

2015

**State of Utah, Plaintiff/Appellee, v. Samuel Aaron Francis,
Defendant/Appellant**

Utah Supreme Court

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Case No. 20150616-SC

IN THE
UTAH SUPREME COURT

STATE OF UTAH,
Plaintiff/Appellee,

v.

SAMUEL AARON FRANCIS,
Defendant/Appellant.

Replacement Brief of Appellee

Certified interlocutory appeal from denial of a motion to enforce a plea agreement, in the Third Judicial District, Salt Lake County, the Honorable Royal Hansen presiding

KELLY ANN BOOTH
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CLINT T. HEINER
Deputy Salt Lake District Attorney

Counsel for Appellee

Addenda

Addendum A

KELLY ANN BOOTH (10910)
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THE JUDGE BUILDING
8 EAST BROADWAY, SUITE 700
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(801) 364-6666 PHONE
(801) 618-3835 FACSIMILE
Attorney for Defendant

IN THE UTAH DISTRICT COURT FOR THE THIRD JUDICIAL DISTRICT
SALT LAKE DEPARTMENT

STATE OF UTAH,

Plaintiff,

-v-

SAMUEL AARON FRANCIS,

Defendant.

**MOTION TO ENFORCE
PLEA AGREEMENT**

Case № 131908488

The Honorable Royal Hansen

COMES NOW Defendant, SAMUEL AARON FRANCIS, and moves the court for an Order to enforce the plea agreement that was in place on June 13, 2015. This Motion is based on the following:

STATEMENT OF FACTS

1. The State has charged Francis by Amended Information with five charges: three counts of third degree felony aggravated assault (DV), one count of third degree felony obstruction of justice, and one count of class B misdemeanor interruption of a communication device.

2. Francis was scheduled to have a three-day trial from June 15 through June 17, 2015.
3. On Friday, June 12, 2015, a final pre-trial conference was held in this matter.
During that conference, the Court directed the parties to meet and confer regarding jury instructions, voir dire, and any outstanding evidentiary issues.
4. Later that Friday afternoon, Mr. Heiner on behalf of the State and Ms. Booth for Francis conducted a telephone conference at approximately 2:30pm.
5. During that phone call, Booth said to Heiner, "One thing we did not do was put the final plea offer in this case on the record this morning at the final pretrial conference. We will probably need to do that Monday morning. What is the final plea offer from the State in this case? I don't think we have talked about that in some months since it appeared we were headed for trial."
6. Heiner responded, "the offer is the same offer that has been out there for some time: Aaron can plead to a third degree felony, 402 reduction after successful completion of probation, 24 months supervised probation, no agreement for recommendation of no jail at sentencing."
7. Booth then responded, "so the 3F would be to the agg assault?"
8. Heiner then replied, "no, I am ok if he pleads to either the obstruction or the agg assault, but no agreement for jail recs."
9. Booth indicated she would relay the offer to her client, but that he would likely decline it because of the felony.

10. Heiner did not at any time during the discussion on June 12 indicate that the offer was no a final offer, or that it contingent on upon notice to the victim. In fact, Heiner and Booth have had several conversations regarding plea resolutions in this matter, and counsel for the alleged victim was involved in those discussions.
11. Booth and Heiner then discussed the remaining evidentiary issues and completed the phone call.
12. Because the State's offer was different than any other offers that had been extended in the case, and because the State's offer to plead to the obstruction charge with a dismissal of the aggravated assault charges, Booth contacted her client to relay and discuss the new offer.
13. On Saturday, June 13, 2015, Booth emailed Heiner upon discovering an evidentiary issue, and requested Heiner contact her at his earliest convenience.
14. Heiner called Booth shortly thereafter, and the two discussed the evidentiary issue (that is the subject of the Tiedemann motion filed herewith). Heiner said he would call Booth back shortly.
15. Heiner then forwarded an email to Booth with an attachment that contained new evidence in the case, and then Heiner called Booth within minutes of forwarding the email, at approximately 3:00pm.
16. Heiner and Booth discussed the evidentiary issue, and Booth indicated to Heiner that she would likely need to file a Tiedemann motion and/or motion in limine.

Exasperated at the 11th hour discovery issue, Booth said to Heiner, "Are we really going to try this case? Why don't we just resolve it?" And then Booth proposed that since there was a late discovery issue, that the State agree to resolve the case with a Class A misdemeanor plea offer.

17. Heiner declined, stating his reasons for not wanting to extend that offer, and said, "Aaron [Francis] can plead to the third degree obstruction or assault, and earn a misdemeanor, but I am not going to agree to a misdemeanor." Booth then said she would get back to Heiner about the issues they had discussed.
18. Booth then discussed the evidentiary issues and plea offer with Francis, and at 4:30pm, Booth emailed Heiner and indicated that Francis had accepted the State's offer, and that Booth would email the Statement of Defendant in Advance of Plea to Heiner for his approval.
19. Booth then emailed the Statement of Defendant to Heiner, and sent him a text message conforming the same and indicating that Booth would meet with Francis at 8am Monday morning to review the Statement and prepare to enter the plea at 8:15am when the Judge took the bench.
20. Heiner emailed Booth Monday morning at 7:25am with minor edits to the Statement of Defendant.
21. When Booth walked into the courtroom Monday morning just before 8:15am, Heiner walked up to Booth and said, "No go, Bethany won't sign off on the obstruction, it has to be aggravated assault."

22. Booth inquired about what Heiner was talking about, and indicated that at no time had Heiner ever told Booth that the offer was not final, and that it was contingent upon any acceptance or approval by the alleged victim.
23. Heiner said, “sorry, I just can’t do it.” at which point Booth indicated she didn’t have any files and was not prepared to go forward with trial in light of the fact that they had a plea deal.
24. Unbeknownst to Booth, Heiner contacted the alleged victim on Saturday to inform her that Francis had accepted a plea offer, but was not able to reach her until Monday morning by phone.
25. Booth knew at the time Heiner extended the new plea offer on Friday, June 12, that the victim had no legal right to preclude the plea offer from being made or prevent the Court from accepting the plea offer.

ARGUMENT

- I. The State breached its agreement with Francis and now the Court must compel the Government to honor the resolution.**

“In interpreting a plea agreement, we rely on general principles of contract law, *United States v. Cachucha*, 484 F.3d 1266, 1270 (10th Cir. 2007), and therefore look to the express language in the agreement to identify both the nature of the government's promise and the defendant's reasonable understanding of this promise at the time of the entry of the

guilty plea" *VanDam*, 493 F.3d at 1199. We construe any ambiguities against the government as the drafter of the agreement. *Cachucha*, 484 F.3d at 1270."¹

And in *Santobello v. New York*, the Supreme Court recognized the importance for a prosecutor to act fairly when negotiating and securing deals with an accused.² And in *United States v. Greene*, the Tenth Circuit reiterated that, "Where a plea is predicated in any significant degree on a promise or agreement, such promise or agreement must be fulfilled to maintain the integrity of the plea."³ The Tenth Circuit then further held, "General principles of contract law govern the prosecution's obligations under a plea agreement."⁴ To determine whether a breach has occurred, courts apply a two-step process: (1) "we examine the nature of the government's promise;" and (2) "we evaluate this promise in light of the defendant's reasonable understanding of the promise..."⁵ The defendant need only prove the underlying facts establishing the breach by a preponderance of the evidence.⁶

In applying the two-part test for determining whether the State is breaching the June 13 plea agreement, the Court can examine the nature of the State's agreement for

¹ *United States v. Rodriguez-Rivera*, 518 F.3d 1208, 1212-13 (10th Cir. 2008).

² *Santobello v. New York*, 404 U.S. 257 (1971).

³ *United States v. Greene*, No. 06-5063 (FED10) 08/16/2007 (Citing, *United States v. Greenwood*, 812 F.2d 632, 637 (10th Cir. 1987) (quoting *United States v. Reardon*, 787 F.2d 512, 516 (10th Cir. 1986)). See also, *United States v. Werner*, 317 F.3d 1168, 1170 (10th Cir. 2003); *United States v. Brye*, 146 F.3d 1207, 1209 (10th Cir. 1998) (citing *Santobello*, 404 U.S. at 262).

⁴ *Ibid.*

⁵ *Werner*, 317 F.3d at 1171; *Brye*, 146 F.3d at 1210 (citing *United States v. Rockwell Int'l Corp.*, 124 F.3d 1194, 1199 (10th Cir. 1997).

⁶ *Id.*

Francis to plead to a felony obstruction of justice charge, and then evaluate that agreement in light of Francis' understanding of the plea agreement, including his reasonable reliance thereon.

In this case, the State, for the first time in the case on June 12, 2015, offered to dismiss the aggravated assault charges in exchange for Francis' plea to obstruction of justice as a domestic violence offense, third degree felony. The State's offer was unequivocal. And Francis' acceptance of that offer on June 13, 2015 was also unequivocal. And, Francis relied on that agreement with the State when he ceased trial preparation, called off his witnesses, and forfeited his retainer to the expert witness in this case. Yet, the State breached that agreement on Monday by erroneously stating that the plea agreement was somehow voided because the alleged victim did not assent.

Francis agreed to waive his constitutional rights in exchange for the State dismissing the felony aggravated assault charges and the interference with a communication device charge. Francis has strong trial defenses, but agreed to waive those defenses and his rights for purpose of avoiding the possibility of being convicted for an aggravated assault, which significantly limit his future educational and employment opportunities. The State's offer, as relayed by Heiner, was not conditional, and in fact was made as a statement of the final offer for the parties to put on the record. That fact demonstrates that the State's offer was not conditional, and that Francis' reliance was reasonable.

Relying upon this agreement and other representations of the State, Francis forewent pursuing his trial defenses in light of the plea agreement. Because it was clear during the June 12 and 13 conversations that the offer was made and not conditional, the plea

agreement was now enforceable. In the subsequent communications, including the email sent by Heiner Monday morning at 7:25am containing edits to the Statement of Defendant memorializing the plea agreement, all indicators were that the plea would be entered imminently.

Applying the general principles of contract law to the agreement between the State and Francis, both parties will benefit from their bargained-for agreement with the government's registering a conviction, procuring the probation conditions and treatment of Francis, and closing one more matter on the State's caseload. Francis is entitled to the benefit of his agreement with the State.

Further, the plea agreement is not void or voidable because the victim does not like the resolution. Utah's victim's rights statutes do not allow for an alleged victim to void a plea agreement.⁷ In fact, the provisions of Utah's victim's rights statutes explicitly state that the rights of victims shall not be construed to provide a legal basis for interference with a plea.⁸

CONCLUSION

WHEREFORE, SAMUEL AARON FRANCIS, having the reasonable understanding that in exchange for his plea as charged to Count Four of the Amended Information, a third degree felony to obstruction of justice (DV), his case will be resolved in a manner favorable to both parties, respectfully moves the court to enforce said agreement, and

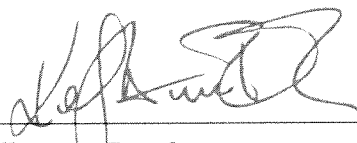
⁷ Utah Code Ann. §§ 77-37-1, et seq., and 77-38-1, et seq.

⁸ Utah Code Ann. §77-38-12.

require that the State honor the resolution that Francis negotiated with Heiner, and
accepted prior to trial.

RESPECTFULLY SUBMITTED this 25th day of June, 2015.

LAW OFFICES OF
KELLY ANN  BOOTH
P.L.L.C.



Kelly Ann Booth

Attorney for Aaron Francis

KELLY ANN BOOTH (10910)
kellyann@boothlegal.com
THE JUDGE BUILDING
8 EAST BROADWAY, SUITE 700
SALT LAKE CITY, UTAH 84111-2225
(801) 364-6666 PHONE
(801) 618-3835 FACSIMILE

Attorney for Defendant

IN THE UTAH DISTRICT COURT FOR THE THIRD JUDICIAL DISTRICT
SALT LAKE DEPARTMENT

STATE OF UTAH,

Plaintiff,

-v-

SAMUEL AARON FRANCIS,

Defendant.

ORDER

Case № 131908488

The Honorable Royal Hansen

THIS COURT, HAVING CONSIDERED the Defendant's Motion, and based on relevant law and good cause appearing, hereby ORDERS:

- The Defendant's Motion is GRANTED. Defendant's case should resolve as the parties agreed.

DATED this _____ day of June, 2015.

The Honorable Royal Hansen
Third Judicial District Court Judge

CERTIFICATE *of* SERVICE

This is to certify that on the 25th day of June, 2015, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

Salt Lake District Attorney
Justice Division Broadway
111 E Broadway Suite 400
Salt Lake City, Utah 84111

- ☐ Hand Delivery
- ☐ U.S. Mail
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ e-filing



SIM GILL, Bar No. 6389
District Attorney for Salt Lake County
Clint Heiner, Bar No. 11209
Deputy District Attorney
111 East Broadway, Suite 400
Salt Lake City, Utah 84111
Telephone: (385) 468-7600
Email: cheiner@sleo.org

IN THE THIRD DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

SAMUEL AARON FRANCIS,

Defendant.

**STATE'S RESPONSE TO
DEFENDANT'S MOTION TO
ENFORCE THE PLEA AGREEMENT**

Case No. 131908488

Honorable ROYAL HANSEN

The State by and through counsel, Clint Heiner, moves this Court to deny Defendant's Motion to Enforce the Plea Agreement.

STATEMENT OF FACTS

Between June 12 and 13, 2015, the State and Counsel for Defense engaged in plea negotiation discussions. Those discussions concluded with a statement by Defense Counsel that "Aaron can not accept any felony because he has a no felony policy at work." So, when on June 13, 2015, Counsel for Defendant sent the State an email tentatively accepting a felony offer (Attachemnt A), the State was surprised. Counsel for the State then emailed the Victim and asked her for her number. On June 14, 2015, the State received another email from Counsel for Defense with an attached proposed plea for review (Attachement B). On June 14, 2015, the

State received a returned email from the Victim with her phone number; however, the state did not call her until the following morning, because of the late hour. On the morning of June 15, 2015, the State looked at the tentative plea and sent an email to Defense Counsel (Attachemnt C). The State then called and spoke with the Victim. After discussing the tentative plea with the Victim, the State rescinded its offer to Defendant in Court at about 8:15 am when Counsel for Defense appeared. The tentative plea agreement was never finalized. Counsel for Defense had not made the changes proposed by the State. Counsel for Defense had not reviewed the plea with Defendant and neither party had signed the plea. Furthermore, the plea was never presented to nor accepted by the trial court.

LAW AND ARGUMENT

In this case, Defendant relays upon contract law principles to seek specific performance of the tentative plea agreement. However, although principles of contract law provide a useful framework involving plea agreements they cannot be blindly incorporated into the criminal law area of plea bargaining. See Patience, 944 P.2d 381, 387 (quoting United States v. Ocanas, 628 F.2d 353, 358 (5th Cir. 1980)). Furthermore, Defendant attempts to apply the wrong legal standards to the issue at hand. Defense references cases where an agreement has been finalized and the court has entered and accepted the plea. The case most directly on point is State v. Stringham, 2001 UT App 13 (2001). In Stringham, before trial, defendants' counsel and the State discussed a potential plea agreement. The plea agreement, however, was never finalized between the parties, nor was it submitted to the trial court for approval. Defendant filed a motion to enforce the proposed plea agreement, which was denied. In Stringham, the Court of Appeals, recognized the Utah Supreme Court's holding in State v. Kay, stating "plea agreements are

binding on the parties and the court once the plea is entered and accepted.” State v. Kay, 717 P.2d 1294, 1304 (Utah 1986).

Here, both counsel for the State and Defense discussed a tentative plea agreement. However, that plea was never finalized; through email communications between Counsel for the State and Defense: (1) Defendant had yet to make final confirmation of the plea, (2) Defendant had not reviewed the plea, and (3) the plea itself had not been finalized and edits still had to be made. Even assuming that the plea was finalized, the State rescinded the offer before it was accepted and entered on the record. Until the plea agreement was entered and accepted by the Court, the State is not bound by the offer. The State can rescind the offer up to the point the Court accepts and enters the plea on the record, so long as defendant took no action that would cause prejudice. (Stringham at 1157, citing State v. Moss, 921 P.2d 1021, 1027 (Utah Ct. app. 1996)). Defendant cannot show prejudice. “[A] plea bargain standing alone is without constitutional significance; in itself it is a mere executory agreement which until embodied in the judgment of a court, does not deprive an accused of liberty or any other constitutionally protected interest.” (Stringham quoting Mabry v. Johnson, 467 U.S. 504 at 507 (1984)). The State presented ready for trial on June 15, 2015. This case has been pending for nearly 2 years, Defendant has waived his speedy trial rights a number of occasions and did so again on June 15, 2015. Any prejudice to this point is speculative and Defendant cannot show any real prejudice.

Furthermore, the Stringham Court noted, “[i]n addition to being an executory agreement, the decision whether to accept or reject a plea agreement lies within the discretion of the trial court.” (quoting State v. Mane, 783 P.2d 61, 66 (Utah Ct. App. 1989)). Furthermore, “even where ‘the government and the defendant reach a plea agreement, the court is not required to accept it.’” (Stringham quoting, United States v. Hernandez, 948 F.2d 316, 325 (7th Cir. 1991)).

Rule 35 of the Utah Rules of Criminal Procedure states, “[a]t the time of entry of plea, the prosecutor shall represent to the court, either in writing or on the record, that the victim has been contacted and an explanation of the plea bargain has been provided to the victim...prior to the court’s acceptance of the plea.” U.R.C.P. 35

Here, even if the State and Defendant would have moved forward with the plea, the Court by rule could have rejected it. Prior to the State rescinding the offer, the Victim had not been contacted and the State had not explained the plea bargain to her. Defendant could not guarantee that the Court would accept and enter the plea of record and should have been prepared to go to trial.

CONCLUSION

The tentative plea offer was not final. Even if the plea was final; the State could rescind the offer where Defendant suffered no actual prejudice. Therefore, there is no plea to enforce. Furthermore, the tentative plea agreement was neither presented to nor accepted by the trial court. Accordingly Defendant’s motion should be denied.

DATED this 30 June 2015.

SIM GILL
District Attorney

/s/ _____
Clint Heiner
Deputy District Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing STATE'S MOTION TO PRECLUDE EXPERT TESTIMONY, was sent to the following:

| | |
|--|---|
| Kelly Ann Booth Attorney for Defendant 8 East Broadway, Suite 700 Salt Lake City, Utah 84111 kellyann@boothlegal.com | <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Messenger/Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> email <input checked="" type="checkbox"/> eFile |
| | |

DATED this 30 June 2015.

/s/ Clint Heiner USB P#11905

Attachment A

Clint Heiner

From: Kelly Ann Booth <kellyann@boothlegal.com>
Sent: Saturday, June 13, 2015 4:31 PM
To: Clint Heiner
Subject: Re: Samuel Aaron Francis

Clint: I am waiting on final confirmation from Aaron, but he is accepting the plea offer you made yesterday for him to plead to the 3rd degree felony, Obstruction of Justice-DV, with 24 month probation recommend, stay silent at sentencing on jail, substance abuse eval and complete recommended treatment, and restitution.

Because of the new information we learned yesterday and today, and the new offer to plead to obstruction, my assessment is that if we can't prevail on a teidemann motion/motion in limine/motion to continue based on the new information we learned yesterday and today, and we have to go forward to trial without the video, the better option is to plead to the new offer.

let's plan on doing that Monday morning, and I'll draft the plea paperwork and send it to you for your approval. see you Monday. Kelly Ann

Kelly Ann Booth, Esq.
The Judge Building
8 East Broadway, Suite 700
Salt Lake City, Utah 84111
(801) 364.6666 Telephone
(801) 618.3835 Facsimile

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Any communication or offer of settlement contained in this electronic mail message is subject to Rule 408 of the Utah Rules of Evidence and Rule 68 of the Utah Rules of Civil Procedure and is subject to the limitations thereof.

Sent from my iPhone

> On Jun 13, 2015, at 2:52 PM, Clint Heiner <CHeiner@slco.org> wrote:
>
>
>
> Clint Heiner
> Deputy District Attorney
> Office of the Salt Lake County District Attorney
> 111 East Broadway, Suite 400<x-apple-data-detectors://4/0> Salt Lake
> City, UT 84111<x-apple-data-detectors://4/0>
>
> 801-363-7900<tel:801-363-7900>
> 801-366-4176<tel:801-366-4176> (fax)

>
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> disseminate, distribute or copy this communication. If you have
> received this message in error, please immediately notify the sender
> by reply electronic mail and delete the original message. Thank you
>
>
> Begin forwarded message:
>
> From: "Clint Heiner" <CHeiner@slco.org<mailto:CHeiner@slco.org>>
> To: "'Kelly Ann Booth'"
> <kellyann@boothlegal.com<mailto:kellyann@boothlegal.com>>
> Cc: "Clint Heiner" <CHeiner@slco.org<mailto:CHeiner@slco.org>>
> Subject: FW: Samuel Aaron Francis
>
> Here is the most up-to-date police report
>
> 52 pages. I attached a copy of the report and the CAD Call
>
> <13-140510.pdf>
> <CAD call 13-140510.pdf>

Attachment B

Clint Heiner

From: Kelly Ann Booth <kellyann@boothlegal.com>
Sent: Sunday, June 14, 2015 8:04 PM
To: Clint Heiner
Cc: Krystal Bain; Justin Knell
Subject: Re: Samuel Aaron Francis
Attachments: SIAP_Francis_20150615.pdf

Clint: Here is the Statement of Defendant in Advance of Plea for the obstruction charge. I included all the terms you indicated on Friday, so it should be good to go. I will be at court in the morning at 8am to review it with Aaron, so we will be ready to go to enter the plea when Judge Hansen takes the bench at 8:15. Let me know if you see any edits that need to be made, otherwise, see you in the morning. Thanks, Kelly Ann

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>
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>
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> From: "Clint Heiner" <CHeiner@slco.org<mailto:CHeiner@slco.org>>
> To: "'Kelly Ann Booth'"
> <kellyann@boothlegal.com<mailto:kellyann@boothlegal.com>>
> Cc: "Clint Heiner" <CHeiner@slco.org<mailto:CHeiner@slco.org>>
> Subject: FW: Samuel Aaron Francis
>
> Here is the most up-to-date police report
>
> 52 pages. I attached a copy of the report and the CAD Call
>
> <13-140510.pdf>
> <CAD.call 13-140510.pdf>

Attachment C

Clint Heiner

From: Clint Heiner
Sent: Monday, June 15, 2015 7:25 AM
To: 'Kelly Ann Booth'
Subject: RE: Samuel Aaron Francis

It is only a 1 step reduction. Also, take alleged victim out of statement .

-----Original Message-----

From: Kelly Ann Booth [mailto:kellyann@boothlegal.com]
Sent: Sunday, June 14, 2015 8:04 PM
To: Clint Heiner
Cc: Krystal Bain; Justin Knell
Subject: Re: Samuel Aaron Francis

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Sent from my iPhone

> On Jun 13, 2015, at 2:52 PM, Clint Heiner <CHeiner@slco.org> wrote:

>
>
>

> Clint Heiner

> Deputy District Attorney

> Office of the Salt Lake County District Attorney

> 111 East Broadway, Suite 400<x-apple-data-detectors://4/0> Salt Lake

> City, UT 84111<x-apple-data-detectors://4/0>

>

> 801-363-7900<tel:801-363-7900>

> 801-366-4176<tel:801-366-4176> (fax)

>

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> received this message in error, please immediately notify the sender

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>

>

> Begin forwarded message:

>

> From: "Clint Heiner" <CHeiner@slco.org<mailto:CHeiner@slco.org>>

> To: "Kelly Ann Booth"

> <kellyann@boothlegal.com<mailto:kellyann@boothlegal.com>>

> Cc: "Clint Heiner" <CHeiner@slco.org<mailto:CHeiner@slco.org>>

> Subject: FW: Samuel Aaron Francis

>

> Here is the most up-to-date police report

>

> 52 pages. I attached a copy of the report and the CAD Call

>

> <13-140510.pdf>

> <CAD call 13-140510.pdf>

KELLY ANN BOOTH (10910)
kellyann@boothlegal.com
THE JUDGE BUILDING
8 EAST BROADWAY, SUITE 700
SALT LAKE CITY, UTAH 84111-2225
(801) 364-6666 PHONE
(801) 618-3835 FACSIMILE
Attorney for Defendant

IN THE UTAH DISTRICT COURT FOR THE THIRD JUDICIAL DISTRICT
SALT LAKE DEPARTMENT

STATE OF UTAH,

Plaintiff,

-v-

SAMUEL AARON FRANCIS,

Defendant.

**MEMORANDUM FURTHER
SUPPORTING DEFENDANT'S
MOTION TO ENFORCE
PLEA AGREEMENT**

Case № 131908488

The Honorable Royal Hansen

COMES NOW Defendant, SAMUEL AARON FRANCIS, and files this *Memorandum Further Supporting Defendant's Motion to Enforce Plea Agreement*.

RESPONSE TO STATE'S STATEMENT OF FACTS

1. "Between June 12 and 13, 2015, the State and Counsel for Defense engaged in plea negotiation discussions. Those discussions concluded with a statement by Defense Counsel that "Aaron can not (sic) accept any felony because he has a no felony policy at work."

- a. *Response:* The State and Francis did not “engage in plea negotiation discussions.” Francis told the State that they had failed to place the final plea offer on the record at the final pre-trial that morning, and needed to do that at trial Monday morning. Francis then inquired what the State’s final offer was, and the State extended a new offer that included dismissal of all the Aggravated Assault felony charges. Francis’s counsel did reply that she did not believe Aaron would accept the offer because he has a no felony policy at work; however, Francis’ counsel clearly indicated to the State that, since there was a new offer that included dismissal of the Aggravated Assault charges, she was ethically obligated to convey the offer to Francis and would get back to the State with his answer. The State did not indicate at any time that the offer was tentative, or subject to approval by anyone. That was the State’s final stated plea offer, the one that the parties “should have” put the record in open court as the final plea offer to Francis for him to accept or reject.

2. “So, when on June 13, 2015, Counsel for Defendant sent the State an email tentatively accepting a felony offer (Attachemnt (sic) A), the State was surprised.”

- a. *Response:* While Francis does not dispute that the State was surprised, the email accepting the offer was not tentative. It read in relevant part, “he is accepting the plea offer you made yesterday for him to plead to the 3rd degree felony, Obstruction of Justice-DV, with 24 month probation

recommend, stay silent at sentencing on jail, substance abuse eval and complete recommended treatment, and restitution...let's plan on doing that Monday morning, and I'll draft the plea paperwork and send it to you for your approval."¹ Despite ample opportunity to hit "reply" to Francis' email, at no time did the State respond to Francis and indicate that he needed to get approval from anyone, or that he had not notified the alleged victim in this case. In fact, when the State did reply to the subsequent email from Francis containing the Statement of Defendant in Advance of Plea, the State's only response was to make minor edits to the document.

3. "Counsel for the State then emailed the Victim and asked her for her number."
 - a. Response: The State could have emailed Francis if it had concerns that the plea offer had not been discussed with the alleged victim. It was clear from Francis' email that the offer was accepted and that Francis was anticipating entering the plea on Monday morning. It was also clear from Francis' acceptance email that the basis for the acceptance of the plea was to avoid asserting and litigating certain defenses and evidentiary issues that had been brought to light on June 13, and that Francis was actually foregoing his defenses and claims in order to take advantage of the new

¹ Email from Booth to Heiner dated June 13, 2015 at 4:31pm (a copy of which is attached hereto as Exhibit A).

plea offer. These facts demonstrate there was likely a duty at that point for the State to inform Francis that it viewed the offer as “tentative,” if it did, in fact, view it as such at that point.

4. “On June 14, 2015, the State received another email from Counsel for Defense with an attached proposed plea for review (Attachement (sic) B).”

a. *Response:* The attached Statement in Advance of Plea outlined all the terms of the plea agreement, as offered by the State and accepted by Francis. Despite confirmation in that email that the plea was accepted by Francis, and an actual document created in performance of the agreement, the State still did not respond to that email and indicate that the plea offer was “tentative” or conditional.

5. “On June 14, 2015, the State received a returned email from the Victim with her phone number; however, the state (sic) did not call her until the following morning, because of the late hour.”

a. *Response:* None.

6. “On the morning of June 15, 2015, the State looked at the tentative plea and sent an email to Defense Counsel (Attachemnt (sic) C).”

a. *Response:* The State’s email made minor edits to the plea agreement, and again did not indicate in any way that the plea was “tentative” or that the parties may not enter the plea that morning.

7. "The State then called and spoke with the Victim. After discussing the tentative plea with the Victim, the State rescinded its offer to Defendant in Court at about 8:15am when Counsel for Defense appeared."
 - a. *Response*: Other than disputing that the plea was "tentative", no further response.
8. "The tentative plea agreement was never finalized. Counsel for Defense had not made the changes proposed by the State."
 - a. *Response*: Counsel did make the changes by interlineation to the Agreement since they were minor edits, and not substantive changes. The plea agreement was finalized on June 13 when Francis accepted the State's unequivocal offer, and relied on that agreement when he forewent investigation and assertion of evidentiary claims and defenses, as well as his trial rights.
9. "Counsel for Defense had not reviewed the plea with Defendant and neither party had signed the plea. Furthermore, the plea was never presented to nor accepted by the trial court."
 - a. *Response*: Counsel had absolutely reviewed the plea agreement with Francis, and the State is correct that no one had signed the agreement yet, because the State unilaterally breached the agreement and rescinded its plea. The plea was presented to the Court, but it has not yet been accepted.

ARGUMENT

*Disposition of charges after plea discussions is not only an essential part of the process, but a highly desirable part for many reasons. It leads to prompt and largely final disposition of most criminal cases...This phase of the process of criminal justice, and the adjudicative element inherent in accepting a plea of guilty, must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.*²

I. US and Utah caselaw indicates that the Court should apply contract law principles in determining where there was an enforceable agreement between the State and Francis.

“Many courts, including the Utah Supreme Court and the United States Supreme Court, have referred to plea agreements as contract and have applied principles from contract law to plea agreements.”³ The Utah Supreme Court has articulated specifically,

[t]he nature of plea bargains requires the exchange of consideration, allowing the parties involved to reach a mutually desirable agreement. A plea bargain is a contractual relationship in which consideration is passed.⁴

The State correctly quoted the Court of Appeals in *Patience* when it stated, “[h]owever, although principles of contract law provide a useful framework involving plea agreements they cannot be blindly incorporated into the criminal law area of plea

² *Santobello v. New York*, 404 U.S. 257, 262 (1971).

³ *State v. Patience*, 944 P.2d 381, 386 (Utah Ct.App.1997) (citing *Santobello v. New York*, 404 U.S. 257, 262 (1971)).

⁴ *State v. West*, 765 P.2d 891, 895-96 (Utah 1988)(internal citations and quotations omitted).

bargaining.”⁵ Yet it failed to include the immediately following sentences in that paragraph which make clear that the application of contract law principles should be more broadly applied in the plea bargain context, not more narrowly as the State suggests. *Patience* goes on to hold,

In applying contract law principles to plea agreements, courts must keep in mind that the defendant’s underlying contract right is constitutionally based and therefore reflects concerns that differ fundamentally from and run wider than those of commercial contract law. As a result, the application of contract law principles to plea agreements may require tempering in some instances. For example, in interpreting plea agreements or determining their validity, court may in certain circumstances hold the government to a higher standard than the defendant.⁶

The central holding in *Patience* was that the State could not rely on strict application of contract law principles to deny the defendant her due process rights or invalid her plea agreement in its entirety. The State in that case was seeking to set aside her entire plea and require the defendant to face trial on the charges anew where she was seeking specific performance under the agreement. This holding stands for the opposition proposition than the State suggests, and further undermines its argument to invalidate its plea agreement.

⁵ State’s Response to Defendant’s Motion to Enforce The Plea Agreement at 2.

⁶ *State v. Patience*, 944 P.2d 381, 387 (Utah Ct.App.1997) (internal citations and quotations omitted).

The Court's holding in *Patience* is premised upon the Utah line of cases interpreting the United States Supreme Court's holdings regarding plea agreements in *Santobello*⁷ and *Mabry*.⁸ Accordingly, "[a] defendant may also be entitled to enforcement of his or her plea agreement on the basis of a reasonably formed expectation,"⁹ including specific performance.¹⁰

Thus, the Court should apply contract law principles broadly to the facts of this plea agreement, and find that the State made a definite plea offer, that was unequivocally accepted by Francis, and he relied upon that agreement (consideration) in foregoing some defenses and evidentiary claims.

A. The State's plea offer was not "tentative," it was definite in its terms and communicated without caveat or condition.

The State's definite, final plea offer was extended to Francis on June 12, when Heiner told Booth, "Aaron can plead to a third degree felony, 402 reduction after successful completion of probation, 24 months supervised probation, no agreement for recommendation of no jail at sentencing." The State does not directly dispute that fact, but rather alleges that the State and Francis engaged in "plea negotiation discussions." Yet that is simply incorrect. The State's offer was a specific response to Francis'

⁷ *Santobello v. New York*, 404 U.S. 257 (1971).

⁸ *Mabry v. Johnson*, 467 U.S. 504 (1984).

⁹ *State v. Nine Thousand One Hundred Ninety-One Dollars*, 791 P.2d 213 (Utah Ct.App.1990).

¹⁰ *State v. Smit*, 2004 UT App 222.

statement that the parties had failed to place on the record the final offer in this case, to meet the requirements of *Missouri v. Frye*. That the State provided its last plea offer in the case is evidence that the parties were not engaged in plea negotiations.

The plea offer from the State was clear, unconditional, specific, and complete in its terms. The State does not dispute that the offer, as stated by Francis in his memorandum, was made. Francis' counsel clearly indicated to the State that, since there was a new offer that included dismissal of the Aggravated Assault charges, she was ethically obligated to convey the offer to Francis and would get back to the State with his answer.

In fact, Francis did respond to the State not more than 24 hours later, with a clear acceptance of the offer. Francis' counsel said, "he is accepting the plea offer you made yesterday for him to plead to the 3rd degree felony, Obstruction of Justice-DV, with 24 month probation recommend, stay silent at sentencing on jail, substance abuse eval and complete recommended treatment, and restitution."¹¹

Accordingly, because the State's plea offer was unconditional and definite, and Francis' acceptance was unequivocal, the Court must enforce the agreement if it determines there was consideration or reliance upon the agreement by Francis; prejudicial.

B. Francis relied upon the plea agreement and was prejudiced by the State's improper rescission.

¹¹ Email from Booth to Heiner dated June 13, 2015 at 4:31pm (a copy of which is attached hereto as Exhibit B).

The State's argument that it can rescind its offer up to the point the Court accepts and enters the plea on the record is incorrect, and not based on Utah or Federal Court authority. In fact, under Utah law, "[a] defendant may also be entitled to enforcement of his or her plea agreement on the basis of a reasonably formed expectation,"¹² including specific performance.¹³ And, "courts will generally only allow the State to unilaterally rescind a plea agreement by showing that facts analogous to those warranting a mistrial exist or by showing that the defendant has breached the agreement."¹⁴

In this case, Francis specifically forewent the investigation and assertion of claims regarding alleged *Brady* and *Teidemann* violations. Francis also forewent his trial rights inasmuch as he presented himself on the day of trial without the benefit of counsel whom could provide effective assistance; Francis' counsel did not have any files or trial materials necessary to present a trial defense because the State induced Francis and his counsel to stop their trial preparations, call off witnesses, and forego claims and defenses relating to evidentiary issues discovered on June 13.

The prejudiced is further demonstrated by the State's objection to Francis' request to continue trial in light of the State's breached plea agreement. The State specifically sought to have Francis go forward without the benefit of effective assistance

¹² *State v. Nine Thousand One Hundred Ninety-One Dollars*, 791 P.2d 213 (Utah Ct.App.1990).

¹³ *State v. Bero*, 645 P.2d 44, 47 (Utah 1984).

¹⁴ *Patience*, 944 P.2d at 387 (internal quotations and citations omitted).

of counsel caused by the inducement of the State to enter the plea agreement. That the Court did not grant the State's request does not alleviate the prejudice suffered by Francis.

Moreover, at least one witness who appeared at the trial on June 15 is likely to fail to appear at any subsequent trial in this matter. Robert Packer stated to Francis' counsel in the hallway on the morning of trial that he "did not want to be here" and did not think he was "going to come back." The prejudice to Francis is clear. The witness appeared on the day of trial for which, but for the State's actions, would have gone forward and the witness could have testified. Further, Francis is now in a position where he is required to pay the expert he retained in this case additional monies because of the State's actions; Dr. Beall was called off when the plea agreement was reached on June 13. And, again, the State prejudiced Francis by insisting on going forward to trial that morning.

Had the Court had the benefit of the briefing on June 15, and a fair appraisal of the facts regarding the plea agreement and subsequent breach, the Court would have enforced the agreement, finding that Francis would be prejudiced by going forward after reliance on the State's agreement.

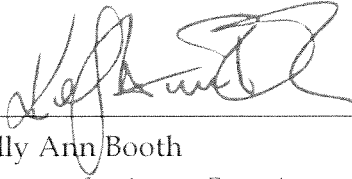
CONCLUSION

WHEREFORE, SAMUEL AARON FRANCIS, having the reasonable understanding that in exchange for his plea as charged to Count Four of the Amended Information, a third degree felony to obstruction of justice (DV), his case will be resolved in a manner

favorable to both parties, respectfully moves the court to enforce said agreement, and require that the State honor the resolution that Francis negotiated with Heiner, and accepted prior to trial.

RESPECTFULLY SUBMITTED this 7th day of July, 2015.

LAW OFFICES OF
KELLY ANN  BOOTH
P.L.L.C.



Kelly Ann Booth
Attorney for Aaron Francis

EXHIBIT A

Kelly Ann Booth

From: Kelly Ann Booth
Sent: Saturday, June 13, 2015 4:31 PM
To: Clint Heiner
Subject: Re: Samuel Aaron Francis

Clint: I am waiting on final confirmation from Aaron, but he is accepting the plea offer you made yesterday for him to plead to the 3rd degree felony, Obstruction of Justice-DV, with 24 month probation recommend, stay silent at sentencing on jail, substance abuse eval and complete recommended treatment, and restitution.

Because of the new information we learned yesterday and today, and the new offer to plead to obstruction, my assessment is that if we can't prevail on a teidemann motion/motion in limine/motion to continue based on the new information we learned yesterday and today, and we have to go forward to trial without the video, the better option is to plead to the new offer.

let's plan on doing that Monday morning, and I'll draft the plea paperwork and send it to you for your approval. see you Monday. Kelly Ann

Kelly Ann Booth, Esq.
The Judge Building
8 East Broadway, Suite 700
Salt Lake City, Utah 84111
(801) 364.6666 Telephone
(801) 618.3835 Facsimile

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Sent from my iPhone

> On Jun 13, 2015, at 2:52 PM, Clint Heiner <CHeiner@slco.org> wrote:
>
>
>
> Clint Heiner
> Deputy District Attorney
> Office of the Salt Lake County District Attorney
> 111 East Broadway, Suite 400<x-apple-data-detectors://4/0> Salt Lake
> City, UT 84111<x-apple-data-detectors://4/0>
>
> 801-363-7900<tel:801-363-7900>
> 801-366-4176<tel:801-366-4176> (fax)
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>
>

> Begin forwarded message:

>
> From: "Clint Heiner" <CHeiner@slco.org<<mailto:CHeiner@slco.org>>>
> To: "'Kelly Ann Booth'"
> <kellyann@boothlegal.com<<mailto:kellyann@boothlegal.com>>>
> Cc: "Clint Heiner" <CHeiner@slco.org<<mailto:CHeiner@slco.org>>>
> Subject: FW: Samuel Aaron Francis
>

> Here is the most up-to-date police report

>
> 52 pages. I attached a copy of the report and the CAD Call
>


> <13-140510.pdf>
> <CAD call 13-140510.pdf>

CERTIFICATE *of* SERVICE

This is to certify that on the 7th day of July, 2015, a true and correct copy of the foregoing was served by the method indicated below, and addressed to the following:

Salt Lake District Attorney
Justice Division Broadway
111 E Broadway Suite 400
Salt Lake City, Utah 84111

- ☐ Hand Delivery
- ☐ U.S. Mail
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ e-filing



Addendum B

1 tempering goes in favor of the State. It says the tempering goes
2 in favor of the defendant.

3 THE COURT: Okay. Thank you.

4 MS. BOOTH: Thank you, Judge.

5 THE COURT: I appreciate your help. Let's see, Counsel,
6 with regard to the motion to enforce the plea agreement, the
7 Court's not in a position to grant that motion, and in fact
8 rejects it, finding that the plea had not been accepted by the
9 Court in this circumstance.

10 The plea had not been entered of record. The victim
11 had not been consulted with regard to a potential plea, and the
12 Tiedemann motion had not been heard at that juncture, that as I
13 look at the State has the ability to rescind an offer before it's
14 accepted and enter a record. Here it was not accepted by the
15 Court or entered of record, either one.

16 The plea agreement -- the State's not bound by that
17 until there is an acceptance. The State can rescind the offer up
18 and to the point that the Court accepts the offer and enters the
19 plea of record, neither of which took place here. Based upon
20 that, the Court's not able to enforce the plea agreement, and so
21 I think we're in the position of getting this matter -- are we
22 ready for trial? Is that what you're telling me, Counsel, on the
23 case and going forward?

24 MR. HEINER: Yes, Judge. I believe we have a pre-trial
25 in front of Judge Shaughnessy the week prior to trial. I don't