

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. 10-147-3
MIKE KNOX a/k/a Michael J. Gibson	:	

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by its attorneys, Zane David Memeger, United States Attorney for the Eastern District of Pennsylvania, and K.T. Newton, Assistant United States Attorney for the District, hereby files its Sentencing Memorandum.

From on or about January 2009 to on or about April 2010, defendant Mike Knox, a/k/a Michael Gibson, who is no stranger to the criminal justice system, with co-conspirators Andre Davis, Talayah Little, Melvin Allen, Keith Ennis and others, participated in a conspiracy to commit bank fraud, and committed substantive acts of bank fraud. Knox assisted Davis in recruiting check runners and accompanying Davis and others to make fraudulent transactions, using fraudulent identification, against the accounts of customers of TD Bank, Citizens Bank and Wachovia Bank. The illegal actions of Knox and his co-conspirators resulted in \$319,575 worth of fraudulent transactions and attempted transactions against the accounts of customers of those banks.

I. STATUS OF THE DEFENDANT

On August 26, 2010, defendant Mike Knox, a/k/a “Michael J. Gibson,” was charged by way of a Superseding Indictment, in Criminal No. 10-147-3, with: Count One, conspiracy to commit bank fraud and aggravated identity theft, in violation of 18 U.S.C. § 371; in Counts 2, 21 and 29, bank fraud and aiding and abetting bank fraud, in violation of 18 U.S.C. §§ 1344 and 2; and, in Counts 3 through 8, 13 through 15, 30 and 31, aggravated identity theft and aiding and abetting aggravated identity theft, in violation of 18 U.S.C. §§ 1028A and 2. Knox appeared before the Court on February 1, 2012 and entered a plea of guilty to Counts One through Eight, Thirteen through Fifteen, Twenty-One and Twenty-Nine through Thirty-One of the Superseding Indictment.

Mike Knox has been on pretrial and presentence release since he was indicted and entered his guilty plea. Knox is scheduled to appear before the Court for sentencing on Thursday, August 30, 2012.

II. MAXIMUM PENALTY

Count 1 - 18 U.S.C. § 371 (conspiracy)

Five years imprisonment, three years supervised release, a \$250,000 fine, and a \$100 special assessment.

Counts 2, 21, 29 - 18 U.S.C. § 1344 (bank fraud)

Thirty years imprisonment, five years supervised release, a \$1,000,000 fine, and a special assessment of \$100 per count.

Counts 3-8, 13-15, 30, 31 - 18 U.S.C. § 1028A (aggravated identity theft)

Two years imprisonment for each count, a two year mandatory minimum term of imprisonment, one year supervised release, as well as a \$250,000 fine, and a \$100 special assessment per count.

The maximum statutory penalty faced by Mike Knox is 117 years imprisonment, five years supervised release, \$6,000,000 fine and a \$1500 special assessment. Full restitution of as much as \$278,275 (actual loss to the banks) shall be ordered by the Court.

III. GUIDELINE IMPRISONMENT/SUPERVISED RELEASE/FINE RANGES

The government believes that the Probation Office correctly calculated the defendant's offense level, Criminal History category, and sentencing guidelines range as follows:

The applicable guideline is U.S.S.G. § 2B1.1. The amount of fraud loss and intended loss as a result of Knox' fraudulent transactions and attempted transactions against accounts of business customers of TD Bank, Citizens Bank and Wachovia Bank was \$319,575. Knox' base offense level, therefore, is 7 pursuant to § 2B1.1(a)(1). That level is increased by 12 pursuant to § 2B1.1(b)(1)(G), as the loss is greater than \$200,000 and less than \$400,000, for an adjusted offense level of 1. Knox offense level is increase by 2 for greater than 10 victims, pursuant to § 2B1.1(b)(2)(A), and further increased by 3 for his role as a supervisor or manager of a scheme with five or more participants, pursuant to § 3B1.1(b), for an adjusted offense level of 24. Knox qualifies for a three level reduction for acceptance of responsibility. Knox' final offense level, therefore, is 21.

Knox has 12 criminal history points, putting him at the top of Criminal History Category of V, and his guideline range for the bank fraud and conspiracy charges, therefore, is 70-87 months. Knox also is subject to a 24 month mandatory consecutive sentence, and up to a

264 month consecutive sentence for the aggravated identity theft counts, resulting in a guideline range of 94 to 351 months.

IV. SENTENCING RECOMMENDATION

Mike Knox, a/k/a “Michael J. Gibson,” engaged for a significant period of time in serious offenses – conspiracy, and committing, and aiding and abetting, bank fraud and identity theft, offenses that had real consequences to individuals and to TD Bank, Citizens Bank and Wachovia Bank.

A prison sentence is warranted and called for by application of the Sentencing Guidelines. The guideline range for imprisonment is 94-351 months. The government believes that, considering Knox’ criminal history and conduct, that a sentence within the guideline range is appropriate. Indeed, a thorough consideration of all of the sentencing factors set forth in 18 U.S.C. § 3553(a) indicates that the most appropriate sentence would be one within the guideline range of 123-128 months (75 to 80 months on the conspiracy and bank fraud charges, and a 48 month consecutive sentence for the aggravated identity theft charges, with two 24 month terms running consecutively, and the remaining terms running concurrently).

The Supreme Court has declared: “As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” *Gall v. United States*, 128 S. Ct. 586, 596 (2007). Thus, the Sentencing Guidelines remain an indispensable resource for assuring appropriate and uniform punishment for federal criminal offenses.

This Court must also consider all of the sentencing considerations set forth in Section 3553(a). Those factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; (4) the need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the guidelines and policy statements issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (7) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).¹

¹ Further, the “parsimony provision” of Section 3553(a) states that “[t]he court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection.” The Third Circuit has held that “district judges are not required by the parsimony provision to routinely state that the sentence imposed is the minimum sentence necessary to achieve the purposes set forth in § 3553(a)(2). . . . ‘[W]e do not think that the “not greater than necessary” language requires as a general matter that a judge, having explained why a sentence has been chosen, also explain why some lighter sentence is inadequate.’” *United States v. Dragon*, 471 F.3d 501, 506 (3d Cir. 2006) (quoting *United States v. Navedo-Concepcion*, 450 F.3d 54, 58 (1st Cir. 2006)).

Consideration of the 3553(a) Factors

Restitution, which is mandatory, is an issue in this case.

1. The nature and circumstances of the offense and the history and characteristics of the defendant

a. The nature and circumstances of the offense

Knox was a major participant in this large scale bank fraud and identity theft ring. He recruited other participants such as Melvin Allen and Keith Ennis, to act as check runners and Knox, with Andre Davis, took the check runners out to conduct fraudulent transactions against the accounts of numerous bank customers. Under no circumstances, is this acceptable or condonable behavior and, more importantly, Knox knew that it was illegal. As a direct result of the actions of Knox and Davis and the individuals they recruited, TD Bank, Citizens Bank and Wachovia Bank became victims of bank fraud and numerous customers of these banks became the victims of identity theft. Without the actions of Knox and Davis, in recruiting and directing the check runners, who actually go into the banks to cash the fraudulent checks, the fraud would not have occurred.

This high level participation in this illegal activity, which victimized many innocent individuals – individuals whose only reason for being defrauded was that they had bank accounts -- cannot be minimized or ignored. Pursuant to § 3553(a)(1), consideration of the nature of his offenses and his actions in furtherance of this scheme, counsels in favor of a significant period of incarceration for Knox.

As a direct result of the actions of Knox and his co-conspirators, over thirty individuals became victims of identity theft, having to deal with the consequences of that serious breach and invasion of privacy. These victims' personal, identifying information – their social

security numbers, their dates of birth, their driver's license numbers, their addresses – have been put out into a public and criminal domain. Like the genie, they cannot be stuffed back in the bottle.

These crimes also have an even more direct and immediate impact on the victims, in terms of time, effort and feelings of violation. Indeed, one of Knox' victims, I.F., had relayed to Keith Ennis' Probation Officer the difficulties in getting his bank account issues cleared up.

Carolanne Clark, another of the victims of this fraud scheme, wrote a letter, explaining how her bank account had been emptied right before Christmas during a period of time when she was sick. *See* Gov't Ex. A. Not only did Ms. Clark miss work to clear up the issues with her bank account, and have to change bank accounts and insurance, she had her husband had continued issues in refinancing their home and obtaining loans for their daughter's college education. *Id.* Ms. Clark summed up her frustrations with this fraud: "My husband and I try our best to always work hard and pay all of our bills. I am so tired of people trying to take the easy way out. . . . Please set an example for others who may try and take the easy way." *Id.*

Matilda Clipner, another victim, stated: "Being a victim of identity theft was a very upsetting time of my life. My money was being stolen out of my checking account. I could not believe this was happening to me." Gov't Ex. B. Ms. Clipner described the impact this fraud had for her and her husband: "Our savings and checking accounts were frozen. We could not get money out of our accounts or use our debit cards. We had to borrow money from my elderly mother-in-law to put gas in my car, buy food and other living expenses. Very embarrassing . . . I felt like someone was watching me or 'going to get me.' I did not even want to use the computer because I thought someone was recording my every move." *Id.*

Victim Nina Leavitt described her experience: “In October 2009, I checked my online banking and found that a large check had been deposited in my account, and, the same day, an almost as large withdrawal was made. After a worried and sleepless night, my husband & I went into the branch as early as we could on Saturday morning. . . . we spent the whole morning at the bank trying to untangle our situation. After the bank, we spent a couple hours at the Horsham Police Department to report the crime. . . . It was also our anniversary, & although my husband & I went out as planned, I was very distraught, & upset, & not able to enjoy it. I spent many hours thereafter trying to track down & cancel what outstanding checks I could. . . . Even now I have great trepidation when I am called upon to write a check. I continue to pay a monthly fee for credit monitoring to this day, & I check my online banking compulsively. Ms. Leavitt summarized her feelings on the effect of this fraud: “This has been a very stressful experience, & I am glad that the responsible parties have been caught. I hope their sentences send a strong message to other who might be contemplating similar fraudulent activity.” *Id.* See Gov’t Ex. C.

b. The history and characteristics of the defendant

As noted in the Presentence Report, this conviction by no means marks Mike Knox’ first contact with the criminal justice system. Indeed, Knox’ criminal career started at the age of 14, with a delinquent adjudication for criminal conspiracy, theft and unauthorized use of an automobile, and continued at age 16, with another delinquent adjudication for the same crimes. PSR ¶¶ 80-82.

Knox’ adult criminal career started in 1997 at age 20, with a guilty plea to the crimes of unlawful restraint and simple assault, and several parole violations up to the maximum possible sentence. PSR ¶ 84. Undeterred by any sentence received thus far, Knox’ criminal

convictions mounted with a guilty plea to receipt to stolen property in January 2002, a prison term of 3 to 23 months, with two subsequent revocations of probation; another guilty plea to receipt to stolen property in March 2002, a prison term of 3 to 23 months, with two subsequent revocations of probation; and an adjudication of guilty to resisting arrest in 2004. PSR ¶¶ 84-102. Moreover, Knox was on probation at the time he committed these crimes. PSR ¶ 103. Clearly, Knox' past prison time and probation has failed to deter him from committing more, and, indeed, more serious, crimes.

In addition, Mike Knox' lack of respect for the law is demonstrated by his status as a scofflaw violator in Philadelphia, with 25 outstanding traffic tickets and fines of over \$5,000. PSR ¶ 104. That lack of respect is also shown by his untruthfulness to the probation officer, with his statement that he had never used illegal drugs, despite a 1997 Philadelphia presentence investigation report which indicated that Knox admitted to smoking marijuana from the age of 17. PSR ¶ 127.

Knox entered into this pattern of criminal activity, despite having a stable upbringing with his mother, and apparently having a "loving and positive family situation with his wife and children" during the time period he was committing these crimes. PSR ¶¶ 115-118. The government does note that, a 1997 mental health evaluation in the Philadelphia criminal system concluded that Knox "best met the diagnostic criteria of personality disorder - anti-social personality with passive aggressive defenses." PSR ¶ 125. Knox has complied, however, with the conditions of his pre-trial and pre-sentence release in this case.

2. The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

The seriousness of Mike Knox' offenses is reflected in the adjusted offense level of 24, given his integral role in the bank fraud and identity theft scheme. The government believes that a within-guidelines sentence is the best way to recognize the seriousness of Knox' offenses, to promote respect for the law, and to provide just punishment for his crimes. Certainly, Knox' past conduct has not demonstrated respect for the law.

3. The need to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant;

A sentence within the guidelines affords both specific and general deterrence to criminal conduct, deterrence that is clearly mandated in this case. Given Knox' past convictions and constant violations of probation, it is clear that his past sentences have not deterred him from criminal conduct. A within-guidelines sentence should give him reason to reconsider his past activities and act as a deterrent for him from future criminal conduct. A guidelines sentence also sends a message to others who would contemplate these same activities. In addition, the government asks that the Court impose the maximum period of five years supervised release, which may provide additional impetus to Knox to refrain from returning to illegal activities.

4. The need to provide the defendant with educational or vocational training, medical care, or other correctional treatment in the most effective manner;

There does appear to be a need to adjust Knox' sentence in order "to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." Knox did not finish high school, and has not earned a GED. PSR ¶ 129. He reported to the probation officer that he is a self-employed music artist and manager. Tellingly, one of the artists he states that he manages is Beanie Sigel (real name of

Dwight Grant), an individual with two federal convictionswhom Knox should not be associating, under the terms of his pre-trial and pre-sentence release. PSR ¶ 130 & n.4.

Knox' records from the Social Security Administration document only one source of employment between 1992 and 2012 – working for Aramark in 2000, for total earning of \$428. PSR ¶ 132. His records do not indicate any self-employment earnings. PSR ¶ 132.

5. The guidelines and policy statements issued by the Sentencing Commission and the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct;

While the sentencing guidelines are advisory, they remain the sole means available for assuring some measure of uniformity in sentencing, fulfilling a key Congressional goal in adopting the Sentencing Reform Act of 1984. Reference to the guidelines, while carefully considering the 3553(a) factors particularly relevant to an individual defendant, is the only available means of preventing the disfavored result of basing sentences on the luck of the draw in judicial assignments. The Third Circuit has explained:

Even under the current advisory system, district courts must “meaningfully consider” § 3553(a)(4), i.e., “the applicable category of offense . . . as set forth in the guidelines.” The section of *Booker* that makes the Guidelines advisory explains that “the remaining system, while not the system Congress enacted, nonetheless continue[s] to move sentencing in Congress’ preferred direction, *helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary.*” *Booker*, 543 U.S. at 264-65 (emphasis added). The Guidelines remain at the center of this effort to “avoid excessive sentencing disparities,” and, as the *Booker* Court explained, the Sentencing Commission will continue “to promote uniformity in the sentencing process” through the Guidelines. *Id.* at 263. We have likewise observed that the ““Guidelines remain an essential tool in creating a fair and uniform sentencing regime across the country.”” *Cooper*, 437 F.3d at 331 (quoting *United States v. Mykytiuk*, 415 F.3d 606, 608 (7th Cir. 2005)).

United States v. Ricks, 494 F.3d 394, 400 (3d Cir. 2007) (emphasis in original). Indeed, as the Supreme Court held in *Gall*, the court must begin with, and remain cognizant of, the Guidelines.

In a somewhat similar case, *United States v. Miguel Bell et al.*, No. 09-672, Kareem Russell (defendant 3), who recruited and directed several check runners, played a similar but lesser role than Knox in the same type of scheme, was in Criminal History category VI and was financially responsible for losses between \$400,000 and \$1,000,000, was sentenced by Judge Pratter to 94 months imprisonment. In that same scheme, Michael Merin (defendant 4), whose role was to recruit bank employees to provide customer information, and who, like Knox, was in Criminal History category V, and was financially responsible for losses between \$400,000 and \$1,000,000, was sentenced to 94 months imprisonment.

In the present case, the 3553(a) factors on balance would support the imposition of a sentence within the recommended sentencing guidelines and of a maximum period of supervised release. The government, therefore, is asking for a sentence in the range of 123-128 months (75 to 80 months on the conspiracy and bank fraud charges, and a 48 month consecutive sentence for the aggravated identity theft charges, with two 24 month terms running consecutively, and the remaining terms running concurrently), to be followed by a five year period of supervised release.

Respectfully submitted,

ZANE DAVID MEMEGER
United States Attorney

K.T. Newton

K.T. NEWTON
Assistant United States Attorney

Dated: August 27, 2012

GOVERNMENT EXHIBIT A

VICTIM IMPACT STATEMENT

Victim Name: _____
USAO Number: 2010R00278

Court Docket Number: 10-CR-00147
Court Docket Number: 10-CR-00542
Court Docket Number: 10-CR-00671

Insert the impact of the crime here

Honorable Mary A. McLaughlin,

I am very sorry that I can not attend
the sentencing due to my work schedule,

Please note that these three took advantage
of me and my family while I was very
sick (Bloodwork weekly) and they emptied
out my bank account right before Christmas.

I had to miss work, change all of
my bank accounts, license and my insurances.

To this day my husband and I are
still having problems with a refinance

and loans for our daughter who is starting college this fall.

My husband and I try our best to always work hard and pay all of our bills. I am so tired of people trying to take the easy way out.

If these three put the same amount of effort into a days work, they would be in a better place.

Please set an example for others who may try and take the easy way.

Thank you,
Ceslaune Clark

P.S.

As of yet I have not received any apology from Citizens Bank as MainLine Health Care.
(sad)

GOVERNMENT EXHIBIT B

VICTIM IMPACT STATEMENT

Victim Name: MATILDA CLIPPER

USAO Number: 2010R00278

Court Docket Number: 10-CR-00147

Court Docket Number: 10-CR-00671

Insert the impact of the crime here

May 30, 2012

Victim Impact Statement

Being a victim of identity theft was a very upsetting time in my life. My money was being stolen right out of my checking account. I could not believe this happened to me. My husband and I went to our bank to question the odd withdraws and rubber checks deposited in our checking account. While we were speaking with the bank manager, the thieves were taking money out from another branch. Our savings and checking account were frozen. We could not get money out of our accounts or use our debt cards. We had to borrow money from my elderly mother-in-law to put gas in my car, buy food and other living expenses. Very embarrassing and unnecessary since we had money to pay our bills but could not use our accounts until things were investigated and worked out. I felt like someone was watching me or going to "get me". I did not even want to use the computer because I thought someone was recording my every move. This was a very emotional time for me besides the mental stress this caused me & my husband. Plus the financial mess with our accounts. We were victimized.

Matilda Cliper

GOVERNMENT EXHIBIT C

VICTIM IMPACT STATEMENT

Victim Name: Nina Amster (Leavitt)
USAO Number: 2010R00278

Court Docket Number: 10-CR-00147
Court Docket Number: 10-CR-00542
Court Docket Number: 10-CR-00671

Insert the impact of the crime here

In October of 2009, I checked my online banking, & found that a large check had been deposited in my account, and the same day, an almost as large withdrawal was made from the same account. Neither my husband nor I were aware of either the deposit or the withdrawal. It was a Friday night that I noticed this, and ^{that} I called the Citizen's Bank customer service line to see what I should do about it. They told me to go into our local branch office the next morning.

After a worried & sleepless night, my husband & I went into the branch as early as we could on Saturday morning. We left our 3 children home, & told them that we would be back soon, so we could visit with Grandma & Popop who were coming over for lunch.

Plans are made to be broken, & instead of making it home for lunch to see my parents we spent the whole morning at the bank trying to untangle our situation. Right after the bank, we spent a couple hours at the Horsham Police Department to report the crime. (At first they →

had a hard time understanding why we were complaining, because there was ~~think~~ an unauthorized deposit first of I think \$4k, but then a withdrawal of \$3k, so they thought at first that we had made \$1k! They were actually trying to make me feel like I was in the wrong! It was awful.)

By the time we got home, my 10-year old daughter had helped Grandma make lunch, everybody had eaten, & in fact, my parents had left! We missed them entirely! It was also our anniversary, & although my husband & I went out as planned, I was very distraught & upset, & not able to enjoy it.

I spent many hours thereafter tracking down & trying to cancel what outstanding checks I could. Although we left a small amount of money in the effected account, we moved most of our money to a new account, & soon after closed the old account entirely, with all that that entails (changing direct deposits & automatic withdrawals...)

Even now, I have great trepidation when I am called upon to write a check. I continue to pay a monthly fee for credit monitoring to this day, & I check my online banking compulsively.

This has been a very stressful experience & I am glad that the responsible parties have been caught. I hope their sentences send a strong message to others who might be contemplating similar fraudulent activity.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Government's Sentencing Memorandum, which was filed via ECF, has been served upon:

Todd Henry, Esquire
Attorney for Defendant Mike Knox, a/k/a Michael J. Gibson

K.T. Newton
K.T. NEWTON
Assistant United States Attorney

Dated: August 27, 2012