AF Approval _____ Chief Approval _____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA

v. CASE NO. **5:15-cr-53-Oc-10PRL**

CODY HOPPEL

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by A. Lee Bentley, III, United States Attorney for the Middle District of Florida, and the defendant, CODY HOPPEL, and the attorneys for the defendant, Gary R. Trombley, Esquire, and P. Matthew Luka, Esquire, mutually agree as follows:

A. Particularized Terms

1. Counts Pleading To

The defendant shall enter a plea of guilty to Counts One and Two of the Information. Counts One and Two charge the defendant with deprivation of rights under color of law, specifically to be free from unreasonable seizure which includes the right to be free from the use of unreasonable force, resulting in bodily injury to D.P. and D.H. respectively, in violation of 18 U.S.C. §§ 242 and 2.

2. Maximum Penalties

Counts One and Two each carry a maximum sentence of 10 years' imprisonment, a fine of $250,000, a term of supervised release of not more than 3 years, and a special assessment of $100 per felony count for individuals. With

Defendant's Initials CH

respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offense, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense, or to the community, as set forth below.

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Counts One and Two are:

First: the defendant was acting under color law when he committed the acts charged in the Information;

Second: the defendant deprived D.P. and D.H. respectively of a right secured or protected by the Constitution or laws of the United States, namely, the right to be free from unreasonable seizure, which includes the right to be free from unreasonable force. In this case, the Information charges that the defendant violated D.P.'s and D.H.'s rights to be free from an unreasonable seizure because (1) Marion County Sheriff's Deputies used unreasonable force against D.P. and D.H. and (2) the defendant knew the force used by Marion County Sheriff's Deputies against D.P. and D.H. was unreasonable.

Third: the defendant acted willfully, that is, the defendant acted with a specific intent to do an act that the defendant knew the law forbade; and

Fourth: the offense resulted in bodily injury.

4. Indictment Waiver

Defendant will waive the right to be charged by way of indictment before a federal grand jury.

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to conduct giving rise to this plea agreement.

6. Mandatory Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. § 3663A, defendant agrees to make full restitution to D.P. and D.H.

7. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

8. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted,

the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG §3E1.1(b) and all terms of this Plea Agreement, including but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

9. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and

complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

10. Use of Information - Section 1B1.8

Pursuant to USSG §1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of defendant's cooperation and pursuant to this agreement shall be used in determining the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

11. Cooperation - Responsibilities of Parties

a. The government will make known to the Court and other relevant authorities the nature and extent of defendant's cooperation and any other mitigating circumstances indicative of the defendant's rehabilitative intent by assuming the fundamental civic duty of reporting crime. However, the defendant understands that the government can make no representation that the Court will impose a lesser sentence solely on account of, or in consideration of, such cooperation.

b. It is understood that should the defendant knowingly provide incomplete or untruthful testimony, statements, or information pursuant to this agreement, or should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and unreservedly disclose and provide full, complete, truthful, and honest knowledge, information, and cooperation regarding any of the matters noted herein, the following conditions shall apply:

(1) The defendant may be prosecuted for any perjury or false declarations, if any, committed while testifying pursuant to this agreement, or for obstruction of justice.

(2) The United States may prosecute the defendant for the charges which are to be dismissed pursuant to this agreement, if any, and may either seek reinstatement of or refile such charges and prosecute the defendant thereon in the event such charges have been dismissed pursuant to this agreement. With regard to such charges, if any, which have been dismissed, the defendant, being fully aware of the nature of all such charges now pending in the instant case, and being further aware of defendant's rights, as to all felony charges pending in such cases (those offenses punishable by imprisonment for a term of over one year), to not be held to answer to said felony charges unless on a presentment or indictment of a grand jury, and further being aware that all such felony charges in the instant case have heretofore properly been returned by the indictment of a grand jury, does hereby agree to reinstatement of such charges by recision of any order dismissing them or, alternatively, does hereby waive, in open court, prosecution by indictment and consents that the United States may proceed by information instead of by indictment with regard to any felony charges which may be dismissed in the instant case, pursuant to this plea agreement, and the defendant further agrees to waive the statute of limitations and any speedy trial claims on such charges.

(3) The United States may prosecute the defendant for any offenses set forth herein, if any, the prosecution of which in accordance with this agreement, the United States agrees to forego, and the defendant agrees to waive the statute of limitations and any speedy trial claims as to any such offenses.

(4) The government may use against the defendant the defendant's own admissions and statements and the information and books, papers, documents, and objects that the defendant has furnished in the course of the defendant's cooperation with the government.

(5) The defendant will not be permitted to withdraw the guilty pleas to those counts to which defendant hereby agrees to plead in the instant case but, in that event, defendant will be entitled to the sentencing limitations, if any, set forth in this plea agreement, with regard to those counts to which the defendant has pled; or in the alternative, at the option of the United States, the United States may move the Court to declare this entire plea agreement null and void.

B. <u>Standard Terms and Conditions</u>

1. <u>Restitution, Special Assessment and Fine</u>

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, <u>shall</u> order the defendant to make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to

make restitution to any victim of the offense, pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (18 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. To ensure that this obligation is satisfied, the Defendant agrees to deliver a check or money order to the Clerk of the Court in the amount of $100.00, payable to "Clerk, U.S. District Court" within ten days of the change of plea hearing.

The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offense to which the defendant is pleading provides for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to 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 to any limitations set forth herein, if any.

5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant

exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this Plea Agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by

the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

7. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by

18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and the Civil Rights Division of the United States Department of Justice and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

9. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

10. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law,

and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth in the attached "Factual Basis," which is incorporated herein by reference, are

true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

12. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

13. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 27th day of October 2015.

A. LEE BENTLEY, III
United States Attorney

CODY HOPPEL
Defendant

Mark Blumberg
Special Litigation Counsel
Civil Rights Division

Gary R. Trombley, Esq.
Attorney for Defendant Hoppel

P. Matthew Luka, Esq.
Attorney for Defendant Hoppel

Kent G. Whittemore, Esq.
Attorney for Defendant Hoppel

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

UNITED STATES OF AMERICA

v. CASE NO. **5:15-cr-53-Oc-10PRL**

CODY HOPPEL

PERSONALIZATION OF ELEMENTS

Count One:

1. On or about August 7, 2014, were you a duly sworn Deputy with the Marion County Sheriff's Office, acting under color of law when you committed the acts charged in the Information?

2. Did you deprive D.P. of a right secured or protected by the Constitution or laws of the United States, namely, the right to be free from unreasonable seizure, which includes the right to be free from unreasonable force, specifically the use of unreasonable force against D.P.?

3. Did you willfully deprive D.P. of that right?

4. Did D.P. suffer bodily injury as a result of your deprivation of his right to be free from unreasonable force?

Count Two:

1. On or about June 1, 2014, were you a duly sworn Deputy with the Marion County Sheriff's Office, acting under color of law when you committed the acts charged in the Information?

2. Did you deprive D.H. of a right secured or protected by the Constitution or laws of the United States, namely, the right to be free from unreasonable seizure, which includes the right to be free from unreasonable force, specifically the use of unreasonable force against D.H.?

3. Did you willfully deprive D.H. of that right?

4. Did D.H. suffer bodily injury as a result of your deprivation of his right to be free from unreasonable force?

Defendant's Initials CH

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
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v. CASE NO. **5:15-cr-53-Oc-10PRL**

CODY HOPPEL

FACTUAL BASIS

Count One

On or about August 7, 2014, the defendant CODY HOPPEL (HOPPEL), a duly sworn law enforcement officer and member of the Marion County Sheriff's Office (MCSO), participated in an operation which included the execution of multiple search warrants, including one for the home of D.P. Upon learning that D.P. fled his home when officers arrived, HOPPEL participated in searching for D.P. Deputies sought to capture D.P. for nearly 60 minutes when D.P. was seen in the area of 100 Marion Oaks Boulevard, Ocala, Florida. At the time that D.P. was spotted, HOPPEL was in a car with Deputy 2, Deputy Adam Ray Crawford and Deputy Trevor Wade Fitzgerald. HOPPEL saw D.P. cross Marion Oaks Blvd. and run into a parking lot. HOPPEL, Deputy 2, Deputy Crawford and Deputy Fitzgerald followed D.P. into the parking area where they could see him without obstruction. HOPPEL saw D.P. stop running, put his hands in the air, and surrender to officers. HOPPEL left the truck in which he was riding from the rear passenger side behind the driver and subdued D.P. on the ground after he had surrendered and was lying on the ground. At the time, D.P. was flat on his

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stomach, his right arm was pinned to the ground and outstretched, palm down, while his left arm was in control of HOPPEL. D.P.'s hands were visible, he was compliant and subdued, and he did not resist the deputies' efforts in any way. At the time, D.P. did not appear to be a threat to the deputies, himself or anyone else.

As HOPPEL, Deputy 2, Deputy Crawford and Deputy Fitzgerald left the truck in which they were riding to take custody of D.P., Deputy James Louis Amidei approached the scene on foot from the street. Deputy Crawford approached D.P behind Deputy 2 and HOPPEL, who had made first contact with D.P. and had pinned D.P. to the ground. Deputy 2 positioned himself immediately above D.P.'s head, Deputy Crawford kneeled at D.P.'s left side, and Deputy Fitzgerald straddled the back of D.P.'s legs. Deputy Amidei hovered above D.P. directly behind Deputy Crawford.

At no time did D.P. resist or pose a threat to the officers. HOPPEL initially grabbed D.P.'s left arm from D.P.'s right side, raised it straight up in the air, thereby pinning D.P.'s torso and right arm to the ground and preventing him from moving. HOPPEL along with Deputy Crawford and Deputy 2 began beating D.P. as he lay immobile, flat on his stomach. HOPPEL then released D.P.'s arm, allowing Deputy Fitzgerald, who was sitting on D.P.'s legs, to grab and control D.P.s right arm. HOPPEL struck D.P. in the head, neck, and shoulder area. Deputy Crawford and Deputy 2 kicked, struck, and kneed D.P.

After the beating was over, HOPPEL saw blood pooling on the pavement from where D.P.'s face had been injured. At no time was it necessary to use any force upon D.P. once D.P. had surrendered, other than to place handcuffs on him. D.P. did not spit, kick, strike, move, threaten, or resist officers in any way. D.P. was compliant and immobilized during the entire time of the beating. The beating lasted for more than 30 seconds. When the beating began, both of D.P.'s hands were visible. At no time prior to the beating did D.P. move his hand under his body to suggest that he might have a weapon. HOPPEL knew that the use of force was unnecessary, counter to his training and completely unjustified at the time that he used, and watched others use, force against D.P.

Count Two

On or about June 1, 2014, the defendant, Cody Hoppel (HOPPEL), a duly sworn law enforcement officer and member of the Marion County Sheriff's Office (MCSO), participated in a Special Weapons and Tactics (SWAT) Team operation at 17161 NW 162nd Terrace, Williston, Florida, which included the arrest of D.H. for having an outstanding arrest warrant for violation of probation. When deputies arrived at the residence, D.H. barricaded himself inside the residence and refused to exit the residence. After several hours of attempted negotiations and an exchange of gunfire, D.H. agreed to lay down his weapons and surrender. Upon exiting the residence, D.H. was given verbal commands by a member of the MCSO SWAT Team to walk to the rear of the SWAT personnel carrier that was parked in front of the residence. At one point D.H. was

commanded to stop in between the house and the vehicle and ordered to pull his shirt off and his shorts down around his ankles. D.H. complied with all of the commands and did not resist the orders in any way.

Fully compliant and unarmed, D.H. then continued to obey the verbal commands and walked slowly with his hands up to the rear of the vehicle. At no time during this process did D.H. resist or pose a threat to the deputies. Once D.H. made it behind the vehicle, and before having been given a command to get on the ground, HOPPEL grabbed D.H. from behind in a bear hug and threw him to the ground face first for the purpose of injuring D.H. and not because such force was necessary to secure D.H.'s hands. Once on the ground, HOPPEL immediately punched the fully compliant D.H. in the face. While HOPPEL was punching D.H. in the face, two other SWAT Team members were next to D.H. At least one of the two SWAT Officers also physically struck D.H. without justification as D.H. was compliant. At the time that the other SWAT members struck D.H., he was fully compliant and subdued, posing no threat of physical harm to any officer or to himself.