

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 09, 2022

SEAN F. MCAVOY, CLERK

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DONOVAN QUINN CARTER CLOUD,

Defendant.

1:19-CR-02032-SMJ-2

Plea Agreement

Fed. R. Crim. P. 11(c)(1)(C)

Plaintiff, the United States of America, by and through Vanessa R. Waldref, United States Attorney for the Eastern District of Washington, Thomas J. Hanlon and Richard C. Burson, Assistant United States Attorneys for the Eastern District of Washington, and Defendant DONOVAN QUINN CARTER CLOUD, and the Defendant's attorneys, Richard A. Smith, Mark A. Larranaga, and Stephen R. Hormel, agree to the following Plea Agreement:

1. Guilty Plea; Maximum Statutory Penalties; and Supervised Release:

The Defendant, DONOVAN QUINN CARTER CLOUD, agrees to enter pleas of guilty to Counts 1 and 3 of the Amended Third Superseding Indictment, filed December 15, 2020, pursuant to Fed. R. Crim. P. 11(c)(1)(C).

1 (a). Count 1:

2 The Defendant agrees to enter a plea of guilty to Carjacking, in violation of 18
3 U.S.C. § 2119, as charged Count 1 of the Amended Third Superseding Indictment.
4 The Defendant understands that the maximum statutory penalty for Carjacking, in
5 violation of 18 U.S.C. § 2119, is a term of imprisonment for no more than 15 years; a
6 fine not to exceed \$250,000; a three (3) year term of supervised release; and a \$100
7 special penalty assessment.

8 (b). Count 3:

9 The Defendant agrees to enter a plea of guilty to Brandishing of a Firearm
10 During a Crime of Violence, in violation of 18 U.S.C. § 924(c)(1)(A)(i),(ii) as charged
11 in Count 3 of the Amended Third Superseding Indictment. The Defendant understands
12 that the maximum statutory penalty for Brandishing of a Firearm During a Crime of
13 Violence, in violation of 18 U.S.C. § 924(c)(1)(A)(i),(ii), is a term of imprisonment of
14 not less than 7 years imprisonment and up to life; a fine not to exceed \$250,000; a five
15 (5) year term of supervised release; and a \$100 special penalty assessment.

16 (c). Total Maximum Penalties:

17 The Defendant understands that by entering pleas of guilty to the above
18 charges, the Court is required to impose consecutive sentences and that the total
19 maximum penalties applicable to this Plea Agreement and the Defendant's pleas of
20 guilty are not more than a life term of imprisonment; an aggregate fine of not more
21 than \$500,000; a term of supervised release. An aggregate special penalty assessment
22 of \$200 (\$100 for each count of conviction) is statutorily prescribed and will be
23 applied.

24 (d). Supervised Release:

25 The Defendant further understands that a violation of the conditions of
26 supervised release carries an additional penalty of re-imprisonment for all or part of
27 the term of supervised release, pursuant to 18 U.S.C. § 3583(e)(3), without credit for
28 time previously served on post-release supervision.

2. Fed. R. Crim. P. 11(c)(1)(C):

The Defendant understands that this is a Plea Agreement pursuant to Fed. R. Crim. P. 11(c)(1)(C) and that the United States may withdraw from this Plea Agreement if the Court imposes a sentence lesser than agreed upon. The Defendant further understands that the Defendant will have the option to withdraw from this Plea Agreement if the Court imposes a sentence harsher than agreed upon.

Here, the parties agree the appropriate sentence is a sentence within a range of 262-327 months imprisonment.

3. Waiver of Constitutional Rights:

The Defendant understands that by entering this plea of guilty, the Defendant is knowingly and voluntarily waiving certain constitutional rights, including:

- (a). The right to a jury trial;
- (b). The right to see, hear, and question the witnesses;
- (c). The right to remain silent at trial;
- (d). The right to testify at trial; and
- (e). The right to compel witnesses to testify.

While the Defendant is waiving certain constitutional rights, the Defendant understands he retains the right to be assisted through the sentencing and any direct appeal of the conviction and sentence by an attorney, who will be appointed at no cost if the Defendant cannot afford to hire an attorney. The Defendant also acknowledges that any pretrial motions currently pending before the Court are waived.

4. Elements of the Offenses:

The United States and the Defendant agree that in order to convict the Defendant of the following offenses, the United States would have to prove beyond a reasonable doubt the following elements and material facts:

(a). Count 1:

For Carjacking, in violation of 18 U.S.C. § 2119:

1 *First*, on or about June 8, 2019, within in the Eastern District of
2 Washington, the Defendant, DONOVAN QUINN CARTER CLOUD,
3 took a motor vehicle from or in the presence of another;

4 *Second*, the Defendant did so by force and violence or by intimidation;

5 *Third*, the motor vehicle had previously been transported, shipped, or
6 received in interstate or foreign commerce; and

7 *Fourth*, the Defendant intended to cause death or serious bodily injury
8 when the defendant took the motor vehicle.

9 (b). Count 3:

10 For Brandishing a Firearm During a Crime of Violence, in violation of 18
11 U.S.C. § 924(c)(1)(A)(i), (ii):

12 *First*, the Defendant, DONOVAN QUINN CARTER CLOUD,
13 committed the crime of Carjacking as charged in Count 1 of the
14 Amended Third Superseding Indictment; and

15 *Second*, the Defendant knowingly brandished the firearm during and in
16 relation to that crime.

17 6. Factual Basis and Statements of Facts:

18 The United States and the Defendant stipulate and agree that the following facts
19 are accurate; that the United States could prove these facts beyond a reasonable doubt
20 at trial; and that these facts constitute an adequate factual basis for Defendant's guilty
21 plea. This statement of facts does not preclude either party from presenting and
22 arguing, for sentencing purposes, additional facts which are relevant to the guideline
23 computation or sentencing, unless otherwise prohibited in this agreement.

24 On June 8, 2019, the Defendant and co-defendant walked to a residence that
25 was located within the external boundaries of the Yakama Nation Indian Reservation.
26 The Defendant approached the residence with the intent to steal a vehicle. The
27 Defendant observed Minor A on the property. The Defendant grabbed Minor A and
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1 held a pistol to his head. The Defendant instructed Minor A's mother (N.V.) to
2 provide him with keys to a vehicle.

3 The co-defendant was armed with a shotgun. Minor A's father, J.V., exited the
4 residence and observed the co-defendant pointing a shotgun at him. J.V. also
5 observed the Defendant holding a pistol to the head of Minor A. J.V. provided keys to
6 his mini-van. The Defendant and his co-defendant advised that they wanted the keys
7 to J.V.'s 2007 pick-up truck. J.V. quickly provided the co-defendant with keys to his
8 2007 pick-up truck. The Defendant and the co-defendant advised that they were going
9 to take Minor A with them. Minor A was placed in the bed of the truck. The
10 Defendant was in the driver's seat. The co-defendant also entered the truck. The
11 Defendant quickly drove away from the property. Minor A was able to jump out of
12 the truck to safety.

13 The Defendant drove the truck through a field in an effort to drive to White
14 Swan. Ultimately, the Defendant drove into a large rock which disabled the vehicle.
15 Law enforcement later found and seized the vehicle. The rearview mirror was
16 removed and sent to the FBI Laboratory. Forensic Examiner S. Prince ("FE Prince")
17 inspected the rearview mirror and observed a latent print. FE Prince compared the
18 latent print to the Defendant's known prints. FE Prince determined that the latent
19 print observed on the rearview mirror was identified to the right thumb on the
20 Defendant's known fingerprint card. The identification was independently verified by
21 another FBI qualified latent print examiner who was blind to FE Prince's conclusion
22 and the case details.

23 7. The United States Agrees:

24 (a). Dismissals:

25 As to the Defendant, the United States agrees to move to dismiss Counts 4, 7, 8,
26 14, 15, 16, 17, 18, and 19 of the Amended Third Superseding Indictment at
27 sentencing, with the reservation of the right to reinstate all counts if the Defendant's
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1 convictions are dismissed, set aside, vacated or reversed, thus voiding the Plea
2 Agreement. *See* Paragraph 16, *infra*.

3 (b). Not to File Additional Charges:

4 The United States Attorney's Office for the Eastern District of Washington
5 agrees not to bring any additional charges against the Defendant arising from this
6 investigation, including but not limited to charges relating to the deaths of J.C. and
7 J.H. which are detailed in the discovery and which occurred on June 8, 2019, unless
8 the Defendant breaches this Plea Agreement any time before or after sentencing.

9 8. United States Sentencing Guideline Calculations:

10 The Defendant understands and acknowledges that the United States Sentencing
11 Guidelines (hereinafter "U.S.S.G.") are applicable to this case and that the Court will
12 determine the Defendant's applicable sentencing guideline range at the time of
13 sentencing. The Defendant also understands that pursuant to *United States v. Booker*,
14 543 U.S. 220 (2005), the Court is required to consider the factors set forth in 18
15 U.S.C. § 3553(a), and to impose a reasonable sentence.

16 (a). Base Offense Level: Carjacking

17 The United States and the Defendant agree that the Base Offense Level for
18 Carjacking is 20. *See* U.S.S.G. §2B3.1(a).

19 (b). Specific Offense Characteristics: Carjacking

20 The United States and the Defendant stipulate and agree that the following
21 specific offense characteristics are applicable: (1) +4 levels because Minor A was
22 abducted to facilitate the commission of the offense; and (2) +2 because the offense
23 involved carjacking.

24 (c). Base Offense Level: Brandishing A Firearm During A Crime of
25 Violence

26 The United States and the Defendant agree that the Base Offense Level for
27 Brandishing a Firearm During a Crime of Violence is the minimum term of
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1 imprisonment required by statute. Here, the minimum term of imprisonment required
2 by statute is 7 years. *See* U.S.S.G. §2K2.4(a).

3 (d). Career Offender:

4 The United States believes the Defendant is a Career Offender, pursuant to
5 U.S.S.G. § 4B1.1. As such, the relevant guideline range is believed to be 262-327
6 months. *See* U.S.S.G. § 4B1.1(c)(3). The Defendant reserves the right to dispute the
7 applicability of this Career Offender provision.

8 (e). Acceptance of Responsibility

9 If the Defendant enters pleas of guilty and demonstrates a recognition and an
10 affirmative acceptance of personal responsibility for the criminal conduct; does not
11 commit any obstructive conduct; accepts this Plea Agreement, and enters pleas of
12 guilty not later than March 11, 2022, the United States will move for a three (3)-level
13 downward adjustment in the Combined Offense Level for the Defendant's timely
14 acceptance of responsibility, pursuant to U.S.S.G. §3E1.1(a),(b).

15 (f). Criminal History:

16 Pursuant to U.S.S.G. § 4B1.1, the United States believes that the Defendant's
17 criminal history category is Category VI. The Defendant reserves the right to argue
18 that the criminal history category is something other than Category VI. The United
19 States and the Defendant agree that criminal history computation will be determined
20 by the Court after review of the Presentence Investigation Report.

21 9. Departures/Variances:

22 The United States and the Defendant reserve the right to seek, and/or oppose,
23 upward or downward adjustments and/or variances in support of sentencing
24 recommendations.

25 10. Length of Imprisonment:

26 The United States and the Defendant agree the appropriate sentence is a
27 sentence between a range of 262-327 months imprisonment.

11. Criminal Fine:

The United States and the Defendant are free to recommend imposition of whatever lawful fine they believe appropriate.

12. Supervised Release:

The United States and the Defendant reserve the right to recommend a term of supervised release.

13. Restitution:

The parties agree restitution is required. *See* 18 U.S.C. §§ 3663, 3663A, and 3664. The Defendant agrees to provide restitution for all counts of conviction as well as restitution for victims identified in Counts 16 and 18. At this time, the United States has not been advised of a specific amount of restitution from the victim representatives, however, the United States will be seeking restitution in this matter and reserves the right to raise this issue prior to sentencing. The Defendant agrees to pay restitution. With respect to restitution, the parties agree to the following:

(a). Restitution Amount and Interest

The Court should order the Defendant to pay restitution to the victims in an amount to be determined at the time of sentencing. The interest on this restitution amount should be waived.

(b). Payments

The parties agree the Court will set a payment schedule based on his financial circumstances. *See* 18 U.S.C. § 3664(f)(2), (3)(A). The Defendant agrees, however, to pay not less than \$25 per month or 10% of his net monthly income, whichever is greater, towards his restitution obligation.

(c). Treasury Offset Program and Collection

The Defendant understands the Treasury Offset Program (“TOP”) collects delinquent debts owed to federal agencies. If applicable, the TOP may take part or all of the Defendant’s federal tax refund, federal retirement benefits, or other federal

1 benefits and apply these monies to the Defendant's restitution obligations. *See* 26
2 U.S.C. § 6402(d); 31 U.S.C. § 3720A; 31 U.S.C. § 3716.

3 The Defendant also understands the United States may, notwithstanding the
4 Court-imposed payment schedule, pursue other avenues to ensure the restitution
5 obligation is satisfied, including, but not limited to, garnishment of available funds,
6 wages, or assets. *See* 18 U.S.C. §§ 3572, 3613, and 3664(m). Nothing in this
7 acknowledgment shall be construed to limit the Defendant's ability to assert any
8 specifically identified exemptions as provided by law, except as set forth in this Plea
9 Agreement.

10 (d). Notifications

11 The Defendant agrees to notify the Court and the United States of any material
12 change in his economic circumstances (e.g., inheritances, monetary gifts, changed
13 employment, or income increases) that might affect his ability to pay restitution. *See*
14 18 U.S.C. § 3664(k). This obligation ceases when the restitution is paid-in-full.

15 The Defendant agrees to notify the United States of any address change within
16 30 days of that change. *See* 18 U.S.C. §3612(b)(F). This obligation ceases when the
17 restitution is paid-in-full.

18 14. Mandatory Special Penalty:

19 The Defendant agrees to pay the \$200 aggregate mandatory special penalty
20 assessment (\$100 per count of conviction) to the Clerk of Court for the Eastern
21 District of Washington. *See* 18 U.S.C. § 3013.

22 15. Payments While Incarcerated:

23 If the Defendant lacks the financial resources to pay the monetary obligations
24 imposed by the Court, the Defendant agrees to earn the money to pay toward these
25 obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility
26 Program.

16. Appeal Rights:

The Defendant understands that he has a limited right to appeal or challenge the convictions and sentences imposed by the Court. The Defendant hereby expressly waives his right to appeal his convictions. The Defendant expressly waives appeal of his sentence, any fine, any term of supervised release, special penalty assessments, any restitution imposed or ordered by the Court, so long as the term of imprisonment imposed is not more than 327 months and restitution does not exceed \$100,000.00. Should the Defendant successfully move to withdraw from this Plea Agreement, or should any of the Defendant's convictions be dismissed, set aside, vacated, or reversed, the Plea Agreement shall become null and void; the United States may move to reinstate all counts of the Amended Third Superseding Indictment; and the United States may prosecute the Defendant on all available charges involving or arising out of the Amended Third Superseding Indictment. Nothing in this Plea Agreement shall preclude the United States from opposing any post-conviction motion for a reduction of sentence or other attack of the conviction or sentence, including, but not limited to, proceedings pursuant to 28 U.S.C. § 2255 (writ of habeas corpus). However, Defendant further expressly waives his right to file any post-conviction motion attacking his convictions and sentence, including a motion pursuant to 28 U.S.C. § 2255, except one based upon ineffective assistance of counsel based on information not now known by Defendant and which, in the exercise of due diligence, could not be known by Defendant by the time the Court imposes the sentence.

17. Integration Clause:

The United States and the Defendant acknowledge that this document constitutes the entire Plea Agreement between the United States and the Defendant, and no other promises, agreements, or conditions exist between the United States and the Defendant concerning the resolution of the case. This Plea Agreement is binding only upon the United States Attorney's Office for the Eastern District of Washington, and cannot bind other federal, state, or local authorities. The United States and the

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Defendant agree that this agreement cannot be modified except in a writing that is signed by the United States and the Defendant.

Approvals and Signatures

Agreed and submitted on behalf of the United States Attorney's Office for the Eastern District of Washington.

Vanessa R. Waldref
United States Attorney



Thomas J. Hanlon/Richard C. Burson
Assistant U.S. Attorneys

3/9/22
Date

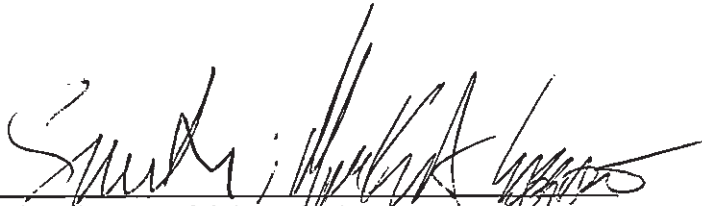
I have read this Plea Agreement and have carefully reviewed and discussed every part of the agreement with my attorney. I understand and voluntarily enter into this Plea Agreement. Furthermore, I have consulted with my attorney about my rights, I understand those rights, and I am satisfied with the representation of my attorney in this case. No other promises or inducements have been made to me, other than those contained in this Plea Agreement and no one has threatened or forced me in any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.



DONOVAN QUINN CARTER CLOUD
Defendant

3/9/22
Date

1 I have read the Plea Agreement and have discussed the contents of the
2 agreement with my client. The Plea Agreement accurately and completely sets forth
3 the entirety of the agreement between the parties. I concur in my client's decision to
4 plead guilty as set forth in the Plea Agreement. There is no legal reason why the
5 Court should not accept the Defendant's pleas of guilty.
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11 Richard A. Smith/Mark A. Larranaga
12 Stephen R. Hormel
13 Counsel for the Defendant
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Date 3/9/22