

FILED
At Albuquerque NM

JUN 29 2007

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

MATTHEW J. DYKMAN
CLERK

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
DEVON LYNN TOWNSEND,)
)
Defendant.)
)

Cr. No. 07-CR-1363 WJ

PLEA AGREEMENT

Pursuant to Rule 11, Fed. R. Crim. P., the parties notify the Court of the following agreement between the United States Attorney for the District of New Mexico, the Defendant, DEVON LYNN TOWNSEND, and the Defendant's counsel, RAYMOND TWOHIG, ESQUIRE:

REPRESENTATION BY COUNSEL

1. The Defendant understands the Defendant's right to be represented by an attorney and is so represented. The Defendant has thoroughly reviewed all aspects of this case with the Defendant's attorney and is fully satisfied with that attorney's legal representation.

RIGHTS OF THE DEFENDANT

- 2. The Defendant further understands the Defendant's rights:
 - a. to be charged and prosecuted by indictment;

- b. to plead not guilty, or having already so pleaded, to persist in that plea;
- c. to have a trial by jury; and
- d. at a trial:
 - 1) to confront and cross-examine adverse witnesses,
 - 2) to be protected from compelled self-incrimination,
 - 3) to testify and present evidence on the Defendant's own behalf, and
 - 4) to compel the attendance of witnesses for the defense.

WAIVER OF RIGHTS AND PLEA OF GUILTY

3. The Defendant agrees to waive these rights and to plead guilty to Counts 1 through 3 of the Information filed in this matter. In Count 1, the Defendant is charged with Stalking, in violation of 18 U.S.C. § 2261A(2)(A). In Count 2, the Defendant is charged with Unlawful access to stored communications, in violation of 18 U.S.C. § 2701(a)(1) and (2) and (b)(1)(A). In Count 3, the Defendant is charged with Unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances, in violation of 2319A. Pursuant to the Forfeiture allegation in the Information, as set forth in further detail below, the Defendant further agrees to forfeit to the United States any and all interest she may have in any and all unauthorized audio and visual recordings of live musical performances obtained without consent of the performers involved.

SENTENCING

4. The Defendant understands that the maximum penalty the Court can impose for each count of the Information is:

a. For the Defendant's violation of 18 U.S.C. § 2261A, the Stalking statute:

- 1) a term of imprisonment of not more than 5 (five) years;
- 2) a fine not to exceed \$250,000.00;
- 3) a term of supervised release of not more than 3 (three) years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
- 4) a mandatory special penalty assessment of \$100.00; and
- 5) restitution as may be ordered by the Court pursuant to law, 18 U.S.C. § 3663A, and paragraph 7 of this agreement.

b. In the case of the Defendant's violation of 18 U.S.C. § 2701(a)(1) and (2) and (b)(1)(A), the Unlawful access to stored communications statute:

- 1) a term of imprisonment of not more than 5 (five) years;
- 2) a fine not to exceed \$250,000.00;
- 3) a term of supervised release of not more than 3 (three) years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on

the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);

- 4) a mandatory special penalty assessment of \$100.00; and
- 5) restitution as may be ordered by the Court pursuant to law, 18 U.S.C. § 3663A, and paragraph 7 of this agreement.

c. For the Defendant's violation of 18 U.S.C. § 2319A, the Unauthorized fixation of and trafficking in sound recordings statute:

- 1) a term of imprisonment of not more than 5 (five) years;
- 2) a fine not to exceed \$250,000.00;
- 3) a term of supervised release of not more than 3 (three) years that must follow any term of imprisonment. (If the Defendant serves a term of imprisonment, is then released on supervised release, and violates the conditions of supervised release, the Defendant's supervised release could be revoked -- even on the last day of the term -- and the Defendant could then be returned to another period of incarceration and a new term of supervised release.);
- 4) a mandatory special penalty assessment of \$100.00; and
- 5) restitution as may be ordered by the Court pursuant to law, 18 U.S.C. § 3663A, and paragraph 7 of this agreement.

5. The parties recognize that the federal sentencing guidelines are advisory, but that the Court is required to consider them in determining the sentence it imposes.

6. The United States reserves the right to make known to the United States Probation Office, for inclusion in the presentence report to be prepared under Rule 32, Fed. R. Crim. P., any information the United States believes may be helpful to the Court,

including but not limited to information about any relevant conduct under U.S.S.G. § 1B1.3.

7. The Defendant agrees and acknowledges that the Court is not limited to ordering restitution only to the amount of the particular offenses to which the Defendant is entering a plea of guilty, but may order restitution to include all amounts resulting from all of the Defendant's criminal conduct related to this case.

DEFENDANT'S ADMISSION OF FACTS

8. The Defendant admits to the following facts:

a. By my signature on this plea agreement, I am acknowledging that I am pleading guilty because I am, in fact, guilty of the offenses to which I am pleading guilty. I recognize and accept responsibility for my criminal conduct. Moreover, in pleading guilty, I acknowledge that if I chose to go to trial instead of entering this guilty plea, the United States could prove facts sufficient to establish my guilt to all of the charges to which I am pleading guilty beyond a reasonable doubt. I specifically admit the following facts related to the charges against me, and declare under penalty of perjury that all of these facts are true and correct:

(1). From on or about January 1, 2006 through on or about November 16, 2006, in Bernalillo County in the State and District of New Mexico, and elsewhere, I used an interactive computer service, and a facility of interstate commerce, to engage in a course of conduct, described in further detail in paragraphs 2 through 19

below, that caused substantial emotional distress to a person in another State, that is, Mr. and Mrs. Chester and Talinda Bennington in California. When I engaged in the course of conduct described below, I was acting with the intent to harass, with the intent to place under surveillance with the intent to harass, and with the intent to cause both of the Benningtons substantial emotional distress.

(2). During the time frame of the events described in the Information, from approximately January 1, 2006 through approximately November 16, 2006, I was living in Albuquerque, New Mexico and working as an employee at the Sandia National Laboratories (SNL) facility in Albuquerque. I worked as a tradesperson at SNL in the Technology and Manufacturing group. In that job, I often worked in a secure part of the facility and had access to a terminal server network which was connected to the Internet. I also had a personal computer at home that was connected to the Internet.

(3). I have been a fan of the alternative or nu metal band Linkin Park. Chester Bennington is the lead singer for Linkin Park. Talinda Bennington is Chester Bennington's wife. Chester and Talinda Bennington live in the State of California. I spent a lot of time on the Internet learning about Chester and Talinda Bennington.

(4). I found out Chester Bennington's personal e-mail address from a mass e-mail that one of Mr. Bennington's friends sent out informing the recipients

about an upcoming concert in which Mr. Bennington was going to perform. After I found out Chester Bennington's e-mail address, I used a computer located in New Mexico with interactive access to the Internet, and without authorization, gained access to a server located in the State of California at yahoo.com, an Internet Service provider. Once I was connected to yahoo.com, I was successfully able to change the password to Mr. Bennington's private e-mail account. Once I reset the password, I was able to review and download all of Mr. Bennington's private e-mail correspondence in his account at yahoo.com. I was also able to find out about Talinda Bennington's e-mail address from accessing her husband's account.

(5). Over the course of several months, I was able to access all sorts of private information about the Benningtons from their private e-mail accounts, including:

- (a). family pictures of the Benningtons and their minor children;
- (b). correspondence between Warner Brothers Records and the business attorney for Linkin Park, including a copy of a check made payable to Chester Bennington from the record company as well as a copy of the recording contract between Warner Brothers Records and the members of Linkin Park;
- (c). information about a new home purchase by the Benningtons which included such documents as a home inspection report, images of the home's interior, and other real estate documents;

- (d). information about the Benningtons' travel plans including flight information and the name of motels and hotels where the Benningtons had reservations;
- (e). a copy of a dental bill for Talinda Bennington;
- (f). information about the time and location of Mrs. Bennington's childbirth classes;
- (g). e-mail correspondence concerning the whereabouts and after school activities of the Benningtons' child;
- (h). information about purchases the Benningtons made for their newborn child;
- (i). information about the schedule and itinerary of the members of Linkin Park, including their itinerary for the Grammy awards show in 2006.

(6). By secretly monitoring the Benningtons' private e-mail correspondence, I was also able to learn private passwords assigned to the Benningtons which allowed me to access other restricted information on the Internet. For example, using the Benningtons' assigned password, I was able to access and download copies of the Benningtons' wedding pictures from the Benningtons' wedding photographer's website.

(7). By using the Bennington's private information, without the Benningtons' knowledge, I also activated the Bennington's online billing account with the Bennington's telephone company, Verizon Wireless. By activating the account over the Internet, I was then able to obtain online access to the Benningtons' telephone bills. For example, as charged in Count 2 of the Information, on or about March 30, 2006, I

intentionally accessed without authorization the Verizon Wireless computer system. I did this by falsely representing that I was Chester Bennington and by inputting Mr. Bennington's information to activate Mr. Bennington's online billing account at Verizon Wireless without Mr. Bennington's knowledge or authorization. I was then able to access and download the entire contents of one of the Benningtons' monthly Verizon Wireless telephone bills, which were stored in an electronic format on the Verizon Wireless computer system. I understand that Verizon Wireless does business in interstate commerce and that the company uses the Internet, which is connected to interstate wires, to send bills in an electronic format in interstate commerce to its customers. I obtained copies of the Benningtons' telephone bills to further my stalking activities.

(8). By reviewing the Benningtons' telephone bills, I was able to learn the telephone numbers of their friends, acquaintances, and business associates. By setting up the online Verizon account, I was also able to listen to all of the Benningtons' voice mail messages left on their telephone answering service.

(9). With access to the Benningtons' private accounts with entities such as Verizon Wireless, I was also able to change the computer passwords assigned to the Benningtons with these companies. On at least one occasion, I changed the password for one of their computer accounts to something to the effect of "Who is doing this to you?"

(10). On at least one occasion, knowing that Chester Bennington was in Arizona, I traveled to Arizona solely for the purpose of trying to see him. While I was there, I monitored Chester Bennington's voice mails as a means of trying to locate where he might be eating dinner or lunch.

(11). On at least one other occasion, while I was in Los Angeles on a family vacation, I drove past the Benningtons' residence.

(12). I also created two new e-mail accounts, "sophiabellehey@yahoo.com" and "inside_informant_for_you@yahoo.com," and used those accounts to send messages to both Talinda Bennington, and friends of the Benningtons. For example, using the "inside_informant_for_you@yahoo.com" address, I wrote a taunting e-mail to a friend of the Benningtons threatening to divulge personal information about the Benningtons. I ended my e-mail describing myself as "somebody who knows a little too much . . ."

(13). Using the "inside_informant_for_you@yahoo.com" address, I next wrote another e-mail to another Bennington friend related to the same private information, referring to the situation as "my little bombshell that's about to explode....." In the same e-mail, I also stated:

The answer will reveal itself shortly.
This is too fun.

(14). Using the "inside_informant_for_you@yahoo.com" address, I then sent a copy of another e-mail to the same friend of the Benningtons, which included the following statements:

I'm having fun. Are you?

* * *

I wonder how the fans would react to this??

(15). The next taunting e-mail that I sent to the same friend of the Benningtons from the same e-mail address, ended with me stating, "Enjoy the rest of your night and maybe just maybe you'll have sweet dreams too."

(16). I also communicated directly with Talinda Bennington by e-mail using the e-mail address sophiabellehey@yahoo.com. In these e-mail messages, I suggested that the Benningtons send an undercover investigator to monitor the activities of a person associated with the Benningtons. Using this same e-mail address, I later sent another e-mail to Talinda Bennington's e-mail address. The text portion of the e-mail to Talinda Bennington that I sent contained a hyperlink to a website. The hyperlink was to an article about cyberstalking.

(17). On another occasion I used an e-mail account registered to Chester Bennington to send an e-mail message posing as Talinda Bennington in an effort to gather information about an e-mail account of a person closely associated with the Benningtons.

(18). In or about August 2006, I contacted Talinda Bennington on the telephone. I did not identify myself during the course of multiple telephone calls.

(19). On or about September 26, 2006, I placed two telephone calls to Talinda Bennington and spoke to Talinda Bennington on the telephone. I again failed to identify myself.

(20). With respect to Count 3 of the Information, I also admit that, on or about November 1, 2006, without the consent of the performers involved, that is, the members of the band Linkin Park, I knowingly and for purposes of my own financial gain, did offer to distribute and did traffic in, copies and phonorecords of unauthorized fixations of the sounds and images of the sounds and images of a live musical performance by the members of the band Linkin Park, that is, a performance that I advertised as occurring on March 4, 2004, in Sunrise, Florida, at the Office Depot Center. More specifically, I was actively engaged in trading unauthorized recordings of live concert performances by a number of different bands, including a variety of different performances by Linkin Park, with other individuals over the Internet on the website, etree.org. In fact, I informed potential traders on the website that I had over 833 bootleg recordings available for trade from a variety of different performers, including a March 4, 2004 Linkin Park performance in Sunrise, Florida recorded onto a DVD. Although I did not offer to sell the bootleg recordings for money, I did possess the unauthorized recordings of the live concert performances with the intent to transfer them to others in

exchanged for the expected receipt of something of value, that is, I offered to trade or exchange them in the expectation that the person to whom I transferred the bootleg recording would also transfer a recording of a live musical performance that I did not yet have in my collection back to me.

9. By signing this agreement, I admit all the foregoing facts and admit that there is a factual basis for each element of the crimes to which I am pleading guilty. I agree that the Court may rely on any of these facts, as well as any undisputed facts in the presentence report, to determine my sentence, including, but not limited to, the advisory guideline offense level.

STIPULATIONS

10. To assist the Court in determining the advisory sentencing guideline range, the United States and the Defendant stipulate as follows:

a. As of the date of this agreement, the Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the Defendant's criminal conduct. Consequently, pursuant to U.S.S.G. § 3E1.1, so long as the Defendant continues to accept responsibility for the Defendant's criminal conduct, the Defendant is entitled to a three-level reduction from her base offense level as calculated under the sentencing guidelines. This reduction depends on the Defendant personally providing to the United States Probation Officer who prepares the presentence report in this case an appropriate written statement in which the Defendant clearly establishes the

Defendant's entitlement to this reduction. Further, the United States is free to withdraw this stipulation if the Defendant engages in any conduct that is inconsistent with acceptance of responsibility between the date of this agreement and the sentencing hearing.

b. The Defendant stipulates and agrees that the applicable advisory guideline for Defendant's crime of Stalking pursuant to 18 U.S.C. § 2261A(2)(A) is U.S.S.G. § 2A6.2, which carries a base offense level of 18.

c. The Defendant recognizes that her extensive accessing of private information about the Benningtons, their family members, and their friends and associates, was unlawful and caused the Benningtons substantial emotional distress. As a term and condition of this plea agreement, without prior Court authorization and written agreement of the United States, the Defendant therefore promises and agrees not to make any further disclosure or dissemination of any information, photographs, documents or images that the Defendant obtained, or learned about without proper authorization, or through unlawful means. This provision specifically includes any information that the Defendant obtained without authorization by accessing the Benningtons' private e-mail accounts, the Benningtons' Verizon Wireless billing account, the Benningtons' wedding photographer's website, or any other accounts or websites associated with either the Benningtons' or their friends and associates.

d. The parties are free to argue either for, or against, the application of any specific offense characteristics or other adjustments to the advisory guideline sentences that are otherwise not addressed by way of stipulation herein.

e. This agreement does not preclude the Defendant from seeking a downward departure or variance from the applicable advisory sentencing guideline range as determined by the Court after resolution of any objections by either party to the presentence report to be prepared in this case. If the Defendant should seek a downward departure or variance, the United States retains its right to oppose such downward departure or variance.

f. The Defendant further agrees to forfeit to the United States the more than 800 recordings, DVD's, CD's and VHS tapes of musical performances and concerts that have previously been disclosed to the Defendant as documents numbered 71 through 86, as well as all of the computers and associated items listed in parts 2 through 5 of the Forfeiture Allegation contained in the Information.

g. As part of this plea agreement, the Defendant agrees to fully cooperate with any mental testing, evaluation, treatment and counseling as the Court may direct.

h. During the period of any Court-ordered incarceration and/or supervised release, the Defendant agrees that she shall not attempt to watch, keep under surveillance in any fashion (including electronically), harass, or have any contact, directly

or indirectly, with Chester Bennington, Talinda Bennington and/or their family and household members (as further defined in paragraph 11 of the December 11, 2006 Restraining Order entered against the Defendant in *Bennington v. Townsend*, in the Superior Court of California, County of Orange, No. 06HL05071). This provision shall include no physical contact or contact by way of telephone messages, mail, e-mail, instant messaging, or other type of electronic communication. The Defendant further agrees that she will stay away from the individuals referenced above and will not appear at any concert or other public or private event or activity where any of the above individuals are present, including any hotel where they may be staying.

11. The Defendant understands that the above stipulations are not binding on the Court and that whether the Court accepts these stipulations is a matter solely within the discretion of the Court after it has reviewed the presentence report. Further, the Defendant understands that the Court may choose to deviate from the advisory guideline sentence. The Defendant understands that if the Court does not accept any one or more of the above stipulations and reaches an advisory guideline sentence different than expected by the Defendant, or if the Court deviates from the advisory guideline range, the Defendant will not seek to withdraw the plea of guilty. In other words, regardless of any stipulations the parties may enter into, insofar as is otherwise permitted by law, the Defendant's final sentence is solely within the discretion of the Court.

DEFENDANT'S ADDITIONAL OBLIGATIONS

12. The Defendant understands the Defendant's obligation to provide the United States Probation Office with truthful, accurate, and complete information. The Defendant represents that the Defendant has complied with and will continue to comply with this obligation.

13. If requested to do so by the United States Attorney's Office, the Defendant will provide all documents, records, writings, tangible objects, or materials of any kind that are in the Defendant's possession, custody, or control and that relate directly or indirectly to any area of inquiry or investigation in this proceeding.

WAIVER OF APPEAL RIGHTS

14. The Defendant is aware that federal law affords a Defendant the right to appeal the sentence imposed. Acknowledging that, the Defendant knowingly waives the right to appeal any sentence within the statutory range applicable to the statute(s) of conviction.

GOVERNMENT'S AGREEMENT

15. Provided that the Defendant fulfills the Defendant's obligations as set out above, the United States agrees that the United States will not bring additional criminal charges against the Defendant arising out of the Defendant's conduct now known to the United States Attorney's Office for the District of New Mexico. The Defendant understands that this agreement is limited solely to the United States Attorney's Office for

the District of New Mexico and does not bind any other federal, state, or local agencies or prosecuting authorities, including the Tax Division of the U.S. Department of Justice.

VOLUNTARY PLEA

16. The Defendant agrees and represents that this plea of guilty is freely and voluntarily made and is not the result of force, threats, or promises (other than the promises set forth in this agreement). There have been no representations or promises from anyone as to what sentence the Court will impose. The Defendant represents that the Defendant is pleading guilty because the Defendant is in fact guilty, and for no other reason.

VIOLATION OF PLEA AGREEMENT

17. The Defendant agrees that if the Defendant violates any provision of this agreement, the United States may declare this agreement null and void, and the Defendant will thereafter be subject to prosecution for any criminal violation, including but not limited to any crime(s) or offense(s) contained in or related to the charges in this case, as well as perjury, false statement, obstruction of justice, and any other crime committed by the Defendant during this prosecution.

SPECIAL ASSESSMENT

18. At the time of sentencing, the Defendant will tender to the United States District Court, District of New Mexico, 333 Lomas Blvd. NW, Suite 270, Albuquerque, New Mexico 87102, a money order or certified check payable to the order of the **United**

States District Court in the amount of \$300.00 in payment of the special penalty assessment described above.

ENTIRETY OF AGREEMENT

19. This document is a complete statement of the agreement in this case and may not be altered unless done so in writing and signed by all parties.

AGREED TO AND SIGNED this 29th day of JUNE, 2007.


LARRY GOMEZ
Acting United States Attorney

FRED J. FEDERICI
Assistant United States Attorney
Post Office Box 607
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(505) 346-7274


RAYMOND TWOHIG, ESQUIRE
Attorney for Defendant

I have read this agreement and carefully reviewed every part of it with my attorney. I understand the agreement and voluntarily sign it.


DEVON LYNN TOWNSEND
Defendant