

District Court, Huerfano County, Colorado 401 Main Street, #304, Walsenburg, CO 81089	LORRAINE A. LUCERO CLERK OF COURT
THE PEOPLE OF THE STATE OF COLORADO  v.  LEE GRACE DOUGHERTY, Defendant	FEB 09 2012  FILED IN COMBINED COURTS HUERFANO COUNTY CO. σ COURT USE ONLY σ
Douglas K. Wilson, Colorado State Public Defender Patrick McCarville, #23683 Deputy State Public Defender Trinidad Regional Public Defenders 134 West Main Street, #32, Trinidad, CO 81082 Phone: (719) 846-9278 Fax: (719) 846-2089 E-mail: trinidad.defenders@coloradodefenders.us	Case No. 11CR104
<b>STIPULATION AND PLEA AGREEMENT</b>	

COMES NOW, Frank Ruybalid, District Attorney, within and for the Third Judicial District of the State of Colorado; Patrick McCarville, attorney of record for the Defendant, and the Defendant to inform the Court of the following plea agreement:

1. That Lee Grace Dougherty will enter GUILTY pleas to the following three counts:

**GUILTY- AMENDED COUNT ELEVEN – ATTEMPTED ASSAULT IN THE FIRST DEGREE**, against victim James Chamberlain, in violation of C.R.S. 18-2-101, 18-3-202(1)(e), a Class 4 Felony.

**GUILTY- COUNT TWENTY-THREE – MENACING**, against victim Craig Lessar, in violation of C.R.S. 18-3-206(1)(a), a Class 5 Felony.

**GUILTY- COUNT TWENTY-FOUR – MENACING**, against victim Joe Albano, in violation of C.R.S. 18-3-206(1)(a), a Class 5 Felony.

**ALL OTHER COUNTS SHALL BE DISMISSED.**

The parties stipulate to a reconsidered sentence in order to effectuate a concurrent sentence in this case to both any sentence imposed in Ms. Dougherty’s case in the United States District Court for the Middle District of Georgia, as well as any sentence imposed in the Florida prosecution for the alleged incident in the County of Pasco and the City of Zephyrhills in the State of Florida.

The parties hereby agree that the testimony of the September 20, 2011 preliminary hearing establishes the factual basis of the counts to which the Defendant is pleading guilty to.

The parties stipulate to an aggravated range sentence of between five and sixteen years on Amended Count Eleven, victim James Chamberlain and stipulate to aggravated range sentences of between two and six years on both Counts Twenty-Three and Twenty-Four. The parties stipulate to consecutive sentencing on each of the three counts to which Ms. Dougherty is pleading guilty to. The total sentencing range for the crimes Ms.

Dougherty is pleading guilty to equals a range of between nine and twenty-eight years in the Department of Corrections.

The parties stipulate that Ms. Dougherty's criminal culpability for counts twenty-three and twenty-four is based on COMPLICITOR liability, in violation of C.R.S. 18-1-603.

Restitution will remain open for 90 days post sentencing.

2. A Class 4 Felony, as an extraordinary risk crime, is punishable by a term of imprisonment of two years to eight years, or as little as one year if the Court finds mitigating circumstances, or as much as sixteen years if the Court finds aggravating circumstances, followed by a mandatory parole period of three years, or by a fine of two thousand dollars to five hundred thousand dollars, or by fine and imprisonment. (I understand that if I violate the terms of such parole, I may be required to serve out any remaining period of my sentence as well as any remaining period of parole in the Department of Corrections.) The actual sentencing range for the class four felony I am pleading guilty to is between five and sixteen years in the Department of Corrections.
3. A Class 5 Felony is punishable by a term of imprisonment of one year to three years, or as much as six years if the Court finds aggravating circumstances, followed by a mandatory parole period of two years, or a fine of one thousand dollars to one hundred thousand dollars, or by fine and imprisonment. (I understand that if I violate the terms of such parole, I may be required to serve out any remaining period of my sentence as well as any remaining period of parole in the Department of Corrections.) The actual sentencing range for each of the class five felonies I am pleading guilty to is between two and six years in the Department of Corrections on each count.
4. The elements of the crime of ASSAULT IN THE FIRST DEGREE are:
  - a. That the defendant,
  - b. In the State of Colorado,
  - c. At or about the date and place charged,
  - d. With intent to cause serious bodily injury,
  - e. To a peace officer,
  - f. Threatened with a deadly weapon a peace officer,
  - g. While the peace officer was engaged in the performance of his duties, and
  - h. The defendant knew or reasonably should have known that the victim was a peace officer engaged in the performance of his duties.
5. The elements of the crime of ATTEMPT TO COMMIT ASSAULT IN THE FIRST DEGREE are:
  - a. That the defendant,
  - b. In the State of Colorado,
  - c. At or about the date and place charged,
  - d. With intent to cause serious bodily injury,
  - e. Engaged in conduct constituting a substantial step toward the commission of First Degree Assault.

6. The elements of the crime of MENACING are:
  - a. That the defendant,
  - b. In the State of Colorado,
  - c. At or about the date and place charged,
  - d. By threat or physical action,
  - e. Knowingly placed or attempted to place another person in fear of imminent serious bodily injury,
  - f. By use of a deadly weapon, or any article used or fashioned in a manner to cause a person to believe that article is a deadly weapon.
  
7. The elements of COMPLICITY TO COMMIT MENACING are:
  - a. The crime of Menacing was committed,
  - b. Another person must have committed the crime(s),
  - c. The Defendant must have knowledge that the other person intended to commit the crime(s) of Menacing,
  - d. The Defendant must have had the intent to promote or facilitate the commission of the crime(s) of Menacing,
  - e. The Defendant must have aided, abetted advised, or encouraged the other person in the commission or planning of the crime(s).

### DEFINITIONS


A person commits "CRIMINAL ATTEMPT" if, acting with the kind of culpability otherwise required for commission of an offense, s/he engages in conduct constituting a substantial step toward the commission of the offense.

A "SUBSTANTIAL STEP" is any conduct, whether act, omission, or possession, which is strongly corroborative of the firmness of the actor's purpose to complete the commission of the offense. Factual or legal impossibility of committing the offense is not a defense if the offense could have been committed had the attendant circumstances been as the actor believed them to be, nor is it a defense that the crime attempted was actually perpetrated by the accused.

"SERIOUS BODILY INJURY" means bodily injury which, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body, or breaks or fractures, or burns of the second or third degree.

"PEACE OFFICER" means a police officer, sheriff, undersheriff, deputy sheriff, Colorado State Patrol Officer, marshal or other law enforcement officer who is employed by the state or any city, city and county, town, or county within this state and who is certified pursuant to section 24-31-305, C.R.S.. A peace officer has the authority to enforce all the laws of the state of Colorado while acting within the scope of his authority and in the performance of his duties.

A peace officer is "ENGAGED IN THE PERFORMANCE OF HIS DUTIES" if he is engaged or acting in, or is present for the purpose of engaging in or acting in, the performance of any duty, service, or function imposed, authorized, required or permitted by law to be performed by such peace officer, whether or not such peace officer is within the territorial limits of his jurisdiction, if the peace officer is in uniform, or the person committing the assault upon or offense against or otherwise acting toward such peace officer or knows or reasonably should know that the victim is a peace officer.

"intent" was defined on the record by the court and the District Attorney. 

A person acts “KNOWINGLY” or “WILLFULLY” with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such a circumstance exists. A person acts “knowingly” or “willfully”, with respect to a result of his conduct, when he is aware that his conduct is practically certain to cause the result

“DEADLY WEAPON” means any of the following which in the manner it is used or intended to be used is capable of producing death or serious bodily injury:

- (I) A firearm, whether loaded or unloaded;
- (II) A knife;
- (III) A bludgeon; or
- (IV) Any other weapon, device, instrument, material, or substance, whether animate or inanimate.

8. The Defendant is pleading guilty by executing this document.
9. The Defendant hereby agrees to forfeit any and all evidence seized in connection with this case with the exception of any identification cards and/or social security card, and the Court further authorizes the destruction of such evidence pursuant to the policies and procedures of the seizing agency.
10. The Defendant has been fully advised of her constitutional rights under Rule 11 of the Colorado Rules of Criminal Procedure and understands that:
  - (a) I have the right to remain silent, and that I don’t have to speak with anybody about this case. If I do make a statement or talk to someone, then whatever I say can and may be used against me in Court.
  - (b) I know that I have the right to have a lawyer to represent me all the way through this case. If I cannot afford to hire a lawyer, then the judge will appoint one to represent me without cost to me. I have a lawyer now, Patrick McCarville, and am fully satisfied with what he has done for me.
  - (c) I understand that my decision to accept this stipulated agreement, must be voluntary on my part and not the result of any undue influence, coercion, or force on the part of anyone. In this case, I am accepting this stipulated agreement because that is what I personally want to do. No one has forced or pressured me to accept this stipulated agreement
  - (d) I have a right to bail out of jail and I know the amount and type of the bail that has been set by a Judge.
  - (e) I have a right to a preliminary hearing, within a reasonable time, to determine if probable cause exists to believe the offense charged was committed by me. I understand that I have this right only as to any felony, and only if I have not already had or waived one.
  - (f) I have been advised of the nature of the charge, as well as the elements of the charges to which I am charged. I have read those elements, which are attached to and a part of this agreement, and fully understand them.

(g) I understand that, by accepting this stipulated agreement, I give up all of these rights. I voluntarily wish to give up these rights.

(h) I am aware of and understand the nature of the evidence being held in my case. I expressly waive my right to the preservation of evidence that may contain DNA and agree that all evidence held in my case will be disposed of by law enforcement without further notice to me or my attorney.

11. The Defendant further states that:

I know that I do not have to accept this stipulated agreement, that I can plead not guilty and have the case tried to a jury. If I were to have a jury trial, I know that:

(a) I have a right to have my lawyer defend me.

(b) I have a right to see and hear any witnesses who testify against me.

(c) My lawyer could cross-examine or question all witnesses who testify against me.

(d) I can call such witnesses as I desire and can obtain subpoenas from the Court to require the attendance and testimony of those witnesses. If I cannot afford to pay the witness and mileage fees, the State of Colorado will pay them for me.

(e) I do not have to testify at any trial. Whether I testify at trial is totally my decision, even if my lawyer disagrees with me.

(f) If I do not want to testify at trial, the jury will be told that my decision not to testify can not be used against me in any way whatsoever.

(g) The prosecutor would have to prove each and every element of the offense(s) charged against me beyond a reasonable doubt before I could be found guilty. I would have a presumption of innocence in my favor and would not have to prove anything.

(h) I have the right to a speedy trial, to normally be held within six (6) months from the day I plead not guilty. The trial would be a public one, and not held in secret.

(i) It requires a unanimous verdict of a jury before I can be found guilty.

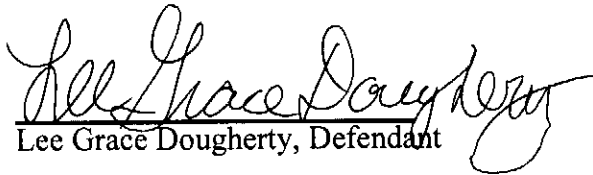
(j) If I were found guilty, I could appeal the case to a higher court. If I could not afford the appeal, the State of Colorado would pay for it, including the costs of a lawyer to represent me.


(k) I have all of these rights but when I sign this stipulated agreement, I give up all of these rights. I voluntarily wish to give up these rights.


12. No promises, agreements, or representations have been made to the Defendant other than what is in this written agreement. The Defendant understands that the Court will not be bound by any promises, agreements, or representations made by anyone concerning the penalty to be imposed including the granting or denying of

probation, unless they are included in this written agreement and approved by the Court. The Defendant understands that it is entirely up to the Court whether to approve or reject this written agreement. The Defendant understands that, if the Court rejects this written agreement, then the Defendant will be allowed to have all charges tried to a jury.

DONE this 9<sup>th</sup> day of February A.D. 2012.

  
Lee Grace Dougherty, Defendant

  
Patrick McCarville # 23683  
Attorney for Defendant

  
Frank Ruybalid, #18448  
District Attorney