

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

United States of America,

Plaintiff,

Criminal No. 13-20214

v.

Honorable Julian A. Cook, Jr.

Liam Mulholland,

Defendant.

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America, by its undersigned attorneys, respectfully submits this sentencing memorandum to inform the Court of its position at sentencing. For the reasons set forth below, the government requests a sentence of 18 months in this case.

I. PROCEDURAL BACKGROUND

On November 21, 2013, the defendant pled guilty to Count One of the First Superseding Indictment, charging him with arson, in violation of 18 U.S.C. § 844(i). A violation of that law is punishable by a mandatory minimum of five years' imprisonment. Pursuant to the Rule 11 between the government and the defendant in this case, the government has filed a motion for downward departure, which provides that the Court may then impose a sentence below the mandatory

minimum sentence of five years and the Sentencing Guideline range, based on the defendant's cooperation with law enforcement. As stated in the government's motion, the defendant's substantial assistance warrants a downward departure of 32 months from the mandatory minimum sentence of 60 months. Based on the additional sentencing factors set forth in 18 U.S.C. § 3553, the government recommends that the Court sentence the defendant to 18 months' imprisonment, a sentence that is sufficient, but not greater than necessary, under the circumstances.

II. FACTUAL BACKGROUND

As set forth in the Rule 11, the defendant has pled guilty to destroying a home under construction by arson. He has also admitted guilt to the arson of a second home on same date, as relevant conduct, and agreed to a stipulated offense involving the arson a few months later of two other homes under construction. Under the Rule 11, the defendant has also acknowledge his guilt in committing two additional arsons, one using timed incendiary devices, and in participating in a conspiracy to commit arson, also by use of incendiary devices, at the Ice Water Company Pumping Station in Stanwood, Michigan. The facts relating to these crimes are set forth below and were also provided to the Probation Department for purposes of the Presentence Report.

A. Facts Relating To The Count of Conviction (Count One)

In March, 2003, the defendant travelled from Bloomington, Indiana to Detroit, Michigan where he and three other individuals planned and discussed destroying, by fire, homes under construction at a residential development site. On or about March 21, 2003, materials were purchased to carry out the arsons, including, old clothing, later to be discarded, and gasoline.

At approximately 3:00 a.m. on March 21, 2003, the defendant and the three other individuals drove to the Mystic Forest housing development in Ann Arbor, Michigan, for the purpose of setting fire to homes that were being built by a development company. Once they arrived at that location, the defendant dispersed gasoline from gallon jugs throughout a two-story home under construction located at 3755 Birch Run. The jugs were refilled with gasoline and outfitted with sponges so they could be used as improvised timing devices. The spongers were then lit. Using a can of black spray paint, another participant in the arson spray painted a message on the garage door of a nearby house that read, "ELF - No Sprawl." (ELF stands for Earth Liberation Front, an environmental extremist movement whose adherents are committed to violent, illegal activities to advance their goals.)

An individual was driving home from working a late shift when she saw the fire and called 911 to report the fire. The witness then turned her car around and drove back toward the main road to wait for the fire department. She then saw that

a second residence on a nearby street was now on fire. The structure had not been burning when she drove by its location earlier. The witness then heard an explosion. She again called 911.

When the Superior Township Fire Department responded to the scene, fire officials found the residence at 3755 Birch Run fully engulfed in flames. The fire department extinguished the fire, which completely destroyed the home, causing property damage of approximately \$250,391.00. At the time of the arson, the residence was in the “rough” framing stage of construction. The roof had been installed and shingled and the windows had been installed; the interior work needed to be completed.

During the subsequent on-scene investigation, an arson canine alerted to the possible presence of ignitable liquids in several locations. Soil samples were collected and analyzed by ATF, who determined that a gasoline accelerant had been used in the arson.

B. Relevant Conduct: Arson of 3622 Brittanie, Ann Arbor, MI

During the course of committing the arson charged in the count of conviction, Count One, the defendant also dispersed gasoline around the site of a second two-story home under construction in the Mystic Forest housing development located at 3622 Brittanie, Ann Arbor, Michigan. A fire was also lit at that site resulting in the total destruction of that residence as well, resulting in a

loss of \$203,560.00. Photographs related to the March 21, 2003 Mystic Forest arsons are attached hereto as Exhibit A.

C. Additional Stipulated Offense

In the Rule 11, the defendant has stipulated to committing the following additional offenses:

Approximately three months after committing the Mystic Forest arsons, on June 4, 2003, at about 4:00 a.m., the defendant and the same three individuals drove to the Willow Ridge housing development in Washington Township, Michigan for the purpose of setting fires to homes that were under construction. Once they arrived at that location, the defendant dispersed gasoline throughout one of the homes under construction at 57680 and 57648 Apple Creek Road. Fires were then lit at those two sites. The defendant also spray painted a message on a nearby forklift that read, "ELF. Stop sprawl."

A witness was driving on Apple Creek Road delivering papers when he/she saw the fires and called 911. The Washington Township Fire Department and law enforcement responded to the scene. Nearby families were evacuated from their homes. Photographs of the scene show the roof of a home near the targeted homes in flames. (Exhibit B, attached hereto).

The fire department extinguished the fires, which completely destroyed the two targeted homes, causing a loss of \$303,662.00. The residence at 57680 was

two-thirds complete; the exterior was nearly finished and the inside had rough plumbing and electric completed. The residence at 57648 was approximately one-half complete.

A letter describing the arsons was mailed to a post office box address known as the point of contact for ELF publicity. On July 2, 2003, a report acknowledging receipt of the communique and praising the arsons appeared on the ELF website.

D. Defendant's Acknowledgment of Additional Criminal Acts

The defendant acknowledges that he participated in the following additional arsons:

(1) On May 3, 2002, at approximately 4:00 a.m., law enforcement and fire officials were called to Sim's Poultry, Inc., in Bloomington, Indiana, a chicken processing facility. A neighbor had reported hearing a loud explosion and then seeing that a refrigerated delivery truck was on fire. Railroad tracts ran adjacent to Sim's Poultry and a short foot path led from those railroad tracks to the property of Sim's. At the time of the arson, a homeless person was staying along the railroad tracks under a bridge located behind Sim's Poultry.

Upon arriving at the scene, law enforcement and fire officials found that homemade incendiary devices had been placed under three delivery trucks, although only one ignited, causing extensive fire damage to that truck. A fourth incendiary device was placed against the building at the loading dock area.

The devices used plastic gallon jug containers filled with flammable liquid, determined to be gasoline and heavy petroleum distillates, and ignition devices initiated through the use of a plastic timer. The ignition device used a modified kitchen timer, a light bulb, a battery, a sponge, and a plastic bag containing a quantity of explosive powder. (See photographs relating to Sim's Poultry arson, attached hereto as Exhibit C).

On May 13, 2002, the Animal Liberation Front (ALF), an extremist animal rights movement, officially claimed responsibility for the arson stating that Sim's Poultry was targeted because of its role in the industry of animal exploitation.

The defendant has acknowledged that he and another individual placed timed incendiary devices underneath refrigerated chicken delivery trucks at Sim's Poultry on behalf of ALF.

(2) On June 27, 2002, at approximately 6:00 a.m., law enforcement received a telephone call from an individual who reported hearing an explosion and seeing black smoke at Pedigo Bay Housing Development, located on Lake Monroe, Bloomington, Indiana, an area of development hotly contested by local environmental activists. The fire department was dispatched to the scene and upon their arrival, found that a residence on Lot 9 that was under construction had already burned to the ground and was smoldering. At the time of the arson, the

home was nearly complete on the outside, while the interior consisted of only wood framing studs and plywood flooring.

The supervisor of the construction site told law enforcement that he had last visited the site the day before the arson and had placed a five-gallon gas tank in the garage for the generator. Fire officials found the melted remains of the gasoline container in the garage area by the entrance door.

The construction supervisor also told law enforcement that a gas grill with an attached propane tank had been located approximately 25 yards from the residence and was used by some of the workers to cook hotdogs. At the time of the fire, the propane tank, detached from the grill, was located by the rear access door to the garage. The propane tank had been burned in the fire but was intact, although the twist handle had been burned off the top of the canister.

The fire was determined to be arson by the Indiana State Fire Marshal. The defendant has acknowledged that he committed the arson of this home under construction in the Pedigo Bay Housing Development.

(3) On September 21, 2003, the Ice Mountain Water Company pumping station of the water bottling plant in Stanwood, Michigan was broken into and incendiary devices were placed throughout the facility. A group tied to ELF had protested against the pumping station and pumping water from the aquifers.

The Michigan State Police Bomb Squad responded to the scene and rendered the devices safe. The devices consisted of two liter soda bottles containing a flammable liquid, later determined to be a mixture of diesel fuel or oil and gasoline, with a trail of liquid spilled on the floor, presumably to disburse the flames from one bottle to another. Each bottle had a sponge affixed to it. One bottle had an igniter device attached to it that consisted of a timer, a battery, and two bottle rocket engines taped to the bottle. It appeared that one of the rocket engines had detonated, but it did not ignite the gasoline. The second engine did not appear to have been detonated. It was intended that this initiating device explode and ignite the additional flammable liquid dispersed on the floor and the additional devices placed throughout the facilities. (Photographs relating to this incident are attached hereto as Exhibit D.)

A communique was posted on the ELF press office website claiming responsibility for the attack at the Ice Mountain pump station.

The defendant acknowledges that he conspired with others in a plot to commit the arson at the Ice Mountain facility and assisted in the construction of incendiary devices that were placed at that facility. The government has no evidence that the defendant broke into the facility or placed the incendiary devices within the building.

III. ARGUMENT

This Court's responsibility to fashion an appropriate sentence may be particularly difficult in this case. On the one hand, the defendant participated over a period of two years in several severely dangerous and highly destructive acts of arson. On the other hand, the defendant appears to have voluntarily abandoned his violent extremism years ago, and well before the indictment in this case. In the past decade, the defendant obtained his law degree, married, and has been gainfully employed. These mitigating facts have been taken into account in the government's recommended sentence of 18 months.

In the government's view, rehabilitation and specific deterrence are not purposes to be fulfilled by a sentence of incarceration in this case. Rather, the § 3553(a) factors that inform the government's recommended sentence are the need to reflect the extremely serious nature of the defendant's criminal conduct, to promote respect for the law, and to provide just punishment, as well as the need for general deterrence.

A. The Nature and Circumstances of the Offenses

Although the defendant's offenses occurred several years ago, at that time, they were not isolated aberrations. Rather, the defendant subscribed to and engaged in violent, dangerous conduct over a relatively lengthy period of time, for a period of two years, from 2002 through 2003. During that time, the defendant

committed six arsons in Michigan and Indiana and participated in a conspiracy to commit arson at the Ice Mountain pumping station.

The defendant also played a critical role in several of those arsons. According to witnesses, it was the defendant who had the expertise to construct incendiary devices and did so for both the arson of the delivery trucks at Sim's Poultry, as well as the attempted arson of the Ice Mountain pumping station. The devices used in these incidents were fire bombs, and either caused or were intended to cause an explosion.

During the plea colloquy on November 21, 2013, the defendant told the Court that he "just went along" with others in committing the arsons in Ann Arbor. That characterization understates the defendant's role and commitment at the time to violent acts for purposes of advancing an environmental agenda. For instance, in the arson of the home under construction in Pedigo Bay, it was the defendant alone who committed that crime. In the arson involving Sim's Poultry, the defendant had only one other accomplice.

B. The Need for the Sentence to Reflect the Seriousness
Of the Offenses and To Provide Just Punishment for the Offenses.

There is no question that the defendant's criminal conduct was both extremely dangerous and highly destructive. It was only fortuity that no one was hurt. While ELF members will sometimes claim that they take precautions to reduce the likelihood of injury – choosing uninhabited homes, for instance – the fact is that

arson is inherently dangerous, and brings the risk of death or serious physical injury to emergency responders and to passers-by. There is also the danger that the fire will spread to areas where people might get hurt or killed. The fire of one of the homes under construction in the June 2003 arsons leapt to the roof of a home that was occupied. Families living in nearby homes were evacuated at the time of the arsons to remove them from harm's way. A homeless man was living near the site of the Sim's Poultry arsons. All of these individuals, not to mention the emergency responders, were put in harm's way by the defendant's conduct.

Further, the devices used in the arsons added to the danger. The defendant did not just strike a match. In two of the arsons, the devices he constructed were specifically designed to explode. In the other arsons, gasoline was used as an accelerant, an accelerant whose vapors when combined with air and fire can readily explode. Individuals who called 911 reported hearing loud explosions in conjunction with the Mystic Forest arsons and the Pedigo Bay arson.

The defendant's conduct also resulted in the complete destruction of five homes under construction, causing hundreds of thousands of dollars in property losses.

A sentence of 18 months in this case is necessary to reflect the extremely serious nature of the defendant's crimes. Further, such a sentence is necessary to provide just punishment for the defendant's criminal conduct.

C. The Need For General Deterrence is Particularly Strong.

A sentence of incarceration is necessary in this case to promote respect for the law and to deter other individuals from committing arsons on behalf of ELF and ALF. The defendant committed arsons on behalf of ELF and ALF -- two environmental extremist organizations that typically draw young adherents, often college-aged students, at an idealistic and impressionable stage. The concept of general deterrence is of more importance in this case than in others. A sentence of probation or a short prison sentence will not promote respect for the law nor will it deter others from engaging in similar conduct. Rather, it will send the message to college-age students that even if they commit extremely dangerous crimes while young, so long as they do not get caught, they can straighten out their ways later as adults and escape punishment. A sentence of imprisonment – even a relatively modest sentence of 18 months for several arsons – will send a message to would-be advocates that crimes of violence meet with consequences, even if an individual

has the fortuity to escape those consequences for a long period of time.

Respectfully submitted,

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Date: April 14, 2014

CERTIFICATION OF SERVICE

I hereby certify that, on April 14, 2014, I caused the foregoing motion to be electronically filed with the Clerk of the Court using the ECF system which will send notification of such filing to Randall S. Levine and Saura J. Sahu, counsel for the defendant.

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Date: April 14, 2014