

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA  
2017 SEP 11 PM 6:10

UNITED STATES OF AMERICA,  
  
Plaintiff,

v.

JOHN BLACKHAWK,  
  
Defendant.

8:16CR216

PLEA AGREEMENT

OFFICE OF THE CLERK

IT IS HEREBY AGREED between the plaintiff, United States of America, through its counsel, Robert C. Stuart, Acting United States Attorney and Douglas R. Semisch, Assistant United States Attorney, and defendant, John Blackhawk, with the advice and consent of his attorney, Jerry M. Hug, as follows:

I

THE PLEA

A. CHARGE(S) & FORFEITURE ALLEGATION(S).

1. Defendant agrees to plead guilty to Count I which charges a violation of Title 18, United States Code, Sections 1167(b) and 2.

2. In exchange for the foregoing, the United States agrees to dismiss Counts II and III as to this defendant at the time of sentencing.

II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED.

Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. A gaming establishment was operated by the Winnebago Tribe pursuant to an ordinance and resolution approved by the National Indian Gaming Commission.

2. On or about dates in the indictment, the defendant willfully misapplied or took with the intent to steal monies and funds of the casino in excess of \$1,000.

Misapply is defined as: voluntarily and intentionally using funds of an entity knowing that such use is unauthorized, unjustifiable or wrongful. It includes the wrongful taking or use of money by an agent of the entity for his own benefit or for the benefit of another. A willful misapplication is done with a bad purpose, but the government need not prove the defendant knew the conduct violated a known legal duty.

**B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS.**

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crime, and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

1. At all relevant times, the defendant was the Chairman of the Winnebago Tribal Council for the Winnebago Tribe of Nebraska.
2. The WinnaVegas Casino (hereafter "the Casino") was a gaming establishment operated by the Tribe pursuant to an ordinance and resolution (hereafter "the Gaming Ordinance") approved by the National Indian Gaming Commission.
3. At all relevant times, the Tribe's use of revenue generated by the Casino was governed by Title 25, United States Code, Section 2710, Title 25 Code of Federal Regulations, Section 290.9, and by the Gaming Ordinance. These authorities prohibited the use of net revenues from any tribal gaming for any purpose other than to fund tribal government operations or programs; to provide for the general welfare of the Tribe and its members; to promote tribal economic development; to donate to charitable organizations; or to help fund operations of local government agencies.
4. At all relevant times, Article IV, Section 1 of the Bylaws of the Tribe provided, "Salaries may be paid to Tribal Council officers and members from tribal funds as approved by a vote of the Tribal Council following, with respect to each such salary

payment, a determination as to the level of compensation and justification therefore, the specific services to be provided for the duration of the salary period.”

5. At all relevant times, Article IV, Section 4 of the Bylaws of the Tribe provided, “Except for expenditures of funds approved pursuant to the budget process set forth above, additional expenditure of funds belonging to the Tribe must first be approved by a majority vote of the Tribal Council at a Regular Meeting.”
6. At all relevant times, Tribal Council members were considered to be full-time employees of the Tribe and were paid annual salaries through the payroll department of the Tribe. During calendar year 2013, the defendant received in excess of \$80,000 in gross pay from the Tribe. During calendar year 2014, the defendant received in excess of \$87,000 in gross pay from the Tribe. These amounts were exclusive of other amounts paid for retroactive salary increases, buy-out of vacation time, and bonuses paid through the payroll department of the Tribe.
7. The Tribal Council never approved at a regular meeting additional salary or other distributions to be paid to any member of the Tribal Council directly from funds of the Casino for any work performed relating to the Casino, nor did the Tribal Council at a regular meeting describe specific additional duties the defendant was to perform at the casino over and above his normal duties with respect to the casino.
8. Beginning on or about December of 2013, in conjunction with other members of the tribal council and the Controller of the casino, ~~the defendant~~ provided Liberty National Bank in Sioux City, Iowa, with personally identifying information so that Liberty National Bank could open separate pre-paid Visa debit card accounts for the defendant and each of the other members of the tribal council. Thereafter, at the direction of a tribal council member, an employee of the Casino did arrange for Liberty National Bank to make loads to the debit cards of the defendant and other tribal council members



in the amounts indicated on the following dates: (a) \$2,500 on 12/20/13; (b) \$2,000 on January 10, 2014; (c) \$2,500 on 1/24/14; (d) \$2,000 on 2/27/14; (e) \$2,000 on 3/19/14; (f) \$2,000 on 4/25/14; (g) \$2,000 on 5/9/14; (h) \$2,500 on 6/2/14 (Defendant Snowball was excluded from this distribution, but received gift certificates in like amount instead); (i) \$1,500 on 6/27/14; (j) \$1,500 on 7/15/14; (k) \$2,500 on 8/7/14; (l) \$2,000 on 9/5/14; and (m) \$2,000 on 9/26/14.

9. Invoices for the loads were sent by Liberty National Bank directly to the casino and not to the payroll department of the tribe. As these invoices exceeded \$10,000 in amount per load, prior approval was required from the Winnebago Gaming Commission pursuant to the Winnebago Gaming Ordinances. No such approval was ever obtained from the Winnebago Gaming Commission nor was the Commission even aware these distributions were being made from casino funds. Similarly, the Tribal Council never approved these disbursements at any regular meeting nor did the council ratify at any regular meeting any agreements or approvals from tribal council members that may have been made outside of a public, regular meeting.
10. Amounts paid by the casino for these loads were listed under the category of miscellaneous administrative expenses on the books of the casino. Further, amounts distributed as indicated in paragraph 8 above were not included on the W2s provided to the defendant and other tribal council members nor were any payroll taxes deducted from said amounts.
11. The defendant utilized his debit card to obtain cash and/or make purchases both in Iowa and Nebraska. As indicated in the Indictment, the defendant used his card on 02/08/14 to purchase items from the Nebraska Furniture Mart in Omaha, Nebraska in the amount of \$1,162.96 and on 10/05/14 to purchase items from the Nebraska Furniture Mart in Omaha, Nebraska in the amount of \$1,742.85.

12. Two tribal council members other than the defendant claimed to the FBI that they were the only ones who had been delegated to go to the casino to do any work and that no other council members did extra work there. That work primarily consisted of searching for a new general manager and a new marketing director for the casino. These council members reported they became upset when they learned other council members were getting the same loads to their cards. The casino controller/interim general manager also told the FBI that she did not see any extra work being done by tribal council members to justify these payments to the tribal council members.
13. Two other tribal council members admitted to the FBI that they did no extra work at the casino.
14. The casino controller/interim general manager kept screen shots of text messages she received from the Tribal Council Treasurer relating to his instructions to load the debit cards. On at least one instance, the justification was listed as being completion of the finance audit. On another, the justification was constitution day. On a third day, the justification was administrative professional's day.
15. Bland & Associates was hired by the Winnebago Tribe to do an independent report concerning the payments to the tribal council members and others from the casino. Bland concluded there was \$301,000 in unallowable loads to prepaid debit cards. These cards were issued to the defendant, the other members of the tribal council, and to various other administrative staff and employees of the casino.

### III

#### PENALTIES

A. COUNT I. Defendant understands that the crimes to which defendant is pleading guilty carries the following penalties:

1. A maximum 10 years in prison;

2. A maximum \$ 250,000 fine;
3. A mandatory special assessment of \$100; and
4. A term of supervised release of up to 3 years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring defendant to serve in prison all or part of the term of supervised release.
5. Possible ineligibility for certain Federal benefits.

#### IV

#### AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE

#### DISTRICT OF NEBRASKA

This plea agreement is limited to the United States Attorney's Office for the District of Nebraska, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities.

#### V

#### PARTIES' SENTENCING RECOMMENDATIONS

##### A. SENTENCING GUIDELINE CALCULATIONS.

Although the parties understand that the Guidelines are advisory and only one of the factors the court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments and Departures. Unless otherwise stated, all agreements as to sentencing issues are made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), but the sentencing recommendation is pursuant to Rule 11(c)(1)(C).

1. The parties have no agreement regarding the Sentencing Guidelines calculations.
2. If the defendant is found to be entitled to an offense level reduction under U.S.S.G. 3E1.1(a) for acceptance of responsibility, the United States hereby moves that the court reduce the

defendant's offense level by one additional level, pursuant to U.S.S.G. § 3E1.1(b), if that paragraph otherwise applies.

3. The parties agree that if the defendant is determined to be a career offender pursuant to U.S.S.G. § 4B1.1(a), the applicable offense level shall be determined pursuant to U.S.S.G. § 4B1.1(b). Furthermore, the defendant will be in Criminal History Category VI.

**B. ACCEPTANCE OF RESPONSIBILITY.**

Notwithstanding paragraph A above, the government will not recommend any adjustment for Acceptance of Responsibility if defendant:

1. Fails to admit a complete factual basis for the plea at the time it is entered, or
2. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the court or probation officer, or
3. Fails to appear in court, or
4. Engages in additional criminal conduct, or
5. Attempts to withdraw the plea, or
6. Refuses to abide by any lawful court order, or
7. Contests or assists any third party in contesting the forfeiture of property(ies) seized or forfeited in connection with this case.

The parties further agree the defendant will make no blanket objections to the criminal history calculation (specific objections based on stated grounds are permitted). Objections to criminal history on the basis that the defendant was not the person who was convicted of the offense(s) described in the presentence investigation report or on the basis that the defendant was not represented by counsel in connection with such conviction(s), if determined to be unfounded, are evidence the defendant has not accepted responsibility and the parties agree no credit for acceptance of responsibility should be given.

**C. ADJUSTMENTS, DEPARTURES & REDUCTIONS UNDER 18 U.S.C. § 3553.**

The parties agree that defendant may not request or recommend additional downward adjustments, departures, including criminal history departures under U.S.S.G. § 4A1.3, and sentence reductions under 18 U.S.C. § 3553.



D. CRIMINAL HISTORY.

The parties have no agreement concerning the defendant's Criminal History Category, except that if defendant is determined to be a Career Offender, the parties agree that the defendant is automatically a Criminal History Category VI pursuant to U.S.S.G. § 4B1.1(b).

E. FACTUAL BASIS AND RELEVANT CONDUCT INFORMATION.

The parties agree that the facts in the factual basis paragraph of this agreement, if any, are true, and may be considered as relevant conduct under U.S.S.G. § 1B1.3 and as the nature and circumstances of the offense under 18 U.S.C. § 3553(a)(1).

The parties agree that all information known by the office of United States Pretrial Service may be used by the Probation Office in submitting its presentence report, and may be disclosed to the court for purposes of sentencing.

F. PARTIES' RECOMMENDATION REGARDING CUSTODY.

1. Pursuant to Rule 11(c)(1)(C), the United States will recommend the defendant be sentenced to a term of probation of five years and be ordered to pay a special assessment of \$100. The defendant shall further be ordered to pay restitution in the amount he personally received from loads to his prepaid debit card and through gift certificates he received from the casino in 2013 and 2014 which he did not pay for. The defendant expressly agrees that the court shall order restitution regarding the gift certificate amounts even though they may not be part of the count of conviction. The parties further agree the amount of restitution to be ordered shall be reduced by the amount the defendant has repaid to the Winnebago Tribe or the Winnevegas Casino as of the date of sentencing.

G. STIPULATED REMOVAL.

If defendant is not a United States citizen, or national, either before or immediately following sentencing, defendant agrees to an order of removal from the United States entered by Executive Office for Immigration Review or authorized Department of Homeland Security official. Defendant understands that defendant will not be removed until defendant has served any criminal sentence imposed in this or any other case. Defendant further waives any right to appeal, reopen or challenge the removal order.

VI

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK



The defendant hereby knowingly and expressly waives any and all rights to appeal the defendant's conviction and sentence, including any restitution order in this case, and including a waiver of all motions, defenses, and objections which the defendant could assert to the charges or to the Court's entry of Judgment against the defendant, and including review pursuant to 18 U.S.C. § 3742 of any sentence imposed, except:

- (a) As provided in Section I above, (if this is a conditional guilty plea); and
- (b) A claim of ineffective assistance of counsel.

The defendant further knowingly and expressly waives any and all rights to contest the defendant's conviction and sentence in any post-conviction proceedings, including any proceedings under 28 U.S.C. § 2255, except:

- (a) The right to timely challenge the defendant's conviction and the sentence of the Court should the Eighth Circuit Court of Appeals or the United States Supreme Court later find that the charge to which the defendant is agreeing to plead guilty fails to state a crime.
- (b) The right to seek post-conviction relief based on ineffective assistance of counsel.

If defendant breaches this plea agreement, at any time, in any way, including, but not limited to, appealing or collaterally attacking the conviction or sentence, the United States may prosecute defendant for any counts, including those with mandatory minimum sentences, dismissed or not charged pursuant to this plea agreement. Additionally, the United States may use any factual admissions made by defendant pursuant to this plea agreement in any such prosecution.

## VII

### **BREACH OF AGREEMENT**

Should it be concluded by the United States that the defendant has committed a crime subsequent to signing the plea agreement, or otherwise violated this plea agreement, the defendant shall then be subject to prosecution for any federal, state, or local crime(s) which this agreement otherwise anticipated would be dismissed or not prosecuted. Any such prosecution(s) may be premised upon any information, statement, or testimony provided by the defendant.

In the event the defendant commits a crime or otherwise violates any term or condition of this plea agreement, the defendant shall not, because of such violation of this agreement, be allowed to withdraw the defendant's plea of guilty, and the United States will be relieved of any obligation it otherwise has under this agreement, and may withdraw any motions for dismissal of

charges or for sentence relief it had already filed.

## VIII

### SCOPE OF AGREEMENT

A. This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

B. By signing this agreement, the defendant agrees that the time between the date the defendant signs this agreement and the date of the guilty plea will be excluded under the Speedy Trial Act. The defendant stipulates that such period of delay is necessary in order for the defendant to have opportunity to enter the anticipated plea of guilty, and that the ends of justice served by such period of delay outweigh the best interest of the defendant and the public in a speedy trial.

C. The United States may use against the defendant any disclosure(s) the defendant has made pursuant to this agreement in any civil proceeding. Nothing contained in this agreement shall in any manner limit the defendant's civil liability which may otherwise be found to exist, or in any manner limit or prevent the United States from pursuing any applicable civil remedy, including but not limited to remedies regarding asset forfeiture and/or taxation.

D. Pursuant to 18 U.S.C. § 3013, the defendant will pay to the Clerk of the District Court the mandatory special assessment of \$100 for each felony count to which the defendant pleads guilty. The defendant will make this payment at or before the time of sentencing.

E. By signing this agreement, the defendant waives the right to withdraw the defendant's plea of guilty pursuant to Federal Rule of Criminal Procedure 11(d). The defendant may only withdraw the guilty plea in the event the court rejects the plea agreement pursuant to Federal Rule of Criminal Procedure 11(c)(5). Furthermore, defendant understands that if the court rejects the plea agreement, whether or not defendant withdraws the guilty plea, the United States is relieved of any obligation it had under the agreement and defendant shall be subject to prosecution for any federal, state, or local crime(s) which this agreement otherwise anticipated would be dismissed or not prosecuted.

F. This agreement may be withdrawn by the United States at any time prior to its being signed by all parties.

IX

**MODIFICATION OF AGREEMENT MUST BE IN WRITING**

This agreement ends all plea discussions. No promises, agreements or conditions have been entered into other than those set forth in this agreement, and none will be entered into unless in writing and signed by all parties.

X

**DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

By signing this agreement, defendant certifies that defendant read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

Date: 9/11/17

UNITED STATES OF AMERICA  
ROBERT C. STUART  
Acting United States Attorney

Douglas R. Semisch  
DOUGLAS R. SEMISCH  
Assistant U.S. Attorney

Date: 9/16/17

John Blackhawk  
JOHN BLACKHAWK  
Defendant

Date: 8/16/17

Jerry M. Hug  
JERRY M. HUG  
Defendant's Attorney