

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : **CRIMINAL NO. 13-47-1**
v. :
FORTUNATO N. PERRI, SR. :

GUILTY PLEA MEMORANDUM

I. INTRODUCTION

On January 31, 2013, the United States Attorney's Office for the Eastern District of Pennsylvania filed a four-count Information charging defendant Fortunato N. Perri, Sr. with one count of conspiracy to commit wire and mail fraud, in violation of 18 U.S.C. § 371; one count of mail fraud, in violation of 18 U.S.C. § 1341; and two counts of wire fraud, in violation of 18 U.S.C. § 1343. These charges arose from defendant Perri's conspiring to and scheming to fix traffic tickets in the Philadelphia Traffic Court.

Perri has informed the United States through his counsel, Brian J. McMonagle, Esquire, that he intends to enter pleas of guilty to all counts of the Information. A change of plea hearing has been scheduled by the Court for March 13, 2013, at 9:30 a.m.

II. GUILTY PLEA AGREEMENT

The defendant has entered into a written plea agreement with the government, pursuant to Rule 11(e)(1)(B) of the Federal Rules of Criminal Procedure, and the signed original will be filed with the Court during the Rule 11 colloquy. An executed copy of the plea agreement is attached as Exhibit A. The major terms of the plea agreement are set out below:

1. The defendant agrees to plead guilty to Counts One through Four of the Information.

2. The defendant agrees to pay the special victims/witness assessment in the amount of \$400 as directed by the court.

3. The defendant agrees to pay a fine of \$500 before the time of sentencing.

4. The government will make whatever sentencing recommendation it deems appropriate.

5. Pursuant to § 6B1.4 of the Sentencing Guidelines, the parties agree and stipulate that, as of the date of this agreement, the defendant has demonstrated acceptance of responsibility for his offense making the defendant eligible for a 2-level downward adjustment under USSG § 3E1.1(a).

6. The defendant voluntarily and expressly waives all his rights to appeal or collaterally attack his conviction, sentence or any matter relating to this prosecution unless the government appeals, his sentence exceeds the statutory maximum, the sentencing judge erroneously departs upward from the otherwise applicable sentencing guideline range, or the sentencing judge, exercising the Court's discretion pursuant to United States v. Booker, 125 S. Ct. 738 (2005), imposes an unreasonable sentence above the final Sentencing Guideline range determined by the Court.

No other promises, agreements or conditions have been entered into other than those set forth in the plea agreement.

III. MAXIMUM PENALTIES

By pleading guilty to four counts of the Information, Perri is subject to the following statutory maximum sentences:

Count One (conspiracy to commit mail and wire fraud), 5 years' imprisonment, a 3 year period of supervised release, a \$250,000 fine, and a \$100 special assessment; Counts Two and Three (wire fraud), 20 years' imprisonment, a 3 year period of supervised release, a \$250,000 fine, and a \$100 special assessment; Count Four (mail fraud), 20 years' imprisonment, a 3 year period of supervised release, a \$250,000 fine, and a \$100 special assessment;

Total Maximum Sentence is: 65 years' imprisonment, a 3 year period of supervised release, a \$1,000,000 fine, and a \$400 special assessment. Full restitution also shall be ordered.

IV. ELEMENTS OF THE OFFENSES

A. The elements of **conspiracy to commit mail and wire fraud**, in violation of 18 U.S.C. § 371, are:

1. The conspiracy, agreement, or understanding described in the information to commit mail and wire fraud was formed by two or more persons and was existing at or about the time charged in the information;

2. The defendant knew of the purpose of the conspiracy and deliberately joined it; and

3. After the conspiracy came into existence, at least one of the conspirators knowingly performed at least one of the overt acts alleged in the indictment to further or advance the purpose of the conspiracy, agreement, or understanding.

B. The elements of **mail fraud**, in violation of 18 U.S.C. § 1341, are:

1. The defendant devised, and aided and abetted the devising, of a scheme to defraud or obtain money or property by means of false or fraudulent pretenses, representations

or promises,¹ and

2. The defendant, for the purpose of executing the scheme, knowingly took and received from an authorized depository for mail matter, and caused to be delivered by mail any matter or thing at the place at which it is directed to be delivered by the person to whom it is addressed.²

C. The elements of **wire fraud**, in violation of 18 U.S.C. § 1343, are:

1. The defendant devised or intended to devise a scheme or artifice

- a. to defraud, or
- b. to obtain money or property by means of false or fraudulent pretenses, representations or promises, and

2. for the purpose of executing the scheme or artifice or attempting to do so,

3. The defendant knowingly caused to be transmitted by means of wire communications in interstate commerce, writings, signs, and signals.³

¹ A scheme to defraud is not defined according to technical standards. The scheme need not be fraudulent on its face, but must involve some sort of fraudulent misrepresentations or omissions reasonably calculated to deceive persons of ordinary prudence and comprehension. United States v. Pearlstein, 576 F.2d 531, 535 (3d Cir. 1978).

² Mail fraud is a specific intent crime. The specific intent relates only to the intent to defraud. The defendants must have either devised the fraudulent scheme themselves or have willfully participated in it with knowledge of its fraudulent nature. Pearlstein, 576 F.2d at 537.

It is not necessary that the scheme contemplate the use of the mails as an essential element, nor is it necessary for the government to show that the defendant mailed anything, as long as he caused it to be mailed. “Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he ‘causes’ the mails to be used.” United States v. Periera, 347 U.S. 1, 8-9 (1954).

³ The phrase “transmits by means of wire, radio, or television communications in interstate commerce” means to send from one state to another by means of telephone or telegraph lines or by means of radio or television. The phrase includes a telephone conversation by a person in one state with a person in another state. The government is not required to prove that the defendant actually used a wire communication in interstate commerce or that he even intended that anything be transmitted in interstate commerce by means of a wire, radio, or television communication to further, or to advance, or to carry out the scheme. But the government must

V. **EVIDENCE IN SUPPORT OF THE CHARGES**

If the government proceeded to trial, it would present the following evidence:

I. **General Background**

Fortunato N. Perri, Sr. was a Senior Judge on Philadelphia Traffic Court (“Traffic Court”). He was first appointed to fill a judicial vacancy on Traffic Court in 1997, and later served as the Administrative Judge of Traffic Court from 2000 until 2002. He became a Senior Judge in 2007 and, as such, was eligible to accept assignments on Traffic Court when his services were requested.

Traffic Court judges presided over and adjudicated moving violations, commonly referred to as traffic tickets or citations, occurring within Philadelphia, and issued by the Philadelphia Police Department, the Pennsylvania State Police, and other police entities. Traffic Court was responsible for the collection of fines and court costs resulting from guilty pleas and

prove that the wire transmission was, in fact, used in some manner to further, advance, or carry out the scheme to defraud. And the government must show that the defendant knew that the use of the wire communication would follow in the ordinary course of business or events, or that the defendant should have anticipated that the wire communication in interstate commerce would be used. Third Circuit Instructions at 6.18.1343-1. If the government proves that the wire communication occurred and was reasonably foreseeable, it is not necessary that the government prove it was foreseeable that the wire communication would be interstate. See United States v. Blackmon, 839 F. 2d 900, 907 (2d Cir. 1988).

The specific intent requirement under the wire fraud statute pertains to the scheme to defraud, not to the causing of the wire transmissions. United States v. Cusino, 694 F.2d 185, 188 (9th Cir. 1982). The government is required to show that the defendants either have devised the fraudulent scheme themselves, or have willfully participated in it with knowledge of its fraudulent nature. Pearlstein, 576 F.2d at 537. Where one does an act with knowledge that a wire will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he causes a wire transmission.

findings of guilty for violations of the Pennsylvania Motor Vehicle Code. The moneys received from the fine portion of a guilty adjudication were equally divided between the City of Philadelphia and the Commonwealth of Pennsylvania.

From in or about August 2009 to in or about July 2011 the defendant and others manipulated Traffic Court cases outside the judicial process in order to achieve favorable outcomes on traffic citations to benefit friends, family members, other associates, or local politicians. This manipulation, or “ticket fixing,” consisted of obtaining continuances of trial dates in order to “judge shop,” dismissing tickets outright, finding the ticketholder not guilty, or adjudicating the ticket in a manner to reduce fines and costs, which would have gone to the Commonwealth of Pennsylvania and the City of Philadelphia, and avoid the assignment of points to a driver’s record.

Perri arranged for preferential treatment, or “ticket-fixing,” on citations received by Perri’s friends and associates, including Henry P. Alfano, charged elsewhere, Mark Bruno, charged elsewhere, M.D. and A.D. To do so, Perri used his close connection to William Hird, Director of Records at Traffic Court, to gain assistance in manipulating Traffic Court cases outside the judicial process in order to achieve favorable outcomes. Hird was extremely loyal to Perri because Perri had originally hired Hird as a personal assistant, and because Perri had been instrumental in securing promotions, along with salary increases, for Hird within Traffic Court.

When Perri gave Hird requests for preferential treatment on specific citations, Hird, in turn, conveyed these requests to the Traffic Court judge presiding over the cases, who regularly engaged in the practice of “ticket fixing” and acceded to the requests made by Hird on behalf of Perri by adjudicating the citation as not guilty or dismissal or guilty of a lower offense,

which resulted in no “points” on the ticketholder’s driving record.

After a citation was adjudicated, Hird often provided a computer printout from the Traffic Court computer system of the case disposition to Perri, which Perri referred to as a “receipt.” Perri, in turn, mailed or gave these “receipts” to Alfano, M.D. or A.D., or directly to the ticketholder as confirmation that the citation had been dismissed or otherwise disposed of. These “receipts” were not provided in the regular course of business by Traffic Court to ticketholders.

II. Perri’s Assisting Alfano with Traffic Court Matters

Perri had a close, long standing relationship with Henry P. Alfano, dating back several years to when Perri was Administrative Judge of Traffic Court. Around that time, Perri approved Alfano’s business, Century Motors, Inc., for a no-bid towing and storage contract regarding vehicles designated by Philadelphia law enforcement agencies. Through this contract, Century Motors, Inc. derived significant income from vehicle owners for the towing and storage of their vehicles.

Perri had regular telephone conversations with Alfano about “fixing” various citations received by Alfano’s friends and associates. Perri was very responsive to Alfano’s requests for help on citations, as evidenced by Perri’s statements: “I see Century on it, it’s gold,” which referred to a citation that Alfano was mailing Perri. Similarly, on another occasion, Perri said to Alfano, “when you call . . . I move everybody.” Alfano would often mail the citation to be “fixed” to Perri. Perri, in turn, mailed the citation to Traffic Court and spoke to Hird about getting it “fixed.”

In return for Perri’s assistance with Traffic Court matters, he received a stream of

benefits from Alfano, including free car repairs, free car maintenance and car towing, free videos, and free food. Alfano arranged for car repairs and maintenance on Perri's Cadillac and Taurus, as well as Perri's family member's Ford Expedition and Chrysler 300, including the rebuilding of an engine and installing a new transmission, as well as cosmetic and detail work. Also at this time, Alfano arranged for Perri's vehicles to be towed from Perri's residence and the residence of his family members to the mechanics and back again. Alfano provided free videos to Perri on dozens of occasions.

III. Perri's Assisting M.D. with Traffic Court Matters

Fortunato N. Perri, Sr. also assisted M.D., a local businessman, with Traffic Court matters. Perri received landscaping services from M.D.'s landscaping business, often free of charge or at reduced rates. M.D. periodically asked Perri for assistance on traffic citations issued to M.D.'s employees. On approximately five occasions, M.D. brought traffic citations to Perri. For these citations, M.D.'s employees did not have to appear at Traffic Court and M.D. never heard about or dealt with the citations thereafter. Perri assisted in manipulating these matters which resulted in favorable dispositions. Specifically, Perri arranged for preferential treatment on a traffic citation issued to M.D. on January 28, 2011. On that date, M.D. called Perri when he received a citation for making a prohibited u-turn. M.D. later delivered the citation to Perri. Perri caused a portion of the M.D.'s traffic citation, which stated a plea of not guilty and included M.D.'s forged signature, to be mailed to Traffic Court. On March 14, 2011, Perri spoke to Hird about M.D.'s citation. Hird assured Perri that "everything's okay" on M.D.'s citation. On April 1, 2011, despite M.D. not appearing for his case or raising any defense to the charged offense, former Traffic Court judge Thomasine Tynes adjudicated M.D.'s citation as not guilty.

IV. Perri's Assisting A.D. with Traffic Court Matters

Since 2001, Perri also assisted A.D., M.D.'s brother, with receiving favorable outcomes on dozens of Traffic Court citations. A.D. owned and operated two companies: (i) a material and delivery company; and (ii) a construction company, each with numerous employees. When A.D.'s employees from these companies received traffic citations, A.D. passed the citations along to Perri. At times, when Hird was at Perri's home, Perri gave A.D.'s citations to Hird and directed Hird to handle them. A.D. and A.D.'s employees did not appear for their respective cases at Traffic Court, yet they received favorable outcomes. Often, Perri provided A.D. with "receipts" of these favorable adjudications. To show his gratitude, A.D. installed a patio for Perri at no charge. Specifically, Perri arranged for preferential treatment on a traffic citation issued to A.K., an employee of A.D. On November 1, 2010, A.K. received a citation for driving at an unsafe speed and for failing to wear a seatbelt. When A.D. called Perri about his "guy" who got a "couple tickets," Perri instructed A.D. to "stop" over. On December 16, 2010, despite neither A.D. nor A.K. appearing for his case or raising any defense to the charged offense, former Traffic Court judge Thomasine Tynes adjudicated A.K.'s citation as not guilty.

V. Perri's Assisting Bruno with Traffic Court Matters

On one occasion, Mark Bruno called Perri about "fixing" a traffic citation received by J.M. Perri agreed to "look into it," stating that he still "got a little connections." In a subsequent call, Perri discussed the citation with Hird and specifically measures to remove any points assessed on the ticket.

VI. Additional Specific Tickets that Perri "Fixed"

A. Ticket to A.S.

Perri sought to fix a citation issued to A.S. on February 15, 2010, from a Pennsylvania State Trooper for driving a tractor trailer that was dropping ice and snow onto travel lanes striking vehicles on Interstate 95, and which carried a fine of \$300 and costs of \$142. On February 17, 2010, A.S. visited Alfano at Century Motors, Inc. On March 8, 2010, A.S. contacted Alfano about his matter in Traffic Court. Referring to a March 3, 2010 notification from Traffic Court that his driving privileges were being suspended because he failed to respond to the traffic citation, A.S. said he will “drop [the Traffic Court information] off” to Alfano. Alfano stated, “we’ll take care of it . . . we’re working on it.”

On March 15, 2010, in an interstate telephone call between Perri in Pennsylvania and Alfano in New Jersey, Alfano told Perri that he was working on deodorizing Perri’s car. Alfano confirmed that Perri received A.S.’s “thing” that Alfano sent Perri in the mail. Perri assured that “it will be alright, don’t worry about it.”

On March 26, 2010, A.S. told Alfano that he received a Notice of License Suspension because he did not plead guilty or not guilty. Alfano told him that “he [Perri] already did that for you.” Alfano told A.S. to bring him the Notice and Alfano will send it to Perri again. Alfano said that he already spoke to Perri about A.S.’s citation and that Perri said everything was okay and that Perri would send a receipt when the case was over. Alfano assured A.S. that his license would not be suspended. Alfano speculated that the notice is just computer generated because A.S.’s case was already “set up for April the 20th.”

On March 26, 2010, Alfano told Perri that A.S. received another Notice of License Suspension and is concerned because he was a truck driver and cannot have a suspended license. Perri told Alfano that Perri was “on top of that . . . I don’t want you worry about that.” Perri instructed Alfano to mail the notice to Perri. Alfano told Perri that he was working on

Perri's Ford Taurus to correct the oil leak and clean the car.

In a subsequent call on this same date, Alfano assured A.S. that Perri had "it under control." Alfano further told A.S. that he did not have to appear at the Traffic Court hearing because Perri was "gonna handle it. . . it's just gonna be knocked out." On March 27, 2010, Perri and Hird discussed A.S.'s citation. Perri said that "the guy keeps getting letters" from Traffic Court that his license may be suspended. Hird said he would look into it and "stop all that action," and that the ticketholder should "ignore it."

On April 20, 2010, Traffic Court Judge Michael J. Sullivan adjudicated A.S.'s citation as not guilty, even though A.S. never appeared in court or raised any defense to the charged offense. On May 12, 2010, Alfano told A.S. that he should have his "receipt in a couple of days." Subsequently, Perri caused a "receipt" to be mailed to A.S., which indicated that his citation was adjudicated not guilty.

B. Tickets to L.R. and Oasis

Perri sought to fix four citations issued to L.R. and the Oasis, when, on March 6, 2010, while driving a bus owned by the Oasis, L.R. was stopped for an inspection and the bus was impounded. L.R. received two citations from a Philadelphia police officer for not having a CDL (commercial driver's license), which carried a fine of \$500 and costs of \$101.50, and for not having a medical certificate, which carried a fine of \$25 and costs of \$101.50. On this same date and time, the Oasis, the company that owned the bus, also received two citations from a Philadelphia police officer for not having a fire extinguisher and a warning device, where each citation carried a fine of \$51 and costs of \$101.50.

On March 6, 2010, Alfano called Perri and told Perri that the bus was impounded by the police. Perri advised Alfano that he would “make it easy” to get the bus released.

On March 7, 2010, Alfano provided Perri with information related to the citations. Specifically, Alfano told Perri that the bus was registered to Oasis Gentlemen’s Club, 6800 block of Essington Avenue, and the date it was impounded. Alfano explained that the side of the bus advertised Christine’s. On March 8, 2010, in an interstate telephone call between Perri, in Pennsylvania, and Henry P. Alfano, in New Jersey, Perri told Alfano that there were four tickets and “you’ll take care of that with me.” Perri instructed Alfano that the owner and the driver should go to the Boot and Tow window at Traffic Court, ask for D.H., and state that “they’re there to pick-up the bus [and] to get the bus released.” Perri further instructed Alfano that Traffic Court Judge Michael J. Sullivan would “waive the collateral on the four tickets [and] they don’t have to post that money.” Lastly, Perri said, “and then you’ll give me those four matters,” referring to the citations.

On March 9, 2010, Alfano advised A.A., a business associate with supervisory authority over the bus impounded by the police, that he did not have to pay the four tickets and attend Traffic Court. Alfano said, “no, when you get [the notices in the mail] you give them to me.” On May 10, 2010, Judge Michael J. Sullivan continued the hearing for the two Oasis tickets. On May 12, 2010, Judge Mark Bruno adjudicated L.R.’s citations as not guilty.

On May 18, 2010, Perri and Alfano discussed the continuance on the Oasis tickets because the district justices were sitting last week and all the judges were away and therefore maybe Perri “couldn’t get it through, you know what I mean?” Alfano responded, “I gotcha. I got the picture.” Perri instructed Alfano to mail Perri any notices.

In a subsequent call on May 18, 2010, Perri confirmed with Hird that the Oasis matter was continued. Hird explained that Judge Sullivan continued the matter because Sullivan did not realize it was for “him,” referring to Perri. Hird explained that he gave it to Danielle C., Judge Sullivan’s personal, but that she “fucked up” and that Hird should go directly to Sullivan instead. Perri said that he only gave Sullivan “five a year,” in reference to requests for “ticket fixing”

On May 21, 2010, Perri told Alfano that he was mailing Alfano two receipts, and “you got a couple more coming.” On June 9, 2010, Judge Michael J. Sullivan again continued the hearing for the two Oasis tickets. On June 11, 2010, Traffic Court mailed a Notice of Trial for the Oasis tickets with a trial date of September 8, 2010.

On June 29, 2010, Perri told Alfano that Alfano will receive another continuance notice on one of the pending citations. Perri further told Alfano that “somebody” will “need” “to show up” at the hearing. Perri continued that “when [the ticketholder] get[s] a notice, you’ll call me with the notice and mail it and don’t worry . . . it’ll be taken care of” Later in the call, Alfano offered to inspect Perri’s car.

In a later call on that same date, Alfano told A.A. that one of the Oasis tickets will be continued and that A.A. would receive a notice and should tell Alfano accordingly.

On September 8, 2010, Judge Robert Mulgrew adjudicated the Oasis citation for no fire extinguisher as guilty and the Oasis citation for no warning device as not guilty.

C. Ticket to D.S.

Perri sought to fix the citation of D.S. that D.S. was issued on August 26, 2010, while D.S. was traveling at a speed of 85 mph in a 55 mph zone on interstate 95. The ticket

carried a fine of \$85 and costs of \$162. An additional assignment of five points to D.S.'s driving record was also possible.

On November 23, 2010, the father of D.S. contacted Alfano about D.S.'s citation. In a subsequent call on that date, Alfano told Perri that "the last one I sent you," the ticketholder is "gonna go." Alfano remarked that he prefers to make the ticketholders attend their hearings, as it "makes it better." Perri said "it'll be alright though."

On November 24, 2010, Alfano asked Perri whether "that girl's ok" and Perri indicated that she is "fine." Alfano again informed Perri that "they're gonna be there." Alfano and Perri confirmed that the hearing was on the "30th" at 9 am. Perri responded, "You are in good hands with Allstate."

On November 24, 2010, Perri informed Hird, in reference to D.S.'s citation, that "[Perri's] got a girl coming down" on November 30th and Hird stated that Perri should call Hird to give him the information.

On November 29, 2010, Perri told Hird the citation number on D.S.'s ticket and that "she'll be in." Hird acknowledged that this was a state police ticket and promised to "look at it" and "we'll go from there."

On November 30, 2010, in an interstate telephone call between Perri, in Pennsylvania, and Alfano, in New Jersey, Alfano asked about the ticket. Perri said that it was a state police ticket and that he was "on top of it" and told Alfano that "when you give me something it's important brother."

On November 30, 2010, Perri asked Hird "how [did] we do?" Hird indicated that he did not definitely know the result because the courtroom was busy, but he's "going to assume

ok” because the assigned judge was Judge Michael Lowry.

On November 30, 2010, Judge Michael Lowry adjudicated the citation as guilty of a different offense, which was a lower offense and which reduced the fine and costs and did not provide for points on a driving record.

On November 30, 2010, Hird informed Perri that the charge was amended to five miles over the speed limit, despite the objection of the state police, who wanted the offender to receive two points on her license.

Next, Perri informed Alfano of the result that the ticket was amended and “there’s no points” and opined that “she still got a good break.”

This memorandum sets forth only the essential facts that would need to be proved to establish the elements of the offenses charged.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney

DENISE S. WOLF
ANTHONY J. WZOREK
Assistant United States Attorneys

CERTIFICATE OF SERVICE

I hereby certify that a correct copy of the government's Guilty Plea Memorandum has been served this date by facsimile and/or first class mail:

Brian J. McMonagle, Esq.
One Penn Square West, Suite 701
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Philadelphia, PA 19102

DENISE S. WOLF
Assistant United States Attorney

DATE: March 8, 2013