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(Cite as: 89 F.3d 1360)

United States Court of Appeals,
Eighth Circuit.
UNITED STATES of America, Appellee,
v.
Forriss D. ELLIOTT, Appellant.

No. 95-1586.
Submitted Feb. 14, 1996.
Decided July 22, 1996.

[BOWMAN](#), Circuit Judge.

Forriss D. Elliott was convicted of seven counts of mail fraud in violation of [18 U.S.C. § 1341 \(1988 & Supp. V 1993\)](#) and one count of conspiracy to commit mail fraud in violation of [18 U.S.C. § 371 \(1988\)](#) for submitting fraudulent legal bills to the state of Missouri in connection with his work as a special assistant attorney general. The District Court ^{FN1} sentenced him to a term of sixty months of imprisonment. Elliott appeals his conviction and sentence. For reversal, Elliott raises four issues. First, he contends that the mail fraud statute does not apply to purely intrastate mailings. Second, Elliott, who is black, raises an equal-protection challenge to the racial composition of the all-white jury that convicted him. Third, he claims that the District Court made a number of evidentiary errors. Fourth, he challenges the length of his sentence as calculated under the sentencing guidelines. We affirm Elliott's conviction and sentence.

^{FN1} The Honorable Jean C. Hamilton, Chief Judge, United States District Court for the Eastern District of Missouri.

I.

In the fall of 1989, Elliott, an attorney in private practice in the St. Louis area, was appointed a part-time special assistant attorney general to represent the Second Injury Fund (the Fund) and the State of Missouri in workers' compensation cases where either the Fund or the state was being sued. In limited circumstances, the Fund provides additional compensation to previously compensated employees who suffer a second job-related injury. The goal of the

Fund is to encourage employers to hire the partially disabled by limiting the employer's liability in the event that the employee "receives a subsequent compensable injury resulting in additional permanent partial disability." [Mo.Rev.Stat. § 287.220.1](#) (1994). As a special assistant attorney general, Elliott was authorized to bill the state for legal services rendered and expenses incurred in his work on *1363 behalf of the state. Elliott mailed his bills to the state on a monthly basis. The bills he submitted, however, turned out to be grossly inflated.

After the state discovered the fraudulent billing scheme, Elliott was indicted for mail fraud. He was convicted after a third trial by an all-white jury. The first two trials, both of which had black jury members, resulted in hung juries.^{FN2} At trial, the government presented a mountain of documentary evidence that mapped out Elliott's fraudulent billing scheme. Thirty-six billing entries showed that Elliott or one of his employees worked more than twenty-four hours a day, sometimes in excess of fifty hours. On forty occasions, Elliott claimed that he or his associate, Steve Lewis, had appeared at a Workers' Compensation Division trial, court hearing, or deposition on behalf of the Fund when, in fact, minute sheets and deposition transcripts revealed that no one from his law firm was present. Elliott also billed the state for settlement negotiations supposedly done on case files that had been closed months or years earlier, some of which Elliott had closed himself. Numerous times the billing entries showed Elliott, who billed himself out at seventy dollars an hour, as the person doing the legal work when, in fact, the work was done by his paralegal or his associate, both of whom had lower billable rates. The documents indicated that, on many occasions, instead of billing the thirty-dollar flat fee that is allowed for handling a partial disability case, Elliott billed partial disability cases at the much more lucrative hourly rate reserved for total disability cases. The documentary evidence also demonstrated that Elliott had grossly exaggerated copying and postage expenses.

^{FN2} After the first two cases ended with hung juries, a third attempt at trial a few weeks later was unsuccessful when a mistrial was declared during the first day of jury se-

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lection because reference was made to the fact that Elliott had been tried twice previously.

Although the substantial documentary evidence was probably enough to convict Elliott, the government also presented witness testimony that showed Elliott was the mastermind of the fraudulent billing scheme. While representing the Fund, Elliott employed two paralegals at different times to assist him in preparing the bills that he sent to the state. Elliott first hired Brenda Leake in August 1990. Leake testified that Elliott ordered her to make bogus entries on his billing statements. She worked for Elliott for about twelve months until she was fired in September 1991. Elliott then hired Connie O'Bryant as a new paralegal to assist in bill preparation. Even though O'Bryant was called as a defense witness, she acknowledged that Elliott gave her false entries to put in the bills. Mary Reinhardt, who worked for the state and received all the bills, also testified. She stated that while Leake was still employed by Elliott, Leake telephoned her to warn her about the false entries and recommended that someone look at the inflated bills. Elliott's former accountant, Brian Cox, also testified. In December 1992, after Elliott saw his picture splashed across the front page of the Sunday edition of the *St. Louis Post-Dispatch* accompanied by a story accusing him of billing fifty-hour work days, Elliott telephoned Cox. Elliott asked Cox to review his billing statements. Cox spent two weeks comparing the bills with Elliott's case files. Cox testified that the bills could not be substantiated. Finally, the government put on the previous sworn testimony of Elliott himself. Although denying criminal culpability, Elliott admitted certain bills were "inflated" or false and that the state was billed for work not done. Trial Trans. (Dec. 1, 1994) at 23-25 (testimony of court reporter regarding Elliott's sworn statements).

II.

Elliott first argues that the mail fraud statute, [18 U.S.C. § 1341](#), does not apply to purely intrastate mailings. Although the evidence shows that Elliott used the United States mails to send his bills to the state, all were sent and received in Missouri. Relying on *United States v. Lopez*, [514 U.S. 549, 115 S.Ct. 1624, 131 L.Ed.2d 626 \(1995\)](#), Elliott insists that mail fraud requires some sort of interstate connection. We disagree. *Lopez* is a Commerce Clause case and therefore has no application whatsoever to the mail

fraud ***1364** statute, which is based on the Postal Power found in Article I, Section 8, Clause 7 of the Constitution. The Postal Power, of course, gives the federal government the power to deliver mail intrastate. In *Lopez*, the Supreme Court struck down the Gun-Free School Zones Act of 1990, which made it a federal offense for any individual knowingly to possess a firearm in a school zone. Congress had used the Commerce Clause as the source of its authority to enact the Gun-Free School Zones Act. The *Lopez* Court determined that Congress exceeded its Commerce Clause authority when it passed the Gun-Free School Zones Act because mere possession of a gun in a school zone did not substantially affect interstate commerce. Unlike the Gun-Free School Zones Act, the jurisdictional basis of the mail fraud statute is grounded in the Postal Power and therefore necessarily encompasses all items passing through the United States mails, even if their passage is purely intrastate. "It is irrelevant that all of the mailings in this case may have been intrastate in nature," [United States v. Cady](#), [567 F.2d 771, 776 n. 7 \(8th Cir.1977\)](#), cert. denied, [435 U.S. 944, 98 S.Ct. 1526, 55 L.Ed.2d 541 \(1978\)](#), because "[t]he focus of the statute is upon the misuse of the Postal Service ... and Congress clearly has the authority to regulate such misuse of the mails," [United States v. States](#), [488 F.2d 761, 767 \(8th Cir.1973\)](#), cert. denied, [417 U.S. 909, 94 S.Ct. 2605, 41 L.Ed.2d 212 \(1974\)](#). See also [United States v. Minkin](#), [504 F.2d 350, 353 \(8th Cir.1974\)](#) (affirming mail fraud conviction where fraudulent mailing made only twelve-mile intrastate journey), cert. denied, [420 U.S. 926, 95 S.Ct. 1122, 43 L.Ed.2d 396 \(1975\)](#); [United States v. Mirabile](#), [503 F.2d 1065, 1067 \(8th Cir.1974\)](#) (affirming mail fraud conviction for intrastate mailing), cert. denied, [420 U.S. 973, 95 S.Ct. 1395, 43 L.Ed.2d 653 \(1975\)](#).

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VI.

For the foregoing reasons, the judgment of the of the District Court is affirmed.

C.A.8 (Mo.),1996.
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