

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

UNITED STATES OF AMERICA)
)
 v.) DOCKET NO. 1:17-CR-80
)
 PHILLIP S. ARMACHAIN, SR.) **FACTUAL BASIS**
)
 _____)

NOW COMES the United States of America, by and through R. Andrew Murray, United States Attorney for the Western District of North Carolina, and hereby files this Factual Basis in support of the plea agreement filed simultaneously in this matter.

This Factual Basis is filed pursuant to Local Criminal Rule 11.2 and does not attempt to set forth all of the facts known to the United States at this time. By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea(s) that the defendant will tender pursuant to the plea agreement, and that the facts set forth in this Factual Basis are sufficient to establish all of the elements of the crime(s). The parties agree not to object to or otherwise contradict the facts set forth in this Factual Basis.

Upon acceptance of the plea, the United States will submit to the Probation Office a "Statement of Relevant Conduct" pursuant to Local Criminal Rule 32.4. The defendant may submit (but is not required to submit) a response to the Government's "Statement of Relevant Conduct" within seven days of its submission. The parties understand and agree that this Factual Basis does not necessarily represent all conduct relevant to sentencing. The parties agree that they have the right to object to facts set forth in the presentence report that are not contained in this Factual Basis. Either party may present to the Court additional relevant facts that do not contradict facts set forth in this Factual Basis.

1. At all times relevant to this factual basis statement, the defendant, PHILLIP S. ARMACHAIN, SR., was a professional bail bondsman, licensed by the State of North Carolina and authorized to execute bail bonds on behalf of defendants in the courts of the State of North Carolina and in the Cherokee Tribal Court for the Eastern Band of Cherokee Indians, in Jackson and Swain Counties, within the Western District of North Carolina. Under the state law, which is also applicable in Tribal Court, once a bail bondsman has posted the bond and a defendant has been released from custody, the bondsman (or "surety"), has the power to surrender the defendant, even when there has been no breach of the conditions of a bail bond, thereby causing the defendant to have to return to custody.

2. In or about November 2016, an adult female identified herein as AB was being held in the Cherokee Tribal Detention Facility following her arrest for Cherokee Tribal Court charges. She contacted the defendant and he agreed to post bond for her. The defendant went to the jail

and completed the necessary procedures to secure the release of AB, then offered to give her a ride home. The defendant, however, drove AB to his own house on the Cherokee reservation.

3. Once inside his house, the defendant started kissing AB and removing her clothes. He informed her that if she would have sex with him he would forgive the fee she owed him for having executed the bond. AB was very familiar with bond procedures and feared that if she did not have intercourse with the defendant he would surrender her back into custody. AB thereby felt pressured to engage in actions that she otherwise would not have done. Therefore, in order to ensure that the defendant would not surrender her back into custody, and to have the fee forgiven, she engaged in sexual intercourse with the defendant.

4. The laws regarding the bail process in the State of North Carolina and Cherokee Tribal Court were not designed or intended to achieve sexual favors for a bondsman from a client defendant. The defendant abused that legal process in order to pressure or coerce AB to provide him with labor or services.

R. ANDREW MURRAY
UNITED STATES ATTORNEY


RICHARD LEE EDWARDS
ASSISTANT UNITED STATES ATTORNEY

Defendant's Counsel's Signature and Acknowledgment

I have read this Factual Basis, the Second Superseding Bill of Indictment, and the plea agreement in this case, and have discussed them with the defendant. Based on those discussions, I am satisfied that the defendant understands the Factual Basis, the Second Superseding Bill of Indictment, and the plea agreement. I hereby certify that the defendant does not dispute this Factual Basis.



Anthony G. Scheer, Attorney for Defendant

DATED: 1/23/18