

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:12-CR- 185-T35MAP

ARSWAYA RALPH

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Robert E. O'Neill, United States Attorney for the Middle District of Florida, and the defendant, Arswaya Ralph, and the attorney for the defendant, Frank De La Grana, mutually agree as follows:

A. **Particularized Terms**

1. Counts Pleading To

The defendant shall enter a plea of guilty to Counts One and Two of the Information. Count One charges the defendant with making a false claim, in violation of 18 U.S.C. § 287. Count Two charges the defendant with identity theft, in violation of 18 U.S.C. §§ 1028(a)(7) and (b)(1).

2. Maximum Penalties

Count One carries a maximum sentence of five years imprisonment, a fine of \$250,000 or the larger of twice the gross gain or twice the gross loss, whichever is greater, a term of supervised release of not more than three years, and a special assessment of \$100. Count two carries a maximum sentence of 15 years

Defendant's Initials AR

AF Approval ARS

imprisonment, a fine of \$250,000 or the larger of twice the gross gain or twice the gross loss, whichever is greater, a term of supervised release of not more than three years, and a special assessment of \$100. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense(s), and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense(s), or to the community, as set forth below.

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offenses with which defendant has been charged and to which defendant is pleading guilty. The elements of Count One are:

- First: The defendant made or presented a claim to a department or agency of the United States;
- Second: The claim as false, fictitious or fraudulent, and material; and
- Third: The defendant knew that the claim was false, fictitious or fraudulent.

The elements of Count Two are:

- First: The defendant knowingly transferred or used a means of identification of another person;
- Second: Without lawful authority;
- Third: During or in relation to or with the intent to commit any unlawful activity that constitutes a violation of Federal law or a felony under any applicable state or local law.

4. Indictment Waiver

Defendant will waive the right to be charged by way of indictment before a federal grand jury.

Defendant's Initials AK

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement related to the conduct giving rise to this plea agreement.

6. Mandatory Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. §§ 3663A(a) and (b), defendant agrees to make full full restitution to the United States Internal Revenue Service.

7. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

8. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant

Defendant's Initials AR

understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG §3E1.1(b), the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

9. Low End

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will not oppose the defendant's request to the Court that the defendant receive a sentence at the low end of the applicable guideline range, as calculated by the Court. The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

10. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court

Defendant's Initials AK

proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

11. Use of Information - Section 1B1.8

Pursuant to USSG §1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of

Defendant's Initials AR

defendant's cooperation and pursuant to this agreement shall be used in determining the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

12. Cooperation - Responsibilities of Parties

a. The government will make known to the Court and other relevant authorities the nature and extent of defendant's cooperation and any other mitigating circumstances indicative of the defendant's rehabilitative intent by assuming the fundamental civic duty of reporting crime. However, the defendant understands that the government can make no representation that the Court will impose a lesser sentence solely on account of, or in consideration of, such cooperation.

b. It is understood that should the defendant knowingly provide incomplete or untruthful testimony, statements, or information pursuant to this agreement, or should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and unreservedly disclose and provide full, complete, truthful, and honest knowledge, information, and cooperation regarding any of the matters noted herein, the following conditions shall apply:

(1) The defendant may be prosecuted for any perjury or false declarations, if any, committed while testifying pursuant to this agreement, or for obstruction of justice.

(2) The United States may prosecute the defendant for the charges which are to be dismissed pursuant to this agreement, if any, and may either seek reinstatement of or refile such charges and prosecute the defendant thereon in the event such charges have been dismissed pursuant to this agreement. With regard

Defendant's Initials AK

to such charges, if any, which have been dismissed, the defendant, being fully aware of the nature of all such charges now pending in the instant case, and being further aware of defendant's rights, as to all felony charges pending in such cases (those offenses punishable by imprisonment for a term of over one year), to not be held to answer to said felony charges unless on a presentment or indictment of a grand jury, and further being aware that all such felony charges in the instant case have heretofore properly been returned by the indictment of a grand jury, does hereby agree to reinstatement of such charges by rescission of any order dismissing them or, alternatively, does hereby waive, in open court, prosecution by indictment and consents that the United States may proceed by information instead of by indictment with regard to any felony charges which may be dismissed in the instant case, pursuant to this plea agreement, and the defendant further agrees to waive the statute of limitations and any speedy trial claims on such charges.

(3) The United States may prosecute the defendant for any offenses set forth herein, if any, the prosecution of which in accordance with this agreement, the United States agrees to forego, and the defendant agrees to waive the statute of limitations and any speedy trial claims as to any such offenses.

(4) The government may use against the defendant the defendant's own admissions and statements and the information and books, papers, documents, and objects that the defendant has furnished in the course of the defendant's cooperation with the government.

(5) The defendant will not be permitted to withdraw the guilty pleas to those counts to which defendant hereby agrees to plead in the instant case

Defendant's Initials AR

but, in that event, defendant will be entitled to the sentencing limitations, if any, set forth in this plea agreement, with regard to those counts to which the defendant has pled; or in the alternative, at the option of the United States, the United States may move the Court to declare this entire plea agreement null and void.

13. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all property subject to forfeiture, pursuant to Title 18, United States Code, Sections 982(a)(2)(B) and 1028(b)(5), whether in the possession or control of the United States or in the possession or control of the defendant or the defendant's nominees.

The property listed below constitutes or is derived from proceeds the defendant obtained, directly or indirectly, as a result of the offense charged in Count Two, and is subject to forfeiture pursuant to Title 18, United States Code, Section 982(a)(2)(B):

- a. a 2010 Buick Lacrosse, VIN # 1G4GE5EV7AF250010;
- b. \$31,407 in cash;
- c. approximately 42 preloadable debit cards;
- d. one pair of Gucci sunglasses with case;
- e. one Samsui Television;
- f. one HP laptop computer, MAC 64D4DA247845, with case;
- g. one thumb drive, SN 09105660699;
- h. one Compaq notebook computer, SN 00196057945365, with case;
- i. assorted jewelry;

Defendant's Initials AK

- j. one Sony video camera;
- k. one white Betsy Johnson handbag;
- l. Gucci gift cards;
- m. a 42" Samsung television;
- n. one Compaq CPU;
- o. one HP desktop CPU;
- p. one pink Kahr Arms P380 firearm, SN RB4470;
- q. Gucci luggage.

Items (f), (g), (h), (n), and (o), listed above, also constitute the defendant's personal property used or intended to be used to commit her offense, and are subject to forfeiture pursuant to Title 18, United States Code, Section 1028(b)(5).

The defendant acknowledges that the vehicle and currency listed as items (a) and (b), above, were administratively seized by the United States Secret Service. The defendant consents to the forfeiture of these assets and waives the right to challenge the administrative forfeiture of them. The defendant further agrees and consents to the forfeiture of all of the assets listed above, pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have that the forfeiture constitutes an excessive fine.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1),

Defendant's Initials AK

the United States and the defendant request that at the time of accepting this plea agreement, the court make a determination that the government has established the requisite nexus between the property subject to forfeiture and the offense(s) to which defendant is pleading guilty and enter a preliminary order of forfeiture. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture shall be final as to the defendant at the time it is entered, notwithstanding the requirement that it be made a part of the sentence and be included in the judgment.

The defendant agrees to forfeit all interests in the properties described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Defendant further agrees to take all steps necessary to locate property and to pass title to the United States before the defendant's sentencing. To that end, defendant agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above wherever located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States.

The defendant agrees that the United States is not limited to forfeiture of the property described above. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence;

Defendant's Initials AL

has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987), including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court,

Defendant's Initials AR

and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any

Defendant's Initials AR

recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

4. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

5. Defendant's Waiver of Right to Appeal and Right to Collaterally Challenge the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the

Defendant's Initials AR

ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

6. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the

Defendant's Initials AR

concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

Defendant's Initials AK

9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

On or about June 2, 2011, law enforcement executed a search warrant at Arswaya Ralph's home located in Riverview in the Middle District of Florida. The search warrant was predicated upon investigation by law enforcement that established Ralph and others were filing fraudulent federal income tax returns with stolen identities in order to obtain refunds from the Internal Revenue Service ("IRS"). The investigation also revealed that Ralph attended and hosted "Drop Parties" during which she and others filed numerous fraudulent income tax returns at the same time.

During the search of Ralph's residence, law enforcement agents recovered approximately \$27,000 in U.S. currency in Ralph's bedroom closet, an additional \$4,387 in currency in a Betsy Johnson designer handbag, approximately 42 preloadable debit cards, two laptop computers, and approximately a dozen handwritten ledgers. These ledgers contained numerous individuals' names, dates of births, social security numbers, personal identification numbers for online tax filing services such as Turbo Tax, and other financial information such as bank account and routing numbers. Law enforcement also seized consumer goods such as designer clothing, shoes, luggage, and handbags as well as electronics and a pink firearm, the aggregate value of which

Defendant's Initials AR

substantially exceeded Ralph's buying power based upon her reported legitimate income of \$0 for 2011.

Post-Miranda, Ralph told law enforcement that she had been filing fraudulent tax returns in using other people's names and identifying information since approximately August or September 2010 and that, among other things, she had purchased a 2010 Buick Lacrosse with fraudulent refund monies. She further admitted that she and others filed these returns online using computers and that she used an HD laptop computer found in her trunk to file some of the fraudulent returns.

Ralph consented to a search of her laptop computer, on which law enforcement found at least 65 fraudulent tax returns for the 2010 tax year that were electronically transmitted and accepted for filing with the IRS. These 65 false claims alone resulted in an intended loss of \$467,781. The names and social security numbers listed on these 65 fraudulent returns were also found in one of Ralph's ledgers that was recovered from her bedroom during the search.

Specifically, law enforcement recovered a reloadable debit card ending in 7295 from a safe Ralph's bedroom. This debit card was issued by the Green Dot Corporation¹ on or about March 27, 2011, in the name of victim DB. Further investigation revealed that a tax refund issued to victim DB in the amount of \$9,585 was

¹ Green Dot provides a service whereby individuals who file their tax returns electronically using Turbo Tax can choose to have their federal income tax return wired to Green Dot who in turn loads the refund on a debit card and mails that card to the filer. The filer can then use the card at any ATM or any location that accepts major credit cards.

loaded onto this card, although by the time law enforcement recovered this card, the balance was zero.

Law enforcement further recovered victim DB's name, social security number, tax refund amount, and other information from one of the ledgers taken from Ralph's residence. A copy of the fraudulent tax refund filed in victim DB's name was also found on Ralph's laptop. A check of IRS records shows that on or about March 25, 2011, Ralph electronically filed a U.S. Individual Income Tax Return in victim DB's name for the tax year 2010, using the IRS' Form 1040. The tax return listed victim DB's name and social security number, identified DB as a student, and claimed that she was due a refund of \$9,585.

Law enforcement contacted victim DB. She confirmed her name and social security number were those used on the 2010 Form 1040, but stated she did not file a 2010 tax return. She further stated that her mother tried to file a return and claim DB as a dependent but could not because Ralph had already filed a fraudulent return using DB's name. DB further stated that she does not know Ralph and did not give Ralph or anyone permission to use her name and social security number or to file an income tax return. Victim DB further confirmed that the information included on the 2010 return Ralph filed using her name and social security number was false.

Among other things, Ralph used the debit card ending in 7295 that contained victim DB's refund for five consecutive ATM transactions at an ATM located in Clearwater, Florida. Ralph took out approximately \$646 in cash using this card on April 12, 2011, and was captured using the card by the ATM's surveillance camera.

Defendant's Initials _____

ARC


10. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

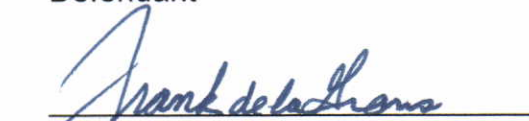
11. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 3rd day of February, 2012.

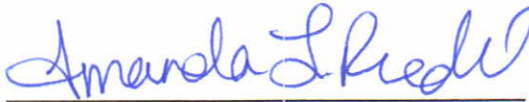


ARSWAYA RALPH
Defendant

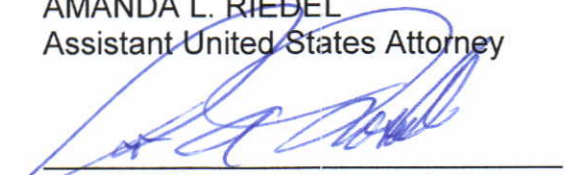


FRANK DE LA GRANA
Attorney for Defendant

ROBERT E. O'NEILL
United States Attorney

By: 

AMANDA L. RIEDEL
Assistant United States Attorney



ROBERT A. MOSAKOWSKI
Assistant United States Attorney
Chief, Economic Crimes Section