

**BRYAN T. DAKE**  
**Assistant U.S. Attorney**  
**U.S. Attorney's Office**  
**P.O. Box 3447**  
**Great Falls, MT 59403**  
**119 First Ave. N., Suite 300**  
**Great Falls, MT 59403**  
**Phone: (406) 761-7715**  
**Fax: (406) 453-9973**  
**E-mail: Bryan.Dake@usdoj.gov**

**ATTORNEY FOR PLAINTIFF**  
**UNITED STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF MONTANA**  
**GREAT FALLS DIVISION**

<b>UNITED STATES OF AMERICA,</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>JANELLE RED DOG,</b>  <b>Defendant.</b>	<b>CR 16-60-GF-BMM</b>  <b>OFFER OF PROOF</b>
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Plaintiff, United States of America, by and through its counsel of record,  
Bryan T. Dake, Assistant U.S. Attorney for the District of Montana, hereby files its  
Offer of Proof.

**THE CHARGE**

The defendant, Janelle Red Dog, was charged in a Superseding Information

with Second Degree Murder, in violation of 18 U.S.C. §§ 1153(a) and 1111(a).

### **PLEA AGREEMENT**

The defendant, Janelle Red Dog, has stated she will enter a guilty plea to the charge listed in the Superseding Information. (Doc. 28.) A plea agreement was entered into between the parties and filed with the Court on April 26, 2017. (Doc. 27). The United States presented any and all formal plea offers to the defendant in writing. The motion for change of plea filed with the Court represents, in the government's view, the most favorable disposition of the case against the defendant. *See e.g., Missouri v. Frye*, 132 S. Ct. 1399 (2012).

### **ELEMENTS**

In order for the defendant, Janelle Red Dog, to be found guilty of Second Degree Murder, in violation of 18 U.S.C. §§ 1153(a) and 1111(a), as charged in the Superseding Information, the United States must prove each of the following elements beyond a reasonable doubt,

First, the defendant is an Indian person;

Second, the offense occurred within the exterior boundaries of the Fort Peck Indian Reservation;

Third, the defendant unlawfully killed K.O.; and,

Fourth, the defendant killed K.O with malice aforethought. To kill with malice aforethought means to kill either deliberately and intentionally or recklessly with extreme disregard for human life.

### **PENALTY**

The single count Superseding Information (Second Degree Murder) carries a maximum penalty of life imprisonment, up to a \$250,000 fine, five years of supervised release, and a \$100 special assessment.

### **ANTICIPATED EVIDENCE**

If this case were tried in United States District Court, the United States would prove the following:

On April 18, 2016, Janelle Red Dog was caring for K.O., a 13-month old baby. Red Dog had been caring for K.O. for approximately three to four weeks prior to the offense.

On the evening of April 18, 2016, Red Dog was in her bedroom with K.O., who had been sick with the flu and was suffering from the beginning stages of pneumonia. Red Dog said that K.O. was crying a lot and she could not get her to stop. Frustrated, Red Dog hit K.O. on the top of her head with an open hand. She hit her two times while she was in her high chair and another two times while K.O. was standing next to Red Dog's bed. According to Red Dog, shortly after the last blow, K.O. started to have a seizure. Red Dog said "she was clenching her teeth

and was out of it” and her breathing was also very labored. K.O. eventually stopped seizing and fell unconscious.

Later that evening a friend stopped by Red Dog’s house. He and Red Dog used methamphetamine, but Red Dog kept going to the back room to check on K.O, who she said had a cold and was not breathing well.

Sometime in the early morning hours, Red Dog became scared about K.O.’s condition and started driving K.O. toward the hospital, but K.O. stopped breathing while en route. Red Dog, believing K.O. to be dead, disposed of her body by placing her into a duffel bag and throwing the duffel bag in an alley trash can. Red Dog then went home and went to sleep.

Red Dog called 911 to report K.O. missing around 12pm. Tribal law enforcement began an investigation into the disappearance.

The next day, April 20, 2016, Red Dog confessed and told law enforcement K.O.’s location. Law enforcement responded to the dumpster, as directed by Red Dog, and found K.O.’s remains.

An autopsy was conducted and it was concluded that K.O. died as a result of multiple blunt force injuries. Her autopsy noted numerous bruises from head to toe in various stages of development, suggesting a pattern of continued physical abuse and neglect. There were also tears around K.O.’s mouth, suggesting someone may have placed their hand over her mouth. It could also not be determined if K.O. was

deceased at the time she was placed in the duffel bag, so asphyxia or cold exposure could not be ruled out as contributing to her death.

Janelle Red Dog is an enrolled member of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. The location of the offense is in Poplar, which is within the exterior boundaries of the Fort Peck Indian Reservation.

The United States would have presented this evidence through the testimony of law enforcement, expert witnesses, and lay witnesses.

DATED this 27th day of April, 2017.

MICHAEL W. COTTER  
United States Attorney

/s/ Bryan T. Dake  
BRYAN T. DAKE  
Assistant U.S. Attorney  
Attorney for Plaintiff