



U.S. Department of Justice

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December 11, 2008

Deborah Boardman
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NationsBank Center, Tower II, Suite 1100
100 South Charles Street
Baltimore, MD 21201-2725

RE: United States v. Schewanda Baptiste, Criminal No. DKC-08-0520

Dear Ms. Boardman:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have her execute it in the spaces provided below. If this offer has not been accepted by December 29, 2008, it will be deemed withdrawn. The terms of the agreement are as follows:

Offense of Conviction

1. The Defendant agrees plead guilty to Count Three of the Indictment charging her with Theft of Government Property, in violation of 18 U.S.C. § 641. The Defendant admits that she is, in fact, guilty of this offense and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows:

First: That the money or property contained in the Indictment belonged to the United States Government and had a value in excess of \$100.

Second: That the defendant stole or converted such money or property for the defendant's own use or for the use of another; and

Third: That the defendant did so knowing the money or property was not hers and with the intent to deprive the owner of the use or benefit of the money or property.

Penalties

3. The maximum sentence provided by statute for the offense to which the Defendant is pleading guilty is as follows: imprisonment for ten years, supervised release of three years, and a fine of \$250,000. In addition, the Defendant must pay \$100.00 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order her to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.¹ If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if she serves a term of imprisonment, is released on supervised release, and then violates the conditions of her supervised release, her supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The Defendant understands that by entering into this agreement, she surrenders certain rights as outlined below:

a. If the Defendant had persisted in her plea of not guilty, she would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that

¹ Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of \$2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in her defense, however, she would have the subpoena power of the Court to compel the witnesses to attend.

d. The Defendant would have the right to testify in her own defense if she so chose, and she would have the right to refuse to testify. If she chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from her decision not to testify.

e. If the Defendant were found guilty after a trial, she would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against her. By pleading guilty, the Defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that she may have to answer the Court's questions both about the rights she is giving up and about the facts of her case. Any statements the Defendant makes during such a hearing would not be admissible against her during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find her guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status.

Advisory Sentencing Guidelines Apply

5. The Defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the "advisory guidelines range") pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto which this Office would prove beyond a reasonable doubt, and to the following applicable sentencing guidelines factors:

a. The base offense level for theft of government property is **6**. U.S.S.G. § 2B1.1.

b. There is a **6** level enhancement because the fraud loss is more than \$30,000 but less than \$70,000. U.S.S.G. § 2B1.1(b)(1)(D).

c. The government contends there is a **2** level enhancement because the offense involved fraud or theft involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a declaration of a major disaster or an emergency. U.S.S.G. § 2B1.1(b)(16). The defendant contends that the enhancement violates the *ex post facto* clause and should not be applied in this case.

d. The government reserves the right to assert that there is a **2** level enhancement because the defendant unlawfully attempted to influence a witness during the investigation of this matter. U.S.S.G. § 3C1.1. The defendant reserves the right to challenge application of this guideline.

e. The adjusted offense level before any acceptance of responsibility adjustment is either **12, 14 or 16**.

f. This Office does not oppose a two-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for her criminal conduct. If applicable under the guidelines, this Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the Defendant's timely notification of her intention to plead guilty. This Office may oppose *any* adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about her involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw her plea of guilty.

g. Thus, the final offense level is either **10, 12 or 13**.

7. The Defendant understands that there is no agreement as to her criminal history or criminal history category, and that her criminal history could alter her offense level if she is a career offender or if the instant offense was a part of a pattern of criminal conduct from which she derived a substantial portion of his income.

8. This Office and the Defendant agree that with respect to the calculation the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines will be raised or are in dispute.

Obligations of the United States Attorney's Office

9. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct.

10. At the time of sentencing, this Office will move to dismiss any open counts against the Defendant.

Restitution

11. The Defendant agrees to the entry of a Restitution Order for the full amount of the losses incurred by both FEMA (\$19,458) and HUD (\$30,000). The Defendant agrees that, pursuant to 18 U.S.C. §§ 3663 and 3663A and §§ 3563(b)(2) and 3583(d), the Court may order restitution of the full amount of the actual, total loss caused by the relevant conduct set forth in the factual stipulation. The Defendant further agrees that she will fully disclose to the probation officer and to the Court, subject to the penalty of perjury, all information, including but not limited to copies of all relevant bank and financial records, regarding the current location and prior disposition of all funds obtained as a result of the criminal conduct set forth in the factual stipulation. The Defendant further agrees to take all reasonable steps to retrieve or repatriate any such funds and to make them available for restitution. If the Defendant does not fulfill this provision, it will be considered a material breach of this plea agreement, and this Office may seek to be relieved of its obligations under this agreement.

Waiver of Appeal

12. The Defendant and this Office knowingly and expressly waive all rights conferred by 18 U.S.C. § 3742 to appeal whatever sentence is imposed, including any fine, term of supervised release, or order of restitution and any issues that relate to the establishment of the advisory guidelines range, as follows: the Defendant waives any right to appeal from any sentence within or below the advisory guidelines range resulting from an adjusted base offense level of **13**, and this Office waives any right to appeal from any sentence within or above the advisory guidelines

range resulting from an adjusted base offense level of **13**. Nothing in this agreement shall be construed to prevent either the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), and appealing from any decision thereunder, should a sentence be imposed that is illegal or that exceeds the statutory maximum allowed under the law or that is less than any applicable statutory mandatory minimum provision. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Obstruction or Other Violations of Law

13. The Defendant agrees that she will not commit any offense in violation of federal, state or local law between the date of this agreement and her sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for her conduct by failing to acknowledge her guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that she may not withdraw her guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

14. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw her guilty plea, and will remain bound to fulfill all of her obligations under this agreement.

Letter to Deborah Boardman, Esq.
December 11, 2008
Page 7

The Defendant understands that neither the prosecutor, her counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

Entire Agreement

15. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The Defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this agreement, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By: _____
Sandra Wilkinson
Assistant United States Attorney

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

Date

Schewanda Baptiste

I am Ms. Baptiste's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement with her. She advises me that she understands and accepts its terms. To my knowledge, her decision to enter into this agreement is an informed and voluntary one.

Date

Deborah Boardman, Esq.

EXHIBIT A
STIPULATED FACTS

The undersigned parties hereby stipulate and agree that if this case had proceeded to trial, the government would have proven the following facts beyond a reasonable doubt. The undersigned parties also stipulate and agree that the following facts do not encompass all of the evidence that would have been presented had this matter proceeded to trial.

Defendant **SCHEWANDA R. BAPTISTE**, age 42, is a resident of New Orleans, Louisiana.

At some time in the summer of 2005, **BAPTISTE** and her husband moved from Louisiana to Maryland. Beginning around August 4, 2005, **BAPTISTE** lived on Ronna Circle in Waldorf, Maryland.

From 2003 through November 2008, **BAPTISTE** and her husband owned a home at 7411 Eastmore Road in New Orleans, Louisiana (“7411 Eastmore Road”). In or about June 5, 2005, **BAPTISTE** rented 7411 Eastmore Road to a woman (“the renter”) who lived there with her two minor children.

On or about August 29-30, 2005, Hurricane Katrina hit the Louisiana gulf coast, causing levees in New Orleans to be breached and resulting in extensive flooding, damage and loss of life. 7411 Eastmore Road was extensively damaged.

At the time of Hurricane Katrina, **BAPTISTE** was living in Maryland and the renter and her children lived at 7411 Eastmore Road. In response to the national emergency caused by Hurricane Katrina, the renter and her children had to evacuate their home in New Orleans and find replacement housing elsewhere. **BAPTISTE** was actually in Maryland on August 29, 2005 enrolling her daughter in the local county school system.

The Federal Emergency Management Agency (“FEMA”) is an agency of the United States within the Department of Homeland Security, which provides emergency assistance to victims of natural disasters. FEMA relief was designed, in part, to provide immediate assistance to individuals left homeless as a result of the storm. It was not a substitute for insurance, and as such, it was not available to **BAPTISTE**, who was not living at 7411 Eastmore Road, and was not physically affected by the hurricane. **BAPTISTE**, in fact, had private insurance which covered the property damage to her home.

On or about September 13, 2005, **BAPTISTE** submitted a fraudulent application to FEMA for disaster assistance relief, which falsely claimed that, at the time the residence sustained damage as a result of Hurricane Katrina, **BAPTISTE**’s address was 7411 Eastmore Road, that this was her primary residence, and that the occupants living at that primary residence at the time of the disaster were herself and her two children. In February 2006, **BAPTISTE** submitted a false and fraudulent lease to FEMA in order to obtain further benefits in the form of rental assistance and to convince FEMA that she had been living in 7411 Eastmore Road together with the renter at the time of the disaster.

In or about September 7, 2005, the renter of 7411 Eastmore Road properly applied for disaster assistance relief. As a result of **BAPTISTE**'s fraudulent application, the renter's disaster relief assistance application was subjected to heightened scrutiny, and payments to the renter were delayed.

The Department of Housing and Urban Development ("HUD") is an agency of the United States which provides block grant disaster assistance to distressed states, local governments and individual homeowners. The Community Development Block Grant ("CDBG") is set up by HUD to assist and aid owners of property damaged or destroyed by Hurricane Katrina. The grant money is disbursed under the Louisiana Road Home Program ("LRHP").

BAPTISTE fraudulently obtained CDBG grant monies from the LRHP at HUD by using the Internet to submit a false and fraudulent application for disaster assistance relief. As part of the application process, **BAPTISTE** and her husband were required to execute, and did execute in June 2008, an "Owner's Affidavit and Indemnity" in which both swore under oath that "We are the eligible owner(s)/occupant(s) having established our/his/her eligibility for a Road Home Grant award based on our/his/her ownership and occupancy of the damaged residential structure on the date of Hurricane Katrina or Hurricane Rita." (Emphasis added). Following approval of the fraudulent application, **BAPTISTE** received approximately \$30,000 in grant funds from the LRHP, to which she was not entitled, in the form of electronic fund transfers.

Specifically, from in or about October 2005 through in or about October 2007, in the District of Maryland, the Eastern District of Louisiana, and elsewhere, **BAPTISTE**, did steal, purloin and knowingly convert to her own use and the use of another, monies of the United States and any department and agency thereof, by fraudulently applying for and obtained approximately \$30,200 in FEMA disaster relief assistance and by fraudulently applying for and obtained approximately \$30,000 in CDBG grant funds from the LRHP and HUD. With regard to FEMA, \$10,742 of the \$30,200 paid was credited to an SBA loan **BAPTISTE** obtained and is currently paying back. Thus, the total amount for restitution purposes to FEMA is \$19,458 (\$30,200 reduced by \$10,742) and to HUD is \$30,000.

BAPTISTE was interviewed by law enforcement in Louisiana in October 2008 at which time she falsely stated words to the effect that she had fled (evacuated) to Maryland just before the storm and had been living at 7411 Eastmore Road in New Orleans together with her daughter, the renter, and the renter's son at that time.

Letter to Deborah Boardman, Esq.
December 11, 2008
Page 10

Agreed to this __ day of _____, 2008:

Schewanda Baptiste

Deborah Boardman
Assistant Federal Public Defender