

DEFENDANT Garry B. Smith

2014-3267-1425580

CHARGE

*AK UNAPP*  
Money Laundering > \$200K,  
TPC 34.02, F1

ADDRESS 4721 Windsor Drive, Garland, Texas, 75042

CAUSE# 199-80604-2014

DESCRIPTION W/M/DOB: 09/17/1973/ [REDACTED] TX DL  
#11827209

AGENCY/# State Securities Board

ARREST INFORMATION GJR

C/C Robert James Nelson

Witness: Eliza Lujan

**TRUE BILL OF INDICTMENT**

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Collin

County, State of Texas, duly organized at the January Term, A.D., 2014 of the 296th


District Court of said county, in said court at said term, do present that \_\_\_\_\_

**GARRY B. SMITH, hereinafter referred to as "defendant"**

on or about and between the dates of June 1, 2010, and October 31, 2010, and before the presentment of this indictment, in Collin County, Texas, and elsewhere, did then and there

knowingly acquire an interest in, and possess, and transfer the proceeds of criminal activity, to wit: current money of the United States of America, in the aggregated amount of two hundred thousand dollars (\$200,000.00) or more, and said proceeds were generated from the commission of the offense of Theft of Property in the amount of two hundred thousand dollars (\$200,000.00) or more, a felony under the laws of the State of Texas; and the commission of fraud in connection with the sale of securities in an amount of \$100,000.00 or more, a felony under the laws of the State of Texas;

Against the peace and dignity of the State.

  
Foreperson of the Grand Jury

**FILED**

14 MAR 25 PM 2: 45

ANDREA STROH THOMPSON  
DISTRICT CLERK  
COLLIN COUNTY, TEXAS  
  
BY \_\_\_\_\_ DEPUTY

DEFENDANT Garry B. Smith

CHARGE *de Whapp*  
Securities Fraud > \$100K,  
Art. 581 Sec. 29(c) Texas  
Securities Act

2014-3266-1425580

ADDRESS 4721 Windsor Drive, Garland, Texas, 75042

CAUSE# 199-80605-2014

DESCRIPTION W/M/DOB: 09/17/1973/ [REDACTED] TX DL  
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AGENCY/# State Securities Board

ARREST INFORMATION GJR

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IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Collin

County, State of Texas, duly organized at the January Term, A.D., 2014 of the 296th

District Court of said county, in said court at said term, do present that \_\_\_\_\_

**GARY B. SMITH, hereinafter referred to as "defendant"**

on or about the dates listed below, and before the presentment of this indictment, in Collin County, Texas, did then and there directly and through agents, sell and offer for sale units of interest in the Acorn Energy, Inc., Hamilton 6-Well Joint Venture, being securities, to wit: investment contracts, to each of the persons listed below, and in the following amounts:

<u>PERSON</u>	<u>DATE</u>	<u>AMOUNT</u>
Daniel Crowley	June 14, 2010	\$131,250.00
Wade Decker	June 15, 2010	\$175,000.00
Wade Decker	July 15, 2010	\$87,500.00
Scott Wormser	August 13, 2010	\$21,875.00
Wesley Zmolek	August 24, 2010	\$21,875.00
Scott Wormser	August 25, 2010	\$43,750.00
Paul Mabile	August 31, 2010	\$21,875.00
Wade Decker	September 2, 2010	\$87,500.00
Scott Wormser	October 10, 2010	\$21,875.00

And said Defendant committed fraud in connection with the sales and offers for sale of said securities by:

**PARAGRAPH ONE**

Knowingly and intentionally representing that funds invested by investors in the Hamilton 6-Well Joint Venture would be used to drill, test, complete and equip six oil wells to be drilled in Archer County, Texas, said information being a misrepresentation of a relevant fact; and

**PARAGRAPH TWO**

Intentionally failing to disclose that funds invested by investors in the Hamilton 6-Well Joint Venture would be used to pay for costs associated with oil and/or gas wells that were not part of the Acorn Energy, Inc., Hamilton 6-Well Joint Venture offering, said information being material fact; and

**PARAGRAPH THREE**

Intentionally failing to disclose that funds invested by investors in the Hamilton 6-Well Joint Venture would be used for purposes unrelated to the drilling, testing, completing and equipping six oil and gas wells in Archer County, Texas, said information being material fact; and

**PARAGRAPH FOUR**

Intentionally failing to disclose that in August of 2010, the defendant was the subject of an investigation being conducted by the United States Securities & Exchange Commission (the "S.E.C.") in regards to his involvement as President and Director of Overland Energy, Inc., to determine whether the defendant violated certain provisions of the federal securities laws, and that on or about August 10, 2010, the defendant was deposed by members of the staff of the Enforcement Division of the Fort Worth Regional Office of the S.E.C. regarding his said involvement, said information being material fact; and

**PARAGRAPH FIVE**

Intentionally failing to disclose that between the dates of August 1, 2004, through September 15, 2005, the defendant through his company, Triton EP, L.L.C., offered and sold securities, to wit: certificates of interest or participation in oil and gas leases or the payments out of production in oil and gas wells without being registered as a dealer or broker dealer agent by the state of Alabama or having an exemption from such registration, and that on or about March 6, 2006, the defendant was ordered *In The Matter Of Triton EP, L.L.C., Garry B. Smith and John M. Faeth* by the Alabama Securities Commission to cease and desist from making further offers and sales of securities, including certificates of interest or participation in oil and gas leases or the payments out of production in oil and gas wells, within or from the state of Alabama, and that on or about May 24, 2006, the defendant entered into a consent order with the Alabama Securities Commission agreeing to refrain from engaging in further securities transactions in the state of Alabama until such time as the defendant and his company became properly registered or qualified for an exemption from such registration, said information being material fact; and

**PARAGRAPH SIX**

Intentionally failing to disclose that the defendant's previous company, Triton EP, L.L.C., was sued on or about July 14, 2009, in Tarrant County District Court in Cause Number 048-238698-09 in a lawsuit styled *Jackie Reeves d/b/a Reaves Construction and Jackie Reaves d/b/a 2JR Trucking v. Triton EP LLC* alleging breach of contract in that Triton EP, L.L.C. failed to pay the plaintiffs for oil field work performed on behalf of Triton EP, L.L.C. by the plaintiffs, including completion services, field services and well operation services, and that on or

about October 28, 2009, a judgment in the amount of \$52,672.40, along with attorney's fees in the amount of \$1,350.00 was entered against Triton EP, L.L.C. in said lawsuit, in favor of the plaintiffs, in the 48<sup>th</sup> Judicial District Court of Tarrant County, Texas; said information being material fact; and

**PARAGRAPH SEVEN**

Intentionally failing to disclose that the defendant's previous company, Triton EP, L.L.C., was sued on or about June 17, 2009, in the 271<sup>st</sup> Judicial District Court of Wise County, Texas, in Cause Number CV09-06-487 in a lawsuit styled *Tejas Western Corporation and Signal Completion Services LP v. Triton EP LLC* alleging breach of contract a suit on a note in that Triton EP, L.L.C. failed to pay the plaintiffs for oil field work performed on behalf of Triton EP, L.L.C. by the plaintiffs, including completion services and well operation services and that the defendant company had executed a promissory note in favor of the plaintiff Tejas Western Corporation in the amount of \$300,000.00 in connection with a loan made to the defendant by the plaintiff and that Triton EP, L.L.C., had defaulted on said note, and that on or about August 24, 2009, a judgment in the amount of \$237,406.00, along with attorney's fees in the amount of \$1,350.00 was entered against Triton EP, L.L.C. in said lawsuit, in favor of the plaintiff Tejas Western Corporation and in the amount of \$123,943.00 along with attorney's fees in the amount of \$1,350.00 in favor of plaintiff Signal Completion Services, L.L.C., in the 271<sup>st</sup> Judicial District Court of Wise County, Texas; said information being material fact; and

**PARAGRAPH EIGHT**

Intentionally failing to disclose that the defendant's previous company, Triton EP, L.L.C., was sued on or about July 24, 2009, by Cooke County, Texas, in Cause Number 6093 in the 235<sup>th</sup> Judicial District Court of Cooke County, Texas, for failure to pay Cooke County taxes totaling \$47,791.92, and that said lawsuit was settled with Triton EP, L.L.C., paying a lump sum of \$17,500.00 to the county and agreeing to pay monthly installment payments totaling \$235.00 until the debt was paid in full; and

**PARAGRAPH NINE**

Intentionally failing to disclose that the defendant's previous company, Triton EP, L.L.C., was sued on or about August 25, 2009, in the 235<sup>th</sup> Judicial District Court of Cooke County, Texas, in Cause Number 09-00397, R.C. Slagle, III, and Henry F. Slagle, as landowners who sold Triton EP, L.L.C., one of the leases on which a well was drilled and who were owed \$40,000.00 in unpaid royalty interest, and that said suit was stayed after Triton EP, L.L.C., filed for Chapter 11 bankruptcy; said information being material fact; and

**PARAGRAPH TEN**

Intentionally failing to disclose that on or about November 7, 2009, that the defendant's previous company, Triton EP, L.L.C. filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, in Case Number 09-37667-BJH-11, said information being material fact;

And all of said amounts were obtained pursuant to one scheme and continuing course of conduct, and the aggregate amount that was obtained was \$100,000.00 or more;

Against the peace and dignity of the State.

FILED

14 MAR 25 PM 2:45

ANDREA STROH THOMPSON  
DISTRICT CLERK  
COOKE COUNTY, TEXAS  
DEPUTY

  
FOREPERSON OF THE GRAND JURY

**DEFENDANT** Garry B. Smith 2014-32168-1425580 **CHARGE** Theft PC 31.03 F1  
**ADDRESS** 4721 Windsor Drive, Garland, Texas, 75042 **CAUSE#** 199-80603-7014  
**DESCRIPTION** W/M; DOB: 09/17/1973; [REDACTED] TX DL #11827209 **AGENCY/#** State Securities Board  
**ARREST INFORMATION** GJR  
**C/C** Robert James Nelson **Witness:** Eliza Lujan

**TRUE BILL OF INDICTMENT**

**IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS: The Grand Jury of Collin County, State of Texas, duly organized at the** January **Term, A.D.,** 2014 **of the** 296th **District Court of said county, in said court at said term, do present that**

**GARRY B. SMITH, hereinafter "defendant"**

on or about the dates listed below, and before the presentment of this indictment, in Collin County, Texas, did then and there unlawfully appropriate, to wit: acquire and exercise control over property, other than real property, to wit: current money of the United States of America, from the following owners, and in the following amounts:

<u>Owner</u>	<u>Date of Appropriation</u>	<u>Amount of Appropriation</u>
Daniel Crowley	June 14, 2010	\$131,250.00
Wade Decker	June 15, 2010	\$175,000.00
Wade Decker	July 15, 2010	\$87,500.00
Scott Wormser	August 13, 2010	\$21,875.00
Wesley Zmolek	August 24, 2010	\$21,875.00
Scott Wormser	August 25, 2010	\$43,750.00
Paul Mabile	August 31, 2010	\$21,875.00
Wade Decker	September 2, 2010	\$87,500.00
Scott Wormser	October 10, 2010	\$21,875.00

And said appropriations were without the effective consent of said owners in that consent was induced by deception, to wit: said defendant created and confirmed by words and conduct false impressions of fact that were likely to affect the judgment of said owners in the transactions and that the defendant did not believe to be true; and said defendant failed to correct false impressions of fact that were likely to affect the judgment of said owners in the transactions, that said defendant previously created and confirmed by words and conduct, and that said defendant did not at the time believe to be true; and said defendant promised performance that affected the judgment of said owners in said transactions that said defendant did not intend to perform and knew would not be performed; And said defendant acted with the intent to deprive said owners of said property by withholding said property permanently and for so extended a period of time that a major portion of the value and enjoyment of said property was lost to said owners, and by disposing of said property in a manner that made recovery of said property by said owners unlikely;


And all of said amounts were obtained, as alleged, as part of one scheme and continuing course of conduct, and the aggregate value of the property so appropriated was \$200,000.00 or more;

Against the peace and dignity of the State.

  
FOREPERSON OF THE GRAND JURY

FILED

14 MAR 25 PM 2:45

ANDREA STROM THOMPSON  
DISTRICT CLERK  
COLLEEN COUNTY, TEXAS  
BY  DEPUTY