

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA     )  
  )  
  )     No.   07 CR 435  
  )     Hon.  Robert W. Gettleman  
  )  
KYLE KNIGHT                        )

**PLEA AGREEMENT**

1.     This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant KYLE KNIGHT, and his attorney, KENT CARLSON, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C) as more fully set forth below. The parties to this Agreement have agreed upon the following:

**Charges in This Case**

2.     The information in this case charges defendant with knowingly transferring explosive materials knowing or having reasonable cause to believe that such explosive materials would be used to commit a crime of violence, in violation of Title 18, United States Code, Section 844(o) (Count One), and conspiring to obstruct commerce by robbery, in violation of Title 18, United States Code, Section 1951(a) (Count Two).

3.     Defendant has read the charges against him contained in the information, and those charges have been fully explained to him by his attorney.

4.     Defendant fully understands the nature and elements of the crimes with which he has been charged.

### Charges to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Counts One and Two of the information. Count One charges the defendant with knowingly transferring explosive materials, knowing or having reasonable cause to believe that such explosive materials would be used commit a crime of violence as defined in Title 18, United States Code, Section 924(c)(3), in violation of Title 18, United States Code, Section 844(o). Count Two charges the defendant with conspiring to obstruct commerce by robbery, in violation of Title 18, United States Code, Section 1951(a).

### Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Two of the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

a. With respect to Count One of the information, in or around February 2003, at Chicago, in the Northern District of Illinois, Eastern Division, the defendant did knowingly transfer explosive materials to Samuel Volpendesto, knowing and having reasonable cause to believe that such explosive materials would be used to commit a crime of violence, as “crime of violence” is defined in Title 18, United States Code, Section 924(c)(3), in violation of Title 18, United States Code, Section 844(o).

Specifically, defendant, based on his knowledge of explosives, provided fireworks displays for a party that occurred on July 4th, 2002. During the party, the defendant spoke to Samuel Volpendesto. Volpendesto asked the defendant what type of explosive material the defendant was using in the fireworks. Volpendesto had bragged to

the defendant about his associations with organized crime, and had also engaged in other criminal activities with the defendant, including robbery. Volpendesto asked the defendant how to damage a 25 foot by 35 foot structure with windows. Volpendesto also asked the defendant if he would be able to prepare some explosive that would damage the windows but not the structure itself. The defendant answered Volpendesto's questions concerning the use of explosive materials, and gave Volpendesto advice on the effect the placement and the weight of explosive material would have on the blast and the resulting damage created by the blast. The defendant also gave advice on how to minimize injuries to individuals passing by or in the vicinity of the structure in the event the explosion was going to occur within the city.

Some time after the party, the defendant had a conversation with Individual B. Individual B asked the defendant if he could put something together for Volpendesto. The defendant understood this to mean that Volpendesto wanted the defendant to assemble a bomb. The defendant told Individual B that he wouldn't make a bomb, but would be willing to provide the powder for making a bomb.

At Volpendesto's direction, the defendant delivered a bag containing two ziploc bags containing explosive powders and a 20-foot long fuse for Volpendesto's use. The defendant left these materials at a store located on South Archer, in Chicago, Illinois for Volpendesto in or around February 2003.

b. With respect to Count Two of the information, beginning no later than on or around February 4, 2002, and continuing until at least on or around August 25, 2003, at Chicago, Hinsdale, Hickory Hills, LaGrange Park and Schiller Park, in the Northern

District of Illinois, Eastern Division, and elsewhere, the defendant did conspire with Individual A, Individual B, Individual C, Individual E and others known and unknown, to obstruct, delay, and affect commerce by robbery, as “robbery” and “commerce” are defined in Title 18, United States Code, Section 1951.

The conspiracy involved the robbery of jewelry stores and financial institutions within the Northern District of Illinois. It was part of the conspiracy that defendant and his co-conspirators would: (a) identify targets, including jewelry stores and financial institutions for armed robberies; (b) obtain intelligence on the targeted establishments prior to committing armed robberies; (c) steal vehicles, and obtain stolen vehicles, for use in the commission of armed robberies; (d) obtain, possess, brandish, and discharge firearms in connection with the commission of armed robberies; (e) physically restrain employees of the targeted establishments while committing armed robberies; (f) obtain and wear disguises during the course of the robberies; and (g) conceal and hide acts done in furtherance of the conspiracy and the purposes of those acts.

As a part of and as acts in furtherance of the conspiracy, the defendant, together with his co-conspirators, did agree to rob and did rob certain establishments, including but not limited to the following:

(a) On or about February 4, 2002, defendant, together with Individual E, robbed the Bank One, located on Irving Park Road, in Schiller Park, Illinois, taking approximately \$5,300 in United States currency. The defendant agreed with Individual E to rob the bank, and drove Individual E to the vicinity of the bank. Individual E went into the bank alone to rob it. After Individual E emerged with approximately \$5,300 in United

States currency that had been under the care and custody of Bank One, the defendant and Individual E counted up and divided the money in a motel room near the bank. The deposits of Bank One were insured by the Federal Deposit Insurance Corporation at the time of the robbery.

(b) On or about May 1, 2002, defendant, together with Individual B, Individual C and another individual, robbed Lenna Jewelers, Hinsdale, Illinois, taking jewelry valued at approximately \$239,752. Specifically, the defendant brought a hammer with him to use during the course of this robbery, that had been modified by adding a steel spike to the tip. The defendant entered Lenna Jewelers with Individual C, and the defendant smashed display cases with his hammer and placed jewelry from the display cases into a bag. Individual C remained at the entrance so that no one else would enter the store during the robbery. Individual C also sprayed one of the employees of the store who was on duty with mace. The defendant and Individual C exited the store with the stolen merchandise. After the robbery, the defendant and others met with Individual A at Individual A's residence to provide Individual A with the jewelry that had been stolen. A few hours later, the defendant, Individual B and Individual C met Individual A at his business, at which time Individual A paid for the jewelry that was stolen.

(c) On or about June 6, 2002, defendant, together with Individual B and Individual C, robbed Husar's House of Fine Diamonds, West Bend, Wisconsin, taking jewelry valued at no less than approximately \$150,000, which jewelry was transported from West Bend, Wisconsin, to Chicago, Illinois after the robbery. Specifically, the

defendant acted at the lookout for this robbery. Individual B acted as the getaway driver, and Individual C entered the jewelry store to commit the robbery.

(d) On or about July 24, 2003, defendant, together with Individual B and Individual C, robbed LD Jewelers, Hickory Hills, Illinois, taking jewelry valued at approximately \$236,928. Specifically, several days in advance of the robbery, the defendant, Individual B and Individual C stole a vehicle from Addison, Illinois, for use as a getaway vehicle during the planned robbery. However, the vehicle was moved after it was robbed, and so the defendant and Individual B ended up using their own vehicles during the course of this robbery. Individual B acted as the lookout for this robbery, and the defendant and Individual C went into LD Jewelers. The defendant pointed a gun at a woman who was on duty in the store, placed plastic handcuffs on her, covered her eyes, and then took keys from her and gave them to Individual C. Individual C emptied some display cases and safes in the store and placed all the items in a bag, and the defendant and Individual C departed the store with the stolen merchandise. A portion of the merchandise that was stolen from LD Jewelers was transported to Florida by Individual B and Individual C for sale.

(e) On or about August 25, 2003, defendant, together with Individual B and Individual C, robbed Marry Me Jewelry Store, LaGrange Park, Illinois, taking approximately \$645,517 in jewelry at gunpoint. The night before the robbery, the defendant and Individual C stole a white van to be used during the robbery. During the robbery, Individual B acted as the lookout, while the defendant and Individual C drove the stolen van to the jewelry store. A jewelry salesman came out of the Marry Me Jewelry

Store, and the defendant emerged from the van with a gun in his hand. The defendant walked towards the salesman, and instructed him to drop the bags he was carrying. The salesman turned and began to run towards the store. However, the salesman turned to confront the defendant. The defendant began to struggle with the salesman, and the defendant's gun discharged and the salesman was shot in the chest. The defendant grabbed the salesman's bags, and ran back to the van. The jewels stolen in this instance came from places outside of Illinois. Individual C then drove the pair away from the scene. Later that day, the defendant, Individual B and Individual C met up at Individual A's residence. Individual A stored the jewelry and agreed to sell the jewelry and to provide money from the sale to the defendant, Individual B and Individual C.

7. The foregoing facts are set forth solely to assist the court in determining whether a factual basis exists for defendant's plea of guilty, and are not intended to be a complete or comprehensive statement of all the facts within defendant's personal knowledge regarding the charged crimes and related conduct.

#### **Maximum Statutory Penalties**

8. Defendant understands that the charges to which he is pleading guilty carry the following statutory penalties:

a. Count One carries a statutory mandatory sentence of 10 years. Defendant further understands that with respect to Count One the judge also may impose a term of supervised release of not more than three years. The term of imprisonment with respect to Count One cannot be imposed to run concurrent with any other term of imprisonment.

b. Count Two carries a maximum sentence of 20 years' imprisonment. Count Two also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count Two, the judge also may impose a term of supervised release of not more than three years. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty or restitution imposed.

d. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is 30 years' imprisonment, and the minimum sentence is 10 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$250,000 on each count of conviction, or twice the gross gain or gross loss resulting from each offense of conviction, whichever is greater, a period of supervised release, and special assessments totaling \$200, in addition to any restitution ordered by the Court.

#### **Sentencing Guidelines Calculations**

9. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:



a. **Applicable Guidelines.** The Sentencing Guidelines to be applied in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2006 Guideline Manual.

b. **Offense Level Calculations.**

i. Count One.

a. Pursuant to Guideline Section 2K2.4, the guideline sentence for Count One of the information is 120 months imprisonment. Pursuant to Guideline Section 2K2.4, Chapters Three and Four of the guidelines do not apply to this count of conviction.

ii. Count Two.

(1) Offense Conduct . Pursuant to Guideline Section 1B1.2(d), a conviction on a count charging a conspiracy to commit more than one offense shall be treated as if the defendant had been convicted on a separate count of conspiracy for each offense that the defendant conspired to commit.

a. Bank One Robbery. Pursuant to Guideline 2B3.1(a) and 2X1.1(a), the base offense level is 20. A 2-level increase in the offense level is appropriate because the property of a financial institution was taken. The resulting offense level is 22.

b. Lenna Jewelers Robbery. Pursuant to Guideline Sections 2B3.1(a) and 2X1.1(a), the base offense level is 20. A 4-level increase in the offense level is appropriate because a dangerous weapon was otherwise used. A 2-level increase

in the offense level is appropriate because the loss exceeded \$50,000. The resulting offense level is 26.

c. Husar's House of Fine Diamonds Robbery.

Pursuant to Guideline Sections 2B3.1(a) and 2X1.1(a), the base offense level is 20. Pursuant to Guideline Section 2B3.1(b)(7), a 2-level increase is appropriate because the loss exceeded \$50,000. The resulting offense level is 22.

d. LD Jewelers Robbery. Pursuant to Guideline

Sections 2B3.1(a) and 2X1.1(a), the base offense level is 20. Pursuant to Guideline Section 2B3.1(b)(2)(C), a 5-level increase is appropriate because a firearm was brandished or possessed. Pursuant to Guideline Section 2B3.1(b)(4), a 2-level increase is appropriate because a person was physically restrained to facilitate commission of the offense. Pursuant to Guideline Section 2B3.1(b)(7), a 2-level increase is appropriate because the loss exceeded \$50,000. The resulting offense level is 29.

e. Marry Me Jewelry Store Robbery. Pursuant to

Guideline Sections 2B3.1(a) and 2X1.1(a), the base offense level is 20. Pursuant to Guideline Section 2B3.1(b)(2) & (b)(3), an 11-level increase is appropriate because a firearm was discharged and a life-threatening bodily injury was sustained by a victim. Pursuant to Guideline Section 2B3.1(b)(7), a 3-level increase is appropriate because the loss exceeded \$50,000. The resulting offense level is 34.

(2) Grouping and Combined Offense Level.

a. Pursuant to Guideline Section 3D1.2, offenses covered by Guideline Section 2B3.1 are not grouped.

b. Pursuant to Guideline Section 3D1.4, the combined offense level for Count Two is 36, because the Marry Me Jewelry Store Robbery with offense level 34 is assigned one Unit, the Lenna Jewelers and LD Jewelers are assigned ½ Unit each because they are between 5 to 8 levels less serious. The Bank One robbery and the Husar's House of Fine Diamonds robberies are disregarded because they are 9 or more levels less serious than the Group with the highest offense level.

iii. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline §3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level with respect to Count Two is appropriate.

iv. In accord with Guideline §3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline §3E1.1(b), if the Court determines the offense level with respect to Count Two to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government and stipulated below, defendant's criminal history points equal 6 and defendant's criminal history category is III:

i. On or about September 30, 1997, the defendant was convicted of possession of an unregistered weapon in the United States District Court for the District of Colorado and sentenced to a term of imprisonment of 18 months and 3 years of supervised release. Pursuant to Guideline Section 4A1.1(a), the defendant receives 3 points for this sentence.

ii. On or about December 22, 2005, the defendant was convicted of being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), in the United States District Court for the Northern District of Indiana, and was sentenced to a term of imprisonment of 30 months and 24 months of supervised release. Pursuant to Guideline Section 4A1.1(a), the defendant receives 3 points for this sentence.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the sentence for Count One is 120 months, which term shall run consecutive to the term of imprisonment imposed on Count Two of the information. The anticipated offense level for Count Two is 33, which, when combined with the anticipated criminal history category of III, results in an anticipated advisory Sentencing Guidelines range of 168 to 210 months' imprisonment with respect to Count Two, in addition to any supervised release, fine, and restitution the Court may

impose. The anticipated combined advisory Sentencing Guidelines range for both offenses is therefore 288 months to 330 months.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this plea agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

### Cooperation

11. Defendant agrees he will fully and truthfully cooperate in any matter in which he is called upon to cooperate. This cooperation shall include providing complete and truthful information in any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil or administrative proceeding. Only the United States Attorney for the Northern District of Illinois may require defendant's cooperation pursuant to this Plea Agreement. Defendant agrees to the postponement of his sentencing until after the conclusion of his cooperation.

### Agreements Relating to Sentencing

12. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation. If the government determines that defendant has continued to provide full and truthful cooperation as required by this plea agreement, then the government shall move the Court, pursuant to Guideline §5K1.1 and 18 U.S.C. § 3553(e), to depart from the applicable Guideline range and statutory minimum sentence and to impose the specific sentence agreed to by the parties as outlined below. Defendant understands that the decision to depart from the applicable guidelines range and statutory minimum sentence rests solely with the Court.

13. If the government moves the Court, pursuant to Sentencing Guideline §5K1.1 and 18 U.S.C. § 3553(e), to depart from the applicable Guideline range and 18 U.S.C. § 3553(e), as set forth in the preceding paragraph, this Agreement will be governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that the sentence imposed by the Court shall include a term of imprisonment in the custody of

the Bureau of Prisons of 180 months. Other than the agreed term of incarceration, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the agreed term of incarceration set forth, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d) and (e). If, however, the Court refuses to impose the agreed term of incarceration set forth herein, thereby rejecting this plea agreement, or otherwise refuses to accept defendant's plea of guilty, either party has the right to withdraw from this plea agreement.

14. If the government does not move the Court, pursuant to Sentencing Guideline §5K1.1 and 18 U.S.C. § 3553(e), to depart from the applicable Guideline range and 18 U.S.C. § 3553(e), as set forth above, this plea agreement will not be governed, in any part, by Federal Rule of Criminal Procedure 11(c)(1)(C), the preceding paragraph of this plea agreement will be inoperative, and the Court shall impose a sentence taking into consideration the factors set forth in 18 U.S.C. § 3553(a) as well as the Sentencing Guidelines, and the statutory minimum sentence without any downward departure for cooperation pursuant to §5K1.1. Defendant may not withdraw his plea of guilty because the government has failed to make a motion pursuant to Sentencing Guideline §5K1.1 and 18 U.S.C. § 3553(e).

15. Regarding restitution, the parties acknowledge that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant to make full restitution to victims at the time of sentencing. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing.

16. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a check or money order payable to the Clerk of the United States District Court.

**Presentence Investigation Report/Post-Sentence Supervision**

17. Defendant understands that the United States Attorney's Office in its submission to the Probation Department as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing, including the nature and extent of defendant's cooperation.

18. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline §3E1.1 and enhancement of his sentence for obstruction of justice under Guideline §3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

19. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release to which defendant is



sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

### **Acknowledgments and Waivers Regarding Plea of Guilty**

#### **Nature of Plea Agreement**

20. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 07 CR 435.

21. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

## Waiver of Rights

22. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Right to be charged by indictment.** Defendant understands that he has a right to have the charges prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

b. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the information separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government 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.

vi. At a trial, 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. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

c. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction and any part of the sentence, including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to (i) a claim of involuntariness, (ii) ineffective assistance of counsel, which relates directly to this waiver or to its negotiation or (iii) any claim or issue of which the defendant is presently unaware.

d. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

23. By entering this plea of guilty, defendant also waives any and all right the defendant may have, pursuant to 18 U.S.C. §3600, to require DNA testing of any physical evidence in the possession of the Government. Defendant fully understands that, as a

result of this waiver, any physical evidence in this case will not be preserved by the Government and will therefore not be available for DNA testing in the future.

### **Other Terms**

24. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

25. The United States agrees not to seek additional criminal charges in the Northern District of Illinois against defendant for the events between 2002 and 2003, which occurred in the Northern District of Illinois and which the defendant has described in his proffers and statements provided to the United States. However, nothing in this Plea Agreement limits the United States in prosecution of defendant in other districts or for crimes not disclosed in his proffers and statements, except as expressly set forth in this Agreement.

### **Conclusion**

26. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

27. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject

to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (or any prosecutions that are not time-barred by virtue of a written waiver of the applicable statute of limitations executed by the defendant on the date of the signing of this Agreement) may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations (or the tolling period pursuant to a written waiver) between the signing of this Agreement and the commencement of such prosecutions.

28. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.

29. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: \_\_\_\_\_

\_\_\_\_\_  
PATRICK J. FITZGERALD  
*United States Attorney*

\_\_\_\_\_  
KYLE KNIGHT  
*Defendant*

\_\_\_\_\_  
AMARJEET S. BHACHU  
*Assistant United States Attorney*

\_\_\_\_\_  
KENT CARLSON  
*Attorney for Defendant*