

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * *
UNITED STATES OF AMERICA
v.
ADEBAYO ADEGBESAN
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* 13-CR-110-01-PB
* May 2, 2014
* 2:20 p.m.
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TRANSCRIPT OF CHANGE OF PLEA
BEFORE THE HONORABLE PAUL J. BARBADORO

Appearances:

For the Government: Arnold Huftalen, AUSA
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For the Defendant: Matthew G. Stachowske, Esq.
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BEFORE THE COURT

THE CLERK: Court is in session and has for consideration a change of plea hearing in United States of America versus Adebayo Adegbesan, Criminal Case No. 13-cr-110-01-PB.

THE COURT: Mr. Huftalen, before we do this case, update me on the status of the other defendants in this case.

MR. HUFTALEN: One defendant, Kamau Brown, pled guilty a few weeks ago. This defendant obviously is pleading guilty today. A third defendant, Mr. Harris, is scheduled to plead guilty at eleven a.m. on Monday of next week, and we are scheduled to go to trial with Mr. Banks who is represented by Jon Saxe who is in the courtroom today.

THE COURT: So there are four defendants in this case?

MR. HUFTALEN: Four defendants. By Monday at lunchtime three will have pled guilty.

THE COURT: Mr. Saxe, are you going to trial?

MR. SAXE: I had indicated to Mr. Huftalen that I have been in contact with my client on a regular basis. He requested after discussing with me that we request a continuance based on the superseding indictment and a lot of new discovery which I just

1 received and haven't even reviewed yet.

2 THE COURT: All right. Do you object to a
3 30-day continuance in light of the superseding
4 indictment?

5 MR. HUFTALEN: No.

6 THE COURT: If you get a motion to continue
7 filed before the end of the day Monday stating that
8 there are -- you need additional time because of a new
9 superseding indictment and additional discovery, I will
10 give you 30 days.

11 MR. SAXE: It's already written. I will file
12 it today. I'm also going to request that my client be
13 able to extend the arraignment so he doesn't have to
14 come up for that and I can file --

15 THE COURT: The arraignment on the
16 superseding?

17 MR. SAXE: That's Monday.

18 THE COURT: Yes. We should continue the
19 arraignment until the time of trial and we'll just do
20 the arraignment the morning of trial.

21 MR. HUFTALEN: He can waive his appearance and
22 arraignment and file a waiver form.

23 THE COURT: All right. So why don't you do
24 that so he doesn't even have to come up. He can waive
25 arraignment on the superseding. As long as everybody --

1 he's on bail now. He's been compliant. There's no
2 reason to believe he's a risk of flight or a risk of
3 harm if he's allowed to remain out?

4 MR. HUFTALEN: Correct.

5 THE COURT: Just file the waiver forms, file
6 the motion to continue. I will continue the case for
7 30 days, take it off the trial list so you won't have to
8 prepare for trial. Okay?

9 MR. SAXE: I will do it before the end of the
10 day, your Honor.

11 THE COURT: All right. Thank you, Mr. Saxe.

12 (Pause.)

13 THE COURT: Okay. Second, Mr. Huftalen, I
14 just want to be sure I've got that right. So the
15 superseding was two Counts, one bank fraud, one
16 conspiracy. You're going to dismiss the conspiracy
17 count after his plea in the bank fraud is accepted.

18 MR. HUFTALEN: In this case here, yes, I am.

19 THE COURT: All right. Thank you.

20 MR. HUFTALEN: I plan to go to trial on both,
21 but with respect to the two outstanding defendants who
22 are pleading guilty, they will plead to Count 1 and I
23 will dismiss Count 2.

24 THE COURT: So it looks like on paper a naked
25 plea. You're telling me that you don't have any deal

1 with him. That in exchange for his plea, you will
2 dismiss the remaining charge. You say you're intending
3 to do that anyway even though you haven't offered it as
4 consideration for his guilty plea.

5 MR. HUFTALEN: Correct.

6 THE COURT: Do you agree that there's no
7 contract agreement for which Mr. Huftalen has agreed to
8 dismiss the second charge in exchange for your client's
9 guilty plea?

10 MR. STACHOWSKE: Yes, your Honor.

11 THE COURT: You agree with that. Okay. All
12 right. Thank you.

13 MR. HUFTALEN: The only other issue -- I don't
14 want to create an issue, but I want to put it out there.
15 There are no offers of a plea in this case. We have
16 offered to concede on nothing.

17 I have told the defendant and his lawyer that
18 if after pleading he testifies at the trial against Mr.
19 Banks, if he goes to trial, I would consider filing a 5K
20 if that rose to the level of substantial assistance, but
21 there's no inducement to get him to plead guilty to
22 offer him a 5K.

23 THE COURT: You have not made any binding
24 commitment in any event. You've merely expressed your
25 position that if he were to agree to do that, you would

1 consider whether to do something with respect to a 5K,
2 but you're not obligated to do so.

3 MR. HUFTALEN: Correct.

4 THE COURT: You're not making your statement
5 to induce a plea agreement.

6 MR. HUFTALEN: Correct.

7 THE COURT: Do you agree with that, counsel?

8 MR. STACHOWSKE: Yes, I do.

9 THE COURT: Okay. Sir, I understand you
10 intend to plead guilty to Count 1 of the superseding
11 indictment charging you with the crime of bank fraud.
12 Is that right?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: So we're going to ask you a series
15 of questions. You need to speak your answers because
16 what we say is being recorded. You need to respond
17 truthfully so I will direct the deputy clerk to place
18 you under oath now.

19 (Defendant duly sworn.)

20 THE COURT: You can be seated and remain
21 seated throughout the proceeding. If you don't
22 understand something I'm saying to you, interrupt me and
23 ask me to explain it. Do you understand?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: How far did you go in school?

1 THE DEFENDANT: I'm a senior.

2 THE COURT: In what?

3 THE DEFENDANT: In biology.

4 THE COURT: In college?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. Do you have any difficulty
7 reading in English?

8 THE DEFENDANT: I do not.

9 THE COURT: Have you ever been treated for a
10 mental illness?

11 THE DEFENDANT: I have not.

12 THE COURT: Are you taking any medicine today
13 or are you under the influence of drugs or alcohol?

14 THE DEFENDANT: I am not.

15 THE COURT: If this case were to go to trial,
16 you would not have to prove your innocence. Instead the
17 prosecutor would have to prove your guilt beyond a
18 reasonable doubt, and the prosecutor would have to prove
19 each element of the offense charged against you in order
20 for you to be found guilty. Do you understand?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Now, there are a couple of key
23 documents here I want to be sure that you've read. One
24 is called an acknowledgement and waiver of rights form.
25 That describes the charge that you're pleading guilty

1 to, bank fraud, and it describes the penalties and
2 describes various consequences of your decision. Have
3 you read that document?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: The second document is the charge
6 itself. It's called the superseding indictment. There
7 are two counts. You're going to be pleading guilty to
8 one of them today, the first count. The first count is
9 bank fraud. The second count is conspiracy to commit
10 bank fraud. Did you read that document?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: And did you discuss it with your
13 lawyer?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And then there is a third document
16 here called "Addendum to Acknowledgement and Waiver of
17 Rights." And that essentially describes the charge, the
18 elements of the offense, and the facts that Mr. Huftalen
19 says he can prove at trial if this case went to trial.
20 Did you read that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Did you discuss that with your
23 lawyer?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you feel you understand all

1 three of those documents?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Okay. So if you look at the
4 addendum -- I told you the prosecutor has to prove each
5 element of the offense. So if you look at the addendum,
6 you can figure out what the elements are. On the first
7 page where he says the first thing that has to be proved
8 is that there was a scheme substantially as charged in
9 the indictment to defraud a financial institution or to
10 obtain a financial institution's money by means of false
11 or fraudulent pretenses. Second, he would have to prove
12 that the defendant knowingly and willfully participated
13 in the scheme with the intent to defraud or to obtain
14 money by means of false or fraudulent pretenses. And
15 third he would have to prove that the financial
16 institution was federally insured. In order for those
17 things -- each one of those things would have to be
18 proved in order for you to be found guilty of the
19 offense of bank fraud. Do you understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Now, if you turn the page and look
22 at the factual basis of the plea beginning on page two
23 and continuing for several pages, is there anything in
24 that statement of facts that you think is wrong?

25 THE DEFENDANT: No, everything is accurate.

1 THE COURT: Now, if we go back to the
2 acknowledgement and waiver of rights form itself, you
3 can see what the potential penalties are that you face.
4 The maximum prison term is up to 30 years. The maximum
5 fine is up to a million dollars. A mandatory special
6 assessment of \$100 will be due for each count of
7 conviction. A term of supervised release of not more
8 than five years could potentially be imposed, and if you
9 violate supervised release you could be sent back to
10 prison. You could be required to make restitution as a
11 part of your offense, and you will have to pay a \$100
12 special assessment that will be due at or before the
13 time of sentencing. Do you understand all that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Have you discussed in general with
16 your lawyer how the Sentencing Guidelines may apply in
17 this case?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: When I sentence you I will use
20 those guidelines to determine a guideline sentencing
21 range. That's a range of months. I will then treat the
22 guidelines as advisory. That means I could sentence you
23 within that range of months or I could sentence you
24 above the range or I could sentence you below the range.
25 Do you understand?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Mr. Huftalen has said that you do
3 not have any agreement with the government regarding how
4 your case is going to be disposed of here. In other
5 words, you're pleading guilty, and according to Mr.
6 Huftalen, he has made no promises to you in an effort to
7 try to get you to plead guilty. Do you agree with that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Mr. Huftalen, have you extended
10 any formal plea offers to the defendant at any point?

11 MR. HUFTALEN: No, we have not.

12 THE COURT: Counsel, do you agree?

13 MR. STACHOWSKE: I agree, your Honor.

14 THE COURT: Has anyone promised you anything
15 in an effort to try to get you to plead guilty?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Has anyone threatened you in an
18 effort to try to get you to plead guilty?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: You're giving up certain
21 constitutional rights by pleading guilty. So you have a
22 right to a trial. That would be in front of a jury.
23 The jury would consist of 12 people. All 12 people
24 would have to find you guilty beyond a reasonable doubt.
25 You would have a right to be represented by counsel at

1 that trial at no cost to you. You could testify at the
2 trial if you wanted to. You would have a right to
3 remain silent if you wanted to remain silent. If you
4 chose to remain silent, I would tell the jury it could
5 not hold your silence against you. You could be present
6 in the courtroom throughout the trial. You could have
7 witnesses brought in at no cost to you that would
8 testify for you. You could be present and you could
9 have your lawyer cross-examine any witnesses who testify
10 against you. By pleading guilty, you're giving up all
11 of these rights. If I accept your guilty plea, there
12 won't be a trial. The only thing that will be left is
13 for me to sentence you, and I will determine any facts
14 that are necessary to sentence you. Do you understand
15 that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Are you satisfied with the legal
18 advice you've received from your attorney?

19 THE DEFENDANT: I am, your Honor.

20 THE COURT: Counsel, have you advised your
21 client concerning the admissibility of any statements or
22 other evidence the government has against him?

23 MR. STACHOWSKE: Yes, I have, your Honor.

24 THE COURT: To your knowledge is he pleading
25 guilty because of any illegally obtained evidence in the

1 government's possession?

2 MR. STACHOWSKE: Not to my knowledge, your
3 Honor.

4 THE COURT: Do you know of any reason why I
5 should not accept his guilty plea?

6 MR. STACHOWSKE: No.

7 THE COURT: Thank you. Sir, this is the last
8 chance you have to change your mind. Do you feel you've
9 had enough time to think about your decision?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you still wish to plead guilty
12 to the charge?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right. I will take your
15 guilty plea now. You've told me that you've read the
16 charge, Count 1 of the superseding indictment, and you
17 understand it. So I won't read it to you again unless
18 you want me to. Do you want me to read it again?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: As to that charge charging you in
21 Count 1 with bank fraud, how do you plead to that
22 charge, guilty or not guilty?

23 THE DEFENDANT: I plead guilty, sir.

24 THE COURT: I guess in case we need to
25 formally arraign him on the indictment as a whole, I'll

1 direct a not guilty plea to be entered on his behalf
2 with respect to Count 2 which you will be later moving
3 to dismiss, okay? I think that should take care of
4 that.

5 MR. HUFTALEN: Thank you.

6 THE COURT: Having questioned the defendant
7 and his counsel on the offered plea of guilty, the
8 defendant and his counsel having informed the Court that
9 they have conferred concerning the offered plea of
10 guilty and all aspects of the charges against the
11 defendant and any defenses he may have, and the Court
12 having observed the defendant making his answers, his
13 demeanor and manner while answering questions, his
14 attitude and his apparent intelligence, and the Court
15 having observed that the defendant does not appear to be
16 under the influence of any medication, drug, or other
17 substance which may affect his judgment in any manner,
18 the Court finds that the offered plea of guilty of the
19 defendant has a factual basis, is free of any coercive
20 influence of any kind, is knowingly, voluntarily, and
21 intelligently made with full knowledge of the charge
22 against him and the consequences of his plea. No
23 threats have been exerted upon him in any manner. No
24 promises have been made to him in an effort to try to
25 get him to plead guilty. Accordingly I accept the

1 defendant's guilty plea. He's now adjudged guilty of
2 the offense set forth in Count 1 of the indictment.

3 Do you plan to dismiss the second count now or
4 after sentencing?

5 MR. HUFTALEN: After sentencing.

6 THE COURT: Sentencing in this case will take
7 place on August 8th at ten a.m. Parties should consult
8 local rules for other dates bearing on the sentencing
9 process. Mr. Huftalen, what's your position on bail?

10 MR. HUFTALEN: The defendant has been on bail.
11 He's been compliant. I've been informed that he's on
12 low level supervision. I submit to the Court that under
13 Title 18, Section 3143, this is not a case where
14 detention is required, and if you were to hold a
15 hearing, you would find by clear and convincing evidence
16 that the defendant is neither a risk of flight nor a
17 danger to others in the community. I recommend that he
18 be released on the same conditions he has been with two
19 minor exceptions. There was one bail condition, I think
20 it was Condition 8B, which required that he actively
21 maintain or seek employment. I request that that be
22 stricken because he's a full-time college student. And
23 I'd request that 8U be added, which is a condition that
24 requires him to continue his educational program as a
25 student.

1 THE COURT: And the probation officer is in
2 agreement about this; right?

3 MS. MCNUTT: I do have one question. In
4 regard to being a senior in college, will you be
5 graduating soon?

6 THE DEFENDANT: I will be graduating in May of
7 2015.

8 MS. MCNUTT: Okay. No objection.

9 MR. STACHOWSKE: And to that end he will be
10 taking classes this summer.

11 THE COURT: I will amend those conditions and
12 otherwise allow the defendant to remain free pending the
13 imposition of sentence subject to the current conditions
14 based on the government's recommendation and the
15 endorsement of the probation officer.

16 Mr. Huftalen, if you don't have an answer or
17 you don't want to answer, you don't have to on this.
18 Does this defendant to your knowledge have a criminal
19 record?

20 MR. HUFTALEN: I believe he does not.

21 THE COURT: Do you know?

22 MS. MCNUTT: My searches have not shown up
23 anything.

24 THE COURT: One of the things I'm curious
25 about -- and, again, you don't have to answer if you

1 don't want to. It looks like one or more of the people
2 that were caught up in this scheme were certainly not
3 leaders of the scheme, did not conceive of the scheme,
4 may not have had any prior criminal record, doesn't
5 appear to be any violence associated with it, doesn't
6 appear to be any actual loss that was suffered. Is the
7 government going to be thinking about incarceration for
8 these defendants of that type?

9 MR. HUFTALEN: The defendants that fit the
10 profile that you just described, no. But some of them
11 don't fit that profile.

12 THE COURT: Right. And some may have
13 aggravating circumstances in their background or the
14 nature of the offense that I'm not aware of. So with a
15 defendant like this, if things are as you have proffered
16 and there are no other aggravating circumstances, it's
17 possible that you will be seeking a non-incarcerative
18 sentence?

19 MR. HUFTALEN: Yes, sir.

20 THE COURT: All right. I just wanted to
21 understand it because obviously a felony conviction for
22 someone like this is a very serious, permanent, adverse
23 consequence in and of itself, and you -- at least the
24 way the case has been proffered to me, it looks like the
25 principal in the case went and recruited some people

1 that he knew, and several of those people didn't have
2 any prior demonstrated propensity to engage in criminal
3 conduct and went along with it as kind of a joy ride
4 kind of thing. Some easy money and nobody gets hurt but
5 the bank kind of problem. Is that consistent with the
6 way -- it may be the case with some of these people?

7 MR. HUFTALEN: Yeah. I mean, there are a
8 couple of these cases in the court now where there were
9 a group who came here and they were not targeted. There
10 were other people who had been indicted. They were
11 targeted in a lure attempt to get them here. But in
12 some instances, like this case, Mr. Adekoya didn't come
13 but he sent four others. The fact that they came and
14 the fact that they engaged in the scheme and the fact
15 that they were looking to take, in this case, \$100,000
16 out of the bank left us with the choice of do we turn a
17 blind eye to it or do we say -- I'm not saying --

18 THE COURT: I'm not in any way implying the
19 decision to charge them is a mistaken decision.
20 Oftentimes it's entirely right to charge somebody even
21 though the sentence isn't going to involve imprisonment.
22 There are many good reasons to do that. I'm sure you
23 have them here. I'm not second guessing on that. I
24 just was curious because here you have a college senior
25 with no criminal record who did something seriously

1 wrong by his own admission and needs to face
2 consequences for it, but I think we would all agree that
3 somebody without any significant criminal record, you
4 want to find a way to punish him appropriately without
5 inhibiting his ability to go on and become a law-abiding
6 member of society. And you feel the same way.

7 MR. HUFTALEN: I do. And I think the Court
8 probably understands that that's the approach I've taken
9 in many cases. I don't disagree with anything that you
10 said.

11 THE COURT: Okay. Fine. Just curious because
12 I've seen a few of them come through now. Maybe related
13 to this, maybe unrelated to this. I seem to have a
14 number of these with you right now.

15 MR. HUFTALEN: I have more than I'd like, and
16 I'm sure you do, too.

17 THE COURT: People are told to come up to New
18 Hampshire and do this stuff. It's a good approach. You
19 end up catching a lot of people.

20 MR. HUFTALEN: The whole lure, I mean, is to
21 eliminate this SODDI defense, S-O-D-D-I, some other dude
22 did it. When you're talking with somebody on the
23 computer, as you know, unless you have eyes on him on
24 the keyboard, there's always that reasonable doubt.

25 THE COURT: It's a very effective law

1 enforcement technique. Believe me, I'm not in any way
2 being critical of it. I'm curious about it and I of
3 course want to see that, to the extent I have
4 responsibilities with respect to it, that I fulfill
5 those responsibilities, and I'm just learning about it,
6 trying to understand it.

7 MR. HUFTALEN: I don't think you will see a
8 whole lot more of these.

9 THE COURT: It seems like you have a very
10 creative active agent who's working with you on at least
11 some of these cases and I just was wondering.

12 MR. HUFTALEN: Who was in Washington, D.C.
13 this week to get an award because he was selected as the
14 Secret Service Agent of the year.

15 THE COURT: Really. That's what I mean. He
16 seems like a go-getter kind of person and people like
17 that tend to produce lots of cases.

18 MR. HUFTALEN: And the targets that he and I
19 are targeting are not like the person who's sitting here
20 in court today.

21 THE COURT: They're people above him.

22 MR. HUFTALEN: Way above.

23 THE COURT: Okay. All right. Thank you.

24 (Adjourned at 2:45 p.m.)

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C E R T I F I C A T E

I, Diane M. Churas, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 5/13/14

/s/ Diane M. Churas
DIANE M. CHURAS, LCR, CRR