

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	CASE NO. 5:11-CR-594
	)	
Plaintiff,	)	JUDGE DAN AARON POLSTER
	)	
v.	)	
	)	
SAMUEL MULLET, SR., et al.	)	
Defendants.	)	

CONSOLIDATED REPLY TO DEFENDANTS' SENTENCING MEMORANDA

The United States of America, through the undersigned attorneys, files this consolidated reply to the defendants' sentencing memoranda.

The defendants' memoranda contain a number of arguments that have been recycled repeatedly at this point in the litigation, namely that their actions in perpetrating a series of violent "religious degradings" on a host of exclusively Amish victims by attacking symbols of the victims' Amish faith were somehow not "because of" religion; and that their violent assaults, which variously involved night-time home invasions, physical restraint, the luring of victims to isolated locations, physical injury, and the use of dangerous weapons were not "kidnapping" for purposes of

the sentencing guidelines. The government refers the court to the multi-week trial in this case and the arguments contained in the government's Sentencing Memorandum and submits that this court should reject the defendants' positions on both points.

This reply will focus on the defendants' claims that their conduct in burying the camera that contained a pictorial record of their violent actions was "not serious" and that there are factors warranting significant downward variances from the sentences counseled by the Guidelines.

- I. Sentences within the Guideline range are warranted by the serious obstruction committed by the defendants.
 - A. All of the defendants participated in the conspiracy and deserve significant punishment.

Some of the defendants have filed motions and memoranda suggesting that they were not part of the conspiracy to conceal evidence and that they should be sentenced to time served on that ground. The Court has settled this question by denying the defendants' various motions to dismiss and vacate their convictions, acknowledging that they are duly convicted of conspiracy. Beyond that, the evidence at trial was clear that every charged defendant participated in the agreement to conceal the camera and photographs that depicted their conduct. Multiple witnesses testified that all of the defendants discussed and agreed with every crime alleged in the indictment, to include concealing the camera. Sam Mullet led discussions concerning the plan to hide the camera in calls to the Holmes County Jail. Johnny Mast testified that everyone in the community gathered at the phone to listen to these calls. There is no defendant in this case who was not a full participant in the scheme and all should be sentenced in a manner that reflects their plan and conduct.

- B. The defendants' obstructive conduct was serious and aimed at concealing key evidence of the true nature of the underlying assaults.

The key theme in the defendants' sentencing memoranda, as it has been since the day of the

first arrests in this case, is that their conduct was trifling in nature and not a serious offense. The defendants continue to deny, for instance, that the assaults they committed were violent or that they resulted in any kind of serious injury to the victims. The defendants have also repeatedly denied that anything they did was “hateful” or exhibited any animus toward the victims or their religion. In keeping with this strategy, defendant Sam Mullet asserts that he was convicted “only” of conspiring to conceal a disposable camera and that his actions in doing so were not “serious” and did not affect the government’s ability to prosecute this case. His co-defendants join his arguments.

The defendants assert that their conduct in burying the camera was “run-of-the-mill” and “not serious” because they did not actually manage to prohibit or interfere with the investigation or prosecution in this case. But defendants’ lack of success in defeating the investigation is not what matters. Rather, the focus in sentencing must be on what the defendants’ intended to do and the seriousness of the offense they were attempting to conceal. *See, e.g., United States v. Tackett*, 113 F.3d 603, 611 (6th Cir. 1997) (“The government need not prove that the [obstructive] actions had their intended effect. Furthermore, an endeavor to obstruct justice violates the law even if, unbeknownst to the defendant, the plan is doomed to failure from the start.”). It is telling that the defendants do not attempt to distinguish the cases cited in the government’s Sentencing Memorandum, which direct that obstruction of justice should be punished in relation to the seriousness of the underlying offense.

The defendants are wrong, however, even on their own terms. First of all, it was only by good fortune that the government was able to obtain the camera and the film containing the photographs. Johnny Mast did not volunteer to give the evidence to the government on his own. Rather, he waited until he was subpoenaed to testify in the grand jury. There is no evidence to

indicate that the government ever would have obtained the camera had it not subpoenaed Mr. Mast. It was also highly fortuitous that the camera remained in a condition from which the film was recoverable after it was buried in the ground and subject to the elements for a period of months. Moreover, the camera was not just any evidence, but rather was among the most significant evidence presented at trial because it conclusively refuted the defendants' claims that their actions were non-violent and innocuous. The photographs were powerful visual evidence that the defendants behaved in a violent and menacing manner and that their conduct terrified their victims. The content of the photographs also illustrated *why* the defendants took them – so they could re-visit and revel in their crimes as well as share the visual details of the attacks with the full community – and illuminated for the jury the malice with which they acted against the victims. This evidence was extremely damaging to the defendants at trial. The concealment of the camera and film was thus part and parcel of the defendants' concerted effort to conceal the true nature of what they did and to evade the law. There is a reason the defendants went to the trouble of making the camera and its contents unavailable to law enforcement – precisely because they knew how significant the photographs would be in exposing their egregious conduct.

The defendants' attempt to dismiss the role the concealment of the camera played in their efforts to facilitate the commission of further crimes is entirely inconsistent with the well-established facts. Again, it does not matter that the defendants were unsuccessful. What matters is their intent and it is clear from the jail calls -- which were directed by Sam Mullet and heard by the entire Bergholz community -- that concealing the camera was part of the defendants' cynical plan to hide the violence that propelled their crimes so they could evade serious punishment and continue to terrorize numerous Amish communities. For all the reasons the well-settled law makes clear, the defendants' obstruction cannot be divorced from the conduct it attempted to hide,

and the defendants offenses warrant sentences that are in line with the seriousness of what they tried to accomplish.

II. The defendants do not merit downward variances from the Guidelines.

The defendants contend that it would be a grave injustice if they were to be sentenced to similar sentences as those they received before the Sixth Circuit Court of Appeals vacated the section 249 convictions. However, they once again cite no authority indicating that this Court cannot find that the religiously-motivated assaults occurred and sentence the defendants in accordance with their underlying relevant conduct. They also conveniently ignore that the Guidelines for their conspiracy and obstruction convictions closely align with their prior sentences because of the significant variances from which they benefited at the prior proceeding. The only question now properly before this Court is what sentence adequately addresses the true nature of the defendants' conduct and comports with the factors set forth in 18 U.S.C. § 3553. When viewed in that light, it is clear that significant sentences close to those recommended in the Guidelines are necessary for these defendants.

One of the factors contained in section 3553(a) is the need for the sentence to reflect the seriousness of the offense and promote respect for the law. The arguments advanced in the defendants' memoranda demonstrate that they do not yet appreciate the seriousness of the crimes they committed nor have they gained respect for the law. The defendants' claim that they lived previously law-abiding lives and should now be sentenced to time served ignores the fact that their conduct was serial in nature and that they openly defied the law in committing their crimes. Indeed, the defendants continued planning and thereafter committed violent assaults even after a number of them were arrested, and even after Sam Mullet falsely assured the Holmes County Sheriff that there would be no further assaults. Another important point for this Court's

consideration is that the plan to hide the camera was hatched and executed while some of the defendants were incarcerated in the Holmes County Jail on state charges related to the attack on the Hershberger family. The defendants nonetheless continue to brazenly claim Sam Mullet's false statements to the Sheriff as a point in their favor.

Another factor set forth in section 3553(a) is the need to ensure deterrence and just punishment. Again, the defendants' own arguments indicate that that they can be deterred only by serving additional time in prison. For example, the defendants advance the remarkable claim they should receive a variance because *they* have been damaged by "invisible penalties." The defendants claim they have been harmed by the loss of their privacy and damage to their reputations, as well as by the unwillingness of other Amish communities to associate with theirs. Of course, it is the defendants themselves who created these circumstances through their own lawless conduct, yet they continue to blame the government and their properly imposed prison sentences for the harms they feel they have suffered. The defendants' sentencing memoranda leaves the impression that they are the victims in this case, not the people they violently assaulted during nighttime raids and orchestrated attacks.

Simply put, there has also been no indication over the past two years that the time the defendants have served up to this point has in any way caused them to re-evaluate the propriety or the gravity of their behavior other than their acknowledgment that the government takes the matters seriously (even if they do not) and their obvious unhappiness at having been caught and punished. Otherwise, all indications are that the defendants continue to operate under the belief that Sam Mullet should direct their activities and that everything they did was merely misunderstood rather than truly wrong. In this respect, defendant Mullet's arguments about his age are especially unpersuasive, as his age has no bearing on his ability to control the activities and thoughts of others

in the Bergholz community. In turn, Sam Mullet's ability to control the Bergholz community and the manner in which he uses that control remains the driving force in this case.

Given the defendants' unrepentant attitudes and actions, continued time in prison for the most culpable members of the conspiracy is necessary to promote true deterrence of future such behavior and adequate respect for the law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2015, a copy of the foregoing Government's Sentencing Memorandum was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Kristy Parker
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