

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT OWENSBORO

UNITED STATES OF AMERICA

PLAINTIFF

v.

CRIMINAL NO.: 4:15CR-11-JHM

ZACHERY COLEMAN

DEFENDANT

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States of America, by John E. Kuhn, Jr., United States Attorney for the Western District of Kentucky, and defendant, Zachery Coleman, and his attorney, Evan Taylor, have agreed upon the following:

1. Defendant acknowledges that he has been charged in the Indictment in this case with a violation of Title 18, United States Code, Section 2423(a). Defendant further acknowledges that the Indictment in this case seeks forfeiture of any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of any such violation, and any property used or intended to be used, in any manner or part, to commit or to facilitate the commission of such violation, including but not limited to an Apple iPhone, serial number C8PHFEYS9T9V, pursuant to Title 18, United States Code, Section 2428, by reason of the offense charged in Count 1 of the Indictment.

2. Defendant has read the charges against him contained in the Indictment, and those charges have been fully explained to him by his attorney. Defendant fully understands the nature and elements of the crimes with which he has been charged.

3. Defendant will enter a voluntary plea of guilty to Count 1 in this case. Defendant will plead guilty because he is in fact guilty of the charge. The parties agree to the following factual basis for this plea:

On or about February 6, 2015, the Daviess County Sheriff's Office (DCSO) received information that Jane Doe, a minor female of twelve year of age, had run away from her then residence in Daviess County. Jane Doe's foster parent observed Jane Doe get into a vehicle being driven by someone else and speed off. Jane Doe returned on February 7, 2015, and was later interviewed by DCSO. Jane Doe reported that she left with Zachery Coleman whom she met on a social networking site geared towards teenagers. At the time, Coleman was twenty-seven years old, but told Jane Doe he was a teenager. Coleman and Jane Doe communicated with each other via text message on various social networking sites. During those conversations, Jane Doe advised that she was twelve years old. After learning of Jane Doe's age, Coleman and Jane Doe had explicit communications about sex and began to plan a sexual encounter. During the early morning hours of February 7, 2015, Coleman drove from his residence in Evansville, Indiana, to Jane Doe's residence in Daviess County, Kentucky and picked her up. While in his vehicle, Coleman digitally penetrated Jane Doe. Coleman then took Jane Doe to his residence in Evansville, Indiana. After spending the night together, Coleman returned Jane Doe to Daviess County and dropped her off. Soon after she returned home, she was interviewed by DCSO.

During the interview, Jane Doe recounted how she met Coleman online just one day prior to meeting him in person. She also described their online communications and how she used a laptop to chat with Coleman. The DCSO obtained consent to search the computer that Jane Doe referred to and obtained chat logs with typed or texted messages between the Jane Doe and

Coleman. Jane Doe reported that COLEMAN used the screen name “Swisher812” while she used “hobbylobbyl*”.

A review of the chat logs obtained by the DCSO revealed that the two engaged in sexually explicit conversations using the social media app “MyLOL”. MyLOL is a self-described teen dating site. During the chats, Coleman acknowledged that he knew the minor was only twelve years old and repeatedly stated, in graphic language, that he wanted to have a sexual encounter with her. In the chats Coleman states “You’re only 12 babe, I can’t get you prego yet.” The two then discuss a meeting time and place. The chat logs also indicate that Coleman chatted with the minor as he was driving to her house to pick her up.

Coleman was interviewed by the DCSO and admitted to using the screen name “Swisher812” to communicate with “hobbylobbyl*”. He also admitted to driving from Evansville, Indiana to Kentucky and picking up Jane Doe in his car and driving her back to Indiana. The Owensboro Police Department conducted a forensic examination of Coleman's iPhone, which revealed that he had accessed MyLOL via his iPhone.

4. Defendant understands that the charge to which he will plead guilty carries a minimum term of imprisonment of 10 years, a maximum term of imprisonment of life, a maximum fine of \$250,000, and supervised release of at least 5 years and up to any number of years, including life, which the Court may specify. Defendant understands that an additional term of imprisonment may be ordered if the terms of the supervised release are violated, as explained in 18 U.S.C. § 3583. Defendant understands that as a result of the charge to which he will plead guilty he may be ordered to forfeit any property constituting or derived from any proceeds obtained, directly or indirectly, as the result of any such violation, and any property

used or intended to be used, in any manner or part, to commit or to facilitate the commission of such violation, including but not limited to an Apple iPhone, serial number C8PHFEYS9T9V.

5. Defendant understands that if a term of imprisonment of more than one year is imposed, the Sentencing Guidelines require a term of supervised release and that he will then be subject to certain conditions of release. §§5D1.1, 5D1.2, 5D1.3.

6. Defendant understands that by pleading guilty, he surrenders certain rights set forth below. Defendant's attorney has explained those rights to him and the consequences of his waiver of those rights, including the following:

A. If defendant persists in a plea of not guilty to the charge against him, he has the right to a public and speedy trial. The trial could either be a jury trial or a trial by the judge sitting without a jury. If there is a jury trial, the jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt.

B. At a trial, whether by a jury or a judge, the United States 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. In turn, 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.

C. At a trial, defendant would have a privilege against self-incrimination and he could decline to testify, without any inference of guilt being drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

7. Defendant understands that the United States Attorney's Office has an obligation to fully apprise the District Court and the United States Probation Office of all facts pertinent to the sentencing process, and to respond to all legal or factual inquiries that might arise either before, during, or after sentencing. Defendant admits all acts and essential elements of the indictment counts to which he pleads guilty.

8. Defendant agrees that any amount of restitution ordered by the Court shall include Defendant's total offense conduct, and is not limited to the counts of conviction. The defendant further understands that he may be responsible for a fine, costs of prosecution, costs of incarceration and supervision which may be required.

9. Defendant acknowledges liability for the special assessment mandated by 18 U.S.C. § 3013 and will pay the assessment in the amount \$100 to the United States District Court Clerk's Office by the date of sentencing.

10. At the time of sentencing, the United States will

-recommend a sentence of imprisonment of 127 months.

-agree to recommend that the United States Attorney's office for the Southern District of Indiana not seek child pornography charges for conduct that occurred in the Southern District of Indiana discovered during the investigation that led to the current charges.

-recommend a fine at the lowest end of the applicable Guideline Range, to be due and payable on the date of sentencing.¹

¹ The defendant acknowledges that he has read the Notice and Penalty Pages attached to the Indictment/Information, and that he understands the interest and penalty provisions applicable to the fine imposed and included in the Judgment entered by the Court, said Notice and Penalty Pages are incorporated herein by reference.

-recommend a reduction of 3 levels below the otherwise applicable Guideline for "acceptance of responsibility" as provided by §3E1.1(a) and (b), provided the defendant does not engage in future conduct which violates any federal or state law, violates a condition of bond, constitutes obstruction of justice, or otherwise demonstrates a lack of acceptance of responsibility. Should such conduct occur and the United States, therefore, opposes the reduction for acceptance, this plea agreement remains binding and the defendant will not be allowed to withdraw his plea.

-demand forfeiture of an Apple iPhone, serial number C8PHFEYS9T9V.

11. Both parties have independently reviewed the Sentencing Guidelines applicable in this case, and in their best judgment and belief, conclude as follows:

A. The Applicable Offense Level should be determined as follows:

28	(§ 2G1.3(a)(3) – base offense level)
+2	(§ 2G1.3 (b)(2)(B) – undue influence)
+2	(§ 2G1.3 (b)(3) – use of a computer)
+2	(§ 2G1.3 (b)(4) – commission of a sex act)
<u>-3</u>	(§ 3E1.1(a) and (b) – acceptance of responsibility)
31	Total offense level

B. The Criminal History of defendant shall be determined upon completion of the presentence investigation, pursuant to Fed. R. Crim. P. 32(c).

Both parties reserve the right to object to the USSG §4A1.1 calculation of defendant's criminal history. The parties agree to not seek a departure from the Criminal History Category pursuant to §4A1.3.

C. The foregoing statements of applicability of sections of the Sentencing Guidelines and the statement of facts are not binding upon the Court. The defendant understands the Court will independently calculate the Guidelines at sentencing and defendant may not withdraw the plea of guilty solely because

the Court does not agree with either the statement of facts or Sentencing Guideline application.

12. Defendant is aware of his right to appeal his conviction and that 18 U.S.C. § 3742 affords a defendant the right to appeal the sentence imposed. Unless based on claims of ineffective assistance of counsel or prosecutorial misconduct, the Defendant knowingly and voluntarily waives the right (a) to directly appeal his conviction and the resulting sentence pursuant to Fed. R. App. P. 4(b) and 18 U.S.C. § 3742, and (b) to contest or collaterally attack his conviction and the resulting sentence under 28 U.S.C. § 2255 or otherwise.

13. Defendant agrees to the forfeiture of any interest he or his nominees may have in the following assets which he owns or over which he exercises control: Apple iPhone, serial number C8PHFEYS9V.

14. By this Agreement, defendant agrees to forfeit all interests in the properties listed in paragraph 13 above and to take whatever steps are necessary to pass clear title to the United States. These steps include but are not limited to surrender of title, the signing of a consent decree, a stipulation of facts regarding the transfer and basis for the forfeitures and signing any other documents necessary to effectuate such transfers.

15. Defendant agrees to waive any double jeopardy challenges that defendant may have to any administrative or civil forfeiture actions arising out of the course of conduct that provide the factual basis for this Indictment. Defendant further agrees to waive any double jeopardy challenges that defendant may have to the charges in this Indictment based upon any pending or completed administrative or civil forfeiture actions.

16. Defendant waives and agrees to waive any rights under the Speedy Trial Act and understands and agrees that sentencing may be delayed so that at sentencing the Court will have the benefit of all relevant information.

17. Defendant agrees not to pursue or initiate any civil claims or suits against the United States of America, its agencies or employees, whether or not presently known to defendant, arising out of the investigation or prosecution of the offense covered by this Agreement.

18. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

19. Defendant agrees to interpose no objection to the United States transferring evidence or providing information concerning defendant and this offense, to other state and federal agencies or other organizations, including, but not limited to the Internal Revenue Service, other law enforcement agencies, and any licensing and regulatory bodies, or to the entry of an order under Fed. R. Crim. P. 6(e) authorizing transfer to the Examination Division of the Internal Revenue Service of defendant's documents, or documents of third persons, in possession of the Grand Jury, the United States Attorney, or the Criminal Investigation Division of the Internal Revenue Service.

20. It is understood that pursuant to Fed. R. Crim. P. 11(c)(1)(B), the recommendations of the United States are not binding on the Court. In other words, the Court is not bound by the sentencing recommendation and defendant will have no right to withdraw his

guilty plea if the Court decides not to accept the sentencing recommendation set forth in this Agreement.

21. Defendant agrees that the disposition provided for within this Agreement is fair, taking into account all aggravating and mitigating factors. Defendant states that he has informed the United States Attorney's Office and the Probation Officer, either directly or through his attorney, of all mitigating factors. Defendant will not oppose imposition of a sentence incorporating the disposition provided for within this Agreement, nor argue for any other sentence. If Defendant argues for any sentence other than the one to which he has agreed, he is in breach of this Agreement. Defendant agrees that the remedy for this breach is that the United States is relieved of its obligations under this Agreement, but Defendant may not withdraw his guilty plea because of his breach.

22. The defendant has been advised and understands, that under the Sex Offender Registration and Notification Act (42 USC §§ 901 et. seq), the defendant must register and keep the registration current in each of the following jurisdictions: the location of the defendant's residence, the location of the defendant's employment; and, if the defendant is a student, the location of the defendant's school. Registration will require that the defendant provide information that includes name, residence address, and the names and addresses of any places at which the defendant is or will be an employee or a student. The defendant understands that he must update his registrations not later than three business days after any change of name, residence, employment, or student status. The defendant understands that he must notify the relevant registration authority with information relating to intended travel outside the United States. The defendant understands that failure to comply with these obligations subjects the

defendant to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

23. This document and the supplemental plea agreement state the complete and only Plea Agreements between the United States Attorney for the Western District of Kentucky and defendant in this case, and are binding only on the parties to this Agreement, supersedes all prior understandings, if any, whether written or oral, and cannot be modified other than in writing that are signed by all parties or on the record in Court. No other promises or inducements have been or will be made to defendant in connection with this case, nor have any predictions or threats been made in connection with this plea.

AGREED:

JOHN E. KUHN, JR.
United States Attorney

By:

A. Spencer McKiness
Assistant United States Attorney

Date

I have read this Agreement and carefully reviewed every part of it with my attorney. I fully understand it and I voluntarily agree to it.

Zachery Coleman
Defendant

Date

I am the defendant's counsel. I have carefully reviewed every part of this Agreement with the defendant. To my knowledge my client's decision to enter into this Agreement is an informed and voluntary one.

Evan Taylor
Counsel for Defendant

Date

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