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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) No. 04 CR 0673-2
) Judge Blanche M. Manning
)
 JONAS COLE BOBAN)

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, JONAS COLE BOBAN, and his attorney, ALAN R. BRUNELL is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C) as set forth in paragraph 20.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 04 CR 0673-2.

This Plea Agreement concerns criminal liability only, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, JONAS COLE BOBAN, and his attorney, ALAN R. BRUNELL have agreed upon the following:

1. Defendant acknowledges that he has been charged in Count One of the indictment in this case with conspiring to possess with intent to distribute and to distribute controlled substances, namely, 3,4 Methylenedioxymethamphetamine (MDMA), and mixtures containing marihuana, Schedule I Controlled Substances, in violation of Title 21, United States Code, Section 846 and Title 18, United States Code, Section 2.

2. Defendant has read the charge against him contained in Count One of the indictment and that charge has been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crime with which he has been charged.

4. Defendant will enter a voluntary plea of guilty to the charge contained in Count One of the indictment in this case.

5. Defendant will plead guilty because he is in fact guilty of the charge contained in Count One of the indictment. In pleading guilty, defendant admits the following, which establish his guilt and relevant sentencing facts beyond a reasonable doubt:

Beginning in or about the summer of 2000, and continuing until in or about July of 2002, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant BOBAN conspired and agreed with others to knowingly and intentionally possess with intent to distribute and to distribute controlled substances, namely, 3, 4 Methylendioxyamphetamine (MDMA) ("Ecstasy") and mixtures containing marihuana, Schedule I Controlled Substances.

From in or about the summer of 2000 through in or about October of 2001, defendant BOBAN received approximately 20 shipments of Ecstasy tablets totaling in excess of 80,000 tablets from his Canadian sources of supply who are identified herein as DW and IS ("sources of supply"). The Ecstasy tablets were transported by the sources of supply from Canada to defendant BOBAN and/or co-defendant Eric Paul Alphin at various locations in Michigan and Illinois, including Will County, Illinois. The sources of supply also utilized the services of co-defendant Daniel Joseph Dorey to deliver the Ecstasy tablets and/or marihuana to co-defendant Eric Paul Alphin. Upon taking receipt of the Ecstasy tablets and/or marihuana defendant BOBAN and/or co-defendant Eric Paul Alphin paid the sources of supply directly. Co-defendant Eric Paul Alphin also indirectly paid the sources of supply for the Ecstasy tablets and/or marihuana that was delivered through co-defendant Daniel Joseph Dorey.

Defendant BOBAN and/or co-defendant Eric Paul Alphin sold the Ecstasy tablets obtained from the sources of supply to customers located in and around Will County, Illinois, the greater Chicago area, Wisconsin, Michigan, and elsewhere.

The preceding paragraphs are intended solely to provide a factual basis for the defendant's plea of guilty. They are not intended to be a detailed statement of everything the defendant knows related to the offense of conviction or criminal activity by others.

6. For purposes of calculating the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree and disagree on the following points:

(a) The November 1, 2001 edition of the *Guidelines Manual* applies to this case.

(b) The parties agree that the quantity of Ecstasy tablets involved in the offense of conviction exceeded 80,000. However the defendant disagrees as to the method to be used to assess the weight per pill and therefore the amount of MDMA involved in the offense of conviction. It is the government's position that the amount of MDMA involved for which the defendant is accountable is in excess of 20,000 grams based upon a weight per tablet of 250 milligrams. Under the drug equivalency tables found in Guideline 2D1.1, one gram of MDMA is equivalent to 500

grams of marihuana. It is the government's position that the defendant is accountable for the equivalent of more than 10,000 kilograms and less than 30,000 kilograms of marihuana, and pursuant to Guidelines 2D1.1(a)(3) and (c)(2), the base offense level is level 36. The defendant disagrees.

(c) Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional information or evidence in conflict with the defendant's acceptance of personal responsibility, and if the defendant continues to accept responsibility for his actions within the meaning of Guideline 3E1.1(a), the government agrees that a two-level reduction in the offense level is appropriate.

(d) Defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently, within the meaning of Guideline 3E1.1(b). Accordingly, at the time of defendant's sentencing hearing, the government will move for an additional 1-level reduction in the offense level, provided the Court determines the offense level to be 16 or greater prior to the operation of Guideline 3E1.1(a).

7. Based on the facts known to the government, the defendant's criminal history points equal six;

(a) On or about February 21, 1997, the defendant was convicted of battery in case number 96 CM 6718 in the Circuit Court for Will County and was sentenced to 12 months supervision. Pursuant to 2Guideline 4A1.1(c) defendant is assessed one criminal history point.

(b) On or about February 21, 1998, the defendant was convicted of battery in case number 97 CM 5190 in the Circuit Court for Will County and was sentenced to 12 months supervision. Pursuant to Guideline 4A1.1(c) defendant is assessed one criminal history point.

(c) On or about October 28, 1998, the defendant was convicted of battery in case number 98 CM 1162 in the Circuit Court for Will County and was sentenced to 12 months conditional discharge. Pursuant to Guideline 4A1.1(c) defendant is assessed one criminal history point.

(d) On or about November 15, 1999, the defendant was convicted of possession with intent to deliver a controlled substance (2 counts: heroin analog and cannabis), possession of a controlled substance, and a FOID violation in case number 97 CF 5515 in the Circuit Court for Will County and on January 26, 2000, was sentenced to 10 years, 5 years, 3 years, and 364 days imprisonment. On or about June 23, 2000, the defendant was re-sentenced to 30 months T.A.S.C. probation which order was

entered August 24, 2000. Pursuant to Guideline 4A1.1(c) defendant is assessed one criminal history point.

(e) On or about November 15, 1999, the defendant was convicted of possession with intent to deliver a controlled substance (2 counts) in case number 99 CF 0928 in the Circuit Court for Will County and on January 26, 2000, was sentenced to 10 years imprisonment on Count I and 5 years imprisonment on Count IV. On or about October 4, 2001, the defendant was re-sentenced to 46 months and 18 days T.A.S.C. probation. Pursuant to Guideline 4A1.1(c) defendant is assessed no criminal history points for this sentence.

(f) On or about November 15, 1999, the defendant was convicted of burglary in case number 99 CF 1222 in the Circuit Court for Will County and on or about January 26, 2000, was sentenced to 7 years imprisonment. On or about October 24, 2001, the defendant was re-sentenced to 46 months and 18 days probation. Pursuant to Guideline 4A1.1(c) defendant is assessed no criminal history points for this sentence.

(g) The defendant committed the instant offense while he was on probation for the offenses in case number 97 CF 5515 in the Circuit Court for Will County wherein he was sentenced to 30 months probation on June 23, 2000. Pursuant to Guideline 4A1.1(d) defendant is assessed two criminal history points.

8. The parties disagree on whether the defendant is a career offender under Guideline 4B1.1(C) based upon the convictions referred to in paragraphs 7(d) and(e). It is the government's position that the defendant is a career offender under Guideline 4B1.1(C) and that the defendant's offense level is level 36 and the defendant's criminal history category is VI. The defendant disagrees.

9. Defendant understands that, in imposing the sentence, the Court will be guided by the United States Sentencing Guidelines. The defendant understands that the Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. The defendant and his attorney and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. The defendant understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

11. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing.

The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw his plea on the basis of such corrections.

12. Defendant understands that the charge contained in the indictment carries a maximum penalty of twenty years imprisonment, a maximum fine of \$1,000,000, and a term of supervised release of at least three years up to any number of years, including life, as well as any restitution which the Court may order.

13. The defendant understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed \$100 on the count to which he has pled guilty, in addition to any other penalty imposed. The defendant understands that the government will request the Court to order the defendant to pay the special assessment of \$100 at the time of sentencing with a check or money order made payable to the Clerk of the U.S. District Court.

14. Defendant agrees he will fully and truthfully cooperate with the United States Attorney for the Northern District of Illinois in any matter in which he is called upon to cooperate. This cooperation shall include providing complete and truthful

information in any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil or administrative proceeding. Only the United States Attorney for the Northern District of Illinois may require defendant's cooperation pursuant to this Plea Agreement. Defendant agrees to the postponement of his sentencing until after the conclusion of his cooperation with the government.

15. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a 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 laypersons selected at random. 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 so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or

not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict him unless, after hearing all the evidence, it was persuaded of defendant's guilt 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 the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

(e) At a 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 in his own behalf.

16. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the

consequences of his waiver of those rights. Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial and only may appeal the validity of this plea of guilty.

17. The defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined), in exchange for the concessions made by the United States in this Plea Agreement. The defendant also waives his right to challenge his sentence or the manner in which it was determined in any collateral attack, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

18. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to any party.

19. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of

defendant's conduct regarding the charge against him, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

20. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation. If the government determines that defendant has continued to provide full and truthful cooperation as required by this Plea Agreement, then the government shall move the Court, pursuant to Guideline § 5K1.1 to depart from the guideline range, and to impose the specific sentence agreed to by the parties as outlined below. Defendant understands that the decision to depart rests solely with the Court. However, this Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that the sentence imposed by the Court shall include a term of imprisonment in the custody of the Bureau of Prisons of sixty percent (60%) of the low end of the applicable guidelines range. Other than the agreed term of incarceration, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the agreed term of incarceration set forth, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(c)(3) and (5). If, however, the Court refuses to impose the agreed term of incarceration set forth herein, thereby

rejecting this Plea Agreement, or otherwise refuses to accept defendant's plea of guilty, either party has the right to withdraw from this Plea Agreement.

21. Defendant understands that his compliance with each part of this Plea Agreement extends throughout and beyond the period of his sentence, and failure to abide by any term of the Plea Agreement is a violation of the Agreement. He further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute the defendant not subject to any of the limits set forth in this Agreement, or to resentence the defendant. The defendant understands and agrees that in the event that this Plea Agreement is breached by the defendant, and the government elects to void the Plea Agreement and prosecute the defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this agreement may be commenced against the defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

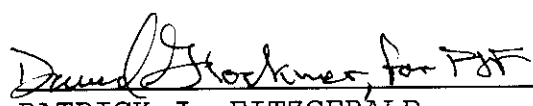
22. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements

reached, other than those set forth in this Agreement, to cause defendant to plead guilty.


23. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

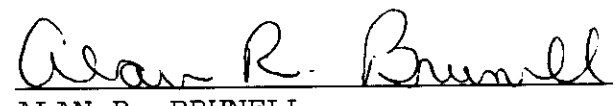
24. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: 9.22.05


PATRICK J. FITZGERALD
United States Attorney


JONAS COLE BOBAN
Defendant


MICHAEL O. LANG
Assistant United States Attorney


ALAN R. BRUNELL
Attorney for Defendant