

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 1:16CR00058AGF
)
 JAMES CLAY WALLER, II,)
)
 Defendant.)

GUILTY PLEA AGREEMENT

Come now the parties and hereby agree, as follows:

1. **PARTIES:**

The parties are the defendant James Clay Waller, II, represented by defense counsel John M. Lynch, and the United States of America (hereinafter "United States" or "Government"), represented by the Office of the United States Attorney for the Eastern District of Missouri. This agreement does not, and is not intended to, bind any governmental office or agency other than the United States Attorney for the Eastern District of Missouri. The Court is neither a party to nor bound by this agreement. However, if the Court accepts the plea agreement as to the sentence or sentencing range, then the Court will be bound by said agreement pursuant to Rule 11(c)(1)(C).

2. **GUILTY PLEA:**

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A) and (C), in exchange for the defendant's voluntary plea of guilty to the charge of Interstate Domestic Violence, the government agrees that no further federal prosecution will be brought in this District relative to

the underlying facts supporting the charges herein, of which the Government is aware at this time. In addition, pursuant to Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, the parties agree that the defendant's sentence should be 420 months. This sentence will be served concurrently with the twenty-year sentence imposed in Case No. 12CG-CR00686-01, in the Circuit Court of Cape Girardeau County, Missouri on June 6, 2013. If the Court informs the parties prior to sentencing that it will reject this agreement or sentences defendant to a sentence not in conformity with this agreement, then either party may withdraw from the plea agreement and the defendant will have an opportunity to withdraw his guilty plea pursuant to Rule 11(c)(5). The parties further agree that neither party shall request a sentence above or below the sentencing agreement in this paragraph pursuant to any chapter of the Guidelines, Title 18, United States Code, Section 3553, or any other provision or rule of law not addressed herein.

The defendant also agrees, pursuant to the guilty plea, to forfeit to the United States all property subject to forfeiture under the applicable statute(s), including but not limited to: all proceeds received or to be received by the defendant, or a transferee of the defendant, from a contract relating to a depiction of such crime in a movie, book, newspaper, magazine, radio or television production, or live entertainment of any kind, or an expression of the defendant's thoughts, opinions, or emotions regarding such crime, or a sum of money equal to the value of all such proceeds.

Specific property subject to forfeiture includes:

All proceeds received or to be received by the defendant or any transferee from any publication of, adaptation of, or other work derived from a manuscript authored by the defendant entitled "'If You Take My Kids, I'll Kill You!': The Public Confession of Missouri's Most

Notorious Wife Killers,” obtained by agents of the Federal Bureau of Investigation on or about March 8, 2016.

3. **ELEMENTS:**

The defendant admits to knowingly violating Title 18, United States Code, Section 2261(a)(1), and admits there is a factual basis for the plea and further fully understands that the elements of the crime are:

- (a) A person travels in interstate commerce;
- (b) With the intent to kill a spouse, and
- (c) As a result of such travel;
- (d) Commits a crime of violence against that spouse.

4. **FACTS:**

The parties agree that the facts in this case are as follows and that the government would prove these facts beyond a reasonable doubt if the case were to go to trial. These facts may be considered as relevant conduct pursuant to Section 1B1.3:

The defendant, James Clay Waller, II, and Jacque Sue Waller were husband and wife. They separated in March of 2011. Jacque Sue Waller had arranged for she and the defendant to meet with a divorce attorney in Cape Girardeau, Missouri at 3:00 p.m. on June 1, 2011 to discuss the terms of the dissolution of their marriage. The defendant had told Jacque Sue Waller on numerous occasions that if she divorced him, she would be signing her death warrant.

On May 31, 2011, the day before the parties were to meet with Jacque’s attorney, the defendant dug a grave on the Illinois side of the Mississippi River near Devil’s Island in which to bury his wife. He then spent the night with his girlfriend in Illinois. The next day, June 1, 2011,

the defendant traveled from Illinois to Cape Girardeau to attend the meeting at the lawyer's office. When the defendant traveled in interstate commerce from Illinois to Missouri that day, he did so with the intent to kill his spouse, Jacque Sue Waller.

Following their meeting with the divorce attorney, Jacque Sue Waller went to the defendant's residence located in Jackson, Missouri. Inside the residence, the defendant strangled and beat Jacque Sue Waller to death. The defendant then transported her body across the Mississippi River by boat and buried her in the grave he had dug the day before.

5. **STATUTORY PENALTIES:**

The defendant fully understands that the maximum possible penalty provided by law for the crime to which the defendant is pleading guilty is life imprisonment and a fine not to exceed \$250,000. The Court shall also impose a period of supervised release of not more than five years.

6. **U. S. SENTENCING GUIDELINES: 2016 MANUAL:**

The defendant understands that this offense is affected by the U. S. Sentencing Guidelines and the actual sentencing range is determined by both the Total Offense Level and the Criminal History Category. To assist the Court in determining the impact of the plea agreement, the parties submit the following U.S. Sentencing Guidelines analysis:

a. **Chapter 2 Offense Conduct:**

(1) **Base Offense Level:** The parties agree that the base offense level is 18, as found in Section 2A6.2. However, pursuant to U.S.S.G. § 2A6.2(c) a cross-reference must be made to U.S.S.G. § 2A1.1 (Murder in the First Degree). The base offense level under § 2A1.1 is

43.

(2) **Specific Offense Characteristics**: The parties agree that there are no Specific Offense Characteristics that apply.

b. **Chapter 3 Adjustments**:

(1) **Acceptance of Responsibility**: The parties recommend that two levels should be deducted pursuant to Section 3E1.1(a) , because the defendant has clearly demonstrated acceptance of responsibility .

(2) **Other Adjustments**: The parties agree that no other Chapter 3 adjustments apply.

c. **Other Adjustment(s)/Disputed Adjustments**: The parties agree no other adjustments are applicable under any chapter of the United States Sentencing Guidelines.

d. **Estimated Total Offense Level**: The parties estimate that the Total Offense Level is 41.

e. **Criminal History**: The determination of the defendant's Criminal History Category shall be left to the Court. Either party may challenge, before and at sentencing, the finding of the Presentence Report as to the defendant's criminal history and the applicable category. The defendant's criminal history is known to the defendant and is available in the Pretrial Services Report.

f. **Effect of Parties' U.S. Sentencing Guidelines Analysis**:

The parties agree that the Court is not bound by the Guidelines analysis agreed to herein. The parties may not have foreseen all applicable Guidelines. The Court may, in its discretion, apply or not apply any Guideline despite the agreement herein and the parties shall not be

permitted to withdraw from the plea agreement. But, if the Court accepts the plea agreement in this case, it is bound by the sentencing agreement in paragraph 2 above.

7. **WAIVER OF APPEAL AND POST-CONVICTION RIGHTS:**

a. **Appeal:** The defendant has been fully apprised by defense counsel of the defendant's rights concerning appeal and fully understands the right to appeal the sentence under Title 18, United States Code, Section 3742.

(1) **Non-Sentencing Issues:** The parties waive all rights to appeal any and all non-sentencing issues without limitation, including, but not limited to, any issues relating to pretrial motions, discovery and the guilty plea.

(2) **Sentencing Issues:** In the event the Court accepts the plea and, in sentencing the defendant follows the sentencing agreement in paragraph 2, then, as part of this agreement, the parties hereby waive all rights to appeal all sentencing issues.

b. **Post-Conviction:** The defendant acknowledges being guilty of the crime to which a plea is being entered, and further states that neither defense counsel nor the government have made representations which are not included in this document as to the sentence to be imposed. The defendant is fully satisfied with the representation received from counsel, John M. Lynch, with whom he has discussed the Government's case, possible defenses and defense witnesses, and that Mr. Lynch has completely and satisfactorily explored all areas which the defendant has requested relative to the Government's case and the defendant's defense; and in light of this and in the event the Court accepts this plea agreement and sentences the defendant to 420 months imprisonment, the defendant further agrees to waive all rights to contest the conviction or sentence on every possible ground, except for prosecutorial misconduct or

ineffective assistance of counsel, in any post-conviction proceeding, including, but not limited to, a motion brought under 28 U.S.C. §§2241, 2255, and Rule 60(b) Fed. R. Civ. P. or by means of any other petition for relief of any description.

c. **Right to Records:** The defendant waives all rights, whether asserted directly or by a representative, to request from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 522, or the Privacy Act, Title 5, United States Code, Section 552(a).

8. **OTHER:**

a. **Disclosures Required by the United States Probation Office:**

The defendant agrees to truthfully complete and sign forms as required by the United States Probation Office prior to sentencing and consents to the release of these forms and any supporting documentation by the United States Probation Office to the government.

b. **Civil or Administrative Actions not Barred; Effect on Other Governmental Agencies:**

Nothing contained herein limits the rights and authority of the United States to take any civil, tax, immigration/deportation or administrative action against the defendant.

c. **Supervised Release:** Pursuant to any supervised release term, the Court will impose standard conditions upon the defendant and may impose special conditions related to the crime defendant committed. These conditions will be restrictions on the defendant to which the defendant will be required to adhere. Violation of the conditions of supervised release resulting in revocation may require the defendant to serve a term of imprisonment equal to the length of the term of supervised release, but not greater than the term set forth in Title 18, United States

Code, Section 3583(e)(3), without credit for the time served after release. The defendant understands that parole has been abolished.

d. **Mandatory Special Assessment:** Pursuant to Title 18, United States Code, Section 3013, the Court is required to impose a mandatory special assessment of \$100 per count for a total of \$100, which the defendant agrees to pay at the time of sentencing. Money paid by the defendant toward any restitution or fine imposed by the Court shall be first used to pay any unpaid mandatory special assessment.

e. **Possibility of Detention:** The defendant may be subject to immediate detention pursuant to the provisions of Title 18, United States Code, Section 3143.

f. **Fines, Restitution and Costs of Incarceration and Supervision:** The Court may impose a fine, restitution (in addition to any penalty authorized by law), costs of incarceration and costs of supervision. The defendant agrees that any fine or restitution imposed by the Court will be due and payable immediately. Pursuant to Title 18, United States Code, Section 3663A, an order of restitution is mandatory for all crimes listed in Section 3663A(c). Regardless of the Count of conviction, the amount of mandatory restitution imposed shall include all amounts allowed by Section 3663A(b) and the amount of loss agreed to by the parties, including all relevant conduct loss. The defendant agrees to provide full restitution to all victims of all charges in the indictment.

g. **Forfeiture:** The defendant agrees to forfeit all of the defendant's interest in all items seized by law-enforcement officials during the course of their investigation. The defendant admits that all United States currency, weapons, property and assets seized by law enforcement officials during their investigation constitute the proceeds of the defendant's illegal

activity, were commingled with illegal proceeds or were used to facilitate the illegal activity. The defendant agrees to execute any documents and take all steps needed to transfer title or ownership of said items to the government and to rebut the claims of nominees and/or alleged third party owners. The defendant further agrees that said items may be disposed of by law enforcement officials in any manner.

The defendant also agrees, pursuant to the guilty plea, to forfeit to the United States all property subject to forfeiture under the applicable statute(s), including but not limited to: all proceeds received or to be received by the defendant, or a transferee of the defendant, from a contract relating to a depiction of such crime in a movie, book, newspaper, magazine, radio or television production, or live entertainment of any kind, or an expression of the defendant's thoughts, opinions, or emotions regarding such crime, or a sum of money equal to the value of all such proceeds.

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9. **ACKNOWLEDGMENT AND WAIVER OF THE DEFENDANT'S RIGHTS:**

In pleading guilty, the defendant acknowledges, fully understands and hereby waives his rights, including but not limited to: the right to plead not guilty to the charges; the right to be tried by a jury in a public and speedy trial; the right to file pretrial motions, including motions to

suppress evidence; the right at such trial to a presumption of innocence; the right to require the government to prove the entire case against the defendant beyond a reasonable doubt; the right not to testify; the right not to present any evidence; the right to be protected from compelled self-incrimination; the right at trial to confront and cross-examine adverse witnesses; the right to testify and present evidence and the right to compel the attendance of witnesses. The defendant further understands that by this guilty plea, the defendant expressly waives all the rights set forth in this paragraph.

The defendant fully understands that the defendant has the right to be represented by counsel, and if necessary, to have the Court appoint counsel at trial and at every other stage of the proceeding. The defendant's counsel has explained these rights and the consequences of the waiver of these rights. The defendant fully understands that, as a result of the guilty plea, no trial will, in fact, occur and that the only action remaining to be taken in this case is the imposition of the sentence.

The defendant is fully satisfied with the representation received from defense counsel. The defendant has reviewed the government's evidence and discussed the government's case and all possible defenses and defense witnesses with defense counsel. Defense counsel has completely and satisfactorily explored all areas which the defendant has requested relative to the government's case and any defenses.

The guilty plea could impact defendant's immigration status or result in deportation. In particular, if any crime to which defendant is pleading guilty is an "aggravated felony" as defined by Title 8, United States Code, Section 1101(a)(43), removal or deportation is presumed

mandatory. Defense counsel has advised the defendant of the possible immigration consequences, including deportation, resulting from the plea.

10. **VOLUNTARY NATURE OF THE GUILTY PLEA AND PLEA AGREEMENT:**

This document constitutes the entire agreement between the defendant and the government, and no other promises or inducements have been made, directly or indirectly, by any agent of the government, including any Department of Justice attorney, concerning any plea to be entered in this case. In addition, the defendant states that no person has, directly or indirectly, threatened or coerced the defendant to do or refrain from doing anything in connection with any aspect of this case, including entering a plea of guilty.

The defendant acknowledges that the defendant has voluntarily entered into both the plea agreement and the guilty plea. The defendant further acknowledges that this guilty plea is made of the defendant's own free will and that the defendant is, in fact, guilty.

11. **CONSEQUENCES OF POST-PLEA MISCONDUCT:**

After pleading guilty and before sentencing, if defendant commits any crimes, violates any conditions of release, violates any term of this guilty-plea agreement, intentionally provides misleading, incomplete or untruthful information to the U.S. Probation Office or fails to appear for sentencing, the United States will be released from its obligations under this agreement. The Government may also, in its discretion, proceed with this agreement and may advocate for any sentencing position supported by the facts, including but not limited to obstruction of justice and denial of acceptance of responsibility.

12. **NO RIGHT TO WITHDRAW GUILTY PLEA:**

Pursuant to Rule 11(c) and (d), Federal Rules of Criminal Procedure, the defendant understands that there will be no right to withdraw the plea entered under this agreement, except where the Court rejects those portions of the plea agreement which deal with charges the government agrees to dismiss or not to bring or as set forth in Paragraph 2 above.

10-5-17

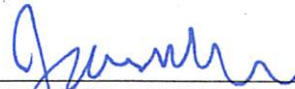
Date



LARRY H. FERRELL, #28874MO
Assistant United States Attorney

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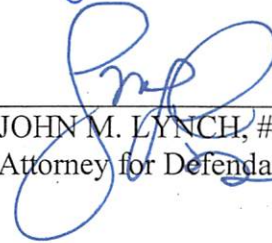
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JAMES CLAY WALLER, II
Defendant

10/5/17

Date



JOHN M. LYNCH, #56604MO
Attorney for Defendant