

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:15-cr-11

v.

Hon. R. Allan Edgar
United States District Judge

THOMAS KEVIN HAMEL,

Defendant.

PLEA AGREEMENT

This constitutes the plea agreement between Thomas Kevin Hamel ("Defendant") and the United States Attorney's Office for the Western District of Michigan. The terms of the agreement are as follows:

1. The Defendant Agrees to Plead Guilty. The Defendant agrees to plead guilty to Count 1 of the Indictment charging the Defendant with sexual exploitation of a minor and attempted sexual exploitation of a minor, in violation of Title 18, United States Code, Section 2251(a).

2. The Defendant Understands the Crime. In order for the Defendant to be guilty of violating Title 18, United States Code, Section 2251(a), the following must be true:

A. the Defendant used a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct; and

B. the Defendant knew or had reason to know that the visual depiction was produced using materials that were mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including computer.

The Defendant is pleading guilty because he is guilty of the charge described above.

3. The Defendant Understands the Penalty.

A. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 2251(a), is the following: thirty years' imprisonment; at least five years and up to a lifetime of supervised release; a fine of \$250,000; and a mandatory special assessment of \$100. The Defendant agrees to pay the special assessment at or before the time of sentencing unless the Defendant affirmatively demonstrates to the Court that he lacks the ability to pay.

B. Mandatory Minimum Sentence. The Defendant understands that the statutory mandatory minimum sentence that the Court must impose for a violation of Title 18, United States Code, Section 2251(a) is fifteen years' imprisonment.

C. Mandatory Restitution. The Defendant understands that he will be required to pay full restitution as required by law. In addition, the Defendant agrees that the restitution order is not restricted to the amounts applicable to the count to which the Defendant is pleading guilty, and he agrees to pay full restitution to any victims of his sexual exploitation of a minor or possession of child pornography as charged in Counts 2 through 6 of the Indictment in this case, including, but not limited to, the victims identified by the National Center for Missing and Exploited Children in his case.

D. Supervised Release. Supervised release is a period of time following imprisonment during which the Defendant will be subject to various restrictions and requirements. The Defendant understands that if he violates one or more of the conditions of any supervised release imposed, he may be returned to prison for all or part of the term of supervised

release, which could result in the Defendant serving a total term of imprisonment greater than the statutory maximum stated above.

4. Consent To Have United States Magistrate Judge Preside Over Guilty Plea. The Defendant hereby acknowledges the following:

- A. That he understands the charge against him and the possible penalty;
- B. That he desires to enter a plea of guilty pursuant to this plea agreement;
- C. That he has the right to have all proceedings, including the plea hearing, conducted by the United States District Judge assigned to this case; and
- D. That a United States Magistrate Judge may conduct the plea hearing with the Defendant's consent and the consent of his attorney and the United States Attorney's Office.

Understanding these rights, the Defendant freely and voluntarily consents to having a United States Magistrate Judge preside over the guilty plea hearing and gives up his right to proceed before a United States District Judge. The Defendant understands that the United States District Judge will accept or reject the plea, accept or reject the plea agreement, and will impose sentence.

5. The Defendant Agrees to Register as a Sexual Offender. The Defendant acknowledges and agrees that he must register as a sex offender in all applicable jurisdictions, including, but not limited to, the jurisdictions where he was convicted, resides, works, and attends school. The Defendant understands that failure to register may subject him to prosecution under applicable state law as well as federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment or both.

6. Factual Basis of Guilt and Relevant Conduct. The Defendant and the United States Attorney's Office agree and stipulate to the following statement of facts, which need not be proven at the time of the plea or sentencing:

Between in or about 2009 and 2013, the Defendant was serving as a volunteer athletic trainer for the St. Ignace LaSalle High School located in St. Ignace, Mackinac County, Michigan. Defendant had been a teacher for approximately 27 years before his retirement in 2009, and had also served as the athletic trainer prior to his retirement. As an athletic trainer, the Defendant worked with the high school football and wrestling teams. Between in or about August 2010 and June 2011, Victim 1 was a freshman at St. Ignace LaSalle High School and was a member of the football team. Sometime during that time frame, Victim 1 went into the training room at St. Ignace LaSalle High School to be taped up by the Defendant. To facilitate the taping, Victim 1 pulled down his football pants and undergarments, and was nude from the waist down.

Unbeknownst to Victim 1, the Defendant had secreted his ~~cellular telephone~~ ^{pen camera} in his pocket and used it to video record Victim 1 as he was being taped up. The Defendant used his ~~cellular telephone~~ ^{pen camera} to surreptitiously video record Victim 1, and the focus of the video is Victim 1's nude genitals. Victim 1 was approximately 14 years of age at the time the video was made. The Defendant created this video to elicit a sexual response in the viewer. The Defendant then transferred the video from his ~~cellular telephone~~ ^{pen camera} to a computer, and then from the computer to a USB thumb drive. The ~~cellular telephone~~ ^{pen camera}, computer and associated hard drive, and USB thumb drive were all manufactured overseas and had traveled in foreign and interstate commerce, as the Defendant knew or had reason to know.

Between 2007 and December 2012, the Defendant manufactured several video recordings with his ~~cellular telephone~~ ^{pen camera} involving minors who were members of the St. Ignace LaSalle High

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School wrestling team. These videos were shot in the trainer's room or locker room at St. Ignace LaSalle High School or at the St. Ignace Middle School locker room. These videos depict male wrestlers who were under the age of 18, including Victims 2 through 5, during weigh-ins, when the wrestlers were nude, or coming from the showers and putting their clothing on. The Defendant stood next to the weigh-in scale with his ^{Pen camera} ~~cellular telephone~~ on his hip, video recording the wrestlers as they approached and stepped up on the scale. The focus of these videos was the nude genitals of the wrestlers who were weighing in at the time. At other times, the Defendant walked around the locker room with his ^{Pen camera} ~~cellular phone~~ on his hip video recording as boys were coming out of the showers and putting on their clothing, exposing their nude genitals. The Defendant created these videos to elicit a sexual response in the viewer.

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None of the wrestlers were aware that the Defendant was video recording them, and none gave him permission to do so. The Defendant then transferred the videos from his ^{Pen} ~~cellular~~ ^{camera} ~~telephone~~ to a computer, and then from the computer to a USB thumb drive. The ^{Pen} ~~cellular~~ ^{camera} ~~telephone~~, computer and associated hard drive, and USB thumb drive were all manufactured overseas and had traveled in foreign and interstate commerce, as the Defendant knew or had reason to know.

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A search warrant was executed at the Defendant's residence on December 6, 2012. Several items of electronic media were seized and a forensic examination was performed upon them. The forensic examination revealed images and videos of child pornography on a Hewlett Packard laptop computer, serial number CNF94155NC, containing a 320GB Hitachi hard drive, serial number 090927PB4C01QYJT8E8B, a Verbatim 16GB USB thumb drive, and a SanDisk Cruzer 16GB USB thumb drive, all of which had been manufactured overseas, and had traveled in foreign and interstate commerce prior to the Defendant's ownership. Forensic analysts located

approximately 2,400 images and videos of child pornography on the Defendant's computer, hard drive, and thumb drives. The forensic analysis of the Defendant's computer also revealed internet search terms indicative of searches for child pornography.

The child pornography images and videos were forwarded to the National Center for Missing and Exploited Children (NCMEC), who identified one known child pornography series. Some of these images and videos involved prepubescent minor children.

7. The United States Attorney's Office Agrees:

A. Acceptance of Responsibility. The United States Attorney's Office agrees to not oppose the Defendant's request for a reduction of his offense level for acceptance of responsibility under §3E1.1 of the Sentencing Guidelines, provided the Defendant satisfies the criteria for such a reduction. Should the Court grant a two-level reduction as provided herein, the government states that the Defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying it of his intention to enter a guilty plea, thereby permitting the government to avoid preparing for trial, and hereby moves the Court to grant an additional one-level reduction if the adjusted offense level is 16 or greater.

B. Dismissal of Other Counts/Charges. The United States Attorney's Office agrees to move to dismiss the remaining counts of the Indictment against the Defendant at the time of sentencing. The Defendant agrees, however, that in determining the sentence the Court may consider the dismissed counts in determining the applicable Sentencing Guidelines range, where the sentence should fall within the applicable guidelines range, and the propriety of any departure from the calculated guidelines range. In addition, the Defendant agrees that the Court may consider any victim impact statements submitted by victims of the dismissed counts

in determining an appropriate sentence and restitution. By this agreement the Defendant does not concede that an increased sentence or an upward departure is, in fact, warranted.

C. No Opposition to Low-End. The United States Attorney's Office agrees not to oppose the Defendant's request to be sentenced at the low end of the applicable Sentencing Guidelines range as determined by the Court at sentencing.

D. Prison Placement. The United States Attorney's Office will not object to a request by the Defendant that the Court recommend that the Defendant be confined at any particular institution. Both parties acknowledge that the Bureau of Prisons, in its sole discretion, decides prison placement and that, while the Bureau often gives deference to a Court's recommendation, the Bureau is not required to follow the Court's recommendation.

8. The Sentencing Guidelines. The Defendant understands that, although the United States Sentencing Guidelines (the "Guidelines") are not mandatory, the Court must consult the Guidelines and take them into account when sentencing the Defendant. The Defendant understands that the Court, with the aid of the presentence report, will determine the facts and calculations relevant to sentencing. The Defendant understands that the Defendant and the Defendant's attorney will have the opportunity to review the presentence report and to make objections, suggestions, and recommendations concerning the calculation of the Guideline range and the sentence to be imposed. The Defendant further understands that the Court shall make the final determination of the Guideline range that applies in this case, and may impose a sentence within, above, or below the Guideline range, subject to the statutory minimum and maximum penalties described elsewhere in this agreement. The Defendant further understands that disagreement with the Guideline range or sentence shall not constitute a basis for withdrawal of the plea.

9. Waiver of Constitutional Rights. By pleading guilty, the Defendant gives up the right to persist in a plea of not guilty and the right to a speedy and public trial by jury or by the Court. As a result of the Defendant's guilty plea, there will be no trial. At any trial, whether by jury or by the Court, the Defendant would have had the following rights:

A. The right to the assistance of counsel, including, if the Defendant could not afford an attorney, the right to have the Court appoint an attorney to represent the Defendant.

B. The right to be presumed innocent and to have the burden of proof placed on the government to prove the Defendant guilty beyond a reasonable doubt.

C. The right to confront and cross-examine witnesses against the Defendant.

D. The right, if the Defendant wished, to testify on the Defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

E. The right not to be compelled to testify, and, if the Defendant chose not to testify or present evidence, to have that choice not be used against the Defendant.

By pleading guilty, the Defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

10. Defendant Consents To Forfeiture of His Electronic Media. Defendant admits that he used his Hewlett Packard laptop computer, serial number CNF94155NC, containing a 320GB Hitachi hard drive, serial number 090927PB4C01QYJT8E8B, a Verbatim 16GB USB thumb drive, and a SanDisk Cruzer 16GB USB thumb drive, to access and possess child pornographic images and videos in the commission of the offense charged in Count 1 of the Indictment. Defendant agrees that based on that conduct, these items are subject to criminal

forfeiture pursuant to 18 U.S.C. § 2253(a)(1) and (3). Defendant consents to the entry of an order of forfeiture at or before sentencing with respect to these items and to the forfeiture of these items. Defendant further agrees not to assist any other persons in any claims or potential claims they may have or bring against these items.

11. Waiver of Appeal.

A. Waiver. In exchange for the promises made by the government in entering this plea agreement, the Defendant waives all rights to appeal or collaterally attack the Defendant's conviction, sentence, or any other matter related to this prosecution, except as listed below.

B. Exceptions. The Defendant may appeal or seek collateral relief to raise a claim, if otherwise permitted by law in such a proceeding, on the following grounds:

1. the Defendant's sentence on any count of conviction exceeded the statutory maximum for that count;
2. the Defendant's sentence was based on an unconstitutional factor, such as race, religion, national origin, or gender;
3. the Defendant's sentence is above the Sentencing Guidelines range as determined by the court at sentencing and is unreasonable;
4. the guilty plea was involuntary or unknowing;
5. the attorney who represented Defendant during the course of this criminal case provided ineffective assistance of counsel.

If Defendant appeals or seeks collateral relief, he may not present any issue in the proceeding other than those described in this subparagraph.

12. The Court is Not a Party to This Agreement. The Defendant understands that the Court is not a party to this agreement and is under no obligation to accept any recommendation by the United States Attorney's Office or the parties regarding the sentence to be imposed. The Defendant further understands that, even if the Court ignores such a recommendation or imposes any sentence up to the maximum established by statute, the Defendant cannot, for that reason, withdraw his guilty plea, and he will remain bound to fulfill all his obligations under this agreement. The Defendant understands that no one – not the prosecutor, the Defendant's attorney, or the Court – can make a binding prediction or promise regarding the sentence the Defendant will receive, except that it will be within the statutory minimum and maximum.

13. FOIA Requests. 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. § 552a.

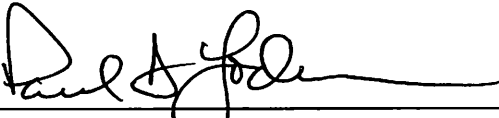
14. This Agreement is Limited to the Parties. This agreement is limited to the United States Attorney's Office for the Western District of Michigan, and cannot bind any other federal, state or local prosecuting, administrative or regulatory authority. This agreement applies only to crimes committed by the Defendant. This agreement does not apply to or preclude any past, present, or future forfeiture or civil actions.

15. This is the Complete Agreement. This agreement has been entered into by both sides freely, knowingly, and voluntarily, and it incorporates the complete understanding between the parties. No other promises have been made, nor may any additional agreements,

understandings or conditions be entered into unless in a writing signed by all parties or on the record in open court.

PATRICK A. MILES, JR.
United States Attorney

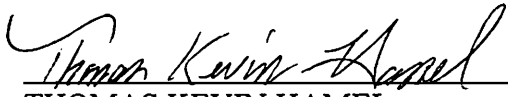
Date: 2/1/16



PAUL D. LOCHNER
Assistant United States Attorney

I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement, and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing provisions, and of the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.

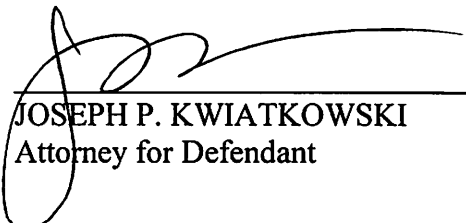
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THOMAS KEVIN HAMEL
Defendant

I am Thomas Kevin Hamel's attorney. I have carefully discussed every part of this agreement with my client. Further, I have fully advised my client of his rights, of possible defenses, of the sentencing provisions and of the consequences of entering into this agreement. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.

Date: 2-1-16



JOSEPH P. KWIATKOWSKI
Attorney for Defendant