

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 vs.)
)
 BRIAN KENT,)
)
 Defendant.)

CRIMINAL NO. 04-40065-JPG

PLEA AGREEMENT

The attorney for the Government and the attorney for the Defendant have engaged in discussions and have reached an agreement pursuant to Federal Rule of Criminal Procedure 11. As a result of that agreement, the Defendant intends to plead guilty in this case. The full and complete Plea Agreement is as follows:

I.

1. Defendant will cooperate fully with the United States. Defendant agrees and acknowledges that his obligation to cooperate requires him to provide complete and truthful testimony under penalty of perjury before any Grand Jury or in any trial proceeding. Furthermore, the Defendant understands that this agreement requires him to testify concerning all criminal activity about which he knows, whether or not Defendant was himself involved.

2. Defendant also agrees and acknowledges that his obligation to cooperate requires him, upon request, to provide complete and truthful information to any Federal, State or Canadian law enforcement agencies concerning any criminal activity about which he knows. Defendant agrees that any such information he provides law enforcement agencies will be complete and truthful.

3. Besides the foregoing, the Defendant will do all things deemed necessary by the United States Attorney and/or any law enforcement agents to assist law enforcement personnel in their investigations into activities in which the Defendant is involved or about which he knows.

4. Defendant further agrees that his obligation to cooperate includes providing information concerning his knowledge of criminal activity in the Southern District of Illinois, and elsewhere, including, but not limited to, all federal districts, and Canada..

5. The Defendant and the Government both agree that, pursuant to the United States Sentencing Commission *Guidelines Manual*, § 1B1.8 [hereinafter "U.S.S.G."], information that the Defendant provides pursuant to his obligation to cooperate fully under the terms of this agreement shall not be used in determining Defendant's applicable guideline range.

6. The United States will inform the Court of the extent of his voluntary cooperation; however, Defendant understands that the Court did not participate in this agreement, is not bound by any recommendations of the Government, and further, that he will not be allowed to withdraw his plea of guilty, once entered.

7. Defendant will not be prosecuted in the Southern District of Illinois for any other crimes now known to the Government or to become known to the Government by virtue of Defendant's cooperation.

8. In conjunction with the provisions of paragraphs 1, 2, 3, and 4, hereinabove, Defendant specifically agrees and acknowledges that if he does not cooperate fully or does not testify truthfully before the Grand Jury or at any trial in any federal district where he is called by the United States as a witness, or in any proceeding in which he is called by Canadian authorities, then the United States is completely released from any obligation arising from this agreement and the Defendant is subject to full prosecution and punishment for any crime known to the Government at

this time. It is further understood that no action taken by the Government, pursuant to this paragraph, shall be grounds for the Defendant to withdraw his plea.

9. Defendant acknowledges that he has been advised and does fully understand the following:

(a) the nature of the charges to which the plea is offered, the mandatory minimum penalty provided by law, if any, and the maximum possible penalty provided by law;

(b) that he has the right to plead not guilty or to persist in that plea if it has already been made, and he has the right to be tried by a jury and at that trial has the right to the assistance of counsel, the right to confront and cross-examine witnesses against him, and the right not to be compelled to incriminate himself;

(c) that if he pleads guilty, there will not be a further trial of any kind, so that by pleading guilty, he waives the right to a trial;

(d) that if he pleads guilty, the Court may ask him questions about the offense to which he has pleaded, and if he answers these questions under oath, on the record, and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or false statement;

(e) that if he pleads guilty, he will waive his right to persist in his plea of not guilty, to be tried by a jury, to have assistance of counsel at the trial, and to confront and cross-examine witnesses against him at trial;

(f) that if he pleads guilty, he is pleading guilty to a felony punishable by a term of imprisonment exceeding one year. Therefore, no matter what sentence the Court imposes (whether probation or any term of imprisonment), he will be forbidden by federal firearms laws from possessing any type of firearm in his lifetime, unless he obtains relief pursuant to 18 U.S.C. § 925, or other appropriate federal statute.

10. Defendant agrees that this Plea Agreement and Stipulation of Facts constitutes the entire agreement between him and the United States and that no promises, inducements or

representations, other than those specifically set forth in this Plea Agreement and Stipulation of Facts, were made to induce him to enter into this Plea Agreement and Stipulation of Facts.

11. It is further understood that this agreement is limited to the Southern District of Illinois, and cannot bind other federal, state or local prosecuting authorities. It is further understood that this Plea Agreement does not prohibit the United States, any agency thereof, or any third party from initiating or prosecuting any civil proceedings directly or indirectly involving Defendant.

12. Defendant understands that this offense is subject to Title 28, United States Code, Section 994(a). Defendant has been advised and understands that the Sentencing Guidelines are advisory and that the Court will consider the applicable Guidelines in conjunction with 18 U.S.C. § 3553(a), in determining the appropriate sentence.

13. Defendant understands that pursuant to Title 18, United States Code, Section 3013, the Court will assess a "Special Assessment" of \$100 per felony count. Defendant agrees that he will pay the full amount of the special assessment prior to or at the time of sentencing.

14. Defendant understands that the Court will impose a term of "supervised release" to follow incarceration. *See* 18 U.S.C. § 3583; U.S.S.G. § 5D1.1.

15. Defendant understands that the Court may impose a fine, costs of incarceration, and costs of supervision and that the Government will recommend the imposition of a fine. The estimated costs of such incarceration or community confinement or supervision, pursuant to an advisory notice from the Administrative Office of the United States Courts dated April 15, 2005, are, for imprisonment: \$1,933.80 per month; for community confinement: \$1,675.23 per month; and for supervision: \$287.73 per month. The Defendant agrees to make complete financial disclosure by truthfully filling out, at the request of the United States Attorney, a Financial Statement (OMB-500).

16. The Defendant states that he has read this agreement and has discussed it with his attorney, and understands it.

17. The Defendant understands and agrees that if he commits any offense in violation of federal, state, or local law, or violates any condition of release, or violates any term or condition of this agreement, the Government is not bound by the provisions herein and may request that the Court impose on the Defendant any penalty allowable by law, including the filing of additional charges or sentencing enhancement notices, in addition to any sanctions that may be imposed for violation of the Court's order setting the conditions of release. No action taken or recommendation made by the Government pursuant to this paragraph shall be grounds for the Defendant to withdraw his plea.

II.

1. The Defendant states that he is actually guilty of and will enter a plea of guilty to counts 1, 3, 8, 9, 10, 11, 12, and 18 of the indictment, charging violations of Title 18, United States Code, Sections 371, 1341, 1342, and 1343. The maximum penalty that can be imposed for Count 1 is 5 years' imprisonment or a \$250,000 fine, or both, and at least 3 years' supervised release. The maximum penalty that can be imposed for Count 3 is 20 years' imprisonment or a \$250,000 fine, or both, and at least 3 years' supervised release. The maximum penalty that can be imposed for Counts 8 through 12 are 20 years' imprisonment or a \$250,000 fine, or both, and at least 3 years' supervised release. The maximum penalty that can be imposed for Count 18 is 5 years' imprisonment or a \$250,000 fine, or both, and at least 3 years' supervised release.

2. The Government and the Defendant agree that the following constitutes the essential elements of the offenses:

A. Conspiracy

FIRST: That the alleged conspiracy existed;

SECOND: That an overt act was committed in furtherance of the conspiracy;
and,
THIRD: That the defendant knowingly and intentionally became a member of
the conspiracy.

B. Mail Fraud

FIRST: That the defendant knowingly devised or participated in the scheme
to defraud as described in the indictment;

SECOND: That the defendant did so knowingly and with the intent to defraud;
and,

THIRD: That for the purpose of carrying out the scheme or attempting to do
so, the defendant used or caused the use of the United States Mails or
a private or commercial interstate carrier in the manner charged in the
particular count.

C. Wire Fraud

FIRST: That the defendant knowingly devised or participated in the scheme
to defraud as described in the indictment,

SECOND: That the defendant did so knowingly and with the intent to defraud;
and,

THIRD: That for the purpose of carrying out the scheme or attempting to do
so, the defendant used or caused interstate wire communications to
take place in the manner charged in the particular count.

D. False and Fictitious Address in Furtherance of Mail Fraud

FIRST: That the defendant knowingly devised or participated in a scheme to
defraud, or engaged in an unlawful business;

SECOND: For the purposes of conducting, promoting, or carrying on said
scheme or unlawful business, the defendant used or assumed, or
requested to be addressed by, a fictitious, false or assumed name or
address, or name other than his own proper name;

THIRD: That for the purpose of carrying out the scheme or attempting to do
so, the defendant used or caused the use of the United States Mails in
the manner charged in the particular count and took and received
from the Postal Service any letter, postal card, package or other mail

matter addressed to such fictitious, false or assumed name or address.

The Defendant agrees and admits that his conduct violated these essential elements of the offenses.

3. The Government and the Defendant agree that the 2001 Guidelines apply. The Government submits to the Court that under the Sentencing Guidelines, after all facts have been considered, Defendant will have an Offense Level of 31 and a Criminal History of I, whereby the sentencing range is 108-135 months. The Government further submits to the Court that the Defendant's fine range will be \$15,000 to \$150,000 according to U.S.S.G. § 5E1.2. The Government and Defendant understand that this provision is not binding on the Court and constitutes the Government's good faith effort to inform the Court of the applicable sentencing range and that the Court ultimately will determine the guideline range after receiving the Presentence Report and giving both parties the opportunity to comment thereon. The Defendant expressly recognizes that, regardless of the guideline range found or the sentence imposed by the Court, he will not be permitted to withdraw his plea. The Government and the Defendant agree that the offense level and the criminal history category calculations submitted by the parties herein constitute the parties' good faith efforts to inform the Court of their beliefs as to the applicable sentencing range and acknowledge that it is the Court which is ultimately responsible for determining the applicable Guideline range and determining the sentence which will be imposed. The Government specifically reserves the right to argue for and present testimony in support of or in opposition to the Probation Office's or the Court's findings as to Offense Level and Criminal History Category (which may be in excess of the calculations set forth herein). The Defendant understands that the Sentencing Guidelines are advisory only and that the Court has the discretion to sentence the Defendant anywhere up to the statutory maximum sentence after consideration of the

Sentencing Guidelines, and the factors set forth in 18 U.S.C. § 3553(a), including the nature and circumstances of the offense(s) and the criminal history and characteristics of the Defendant.

4. Defendant and the Government agree that the base Guideline Offense Level in this case is 6 pursuant to U.S.S.G. § 2B1.1(a). The Defendant and the Government further agree that the amount of loss was between \$400,000 and \$1 million and is subject to a 14 point enhancement under § 2B1.1(b)(1)(F). The Defendant and the Government further agree that the offense involved 50 or more victims and hence is subject to a four point enhancement under § 2B1.1(b)(2)(B). Additionally, the specific offense characteristic of § 2B1.1(b)(8) applies because a substantial part of the scheme was committed from outside of the United States, thus the Defendant's offense level is increased by another two levels.

5. Defendant and the Government agree that there were multiple vulnerable victims and hence there is a two point increase under § 3A1.1(b)(1) and another two point increase under § 3A1.1(b)(2).

6. Defendant and the Government agree that Defendant was an organizer and leader of a criminal activity that involved five or more people and hence there is a four point increase under § 3B1.1(a).

7. Defendant and the Government agree that Defendant has not obstructed justice in this case and therefore, pursuant to U.S.S.G. § 3C1.1, the Defendant's base offense level should not be increased.

8. The Government anticipates that by pleading guilty the Defendant may be entitled to a reduction of 3 Levels based upon a finding by the Court that the Defendant has demonstrated an acceptance of personal responsibility for his criminal conduct which would thereby reduce the

Offense Level to 31 (from Offense Level 34). *See* U.S.S.G. § 3E1.1. Defendant and the Government agree that no victim-related adjustments apply to this offense. *See* U.S.S.G. § 3.A.

9. The Government submits to the Court that it appears that the Defendant has amassed one (1) Criminal History point and that his Sentencing Guideline Criminal History Category is I. This calculation is based upon the following information:

<u>Date</u>	<u>Charge</u>	<u>Disposition</u>	<u>Guideline</u>	<u>Score</u>
1997	Bad Check	Probation	4A1.1(c)	1

Defendant expressly recognizes that the final calculation will be determined by the Court after considering the Presentence Report, the views of the parties and any evidence submitted prior to sentencing. Defendant recognizes that, regardless of the criminal history found by the Court, he will not be able to withdraw his plea.

10. The Defendant understands that the Government will recommend the imposition of a fine at the low end of the guidelines range. The Defendant understands that the Government's recommendation may be based in part on the Defendant's projected earnings through the Inmate Financial Responsibility Program.

11. The Government will move to dismiss Counts 2, 4, 5, 6, 7, 13, 14, 15, 16, and 17.

12. Defendant and the Government agree that based upon substantial assistance rendered through the complete and total cooperation of Defendant, the Government may, in the sole discretion of the United States Attorney, file either a motion under § 5K1.1 of the Sentencing Guidelines or a motion under Rule 35 of the Federal Rules of Criminal Procedure advising the Court of a recommended reduction in sentence. The Motion, if any, will only be filed if the assistance rendered

by the Defendant is found to be complete and thoroughly truthful, regardless of the outcome of any trial or hearing at which the Defendant may testify. The Defendant understands that any reduction of sentence, and the extent of that reduction, lies in the discretion of the Court.

13. Notwithstanding the immediately preceding paragraph, the defendant understands and acknowledges that there have been concessions made by the Government, including those with respect to uncharged conduct. In addition, the parties have discussed the potential application of the treaty between the United States and Canada that permits Canadian nationals who are convicted of offenses in the United States, under certain circumstances, to serve part of their sentence in Canada. (Hereinafter "treaty transfer.") The parties acknowledge that defendant may be eligible for consideration under this treaty, as a consequence of which, he might be transferred to Canada to serve his sentence. If so transferred, he may then be eligible for parole in accordance with Canadian law. Since certain concessions have been made by the Government to facilitate defendant's eligibility for a transfer to Canada as a result of Defendant's extensive co-operation with the Government, Defendant expressly acknowledges that his co-operation has already been taken into account by the Government in this plea agreement and that it is not likely that the Government will be seeking an additional reduction of his sentence as a result of Defendant's co-operation. Defendant acknowledges that he has been advised that the United States Attorney does not implement the treaty between the United States and Canada, makes no representation about defendant's eligibility under the treaty, any probable period of incarceration as a result of the application of the treaty, or the effect of Canadian law on his eligibility for parole.

14. The Defendant understands that the Government will oppose any request for a treaty transfer made within three years of his arrest, due to the need for Defendant's participation in ongoing investigations.

15. In order to facilitate Defendant's co-operation under this agreement, defendant agrees that once he is released from any sentence of incarceration, that he will promptly notify the U.S. Postal Inspection Service in St. Louis, Missouri, in writing, within seventy two hours of any change in his residence address. Notice will be deemed to be given to the Postal Inspection Service when it is *actually received*. The Defendant further agrees to voluntarily appear in the United States when requested to do so. The request to Defendant will be deemed to have been given when delivered to the Defendant's residence as reported by him to the Postal Inspection Service. Defendant's failure to appear when so requested by the Postal Inspection Service will be deemed to be a material breach of this agreement, subjecting Defendant for prosecution for any offense now known to the government.

16. Defendant hereby waives the statute of limitations and agrees not to assert the defense of statute of limitations in connection with the prosecution for any offense which is not time barred as of the date of this agreement. The waiver of the statute of limitations will be limited to prosecution in the Southern District of Illinois and brought as a result of Defendant's breach of this plea agreement. Defendant agrees to waive extradition to the United States for prosecution for offenses brought as a result of Defendant's breach of this agreement to the fullest extent that this waiver is enforceable in the country where Defendant may be found.

17. The United States agrees not to seek an upward departure from the Guidelines and defendant agrees to not seek a downward departure from the Guidelines. The agreement by the parties to not seek a departure from the Guidelines is not binding upon the Court or the United States Probation Office and the Court may impose any sentence authorized by law.

18. The Defendant agrees that he is subject to a mandatory order of restitution. He agrees to make restitution in the amount set forth in the Stipulation.

III.

1. The Defendant understands that by pleading guilty, he is waiving all appellate issues that might have been available if he had exercised his right to trial. The Defendant states that he is fully satisfied with the representation he has received from his counsel, that they have discussed the Government's case, possible defenses and have explored all areas which the Defendant has requested relative to the Government's case and his defense.

2. The Defendant is aware that Title 18, Title 28 and other provisions of the United States Code afford every defendant limited rights to contest a conviction and/or sentence. Acknowledging all this, and in exchange for the recommendations and concessions made by the United States in this plea agreement, the Defendant knowingly and voluntarily waives his right to contest any aspect of his conviction and sentence that could be contested under Title 18 or Title 28, or under any other provision of federal law, except that if the sentence imposed is in excess of the Sentencing Guidelines as determined by the Court, the Defendant reserves the right to appeal the reasonableness of the sentence. The Defendant acknowledges that in the event such an appeal is taken, the Government reserves the right to fully and completely defend the sentence imposed, including any and all factual and legal findings supporting the sentence, even if the sentence imposed is more severe than that recommended by the Government. Defendant knowingly and voluntarily waives his right to seek a pardon, whether before or after his release from custody.

3. Defendant's waiver of his right to appeal or bring collateral challenges shall not apply to: 1) any subsequent change in the interpretation of the law by the United States Supreme Court or the United States Court of Appeals for the Seventh Circuit, which is declared retroactive by those Courts, and which renders the defendant actually innocent of the charges covered herein, and 2) appeals based upon Sentencing Guideline amendments which are made retroactive by the United

States Sentencing Commission (see U.S.S.G. § 1B1.10). The Government reserves the right to oppose such claims for relief.

4. Defendant's waiver of his appeal and collateral review rights shall not affect the Government's right to appeal Defendant's sentence pursuant to Title 18, United States Code, Section 3742(b). This is because United States Attorneys lack any right to control appeals by the United States, through plea agreements or otherwise; that right belongs to the Solicitor General. 28 C.F.R. § 0.20(b).

5. 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, Title 5, United States Code, Section 552, or the Privacy Act of 1974, Title 5, United States Code, Section 552a.

6. Defendant waives all claims under the Hyde Amendment, Title 18, United States Code, Section 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

7. A. The Defendant acknowledges that the Government has provided complete discovery compliance in this case. Defendant states that he has reviewed said discovery compliance with his attorney. Defendant states that he has been advised that there may be items of physical evidence in this case which may have biological evidence, such as semen, blood, saliva, hair, skin tissue, or other identifiable biological material, that could be subjected to DNA testing either now or in the future. Defendant understands that the Government does not intend to conduct DNA testing of any of the items of physical evidence.

Defendant states that he has discussed with his attorney his rights regarding DNA testing on the physical items seized as evidence in this case and is satisfied that there is no need for any DNA testing of any evidence in this case.

B. The Defendant states that he specifically understands that he could request DNA testing of evidence in this case before he pleads guilty pursuant to this Plea Agreement. He further understands that, if the Court enters a judgment of conviction for the offense(s) to which he pleads guilty pursuant to this Plea Agreement, he could request DNA testing of evidence in this case after conviction under the conditions specified in 18 U.S.C. § 3600.


C. The Defendant states that knowing and understanding his right to request DNA testing, he knowingly and voluntarily waives and gives up that right. He understands that this waiver applies to DNA testing of all items seized as evidence in this case that could be subjected to DNA testing. He further understands that he is waiving the right to request DNA testing of evidence in this case in the current proceeding, in any proceeding following conviction under 18 U.S.C. § 3600, and in any other type of proceeding in which DNA testing may be requested. He fully understands that, as a result of his waiver of the right of DNA testing, that he will never have another opportunity to have the evidence in this case submitted for DNA testing or to employ the results of DNA testing to support a claim that he is actually innocent of the offense(s) to which he pleads guilty pursuant to this Plea Agreement.

D. The Defendant states that he has fully discussed the significance of DNA testing both before and after his conviction and its possible uses with his attorney. The Defendant states he is satisfied with his attorney's explanation concerning DNA testing and the advice his attorney has provided to him concerning the consequences of waiving the right to request DNA testing.

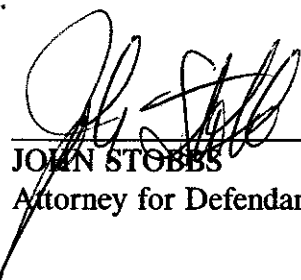
E. The Defendant states that he has been advised of his rights under 18 U.S.C. §§ 3600 and 3600A. Defendant states that he waives those rights and consents to the destruction of all items of physical evidence seized in this case.

IV.

No matters are in dispute.



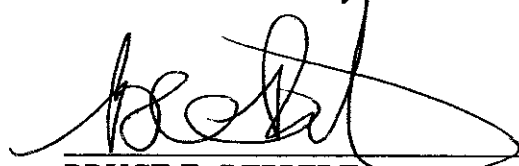
BRIAN KENT
Defendant



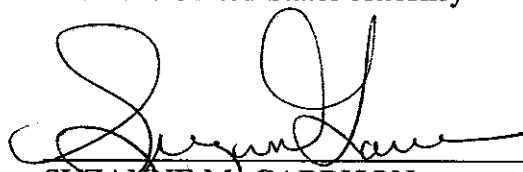
JOHN STOBBS
Attorney for Defendant

Date: 9-1-05

RONALD J. TENPAS
United States Attorney



BRUCE E. REPERT
Assistant United States Attorney



SUZANNE M. GARRISON
Assistant United States Attorney

Date: 9/1/05