

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 11-04007-01-CR-C-NKL
)	
TREVONN LIONEL FRENCH,)	
)	
Defendant.)	

PLEA AGREEMENT

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the parties described below have entered into the following plea agreement:

1. The Parties. The parties to this agreement are the United States Attorney's Office for the Western District of Missouri (otherwise referred to as "the Government" or "the United States"), represented by Beth Phillips, United States Attorney, Anthony P. Gonzalez, Assistant United States Attorney, and Steven R. Berry, Special Assistant United States Attorney, and the defendant, Trevonn Lionel French ("the defendant"), represented by Troy K. Stabenow.

The defendant understands and agrees that this plea agreement is only between him and the United States Attorney for the Western District of Missouri, and that it does not bind any other federal,

state or local prosecution authority or any other government agency, unless otherwise specified in this agreement.

2. Defendant's Guilty Plea. The defendant agrees to and hereby does plead guilty to Count Two of the indictment, which charges that, on or about January 9, 2011, at or near Fulton, in Callaway County, in the Western District of Missouri, the defendant did knowingly and intentionally distribute a mixture and substance containing a detectable amount of heroin, a Schedule I controlled substance, and that Summer Bond died as a result of the use of the heroin which the defendant had distributed, in violation of Title 21, United States Code, Section 841(a)(1), and punishable under Title 21, United States Code, Section 841(b)(1)(C). By entering into this plea agreement, the defendant admits that he knowingly and intentionally committed this offense, that is, that he knowingly distributed heroin, a Schedule I controlled substance, to Summer Bond, and that Bond died as a result of the use of the heroin he distributed to her, and admits that he is, in fact, guilty of the offense as charged in Count Two.

3. Factual Basis for Guilty Plea. The parties agree that the facts constituting the offense to which the defendant is pleading guilty are as follows:

On January 9, 2011, medical and law enforcement personnel were dispatched to 8615 County Road 427 in Fulton, Callaway County, Missouri, where they found 28-year-old Summer Bond (Bond) dead. Medics confirmed that Bond was deceased, and noted that there were two track marks on Bond's left arm and a ligature impression on the right

arm. Bond's mother, Kathryn Smith (Ms. Smith), reported that, at approximately 12:10 p.m. that same day, she had discovered Bond unresponsive inside a bathroom at the residence, and she had removed a tourniquet from Bond's arm.

Ms. Smith observed a hypodermic needle on the bathroom counter with a nearby spoon that contained suspected drugs. Ms. Smith later handed one of the medics an eyeglass case containing the spoon, along with a syringe and a piece of plastic containing a small white chunk that field-tested positive for opiate/heroin content. There was a dried red residue on the spoon that field-tested positive for human blood, and a dried white residue that field-tested positive for opiate/heroin content.

DEA S/A Steve Mattas received information that Bond's brother, Cody Smith (Smith) had also overdosed on heroin near the same time, but did not die and was recovering at University Hospital in Columbia, Missouri.

On January 10, 2011, while at University Hospital, Smith stated that, on January 9, 2011, he purchased a \$60 heroin "nugget" from the defendant at the defendant's residence in Fulton, Callaway County, Missouri. While at the defendant's residence, Smith injected the heroin and overdosed. Smith estimated that he had been buying "crack" and heroin from the defendant for approximately the past five months, and that Smith's sister (Bond) had been buying heroin from the defendant for approximately the past two years.

A cooperating individual (W) told S/A Mattas that Rachel Hoteling, the defendant's girlfriend, said, among other things, that Bond had overdosed on the same heroin that Smith had overdosed on.

Later, Hoteling also told agents that the defendant sold heroin to Smith, and that he gave some of the same heroin to Bond in lieu of a debt. (Bond had given the defendant Xanax and he owed her \$25 for the Xanax, and he gave her the heroin instead of the money.) Hoteling stated that she too had been given the same heroin by the defendant that he had provided to Smith and Bond, and that she also overdosed, but was revived by friends.

A cooperating witness called the defendant on January 10, 2011, and during the call, among other things, the defendant admitted he knew the heroin was potent because his girlfriend Rachel "almost died Friday night." The defendant stated that Hoteling had stopped breathing and had to be revived.

In a later call that day, the defendant related details about Smith's overdose, including that it was he (defendant) who took Smith to the hospital.

On January 13, 2011, the witness spoke to the defendant by phone, and the defendant stated that he had more heroin available. The defendant sold the witness heroin during a meeting at the defendant's residence in Fulton, Callaway County, Missouri. The substance sold to the witness by the defendant field-tested positive for heroin.

Later on January 13, 2011, the defendant was arrested at his residence in Fulton. Following his arrest, the defendant was advised of his *Miranda* rights, and agreed to give a statement. The defendant admitted selling Smith the heroin that led to his overdose. The defendant offered the heroin to Smith, which Smith purchased for \$60, as he was out of "crack" cocaine.

While initially denying involvement with Summer Bond, eventually the defendant admitted to providing Bond with the syringe left over from Smith's overdose, along with an additional amount of heroin in exchange for a \$25 debt that he owed Bond from a previous narcotics transaction in which Bond provided defendant with pills.

The defendant signed a written statement prepared by S/A Mattas admitting to distributing heroin to Smith, and transporting him to the hospital following his overdose. The defendant also admitted providing Bond with the syringe containing what was left of the heroin that caused Smith's overdose, along with an additional amount of heroin.

Following the interview of the defendant, S/A Mattas and Sgt. Jeffries made contact with Rachel Hoteling as she was driving away from the defendant's residence. Hoteling agreed to return to the residence and speak with the officers. Hoteling consented to a search of the residence, which she shared with the defendant. She

denied knowledge of any contraband at the residence, other than possibly some unused syringes and a spoon with possible heroin residue. When advised that the defendant had stated there was possibly a digital scale in a dresser drawer, Hoteling went to the night stand drawer and located a black scale with suspected heroin residue on it. She also gave the officers a metal spoon with suspected heroin residue on it.

Hoteling said that the heroin that was given to her, Smith and Bond was the same, and that the defendant's heroin had caused all three overdoses. She said the defendant was aware of the two overdoses which preceded Bond's overdose, resulting in her death.

The body of Summer Bond was taken to the medical examiner where, on January 10, 2011, she was examined by Michael J. Panella, M.D., J.D., who was assisted by Jason Stewart, forensic technician. Samples of the vitreous, blood, bile, urine and liver were submitted to the St. Louis University Toxicology lab for a drug screen. The analysis was requested by Dr. Adelstein of the Medical Examiner's Office, and the analysis was performed by Dr. Christopher Long (SLU). According to the toxicology report, morphine was detected in blood taken from Bond during the autopsy, with a level of 0.16 micrograms/ml (free). Bond's urine sample contained 6-monoacetylmorphine and codeine metabolite, measuring 0.08 micrograms/ml and 0.09 micrograms/ml, respectively. These are all metabolites of heroin. According to Dr. Panella, the level of morphine in Bond's blood was within the reported lethal range. Based on the toxicology report, the ligature mark and injection sites on Bond's arms, the presence of drug paraphernalia at the scene when Bond's body was recovered, and the lack of any other findings during the autopsy suggesting other contributing factors, Dr. Panella determined that the cause of death was acute heroin toxicity.

By entering into this plea agreement, the defendant agrees that he distributed heroin as set forth above, and agrees that use of that heroin resulted and caused the three overdoses set forth above. More specifically, as to one of the overdoses, the defendant agrees that Summer Bond's death resulted from the use of heroin distributed to her on or about January 9, 2011, by the defendant.

4. Use of Factual Admissions and Relevant Conduct. The defendant acknowledges, understands and agrees that the admissions contained in paragraph 3 and other portions of this plea agreement will be used for the purpose of determining his guilt and advisory sentencing range under the United States Sentencing Guidelines ("U.S.S.G." or "Guidelines"), including the calculation of the defendant's offense level in accordance with U.S.S.G. § 1B1.3(a)(2). The defendant acknowledges, understands and agrees that the conduct charged in any dismissed counts of the indictment, as well as all other uncharged related criminal activity, may be considered as "relevant conduct" pursuant to U.S.S.G. § 1B1.3(a)(2) in calculating the offense level for the charge to which he is pleading guilty.

5. Statutory Penalties. The defendant understands that, upon his plea of guilty to Count Two of the indictment, charging him with distribution of heroin resulting in death, the minimum penalty the Court may impose is not less than twenty (20) years' imprisonment, while the maximum penalty the Court may impose is not more than life imprisonment, not less than three (3) years' supervised release, a \$1 million fine, and a \$100 mandatory special assessment per felony count of conviction, which must be paid in full at the time of sentencing. The defendant understands that, upon his plea to Count Two, he must serve any and all of any sentence imposed, that the sentence will be at least twenty (20)

years' imprisonment, and that under no condition can he receive parole, probation or a suspended sentence. The defendant further understands that this offense is a Class A felony.

However, the defendant understands and agrees that, pursuant to Federal Rules of Criminal Procedure 11(c)(1)(C), 11(c)(3)(A) and 11(c)(4), the Government agrees that a particular Guideline provision is applicable to the offense to which he is pleading guilty and, as a result, that a particular sentencing range is the appropriate disposition of the case, and that, if the Court accepts this plea agreement, the agreed disposition will be included in the judgment. More particularly, the Government agrees that § 2D1.1(a)(2) of the Guidelines is applicable to the offense, which provides for a base offense level of 38. The Government agrees that an offense level of 38 is appropriate, and that this offense level can only be adjusted downward for acceptance of responsibility, if appropriate. The defendant understands that, if the Court accepts this plea agreement, the agreed disposition will be based upon an offense level of 38, which may only be reduced by acceptance, and this disposition will be included in the judgment.

6. Sentencing Procedures. The defendant acknowledges, understands and agrees to the following:

a. in determining the appropriate sentence, the Court will consult and consider the United States Sentencing Guidelines promulgated by the United States Sentencing Commission; these Guidelines, however, are

advisory in nature, and the Court may generally impose a sentence either less than or greater than the defendant's applicable Guidelines range, unless the sentence imposed is "unreasonable";

b. generally, the Court will also determine the defendant's applicable Sentencing Guidelines range at the time of sentencing, however in the instant case the Government and defendant agree, pursuant to Rules 11(c)(1)(C), 11(c)(3)(A) and 11(c)(4), that the appropriate offense level for the offense of conviction is 38, prior to considering acceptance of responsibility;

c. in addition to a sentence of imprisonment, the Court may impose a term of supervised release of not less than three (3) years; that the Court must impose a period of supervised release if a sentence of imprisonment of more than one (1) year is imposed;

d. generally, the Court may impose any sentence authorized by law, including a sentence that is outside of, or departs from, the applicable Sentencing Guidelines range; however, due to the instant plea agreement, if the Court accepts this plea agreement, the sentence will be based upon the agreed disposition, with an offense level from 35 to 38, inclusive;

e. any sentence of imprisonment imposed by the Court will not allow for parole;

f. if the Court accepts this plea agreement, the Court will be bound to the agreed disposition, that is, a sentence within the guideline corresponding to the final offense level (from 35 to 38, inclusive); and

g. the defendant may not withdraw his guilty plea solely because of the nature or length of the sentence imposed by the Court.

7. Government's Agreements. Based upon evidence in its possession at this time, the United States Attorney's Office for the Western District of Missouri, as part of this plea agreement, agrees not to bring any additional charges against the defendant

for any federal criminal offenses related to distribution of heroin resulting in death for which it has venue and which arose out of the defendant's conduct described above. Additionally, the United States Attorney for the Western District of Missouri agrees to dismiss Counts One and Three at sentencing. The United States also agrees to recommend that the defendant be sentenced at the low end of the applicable Guidelines range, but only if the final Guidelines range is greater than the mandatory twenty (20) years' imprisonment required by statute.

The defendant understands that this plea agreement does not foreclose any prosecution for an act of murder or attempted murder, an act or attempted act of physical or sexual violence against the person of another, or a conspiracy to commit any such acts of violence or any criminal activity of which the United States Attorney for the Western District of Missouri has no knowledge.

The defendant recognizes that the United States' agreement to forego prosecution of all of the criminal offenses with which the defendant might be charged is based solely on the promises made by the defendant in this agreement. If the defendant breaches this plea agreement, the United States retains the right to proceed with the original charges and any other criminal violations established by the evidence. The defendant expressly waives his right to challenge the initiation of the dismissed or additional charges against him if he breaches this agreement. The defendant expressly

waives his right to assert a statute of limitations defense if the dismissed or additional charges are initiated against him following a breach of this agreement. The defendant further understands and agrees that, if the Government elects to file additional charges against him following his breach of this plea agreement, he will not be allowed to withdraw his guilty plea.

8. Preparation of Presentence Report. The defendant understands that the United States will provide to the Court and the United States Probation Office a government version of the offense conduct. This may include information concerning the background, character and conduct of the defendant, including the entirety of his criminal activities. The defendant understands these disclosures are not limited to the count to which he has pleaded guilty. The United States may respond to comments made or positions taken by the defendant or the defendant's counsel, and correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject only to any limitations set forth in this plea agreement. The United States and the defendant expressly reserve the right to speak to the Court at the time of sentencing pursuant to Rule 32(i)(4) of the Federal Rules of Criminal Procedure.

9. Withdrawal of Plea. Either party reserves the right to withdraw from this plea agreement for any or no reason at any time

prior to the entry of the defendant's plea of guilty and its formal acceptance by the Court. In the event of such withdrawal, the parties will be restored to their pre-plea agreement positions to the fullest extent possible. However, after the plea has been formally accepted by the Court, the defendant may withdraw his plea of guilty only if the Court rejects the plea agreement, or if the defendant can show a fair and just reason for requesting the withdrawal.

10. Agreed Guidelines Applications. With respect to the application of the Sentencing Guidelines to this case, the parties stipulate and agree as follows:

a. As stated in the plea agreement, the Sentencing Guidelines generally do not bind the Court and are advisory in nature, and the Court may impose a sentence that is either above or below the defendant's applicable Guidelines range, provided the sentence imposed is not "unreasonable;" however, this agreement, pursuant to Rules 11(c) (1) (C), 11(c) (3) (A) and 11(c) (4), provides for an agreed sentencing range which binds the Court if this plea agreement is accepted;

b. Pursuant to the agreement, and pursuant to Rules 11(c) (1) (C), 11(c) (3) (A) and 11(c) (4), the applicable Guidelines section for the offense of conviction is U.S.S.G. § 2D1.1(a) (2), which provides for a base offense level of 38, as death resulted from the use of heroin which the defendant provided to the individual who died;

c. The Court will determine whether the defendant has accepted responsibility pursuant to § 3E1.1(a). If the Court determines the defendant is due a 2-point reduction for acceptance of responsibility, the Government agrees it will inform the court that the defendant is entitled to an additional 1-point reduction as he has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying

authorities of his intention to enter a plea of guilty, and thereby permitting the Government to avoid preparing for trial and permitting the Government and the Court to allocate their resources efficiently. Guideline § 3E1.1(b). The Government, at the time of sentencing, will file a written motion regarding the additional 1-point reduction unless the defendant: (1) fails to abide by all of the terms and conditions of this plea agreement; (2) attempts to withdraw his guilty plea, violates the law, or otherwise engages in conduct inconsistent with his acceptance of responsibility; or (3) is not awarded the 2-point reduction;

d. There is no agreement between the parties regarding the defendant's criminal history category. The parties agree that the Court will determine his applicable criminal history category after receipt of the presentence investigation report prepared by the United States Probation Office;

e. The defendant understands that, if the Court accepts this plea agreement, then it is bound to sentence the defendant within the guideline range based upon the final offense level (between 35 and 38, inclusive), and the determined criminal history, but in no event less than 240 months;

f. The United States agrees not to seek an upward departure or any adjustment from the agreed Guidelines range, and the defendant agrees not to seek a downward departure or any adjustment from the agreed Guidelines range. The agreement by the parties not to seek a departure from the Guidelines is not binding upon the Court, except as modified by the agreement and Rules 11(c)(1)(C), 11(c)(3)(A) and 11(c)(4), or the United States Probation Office;

g. The defendant consents to judicial fact-finding by a preponderance of the evidence for all issues pertaining to the determination of the defendant's sentence, including the determination of the mandatory minimum sentence of twenty years (including the facts that support any specific offense characteristic or other enhancement or adjustment), and any legally authorized increase above the normal statutory maximum. The defendant waives any right to a jury determination beyond a reasonable doubt of all facts used to determine and enhance the sentence imposed, and waives any right to

have those facts alleged in the indictment. The defendant also agrees that the Court, in finding the facts relevant to the imposition of sentence, may consider any reliable information, including hearsay; and

h. The defendant understands and agrees that the factual admissions contained in paragraph 3 of this plea agreement, and any admissions that he will make during his plea colloquy, support the imposition of the agreed upon Guidelines calculations contained in this agreement.

11. Effect of Non-Agreement on Guidelines Applications. The parties understand, acknowledge and agree that there are no agreements between the parties with respect to any Sentencing Guidelines issues other than those specifically listed in paragraphs 5, 6 and 10 and their subsections. As to any other Guidelines issues, the parties are free to advocate their respective positions at the sentencing hearing.

12. Change in Guidelines Prior to Sentencing. The defendant agrees that, if any applicable provision of the Guidelines changes after the execution of this plea agreement, then any request by the defendant to be sentenced pursuant to the new Guidelines will make this plea agreement voidable by the Government at its option. If the Government exercises its option to void the plea agreement, the United States may charge, reinstate or otherwise pursue any and all criminal charges that could have been brought but for this plea agreement.

13. Government's Reservation of Rights.

The defendant

understands that the United States expressly reserves the right in this case to:

a. oppose or take issue with any position advanced by the defendant at the sentencing hearing which might be inconsistent with the provisions of this plea agreement;

b. comment on the evidence supporting the charges in the indictment;

c. oppose any arguments and requests for relief the defendant might advance on an appeal from the sentence imposed, and that the United States remains free, on appeal or collateral proceedings, to defend the legality and propriety of the sentence actually imposed, even if the Court chooses not to follow any recommendation made by the United States; and

d. oppose any post-conviction motions for reduction of sentence, or other relief.

14. Waiver of Constitutional Rights.

The defendant, by

pleading guilty, acknowledges that he has been advised of, understands, and knowingly and voluntarily waives the following rights:

a. the right to plead not guilty and to persist in a plea of not guilty;

b. the right to be presumed innocent until his guilt has been established beyond a reasonable doubt at trial;

c. the right to a jury trial, and at that trial, the right to the effective assistance of counsel;

d. the right to confront and cross-examine the witnesses who testify against him;

e. the right to compel or subpoena witnesses to appear on his behalf; and

f. the right to remain silent at trial, in which case his silence may not be used against him.

The defendant understands that, by pleading guilty, he waives or gives up those rights and that there will be no trial. The defendant further understands that, if he pleads guilty, the Court may ask him questions about the offense to which he pleaded guilty, and if the defendant answers those questions under oath and in the presence of counsel, his answers may later be used against him in a prosecution for perjury or making a false statement. The defendant also understands that he has pleaded guilty to a felony offense and, as a result, will lose his right to possess a firearm or ammunition and might be deprived of other rights, such as the right to vote or register to vote, hold public office, or serve on a jury.

15. Waiver of Appellate and Post-Conviction Rights.

a. The defendant acknowledges, understands and agrees that, by pleading guilty pursuant to this plea agreement, he waives his right to appeal or collaterally attack a finding of guilt following the acceptance of this plea agreement, except on grounds of: (1) ineffective assistance of counsel; or (2) prosecutorial misconduct; and

b. The defendant expressly waives his right to appeal his sentence, directly or collaterally, on any ground except claims of: (1) ineffective assistance of counsel; (2) prosecutorial misconduct; or (3) an illegal sentence. An "illegal sentence" includes a sentence imposed in excess of the statutory maximum, but does not include less serious sentencing errors, such as a misapplication of the Sentencing Guidelines, an abuse of discretion, or the imposition of an unreasonable sentence. However, if the United States exercises its

right to appeal the sentence imposed as authorized by 18 U.S.C. § 3742(b), the defendant is released from this waiver and may, as part of the Government's appeal, cross-appeal his sentence as authorized by 18 U.S.C. § 3742(a) with respect to any issues that have not been stipulated to or agreed upon in this agreement.

16. Financial Obligations. By entering into this plea agreement, the defendant represents that he understands and agrees that a special assessment will be imposed as part of the sentence in this case. The defendant promises to pay the special assessment of \$100 by submitting a satisfactory form of payment to the Clerk of the Court prior to appearing for the sentencing proceeding in this case. The defendant agrees to provide the Clerk's receipt as evidence of his fulfillment of this obligation at the time of sentencing.

17. Waiver of FOIA Request. The defendant waives all of his rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case including, without limitation, any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

18. Waiver of Claim for Attorney's Fees. The defendant waives all of his claims under the Hyde Amendment, 18 U.S.C. § 3006A, for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

19. Defendant's Breach of Plea Agreement. If the defendant commits any crimes, violates any conditions of release, or violates any term of this plea agreement between the signing of this plea agreement and the date of sentencing, or fails to appear for sentencing, or if the defendant provides information to the United States Probation Office or the Court that is intentionally misleading, incomplete or untruthful, or otherwise breaches this plea agreement, the United States will be released from its obligations under this agreement. The defendant, however, will remain bound by the terms of the agreement, and will not be allowed to withdraw his plea of guilty.

The defendant also understands and agrees that, in the event he violates this plea agreement, all statements made by him to law enforcement agents subsequent to the execution of this plea agreement, any testimony given by him before a grand jury or any tribunal, or any leads from such statements or testimony shall be admissible against him in any and all criminal proceedings. The defendant waives any rights that he might assert under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that pertains to the admissibility of any statements made by him subsequent to this plea agreement.

20. Defendant's Representations. The defendant acknowledges that he has entered into this plea agreement freely and voluntarily

after receiving the effective assistance, advice and approval of counsel. The defendant acknowledges that he is satisfied with the assistance of counsel, and that counsel has fully advised him of his rights and obligations in connection with this plea agreement. The defendant further acknowledges that no threats or promises, other than the promises contained in this plea agreement, have been made by the United States, the Court, his attorney, or any other party to induce him to enter his plea of guilty.

21. No Undisclosed Terms. The United States and the defendant acknowledge and agree that the above stated terms and conditions, together with any written supplemental agreement that might be presented to the Court *in camera*, constitute the entire plea agreement between the parties, and that any other terms and conditions not expressly set forth in this agreement, or any written supplemental agreement, do not constitute any part of the parties' agreement, and will not be enforceable against either party.

22. Standard of Interpretation. The parties agree that, unless the constitutional implications inherent in plea agreements require otherwise, this plea agreement should be interpreted according to general contract principles, and the words employed are to be given their normal and ordinary meanings. The parties further agree that, in interpreting this agreement, any drafting errors or ambiguities are not to be automatically construed against

either party, whether or not that party was involved in drafting or modifying this agreement.

Beth Phillips
United States Attorney

By _____ /S/

Dated 5/6/11

Anthony P. Gonzalez
Assistant United States Attorney
Missouri Bar No. 29922

I have consulted with my attorney and fully understand all of my rights with respect to the offenses charged in the indictment. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this plea agreement, and I voluntarily agree to it.

Dated 5/6/11

/S/

Trevonn Lionel French
Defendant

I am defendant Trevonn Lionel French's attorney. I have fully explained to him his rights with respect to the offenses charged in the indictment. Further, I have reviewed with him the provisions of the Sentencing Guidelines which might apply in this case. I have carefully reviewed every part of this plea agreement with him. To my knowledge, Trevonn Lionel French's decision to enter into this plea agreement is an informed and voluntary one.

Dated 5/6/11

/S/

Troy K. Stabenow
Attorney for Defendant