

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN, JUDGE

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)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. CR 09-0719 EMC
)	
GREGORY ALEXANDER,)	
)	
Defendant.)	San Francisco, California
)	Tuesday, December 13, 2011
-----)	(16 pages)

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiff: MELINDA L. HAAG, Esq.
 United States Attorney
 450 Golden Gate Avenue
 San Francisco, California 94102
 BY: MICHELLE KANE
 Assistant United States Attorney

For Defendant: Federal Public Defender
 450 Golden Gate Avenue
 Nineteenth Floor
 San Francisco, California 94102
 BY: ELIZABETH MEYER FALK

1 Tuesday, December 13, 2011

2 (1:35 p.m.)

3 (Defendant present in court.)

4 DEPUTY CLERK: Calling case Cr. 09-0719, USA
5 versus Gregory Alexander.

6 Counsel, please come to the podium and state your
7 appearance for the record.

8 MS. KANE: Michelle Kane for the United States.
9 Good afternoon, your Honor.

10 MS. FALK: And Elizabeth Falk for Mr. Alexander,
11 who's present.

12 THE COURT: Good afternoon.

13 Good afternoon, Mr. Alexander.

14 THE DEFENDANT: Good afternoon, your Honor.

15 THE COURT: I see that there -- I did receive a
16 plea agreement in this matter.

17 MS. FALK: Yes.

18 THE COURT: I understand there's an issue about
19 which court --

20 MS. FALK: Well, your Honor, we were going to
21 request -- after the arraignment before Judge Laporte this
22 morning, she reminded us that we could refer the case to a
23 magistrate judge, basically for all purposes, but since
24 you had -- your Honor had actually set this specially --
25 it didn't really cross my mind. But after talking it over

1 with Mr. Alexander, I think we would like to refer the
2 case back down to the duty magistrate for sentencing.
3 We'd be willing to sign an order, if the Court's willing
4 to do that.

5 THE COURT: Well, if there's consent, then you
6 have a right to do that. And I don't have any issue with
7 that.

8 MS. FALK: One request I'd make, your Honor, is
9 that if you could refer the case from the last week of
10 December. Judge Spero was the settlement judge in this
11 matter and he would be the duty magistrate for the last
12 week. I don't think it would be appropriate for it to go
13 to Judge Spero. And I think it's a timing issue. I think
14 it's just whoever's on duty the day it's referred.

15 THE COURT: Oh, so he was the settlement judge.

16 MS. FALK: On this case.

17 THE COURT: On this case, but your request is to
18 refer it to...?

19 MS. FALK: To Judge Laporte, who's the duty
20 judge. She just wanted to point out that there's a timing
21 issue in December and that Judge Spero is taking the last
22 week of duty.

23 THE COURT: So if we make the referral today.

24 MS. FALK: Then it would go to Judge Laporte.
25 That's all.

1 THE COURT: Okay. All right. I got it.

2 MS. FALK: And in fairness and disclosure, that
3 Judge Spero would probably not -- I don't think it would
4 be appropriate for him to sit on the matter at this point.

5 THE COURT: I think that's correct.

6 So everything's in reverse here, so I'll be
7 taking the plea, I guess.

8 MS. KANE: Yes.

9 THE COURT: That's fine. I'm used to being on
10 all sides of these things, so that's fine with me.

11 MS. KANE: And I have a signed copy of the plea
12 agreement.

13 THE COURT: Good.

14 MS. KANE: It is identical to the one that I sent
15 to your chambers yesterday, with the one exception:
16 There's an interlineation on Page 2, just to change the
17 name of a website in the factual basis. All the parties
18 have initialed the change.

19 THE COURT: Okay. Great. Thank you.

20 Okay. Mr. Alexander, I understand that you wish
21 to enter a plea this afternoon, and I need to ask you some
22 questions, make sure that this is a valid plea, that you
23 know what you are doing, and that this is a voluntary act.
24 If you have any questions or wish to consult with your
25 attorney, please say so. And if there's something you

1 don't understand, please ask me to clarify. Okay?

2 THE DEFENDANT: (Nods head)

3 THE COURT: First, I have to have you take the
4 oath.

5 (Defendant sworn)

6 DEPUTY CLERK: Please try to speak into the
7 microphone, your full name, and spell your last name.

8 THE DEFENDANT: Gregory Alexander,
9 A-l-e-x-a-n-d-e-r.

10 BY THE COURT:

11 Q. Thank you, Mr. Alexander. Do you understand that the
12 answers you give will be subject to penalty of perjury
13 if you do not answer my questions truthfully?

14 A. Yes, I do your Honor.

15 Q. Could you state your age and highest level of education?

16 A. Forty-four. I have a two-year degree.

17 Q. All right. Are you currently under the influence of any
18 medication, drugs or alcohol?

19 A. No, your Honor.

20 Q. Are you sick or ill in any way that would prevent you
21 from understanding what's going on today?

22 A. No.

23 THE COURT: Any reason to doubt Mr. Alexander's
24 competence to plead?

25 MS. KANE: No, your Honor.

1 MS. FALK: No, your Honor.

2 THE COURT: All right. I find that Mr. Alexander
3 is competent to plead.

4 BY THE COURT:

5 Q. Mr. Alexander, have you had enough time to speak with
6 your attorney?

7 A. Yes, I have.

8 Q. Have you discussed what the prosecutor would have to
9 prove at trial, and any defenses you have?

10 A. Yes.

11 Q. And you've discussed the possible sentence that you
12 might receive if you were convicted?

13 A. Yes.

14 Q. Are you satisfied with the representation you've
15 received?

16 A. Yes.

17 Q. All right. You have a number of constitutional rights,
18 many of which you'd be giving up. So let me go over
19 those with you. As has happened here, you have the
20 right to counsel at every stage of this case, and one
21 would be appointed for you if you could not afford one.

22 You have the right to maintain a not guilty plea.

23 You have the right to a speedy and public jury
24 trial. You would be presumed innocent at that trial and
25 the government would have the burden of proof to prove

1 that you were guilty beyond a reasonable doubt to the
2 satisfaction of all 12 jurors.

3 All 12 would have to agree unanimously in order
4 to convict.

5 Do you understand that?

6 A. Yes, I do, your Honor.

7 Q. At trial, the government would have to present evidence
8 and call witnesses to testify in open court, and you'd
9 have the right to confront and cross-examine those
10 witnesses. Do you understand that?

11 A. Yes.

12 Q. You'd also have the right to call witnesses on your own
13 behalf, and use the power of this court to subpoena
14 documents and witnesses not otherwise readily available
15 to you. Do you understand that?

16 A. Yes, I do, your Honor.

17 Q. Okay. At that trial, you'd have the right to testify
18 but wouldn't be required to do so because you have the
19 right to remain silent under the Constitution. And if
20 you were to exercise that right to remain silent, no one
21 could comment on that to the jury simply because you
22 exercise your right to remain silent. Do you understand
23 that?

24 A. Yes, your Honor.

25 Q. And you'd have the right to appeal any adverse outcome,

1 and if you were held in custody, to file a petition for
2 writ of habeas corpus.

3 Now, by entering this guilty plea, you will be
4 waiving all of those rights except for your right to
5 counsel and your right to bring a habeas petition on the
6 grounds of ineffective assistance -- I believe that's the
7 exception here?

8 MS. FALK: Yes.

9 THE COURT: All right.

10 BY THE COURT:

11 Q. You understand that.

12 A. Yes, your Honor.

13 THE COURT: And could we have the nature of the
14 charge stated?

15 MS. KANE: Yes, your Honor. The defendant is
16 charged with one count in a superseding information of
17 violating 18 USC Section 2701(a)(1), unlawful access to
18 stored communications. The elements are, 1, that the
19 defendant intentionally accessed a facility that provided
20 an electronic communications service without authorization
21 or exceeded authorized access to the facility; and, 2, in
22 doing so, obtained, altered or prevented authorized access
23 to a communication in the electronic storage.

24 BY THE COURT:

25 Q. All right, do you understand the charge and the maximum

1 penalties here, Mr. Alexander?

2 A. I do, your Honor.

3 Q. You understand that absent the plea agreement, were you
4 to be convicted, I would be obligated to calculate the
5 applicable sentencing guideline range and consider that
6 range as well as other factors in pronouncing any
7 sentence?

8 A. Yes.

9 Q. Okay. Have you been threatened or forced into this plea
10 agreement?

11 A. No.

12 Q. Have any promises been made to you other than what's in
13 the plea agreement?

14 A. No.

15 Q. And you've discussed this plea agreement with your
16 attorney?

17 A. Yes, your Honor.

18 Q. All right. And you are entering a guilty plea of your
19 own free will?

20 A. Yes.

21 Q. You've had an opportunity to read and discuss this plea
22 agreement in detail with your attorney before signing
23 it?

24 A. Yes, your Honor.

25 Q. All right. Let me make sure you understand the terms of

1 the plea agreement. As I understand it, in exchange for
2 your entering a guilty plea for the sole count, the
3 parties have agreed on a sentencing guideline
4 calculation that has an adjusted offense level of four;
5 that you would be subject to a special condition of
6 supervised release, which is that you would submit your
7 person, residence, office, vehicle or any property under
8 your control to a search, which would be conducted by a
9 U.S. probation officer or any law enforcement officer at
10 anytime, with or without probable cause.

11 And that the recommended sentence in this matter
12 would be a sentence of one year of probation.

13 And that the government agrees that it would not
14 file any additional charges that could be filed as a
15 result of the investigation that led to the information
16 that was filed in this matter.

17 Let me make sure, first of all, that I've
18 adequately summarized the plea agreement.

19 MS. KANE: Yes, your Honor. I believe that's
20 correct. I would just want to clarify, the Court noted
21 that -- what might happen in the absence of a plea
22 agreement, and regarding the sentencing guidelines,
23 because this is an agreement under sections 11C1A and C1B,
24 the Court will still have to make its own calculation
25 and -- as opposed to an agreement under C1C.

1 THE COURT: Right. All right.

2 BY THE COURT:

3 Q. And is that your -- is what we've said your
4 understanding of the plea agreement, Mr. Alexander?

5 A. Yes, your Honor.

6 Q. All right. Are you a U.S. citizen?

7 A. Yes.

8 Q. So we don't have to worry about any immigration issues
9 as a result.

10 Counsel, you have discussed this plea agreement
11 thoroughly with your client?

12 MS. FALK: I have.

13 THE COURT: And you're satisfied that he
14 understands the plea agreement.

15 MS. FALK: Yes.

16 BY THE COURT:

17 Q. Mr. Alexander, do you understand that, as we've just
18 talked about, once you enter a guilty plea, a
19 presentence report would be prepared, and the sentencing
20 judge, in this case, probably Magistrate Judge Laporte,
21 will have to review that, and you will have a chance to
22 comment or object to the report before any sentencing.
23 Do you understand that?

24 A. Yes, your Honor.

25 Q. And you understand that although the sentencing judge

1 will consider the recommendation, it's not bound by the
2 recommendation that is in this plea agreement, that she
3 could impose a sentence that is different than that
4 which is recommended here?

5 A. Yes, your Honor.

6 Q. And that even if she imposes a sentence that's more
7 severe than is recommended, you would not have a right
8 to withdraw your plea once you enter it. Do you
9 understand that?

10 A. I understand.

11 Q. All right. And you've discussed with your attorney how
12 the sentencing guidelines operate here?

13 A. Yes, your Honor.

14 Q. And you understand that the United States Supreme Court
15 has ruled that the guideline ranges, once they're
16 calculated, is advisory only and not binding on the
17 Court?

18 A. Yes.

19 Q. And that you will have a chance to, as I mentioned, to
20 address any calculation that you disagree with at the
21 sentencing hearing. Do you understand that?

22 A. Can you repeat the last sentence?

23 Q. That at the sentencing hearing, if for some reason you
24 disagree with the judge's calculation, you have a chance
25 to comment on that?

1 A. Yes, your Honor.

2 Q. And you understand that parole in the federal system has
3 been abolished, and if you are sentenced to prison, you
4 will not be released on parole. Do you understand that?

5 A. Yes, your Honor.

6 Q. Let me make sure that there's a factual basis for the
7 plea, so let me go over the facts that are in here, and
8 I want to you tell me whether all these facts are true
9 and accurate. All right?

10 The plea agreement states that beginning no later
11 than November 26th, 2007 and continuing through at least
12 June 24th, 2008, you intentionally accessed the Yahoo
13 e-mail account of Randall Hough, randallhough@yahoo.com,
14 and you read e-mail messages, including unopened messages,
15 in his account, and he did not authorize you or give you
16 access to his e-mail account. Is that true?

17 A. That is correct.

18 Q. That you were aware that the Yahoo computer servers on
19 which Mr. Hough's e-mail account was maintained, located
20 in the Northern District of California, and that they
21 were a facility through which electronic communication
22 service was provided. And that you also agreed that the
23 messages in his account were in electronic storage at
24 the time you accessed them, as defined by 18 USC Section
25 2510(17)(a). Do you agree with those facts?

1 A. Yes, your Honor.

2 Q. He also states that prior to November of 2001, you
3 voluntarily maintained and moderate the online forum
4 www.collegechess.org as part of your duties. You were
5 able to see the users' names and passwords that were
6 used to access the forum. And Mr. Hough was a member of
7 the forum, and you used log-in information from his
8 forum account to obtain unauthorized access to his
9 e-mail account. Is that true?

10 A. Yes, your Honor.

11 Q. And that during the time you repeatedly accessed his
12 personal e-mail account, Hough was a member of the U.S.
13 Chess Federation board of directors. By gaining access
14 to his e-mail account you were able to obtain
15 confidential information related to the United States
16 Chess Federation internal investigation; that you
17 forwarded some of that information to other individuals
18 who were associated with the United States Chess
19 Federation. Is that true?

20 A. Yes, your Honor.

21 Q. All right.

22 THE COURT: The facts that are set forth in
23 Paragraph 2 have been affirmed by Mr. Alexander.
24 Therefore, I find there is a factual basis for the plea
25 and that the elements to support a conviction under the

1 sole count have been satisfied. I also find Mr. Alexander
2 understands his rights, knowingly waives those rights and
3 knowingly and intelligently can enter a guilty plea, and
4 find that the plea agreement has in fact been signed by
5 all the parties, including Mr. Alexander, so we can go
6 ahead and take the plea at this point.

7 Mr. Alexander, how do you plead to the sole
8 count, Count 1, of the superseding information in this
9 case, guilty or not guilty?

10 THE DEFENDANT: Guilty, your Honor.

11 THE COURT: All right. The guilty plea will be
12 entered. And this case will therefore be set for
13 sentencing before Judge Laporte...?

14 DEPUTY CLERK: March 20th, at 11:00 a.m.

15 MS. FALK: Is that okay?

16 MS. KANE: Yes, that's fine with the government.

17 THE COURT: All right. So you will -- your
18 attorney will direct you to the probation department to
19 begin to prepare a presentence report. And again, you'll
20 have a chance to review that prior to sentencing.

21 Your sentencing will be set -- has been now set
22 before Judge Laporte on March 20th. All right?

23 THE DEFENDANT: Thank you, your Honor.

24 THE COURT: Okay.

25 MS. KANE: Thank you.

1 THE COURT: Thank you very much. Good luck.

2 THE DEFENDANT: Thank you.

3 (Adjourned)

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14 CERTIFICATE OF REPORTER

15 I, Connie Kuhl, Official Reporter for the United
16 States Court, Northern District of California, hereby
17 certify that the foregoing proceedings were reported by
18 me, a certified shorthand reporter, and were thereafter
19 transcribed under my direction into written form.

20 

21 _____
22 Connie Kuhl, RMR, CRR
23 Wednesday, February 8, 2012
24
25