

PAULETTE L. STEWART
Assistant U.S. Attorney
U.S. Attorney's Office
901 Front Street, Suite 1100
Helena, MT 59626
Phone: (406) 457-5120
FAX: (406) 457-5130
Email: paulette.stewart@usdoj.gov

ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. CONNOR HAYDEN KRAEGEL, Defendant.	CR 10-27-BU-DWM <u>OFFER OF PROOF</u>
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THE CHARGE

The defendant, CONNOR HAYDEN KRAEGEL, is charged in the information with theft from a federal firearms licensee in violation of 18 U.S.C. § 922(u).

PLEA AGREEMENT

The defendant will plead guilty to the information.

ISSUE TO COVER AT CHANGE OF PLEA HEARING

There is another possible case against Connor Kraegel that is not covered in the information nor the plea agreement - that is/are Arms Export Control Act violation(s) of 22 U.S.C. § 2778. All parties are aware of the possibility of this other case. For the Court's reference an unsigned copy of the plea agreement in this case is attached.

PENALTIES

The defendant is subject to a maximum sentence of ten years imprisonment, a \$250,000 fine, and three years supervised release.

ELEMENTS

In order for the defendant to be found guilty of the charge in the information, the United States must prove each of the following elements beyond a reasonable doubt:

- First, the defendant knowingly took and carried away one or more firearms from the premises of Bob Ward and Sons Inc.;
- Second, that Bob Ward and Sons Inc. is federally licensed to engage in the business of dealing in firearms;

- Third, the firearm was in Bob Ward and Sons Inc.'s business inventory; and
- Fourth, those firearms had been shipped and transported in interstate or foreign commerce.

ANTICIPATED EVIDENCE

If this case was tried in United States District Court, the United States would present the following evidence:

1. On February 8, 2010, at approximately 2:00 a.m., Connor Hayden Kraegel burglarized Bob Ward and Sons Inc. sporting goods store in Bozeman, Montana. Kraegel broke through a back door to the store and grabbed an armload of various firearms before walking out of the store. During the burglary, Kraegel took 11 firearms (nine were recovered).

2. Bob Ward and Sons Inc. maintains a federal firearms license to deal in firearms, this includes buying and selling firearms. Bob Ward and Sons Inc.'s license was active on February 8, 2010, as well as before and after that date. The stolen firearms listed below were in the business inventory of Bob Wards and Sons Inc. before Kraegel took them.

3. The stolen firearms that were recovered from Kraegel include:

- a Magnum Research, Inc. .50 caliber pistol, serial number 39201716;
- a Beretta 9mm pistol, serial number J20786Z;
- a HS Products .40 caliber pistol, serial number MG162923;
- a HS Products 9mm pistol, serial number MG956206;
- a Glock 9mm pistol, serial number NLG305;
- a Springfield Armory .308 caliber rifle, serial number 240183;
- a Smith & Wesson .223 caliber rifle, serial number SM56807;
- a Remington Arms Company, Inc. 12 gauge shotgun, serial number AB862206M; and
- a Microtech Small Arms Research .223 caliber rifle, serial number TACTICAL070.

The two stolen firearms not recovered are a Smith & Wesson .223 caliber rifle, serial number SN50691; and a CZ (Ceska Zbrojovka) .223 caliber rifle, serial number A309600.

4. A special agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives would testify that the firearms listed above were not manufactured within the State of Montana. Therefore, they traveled in interstate or foreign commerce before Kraegel took them from Bob Ward and Sons Inc.

Respectfully submitted this 29th day of December, 2010.

MICHAEL W. COTTER
United States Attorney

/s/ Paulette L. Stewart
Assistant United States Attorney
United States Attorney's Office
Attorney for Plaintiff

PAULETTE L. STEWART
Assistant U.S. Attorney
U.S. Attorney's Office
901 Front Street, Suite 1100
Helena, MT 59626
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Pursuant to Rule 11 of the Federal Rules of Criminal Procedure,
the United States of America, by Paulette L. Stewart, Assistant United

AUSA Def. Atty Def.

States Attorney for the District of Montana, and the defendant,
CONNOR HAYDEN KRAEGEL, and his attorney, Herman A. Watson
III, have agreed upon the following:

1. The defendant acknowledges that he has been charged in
the information in this case with theft from a federal firearms licensee
in violation of 18 U.S.C. § 922(u).

2. The defendant has read the charge against him contained in
the information and that charge has been fully explained to him by his
attorney.

3. The defendant fully understands the nature and elements of
the crime with which he has been charged.

4. The defendant will enter a voluntary plea of guilty to the
information in this case.

5. *Nature of the Agreement:* The parties agree that this plea
agreement shall be filed and become a part of the record in this case,
and will be governed by Rule 11(c)(1)(A) and (B), *Federal Rules of
Criminal Procedure*. The defendant acknowledges that the agreement
will be fulfilled provided a) the United States does not pursue other

charges against the defendant as provided in ¶13, and b) makes the recommendations contained in ¶11. The defendant understands that if the agreement is accepted by the Court, he will not have an automatic right to withdraw his plea even if the Court does not accept or follow the recommendations made by the United States. Rule 11(c)(3)(B), (d)(2)(A), *Federal Rules of Criminal Procedure*.

Effect of Withdrawal from the Agreement: The parties stipulate and agree that if the defendant moves to withdraw his guilty plea, entered pursuant to and receiving the benefits of this agreement, and if he successfully withdraws his plea either in the district court or on appeal, that this agreement will become null and void.

Moreover, if the defendant at any time after judgment is entered obtains dismissal, reversal or remand of the count or counts of conviction for any reason, the United States will be permitted, by agreement of the parties, to restore all original charges either dismissed or not filed pursuant to this plea agreement. The defendant, in that circumstance, expressly waives any claim of double jeopardy or right to have this agreement enforced. In such event, the defendant

waives any objections, motions, or defenses based upon the Statute of Limitations, the Speedy Trial Act, or any other potential restriction on the re-institution of counts dismissed, or institution of counts surrendered, as part of the consideration given by the prosecution in this agreement.

6. *Admission of Guilt:* The defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty to the information, the defendant acknowledges that on or about February 8, 2010, at Bozeman, in the State and District of Montana, the defendant, CONNOR HAYDEN KRAEGEL, did steal or unlawfully take or carry away one or more firearms that had been shipped or transported in interstate or foreign commerce, from the business inventory of the person or premises at Bob Ward and Sons Inc., 3011 Max Avenue, Bozeman, Montana, a business licensed to engage in dealing in firearms, those firearms are:

- a Magnum Research, Inc. .50 caliber pistol, serial number 39201716;
- a Beretta 9mm pistol, serial number J20786Z;

- a HS Products .40 caliber pistol, serial number MG162923;
- a HS Products 9mm pistol, serial number MG956206;
- a Glock 9mm pistol, serial number NLG305;
- a Springfield Armory .308 caliber rifle, serial number 240183;
- a Smith & Wesson .223 caliber rifle, serial number SM56807;
- a Remington Arms Company, Inc. 12 gauge shotgun, serial number AB862206M; and
- a Microtech Small Arms Research .223 caliber rifle, serial number TACTICAL070;

all in violation of 18 U.S.C. § 922(u).

7. *Maximum Punishment Provided by Law:* The defendant understands the charge to which he will plead guilty carry a maximum penalty of 10 years imprisonment and a \$250,000 fine. Further, the defendant acknowledges that the crime to which he is entering a plea is a Class C felony [10 - 25 years] 18 U.S.C. § 3559(a)(3) which provides for a maximum term of supervised release of three years. 18 U.S.C.

§ 3583(b)(2).

The defendant also understands that restitution to the victim of this crime is mandatory. 18 U.S.C. § 3663A(c)(1).

8. *Elements of the Charge:* The defendant has been advised of the nature of the charge made against him and the elements of the crime to which he is entering a guilty plea. The defendant understands that if the case were to go to trial the government would be required to prove each and every element of the crime. He further acknowledges that these are the elements of the crime charged in the information:

- First, the defendant knowingly took and carried away one or more firearms from the premises of Bob Ward and Sons Inc.;
- Second, that Bob Ward and Sons Inc. is federally licensed to engage in the business of dealing in firearms;
- Third, the firearm was in Bob Ward and Sons Inc.'s business inventory; and
- Fourth, those firearms had been shipped and transported in interstate or foreign commerce.

The defendant understands that by entering a guilty plea, the

government will not be required to present proof of his guilt and the elements recited herein because there will be no trial if the Court accepts his plea of guilty and the plea agreement of the parties.

9. *Recitation of Rights:*

(a) The defendant is entitled to have the charge outlined in paragraph 1, above, prosecuted by an indictment returned by a concurrence of 12 or more members of a legally constituted grand jury, consisting of not less than 16 and not more than 23 members.

(b) During the entry of any plea pursuant to this plea agreement, the government has a right to use against the defendant, in a prosecution for perjury or false statement, any statement that the defendant gives during any such plea colloquy.

(c) If the defendant persisted in a plea of not guilty to the charges against him, he would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury.

(d) The defendant has the right to be represented by counsel, and if necessary, have the court appoint counsel, at trial and at

every other stage of these proceedings.

(e) If the trial is a jury trial, the jury would be composed of 12 laypersons selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, and that it could not convict him unless after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt.

(f) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not he was persuaded of the defendant's guilt beyond a reasonable doubt.

(g) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against the defendant. The defendant would be able to

confront those government witnesses and his attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence in his own behalf. If the witnesses for the defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.

(h) At a trial, the defendant would have a privilege against self-incrimination so that he could decline to testify and no inference of guilt could be drawn from his refusal to testify. If the defendant desired to do so, he could testify in his own behalf.

(i) If convicted, and within 14 days of the entry of the Judgment and Commitment, the defendant would have the right to appeal his conviction to the Ninth Circuit Court of Appeals for review to determine if any errors were made which would entitle him to reversal of the conviction.

(j) The defendant has a right to have the district court conduct the change of plea hearing required by Rule 11, *Federal Rules of Criminal Procedure*. By his execution of this agreement, the defendant expressly waives that right and agrees to hold that hearing

before, and allow the Rule 11 colloquy to be conducted by, the U.S. Magistrate Judge.

10. *Waiver of Rights by Plea:* The defendant understands that by pleading guilty pursuant to this agreement, he is waiving all the rights set forth in the prior paragraph. The defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

11. *Recommendations:*

The United States will recommend a probationary sentence of five years given the unique nature of this defendant and this case.

The United States will recommend that the defendant be given a two-point credit for acceptance of responsibility, unless the defendant is found to have obstructed justice prior to sentencing. USSG § 3C1.1.

The United States reserves the right to object to or comment upon the applicability, or inapplicability, of any adjustment or enhancement to be used in the advisory sentencing guideline calculation.

Both parties acknowledge that the Court is not bound by

the recommendations of either party, and may sentence the defendant to a sentence anywhere within the advisory Guideline range or may impose any reasonable sentence outside that guideline range.

Although advisory, the parties agree that the U.S. Sentencing Guidelines must be applied, and a calculation determined, as part of the protocol of sentencing to determine what sentence will be reasonable.

12. *Agreement as to Restitution:* The defendant acknowledges and agrees to be responsible for complete restitution regardless of whether the defendant has been criminally charged as part of this plea agreement. 18 U.S.C. § 3663(a)(3). This includes restitution to the Yellowstone National Park for property taken by the defendant.

13. *Non-Prosecution or Dismissal:* Upon acceptance of this agreement by the Court, the United States Attorney for Montana shall bring no further action against CONNOR HAYDEN KRAEGEL based upon the facts alleged in this information. Both parties acknowledge that the prosecution has no authority to bind the U.S. Probation Office

or the Court with respect to guideline enhancements or adjustments they deem appropriate.

14. *Waivers:*

(a) *Waiver of FOIA:* The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a.

(b) *Waiver of Appeal of the Sentence:* The defendant acknowledges that 18 U.S.C. § 3742 affords him the right to appeal the sentence imposed in this case. In consideration for the government's concessions in this agreement, the defendant waives any and all right to directly appeal the sentence.

The defendant also waives his right to challenge the sentence in a collateral proceeding pursuant to 28 U.S.C. § 2255. This waiver does not prohibit his right to pursue or maintain such an action arising from

facts not known or reasonably capable of being known at the time of his entry of guilty plea or alleging that he received ineffective assistance of counsel.

15. *Voluntary Plea:* The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this agreement to induce the defendant to plead guilty.

16. *Special Assessment/Financial Obligations:* The defendant recognizes that he will be responsible for a mandatory assessment of \$100 on each count pursuant to 18 U.S.C. § 3013 of the Comprehensive Criminal Control Act. The defendant understands and agrees that pursuant to 18 U.S.C. § 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately, and subject to immediate enforcement by the United States. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only

method, nor a limitation on the methods available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

17. *Detention/Release After Plea:* The United States agrees that it will not move for detention but will defer to the discretion of the court the decision as to whether the defendant meets the conditions of 18 U.S.C. § 3143(a)(1) or (2), and whether the defendant has clearly shown exceptional reasons why detention is not appropriate. 18 U.S.C. § 3145(c). The United States is obligated to advise the Court of the appropriate legal standards that relate to the defendant's eligibility for post-conviction release. The defendant acknowledges that obligation and understands that advising the Court as to the law and facts is not an abrogation of its agreement not to request remand.

18. *Entire Agreement:* Any statements or representations made by the United States, the defendant, or his counsel prior to the full execution of this plea agreement are superseded by this plea agreement. No promises or representations have been made by the

United States except as set forth in writing in this plea agreement.

This plea agreement constitutes the entire agreement between the parties. Any term or condition which is not expressly stated as part of this plea agreement is not to be considered part of the agreement.

MICHAEL W. COTTER
United States Attorney

PAULETTE L. STEWART
Assistant U. S. Attorney
Date: _____

CONNOR HAYDEN KRAEGEL
Defendant
Date: _____

HERMAN A. WATSON III
Defense Counsel
Date: _____