

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

UNITED STATES OF AMERICA

v.

CASE NO.: 4:19cr24/MW

KEVIN ROBERT LEE
_____ /

FACTUAL BASIS FOR GUILTY PLEA

Defendant admits that, if this case were to proceed to trial, the Government could prove the following facts beyond a reasonable doubt:

Between June 2014 and November 2017, Defendant worked at FSU Credit Union ("FSUCU") as Lending Director. Defendant was also Treasurer of the Tallahassee Chapter of Credit Unions ("TCCU"), a non-profit organization that favors pro-credit union legislation. Lee's position as Treasurer allowed him access to the Chapter's bank account (account number ending in -764) and credit/debit card. TCCU relied solely on Defendant to monitor its account and provide accurate financial statements.

In 2014, Defendant used the name, date of birth, and social security number (SSN) of M.A., President of TCCU, to create a second account for TCCU (account number ending in -985) that only listed M.A. as the owner. Defendant used the original TCCU account (account number ending in -764) for his fraudulent activity

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**CLERK, U.S. DISTRICT
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while leaving the new account he created (account number ending -985) for legitimate TCCU transactions. Defendant also created two accounts (using the names, dates of birth, and SSNs of his college roommates, E.D.Z. and L.G.H.) which served as “intermediary accounts” into which funds stolen from FSUCU customers went. These intermediary accounts also were created with lines of credit (“loans”), and Defendant used his position as Lending Director at FSUCU to approve both those loans.

To accomplish his scheme, Defendant fraudulently transferred money from FSUCU customer accounts (set forth in Figure 1, *below*) into one of the intermediary accounts that he created (via check or ACH). Defendant used the funds in these accounts to either repay lines of credit or to write checks or make ACH payments to his creditors for his own benefit (see Figure 2, *below*).

<u>Date(s)</u>	<u>From Account # ending in</u>	<u>Account Owner</u>	<u>Total Amount</u>
On or about 5/15/2015	-049	E.D.Z.	\$1,900.00
On or between 05/26/2015 and 05/18/2016	-719	H.L.C.	\$263,969.73
On or between 01/19/2016 and 12/19/2016	-701	T.R.B.	\$61,022.17
On or about 11/1/2016	-778	J.G.P.	\$42,937.26
On or about 2/10/2017	-7245	R.R.R.	\$42,989.54
On or about 2/14/2017	-812	J.P.	\$43,000.00
On or about 2/14/2017	-823	K.O.P.	\$35,000.00
On or about 4/21/2017	-066	T.F.	\$60,000.00
On or between 05/17/2017 and 06/27/2017	-746	J.K.H.	\$69,500.00

On or between 05/31/2017 and 06/24/2017	-280	D.S.	\$69,000.00
On or about 6/6/2017	-198	J.H.	\$20,000.00
On or between 06/14/2017 and 06/27/2017	-468	J.K.D.	\$51,500.00
On or about 6/28/2017	-181	M.F.N.	\$9,800.00
On or about 8/2/2017	-669	D.R.	\$86,000.00
On or about 8/7/2017	-892	J.D.	\$69,500.00
On or about 10/23/2017	-466	A.L.D.	\$35,000.00
On or about 10/25/2017	-865	N.P.	\$93,620.00
On or about 11/2/2017	-337	W.R.H.	\$60,000.00
On or about 11/9/2017	-064	A.H.	\$35,000.00
On or about 11/13/2017	-824	W.A.H.	\$69,500.00
			Total: <u>\$1,219,238.70</u>

Figure 1

Defendant drew funds from the lines of credit (account numbers ending in -346 and -404) and deposited the funds into the TCCU account (account number ending in -985) so he could spend it for his own benefit. Defendant accessed inactive customer accounts and transfer funds from those accounts either to pay down the lines of credit he created, to the intermediary accounts he created, or into the original TCCU account which he utilized. Defendant used the stolen funds to pay off personal credit cards, to make mortgage and car payments, and for his children's tuition. At times Defendant would cut checks directly from the line of credit accounts to pay for his wife's car loan and his children's school tuition. The majority of the money (roughly \$500,000) went towards paying Defendant's American Express credit card which he used in part to pay for video game in-app purchases, with one month of purchases totaling over \$150,000.

After Defendant moved money from FSUCU customer accounts into the intermediary accounts or the original TCCU account, he would cut himself checks, transfer the funds into other external bank accounts, or would perform an ACH payments to his creditors. Between June 19, 2014 and November 14, 2017, Defendant transferred or withdrew a total of \$806,666.26 from FSUCU and spent, used, or applied it as follows:¹

<u>Description</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>Total</u>
Credit Card Payments	-	\$43,561.40	\$169,725.35	\$399,710.30	\$612,997.05
Checks to Self	\$2,750.00	\$17,439.76	\$51,744.94	\$15,000.00	\$86,934.70
Auto Loan	-	\$3,782.60	\$19,077.97	\$9,868.44	\$32,729.01
Home Mortgage	-	-	-	\$22,279.53	\$22,279.53
ATM Withdrawals	\$300.00	\$2,880.00	\$6,940.50	\$11,009.00	\$21,129.50
Transfers to Personal Acct	-	-	\$2,866.54	\$17,070.00	\$19,936.54
Misc. Expenditures	\$147.62	\$2,098.31	\$688.55	\$2,551.20	\$5,485.68
Checks to Daycare	-	\$3,105.00	\$2,025.00	-	\$5,130.00
Bank Fees	-	-	\$12.75	\$31.50	\$44.25
Total	\$3,197.62	\$72,867.07	\$253,081.60	\$477,519.97	<u>\$806,666.26</u>

Figure 2

In case of suspicious customers, Defendant developed a story to protect his fraudulent activity. When customers would call in realizing their missing funds, Defendant explained to them that FSUCU closed their inactive account and sent

¹ The \$1.2 million total in *Figure 1* represents funds that Defendant either actually embezzled or attempted to embezzle (and represents the figure alleged in counts One through Twenty of the indictment). The \$806,666.27 total in *Figure 2* represents the net loss to FSUCU or its customers, and constitutes money that left custody of FSUCU (and represents the figure alleged in count Twenty-Two of the indictment).

them a check in the mail. In November 2017, one victim called inquiring about her missing funds. Defendant gave the same story he had been using; however, the victim did not believe him. The customer's employer, concerned about the missing money, emailed FSUCU.

Once FSUCU became aware of the situation, Defendant confessed to his employer, specifically admitting that:

- 1) the victims were real people,
- 2) the victims did not authorize the accounts to be opened, and
- 3) he knew what he did was wrong.

Additionally, Defendant turned over his spreadsheet detailing the accounts in his scheme. Further, Defendant also confessed to an FDLE Special Agent, in detail, during an audio-recorded interview, with his lawyer present.

On February 5, 2016 and March 5, 2017 (prior to the interview with law enforcement), Defendant filed tax returns for years 2015 and 2016, respectively, in which he did not claim as income the funds he stole from FSUCU (as listed in *Figure 2*). For the 2015 tax year, Defendant only claimed income of \$79,245, and for the 2016 tax year, Defendant claimed only income of \$82,154. Further, on March 18, 2018 (after to his interview with law enforcement), Defendant filed a tax return with the Internal Revenue Service for tax year 2017 in which he claimed income of only \$98,085, in which Defendant did not claim as income any of the funds he stole (and admitted to stealing) from FSUCU (as listed in *Figure 2*). By this conduct,



Defendant underpaid taxes for tax years 2015-2017 in the amount of \$223,574.00 (\$17,795.00, \$ 73,885.00, and \$ 131,894.00 for tax years 2015, 2016, and 2017, respectively).

ELEMENTS OF THE OFFENSES

i. **Bank Fraud - 18 U.S.C. § 1344 (Counts 1-20);** 11th Circuit Pattern Jury Instructions § O52:

- (1) the Defendant knowingly carried out or attempted to carry out a scheme to defraud a financial institution or to get money, assets, or other property from a financial institution by using false or fraudulent pretenses, representations, or promises about a material fact;
- (2) the false or fraudulent pretenses, representations, or promises were material;
- (3) the Defendant intended to defraud the financial institution or someone; and
- (4) the financial institution was federally insured or chartered.

ii. **Aggravated Identity Theft – 18 U.S.C. § 1028A (Count 21);** 11th Circuit Pattern Jury Instructions § O40.3:

- (1) The Defendant knowingly transferred, possessed, or used another person's means of identification;
- (2) The Defendant did so without lawful authority²;
- (3) The Defendant knew the means of identification belonged to an actual person, and

² In United States v. Zitron, 810 F.3d 1253, 1260 (11th Cir. 2016) (per curiam), the Eleventh Circuit found that the defendant used the victim's identity "without lawful authority" in two ways: (1) the defendant did not have permission to use the victim's identity, and (2) the defendant used the victim's means of identification for an unlawful purpose. See also United States v. Joseph, 567 F. App'x 844, 848 (11th Cir. 2014) (per curiam) (unpublished).



(4) The Defendant did so in relation to [the eligible felony alleged in the indictment].

iii. **Theft from Lending, Credit, and Insurance institutions – 18 U.S.C. 657 (Count 22);** Adapted from 11th Circuit Pattern Jury Instructions § O22³, 5th Circuit Pattern Jury Instructions § 2.29, and District of South Carolina Pattern Jury Instructions for Federal Criminal Cases at page 95:

- (1) the Defendant was an officer, agent, or employee or someone connected in any capacity of a lending, credit, or insurance institution;
- (2) the accounts of the institution were federally insured at the time of the offense;
- (3) the Defendant knowingly embezzled, abstracted, purloined, or willfully misapplied funds or credits belonging to the institution or entrusted to its care;
- (4) the Defendant intended to injure or defraud the institution; and
- (5) the embezzled or misapplied funds or credits had a value greater than \$1,000.

iv. **Preparation of False Tax Return – 26 U.S.C. § 7206 (Counts 23-25);** 11th Circuit Pattern Jury Instructions § O109.1:

- (1) The Defendant made or caused to be made a [tax-related document] for the year _____;
- (2) The [tax-related document] contained a written declaration that it was made under the penalty of perjury;
- (3) When the Defendant made the [tax-related document], he knew it contained false material information;

³ There is no Eleventh Circuit pattern jury instruction for a violation of 18 U.S.C. § 657; however, the language of this section is almost identical to that of 18 U.S.C. § 656 (described in 11th Circuit Pattern Jury Instructions § O22).



(4) When the Defendant did so, he intended to do something he knew violated the law; and

(5) The false matter in the [tax-related document] related to a material statement.



ERIC ABRAHAMSEN
Attorney for Defendant

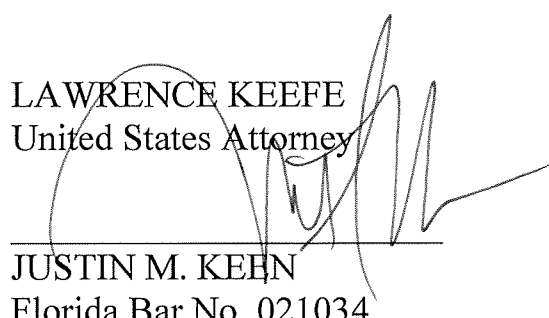
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KEVIN ROBERT LEE
Defendant

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