

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No.: 15-340 (JRT-LIB)

UNITED STATES OF AMERICA,

Plaintiff,

**PLEA AGREEMENT AND
SENTENCING STIPULATIONS**

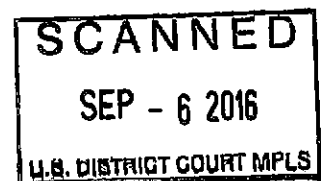
v.

DANNY JAMES HEINRICH,

Defendant.

The United States of America and Danny James Heinrich (hereinafter referred to as the "Defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement is intended to be a global resolution between the Defendant, the United States Attorney's Office for the District of Minnesota, and the State of Minnesota, Stearns County, with respect to only the following incidents: First, the abduction, sexual assault, and murder of J.W.; and second, the possession and receipt of child pornography as set forth in the Indictment herein. Except as provided in the joint agreement, referenced in paragraph 13 of this agreement, this agreement does not bind any other United States Attorney's Office or any other federal or state agency, nor does this agreement extend to any other matter.

1. **Charges.** Defendant agrees to enter a plea of guilty to Count 24 of the Indictment, which charges him with Receipt of Child Pornography, in violation of 18 U.S.C. §§ 2252A(a)(2)(A), 2252A(b)(1) and 2256(8)(A). The United States agrees to move to dismiss all remaining counts in the Indictment as to the Defendant at sentencing.



2. **Factual Basis.** The parties agree that the factual basis set forth in this agreement is true and correct and constitutes sufficient evidence to establish Defendant's guilt beyond a reasonable doubt. Defendant agrees that at the time of his plea colloquy he will provide a more detailed factual statement, under oath, as to all matters subject of this agreement. Defendant agrees that the following facts are true:

Indictment – Count 24 – Receipt of Child Pornography

- a. On or about March 1, 2014, in the State and District of Minnesota, Defendant did knowingly receive child pornography, that is, a visual depiction that had been shipped and transported using a means and facility of interstate and foreign commerce, including by computer, and had been mailed, shipped and transported in and affecting interstate and foreign commerce, where the production of such visual depictions involved the use of a minor engaging in sexually explicit conduct and such depictions were of such conduct.
- b. Specifically, Defendant received a photograph with the computer title "lod398.jpg," which depicts a minor female with long brown curly hair. The child is laying on a bed with a beige blanket and her head is resting on a pillow. The girl is naked and her genitals are fully exposed for the camera, conduct constituting lascivious exhibition of the pubic area. Defendant received this photograph on a computer using the Internet.

Relevant Conduct

- c. **Relevant Conduct:** In addition to the child pornography listed above, Defendant agrees to the following relevant conduct:
 - i. On or about October 22, 1989, in the State and District of Minnesota, Stearns County, Defendant abducted, sexually assaulted, and murdered J.W., an 11-year old minor male.
 - ii. On January 13, 1989, in the State and District of Minnesota, Stearns County, Defendant abducted and sexually assaulted JS, a 12-year old minor male.
 - iii. Defendant admits that he possessed 10 to 150 child pornography images depicting known child victims, including images of prepubescent minors under the age of 12, material that portrays

sadistic or masochistic conduct, and images of morphed child pornography.

3. **Waiver of Pretrial Motions.** Defendant understands and agrees he has certain rights to litigate pretrial motions in this case. Defendant has filed and pursued pretrial motions, including motions to suppress evidence obtained from the search of his home in Annandale, Minnesota occurring on July 28, 2015, and to suppress Defendant's statements to law enforcement on July 28, 2015 and thereafter. As part of this plea agreement, and based upon the concessions of the United States contained herein, Defendant knowingly, willingly, and voluntarily gives up the right to further litigate any and all pre-trial motions and affirmatively withdraws all motions, including all objections to the Magistrate's Report and Recommendation denying his motions to suppress, currently pending before the Court.

4. **Statutory Penalties.** The parties agree that Defendant is subject to the following statutory penalties per 18 U.S.C. § 2252A(b)(1):

- a. a mandatory minimum of 5 years' imprisonment;
- b. a maximum of 20 years' imprisonment;
- c. a supervised release term of at least five years up to a maximum supervised release term of life;
- d. a fine of up to \$250,000;
- e. a mandatory special assessment of \$100; and
- f. payment of mandatory restitution in an amount to be determined by the Court.

5. **Revocation of Supervised Release.** Defendant understands that if he violates any condition of supervised release, Defendant could be sentenced to an

additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583(k).

6. **Guideline Calculations.** The parties acknowledge that Defendant will be sentenced in accordance with 18 U.S.C. § 3551, *et seq.* The parties also acknowledge that the Court will consider the United States Sentencing Guidelines in determining the appropriate sentence and stipulate to the following guideline calculations:

- a. **Base Offense Level.** The parties agree that the base offense level for receipt of child pornography is **22**. (U.S.S.G. § 2G2.2(a)(1)). The addition of the applicable specific offense character set forth below, results in a total offense level of **35**.
- b. **Specific Offense Characteristics.** The parties agree that: the offense level should be decreased by **2 levels** because the Defendant's conduct was limited to receipt/solicitation of materials; increased by **2 levels** because the material involved prepubescent minors (U.S.S.G. § 2G2.2(b)(2)); **4 levels** because the offense involved materials that portray sadistic or masochistic conduct or other depictions of violence, for example, Image 8 in Binder # SD-29784-4 depicts a minor being anally penetrated with an object, (U.S.S.G. § 2G2.2(b)(4)); **2 levels** because the offense involved the use of a computer and interactive computer service (U.S.S.G. § 2G2.2(b)(6)); **2 levels** because the offense involved between 10 to 150 images U.S.S.G. § 2G2.2(b)(7)(A); and **5 levels** because Defendant engaged in a pattern of activity involving abuse of minor(s), as detailed in the relevant conduct set forth in this agreement (U.S.S.G. § 2G2.2(b)(5)). The parties agree that no other specific offense characteristics apply.
- c. **Acceptance of Responsibility.** The government agrees to recommend that Defendant receive a **3-level** reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, Defendant understands and agrees that this recommendation is conditioned upon the following: (i) Defendant testifies truthfully during the change of plea and sentencing hearings, (ii) Defendant cooperates with the Probation Office in the pre-sentence investigation, including disclosure of truthful and accurate financial information to the Probation Office, and (iii) Defendant commits no further acts inconsistent with acceptance of responsibility. (U.S.S.G. §3E1.1(a) and (b)). The parties agree that no other Chapter 3 adjustments apply.

- d. Criminal History Category. Based on information available at this time, the parties believe that Defendant's criminal history category is I. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history and related status will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing. Defendant understands that if the presentence investigation reveals any prior adult or juvenile sentence which should be included within his criminal history under the U.S. Sentencing Guidelines, Defendant will be sentenced based on his true criminal history category, and he will not be permitted to withdraw from this Plea Agreement. (U.S.S.G. § 4A1.1).
- e. Guideline Range. If the adjusted offense level is 32, and the criminal history category is I, the Sentencing Guidelines range is 121-151 months of imprisonment.
- f. Fine Range. If the adjusted offense level is 32, the fine range is \$35,000 to \$350,000. (U.S.S.G. § 5E1.2(c)(3)).
- g. Supervised Release. The Sentencing Guidelines require a term of supervised release of at least five years and up to a life term if a term of imprisonment of more than one year is imposed. (U.S.S.G. §§ 5D1.2(a)(1) and 5D1.2(b)(2); 18 U.S.C. § 3583(k)).
- h. Sentencing Recommendation and Variance. The parties agree that notwithstanding the Sentencing Guidelines, the facts set forth in the factual basis and those to be admitted at the plea hearing constitute grounds for an upward variance from the Sentencing Guidelines to the statutory maximum of 240 months' imprisonment in light of the factors set forth in 18 U.S.C. 3553(a). Both parties agree that 240 months' imprisonment is appropriate and will seek an upward variance and advocate for that sentence.

7. **Discretion of the Court**. The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable Guidelines factors and the applicable criminal history category. The Court may also depart from the applicable Guidelines range. If the Court determines that the applicable

Guideline calculations or Defendant's criminal history category are different from that stated above, the parties may not withdraw from this agreement, and Defendant will be sentenced pursuant to the Court's determinations.

8. **Special Assessment.** The Guidelines require payment of a special assessment in the amount of \$100 for each felony count of which Defendant is convicted. (U.S.S.G. § 5E1.3). The \$100 special assessment becomes due and payable at sentencing.

9. **Restitution.** Defendant understands and agrees that 18 U.S.C. § 2259 and the Mandatory Victim Restitution Act (MVRA), 18 U.S.C. § 3663A, apply and that the Court is required to order Defendant to make restitution to the victims of his crime. There is no agreement with regard to the amount of restitution; however, Defendant understands that the Court may order Defendant to make restitution to any victims of his crimes regardless of whether the victim was named in the Indictment or whether the victim is included in the count of conviction.

10. **Forfeiture.** Defendant agrees to forfeit to the United States, pursuant to 18 U.S.C. § 2253(a):

- a. any visual depiction described in section 2251, 2251A, 2252, 2252A, 2252B or 2260 of Chapter 110, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of Chapter 110;
- b. any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and
- c. any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

Specifically, the parties agree that Defendant will forfeit the following to the United States: one Gateway Desktop Computer, Model 510XL, bearing serial number 1099991119. Defendant agrees that this property is subject to forfeiture because the items were used to commit the offense charged in Count 24 of the Indictment. The United States reserves the right to seek the forfeiture of additional property.

If any of the above-described forfeitable property, as a result of any act or omission of Defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 2253(b), to seek forfeiture of any other property of Defendant up to the value of the above forfeitable property.

11. **Waivers of Appeal and Collateral Attack.** Defendant understands that 18 U.S.C. § 3742 affords Defendant the right to appeal the sentence imposed in this case. Acknowledging this right, and in exchange for the concessions made by the United States in this plea agreement, Defendant hereby waives all rights conferred by 18 U.S.C. § 3742 to appeal Defendant's sentence, unless the sentence exceeds 240 months. The United States agrees to waive its right to appeal unless the sentence is less than 240 months' imprisonment. Defendant waives all constitutional challenges to the evidence in this

case. In addition, Defendant expressly waives the right to petition under 28 U.S.C. § 2255, except for petitions alleging ineffective assistance of counsel. Defendant understands that this agreement is a negotiated settlement of numerous matters, including charged and uncharged criminal conduct. The conviction and sentence contained in this agreement are essential to the agreement. Should Defendant's conviction pursuant to this agreement be vacated or his sentence reduced for any reason, the parties agree that all parties are restored to their pre-agreement rights; Defendant specifically waives any applicable statute of limitations as to the offenses charged in the Indictment (Doc. No. 18); and Defendant agrees that any statements he has made to law enforcement and in Court pursuant to this agreement can be used against him in any Federal prosecution. Defendant has discussed these rights with Defendant's attorneys. Defendant understands the rights being waived, and Defendant waives these rights knowingly, intelligently, and voluntarily.

12. **Civil Commitment.** Defendant understands that by pleading guilty, he may be subject to civil commitment by state or federal authorities under statutes including, but not limited to, 18 U.S.C. § 4248, Minnesota Statute Chapter 253B, or any similar law of any other jurisdiction. This could result in Defendant being confined to a facility after his release from any sentence served pursuant to this agreement. Defendant understands that no one, including his attorneys, the Assistant U.S. Attorneys, or the Judge, can predict with certainty the effect of his conviction with respect to civil commitment. Regardless of any civil commitment consequences that may follow from his guilty plea, Defendant still wishes to plead guilty as set forth in this plea agreement.

13. **Complete Agreement.** This, along with two agreements signed before entry of plea: 1) the Joint Agreement dated August 29, 2016 and signed August 30, 2016, (Attachment 1); and, 2) the Proffer Agreement dated and signed September 1, 2016 (Attachment 2), is the entire agreement and understanding between the United States and Defendant.

Date: 9/6/16

ANDREW M. LUGER
United States Attorney



ANDREW M. LUGER
U.S. Attorney

Date: 9/6/2016



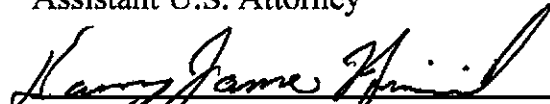
STEVEN L. SCHLEICHER
Assistant U.S. Attorney

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Assistant U.S. Attorney

Date: 9/6/2016



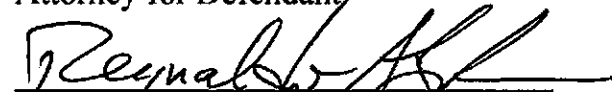
DANNY JAMES HEINRICH
Defendant

Date: 9/6/2016



KATHERIAN ROE
Chief Federal Defender
Attorney for Defendant

Date: 9/6/16



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