

**FILED**

JUL 27 2016

Clerk, U.S. District Court  
District Of Montana  
Billings

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**ATTORNEYS FOR PLAINTIFF**  
**UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**BILLINGS DIVISION**

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| <p><b>UNITED STATES OF AMERICA,</b></p> <p><b>Plaintiff,</b></p> <p>vs.</p> <p><b>TAWNYA BEARCOMESOUT,</b></p> <p><b>Defendant.</b></p> | <p><b>CR 16-13-BLG-SPW</b></p> <p><b>PLEA AGREEMENT</b></p> |
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Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, the United States, represented by Assistant U.S. Attorneys Kris A. McLean and John D. Sullivan, and the defendant Tawnya Bearcomesout, and her attorneys Anthony Gallagher and Gillian Gosch, have agreed upon the following:

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1. **Scope:** This plea agreement is between the United States Attorney's Office for the District of Montana and the defendant. It does not bind any other federal, state or local prosecuting, administrative or regulatory authority, or the United States Probation Office.

2. **Charges:** The defendant agrees to plead guilty to count II of the indictment, which charges her with involuntary manslaughter in violation of 18 U.S.C. §§ 1153(a) and 1112(a). This offense carries maximum penalties of eight years imprisonment, a \$250,000 fine, three years of supervised release, and a \$100 special assessment.

At the time of sentencing, the United States will move to dismiss count I of the indictment if the Court accepts the plea agreement.

3. **Nature of the Agreement:** The parties agree that this plea agreement will be governed by Federal Rule of Criminal Procedure 11(a)(2), (c)(1)(A), and (c)(1)(C). The defendant filed a motion to dismiss the indictment on June 16, 2016, which the Court denied on July 22, 2016. With the government's consent, the defendant reserves her right to appeal the Court's adverse pretrial ruling of her motion to dismiss under Federal Rule of Criminal Procedure 11(a)(2). The parties acknowledge that such a conditional plea and reservation also requires the consent of the Court, and if consent is not given, the plea agreement is null and void and the case may be set for trial.

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This plea agreement is also governed by Federal Rule of Criminal Procedure 11(c)(1)(A) and (C). The defendant acknowledges that the agreement will be fulfilled provided that the United States moves to dismiss, and the Court agrees to dismiss count I of the indictment. The defendant and the United States agree that a specific disposition of 18 to 24 months of imprisonment, reduced by a variance of 17 months, which is the amount of time the defendant served in tribal custody, is appropriate. The parties also agree that following the defendant's release from imprisonment, that she will be placed on supervised release for a term of three years. The defendant understands that, under Federal Rule of Criminal Procedure 11(d)(2)(A), if the plea agreement is accepted by the Court, the defendant will not have an automatic right to withdraw her plea. If the Court rejects the plea agreement, under Federal Rule of Criminal Procedure 11(c)(5), the defendant will be able to withdraw her guilty plea and the parties will proceed to trial.



**4. Admission of Guilt:** The defendant will plead guilty because she is in fact guilty of the charge contained in count II of the indictment. In pleading guilty, the defendant acknowledges that:

First, the defendant committed an act that might produce death;

Second, the defendant acted with gross negligence, defined as wanton or reckless disregard for human life;

Third, the defendant's act was the proximate cause of the death of the victim. A proximate cause is one that played a substantial part in bringing about the death, so that the death was the direct result or a

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reasonably probable consequence of the defendant's act;

Fourth, the killing was unlawful. A killing is unlawful within the meaning of this instruction if it was neither justifiable nor excusable;

Fifth, the defendant either knew that such conduct was a threat to the lives of others or knew of circumstances that would reasonably cause the defendant to foresee that such conduct might be a threat to the lives of others;

Sixth, the killing occurred within the exterior boundaries of the Northern Cheyenne Indian Reservation; and

Seventh, the defendant is an Indian person.

**5. Waiver of Rights by Plea:**

(a) The government has a right to use against the defendant, in a prosecution for perjury or false statement, any statement that the defendant gives under oath during the plea colloquy.

(b) The defendant has the right to plead not guilty or to persist in a plea of not guilty.

(c) The defendant has the right to a jury trial unless the defendant, by written waiver, consents to a non-jury trial. The government must also consent and the Court must approve a non-jury trial.

(d) The defendant has the right to be represented by counsel, and if necessary, have the court appoint counsel, at trial and at every other stage of these proceedings.

(e) If the trial is a jury trial, the jury would be composed of 12

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laypersons selected at random. The defendant and defense attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict the defendant unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt.

(f) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not he was persuaded of the defendant's guilt beyond a reasonable doubt.

(g) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those government witnesses and the defense attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence on the defendant's own behalf. If the witnesses for the defendant would not appear voluntarily, their appearance could be mandated through the subpoena power of the Court.

(h) At a trial, there is a privilege against self-incrimination so that the defendant could decline to testify and no inference of guilt could be drawn

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from refusal to testify. Or the defendant could exercise the choice to testify on his or her own behalf.

(i) If convicted, and within 14 days of the entry of the Judgment and Commitment, the defendant would have the right to appeal the conviction to the United States Court of Appeals for the Ninth Circuit for review to determine if any errors were made which would entitle the defendant to reversal of the conviction.


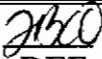
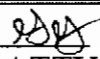
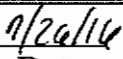
(j) The defendant has a right to have the district court conduct the change of plea hearing required by Federal Rule of Criminal Procedure 11. By execution of this agreement, the defendant expressly waives that right and agrees to hold that hearing before, and allow the Rule 11 colloquy to be conducted by, the U.S. Magistrate Judge.

(k) If convicted in this matter, a defendant who is not a citizen of the United States may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

The defendant understands that by pleading guilty pursuant to this agreement, defendant is waiving all the rights set forth in this paragraph. The defendant's attorney has explained these rights and the consequences of waiving these rights.

**6. Recommendations:** The parties agree that a sentence of 18 to 24

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months of imprisonment, reduced by a variance of 17 months, which is the amount of time the defendant served in tribal custody, and three years of supervised release to follow is the appropriate disposition of this case.

**7. Sentencing Guidelines:** Although advisory, the parties agree that the U.S. Sentencing Guidelines must be applied, and a calculation determined, as part of the protocol of sentencing to determine what sentence will be reasonable.

**8. Waiver of Appeal of the Sentence:** The defendant acknowledges that 18 U.S.C. § 3742 affords the right to appeal the sentence imposed in this case. While the defendant reserves the right to appeal the Court's adverse pretrial ruling of her motion to dismiss, based on the concessions made by the government in this case, the defendant waives any and all right to directly appeal any aspect of her sentence, including conditions of probation or supervised release.

The defendant also waives the right to challenge the sentence in a collateral proceeding pursuant to 28 U.S.C. § 2255. This waiver does not prohibit the right to pursue or maintain such an action alleging ineffective assistance of counsel.

**9. Voluntary Plea:** The defendant and the defendant's attorney acknowledge that no threats, promises, or representations have been made to induce the defendant to plead guilty, and this agreement is freely and voluntarily endorsed by the parties.

**10. Detention/Release After Plea:** Pursuant to 18 U.S.C. § 3143(a)(1),

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the defendant acknowledges that by statute she will be detained upon conviction unless the Court finds, by clear and convincing evidence, that she will not likely flee or pose a danger to the community.

As a part of this agreement, however, the defendant specifically consents to her continued detention pending sentencing and that she will not move for a detention hearing either before or after conviction.

**11. Breach:** If the defendant breaches the terms of this agreement, or commits any new criminal offenses between signing this agreement and sentencing, the U.S. Attorney's Office is relieved of its obligations under this agreement, but the defendant may not withdraw her guilty plea.

**12. Entire Agreement:** Any statements or representations made by the United States, the defendant, or defense counsel prior to the full execution of this plea agreement are superseded by this plea agreement. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. This plea agreement constitutes the entire agreement between the parties. Any term or condition which is not expressly stated as part of this plea agreement is not to be considered part of the agreement.

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AUSA      DEF      ATTY      Date



MICHAEL W. COTTER  
United States Attorney

*John Allum*  
for: KRIS A. McLEAN  
Assistant U.S. Attorney  
Date: 7/27/16

*Tawnya Bearcomesout*  
TAWNYA BEARCOMESOUT  
Defendant  
Date: 7/26/16

*Kevin Ross for*  
ANTHONY GALLAGHER  
Defense Counsel  
Date: 7/26/16

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