

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

No. 1:08-CR-47

Plaintiff,

Hon. PAUL L. MALONEY
Chief United States District Judge

vs.

FRANK BRIAN AMBROSE,

Defendant.

_____/

**MOTION AND BRIEF OF THE UNITED STATES FOR DOWNWARD
DEPARTURE BASED ON SUBSTANTIAL ASSISTANCE**

NOW COMES the United States, by United States Attorney Charles R. Gross and Assistant United States Attorney Hagen W. Frank, and moves this Court to depart downward from the U.S. Sentencing Guidelines pursuant to USSG § 5K1.1.

On March 20, 2008, just 10 days after his initial appearance before the Court on March 10th, defendant Frank Ambrose pled guilty to Count 1 of the Indictment, which charged him with conspiring to commit two arsons in support of an extremist environmental-defense movement known as the “Earth Liberation Front,” or “ELF.” This Court accepted that plea and adjudicated Defendant guilty on April 7, 2008, and his sentencing is scheduled for October 20, 2008.

The Presentence Investigation Report (PSR) calculates that Defendant should be sentenced as a Criminal History Category VI pursuant to USSG § 3A1.4, that his adjusted offense level subtotal should be 39, and that his total offense level on Count 1 after adjustment for acceptance of responsibility should be 36. (PSR at 14-15, paras. 57-62). This would produce an advisory Sentencing Guideline range of between 324 to 405 months of imprisonment if the

Court accepted the PSR's recommendations as correct and adopted them. The PSR also notes, however, that Defendant's advisory range is reduced to 240 months by operation of USSG § 5G1.1(a) because Count 1 carries a statutorily authorized maximum sentence of 240 months in prison.¹ (PSR at 21, paras. 97 & 98). The PSR also notes that Count 1 carries a mandatory minimum sentence of five years. (PSR at 21, para. 97). Neither party objects to the PSR calculations or to its other content.

Pursuant to USSG § 5K1.1, the United States now moves the Court to downwardly depart eight (8) levels from the guidelines, and states in support of this motion that Defendant has provided exceptionally substantial assistance in the investigation of other persons who have committed offenses against the United States. If this Court grants the motion, Defendant's total offense level on Count 1 would be reduced to 24² and his advisory Sentencing Guideline range for that offense would become 100 to 125 months vice 240 months.

FACTS

Defendant's cooperation with and assistance to the United States has been nothing short of remarkable, both in terms of the time and effort he put into it and in terms of its value to

¹The Government notes that, because USSG § 1B.1(e) requires that the adjustment for acceptance of responsibility under § 3E1.1 be applied against the offense level that exists before application of Chapter 5G requirements, Defendant stands to receive no practical benefit from his § 3E1.1 credit. However, the Court has the discretion to depart downward from the Guideline sentence to compensate for that dynamic. United States v. Rodriguez, 64 F.3d 638, 643 (11th Cir. 1995). The Government would have no objection to the Court's exercising that discretion in this case.

² This assumes that the start point of the departure is from the USSG range of 240 months, which correlates with offense level 32 for a CHC VI. See generally United States v. Shaw, 313 F.3d 219, 223 (4th Cir. 2002) (citing USSG § 5G1.1 as basis for holding that, where statutory maximum sets the Guideline sentence, that maximum is the start point for departure).

Federal law enforcement. As a direct result of Defendant's help, the Government secured convictions against almost all of the persons who were involved in the most significant but, until this prosecution, unsolved, act of domestic terrorism committed in the Western District of Michigan in the past decade – the 1999 New Year's Eve arson of Agriculture Hall at Michigan State University (MSU), an academic institution of international significance and national importance that has a profound effect on interstate commerce and that receives significant funding from the United States Government. The direct and indirect results of Defendant's assistance reached well beyond the MSU arson, however, to other unsolved arsons and other significant acts of property destruction and intimidation committed in the Eastern District of Michigan, the Southern District of Indiana, and to investigations in other Federal districts that are still ongoing.

Defendant's cooperation began in August 2007, well before the return of the Indictment in this case, when he met with investigating agents for a proffer-of-information interview several months after the April 2007 execution of a search warrant, issued by this Court for his residence near Detroit, that sought evidence related to the September 2003 attempted arson of the "Ice Mountain" bottled-water pumping station near Stanwood, Michigan. Defendant admitted at that meeting that he had been involved in the Ice Mountain attempt, along with co-defendant Marie Mason and others, and that he and Mason were also directly responsible for the MSU arson. Defendant also admitted that he and Mason had committed many other acts of arson and property destruction between 1999 and 2003 in Michigan, Indiana and elsewhere, all in the name of the

“ELF.”³

Investigative efforts in the MSU arson to that time had not produced enough evidence to support a successful prosecution against all of the investigative targets, and the Government needed more than Defendant’s word to move forward. Investigators also believed that, even though Ambrose had voluntarily ceased his illegal activities and left the ELF movement several years before, he perhaps still had the potential to re-ingratiate himself with his erstwhile associates in the environmental-extremist movement. Ambrose thereafter agreed to actively assist not only in the investigation into the MSU arson, but also in investigations of other unsolved ELF actions and in proactive efforts to discover and disrupt ELF actions in the making.

Working at the FBI’s direction, Defendant then began a long period of extremely active assistance that included making consensually monitored and recorded conversations with investigative targets, including Marie Mason, and traveling across the United States to meet in person with such targets for the purpose of gathering intelligence and recording conversations. At times, Defendant was with groups of other extremists in isolated locations while wearing FBI recording devices, and he was therefore at risk of physical harm if discovered.

³ As alleged in the Indictment, “The ELF was, and remains, a loosely organized movement of individuals who are committed to the eradication of commercial, research, and other activities that its adherents consider harmful to the natural environment. ELF espouses a philosophy of what its adherents refer to as “direct action,” a term that denotes acts of politically-motivated violence designed to force segments of society, including the general civilian population, private business, and government, to change their attitudes about environmental issues and/or to cease activities considered by the movement to have a negative impact on the natural environment. ELF direct actions include acts that violate the criminal laws of the United States or of individual States and that are dangerous to human life. ELF adherents carry out such direct actions in order to intimidate or coerce civilian populations and/or to influence the policy of government through such means. Arson is one of the most frequently employed forms of ELF direct action.” Indictment at 1-2, paras. 2 & 3.

In some cases Defendant obtained direct evidence of guilt, such as audiotape admissions by defendant Mason to the MSU arson, and in other cases he obtained information that provided investigative leads for Government surveillance activities and that enabled the Government to obtain additional investigative process issued by this Court, such as orders pursuant to 18 U.S.C. §§ 3123 and 2703, Federal grand jury subpoenas, and a Federal search warrant for defendant Mason's computer from her residence in Cincinnati, Ohio, at the time of her arrest on this Court's warrant. Throughout the period of his cooperation, Defendant was accessible to investigating agents by phone at any time of the night or day, always responding immediately to queries about various aspects of the ever-growing investigation and proactively contacting agents whenever he remembered details of potential investigative value. Defendant also met with the undersigned for day-long meetings in advance of his two appearances before the Grand Jury investigating this matter, and testified fully and without hesitation before that body.

All told, Defendant traveled outside of Michigan seven times at the FBI's direction, often working extremely late hours; he made repeated trips from Detroit to Grand Rapids; he made 178 consensual recordings of telephone conversations and in-person meetings with investigative targets; and he participated in lengthy interviews with the FBI's Behavioral Analysis Unit and otherwise assisted the FBI's efforts to improve its intelligence-gathering protocols related to, and its understanding of, underground environmental and animal-rights extremist groups and movements.

Thanks in large measure to Defendant's assistance, the Government was confident when it brought these charges that it would be able to prevail at trial. Thanks also in large measure to Defendant's assistance, the Government did not have to go to trial. When the other defendants

realized that the Government's evidence would consist of far more than just Frank Ambrose's testimony, they negotiated guilty pleas. Most significantly, Marie Mason entered an agreement that required her to plead guilty to the Indictment in its entirety,⁴ and that required her to stipulate to a long list of other criminal acts she committed on behalf of ELF. Finally, the information and leads provided by Defendant brought other long-stymied eco-terror investigations back to life, and those investigations continue to date. Although Defendant's utility as an active investigative asset was exhausted when the plea-agreement containing his cooperation agreement was filed, the investigative momentum generated by his cooperation continues to date.

The success of this prosecution, and of the Government's larger investigative effort, would likely not have been possible without Defendant's cooperation. Further, in addition to the successful prosecution of an important case, Defendant's assistance also enabled the FBI to significantly enhance its intelligence base concerning not only extremist activity in the Upper Midwest, but also concerning the methodology, the security culture, and the psychology of ELF and related movements.

LAW

The Sentencing Guidelines enumerate five non-exclusive reasons for granting a Government motion for a downward departure based on substantial assistance. These are:

- (1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
- (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;

⁴Defendant Mason was not required to plead guilty to Count 3, but that count simply re-charged the MSU arson alleging an alternative jurisdictional basis to Count 2 and omitting the element of aggravation.

- (3) the nature and extent of the defendant's assistance;
- (4) any injury suffered, or any damage or risk of injury to the defendant or his family resulting from his assistance;
- (5) the timeliness of the defendant's assistance.

USSG § 5K1.1(a).

The Government's perspective is based on over 18 months of active participation in this prosecution, the investigation that produced it, and the larger investigation that it spawned. In the Government's evaluation, and as described supra, the Defendant's information and cooperation was hugely significant and useful. His testimony was complete and truthful, and he did his absolute best over time to recall details of events that happened and things he did years ago. The nature, extent, and value of his assistance went far beyond the norm, and the Government would not be surprised if Defendant's activities set a high-water mark for assistance in the Court's estimation. The Defendant put himself in situations where he could have been harmed if discovered wearing a wire. Finally, Defendant's assistance was as timely as it was valuable.

For the foregoing reasons, the Government respectfully requests the Court grant the motion and depart downward by eight (8) levels pursuant to USSG § 5K1.1.

Respectfully submitted,

CHARLES R. GROSS
United States Attorney

Dated: 10 Oct. 2008

/s/ H.W. Frank
HAGEN W. FRANK
Assistant United States Attorney