

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 13 CR 50009
)
) Judge Frederick J. Kapala
)
vs.)
)
ANTHONY HARDY)

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, GARY S. SHAPIRO, and defendant ANTHONY HARDY, and his attorney, GREGORY J. DUTCH, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The information in this case charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343 (Count One), and aggravated identity theft, in violation of Title 18, United States Code, Section 1028A.

3. Defendant has read the charges against him contained in the information, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following counts of the information: Count One, which charges defendant with an

interstate wire transmission in furtherance of a scheme to defraud, in violation of Title 18, United States Code, Section 1343; and Count Two, which charges defendant with possession of the means of identification of another person in connection with the felony offense of wire fraud, in violation of Title 18, United States Code, Section 1028A.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Two of the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

a. With respect to Count One of the information:

i. Generally, defendant admits that between mid-2010, and January 2012 he and Anthony Taylor, William Dorn, Cameron Love, and others, knowingly devised and engaged in a scheme to defraud retail chain stores, and to obtain money, funds, and property belonging to retail chain stores by means of materially false and fraudulent pretenses, representations, and promises.

ii. Specifically, defendant admits that between mid-2010, and January 2012, along with Anthony Hardy, Anthony Taylor, and Cameron Love, he created and used counterfeit checks and counterfeit identifications to purchase merchandise from large chain stores such as Wal-Mart and Farm and Fleet located in various states. The defendant admits that after he and the others had purchased merchandise from such stores, they returned the merchandise to a different store location for a cash refund. When he used the counterfeit checks and counterfeit identifications he knew that some of the names and

addresses on the checks and identification were fictitious and some were real. He was also then aware that some of the bank account information was fictitious and some was real. The defendant admits that through information known to him at the times of the merchandise purchases, it was reasonably foreseeable by him that the chain stores would use interstate wire communications to complete the transactions for the purchase of the merchandise.

iii. On July 12, 2011, for the purpose of executing the scheme at a Wal-Mart store in Huntley, Illinois, the defendant engaged in a transaction to purchase merchandise through the use of a counterfeit check with the check number 4303. To complete the transaction for the purchase, Wal-Mart electronically sent transaction information from the Huntley, Illinois store through the Internet to a Wal-Mart computer in either Missouri or Arkansas.

b. With respect to Count Two of the information:

i. Specifically, on or about May 6, 2011 in Rockford, Illinois, the defendant knowingly possessed without lawful authority, a means of identification of another person, namely, an access device for J.K., during and in relation to the violation of Title 18, United States Code, Section 1343 described in Count One of the Information.

ii. Generally, on or about May 6, 2011 in Rockford, Illinois, the defendant possessed the social security number of J.K., an actual person he knew existed. The defendant possessed the social security number of J.K. for the purpose of using it to purchase merchandise from large chain stores such as Wal-Mart and Farm and Fleet located

in various states with counterfeit checks and counterfeit identifications based on the social security number.

Maximum Statutory Penalties

7. Defendant understands that the charges to which he is pleading guilty carry the following statutory penalties:

a. Count One carries a maximum sentence of 20 years' imprisonment. Count One also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count One the judge also may impose a term of supervised release of not more than three years. The judge may also impose a sentence of probation between one and five years.

b. Count Two carries a mandatory sentence of 2 years' imprisonment which must be imposed to run consecutive to any sentence of imprisonment imposed on Count One. Count Two also carries a maximum fine of \$250,000. Defendant further understands that with respect to Count Two, the judge also may impose a term of supervised release of not more than one year.

c. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

d. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty or restitution imposed.

e. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is 22 years' imprisonment, and the minimum sentence is 2 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$500,000, or twice the gross gain or gross loss resulting from Count One plus \$250,000, whichever is greater, a period of supervised release, probation, and special assessments totaling \$200, in addition to any restitution ordered by the Court.

Sentencing Guidelines Calculations

8. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

9. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points, except as specified below:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2012 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level for Count One is 7, pursuant to Guideline § 2B1.1(a)(1).

ii. The government contends, and the defendant reserves the right to disagree, that the offense level for Count One must be increased by 10 levels to level 17 pursuant to Guideline § 2B1.1(b)(1)(F) because the loss was more than \$120,000.

iii. The government contends, and the defendant reserves the right to disagree, that the offense level must be increased by 4 levels to level 21 pursuant to Guideline § 2B1.1(b)(2)(B) because the offense involved 50 or more victims.

iv. The government contends, and the defendant reserves the right to disagree, that the offense level for Count One must be increased by 4 levels to level 25 pursuant to Guideline § 3B1.1(a) because the defendant was an organizer and leader of criminal activity that involved five or more participants and was otherwise extensive.

v. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level for Count One is appropriate.

vi. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the

offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level of Count One.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government and stipulated below, defendant's criminal history points equal zero and defendant's criminal history category is I:

i. On or about March 31, 1995, defendant was convicted of knowingly damaging property in the Circuit Court of Stephenson County, Illinois and sentenced to one year conditional discharge. Pursuant to Guideline § 4A1.2(e)(3) this conviction results in no criminal history points.

ii. On or about March 19, 1996, defendant was convicted of domestic battery, violation of an order of protection, resisting a peace officer, and criminal trespass to land, in the Circuit Court of Stephenson County, Illinois and sentenced to one year special probation and 25 days imprisonment. Pursuant to Guideline § 4A1.2(e)(3) this conviction results in no criminal history points.

iii. On or about March 18, 1996, defendant was convicted of aggravated battery in a public place, criminal trespass to a vehicle, and violation of an order of protection, in the Circuit Court of Stephenson County, Illinois and sentenced to thirty months special probation and 55 days imprisonment. Pursuant to Guideline § 4A1.2(e)(3) this conviction results in no criminal history points.

iv. On or about April 11, 1997, defendant was convicted of violation of an order of protection and knowing damaging property in the Circuit Court of Stephenson County, Illinois and sentenced to one year special conditional discharge. Pursuant to Guideline § 4A1.2(e)(3) this conviction results in no criminal history points.

v. On or about January 5, 2001, defendant was convicted of resisting a peace officer in the Circuit Court of Stephenson County, Illinois and sentenced to twenty days imprisonment. Pursuant to Guideline § 4A1.2(c)(1) this conviction results in no criminal history points.

vi. On or about March 19, 1996, defendant was convicted of domestic battery in the Circuit Court of Stephenson County, Illinois and sentenced to sixty days imprisonment. Pursuant to Guideline § 4A1.2(e)(3) this conviction results in no criminal history points.

vii. On or about December 8, 2004, defendant was convicted of resisting driving while license suspended in the Circuit Court of Winnebago County, Illinois and sentenced to twenty days imprisonment. Pursuant to Guideline § 4A1.2(c)(1) this conviction results in no criminal history points.

viii. On or about May 14, 2012, defendant was convicted of solicitation to commit forgery in the Superior Court of Maricopa County, Arizona and sentenced to one year of imprisonment. Pursuant to Guideline § 4A1.2(a)(1) this conviction results in no criminal history points.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, according to the government's position the anticipated offense level for Count One is 22, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range for Count One of 41 to 51 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. Defendant also acknowledges that for Count Two of the information he is subject to a statutory minimum sentence of 2 years' imprisonment that must be imposed to be served consecutive to any sentence of imprisonment imposed for Count One.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the

Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

10. The government agrees to recommend that the Court impose a sentence of imprisonment within the applicable guidelines range as to Count One, plus a mandatory consecutive sentence of two years' imprisonment on Count Two, and to make no further recommendation concerning what sentence of imprisonment should be imposed.

11. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

12. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant, together with any jointly liable co-defendants, to make full restitution to victims in an amount to be determined by the Court at sentencing, which amount shall reflect credit for any funds repaid prior to sentencing.

13. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States

Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

14. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

15. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

16. This Agreement is entirely voluntary and represents the entire agreement between the Acting United States Attorney and defendant regarding defendant's criminal liability in case 11 CR 50083-1.

17. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

18. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. Right to be charged by indictment. Defendant understands that he has a right to have the charges prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

b. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the information separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

c. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

d. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

19. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

20. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of

his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

21. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

22. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

23. Defendant understands that the government has the right to seek defendant's truthful testimony before a grand jury or a district court.

Conclusion

24. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

25. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

26. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

27. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

28. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

GARY S. SHAPIRO
United States Attorney

ANTHONY HARDY
Defendant

MICHAEL D. LOVE
Assistant U.S. Attorney

GREGORY J. DUTCH
Attorney for Defendant