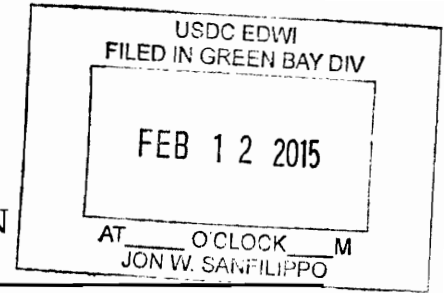


ORIGINAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN



UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 14-CR-217

JOSEPH H. MARTIN,

Defendant.

PLEA AGREEMENT

1. The United States of America, by its attorneys, James L. Santelle, United States Attorney for the Eastern District of Wisconsin, and Stephen A. Ingraham, Assistant United States Attorney, and the defendant, Joseph H. Martin, individually and by attorney Krista A. Halla-Valdes, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, enter into the following plea agreement:

CHARGES

2. The defendant has been charged in a two-count indictment that alleges violations of Title 18, United States Code, Section 2252(a)(1), and a one-count information that alleges a violation of Title 18, United States Code, Section 2252(a)(2).

3. The defendant has read and fully understands the charges contained in the indictment and information. He fully understands the nature and elements of the crimes with which he has been charged, and those charges and the terms and conditions of the plea agreement have been fully explained to him by his attorney.

4. As to the information, the defendant voluntarily agrees to waive prosecution by indictment in open court.

5. The defendant voluntarily agrees to plead guilty to the information, set forth in full as follows:

COUNT ONE

Receiving Child Pornography

THE UNITED STATES ATTORNEY CHARGES THAT:

1. *On or about November 4, 2013, in the State and Eastern District of Wisconsin, and elsewhere,*

JOSEPH H. MARTIN,

did knowingly receive using a means or facility in interstate or foreign commerce, namely, a computer connected to the Internet, child pornography, as defined in Title 18 United States Code, Section 2256(8)(A).

2. *The child pornography transported and shipped by the defendant included a 23 minute and 40-second video identified by the file name webcamstick ... jail ... _ nude, depicting a prepubescent female masturbating.*

All in violation of Title 18, United States Code, Section 2252(a)(2).

6. The defendant acknowledges, understands, and agrees that he is, in fact, guilty of the offense described in paragraph 5. The parties acknowledge and understand that if this case were to proceed to trial, the government would be able to prove the following facts beyond a reasonable doubt. The defendant admits that these facts are true and correct and establish his guilt beyond a reasonable doubt:

Distribution of child pornography to law enforcement via peer-to-peer network

On January 27, 2014, a law enforcement undercover agent found that a certain internet protocol address (IP) was offering 55 files of investigative interest for downloading on the Ares peer-to-peer file sharing network after using search terms or hash values associated with child pornography. Later that evening, the agent downloaded one video from this IP address which depicted a female of an unknown age in a darkened setting fellating a male. A second video downloaded from that same IP address depicted a female of approximately aged 15-17 exposing her vagina to the camera.

On January 30, 2014, the undercover agent downloaded 4 files from the same internet protocol (IP) address, but on review the ages of the people appearing in the files could not be determined.

On February 19, 2014, the National Center for Missing and Exploited Children (MCMEC) indicated that of the 55 hash files of interest obtained from this IP address in January that were being offered for downloading, 16 were "Identified Child" and

39 were "Recognized" hash values, meaning that the image appears to show at least one child previously identified by law enforcement.

On May 16 and 17, 2014, another law enforcement office undercover investigation found that the same IP address involved in the above-described file sharing was offering at least 100 files of interest to law enforcement. Law enforcement discovered at that time that the IP address was associated with Charter Communications customer Joseph H. Martin of Keshena, WI on the Menominee Indian Reservation, having been a customer since March 2, 2011. On this same occasion, law enforcement downloaded five videos from this same IP address. The first showed a prepubescent female masturbating and exposing her anus and vagina. The second video depicts a minor female digitally manipulating her vagina exposed and an adult male fellating her. The third video depicts a prepubescent female masturbating, and fellating a male. This video was charged as Count One of the indictment. The file was a partial download which nonetheless included child pornography. The fourth video depicts a 10 to 12 year old female attempting to insert a vibrator into her vagina and anus. The fifth video depicts the same female as in video four rubbing her vagina.

In June 2, 2014, the National Center for Missing and Exploited Children (MCMEC) indicated that of the 100 hash files of interest obtained from this IP

address in May that were being offered for downloading, 25 were "Identified Child" and 75 were "Recognized" hash values, meaning that the image appears to show at least one child previously identified by law enforcement, including the one in the video in Count One of the indictment.

On August 11, 2014, an undercover law enforcement officer downloaded two movie files from the same IP address associated with Joseph Martin. The first showed a female aged about 15 to 17 years old inserting a vibrator into her vagina. The second video depicted a prepubescent female digitally manipulating her vagina. This second transmission was charged as Count Two of the indictment.

Search warrant execution and admissions

In October 9, 2014, a federal search warrant was issued for Martin's Keshena residence, and executed on October 14, 2014. During an interview at his residence, Martin admitted that child pornography would be found on his laptop computer, and agreed to go to the Shawano County Sheriff's Office for a non-custodial interview.

During this interview, Martin said that he:

- is an unsophisticated computer user who viewed adult pornography;
- has seen child pornography, but deletes any such images right away;
- turned off his Charter modem in late September and got a new IP

address;

- used some incriminating search terms: pthc; ptsc; r@ygold; and hussyfank, but not “pedo;”
- did not know what “pthc” meant;
- copies and pastes names from search results;
- has seen the “Vicki” file name, but does not recall opening those files;
- denied that he had ever molested a minor;
- admitted an earlier denial about using external media for child pornography was false;
- preferred girls in their upper teens -- 16 to 17;
- is interested in adult, not child pornography;
- lives with his mother, and is the only user of computers at the residence; and
- is the sole user of the Sony laptop and flash drives recovered in his bedroom.

Preliminary examination of the three seized laptops, five thumb drives, and one tablet confirms that Martin had about 100 child pornography videos, mostly on the thumb drives. In particular, the video Martin transmitted to law enforcement on August 11 named above was recovered as an actual working file from one of two four GB thumb drives containing child pornography, listed as

number iii in the forfeiture portion of the indictment. The video that Martin transmitted on May 17, named above as Count One of the indictment, was found on the same thumb drive as a deleted file.

The analysis also revealed the video charged and described in the information, which Martin received on a Sony Vaio laptop computer on November 4, 201~~4~~³, and then moved to a thumb drive the following day.

Of the nine computer items seized, no child pornography was found on three of them: a 4GB thumb drive, a Sony laptop, and a Toshiba tablet.

All of the seized computer equipment was manufactured outside the State of Wisconsin.

This information is provided for the purpose of setting forth a factual basis for the plea of guilty. It is not a full recitation of the defendant's knowledge of, or participation in, these offenses.

PENALTIES

7. The parties understand and agree that the offense to which the defendant will enter a plea of guilty carries the following maximum term of imprisonment and fine: Count One of the information, a minimum 5 years up to a maximum 20 years imprisonment, and a \$250,000 fine. The count also carries a mandatory special assessment of \$100, and a supervised release term of not less than 5 years to life.

8. The defendant acknowledges, understands, and agrees that he has discussed the relevant statutes as well as the applicable sentencing guidelines with his attorney.

DISMISSAL OF REMAINING COUNTS

9. The government agrees to move to dismiss the indictment at the time of sentencing.

ELEMENTS

10. The parties understand and agree that in order to sustain the charge of receiving child pornography, as set forth in the information, the government must prove each of the following propositions beyond a reasonable doubt:

First, that the defendant knowingly received a visual depiction of sexually explicit conduct as alleged in the information;

Second, that the visual depiction was transported in interstate commerce by any means, including by computer

Third, that the production of the visual depiction involved the use of a minor engaging in sexually explicit conduct;

Fourth, such visual depiction is of a minor engaged in sexually explicit conduct; and

Fifth, the defendant knew that at least one of the performers in such visual depiction was a minor and knew that the visual depiction was of such minor engaged in sexually explicit conduct.

SENTENCING PROVISIONS

11. The parties agree to waive the time limits in Fed. R. Crim. P. 32 relating to the presentence report, including that the presentence report be disclosed not less than 35 days before the sentencing hearing, in favor of a schedule for disclosure, and the filing of any objections, to be established by the court at the change of plea hearing.

12. The parties acknowledge, understand, and agree that any sentence imposed by the court will be pursuant to the Sentencing Reform Act, and that the court will give due regard to the Sentencing Guidelines when sentencing the defendant.

13. The parties acknowledge and agree that they have discussed all of the sentencing guidelines provisions which they believe to be applicable to the offense set forth in paragraph 5. The defendant acknowledges and agrees that his attorney in turn has discussed the applicable sentencing guidelines provisions with him to the defendant's satisfaction.

14. The parties acknowledge and understand that prior to sentencing the United States Probation Office will conduct its own investigation of the

defendant's criminal history. The parties further acknowledge and understand that, at the time the defendant enters a guilty plea, the parties may not have full and complete information regarding the defendant's criminal history. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentencing court's determination of the defendant's criminal history.

Sentencing Guidelines Calculations

15. The parties acknowledge, understand, and agree that the sentencing guidelines calculations included in this agreement represent the positions of the parties on the appropriate sentence range under the sentencing guidelines. The defendant acknowledges and understands that the sentencing guidelines recommendations contained in this agreement do not create any right to be sentenced within any particular sentence range, and that the court may impose a reasonable sentence above or below the guideline range. The parties further understand and agree that if the defendant has provided false, incomplete, or inaccurate information that affects the calculations, the government is not bound to make the recommendations contained in this agreement.

Relevant Conduct

16. The parties acknowledge, understand, and agree that pursuant to Sentencing Guidelines Manual § 1B1.3, the sentencing judge may consider

relevant conduct in calculating the sentencing guidelines range, even if the relevant conduct is not the subject of the offense to which the defendant is pleading guilty.

Base Offense Level

17. The parties agree to recommend to the sentencing court that the applicable base offense level for the offense charged in the information is 22 under Sentencing Guidelines Manual § 2G2.2(a)(2).

Specific Offense Characteristics

18. The parties will recommend to the sentencing court that the following enhancements to the offense level are appropriate under the Sentencing Guidelines Manual for the offense in the information: two-levels under § 2G2.2(b)(6) because the offense involved use of a computer; five levels under § 2G2.2(b)(7)(D) because the offenses involved 600 or more images of child pornography; 2 levels under § 2G2.2(b)(2) because the offenses involved material involving a prepubescent minor; and 2 levels under § 2G2.2(b)(3)(F) because the offenses involved distribution.

SPECIAL CONDITIONS FOR SUPERVISED RELEASE

19. Pursuant to 18 U.S.C. § 3583(d), the defendant has been advised and understands the court shall order as a mandatory condition of supervised release, that the defendant comply with state sex offender registration requirements. The

defendant also has been advised and understands that under the Sex Offender Registration and Notification Act, a federal law, he must register and keep the registration current in each of the following jurisdictions: the location of his residence; the location of his employment; and, if he is a student, the location of his school. Registration will require that the defendant provide information that includes, name, residence address, and the names and addresses of any places at which he will be an employee or a student. The defendant understands that he must update his registration not later than three business days after any change of name, residence, employment, or student status. The defendant understands that failure to comply with these obligations may subject him to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine and/or imprisonment.

Acceptance of Responsibility

20. The government agrees to recommend a two-level decrease for acceptance of responsibility as authorized by Sentencing Guidelines Manual § 3E1.1(a), but only if the defendant exhibits conduct consistent with the acceptance of responsibility. In addition, if the court determines at the time of sentencing that the defendant is entitled to the two-level reduction under § 3E1.1(a), the government agrees to make a motion recommending an additional one-level decrease as authorized by Sentencing Guidelines Manual § 3E1.1(b)

because the defendant timely notified authorities of his intention to enter a plea of guilty.

Sentencing Recommendations

21. Both parties reserve the right to provide the district court and the probation office with any and all information which might be pertinent to the sentencing process, including but not limited to any and all conduct related to the offense as well as any and all matters which might constitute aggravating or mitigating sentencing factors.

22. Both parties reserve the right to make any recommendation regarding any and all factors pertinent to the determination of the sentencing guideline range; the fine to be imposed; the amount of restitution and the terms and condition of its payment; the length of supervised release and the terms and conditions of the release; the defendant's custodial status pending the sentencing; and any other matters not specifically addressed by this agreement.

23. The government and the defendant agree to jointly recommend a five year sentence of imprisonment.

Court's Determinations at Sentencing

24. The parties acknowledge, understand, and agree that neither the sentencing court nor the United States Probation Office is a party to or bound by this agreement. The United States Probation Office will make its own recommendations to the sentencing court. The sentencing court will make its own determinations regarding any and all issues relating to the imposition of sentence and may impose any sentence authorized by law up to the maximum penalties set forth in paragraph 7 above. The parties further understand that the sentencing court will be guided by the sentencing guidelines but will not be bound by the sentencing guidelines and may impose a reasonable sentence above or below the calculated guideline range.

25. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty plea solely as a result of the sentence imposed by the court.

FINANCIAL MATTERS

26. The defendant acknowledges and understands that any and all financial obligations imposed by the sentencing court are due and payable upon entry of the judgment of conviction. The defendant agrees not to request any delay or stay in payment of any and all financial obligations.

27. The defendant agrees that, during the period of any supervision (probation or supervised release) imposed by the court in this case, the defendant will provide the Financial Litigation Unit (FLU) of the United States Attorney's Office with completed financial forms which will be provided by FLU, and will provide any documentation required by those forms. The defendant will provide FLU with such completed financial forms with required documentation within the first two months of supervision, at six month intervals thereafter during supervision, and within the last six months of scheduled supervision.

Special Assessment

28. The defendant agrees to pay the special assessment in the amount of \$100 prior to or at the time of sentencing.

Forfeiture

29. The defendant agrees that the computers and computer equipment referred to in the factual summary and the Forfeiture Allegation of the information were used to facilitate the offense. The defendant agrees to the forfeiture of these properties and to the immediate entry of a preliminary order of forfeiture. The defendant agrees that he has an interest in all of this computer equipment.

DEFENDANT'S WAIVER OF RIGHTS

30. In entering this agreement, the defendant acknowledges and understands that in so doing he surrenders any claims he may have raised in any pretrial motion, as well as certain rights which include the following:

- a. If the defendant persisted in a plea of not guilty to the charges against him, he would be entitled to a speedy and public trial by a court or jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the government and the judge all must agree that the trial be conducted by the judge without a jury.
- b. If the trial is a jury trial, the jury would be composed of twelve citizens selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of guilty. The court would instruct the jury that the defendant is presumed innocent until such time, if ever, as the government establishes guilt by competent evidence to the satisfaction of the jury beyond a reasonable doubt.
- c. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not he was persuaded of defendant's guilt beyond a reasonable doubt.
- d. At such trial, whether by a judge or a jury, the government would be required to present witnesses and other evidence against the defendant. The defendant would be able to confront witnesses upon whose testimony the government is relying to obtain a conviction and he would have the right to cross-examine those witnesses. In turn the defendant could, but is not obligated to, present witnesses and other evidence

on his own behalf. The defendant would be entitled to compulsory process to call witnesses.

- e. At such 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 on his own behalf.

31. The defendant acknowledges and understands that by pleading guilty he is waiving all the rights set forth above. The defendant further acknowledges the fact that his attorney has explained these rights to him and the consequences of his waiver of these rights. The defendant further acknowledges that as a part of the guilty plea hearing, the court may question the defendant under oath, on the record, and in the presence of counsel about the offenses to which the defendant intends to plead guilty. The defendant further understands that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

32. The defendant acknowledges and understands that he will be adjudicated guilty of the offense to which he will plead guilty and thereby may be deprived of certain rights, including but not limited to the right to vote, to hold public office, to serve on a jury, to possess firearms, and to be employed by a federally insured financial institution.

33. The defendant knowingly and voluntarily waives all claims he may have based upon the statute of limitations, the Speedy Trial Act, and the speedy

trial provisions of the Sixth Amendment. The defendant agrees that any delay between the filing of this agreement and the entry of the defendant's guilty plea pursuant to this agreement constitutes excludable time under the Speedy Trial Act.

Further Civil or Administrative Action

34. The defendant acknowledges, understands, and agrees that the defendant has discussed with his attorney and understands that nothing contained in this agreement, is meant to limit the rights and authority of the United States of America or any other state or local government to take further civil, administrative, or regulatory action against the defendant, including but not limited to any listing and debarment proceedings to restrict rights and opportunities of the defendant to contract with or receive assistance, loans, and benefits from United States government agencies. Further, under the federal Sex Offender Registration and Notification Act, the defendant will be required to register as a sex offender, and would face criminal penalties for failing to register.

GENERAL MATTERS

35. The parties acknowledge, understand, and agree that this agreement does not require the government to take, or not to take, any particular position in any post-conviction motion or appeal.

36. The parties acknowledge, understand, and agree that this plea agreement will be filed and become part of the public record in this case.

37. The parties acknowledge, understand, and agree that the United States Attorney's office is free to notify any local, state, or federal agency of the defendant's conviction.

38. The defendant understands that pursuant to the Victim and Witness Protection Act, the Justice for All Act, and regulations promulgated thereto by the Attorney General of the United States, the victim of a crime may make a statement describing the impact of the offense on the victim and further may make a recommendation regarding the sentence to be imposed. The defendant acknowledges and understands that comments and recommendations by a victim may be different from those of the parties to this agreement.

EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT

39. The defendant acknowledges and understands if he violates any term of this agreement at any time, engages in any further criminal activity prior to sentencing, or fails to appear for sentencing, this agreement shall become null and void at the discretion of the government. The defendant further acknowledges and understands that the government's agreement to dismiss any charge is conditional upon final resolution of this matter. If this plea agreement is revoked or if the defendant's conviction ultimately is overturned, then the

government retains the right to reinstate any and all dismissed charges and to file any and all charges which were not filed because of this agreement. The defendant hereby knowingly and voluntarily waives any defense based on the applicable statute of limitations for any charges filed against the defendant as a result of his breach of this agreement. The defendant understands, however, that the government may elect to proceed with the guilty plea and sentencing. If the defendant and his attorney have signed a proffer letter in connection with this case, then the defendant further acknowledges and understands that he continues to be subject to the terms of the proffer letter.

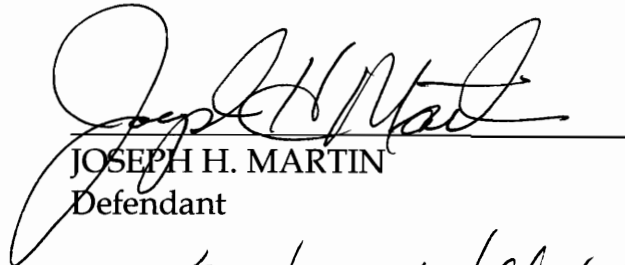
VOLUNTARINESS OF DEFENDANT'S PLEA

40. The defendant acknowledges, understands, and agrees that he will plead guilty freely and voluntarily because he is in fact guilty. The defendant further acknowledges and agrees that no threats, promises, representations, or other inducements have been made, nor agreements reached, other than those set forth in this agreement, to induce the defendant to plead guilty.

ACKNOWLEDGMENTS

I am the defendant. I am entering into this plea agreement freely and voluntarily. I am not now on or under the influence of any drug, medication, alcohol, or other intoxicant or depressant, whether or not prescribed by a physician, which would impair my ability to understand the terms and conditions of this agreement. My attorney has reviewed every part of this agreement with me and has advised me of the implications of the sentencing guidelines. I have discussed all aspects of this case with my attorney and I am satisfied that my attorney has provided effective assistance of counsel.

Date: 2/12/15


JOSEPH H. MARTIN
Defendant

Date: 2/12/15


KRISTA A. HALLA-VALDES
Attorney for Defendant

For the United States of America:

Date: 2/12/15


JAMES L. SANTELLE
United States Attorney

Date: 2/12/15


STEPHEN A. INGRAHAM
Assistant United States Attorney