

James J. Belanger (011393)
COPPERSMITH BROCKELMAN PLC
2800 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Tel: (602) 224-0999
Fax: (602) 224-6020
jbelanger@cblawyers.com

Attorneys for Defendant Mario Chagolla, Jr.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

United States of America,
Plaintiff,

v.

Mario Chagolla, Jr.,
Defendant.

3:13-CR-8150-PCT-DJH

**CHAGOLLA PRESENTENCE
MEMORANDUM**

This memorandum is being submitted in support of the stipulated Plea Agreement negotiated in this case between the United States and the Defendant, Mario Chagolla.

a. This Plea is Appropriate and Should be Accepted.

As the Court is aware, this plea agreement is one in which the parties agreed that “a specific sentence ... is the appropriate disposition of the case.” See Rule 11(c)(1)(C), Fed. Rules of Crim. Proc. The agreement itself was reached after months of intense negotiation between the parties and was based on a critical and very pragmatic review of the evidence, including the proposed testimony of the percipient witnesses. Mr. Chagolla has accepted responsibility and provided a factual basis for his role in the death of Dwayne Beauty. But

that was *not* the case the government confronted throughout this matter. Rather, this case was a series of inconclusive evidentiary facts and conflicting and inconsistent statements from persons - and Mr. Chagolla was not one of them - who had a significant motive to see Dwayne Beauty dead.

b. Mr. Chagolla Acknowledged His Role in this Matter.

What is set out below is not meant to undermine Mr. Chagolla's factual basis or acceptance of responsibility, but to advise the Court and put into context the risk that the United States and Mr. Chagolla were confronting in evaluating this case and in negotiating the plea agreement. Mr. Chagolla plead guilty to voluntary manslaughter. As recounted in the factual basis, both Chagolla and the victim were extremely intoxicated. The victim initiated a confrontation to which Mr. Chagolla responded. Mr. Chagolla used a knife and stabbed the victim knowing that the knife could result in the victim's death, but acting in disregard of that fact.

c. The Case Confronting the Government Was Problematic.

The foregoing factual basis notwithstanding, what is set out below is what the government was confronting in evaluating and processing this case:

There were believed to be three witnesses to the events of June 16, 2013, during which Dwayne Beauty, a person widely believed to be a child molester, a mean and vicious drunk, and a person widely disliked in his own community, was allegedly murdered in Ted Gia's house. Those witnesses were the defendant, Mario Chagolla, and the two uncharged principals and/or accessories after the fact, Ted Gia and Larry Telese.

According to the government's disclosure, the facts of what actually happened were

not clear other than that, at a time when all involved had been drinking very heavily at Gia's house¹, Dwayne Beauty and Mario Chagolla had some kind of physical altercation.

Chagolla and Beauty fought, Beauty went down, and by all accounts, was immediately unconscious. The witnesses agree on this point—Beauty never regained consciousness.²

Gia has said on at least two occasions that the fight was mutual and one time said it was initiated by Beauty.

Other than the statements about Beauty losing consciousness, there is no consistent, uncompromised, non-self-serving evidence about what happened over the next several hours. Both Gia and Telese, who were not charged and who were at least accessories, if not principals, gave many inconsistent versions of events to various law enforcement.

Telese, in particular, provided accounts of what happened that varied in substance and detail depending on who was asking the questions and what information he was provided before the question was asked. As Telese repeatedly told the FBI agents during his interview on September 24, 2013, he was willing to tell them whatever they wanted to hear “just as long as it helps me out.”³ Telese was an alcoholic of such magnitude that, in the middle of an FBI interview, he snuck away to get a drink.⁴ And several law enforcement reports note that he vomited during interviews because of alcohol withdrawal.⁵ He also failed a polygraph examination regarding his version of events and his role in Beauty's homicide.⁶

¹ Gov't Disclosure p. 351 (Ted Gia: “Everyone was buzzed.”).

² Gov't Disclosure pp. 353 (Ted Gia: “It looked like Dwayne had been knocked out cold after Mario had punched him.”), 313 (Larry Telese: Beauty was immediately knocked unconscious because he was drunk).

³ Gov't Disclosure p. 301.

⁴ Gov't Disclosure p. 317.

⁵ *See, e.g.*, Gov't Disclosure p. 170 (“Telese was suffering tremors and vomiting from alcohol withdrawal.”).

⁶ Gov't Disclosure 2006-10.

According to DNA analysis, Beauty's blood was apparently found on Gia's floor. Assuming that is so, we agree that it appears almost certain that Beauty died there after some kind of fight or confrontation. It is indeterminate how long the fight lasted or how it started or how Beauty actually died. Gia and Telese have each given multiple, inconsistent statements to the Yavapai-Apache police and the FBI. In those various statements, they have said that:

- Beauty was kicked by Telese, three times.⁷ Telese admitted to stomping on Beauty's head after Beauty fell to the ground after the fight with Chagolla.
- Beauty died because he was punched and kicked. Or, he died because he was stabbed. Both Gia and Telese gave two entirely different accounts of the fight, one where it was a beating with feet and hands, and one where it was a stabbing with a knife.⁸
- There was also conflicting testimony regarding whether Beauty was restrained, and no physical evidence of restraint. Gia in one interview said there was no tape or restraint.⁹

As for the reason the fight between Chagolla and Beauty started, several reasons were proffered -- it might have been because Chagolla was getting back at Beauty for killing Gia's girlfriend. Or it might have been mutual fight, or it might have started because Chagolla said something to Beauty about being a child molester¹⁰ and a bully who routinely beat his own girlfriend.¹¹ Or the fight might have been started by Beauty, who was widely known to be

⁷ Gov't Disclosure pp. 162, 353.

⁸ Gov't Disclosure pp. 353-54 (Gia gives an account of the fight that does not involve a knife), 358-59 (during the same interview, Gia gives a separate account that includes the knife), 305-13 (Telese gives an account of the fight that does not involve a knife, and then gives a different account after an FBI agent prompts him, "I think we skipped a part there about the knife and the tape and the stabbing." (308)).

⁹ Gov't Disclosure p. 2, 162, 305-08 (Telese gives account of the fight that does not include tape).

¹⁰ Gov't Disclosure p. 361 ("people had been after Dwane for trying to molest a child.").

¹¹ *See, e.g.*, Gov't Disclosure p. 212 ("Beauty then struck [his girlfriend, Pam Jackson] in the face telling her

violent, grossly recidivist predator, particularly when he was drinking.¹² Consider this sampling of events from Beauty's past:

- Beauty told his girlfriend, Pam Jackson, that he had killed Kathy Englund, and that he would kill Jackson, too.¹³
- While drunk, Beauty molested a young girl.¹⁴
- While drunk, Beauty struck Kathy Jackson in the face, pushed Gia to the ground, and caused Kathy Englund to fall and strike her head on a wood stove. Englund died later that night.¹⁵
- Beauty has repeatedly been charged with domestic violence and assault, including multiple attacks on women as well as an elderly relative.

After he died, perhaps several hours after, Beauty's body was said to have been dismembered and later burned, and this does appear to be the case. Gia and Telese's statements about the aftermath and their role in it, however, were just as confused, inconsistent and self-serving as their statements about the fight:

- Gia, Telese, and Chagolla left the house to go to the house of an acquaintance, then to the nearby Cliff Castle Casino.¹⁶
- Chagolla left the house, and Gia and Telese stayed there, playing dominoes for two hours and allegedly did nothing with Beauty's bloody body on the floor.¹⁷

'Be Quiet, shut the fuck up and sit there'!").

¹² Gov't Disclosure pp. 95 (4/21/2011 charges for assault and disorderly conduct), 350 (Beauty admitted that he killed Kathy Englund, tried to fight Ray Smith, and threatened to beat up Gia when they were drinking together), 361 (Beauty molested a girl while he was drunk), 488 (while drunk, Beauty struck his girlfriend in the face, pushed Gia down to the floor, and caused Kathy Englund to fall and strike her head on a wood stove), 498 (Beauty told his girlfriend that he had killed Kathy Englund and would kill her, too), 499 ("[E]veryone knew that Dwayne's death was retaliation for what he had done to Kathy, Pam, and the young girl that he had been caught with.").

¹³ Gov't Disclosure pp. 350, 498.

¹⁴ Gov't Disclosure p. 361.

¹⁵ Gov't Disclosure p. 488.

¹⁶ Gov't Disclosure pp. 354-355.

¹⁷ Gov't Disclosure pp. 314, 172.

- Chagolla used a circular saw to dismember the body. Chagolla did not use a saw.¹⁸ (No blood was ever found on any saw, nor was there blood spatter consistent with the use of any kind of electrically powered saw.)
- Parts of Beauty's body were burned at Gia's house.¹⁹ No, Chagolla left and burned them later.²⁰
- Chagolla never said anything to Telese about how he disposed of the body parts. No, he actually told Telese that he had burned them.²¹

Mr. Chagolla did appear to have been involved in the aftermath in terms of burning remains, although family members later said he was acting out of his mind.²²

d. Gia and Telese Are Not Credible and Had a Motive to Kill Beauty.

Aside from the fact that Gia and Telese's accounts of events were confused, inconsistent and contradictory, there were additional reasons to believe they are lying.

First of all, both Gia and Telese have admitted that they were at least accessories to the killing, and after the fact. Gia said that he gave Chagolla a roll of duct tape as well as a knife²³ (that is, in the versions of Gia's story that included those items), and that he helped place Beauty's remains into a car outside the house.²⁴ Telese, meanwhile, admitted that he kicked Beauty while he was down on the ground, while saying "This is for Kathy [Englund]."²⁵ Telese also said he helped get rid of Beauty's remains.²⁶

¹⁸ Gov't Disclosure p. 2.

¹⁹ Gov't Disclosure p. 161.

²⁰ Gov't Disclosure p. 173.

²¹ Gov't Disclosure p. 326.

²² Gov't Disclosure pp. 530-531 (Mario Sr.: "He was acting crazy, like – like he's on drugs and drinking. Real crazy. I mean out of his mind, man."); 572 (Socorro: "My daughters said he was saying some crazy things"); 598 (Joy: "[H]e was saying really crazy things")

²³ Gov't Disclosure p. 2.

²⁴ Gov't Disclosure p. 357.

²⁵ Gov't Disclosure p. 162.

²⁶ Gov't Disclosure p. 322-323.

Second, Gia and Telese's statements about their actions and their actions that night and afterward were incredible. Neither one tried to intervene in the fight between Chagolla and Beauty. In fact, they participated—against Beauty. Then Chagolla left the house for an extended period of time, during which Gia and Telese were alone with Beauty. During that time, neither Gia nor Telese called 911, or attempted to take Beauty to a hospital. Gia says that he immediately started mopping the blood off the floor.²⁷ Telese claims that he and Gia simply sat at the table during that time, continuing their game of dominoes.²⁸ Either Telese is lying, or he and Gia just allowed Beauty to die with no intervention or assistance. Even after it was all over, and Chagolla was long gone, neither Gia nor Telese ever called the police to report what had happened.

Third, Gia and Telese were the ones with a motive to kill Beauty. Both Gia and Telese wanted revenge for the death of Kathy Englund. On April 20, 2013, just two months before this incident, a group had gathered at Gia's house—Beauty, Pam Jackson (Beauty's girlfriend), Gia, and Kathy Englund (Gia's girlfriend).²⁹ They were all "highly intoxicated." Beauty wanted to take Englund into a bedroom to have sex with her. Gia tried to object. Beauty then "shoved Gia down to the floor," and Gia got up and fled to a bedroom. Englund stood up to follow Gia, but Beauty grabbed her wrist. Englund fell, allegedly striking her head on the corner of a stove. The only remaining witness, Pam Jackson, gasped, and "Beauty then struck . . . her in the face telling her 'Be Quiet, shut the fuck up

²⁷ Gov't Disclosure p. 354.

²⁸ Gov't Disclosure pp. 314, 172.

²⁹ The account of Kathy Englund's death comes from Pam Jackson. See Gov't Disclosure p. 212.

and sit there’!”³⁰ Jackson blacked out. When she regained consciousness, Beauty was telling her that Gia and Englund had gone to sleep, and they should leave. Englund never woke up. Notwithstanding evidence of blunt force trauma, the medical examiner concluded that she died of alcohol poisoning.³¹

Approximately one month later (mid-May of 2013), Beauty was in jail on a charge unrelated to Englund’s death. Jackson went over to Gia’s house. They drank together and “messed around.”³² “During the conversation Gia told Jackson that [Beauty]’s time was coming. . . . Gia told Jackson that [Beauty] had something to do with Gia’s former girlfriend Kathy’s death.”³³ This was approximately one month before Beauty’s death on June 16. In addition to telling Pam Jackson that Beauty’s time was coming, Gia told the FBI that Beauty had threatened to beat him up, that he was tired of being pushed around by Beauty, and that he wanted to jump Beauty.³⁴ Several weeks before Beauty died, Beauty was arrested for trespassing at Gia’s house.

Telese also had a motive to seek retribution against Beauty for the death of Englund. According to Gia, while kicking Beauty, Telese yelled “This is for Kathy [Englund].”³⁵

Finally, there were a number of other people who might have wanted Beauty dead. Pam Jackson was one. As one member of the Yavapai-Apache tribe told the FBI, “everyone knew that Dwayne’s death was retaliation for what he had done to Kathy, Pam, and the

³⁰ Gov’t Disclosure p. 212.

³¹ Gov’t Disclosure pp. 424-31.

³² Gov’t Disclosure pp. 361, 363.

³³ Gov’t Disclosure p. 361.

³⁴ Gov’t Disclosure p. 350.

³⁵ Gov’t Disclosure p. 162

young girl that he had been caught with.”³⁶

e. The Plea is Appropriate in Light of the Government’s Evaluation.

As noted above, the government’s case against Mr. Chagolla was based on the inconsistent, conflicting, and often nonsensical statements of two witnesses. Both of the witnesses were extremely intoxicated at the time, both had reasons for wanting Beauty dead, and both admitted involvement in Beauty’s death and the aftermath. There was a substantial and legitimate question about whether the government could prove this case beyond a reasonable doubt. Mr. Chagolla’s plea and acceptance of responsibility allowed this case to resolve, at least as to him.

f. Gia and Telese’s Account of the Aftermath is Unreliable.

Although Mr. Chagolla accepted responsibility for his role in Beauty’s death and provided a factual basis for his conduct, this did not include the aftermath. Other than Mr. Chagolla’s disposal of parts of the body, it is speculation what happened to Mr. Beauty in the time after he was stabbed, unconscious on the ground, and alone in a house with Gia and Telese for at least two hours. There is no credible evidence that that Mr. Chagolla dismembered the victim’s body post-mortem with a circular saw, or that he pulled out the victim’s teeth. There is evidence that he was involved in burning parts of the body. What happened in the hours that Gia and Telese were alone in Gia’s house with Beauty unconscious is not known.

³⁶ Gov’t Disclosure p. 499.

Conclusion

The statement of the FBI case agent in this case from the Pre-Sentence Report is perhaps the best and most objective characterization of this matter. “He stated it involved two men, who have a history of substance abuse, getting into a physical altercation, in which one of them managed to gain the upper hand and stab the other. ... He does not believe that premeditation was involved in this case. The agent believes the 10 year stipulation is appropriate, since this case did not involve the most credible witness testimony” and they are unsure of the involvement of the other witnesses.

The stipulated plea agreement in this case, reached after very long, intense and considered deliberation, is appropriate and should be accepted.

Respectfully submitted on September 14, 2015.

COPPERSMITH BROCKELMAN PLC

By: /s/ James J. Belanger

James J. Belanger
2800 North Central Avenue, Suite 1200
Phoenix, Arizona 85004
Tel: (602) 381-5476
Fax: (602) 772-3776
jbelanger@cblawyers.com

Attorneys for Defendant Mario Chagolla, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing a copy to the following CM/ECF registrant:

Dimitra H. Sampson
Assistant U.S. Attorney
United States Attorney's Office

/s/ Verna Colwell _____