

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

CR08-314 JRT

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	PLEA AGREEMENT AND
v.)	SENTENCING STIPULATIONS
)	
MATTHEW BRADLEY DEPALMA,)	
)	
Defendant.)	

The United States by its attorneys, Frank J. Magill Jr., United States Attorney for the District of Minnesota, W. Anders Folk, Assistant United States Attorney, and the defendant, Matthew Bradley Depalma, by himself, and with his attorney, Reynaldo A. Aligada, Jr., Esq., hereby agree to dispose of this case on the following terms and conditions.

FACTUAL BASIS

1. The government and the defendant agree that, between on or about August 22, 2008 and on or about August 29, 2008, in the State and District of Minnesota, the defendant, Matthew Bradley Depalma, knowingly, intentionally and unlawfully possessed destructive devices, namely Molotov cocktails. Further, the parties agree that the defendant possessed and manufactured 5 Molotov cocktails, not registered to him in the National Firearms Registration and Transfer Record.

AGREEMENTS AND STIPULATIONS

2. The defendant will plead guilty to Count 1 of the Information charging the defendant with Possession of Destructive

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Devices, in violation of Title 26, United States Code, Sections 5845, 5861(d), and 5871.

3. The defendant understands that the maximum punishment for this offense is as follows:

- A. ten (10) years imprisonment;
- B. a fine of up to \$10,000;
- C. a supervised release term of 3 years;
- D. a mandatory special assessment of \$100.00;
- E. the assessment of the defendant of the costs of prosecution, imprisonment, and supervision; and
- F. the possible loss of eligibility for federal benefits.

4. The defendant agrees that any special assessment, fine, costs, order of restitution, or other financial judgment imposed as part of the sentence in this case shall be due, payable, and collectable immediately upon the entry of the judgment and commitment order in this case, and the government may take all steps under the law to collect on the judgment at that time.

5. The defendant understands that he will be sentenced in accordance with the Federal Sentencing Act, 18 U.S.C. § 3551 et seq. The parties are aware and agree that the Federal Sentencing Guidelines are advisory to, but not binding on, the Court. The parties have agreed upon the Sentencing Guideline factors as set forth below. The parties' stipulations as to the sentencing factors are not binding upon the Court. If the Court determines the factors to be different

from those set forth below, the parties shall not be entitled to withdraw from the plea agreement.

6. Base Offense Level. The parties agree that the appropriate Guidelines section for Count 1 of the Information is Section 2K2.1. Because the offense involves devices defined in 26 U.S.C. § 5845(a), the parties believe that the base offense level is 18. See U.S.S.G. § 2K2.1(a)(5).

7. Specific Offense Characteristics. The parties agree that the following specific offense characteristics listed in section 2D1.1(b)(1)-(6) will apply in this case.

A. The parties agree that, because five (5) destructive devices were possessed in this case, a 2-level enhancement applies pursuant to Guidelines Section 2K2.1(b)(1)(A).

B. The parties agree that because the offense involved destructive devices, a 2-level enhancement applies pursuant to Guidelines Section 2K2.1(b)(3)(B).

C. The parties agree that the defendant possessed the destructive devices with knowledge, intent, or reason to believe that they would be used or possessed in connection with another felony offense, specifically, arson in the third degree, as charged under Minnesota Statute Section 609.563. Thus, a 4-level enhancement applies pursuant to Guidelines section 2K2.1(b)(6).

D. The parties agree that no other specific offense characteristics are applicable to this case.

8. Adjustments. The parties agree that no adjustments set forth in Guideline sections 3A1.1 through 3C1.2 are applicable in this case. The parties further agree to jointly recommend that no terrorism-related enhancement apply from the Guidelines.

9. Acceptance of Responsibility. The government will recommend that the defendant receive a three-level credit for acceptance of responsibility provided that: (1) he testifies truthfully during the change of plea hearing, (2) he cooperates with the Probation Office in the pre-sentence investigation and (3) commits no further acts inconsistent with acceptance of responsibility.

10. Criminal History Category. The parties believe that the defendant's criminal history category is Level I. The parties agree, however, that the defendant's criminal history category ultimately will be determined by probation and the Court, and the parties may not withdraw from this agreement if the criminal history category differs from category I.

11. Guideline Range. Depending on the Court's determination of Guideline factors, the parties believe the following Guideline range is possible:

- A. *Base Offense Level: 18 (2K2.1(a)(5))*
- B. *Enhancement for Number of Devices: + 2 (2K2.1(b)(1)(A))*
- C. *Enhancement for destructive devices: + 2 (2K2.1(b)(3)(B))*
- D. *Enhancement for possession of destructive devices with knowledge, intent, or reason to believe that they would be used or possessed in connection with another felony offense: +4 (2K2.1(b)(6))*

E. Reduction for Acceptance of Responsibility: -3
(3E1.1(a), 3E1.1(b))

F. Total Adjusted Offense Level: $18 + 2 + 2 + 4 - 3 = 23$

G. Criminal History Category: I

H. Guideline Range: 46-57 Months imprisonment

12. Fine Range. Assuming an offense level of 23, the fine range is \$10,000-\$100,000.

13. Special Assessment. The Guidelines require payment of a special assessment in the amount of \$100.00. Section 5E1.3.

14. Supervised Release. The applicable guideline range for supervised release is 2 - 3 years. The defendant understands that, if he were to violate any condition of supervised release, he could be sentenced to an additional term of imprisonment.

15. Waiver of Pretrial Motions. The defendant understands and agrees that he has certain rights to file pretrial motions in this case. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, the defendant knowingly, willingly, and voluntarily waives all pretrial motions in this case.

16. Waiver of Appeal. The defendant understands that by pleading guilty the defendant waives all rights to a trial or appeal on the question of the defendant's guilt or innocence. The defendant understands that Title 18, United States Code, Section 3742, affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this right, and in exchange for the

concessions made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742 to appeal his sentence, unless the Court imposes a sentence above 57 months. The government agrees to waive its right to appeal a sentence above 46 months. The defendant has discussed these rights with his attorney. The defendant understands the rights being waived, and the defendant waives these rights knowingly, intelligently, and voluntarily.

18. Other than as stated in this Plea Agreement and Sentencing Stipulations, there is no agreement between the parties as to the term of imprisonment, the term of supervised release, the fine, the restitution, the costs, or any other penalties which the court may impose.

The foregoing accurately sets forth the full extent of the plea agreement and the sentencing stipulations in the above-captioned case.

Dated: 10/21/08

FRANK J. MAGILL JR.,
United States Attorney

for E. W. M. D. J.
BY: W. ANDERS FOLK
Assistant U.S. Attorney

Dated: 10/21/08

Matthew Bradley Depalma
MATTHEW BRADLEY DEPALMA
Defendant

Dated: 10/21/2008

Reynaldo A. Aligada, Jr.
Reynaldo A. Aligada, Jr., Esq.
Attorney for Defendant