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United States Attorney
District of Maryland
Northern Division BY

AT BALTIMORE
CLERK, U.S. DISTRICT COURT
DISTRICT OF MARYLAND

DEPUTY

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JW
Michel Miller Yasser
Assistant United States Attorney

November 17, 2011

Marshall Henslee, Esq.
Counsel for Defendant
204 Courtland Avenue
Towson, Maryland 21204

Re: *U.S. v. Timothy Berry*, WDQ 11-0520

Dear Counsel:

This letter, together with the Sealed Supplement, confirms the plea agreement which has been offered to the Defendant by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by Friday, November 25, 2011, it will be deemed withdrawn. The terms of the agreement are as follows:

Offense of Conviction

1. The Defendant agrees to waive indictment and plead guilty to a Superseding Criminal Information which will charge him in Count One with being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. §922(g)(1) and in Count Two with being a felon in possession of explosives, in violation of 18 U.S.C. §842(i)(1). The Defendant admits that he is, in fact, guilty of these offenses and will so advise the Court.

Elements of the Offense

2. The elements of the offense to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows:

Felon in Possession of a Firearm (Count One)

- a. That, on or about February 24, 2011, in the District of Maryland, the Defendant knowingly possessed a firearm, as that term is defined in 18 U.S.C. §921(a)(3), or ammunition;
- b. That the firearm or ammunition affected interstate commerce;
- c. That prior to February 24, 2011, the Defendant had been convicted of a crime punishable by imprisonment for a term exceeding one year and his civil rights had not been restored.

Felon in Possession of Explosives (Count Two)

- a. That, on or about February 24, 2011, in the District of Maryland, the Defendant knowingly possessed an explosive, as that term is defined in 18 U.S.C. §844(j);
- b. That the explosive or its components had been shipped or transported in or affecting interstate or foreign commerce;
- c. That prior to February 24, 2011, the Defendant had been convicted of a crime by imprisonment for a term exceeding one year and his civil rights had not been restored.

Penalties

3. The maximum sentence provided by statute for the offense to which the Defendant is pleading guilty is as follows: Count One: 10 years imprisonment, followed by a three-year term of supervised release, and a fine of \$250,000; Count Two: 10 years imprisonment, followed by a three-year term of supervised release, and a fine of \$250,000. In addition, the Defendant must pay \$200.00 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664.¹ If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and then violates the conditions of his supervised release, his supervised release could be revoked - even on the last day of the term - and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

¹ Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of \$2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest on that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C. § 3612(f)(3).

Waiver of Rights

4. The Defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:

a. If the Defendant had persisted in his plea of not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. That trial could be conducted by a judge, without a jury, if the Defendant, this Office, and the Court all agreed.

b. The Defendant has the right to have his case presented to a Grand Jury, which would decide whether there is probable cause to return an indictment against him. By agreeing to proceed by way of Information, he is giving up that right, and understands that the charges will be filed by the United States Attorney without the Grand Jury.

c. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

d. If the Defendant went to trial, the government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

e. The Defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from his decision not to testify.

f. If the Defendant were found guilty after a trial, he would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against him. By pleading guilty, the Defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

g. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that he may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

h. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

i. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status. The Defendant recognizes that if he is not a citizen of the United States, pleading guilty may have consequences with respect to his immigration status. Under federal law, conviction for a broad range of crimes can lead to adverse immigration consequences, including automatic removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and the Defendant understands that no one, including his/her attorney or the Court, can predict with certainty the effect of a conviction on immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any potential immigration consequences.

Advisory Sentencing Guidelines Apply

5. The Defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the "advisory guidelines range") pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

6. This Office and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto, which this Office would prove beyond a reasonable doubt, and to the following applicable sentencing guidelines factors:

Group One: Felon in Possession of a Firearm (Count One)

a. Pursuant to U.S.S.G. § 2K2.1(a)(6), the base offense level is **fourteen (14)** because the Defendant was a prohibited person at the time the Defendant committed the instant offense.

b. Pursuant to U.S.S.G. § 2K2.1(b)(6), the offense level is increased by **four (4)** because the defendant used or possessed any firearm or ammunition in connection with another felony offense; namely, reckless endangerment.

c. This Office and the Defendant agree that the following sentencing guidelines factor is in dispute: Whether, pursuant to U.S.S.G. § 3C1.1, the offense level should be increased by **two (2)** because the defendant willfully obstructed and impeded, and attempted to obstruct and impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction and the obstructive conduct related to the defendant's offense of conviction and related conduct. **Group One Total= either eighteen (18), without the obstruction enhancement, or twenty (20), with the obstruction**

enhancement.

Group Two: Felon in Possession of Explosives (Count Two)

a. Pursuant to U.S.S.G. § 2K1.3, the base offense level is sixteen (16) because the Defendant was a prohibited person at the time the Defendant committed the instant offense. **Group Two Total = sixteen (16).**

b. Pursuant to U.S.S.G. § 2K1.3(b)(3), the offense level is increased by **four (4)** because the defendant used or possessed any ~~firearm or ammunition~~ in connection with another felony offense; namely, reckless endangerment. *explosives (RMV) MTH*

c. This Office and the Defendant agree that the following sentencing guidelines factor is in dispute: Whether, pursuant to U.S.S.G. § 3C1.1, the offense level should be increased by **two (2)** because the defendant willfully obstructed and impeded, and attempted to obstruct and impede, the administration of justice with respect to the investigation, prosecution, or sentencing of the instant offense of conviction and the obstructive conduct related to the defendant's offense of conviction and related conduct. **Group One Total= twenty (20), without the obstruction enhancement, or twenty (22), with the obstruction enhancement.**

Group One and Two: Combined Offense Level

a. Pursuant to U.S.S.G. § 3D1.4(a), Group Two is counted as one Unit, and Group One is counted as one Unit because it is equally serious and between 1 to 4 levels less serious than Group Two, for a total of 2 Units.

b. Pursuant to the table set forth at U.S.S.G. § 3D1.4, 2 levels are added to the Group with the highest offense level (Group Two), resulting in a **combined Offense Level of either twenty-two (22), without the obstruction enhancement, or twenty-four (24), with the obstruction enhancement.**

Acceptance of Responsibility

a. This Office does not oppose a two-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the Defendant's timely notification of his intention to plead guilty. This Office may oppose *any* adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to

sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty.

b. With acceptance of responsibility, the **Final Adjusted Offense Level is either nineteen (19), without the obstruction enhancement, or twenty-one (21), with the obstruction enhancement.**

7. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

8. This Office and the Defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines will be raised or are in dispute.

Obligations of the United States Attorney's Office

9. At the time of sentencing, this Office will recommend a sentence within the Guidelines range. At the time of sentencing, this Office will move to dismiss the pending Indictment against the Defendant.

10. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the counts of the Indictment that this Office has agreed to dismiss at sentencing.

Forfeiture

11. The defendant understands that the court will, upon acceptance of his guilty plea, enter an order of forfeiture as part of his sentence, and that the order of forfeiture may include assets directly traceable to his offense, substitute assets and/or a money judgment equal to the value of the property derived from, or otherwise involved in, the offense. Specifically, the court will order the forfeiture of any property used to commit or to facilitate the commission of the offense and all property involved in the offense, including but not limited to the following:

**FEG Model PJK9 handgun, Serial Number B80325
Mossberg Model 535 12-gauge shotgun, Serial Number AT115015
magazines, ammunition, explosives and explosive-making materials
seized on February 24, 2011 in the District of Maryland**

The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2 and 43(a)

regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

Assisting the Government with Regard to the Forfeiture

12. The defendant agrees to assist fully in the forfeiture of the foregoing assets. The defendant agrees to disclose all of his assets and sources of income to the United States, and to take all steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. The defendant further agrees that he will not assist any third party in asserting a claim to the forfeited assets in an ancillary proceeding and that he will testify truthfully in any such proceeding.

Waiver of Further Review of Forfeiture

13. The defendant further agrees to waive all constitutional, legal and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also agrees not to challenge or seek review of any civil or administrative forfeiture of any property subject to forfeiture under this agreement, and will not assist any third party with regard to such challenge or review or with regard to the filing of a petition for remission of forfeiture.

Waiver of Appeal

14. In exchange for the concessions made by this Office and the Defendant in this plea agreement, this Office and the Defendant waive their rights to appeal as follows:

- a) The Defendant knowingly waives all right, pursuant to 28 U.S.C. § 1291 or otherwise, to appeal the Defendant's conviction;
- b) The Defendant and this Office knowingly waive all right, pursuant to 18 U.S.C. § 3742 or otherwise, to appeal whatever sentence is imposed (including the right to appeal any issues that relate to the establishment of the advisory guidelines range, the determination of the defendant's criminal history, the weighing of the sentencing factors, and the decision whether to impose and the calculation of any term of imprisonment, fine, order of forfeiture, order of restitution, and term or condition of supervised release).
- c) Nothing in this agreement shall be construed to prevent the Defendant or this

Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), or from appealing from any decision thereunder, should a sentence be imposed that resulted from arithmetical, technical, or other clear error.

- d) The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Obstruction or Other Violations of Law

15. The Defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, or (iii) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the agreement pursuant to this paragraph.

Court Not a Party

16. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant

will receive. The Defendant agrees that no one has made such a binding prediction or promise.


Entire Agreement

17. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The Defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this agreement, please sign and have the Defendant sign the original and return it to me promptly.

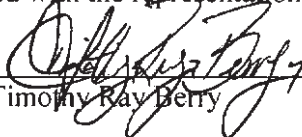
Very truly yours,

Rod J. Rosenstein
United States Attorney

By: 
Rachel M. Yasser
Assistant United States Attorney

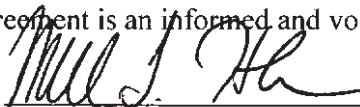
I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

11-29-11
Date


Timothy Ray Berry

I am Mr. Berry's attorney. I have carefully reviewed every part of this agreement, including the Sealed Supplement, with him. He advises me that he understands and accepts its terms. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

11-29-11
Date


Marshall Henslee, Esq.

ATTACHMENT A

The Defendant stipulates and agrees that if this case had proceeded to trial, the government would have proven the following facts beyond a reasonable doubt. The Defendant also stipulates and agrees that the following facts do not encompass all of the evidence that would have been presented had this matter proceeded to trial.

The defendant, **TIMOTHY RAY BERRY** ("**BERRY**"), is a 38 year-old resident of Owings Mills, Maryland. Prior to February 13, 2011, **BERRY** was previously convicted of at least one felony punishable by a term of imprisonment exceeding one year, and his civil rights have not been restored.

On February 13, 2011, **BERRY** assaulted a minor by shooting him in the leg with a BB gun. **BERRY** also maintained a loaded, unsecured handgun and explosives at his residence, where minors were present, a crime of reckless endangerment under Maryland law and punishable by over one year imprisonment.

On February 24, 2011, the Baltimore County Police Department Crimes Against Children (CAC) Unit executed a search warrant at **BERRY**'s residence located in an apartment building. The BB gun used by **BERRY** to assault the minor was recovered. **BERRY** was also found to be in possession of a loaded FEG 9 mm handgun, a 12-gauge Mossberg shotgun, 3 boxes of ammunition, handcuffs, brass knuckles, several BB guns, a pellet gun, airsoft pistols, and a Street-Wise 200,000 Volt stun gun. Law enforcement also observed in **BERRY**'s residence several improvised explosive devices, including "C-4" explosive material— a gray, putty-like material wrapped in plastic- as well as a clear plastic container containing a gray powder and a M-800 Pyrotechnic device and secured with a white lid with a burnt hole in the center.

A second search warrant was executed at **BERRY**'s house by the Baltimore County Hazardous Devices Team (HDT) for evidence relating to the manufacturing of illegal improvised explosives, and **BERRY** was found to be in possession of the following materials commonly used in the production of illegal improvised explosives: containers of potassium nitrate and potassium chlorate, smokeless shotgun powder, petroleum jelly, model rocket igniters and motors, heating tablets containing hexamine, pool chemicals, various types of fuse materials, numerous pieces of PVC and metal pipe, of varying lengths, and PVC and metal pipe fittings, measuring cups, funnels, mixing containers, and several packs of vinyl gloves.

BERRY also possessed the following books related to firearms and the manufacture of illegal improvised explosives: New and Improved C-4; The Chemistry of Powder and Explosives; The Anarchist Cookbook; Blaster's Handbook; The Anarchist Arsenal; Homemade Semtex; Improvised Radio Detonation Techniques; The Do-It-Yourself Gunpowder Cookbook; Law and Disorder- Rearming the 66mm Light Anti-Tank Weapon; Improvised Munitions Black Book Volume 2; Military TM 31-210 Improvised Munitions Handbook; Military FM 31-201-1 Unconventional Warfare; Military FM 5-24 Explosives and Demolitions; Home Workshop

Explosives; Home-Built Claymore Mines; Ragnar's Homemade Detonators- How to Make 'Em, How to Salvage 'Em, How to Detonate 'Em. **BERRY** had underlined and starred book titles including "Clear Your Record & Own a Gun," and "How to Lose Your X-Wife Forever."

BERRY's computer was seized searched pursuant to a search warrant. The forensic review of the computer revealed that, as recently as January 26, 2011, **BERRY** had searched online for instructions on how to make homemade C-4, and how to fabricate tags for Maryland License Plates.

On March 1, 2011, following **BERRY**'s arrest and detention on state charges related to child abuse, reckless endangerment, and gun possession, and with knowledge of the imminent federal investigation, **BERRY**, from jail, placed a telephone call in which he instructed another individual to "burn" the "other books" and to "just get rid of 'em so there's like, no, you know, evidence." **BERRY** ordered that "anything that looks like it could be suspect or anything, just get rid of it completely." He further instructed to "throw it in that little bowl and burn it."

The handgun and shotgun recovered on February 24, 2011 were found to be operable and are firearms under 18 U.S.C. § 921(a)(3). The firearms, ammunition, and materials used to manufacture the explosives recovered were manufactured outside the State of Maryland and therefore affected interstate commerce prior to recovery.

12/1/11
Date



Timothy Ray Berry

12-1-11
Date



Marshall Henslee, Esq.