



State of New York
OFFICE OF THE WELFARE INSPECTOR GENERAL
22 Cortlandt St., 11th floor, New York, NY 10007
(212) 417-5822 Fax: (212) 417-5849
owig.state.ny.us

David A. Paterson
Governor

Sean Courtney
Welfare Inspector General

March 26, 2010

Hon. Martin P. Murphy
Supreme Court of the State of New York
Kings County, Criminal Term, Part 40
320 Jay Street
Brooklyn, New York 11201
Delivered by hand

Re: People v. Kenley Stanislas, Ind. No. 12362/08

Dear Justice Murphy:

I respectfully submit, pursuant to Criminal Procedure Law section 390.40, this sentencing memorandum with respect to the above-referenced indictment. I am fully familiar with the facts and circumstances of the case in my capacity as the assigned prosecutor and through the investigation conducted by my agency, the New York State Office of the Welfare Inspector General.

On March 14, 2010, the Defendant, Kenley Stanislas, pleaded guilty before Your Honor to the third count of the indictment, Criminal Possession of a Forged Instrument in the Second Degree, in violation of Penal Law section 170.25, a class "D" felony, with the understanding that he would receive a prison sentence of from two to four years. The plea was acceptable to this office in part because of the nature of the specific criminal misconduct for which the Defendant was arrested and indicted, and because the trial of the indictment would have required testimony from at least thirty-five witnesses, many of them elderly, sick or disabled persons who understandably expressed great reluctance to undergo the stress of a trial. Sentencing is scheduled before Your Honor on Monday March 29, 2010.

The facts of the Defendant's criminal misconduct, which gave rise to the indictment, are as

follows.

In the course of an investigation conducted by the New York City Human Resources Administration (“HRA”), the New York State Office of Temporary and Disability Assistance, and this office during 2007-08, the Defendant was identified as a person associated with a criminal conspiracy that was systematically stealing hundreds of public benefit accounts from residents in and in the vicinity of central Brooklyn, New York. HRA brought the problem to our attention after receiving a steady stream of complaints from account-holders that their electronic benefits transfer (“EBT”) public benefit accounts had been frozen and the funds in their accounts stolen.¹

On December 3, 2008, investigators from this office and from HRA saw the Defendant exiting a building on central Brooklyn (“his building”). The following events transpired.

- The Defendant entered a grocery store (“Store #1”). He began taking items from the store’s shelves, and placed them by the check-out counter. He then went to the rear of the store, where he removed a slip of paper from one of his shoes. He handed the paper, which bore numbers, to a clerk. The clerk returned to the front of the store, and, holding the slip of paper, entered a series of numbers into a terminal used to process EBT transactions. The clerk told the Defendant how much credit remained on the EBT account that had just been accessed. With that, the Defendant purchased several items, with the clerk’s utilizing the EBT terminal. Carrying a bag with his purchases, he left the store and returned directly to his building. Meanwhile, at HRA’s offices in lower Manhattan, an investigator was monitoring, in real time, all EBT transactions at this particular store. This investigator informed us that, at the precise time of our observations of the Defendant, a transaction occurred in the store’s EBT system in the amount twenty-one dollars. The EBT account from which this amount was debited belonged to a family with names entirely different from the Defendant’s; and the family’s home address was not in the vicinity of the store or his building.
- Later that day, the Defendant exited his building. He went directly to another grocery store (“Store #2”). We sent an investigator to follow the Defendant into the store. The

¹ Food stamp benefits are provided to eligible clients through EBT cards, which are, in essence, debit cards. Each card is associated with an account that the local social services agency—in New York City, HRA—replenishes monthly. The EBT card bears the client’s name, a unique account number. A magnetic strip on the back of the card can be read by dedicated terminals in approved stores. When buying food at a store, the client typically presents the card to the cashier. The cashier totals the cost of the items and enters that total into the terminal. The cashier swipes the card through the terminal, which reads the card information; the participant enters a password or PIN onto a keypad; and the transaction is completed. Information from the terminal is transmitted to a government-approved contractor, which makes a deduction from the participant’s food stamp account in the full amount of the transaction, and sends a corresponding credit electronically to the merchant’s bank account. Food stamp credits may not be withdrawn at stores in the form of cash. (However, EBT cards may also contain funds from other public benefit programs, which do allow cash withdrawals.) EBT accounts are known to be susceptible to trafficking—that is, the conversion of food stamp benefits directly into cash, instead of purchasing food.

investigator overheard the Defendant saying to the cashier, "It's OK, it's OK." Hand-to-hand contact followed between the Defendant and the cashier. The Defendant exited the store. The HRA investigator who was remotely monitoring EBT transactions in this store informed our field investigators that, while the Defendant was with the cashier, a debit in the amount of one hundred twenty-seven dollars was made from the same account that the Defendant had accessed in Store #1. The Defendant returned directly to his building.

- Later that afternoon, as the Defendant exited his building, we contacted the New York City Police Department's Warrant Squad, and gave Squad detectives the Defendant's location. The detectives arrived promptly and arrested the Defendant on an outstanding bench warrant.
- In processing the arrest and securing the Defendant, Squad detectives noticed an unusual bulge in the Defendant's groin area. Faced with the prospect of a search, the Defendant reached into the front of his underpants and produced two 3-1/2 by 6 inch soft-bound booklets. Inside the booklets were notes, in a single distinctive handwriting, with the names, EBT account numbers, passwords and other personal identifying information of more than three hundred HRA clients. The information in the books was sufficient to access those accounts through an HRA-provided telephone number and then to change the passwords—thereby enabling the caller to conduct transactions on the accounts with willing store merchants. Among the names and account numbers in the books were those of the head of the family whose account the Defendant used earlier that day in Stores #1 and #2.
- In addition to the booklets, detectives recovered two EBT cards from the Defendant. Neither card was in the Defendant's name. The photographs on the two cards were clearly not of the Defendant; one was of a female, the other a male. The female's card had been altered to display the same account number that the Defendant used in Stores #1 and #2. A slip of paper bearing additional EBT account numbers was recovered from one of the Defendant's socks.

The Defendant was arrested in the instant case on December 11, 2008, while being held for the Criminal Court case for which the bench warrant has been issued.

We contacted the husband and wife whose EBT account the Defendant used on December 5th at Stores #1 and #2. Both husband and wife said that they did not know the Defendant and that they had not given anyone permission to access their EBT account. Moreover, the two explained that they were unaware of their account password's having been changed and that someone else was accessing the credits in the account. They showed us a formal notice, dated August 30, 2008, that HRA had mailed to them, stating that their food stamp case would be discontinued in the following month because their income exceeded the threshold for eligibility in the program. Shortly after receiving this notice, the family stopped using their EBT card. Then, on September 8th, the password for the account was changed remotely, through a toll-free telephone number provided by HRA. We discovered, however, that, despite the notice, HRA failed to deactivate the account. As a result, food stamp credits of \$582 monthly continued to be posted to the account. The husband and wife told us that they were unaware

that their account remained open, and that it had been accessed, their password changed, and credits taken from the account. HRA records indicate that some person or persons, which at the very least included the Defendant (on December 3, 2008, if not earlier), stole funds from this account on fourteen separate occasions between September 8, 2008 and December 3, 2008, for a grand total of \$2,041.61. This, of course, was only one of the hundreds of accounts to which the Defendant had access through the information recorded in his two booklets.

The Defendant has had prior criminal activity involving the criminal possession of EBT accounts.

During the course of preparing for the trial of this indictment, we inspected evidence vouchered by the New York City Police Department in relation to the Defendant's arrest in Brooklyn on September 16, 2007 for, among other charges, Criminal Use of a Public Benefit Card in the Second Degree. Among the items recovered from the Defendant's person in that case were: five EBT cards (two of which bore the Defendant's name) with the account numbers altered, and a small soft-covered booklet containing more than one hundred handwritten entries of the names, account numbers and other personal information of HRA EBT clients. The handwriting in this booklet appeared to be identical to the handwriting in the two booklets recovered from the Defendant's underpants on December 3, 2008.²

In addition, on October 20, 2008, the Defendant was captured on videotape in a store in central Brooklyn, where he used a stolen EBT account to buy containers of Red Bull.

The Defendant has a long and serious criminal history.

He has three prior felony convictions:

- He pleaded to Attempted Burglary in the Third Degree, a class E felony, in New York County, Ind. No. 7107 of 1988, on May 9, 1989; and he was sentenced to a term of incarceration of from one to three years.
- He pleaded to Burglary in the Third Degree, a class D felony, in New York County, Ind. No. 1201 of 1989, on May 9, 1989; and he was sentenced to a term of one to three years.
- He was convicted after trial of Robbery in the Second Degree, a class C violent felony offense, in New York County, Ind. No. 6310 of 1992, on March 16, 1993; and he was sentenced to 54 months to 9 years. He was paroled in May 14, 1998. Parole was revoked on Jan 30, 2001. He finally was discharged March 21, 2002.

The Defendant has nineteen misdemeanor convictions, the first having occurred on July 8, 1988, the most recent on March 6, 2008. The charges in most of these cases related to criminal

² The Defendant had public assistance cases with HRA at various periods of his adult life. His most recent HRA case was closed in January 2008. The handwriting in the multiple documents filed by the Defendant with HRA over the course of several years appears to be the same as the handwriting in the booklets recovered from the Defendant's underpants in December 2008, as well as from the 2007 arrest. (The Defendant pleaded to petit larceny, and received a sentence of forty-five days in prison, in satisfaction of the 2007 case.)

possession of controlled substances and/or larceny.

A misdemeanor case remains pending in Brooklyn Criminal Court, under docket number 2008KN020402. The charges in that case include Criminal Possession of a Controlled Substance in the Seventh Degree and Assault of a Police Officer.

On December 3, 2008, the Defendant was arrested on a bench warrant by detectives from the New York City Police Department's Warrant Squad. The warrant had been issued by Brooklyn Criminal Court, after the Defendant failed to appear for docket number 2008KN020402, mentioned above. Defendant was arraigned on a felony complaint in this case on December 12, 2008. On December 17, 2008, the indictment, to which the Defendant has pleaded, was filed.

There are two sets of particular, immediate victims in this case. The first consists of three governmental agencies: HRA, which is the municipal agency that administers food stamp benefits and public assistance benefits in New York City; the New York State Office of Temporary and Disability Assistance, which is responsible for overseeing the program throughout New York State, including New York City; and the United States Department of Agriculture, which administers the food stamp program nation-wide, and through which the program is almost entirely funded. HRA estimated for us that the cash value of all the active accounts in the Defendant's possession on the date of his arrest was approximately \$100,000—in excess of the threshold for the second count in the indictment, Criminal Possession of Stolen Property in the Second Degree. I anticipate that HRA will submit its own victim impact statement to the Court.

Of particular importance to this office is a second set of victims: hundreds of poor and disadvantaged families and individuals whose accounts the Defendant illegally possessed.

EBT clients were harmed financially, in that many identified in the Defendant's booklets had their benefits stolen. HRA has not restored those benefits because it considers the thefts to have been the result, in part, of the clients' own negligence.³ Even those clients whose accounts had not been defalcated suffered harm. The Defendant possessed confidential personal information that represented a serious invasion of their privacy. All the victims with whom I spoke expressed anger or indignation or shame about the Defendant's having possessed their personal information, and that information's being sufficient to access their EBT accounts.

The manner in which the clients' personal information was extracted was remarkably manipulative and depraved. The complainants related, in general, the following scenario:

The client, or a member of his/her family, receives a telephone call from a male.

³ We will be recommending to HRA and the other governmental agencies that these victims be made whole.

The male identifies himself as an investigator or caseworker with the New York City Department of Social Services. The caller sternly reprimands the client either for missing an appointment with social services or for not being home when the caller said that he had attempted to visit. The caller says that the client will have his/her public benefits terminated unless the client immediately makes arrangements for another appointment. An appointment can only be made, the caller insists, if the client confirms with the caller the client's EBT account number, Social Security number, and date of birth. (Many of the clients balked initially at providing this information over the telephone, but the caller, identifying himself with a fictitious name and badge number, insisted that their cases would immediately be closed if they did not cooperate.) A day or so after this call, the client, attempting to make a purchase with his/her EBT card, discovers that the card cannot be used because the password on the account has been changed. By the time the client visits an HRA office to correct the problem, credits in the account—usually hundreds of dollars for each incident—have been removed. (Most of the illegal transactions occurred in several stores in central Brooklyn.) HRA issues a new EBT card and password to the client, but refuses to reimburse the client because he/she provided confidential information over the telephone, contrary to HRA's policy.⁴

In preparing for the trial of this indictment, we interviewed approximately thirty client-victims, whose accounts had been stolen and whose names and personal information were written in the Defendant's booklets. The oldest victim was 103 years of age. (Her daughter, a spry person in her seventies, had taken the call from the purported investigator.) The youngest was a mother in her late twenties. Most had children, and had little or no income. Levels of education varied considerably. All described to us the same approach taken by the caller: bullying, threatening, insistent, and authoritative. With the wisdom of hindsight, they all realized their error in releasing personal information over the telephone; but all of them, faced with the immediate loss of the food assistance on which they relied so much, felt that they had no choice but to do so.

Upon the Defendant's arrest on December 3, 2008, HRA stopped receiving complaints that followed the above pattern.

As we prepared for trial, we obtained credible information that the Defendant was the leader of a small group that, using public telephone directories, routinely cold-called telephone numbers of addresses in central Brooklyn; and that it was the Defendant himself who posed as the HRA investigator and spoke to the victims. According to our information, the Defendant and his accomplices were able to steal hundreds (if not thousands) of dollars in a single day.

⁴ In many instances, the theft continued, because the caller, or his accomplices, continued to access the accounts with the personal information that had been obtained. HRA finally secured these clients' accounts by restricting telephone access to the accounts. It is our position that the losses occurred, in part, because HRA's method of allowing ready access by telephone to EBT accounts lacked sufficient controls.

Much of the money was used to buy and consume narcotics. The Defendant's own words corroborate this information. On June 5, 2009, while being held in Rikers Island (where he has been detained since his arrest), the Defendant had a conversation with one of his sisters. In part of the conversation, the sister recalled a visit to the Defendant, prior to his arrest, when he was living in what she described as a crack/narcotics den. The sister asked the Defendant about his pending case, which she said involved "false names and stuff like that." Although the Defendant tried to change the subject, the sister remarked, "You know you should be able to do your own business, instead of that nonsense." The Defendant replied, "That was like my own business. You know how much money I was making? I was just wasting it!" The sister said, "That was illegit business. I'm talking about legit business." The Defendant ended the discussion with "I don't want to talk about that over the phone 'cause my case it still pending."

One of the initial hypotheses of our investigation was that the Defendant obtained access to EBT accounts with the assistance of a person or persons employed by HRA. We found no evidence to support this possibility. We did obtain evidence, despite the Defendant's unwillingness to cooperate with us, of a larger pattern of criminal activity associated with the Defendant. We have referred that evidence to the Major Narcotics Bureau of the Kings County District Attorney's Office, for their appropriate action. We cannot comment on the nature of that evidence, except to note that it relates, in part, to trafficking in EBT cards to facilitate selling narcotics and prostitution.

Very truly yours,

Sean Courtney
New York State Welfare Inspector General and
Special Assistant District Attorney
212-417-5822

c: Leon Schrage, Esq.
Counsel for Defendant
26 Court St., Su. 810
Brooklyn, NY 11242