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UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

UNITED STATES OF AMERICA,)	DOCKET NO: CR -10-183-N-BLW
)	
Plaintiff,)	DEFENDANT'S SENTENCING
)	MEMORANDUM AND MOTION FOR
vs.)	DOWNWARD VARIANCE AND
)	DEPARTURE
LARRY FAIRFAX,)	
)	Sentencing: May 11, 2011
Defendant.)	8:30 a.m.
_____)	

TO: THE COURT AND ALL INTERESTED PARTIES:

Defendant, LARRY FAIRFAX, by and through his attorney of record, John E. Miller of *The Law Office of John E. Miller, A Professional Corporation*, submits his Sentencing Memorandum and respectfully moves this Honorable Court pursuant to 18 U.S.C. §3553, and

DEFENDANT'S SENTENCING MEMORANDUM

§5K2.0 of the United States Sentencing Guidelines to grant downward departures and/or variance from the guidelines. Mr. Fairfax offers the following:

DEFENDANT'S SENTENCING MEMORANDUM
AND MOTION FOR DOWNWARD VARIANCE AND DEPARTURE

I. INTRODUCTION; THE DEFENDANT AND HIS PARTICIPATION

Larry Fairfax was arrested on June 15, 2010 and has been in Federal custody continuously since that date; a period of approximately eleven (11) months. Mr. Fairfax, in a timely manner, entered a change of plea at a hearing conducted on October 7, 2010 pursuant to Plea Agreement therein accepting responsibility for the crimes alleged, to wit: manufacturing and possession of a destructive device. Mr. Fairfax had been cooperating with the Government investigations related to this matter even before his arrest, and continued his cooperation immediately following his arrest. The original change of plea had been set for September 7, 2010, but was continued to October 7, 2010. Following the change of plea, sentencing was initially scheduled for December 16, 2010. Due to the Court's trial calendar, the sentencing date was continued to February 7, 2011. Because of the multiple trial continuances granted in the *United States v. Edgar Steele*, 10-CR-148-N-BLW, a case in which Mr. Fairfax will be a witness in compliance with his plea agreement, the Government has asked, and he has acquiesced, to two additional continuances to his sentencing date from February 7 to March 16, 2011 and from March 16, 2011 to May13, 2011(now May 11). At the time of submission of this memorandum, Mr. Steele's trial has now concluded with the matter being deliberated by the jury.

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Mr. Fairfax is a fifty year old man, born in March of 1961 in Spokane, Washington. He is married to his spouse of 32 years, Carla Fairfax, and they are the parents of two sons, Andrew and Richard; both now adults. They, Mr. and Mrs. Fairfax, have made Sagle, Idaho their home since 1988. Mr. Fairfax's family, friends and members of his community are supporting him in this matter. They have written letters to the Court and many will be in the courtroom at the time of sentencing.

Mr. Fairfax has been a law-abiding citizen within this community for the thirty plus years of his adult life. He has of record a 1980-81 arrest in his late teens for a business burglary and theft or receipt of stolen automobile tires; a matter that was later dismissed/expunged after he paid his debt to society. That matter has not, and should not affect the guideline sentence calculation. Since moving to the Sagle area, Mr. Fairfax and his wife were able to build a good logging and construction business that enabled them to purchase the house in which they raised their family. Having lived and worked in the same community through all those years also established them within their community as good, hard working people; some would submit that they are "salt of the earth" type of people. As the Court will glean from the numerous letters of support from friends, family members and other people from his community, Mr. Fairfax is well respected with a reputation of honesty, hard work and caring for others. To a person, the numerous people who support Mr. Fairfax reported in their letters that the admitted conduct of Mr. Fairfax in this case is foreign to them; that this conduct does not fit the character of the

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person that they know as Larry Fairfax. For example: Nancy C. Gerth, Ph.D., a neighbor, wrote:

“...The criminal acts committed by Larry were totally out of character, so much so that when I first read about them in the newspaper I thought that there must be another Larry Fairfax living in Sagle. Larry is a family man who works hard for a living. He is good-natured and generous, slow to anger....”

Mark Mays, Ph.D., J.D., another neighbor, in describing Mr. Fairfax’s unique way of working out problems wrote:

“ I have found him to be reliable, honest, and responsible in all of my activities with him. He keeps his word. I have felt my person, my property and my family to be safe with him—and still do.I could see how he could run into trouble by looking only at the problem and not the process, but I’ve never doubted his motivation, his ethics, or his character. I see a criminal act by Larry as truly aberrant and out of character for him. ...I would reassure the Court that I personally would feel safe in the area should Larry be released and, perhaps a more significant statement, would be my judgment that my wife and five children would also be safe.”

As the Court peruses the other numerous letters of support¹, the Court will find that each of these people, people who do not bear the professional titles of two uniquely qualified and quoted individuals to make such observations, echo in their own humble words similar conclusions about Mr. Fairfax’s character.² They obviously do not share in the venom laced descriptions and allegations given by Mrs. Steele in the media and at the change of plea hearing which, one supposes, will be repeated, if allowed by the Court, at the time of sentencing.

Over the last several decades, Mr. and Mrs. Fairfax successfully built a construction/logging and handyman business that had supported his family in such a way that

1 The support letters will be filed, under seal, as Supplement(s) to this Sentencing Memorandum. They are filed under seal to protect the contact information of each author.

2 The Court is also asked to review the numerous sealed letters of support in the Court’s file given at the time of Mr. Fairfax’s motion for release from pre-trial detention in June of 2010.

they could be described as an average, middle-class North Idaho family with strong connections to their community. Unfortunately, as with many folks, Mr. Fairfax's financial stability had been severely impacted by the recent economic downturn, and he found himself struggling to stay on top of bills.

Over the course of the last few years, he has done much more of local handyman work to make ends meet. This is how many people in the Sagle community know of him, including Edgar Steele, who had hired Mr. Fairfax on several occasions over the years to undertake construction and other odd jobs at his residence. It is during these undertakings that Mr. Steele began to engage Mr. Fairfax in conversations that took a dark turn in the late Fall of 2009. Mr. Steele quite casually let Mr. Fairfax know that he was not happy with a lot of people; people who he would like to see dead. Mr. Fairfax feigned interest in Mr. Steele's stories, after all, he was paying Mr. Fairfax to do things, and this work was important; it was helping keep his family afloat financially. Nothing specific was said for awhile, until February 2010 when it apparently became acceptably clear to Mr. Steele that Mr. Fairfax might be interested and capable of doing harm to people at Mr. Steele's request. It was in early 2010 when these "desires" of Mr. Steele became real. Mr. Steele actually proposed that Mr. Fairfax would be paid by Mr. Steele to kill several people, some of whom he then named.

At this point, with the crystal clarity of 20-20 hindsight, Mr. Fairfax knows that he should have walked away. He did not. Instead, Mr. Fairfax thought he could control the

situation and maneuver around having to hurt anyone. He thought he could accept some payments from Mr. Steele, money that would help his family, but then never carry out Mr. Steele's wishes; and then, either be able to keep the money as an offset for legitimate work done or over time repay the amount paid as he became more financially able. Then, in or about February or March 2010, came the actual naming by Mr. Steele of his first desired target, his wife. Mr. Steele offered and paid a down-payment of \$10,000 in silver, with an additional payment of \$15,000 to be due upon completion, to carry out the murder of Mrs. Steele and her mother. Mr. Fairfax accepted the down payment by picking up the silver in two separate deliveries from the location in Mr. Steele's out buildings that Mr. Steele indicated the silver would be placed, silver with an approximate value of \$10,000.00. Within a couple of weeks of picking up the silver³, Mr. Fairfax cashed in the silver to help alleviate his financial troubles. Mr. Fairfax knew when he picked up the down payment that he would never actually hurt anyone and that he would find a way to direct the situation to a harmless conclusion. But at that point Mr. Steele expected him to do the deed. From March 2010, through April and May 2010, Mr. Fairfax kept making excuses to Mr. Steele as to why the "job" had not been done. It became more and more clear to Mr. Fairfax, that Mr. Steele was a danger not only to those he wanted dead, but also to Mr. Fairfax. After all Mr. Fairfax was aware of the plans of Mr. Steele, he had been paid to kill, and was not doing it. In late May 2010, Mr. Fairfax knew that he had to do

³ As trial exhibits introduced at the trial of Mr. Steele revealed.

something to further delay Mr. Steele. Mr. Steele had put time pressure on Mr. Fairfax to do the job. Mr. Fairfax still knew that he was not going to do what Mr. Steele expected of him. While he was trying to figure out what to do to extricate himself, he decided to placate Mr. Steele at least a bit longer with an action. He did this because Mr. Steele had informed him that if he wasn't going to get it done, someone else would be hired to do it and intimated that he would take care of Mr. Fairfax too. At that point Mr. Fairfax was concerned about time. Something needed to be done and done now to keep Mr. Steele from hiring others to do the murders and potentially do harm to Mr. Fairfax.

This is the conduct for which he now stands before the Court for sentencing. Mr. Fairfax chose to create and affix the explosive devices that he and Mr. Steele had discussed so as to convince Mr. Steele that he was actually going forward with the plan. However, he would go forward with devices that Mr. Fairfax believed would not actually explode, but looked viable to Mr. Steele, if he chose to inspect the devices. Mr. Fairfax, because of his background, has some working knowledge of fireworks. He believed, based upon his use of fireworks, that "hobby fuse", the type of fuse used commonly for simple fireworks displays and that he would use in preparing the devices, would not ignite from the heat generated when in contact with a normally functioning exhaust system⁴. He would affix the fuse to the exhaust system as a source of

⁴ This "belief" has been verified by the testing of the defense expert, Jeff Bush, whose affidavit and report will be submitted after consultation with the US Attorney's office, or he will testify at the time of sentencing.

ignition and convince Mr. Steele that this would work to set off the device. He also believed that causing breaks in the fuse which couldn't be seen would disrupt an unexpected ignition of the fuse, so he broke the fuse in several places from where it was attached to the exhaust to the device. Finally, he believed that the use of multiple wraps of fire retardant black electrical tape would stop any ignited fuse dead prior to passing beyond the tape⁵. He would create and place these devices as Mr. Steele wanted, but he would do so with all of these "safe-guards" in place believing that the devices would not cause any harm. He would then have kept Mr. Steele from hiring someone else, he would feel safe himself from Mr. Steele's anger, and he would have time to find legal advice and go to the authorities. On May 27-28, 2010 he constructed the devices and placed them under Mr. and Mrs. Steele's cars.⁶ Mr. Fairfax was very concerned that if Mr. Steele checked the device on his car that it must look to him to be viable. Mrs. Steele drove to Oregon the next day with the device attached to her car. As we all know, the device never exploded. It rode around under the vehicle from May 28, 2010 until discovered at an oil change shop in Coeur d'Alene on June 15, 2010.⁷

Again with 20-20 hindsight, Mr. Fairfax realizes the stupidity and recklessness of his

5 It should be noted that the testing report by the defense expert, Jeff Bush, concluded that the breaks or electrical tape wrapping would not consistently disrupt an ignited fuse.

6 A duplicate device was placed under Mr. Steele's car at his instruction and request to support an alibi. It was later removed by Mr. Fairfax as demanded by Mr. Steele when the first device on Mrs. Steele's car "failed".

7 The foregoing paragraph responds to and answers the queries of the US Probation Sentencing Recommendation, bottom of page one and top of page two. These queries were further responded to at Mr. Steele's trial.

action. Even though he believed that the device was designed and constructed to fail, that it would not function, he now recognizes the dangerous position into which he had placed Mrs. Steele and perhaps an unwary person who may have found the device, and he very much regrets his poor choices. He did not want anyone hurt. His actions were poorly considered and, he knows now in accepting responsibility, cannot be justified despite his intended desire to save lives.

When the device did not do what Mr. Steele expected, Mr. Steele insisted on Mr. Fairfax traveling to Oregon, finding his wife's vehicle and removing the device if it was still in place to avoid it being found. Mr. Fairfax traveled to Oregon on May 31, 2010, and erroneously concluded that the device was no longer on the vehicle. Within days, Mr. Fairfax was meeting with his local attorney and making contact with the Federal authorities to expose Mr. Steele's plans. He was frightened. Everything was moving very fast, so fast that his then attorney advised slowing down the discussions with law enforcement, without knowing the full details of Mr. Fairfax's prior involvement, so that an immunity potential could be fully developed. Mr. Fairfax consciously ignored this advice and continued his discussions with law enforcement because he did not want any potential backup plan by Mr. Steele to cause harm to Mrs. Steele or anyone else; a deadline had been placed by Mr. Steele. This led to Mr. Fairfax being asked by the authorities to conceal a recording device upon his person to record Mr. Steele's statements related to this matter. Mr. Fairfax failed to fully inform the authorities about his prior delaying

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actions in constructing and placing what he believed to be an inert device beneath Mrs. Steele's car. He thought that it had fallen off. He realizes that this omission was another mistake and reckless action.

Mr. Fairfax did as requested by the authorities and conducted two recorded conversations with Mr. Steele on June 9 and 10, 2010. As planned by Mr. Steele during these conversations, Mr. Fairfax was engaged for a SECOND attempt to finish the planned murder of Mrs. Steele and her mother and drove to Oregon with expense money that was provided by Mr. Steele during one of the recorded conversations.⁸ At this point, Mr. Steele had suggested that an auto insurance uninsured motorist provision could potentially provide a payout of \$100,000, which he would split with Mr. Fairfax if paid by the company in addition to the base payment previously offered. The plan now as envisioned by Mr. Steele was to have Mr. Fairfax cause an auto accident, wrecking Mrs. Steele's moving vehicle and causing her death. If that couldn't happen Mr. Fairfax was to go to the residence in Oregon where Mrs. Steele was staying and shoot her to death. As noted during the trial of Mr. Steele, Mr. Steele's second plan (after the failed May 28 destructive device) and instruction to Mr. Fairfax is fully captured in the June 9 and 10 recordings obtained by Mr. Fairfax at the direction of law enforcement. To keep the "plan" moving forward thereby allowing the authorities to intervene, Mr. Fairfax was instructed to and did travel to Oregon overnight June 10 with an FBI provided GPS tracking device.

⁸ The money provided by Mr. Steele was of course taken by the authorities and replaced by other expense money provided to Mr. Fairfax by the FBI.

Shortly thereafter, Mr. Steele was arrested on June 11. Mr. Fairfax returned to his Sagle home on June 11, 2010. On June 15, 2010, the device under Mrs. Steele's vehicle was found still affixed leading to Mr. Fairfax's arrest that day. He immediately acknowledged the construction and placement of the device under Mrs. Steele's car to the authorities and explained to them his actions, including his belief that the device was a "dud".

LARRY FAIRFAX's Life Following His Arrest In This Case

Mr. Fairfax has been continually incarcerated in this matter since June 15, 2010. While in jail he has been a model prisoner. His various medical conditions, including diabetes, gastro-intestinal issues (acid reflux), poor hearing (he is deaf in this left ear), menieres disease, denture issues, shy bladder syndrome, sleep apnea, and obesity among other ailments, have all adversely affected his time in jail both personally and financially. Despite the discomfort, Mr. Fairfax has utilized the available religious and social services within both the Bonner County, and now the Shoshone County jail facilities to his advantage. His family continues to struggle financially with their primary wage earner away, but they continue to persevere in his absence.

II. SENTENCING GUIDELINE CALCULATIONS

Pursuant to the Final PSR, under the Sentencing Guidelines, LARRY FAIRFAX's adjusted offense level after consideration of acceptance is recommended to be 21 after application of the 3 level downward adjustment for acceptance. He has a Criminal History Category I because of NO CRIMINAL HISTORY POINTS. As a result, his PSR recommended

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applicable guideline range is 37-46 months incarceration, Sentencing Recommendation, Page 1. U.S. Probation recommends sentencing within the calculated range at 40 months.

Mr. Fairfax has objected to and argues against the recommended application of the guidelines by US. Probation. The defense objections are incorporated herein by reference to the extent not resolved by the final PSR. The Government has agreed with the defense base guideline calculation of Offense Level 20 and, after the three (3) level departure for acceptance, Offense Level 17, has agreed with a recommend guideline sentencing range of 24-30 months. Mr. Fairfax further argues as follows for downward departures and/or variance from this or an applicable guideline range as may be determined by the Court.

III. MOTIONS FOR VARIANCE OR DEPARTURE FOR A SENTENCE THAT IS SUFFICIENT BUT NOT GREATER THAN NECESSARY

GENERALLY:

When sentencing an individual, a court is required to determine how best to comply with 18 U.S.C. § 3553(a)'s primary directive: to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing. In making this determination, courts should consider the advisory sentencing guidelines, but must weigh all of the § 3553(a) factors. *Kimbrough v. United States*, 128 S. Ct. 558, 564—565 (2007); *United States v. Booker*, 543 U. S. 220, 245 (2005). This statute requires district courts to give "respectful consideration" to the guidelines, but "permits the court to tailor the sentence in light of other statutory concerns as well." *Kimbrough*, 128 S. Ct. at 570 (citing *Booker*, 543 U.S. at 245—246); *see also Gall v.*

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United States, 128 5. Ct. 586, 594—596 (2007). A district court is free to impose a non-guideline sentence when the case falls outside the “heartland,” when the guideline range fails to reflect the § 3553(a) considerations, or when a case “warrants a different sentence regardless.”

Rita v. United States, 127 5. Ct. 2456, 2465 (2007).

The sufficient-but-not-greater-than-necessary directive is not a “factor” to be considered. Rather, it sets an independent upper limit on the sentence a court may impose. In determining what sentence is sufficient but not greater than necessary, *USSG § 3553(a)* provides that the court should consider several factors:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing ranges established for—
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the [Sentencing] guidelines...in effect on the date the defendant is sentenced...;
- (5) any pertinent policy statement;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

While this Court should consider the sentencing guideline range calculated by the probation office, it must also consider all of the §3553(a) factors and the recommendations of the

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defense. In Mr. Fairfax's case, the advisory guideline range either as calculated by US Probation or the defense and the Government, calls for a sentence that is far longer than necessary to meet the purposes of sentencing. The circumstances of his life and his actions both before his arrest and during the pendency of this case call for a sentence less than that described by the advisory range. Consideration of Mr. Fairfax's circumstances and actions in light of all of the § 3553(a) factors, including grounds for downward departure described by the guidelines, shows that a sentence far less than 24 to 30 months incarceration is merited. In fact, dependent upon the departures or variance approved by the Court, the defense suggests that a sentence of time served (eleven months as of the date of sentencing) with probation for a following period of months would be sufficient. Perhaps a split sentence with time served, and then a period of home detention followed by probation would be appropriate in this case. Such suggested sentencing options would fully satisfy the stated goals and purposes of sentencing. Any such sentence would then of course be followed with a statutory term of supervised release (the "second" sentence) of not more than three (3) years.

In sentencing Mr. Fairfax, this Court should consider the guidelines and all of the other §3553(a) factors, including grounds for downward departure within the guidelines or variance as accorded by the recent case law. "In accord with 18 U. S. C. § 3553(a), the Guidelines, formerly mandatory, now serve as one factor among several that courts must consider in determining an appropriate sentence." *Kimbrough*, 128 S. Ct. at 564. Following *Booker*, the guidelines no

longer dominate sentencing. They no longer remove from consideration factors such as emotional conditions or family ties, that were always relevant under § 3553(a), but which were previously forbidden to sentencing courts. *See, e.g.*, U.S.S.G. §5H1.3, §5H1.6. Courts may disagree with a guideline's application to a certain individual, as well as the guideline provision's underlying policy. *Kimbrough*, 128 5. Ct. at 574-575, 570.

A downward variance from the advisory guidelines is warranted in this case because Mr. Fairfax's characteristics show dedication to a crime free life and community service prior to his aberrant behavior in this case, and because his age and his medical infirmities. The court further should not discount the fact that Mr. Fairfax's actions did not hurt anyone and did in fact end up saving lives. It was Mr. Fairfax who brought this matter to the attention of law enforcement.

This Court must consider all factors relevant to sentencing, including Mr. Fairfax's history and characteristics, and the most effective sentence, to arrive at a judgment that serves the above noted purposes of sentencing. Mr. Fairfax's personal history includes both experiences that led him toward the commission of the instant offense and the known and demonstrated abilities that made him an outstanding citizen for decades of adult life prior to the current legal problems brought about by his aberrant conduct. Further incarceration, remember he has already served nearly a full year in jail, would neither acknowledge Mr. Fairfax's positive actions in this case, nor provide any needed rehabilitative or the deterrent properties envisioned by a "just punishment". Most certainly, the Court should consider the facts and the outcome of

this matter. No one was hurt, no one was killed, and the plot to do so was brought to the attention of law enforcement by Mr. Fairfax. The device did not explode. The backup plot was foiled and by his actions, many other lives were probably saved.

SPECIFIC DOWNWARD DEPARTURE GROUNDS:

The defense requests the Court to consider departures or variance sufficient to place the defendant within Zone A or Zone B of the Sentencing Table taking into consideration the other departures or adjustments, upward or downward, imposed or granted by the Court thus allowing for sentencing options including probation.

Should the Court calculate the sentencing guideline range in accordance with the recommendation of US Probation, the defense requests that the following requested downward departure levels be increased in such a way to counter the effect of the four level upward adjustment pursuant to 2k2.1(b)(6). The defense hereby moves the Court for the following downward departures:

Acceptance of Responsibility

Pursuant to the Plea Agreement executed and filed with the Court in this matter Section V.B.1., page 6, the defendant moves for a downward departure, three (3) levels, pursuant to USSG §3E1.1(a) and (b), for Acceptance of Responsibility. This would reduce the Base Offense Level of 18 plus 2 for Special Offense Characteristics, total of 20, (as argued in the Objection) to 17.

Super Acceptance of Responsibility

The defendant moves for an addition one (1) downward departure level, pursuant to Super Acceptance of Responsibility based upon the facts that this defendant came to the Government with the information necessary to expose the murder for hire plot and immediately acknowledged his part in construction and placement of the destructive device. Neither this case nor the related prosecution of Edgar Steele would be before this Court without this defendant's actions. This would reduce the sentencing Offense Level to 16.

Mr. Fairfax's risk of recidivism is NIL

The defendant moves for a downward departure, two (2) levels, in light of the low, if not non-existent, risk of recidivism. In determining a defendant's criminal history category and appropriate sentencing guideline range, one of the considerations in formulating the guidelines was protecting the public from further crimes of the defendant while assessing the likelihood of recidivism and future criminal behavior. See Introductory Commentary, Ch. 4 Part A - CRIMINAL HISTORY. It would normally be expected that a person with a criminal history would be at higher risk of re-offending. However, the late onset (age 49), his current age 50, and the lack of criminal history in Mr. Fairfax's past, suggest that his risk of recidivism is really quite

low.

Section 5K2.0 allows a sentencing court to impose a sentence outside the applicable guideline range if the court finds “that there exists a[n] ...mitigating circumstance of a kind, or to a degree, not adequately taken into consideration...in formulating the guidelines that should result in a sentence different from that described.” In furtherance of §5K2.0, the guidelines encourage courts to depart downward from the guideline range when the defendant’s criminal history category significantly overstates the seriousness of his prior conduct.

If reliable information indicates that the criminal history category does not adequately reflect the seriousness of the defendant’s past criminal conduct or the likelihood that the defendant will commit other crimes, the court may consider imposing a sentence departing from the otherwise applicable guideline range.

There may be cases where the court concludes that a defendant’s criminal history category significantly over-represents the seriousness of a defendant’s criminal history or the likelihood that the defendant will commit further crimes. The court may conclude that the defendant’s criminal history was significantly less than that of most defendant’s in the same criminal history category (Category II), and therefore consider a downward departure from the guidelines.

§4A1.3 (Policy Statement). See United States v. Abbott, 30 F.3d 71, 72-73 (7th Cir. 1994).

A departure or variance is warranted in Mr. Fairfax’s case as his risk of recidivism is far lower than that of the typical offender. His successful pre-charging, self motivated rehabilitation and presentation of this matter to the authorities, his effort thereby in saving lives, his efforts to assist the government, and efforts in the community to help others are not consistent with an individual at risk of committing additional offenses or being a danger to his community. Further,

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he has been employed for his entire lifetime, further evidencing his reliability, and has the ability to seek employment based on his past employment experiences. Finally, in reading the support letters from his community, one can only conclude that the community is NOT at risk that this defendant will commit future crimes. This would reduce the sentencing Offense Level to 14

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Aberrant Behavior

The defendant moves for a downward departure, three (3) levels, in accordance with USSG §5K2.20 as Mr. Fairfax's conduct was "a single criminal occurrence or a single criminal transaction that (A) was committed without significant planning; (B) was of limited duration; and (C) represents a marked deviation by the defendant from an otherwise law-abiding life. U.S. v. Gonzalez, 281 F.3d 38 (2nd Cir. 2002) This would reduce the sentencing Offense Level to 11.

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This Court is fully apprised of the Plea Agreement and the result of the Edgar Steele trial. But in light of the above and the attached letters from family members, and friends, as well as the totality of the circumstances in this case, this Court has the authority and can, *sua sponte*, vary from the guideline sentencing range. The defense submits that Mr. Fairfax is not the type of offender for which the USSG were designed. He has demonstrated both in his pre-arrest and post-charging conduct, that he is a benefit to society not a detriment. If federal prison is where he must go, and he recognizes that this may be the case, he asks for the Court's consideration in

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ordering a sentence at the low end of the applicable range determined by the Court to be appropriate and further that a calculation of the time that he has already served be included in the Court's sentencing order.

Therefore the defendant submits that the Base Offense Level of 20, and Criminal History Category I should, with the application of the above requested downward departures or variance result in a sentence calculation as follows:

Base Offense Level - 20

Total Requested Departures or Variance -9

Offense Level =11

Sentencing Range Zone B = 8-14 months

CONCLUSION

DEFENSE SENTENCING THOUGHTS

Throughout this memorandum and motion, Mr. Fairfax has attempted to show that the goals of deterrence and protection of the public long ago ceased to be concern in his case. Thus, the sentence imposed in this case need not account for the risk presumed for an individual with his criminal history category or who may have similarly acted in making a destructive device. Mr. Fairfax respectfully requests that the Court downward vary and depart from the guideline range and impose a sentence that is consistent with the goals of sentencing taking into consideration the sentencing factors presented by Mr. Fairfax in this memorandum.

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Mr. Fairfax is not suggesting that this Court not impose a sentence of incarceration in this case. He has already served incarceration of eleven (11) months in anticipation of this date. The defense is suggesting that his time already served is sufficient to meet the purposes and goals of sentencing. The defense requests the Court's consideration of a sentence that would punish Mr. Fairfax for his admitted offense but that would take into consideration the entire picture of this case. The totality of Mr. Fairfax's actions did not result in physical harm to anyone but in fact saved the lives of those individuals targeted or to be targeted by Mr. Steele. As a result, Mr. Fairfax asks the Court to grant his request for a downward variance and departure and impose a sentence that allows him an opportunity to return to his family and livelihood, allows him to continue to be a positive influence for others in his community, and allows him to return to work immediately in his effort to pay the amount of agreed or ordered forfeiture in this case.

The defense alternatively suggests that a departure or variance different than argued by the defense could and should be fashioned by the Court to land the defendant into a split sentence range, a home detention to serve the remainder of any incarceration ordered on top of what has already been served, or even to the point where probation could be considered now for

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the remainder of any sentence of incarceration. Again, any such sentence would be followed by the “second sentence” of not more than three (3) years supervised release.

RESPECTFULLY SUBMITTED:

Dated: May 5, 2011

*The Law Office of John E. Miller
A Professional Corporation*

S/ _____
John E. Miller, Attorney for Larry Fairfax

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be:

____ facsimile transmitted
 X hand delivered

to the following address on this 5th day of May 2011:

Traci Whelan, Esq.
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S/ _____
John E. Miller

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