

IN THE UNITED STATES DISTRICT COURT FOR THE **F I L E D**
NORTHERN DISTRICT OF OKLAHOMA

JP MAR 14 2002

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

-vs-)

Case No. 00-CR-126-C ✓

RADMILLA A. CODY,)

aka "MILLIE",)

aka "MARILYN KELLY",)

Defendant.)

PLEA AGREEMENT

COMES NOW the United States of America, by and through David E. O'Meilia, United States Attorney for the Northern District of Oklahoma, and Assistant United States Attorneys **DOUGLAS A. HORN** and **CHAD A. GREER**, and the defendant, **RADMILLA A. CODY** in person and through her counsel, **STAN MONROE**, and respectfully informs the Court that they have reached the following agreement:

(A) DEFENDANT'S OBLIGATIONS

(1) Plea



Defendant's Initials

The defendant agrees to enter a voluntary plea of guilty to the following count:

COUNT ONE - Misprision of a felony in violation of Title 18, United States Code, Section 4

as set forth in the Bill of Information in cause number **00-CR-126-C**, Northern District of Oklahoma, and admits to being in fact guilty as charged in the count to which she is pleading guilty.

(2) Waiver of Constitutional Rights

(a) The defendant understands that by pleading guilty she will be giving up the following constitutional rights: the right to be indicted if proceeding by Information, the right to plead not guilty, the right to be tried by a jury, or if the defendant wishes and with the consent of the government, to be tried by a judge. At that trial, the defendant would have the right to an attorney and if the defendant could not afford an attorney, the Court would appoint one to represent the defendant. The defendant would have the right to assist in the selection of the jury. During the trial, the defendant would be presumed innocent and a jury would be instructed that the burden of proof is on the government to prove the defendant guilty beyond a reasonable doubt and by a unanimous verdict. The defendant would have the right to confront and cross-examine witnesses against the defendant. If the defendant wishes, the defendant could testify on her own behalf and present witnesses in her



Defendant's Initials

defense. On the other hand, if the defendant did not wish to testify, that fact could not be used against the defendant and a jury would be so instructed. If the defendant were found guilty after a trial, the defendant would have the right to appeal that verdict to determine if any errors had been committed during trial that would require either a new trial or a dismissal of the charges. By pleading guilty, the defendant will be giving up all of these rights. By pleading guilty, the defendant understands that the defendant may have to answer questions posed to her by the Court both about the rights that the defendant will be giving up and the factual basis for the defendant's plea. Any statements made by the defendant during such a hearing are not, in any civil or criminal proceeding, admissible against the defendant except as provided in Federal Rules of Criminal Procedure 11(e)(6).

(b) Appellate Rights: Limitations

The defendant agrees to waive all appellate rights, including any and all collateral attacks including but not limited to those pursued by means of a writ of habeas corpus, save and except claims of ineffective assistance of counsel.

(3) Special Assessment

The defendant hereby agrees to pay the total amount required for the Special Monetary Assessment (\$100 per felony count) to the Clerk, United States District Court, before the time of the sentencing hearing or as directed by the District Court.

(4) Factual Basis and Elements

In regard to the factual basis as required by Federal Rules of Criminal Procedure 11(f), the defendant agrees and stipulates that there is a factual basis for the plea of guilty and relieves the United States of any further obligation to adduce such evidence.

The defendant, **RADMILLA A. CODY**, admits that the acts constituting the crime of Misprision of a Felony are:

- 1) Commission of distribution of marijuana;
- 2) accused had full knowledge that marijuana was being distributed;
- 3) accused failed to notify authorities; and,
- 4) accused took affirmative step to conceal crime.

The defendant, **RADMILLA A. CODY**, admits that she knowingly and intentionally committed or caused to be committed the acts constituting the crime alleged in Count One of the Information filed in cause number **00-CR-126-C**, and confesses to the Court that she is in fact guilty of such crime.

Specifically, the defendant, **RADMILLA A. CODY**, states that on one occasion in September, 1998, at the request of **DARRELL DWIGHT BELLAMY** and at his house in Arizona, she assisted **DARRELL DWIGHT BELLAMY**

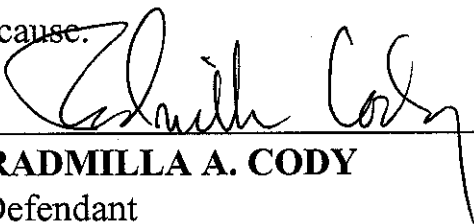
package large quantities of marijuana for distribution. Specifically, **RADMILLA CODY** helped **DARRELL DWIGHT BELLAMY** wrap large bundles of marijuana with "Saran" wrap, and mix in mustard, pepper and fabric softener with the packaging. She knew that coating and wrapping the marijuana in this fashion would conceal the odor of the marijuana from law enforcement officials. Additionally, **DARRELL DWIGHT BELLAMY** distributed said marijuana from his residence and with her knowledge. Further, **RADMILLA A. CODY** knew that assisting **DARRELL DWIGHT BELLAMY** wrap large amounts of marijuana to avoid police detection and to witness him distribute that marijuana to other individuals certainly constituted the felony offense of delivery of a controlled substance, to wit: marijuana. *Some of which was distributed in Oklahoma*

The defendant was in the Northern District of Oklahoma shortly after this incident and failed to report said incident to authorities

In addition, **RADMILLA A. CODY** states that during the six (6) year relationship she had with **DARRELL DWIGHT BELLAMY**, he would often physically strike her and threaten her with handguns. Specifically, on one occasion, **DARRELL DWIGHT BELLAMY**, in a fit of anger, put the barrel of a handgun inside her mouth. **RADMILLA A. CODY** states that her constant fear of **DARRELL DWIGHT BELLAMY** did not rise to the level of a complete defense to the crime with which she is charged, she does assert that it severely affected her decision to wrap marijuana at **DARRELL DWIGHT BELLAMY'S** request.


Defendant's Initials

Further, this continual fear of **DARRELL DWIGHT BELLAMY** affected her decision not to tell law enforcement authorities about **DARRELL DWIGHT BELLAMY** possessing and distributing said marijuana to other individuals. Finally, this constant fear of **DARRELL DWIGHT BELLAMY** did acutely affect her decision to commit perjury in her initial appearance in front of the grand jury in the instant cause.


RADMILLA A. CODY
Defendant

3/14/02
Date

(6) Cooperation of the Defendant

The defendant agrees to full cooperation with the United States Government and all of its various departments and agencies in the continuing investigation into the defendant's and other individuals' alleged criminal conduct. More particularly, the defendant agrees to completely disclose to the United States Government all of the information she is aware of, has access to, or which becomes available to him, concerning any alleged criminal conduct. As well, the defendant agrees to provide complete assistance and truthful testimony in any and all matters of alleged criminal conduct which she has knowledge of that arises out of this investigation. The defendant hereby agrees to cooperate fully with inquiries, whether criminal or civil in nature, made by or on behalf of any federal

law enforcement or regulatory agency, department or board. In this connection, the defendant agrees to make himself available to federal authorities for interviews whenever reasonably requested by them. The defendant shall cooperate by providing truthful, complete, and forthright information whenever, wherever, to whomever, and in whatever form an attorney or investigator from the government requests. The term "whatever form" includes, but is not limited to, oral responses to questions; sworn written statements; interrogatories; sworn testimony before a Grand Jury; sworn testimony in court; and production of documentary materials. The term "whomever" includes, but is not limited to, federal law enforcement agencies, the United States District Court and any duly empaneled federal juries or grand juries. Furthermore, the defendant agrees to undergo complete and thorough debriefing by the United States Government.

The government defines "full cooperation" to require complete, candid, and absolutely truthful disclosures by the defendant in response to any and all questions or inquiries that may be put to him in connection with such debriefings with law enforcement personnel, before any Grand Jury, or at any trial or related hearing. Additionally, the term "full cooperation" also includes following the directions of law enforcement officers in pursuing and gathering evidence in investigations of alleged criminal conduct involved in those investigations. In

contrast, the term "full cooperation" does not involve taking any action whatsoever to compromise any such investigation(s), including withholding information that could assist in any such investigation(s). It is further acknowledged that the government, acting in good faith, has the sole unilateral discretion to determine whether the defendant is providing "full cooperation" as defined above. The defendant further agrees to tender forthwith any and all records which she has, or to which she has access, which have a bearing upon her criminal activity.

(a) **Government Reserves Discretion to file U.S.S.G. § 5K1.1 Motion for Downward Departure**

If and when the assistance described in the preceding paragraphs has been fully completed, the United States, acting in good faith, in its sole discretion shall determine whether the defendant's assistance has been substantial. The United States is under no obligation to investigate and act upon information provided by the defendant. However, if the United States in fact derives substantial assistance as a result of information provided, the United States will so advise the Court. Upon a determination that the defendant has rendered substantial assistance, the United States will move for a downward departure pursuant to § 5K1.1 of the Sentencing Guidelines or pursuant to Federal Rule of Criminal Procedure 35(b),

as appropriate; provided, however, regardless of the nature and extent of any assistance given hereunder, the United States shall have no obligation to move for a downward departure if the defendant also knowingly furnishes information that is materially false, or acts in a manner that neutralizes her availability to be called as a truthful witness by the United States. Any good faith determination by the United States that the defendant has failed to provide substantial assistance or has knowingly provided materially false information is within the sole discretion of the United States. If the United States moves for a downward departure, whether to depart and the extent of any such departure shall be within the **SOLE DISCRETION** of the sentencing Court.

(B) THE GOVERNMENT'S OBLIGATIONS

(1) Further Prosecution

It shall not initiate additional criminal charges against the defendant in the Northern District of Oklahoma that, as of the date of the defendant's acceptance of this agreement, are known to the government and arise from its investigation of the defendant's actions and conduct giving rise to the instant Information, save and except criminal acts involving violations investigated by the United States Internal Revenue Service. The defendant understands, however, that this obligation is subject to all "Limitations" set forth below and that this Office is free to prosecute the

defendant for any illegal conduct (*i.e.*, violation of federal criminal laws) not discovered by or revealed to the government during its investigation or occurring after the date of this agreement.

(2) Dismissal of Remaining Charges.

If the Court finds the defendant's plea of guilty to be freely and voluntarily made and accepts the plea, then the United States will move, at the appropriate time, to dismiss count one (1) in the Second Superseding Indictment filed on July 13, 2001, in case number **00-CR-126-C**, as to this defendant.

(C) SENTENCE

(1) Statutory

The defendant acknowledges that the maximum statutory sentence under Title 18, United States Code, Section 4, is not more than three years imprisonment and/or a \$250,000 fine. Additionally, the defendant is aware, if imprisonment is imposed, that the Court may include as part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment, not to exceed one year.

If the term of supervised released for any count of conviction is revoked, the defendant may be imprisoned for an additional term not to exceed the term of imprisonment authorized in Title 18, United States Code, Section 3583(e)(3) for the offense of conviction, with no credit being given for any time served while on

supervised release. Further, if the crime of conviction occurred after September 13, 1994, the Court may impose another term of supervised release following any term of imprisonment imposed for a violation of supervised release conditions, and this term of supervised release may not exceed the term of supervised release originally authorized by statute for the offense of conviction less any term of imprisonment that was imposed upon revocation of supervised release (Title 18, United States Code, Section 3583(e) and (h)). If a second or subsequent term of supervised release is revoked, the Court may impose another term of imprisonment not to exceed the difference between any imprisonment imposed for a prior revocation of supervised release for the offense of conviction and the term of imprisonment authorized pursuant to Title 18, United States Code, Section 3583(e)(3). Accordingly, the original term of imprisonment when combined with any term of imprisonment arising from revocations of supervised release, may result in a total amount of imprisonment greater than the statutory maximum term for the offense of conviction.

(2) Guidelines

The defendant is aware that the sentence to be imposed shall be in conformity with the Sentencing Guidelines promulgated pursuant to the Sentencing Reform Act of 1984 at Title 18, United States Code, Section 3551 through Section 3742, and Title 28, United States Code, Section 991 through Section 998, and that a sentence

imposed under the Guidelines is without parole. The defendant is further aware that the sentence has not yet been determined by the Court, that any estimate of the likely sentence received from any source is a prediction, not a promise, and that the Court has the final discretion to impose any sentence up to the statutory maximum. The defendant further understands that all recommendations or requests by the United States pursuant to this agreement are not binding upon the Court (Sentencing Guidelines §6B1.4(d)). The Court will impose a sentence within the appropriate guideline range, unless the Court finds there is a basis for departure because there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines.

If the sentencing court should impose any sentence up to the maximum established by statute, the defendant cannot, for that reason alone, withdraw her guilty plea, but will remain bound to fulfill all of her obligations under this agreement.

Nothing in the plea agreement, save and except any stipulations contained herein, limits the right of the United States to present to the Court or Probation Office, either orally or in writing, any and all facts and arguments relevant to the defendant's sentence and the defendant's criminal history category, that are available to the United States at the time of sentencing. The United States reserves its full right

of allocution pursuant to Rule 32(c)(3)(D) of the Federal Rules of Criminal Procedure.

THE DEFENDANT FURTHER UNDERSTANDS THAT THE SENTENCE TO BE IMPOSED UPON THE DEFENDANT WILL BE DETERMINED SOLELY BY THE SENTENCING JUDGE. THE UNITED STATES CANNOT AND DOES NOT MAKE ANY PROMISE OR REPRESENTATION AS TO WHAT SENTENCE THE DEFENDANT WILL RECEIVE.

(3) Stipulations

Pursuant to U.S.S.G. § 6B1.4, the defendant and the United States agree and stipulate as follows:

(a) Stipulation as to Drug Amounts Attributable to Defendant for Her Relevant Conduct

The government and the defendant, **RADMILLA CODY**, stipulate that the total amount of marijuana attributable to this defendant through her relevant conduct in these drug activities equals between approximately one-hundred eight (108) kilograms and three-hundred twenty-four (324) kilograms of marijuana. This amount of marijuana equates to an initial unadjusted Base Offense Level of twenty-six (26) for this defendant. However, after applying the automatic


Defendant's Initials

adjustment under U.S.S.G. § 2X4.1 (Sentencing Guideline for “Misprision of a Felony”), the resulting Base Offense Level, before application of any adjustments or departures, is seventeen (17) for this defendant.

(b) Acceptance of Responsibility

Provided the defendant clearly demonstrates acceptance of responsibility, the United States agrees to recommend a two-level reduction in offense level pursuant to U.S.S.G. §3E1.1. The United States agrees to recommend that the defendant receive an additional one-level reduction pursuant to U.S.S.G. §3E1.1(b)(2). The sentencing judge is in a unique position to evaluate the acceptance of responsibility and his determination will provide the final approval or disapproval of any Section 3E1.1 point level reduction for timely acceptance.

(c) Stipulation that U.S.S.G., Section 5K2.12 Applies to this Defendant

In addition, the government and the defendant stipulate, in accessing the circumstances surrounding her statement of facts forming the factual basis of this plea agreement, that U.S.S.G. §5K2.12 applies to this defendant. Specifically, the continual threatening atmosphere and fear that **DARRELL DWIGHT BELLAMY** imposed on her affected her actions as to the offense she is pleading guilty to in the current cause.

(4) The Court and the United States Probation Office Are Not Bound by any of the Stipulations in the Plea Agreement

Pursuant to Sentencing Guidelines §6B1.4(d), it is understood that neither the Court nor the United States Probation Office is bound by the foregoing stipulations, either as to questions of fact or as to determination of the correct sentencing guidelines to apply to the facts.

(5) Waiver of Defendant's Rights Under the "Hyde Amendment"

The defendant expressly acknowledges that she is not, by virtue of entering into this plea agreement or any of the terms hereof, or by virtue of any other circumstances, a "prevailing party" within the meaning of Public Law 105-119, Section 617 (known as the Hyde Amendment). The defendant voluntarily, knowingly, and intelligently **WAIVES** any rights she may have to seek a reasonable attorney's fee and other litigation expenses under the Hyde Amendment.

(D) LIMITATIONS

This Plea Agreement shall be binding and enforceable upon the Office of the United States Attorney for the Northern District of Oklahoma, but in no way limits, binds or otherwise affects the rights, powers, duties or obligations of any state or local law enforcement agency, administrative or regulatory authorities, civil or

administrative enforcement, collection, bankruptcy, adversary proceedings or suits which have been or may be filed by any governmental entity, including without limitation, the Internal Revenue Service, the Tax Division of the Department of Justice, and the trustee in bankruptcy.

(E) BREACH OF AGREEMENT

In the event either party believes the other has failed to fulfill any obligations under this Agreement, then the complaining party shall, in its discretion, have the option of petitioning the Court to be relieved of its obligations herein. Whether or not a party has completely fulfilled all of its obligations under this Agreement shall be determined by the Court in an appropriate proceeding at which any disclosures and documents provided by either party shall be admissible and at which the complaining party shall be required to establish any breach by a preponderance of the evidence. The parties agree that this agreement is made pursuant to Rule 11(e)(1)(b) of the Federal Rules of Criminal Procedure.

The parties agree that this agreement is made pursuant to Rule 11(e)(1)(b) of the Federal Rules of Criminal Procedure, and as such the defendant hereby **WAIVES** all rights to withdraw from her plea and this agreement, save and except for the limited reasons outlined above in this paragraph.

(F) CONCLUSION

No agreements, representations or understandings have been made between the parties in this case, other than those which are explicitly set forth in this Plea Agreement, and none will be entered into unless executed in writing and signed by all of the parties.

SO AGREED:

DAVID E. O'MEILIA, UNITED STATES ATTORNEY

Chad A. Greer for DATED: 3/14/02

DOUGLAS A. HORN

Assistant United States Attorney

Chad A. Greer DATED: 3/14/02

CHAD A. GREER

Assistant United States Attorney

Stan Monroe DATED: 3/14/02

STAN MONROE


Attorney for Defendant

Radmilla A. Cody DATED: 3/14/02

RADMILLA A. CODY

Defendant

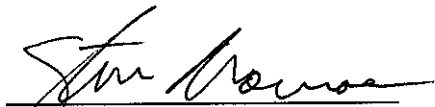
I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully understand my rights with respect to the provisions of the Sentencing Guidelines which may apply to my case. No other promises or inducements have been made to me, other than those contained in this pleading. In addition, no one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorney in this matter.


RADMILLA A. CODY
Defendant

3/14/02
DATE


Defendant's Initials

I am **RADMILLA A. CODY'S** attorney. I have carefully reviewed every part of this agreement with my client. Further, I have reviewed with my client the provisions of the Sentencing Guidelines which may apply in this case. To my knowledge, my client's decision to enter into this agreement is an informed and voluntary one.


STAN MONROE

3/14/02
DATE


Defendant's Initials