

FILED IN OPEN COURT

10/27/2021

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. 3:21-cr-51-TJC-JRK

JEROME WILLIAM CLAMPITT II

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Karin Hoppmann, Acting United States Attorney for the Middle District of Florida, and the defendant, JEROME WILLIAM CLAMPITT II, and the attorney for the defendant, D. Christopher Carson, mutually agree as follows:

A. Particularized Terms

1. Count Pleading To

The defendant shall enter a plea of guilty to Count One of the Indictment. Count One charges the defendant with tampering with a consumer product, in violation of 18 U.S.C. § 1365(a).

2. Maximum Penalties

Count One carries a maximum sentence of not more than 10 years' imprisonment, a fine of not more than \$250,000, or both fine and imprisonment, a term of supervised release of not more than 3 years, and a mandatory special assessment of \$100 due on the date of sentencing. A violation of the terms and conditions of supervised release carries a maximum sentence of not more than 2

Defendant's Initials AC

AF Approval MT

years 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 offenses, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offenses, or to the community, as set forth below.

3. **Elements of the Offenses**

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

Elements of Count One

One: the defendant tampered with a consumer product, or its container, that affected interstate commerce; and

Two: the defendant acted with reckless disregard for the risk that another person would be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to that risk.

4. **No Further Charges**

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge the defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the particular conduct that is specifically described in the attached "Factual Basis."

Defendant's Initials SL

5. **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.

Defendant's Initials *JS*

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 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.

Defendant's Initials *AL*

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.

Defendant's Initials 

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 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.

Defendant's Initials 

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

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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

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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

Defendant's Initials AL

offenses are 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**

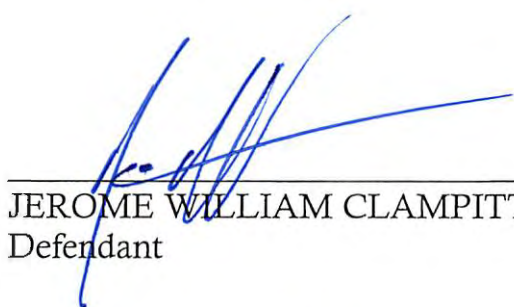
This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

Defendant's Initials 

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 30 day of September 2021.



JEROME WILLIAM CLAMPITT II
Defendant



D. CHRISTOPHER CARSON
Attorney for Defendant

KARIN HOPPMANN
Acting United States Attorney



MICHAEL J. COOLICAN
Assistant United States Attorney



FRANK M. TALBOT
Assistant United States Attorney
Chief, Jacksonville Division

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UNITED STATES DISTRICT COURT
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JEROME WILLIAM CLAMPITT II

PERSONALIZATION OF ELEMENTS

As to Count One:

1. Do you admit that on January 30, 2020, in the Middle District of Florida, you tampered with a consumer product, that is, injectable fentanyl?
2. Do you admit and acknowledge that the United States can prove that the injectable fentanyl was manufactured outside of the State of Florida and was shipped in interstate commerce?
3. Do you admit that you tampered with the injectable fentanyl with reckless disregard for the risk that another person would be placed in danger of bodily injury and death, and under circumstances manifesting extreme indifference to that risk?

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FACTUAL BASIS

On January 30, 2020, Registered Nurse Jerome Clampitt (the defendant) was working a night shift in the intensive care unit (or ICU) of a hospital in Jacksonville, Florida. An ICU is a specialized unit within a hospital that provides intensive and specialized care to critically ill patients who require enhanced monitoring and possibly organ support to sustain life. A patient in the defendant's care was prescribed and receiving an intravenous dose of fentanyl, which is synthetic opioid used as a pain medication and together with other medications for anesthesia. The fentanyl was being delivered through a patient-controlled analgesia (or PCA), a device that administers controlled substances to patients.

Two fellow employees (Employee A and Employee B) saw the defendant using a smaller syringe to inject an unknown substance into the PCA. There was no medically valid reason for him to do so. Employee A and Employee B notified a supervisor about what they saw.

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Employee A also reviewed records to determine when the defendant had checked out the dose of fentanyl at issue. Employee A saw that the amount of fentanyl remaining in the PCA unit was more than expected, given the passage of time and expected rate at which the fentanyl was to be delivered.

Another hospital employee (Employee C) relieved the defendant at shift change. She noted that the patient at issue was awake, which was highly unusual, given the prescribed fentanyl. Employee C changed out the dose of fentanyl, turning over the remnants to a supervisor who, in turn, preserved it and eventually turned it over to law enforcement.

Laboratory testing by the U.S. Food and Drug Administration (FDA) eventually determined that the preserved dose of fentanyl had been diluted with saline. Business records show that the fentanyl that the hospital administers to patients is shipped in interstate commerce from Illinois to Florida.

Later on January 30, after acknowledging in writing his *Miranda* rights, the defendant agreed to be interviewed by investigators from the FDA and Jacksonville Sheriff's Office. The defendant admitted that on two occasions, he had diverted drugs from patients at the hospital (but no other hospitals) and stated that he needed help. He claimed to be stealing fentanyl to inject at home to help him sleep after working night shifts. He repeatedly denied diluting patient drugs with saline.

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Also on January 30, at his employer's request, the defendant submitted to a drug test. He tested positive for fentanyl. Following these events, the hospital fired the defendant. He had been working there for approximately one month.

An audit of hospital records showed multiple discrepancies in the defendant's handling of controlled substances during the brief time he worked for the hospital. Records showed that on January 16, 2020, the defendant checked out two bottles of propofol, but only administered one, never returning the other. (Propofol is a controlled substance that is administered intravenously to induce anesthesia in surgical patients and to provide sedation for ICU patients). On January 22, 2020, the defendant checked out another bottle of propofol, but there was no record that he ever administered it to a patient. That same day, he purportedly checked out and administered a bottle of propofol to a patient, but the records suggest he did so prematurely, before a prior dose had been fully administered. On January 23, 2020, the defendant checked out a dose of fentanyl, but there is no record of him administering it to a patient.

Investigators later learned that in 2019, a separate hospital had employed the defendant and discovered discrepancies in its records that suggested that the defendant might have been diverting drugs for his own use. That hospital requested that the defendant submit to a drug test and fired him when he refused.

The defendant is a trained and educated healthcare professional. As such, he knew that his activities resulted in one or more critically ill patients receiving diluted

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fentanyl, which lacked prescribed quantities of active medication necessary to control pain. He also knew that, having been deprived of medically-necessary medication, such patients would endure pain and suffering. In addition, he knew that the failure to anesthetize or control pain in ICU patients can result in increased risks of illness and death, stemming from, among other things, respiratory, cardiovascular, and musculoskeletal complications. Moreover, he knew that by tampering with and administering diluted fentanyl, his activities resulted in false entries in patient medical records and potentially caused his colleagues to be reluctant to administer additional medication to control pain. Further, the defendant knew that intravenous drug users, like him, have a higher risk of, among other things, contracting infections and blood-borne pathogens. His drug-use potentially passed those risks on to the ICU patients in his care.

Defendant's Initials JK