UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal Action No. 16-40001-TSH
	)	
ASHLEY BIGSBEE,	)	
Defendant.	)	

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by William D. Weinreb, Acting U.S. Attorney, and Mark J. Grady, Assistant U.S. Attorney, hereby provides the following sentencing memorandum.

Introduction

In her Sentencing memorandum, Bigsbee objects to the application of a Guideline provision which assigns a base offense level of 18 if a machine gun was "involved" in the offense. In support of this claim, Bigsbee contends that the Guideline should only apply if there is proof that she knew of the characteristics of the weapon. Bigsbee further seeks a downward adjustment, claiming to have been a "minimal participant" in the offense. As detailed below, the Defendant's various arguments concerning the base offense level and minimal role adjustment are without legal or factual merit.

Further, in her sentencing arguments, and, in a statement attached to the sentencing memorandum, Bigsbee now denies facts which she admitted during the Rule 11 proceedings and essential elements of the offenses to which she pled guilty. Because the Defendant now seeks to contest facts which were admitted during the Rule 11 proceedings, it is the position of the government that the defendant should be denied any adjustment for acceptance of responsibility.

Facts

Bigsbee is charged in Count Five of the Indictment with conspiracy to possess, store, conceal, and sell stolen weapons, in violation of 18 U.S.C. § 371; in Count Seven with the possession, storage and sale of stolen firearms, in violation of 18 U.S.C. § 922(j); and in Count Twelve, with making false statements to federal officials, in violation of 18 U.S.C. § 1001. [D. 32].

On December 13, 2016, Bigsbee pleaded guilty to the above noted offenses. In so doing, under oath, Bigsbee admitted the following facts (subject to two objections noted below):

> On the night of November 14th, 2015, codefendant and coconspirator James Morales broke into the weapons vault inside the Lincoln Stoddard United States Army Reserve Center located at 25 Lake Street -- Lake Avenue North, Worcester, Massachusetts. An inventory would later reveal that six M4 carbines and 10 M11 handguns had been stolen from the vault.
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> Morales was located and arrested on Long Island, New York, at approximately 7:00 p.m. on November 18th, 2015. Inside Morales' vehicle, agents found four of the stolen M4 carbines and two of the stolen M11 handguns. A fifth M4 carbine and two handguns were later turned into the New York City Police Department. These weapons were identified as coming from the Armory by, among other things, their serial numbers.
>
> Prior to traveling to New York on the morning following the robbery, November 15th, 2015, Morales visited the home of Ashley Bigsbee and Tyrone James on Page Street in Dorchester, Massachusetts. There, *Morales proposed that Bigsbee and Tyrone assist him with selling a number of the weapons he had stolen the night before, and Bigsbee and Tyrone agreed to do so*.
>
> *This agreement to sell the stolen weapons and Bigsbee and Tyrone's efforts to sell the stolen weapons* would be evidenced at trial by, among other things, GPS data reflecting that Morales had repeatedly traveled to and from 27 Page Street in Dorchester on November 15th, 2015.
>
> It would be further evidenced by text messages recovered from cell phones belonging to Bigsbee and Tyrone *reflecting that*

on November 15th, 2015, Bigsbee and Tyrone had contacted numerous individuals offering to sell firearms and that they had offered to do so for well below the market and street value of the weapons.

Agents further recovered from cell phones belonging to Bigsbee and Tyrone photographs that had been taken on November 15th, 2015, which depicted:

(1) the stolen weapons lying on the kitchen table of their apartment at 27 Page Street;

(2) Bigsbee holding one of the stolen M11 handguns; and

(3) two of the stolen M11 handguns lying on the bed shared by Bigsbee and Tyrone at the Page Street apartment.

Through their efforts, Bigsbee and Tyrone arranged for Morales to sell a number of the handguns, and the sales of those weapons occurred in their apartment at 27 Page Street on November 15, 2015. In exchange for Bigsbee and Tyrone's assistance with selling the stolen weapons, Morales gave Tyrone and Bigsbee one of the M4 carbines.

On the night of November 15th, 2015, or soon after, Bigsbee and/or Tyrone put the weapon in a red bag and brought it to the home of an acquaintance of Bigsbee located on Kingsdale Street in Dorchester.

Bigsbee was interviewed on November 20th, 2015, by the FBI. Agents interviewed Bigsbee on November 20th, 2015, outside 27 Page Street in Dorchester. Agents who were wearing FBI raid gear informed Bigsbee that it was a criminal offense to lie to federal agents. Bigsbee told agents, among other things, that Morales had come to the apartment on Sunday, November 15th, 2015, and had picked up Bigsbee. Bigsbee denied that Morales had ever been in her apartment. Bigsbee further denied knowing anything about a robbery of the armory in Worcester, about any guns, or about any guns that Morales was trying to sell. Bigsbee's claim that she had no knowledge of any firearms that Morales was trying to sell was untrue as Bigsbee then and there knew.

On November 27th, 2016, Bigsbee was arrested by federal authorities. After Bigsbee was arrived -- advised of her Miranda rights, Bigsbee was interviewed by federal agents. Bigsbee informed the agents she had previously lied to agents because she was afraid of getting caught up in the whole mess.

Bigsbee then explained, among other things, that on the morning of November 15th, 2015, she was present on the third floor apartment at Page Street with her boyfriend Tyrone when Morales arrived.

In the kitchen Morales took five or six black handguns out of the duffel bag he had brought along with two or three black rifle-type guns. Bigsbee was shown one of the photographs and admitted that it depicted her holding one of the stolen handguns. *Bigsbee further claimed that the night the guns had been sold, she and Tyrone had put a bunch of clothes, but no weapons, in a red duffel bag, and that Tyrone asked Bigsbee to call an acquaintance at Kingsdale Street in Dorchester.*

Thereafter, at approximately 11:00 p.m., she and Tyrone had brought the red duffel bag to Kingsdale Street and left the weapon with an acquaintance there. After her interview, Bigsbee brought agents to an address on Kingsdale Street where a red bag containing an M4 carbine was recovered on the sidewalk. The serial number of that weapon matched one of the M4 carbines stolen from the Armory.

In addition to the foregoing, *an acquaintance of Bigsbee, who resided on Kingsdale Street, whom I will identify as Witness No. 1, would testify at trial that Bigsbee and a man he did not know had brought the red bag to the home of Witness 1 on or about November 20th, 2015, and that Bigsbee had asked Witness 1 to store the bag for her. Further, Witness 1 would testify that on November 27th, 2015, just before the police arrived, Witness 1 had received a text message apparently sent at Bigsbee's request directing Witness 1 to put the red bag outside because the police were on the way. Witness 1 would testify that he followed that instruction.*

Another acquaintance of Bigsbee, whom I will identify as Witness 2, would testify that on November 27th, 2016, as Bigsbee was being escorted out of Page Street before travelling to Kingsdale Street where the M4 carbine would be recovered on the sidewalk, *Bigsbee gave Witness 2 a phone number and told Witness 2 to call the number and to tell the person on the other end to take the bag outside and that the police are on the way. W*itness 2 text messaged the number provided by Bigsbee, quote, hey, dis, D-I-S, AR, A-R, Ashley friend. She said to please put dat, D-A-T, bag outside right now. DA, D-A, police on da, D-A, way, end quote. Within a minute of the text, Witness 2 received a call from the number she had text messaged and spoke to a man. Witness 2 told the man again what Bigsbee had asked her to relay about taking the bag outside because the police were on the way.

There were manufacturing stamps on each of the weapons establishing that the weapons were manufactured outside the Commonwealth of Massachusetts. Further, agents with expertise in

> the field of firearms would testify that all of the weapons had been manufactured outside of the Commonwealth of Massachusetts.
>
> The M4 carbines are prominently stamped "Property of U.S. Government." Similarly, but less markedly, the M11 handguns are also stamped with "USM11." The M4 carbine is a military weapon capable of firing a three-bullet burst for each single pull of the trigger.

Bigsbee Rule 11 Transcript, p. 18, ln. 18 – p. 23, ln. 24 (emphasis added).[1]

After those facts were read, the Court inquired if Bigsbee had done those things. Ex. 1, p. 24, ln. 7-8. Bigsbee's counsel represented that there were certain facts she contested. *Id*. p. 24, ln. 14-15. Bigsbee, herself, indicated that "I want to add and change a few facts." *Id.* p. 25, ln. 18-19.

After twice conferring with counsel off the record, Bigsbee made two changes. She began by stating that: (1) "with the – me putting something in bag, me putting the gun they said I put inside the bag, I didn't do that…."; and (2) "I wanted to change that I never introduced Morales to the guy who bought the guns. In never introduced him to him." Ex. 1, p. 25, ln. 21-14 and p. 25, ln. 5-7.

The Court then asked, "anything else you want to add or subtract or change?", to which Bigsbee responded, "No your honor." Ex. 1, p. 26, ln. 8-10.

[1] A copy of the Rule 11 Transcript will be later filed as Exhibit 1. Due to computer issues and the ongoing storm, undersigned counsel is unable to access and file the Exhibits to this memorandum at this time.

ARGUMENT

I. The Offense "Involved" a Machine Gun

Bigsbee has argued that because she was unaware of the nature of the M4 Carbine,[2] the Court should not apply a base offense level for an offense involving a machine gun. USSG § 2K2.1. The defendant's claim is without merit.

The pertinent Guideline provides, in relevant part:

> (a) Base Offense Level (Apply the Greatest):
>
> (5) 18, if the offense *involved* a firearm described in 26 U.S.C. § 5845(a)…

U.S.S.G. §2K2.1 (emphasis added).[3] Simply put, the Guidelines do not impose a knowledge requirement. Either a machine gun was "involved," or it was not. In light of the plain language of the Guideline, the Defendant's contention that a knowledge requirement should be imposed is wishful thinking.[4]

Courts have, consistently and uniformly, rejected the claim advanced by Bigsbee that USSG § 2K2.1(a)(5) requires proof that the defendant knew the nature of the weapon involved. The Ninth Circuit, for instance, has rejected exactly this argument:

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[2] To the extent that the Defendant's knowledge of any of the weapons as machine guns is relevant for purposes of sentencing, that issue will be addressed by the government at the sentencing hearing.

[3] The Defendant herself appears to concede that the plain language of the Guideline applies, noting that the application is "technically allowed." Defendant's Memorandum, p. 19-20.

[4] In support of the claim that knowledge of the characteristics of the weapon are required under the Guidelines, the defendant has cited case law applicable to a criminal charge of possession of a machine gun under 18 U.S.C. §922(o). *See* Defendant's Memorandum, p. 19-20. The government takes no issue with the general proposition that a *charge* of possession of a machine gun would impose a knowledge requirement. But that is not the issue before the Court.

> *Staples*[5] is a narrow decision, 511 U.S. at 619, that is distinguishable because it involved the elements for establishing a criminal offense, not the requirements for the Sentencing Guidelines. Sentencing factors do not normally have a scienter element because they are not separate criminal offenses. *See United States v. Gonzalez*, 262 F.3d 867, 870 (9th Cir.2001) (distinguishing Staples and holding that there is no implied scienter requirement associated with U.S.S.G. § 3B1.4); *see also United States v. Lavender*, 224 F.3d 939, 941 (9th Cir.2000) (rejecting the argument that U.S.S.G. § 2B3.1(b)(2)(E) has an implied scienter requirement). Therefore, *Staples* does not apply in the instant case and the Government was not required to prove that Warner was aware of the characteristics of the M-14 that brought it within the statutory definition of a machine gun.

United States v. Warner, 49 F. App'x 753, 754, 2002 WL 31474237, *1 (9th Cir. Nov. 4, 2002).

Similarly, in *United States v. Saavedra*, 523 F.3d 1287, 1289-90 (10th Cir. 2008), the Tenth Circuit rejected the defendant's argument that the government was obligated to prove that he knew one of the shotguns he possessed qualified as a "sawed off" shotgun under federal law in order for USSG § 2K2.1(a)(5) to apply. Rejecting that claim, the Court reasoned:

> The text of § 2K2.1(a)(5) does not contain a scienter requirement, and we will not presume such a requirement. Because Guidelines may "compound[ ] the punishment for the offense, but fall[ ] far short of criminalizing apparently innocent conduct," the common-law principles of *Staples* and its progeny do not apply. *Nava–Sotelo,* 354 F.3d at 1207 (quotations omitted). Accordingly, it is enough for the government to show that the weapon's characteristics fall within the guideline. *See, e.g., United States v. Gonzalez–Lopez,* 335 F.3d 793, 798 (8th Cir.2003) ("The Sentencing Commission understands the difference between actus reas [sic] and mens rea and specifically includes a scienter element within a guideline when it intends mens rea to be considered."); *United States v. Fry,* 51 F.3d 543, 545–46 (5th Cir.1995) (finding no scienter requirement in § 2K2. 1(a)(3)); *United States v. Chatman,* 994 F.2d 1510, 1517 (10th Cir.1993) (declining to read a scienter requirement into a guideline related to possessing a firearm during the commission of an offense); *see also United States v. Brown,* 514 F.3d 256, 269 (2d Cir.2008); *United States v. Thornton,* 306 F.3d 1355, 1359 (3d Cir.2002). The district court therefore properly applied the guideline.

[5] In *Staples v. United States*, 511 U.S. 600 (1994), the Supreme Court held that the *charge* of possession of a machine gun required proof that the Defendant knew of the weapon's characteristics. Bigsbee is not charged with the crime of possession of a machine gun.

Saavedra, 523 F.3d at 1289–90. *See also, Fry*, 51 F.3d at 546 ("the language of section 2K2.1(a)(3)[6] makes no reference to the defendant's mental state. The section is plain on its face and should not, in light of the apparent intent of the drafters, be read to imply a scienter requirement.").

There can be no rational dispute that the M4 Carbine, which is capable of firing three rounds upon a single pull of the trigger, is a "machine gun" under federal law[7] (indeed, this fact was specifically admitted during the Rule 11 proceedings). Ex 1, p. 23, ln. 20-24.

The drafter's of the Guidelines are well aware of how to impose a requirement of knowledge,[8] and have not done so here. Accordingly, as Probation has concluded, a base offense level of 18 is appropriately applied.

Minimal Role

The Guidelines afford an opportunity to defendants to obtain a downward adjustment if they were "minimal" or "minor" participants in an "offense."[9] The Court's determination of

[6] Section 2K2.1(a)(3) is identical to the provision at issue in this case except that it applies a higher base offense level to individuals with a prior narcotics or violent convictions. *See* USSG § 2K2.1(a)(3).

[7] *See* 26 U.S.C. §5845(a) ("The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.")

[8] Indeed, other provisions of the very same Guideline specifically provide for a knowledge requirement. *See, e.g.*, § 2K2.1(b)(6)(A) (a four-level enhancement applies if a defendant "possessed or transferred any firearm *with knowledge, intent, or reason to believe* that it would be transported out of the United States….").

[9] The scope of the "offense" to be considered includes all "relevant conduct" as defined in USSG §1B1.3(a)(1)-(4).

whether such an adjustment applies is fact based, and involves consideration of a non-exhaustive list of factors such as:

> (i) the degree to which the defendant understood the scope and structure of the criminal activity;
> (ii) the degree to which the defendant participated in planning or organizing the criminal activity;
> (iii) the degree to which the defendant exercised decision-making authority or influenced the exercise of decision-making authority;
> (iv) the nature and extent of the defendant's participation in the commission of the criminal activity, including the acts the defendant performed and the responsibility and discretion the defendant had in performing those acts; and
> (v) the degree to which the defendant stood to benefit from the criminal activity.

U.S.S.G. 3B1.2, Application Note 3(C).

In support of her claims for a minimal role adjustment, Bigsbee contends that her role in the offense was tangential, consisting only of introducing Morales to James, allowing her phone to be used to take photographs of the weapons, and allowing her phone to be used to text potential buyers. Def. Sent Memo, p. 25. Bigsbee further claims not to have participated in the actual sale and not to have benefitted from the sales. *Id.*[10]

Bigsbee's arguments ignore her own Rule 11 admissions. *See, e.g., United States v. Marrero-Rivera*, 124 F.3d 342, 349 (1st Cir. 1997) (responses made at a Rule 11 proceeding are appropriately relied upon as "[i]t is the policy of the law to hold litigants to their assurances")(and cases cited). Bigsbee should be held to the facts which she has previously

[10] In support of these various claims, Bigsbee points not the Rule 11 proceedings, but to various claims made during witness interviews that were disclosed in the discovery in this matter. Certainly, the government takes no issue with the content of the various reports (inasmuch as the court recognizes that the reports reflect what was told to agents, not the version of events that would have been proven by the government at a trial). Whatever factual issues may have been in dispute before Bigsbee's guilty plea, however, are no longer so. Bigsbee cannot make specific admissions a Rule 11 proceeding then seek to challenge her own admissions with interview reports of other witnesses.

admitted, and, those facts clearly demonstrate that Bigsbee does not qualify for a minimal role reduction.[11]

For instance, Bigsbee now claims that James, and not she, texted individuals using her phone offering to sell weapons. Def. Memo., p. 25 ("It also appears that Ms. Bigsbee allowed James to further use her phone to contact potential buyers for the guns."). Contrary to this claim, Bigsbee admitted, under oath, that "Bigsbee and Tyrone's efforts to sell the stolen weapons would be evidenced at trial by, among other things, … text messages recovered from cell phones belonging to *Bigsbee and Tyrone* reflecting that on November 15th, 2015, *Bigsbee and Tyrone* had contacted numerous individuals offering to sell firearms and that *they* had offered to do so for well below the market and street value of the weapons." Tr., p. 19, ln. 15-25 (emphasis added).[12] Similarly, Bisgbee now claims, "Ms. Bigsbee never sold or transferred any firearms to anyone, nor did she receive anything of any value in return for those sales." Contrary to this claim, Bigsbee admitted, under oath, that, "[i]n exchange for Bigsbee and Tyrone's assistance with selling the stolen weapons, Morales gave *Tyrone and Bigsbee* one of the M4 carbines." Tr. p. 20, ln. 14-16 (emphasis added). In fact, from November 20, 2015 onward, Bigsbee was the *sole* individual[13] in possession of the M4 Carbine stored at Kingsdale Street.

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[11] As detailed below, Bigsbee's attempt to deny facts admitted at the Rule 11 proceedings also demonstrates that Bigsbee had not accepted responsibility for her actions.

[12] The government should not have re-prove matters already admitted during the Rule 11 proceedings. To the extent it becomes an issue, the text messages will be filed as Exhibits 2 and 3 for purposes of the record. *See supra* footnote 1. Exhibit 2 reflects text messages recovered from a phone seized from Bisgbee on November 20, 2015 pursuant to a state arrest. Exhibit 3 reflects text messages from a cellphone recovered from Bisgbee on November 27, 2015, pursuant to her federal arrest.

[13] Both James and Morales were in custody. Morales has been in custody since November 18, 2015 (though he briefly escaped in December 2016) and James has been in custody since November 20, 2015.

With respect to the minimal role factors, as noted by probation, Bigsbee "helped organize the offense, she exercised decision-making and discretion, and she actively participated in the concealment of the offense." PSR, p. 37 - Probation Officer's Response to the Defendant's Objections. "Evidence is clear that Bigsbee communicated directly with at least one potential buyer," "she exercised decision-making authority and discretion through price-negotiation," "stored the firearms at [an acquaintance's] house, and then arranged for the disposal of the firearms (incident to her arrest when she asked a third friend to reach out to [her acquaintance] to get the guns out of his house)." *Id*.

What's more, Bigsbee's Rule 11 admissions clearly establish that Bigsbee was aware of the full nature and scope of the criminal conduct, both the conspiracy to possess and sell the stolen weapons and her own possession of stolen weapons.[14] In addition to the facts noted above, Bigsbee admitted during the Rule 11 proceedings that she knowingly agreed to attempt to sell the stolen weapons. Ex. 1, p. 19, ln 11-14 ("Morales proposed that *Bigsbee and Tyrone* assist him with selling a number of the weapons he had stolen the night before, and *Bigsbee and Tyrone* agreed to do so…") (emphasis added).

In sum, every single factor the Guidelines direct this Court to consider weighs against a minimal role finding.

[14] Bigsbee begins by arguing that Morales stole the weapons as evidence that she did not have a role in that crime. True, but that is not conduct for which Bigsbee is charged, nor is it relevant conduct for Bigsbee's charged offenses. Bigsbee and James had no role in the planning or execution of the robbery, and that crime does not fall within the Guidelines Definition of "relevant conduct." *See* USSG §1B1.3(a)(1)-(4). Accordingly, that crime is irrelevant to the minimal role analysis. In essence, Bisgbee argues that she has nothing to do with a crime she had nothing to do with. That is a truism, not an argument. It is akin to Morales claiming that he had a minimal role in Bigsbee's lying to the FBI. It is both accurate, and pointless.

III. Bigsbee Should Be Denied An Adjustment for Acceptance of Responsibility

Under the Guidelines, a defendant who "clearly demonstrates acceptance of responsibility for h[er] offense" may be entitled to a two level reduction. USSG §3E1.1(a). For offenses carrying a total offense level of sixteen or higher,[15] a third level reduction is available upon motion of the government where the defendant "timely notif[ies] authorities of h[er] intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently." USSG §3E1.1(b).

The Defendant has the burden of proving an entitlement to the reduction. *See, e.g., United States v. Therrien*, 847 F.3d 9, 18 (1st Cir. 2017) (defendant "bears the burden of proving h[er] entitlement to an acceptance-of-responsibility credit…."); *United States v. McLaughlin*, 378 F.3d 35, 39 (1st Cir. 2004) (same). Further, Bigsbee is not entitled to an acceptance of responsibility adjustment merely because she has pleaded guilty. *See United States v. McLaughlin*, 378 F.3d 35, 39 (1st Cir. 2004) ("Although the entry of a guilty plea prior to trial is impressive evidence of acceptance of responsibility, it does not automatically entitle a defendant to the credit.") (citing *United States v. Bradley*, 917 F.2d 601, 606 (1st Cir.1990).

A defendant's post plea conduct, such as denial of essential elements of guilt, or contesting facts that have been admitted during the Rule 11 proceedings, can support a finding

[15] In her sentencing memorandum, the Defendant argues that her offense level is below sixteen and that she is also entitled to a three level reduction for acceptance of responsibility. Both cannot be correct. The third level is not available where the total offense level is below sixteen. *See* Application Note 6 ("Subsection (b) provides an additional 1-level decrease in offense level for a defendant at offense level 16 or greater prior to the operation of subsection (a)…").

that the Defendant has not accepted responsibility For example, Application Note 3 to the Guideline provides:

> Entry of a plea of guilty prior to the commencement of trial *combined with truthfully admitting the conduct comprising the offense of conviction*, and truthfully admitting or not falsely denying any additional relevant conduct for which [s]he is accountable under § 1B1.3 (Relevant Conduct) (see Application Note 1(A), will constitute significant evidence of acceptance of responsibility for the purposes of subsection (a). However, *this evidence may be outweighed by conduct of the defendant that is inconsistent with such acceptance of responsibility*.

U.S.S.G. §3E1.1, Application Note 3 (emphasis added).

Here, after pleading guilty, Bigsbee has submitted a letter in which she denies essential elements of the offense and denies conduct to which she has previously admitted. Specifically, Bigsbee claims, "I did not know that these guns were stolen.[16] I had no part in trying to sell these guns." Defendant's Written Statement to the Court dated March 1, 2017, Sentencing Memo. Exhibit 18, p. 1. As discussed extensively above, *see supra*, Bigsbee has further attempted to deny facts which were admitted during her Rule 11 colloquy in an effort to obtain a minimal role adjustment.

Bigsbee's denial of essential elements of the offense, after admitting those facts during the Rule 11 proceedings, demonstrates that she has not accepted responsibility for her actions. Similarly, Bigsbee's challenges to facts admitted under oath during the Rule 11 proceedings are inconsistent with acceptance of responsibility. *See, e.g., United States v. Hall*, 316 F. App'x 287,

[16] Contrary to this claim, even Bigsbee's own counsel acknowledges, "[t]he Government has presented more than enough evidence to prove that Ms. Bigsbee knew or should have known the firearms were stolen." Def. Sent. Memo., p. 18. Further, during the Rule 11 proceedings, Bigsbee was expressly apprised prior to her admission that in order to prove the charge of possession, concealing and storing stolen weapons that the government would have to prove, beyond a reasonable doubt, that Bigsbee "knew or had reasonable cause to believe that the firearms were stolen." Ex. 1, p. 17, ln. 11.

288 (4th Cir. 2009) ("Hall's post-admission recantation of his guilt and his denial of his role in the charged offense is clearly inconsistent with accepting responsibility."); *United States v. May*, 359 F.3d 683, 694 (4th Cir. 2004) (reversing a district court's grant of acceptance of responsibility where defendant sought to deny essential elements of the offense in the PSR); *United States v. Rowles*, 198 F.3d 248 (6th Cir. 1999)("a defendant who admits the factual predicate for conviction but denies or minimizes his culpability therefor is not entitled to an adjustment for acceptance of responsibility."); *United States v. Webster*, 54 F.3d 1, 6 (1st Cir. 1995) ("The district court found that Bouthot had understated his criminal involvement. This in turn warranted a finding that Bouthot had not fully accepted responsibility"); *United States v. Bostic*, 1 F.3d 1242 (6th Cir. 1993) (upholding denial of responsibility when "defendant denied knowledge of the scheme to defraud the bank and denied having any criminal intent even though she pleaded guilty to the offense."); *United States v. Carroll*, 908 F.2d 340, 341 (8th Cir. 1990) (upholding denial of acceptance of responsibility to an defendant who sought to withdraw his plea and who denied elements of the offense at sentencing); and *Roman v. United States*, 2010 WL 1032508, at *5 (D.P.R. Mar. 11, 2010) ("To receive reduction in base offense level under the sentencing guidelines for acceptance of responsibility defendant most accept responsibility for all facets of crime to which he either pled guilty or of which he was convicted") (and cases cited).

For these reasons, the Court should determine that Bigsbee's efforts to deny essential elements of the offense to which she has pleaded guilty, and Bigsbee's attempts to deny facts which were admitted during the Rule 11 proceedings reflect that Bigsbee has not accepted responsibility for her actions within the meaning of the Guidelines. Accordingly, the Court should deny a downward adjustment under USSG §3E1.1.

Conclusion

For the reasons stated herein, the Court should conclude that: (1) the base offense level of eighteen applies to the offense; (2) Bigsbee is not entitled to a minimal or minor role reduction; and (3) Bigsbee is not entitled to an acceptance of responsibility adjustment.

Respectfully submitted,

WILLIAM D. WEINREB
ACTING UNITED STATES ATTORNEY

By: */s/ Mark J. Grady*
Mark J. Grady
Assistant U.S. Attorney

Dated: March 14, 2017

Certificate of Service

I hereby certify that this document was filed via the court's ECF filing system and that registered parties will be served via the ECF system.

/s/ Mark J. Grady
Mark J. Grady, Assistant U.S. Attorney

Dated: March 14, 2017