

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KENNI JO BENNETT,

Defendant.

No. CR17-5225 RBL

PLEA AGREEMENT

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Erin H. Becker, Assistant United States Attorney for said District, Kenni Jo Bennett and her attorney, Michael Martin, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A) and (B):

1. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to Unlawful Possession of a Destructive Device, as charged in Count 1 of the Indictment, in violation of Title 26, United States Code, Sections 5861(d) and 5845(a)(8), and Title 18, United States Code, Section 2.

By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering her guilty

1 plea, she will be placed under oath. Any statement given by Defendant under oath may be
2 used by the United States in a prosecution for perjury or false statement.

3 2. **Elements of the Offense.** The elements of the offense of Unlawful
4 Possession of a Destructive Device are as follows:

5 First, the defendant knowingly possessed or received a destructive device.

6 Second, the destructive device was not registered to the defendant in the
7 National Firearms Registration and Transfer Record.

8 3. **The Penalties.** Defendant understands that the statutory penalties
9 applicable to the offense to which she is pleading guilty are as follows: A maximum term
10 of imprisonment of up to 10 years; a fine of up to \$10,000; a period of supervision
11 following release from prison of up to three years; and a mandatory special assessment of
12 \$100. If a probationary sentence is imposed, the probation period can be for up to five
13 years. Defendant agrees that the special assessment shall be paid at or before the time of
14 sentencing.

15 Defendant understands that supervised release is a period of time following
16 imprisonment during which she will be subject to certain restrictive conditions and
17 requirements. Defendant further understands that if supervised release is imposed and she
18 violates one or more of the conditions or requirements, Defendant could be returned to
19 prison for all or part of the term of supervised release that was originally imposed. This
20 could result in Defendant serving a total term of imprisonment greater than the statutory
21 maximum stated above.

22 Defendant understands that as a part of any sentence, in addition to any term of
23 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
24 restitution to any victim of the offense, as required by law.

25 Defendant agrees that any monetary penalty the Court imposes, including the
26 special assessment, fine, costs, or restitution, is due and payable immediately and further
27 agrees to submit a completed Financial Statement of Debtor form as requested by the
28 United States Attorney's Office.

1 **4. Rights Waived by Pleading Guilty.** Defendant understands that by
2 pleading guilty, she knowingly and voluntarily waives the following rights:

- 3 a. The right to plead not guilty and to persist in a plea of not guilty;
4 b. The right to a speedy and public trial before a jury of her peers;
5 c. The right to the effective assistance of counsel at trial, including, if
6 Defendant could not afford an attorney, the right to have the Court
7 appoint one for her;
8 d. The right to be presumed innocent until guilt has been established
9 beyond a reasonable doubt at trial;
10 e. The right to confront and cross-examine witnesses against Defendant
11 at trial;
12 f. The right to compel or subpoena witnesses to appear on her behalf at
13 trial;
14 g. The right to testify or to remain silent at trial, at which trial such
15 silence could not be used against Defendant; and
16 h. The right to appeal a finding of guilt or any pretrial rulings.

17 **5. Ultimate Sentence.** Defendant acknowledges that no one has promised or
18 guaranteed what sentence the Court will impose.

19 **6. Restitution.** Defendant shall make restitution to D.H. and M.M. for the
20 damage to or destruction of their vehicle, a 2011 Kia Forte, in amount to be determined,
21 with credit for any amounts already paid. Said amount shall be due and payable
22 immediately and shall be paid in accordance with a schedule of payments as proposed by
23 the United States Probation Office and ordered by the Court. Defendant specifically
24 agrees that restitution is mandatory for her offense pursuant to 18 U.S.C.
25 § 3663A(c)(1)(A)(i) and (c)(2), because this Plea Agreement relates to a charge for an
26 offense that is a crime of violence, as defined in 18 U.S.C. § 16, and that offense gave
27 rise to this Plea Agreement.

1 7. **Statement of Facts.** The parties agree on the following facts. Defendant
2 admits she is guilty of the charged offense:

3 a. Sometime between August 25, 2016, and October 13, 2016,
4 Defendant came to believe that D.H., a person known to her, had provided
5 information about her illegal narcotics trafficking to law enforcement officers with
6 the Lakewood Police Department.

7 b. After hearing that D.H. had provided information about her
8 activities, Defendant and a friend went to the Puyallup tribal reservation and made
9 contact with a man there who could provide her with an explosive. The man,
10 whom Defendant knew as "Sonny," gave her a device about the size of a small
11 soda can that had a green fuse coming out one side and an attached magnet.

12 c. Defendant then recruited Thomas J. Fite to assist her in blowing up
13 D.H.'s car, a 2011 Kia Forte, telling him that D.H. was a "snitch." She paid Fite
14 about an ounce of methamphetamine to help her blow up the car.

15 d. During the early morning hours of October 13, 2016, Defendant
16 drove to D.H.'s neighborhood and saw the Kia Forte, owned by D.H. but used by
17 his partner M.M., parked in the driveway of the house that D.H. and M.M. shared.
18 The car was parked immediately adjacent to the house, close to the front windows.
19 Defendant believed D.H. to be home.

20 e. Defendant then called Fite and drove to his home to pick him up.
21 She sent him a text message stating, "I'm here." Fite came out of his home and got
22 into Defendant's car, and Defendant and Fite returned to D.H.'s home, arriving at
23 approximately 3:27 a.m. on October 13, 2016.

24 f. Once there, Defendant parked her car, and she and Fite got out.
25 Defendant retrieved the device she had purchased some time earlier from "Sonny."
26 She provided the device to Fite, and they approached the Kia Forte. Defendant
27 was smoking a cigarette, and she tore the filter off the cigarette and used the
28 remainder to light the fuse on the device that Fite was then holding.

1 g. Defendant instructed Fite to put the ignited device under D.H. and
2 M.M.'s car, on the gas tank. Fite did.

3 h. Defendant and Fite watched as sparks appeared under the Kia Forte,
4 and Defendant videorecorded the event with her phone. The device then exploded,
5 blowing a hole into the trunk area of the Kia Forte and spreading debris over a
6 wide area, including into the lawns of properties across the street. Defendant and
7 Fite then returned to Defendant's vehicle and departed. Defendant took Fite home.

8 i. Defendant obtained the device, recruited Fite, and participated in
9 placing the device on the Kia Forte and blowing it up in retaliation for D.H.'s
10 provision of information to law enforcement personnel about her drug trafficking.
11 She acted knowingly and maliciously in doing so.

12 j. The device that Defendant obtained from "Sonny" and then placed
13 on the Kia Forte on October 13, 2016, to blow it up was an explosive weapon
14 classified as a destructive device pursuant to federal law.

15 k. The destructive device that Defendant and Fite placed on the Kia
16 Forte on October 13, 2016, was not registered to either Defendant or Fite in the
17 National Firearms Registration and Transfer Record.

18 **8. United States Sentencing Guidelines.** Defendant understands and
19 acknowledges that the Court must consider the sentencing range calculated under the
20 United States Sentencing Guidelines and possible departures under the Sentencing
21 Guidelines together with the other factors set forth in Title 18, United States Code,
22 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the
23 history and characteristics of the defendant; (3) the need for the sentence to reflect the
24 seriousness of the offense, to promote respect for the law, and to provide just punishment
25 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
26 conduct; (5) the need for the sentence to protect the public from further crimes of the
27 defendant; (6) the need to provide the defendant with educational and vocational training,
28 medical care, or other correctional treatment in the most effective manner; (7) the kinds

1 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
2 avoid unwarranted sentence disparity among defendants involved in similar conduct who
3 have similar records. Accordingly, Defendant understands and acknowledges that:

4 a. The Court will determine applicable Defendant's Sentencing
5 Guidelines range at the time of sentencing;

6 b. After consideration of the Sentencing Guidelines and the factors in
7 18 U.S.C. § 3553(a), the Court may impose any sentence authorized by law, up to
8 the maximum term authorized by law;

9 c. The Court is not bound by any recommendation regarding the
10 sentence to be imposed, or by any calculation or estimation of the Sentencing
11 Guidelines range offered by the parties or the United States Probation Department,
12 or by any stipulations or agreements between the parties in this Plea Agreement;
13 and

14 d. Defendant may not withdraw her guilty plea solely because of the
15 sentence imposed by the Court.

16 9. **Acceptance of Responsibility.** At sentencing, *if* the district court concludes
17 Defendant qualifies for a downward adjustment acceptance for acceptance of
18 responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or
19 greater, the United States will make the motion necessary to permit the district court to
20 decrease the total offense level by three levels pursuant to USSG §§ 3E1.1(a) and (b),
21 because Defendant has assisted the United States by timely notifying the United States of
22 her intention to plead guilty, thereby permitting the United States to avoid preparing for
23 trial and permitting the Court to allocate its resources efficiently.

24 10. **Sentencing Factors.** The parties agree that the following Sentencing
25 Guidelines provisions apply to this case:

26 a. U.S.S.G. § 2K2.1(a)(4)(B), setting a base offense level of 20 because
27 the offense involved a destructive device as described in 26 U.S.C. § 5845(a) and the
28 defendant was a prohibited person, specifically a felon, at the time of the offense; and

1 b. U.S.S.G. § 2K2.1(b)(3)(B), increasing the base offense by two levels
2 because the offense involved a destructive device other than a portable rocket, missile, or
3 device for use in launching a portable rocket or missile.

4 The parties agree they are free to present arguments regarding the applicability of
5 any and all other provisions of the United States Sentencing Guidelines. In particular,
6 Defendant understands that the United States will argue that U.S.S.G. § 2K2.1(b)(6)(B)
7 applies, increasing the offense level by four levels for using the destructive device in
8 connection with another felony offense, such as Arson in the Second Degree in violation
9 of RCW 9A.48.030 or other similar offenses. Defendant further understands that at the
10 time of sentencing, the Court is free to reject these stipulated adjustments, and is further
11 free to apply additional downward or upward adjustments in determining Defendant's
12 Sentencing Guidelines range. Defendant further understands that she cannot withdraw her
13 guilty plea simply because of the guidelines determination made by the Court.

14 **11. Sentencing Recommendation.** The United States agrees to recommend a
15 term of imprisonment of no greater than the middle of the sentencing guidelines range
16 calculated by the Court at sentencing. Defendant understands and acknowledges that the
17 Court is not bound by the recommendation of the United States, and that the Court may
18 impose any term of imprisonment up to the statutory maximum penalty authorized by
19 law. Beyond the aforementioned recommendation with respect to imprisonment,
20 Defendant further understands that the United States is free to make any recommendation
21 at sentencing with respect to any other aspect of her sentencing that the United States
22 chooses.

23 Defendant is free under this Plea Agreement to make any recommendation at
24 sentencing that she deems appropriate. Defendant understands and acknowledges that the
25 Court is not bound by that recommendation either, and may impose any term of
26 imprisonment up to the statutory maximum penalty authorized by law.

27 Defendant further understands that she cannot withdraw her guilty plea simply
28 because of the sentence imposed by the Court.

1 12. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
2 the United States Attorney's Office for the Western District of Washington agrees not to
3 prosecute Defendant for any additional offenses known to it as of the time of this
4 Agreement that are based upon evidence in its possession at this time, and that arise out
5 of the conduct giving rise to this investigation. In this regard, Defendant recognizes the
6 United States has agreed not to prosecute all of the criminal charges the evidence
7 establishes were committed by Defendant solely because of the promises made by
8 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing
9 the Presentence Report, the United States Attorney's Office will provide the United
10 States Probation Office with evidence of all conduct committed by Defendant.

11 Defendant agrees that any charges to be dismissed before or at the time of
12 sentencing were substantially justified in light of the evidence available to the United
13 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
14 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
15 (1997).

16 13. **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if
17 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
18 Agreement and Defendant may be prosecuted for all offenses for which the United States
19 has evidence. Defendant agrees not to oppose any steps taken by the United States to
20 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
21 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
22 Defendant has waived any objection to the re-institution of any charges in the Indictment
23 that were previously dismissed or any additional charges that had not been prosecuted.

24 Defendant further understands that if, after the date of this Agreement, Defendant
25 should engage in illegal conduct, or conduct that violates any conditions of release or the
26 conditions of her confinement, (examples of which include, but are not limited to,
27 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
28 pending sentencing, and false statements to law enforcement agents, the Pretrial Services

1 Officer, Probation Officer, or Court), the United States is free under this Agreement to
2 file additional charges against Defendant or to seek a sentence that takes such conduct
3 into consideration by requesting the Court to apply additional adjustments or
4 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
5 advisory Guidelines range, and/or by seeking an upward departure or variance from the
6 calculated advisory Guidelines range. Under these circumstances, the United States is
7 free to seek such adjustments, enhancements, departures, and/or variances even if
8 otherwise precluded by the terms of the plea agreement.

9 **14. Waiver of Appellate Rights and Rights to Collateral Attacks.** Defendant
10 acknowledges that by entering the guilty plea required by this plea agreement, Defendant
11 waives all rights to appeal from her conviction and any pretrial rulings of the court.
12 Defendant further agrees that, provided the court imposes a custodial sentence that is
13 within or below the Sentencing Guidelines range (or the statutory mandatory minimum, if
14 greater than the Guidelines range) as determined by the court at the time of sentencing,
15 Defendant waives to the full extent of the law:

16 a. Any right conferred by Title 18, United States Code, Section 3742,
17 to challenge, on direct appeal, the sentence imposed by the court, including any
18 fine, restitution order, probation or supervised release conditions, or forfeiture
19 order (if applicable); and

20 b. Any right to bring a collateral attack against the conviction and
21 sentence, including any restitution order imposed, except as it may relate to the
22 effectiveness of legal representation.

23 This waiver does not preclude Defendant from bringing an appropriate motion
24 pursuant to 28 U.S.C. § 2241, to address the conditions of her confinement or the
25 decisions of the Bureau of Prisons regarding the execution of her sentence.

26 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
27 attacking (except as to effectiveness of legal representation) the conviction or sentence in
28 any way, the United States may prosecute Defendant for any counts, including those with

1 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
2 Agreement.

3 15. **Voluntariness of Plea.** Defendant agrees that she has entered into this Plea
4 Agreement freely and voluntarily and that no threats or promises, other than the promises
5 contained in this Plea Agreement, were made to induce Defendant to enter her plea of
6 guilty.

7 16. **Statute of Limitations.** In the event this Agreement is not accepted by the
8 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,
9 the statute of limitations shall be deemed to have been tolled from the date of the Plea
10 Agreement to: (1) thirty days following the date of non-acceptance of the Plea Agreement
11 by the Court; or (2) thirty days following the date on which a breach of the Plea
12 Agreement by Defendant is discovered by the United States Attorney's Office.

13 17. **Completeness of Agreement.** The United States and Defendant
14 acknowledge that these terms constitute the entire Plea Agreement between the parties.
15 This Agreement binds only the United States Attorney's Office for the Western District

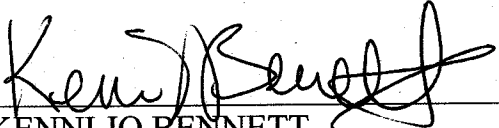
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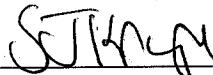
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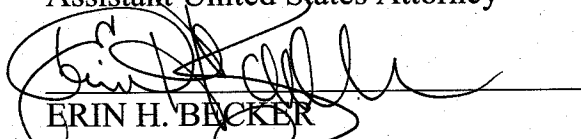
1 of Washington. It does not bind any other United States Attorney's Office or any other
2 office or agency of the United States, or any state or local prosecutor.

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4 Dated this 6th day of October, 2017.

5
6 
7 KENNI JO BENNETT
8 Defendant

9 
10 MICHAEL MARTIN Steven J. Krupa
11 Attorney for Defendant Kenni Jo Bennett

12 
13 TODD GREENBERG
14 Assistant United States Attorney

15 
16 ERIN H. BECKER
17 Assistant United States Attorney