

FILED
IN COURT
ASHEVILLE, N.C.

FEB - 8 2008

U.S. DISTRICT COURT
W. DIST. OF N.C.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA

DOCKET NO. 1:07CR123-05

vs.

IRVIN KEITH COMER

STATEMENT OF FACTS

Were this matter to go to trial, the United States of America would prove the following facts beyond a reasonable doubt:

1. From a date ⁱⁿ ~~or~~ ²⁰⁰⁸ ~~about October 1, 2000~~, and continuously thereafter through June 28, 2007, in Buncombe and Madison Counties, and elsewhere within the Western District of North Carolina, the defendant IRVIN KEITH COMER, knowingly and willfully committed the offense of operating an illegal gambling business, that is: to conduct, finance, manage, supervise and direct an illegal gambling business, said illegal gambling business involving the operation of video poker machines in violation of the laws of the State of North Carolina, in which state said business was conducted; which illegal gambling business involved, during the period aforesaid, five or more persons who conducted, financed, managed, supervised, directed and owned all or a part thereof; and which gambling business remained in substantially continuous operation for a period in excess of thirty days, and had a gross revenue in excess of \$2,000 in any single day, all in violation of Title 18, United States Code, Section 1955.

2. This Statement of Facts does not contain each and every fact known to the defendant and to the United States concerning the defendant's or others' involvement in the charges set forth in the plea agreement.

3. During the relevant period, the defendant was one of the operators of Western Amusement, Inc., which owned video poker machines that were in operation in Buncombe and Madison Counties. In addition to the defendant, other persons involved with the operation of

Western Amusement included, among others, his son Kerry Comer, Jack Shepherd, and Joseph Wayne Vinestt, who was the person with responsibility for collecting monies from the machines, that is, performing "checkups," and occasionally for delivering cash to stores that had Western Amusement machines so as to enable the store owners to make cash payouts to winners. A "checkup" consisted of visiting the store, examining the machines, taking readings of the amount of cash in, cash out, and net profit for each machine since the last checkup, and dividing the profits between the store owners and Western. Western Amusement would receive 40% or 50% of the net profits from the operation of the machines, and the store owners would retain the remaining 50% or 60%. Western Amusement's profits were then divided equally between Jack Shepherd and Kerry Comer.

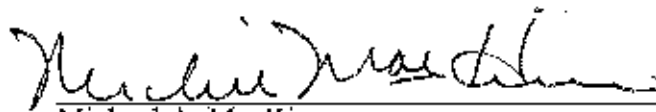
4. The defendant knew during this relevant time period that Western Amusement, Inc., its employees, and its affiliated store owners were involved in violations of the gambling laws of the State of North Carolina, he knew that five or more persons were involved in conducting, financing, managing, supervising, and directing the illegal gambling business, and he knew that the illegal gambling business was in substantially continuous operation for a period of more than thirty days. He knowingly and willfully joined in the agreement to conduct this illegal gambling business.

Defendant's Signature: After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, IRVIN KETH COMER, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.



IRVIN KETH COMER
Defendant

Defense Counsel's Signature: I am the attorney for IRVIN KETH COMER. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.


Michael A. MacKinnon
Counsel for Defendant