

DECLARATION OF BRADLEY SWARTZ

Bradley Swartz does hereby declare as follows:

1. I am a Supervising Investigator employed full time with the Office of Field Investigation and Audit in the New York Department of Motor Vehicles ("DMV"). I have been employed in this capacity for seven years. I have also served in the DMV as a Senior Investigator for approximately three and as an Investigator for approximately three years. My office is located in Albany, New York.

2. As a Supervising Investigator with the DMV, my duties and responsibilities include overseeing a unit in Albany that investigates forged and altered documents. In this position and in previous positions I have become extremely familiar with the registration, reassignment, title, and dealership documents issued by New York and numerous other states. The alteration or forging of documents is almost always an integral part of large-scale odometer fraud because such documents generally contain odometer mileage information. It is frequently necessary to alter or forge such documents to conceal vehicles' true mileage from purchasers and from state authorities. In this way I became directly or indirectly engaged in the investigation of numerous cases of odometer fraud throughout New York State.

3. In fulfilling my responsibilities, I have frequent contact with several types of individuals familiar with particular aspects of odometer tampering. The types of people I encounter in this regard include other investigators and

regulatory agencies investigating or attempting to prevent odometer tampering, individuals actively involved in odometer tampering, people who knowingly or innocently purchase vehicles which have been the subject of odometer tampering, consumers who have purchased cars the odometers of which have been rolled back, and individuals involved at different levels of the automobile business.

4. As a result of the activities described above, I have become familiar with the problems encountered by people who purchase vehicles with rolled odometers. I have also spoken with numerous used car dealers in New York State regarding vehicles with rolled odometers.

5. Section 2N3.1 of the United States Sentencing Commission Guidelines ("U.S.S.G.") provides that for odometer fraud, one should apply the "Fraud and Deceit" Guideline, 2F1.1 if more than one vehicle was involved in the offense, as in this case, United States v. [REDACTED] 93 CR 1122 (JBW). Guideline 2F1.1 requires that an "amount of loss" be determined for the offense. In this case, that requires an estimation of the difference in value between apparent low mileage cars and resale value of vehicles with rolled odometers whose actual mileage is not known. The records gathered in the investigation do not show the prices that all consumers paid for vehicles whose odometers were altered. However, documents and information gathered from witnesses that have been interviewed yield a retail sales price of approximately \$6,000. In addition, consumers on

average paid retail sales tax at approximately 8.25 percent, as well as fees for inspection and registration. These prices, taxes, and fees appear typical for the cars that ██████ sold.

6. Thirty dealerships in the New York City area were interviewed by my staff about odometer rollbacks.^{2/} All of these dealerships stated that they would not knowingly purchase a vehicle with an odometer rollback. Twenty-seven out of thirty of these dealerships stated that they would not accept a car with an odometer rollback as a trade-in for part of the purchase price of a new car, and three stated that they would only accept such a trade-in vehicle if it were clearly identified by the seller as a car whose true mileage was unknown. When asked about the value of vehicles with odometer rollbacks, most were not willing or able to estimate how to calculate the value of such a vehicle. Of those who did give an estimate, six stated that the value would be fifty percent of its normal market or "bluebook" value, one stated only that their value would be "significantly less" than normal market value, and one estimated the value as the

^{2/} The dealerships interviewed were the following: Acura at Long Island City; B & L Toyota, Bronx; Babylon Honda, West Babylon; Bronx Acura, Bronx; Bronx Hyundai, Bronx; Country Lincoln Mercury, Huntington; Curry Ford, Peekskill; Farmingdale Dodge, Farmingdale; Gregoris Nissan of Valley Stream; Jackson Lincoln Mercury, Ossining; Lee's Toyota, Jamaica; Mercedes Benz Manhattan, Inc., Manhattan; Mohegan Motors, Mohegan Lake; Nemet Motors, Jamaica; Old Country Dodge, Hicksville; Palanker Chevrolet, West Babylon; Penn Toyota, Greenvale; Premier Nissan & Cadillac, New Rochelle; Queensboro Toyota, Jackson Heights; Rallye Motors, Roslyn; Rushneck Pontiac, Tarrytown; S & W Sales Co., Ridgewood; Saab at Bayside; Silver Star Motors, Long Island City; Smithtown Toyota, Smithtown; Sovereign Motor Cars, Brooklyn; Star Volvo, Nanuet; Volvo BP, Floral Park; Wantagh Mitsubishi, Wantagh; and Westbury Nissan, Westbury.

wholesale price. The findings of this survey are consistent with my own knowledge of this area gained during the years I have worked at the DMV. There is no identifiable market for a vehicle with an odometer rollback, and the taint caused by an odometer rollback leads to a dramatic decrease in value. To the extent this decrease in value can be quantified, it amounts to about fifty percent of a vehicle's normal market price. A consumer attempting to resell a vehicle with a rolled odometer, therefore, would be likely to obtain no more than half of what he or she had paid for the vehicle.

7. On the basis of the above, I believe that the loss per vehicle that consumers would suffer if they attempted to resell their vehicles would amount to approximately fifty percent of the purchase price they paid for their cars. Since the average purchase price was approximately \$6,000, this average loss would be \$3,000.

8. This loss figure is based on an attempt to determine the loss per vehicle on resale, a method dictated by Guideline 2F1.1, Application Note 7(a). The resulting loss figure is reasonable, even if one examines losses people suffer if they do not sell these rollback vehicles. This is because there are several elements of damages that individuals suffer when they purchase a car the odometer of which has been altered. The damages begin with the purchase price and increase as time passes. The damages consumers suffer include the following:

a. Purchase price: The difference between the purchase price of a used car with accurate mileage, and the purchase price which is inflated by a false low mileage on its odometer.^{2/}

b. Insurance costs: Frequently owners of vehicles with high mileage do not insure them for collision damage, while owners of lower mileage cars do carry such insurance. The false low mileage reading thus leads owners to pay more for insurance than they would if they knew the vehicles' actual mileage.

c. Repair costs: The difference in the purchase price of low and high mileage cars theoretically reflects, among other things, anticipated repair costs to vehicles with higher mileages. However, as a practical matter many high mileage vehicles suffer serious and expensive mechanical problems which are not reflected in purchase price differentials. Thus, owners of high mileage vehicles frequently suffer extraordinary costs to repair and maintain their vehicles that are not accounted for in differences in the cost of the vehicles, as described in paragraph "a" above.

^{2/} This difference is reflected only in part in publications which list the value of used vehicles with varying amounts of mileage on them. Those publications are meant to compare low and high mileage vehicles with accurate odometers. Used car retailers for the most part do not want a vehicle the odometer of which has been altered (if it has to be sold with that fact acknowledged), and consumers simply do not want such a vehicle.

d. Taxes: Car buyers commonly pay sales tax on the purchase price of their vehicles, and thereafter (in some jurisdictions which impose property taxes on motor vehicles) pay property taxes which are based in part on that purchase price. When the price of the vehicle is fraudulently inflated as the result of a rolled back odometer, the purchaser pays additional sales and property taxes beyond what he or she would pay if the odometer reflected the vehicle's actual mileage. The sales tax on an automobile in New York State is 4% and an additional 4.25% in New York City, for a total of 8.25%. In this case, however, the defendant did not pay any of the sales tax that he collected, either to the State or City of New York. Therefore, the entire tax should be considered a loss to the consumer and to state and local government. With approximately \$6,000 as a retail sales price, the average loss associated with the collection of retail sales tax was \$495, which is 8.25% of \$6,000.

e. Lost time and lost use of car: In addition to the actual cost of repairs, people suffer a loss of time associated with breakdowns and dealing with service personnel. They may also spend considerable amounts of time attempting to resolve the problems that arise with the seller if they realize they have purchased a vehicle with a rolled-back odometer. During this time a consumer will also lose the use of the vehicle. The costs of these losses are

real, including lost wages and the opportunity to spend time in other more productive pursuits.

9. I was the lead agent in this case, United States v.

~~_____~~ Based on all of the above factors, and on the type of cars that defendant purchased and sold, and the amount of the mileage rollbacks involved,^{2/} I believe that a conservative estimate of losses consumer suffered per vehicle, using the figures discussed in the previous paragraph, is \$3,000.

10. Because many elements of a motor vehicle wear out with use and mileage, rather than with years, there are dangers involved in not knowing the correct mileage on a motor vehicle. Congress noted this fact in passing the federal laws that ~~_____~~ violated, linking "an accurate indication of the mileage traveled by a motor vehicle" to "its safety and reliability." 15 U.S.C. § 1981. The brakes, front end suspension, steering, and drive line members are particularly subject to failure as the result of mileage. Because consumers of vehicles that have been the subject of odometer rollbacks are unaware of the true mileage on their vehicles, they are less likely than people with accurate odometers to provide proper maintenance to their cars, and the cars may therefore be subject to sudden failure. In many circumstances common in everyday driving, such a failure could

^{2/} On average, defendant caused vehicle odometers to be rolled back approximately 37,500 miles, from an average of approximately 68,000 miles at time of purchase to an average 30,500 miles at time of sale. This is based on a group of more than two hundred cars for which we have both high and low mileage figures.

cause serious injury or death not only to a driver and his or her passengers, but to others on the road or nearby.

11. While consumers are the principal victims of this type of fraud, the sale of vehicles with odometer rollbacks also creates unfair competition for legitimate dealers. Legitimate dealers are likely to lose sales and profits because of this unfair competition.

12. My investigation revealed that [REDACTED] was responsible for sales of at least 373 vehicles. The National Highway Traffic Safety Administration ("NHTSA") and my office have gathered documentation with regard to 324 vehicles handled by [REDACTED]'s wholesale dealership. In addition, my office has gathered documents with regard to approximately an additional 19 transactions undertaken by [REDACTED] where [REDACTED] and [REDACTED] shared books of "[REDACTED]" retail reassignment documents and an additional 30 transactions involving wholesale documents from a South Florida concern, [REDACTED] Enterprises, and retail documents issued to [REDACTED] Auto Sales. Both of these groups of sales should be attributed to the defendant. I believe this estimate to be an extremely conservative approach to ascertaining the volume of vehicles he sold. The documentation gathered primarily pertains to the period 1989-1991. The defendant, however, held a wholesale license prior to that time, and was involved in the rollback business after that time. In 1993 alone, my office has

discovered over a hundred vehicles advertised for sale by the defendant in one newspaper, the Staten Island Advance.

13. The group of 30 transactions should be attributed to the defendant for a number of reasons.

a. Wholesale documents show that these vehicles were purchased in New Jersey by [REDACTED] Enterprises. [REDACTED] was authorized to buy vehicles for [REDACTED] Enterprises, Inc., and no other authorized buyers for Northeastern auctions have been identified for this South Florida business.

b. The retail documents involved were issued by the DMV to [REDACTED] Auto Sales, an entity previously encountered by myself that was used to conceal sales of odometer rollbacks by [REDACTED] or his brother [REDACTED].

c. A number of consumers of these vehicles have identified [REDACTED] as a seller by name, and others have located the place of sale at [REDACTED] Avenue, where the defendant has conducted his business. Others have identified the defendant's brother [REDACTED] as the seller.

d. The retail documents used to transact these sales all came from the same group of fifty documents, whether they were used by [REDACTED] or by [REDACTED] in the sale. The group of documents is commonly referred to as a book of "MV-50s" and have motor vehicle reassignment documents issued in each book. Whether [REDACTED] or [REDACTED] sold

the car, the two brothers shared reassignment documents to use in the transaction.

e. I have reviewed these documents myself and found that the pattern in which these documents were marked and used reflects the same patterns as used previously by the defendant and his brother.

f. The pattern of business connected with these sales shows an effort to conceal activity.

i. In October 1993 a DMV investigator found numerous cars at [REDACTED] Avenue, the address at which both [REDACTED] and [REDACTED] sold rolled-back cars. The cars all had cards placed so as to conceal their vehicle identification numbers.

ii. DMV investigators also have found advertisements for business under various names in the same time period, even though the numbers used were listed at [REDACTED] Avenue, the previous location of the defendant's business and the home of his father.

iii. Some consumers stated that they bought cars at the defendant's address at [REDACTED] Place, but that the person who sold the car gave a name to them other than [REDACTED].

iv. Consumers have stated that both [REDACTED] and [REDACTED] insisted on cash transactions.

v. The retail name entered on the documents, [REDACTED] Auto Sales, also does not correspond with the name to

which the documents were issued, [REDACTED] Auto Sales.

Taken together, this evidence demonstrates that the defendant was knowingly involved in these transactions.

14. Questionnaires were mailed to a number of consumers who purchased vehicles from [REDACTED] and from [REDACTED]. Of 69 individuals who purchased vehicles from [REDACTED], 66 stated that they would not have purchased the vehicle at all if they knew the mileage was thirty or forty thousand miles higher, and 39 stated that the vehicle thus far performed below expectations. Of those consumers who purchased vehicles from [REDACTED], 62 of 70 who answered the question stated that they would not have purchased the vehicle had they known the mileage was thirty or forty thousand miles higher than they believed at the time, and 27 of 70 who answered the question stated that the vehicle had thus far performed below their expectations. It should be noted that numerous dissatisfied consumers reported major, costly repairs related to parts such as the transmission and the engine. As the vehicles age further and endure further use, even consumers who are currently satisfied with their vehicle's performance will be likely to experience such major difficulties prematurely. From 69 questionnaires I also tabulated the average price paid by [REDACTED] s customers and found it to be \$5,975.84, which is consistent with the information I gathered earlier in witness interviews.

15. I also believe that [REDACTED] caused the rollback of virtually all of the vehicles he bought and sold. A variety of checks were used to determine whether or not the vehicles were sold with accurate mileage.^{4/} These checks showed mileage discrepancies on all but one of the 250 vehicles checked, which is a 99% discrepancy or rollback rate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____

Bradley Swartz
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and Audit
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Vehicles

^{4/} The checks for mileage discrepancies were accomplished by comparing mileage available from state registration files or title histories showing mileage after the defendant sold the vehicles, to other evidence of mileage on the vehicles before defendant acquired them. The mileage information regarding the vehicle prior to [REDACTED]'s purchase were obtained either by myself or Jon Setzer, who is currently in Denver, Colorado serving as Special Agent in Charge of NHTSA's Western Region. This information was obtained from persons who sold to the defendant, mileages stored in a computer system used to track vehicle titles and mileages, other title history documents, and auto auction records. Mileage information after [REDACTED]'s sale was obtained from documents submitted to the DMV to title the vehicle in New York, DMV records, and consumers. In all cases the identity of the vehicles were verified by "VIN", or vehicle identification numbers, which are unique to each vehicle.