




U.S. Department of Justice

United States Attorney
District of Maryland
Southern Division


Rod J. Rosenstein
United States Attorney

Adam K. Alke
Assistant United States Attorney

400 United States Courthouse
6500 Cherrywood Lane
Greenbelt, MD 20770-1249

DIRECT: 301-344-4340
MAIN: 301-344-4433
FAX: 301-344-4316
TTY/TDD: 301-344-2426
Adam_Alke@usdoj.gov

September 20, 2010

Andrew Carter, Esq.
Assistant Federal Public Defender
Office of the Federal Public Defender
6411 Ivy Lane, Suite 710
Greenbelt, Maryland 20770

Re: United States of America v. Thomas Anthony Hubbard
Criminal Number RWT-10-0260

Dear Mr. Carter:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by October 4, 2010, it will be deemed withdrawn. The terms of the agreement are as follows:

Offenses of Conviction

1. The Defendant agrees to plead guilty to Counts One and Two of the Indictment now pending against him, which charges him with knowingly and unlawfully attempting to obstruct, delay, and affect commerce by robbery, in violation of 18 U.S.C. § 1951 (the "Hobbs Act"); and Count Two, which charges him possessing and brandishing a firearm in furtherance of crime of violence in violation of 18 U.S.C. § 924(c). The Defendant admits that he is, in fact, guilty of these offenses and will so advise the Court.

Elements of the Offenses

2. The elements of the offenses to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows: **Hobbs Act:** (1) that the defendant knowingly obtained, took, or attempted to take the personal property of another; (2) that the defendant took this property against the victim's will, by actual or threatened force, violence, or fear of injury, whether immediately or in the future; and (3) that doing so affected interstate commerce; **Firearms Offense:** (1) that the Defendant committed or attempted to commit a crime

of violence for which he might be prosecuted in a court of the United States: (2) that the Defendant knowingly possessed a firearm in furtherance of the commission or attempted commission of the crime of violence, and brandished that firearm during the attempt.

Penalties

3. The maximum sentence provided by statute for each of the offenses to which the Defendant is pleading guilty is as follows: Hobbs Act: imprisonment for up to twenty years, three years of supervised release, and a fine of up to \$250,000; Firearms Offense: imprisonment for not less than seven years subsequent to any sentence imposed for the underlying crime of violence and for not more than life, followed by a term of supervised release of not more than five years, and a fine of \$250,000. In addition, the Defendant must pay \$200 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.¹ If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

Waiver of Rights

4. The Defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:
 - a. If the Defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.
 - b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury

¹ Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of \$2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

d. The Defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

e. If the Defendant were found guilty after a trial, he would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against him. By pleading guilty, the Defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that he may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status. The Defendant recognizes that if he/she is not a citizen of the United States, pleading guilty may have consequences with respect to his/her immigration status. Under federal law, conviction for a broad range of crimes can lead to adverse immigration consequences, including automatic removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and the Defendant understands that no one, including his/her attorney or the Court, can predict with certainty the effect of a conviction on immigration status. Defendant nevertheless affirms that he/she wants to plead guilty regardless of any potential immigration consequences.

Advisory Sentencing Guidelines Apply

5. The Defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the “advisory guidelines range”) pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto which this Office would prove beyond a reasonable doubt, and to the following applicable sentencing guidelines factors:

a. Hobbs Act Robbery (Count One): The base offense level is 20, pursuant to U.S.S.G. § 2B3.1. A 5-level upward adjustment would normally apply because the Defendant brandished a firearm during the attempted robbery; however, pursuant to U.S.S.G. § 2K2.4 Application Note 4, because the Defendant is also pleading guilty to, and will be sentenced for, a violation of 18 U.S.C. § 924(c), this enhancement does not apply. A 2-level upward adjustment applies, pursuant to U.S.S.G. § 2B3.1(b)(3)(A), because a victim sustained a bodily injury.

b. This Office does not oppose a 2-level reduction in the Defendant’s adjusted offense level, based upon the Defendant’s apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional 1-level decrease in recognition of the Defendant’s timely notification of his intention to plead guilty. This Office may oppose *any* adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. The final offense level for Count One is 19.

c. Firearms Offense (Count Two): The guideline sentence is seven years, pursuant to U.S.S.G. § 2K2.4, because this is the minimum term of imprisonment required by statute. This sentence must be imposed consecutive to any sentence imposed for Count One.

7. The Defendant understands further that his criminal history could alter his offense level if he is determined to be a career offender. The Defendant further understands if he is determined to be a career offender that his guideline sentence range for Counts One and Two will be 262-327 months pursuant to U.S.S.G. § 4B1.1(c)(3).

8. This Office and the Defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines will be raised or are in dispute.

Forfeiture of Firearm

9. The Defendant understands and agrees that as a result of his criminal record and his guilty plea, he is not permitted to own, possess, or use a firearm or ammunition. He forfeits all right, title, and interest in a Erma Exam, Model RXX22, semi-automatic handgun bearing serial number J09257.

Obligations of the United States Attorney's Office

10. At the time of sentencing, this Office will recommend a sentence anywhere within the applicable sentencing guideline range. At the time of sentencing, this Office will move to dismiss any open counts against the Defendant.

11. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the counts of the Indictment that this Office has agreed to dismiss at sentencing.

Waiver of Appeal

12. In exchange for the concessions made by this Office and the Defendant in this plea agreement, this Office and the Defendant waive their rights to appeal as follows:

a. The Defendant knowingly waives all right, pursuant to 28 U.S.C. § 1291 or otherwise, to appeal the Defendant's conviction;

b. The Defendant and this Office knowingly waive all right, pursuant to 18 U.S.C. § 3742 or otherwise, to appeal whatever sentence is imposed (including the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant's criminal history, the weighing of the sentencing factors, and the decision whether to

impose and the calculation of any term of imprisonment, fine, order of forfeiture, order of restitution, and term or condition of supervised release), except as follows:

i. If the Defendant is determined not to be a career offender, (A) the Defendant reserves the right to appeal any term of imprisonment above the advisory guidelines range resulting from an adjusted base offense level of 19 on Count One and any term of imprisonment greater than seven years on Count Two; and (B) this Office reserves the right to appeal any term of imprisonment below the advisory guidelines range resulting from an adjusted base offense level of 19 on Count One and any term of imprisonment greater than seven years on Count Two.

ii. If the Defendant is determined to be a career offender, (A) the Defendant reserves the right to appeal any aggregate term of imprisonment for Counts One and Two to the extent that it exceeds 327 months, (B) and this Office reserves the right to appeal any aggregate term of imprisonment for Counts One and Two to the extent that it is below 262 months.

c. Nothing in this agreement shall be construed to prevent the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), or from appealing from any decision thereunder, should a sentence be imposed that resulted from arithmetical, technical, or other clear error.

d. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Obstruction or Other Violations of Law

13. The Defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

14. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

Entire Agreement


15. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The Defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties.

Andrew Carter, Esq.
September 20, 2010
Page 8

If the Defendant fully accepts each and every term and condition of this agreement, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By: 
Adam K. Ake
Assistant United States Attorney

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

10/8/11
Date 
Thomas Anthony Hubbard

I am Thomas Hubbard's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement, with him. He advises me that he understands and accepts its terms. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

10/8/11
Date 
Andrew Carter, Esq.

ATTACHMENT A: STATEMENT OF FACTS – THOMAS ANTHONY HUBBARD

The United States and Defendant Thomas Anthony Hubbard stipulate and agree that if this case proceeded to trial, the United States would prove the facts set forth below beyond a reasonable doubt. They further stipulate and agree that these are not all of the facts that the United States would prove if this case proceeded to trial.

On or about February 25, 2010, at approximately 8:30 p.m., defendant THOMAS ANTHONY HUBBARD entered a Jerry's Subs and Pizza franchise located at 5720 Crain Highway in Upper Marlboro, Maryland. He wore a mask and carried an Erma Excann, Model RX22, semi-automatic handgun bearing serial number J09257. HUBBARD also carried a steel pipe section capped on both ends and wired to a cell phone in a manner designed to mimic a pipe bomb's appearance. When he entered the restaurant, HUBBARD approached the store manager, brandished the firearm, and told the manager that he had a bomb. HUBBARD threatened to detonate the bomb unless the manager and restaurant owner, who had emerged from the back office after hearing commotion up front, filled a plastic bag with all the money in the restaurant.

The owner was in the process of opening the store's safe to comply with HUBBARD's instruction when he noticed that HUBBARD's head was turned away and the hand holding the gun was at his side. The owner took the opportunity to jump on HUBBARD and began hitting him in an attempt to disarm him. HUBBARD dropped his gun to the floor and a sustained fistfight ensued. HUBBARD tried to escape as the owner and manager fought to physically restrain him. The store owner sustained multiple blows and minor injuries from the altercation. HUBBARD eventually escaped from the store without the apparent pipe bomb or the .22 caliber handgun he had entered with but was later arrested.

After his arrest, HUBBARD confessed to constructing the fake pipe bomb and to taking it and the handgun into the Jerry's Subs and Pizza store in an attempt to rob it. The Jerry's Subs and Pizza franchise that HUBBARD attempted to rob distributed food products that it obtained from outside of Maryland. The Erma Excann handgun HUBBARD carried and used is manufactured in Germany and assembled in Florida and traveled in international and interstate commerce before arriving in Maryland. Prior to February 25, 2010, HUBBARD had been convicted of offenses punishable by more than one year of imprisonment and his civil rights had not been restored.

I have read this statement of facts, and have carefully reviewed it with my attorney. I acknowledge that it is true and correct.

10/8/11 _____
Date


Thomas Anthony Hubbard