

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Criminal Action No. 09-cr-00519-CMA

UNITED STATES OF AMERICA,

Plaintiff,

v

CHARLES H. TOUPS, JR.

Defendant,

JOINT STIPULATION AND
MOTION FOR DISMISSAL WITHOUT PREJUDICE

The United States of America, by Michelle M. Heldmyer, Assistant United States Attorney, and the defendant Charles H. Toups, Jr., personally and through his attorney Kathryn Stimson, Esq., stipulate to the dismissal of the Information in the above matter without prejudice pursuant to the terms and conditions set forth below:

1. **Deferral of Prosecution:** The prosecution of Counts One through Three of the Information shall be deferred for a period of 24 months from the date of dismissal without prejudice, subject to the terms and conditions set forth herein.
2. **Defendant Obligations:** During the period of deferral as set forth above the defendant shall:
 - a. be banned from all National Forest Service, National Park Service, and Bureau of Land Management property. The defendant may, as a paying customer during regular business hours, recreate at designated ski areas, regardless of whether they incorporate Forest Service property. The defendant must obey all Forest Service and ski area rules and regulations

while on the property, and may not camp overnight in or near such areas except as a paying customer in a designated overnight campsite.

- b. not commit any federal, state or municipal offenses (excepting traffic infractions);
- c. report in writing to the Office of the United States Attorney, by U. S. Mail any any criminal offense charged against the defendant during the period of deferral within 5 days of being notified thereof. The defendant agrees that in the even the is charged with any such offense within the period of deferral, that the period of deferral shall be extended by operation of this agreement for a period of 60 days following the disposition of that charge by verdict or plea and that the defendant shall notify the Office of the United States Attorney of such disposition in the manner and within the time set forth herein.

3. Government's Obligations: The government agrees that it may only file an Information charging the same offenses and based on the same facts as set forth in the Information, upon a violation of the terms and conditions of this agreement, within the period of deferral or any extension thereof as set forth in Paragraph 1 above.

4. Defendant's Admission of Guilt: The defendant agrees that the law makes it a crime to forcibly resist, oppose, impede, or interfere with an officer and employee of an agency of the United States. The defendant further agrees that he committed the offense as charged in Count One of the Information, that is, resisting, opposing and impeding a law enforcement officer, in violation of Title 18, United States Code, Section 111.

a. The elements of a violation of 18 U.S.C. 111 are:

First: On or about November 14, 2009, in the State and District of Colorado, upon lands administered by the National Forest Service, namely the White River National Forest;

Second: Toups did forcibly resist, oppose, impede, and interfere with Jill Wick, an officer and employee of the United States

Third: While Officer Wick was engaged in the performance of her official duties.

b. The defendant agrees and admits to the following factual basis in support of Count One of the Information:

On or about November 14, 2009, Law Enforcement Officer Jill Wick of the National Forest Service and a Summit County Deputy Sheriff were tasked with serving a valid, judicially-issued arrest warrant on the defendant, Charles Toups, Jr., based upon a pending charge of illegal residential use of National Forest property.

The officers encountered Toups in the Arapaho Basin Ski Area, and informed him of the federal arrest warrant. The defendant stiffened his body and resisted custody. The officers directed him to place his hands behind his back but Toups clenched his hands, tucked his arms against his torso and started to shout at the officers. Toups refused to put his hands behind his back upon command. After a struggle, the officers were able to move his hands so that Toups could be handcuffed.

Officer Wick is an officer and employee of the United States, and

was engaged in the performance of her official duties at the time of the encounter with Toups.

c. The defendant understands and agrees that this entire agreement and the admissions set forth herein can be used against him in any subsequent prosecution pursued as a result of a violation of the terms and conditions of this agreement.

d. The defendant also agrees that the ends of justice require that the time during which this agreement is in force should be excluded from time calculations pursuant to the Speedy Trial Act and that any constitutional right to speedy trial be tolled by the terms of this agreement.

5. Consequences of Violation of this Agreement: The defendant understands and agrees that, upon a violation of any of the terms of this agreement, the government may, at its discretion, prosecute the defendant for any and/or all of the charges in the Information, together with any new violations of the law which constituted the basis for the breach of this agreement. Nothing in this agreement is construed as binding or prohibiting any other entity from pursuing legal action against the defendant, nor is the government prohibited from pursuing legal action as to any new violations of the law not encompassed by this agreement.

6. Survival: The parties agree that the terms and conditions of this Joint Motion and Stipulation for Dismissal Without Prejudice shall survive the dismissal without prejudice and remain binding on the parties during the period of deferral as set forth herein.

DAVID M. GAQUETTE

United States Attorney

Michelle M. Heldmyer

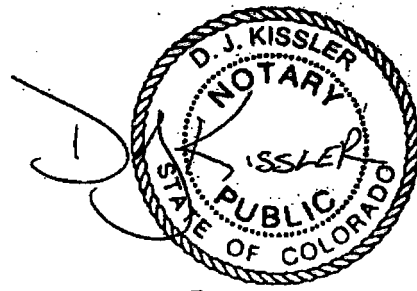
Michelle M. Heldmyer
Assistant United States Attorney
400 Rood Avenue, Suite 220
Grand Junction, CO 81501
Telephone: (970)-241-3843
FAX: (970)-248-3630
E-mail: michelle.heldmyer@usdoj.gov
Attorney for Plaintiff United States

Kathryn Stimson 1/12/10

Kathryn Stimson Esq.
Assistant Federal Public Defender
633 17th Street, Suite 1000
Denver, CO 80202
Telephone: (303) 294-7002
Fax: (303) 294-1192
E-mail: Kathryn_Stimson@fd.org
Attorney for Defendant

Charles H. Toups, Jr.

Charles H. Toups Jr 12/12/10
Defendant



EXP. 12.07.2011