

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) CR. NO. 1:16-CR-571-MHT-SRW-2
)
DARIN LEWIS)

PLEA AGREEMENT

DEFENSE COUNSEL: Don W. Bethel
ASSISTANT U.S. ATTORNEY: Jonathan S. Ross

COUNT AND STATUTE CHARGED

Count 1: 18 U.S.C. § 371 – Conspiracy to commit wire fraud

COUNT PLEADING PURSUANT TO PLEA AGREEMENT

Count 1: 18 U.S.C. § 371

STATUTORY MAXIMUM PENALTIES

Count 1: 18 U.S.C. § 371

A term of imprisonment of not more than 5 years, a fine of not more than \$250,000, or both; a term of supervised release of not more than 3 years; an assessment fee of \$100; and an order of restitution.

ELEMENTS OF THE OFFENSE

Count 1: 18 U.S.C. § 371

- First: An agreement existed to achieve an unlawful purpose, that is, to commit wire fraud, in violation of 18 U.S.C. § 1343;
- Second: The defendant knowingly and voluntarily participated in the agreement; and
- Third: Some member of the conspiracy committed an overt act in furtherance of the agreement.

Object offense: 18 U.S.C. § 1343

- First: The defendant knowingly devised or participated in a scheme to defraud, or to obtain money or property by using false pretenses, representations, or

promises;
 Second: the false pretenses, representations, or promises were about a material fact;
 Third: the defendant acted with the intent to defraud; and
 Fourth: the defendant transmitted or caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud.

Jonathan S. Ross, Assistant United States Attorney, and Don W. Bethel, attorney for the defendant, pursuant to Rule 11(c)(1)(A) and Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, have, with the authorization of the defendant, entered into discussions with a view towards reaching a pretrial conclusion of the charges pending in the indictment. The parties have reached a plea agreement. The parties submit the plea pursuant to Rule 11(c)(1)(A) and Rule 11(c)(1)(B), and the parties understand that, the terms of the plea agreement do not bind the Court and if they are not accepted by the Court, the defendant will not be allowed to withdraw his plea of guilty. The parties further understand that, if at any time, the defendant breaches this agreement, his guilty plea may not be withdrawn.

GOVERNMENT'S PROVISIONS

1. Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the Government agrees, to recommend a sentence of no greater than the bottom of the advisory Guidelines range, as calculated by the Court at the sentencing hearing.

2. The Government agrees that, for purposes of calculating the defendant's total offense level, the defendant clearly demonstrated acceptance of responsibility for his offense. See U.S.S.G. § 3E1.1(a). Further, the defendant assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting

the Government and this Court to allocate their resources efficiently. Provided that the defendant otherwise qualifies, the Government will move at the sentencing hearing for a further reduction of one level. See U.S.S.G. § 3E1.1(b). Determination of whether the defendant met the defendant's obligations to qualify for the reduction pursuant to § 3E1.1 is at the sole discretion of the Government.

3. The Government agrees that, for the purpose of calculating the defendant's total offense level, the defendant is accountable for a loss of more than \$40,000 and less than or equal to \$95,000. See U.S.S.G. § 2B1.1(b)(1)(D).

4. The Government makes no representation regarding the defendant's criminal history category, which will be recommended by the United States Probation Office (Probation), and determined by the Court.

5. The Government reserves the right to inform the Court and Probation of all facts pertinent to the sentencing process, including all relevant information concerning the offenses and the defendant's background.

6. Pursuant to Rule 11(c)(1)(A), the Government agrees that it will not bring additional charges arising out of the defendant's participation in the scheme set forth in the indictment.

DEFENDANT'S PROVISIONS

7. The defendant agrees to plead guilty to count 1.

8. The defendant agrees with the loss calculation to be recommended by the Government, as set forth in paragraph 3.

9. The defendant agrees that, pursuant to Rule 11(c)(1)(B), that the appropriate

disposition of the case is a sentence of no greater than the bottom of the advisory Guidelines range calculated by the Court at the sentencing hearing. The defendant specifically reserves the right to argue for a sentence below the bottom end of that range.

10. The defendant agrees not to commit any other federal, state, or local offense while awaiting sentencing, whether that offense is charged or chargeable or not. Such criminal activity would include, but is not limited to, witness tampering or facilitation of any other criminal activity. The defendant agrees to provide truthful information to Probation and the Court. Determination of whether the defendant's conduct violates this provision is at the complete discretion of the Government.

11. The defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of the Court. The defendant also agrees that the full fine and restitution amounts shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of Probation at any time, the defendant agrees that the United States Bureau of Prisons and Probation will have the authority to establish payment schedules to ensure payment of the fine and restitution. The defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off from federal payments, execution on non-exempt property, and any other means the Government deems appropriate. The defendant also agrees that the defendant may be contacted by Government officials regarding the collection of any financial obligation imposed by the Court without notifying the defendant's attorney and outside the presence of the defendant's attorney.

12. In order to facilitate the collection of financial obligations imposed in this case, the defendant agrees to disclose fully all assets in which the defendant has any interest or over which

the defendant exercises control, directly or indirectly, including those held by a spouse, nominee, or third party. Further, the defendant will, if requested by the Government, promptly submit a completed financial statement to the Office of the United States Attorney for the Middle District of Alabama in a form the Government provides and as the Government directs. The defendant promises that such financial statement and disclosures will be complete, accurate, and truthful. The defendant expressly authorizes the Government to obtain a report on the defendant's credit in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

13. The defendant certifies that the defendant has made no transfer of assets in contemplation of this prosecution for the purpose of evading or defeating financial obligations that are created by this agreement or that may be imposed upon the defendant by the Court. In addition, the defendant promises that the defendant will make no such transfers in the future.

FACTUAL BASIS

14. The defendant admits the allegations charged in count 1 of the indictment and admits that the plea of guilty establishes proof of the following facts:

a. During the times relevant to the indictment, Lewis was a resident of Crestview, Florida and was an experienced construction worker.

b. During the times relevant to the indictment, Lewis's co-defendant, Roberson Excavation, Inc. (Roberson Excavation) was a Florida corporation with an office in Milton, Florida. Roberson Excavation was a construction project contractor and specialized in paving, grading, underground utility installation, and other construction projects requiring excavation.

c. During the times relevant to the indictment, Lewis's co-defendant, Billy

Ray Roberson, was a resident of Milton, Florida, had an ownership interest in Roberson Excavation, and served as the president of Roberson Excavation.

d. During the times relevant to the indictment, the Dale County Water Authority (DCWA) was a publicly owned municipal water system. As such, the DCWA provided drinking water to businesses and residences in and around Ozark, Alabama.

e. In June of 2014, the DCWA applied for and received a \$1.62 million loan from the Environmental Protection Agency (EPA), to be administered by the Alabama Department of Environmental Management (ADEM). The DCWA intended to use the loaned funds to replace water lines in the Marley Mill area of Dale County, Alabama.

f. Upon receiving the loan, the DCWA hired Roberson Excavation to serve as the general contractor on the Marley Mill water line replacement project. Under the contract between the DCWA and Roberson Excavation: (1) Roberson Excavation was to complete the replacement of the water line in the Marley Mill area on or before November 5, 2014, that is, 120 days after July 9, 2014, the date on which work on the project was to begin; (2) for each day after November 5, 2014 that the project was not finished, Roberson Excavation was to pay a \$500 penalty; and (3) on or about the 10th of each month, Roberson Excavation could apply to the project engineer (a separate company hired by the DCWA) for incremental payments from the DCWA, the amount of the incremental payment to be based on the number of linear feet of water line laid by Roberson Excavation during the preceding month.

g. Before Roberson Excavation began working on the project, its representatives met with representatives from the DCWA and formed an agreement as to responsibilities for completing testing of the newly installed water lines before those water lines

went into service. Pursuant to that agreement, Roberson Excavation was responsible for: (1) subjecting newly installed lines to hydrostatic, or pressure, testing to determine whether leaks existed in a line, with such pressure testing complying with Standard C600 of the American Water Works Association (AWWA); (2) upon a line's passing a pressure test, flushing of the line to clear the line of sediment or debris, and then treating the line with a disinfectant; and (4) after a line was pressure tested, flushed, and disinfected, drawing water samples from the line and transporting those samples to a licensed laboratory where the laboratory personnel were to test the samples for the presence of harmful bacteria. As for this last obligation, Roberson Excavation agreed that it would withdraw samples pursuant to the procedure set forth at Standard C651 of the AWWA.

h. On or about July 9, 2014, Roberson Excavation began working on the Marley Mill water line replacement project. Roberson Excavation did not complete the project by the date set forth in the contract—November 5, 2014. On November 15, 2014, the DCWA began assessing Roberson Excavation daily penalties of \$500.

i. On or about January 22, 2015, Co-defendant Billy Ray Roberson hired Defendant Lewis to work on the Marley Mill project. Lewis's initial responsibility was to oversee the completion of the boring of a water line under United States Highway 231, so as to link two segments of newly installed lines. Upon Roberson Excavation's completion of such boring work, Roberson asked Lewis to remain on the project as a site supervisor. Lewis agreed to do so.

j. Sometime after beginning work for Roberson Excavation, Lewis entered into an agreement with Roberson, both acting in their capacities as representatives of Roberson Excavation and to the benefit of Roberson Excavation, to: (1) not complete requisite testing as required under the contract documents; (2) falsify documents that would ultimately be submitted

to the DCWA so as to cause the DCWA to believe that Roberson Excavation employees had completed the requisite testing; and (3) obtain payment from the DCWA under the contract documents as though Roberson Excavation employees had completed the requisite testing. Lewis's role in this scheme was to complete some of the testing falsification.

k. In furtherance of the above-described scheme, on twelve dates during February of 2015, Lewis conducted pressure tests on portions of the newly installed water lines. During some or all of those tests, Lewis manipulated the flow of water through the lines so that the pressure tests would not reveal leaks that Lewis knew or reasonably believed existed in the lines. Lewis then, acting within the scope of his duties for Roberson Excavation and to the benefit of Roberson Excavation, transmitted to an employee of the project engineer the results of the pressure tests. The results were illegitimate. Lewis generated these illegitimate results at the direction of his supervisor, Defendant Roberson.

l. On or about February 17, 2015 and February 19, 2015, Lewis withdrew water from a fire hydrant on the newly installed water line for the purposes of submitting the samples for bacteriological testing. Lewis withdrew both water samples from the same fire hydrant, knowing that the lines to which the fire hydrant was connected were free of bacteria. On the documents provided by the Houston County Regional Water Lab for the submission of the samples of testing, Lewis falsely recorded the locations from which he had taken the samples. He prepared the documents so that it would appear as though he had taken the samples from portions of the line in which Lewis knew or reasonably believed there to be harmful bacteria. Lewis did this at the direction of Roberson. Furthermore, Lewis acted during the course of his employment with Roberson Excavation and to the benefit of Roberson Excavation.

m. After Lewis submitted the samples, employees of the Houston County Regional Water Lab tested the samples and found the samples negative for the presence of bacteria. Thereafter, those employees indicated such on the custody documents. They then transmitted the custody documents, via electronic mail using interstate wires, to Roberson Excavation.

n. Upon receipt of the falsified bacteriological testing report, on or about February 24, 2015, an employee of Roberson Excavation transmitted to the project engineer through electronic mail using interstate wires a request for payment. The request for payment contained materially false statements, including, but not limited to, that all pressure and bacteriological testing had been completed in accordance with applicable AWWA standards.

DEFENDANT'S WAIVER OF APPEAL AND COLLATERAL ATTACK

15. Understanding that 18 U.S.C. § 3742 provides for appeal by a defendant of the sentence under certain circumstances, the defendant expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the sentence. The defendant also waives the right to attack his conviction and sentence in any post-conviction proceeding, including proceedings pursuant to 28 U.S.C. § 2255. This waiver does not include the right to appeal on the grounds of ineffective assistance of counsel or prosecutorial misconduct, or to collaterally attack the sentence on those grounds.

16. In return for the above waiver by the defendant, the Government does not waive its right to appeal the sentence imposed in this case. The Government does not waive its right to appeal any order dismissing the information, vacating a sentence, or otherwise terminating the prosecution at any stage of the proceedings. Further, the parties agree that nothing in this

agreement shall affect the Government's right or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the Government decides to exercise its right to appeal, the defendant is released from his appeal waiver and may pursue any appeal pursuant to 18 U.S.C. § 3742.

APPLICATION OF THE SENTENCING GUIDELINES AND 18 U.S.C. § 3553(a)

17. The parties understand that the Court is neither a party to nor bound by this agreement. The Court may or may not follow the recommendation set forth in the agreement, or defer its decision until it has had an opportunity to consider the presentence report prepared by Probation. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence and the United States Sentencing Guidelines, if any, applicable to defendant's case will be determined solely by the Court, with the assistance of Probation. The defendant understands that the Court is required to consider any applicable sentencing guidelines, but may depart from these provisions under some circumstances. The defendant acknowledges that the defendant and the defendant's attorney have discussed the advisory Guidelines and the defendant understands how the Guidelines are applicable to the defendant's case. The defendant further understands that the Court will consider the factors enumerated in 18 U.S.C. § 3553(a), in imposing a sentence. Specifically, the Court will consider:

- (a) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (b) the need for the sentence imposed – (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (c) the kinds of sentences available;
- (d) the kinds of sentence and the sentencing range established for the applicable

- category of offense committed by the applicable category of defendant as set forth in the sentencing guidelines;
- (e) any pertinent policy statement - (A) issued by the Sentencing Commission subject to any amendments made to such policy statement by act of Congress; and (B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced;
 - (f) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
 - (g) the need to provide restitution to any victims of the offense.

See 18 U.S.C. § 3553(a).

DEFENDANT'S UNDERSTANDING AND ACKNOWLEDGMENT

18. The defendant, before entering a plea of guilty to count 1 of the indictment, advises the Court that:

a. The discussions between the attorney for the Government and the attorney for the defendant towards reaching an agreed plea in this case have taken place with the defendant's authorization and consent.

b. The defendant acknowledges that a breach of this plea agreement by the defendant, including committing another federal, state, or local offense prior to sentencing on the pending charges, will not entitle him to withdraw his guilty plea in this case. The defendant understands and acknowledges that the defendant's guilty plea will remain in full force and effect upon any breach of this agreement by the defendant.

c. The defendant understands that pursuant to 18 U.S.C. § 3103, the \$100.00 assessment fee is to be paid by the defendant on the date of sentencing. The defendant will make an honest, good faith effort to pay said fee as directed by the Financial Litigation Section of the Office of the United States Attorney for the Middle District of Alabama. The defendant further understands that by completing and submitting to the Court or to the Government any financial

statements, the defendant is representing that the statement is true and accurate to the best of the defendant's information, knowledge, and belief.

d. The defendant understands that the defendant has a right to be represented by an attorney at every stage of the proceedings against the defendant and is represented by the defendant's attorney, Don W. Bethel.

e. The defendant understands that the defendant has the right to plead not guilty and has the right to be tried by a jury and, at a trial, has the right to the assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right to call witnesses in the defendant's own behalf, and the right not to be compelled to incriminate the defendant, and that if the defendant enters a plea of guilty, there will not be a further trial of any kind and that by the entry of such a plea, the defendant waives the right to a trial by jury or to a trial before the Court.

f. The defendant understands that in entering a plea of guilty, the Court may ask questions about the offenses to which the plea is entered and further understands that if the defendant answers these questions under oath, on the record, and in the presence of counsel, which questions and answers would be recorded, that the answers may later be used against the defendant in a prosecution for perjury or making a false statement if the answers are not truthful.

g. The defendant understands and advises the Court that the plea agreement as set forth and the plea to be entered by the defendant as a result thereof is voluntary on the defendant's part and is not the result of any force or threats or of any promises apart from the plea agreement. The defendant further advises the Court that the plea agreement is the result of prior discussions between the attorney for the Government and the attorney for the defendant, all

conducted with the defendant's authorization, knowledge and consent.

h. The defendant's understanding of this plea agreement is as set forth in this document.

i. The defendant understands that the Government can only make a recommendation as to the appropriate sentence, which is not binding on the Court.

j. The defendant understands and has been advised that evidence of a plea of guilty, later withdrawn or an offer to plead guilty to the crimes charged in the indictment, or of statements made in connection with and relevant to the plea or offer to plead, shall not be admissible in any civil or criminal proceedings against the defendant. However, the defendant does understand that evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, or an offer to plead guilty to the crimes charged in the information, is admissible in a criminal proceeding for perjury or making a false statement when the statement was made by the defendant under oath, on the court record, and in the presence of counsel.

k. The defendant is satisfied that his defense attorney has been competent and effective in representing defendant.

19. The attorneys for the Government and for the defendant represent to the Court that this plea agreement is the agreement of the parties that has been reached pursuant to the plea agreement procedure provided for in Rule 11 of the Federal Rules of Criminal Procedure. The attorney for the defendant further advises the Court that the defendant has been advised of the nature of the charges to which the foregoing described plea is to be offered, and that the defendant has been advised of the defendant's right to plead not guilty and to be tried by a jury on all issues; of the maximum possible penalty provided by law; that by the entering of a plea of guilty, the

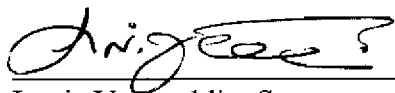
defendant waives the right to be tried by a jury or by the Court, waives the right to confront and cross-examine witnesses against the defendant and the right not to be compelled to incriminate the defendant; and that if the defendant pleads guilty, there will not be a further trial of any kind. Further, the defendant has been advised that if the defendant pleads guilty, the Court may ask questions about the offense to which the defendant has pleaded and that if the plea is rejected or later withdrawn, that the answers to such questions may not be used against the defendant in a civil or criminal proceeding, but that the defendant's answers may later be used against the defendant in a prosecution for perjury or making a false statement if the answers are not truthful.¹⁸

20. The defendant understands that Probation will prepare a presentence investigation report for the Court. Probation will consider the defendant's conduct related to the offense to which the plea is offered, as well as the defendant's criminal history. The offense level or criminal history category as calculated by Probation and determined by the Court may differ from that projected by the defendant's attorney or the Government. In the event that the Court determines the defendant's offense level or criminal history category to be higher than the defendant anticipated, the defendant will have no right to withdraw the plea on that basis.

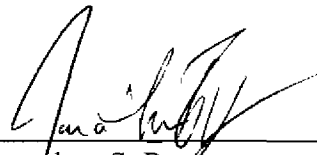
This 16th day of February, 2017.

Respectfully submitted,

GEORGE L. BECK, JR.
UNITED STATES ATTORNEY



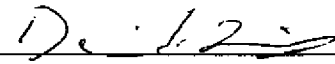
Louis V. Franklin, Sr.
Criminal Chief



Jonathan S. Ross
Assistant United States Attorney


I have read the foregoing plea agreement, understand the same, and the matters and facts set forth therein accurately and correctly state the representations that have been made to me and accurately set forth the conditions of the plea agreement that has been reached.

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE AND CORRECT AND THAT I AM SATISFIED THAT I HAVE RECEIVED COMPETENT ADVICE AND REPRESENTATION FROM MY DEFENSE ATTORNEY, Don W. Bethel.



Darin Lewis
Defendant

Feb. 16, 2017
Date



Don W. Bethel
Attorney for the Defendant

16 Feb 17
Date