

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENEVILLE

UNITED STATES OF AMERICA

v.

MARVIN "POPCORN" SUTTON

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No. 2:08-CR-24
JUDGE GREER

PLEA AGREEMENT

The United States of America, by the United States Attorney for the Eastern District of Tennessee, and the defendant, Marvin "Popcorn" Sutton and the defendant's Attorney, Tim S. Moore, have agreed upon the following:

1. The defendant will waive Indictment and arraignment and plead guilty to an Information charging the defendant with the following offense(s).

a) Being a convicted felon in possession of a firearm in violation of 18 United States Code, § 922(g)(1). The maximum punishment for this offense is ten years imprisonment, \$250,000.00 fine, three years supervised release, and \$100.00 mandatory assessment.

b) Not being a distiller authorized by law to produce distilled spirits, knowingly producing distilled spirits by distillation from mash and other material in violation of 26 United States Code, § 5601(a)(8). The maximum punishment for this offense is five years imprisonment, \$250,000.00 fine, three years supervised release, and \$100.00 mandatory assessment.

2. The parties agree that the appropriate disposition of this case would be the following as to each count:

- a) The Court may impose any lawful term of imprisonment up to the statutory maximum;
- b) The Court may impose any lawful fine up to the statutory maximum;
- c) The Court may impose any lawful term of supervised release up to the statutory maximum;
- d) The Court will impose a special assessment fee as required by law; and
- e) The Court may order forfeiture as applicable and restitution as appropriate.

3. The defendant has read the information, discussed the charges and possible defenses with defense counsel, and understands the crime(s) charged. The defendant is pleading guilty because the defendant is in fact guilty.

4. In support of the defendant's guilty plea, the defendant agrees and stipulates to the following facts. These are the facts submitted for the purposes of the defendant's guilty plea. They do not necessarily constitute all of the facts in the case. Other facts may be relevant to sentencing. Both the defendant and the United States retain the right to present additional facts to the Court to ensure a fair and appropriate sentence in this case.

In 1974, Sutton was investigated by the Bureau of Alcohol, Tobacco, and Firearms and subsequently charged for multiple violations of the Internal Revenue Laws pertaining to liquor. Sutton was convicted of the aforementioned charge and was sentenced in 1975.

In 1981, Sutton was convicted and sentenced in the Haywood County Superior Court, North Carolina for felony possession of a controlled substance. Sutton received a five year sentence. In 1985, Sutton was convicted and sentenced in the Haywood County Superior Court, North Carolina for felony assault with a deadly weapon with intent to kill. Sutton received a three year sentence.

On April 24, 2007, several local fire departments responded to a fire at 324 Upper Road, Parrottsville, Tennessee. The fire was extinguished and the owner of the property, Marvin “Popcorn” Sutton, was interviewed. During the interview Sutton admitted his knowledge of the presence of untaxed alcohol, commonly referred to as “moonshine” and further admitted to knowingly and willingly manufacturing the moonshine with the operable moonshine still that was on his property. The crime scene investigation, evidence seized and interviews conducted concluded that Sutton was knowingly manufacturing and possessing moonshine. On July 7, 2007, in the Criminal Court of Cocke County, Tennessee, Sutton was sentenced to a term of two years probation for possession of untaxed liquor in excess of three gallons.

On February 7, 2008, an agent of the Tennessee Alcoholic Beverage Commission, functioning in an undercover capacity (UC), met Sutton for the purpose of purchasing moonshine in excess of fifty gallons. The UC initially met Sutton at 324 Upper Road, Parrottsville, Tennessee, and engaged Sutton in conversation. During the conversation at the 324 Upper Road location Sutton advised the UC that Sutton currently had firearms and moonshine in his possession. Sutton also advised the UC that Sutton has been engaged in the business of manufacturing and distributing moonshine for many years. After this conversation, the UC loaded a few gallons of moonshine in the UC’s vehicle and then was taken to 127 Loftis Road, Parrottsville, Tennessee by Sutton. While at the Loftis Road location, the UC, Sutton, and an individual identified as “Billy” (later identified as Billy Hux) loaded approximately 80 gallons of moonshine into the UC’s vehicle. The moonshine was stored in a brown, wooden outbuilding. Right beside the building was a disabled school bus.

On February 14, 2008, an agent of the Alcoholic Beverage Commission, functioning in an undercover capacity (UC) met Sutton for the purpose of purchasing moonshine in excess of

one hundred gallons. The UC met Sutton at 324 Upper Road, Parrottsville, Tennessee, and engaged Sutton in conversation. During the conversation, Sutton showed the UC a Star, .380 caliber pistol and a .38 caliber revolver. The UC also observed numerous gallons of moonshine at the 324 Upper Road location. At the conclusion of the conversation the UC was taken to 127 Loftis Road, Parrottsville, Tennessee by Sutton. While at the Loftis Road location, the UC and Sutton loaded approximately 100 gallons of moonshine into the UC's vehicle. During the process of loading the UC's vehicle, the UC and Sutton were engaged in conversation. During this conversation, Sutton advised the UC that he had moonshine stored in at least one other separate location.

On February 28, 2008, an agent of the Alcoholic Beverage Commission, functioning in an undercover capacity (UC) met Sutton for the purpose of purchasing moonshine in excess of one hundred gallons. The UC met Sutton at 324 Upper Road, Parrottsville, Tennessee, and was immediately taken to 127 Loftis Road, Parrottsville, Tennessee by Sutton. While at the Loftis Road location, the UC, Sutton, and Billy Hux loaded approximately 100 gallons of moonshine into the UC's vehicle. During the process of loading the UC's vehicle, the UC, Sutton, and Billy Hux were engaged in conversation. During this conversation, Hux advised the UC that Hux participated in the manufacturing process of the moonshine. During surveillance, SA Greg Moore observed Sutton leaving the location in his vehicle and traveling to "J.D.'s Market" in Parrottsville.

The week of March 3, 2008, the UC had a phone conversation with Sutton. Sutton advised the UC that he had conducted a count of all moonshine that he (Sutton) currently had available to sell. Sutton advised that he had 500 gallons in Tennessee and 400 gallons in Maggie

Valley (North Carolina).

On March 12, 2008, an agent of the Tennessee Alcohol Beverage Commission, functioning in an undercover capacity, (UC) met with Sutton at his residence, 324 Upper Road, Parrottsville, Tennessee, to discuss another delivery of moonshine. While at the residence, the UC observed Sutton to still be in possession of moonshine and firearms. Sutton took UC and Billy Hux to the storage building at 127 Loftis Road in Parrottsville, Tennessee, to show UC that he had the 500 gallons there ready for delivery. Some of the moonshine that Sutton showed the UC was being stored in the old school bus next to the storage building.

On the same day, Sutton and Billy Hux took UC to a barn located off Scott Pond Road in Parrottsville, Tennessee. From Sutton's residence, they turned left out of Sutton's driveway and went a short distance to the intersection of Upper Road and Scott Pond Road. They turned left onto Scott Pond Road and traveled a short distance to a driveway on the right leading to a barn. Inside the barn were three moonshine stills. The UC estimated that the smallest of the stills was 500 gallons and the largest was twice that capacity. Two of the stills were operating and the third still had a hole in it.

A total of 1100 gallons of sour mash that would have produced approximately 130 gallons of moonshine were seized by the Tennessee Alcohol Beverage Commission and Bureau of Alcohol, Tobacco, Firearms, and Explosives. The defendant admits to having produced this moonshine with the help of Billy Hux.

The property at 324 Upper Road, Parrottsville, Tennessee is owned by Sutton and has been since the early 1990s.

On March 13, 2008 ATF Special Agent Greg Moore determined that the Star, .380 caliber

pistol and the Rossi, .38 caliber revolver were manufactured outside the State of Tennessee, and in order to be at the residence located at 324 Upper Road, Parrottsville, Tennessee, they had to have affected interstate and foreign commerce.

Your affiant was advised by Ray Brady, United States Treasury Department, Trade and Taxation Bureau that their records revealed that Sutton has never been issued a Beverage Distillers Permit and/or Alcohol Fuel Permit, and the defendant admits to producing the moonshine without a Beverage Distillers Permit.

5. The defendant understands that by pleading guilty the defendant is giving up several rights, including:

- a) the right to be indicted by a grand jury for these crimes;
- b) the right to plead not guilty;
- c) the right to a speedy and public trial by jury;
- d) the right to assistance of counsel at trial;
- e) the right to be presumed innocent and to have the burden of proof placed on the United States to prove the defendant guilty beyond a reasonable doubt;
- f) the right to confront and cross-examine witnesses against the defendant;
- g) the right to testify on one's own behalf, to present evidence in opposition to the charges and to compel the attendance of witnesses; and
- h) the right not to testify and to have that choice not used against the defendant.

6. Given the defendant's agreement to plead guilty, the United States will not oppose a two-level reduction for acceptance of responsibility under the provisions of Section 3E1.1(a) of the Sentencing Guidelines. Further, if the defendant's offense level is 16 or greater, the United

States agrees to move, at or before the time of sentencing, that the Court decrease the offense level by one additional level pursuant to Section 3E1.1(b) of the Sentencing Guidelines. The defendant agrees that the decision to file this motion is within the sole discretion of the United States. Should the defendant engage in any conduct or make statements that are inconsistent with accepting responsibility for the defendant's offense(s), including violations of conditions of release or the commission of additional offenses prior to sentencing, the United States will be free not to make such motion or to withdraw such motion if already made, and will be free to recommend to the Court that the defendant not receive any offense level reduction for acceptance of responsibility under Section 3E1.1 of the Sentencing Guidelines.

7. The defendant agrees to pay the special assessment in this case prior to sentencing.

8. No promises have been made by any representative of the United States to the defendant as to what the sentence will be in this case. Any estimates or predictions made to the defendant by defense counsel or any other person regarding the potential sentence in this case are not binding on the Court. The defendant understands that the sentence in this case will be determined by the Court after it receives the pre-sentence report from the United States Probation Office and any information presented by the parties. The defendant acknowledges that the sentencing determination will be based upon the entire scope of the defendant's criminal conduct, the defendant's criminal history, and pursuant to other factors and guidelines as set forth in the Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553.

9. The defendant agrees to pay any fine and/or restitution imposed by the Court to the Clerk of Court. The defendant also agrees that the full fine and/or restitution amount shall be

considered due and payable immediately. If the defendant cannot pay the full amount immediately and is placed in custody or under the supervision of the Probation Office at any time, the defendant agrees that the Bureau of Prisons and the Probation Office will have the authority to establish payment schedules to ensure payment of the fine and/or restitution. The defendant further agrees to cooperate fully in efforts to collect the fine and/or restitution obligation by set-off of program payments, execution on non-exempt property, and any other means the United States deems appropriate. Finally, the defendant and counsel agree that the defendant may be contacted regarding the collection of any fine and/or restitution without notifying counsel and outside the presence of counsel.

10. The defendant understands and agrees that this plea agreement does not include penalties and taxes that may be assessed by other state, local and federal agencies such as the Department of Commerce, the Tennessee Alcoholic Beverage Commission, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives as a result of taxes due on the production of untaxed spirits.

11. The United States agrees not to seize or forfeit the Sutton's residence, located at 324 Upper Road, Parrottsville, Tennessee. However, defendant Marvin "Popcorn" Sutton agrees to the administrative and/or judicial forfeiture to the United States of his interest in the moonshine stills, moonshine, ingredients used to manufacture moonshine, and the two firearms, a Star, .380 caliber, semi-automatic pistol and a Rossi, .380 caliber revolver found at Sutton's residence.

12. (a) In consideration of the concessions made by the United States in this agreement and as a further demonstration of the defendant's acceptance of responsibility for the offense(s) committed, the defendant agrees not to file a direct appeal of the defendant's conviction(s).

(b) In addition, the defendant knowingly and voluntarily waives the right to file any motions or pleadings pursuant to 28 U.S.C. § 2255 or to collaterally attack the defendant's conviction(s). The parties agree that the defendant retains the right to raise, by way of collateral review under § 2255, claims of ineffective assistance of counsel or prosecutorial misconduct not known to the defendant by the time of the entry of judgment.

13. The defendant also expressly agrees that the defendant's photograph, image and/or criminal history can be publicly disclosed or displayed to further the education and deterrence goals of Project Safe Neighborhoods.

14. This agreement becomes effective once it is signed by the parties. If the United States violates the terms of this agreement, the defendant will have the right to withdraw from this agreement. If the defendant violates the terms of this agreement, moves to withdraw the defendant's guilty plea(s), or violates any court order, or any local, state or federal law pending the resolution of this case, then the United States will have the right to void any or all parts of the agreement and may also enforce whatever parts of the agreement it chooses. In addition, the United States may prosecute the defendant for any and all federal crimes that the defendant committed related to this case, including any charges that were dismissed and any other charges which the United States agreed not to pursue. The defendant expressly waives any statute of limitations defense and any constitutional or statutory speedy trial defense to such a prosecution. The defendant also understands that a violation of this plea agreement by the defendant does not entitle the defendant to withdraw the defendant's guilty plea(s) in this case.

15. This plea agreement constitutes the full and complete agreement and understanding between the parties concerning the defendant's guilty plea to the above-referenced charge(s), and there are no other agreements, promises, undertakings, or understandings between the defendant

and the United States. The parties understand and agree that the terms of this plea agreement can be modified only in writing signed by all of the parties and that any and all other promises, representations, and statements whether made before, contemporaneous with, or after this agreement, are null and void.

JAMES R. DEDRICK
United States Attorney

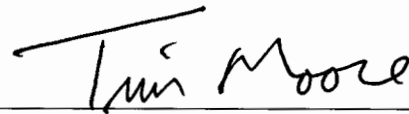
4-3-08
Date

By: 
ROBERT M. REEVES
Assistant United States Attorney

April 3-2008
Date


MARVIN "POPCORN" SUTTON
Defendant

4-3-08
Date


TIM S. MOORE
Attorney for Defendant