

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JAN 15 2014 *10*

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 MATTHEW T. O'CONNER,)
)
 Defendant.)

Citation No.: FAMS 4384501

TSA Case No.: EIR2014ABQ0043

NOTICE OF AGREEMENT AND CONSENT ORDER

The parties respectfully notify the Court of the following Notice of Agreement and Consent Order (NA&CO) between the United States Attorney for the District of New Mexico, the Defendant, MATTHEW T. O'CONNER, representing himself. See 49 C.F.R. § 1503.423 (Consent Orders).

- 1. Representation. Defendant is alleged to committed a federal misdemeanor offence, and he is aware that he has the following rights:
 - a. **Penalties**. The right to be advised of the charge, including the minimum and maximum penalties. Those penalties are the following:
 - (1) up to twelve months imprisonment, and if any imprisonment is imposed, up to one year of supervised release that will follow any term of imprisonment;
 - (2) up to five years of probation if a term of imprisonment is not imposed;
 - (3) a fine up to \$100,000; *MTO' C Kton*
 - (4) a mandatory processing fee of \$25;

(5) restitution as ordered by the Court;

(6) civil penalties, which may be pursued by the United States through

either the United States Attorney's Office or the Transportation and Security Administration of up to \$11,000.

b. **Counsel.** The right to retain counsel at Defendant's own expense, or if Defendant is unable to retain counsel, the right to request the appointment of counsel.

c. **Statement.** The right to not make a statement, and the understanding that any statement made by the Defendant may be used against the Defendant. However, any statement made to the Assistant United States Attorney as part of plea negotiations to resolve this case in lieu of further criminal proceedings may not be used by the United States in any manner for any purpose if the Defendant elects to proceed to trial on the merits.

d. **Trial.** The right to plead not guilty and to persist in that plea. At trial, the United States would have to prove each and every element to the trier of fact beyond a reasonable doubt by competent and admissible evidence. If the United States failed to carry its burden, the Defendant understands that the Defendant would not be convicted. The Defendant also is aware that "forgetting" is an absolute defense to the alleged violation, but Defendant would have to submit evidence about forgetting as an affirmative defense, and the United States would have a right to cross-examine any witness on that issue and to attempt to rebut such testimony with its own evidence. On the other hand, the Defendant would have a similar right to cross-examine the witnesses offered by the United States. The Defendant has an absolute right to not testify, and Defendant's silence in not testifying could not be held against the Defendant. At trial, Defendant would have the following rights:

- (1) to have a trial by jury before a District Court Judge;
- (2) to confront and cross-examine adverse witnesses;
- (3) to be protected from compelled self-incrimination;
- (4) to testify and present evidence on the Defendant's own behalf; and
- (5) to compel the attendance of witnesses for the defense.

e. **Waiver of Representation.** Knowing these rights, the potential minimum and maximum penalties, the civil penalties, and having considered possible defenses, the Defendant waives his right to counsel and wishes to resolve this case without an admission of guilt, but admitting to the civil violation as discussed below.

2. Factual Basis

a. An individual may not knowingly and willfully enter an airport area that serves an air carrier or foreign air carrier in violation of security requirements. *See* 49 U.S.C. § 46314(a) (providing a criminal offense punishable as a Class A misdemeanor).

b. In addition, an individual is prohibited from having a weapon, explosive, or incendiary, on or about the individual's person or accessible property when the individual is entering a sterile area or boarding a flight. *See* 49 C.F.R. §§ 1540.111(a)(1) and 1503.401(b)(1) (providing a regulatory offense with civil sanction of up to \$11,000 for an individual; adjusted for inflation pursuant to 49 C.F.R. § 1503.401(d)); *see also* 49 U.S.C. § 46301(a)(5)(A)(i).

c. A report of investigation indicates that on November 14, 2013, the Defendant was preparing to board a flight from the Albuquerque International Sunport (ABQ), Albuquerque, New Mexico. The Defendant offered himself and his property for inspection before entering the sterile area. During the Transportation and Security

Administration's (TSA) inspection of Defendant's property at the airport security area, TSA discovered a Jennings J-22 firearm (Serial #693232) loaded with six rounds of .22 caliber ammunition in the Defendant's accessible property. A round of ammunition was not chambered in the weapon. As a result of finding the Defendant's loaded weapon in a sterile area, a TSA Law Enforcement Officer issued the Defendant a federal District Court Violation Notice (Citation).

d. The United States agrees that the Defendant was not prohibited by law from possessing the firearm, and that Defendant did not have a current concealed weapon or firearm license (No. W1234567).

3. Collateral Forfeiture. The Defendant agrees to remit to the Central Violations Bureau (CVB) an amount of \$25 as a mandatory CVB Processing Fee, and \$975 as a collateral forfeiture, for a total due of \$1,000.

4. Voluntary Abandonment of Instrumentality. The Defendant asserts that he is the sole owner of the above-described weapon and ammunition. Defendant agrees the described firearm and ammunition were the items found by TSA as indicated in the Violation Notice. As essential part of this NA&CO, the Defendant hereby relinquishes all title, interest and rights, now and forever, to the described firearm and ammunition to the United States. The described objects will be disposed of pursuant to applicable statutes and regulations.

5. Consent Order

a. Pursuant to D.N.M.LR-Cr. 58(a)(4), the collateral forfeiture paid is *not* a fine, and this NA&CO is not an admission of criminal guilt. As such, the Defendant has not been found guilty of a violating 49 U.S.C. § 46314(a), and the Defendant persists in his plea of "not guilty" to this charge. The parties agree:

(1) Defendant acknowledges that this incident may be considered in any similar criminal or civil offense that is charged subsequently.

(2) The United States will not bring additional criminal charges or pursue any civil penalties against the Defendant arising out of the facts forming the basis of the present Violation Notice.

b. The Defendant admits and stipulates to the factual basis above, including jurisdiction, and to a violation of 49 C.F.R. § 1540.111(a)(1) of the Transportation Security Regulations for civil purposes, in that Defendant brought a loaded weapon into a sterile area in his accessible property. The Defendant waives his rights to further procedural steps and all rights to judicial review of this matter. Further, the TSA agrees to *not* assess a civil penalty in the matter against the Defendant. Accordingly, this NA&CO constitutes a finding by the TSA of the facts and regulatory violation contained herein. This NA&CO is issued pursuant to 49 U.S.C. §§ 46301(a) and (d), and to 49 C.F.R. § 1503.423.

c. The United States agrees to forego a civil penalty of up to \$11,000 under 49 U.S.C. § 46301(a)(5)(A)(i) as a result of the agreement to the issuance of the NA&CO.

d. The Defendant acknowledges that this NA&CO may affect his ability to obtain or renew a carry concealed weapon or firearm license.

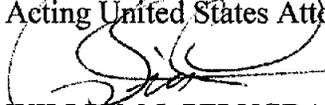
6. This NA&CO is limited to the United States Attorney's Office for the District of New Mexico and the Transportation and Security Administration, and it does not bind any other federal, state, tribal or local agencies or prosecuting authorities.

7. The Defendant hereby enters into this agreement for the purpose of resolving any possible civil liability to the United States based upon the factual basis herein.

AGREED TO AND SIGNED this 15th day of January, 2014.

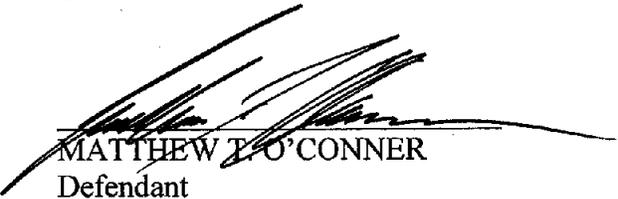
Respectfully submitted,

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I understand the terms of this NA&CO, and I voluntarily agree to those terms. I understand my rights, possible defenses, and my right to not abandon my personal property, the possible civil penalties, and of the consequences of entering into this NA&CO. No promises or inducements have been given to me other than those contained herein. No one has threatened or forced me in any way to enter into this NA&CO. I agree to this NA&CO being entered by the TSA in lieu of a civil penalty in this case.


MATTHEW T. O'CONNOR
Defendant

THIS COURT has considered this NA&CO, and is fully advised of the premises set forth. It is satisfied that the Defendant has entered this NA&CO knowingly and voluntarily, and therefore, it hereby

FINDS the Defendant has knowingly and intentionally waived his right to be represented by counsel, and it

ACCEPTS this agreement and enters this Consent Order.

DATE

January 15, 2014


KAREN B. MOLZEN
Chief United States Magistrate Judge