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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10 United States of America,
11 Plaintiff,

12 vs.

13
14 Mario Chagolla, Jr.,
15 Defendant.

No. CR-13-8150-PCT-DJH

**UNITED STATES' SENTENCING
MEMORANDUM**

16
17 The United States of America, by and through undersigned counsel, hereby
18 provides its Sentencing Memorandum, respectfully requesting that this Court accept the
19 plea agreement and sentence the defendant to 10 years imprisonment, followed by 3 years
20 supervised release, as stipulated in the plea agreement. The United States' position is
21 supported by the attached Memorandum.

22 Respectfully submitted this 8th day of September, 2015.

23 JOHN S. LEONARDO
United States Attorney
24 District of Arizona

25 s/Dimitra H. Sampson
26 DIMITRA H. SAMPSON
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MEMORANDUM**I. Facts**

The facts of this case will not be repeated herein as they are summarized generally in the presentence report. Although this Sentencing Memorandum is being submitted, undersigned counsel intends to address the Court in detail at the time of sentencing regarding the evidence in this case and the United States' position in favor of acceptance of the plea agreement with the stipulations therein. It is difficult to fully summarize the facts and evidence in this case in this Memorandum, as numerous interviews have taken place over the last two years, and most of the witnesses have been interviewed on a number of occasions.

II. The Guidelines

Although technically, the presentence writer has properly calculated the applicable advisory sentencing guidelines in this case, and the defendant did not object, in the interests of fairness, the United States had not contemplated the two level enhancement for restraint, pursuant to U.S.S.G. 3A1.3. Although at least one witness indicated the victim was restrained with duct tape when he was stabbed, it is not entirely clear from the contradictory evidence whether the victim was restrained before he was killed and/or whether he was restrained at all. In addition, no duct tape was located at either crime scene. Because the standard of proof is preponderance of the evidence, one witness's statement may be sufficient; however, had this enhancement not been added, the applicable advisory sentencing guidelines range would have been 78 to 97 months.

The defendant previously objected to the draft presentence report for recommending an upward departure and/or variance for Extreme Conduct, pursuant to U.S.S.G. 5K2.8. As the United States' Response to those objections indicated, there was evidence in this case that the defendant's conduct was extreme with regard to the post-mortem conduct. Although post-mortem conduct does not necessarily exemplify: "torture of a victim, gratuitous infliction of injury, or prolonging of pain or humiliation" as set forth in the Guidelines, it is otherwise "heinous, cruel, brutal or degrading to the

1 victim” as stated in the United States’ Response. Therefore, this Court may, and should,
2 consider the extreme post-mortem conduct in sentencing the defendant.

3 The United States does not necessarily concur with a four-level upward departure
4 and/or variance in this case, however, particularly since the defendant did not act alone
5 with respect to the post-mortem conduct. In full candor, the United States had
6 contemplated arguing Extreme Conduct, but not a two-level enhancement for restraint
7 under the guidelines. Therefore, even if a two-level upward departure and/or variance
8 were recommended for Extreme Conduct, the resulting applicable guidelines range
9 recommended by the United States would have been the same as what the presentence
10 writer initially calculated (97 to 121 months).

11 **III. Sentencing Recommendation**

12 The United States respectfully recommends that this Court accept the plea
13 agreement and sentence the defendant to 10 years imprisonment, as stipulated in the plea
14 agreement. This represents the high end of the recommended applicable advisory
15 sentencing guidelines range of 97 to 121 months, as initially calculated by the
16 presentence writer. Although the presentence writer’s recommendation for 15 years is
17 reasonable, and 10 years may, at first glance, appear to be a relatively lenient sentence in
18 this case, that is in large part because of the post-mortem conduct. As the case agent
19 stated, the homicide itself in this case was very similar to many, if not most, that take
20 place on the reservation, particularly involving intoxicated persons. And for reasons
21 which will be set forth in more detail herein as well as at the time of sentencing, the
22 unique facts and circumstances of this case justify consideration of a seemingly more
23 “lenient” plea.

24 The recommended sentence satisfies the Title 18, United States Code, Section
25 3553(a) factors. It goes without saying that this was a very serious offense. But it is
26 important to note that the defendant pled guilty to Voluntary Manslaughter, and as he
27 mentioned to many of the witnesses in this case, he claimed that he was acting in self-
28 defense, or at least with adequate provocation or in the heat of passion. The United

1 States does not necessarily concede this fact (certainly not a legal assertion of self-
2 defense); however, undersigned counsel also recognizes, with the unique facts and
3 circumstances present in this particular case, to include the victim's lengthy criminal
4 history, the defense would be able to provide evidence of this at trial.

5 The defendant does have a lengthy criminal history; however, it is accounted for in
6 his criminal history category. It is also apparent from his criminal history that almost
7 every arrest and/or conviction is related to his obvious alcohol and substance abuse
8 addiction. This does not, in any way, justify his history, but it is relevant to the
9 sentencing factors this Court must consider, which include the defendant's history and
10 characteristics, as well as his need for rehabilitation and treatment. It is also important to
11 note that while the defendant's criminal history is not unlike many criminal histories seen
12 in other Indian Country cases, because the defendant is not Native American and did not
13 reside on the reservation, his convictions are counted in his criminal history category,
14 which would not be the case if he was Native American with only tribal convictions.

15 Among the many other sentencing factors this Court must consider, avoiding
16 sentencing disparities between similarly situated defendants is crucial. Most Voluntary
17 Manslaughter convictions committed on the reservation result in an applicable advisory
18 sentencing guidelines range of 63 to 78 months. Most Second Degree Murder cases have
19 an applicable sentencing guidelines range of 168 to 210 months, and even some of the
20 more "egregious" cases are still pled to ranges between 10 and 15 years, depending in
21 large part on the strength of the evidence.

22 This case is clearly "egregious", but mostly because of the post-mortem conduct.
23 This case is also a Voluntary Manslaughter as it is pled, not Second Degree Murder. In a
24 different case, with different facts and evidence, the United States may very well be
25 asking this Court to consider the dismissed and uncharged conduct. However, as
26 undersigned counsel will explain more fully at the time of sentencing, the strength of the
27 evidence in this case, or the lack thereof, is a critical factor here. The United States'
28 entire case regarding the murder relies on two witnesses who were clearly involved with

1 the post-mortem conduct, and perhaps more. There are several unknowns with respect to
2 the killing itself.

3 Both of the witnesses are severe alcoholics and have provided inconsistent
4 statements to law enforcement. One of the witnesses, Ted Gia, actually has a lengthy
5 history of animosity towards the victim, and arguably a motive to kill the victim, even
6 though they were long-time friends. The victim had a lengthy history of abusing Gia's
7 girlfriend, who was also involved in an intimate relationship with Gia at one time.
8 Furthermore, Gia believed the victim was responsible for his long-time girlfriend's death
9 just months before the victim was murdered. The other witness, Larry Telese, admittedly
10 kicked the victim several times while he was unconscious on the ground. Of all of the
11 individuals involved, the defendant had the least history and/or contact with the victim.
12 By all accounts, there was a long period of time in which they left the victim alone, lying
13 unconscious (presumably deceased) on Gia's floor while they went to the casino and
14 other places before they returned and the post-mortem conduct commenced.

15 Both witnesses also assisted the defendant in dismembering, burning and
16 disposing of the victim's body. Gia cleaned up his home after the murder, and Telese
17 helped the defendant dispose of the remaining body parts. Neither of the witnesses
18 reported the murder to law enforcement, despite the fact that the victim was their friend.
19 No murder weapon was ever located with the victim's blood on it. In fact, the circular
20 saw in the defendant's car had no blood on it. Therefore, it is still unknown what was
21 used to dismember the victim (and to kill the victim for that matter), and the witnesses
22 have been inconsistent as to this fact. Some of the victim's remains were found at Gia's
23 house (as well as the victim's blood) and some of his remains were recovered at the
24 defendant's home (with blood in the defendant's trunk).

25 Therefore, the post-mortem conduct is scientifically provable, unlike the homicide,
26 which relies solely on witness testimony. There is always a risk with relying solely on
27 eye-witness testimony, but those potential issues are amplified in this case for the reasons
28 stated above and more. Without the defendant's admission to the killing itself, Accessory

1 After the Fact for a Voluntary Manslaughter carries a statutory maximum of only 7.5
2 years imprisonment. This was a factor seriously taken into account when fashioning a
3 fair and reasonable plea offer that would still represent the interests of justice and satisfy
4 the relevant federal sentencing factors.

5 **IV. Conclusion**

6 For all of these reasons, and for additional reasons which will be explained at the
7 time of sentencing, a 10 year sentence in this case is in the best interests of justice, and
8 the United States respectfully requests that this Court accept the plea agreement and
9 sentence the defendant in accordance therewith.

10 Respectfully submitted on this 8th day of September, 2015.

11 JOHN S. LEONARDO
12 United States Attorney
13 District of Arizona

14 s/Dimitra H. Sampson
15 DIMITRA H. SAMPSON
16 Assistant U.S. Attorney

17 **CERTIFICATE OF SERVICE**

18 I hereby certify that on this same date, I electronically transmitted the attached
19 document to the Clerk's Office using the CM/ECF System for filing a copy to the
20 following CM/ECF registrant:

21 James Belanger
22 *Attorney for the Defendant*

23 Haylee Campbell
24 U.S. Probation

25 s/ Keona Ross
26
27
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