

11442 (12/03) Warrant for Arrest

RECEIVED

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

MAY 17 PM 12:09

U.S. MARSHALS SERVICE
NORTHERN GEORGIA

UNITED STATES OF AMERICA,

WARRANT FOR ARREST

VS.

KENNETH E. HILBISH
AGENT TO ARREST

CASE NO. 1:06-CR-230

To: The United States Marshal
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest **KENNETH E. HILBISH** and bring him or her
forthwith to the nearest magistrate to answer a(n)

Indictment Information Complaint Order of Court Violation Notice Probation Violation Petition

Charging him or her with (brief description of offense): Aided and abetted by others, did embezzle, steal, and unlawfully
and willfully abstract and convert to his own use the moneys,
funds, securities, property and other assets of Local 528,

in violation of Title 29, United States Code, Section 501(c) and Title 18, United States Code, Section 2.

LUTHER D. THOMAS
Name of Issuing Officer

Clerk, U.S. District Court
Title of Issuing Officer

Luisa Lopez
Signature of Issuing Officer

May 17, 2006 at Atlanta, Georgia
Date and Location

Bail Fixed at \$ _____

By: _____
Name of Judicial Officer

RETURN

This warrant was received and executed with the arrest of the above-named defendant at:

Date Received: _____

Name and Title of Arresting Officer

Date of Arrest: _____

Signature of Arresting Officer

FILED IN CHAMBERS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MAY 18 2006
U.S. MAGISTRATE JUDGE
N.D. GEORGIA

UNITED STATES OF AMERICA

v.

KENNETH E. HILBISH,
Defendant.

CRIMINAL INDICTMENT

NO. 1 06 - CR - 230

THE GRAND JURY CHARGES THAT:

1. At all times material to this Indictment, Local Number 528, of the International Brotherhood of Teamsters (IBT), 2540 Lakewood Avenue, SW, Atlanta, Georgia, hereinafter referred to as Local 528, was a labor organization engaged in an industry affecting commerce within the meaning Title 29, United States Code, Sections 402(i) and 402(j).

2. At all times material to this Indictment, defendant KENNETH E. HILBISH was an officer as that term is defined in Title 29, United States Code, Section 402(n) that is, President of Local 528. He was also directly employed by Local 528.

3. From on or about July 1, 2001, and continuing through on or about December 31, 2002, in the Northern District of Georgia, the defendant, KENNETH E. HILBISH, aided and abetted by others, did embezzle, steal, and unlawfully and willfully abstract and convert to his own use the moneys, funds, securities, property and other

assets of Local 528 in the approximate amount of \$21,305.00, said sum constituting unauthorized expense payments on behalf of the defendant and others, all in violation of Title 29, United States Code, Section 501(c) and Title 18, United States Code, Section 2.

A *[Signature]* BILL
[Signature]
FOREPERSON

DAVID E. NAHMIAS
UNITED STATES ATTORNEY

[Signature]
DAVID M. LETA

ASSISTANT UNITED STATES ATTORNEY
600 U.S. Courthouse
75 Spring Street, S.W.
Atlanta, GA 30303
404/581-6000
Georgia Bar No. 447931

ATTEST: A TRUE COPY
CERTIFIED THIS

MAY 17 2006

Luther D. Thomas, Clerk
By: *[Signature]*
Deputy Clerk

GUILTY PLEA and PLEA AGREEMENT

United States Attorney
Northern District of Georgia

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CRIMINAL NO. 1:06-Cr-0230-BBM

KENNETH E. HILBISH, defendant, having received a copy of the above-numbered Indictment and having been arraigned, hereby pleads GUILTY to Count(s) One thereof. The defendant, his counsel, and the United States Attorney for the Northern District of Georgia ("the Government"), as counsel for the United States, subject to approval by the Court, have agreed upon a negotiated plea in this case, the terms of which are as follows:

1. ADMISSION OF GUILT

The defendant admits that he is pleading guilty because he is in fact guilty of the crime(s) charged in Count(s) One of the Indictment.

2. TRIAL RIGHTS

The defendant understands that by pleading guilty, he is giving up the right to plead not guilty and the right to be tried by a jury. At a trial, the defendant would have the right to an attorney, and if the defendant could not afford an attorney, the Court would appoint one to represent the defendant. During the trial, the defendant would be presumed innocent and the Government would have the burden of proving him guilty beyond a reasonable doubt. The defendant would have the right to confront and cross-examine the witnesses against him. If the defendant wished, he could testify on his own behalf and present evidence in his defense, and he could subpoena witnesses to testify on his behalf. If, however, the defendant did not wish to testify, that fact could not be used against him. If the defendant were found guilty after a trial, he would have the right to appeal the conviction. The defendant understands that by pleading guilty, he is giving up all of these rights and there will not be a trial of any kind. The defendant also understands that he ordinarily would have the right to appeal his sentence and, under some circumstances, to attack the sentence in post-conviction proceedings. By entering this Plea Agreement, the

defendant may be waiving some or all of those rights to appeal or collaterally attack his sentence, as specified below. Finally, the defendant understands that, to plead guilty, he may have to answer questions posed to him by the Court concerning the rights that he is giving up and the facts of this case, and the defendant's answers, if untruthful, may later be used against him in a prosecution for perjury or false statements.

3. MAXIMUM AND MANDATORY MINIMUM PENALTIES

The defendant understands that, based on his plea of guilty, he will be subject to the following maximum and mandatory minimum penalties:

- (a) Maximum term of imprisonment: five years incarceration.
- (b) Mandatory minimum term of imprisonment: none.
- (c) Term of supervised release: two years to three years.
- (d) Maximum fine: \$250,000.
- (e) Full restitution to all victims of the offense(s) and relevant conduct.
- (f) Mandatory special assessment: \$100.

The defendant understands that, before imposing sentence in this case, the Court will be required to consider, among other factors, the provisions of the United States Sentencing Guidelines. Ultimately, it is within the Court's discretion to impose a sentence up to and including the statutory maximum. The defendant also understands that no one can predict his exact sentence at this time.

4. NO ADDITIONAL CHARGES

The United States Attorney for the Northern District of Georgia agrees not to bring further criminal charges against the defendant related to the charges to which he is pleading guilty. The defendant understands that this provision does not bar prosecution by any other federal, state, or local jurisdiction.

5. ACCEPTANCE OF RESPONSIBILITY

The Government will recommend that the defendant receive the two-level adjustment for acceptance of responsibility pursuant to Section 3E1.1 of the Sentencing Guidelines. However, the Government will not be required to recommend acceptance of responsibility if, after entering this Plea Agreement, the defendant engages in conduct

inconsistent with accepting responsibility. Thus, by way of example only, should the defendant falsely deny or falsely attempt to minimize his involvement in relevant offense conduct, give conflicting statements about his involvement, fail to pay the special assessment, or participate in additional criminal conduct, including unlawful personal use of a controlled substance, the Government will not be required to recommend acceptance of responsibility.

6. GUIDELINE RECOMMENDATION

Based upon the evidence currently known to the Government, the Government will recommend the following applications of the Sentencing Guidelines:

- (a) The applicable offense guideline is Section 2B1.1.
- (b) The amount of loss resulting from the offense(s) of conviction and all relevant conduct is more than \$10,000 but less than \$30,000.
- (c) Pursuant to Section 3B1.3, the defendant abused a position of private trust in a manner that significantly facilitated the commission and concealment of the offense and thus his offense level will be increased by two levels.

7. RESTITUTION

The defendant understands that pursuant to the Mandatory Victims Restitution Act of 1996 (the "MVRA"), 18 U.S.C. Section 3663A, the district court must order full restitution to the victim(s) of the offense(s) to which he is pleading guilty. The defendant understands that the exact amount of restitution owed to each victim will be determined at or before sentencing. The defendant agrees to cooperate fully in the investigation of the amount of restitution and the identification of victims.

8. SPECIAL ASSESSMENT

The defendant agrees that, within 30 days of the guilty plea, he will pay a special assessment in the amount of \$100 money order or certified check made payable to the Clerk of Court, U.S. District Court, 2211 U.S. Courthouse, 75 Spring Street, S.W., Atlanta, Georgia 30303. The defendant agrees to provide proof of such payment to the undersigned Assistant United States Attorney within 30 days of the guilty plea.

9. SPECIFIC SENTENCE RECOMMENDATION

If the defendant's non-binding sentencing guidelines results in a sentencing range

within Zone A or Zone B of the sentencing table, then the Government agrees to recommend that the defendant be sentenced to a term of probation and a fine within the non-binding sentencing guidelines calculation. The term of probation the government recommends is dependent upon the ultimate loss figure as determined by the Court. If the Court determines that the loss amount is \$5,000 or less, then the government will recommend one year probation. If the Court determines the loss amount is between \$5,001 and \$15,000, then the government will recommend two years probation. If the Court determines the loss amount is \$15,001 or greater, then the Government will recommend a sentence of three years probation.

10. RIGHT TO STATE FACTS/MAKE RECOMMENDATIONS

The Government reserves the right to inform the Court and the Probation Office of all facts and circumstances regarding the defendant and this case, and to respond to any questions from the Court and the Probation Office and to any misstatements of fact or law. Except as expressly stated elsewhere in this Plea Agreement, the Government also reserves the right to make recommendations regarding application of the Sentencing Guidelines.

11. LIMITED WAIVER OF APPEAL

To the maximum extent permitted by federal law, the defendant voluntarily and expressly waives the right to appeal the conviction and sentence and the right to collaterally attack his sentence in any post-conviction proceeding, including a § 2255, on any ground, except that the defendant may file a direct appeal of a sentence higher than the otherwise applicable advisory sentencing guideline range. The defendant understands that this Plea Agreement does not limit the Government's right to appeal, but if the Government appeals the sentence imposed, the defendant may also file a direct appeal of his sentence.

12. DNA WAIVER

The parties agree that no biological evidence (as defined in 18 USC § 3600A) has been identified in this case; therefore, the defendant understands and agrees that no evidence will be preserved for DNA testing.

13. NON BINDING - NO STIPULATIONS

The defendant understands and agrees that the recommendations of the Government incorporated within this Plea Agreement or otherwise discussed between the parties are not binding on the Court and that the Court's failure to accept one or more of the recommendations will not constitute grounds to withdraw his guilty plea or to claim a breach of this Plea Agreement.

14. NO OTHER AGREEMENTS

There are no other agreements, promises, representations, or understandings between the defendant and the Government.

In Open Court this 20th day of October, 2006.

SIGNATURE (Attorney for Defendant)
JEFFREY G. BROWN

SIGNATURE (Defendant)
KENNETH E. HILBISH

SIGNATURE (Assistant U.S. Attorney)
DAVID M. LETA

THIS DOCUMENT IS ONLY A DRAFT UNTIL SIGNED BY THE APPROVING OFFICIAL

SIGNATURE (Approving Official)
RANDY S. CHARTASH

DATE

I have read the indictment against me and have discussed it with my attorney. I understand the charges and the elements of each charge that the Government would have to prove to convict me at a trial. I have read the foregoing Plea Agreement and have carefully reviewed every part of it with my attorney. I understand the terms and conditions contained in the Plea Agreement, and I voluntarily agree to them. I also have discussed with my attorney the rights I may have to appeal or challenge my sentence, and I understand that the appeal waiver contained in the Plea Agreement will prevent me, with the narrow exceptions stated, from appealing my sentence or challenging my sentence in any post-conviction proceeding. No one has threatened or forced me to plead guilty, and no promises or inducements have been made to me other than those discussed in the Plea Agreement. The discussions between my attorney and the Government toward reaching a negotiated plea in this case took place with my permission. I am fully satisfied with the representation provided to me by my attorney in this case.