

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

U.S. DISTRICT COURT DISTRICT OF N.H. FILED

2006 NOV 13 P 3:10

UNITED STATES OF AMERICA	:	Criminal No.: 1:06-cr-00043-SM
	:	
	:	VIOLATION
vs.	:	
	:	18 U.S.C. § 371 (Conspiracy)
SHAUN HANSEN	:	47 U.S.C. § 223(a)(1)(D)(Interstate Telephone Harassment by Repeated Calling)
	:	
Defendant.	:	
	:	

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States of America and the defendant, SHAUN HANSEN, agree as follows:

1. The defendant is entering this agreement and is pleading guilty freely and voluntarily without promise or benefit of any kind, other than contained herein, and without threats, force, intimidation, or coercion of any kind.

2. The defendant knowingly, voluntarily and truthfully admits the facts contained in the attached Factual Basis for Plea.

3. The defendant agrees to plead guilty to Counts I and II in the Indictment: Conspiracy to Commit Interstate Telephone Harassment by Repeated Calling, in violation of 18 U.S.C. § 371 (Count I); and Interstate Telephone Harassment by Repeated Calling, in violation of 47 U.S.C. § 223(a)(1)(D) (Count II). The defendant admits that he is guilty of these crimes, and the defendant understands that he will be adjudicated guilty of these offenses.

4. Count I of the Indictment charges that the defendant, Shaun Hansen, did knowingly, willfully, and unlawfully conspire, confederate, combine, and agree with other individuals to commit an offense against the United States, that is, to make and cause certain telephones repeatedly and

continuously to ring, with intent to harass the recipients of those calls, through the use of interstate communications.

5. Count II of the Indictment charges that in or about November 2002, in the District of New Hampshire and elsewhere, the defendant, SHAUN HANSEN, in interstate communications initiating in the State of Idaho, made and caused, and aided and abetted others in making and causing, six telephone numbers terminating in the District of New Hampshire repeatedly and continuously to ring, with intent to harass persons at the called numbers, in violation of Title 47, United States Code, Section 223(a)(1)(D) and Title 18, United States Code, Section 2.

6. The defendant understands the nature of the offenses to which he is pleading guilty, and the elements thereof, including the penalties provided by law. The maximum penalties for the offense in Count I are five years of imprisonment, a fine of \$250,000, and a mandatory special assessment of \$100. The maximum penalties for the offense in Count II are two years of imprisonment, a fine of \$250,000, and a mandatory special assessment of \$100. The defendant understands that the Court may impose a term of supervised release to follow any incarceration, in accordance with 18 U.S.C. § 3583. The authorized term of supervised release is not more than three years. The defendant also understands that the Court may impose restitution, costs of incarceration, and costs of supervision.

7. If the Court accepts defendant's plea of guilty and the defendant fulfills each of the terms and conditions of this agreement, the United States agrees that it will not further prosecute the defendant for crimes arising from the circumstances described in the Factual Basis for Plea.

8. The defendant understands that the Sentencing Reform Act of 1984 applies in this case and that the Court is required to consider the United States Sentencing Guidelines as advisory

guidelines. The defendant further understands that the defendant has no right to withdraw the defendant's guilty plea if the applicable advisory guideline range or the defendant's sentence is other than the defendant anticipated. The defendant also understands that the United States and the United States Probation Office shall:

- A. advise the Court of any additional, relevant facts that are presently known or may subsequently come to their attention;
- B. respond to questions from the Court;
- C. correct any inaccuracies in the pre-sentence report;
- D. respond to any statements made by the defendant or the defendant's counsel to a probation officer or to the Court.

The defendant understands that the United States and the Probation Office may address the Court with respect to an appropriate sentence to be imposed in this case.

9. The defendant is aware that any estimate of the probable sentence or the probable sentencing range relating to the defendant pursuant to the advisory Sentencing Guidelines that the defendant may have received from any source is only a prediction and not a promise, and is not binding on the United States, the Probation Office, or the Court, except as expressly provided in this Plea Agreement.

10. The parties agree that the appropriate advisory sentencing guideline, as applied in this case, is U.S.S.G. § 2A6.1, and that the base offense level is 6. The parties agree that the specific offense characteristic set forth in § 2A6.1(b)(4), substantial disruption of public, governmental, or business functions or services, applies in this case, and that a 4-level increase is warranted. The parties agree that the resulting advisory offense level for HANSEN is 10, and agree that no adjustments under §3B1.1 or §3B1.2 apply.

11. The United States agrees that it will not oppose a two-level reduction in the defendant's adjusted offense level, under the advisory Sentencing Guidelines, based upon the defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for the offense. Should the Court agree with the two-level reduction for acceptance of responsibility, the parties agree that the resulting advisory offense level would be 8. The United States, however, may oppose any adjustment for acceptance of responsibility if the defendant:

- A. fails to admit a complete factual basis for the plea at the time the defendant is sentenced or at any other time;
- B. challenges the United States' offer of proof at any time after the plea is entered;
- C. denies involvement in the offense;
- D. gives conflicting statements about that involvement or is untruthful with the Court, the United States or the Probation Office;
- E. fails to give complete and accurate information about the defendant's financial status to the Probation Office;
- F. obstructs or attempts to obstruct justice, prior to sentencing;
- G. has engaged in conduct prior to signing this Plea Agreement which reasonably could be viewed as obstruction or an attempt to obstruct justice, and has failed to fully disclose such conduct to the United States prior to signing this Plea Agreement;
- H. fails to appear in court as required;
- I. after signing this Plea Agreement, engages in additional criminal conduct; or
- J. attempts to withdraw the plea of guilty.

The defendant understands and agrees that the defendant may not withdraw the defendant's guilty plea if, for any of the reasons listed above, the United States does not recommend that the defendant receive a reduction in the defendant's sentence for acceptance of responsibility. The defendant also understands and agrees that the Court is under no obligation to reduce the offense level if it finds that the defendant has not accepted responsibility. Furthermore, the defendant understands that these recommendations and agreements are not binding on the Court or the Probation Office.

12. The defendant agrees that he will not move for a downward departure from the advisory sentencing guideline level determined by the Court. The government agrees that it will not move for an upward departure from the advisory sentencing guideline level determined by the Court, and that it will recommend a sentence within the guideline range. The defendant retains the right to request, pursuant to the principles set forth in *Booker v. United States*, 543 U.S. 220 (2005), that the Court grant a variance from the advisory sentencing guideline level determined by the Court.

13. The defendant understands and acknowledges that he may receive any sentence within the statutory maximum for the offenses of conviction. The United States cannot and does not make any promise or representation as to what sentence the defendant will receive or what fines or restitution, if any, the defendant may be ordered to pay. The defendant understands that the sentence and the sentencing guidelines applicable to this case will be determined solely by the Court, with the assistance of the United States Probation Office, that the Court may impose the maximum sentence permitted by the statute, and that the defendant will not be permitted to withdraw his plea regardless of the sentence calculated by the United States Probation Office or imposed by the Court.

14. The defendant is aware that the defendant has the right to challenge the defendant's sentence and guilty plea on direct appeal. The defendant is also aware that the defendant may, in

some circumstances, be able to argue that the defendant's plea should be set aside, or the defendant's sentence be set aside or reduced, in a collateral challenge (such as pursuant to a motion under 28 U.S.C. § 2255 or § 2241). By entering into this Plea Agreement, the defendant knowingly and voluntarily waives any right to appeal or to collaterally challenge:

(a) The defendant's guilty plea and any other aspect of defendant's conviction, including, but not limited to, any rulings on pretrial suppression motions or any other pretrial dispositions of motions and issues, except that the defendant retains the limited and exclusive right to appeal the district court's denial of the defendant's motion to dismiss the Indictment on the ground that "Title 47 U.S.C. § 223(a)(1)(D) Failed to Provide Fair Notice that it Prohibited the Alleged Conduct," as filed by the defendant on July 3, 2006, and denied by the Court on August 29, 2006; and

(b) any sentence imposed by the Court or the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or a variance from the advisory guideline range that the Court establishes at sentencing.

The defendant expressly retains his right to appeal his conviction on the ground that the definition of "harass" adopted by the district court in this case and in the related case of United States of America v. James Tobin, Docket No. 04-216-01-SM in the United States District Court for the District of New Hampshire is erroneous, and that for purposes of 47 U.S.C. § 223(a)(1)(D) an intent to harass requires proof that the caller intended to annoy, threaten, abuse, frighten, oppress, persecute, or otherwise inflict significant emotional distress on the recipients of the phone calls.

15. The defendant's waiver of rights to appeal and to bring collateral challenges shall not

apply to appeals or challenges based on new legal principles in First Circuit or Supreme Court cases decided after the date of this Plea Agreement which are held by the First Circuit or Supreme Court to have retroactive effect. The defendant's waiver of the right to collateral review does not extend to claims that the plea was unknowing or involuntary or to claims that the defendant received ineffective assistance of counsel in the negotiation of the plea or plea agreement.

16. This Plea Agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. § 3742(b), and the United States therefore retains its appeal rights.

17. The defendant hereby waives all rights, whether asserted directly or by a representative, to 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. §522a.

18. If this agreement becomes null and void pursuant to Paragraph 19, or if the defendant commits a material breach of the agreement by failing to comply with any of the material conditions and terms set forth in this agreement, the government is released from all its promises and commitments made in this agreement. The determination as to whether the defendant has committed a material breach of the agreement rests entirely within the discretion of the Computer Crimes and Intellectual Property Section and/or the Public Integrity Section of the United States Department of Justice, Criminal Division. Upon defendant's failure to comply with any of the terms and conditions set forth in this agreement, the government may fully prosecute the defendant on all criminal charges that can be brought against the defendant. With respect to such a prosecution:

a. The defendant shall assert no claim under the United States Constitution, any statute, Rule

410 of the Federal Rules of Evidence, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, or any other federal rule, that defendant's statements pursuant to this agreement or any leads derived therefrom, should be suppressed or are inadmissible;

b. The defendant waives any right to claim that evidence presented in such prosecution is tainted by virtue of the statements the defendant has made; and

c. The defendant waives any and all defenses based on the statute of limitations with respect to any such prosecution that is not time-barred on the date that this agreement is signed by the parties.

19. The defendant agrees that if the Court does not accept the defendant's plea of guilty, this agreement shall be null and void.

20. The defendant understands that this agreement is binding only upon the Computer Crimes and Intellectual Property Section and the Public Integrity Section of the United States Department of Justice, Criminal Division. The United States Attorney for the District of Idaho has in a separate letter declined prosecution on any potential charges arising from the phone jamming scheme described in the accompanying Factual Basis for Plea. This agreement does not bind any other United States Attorney's Office, nor does it bind any state or local prosecutor. If requested, however, the Computer Crimes and Intellectual Property Section and/or the Public Integrity Section will bring this agreement to the attention of any other prosecuting jurisdiction and ask that jurisdiction to abide by the provisions of this plea agreement. The defendant understands that other prosecuting jurisdictions retain discretion over whether to abide by the provisions of this agreement.

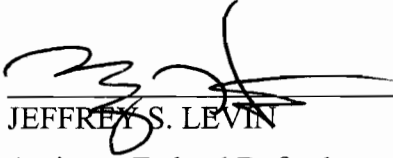
21. This agreement and the Factual Basis for Plea constitute the entire agreement between the United States and the defendant. No other promises, agreements, or representations exist or have

been made to the defendant or the defendant's attorneys by the government in connection with this case. This agreement may be amended only by a writing signed by all parties.

Dated: 11-6-06, 2006

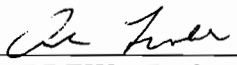


SHAUN HANSEN
Defendant



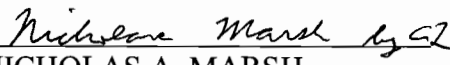
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	:	Harassment by Repeated Calling)
	:	
Defendant.	:	

FACTUAL BASIS FOR PLEA

At all times relevant hereto:

1. Defendant SHAUN HANSEN was a co-owner/operator of MYLO ENTERPRISES, an Idaho-based company engaged in the business of telemarketing services.

2. In or about late October or early November 2002, a coconspirator telephoned HANSEN to discuss a project. During that call and subsequent telephone calls, HANSEN agreed that employees of MYLO ENTERPRISES, which was located in the State of Idaho, would place hang-up calls to six East Coast/New England area telephone numbers throughout the day on November 5, 2002. The telephone numbers provided to HANSEN were as follows: (603) 335-5571, (603) 335-6220, (603) 542-9539, (603) 622-0901, (603) 889-0400, and (603) 669-1050. HANSEN knew that at least five of the numbers to be called were numbers to offices of the Democratic Party.

HANSEN further knew that the purpose of the hang-up calling scheme was to harass¹ the

¹ For purposes of this factual proffer, the term “harass” is defined in the same manner as the district court defined that term in its jury instructions in the companion case, based on identical facts, of United States of America v. James Tobin, Docket No. 04-216-01-SM in the United States District Court for the District of New Hampshire:

“Harass. A person uses the telephone to harass another if he or she intentionally employs the phone in a way that is not meant as a good faith effort to communicate with a person at the

individuals who would be receiving the hang-up calls, thereby disrupting the activities of the Democratic Party.

3. In or about early November 2002, defendant SHAUN HANSEN made arrangements for employees of MYLO ENTERPRISES to place repeated hang-up calls from Sandpoint, Idaho, on November 5, 2002, to six East Coast/New England area telephone numbers to be provided to HANSEN. On or about November 4, 2002, MYLO ENTERPRISES received a payment of \$2,500.00 for placing the calls. The defendant, SHAUN HANSEN, accepted delivery of the check on behalf of MYLO ENTERPRISES.

4. On or about November 4, 2002, the six telephone numbers to be “jammed” on November 5, 2002, including the five numbers to offices of the Democratic Party, were communicated to defendant SHAUN HANSEN by a coconspirator. On or about November 5, 2002, between approximately 7:45 a.m. EST and approximately 9:10 a.m. EST, employees of MYLO ENTERPRISES – at HANSEN’s direction – placed interstate telephone calls from Idaho to the six

number called and is done with an unjustifiable motive. So, for example, it is possible to intentionally cause the telephone of another to ring repeatedly and yet not violate the law if the caller is trying, in good faith, to contact someone at the number called.

If, however, the caller causes the telephone of another to ring repeatedly and the caller is doing so for reasons other than a good faith effort to communicate with someone at the number called, the law deems such conduct to be harassing. So, in the context of this case, the word harass means and describes conduct that is intentionally designed not to communicate, but instead to impede, distract, disrupt or undermine, in a substantial and not a trivial way, the ability of persons at the called numbers to communicate with others and to effectively go about their business.”

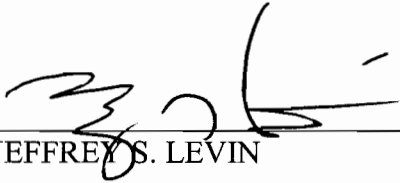
Jury Instructions, pp. 30-31, Document 144, United States of America v. James Tobin, Docket No. 04-216-01-SM in the United States District Court for the District of New Hampshire.

identified telephone numbers in the East Coast/New England area several hundred times, causing the phones to ring repeatedly and continuously until answered, and then hung up.

Dated: 11-6-06, 2006

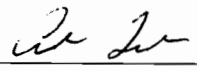


SHAUN HANSEN
Defendant




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