

~~CALENDARED/DOCKETED~~

WENDY J. OLSON, IDSB #7634
UNITED STATES ATTORNEY
TRACI J. WHELAN, IDSB #4416
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF IDAHO
6450 N. MINERAL DRIVE, SUITE 210
COEUR D'ALENE, IDAHO 83815
TELEPHONE: (208) 667-6568
FACSIMILE: (208) 667-0814

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LARRY FAIRFAX,

Defendant.

Case No. 10-183-N-BLW

RULE 11 PLEA AGREEMENT

C. Todd Smith 8/20/10 JH

I. GUILTY PLEA

A. Summary of Terms. Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), the defendant, the attorney for the defendant, and the Government¹ agree that the defendant will plead guilty to Counts One and Two of the Information, which charges the defendant with:

Count One, Possession of Unregistered Firearm, in violation of Title 26, United States Code, Section 5861(d); and

Count Two, Making a Firearm in Violation of the National Firearms Act, in violation of Title 26, United States Code, Section 5861(f).

This plea is voluntary and did not result from force, threats, or promises, other than any promise made in this Plea Agreement. Upon acceptance of the defendant's guilty pleas, and the defendant's full compliance with the other terms of this Agreement, the Government, under Federal Rule of Criminal Procedure 11(c)(1)(B), will recommend a sentence within the Sentencing Guideline range. The defendant agrees that the Court may consider uncharged "relevant conduct," including conduct alleged in any dismissed counts in arriving at an appropriate sentence pursuant to USSG § 1B1.3. The defendant voluntarily agrees to forfeit any interest in the destructive device.

B. Oath. The defendant will be placed under oath at the plea hearing. The Government may use any statement that the defendant makes under oath against the defendant in a prosecution for perjury or false statement.

¹ The word "Government" in this Agreement refers to the United States Attorney for the District of Idaho.

II. WAIVER OF CONSTITUTIONAL RIGHTS AT TRIAL

The defendant understands that by pleading guilty, he waives the following rights: 1) the right to plead not guilty to the offense(s) charged against the defendant and to persist in that plea; 2) the right to a trial by jury, at which the defendant would be presumed innocent and the burden would be on the Government to prove the defendant's guilt beyond a reasonable doubt; 3) the right to have the jury agree unanimously that the defendant was guilty of the offense; 4) the right, at trial, to confront and cross-examine adverse witnesses; 5) the right to present evidence and to compel the attendance of witnesses; and 6) the right not to testify or present evidence without having that held against the defendant. If the District Court accepts the defendant's guilty plea, there will be no trial.

III. NATURE OF THE CHARGES

A. **Elements of the Crime.** The elements of the crime of Possession of an Unregistered Firearm as charged in Count One are as follows:

1. The defendant Larry Fairfax knowingly received or possessed a National Firearms Act firearm;
2. The firearm was a destructive device made from a metal pipe, explosive powder and a fuse;
3. The defendant Larry Fairfax knew of the characteristics of the firearm, that is, that it was a destructive device;
4. The firearm could readily have been put in operating condition;
5. The firearm was not registered to the defendant in the National Firearms Registration and Transfer Record.

The elements of the crime of Making a Firearm in Violation of the National Firearms Act as charged in Count Two are as follows:

1. The defendant Larry Fairfax knowingly made a National Firearms Act firearm, to wit: a destructive device made from a metal pipe, explosive powder and a fuse;
2. In violation of the National Firearms Act.

B. Factual Basis. If this matter were to proceed to trial, the Government and the defendant agree that the following facts would be proven beyond a reasonable doubt:

Between November of 2009 and June of 2010 Edgar Steele had several conversations with Larry Fairfax about hiring Fairfax to kill Steele's wife and mother-in-law. One of the methods discussed to accomplish the death of Steele's wife was to place a destructive device, also known as a pipe bomb, under her car and detonate it. The plan was for Fairfax to construct the pipe bombs and place them beneath Mrs. Steele's car and Mr. Steele's car. Steele wanted the destructive device affixed to his own car so that after his wife's car blew up, he could detonate the destructive device on his own car thus creating an alibi or defense. On or about May 27, 2010, Edgar Steele made arrangements for he and his wife to be away from their home. The home is located in Bonner County, Idaho. Steele left the garage unlocked so Fairfax could affix the pipe bombs to both cars. Fairfax made the destructive devices at his own home, brought them to Steele's home and affixed them to the cars. The destructive devices were each made from a metal pipe, smokeless gunpowder, and hobby fuse. Fairfax has told law enforcement he believed he had constructed the destructive devices so that they would, in all likelihood, fail to detonate. The parties agree the devices had the potential to explode.

Steele's wife left within a day or two of the device being affixed to her car. She drove back to Oregon to take care of her mother. The device did not explode and Steele demanded explanation from Fairfax as to why the plan did not work. Fairfax drove to Oregon on May 31, 2010, to check whether the destructive device was still on Steele's wife's car. Another individual went with Fairfax to check the car and did not see the destructive device. Based upon this observation, Fairfax believed it had fallen off and he returned to Idaho. At Edgar Steele's demand, Fairfax removed the destructive device from Steele's vehicle and dismantled it.

On June 15, 2010, Steele's wife stopped at Quick Lube in Cocur d'Alene, Idaho, to have her oil changed and employees discovered the destructive device attached to the frame. The officers with the Spokane Bomb Unit and agents with the Bureau of Alcohol, Tobacco, Firearms and Explosives found the destructive device had all the needed components and could have ignited. The destructive device was not registered in the National Firearms Registration and Transfer Record.

IV. SENTENCING FACTORS

A. **Maximum Penalties.** A violation of Title 26, United States Code, Section 5861(d) as charged in **Count One** is punishable by a term of imprisonment of ten years, a term of supervised release of not more than three years, a maximum fine of \$10,000, and a special assessment of \$100.

A violation of Title 26, United States Code, Section 5861(f) as charged in **Count Two** is punishable by a term of imprisonment of ten years, a term of supervised release of not more than three years, a maximum fine of \$10,000, and a special assessment of \$100.

B. Supervised Release. Following release from prison, the defendant may be placed on supervised release for not more than three years.

The law permits the combined prison time and term of supervised release to exceed the maximum term of incarceration for the crimes to which the defendant is pleading guilty. Violation of any condition of supervised release may result in further penalties and/or prosecution.

C. Fines and Costs. The Court may impose a fine. No agreement exists as to the amount of the fine. The Court may also order the defendant to pay the costs of imprisonment, probation, and supervised release.

D. Special Assessment. The defendant will pay the special assessment before sentencing and will furnish a receipt at sentencing. Payment will be made to the United States District Court, Clerk's Office, Federal Building and United States Courthouse, 6450 N. Mineral Drive, Coeur d'Alene, Idaho 83815.

V. UNITED STATES SENTENCING GUIDELINES

A. Application of Sentencing Guidelines. The Court must consider the United States Sentencing Guidelines (USSG) in determining an appropriate sentence under 18 U.S.C. § 3553. The defendant agrees that the Court may consider "relevant conduct" in determining a sentence pursuant to USSG § 1B1.3.

The Court is not a party to the Plea Agreement. The Plea Agreement does not bind the Court's determination of Sentencing Guidelines range. The Court will identify the factors that will determine the sentencing range under the Sentencing Guidelines. While the Court may take the defendant's cooperation, if any, and the recommendations of the parties into account, the

Court has complete discretion to impose any lawful sentence, including the maximum sentence possible.

Recognizing that the Court is not bound by this Agreement, the parties agree to the recommendations and requests set forth below.

B. Sentencing Guidelines Recommendations and Requests.

1. **Acceptance of Responsibility.** If the defendant clearly accepts responsibility for the offense, the defendant will be entitled to a reduction of two levels in the combined adjusted offense level, under USSG § 3E1.1(a). The Government will move for an additional one-level reduction in the combined offense level under § 3E1.1(b) if the following conditions are met: (1) the defendant qualifies for a decrease under § 3E1.1(a); (2) the offense is level 16 or greater; and (3) the defendant has timely notified authorities of the defendant's intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. If, before sentence is imposed, the defendant fails to meet the criteria set out in USSG § 3E1.1, or acts in a manner inconsistent with acceptance of responsibility, the Government will withdraw or not make such a recommendation.

2. **Downward Departure or Variance Request by Defendant.** Unless otherwise specified in this paragraph, the defendant will not seek a downward departure or variance under 18 U.S.C. § 3553(a), without first notifying the Government and informing it of the basis, in writing, not less than 21 days before the date set for sentencing.

VI. COOPERATION

A. **Truthful Information and Assistance.** The defendant promises to provide truthful and complete information to the Government and its investigative agencies, including

testimony in legal and administrative proceedings, concerning the defendant's role and the roles of all others involved in offense-related behavior. The defendant shall not attempt to protect anyone through false information or omission. The defendant will not falsely implicate anyone. Any intentional deviation from the truth in any of the defendant's testimony may result in prosecution for perjury and obstruction of justice. The defendant's duty under the terms of this Agreement is to tell the truth whether or not it bolsters the Government's case against any particular individual. The defendant specifically understands that this Agreement is not contingent upon the conviction of any person.

The defendant agrees to cooperate in good faith. This means the defendant will not only respond truthfully and completely to all questions asked, but will also volunteer all information that is reasonably related to subjects discussed. In other words, the defendant may not omit facts about crimes, participants, or defendant's involvement, and then claim not to have breached the Agreement because he was not specifically asked. This Agreement is breached by any action or statement inconsistent with continued cooperation.

The defendant agrees to be available for interviews to prepare for testimony. If necessary, the defendant will submit, upon request, to government-administered polygraph examinations (and provide a personal financial statement, if requested).

The defendant agrees to identify all property related to his crimes. The defendant will identify the extent of any person's or entity's (including defendant's) interest in any such property. The defendant agrees to assist in the recovery and forfeiture of such property to the United States.

B. Use of Information Against Defendant. In exchange for the defendant's agreement, the Government will not use new information the defendant provides (pursuant to this Agreement) about his own criminal conduct. The Government may reveal such information to the Court. There shall be no restrictions, however, on the use of information: 1) previously known to law enforcement agencies; 2) revealed to law enforcement agencies by, or discoverable through, an independent source; or 3) in the event there is a breach of this Agreement.

C. Defendant's Assumption of Risk. The defendant agrees freely and voluntarily to cooperate with the Government, knowing the possible consequences of cooperation. The defendant's attorney knows of the defendant's cooperation and agrees that the defendant shall enter into this Agreement. The defendant hereby absolves the Government, including its employees and/or any of its political subdivisions and any of its employees, from any liability associated with this cooperation, and includes defendant's successors, heirs and assigns.

VI. WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS

A. In exchange for this Agreement, and except as provided in subparagraph B, the defendant waives any right to appeal or to collaterally attack the conviction, entry of judgment, and sentence.

The defendant acknowledges that this waiver shall result in the dismissal of any appeal or collateral attack the defendant might file challenging the plea, conviction or sentence in this case. Further, if the defendant violates this waiver it will be a breach of this Agreement and the Government may withdraw from this Plea Agreement and take other remedial action.

If the defendant believes the Government has not fulfilled its obligations under this Agreement, the defendant will object at the time of sentencing; further objections are waived.

B. Notwithstanding subparagraph A, the defendant shall retain the right to file one direct appeal only if one of the following unusual circumstances occur; the defendant understands that these circumstances occur rarely and that in most cases this Agreement constitutes a complete waiver of all appellate rights:

1. the sentence imposed by the District Court exceeds the statutory maximum;
2. the District Court arrived at an advisory Sentencing Guidelines range by applying an upward departure under Chapter 5K of the Guidelines; or
3. the District Court exercised its discretion under 18 U.S.C. § 3553(a) to impose a sentence that exceeds the advisory Sentencing Guidelines range as determined by the District Court.

Notwithstanding subparagraph A, the defendant may file one habeas petition (motion under 28 U.S.C. § 2255) for ineffective assistance of counsel only if: (1) the motion is based solely on information not known to the defendant at the time the District Court imposed sentence; and (2) in the exercise of reasonable diligence, the information could not have been known by the defendant at that time.

VII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT

The defendant agrees to provide material financial and other information requested by a representative of the United States Probation Office for use in preparing a presentence report. Failure to execute releases and provide such information violates this Agreement. Such failure will subject the defendant to additional penalties, including an enhancement under USSG § 3C1.1, or an upward departure under § 5K2.0, and relieve the Government of the obligations in

this Agreement. Such failure will not, however, constitute grounds for withdrawing the plea of guilty unless the Government so requests.

VIII. NO RIGHT TO WITHDRAW PLEA

The defendant understands that the Court may not follow the recommendations or requests made by the parties at the time of sentencing. The defendant cannot withdraw from this Plea Agreement or the guilty plea, regardless of the Court's actions.

IX. CONSEQUENCES OF VIOLATING AGREEMENT

A. **Government's Options.** If the defendant fails to keep any promise in this Agreement or commits a new crime, the Government is relieved of any obligation not to prosecute the defendant on other charges, including charges not pursued due to this Plea Agreement. Such charges may be brought without prior notice. In addition, if the Government determines after sentence is imposed that the defendant's breach of the Agreement warrants further prosecution, the Government may choose between letting the convictions under this Plea Agreement stand or vacating such convictions so that such charge s may be re-prosecuted. If the Government determines that a breach warrants prosecution before sentencing, it may withdraw from the Plea Agreement in its entirety.

B. **Defendant's Waiver of Rights.** If the defendant fails to keep any promise made in this Agreement, the defendant gives up the right not to be placed twice in jeopardy for the offenses to which the defendant entered a plea of guilty or which were dismissed under this Agreement. In addition, for any charge that is brought as a result of the defendant's failure to keep this Agreement, the defendant gives up: (1) any right under the Constitution and laws of the United States to be charged or tried in a more speedy manner; and (2) the right to be charged

within the applicable statute of limitations period if the statute of limitations expired after the defendant entered into this Agreement.

Furthermore, if the defendant does not enter an acceptable plea, the Government will move to continue the trial now set to allow the Government adequate time to prepare. The defendant agrees not to contest such a continuance, and agrees that the resulting delay would be excludable time under 18 U.S.C. §§ 3161(h)(1)(I), (h)(3)(A), or (h)(8)(A).

X. MISCELLANEOUS

A. No Other Terms. This Agreement is the complete understanding between the parties, and no other promises have been made by the Government to the defendant or to the attorney for the defendant. This Agreement does not prevent any governmental agency from pursuing civil or administrative actions against the defendant or any property. Unless an exception to this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or obligate governmental entities other than the United States Attorney's Office for the District of Idaho. The Government will bring the defendant's cooperation and pleas to the attention of other prosecuting authorities at the defendant's or defendant's counsel's request.

B. Plea Agreement Acceptance Deadline. This plea offer is explicitly conditioned on the defendant's notification of acceptance of this Plea Agreement no later than 5:00 p.m. on August 18, 2010.

XI. UNITED STATES' APPROVAL

I have reviewed this matter and the Plea Agreement. I agree on behalf of the United States that the terms and conditions set forth above are appropriate and are in the best interests of justice.

WENDY J. OLSON
UNITED STATES ATTORNEY
By:



TRACI J. WHELAN
Assistant United States Attorney

8-18-10

Date

XII. ACCEPTANCE BY DEFENDANT AND COUNSEL

I have read and carefully reviewed every part of this Plea Agreement with my attorney. I understand the Agreement and its effect upon my potential sentence. Furthermore, I have discussed all of my rights with my attorney and I understand those rights. No other promises or inducements have been made to me, directly or indirectly, by any agent of the Government, including any Assistant United States Attorney, concerning the plea to be entered in this case. In addition, no one has threatened or coerced me to do, or to refrain from doing, anything in connection with this case, including to enter a guilty plea. I am satisfied with my attorney's advice and representation in this case.




LARRY FAIRFAX
Defendant

8-18-10

Date

I have read this Plea Agreement and have discussed the contents of the

Agreement with my client. The Plea Agreement accurately sets forth the entirety of the Agreement. I concur in my client's decision to plead guilty as set forth above.



JOHN MILLER
Attorney for the Defendant

8-18-10

Date