

APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4854

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JARA MEOTTA ISHON FLOWERS,

Defendant - Appellant.

Appeal from the United States District Court for the Western District of North Carolina,
at Charlotte. Robert J. Conrad, Jr., District Judge. (3:16-cr-00023-RJC-DCK-1)

Argued: May 10, 2018

Decided: June 4, 2018

Before GREGORY, Chief Judge, and WYNN and THACKER, Circuit Judges.

Dismissed in part, affirmed in part by unpublished per curiam opinion.

ARGUED: Joshua B. Carpenter, FEDERAL DEFENDERS OF WESTERN NORTH CAROLINA, INC., Asheville, North Carolina, for Appellant. Anthony Joseph Enright, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee. **ON BRIEF:** Ross Hall Richardson, Interim Defender, FEDERAL DEFENDERS OF WESTERN NORTH CAROLINA, INC., Charlotte, North Carolina, for Appellant. Jill Westmoreland Rose, United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Charlotte, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jara Meotta Ishon Flowers (“Appellant”) pled guilty in the district court to Hobbs Act extortion under color of official right in violation of 18 U.S.C. § 1951(a). She appeals her conviction. The Government filed a motion to dismiss the appeal as barred by the appellate waiver in Appellant’s plea agreement. We grant the Government’s motion and dismiss the appeal in part. We affirm the district court’s decision as to the remainder of the appeal.

I.

A.

While employed as a correctional officer at a state operated correctional facility in North Carolina, Appellant entered into an arrangement with at least one inmate at the facility to use her position to smuggle contraband into the facility in exchange for payment. Per this agreement, the inmate would provide Appellant with the contact information of an individual outside the prison whom Appellant would then meet to obtain the contraband and payment for her services.

In 2015, state and federal authorities began an investigation into the smuggling of contraband into the correctional facility where Appellant worked. On July 13, 2015, an undercover agent recorded a conversation with Appellant during which she discussed receiving payment in exchange for smuggling the contraband into the facility. Appellant was later arrested.

B.

In February 2016, a grand jury indicted Appellant and charged her with Hobbs Act extortion under color of official right in violation of 18 U.S.C. § 1951(a). She filed a motion to dismiss the indictment, arguing that pursuant to Justice Thomas's dissent in *Ocasio v. United States*, 136 S. Ct. 1423 (2016), the Hobbs Act does not apply to bribery. The district court denied Appellant's motion because "the majority opinion [in *Ocasio*] did not upset the existing state of the law [pursuant to *Evans v. United States*, 504 U.S. 255 (1992)] that the Hobbs Act covers bribery." J.A. 18.¹

After Appellant's motion to dismiss was denied, she entered into a plea agreement with the Government. Under the terms of the plea agreement, Appellant waived her right to challenge her conviction except as to claims for ineffective assistance of counsel or prosecutorial misconduct. Appellant also reserved "the right to appeal as to the issue of whether 18 U.S.C. § 1951 extortion under color of official right is properly charged in bribery cases per the dissent in [*Ocasio*.]" J.A. 34 (quoting J.A. 73 (sealed)).

On July 28, 2016, the district court² conducted a plea hearing pursuant to Rule 11 of the Federal Rules of Criminal Procedure. During the hearing, the Government read from the plea agreement, specifically mentioning Appellant's waiver of "all such rights to contest the conviction and/or sentence" in the absence of ineffective assistance of counsel

¹ Citations to the "J.A." refer to the Joint Appendix filed by the parties in this appeal.

² Appellant consented to having a magistrate judge preside over this proceeding.

or prosecutorial misconduct. J.A. 34. The Government clarified that Appellant also “reserve[d] the right to appeal as to the issue of whether 18 U.S.C. [§] 1951 extortion under color of official right is properly charged in bribery cases per the dissent in *[Ocasio]*.” *Id.* Appellant’s counsel emphasized, “[T]his is a conditional plea and what’s reserved is the right to appeal the District Court’s denial of a . . . pretrial motion to dismiss based on the *Ocasio* dissent.” *Id.* at 35–36.

The district court then addressed Appellant as follows:

THE COURT: Now, you are waiving some rights you have to appeal. This case is a little bit unusual and I think we covered that pretty clearly here, but you are nonetheless waiving some rights you have to appeal with some exceptions. Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Well, let me ask you two standard questions, then, on that topic. Do you understand that with those exceptions you are waiving the right to appeal your conviction and/or your sentence in the plea agreement? Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You also understand that with those exceptions you are also waiving the right to challenge your conviction and/or your sentence in what’s called a “post-conviction proceeding”?

THE DEFENDANT: Yes, Your Honor.

J.A. 36–37.

At the conclusion of the plea hearing, the district court determined that Appellant's plea was "knowingly and voluntarily made, and that [Appellant] understand[ed] the charges, potential penalties, and consequences of her plea." J.A. 40. The district court further found "that [Appellant's] plea [was] supported by an independent basis in fact, containing each of the elements of the offense to which she is pleading." *Id.* Therefore, the district court accepted Appellant's guilty plea. It later sentenced her to 18 months of imprisonment. Appellant timely appealed.

II.

Appellant's principal argument on appeal is that her conduct does not constitute an "official act" -- as that term is defined in *McDonnell v. United States*, 136 S. Ct. 2355 (2016) -- necessary to prove Hobbs Act extortion under color of official right. The Government contends that Appellant waived her right to present this argument by entering into a plea agreement that contained an appellate waiver.

"We generally will enforce a waiver to preclude a defendant from appealing a specific issue if the record establishes that the waiver is valid and that the issue being appealed is within the scope of the waiver." *United States v. Thornsby*, 670 F.3d 532, 537 (4th Cir. 2012) (internal alterations and quotation marks omitted). We agree with the Government that the appellate waiver is valid and that Appellant's argument on appeal falls within the scope of the waiver. Accordingly, we grant the Government's motion and dismiss the appeal in part.

A.

The appellate waiver in Appellant's plea agreement is valid. "An appellate waiver is valid if the defendant's agreement to the waiver was knowing and intelligent." *Thornsbury*, 670 F.3d at 537. "Generally, if a district court questions a defendant regarding the waiver of appellate rights during the Rule 11 colloquy and the record indicates that the defendant understood the full significance of the waiver, the waiver is valid." *Id.* (citing *United States v. Johnson*, 410 F.3d 137, 151 (4th Cir. 2005)); *see United States v. Adams*, 814 F.3d 178, 182 (4th Cir. 2016) ("[A] properly conducted Rule 11 colloquy establishes the validity of the waiver.").

Because the Government's counsel and Appellant's counsel discussed the scope of the waiver at the plea hearing, and the district court specifically questioned Appellant about her intent to waive her right to appeal her conviction, the appellate waiver in the plea agreement is valid. *See United States v. Copeland*, 707 F.3d 522, 528 (4th Cir. 2013) (holding that appellate waiver valid where "the district court read the appeal waiver aloud and questioned [the defendant] as to whether he 'underst[ood] the appellate rights [he was] giving up in that paragraph'").

B.

Further, the principal issue Appellant seeks to raise on appeal is within the scope of the appellate waiver. Appellant contends that her conduct does not constitute an "official act" -- as that term is defined in *McDonnell v. United States*, 136 S. Ct. 2355 (2016) -- necessary to prove Hobbs Act extortion under color of official right. This issue is not an assertion of ineffective assistance of counsel or prosecutorial misconduct. And

the issue Appellant specifically reserved in her plea agreement -- “whether 18 U.S.C. § 1951 extortion under color of official right is properly charged in bribery cases per the dissent in [*Ocasio v. United States*, 136 S. Ct. 1423 (2016)]” -- does not encompass the *McDonnell* issue Appellant now raises.

Justice Thomas’s dissent in *Ocasio* opines that Hobbs Act extortion under color of official right does not cover bribery. 136 S. Ct. at 1437 (Thomas, J., dissenting). The dissent asserts that the Supreme Court’s decision in *Evans v. United States*, 504 U.S. 255 (1992) -- which defined Hobbs Act extortion under color of official right as “the rough equivalent of . . . taking a bribe,” *id.* at 260 -- “wrongly equated extortion with bribery.” *Ocasio*, 136 S. Ct. at 1437 (Thomas, J., dissenting). By contrast, the Court in *McDonnell* applied *Evans*’s definition of Hobbs Act extortion under color of official right in reviewing the conviction of a defendant who “had accepted bribes.” 136 S. Ct. at 2365. Because *McDonnell* dealt with Hobbs Act extortion under color of official right in a bribery case, it cannot possibly form the basis for an argument that Hobbs Act extortion under color of official right is not “properly charged in bribery cases.”

Indeed, this is precisely why Appellant’s briefs in this appeal present the two issues in the alternative. And significantly, the Supreme Court had not yet decided *McDonnell* at the time *Ocasio* was decided, so neither the *Ocasio* majority opinion nor Justice Thomas’s dissent relied on *McDonnell*. Thus, the principal issue Appellant seeks to raise on appeal falls within the scope of the valid appellate waiver in her plea agreement.

C.

Under certain circumstances, “[w]e will refuse to enforce an otherwise valid waiver if to do so would result in a miscarriage of justice.” *Adams*, 814 F.3d at 182. We conclude that no such circumstances exist in this case. Therefore, we enforce the appellate waiver in Appellant’s plea agreement.

III.

Appellant also argues, pursuant to the reasoning articulated by Justice Thomas’s dissent in *Ocasio v. United States*, 136 S. Ct. 1423 (2016), that *Evans v. United States*, 504 U.S. 255 (1992), was wrongly decided. Like the district court, “we are not free to overrule or ignore the Supreme Court’s precedents.” *United States v. Cheek*, 415 F.3d 349, 353 (4th Cir. 2005). Accordingly, we affirm the district court’s order denying Appellant’s motion to dismiss the indictment on this basis.

IV.

For the foregoing reasons, we grant the Government’s motion to dismiss the appeal in part. We affirm the district court’s decision as to the remainder of the appeal.

*DISMISSED IN PART,
AFFIRMED IN PART*

FILED: June 4, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-4854
(3:16-cr-00023-RJC-DCK-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JARA MEOTTA ISHON FLOWERS

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed in part. The appeal is dismissed in part.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:16-CR-00023-RJC-DCK

USA)
)
v.) ORDER
)
JARA MEOTTA ISHON FLOWERS)
)

THIS MATTER is before the Court on the defendant's Motion to Dismiss, (Doc. No. 11), and the government's response, (Doc. No. 13).

Federal Rule of Criminal Procedure 12(b)(3)(B) allows a defendant to challenge an indictment prior to trial for failing to state an offense. “[A]n indictment is legally sufficient (1) if it alleges the essential elements of the offense, that is, it fairly informs the accused of what he is to defend; and (2) if the allegations will enable the accused to plead an acquittal or conviction to bar a future prosecution for the same offense.” United States v. Rendelman, 641 F.3d 36, 44 (4th Cir. 2011). A court may not dismiss an indictment based on facts that should have been developed at trial. United States v. Engle, 676 F.3d 405, 415 (4th Cir. 2012).

Here, Count One of the Indictment alleges that the defendant affected commerce by extortion, that is she obtained property from inmates at a prison with their consent under color of official right, in violation of 18 U.S.C. § 1951. (Doc. No. 1 at 2). Introductory paragraphs claim that the defendant was employed as a correctional officer when she used her official position to smuggle synthetic marijuana to at least one inmate in exchange for money. (Id. at 1-2). The defendant asks the Court to rely on a dissenting opinion in the recent case of Ocasio v. United States, 136 S. Ct. 1423 (2016), to find that the Hobbs Act does not apply to bribery. (Doc. No. 11: Motion at 1). However, as rightly argued by the government, (Doc. No. 13: Response at 1),

the majority opinion did not upset the existing state of the law that the Hobbs Act covers bribery, that is a public official taking money to which she is not entitled, knowing the payment is in return for an official act. Ocasio, 136 S. Ct. at 1428, 1434 (citing Evans v. United States, 504 U.S. 255, 260 (1992). Accordingly, the Court finds that the indictment sufficiently alleges the essential elements of the offense and protects the defendant from double jeopardy.

IT IS, THEREFORE ORDERED that the defendant's Motion to Dismiss, (Doc. No. 11), is **DENIED**.

Signed: July 13, 2016



Robert J. Conrad, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
Western District of North Carolina

UNITED STATES OF AMERICA

V.

JARA MEOTTA ISHON FLOWERS

) **JUDGMENT IN A CRIMINAL CASE**

) (For Offenses Committed On or After November 1, 1987)

)

)

) Case Number: DNCW316CR000023-001

) USM Number: 32657-058

)

) Peter Adolf

) Defendant's Attorney

THE DEFENDANT:

- Pleaded guilty to count(s) 1.
- Pleaded nolo contendere to count(s) which was accepted by the court.
- Was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

Title and Section	Nature of Offense	Date Offense Concluded	Counts
128:1951(a)	Extortion under color of official right	2/2/16	1

The Defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984, United States v. Booker, 125 S.Ct. 738 (2005), and 18 U.S.C. § 3553(a).

- The defendant has been found not guilty on count(s).
- Count(s) (is)(are) dismissed on the motion of the United States.

IT IS ORDERED that the Defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay monetary penalties, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence: 12/15/2016

Signed: December 27, 2016



Robert J. Conrad, Jr.
United States District Judge



Defendant: Jara Meotta Ishon Flowers
Case Number: DNCW316CR000023-001

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IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of EIGHTEEN (18) MONTHS.

The Court makes the following recommendations to the Bureau of Prisons:

- Participation in any available mental health or domestic violence treatment programs as may be recommended by a Mental Health Professional.
- Participation in any available educational and vocational opportunities.
- Placed in a facility as close to Charlotte, NC as possible, consistent with the needs of BOP.

The Defendant is remanded to the custody of the United States Marshal.

The Defendant shall surrender to the United States Marshal for this District:

- As notified by the United States Marshal.
- At _ on _.

The Defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- As notified by the United States Marshal.
- Before 2 p.m. on _.
- As notified by the Probation Office.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____
_____, with a certified copy of this Judgment.

United States Marshal

By: _____
Deputy Marshal

Defendant: Jara Meotta Ishon Flowers
Case Number: DNCW316CR000023-001

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of THREE (3) YEARS.

The condition for mandatory drug testing is suspended based on the court's determination that the defendant poses a low risk of future substance abuse.

STANDARD CONDITIONS OF SUPERVISION

The defendant shall comply with the standard conditions that have been adopted by this court and any additional conditions ordered.

1. The defendant shall not commit another federal, state, or local crime.
2. The defendant shall refrain from possessing a firearm, destructive device, or other dangerous weapon.
3. The defendant shall pay any financial obligation imposed by this judgment remaining unpaid as of the commencement of the sentence of probation or the term of supervised release on a schedule to be established by the Court.
4. The defendant shall provide access to any personal or business financial information as requested by the probation officer.
5. The defendant shall not acquire any new lines of credit unless authorized to do so in advance by the probation officer.
6. The defendant shall not leave the Western District of North Carolina without the permission of the Court or probation officer.
7. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer.
8. A defendant on supervised release shall report in person to the probation officer in the district to which he or she is released within 72 hours of release from custody of the Bureau of Prisons.
9. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
10. The defendant shall support his or her dependents and meet other family responsibilities.
11. The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other activities authorized by the probation officer.
12. The defendant shall notify the probation officer within 72 hours of any change in residence or employment.
13. The defendant shall refrain from excessive use of alcohol and shall not unlawfully purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as duly prescribed by a licensed physician.
14. The defendant shall participate in a program of testing and treatment or both for substance abuse if directed to do so by the probation officer, until such time as the defendant is released from the program by the probation officer; provided, however, that defendant shall submit to a drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter for use of any controlled substance, subject to the provisions of 18:3563(a)(5) or 18:3583(d), respectively; The defendant shall refrain from obstructing or attempting to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing or monitoring which is (are) required as a condition of supervision.
15. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
16. The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
17. The defendant shall submit his person, residence, office, vehicle and/or any computer system including computer data storage media, or any electronic device capable of storing, retrieving, and/or accessing data to which they have access or control, to a search, from time to time, conducted by any U.S. Probation Officer and such other law enforcement personnel as the probation officer may deem advisable, without a warrant. The defendant shall warn other residents or occupants that such premises or vehicle may be subject to searches pursuant to this condition.
18. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed by the probation officer.
19. The defendant shall notify the probation officer within 72 hours of defendant's being arrested or questioned by a law enforcement officer.
20. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
21. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
22. If the instant offense was committed on or after 4/24/96, the defendant shall notify the probation officer of any material changes in defendant's economic circumstances which may affect the defendant's ability to pay any monetary penalty.
23. If home confinement (home detention, home incarceration or curfew) is included you may be required to pay all or part of the cost of the electronic monitoring or other location verification system program based upon your ability to pay as determined by the probation officer.
24. The defendant shall cooperate in the collection of DNA as directed by the probation officer.
25. The defendant shall participate in transitional support services under the guidance and supervision of the U.S. Probation Officer. The defendant shall remain in the services until satisfactorily discharged by the service provider and/or with the approval of the U.S. Probation Officer.

Defendant: Jara Meotta Ishon Flowers
Case Number: DNCW316CR000023-001

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CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the Schedule of Payments.

ASSESSMENT	FINE	RESTITUTION
\$100.00	\$0.00	\$0.00

The determination of restitution is deferred until. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

FINE

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on the Schedule of Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

The court has determined that the defendant does not have the ability to pay interest and it is ordered that:

The interest requirement is waived.

The interest requirement is modified as follows:

COURT APPOINTED COUNSEL FEES

The defendant shall pay court appointed counsel fees.

The defendant shall pay \$0.00 towards court appointed fees.

Defendant: Jara Meotta Ishon Flowers
Case Number: DNCW316CR000023-001

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A Lump sum payment of \$0.00 due immediately, balance due
 Not later than _____
 In accordance (C), (D) below; or

B Payment to begin immediately (may be combined with (C), (D) below); or

C Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of \$50.00 to commence 60 (E.g. 30 or 60) days after the date of this judgment; or

D Payment in equal Monthly (E.g. weekly, monthly, quarterly) installments of \$ 50.00 to commence 60 (E.g. 30 or 60) days after release from imprisonment to a term of supervision. In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. Probation Officer shall pursue collection of the amount due, and may request the court to establish or modify a payment schedule if appropriate 18 U.S.C. § 3572.

Special instructions regarding the payment of criminal monetary penalties:

The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court costs:
 The defendant shall forfeit the defendant's interest in the following property to the United States

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments are to be made to the United States District Court Clerk, 401 West Trade Street, Room 210, Charlotte, NC 28202, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program. All criminal monetary penalty payments are to be made as directed by the court.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Defendant: Jara Meotta Ishon Flowers
Case Number: DNCW316CR000023-001

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STATEMENT OF ACKNOWLEDGMENT

I understand that my term of supervision is for a period of _____ months, commencing on _____.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

I understand that revocation of probation and supervised release is mandatory for possession of a controlled substance, possession of a firearm and/or refusal to comply with drug testing.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) _____ Date: _____
Defendant

(Signed) _____ Date: _____
U.S. Probation Office/Designated Witness

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA

) DOCKET NO.: 3:15 CR 23 / RJC

v.

) **PLEA AGREEMENT**

JARA MEOTTA ISHON FLOWERS

)

NOW COMES the United States of America, by and through Jill Westmoreland Rose, United States Attorney for the Western District of North Carolina, and the defendant, JARA MEOTTA ISHON FLOWERS, in person and through counsel, Peter Adolf, and respectfully inform the Court that they have reached an agreement pursuant to Federal Rule of Criminal Procedure ("Rule") 11. References to the United States herein shall mean the United States Attorney for the Western District of North Carolina.

I. Plea

1. The defendant agrees to enter a voluntary plea of guilty to Count ONE as set forth in the Bill of Indictment, and admits to being in fact guilty as charged in this Count.

2. The defendant understands that each and every provision set forth below is a material term of the plea agreement. The defendant's failure to fully comply with any provision of the plea agreement, attempt to withdraw the guilty plea or violation of any federal, state or local law, or any order of any court, including any condition of pre-trial or pre-sentence, or post-sentence release is a breach of the plea agreement. In addition to any other remedy available in law, the defendant's breach (i) will relieve the United States of its obligations under the Plea Agreement, but the defendant will not be relieved of the defendant's obligations or allowed to withdraw the guilty plea; (ii) may constitute the defendant's failure to accept responsibility under U.S.S.G. § 3E1.1; and (iii) will permit the United States to proceed on any dismissed, pending, superseding or additional charges.

II. Sentence

3. The defendant is aware that the statutory minimum and maximum sentences for each count are as follows:

Count ONE: a violation of 18 U.S.C. § 1951; a maximum term of twenty years, a \$ 250,000 fine, or both such fine and imprisonment.

4. The defendant understands that a violation of supervised release may subject the defendant to an additional period of incarceration.

5. The defendant is aware that the Court: (a) will consider the advisory *United States Sentencing Guidelines* [U.S.S.G.] in determining the sentence; (b) has not yet determined the sentence and any estimate of the likely sentence is a prediction rather than a promise; (c) has the final discretion to impose any sentence up to the statutory maximum for each count; and (d) is not bound by recommendations or agreements by the United States. Knowing this, the defendant understands that the defendant may not withdraw the plea as a result of the sentence imposed.

6. Pursuant to Rule 11(c)(1)(B), the parties agree that they will jointly recommend that the Court make the following findings and conclusions as to the U.S.S.G:

a. The United States agrees that the defendant's entry of plea is timely for purposes of U.S.S.G. § 3E1.1(b).

b. Notwithstanding any other recommendation herein, if the Probation Office determines from the defendant's criminal history that U.S.S.G. §4B1.1 (Career Offender) or U.S.S.G. §4B1.4 (Armed Career Criminal) applies, such provision may be used in determining the sentence.

c. The United States will inform the Court and the probation office of all facts pertinent to the sentencing process and will present any evidence requested by the Court.

7. The defendant agrees to the following with respect to financial disclosures, monetary penalties, forfeiture and restitution:

a. To pay full restitution, regardless of the resulting loss amount, to all victims directly or indirectly harmed by the defendant's "relevant conduct," including conduct pertaining to any dismissed counts or uncharged conduct, as defined by U.S.S.G. § 1B1.3, regardless of whether such conduct constitutes an "offense" under 18 U.S.C. §§ 2259, 3663 or 3663A.

b. To make full disclosure of all current and projected assets to the U.S. Probation Office immediately and prior to the termination of the defendant's supervised release or probation, such disclosures to be shared with the U.S. Attorney's Office, including the Financial Litigation Unit, for any purpose.

c. To truthfully complete under penalty of perjury within thirty days of the execution of this Plea Agreement a financial statement provided by the U.S. Attorney's Office and to update the statement with material changes within seven days of the change.

d. That monetary penalties imposed by the Court will be (i) subject to

immediate enforcement as provided for in 18 U.S.C. § 3613, and (ii) submitted to the Treasury Offset Program so that any federal payment or transfer of returned property the defendant receives may be offset and applied to federal debts but will not affect the periodic payment schedule.

8. With regard to each and every asset listed in the Bill of Indictment or seized in a related investigation or administrative, state, or local action the defendant stipulates and agrees:

- a. To its forfeiture herein, if necessary as substitute property under 21 U.S.C. § 853(p), as made applicable by 18 U.S.C. § 982(b)(1) or any other statute, or in a separate administrative or civil judicial proceeding.
- b. That the defendant has or had a possessory interest or other legal interest in each item or property.
- c. To the entry of a money judgment in the amount specified in the Bill of Indictment.
- d. To the Magistrate Judge conducting all proceedings necessary for any civil forfeiture of the property, including entry of judgment, pursuant to 28 U.S.C. §636(c).
- e. That the property may be returned to the true owner or treated as abandoned property.
- f. To assist the United States in the recovery of all assets by (i) taking whatever steps are necessary or requested by the United States to pass clear title to the United States; (ii) preventing the disbursement of any moneys and sale of any property or assets; (iii) not encumbering or transferring any real estate after the defendant's signing of this plea agreement; and (iv) directing all financial institutions to turn over and surrender to the United States all funds and records regarding accounts listed in any document signed by defendant pursuant to this plea agreement, as criminal proceeds or substitute property.

9. The defendant waives all rights to notice of forfeiture under Rule 32.2 and of any other action or proceeding regarding such assets. The defendant consents and waives all rights to compliance by the United States with any applicable deadlines under 18 U.S.C. § 983(a). Any related administrative claim filed by the defendant is hereby withdrawn.

10. If the United States discovers that the defendant has not fully disclosed all assets, the United States may seek forfeiture of any subsequently-discovered assets, and the defendant agrees to the immediate forfeiture of any such assets.

11. The defendant further agrees to participate in the Inmate Financial Responsibility Program to fulfill all financial obligations due and owing under this agreement and the law.

III. Procedure

12. The defendant agrees that a duly-qualified federal Magistrate Judge may conduct the hearing required by Rule 11.

13. The defendant stipulates that there is a factual basis, as required by Fed. R. Crim. P. 11(b)(3), for the plea of guilty. The defendant further stipulates that the defendant has read and understood the Factual Basis attached to this plea agreement, and that such Factual Basis may be used by the Court and the United States Probation Office without objection by the defendant to determine the applicable advisory guideline range or the appropriate sentence under 18 U.S.C. § 3553(a), unless the Factual Basis itself notes that the defendant's right to object to a particular fact(s) was explicitly reserved.

IV. Waivers

14. The defendant is aware that the law provides certain limited rights to withdraw a plea of guilty, has discussed these rights with defense counsel and knowingly and expressly waives any right to withdraw the plea once the Magistrate Judge has accepted it.

15. The defendant acknowledges that Rule 11(f) and Fed. R. of Evid. 408 and 410 are rules which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions. The defendant knowingly and voluntarily waives these rights and agrees that any statements made in the course of the defendant's guilty plea or this plea agreement (in part or in its entirety, at the sole discretion of the United States) will be admissible against the defendant for any purpose in any criminal or civil proceeding if the defendant fails to enter or attempts to withdraw the defendant's guilty plea, or in any post-conviction proceeding challenges the voluntary nature of the guilty plea.

16. The defendant agrees that by pleading guilty, the defendant is expressly waiving the right: (a) to be tried by a jury; (b) to be assisted by an attorney at trial; (c) to confront and cross-examine witnesses; and (d) not to be compelled to incriminate him or herself.

17. The defendant has discussed with his attorney: (1) defendant's rights pursuant to 18 U.S.C. § 3742, 28 U.S.C. § 2255, and similar authorities to contest a conviction and/or sentence through an appeal or post-conviction after entering into a plea agreement and (2) the possible impact of any such issue on the desirability of entering into this plea agreement.

18. The defendant, in exchange for the concessions made by the United States in this plea agreement, waives all such rights to contest the conviction and/or sentence except for: (1) claims of ineffective assistance of counsel or (2) prosecutorial misconduct, except as to the following: the defendant and the United States agree that the defendant may reserve the right to appeal as to the issue of whether 18 U.S.C. § 1951 extortion under color of official right is properly charged in bribery cases per the dissent in Ocasio v. United States, 135 S.Ct. 1423 (2016); The defendant also knowingly and expressly waives all rights conferred by 18 U.S.C. § 3742 or

otherwise to appeal whatever sentence is imposed with the two exceptions set forth above. The defendant agrees that the United States preserves all its rights and duties as set forth in 18 U.S.C. § 3742(b). Should the United States Sentencing Commission and/or Congress in the future amend the Sentencing Guidelines to lower the guideline range that pertains to the defendant's offense(s) and explicitly make such an amendment retroactive, the United States agrees that it will not assert this waiver as a bar to the defendant filing a motion with the district court pursuant to 18 U.S.C. § 3582(c)(2). However, if the defendant files such a motion, the United States reserves the right to oppose the motion on any other grounds, and reserves the right to assert this waiver as a bar to an appeal from the district court's decision regarding the motion.

19. The defendant waives all rights, whether asserted directly or by a representative, to request or to receive from any department or agency 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, 5 U.S.C. § 552a.

V. Effects of Plea

20. The defendant understands that if this case is governed by Title 18, United States Code, Sections 3143(a)(2) and 3145(c) that a judicial officer shall order that a person who has been found guilty of an offense of this kind be detained unless there are statutory justifications why such person's detention would not be appropriate.

21. The defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status if the defendant is not a citizen of the United States. The defendant understands that no one can predict to a certainty the effect of the defendant's conviction(s) on the defendant's immigration status and wants to plead guilty regardless, even if the consequence is the defendant's automatic removal from the United States.

VI. Assistance to United States

22. If requested by the United States, but only if so requested, the defendant agrees to cooperate with the United States, including but not limited to the following:

a. The defendant will provide truthful information about the subject charges and about any other criminal activity within the defendant's knowledge to any United States agent or agency that the United States designates.

b. The defendant will testify truthfully in any trial, hearing, or grand jury proceeding, including, but not limited to, testimony against any co-defendants, as the United States designates. Should the defendant testify at the request of the United States, the defendant hereby waives payment of any witness fees or expenses.

c. The defendant will be reasonably available for debriefing and pre-trial conferences as the United States may require.

d. The defendant will provide to the United States all documents or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

e. The defendant understands that the United States desires only truthful and accurate information and testimony and, in fact, that knowingly giving false information or testimony can be prosecuted as an additional criminal offense.

f. The defendant's obligation under this section is a continuing one, and will continue after sentencing until all investigations and/or prosecutions to which the defendant's cooperation may be relevant have been completed.

23. The United States agrees that nothing that the defendant discloses pursuant to the Plea Agreement will be used against the defendant in any other criminal proceeding, except:

a. information regarding crimes of violence;

b. in a prosecution for any crime committed by the defendant after the effective date of this plea agreement;

c. as necessary in a prosecution for false statements, perjury, obstruction of justice, or in any proceeding for impeachment, rebuttal, or countering a defense (whether presented through opening statements, cross-examination, or otherwise);

d. by making indirect use of any information that the defendant provides, including investigative leads or other witnesses. However, if there is an agreement pursuant to U.S.S.G. §1B1.8, information directly or indirectly derived from the defendant pursuant to this agreement shall not be used in determining the applicable guideline range.

24. Nothing in this agreement places any obligation on the United States to seek the defendant's cooperation or assistance. If the defendant so assists the United States:

a. The United States, in its sole discretion, will determine whether said assistance has been substantial.

b. Upon a determination that the defendant has rendered substantial assistance, the United States may make a motion pursuant to U.S.S.G. § 5K1.1 for imposition of a sentence below the applicable Sentencing Guidelines or pursuant to Rule35(b) for a reduction in the defendant's term of imprisonment. The United States may also, within its sole discretion, move the Court pursuant to 18 U.S.C. § 3553(e) and/or Rule35(b) to impose a sentence below any applicable statutory mandatory minimum

c. Any determination that the defendant has failed to provide substantial

assistance or has knowingly provided false information is within the sole discretion of the United States, and the defendant waives all objections and rights of appeal or collateral attack of such a determination. The defendant understands that if the United States makes a motion for reduction of sentence, the motion is not binding on the District Court.

VII. Conclusion

25. This agreement is effective and binding once signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled by the Court.

26. There are no agreements, representations, or understandings between the parties in this case, other than those explicitly set forth in this Plea Agreement, or as noticed to the Court during the plea colloquy and contained in writing in a separate document signed by all parties.

SO AGREED:

For → Corey P. Ellis
JILL WESTMORELAND ROSE, United States Attorney
Peter Adolf
PETER ADOLF, Attorney for Defendant

DATED: 7/26/2016

DATED: 7/26/16

DATED: 7/26/16

May 2015

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

NOW COMES the United States of America, by and through the undersigned United States Attorney for the Western District of North Carolina, and hereby files this Factual Basis in support of the plea entered in this matter.

This Factual Basis does not attempt to set forth all of the facts known to the United States at this time. This Factual Basis is not a statement of the defendant, and, at this time, the defendant may not have provided information to the United States about the offenses to which the defendant is pleading guilty, or the defendant's relevant conduct, if any.

By their signatures below, the parties expressly agree that there is a factual basis for the guilty plea(s) that the defendant will tender. The parties also agree that this Factual Basis may, but need not, be used by the United States Probation Office and the Court in determining the applicable advisory guideline range under the *United States Sentencing Guidelines* or the appropriate sentence under 18 U.S.C. § 3553(a). The defendant agrees not to object to any fact set forth below being used by the Court or the United States Probation Office to determine the applicable advisory guideline range or the appropriate sentence under 18 U.S.C. § 3553(a) unless the defendant's right to object to such particular fact is explicitly reserved below. The parties' agreement does not preclude either party from hereafter presenting the Court with additional facts which do not contradict facts to which the parties have agreed not to object and which are relevant to the Court's guideline computations, to 18 U.S.C. § 3553 factors, or to the Court's overall sentencing decision.

1. From May 2015 until on or about January 2016, Jara Meotta Ishon Flowers was employed as a Correctional Officer at Brown Creek Correctional Institution in Polkton, North Carolina which is within the Western District of North Carolina. Brown Creek Correctional Institution (BCCI) is a state prison facility operated by the North Carolina Department of Public Safety (NC-DPS). The mission of Brown Creek Correctional Institution is to protect the community, its employees, inmates and assigned property through the progressive supervision of inmates. The facility provides a safe and humane working and living environment where jobs and programs are provided for inmates to prepare them for successful transition into society. Flowers began her employment as a correctional officer at BCCI in May 2015.

2. Tobacco, alcohol, and controlled substances, among other things, are deemed to be

contraband within BCCI. Correctional Officers at BCCI and throughout the NC-DPS are prohibited from bringing alcohol, tobacco, controlled substances, illegal drugs, among other controlled items, into any North Carolina correctional facility to include BCCI.

3. During an undercover investigation conducted by the North Carolina State Bureau of Investigations (NCSBI) and the Federal Bureau of Investigation (FBI), agents learned that Correctional Officers employed at BCCI were bringing synthetic marijuana and other contraband items into the prison in exchange for United States Currency. "K2" (synthetic marijuana) is a Schedule I controlled substance under federal law. It is also illegal to sell, manufacture or possess synthetic marijuana under N.C. law. Synthetic marijuana is contraband and is prohibited within the NC prison facilities.

4. As part of the investigation, an undercover agent was instructed, by an outside contact of an inmate incarcerated at BCCI, that he would receive a package which would then be transferred to "John Doe", a BCCI correctional officer, who would smuggle the package into the prison. The undercover agent confirmed that the delivery to him and ultimately to the correctional officer was in fact made at the direction and on behalf of an inmate at BCCI.

5. Despite the arrangement, on or about July 13, 2015, the undercover agent received a call from Flowers who advised that she had already received and delivered the "package" and as a result was owed \$300 for her services. Flowers agreed to meet the undercover the next day to receive payment.

6. On July 14, 2015, the undercover agent met Flowers in Charlotte, North Carolina. The meeting was audio and video recorded. During the meeting, which occurred in the undercover agent's car, Flowers was paid \$300 by the undercover agent. During the meeting, Flowers discussed receiving the payment in exchange for delivering synthetic marijuana into BCCI. Flowers also stated that she was a correctional officer at BCCI and was aware that delivering contraband items into the prison system was a violation of policy and law. Flowers made multiple deliveries of contraband of inmates in exchange for United States Currency.

7. Following the return of the indictment in this matter, agents contacted Flowers and instructed her to meet them so that she could be served with the Arrest Warrant issued by the Federal Court. After agreeing to meet the agents, Flowers refused to turn herself in and in fact withdrew from contact with the agents. After several days, agents, using investigative techniques, located Flowers in the Winston-Salem, NC area and arrested her.

Cory T. Ellis
 FOR → JILL WESTMORELAND ROSE
 UNITED STATES ATTORNEY

Defendant's Counsel's Signature and Acknowledgment

I have read this Factual Basis and the Bill of Indictment in this case, and have discussed them with the defendant. Based on those discussions, I am satisfied that the defendant understands the Factual Basis and the Bill of Indictment. I hereby certify that the defendant does not dispute this Factual Basis with the exception of those facts to which I have specifically reserved the right to object, and understands that it may be used for the purposes stated above.



PETER ADOLF, Attorney for Defendant

DATED: 7/26/16

**FILED
ASHEVILLE, NC**

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

**U.S. DISTRICT COURT
WESTERN DISTRICT OF NC**

FEB 02 2016

UNITED STATES OF AMERICA)	FILE NO: 3:16 CR 23 -RJC
)	
v.)	BILL OF INDICTMENT
)	
JARA MEOTTA ISHON FLOWERS)	

**VIOLATION:
18 U.S.C. § 1951**

THE GRAND JURY CHARGES:

INTRODUCTION

1. At all times relevant to this Bill of Indictment, the defendant, JARA MEOTTA ISHON FLOWERS, was employed as a Correctional Officer at Brown Creek Correctional Institution in Polkton, North Carolina which is within the Western District of North Carolina. Brown Creek Correctional Institution (BCCI) is a state prison facility operated by the North Carolina Department of Public Safety (NC-DPS). The mission of Brown Creek Correctional Institution is to protect the community, its employees, inmates and assigned property through the progressive supervision of inmates. The facility provides a safe and humane working and living environment where jobs and programs are provided for inmates to prepare them for successful transition into society.
2. The defendant began her employment at BCCI in May 2015. During her tenure at BCCI the defendant has worked in two separate units and generally worked 12 hour shifts.
3. Tobacco, alcohol, and controlled substances, among other things, are deemed to be contraband within BCCI. Correctional Officers at BCCI and throughout the NC-DPS are prohibited from bringing alcohol, tobacco, controlled substances, illegal drugs, among other controlled items, into any North Carolina correctional facility to include BCCI.
4. The North Carolina Department of Public Safety Policy and Procedures Manual for prison employees. Section .0202(f)(2) provides:
“...It is a criminal offense for any person [employee] to sell or give any inmate any intoxicating drink, barbiturate or stimulant drug, or any narcotic, poison or poisonous substance....”

5. No later than June 2015, JARA MEOTTA ISHON FLOWERS reached an arrangement with at least one BCCI inmate under which she agreed to use her position as a Correctional Officer to smuggle "K2" (synthetic marijuana), a contraband substance, into BCCI for use by at least one inmate, in exchange for United States Currency.
6. "K2" synthetic marijuana is a Schedule I controlled substance under Federal Law; thus, its possession, manufacture and distribution is unlawful. It is also illegal to sell, manufacture or possess synthetic marijuana in North Carolina.
7. To effectuate the smuggling scheme, the inmate provided contact information for an outside individual who would meet with the defendant, provide the contraband and payment in exchange for JARA MEOTTA ISHON FLOWERS smuggling the contraband into BCCI.

COUNT ONE

(Extortion Under Color of Official Right; 18 U.S.C. § 1951)

The allegations set forth in the foregoing Introduction are hereby incorporated by reference.

From in or about June 2015 and continuing until the present, in Anson County, which is within the Western District of North Carolina,

JARA MEOTTA ISHON FLOWERS

knowingly attempted to and did obstruct, delay and affect commerce by extortion, in that the defendant obtained property, namely money and other things of value, from inmates at Brown Creek Correctional Institution in Polkton, North Carolina, with the inmates' consent, under color of official right.

In violation of Title 18, United States Code, Section 1951.

NOTICE OF FORFEITURE AND FINDING OF PROBABLE CAUSE

Notice is hereby given of 18 U.S.C. § 924 and 28 U.S.C. § 2461(c). Under Section 2461(c), criminal forfeiture is applicable to any offenses for which forfeiture is authorized by any other statute, including but not limited to 18 U.S.C. § 981 and all specified unlawful activities listed or referenced in 18 U.S.C. § 1956(c)(7), which are incorporated as to proceeds by Section 981(a)(1)(C). The following property is subject to forfeiture in accordance with Section 924 and/or 2461(c):

- a. All property which constitutes or is derived from proceeds of the violations set forth in this bill of indictment;
- b. All firearms and ammunition involved or used in such violations; and
- c. If, as set forth in 21 U.S.C. § 853(p), any property described in (a) or (b) cannot be located upon the exercise of due diligence, has been transferred or sold to, or deposited with, a third party, has been placed beyond the jurisdiction of the court, has been substantially diminished in value, or has been commingled with other property which cannot be divided without difficulty, all other property of the defendants to the extent of the value of the property described in (a) and (b).

A TRUE BILL:

A handwritten signature in black ink, appearing to read "Jill Westmoreland Rose".

JILL WESTMORELAND ROSE
UNITED STATES ATTORNEY