UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
CHATTANOOGA

UNITED STATES OF AMERICA	)	
	)	
v.	)	**1:21-cr-69**
	)	
DONNA CLARK	)	**Judge Atchley/Steger**

PLEA AGREEMENT

The United States of America by and through Francis M. Hamilton III, Acting United States Attorney for the Eastern District of Tennessee, and Steven S. Neff, Assistant United States Attorney, and Donna Clark, the defendant, and Gianna Maio, the defendant's attorney, have agreed upon the following:

1. The defendant will waive indictment and arraignment and plead guilty to an information charging the defendant with the following offense:

Count _1_. Wire Fraud, in violation of 18 U.S.C. § 1343. The punishment for this offense is as follows. A maximum possible term of imprisonment of up to 30 years, a possible fine of up to $1,000,000, up to 5 years of supervised release, special assessment, forfeiture and restitution.

2. In consideration of the defendant's guilty plea, the United States agrees to dismiss the remaining counts against the defendant in this indictment (Counts Two and Three) and not to further prosecute the defendant in the Eastern District of Tennessee for any other non-tax criminal offenses committed by the defendant that are related to the charges contained in the indictment in this case and that are known to the United States Attorney's Office for the Eastern District of Tennessee at the time this plea agreement is signed by both parties.

3. The defendant has read the Information and discussed the charges and possible defenses with defense counsel, and the defendant understands the crimes charged. Specifically, the elements of the offense of conviction are as follows:

Wire Fraud: Title 18, United States Code, Section 1343:

a) Defendant devised a scheme to defraud or obtain money or property by materially false or fraudulent pretenses, representations or promises (or willfully participated in such a scheme with knowledge of its fraudulent nature);

b) Defendant acted with the intent to defraud; and

c) In advancing or furthering the scheme, transmitted or caused the transmission of any writing, signal, or sound by means of wire, radio, or television communication in interstate commerce.

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 plea. 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.

The defendant has been a resident of Benton, Tennessee at all times relevant to the indictment. She maintained personal bank accounts at Wells Fargo Bank ("WFB"), BB&T & Co. ("BB&T"), and First Volunteer Bank ("FVB").

Beginning in or before October 2020, the defendant began communicating with unknown entities on the internet purporting to be men interested in a dating relationship with her. She later began knowingly operating as a money mule for these entities. After the defendant began operating as a money mule for these entities, she was warned multiple times over a series of months by family members and friends that she was acting as a money mule who was laundering money and facilitating criminal activity and fraud.

On or about June 21, 2021, an FBI special agent advised the defendant that she was involved in the transfer of money obtained by theft or fraud, or possibly even drug proceeds. The agent warned her that her bank accounts and prepaid cards she had purchased were being used to receive and send stolen money or money obtained through fraud; and that she is involved in illegal activity of money laundering and operating as an unlicensed money transmitting business, both of which are violations of federal law. The agent advised that the entities to which she was talking and for which she was transferring money were not likely from the United States, that they were engaged in fraud and defrauding victims in the United States, and that she was aiding them in the fraud by engaging in the money transfers, bitcoin deposits, and prepaid card transactions. He advised her to immediately stop communicating with these entities and cease all financial transactions for them.

The defendant acknowledged that she understood that she was aiding criminal activity and she could later be arrested or charged with a federal crime if she continued to engage in these activities and promised that she would cease all contact with the entities and stop engaging in the transactions. In the presence of the interviewing Agents, Clark blocked the cellphone and other communication accounts of the men on her cellphone; and Clark assured the Agents that she would have no further communication with the men, including communications via Internet, phone, Whats App, or other apps.

When interviewed, Clark stated that although she has never met any of the men in person, the relationships became romantic, and they told her that they love her and were coming to the United States to marry her. The men all claimed to be from the United States, but they have foreign accents and are living and working overseas. The defendant communicates with the men via her cellphone, email, and apps such as Whats App and Hangouts. The men all claimed that people were sending money to them, but the people could not transfer the money directly to the men, so the defendant agreed to have the people send the money to her, and then she sent the money to the men.

The defendant received packages in the mail or UPS containing cash. The defendant did not know any of the people who sent her the money. One of the men instructed Clark how to go to a Bitcoin ATM and deposit the money to his account. The men also asked her to buy Steam cards, and after she bought the cards, Clark sent them photos of the cards. The men also asked her to buy Green Dot cards, and Clark sent the men money on CashApp. The men allowed Clark to keep some of the money which she received, from $20 to like $200. Clark provided SA Kukura with original UPS envelopes which Clark received from "K.B." and "M.W." Clark stated that the packages contained cash, but she did not know "K.B." or "M.W." Clark also provided SA Kukura with original Bitcoin ATM receipts.

A Confidential Human Source (CHS) contacted Kukura shortly after the June 21, 2021, interview of Clark. The CHS told Kukura that after he spoke to Clark, she destroyed her Green Dot cards. The CHS also advised that Clark was continuing to engage in money mule activities. For example, on the evening of June 23, 2021, the CHS was at Clark's apartment at 138 Chilhowee Circle, apartment 102, Benton, Tennessee and saw Clark scratching off Steam cards, taking photos of the cards, and sending the photos to one of the men with whom she had been communicating – a man named "Ken Roberts." The CHS later provided Kukura with photographs and video taken in Clark's apartment of Steam cards, a Wells Fargo Bank transaction receipt, and store receipts. During subsequent consensually-recorded conversations, Clark told the CHS that all the Steam cards are for Roberts. When the CHS asked Clark how Roberts sells the Steam cards, Clark explained that Roberts has the bar code and PIN, that Clark scratches them off and sends a picture to Roberts, and then Clark throws the cards in the garbage. One of the store receipt photos/video provided to Kukura by the CHS was for the cash purchase of Steam cards on June 23, 2021, at a Dollar General store. Kukura subsequently obtained images from the store surveillance cameras, and recognized Clark as the person in the images making the purchase of the Steam cards.

On June 28, 2021, the CHS reported to Kukura that Clark informed the CHS that Clark had received money into her Wells Fargo Bank account from a man named "D.W.", that Clark was going to the bank branch in Dalton, Georgia, that day to withdraw the money in cash, and that Clark was then going to send the cash to a woman at Roberts' direction. Kukura and other FBI Agents conducted surveillance at the Wells Fargo Bank on June 28, 2021, where they observed Clark's PT Cruiser. The PT Cruiser departed the bank at approximately 1:30 pm and they followed it back toward the Tennessee/Georgia border.

The CHS engaged in consensually recorded conversations with Clark. Some of these conversations took place in Clark's apartment, and the CHS was present when Clark was on her cellphone speaking to Roberts and others. While in her apartment, Clark also showed the CHS text messages which she received from Roberts on her cellphone. During these consensually recorded conversations, Clark and the CHS discussed the money which she received into her Wells Fargo Bank account, including the following:

Clark told the CHS that she received $20,833 into her Wells Fargo Bank account from "D.W.", and on June 28, 2021, she withdrew $19,833 in cash which she then sent via FedEx on June 29, 2021, to two other people for Roberts. Clark told the CHS that Roberts let her keep $1,000; and that she paid $100 out if it for Steam cards, and $45 out of it to ship it. She said that she sent the cash to "I.J.F." in Apopka, Florida, and "V.G.M." in Cookeville, Tennessee. Clark did not split the money evenly between them, but did it like Roberts said.

On July 3, 2021, Clark told the CHS that she believed that those other people got their money because Clark had not heard anything different. Clark also told the CHS that she kept $1,000 out of that transaction. The CHS provided SA Kukura with a photograph taken in Clark's apartment of the cash which Clark withdrew from her Wells Fargo Bank account on June 28, 2021. The photograph shows not only the cash, but also a Wells Fargo Bank envelope, and what appears to be two padded envelope mailers.

SA Kukura conducted surveillance on June 29, 2021, and at approximately 9:22 am, he observed Clark's vehicle parked in front of the Post & Ship business in Cleveland, Tennessee. After Clark left the business, Kukura interviewed two employees of Post & Ship who told him that Clark mailed two packages via FedEx on June 29, 2021; that the packages were already wrapped, so they asked Clark about the contents, and Clark told them that there were pictures inside the packages. One of the employees also told Kukura that Clark had written "Careful Pictures" on the packages; that one package was sent to "I.J.F" in Apopka, Florida, and the other was sent to "V.G.M" in Cookeville, Tennessee; and that the printer was not working at the business, so the employees had been unable to give Clark a receipt.

On July 2, 2021, an FBI Agent interviewed the Wells Fargo Bank teller who assisted Clark with the $19,833 cash withdrawal on June 28, 2021. The teller noted that the bulk of the money in Clark's account came from a deposit from "D.W.", and the teller asked Clark about the withdrawal. Clark told the teller that "D.W." was her uncle, that "D.W." had borrowed Clark's car and gotten into an accident, and that the deposit from "D.W." into Clark's account was an insurance settlement payment because "D.W." felt bad and wanted to repay Clark. I.e., the defendant lied.

On July 14, 2021, the CHS provided Kukura with the following information: Clark was still communicating with several more men that she met on-line, and it was getting to be so many men that Clark was having trouble keeping track, so Clark was keeping a notepad when she talks to them. Clark One of the men was having a package delivered to Clark, but the man told Clark not to open it. The man allegedly worked on an oil rig, so he could not receive the package. The package is supposedly a birthday present that the man ordered, and it was being delivered to Clark so she could then ship it to someone else. One of the men wanted to send money to Clark's bank account which Clark would then send to the families of the man's employees in Mexico.

Clark has maintained several bank accounts during the course of her criminal activity. She used those accounts to receive deposits, send funds, and launder money for unlawful activities. When SA Kukura interviewed Clark, she told him that Regions Bank and Simply Bank had closed her bank accounts based upon suspicious activities. After the interview, however, Clark continued to engage in the very financial transactions which Kukura warned her to stop during her interview on June 21, 2021.

She opened at least two new accounts, one at First Volunteer Bank and another at BB&T Bank.

On July 17 and 18, 2021, the Confidential Human Source (CHS) told Kukura the following:

a. Clark recently met another man named "Steven Anderson" on-line.

b. On July 15 or 16, 2021, Anderson wired $89,292.50 to Clark's BB&T Account.

c. Clark has a bank phone app on her cellphone, and Clark showed the CHS the activity in her BB&T account. There were two wire transfers of $50,000 and $39,292.50.

d. The $50,000 wire transfer had what might be a wire transfer code of "20210715-00008516INCO", and the $39,292.50 wire transfer indicated it was from "Merchfundi Fora Financial B".

e. Clark had already withdrawn $15,000 by writing a check payable to herself which Clark then deposited into Clark's FVB Account. Clark also withdrew $500 cash at an ATM; so when Clark showed CHS the account activity on the evening of July 16, 2021, the balance in the BB&T account was $73,368.13.

f. When the CHS spoke to Clark on July 17, 2021, Clark told the CHS that Clark went to BB&T on July 17, 2021 and obtained a $20,000 cashier's check which Clark plans to deposit to her FVB Account on July 19, 2021, and that she is also going to get another $20,000 cashier's check on July 19, 2021 and deposit it to her FVB Account. Clark said that Anderson instructed her to do this.

g. Clark told CHS that Clark doesn't know who the two wire transfers actually came from, be it Anderson or someone else.

On July 19, 2021, SA Kukura received information from First Volunteer Bank (FVB), that $15,000 was recently deposited into Clark's FVB Account and the current balance was approximately $16,000. Kukura also received information from BB&T Bank on July 19, 2021, that there were recent deposits of $50,000 (ostensibly a PayPal business loan) and about $39,000 (ostensibly a business loan from Fora Financial) via wire transfer and ACH credit, and that Clark withdrew $20,000 on July 17, 2021. The ACH transfer record reflected that the $39,292.50

business loan[1] originated from Fora Financial located in New York. The alleged borrower's name was Schulten Orthodontics located in Louisville, Kentucky. Kukura spoke to a representative of Schulten Orthodontics who confirmed that they knew nothing about that load and had not received that money. It appears as if the identity of the orthodontist was stolen and someone representing himself as the orthodontist had spoken with Fora Financial about the loan. The account that was identified to them was supposed to be the Schulten Orthodontics account but was instead actually sent directly to the defendant's account at BB&T.

On July 19, 2021, Kukura again interviewed Clark. Clark admitted that she transferred $15,000 from her BB&T Account into her FVB Account. She also told him she obtained a $20,000 cashier's check from BB&T that she had planned on depositing into her FVB Account. Clark gave him the cashier's check, issued July 17, 2021 by BB&T Bank. Clark further told him that she withdrew $500 from her BB&T Account through an ATM, spent some of the cash, and had the remainder in her home. She admitted that she continued to be involved in the fraud and the money laundering in spite of his warnings to her on June 21, 2021.

The defendant was responsible for at least $110,125.50 in transactions as part of the overall embezzlement scheme. As part of this plea agreement, the defendant agrees that she engaged in a scheme to defraud others in the Eastern District of Tennessee and elsewhere by using wire transfers.

5. The defendant is pleading guilty because she—the defendant—is in fact guilty. The defendant understands that by pleading guilty the defendant is giving up several rights, including:

a. the right to plead not guilty;

[1] The count of conviction – Count One

b. the right to a speedy and public trial by jury;

c. the right to assistance of counsel at trial;

d. the right to be presumed innocent and to have the burden of proof placed on the United States to prove the defendant guilty beyond a reasonable doubt;

e. the right to confront and cross-examine witnesses against the defendant;

f. 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

g. the right not to testify and to have that choice not used against the defendant.

6. Pursuant to Rule 11(c)(1)(C), the defendant and the United States agree that a sentence of a three (3) year term of probation is the appropriate disposition of this case. Additionally, the Court may impose any lawful fine(s) and any special assessment fees as required by law, and order forfeiture as applicable and restitution as appropriate. In the event the Court declines to accept this agreement, either party will be free to withdraw from the plea agreement.

7. 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 Court awards 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 offenses, including violations of conditions of release or the commission of any additional offenses prior to sentencing, the United States will be free to decline to make such motion, to withdraw that motion if already made, and to recommend to the Court that the defendant

not receive any reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

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

9. The defendant agrees that the Court shall order restitution, pursuant to any applicable provision of law, for any loss caused to: (a) the victims of any offense charged in this case (including dismissed counts); and (b) 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.

10. Unless otherwise limited by an agreed preliminary order of forfeiture, the defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, which constitute or are derived from proceeds traceable to an offense in violation of 18 U.S.C. § 1343, or any property traceable to such property which are in the possession or control of the defendant or the defendant's nominees.

The defendant agrees to forfeit the defendant's interest in the following properties:

a. $460.00 U.S. currency seized from the residence of Donna J. Clark on July 19, 2021;

b. $20,000.00 official check (#1003749082) from BB&T payable to Donna Clark dated July 17, 2021;

c. Funds up to the amount of $53,038.13 in BB&T Bank account number 1430001294316 held in the name of Donna J. Clark;

d. Funds up to the amount of $15,000.00 in First Volunteer Bank account number 2000294039 held in the name of Donna J. Clark; and

e. A personal money judgment in the amount of at least $110,125.50 in favor of the United States and against the defendant, DONNA J. CLARK, which represents the proceeds traceable to violations of 18 U.S.C. § 1343.

The defendant further agrees to assist the United States fully in the identification, recovery, and return to the United States of any other assets or portions thereof subject to forfeiture. The defendant further agrees to make a full and complete disclosure of all assets over which the defendant exercises control and those which are held or controlled by a nominee. The defendant agrees to forfeit all interests in the properties as described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and the signing of any other documents necessary to effectuate such transfers. The defendant agrees not to object to any civil or criminal forfeiture brought against these properties. The defendant agrees to take all such steps to locate such property and to pass title to the United States before the defendant's sentencing.

In the event a money judgment forfeiture is ordered, the Defendant agrees to send all money judgment payments to the United States Marshals Service. Defendant also agrees that the full money judgment amount shall be considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody, the defendant agrees that the Bureau of Prisons will have the authority to establish payment schedules to ensure payment of the money judgment. The defendant further agrees to cooperate fully in efforts to collect on the money judgment 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 the money judgment without notifying defendant's counsel and outside the presence of the defendant's counsel.

11. 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 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 plea 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.

12. The defendant acknowledges that the principal benefits to the United States of a plea agreement include the conservation of limited government resources and bringing a certain end to the case. Accordingly, in consideration of the concessions made by the United States in this plea agreement and as a further demonstration of the defendant's acceptance of responsibility for the offense(s) committed, the defendant voluntarily, knowingly, and intentionally agrees to the following:

a. The defendant will not file a motion for downward departure or variance or a direct appeal of the defendant's conviction(s) or sentence. The defendant also waives the right to appeal the Court's determination as to whether the defendant's sentence will be consecutive or partially concurrent to any other sentence.

b. The defendant will not file any motions or pleadings pursuant to 28 U.S.C. § 2255 or otherwise collaterally attack the defendant's conviction or sentence, with two exceptions: the defendant retains the right to file a § 2255 motion as to (i) prosecutorial misconduct, and (ii) ineffective assistance of counsel.

c. The defendant will not, whether directly or by a representative, request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

13. This plea 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 plea agreement, the defendant will have the right to withdraw from this plea agreement. If the defendant violates the terms of this plea agreement in any way (including but not limited to failing to enter guilty plea as agreed herein, moving to withdraw guilty plea 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 plea agreement and may also enforce whatever parts of the plea 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 the United States dismissed and any other charges that the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or 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 plea in this case.

14. The United States will file a supplement in this case, as required in every case by the Local Rules of the United States District Court for the Eastern District of Tennessee, even though there may or may not be any additional terms. If additional terms are included in the supplement, they are hereby fully incorporated herein.

15. This plea agreement and supplement constitute 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 plea agreement, are null and void.

FRANCIS M. HAMILTON III
Acting United States Attorney

12.21.21
Date

By: Gianna Maio (with permission for)
Steven S. Neff
Assistant United States Attorney

12-21-21
Date

Donna Clark
Donna Clark
Defendant

12.21.21
Date

Gianna Maio
Gianna Maio
Attorney for the Defendant