

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 4:18-CR-00975-CDP
)	
RANDY HAYS,)	
)	
Defendant.)	

GUILTY PLEA AGREEMENT

Come now the parties and hereby agree, as follows:

1. PARTIES:

The parties are the defendant RANDY HAYS, represented by defense counsel GREG N. SMITH, and the United States of America (hereinafter "United States" or "Government"), represented by the Office of the United States Attorney for the Eastern District of Missouri and the Civil Rights Division of the United States Department of Justice. This agreement does not, and is not intended to, bind any governmental office or agency other than the United States Attorney for the Eastern District of Missouri and the Civil Rights Division of the United States Department of Justice. The Court is neither a party to, nor bound by, this agreement.

2. GUILTY PLEA:

Pursuant to Rule 11(c)(1)(A), Federal Rules of Criminal Procedure, in exchange for the defendant's voluntary plea of guilty to Count 1 of the Indictment, the United States agrees that it will dismiss Count 2 as to the defendant at the time of sentencing, and agrees that no further federal prosecution will be brought in this District relative to the defendant's conduct on September 17, 2017, of which the Government is aware at this time.

In addition, the parties agree that the U.S. Sentencing Guidelines Total Offense Level analysis agreed to by the parties herein is the result of negotiation and led, in part, to the guilty plea. The parties agree that either party may request a sentence above or below the U.S. Sentencing Guidelines range (combination of Total Offense Level and Criminal History Category) ultimately determined by the Court pursuant to any chapter of the Guidelines and Title 18, United States Code, Section 3553(a) at a sentencing hearing. The parties further agree that notice of any such request will be given no later than ten days prior to sentencing and that said notice shall specify the legal and factual bases for the request.

3. ELEMENTS:

With respect to Count 1, the defendant admits to knowingly violating Title 18, United States Code, Sections 242 and 2, and admits there is a factual basis for the plea and further fully understands that the elements of the crime of aiding and abetting a Deprivation of Constitutional Rights Under Color of Law are:

One, that the defendant was acting under color of law;

Two, that the defendant acted willfully;

Three, that the defendant caused, encouraged, or aided in the deprivation of the victim's Constitutional right not to be subjected to unreasonable seizure, including the right to be free from unreasonable force; and

Four, that the offense resulted in bodily injury and involved the use of a dangerous weapon.

4. FACTS:

The parties agree that the facts in this case are as follows and that the government would prove these facts beyond a reasonable doubt if the case were to go to trial. These facts may be considered as relevant conduct pursuant to Section 1B1.3:

Following the acquittal on September 15, 2017, of former St. Louis Metropolitan Police Department (“SLMPD”) Officer Jason Stockley on a state murder charge stemming from an officer-involved shooting, there were multiple days of concentrated protests in and around St. Louis, Missouri. SLMPD and the City of St. Louis had notice of the impending verdict, planned their protest response, and organized its officers into response teams. Many officers, including Defendant Randy Hays, were detailed to the Civil Disobedience Team (CDT). SLMPD Detective L.H., a 22-year veteran officer of SLMPD, was assigned to work in an undercover capacity during the protests, and was tasked with documenting protest activity and property destruction. CDT officers were aware that there were fellow officers working in an undercover capacity, though they did not know which officers were specifically assigned to that role.

The Arrest and Assault of L.H.

During the evening of September 17, 2017, two days after the protests began, L.H. was working undercover and ended up at or around the St. Louis Public Library at the corner of 14th Street and Olive Street. At around the same time, Defendant Hays and other CDT officers were walking north on 14th Street toward Washington Avenue. The CDT officers were walking in a line, in pairs of two, ultimately to get to a location where they would stand in formation, side-by-side, to engage in crowd control. While the CDT was walking on 14th Street, and as depicted on

pole camera video, there was very little protest activity at the intersection of 14th Street and Olive Street.

Defendant Hays was situated close to the front of the line as the CDT officers were walking on 14th Street. Co-defendant Dustin Boone (“Boone”) was next to him. Co-defendant Christopher Myers (“Myers”) and another officer (“Officer A”) were walking in front of Defendants Hays and Boone. During their walk on 14th Street, SLMPD SWAT vehicles began shooting pepper balls at individuals who were near the St. Louis Public Library. As a result, several of these individuals began running from where the pepper balls were being shot. At that time, Defendant Hays did not witness anyone committing a crime nor did there appear to be probable cause to arrest anyone.

As the CDT approached the corner of 14th Street and Olive Street, CDT officers nonetheless began running toward those individuals who were running from the pepper balls. Defendant Hays and Co-defendant Boone began running as well, along with Co-defendant Myers and “Officer A.” L.H. had been standing on the corner of 14th Street and Olive Street between a portable generator and the curb. At no time did L.H. appear to be committing a crime and Defendant Hays did not witness anything that gave the officers probable cause to arrest L.H. Nonetheless, believing that L.H. was a protester, the aforementioned four officers, as well as other officers, took L.H. into custody, and in so doing, assaulted him, using physical force that was both unnecessary and unreasonable. Specifically, Defendant Hays saw “Officer A” kick L.H. squarely in the face, without reason or provocation, and inconsistent with when it is appropriate for an officer to use such physical force. When “Officer A” kicked L.H., L.H. was prone on the ground, compliant, not posing a physical threat, and not saying a word.

In addition, a cell phone recording captured Defendant Hays and "Officer A" giving orders to L.H. to put his hands out. At that time, L.H. was wedged in a small area between the portable generator and the curb. Several officers were pinning L.H. down in that small area, such that L.H. could not move. Co-defendant Boone had his knee on L.H.'s shoulder and was continually pushing down L.H.'s head, while telling L.H. not to look at him. The aforementioned officers were thus making it difficult for L.H. to comply with the order to put his hands out. Defendant Hays delivered three to five strikes to L.H.'s body with his riot baton, and Defendant Hays forcefully shoved L.H. to the ground. Throughout the encounter, L.H. did not do anything to warrant arrest or the use of any physical force, and remained silent. Nonetheless, Defendant Hays, Co-Defendant Boone, "Officer A" and other officers used unreasonable force against L.H., which resulted in bodily injury.

The following day, after roll call at the Electrician's Hall, a member of the SLMPD command staff requested that all officers involved with the arrest at 14th Street and Olive Street meet him outside. Defendants Hays, Boone and Myers, as well as "Officer B" and a few others, went outside. "Officer A" did not go outside. While meeting with the member of the command staff, the CDT officers learned that the arrestee was L.H. Co-defendant Myers admitted that he intentionally destroyed L.H.'s cell phone. Similarly, "Officer B" admitted intentionally destroying L.H.'s camera, and "Officer B" thereafter took up a collection from officers to replace the camera he broke.

Defendant Hays further acknowledges that he sent and received the following text messages related to the unnecessary physical force used on L.H.:

From	To	Time (UTC)	Body
Boone	Hays	9/18/17 20:15	Everyone seems to think that we r ok. Still don't like it hanging over me tho!
Hays	Boone	9/18/17 20:21	Yeah, me either, just told [another officer] the ass whooping can be explained. The camera thing can't and we weren't apart of that.
Boone	Hays	9/18/17 20:23	Yes, trust me, I am WAY more alright with what u and I did than what the others did! I don't like that we put our hands on another cop, but the situation was a little fucked up too, wasn't JUST us.
Hays	Boone	9/18/17 20:28	Wasn't just us, I don't like the beating the hell outta a cop, but the department put him in that spot, he could've announced himself any time. And he wa
Hays	Boone	9/18/17 20:28	sn't complying. The camera thing is just ignorant, nothing we all haven't done and if it was a protestor it wouldn't be a problem at all.
Boone	Hays	9/18/17 20:28	Correct

Defendant Hays admits herein that he aided and abetted in the willful deprivation L.H.'s constitutional right not to be subjected to unreasonable force, and the conduct resulted in bodily injury.

5. STATUTORY PENALTIES:

The defendant fully understands that the maximum possible penalty provided by law for the crime to which the defendant is pleading guilty is imprisonment of not more than ten years, a fine of not more than \$250,000, or both such imprisonment and fine. The Court may also impose a period of supervised release of not more than 3 years.

6. U.S. SENTENCING GUIDELINES: 2019 MANUAL:

The defendant understands that this offense is affected by the U.S. Sentencing Guidelines and the actual sentencing range is determined by both the Total Offense Level and the Criminal History Category. The parties agree that the following are the applicable U.S. Sentencing Guidelines Total Offense Level provisions.

a. Chapter 2 Offense Conduct:

(1) **Base Offense Level:** The base offense level for the offense to which the defendant is pleading guilty is determined first by applying §2H1.1. §2H1.1 provides that the cross-reference to §2A2.2 applies because the offense involved an Aggravated Assault, so the base offense level is *fourteen (14)*.

(2) **Specific Offense Characteristics:** The parties agree that the following Specific Offense Characteristics apply: *Four (4) levels* should be added pursuant to §2A2.2(b)(2)(B), because a dangerous weapon was used. *Seven (7) levels* should be added pursuant to §2A2.2(b)(3)(C), because the victim sustained permanent bodily injury. However, pursuant to §2A2.2(b)(3), the cumulative adjustments from application of subdivisions (2) and (3) shall not exceed *ten (10) levels*. *Six (6) levels* should be added pursuant to §2H1.1(b)(1), because the underlying offense was committed under color of law.

(3) **Chapter 3 Adjustments:** The parties agree that the following additional adjustments apply: *Two (2) levels* should be added pursuant to §3A1.3, because the victim was physically restrained in the course of the offense.

(4) Acceptance of Responsibility: The parties agree that *three (3) levels* should be deducted pursuant to Section 3E1.1(a) and (b), because the defendant has clearly demonstrated acceptance of responsibility and timely notified the government of the defendant's intention to plead guilty. The parties agree that the defendant's eligibility for this deduction is based upon information presently known. If subsequent to the taking of the guilty plea the government receives new evidence of statements or conduct by the defendant which the government believes are inconsistent with defendant's eligibility for this deduction, the government may present said evidence to the court, and argue that the defendant should not receive all or part of the deduction pursuant to Section 3E1.1, without violating the plea agreement.

b. Estimated Total Offense Level: The parties estimate that the Total Offense Level is *twenty-nine (29)*.

c. Criminal History: The determination of the defendant's Criminal History Category shall be left to the Court. Either party may challenge, before and at sentencing, the finding of the Presentence Report as to the defendant's criminal history and the applicable category. The defendant's criminal history is known to the defendant and is substantially available in the Pretrial Services Report.

7. WAIVER OF APPEAL AND POST-CONVICTION RIGHTS:

a. Appeal: The defendant has been fully apprised by defense counsel of the defendant's rights concerning appeal and fully understands the right to appeal the sentence under Title 18, United States Code, Section 3742.

(1) **Non-Sentencing Issues:** The parties waive all rights to appeal any issues relating to pretrial motions and discovery.

b. **Habeas Corpus:** The defendant agrees to waive all rights to contest the conviction or sentence in any post-conviction proceeding, including one pursuant to Title 28, United States Code, Section 2255, except for claims of prosecutorial misconduct or ineffective assistance of counsel.

c. **Right to Records:** The defendant waives all rights, whether asserted directly or by a representative, to request from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 522, or the Privacy Act, Title 5, United States Code, Section 552(a).

d. **Statutory Challenge:** The defendant knowingly and voluntarily waives the right to raise on appeal or on collateral review any argument that (1) the statute to which the defendant is pleading guilty is unconstitutional and (2) the admitted conduct does not fall within the scope of the statute.

8. **OTHER:**

a. **Disclosures Required by the United States Probation Office:** The defendant agrees to truthfully complete and sign forms as required by the United States Probation Office prior to sentencing and consents to the release of these forms and any supporting documentation by the United States Probation Office to the government.

b. **Civil or Administrative Actions not Barred; Effect on Other Governmental**

Agencies: Nothing contained herein limits the rights and authority of the United States to take any civil, tax, immigration/deportation or administrative action against the defendant.

c. **Supervised Release:** Pursuant to any supervised release term, the Court will impose standard conditions upon the defendant and may impose special conditions related to the crime defendant committed. These conditions will be restrictions on the defendant to which the defendant will be required to adhere. Violation of the conditions of supervised release resulting in revocation may require the defendant to serve a term of imprisonment equal to the length of the term of supervised release, but not greater than the term set forth in Title 18, United States Code, Section 3583(e)(3), without credit for the time served after release. The defendant understands that parole has been abolished.

d. **Mandatory Special Assessment:** Pursuant to Title 18, United States Code, Section 3013, the Court is required to impose a mandatory special assessment of \$100.00 per count for a total of \$100.00, which the defendant agrees to pay at the time of sentencing. Money paid by the defendant toward any restitution or fine imposed by the Court shall be first used to pay any unpaid mandatory special assessment.

e. **Detention:** The defendant is subject to immediate detention pursuant to the provisions of Title 18, United States Code, Section 3143.

f. **Fines, Restitution and Costs of Incarceration and Supervision:** The Court may impose a fine, restitution (in addition to any penalty authorized by law), costs of incarceration, and costs of supervision. The defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately. Pursuant to Title 18, United States Code, Section 3663A,

an order of restitution is mandatory for all crimes listed in Section 3663A(c). Regardless of the Count of conviction, the amount of mandatory restitution imposed shall include all amounts allowed by Section 3663A(b) and the amount of loss agreed to by the parties, including all relevant conduct loss. The defendant agrees to provide full restitution to all victims of all charges in the indictment.

g. POST Certification: The defendant agrees to forfeit his Peace Officer Standards and Training (POST) certification from Missouri Department of Public Safety.

h. Admissions: Except under circumstances where the Court, acting on its own, fails to accept this plea agreement, the defendant agrees that, upon the defendant's signing of this plea agreement, the facts that the defendant has admitted under this plea agreement as set forth above, as well as any facts to which the defendant admits in open court at the defendant's plea hearing, shall be admissible against the defendant under Federal Rule of Evidence 801(d)(2)(A) in any subsequent proceeding, including a criminal trial, and the defendant expressly waives the defendant's rights under Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410 with regard to the facts the defendant admits in conjunction with this plea agreement.

9. ACKNOWLEDGMENT AND WAIVER OF THE DEFENDANT'S RIGHTS:

In pleading guilty, the defendant acknowledges, fully understands, and hereby waives his rights, including but not limited to: the right to plead not guilty to the charges; the right to be tried by a jury in a public and speedy trial; the right to file pretrial motions, including motions to suppress or exclude evidence; the right at such trial to a presumption of innocence; the right to require the government to prove the elements of the offenses against the defendant beyond a reasonable doubt; the right not to testify; the right not to present any evidence; the right to be

protected from compelled self-incrimination; the right to confront and cross-examine adverse witnesses; the right to testify, present evidence, and the right to compel the attendance of witnesses. The defendant further understands that by this guilty plea, the defendant expressly waives all the rights set forth in this paragraph.

The defendant fully understands that the defendant has the right to be represented by counsel, and if necessary, to have the Court appoint counsel at trial and at every other stage of the proceeding. The defendant's counsel has explained these rights and the consequences of the waiver of these rights. The defendant fully understands that, as a result of the guilty plea, no trial will, in fact, occur and that the only action remaining to be taken in this case is the imposition of the sentence.

The defendant is fully satisfied with the representation received from defense counsel. The defendant has reviewed the government's evidence and discussed the government's case and all possible defenses and defense witnesses with defense counsel. Defense counsel has completely and satisfactorily explored all areas which the defendant has requested relative to the government's case and any defenses.

The guilty plea could impact defendant's immigration status or result in deportation. In particular, if any crime to which defendant is pleading guilty is an "aggravated felony" as defined by Title 8, United States Code, Section 1101(a)(43), removal or deportation is presumed mandatory. Defense counsel has advised the defendant of the possible immigration consequences, including deportation, resulting from the plea.

10. VOLUNTARY NATURE OF THE GUILTY PLEA AND PLEA AGREEMENT:

This document constitutes the entire agreement between the defendant and the government, and no other promises or inducements have been made, directly or indirectly, by any agent of the government, including any Department of Justice attorney, concerning any plea to be entered in this case. In addition, the defendant states that no person has, directly or indirectly, threatened or coerced the defendant to do, or refrain from doing, anything in connection with any aspect of this case, including entering a plea of guilty.

The defendant acknowledges having voluntarily entered into both the plea agreement and the guilty plea. The defendant further acknowledges that this guilty plea is made of the defendant's own free will and that the defendant is, in fact, guilty.

11. CONSEQUENCES OF POST-PLEA MISCONDUCT:

After pleading guilty and before sentencing, if defendant commits any crime, other than minor traffic offenses, violates any condition of release that results in revocation, violates any term of this guilty plea agreement, intentionally provides misleading, incomplete or untruthful information to the U.S. Probation Office, or fails to appear for sentencing, the United States, at its option, may be released from its obligations under this agreement. The Government may also, in its discretion, proceed with this agreement and may advocate for any sentencing position supported by the facts, including but not limited to obstruction of justice and denial of acceptance of responsibility.

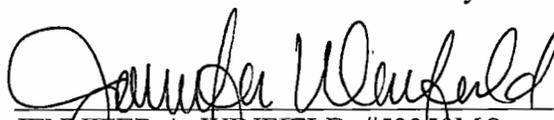
12. NO RIGHT TO WITHDRAW GUILTY PLEA:

Pursuant to Rule 11(c) and (d), Federal Rules of Criminal Procedure, Defendant Hays understands that there will be no right to withdraw the plea entered under this agreement, except where the Court rejects those portions of the plea agreement which deal with charges the Government agrees to dismiss or not to bring.

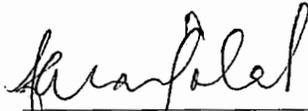
11/8/19
Date


CARRIE COSTANTIN, #35925MO
First Assistant United States Attorney

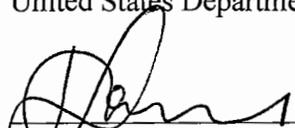
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Date


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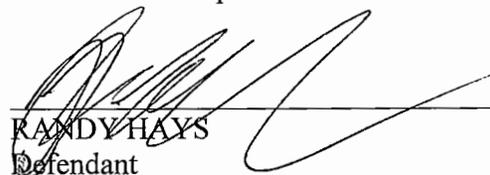
11/8/2019
Date


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JANEA LAMAR
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RANDY HAYS
Defendant

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GREG N. SMITH
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