

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
DUBLIN DIVISION

UNITED STATES OF AMERICA

v.

SHAKEENA HAMILTON

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CR: 322-05

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION
FILED IN OFFICE
3:40 p.m.
Deputy Clerk

PLEA AGREEMENT

Defendant Shakeena Hamilton, represented by her counsel Mitchell M. Shook, and the United States of America, represented by Assistant United States Attorney Chris Howard, have reached a plea agreement in this case. The terms and conditions of that agreement are as follows.

1. Guilty Plea

Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter of plea of guilty to Count One of the Information, which charges a violation of 18 U.S.C. § 371.

2. Elements and Factual Basis

The elements necessary to prove the offense charged in Count One are (1) that two or more persons in some way agreed to try to accomplish a shared and unlawful plan; (2) the Defendant knew the unlawful purpose of the plan and willfully joined in it; (3) during the conspiracy, one of the conspirators knowingly engaged in at least one overt act as described in the Information; and (4) the overt act was committed at or about the time alleged and with the purpose of carrying out or accomplishing some object of the conspiracy.

Defendant agrees that she is, in fact, guilty of this offense. She agrees to the accuracy of the following facts, which satisfy each of the offense's required elements:

The Coronavirus Aid, Relief, and Economic Security ("CARES") Act was a federal law enacted in or about March 2020 designed to provide emergency financial assistance to the millions who are suffering the economic effects caused by the COVID-19 pandemic. Among other relief efforts, the United States sought to provide financial support to eligible businesses that could be used to offset certain business expenses.

The Small Business Administration ("SBA") was an executive branch agency of the United States government that provided support to entrepreneurs and small businesses. The SBA was headquartered in Washington, DC and maintained its computer servers outside of the State of Georgia. The SBA's mission was to maintain and strengthen the nation's economy by enabling the establishment and viability of small businesses and by assisting in the economic recovery of communities after disasters. As part of this effort, the SBA enabled and provided for loans through banks, credit unions, and other lenders. These loans have government-backed guarantees. In addition, the SBA provided loans that came directly from the U.S. Government.

A source of relief provided by the CARES Act was the authorization of up to \$349 billion in forgivable loans to small businesses for job retention and certain other expenses, through a program referred to as the Paycheck Protection Program ("PPP"). In or around April 2020, Congress authorized over \$300 billion in additional PPP

funding. To obtain a PPP loan, a qualifying business had to submit a PPP loan application signed by an authorized representative of the business. The PPP loan application required the business (through its authorized representative) to acknowledge the program rules and make certain affirmative certifications to be eligible to obtain the PPP loan. In the PPP loan application, the small business (through its authorized representative) had to state, among other things, its: (a) average monthly payroll expenses; and (b) number of employees. These figures were then used to calculate the amount of money the small business was eligible to receive under the PPP.

A PPP loan application must be processed by a participating lender, such as a financial institution. If a PPP loan is approved, the participating lender funds the PPP loan using its own monies, which are 100% guaranteed by the SBA. Data from the application, including the information about the borrower, the total amount of the loan, and the listed number of employees, is transmitted by the lender to the SBA in the course of processing the loan. The PPP loan proceeds must be used by the business on certain permissible expenses—payroll costs, interest on mortgages, rent, and utilities. The PPP allows the interest and principal of the PPP loan to be entirely forgiven if the business spends the loan proceeds on these expense items within a designated period of time and uses a certain percentage of the PPP loan proceeds on payroll expenses.

Beginning no later than February 2021 and continuing through at least April 2021, in Telfair County, within the Southern District of Georgia, and elsewhere,

Defendant, aided and abetted by others, did knowingly and willfully combine, conspire, confederate, and agree with at least one other person to commit wire fraud, that is to devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing the scheme and artifice and to obtain money and property, caused to be transmitted wires and signals in interstate and foreign commerce, namely interstate communications to be made over the internet, in furtherance of the scheme and artifice to defraud, in violation of 18 U.S.C. § 1343. All of this was done in violation of 18 U.S.C. § 371.

The object of the conspiracy was for Defendant and her coconspirators to unjustly enrich themselves by making false PPP applications to the SBA and to financial institutions, to unlawfully induce the SBA and PPP lenders to dispense money and funds to coconspirators to which they were not entitled, and who, in turn, would pay a portion of the ill-gotten funds to Defendant as a kickback.

In furtherance of this scheme, and to effect the objects thereof, the following acts were committed in furtherance of the conspiracy:

It was part of the conspiracy that between February 2021 and April 2021, Defendant and her coconspirators utilized cellular devices, email, and the internet to create fraudulent PPP applications. Coconspirators would send their personal identifying information and banking information to Defendant. Defendant, in turn, would use the internet to access Company 1, which is a lender service provider that partners with banks to apply for and secure PPP loans.

For each PPP loan, Defendant would use a coconspirator's information with his/her knowledge and consent to create fraudulent PPP applications falsely reporting the existence of businesses that did not exist, falsely reporting the number of employees, and falsely reporting revenue. Next, a coconspirator would login to Company 1 and verify his/her identity by taking a self-photograph. Once an application was prepared, a coconspirator would electronically verify his/her identity with Company 1, then Defendant would complete and submit the fraudulent PPP application through interstate wires. After a PPP application was approved by a lender, a coconspirator would electronically receive, sign, and submit loan documents to the lender.

In reliance on false representations made in PPP applications created by Defendant in conjunction with her coconspirators, banks headquartered outside the State of Georgia, by means of wire communication, deposited millions of dollars into coconspirators' bank accounts resulting from this scheme.

In exchange for Defendant completing a fraudulent PPP application, Defendant's coconspirators agreed to pay Defendant in amounts as high as \$5,000 per PPP application. Coconspirators transmitted the kickback to Defendant via CashApp, Zelle, or by cash transactions.

Between in or around February 2021 through in or around April 2021, Defendant, while in the Southern District of Georgia, caused to be submitted more than 120 fraudulent PPP applications on behalf of herself and conspirators, which resulted in more than approximately \$2,300,000 being disbursed from banks to

members of the conspiracy. Of that, Defendant obtained more than \$300,000 in unlawful kickbacks disbursed from coconspirators to her as payment for submitting the fraudulent PPP applications. Defendant used proceeds of the conspiracy to purchase a Mercedes vehicle and other items unrelated to the purpose of the PPP's creation.

3. Possible Sentence

Defendant's guilty plea in Count One will subject her to the following maximum possible sentence: 5 years' imprisonment, 3 years' supervised release, a \$250,000 fine, such restitution as may be ordered by the Court, and forfeiture of all forfeitable assets. The Court additionally must impose a \$100 special assessment per count of conviction.

4. No Promised Sentence

No one has promised Defendant that the Court will impose any particular sentence or a sentence within any particular range. The Court is not bound by any estimate of sentence given or recommendations made by Defendant's counsel, the government, the U.S. Probation Office, or anyone else. The Court may impose a sentence up to the statutory maximum. Defendant will not be allowed to withdraw her plea of guilty if she receives a more severe sentence than she expects.

5. Court's Use of Sentencing Guidelines

The Court is obligated to use the United States Sentencing Guidelines to calculate the applicable guideline range for Defendant's offense. The Sentencing Guidelines are advisory; the Court is not required to impose a sentence within the

range those Guidelines suggest. The Court will consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), in determining the Defendant's sentence. The Sentencing Guidelines are based on all of Defendant's relevant conduct, pursuant to U.S.S.G. § 1B1.3, not just the conduct underlying the particular Count or Counts to which Defendant is pleading guilty.

6. Agreements Regarding Sentencing Guidelines

a. Use of Information

Nothing in this agreement precludes the government from providing full and accurate information to the Court and U.S. Probation Office for use in calculating the applicable Sentencing Guidelines range. Any incriminating information provided by the defendant during her cooperation will not be used in determining the applicable Guidelines range, pursuant to Section 1B1.8 of the Sentencing Guidelines.

b. Acceptance of Responsibility

If the Court determines that Defendant qualifies for an adjustment under U.S.S.G. § 3E1.1(a), and the offense level prior to operation of § 3E1.1(a) is 16 or greater, the government will move for an additional one-level reduction in offense level pursuant to Section 3E1.1(b) based on Defendant's timely notification of her intention to enter a guilty plea.

7. Cooperation

a. Complete and Truthful Cooperation

If Defendant elects to cooperate, she must provide full, complete, candid, and truthful cooperation in the investigation and prosecution of the offenses charged in her Indictment and any related offenses. Defendant shall fully and truthfully disclose her knowledge of those offenses and shall fully and truthfully answer any question put to her by law enforcement officers about those offenses.

This agreement does not require Defendant to “make a case” against any particular person. Her benefits under this agreement are conditioned only on her cooperation and truthfulness, not on the outcome of any trial, grand jury, or other proceeding.

b. Motion for Reduction in Sentence Based on Cooperation

The government, in its **sole discretion**, will decide whether Defendant’s cooperation qualifies as “substantial assistance” pursuant to U.S.S.G. § 5K1.1 or Fed. R. Crim. P. 35 and thereby warrants the filing of a motion for downward departure or reduction in Defendant’s sentence. If such a motion is filed, the Court, in its sole discretion, will decide whether, and to what extent, Defendant’s sentence should be reduced. The Court is not required to accept any recommendation by the government that the Defendant’s sentence be reduced.

8. Abandonment of Property

Defendant waives and abandons her interest in any property that may have been seized in connection with this case, including but not limited to certain electronic devices, including a cellular phone, and all funds and assets seized and sought to be forfeited in the related case pending in Telfair County, Georgie, Superior Court.

9. Financial Obligations and Agreements

a. Restitution

The amount of restitution ordered by the Court shall include restitution for the full loss caused by Defendant's total criminal conduct. Restitution is not limited to the specific count to which Defendant is pleading guilty. Any restitution judgment is intended to and will survive Defendant, notwithstanding the abatement of any underlying criminal conviction. The United States agrees to recommend that the funds seized by state authorities following Defendant's arrest on July 2, 2021, to which Defendant has agreed to waive and abandon any interest be credited towards the amount of Defendant's restitution ordered by the Court at sentencing.

b. Special Assessment

Defendant agrees to pay a special assessment in the amount of \$100, payable to the Clerk of the United States District Court, which shall be due immediately at the time of sentencing.

10. Waivers

a. Waiver of Appeal

Defendant entirely waives her right to a direct appeal of her conviction and sentence on any ground (including any argument that the statute to which the defendant is pleading guilty is unconstitutional or that the admitted conduct does not fall within the scope of the statute). The only exceptions are that the Defendant may file a direct appeal of her sentence if (1) the court enters a sentence above the statutory maximum, (2) the court enters a sentence above the advisory Sentencing

Guidelines range found to apply by the court at sentencing; or (3) the Government appeals the sentence. Absent those exceptions, Defendant explicitly and irrevocably instructs her attorney not to file an appeal.

b. Waiver of Collateral Attack

Defendant entirely waives her right to collaterally attack her conviction and sentence on any ground and by any method, including but not limited to a 28 U.S.C. § 2255 motion. The only exception is that Defendant may collaterally attack her conviction and sentence based on a claim of ineffective assistance of counsel.

c. FOIA and Privacy Act Waiver

Defendant waives all rights, whether asserted directly or through a representative, to request or receive from any department or agency of the United States any record pertaining to the investigation or prosecution of this case under the authority of the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, and all subsequent amendments thereto.

d. Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 Waiver

Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence ordinarily limit the admissibility of statements made by a defendant during the course of plea discussions or plea proceedings. Defendant knowingly and voluntarily waives the protections of these rules. If Defendant fails to plead guilty, or her plea of guilty is later withdrawn, all of Defendant's statements in connection with this plea, and any leads derived therefrom, shall be admissible for any and all purposes.

11. Defendant's Rights

Defendant has the right to be represented by counsel, and if necessary have the court appoint counsel, at trial and at every other critical stage of the proceeding. Defendant possesses a number of rights which she will waive by pleading guilty, including: the right to plead not guilty, or having already so pleaded, to persist in that plea; the right to a jury trial; and the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

12. Satisfaction with Counsel

Defendant has had the benefit of legal counsel in negotiating this agreement. Defendant believes that her attorney has represented her faithfully, skillfully, and diligently, and she is completely satisfied with the legal advice given and the work performed by her attorney.

13. Breach of Plea Agreement

If Defendant fails to plead guilty, withdraws or attempts to withdraw her guilty plea, commits any new criminal conduct following the execution of this agreement, or otherwise breaches this agreement, the government is released from all of its agreements regarding Defendant's sentence, including any agreements regarding the calculation of Defendant's advisory Sentencing Guidelines. In addition, the government may declare the plea agreement null and void, reinstate any counts that may have been dismissed pursuant to the plea agreement, and/or file new charges against Defendant that might otherwise be barred by this plea agreement.

Defendant waives any statute-of-limitations or speedy trial defense to prosecutions reinstated or commenced under this paragraph.

14. Entire Agreement

This agreement contains the entire agreement between the government and Defendant.

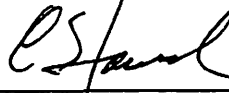
DAVID H. ESTES
UNITED STATES ATTORNEY

Date

3-30-2022

Date

Karl Knoche
Assistant United States Attorney
Criminal Chief



Chris Howard
Assistant United States Attorney

I have read and carefully reviewed this agreement with my attorney. I understand each provision of this agreement, and I voluntarily agree to it. I hereby stipulate that the factual basis set out therein is true and accurate in every respect.

03/30/22
Date

Shakeena Hamilton
Shakeena Hamilton
Defendant

I have fully explained to Defendant all of her rights, and I have carefully reviewed each and every part of this agreement with her. I believe that she fully and completely understands it, and that her decision to enter into this agreement is an informed, intelligent, and voluntary one.

03/30/22
Date

Mitchell M. Shook
Mitchell M. Shook
Defendant's Attorney

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ORDER

The aforesaid Plea Agreement, having been considered by the Court in conjunction with the interrogation by the Court of the defendant and the defendant's attorney at a hearing on the defendant's motion to change her plea and the Court finding that the plea of guilty is made freely, voluntarily and knowingly, it is thereupon,

ORDERED that the plea of guilty by defendant be, and it is, hereby accepted and the foregoing Plea Agreement be, and it is, hereby ratified and confirmed.

This 14th day of April 2022.



HON. DUDLEY H. BOWEN, JR.
JUDGE, UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA