

FILED IN OPEN COURT

2-8-2018

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

CLERK, U. S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, FLORIDA

UNITED STATES OF AMERICA

v.

CASE NO. 3:17-cr-76(S1)-J-32JBT

RODERICK RANDOLPH LESTER

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by MARIA CHAPA LOPEZ, United States Attorney for the Middle District of Florida, and the defendant, RODERICK RANDOLPH LESTER, and the attorney for the defendant, Waffa Hanania, Esq., mutually agree as follows:

A. Particularized Terms

1. Count(s) Pleading To

The defendant shall enter a plea of guilty to Counts One and Three of the Superseding Indictment. Count One charges the defendant with robbery affecting interstate commerce, in violation of 18 U.S.C. § 1951(a) & (b). Count Three charges the defendant with possessing a firearm after having been convicted of a felony, in violation of 18 U.S.C. §§ 922(g)(1) & 924(a)(2).

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AF Approval B/S

2. Minimum and Maximum Penalties

Count One carries a maximum penalty of up to twenty years of imprisonment, a fine of not more than \$250,000, or both a term of imprisonment and a fine, a term of supervised release of not more than three years, and a mandatory special assessment of \$100, said special assessment to be due on the date of sentencing. A violation of the terms and conditions of supervised release carries a maximum sentence of not more than two years of imprisonment as well as the possibility of an additional term of supervised release.

Count Three carries a maximum penalty of up to ten years of imprisonment, a fine of not more than \$250,000, or both a term of imprisonment and a fine, a term of supervised release of not more than three years, and a mandatory special assessment of \$100, said special assessment to be due on the date of sentencing. A violation of the terms and conditions of supervised release carries a maximum sentence of not more than two years of imprisonment as well as the possibility of an additional term of supervised release.

The cumulative maximum penalty for the offenses charged in Counts One and Three of the Superseding Indictment is up to thirty years of imprisonment, a fine of not more than \$500,000, or both a term of

imprisonment and a fine, a term of supervised release of not more than three years, and a mandatory special assessment of \$200, said special assessment to be due on the date of sentencing. A violation of the terms and conditions of supervised release carries a maximum sentence of not more than four years of imprisonment as well as the possibility of an additional term of supervised release.

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 Offense(s)

The defendant acknowledges understanding the nature and elements of the offense(s) with which defendant has been charged and to which defendant is pleading guilty.

The elements of Count One are:

- First: The defendant knowingly acquired someone else's personal property;
- Second: The defendant took the property against the victim's will, by using actual or threatened force, or violence, or causing the victim to fear harm, either immediately or in the future; and
- Third: The defendant's actions delayed, interrupted, or affected interstate commerce.

The elements of Count Three are:

First: The defendant knowingly possessed a firearm in or affecting interstate or foreign commerce; and

Second: Before possessing the firearm, the defendant had been convicted of a felony – a crime punishable by imprisonment for more than one year.

4. Counts Dismissed

At the time of sentencing, the remaining count against the defendant, Count Two of the Superseding Indictment, will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

5. Mandatory Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. § 3663A(a) and (b), defendant agrees to make full restitution to, if any, to the victims of Count One of the Superseding Indictment, identified as Glover's New and Used Tire, V.R., and Y.C.

6. 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 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) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., 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.

7. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 924(d) and 28 U.S.C. § 2461(c), whether in the possession or control of the United States, the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, a Taurus, Cal: 40, Model 740, pistol, Serial Number SGY23405, and 7 rounds of Cal: 40 ammunition, which the defendant used in the violation charged in

Count Two. The defendant further consents to the filing of a motion by the United States for immediate entry of a Preliminary Order of Forfeiture.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil judicial or administrative forfeiture action. The defendant also agrees to waive all constitutional, statutory and procedural challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

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 Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

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The defendant agrees to take all steps necessary to identify and locate all property subject to forfeiture and to transfer custody of such property to the United States before the defendant's sentencing. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct. 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 Federal Rule of Criminal Procedure 11 and USSG § 1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of the defendant's cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to the forfeitable assets before the defendant's sentencing. In addition to providing full and complete information about forfeitable assets, 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. To that end, the defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control directly or indirectly, including all assets held by nominees, to execute any documents requested by the United States to obtain from any other parties by lawful means any records of assets owned by the defendant, and to consent to the release of the defendant's tax returns for the previous five years.

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The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct.

The defendant agrees that the United States is not limited to forfeiture of the property specifically identified for forfeiture in this Plea Agreement. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence; 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. The Defendant expressly consents to the forfeiture of any substitute assets sought by the Government. 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 the Court may impose upon the defendant in addition to forfeiture.

The defendant agrees that, in the event the Court determines that the defendant has breached this section of the Plea Agreement, the defendant

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may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and may be eligible for an obstruction of justice enhancement.

The defendant agrees that the forfeiture provisions of this plea agreement are intended to, and will, survive the defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if the defendant had survived, and that determination shall be binding upon defendant's heirs, successors and assigns until the agreed forfeiture is collected in full.

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); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663, 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. The defendant further

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understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. The special assessment is due on the 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. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed

from the United States, denied citizenship, and denied admission to the United States in the future.

4. 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.

5. Financial Disclosures

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 to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including

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those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and 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 recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. 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.

7. Defendant's Waiver of Right to Appeal 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 on any ground, including the 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).

8. 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.

9. 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.

10. 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 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

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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.

11. 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 in the attached "Factual Basis," which is incorporated herein by reference, 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.

12. 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.

13. 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 7th day of ^{February} ~~January~~, 2018.


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RODERICK RANDOLPH LESTER
Defendant

MARIA CHAPA LOPEZ
United States Attorney


LAURA COFER TAYLOR
Assistant United States Attorney


WAFFA HANANIA, Esq.
Attorney for Defendant


FRANK TALBOT
Assistant United States Attorney
Chief, Jacksonville Division

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 3:17-cr-76(S1)-J-32JBT

RODERICK RANDOLPH LESTER

PERSONALIZATION OF ELEMENTS

As to Count One:

1. On or about September 26, 2016, in Duval County, in the Middle District of Florida, did you knowingly acquire someone else's property, specifically, a Michelin brand tire of Glover's New and Used Tires?
2. Did you take the property against the victim's will, by using actual or threatened force, or violence, or causing the victim to fear harm, either immediately or in the future?
3. Do you acknowledge that your actions delayed, interrupted, or affected interstate commerce?

As to Count Three:

1. On or about September 26, 2016, in Duval County, in the Middle District of Florida, did you knowingly possess a firearm, that is, a Taurus pistol, which had been manufactured in Brazil?

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2. Prior to possessing the Taurus pistol, had you been convicted of a felony – a crime punishable by imprisonment for more than one year?

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

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v.

CASE NO. 3:17-cr-76(S1)-J-32JBT

RODERICK RANDOLPH LESTER

FACTUAL BASIS

On September 26, 2016, Roderick Randolph LESTER entered Glover's New and Used Tire ("Glover's"), located at 302 East 8th Street in Jacksonville, Florida, within the Middle District of Florida, and stated to V.R., who was then an employee of Glover's, that the owner of Glover's owed money to LESTER. LESTER stated to V.R. that he had come in for a Michelin brand tire. When V.R. quoted him a price, LESTER stated that he did not have to pay for it because of his business relationship with the owner. Also present at Glover's during these events was a second employee, Y.C. and another person. V.R. informed LESTER that LESTER would need to contact the owner of Glover's so that V.R. could verify that LESTER was permitted to take the tire. LESTER responded "[expletive] that. I'm taking the tire." LESTER proceeded to load the Michelin brand tire into the bed of his pickup truck. V.R. attempted to take the tire back from LESTER, and LESTER

pulled a Taurus pistol from a holster on his waist, pointed it at V.R., and stated "I'm taking the tire." V.R., fearing that LESTER would shoot him, backed away and did not stop LESTER from taking the tire. LESTER then left Glover's.

An individual placed a call to 911. An officer with the Jacksonville Sheriff's Office ("JSO"), who was patrolling the area near Glover's, responded to the scene. As the officer was arriving at Glover's, he observed V.R. in the road gesturing toward LESTER's pickup truck, which the officer had just passed as LESTER drove away the area. The officer observed the pickup truck driven by LESTER enter and drive through a parking lot. The officer detained LESTER at the exit of the parking lot and waited for backup. Upon the arrival of backup, LESTER was taken into custody. A search of the parking lot revealed a Taurus pistol laying atop a thick hedge that was located in the parking lot. The Michelin brand tire that LESTER had stolen from Glover's was located in the back of LESTER's pickup truck.

JSO officers conducted a "show-up" identification in which V.R. and Y.C. identified LESTER as the person who had robbed Glover's of a Michelin brand tire. LESTER, V.R., and Y.C. were transported to the Police Memorial Building located at 501 East Bay Street in Jacksonville in

order to conduct interviews. V.R. and Y.C. were the employees of Glover's on duty that night, and their absence from the business interrupted the engagement of Glover's in interstate commerce while the investigation was proceeding that evening. Prior to September 26, 2016, Glover's had obtained inventory from outside the State of Florida and dealt in automotive parts manufactured outside of the State of Florida.

At the Police Memorial Building, LESTER waived his *Miranda* rights and stated that he had traveled to Glover's to obtain a tire that he claimed was owed to him. LESTER admitted that he had possessed a firearm, which he stated he carried for protection. LESTER stated that he was aware he was not permitted to carry firearms and had been warned by a federal judge that he would be facing a large amount of time in prison if he were to be brought into federal court in the future.

Analysis of the firearm revealed it to be a pistol that had been manufactured by Taurus in Brazil. Prior to possessing the Taurus pistol, LESTER had been convicted of the following crimes punishable by a term of imprisonment exceeding one year:

1. Manslaughter, on or about January 23, 1996,
2. Possession of a firearm by a convicted felon, on or about May 24, 2001,
3. Possession with intent to sell or delivery or manufacture or purchase cannabis, on or about

May 24, 2001,

4. Burglary to a structure or conveyance, on or about May 24, 2001,
5. Possession of burglary tools, on or about May 24, 2001,
6. Driving while license suspended or revoked- felony, on or about August 27, 2009, and
7. Possession of a firearm by a convicted felon, on or about September 29, 2011.

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