



United States Department of Justice

*United States Attorney
Southern District of West Virginia*

*Robert C. Byrd United States Courthouse
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Charleston, WV 25326
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January 23, 2012

Rodney A. Smith, Esquire
Bailey & Glasser LLP
209 Capitol Street
Charleston, WV 25301

Re: United States v. Jerry Bowman

Dear Mr. Smith:

This will confirm our conversations with regard to your client, Jerry Bowman (hereinafter "Mr. Bowman"). As a result of these conversations, it is agreed by and between the United States and Mr. Bowman as follows:

1. **CHARGING AGREEMENT.** Mr. Bowman agrees to waive his right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by indictment and will consent to the filing of a one-count information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as "Plea Agreement Exhibit A."

2. **RESOLUTION OF CHARGES.** Mr. Bowman will plead guilty to a violation of 18 U.S.C. § 241 (conspiracy against rights) as charged in said information.

3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Bowman will be exposed by virtue of this guilty plea is as follows:

(a) Imprisonment for a period of ten years;

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Defendant's
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- (b) A fine of \$250,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of three years;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) An order of restitution pursuant to 18 U.S.C. §§ 3663 and 3664, or as otherwise set forth in this plea agreement.

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Bowman will tender a check or money order to the Clerk of the United States District Court for \$100, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Mr. Bowman will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Mr. Bowman fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Mr. Bowman.

5. **PAYMENT OF MONETARY PENALTIES.** Mr. Bowman agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Mr. Bowman further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment.

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Defendant's
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6. **RESIGNATION FROM OFFICE / POLITICAL ACTIVITY.** Mr. Bowman agrees that, on or before the date his guilty plea is entered, he will officially resign from the office of Sheriff of Lincoln County, West Virginia. Moreover, Mr. Bowman agrees that he will not seek nor serve in any public office at any time after his resignation from office pursuant to this agreement, nor engage in political campaigning at any time after the date of this agreement.

7. **COOPERATION.** Mr. Bowman will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Bowman may have counsel present except when appearing before a grand jury. Further, Mr. Bowman agrees to be named as an unindicted co-conspirator and unindicted aider and abettor, as appropriate, in subsequent indictments or informations.

8. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Bowman, and except as expressly provided for in paragraph 9 below, nothing contained in any statement or testimony provided by Mr. Bowman pursuant to this agreement, or any evidence developed therefrom, will be used against him, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

9. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Bowman for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Bowman for perjury or false statement if such a situation should occur pursuant to this agreement.

JB
Defendant's
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Rodney A. Smith, Esquire
January 23, 2012
Page 4

Re: Jerry Bowman

10. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Bowman stipulate and agree that the facts comprising the offenses of conviction include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit B." The Stipulation of Facts does not contain all facts relevant to this matter.

Mr. Bowman agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by him, and he is subsequently tried on any of the charges in the information, the United States may use and introduce the Stipulation of Facts in the United States' case-in-chief, in cross-examination of him or of any of his witnesses, or in rebuttal of any testimony introduced by him or on his behalf. Mr. Bowman knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Bowman understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.

11. **AGREEMENT ON SENTENCING GUIDELINES.** Based on the foregoing Stipulation of Facts, the United States and Mr. Bowman agree that USSG § 2H2.1 applies to this case, and that Mr. Bowman's base offense level is 12. The United States and Mr. Bowman have not reached agreement regarding any adjustments that may affect Mr. Bowman's adjusted offense level.

The United States and Mr. Bowman acknowledge and understand that the Court and the Probation Office are not bound by the parties' calculation of the United States Sentencing Guidelines set forth above and that the parties shall not have the right to withdraw from the plea agreement due to a disagreement with the Court's calculation of the appropriate guideline range.

JB
Defendant's
initials

Rodney A. Smith, Esquire
January 23, 2012
Page 5

Re: Jerry Bowman

12. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Bowman knowingly and voluntarily waives the right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is below or within the Sentencing Guideline range corresponding to offense level 12. The United States also waives its right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is within or above the Sentencing Guideline range corresponding to offense level 15.

Mr. Bowman also knowingly and voluntarily waives the right to challenge his guilty plea and his conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

13. **WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Bowman knowingly and voluntarily 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 any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

14. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

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- (a) Inform the Probation Office and the Court of all relevant facts and conduct;
- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Bowman;
- (f) Advise the Court concerning the nature and extent of Mr. Bowman's cooperation; and
- (g) Address the Court regarding the issue of Mr. Bowman's acceptance of responsibility.

15. **VOIDING OF AGREEMENT.** If either the United States or Mr. Bowman violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

16. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Bowman in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Mr. Bowman in any Court other than the United States District Court for the Southern District of West Virginia.

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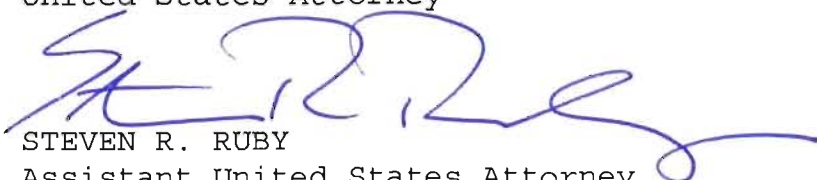
Rodney A. Smith, Esquire
January 23, 2012
Page 7

Re: Jerry Bowman

Acknowledged and agreed to on behalf of the United States:


R. BOOTH GOODWIN II
United States Attorney

By:


STEVEN R. RUBY
Assistant United States Attorney

SRR/vld

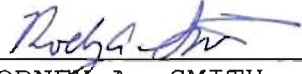
I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this seven-page agreement that I have read and carefully discussed every part of it with my attorney, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorney has advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.



JERRY BOWMAN
Defendant

1-23-2012

Date Signed



RODNEY A. SMITH
Counsel for Defendant

1/23/12

Date Signed

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. _____

JERRY BOWMAN

I N F O R M A T I O N

The United States Attorney Charges:

1. In May 2010, a primary election was held in the State of West Virginia, in part for the purpose of nominating candidates for the office of Representative to Congress and various state and local offices (the "Election").

2. At all relevant times, defendant JERRY BOWMAN was Sheriff of Lincoln County, West Virginia.

The Conspiracy

3. Beginning no later than January 2010 and continuing through and including at least May 2010, in Lincoln County, West Virginia, and within the Southern District of West Virginia, defendant JERRY BOWMAN, together with others whose identities are known and unknown to the United States Attorney, did knowingly conspire to injure and oppress persons in the State of West Virginia, in West Virginia's Third Congressional District, and in Lincoln County, West Virginia, in the free exercise and enjoyment of rights and privileges secured to those persons by

PLEA AGREEMENT EXHIBIT A

the Constitution and laws of the United States, that is, to cause votes to be illegally cast and counted in the Election, in violation of Title 18, United States Code, Section 241.

Manner and Means of the Conspiracy

4. It was a part of this conspiracy that defendant JERRY BOWMAN, together with others whose identities are known and unknown to the United States Attorney, did agree to offer registered voters the option to cast absentee ballots in the Election even if those voters had none of the legally prescribed grounds for eligibility to cast an absentee ballot.

5. It was further a part of this conspiracy that defendant JERRY BOWMAN, together with others whose identities are known and unknown to the United States Attorney, would and did complete applications for absentee ballots on behalf of registered voters, knowing that those registered voters had none of the legally prescribed grounds for eligibility to cast an absentee ballot.

6. It was further a part of this conspiracy that defendant JERRY BOWMAN, together with others whose identities are known and unknown to the United States Attorney, would and did falsely state on absentee ballot applications completed on behalf of certain registered voters that those registered voters had one of the legally prescribed grounds for eligibility to cast an absentee ballot.

7. It was further a part of this conspiracy that defendant JERRY BOWMAN, together with others whose identities are known and unknown to the United States Attorney, would and did request that certain registered voters contact defendant JERRY BOWMAN and others whose identities are known and unknown to the United States Attorney when those registered voters received absentee ballots by mail.

8. It was further a part of this conspiracy that defendant JERRY BOWMAN, together with others whose identities are known and unknown to the United States Attorney, would and did unlawfully make themselves present while certain voters completed their absentee ballots, and would and did unlawfully suggest specific candidates for whom those certain voters should vote.

9. It was further a part of this conspiracy that defendant JERRY BOWMAN, together with others whose identities are known and unknown to the United States Attorney, would not and did not make the affidavit required by law of any person who provides assistance in voting an absent voter's ballot by mail.

10. It was further a part of this conspiracy that defendant JERRY BOWMAN, together with others whose identities are known and unknown to the United States Attorney, would and did unlawfully personally deliver absentee ballots to certain registered voters.

In violation of Title 18, United States Code, Section 241.

UNITED STATES OF AMERICA

R. BOOTH GOODWIN II
United States Attorney

By: _____
STEVEN R. RUBY
Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. _____

JERRY BOWMAN

STIPULATION OF FACTS

The United States and Jerry Bowman stipulate and agree that the facts comprising the offense(s) of conviction in the Information attached as Plea Agreement Exhibit A include the following:

In or around January 2010, while holding office as Sheriff of Lincoln County, West Virginia ("Lincoln County"), Mr. Bowman filed to run for election as Circuit Clerk of Lincoln County. Also in or around January 2010, a person whose identity is known to the United States Attorney (the "Known Person"), filed to run for election to the Lincoln County Commission, and Donald Whitten filed to run for re-election as County Clerk of Lincoln County. Also in or around January 2010, Congressman Nick Joe Rahall II filed to run for re-election to the United States House of Representatives seat for West Virginia's Third Congressional District.

Mr. Bowman expected that his race and the Known Person's race would be close races. The Known Person expressed to Mr. Bowman that the Known Person also expected those two races to be close. Mr. Bowman, the Known Person, and Mr. Whitten (the "Candidates") agreed to a plan to gain votes and affect the 2010 primary election by using the absentee voting process. The Candidates agreed that they would, together and individually, visit voters and offer them applications to vote absentee in the 2010 primary election. The Candidates further agreed that they would complete absentee ballot applications for voters. The Candidates also agreed that on those applications they would state certain reasons that voters were legally eligible to vote absentee, regardless of whether those reasons were true.

In carrying out this plan, the Candidates traveled together to visit many voters and complete absentee ballot applications

PLEA AGREEMENT EXHIBIT B

for those voters. Mr. Bowman completed more than 100 absentee ballot applications for absentee voters. On most of those applications, Mr. Bowman knowingly and intentionally provided false reasons for voters' eligibility to vote absentee. Mr. Bowman had read the West Virginia Secretary of State's absentee ballot application and knew that it stated, "I understand that I must vote in person if I can." Most of the voters for whom Mr. Bowman completed absentee ballot applications had no apparent reason for eligibility to vote absentee, and Mr. Bowman did not ask those voters if they had a reason to vote absentee legally. Instead, Mr. Bowman simply marked one of the reasons for absentee voting that he and the other Candidates had agreed to mark. On many occasions when Mr. Bowman completed absentee ballot applications for voters who had no apparent reason to vote absentee legally, the Known Person and Mr. Whitten were present and participated in encouraging the subject voters to vote absentee. At no time did Mr. Bowman sign or write his name in the area of the absentee ballot application marked designated "Signature of person assisting Voter (if needed)."

On several occasions, Mr. Bowman witnessed the Known Person complete absentee ballot applications for voters who had no apparent reason to vote absentee legally. Mr. Bowman did not witness the Known Person ask any of those voters if they had a reason to vote absentee legally. Instead, the Known Person marked one of the reasons for absentee voting that he and the other Candidates had agreed to mark.

For every absentee ballot application that Mr. Bowman completed, he had the subject voter sign the application. Mr. Bowman observed, however, that few if any voters read the applications. On the occasions when Mr. Bowman witnessed the Known Person complete absentee ballot applications, the Known Person had the subject voter sign the application. On those occasions, as well, Mr. Bowman observed that few if any voters read the applications.

Mr. Bowman hand-delivered to the Lincoln County Clerk many false absentee ballot applications that he had completed. Mr. Bowman witnessed the Known Person hand-deliver to the Lincoln County Clerk many absentee ballot applications that Mr. Bowman had witnessed the Known Person complete in the manner described above.

Mr. Bowman knew that a voter's absentee ballot normally was mailed to the voter within a few days of when the voter's absentee ballot application was received. Moreover, when Mr.

Bowman completed a voter's absentee ballot application, he often told the voter to call him when the voter received an absentee ballot and that he would help the voter complete the absentee ballot envelope and show the voter where to sign. On many occasions when Mr. Bowman knew or believed that a voter had received an absentee ballot, he went to the voter's home and was present and watching while the voter completed the voter's absentee ballot. On most of these occasions, while the voter completed the voter's absentee ballot, Mr. Bowman told the voter which candidates Mr. Bowman supported for election. Moreover, Mr. Bowman himself marked at least six voters' absentee ballots, which lawfully could be marked only by the voters themselves.

Mr. Whitten was present and watched voters complete their absentee ballots on many occasions when Mr. Bowman also was present. On those occasions, Mr. Bowman told voters that he and Mr. Whitten supported certain candidates. The Known Person was also present and watching on at least one occasion when a voter completed the voter's absentee ballot in Mr. Bowman's presence.

To Mr. Bowman's knowledge, few if any of the voters who completed their absentee ballots in Mr. Bowman's presence or whose ballots Mr. Bowman himself marked required assistance to complete their absentee ballots. Mr. Bowman never made an affidavit of the type that must be made by one who assists an absentee voter in completing his or her ballot, nor, to Mr. Bowman's knowledge, did the other Candidates.


On at least two occasions, Mr. Bowman hand-delivered absentee ballots to voters. Mr. Bowman received these absentee ballots from Mr. Whitten for the purpose of hand-delivering them.

During all these events, Mr. Bowman knew that it was wrong to be present while voters completed their ballots, to tell voters which candidates he preferred while voters completed their ballots, to hand-deliver absentee ballots to voters, and to mark another voter's ballot.

Mr. Bowman also suspected that it was wrong to complete applications that gave false reasons for voters' eligibility to vote absentee. Indeed, some voters expressed to Mr. Bowman skepticism that it was legal for them to vote absentee. Despite his doubts that his conduct was proper, Mr. Bowman did not read the statutory provisions on absentee voting until after most or all of the above-described events had occurred. When Mr. Bowman did read those provisions, he confirmed his suspicion that his


conduct and that of the other Candidates was illegal. Mr. Bowman immediately shared this fact with the other Candidates. Nonetheless, the Candidates permitted the absentee votes cast illegally as a result of their conduct be counted in the 2010 primary election.

Stipulated and agreed to:



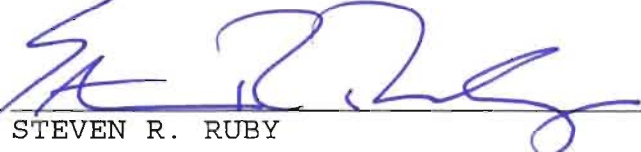
JERRY BOWMAN
Defendant

1-23-2012
Date



RODNEY A. SMITH
Counsel for Defendant

1/23/12
Date



STEVEN R. RUBY
Assistant United States Attorney

1/23/12
Date