

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. MELISSA MARIE LOCKHART

Defendant.

**PLEA AGREEMENT AND STATEMENT OF FACTS
RELEVANT TO SENTENCING**

The United States of America (the Government), by and through Michelle M. Heldmyer, Assistant United States Attorney for the District of Colorado, and the defendant, Melissa Marie Lockhart, personally and by counsel, Stephen L. Laiche, submit the following Plea Agreement and Statement of Facts Relevant to Sentencing pursuant to D.C.COLO.LCrR 11.1.

I. PLEA AGREEMENT

Defendant's Obligations:

1. The defendant agrees to plead guilty to **Count One** of the Information, charging a violation of 18 U.S.C. § 3, Accessory After the Fact.

Government's Obligations:

1. Upon acceptance of this plea agreement by the Court, the Government agrees to dismiss Count Two of the Indictment and seek no additional charges based on the facts now known to it.

II. ELEMENTS OF THE OFFENSE

Count One: The elements of 18 U.S.C. § 3 are:

- First:* The defendant knew someone else had already committed the crime of aggravated animal cruelty;
- Second:* The defendant then helped that person try to avoid being arrested, prosecuted or punished; and
- Third:* The defendant did so with the intent to help that person avoid being arrested, prosecuted or punished.

III. STATUTORY PENALTIES

Count One: The maximum statutory penalty for a violation of 18 U.S.C. § 3 as charged in the Information is: not more than 18 months' imprisonment; not more than \$125,000 fine, or both; not more than 3 years supervised release; and \$100 special assessment fee.

The conviction may cause the loss of civil rights, including but not limited to the rights to possess firearms, vote, hold elected office, and sit on a jury. If the defendant is an alien, the conviction may cause the defendant to be deported or confined indefinitely if there is no country to which the defendant may be deported.

A violation of the conditions of probation or supervised release may result in a separate prison sentence. If a condition of release is violated, the defendant may be sentenced to up to 2 years without credit for pre-release imprisonment or time previously served on post-release

supervision; if the defendant commits any criminal offense under Chapter 109A, 110, or 117, or Title 18, United States Code, Sections 1201 or 1591, for which imprisonment for a term longer than 1 year can be imposed, the defendant shall be sentenced to not less than 5 years and up to the maximum term of imprisonment for the offense, as set forth above.

**IV. STIPULATION OF FACTUAL BASIS AND FACTS
RELEVANT TO SENTENCING**

The parties agree that there is no dispute as to the material elements which establish a factual basis of the offense of conviction.

Pertinent facts are set out below in order to provide a factual basis for the plea and to provide facts which the parties believe are relevant, pursuant to §1B1.3, for computing the appropriate guideline range. To the extent the parties disagree about the facts relevant to sentencing, the statement of facts identifies which facts are known to be in dispute at the time of the plea. (§6B1.4(b))

The statement of facts herein does not preclude either party from presenting and arguing, for sentencing purposes, additional facts or factors not included herein which are relevant to the guideline computation (§1B1.3) or to sentencing in general (§1B1.4). In "determining the factual basis for the sentence, the court will consider the stipulation [of the parties], together with the results of the presentence investigation, and any other relevant information." (§6B1.4 Comm.)

The parties agree that the government's evidence would show that the date on which conduct relevant to the offense (§1B1.3) began is December 29, 2009.

The parties agree that the government's evidence would be as follows:

In the early morning hours of December 30, 2009, a mixed-breed dog named "Buddy," who belonged to the Leber family in Delta, Colorado, was found dead on the Colorado National Monument. Buddy had been dragged to his death behind a red pickup truck driven by Steven Clay Romero of Grand Junction, Colorado. Buddy, and another dog owned by the Lebers, had been taken from the Delta area the morning before Buddy's death by the defendant, Melissa Lockhart. Lockhart and Romero, who is Lockhart's brother, took the dogs to Lockhart's home in Fruita, where she resided with her husband and children. At the time they were taken, the dogs were healthy, clean and well-fed.

All parties left the home for a period of time on December 29, 2009. Later that evening, Lockhart and Romero returned and discovered the remains of their kitten in Lockhart's home. Blaming Buddy for the death, Romero took Buddy to the Monument in the back of a pickup truck, tied a rope around his neck and to the truck, and drove up the hill. Buddy died of internal hemorrhaging consistent with dragging death.

After Buddy was dead, Romero cut the rope and left the Monument, leaving Buddy's remains on the side of the road.

Police in Delta began an investigation into the dog theft, as Park Rangers from the Monument independently investigated Buddy's death. Through an eye witness, Delta police identified Lockhart as the person who had left a Delta business parking lot with the two Leber dogs. Sgt. Brad Lamb of the Delta Police Department ("PD") spoke with Lockhart for the first time at approximately 10:00 am on December 30, 2010. Sgt. Lamb was unaware at the time of this conversation that one of the dogs had been found dead.

During this conversation, Lockhart told Sgt. Lamb that she took the dogs because they were in an abandoned house. The eye witness has stated that the dogs were loose, having gotten out of the back of a truck, and were playing with Lockhart's children while Lockhart was in a nearby doctor's office. The dogs were then put in Lockhart's car, and Lockhart drove away. They witness wrote down Lockhart's license number.

Lockhart stated that she had taken the dogs to her grandfather's residence in Delta, and left them there, though she was unable to give Sgt. Lamb the address, nor did she give coherent directions to the residence. Sgt. Lamb told Lockhart that he simply wanted to return the dogs to their owner. Lockhart then stated that she understood, because she had a kitten and would be upset if anything happened to it. Lockhart then stated that the dogs had actually escaped from her grandfather's yard, but she would be willing to replace them. She indicated her grandfather's name was "Joe Abeyta."

Sgt. Lamb was able to locate the residence of Lockhart's grandfather and question the residents. They told Sgt. Lamb that they knew nothing about the Leber dogs. No dogs had been left at their residence, and they had no idea why Lockhart would tell police that the dogs had been there.

Sgt. Lamb called Lockhart around 11:00 am and told her about his visit to her grandfather's home. Sgt. Lamb, who had by then talked to the Park Rangers, asked Lockhart about Romero and a red pickup truck. Lockhart threatened to bring charges against the police for "harassing" her. Sgt. Lamb then explained why he believed she was lying, and told her that he would seek charges. He then hung up and did not speak to her again.

However, about 2 minutes later, Romero's girlfriend, Krysta Morris, called Sgt. Lamb's cell phone (the same number he had been using to speak with Lockhart). Morris stated that, in fact, she had been the one who had kept the dogs at her home on 29 Road in Grand Junction, but one had run away. She volunteered that Romero was with her the entire day and night in question, and had nothing to do with the dogs' disappearance. She offered to transport the remaining dog to Delta, and Sgt. Lamb told her to call when she was close. A few minutes later, Morris called back and gave an excuse why she could not drive to Delta at that time. Sgt. Lamb told her to call when she could go. Morris called a third time, and arrangements were made to turn over the dog in a Grand Junction Walmart parking lot.

Simultaneously, the Fruita Police Department was assisting in Delta's investigation, at the Delta PD's request. Officers had gone to Lockhart's residence the morning of December 30, 2010, in an attempt to interview its residents. Lockhart called the Fruita PD at around 10:00 am that day, after police had left a note to call on the door 40 minutes earlier. Lockhart told PST Bradshaw that she and her children were in Delta for a doctor's appointment. They went to the home of her grandpa, "Bill Abeyta," and while there, her children found two dogs in an abandoned house down the street from her grandpa's house. She described the dogs as looking dirty, abused and thin, with matted eyes and visible ribs. She claimed to have brought the sickly dogs to her grandpa's home and told him to call Delta Animal Control. Lockhart claimed not to know her grandpa's address nor telephone number.

Lockhart called again at approximately 10:15 am, and spoke to Lt. Macy. Lt. Macy pressed for information about Lockhart's grandpa but Lockhart stated, "I don't know what's going on, but my Mom called by Grandpa this morning and he said he got up and the dogs were

gone.” Lt. Macy told Lockhart that she needed to provide better information or she may be charged. Lt. Macy invited Lockhart to come to the Fruita PD, but she declined. Lt. Macy told Lockhart that she believed Lockhart was lying, and that she would be requesting a warrant for theft and animal abuse. The conversation then ended.

At approximately 11:10 am, Lockhart called the Fruita PD again. She told Lt. Macy that she would come to the Fruita PD around 4:00 pm. Lockhart repeated the false story about her grandpa and continued to refuse to provide contact information for him. She indicated she did not like dogs, and that she did not want to get in trouble for something “stupid” like this. She asked if she would be arrested when she arrived, and was told no. This meeting never took place.

Fruita PD determined that a neighbor had complained the day before Buddy’s death about howling dogs in the Lockhart townhouse, and Fruita PD had responded. No one was home, but they were able to see through the window two dogs fitting the description of the Leber dogs in the Lockhart living room.

At around 4:00 pm on December 30, 2010, Morris and Lockhart showed up at the parking lot with the second Leber dog, as arranged by Morris. The Fruita PD, Grand Junction PD and Park Rangers were also present. Lockhart stayed back, and Morris spoke to police. Morris repeated the story that the dogs were abused, and one dog had run away. At first, Morris refused to identify Lockhart, but eventually police were able to obtain her identity from Lockhart’s juvenile son, who had been standing with Morris.

Lockhart was approached by police and told that she would be charged in Delta with theft of the dogs. When asked if she wished to make a statement, Lockhart repeated the false story of

abandoned dogs, one having run away. Lt. Macy then read Lockhart her Miranda warnings and told her she was under arrest for false reporting. If she wished to be truthful, Lt. Macy explained, she would not go to jail at that time, but that she would still be charged and everything would be included in a report. Lockhart said she was protecting someone.

Lockhart then told police that she had been in Delta seeing Dr. Jahani when her two boys, left in the car, found the dogs. She thought they were abandoned and took the dogs, at her sons' request, to her home in Fruita. Romero was present. They went to dinner later, and when they returned, the dog had killed their cat. Lockhart told Romero to get rid of the dog, and Romero stated he was going to kill the dog for having killed the cat. He left with the dog, driving his "other" girlfriend's red pickup truck. When he returned about 1/2 hour later, the dog was gone. Romero told Lockhart what he had done to the dog.

According to Krysta Morris, who has agreed to testify for the United States, Romero, Lockhart and she met the morning after Buddy was killed to plan what would be said to police. All knew that Romero had killed Buddy, and intended to protect Romero from possible prosecution by lying about the events in question. Lockhart and Romero told Morris what to say - that the dogs had been abandoned, and were at her house until one ran away.

V. SENTENCING COMPUTATION

Any estimation by the parties regarding the estimated appropriate guideline application does not preclude either party from asking the Court to depart or vary from the otherwise appropriate guideline range at sentencing, if that party believes that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the sentencing guidelines. (§5K2.0)

The parties stipulate that sentencing in this case will be determined by application of the sentencing guidelines, issued pursuant to 28 U.S.C. § 994(a), and 18 U.S.C. §3553.

The parties understand that the Court may impose any sentence, up to the statutory maximum, regardless of any guideline range computed, and that the Court is not bound by any position of the parties. (§6B1.4(d)) The Court is free, pursuant to §§6A1.3 and 6B1.4, to reach its own findings of facts and sentencing factors considering the parties' stipulations, the presentence investigation, and any other relevant information. (§6B1.4 Comm.; §1B1.4)

To the extent the parties disagree about the sentencing factors, the computations below identify the factors which are in dispute. (§6B1.4(b))

United States' Guidelines Computation:

Pursuant to § 2X5.1 if the offense is a felony for which no guideline has been expressly promulgated, apply the most analogous offense guideline. If there is not a sufficiently analogous guideline, the provisions of 18 U.S.C. 3553 shall control, except that any guidelines and policy statements that can be applied meaningfully in the absence of a Chapter Two offense guideline shall remain applicable. The United States does not believe a sufficiently analogous guideline exists in this case, because calculation under § 2X3.1 requires calculation of the offense level for the underlying offense. As no sufficiently analogous guideline exists for the offense of aggravated animal cruelty, the United States believes that a proper calculation cannot be made under § 2X3.1. The sentence would be limited, in any case, by the statutory maximum

Defendant's Guidelines Computation:

- 1. U.S.S.G. §2X3.1(a)(2)4
- 2. There are no role-in-the-offense, or other upward adjustments, under Chapter 3.
- 3. Career offender/criminal livelihood/armed career criminal adjustments would not apply
- 4. pursuant to guideline section 5D 1.2, if the court imposes a term of supervised release, that term shall not be more than one year

Total4

The parties understand that the defendant's criminal history computation is tentative. The criminal history category is determined by the Court. If the criminal history records currently available to the parties are accurate, the records produces a category of **IV**. However, in order to be as accurate as possible, with the criminal history category undetermined at this time, the estimated offense level could conceivably result in a range from 0 months (bottom of Offense Level 4, Criminal History Category I), to 12 months (top of Offense Level 4, Criminal History Category VI). The sentence would be limited, in any case, by the statutory maximum of 18 months.

The defendant must also pay a \$100 Special Assessment Fee and may be ordered to pay restitution.

VI. WHY THE PROPOSED PLEA DISPOSITION IS APPROPRIATE

The parties believe the sentencing range resulting from the proposed plea agreement is appropriate because all relevant conduct is disclosed, the sentencing guidelines and 18 U.S.C. §3553 take into account all pertinent sentencing factors with respect to this defendant, and the charges to which the defendant has agreed to plead guilty adequately reflect the seriousness of the actual offense behavior.

This document states the parties' entire agreement. There are no other promises, agreements (or "side agreements"), terms, conditions, understandings or assurances, express or implied. In entering this agreement, neither the government nor the defendant have relied, or are relying, on any terms, promises, conditions or assurances not expressly stated in this agreement.

Date: 5-17-10


Melissa Marie Lockhart
Defendant

Date: 5/17/10


Stephen L. Laiche
Attorney for Defendant

Date: _____

Michelle M. Heldmyer
Assistant U.S. Attorney