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| DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: Boulder County Justice Center 1777 Sixth St Boulder, Colorado 80302 Court Phone: (303) 441-3750 | FILED IN THE 20TH JUDICIAL DISTRICT OCT 08 2009 BOULDER COUNTY, CO COURT USE ONLY |
| PEOPLE OF THE STATE OF COLORADO vs. SCOTT LEE KIMBALL, Defendant | Case No: 09CR1626 Division: 6 |
| Attorney Name: Katharina Booth, Reg. #30087 Chief Deputy District Attorney Amy Okubo, Reg. #22657 Chief Deputy District Attorney Boulder County Justice Center 1777 Sixth St Boulder, CO 80302 Attorney Phone: (303) 441-3781 Attorney Fax: (303) 441-4703 Attorney E-mail: kbooth@bouldercounty.org | <p style="text-align: center;">PLEA AGREEMENT AND ADVISEMENT PURSUANT TO CRIMINAL PROCEDURE RULE 11 AND PLEA OF GUILTY</p> |

I. STATEMENT OF PLEA AGREEMENT

a. The SENTENCE AGREEMENT for this case is:

The Defendant agrees and understands that he will plead guilty to Count 1, Second Degree Murder, a Class 2 felony, and Count 2, Second Degree Murder, a Class 2 felony.

The Defendant agrees and understands that both Count 1, Murder in the Second Degree, and Count 2, Murder in the Second Degree, are class two felonies. The Defendant agrees and understands that each class two felony is presumptively punishable by a sentence range of Eight (8) to Twenty-four (24) years in the Department of Corrections, and that with exceptional mitigating or aggravating circumstances the sentence on each count could be between Four (4) and Forty-eight (48) years in the Department of Corrections. The Defendant also agrees and understands that Count 1 and Count 2 each carry an additional Five (5) years of mandatory parole which may be served in addition to any incarceration outlined in this agreement, should the Defendant violate parole. The Defendant further agrees and understands the applicable fine for each class two felony

can be between \$5000 to \$1,000,000. C.R.S. 18-1.3-401(V)(A), (8)(a).

Count 1, as alleged in the criminal complaint, states the following:

That on or about August 5, 2004 to September 15, 2004 in, or triable in, the County of Boulder, State of Colorado SCOTT LEE KIMBALL unlawfully, feloniously, and knowingly caused the death of Terry Kimball, in violation of Colorado Revised Statute section 18-3-103(1)

Count 2, as alleged in the criminal complaint, states the following:

That on or about January 29, 2003 to August 24, 2003 in, or triable in the County of Boulder, State of Colorado, SCOTT LEE KIMBALL, unlawfully, feloniously, and knowingly caused the death of Jennifer Marcum, LeAnn Emry, and Kaysi McLeod in violation of Colorado Revised Statute section 18-3-103(1).

The Defendant knowingly, intelligently and voluntarily admits his criminal culpability for Counts 1 and 2 as outlined above, agrees that there is a factual basis for each count, and waives any further establishment of a factual basis for both counts. The Defendant acknowledges that the arrest warrant for this case has been attached and incorporated herein to this Plea Agreement and Advisement as People's Attachment 1, and said warrant establishes a factual basis that the Defendant is a principal actor in committing both Counts 1 and 2 above.

The Defendant will enter his plea of guilt to both charges under a complicity theory, pursuant to C.R.S. 18-1-603. The Defendant acknowledges and admits that he aided, abetted, advised or assisted another person in the commission of Counts 1 and 2, and is held accountable as if the principal in these crimes.

The Defendant agrees and understands that the sentence in Counts 1 and 2, is stipulated, and as follows:

- (1) COUNT 1: Defendant will be sentenced, by **STIPULATION** to a **PRISON SENTENCE** in the Colorado Department of Corrections **OF FORTY-EIGHT (48) YEARS**, which will and shall be followed by an additional **FIVE (5) YEARS MANDATORY parole** period as required by state law.
- (2) COUNT 2: Defendant will be sentenced, by **STIPULATION** to a **PRISON SENTENCE** in the Colorado Department of Corrections **OF TWENTY-TWO (22) YEARS, TO RUN CONSECUTIVE TO COUNT 1**, and which will and shall be followed by an additional **FIVE (5) YEARS MANDATORY parole** period as required by state law.
- (3) As to Count 1, Defendant agrees that his parole eligibility shall be calculated

pursuant to C.R.S. 17-22.5-403(2.5)(a), as amended on July 1, 2004.

- (4) The Defendant understands that he has a right to have exceptional aggravating circumstances proven beyond a reasonable doubt by a jury of twelve, pursuant to Blakely v. Washington, 542 U.S. 296 (2004), but agrees to waive that finding. Further, Defendant agrees, that despite this waiver, such a finding is not required in this plea based on his status of being on "conditional release" from a federal sentence at the time of the commission of these offenses.
- (5) Defendant is stipulating to exceptional aggravating circumstances to allow this court to impose a sentence on each count in the statutory aggravated range of up to 48 years. Defendant agrees that his prior criminal history, to include 7 separately brought and tried felony convictions at the time of this plea, and/or his status of being on "conditional release" from a federal sentence at the time of the commission of these offenses, are aggravating circumstances.
- (6) The Defendant further agrees that he is waiving his right to any sentence reconsideration in this case pursuant to Federal or State law, including but not limited to, federal habeas corpus, C.R.S. 18-1.3-406 (crime of violence), and the Colorado Rules of Criminal Procedure, except as provided in paragraph 13, 15 *JCK* herein. (See also, waiver and acknowledgment in Section II(n) of this document.)

The Defendant knowingly, intelligently and voluntarily agrees as follows:

- (1) Defendant shall have no contact with the any of the persons listed in the case endorsement of witnesses, including but not limited to, any family member of victims: Jennifer Marcum, LeAnn Emry, Kaysi McLeod, and Terry Kimball. This no contact provision does not extend to Barb Kimball and Brett Kimball. The endorsement of witnesses is attached and incorporated herein as People's Attachment 2;
- (2) As part of this agreement, the Defendant will not be required to participate in any law enforcement debriefing or testify against any persons involved in this case, with the limited exception of if the Defendant can provide additional information regarding the location of Jennifer Marcum's remains. Furthermore, the Defendant has not agreed to testify against anyone in order to obtain this agreement;
- (3) Defendant agrees and stipulates that Boulder County has proper subject matter jurisdiction pursuant to C.R.S. 18-1-201. Defendant agrees and understands that criminal jurisdiction over felony offenses committed in Colorado extends to all the District Courts of Colorado. People v. Joseph, 920 P.2d 850 (Colo. 1996). Further, Defendant agrees and understands that pursuant to C.R.S. 18-1-201(1)(a), conduct constituting an offense that is committed either wholly or partly within the State of Colorado is properly within Colorado state jurisdiction;

- (4) Pursuant to C.R.S. 18-1-202, Defendant agrees to waive any constitutional and statutory rights governing venue, and agrees that the Boulder County District Court is a proper venue for the prosecution, acceptance of the proposed plea agreement, and imposition of sentence in this case. Defendant agrees and understands that once he subjects himself to the authority of the Boulder County District Court by offering a guilty plea, any further objection to venue is waived. People v. Joseph, 920 P.2d 850 (Colo. 1996);
- (5) Defendant agrees to, and waives any objection to, the authority of the Boulder County District Attorney's Office to bring the criminal charges in this case. Defendant agrees to, and waives any objection to the sufficiency of the criminal information that alleges two counts of Murder in the Second Degree. See People v. Joseph, 920 P.2d 850 (Colo. 1996);
- (6) The Boulder County District Attorney's Office has been granted the authority to provide a promise of non-prosecution by the Adams County District Attorney's Office as outlined in this paragraph. Specifically, the Adams County District Attorney's Office has agreed not to prosecute the following non-violent crimes committed within the jurisdiction of Adams County:
 - a. One forged check, in the amount of \$4675.00, passed by Defendant at Belco Credit Union, 550 West 104th Avenue in Northglenn, on or about April 15, 2003;
 - b. Three fraudulent money orders, totaling \$6032.00, drawn on Chase Manhattan Bank, presented by Defendant at Belco Credit Union at 120th and Huron, on or about February 1, 2005;
 - c. Two fraudulent checks drawn on U.S. Bank, for total of \$3637.59, and deposited by Defendant, on or about August 14-19, 2003.
- (7) Defendant agrees and understands he has not been given any promise of non-prosecution to any other known or unknown offense not otherwise enumerated in this Agreement;
- (8) The People represent that they and/or the United States Attorney's Office for the District of Colorado, which had formerly been involved in the negotiation and performance of this agreement, have communicated with the Offices of the District Attorneys for the 5th, 8th, and 17th Judicial Districts of Colorado, and Grand and Uintah Counties in the State of Utah, and obtained their agreement to proceed in this proposed plea agreement. Defendant will not be prosecuted for any other crimes directly related to the deaths of Kaysi McLeod, Jennifer Marcum, LeAnn Emry, and Terry Kimball in those respective jurisdictions;
- (9) The Defendant understands and agrees that the Memorandum of Understanding executed on December 17, 2008, including all promises, representations and agreements made by the People, is null, void and non-binding on any party. The agreement between the

parties concerning the deaths of Jennifer Marcum, LeAnn Emry, Kaysi McLeod, and Terry Kimball is fully contained within this document. Defendant's plea in this case is not conditioned on any other agreement, or terms or conditions not otherwise enumerated in this document;

- (10) The Defendant understands and agrees that he will not receive any pre-sentence confinement credit in this case, as said incarceration has been previously applied to Boulder County case number 08CR351 and federal case, United States District Court for the District of Colorado, 07-CR-00248-MSK. Defendant agrees and understands that the sentences imposed in this case shall commence upon the entry of his pleas and immediate sentencing, on October 8, 2009;
- (11) The Defendant understands and agrees that the sentence imposed in this case will be longer than, but served concurrently to, Boulder County case 08CR351 and United States District Court for the District of Colorado, case 07-CR-00248-MSK;
- (12) Defendant knowingly agrees to waive any objection to charging the offense of Murder in the Second Degree in Count 2 of the information, naming multiple victims in the same count;
- (13) Defendant acknowledges that his attorneys in this case, Megan Ring and Seth Temin, have effectively represented his interests in this case. The Defendant acknowledges and affirms that proper discovery has been provided to his attorneys, via documents and extensive briefings by the FBI and local law enforcement, of the facts, evidence, and forensic test results, that substantiate the charges of Second Degree Murder as outlined in this agreement. Defendant further acknowledges that he has had sufficient opportunity to meet, confer, and question his attorneys prior to his plea in this case, and he is satisfied with the method of discovery and his attorneys' representation of him;
- (14) Defendant agrees, understands, and acknowledges that under the terms of this agreement, he will serve 35.195 to 35.25 actual calendar years in the Department of Corrections before he is eligible for parole. If the Colorado Department of Corrections determines that the conviction for Count 2 enhances Count 1, and thereby prevents the accrual of earned time on Count 1, the sentences enumerated above, on Count 1 and Count 2 will be modified by the Court to 47 years on each count to run concurrent to one another before he is eligible for parole.
- (15) The People acknowledge and agree that after 35.195 to 35.25 actual calendar years have been served, Defendant will be entitled to have the Boulder County District Court modify his sentence to comply with this agreement, despite the time limitations of Colorado Rules of Criminal Procedure, Rule 35(b). This agreement to a sentence modification also pertains to any situation where the federal sentence imposed in 07-CR-00248-MSK would prevent the Defendant from being released after serving the 35.195 to 35.25 years. However, other than this one specific allowance for the passage of 35.195 to 35.25 actual calendar years, the Defendant agrees and understands that by entering into this stipulated

disposition he is otherwise waiving his right to any sentence reconsideration pursuant to Federal or State law, including but not limited to, federal habeas corpus, C.R.S. 18-1.3-406 (crime of violence), and the Colorado Rules of Criminal Procedure;

- (16) The Defendant acknowledges and fully understands his right to have a pre-sentence investigation report ("PSI") prepared by the Probation Department, pursuant to C.R.S. 16-11-102, prior to any sentence being imposed on Counts 1 and 2. The Defendant knowingly, intelligently and voluntarily agrees to waive his right to the preparation of the pre-sentence report and agrees to proceed immediately to sentencing in accordance with this agreement upon entry of his guilty pleas.
- (17) Restitution, to be determined within 90 days, as a condition
b. CULPABILITY AND ACCOUNTABILITY of defendant's parole.

A crime is committed when a defendant has committed a voluntary act prohibited by law accompanied by a culpable mental state. Voluntary act means an act performed consciously as a result of effort or determination. Culpable mental state means (1) intentionally or with intent; (2) knowingly or willfully; (3) recklessly; or (4) with criminal negligence. Each criminal offense has a mental state that must be proved beyond a reasonable doubt at trial. The mental states are listed below.

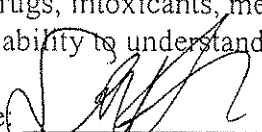
A person acts "**intentionally**" or "**with intent**" when his conscious objective is to cause the specific result prescribed by the statute defining the offense. It is immaterial whether or not the result actually occurred.

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 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.

A person acts "**recklessly**" when he consciously disregards a substantial and unjustified risk that a result will occur or that a circumstance exists.

A person acts "**with criminal negligence**" when, through a gross deviation from the standard of care that a reasonable person would exercise, he fails to perceive a substantial and unjustified risk that a result will occur or that a circumstance exists.

II. DECLARATIONS BY DEFENDANT

- a. I acknowledge that I am the Defendant in this case and that my true name is as stated above.
- b. I am 43 years old.
- c. The highest level of education I completed is 12.
- d. At this time, I am not under the influence of any drugs, intoxicants, medications, or have any mental condition that interferes with my ability to understand the advisement of rights and my plea of guilty.
- e. I read, speak, and understand the English language:  OR

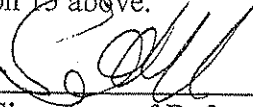
(Signature of Defendant)

this document has been translated to me by an interpreter, in _____, a language that I understand. _____.

(Signature of Defendant)

- f. I understand the nature of the charge(s) against me. I acknowledge that I have read and understand the elements of the offense(s), including the culpable mental state, and the penalty for the offense(s). I am entering a plea of guilty to the offense(s). I understand that the prosecution would have to prove each element of the offense(s) beyond a reasonable doubt before I could be convicted of the offense(s) in a trial.
- g. I am entering my plea of guilty freely and voluntarily and not as a result of coercion or undue influence on the part of anyone. There have been no threats, force, or promises made to me to cause me to enter this plea.
- h. I understand that the Court will not be bound by any representations made to me by anyone concerning the penalty to be imposed or the granting or denial of probation, unless such representations are included in a formal plea agreement placed on the record and approved by the Court.
- i. I acknowledge that there is a factual basis for this plea. If the plea is a result of a plea agreement, I waive the establishment of a factual basis for the charge, as I am pleading guilty to take advantage of the plea agreement.
- j. I have signed this document and I thoroughly understand its contents.
- k. I understand that if I am ever sentenced to prison following a plea of guilty to a felony that occurred on or after July 1, 1993, I will be ordered to serve **A MANDATORY PAROLE** period. This parole period is **IN ADDITION TO AND SERVED AFTER** any sentence to the Department of Corrections that I may receive from the judge and is in addition to any sentence imposed as part of the plea agreement I am entering into with the District Attorney. I understand that if there is a plea agreement in my case that involves an upper limit on the possible prison sentence or a stipulated prison sentence, the mandatory parole period will be imposed **IN ADDITION TO AND SERVED AFTER** any prison sentence imposed pursuant to the agreement. I understand that if I ever violate my parole, I can be sent back to prison, and that prison time imposed after I am placed on parole is separate from any sentence agreements I have made with the prosecution at this time.
- l. I understand that if I am not a citizen of the United States and I plead guilty or nolo contendere ("no contest") to a crime, my plea may result in deportation and/or exclusion from the United States or denial of naturalization in the United States.
- m. I understand that if the Court accepts my guilty plea to a felony, I will stand convicted of a felony. I understand that this felony conviction may be used against me in any future proceeding under the habitual criminal laws. I also understand that my felony conviction may be used against me in a future proceeding to attack my credibility. If I have entered into a Stipulation of a Deferred Sentence and I have not yet completed the terms of that agreement, my guilty plea may be used against me in any future proceeding as stated above.
- n. If I am entering into a stipulated prison sentence in this case, I understand that I am giving up my right to have the Court reconsider my sentence pursuant to Federal or State law, including but not limited to, federal habeas corpus, C.R.S. 18-1.3-406

(crime of violence), and the Colorado Rules of Criminal Procedure, except as noted in paragraph 15 above.

Signed: 
(Signature of Defendant)

- o. I understand if the judge sentences me to prison, the term of incarceration shall be from the minimum in the presumptive range to twice the maximum in the presumptive range if any of the following circumstances apply: (1) I was on bond in another case that resulted in a conviction of a felony crime; (2) I was on bond after having pled guilty to a lesser offense when the original charge was a felony; or (3) I was on a felony deferred judgment and sentence.
- p. I understand if the judge sentences me to prison, the term of incarceration shall be from the midpoint of the presumptive range to twice the maximum in the presumptive range if any of the following circumstances apply: (1) The crime to which I am entering a guilty plea is a crime of violence; (2) I was on parole for a felony crime; (3) I was on probation or on bond while awaiting sentencing following revocation of felony probation; (4) I was an escapee from a previously imposed felony sentence.
- q. By initialing in the space below, I admit there is proof beyond a reasonable doubt that when I committed the crime to which I am pleading guilty:
_____ I was on a felony deferred sentence.
_____ I was on bond in another case that resulted in a conviction of a felony.
_____ I was on probation for a felony crime.
 X-Yes _____ I was on parole/federal "conditional release" for a felony crime.

Signed: 
(Signature of Defendant)

- r. I understand that by pleading guilty and giving up my right to have a trial, I give up the right to have a jury determine, beyond a reasonable doubt, if there are aggravating facts or circumstances in my case. I specifically agree that a judge and not a jury can determine the existence of aggravating facts in my case that could be used by a judge to impose a sentence to prison that is greater than the presumptive prison sentence range for the offense(s) included within this plea agreement.
- s. If I have specifically agreed to a sentence to imprisonment for a term or range of years that is greater than the presumptive range, I agree to allow a judge to decide if there are aggravating facts to support that sentence, including but not limited to my status on felony deferred sentence, felony bond, felony probation or parole, as well as any other fact the judge may choose to consider in determining if there are extraordinary aggravating circumstances in my case.

III. STATEMENT OF RIGHTS WAIVED

WAIVE(S), as used in this document, means the intentional relinquishment of one's

right.

- a. I do not have to make any statement about this case and I understand that any statement I make may be used against me.
- b. Any plea that I enter must be voluntary and not the result of undue influence or coercion on the part of anyone.
- c. I have the right to have the court set bail and I can post that bail if bail can be granted for my offense.
- d. In certain situations, I have the right to have a preliminary hearing to determine if probable cause exists to believe that I committed a crime.
- e. I have the right to enter a plea of not guilty and have a speedy and public trial in this case either to the Court or to a jury
- f. I have the right to be represented by an attorney at all critical stages through trial and for any appeal of right.
- g. If I do not have the means to hire an attorney, I can ask the Court to appoint one for me without cost to me, and one will be appointed
- h. I am presumed innocent of the charges pending against me, and the presumption of innocence will remain with me throughout the trial. The prosecution must present evidence that proves each and every element of the charge(s) beyond a reasonable doubt to find me guilty.
- i. At the trial, I have the right to confront the witnesses called to testify against me, including the right to cross-examine those witnesses.
- j. I have the right to present evidence in my own defense at the trial and to compel the attendance of witnesses by subpoenas issued by the Court.
- k. I have the right to remain silent at the trial or testify in my defense as I choose. If I choose to remain silent, my silence cannot be used against me.
- l. After the trial is over, I have the right to appeal to a higher court to review the judgments of the trial court.

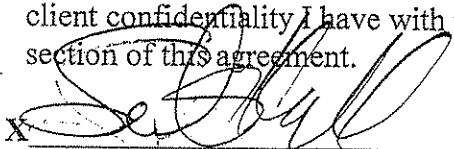
IV. I understand that the offense(s) to which I will plead guilty have the following possible fines, prison penalties, and periods of mandatory parole:

FELONY OFFENSES

| | | PRESUMPTIVE RANGE | | EXCEPTIONAL CIRCUMSTANCES | | PAROLE | MAN-DATORY AGGRA-VATION |
|----|-------|---------------------------|---------------------------------|---------------------------|-------------|------------------|-------------------------------|
| | Class | Minimum | Maximum | Minimum | Maximum | Mandatory Parole | Midpoint of Presumptive Range |
| XX | F2 | 8 YEARS \$5000 FINE | 24 YEARS \$1,000,000 FINE | 4 YEARS | 48 YEARS | 5 YEARS | 16 YEARS |
| | F3ER | 4 YEARS \$3000 | 16 YEARS \$750,000 | 2 YEARS | 32 YEARS | 5 YEARS | 10 YEARS |

| | | | | | | | |
|--|------|---------------------------|-----------------------------------|-------------|-------------|---------|-----------------------------|
| | | FINE | FINE | | | | |
| | F3 | 4 YEARS \$3000 FINE | 12 YEARS \$750,000 FINE | 2 YEARS | 24 YEARS | 5 YEARS | 8 YEARS |
| | F4ER | 2 YEARS \$2000 FINE | 8 YEARS \$500,000 FINE | 1 YEAR | 16 YEARS | 3 YEARS | 5 YEARS |
| | F4 | 2 YEARS \$2000 FINE | 6 YEARS \$500,000 FINE | 1 YEAR | 12 YEARS | 3 YEARS | 4 YEARS |
| | F5ER | 1 YEAR \$1000 FINE | 4 YEARS \$100,000 FINE | 6 MONTHS | 8 YEARS | 2 YEARS | 2.5 YEARS (30 MONTHS) |
| | F5 | 1 YEAR \$1000 FINE | 3 YEARS \$100,000 FINE | 6 MONTHS | 6 YEARS | 2 YEARS | 2 YEARS |
| | F6ER | 1 YEAR \$1000 FINE | 2 YEARS \$100,000 FINE | 6 MONTHS | 4 YEARS | 1 YEAR | 1.5 YEARS (18 MONTHS) |
| | F6 | 1 YEAR \$1000 FINE | 18 MONTHS \$100,000 FINE | 6 MONTHS | 3 YEARS | 1 YEAR | 15 MONTHS |

V. I acknowledge that I have read and understand the plea agreement stated in Section I and the advisement of rights in Section III. I understand that by entering my plea of guilty I am waiving and giving up all the rights set forth in this document. I also acknowledge that I have read and understand the declarations in Section II and those declarations are true and correct. Regarding the Attorney Certificate below, I waive any right to attorney-client confidentiality I have with respect to the statements made by my attorney in that section of this agreement.



 DEFENDANT'S SIGNATURE

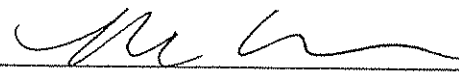
10/8/09
 DATE

ATTORNEY CERTIFICATE TO THE COURT

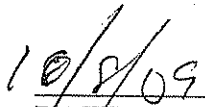
As attorney for the above Defendant, I approve this plea agreement and certify to the Court the following:

- a. I have discussed the facts and law applicable to this matter with the Defendant including the necessary culpable mental state, possible defense(s), and potential penalties.

- b. I have reviewed the contents of this plea agreement with the Defendant, including the sections enumerating the rights contained in Rules 5(a)(2) and 11(b) of the Colorado Rules of Criminal Procedure. To the best of my knowledge and belief, the statements and declarations made by the Defendant in Section 1 of this document are in all respects accurate and true.
- c. The Defendant appears to be mentally competent and exhibits no physical or mental condition that would affect his/her understanding of court proceedings or his/her ability to make an informed decision.
- d. It is my professional opinion that the Defendant is entering into this plea agreement freely and voluntarily and with a full understanding of his/her legal rights, the legal and factual issues of his/her case, and the consequences of his/her decision. I have informed the defendant that he/she must ultimately make his/her own decision to accept or reject this plea agreement.

X 

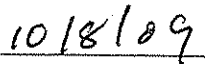
MS. MEGAN RING
ATTORNEY FOR DEFENDANT KIMBALL



DATE

X 

MR. SETH TEMIN
ATTORNEY FOR DEFENDANT KIMBALL



DATE