

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

UNITED STATES OF AMERICA	)	
	)	3:10-CR-168
v.	)	JUDGES Phillips/Shirley
	)	
JEROME STUART PENDZICH	)	

PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, and the defendant, JEROME STUART PENDZICH, and the defendant's attorney, Jerry W. Laughlin, have agreed upon the following:

1. The defendant will waive indictment and plead guilty to an Information charging him with knowingly and willfully attempting to export, defense articles that were restricted under the Arms Export Control Act (AECA) and the governing regulations contained in the International Traffic in Arms Regulations (ITAR), without a license, in violation of Title 18, United States Code, Section 2778. The maximum punishment for this offense is ten years imprisonment, a fine of \$1,000,000, three years supervised release, and a mandatory special assessment of \$100.

2. The parties agree that the appropriate disposition of this case would be the following:

- a) The Court may impose any lawful terms of imprisonment, any lawful fines, and any lawful terms of supervised release up to the statutory maximums;
- b) The Court will impose special assessment fees as required by law; and
- c) The Court may order forfeiture as applicable and restitution as appropriate.

3. The defendant has read the Information, discussed the charges and possible defenses with defense counsel, and understands the crimes charged. The defendant is pleading guilty because the defendant is in fact guilty.

In order to be guilty of the charge in the Information, the defendant agrees that each of the following elements of the crime must be proved beyond a reasonable doubt: (1) that the defendant attempted to export from the United States to a foreign country a defense article that is listed on the United States Munitions List; (2) the defendant attempted to export the defense article without having first obtained a license or written approval from the United States Department of State; and (3) the defendant acted knowingly and willfully in attempting to export the defense article without a license.

4. In support of the defendant's guilty plea, the defendant agrees and stipulates to the following facts which satisfy the offense elements. These are the facts submitted for purposes of the defendant's guilty pleas. They do not necessarily constitute all of the facts in the case. Other facts may be relevant to sentencing. Both the defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.

In January, 2009, the defendant, JEROME STUART PENDZICH, was operating two internet businesses from his residence located at 209 Reece Hill Road, Hampton, Tennessee. He was also soliciting business on the internet on-line market place, eBay, with the username "BULLETPROOFVEST."

During January, 2009, Special Agents from ICE, San Diego, were conducting a query of individuals and companies advertising on eBay who were soliciting commodities listed and controlled under the United States Munitions List (USML), and who were willing to ship those commodities "world-wide" as advertised in the eBay listings. The defendant, using the name

BULLETPROOFVEST, advertised bullet proof vests and body armor, among other items. Subsequent e-mail contact from the defendant indicated his willingness to ship bullet-proof vests to Canada and ultimately to what he believed to be "clients" in the United Arab Emirates. Thereafter, recorded phone calls were made between the undercover agents and the defendant.

In May, 2009, the ICE undercover agents made arrangements with the defendant for him to send export controlled small arms protective inserts (SAPI plates) to Bogota, Columbia, South America. The SAPI plates were Level IV protection level and constituted defense articles under the ITAR and the Arms Export Control Act. The defendant told the undercover agents that he had an export license which authorized him to send the SAPI plates directly to Bogota, Columbia, South America. The defendant told the ICE undercover agents that he would ship them directly from Tennessee by U.S. Postal Service Priority Mail.

On May 28, 2009, ICE agents received information that the defendant had mailed a package at the Hampton, Tennessee Post Office to a location in Bogota, Columbia, South America. Afterwards, ICE agents received two export controlled Level IV SAPI plates.

On June 18, 2009, ICE received information that the defendant had deposited two packages at the Hampton, Tennessee Post Office. These packages contained eight export controlled Level IV SAPI plates to be shipped to Bogota, Columbia, South America, for \$1,245. On June 19, 2009 and June 21, 2009, ICE agents received these packages. The defendant had falsely described the items contained in the packages as "ceramic plates" and "gifts" on customs declarations.

On September 16, 2009, ICE executed a search warrant at the defendant's residence. Among the items seized were three computers which contained records of the defendant's business, including the above transactions. On this date, the defendant was interviewed and admitted to agents that he had attempted to ship defense articles overseas without an export license on the aforesaid occasions. The defendant was previously advised by his supplier, Armor Express, that an export license from the United States Department of State was required before he could attempt to send the SAPI plates overseas. Thus, at the time the defendant attempted to export the above SAPI plates he knew they were export controlled and he could not lawfully attempt to export them without first obtaining a validated license from the State Department.

Other than the aforementioned defense articles being on the United States Munitions List, the government is not aware of any evidence that indicates the above conduct posed a direct risk to a security or foreign policy interest of the United States. Further, the defendant's specific conduct in this case did not compromise the national security of the United States.

5. The defendant understands that by pleading guilty pursuant to this plea agreement the defendant is giving up several rights, including:
- a) the right to be indicted by a grand jury for the crimes contained in the Information;
  - b) the right to plead not guilty;
  - c) the right to a speedy and public trial by jury;
  - d) the right to assistance of counsel at trial;
  - e) the right to be presumed innocent and to have the burden of proof placed on the government to prove the defendant guilty beyond a reasonable doubt;

- f) the right to any further discovery from the government;
- g) the right to confront and cross-examine witnesses against the defendant;
- h) the right to testify on one's own behalf, to present evidence in opposition to the charges and to compel the attendance of witnesses; and
- i) the right not to testify and to have that choice not used against the defendant.

6. The defendant further agrees to cooperate fully, completely, and truthfully with any and all law enforcement agents and personnel of the United States Department of Justice. This cooperation includes, but is not limited to, meeting with and being interviewed by such law enforcement agents or personnel of the United States Department of Justice whenever requested. The defendant further agrees not to protect anyone who was truly involved and not to falsely implicate anyone who was not truly involved in the commission of criminal offenses. The defendant further agrees to testify completely and truthfully before a federal grand jury, at any trial, or at any other proceeding if called upon by the United States to do so. Upon request by the United States, the defendant must furnish all documents, objects and other evidence in the defendant's possession, custody, or control that are relevant to the United States' inquiries. The defendant and defense counsel also knowingly, voluntarily, and intentionally waive the defendant's right (where applicable) to have defense counsel present during the course of cooperation, including questioning or court appearances.

7. To ensure the defendant's truthful cooperation, the United States agrees, except as provided below, not to use any self-incriminating information provided by the defendant pursuant to this written plea agreement against the defendant. However, nothing in this plea agreement shall restrict the use of any information (1) known to the United States prior to entering into this written plea agreement, (2) obtained from any other source, or (3) concerning the defendant's prior criminal record. Should any of the following

occur (1) the defendant provides false or misleading information during the course of the defendant's cooperation, (2) the defendant moves to withdraw the defendant's guilty plea, or (3) the defendant breaches any other of the terms of this plea agreement, then the United States may make use of any information provided by the defendant to law enforcement authorities at any time (including any information provided during formal or informal proffer sessions prior to signing this plea agreement, and any information provided after signing this plea agreement) for any purpose in any subsequent proceeding, including grand jury, trial, and sentencing phases of this case or in any other prosecutions or proceedings against the defendant or others. Moreover, if the United States determines at any time (before or after sentencing) that the defendant has failed to cooperate fully, completely, and truthfully, or otherwise violated any of the terms of this plea agreement, it will be free to withdraw any favorable sentencing motion filed by the United States, including motions filed under U.S.S.G. § 5K1.1, and/or 18 U.S.C. § 3553.

8. At the time of sentencing, the United States may bring to the Court's attention the nature, extent, and value of the defendant's cooperation so that it may be considered in determining a fair and appropriate sentence under the facts of the case. If, in the sole discretion of the United States, the defendant provides substantial assistance, the United States may file a motion for downward departure pursuant to Section 5K1.1 of the Sentencing Guidelines or 18 U.S.C. § 3553(e), or both, allowing the Court to impose a sentence which may fall below the minimum mandatory term of imprisonment or below the Sentencing Guidelines, but the United States will be under no obligation to do so. The United States retains complete discretion whether to file such a motion. If such a motion is filed, the defendant understands that the Court, not the United States, determines whether

the defendant receives a downward departure or a sentence below a minimum mandatory term of imprisonment.

9. The United States and defendant agree that pursuant to Section 2M5.2 of the Sentencing Guidelines the base offense level for above offense is 26. This agreement does not bind the court and does not preclude the defendant from making a motion for a departure from the applicable sentencing guideline range.

10. Given the defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of Section 3E1.1(a) of the Sentencing Guidelines. Further, if the defendant's offense level is 16 or greater, and the defendant is awarded the two-level reduction pursuant to Section 3E1.1(a), the United States agrees to move, at or before the time of sentencing, the Court to decrease the offense level by one additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. Should the defendant engage in any conduct or make any statements that are inconsistent with accepting responsibility for the defendant's offense(s), including violations of conditions of release or the commission of additional offenses prior to sentencing, the United States will be free not to make such motion or to withdraw such motion if already made, and will be free to recommend to the Court that the defendant not receive any offense level reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

11. The defendant agrees to pay the special assessment in this case prior to sentencing.

12. The defendant agrees that the court shall order restitution, pursuant to any applicable provision of law, for any loss caused to: (1) the victims of any offense charged in this case (including dismissed counts); and (2) the victims of any criminal activity that

was part of the same course of conduct or common scheme or plan as the defendant's charged offenses.

13. No promises have been made by any representative of the United States to the defendant as to what the sentence will be in this case. Any estimates or predictions made to the defendant by defense counsel or any other person regarding any potential sentence in this case are not binding on the Court, and may not be used as a basis to rescind this plea agreement or withdraw the defendant's guilty pleas. The defendant understands that the sentence in this case will be determined by the Court after it receives the presentence report from the United States Probation Office and any information presented by the parties. The defendant acknowledges that the sentencing determination will be based upon the entire scope of the defendant's criminal conduct, the defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

14. Financial Obligations. The defendant agrees to pay all fines and restitution imposed by the Court to the Clerk of Court. The defendant also agrees that the full fine and/or restitution amount(s) 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 the Probation Office at any time, the defendant agrees that the Bureau of Prisons and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect any financial obligation imposed by the Court by set-off of federal payments, execution on non-exempt property, and any other means the United States deems appropriate. The defendant and counsel also agree that the defendant may be contacted post-judgment regarding the collection of any financial obligation imposed by the



Court without notifying the defendant's counsel and outside the presence of the defendant's counsel. In order to facilitate the collection of financial obligations to be imposed with this prosecution, 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 other third party. In furtherance of this agreement, the defendant additionally agrees to the following specific terms and conditions:

- a) If so requested by the United States, the defendant will promptly submit a completed financial statement to the U.S. Attorney's Office, in a form it provides and as it directs. The defendant promises that such financial statement and disclosures will be complete, accurate, and truthful.
- b) The defendant expressly authorizes the U.S. Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.
- c) If so requested by the United States, the defendant will promptly execute authorizations on forms provided by the U.S. Attorney's office to permit the U.S. Attorney's Office to obtain financial and tax records of the defendant.

15. a) In consideration of the concessions made by the United States in this agreement and as a further demonstration of the defendant's acceptance of responsibility for the offenses committed, the defendant agrees not to file a direct appeal of the defendant's convictions or sentence except the defendant retains the right to appeal a sentence imposed above the sentencing guideline range or any applicable mandatory minimum sentence (whichever is greater) determined by the district court.

b) In addition, the defendant knowingly and voluntarily waives the right to file any motions or pleadings pursuant to 28 U.S.C. § 2255 or to collaterally attack the defendant's convictions and/or resulting sentence. The parties agree that the defendant retains the right to raise, by way of collateral review under § 2255, claims of ineffective

assistance of counsel or prosecutorial misconduct not known to the defendant by the time of the entry of judgment.

16. In consideration of the defendant's guilty plea, the United States agrees not to further prosecute the defendant in the Eastern District of Tennessee for any other non-tax criminal offense committed by the defendant that is related to the charges in the Information and known to the United States Attorney's Office for the Eastern District of Tennessee at the time of the execution of this plea agreement.

17. This agreement becomes effective once it is signed by the parties and is not contingent on the defendant's entry of a guilty plea. If the United States violates the terms of this agreement, the defendant will have the right to withdraw from this agreement. If the defendant violates the terms of this agreement in any way (including but not limited to failing to enter guilty pleas as agreed herein, moving to withdraw guilty pleas after entry), or by violating any court order or any local, state or federal law pending the resolution of this case, then the United States will have the right to void any or all parts of the agreement and may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the defendant for any and all federal crimes that the defendant committed related to this case, including any charges that were dismissed and any other charges which the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or statutory speedy trial or double jeopardy defense to such a prosecution. The defendant also understands that a violation of this plea agreement by the defendant does not entitle the defendant to withdraw the defendant's guilty pleas in this case.

18. This plea agreement constitutes the full and complete agreement and understanding between the parties concerning the defendant's guilty plea to the above-

referenced charges, and there are no other agreements, promises, undertakings, or understandings between the defendant and the United States. The parties understand and agree that the terms of this plea agreement can be modified only in writing signed by all of the parties and that any and all other promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

WILLIAM C. KILLIAN  
UNITED STATES ATTORNEY

1/13/11  
Date

By: Jeffrey E. Theodore  
JEFFREY E. THEODORE  
Assistant United States Attorney

12/03/2010  
Date

Jerome Stuart Pendzich  
JEROME STUART PENDZICH  
Defendant

12/3/2010  
Date

Jerry W. Laughlin  
JERRY W. LAUGHLIN  
Attorney for the Defendant