

FW: Max It Pawn Arson Case

From: "Brennan, Amber (USAMN)" <(b)(6); (b)(7)(C)>
To: "Kovats, Charles (USAMN)" <(b)(6); (b)(7)(C)> "Folk, Anders (USAMN)" <(b)(6); (b)(7)(C)>
Date: Mon, 19 Jul 2021 20:16:21 -0500
Attachments: Plea_Agree.pdf (133.31 kB)

FYSA...
Laura has also been looped in.

From: Calhoun-Lopez, Thomas (USAMN) <(b)(6); (b)(7)(C)>
Sent: Monday, July 19, 2021 5:36 PM
To: Zerna, Tasha (USAMN) <(b)(6); (b)(7)(C)>; LaTour, Angella (USAMN) <(b)(6); (b)(7)(C)>
Cc: (b)(6); (b)(7)(C); Brennan, Amber (USAMN) <(b)(6); (b)(7)(C)>
Subject: Max It Pawn Arson Case

Tasha and Angie:

(b)(5); (b)(6); (b)(7)(C)

Thanks,
Tom

TOM CALHOUN-LOPEZ | Assistant United States Attorney
U.S. Attorney's Office | District of Minnesota
600 U.S. Courthouse | 300 South Fourth Street | Minneapolis, MN 55415
T: (b)(6); (b)(7)(C)
thomas.calhoun-lopez@usdoj.gov

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 20-168 (WMW/ECW)**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	PLEA AGREEMENT
)	AND SENTENCING
)	STIPULATIONS
MONTEZ TERRIEL LEE, JR.,)	
)	
Defendant.)	

The United States of America and Montez Terriel Lee, Jr. (hereinafter referred to as “Defendant”) agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the Defendant and the United States Attorney’s Office for the District of Minnesota. This agreement does not bind any other United States Attorney’s Office or any other federal or state agency.

1. **Charges.** The Defendant agrees to plead guilty to Count 1 of the Indictment, which charges the Defendant with arson on property used in interstate commerce, in violation of Title 18, United States Code, Section 844(i).

2. **Factual Basis.** The Defendant agrees to the following facts and further agrees that, were this matter to go to trial, the United States would prove the following facts beyond a reasonable doubt:

On May 28, 2020, the Defendant, along with others, broke into the Max It Pawn Shop, located at 2726 East Lake Street in Minneapolis, Minnesota. The Defendant then

poured a fire accelerant around the pawn shop, and lit the accelerant on fire. The fire destroyed the Max It Pawn.

At the time the Defendant set the fire, the Max It Pawn Shop building was being used in interstate commerce.

The Defendant admits and agrees that he intentionally damaged and destroyed the Max It Pawn Shop by means of fire on May 28, 2020. He further admits and agrees that he acted voluntarily, and that he knew his actions violated the law.

The United States and the Defendant agree that, on July 20, 2020, federal and state law enforcement personnel recovered the body of a man with the initials O.L.S. in the rubble of the Max It Pawn. The United States and the Defendant dispute whether the Defendant's conduct caused the death of O.L.S., and will be prepared to present their respective positions during sentencing proceedings as set forth in paragraph 5.b., below.

3. **Statutory Penalties.** The parties agree that Count 1 of the Indictment carries statutory penalties of:

- a. a maximum term of imprisonment of 20 years;
- b. a mandatory minimum term of imprisonment of 5 years;
- c. a supervised release term of up to three years;
- d. a fine of up to \$250,000; and
- e. a mandatory special assessment of \$100.00.

4. **Revocation of Supervised Release.** The Defendant understands that if he were to violate any condition of supervised release, the Defendant could be sentenced to

an additional term of imprisonment up to the length of the original supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

5. **Guideline Calculations.** The parties acknowledge that the Defendant will be sentenced in accordance with 18 U.S.C. § 3551, *et seq.* Nothing in this plea agreement should be construed to limit the parties from presenting any and all relevant evidence to the Court at sentencing. The parties also acknowledge that the Court will consider the United States Sentencing Guidelines in determining the appropriate sentence and stipulate to the following guideline calculations:

a. **Base Offense Level.** The parties agree that, because the offense created a substantial risk of death or serious bodily injury to persons other than a participant in the offense, and the risk was created knowingly, the base offense level for Count 1 of the Indictment is **24**. U.S.S.G. § 2K1.4(a)(1).

b. **Cross Reference.** The United States contends that, because a death resulted from the offense, the provisions of U.S.S.G. § 2A1.2 apply. U.S.S.G. § 2K1.4(c)(1). The United States therefore contends that the adjusted offense level for Count 1 of the Indictment is **38**. U.S.S.G. § 2A1.2(a). The Defendant does not agree that the provisions of U.S.S.G. § 2A1.2 apply. The parties anticipate that this issue will be the subject of an evidentiary hearing, and will be prepared to present their respective arguments and evidence to the Court during sentencing proceedings.

c. **Specific Offense Characteristics.** The parties agree that no specific offense characteristics apply.

d. **Chapter 3 Adjustments.** The parties agree that, other than credit for acceptance of responsibility, no Chapter 3 adjustments apply.

e. **Acceptance of Responsibility.** The United States agrees to recommend that the Defendant receive a **3**-level reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, the Defendant understands and agrees that this recommendation is conditioned upon the following: (i) the Defendant testifies truthfully during the change of plea hearing, (ii) the Defendant cooperates with the Probation Office in the preparation of the Pre-sentence Report, and (iii) the Defendant

commits no further acts inconsistent with acceptance of responsibility. U.S.S.G. § 3E1.1.

f. Criminal History Category. Based on information available at this time, the parties believe that the Defendant's criminal history category is **III**. This does not constitute a stipulation, but an assessment based on the information currently known. The parties acknowledge that the Defendant's actual criminal history category and related status (which might impact the Defendant's adjusted offense level) will be determined by the Court based on the information presented in the Presentence Report and by the parties at the time of sentencing.

g. Guideline Range.

The United States' view of the appropriate sentencing calculations as outlined above would result, after an adjustment for acceptance of responsibility, in an offense level of **35**. If the United States' position is adopted by the Court, and the Defendant's criminal history category is **III**, the Sentencing Guidelines range for Count 1 would be **210–262** months' imprisonment. Because this exceeds the statutory maximum term of imprisonment of **240** months for Count 1, the Guidelines range would become **210–240** months' imprisonment. 18 U.S.C. § 844(i); U.S.S.G. § 5G1.1(a).

The Defendant's view of the appropriate sentencing calculations as outlined above would result, after an adjustment for acceptance of responsibility, in an offense level of **21**. If the Defendant's position is adopted by the Court, and the criminal history category is **III**, the Sentencing Guidelines range for Count 1 would be **46–57** months' imprisonment. Because this range is below the mandatory minimum sentence of **60** months, the Guidelines range for Count 1 would be **60** months. 18 U.S.C. § 844(i); U.S.S.G. § 5G1.1(b).

h. Fine. If the adjusted offense level is **35**, the applicable fine range would be **\$40,000** to **\$400,000**. Because that amount exceeds the statutory maximum fine of **\$250,000**, the applicable fine range would be **\$40,000** to **\$250,000**. 18 U.S.C. § 841(i). If the adjusted offense level is **21**, the applicable fine range is **\$15,000** to **\$150,000**. U.S.S.G. § 5E1.2(c)(3).

i. Supervised Release. The Sentencing Guidelines call for a term of supervised release of between one and three years for Count 1. U.S.S.G. § 5D1.2(a)(2).

j. Sentencing Recommendation and Departures. The parties reserve the right to make departure motions and to oppose any such motions made by the opposing party. If the Court adopts the United States' position that a death resulted from the offense, resulting in an adjusted offense level of **35**, the United States agrees to request a sentence of imprisonment at the low-end of the applicable Guidelines range. The Defendant reserves the right to argue for a sentence outside the advisory guidelines range, except that the Defendant acknowledges that he is subject to a **60**-month mandatory minimum term of imprisonment. 18 U.S.C. § 844(i).

6. **Discretion of the Court.** The foregoing stipulations are binding on the parties, but do not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable Guidelines factors and the applicable criminal history category. The Court may also depart from the applicable Guidelines. If the Court determines that the applicable Guidelines calculations or the Defendant's criminal history category is different from that stated above, such a determination shall not provide a basis for the parties to withdraw from this agreement, and the Defendant will be sentenced pursuant to the Court's determinations.

7. **Special Assessments.** The Sentencing Guidelines require payment of a special assessment in the amount of \$100.00 for each felony count of which the Defendant is convicted. U.S.S.G. § 5E1.3. The Defendant agrees to pay the special assessment prior to sentencing.

8. **Complete Agreement.** This, along with any agreement signed by the parties before the entry of the plea, is the entire agreement and understanding between the United States and the Defendant.

Dated:

W. ANDERS FOLK
Acting United States Attorney

BY: THOMAS CALHOUN-LOPEZ
Assistant United States Attorney

Dated:

MONTEZ TERRIEL LEE, JR.
Defendant

Dated:

BRUCE M. RIVERS, ESQ.
Counsel for Defendant

Montez Lee Sentencing (Max It Pawn Arson)

From: "Calhoun-Lopez, Thomas (USAMN)" <(b)(6); (b)(7)(C)>
To: "Brennan, Amber (USAMN)" <(b)(6); (b)(7)(C)>
Date: Thu, 30 Sep 2021 10:16:33 -0500
Attachments: Sentencing_Position_Montez_Lee.docx (876.85 kB); Request_for_Departure_Montez_Lee.docx (21.65 kB)

Amber:

Thank you again for your thoughts. A proposed sentencing memorandum and request for variance is attached. I am available generally around the next few weeks to discuss. As we discussed, there is no hurry on this—Mr. Lee's sentencing is currently set for 11/30 before Judge Wright.

Thank You,
Tom

TOM CALHOUN-LOPEZ | Assistant United States Attorney
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(b)(6); (b)(7)(C)
thomas.calhoun-lopez@usdoj.gov

RE: Montez Lee Sentencing (Max It Pawn Arson)

From: "Kovats, Charles (USAMN)" <(b)(6); (b)(7)(C)>
To: "Brennan, Amber (USAMN)" <(b)(6); (b)(7)(C)> "Calhoun-Lopez, Thomas (USAMN)"
Date: Thu, 30 Sep 2021 20:08:36 -0500

Tom,

(b)(5); (b)(6); (b)(7)(C)

Many thanks to both you and Amber moving this along. We had some interesting stops along the way.

-Charlie

From: Brennan, Amber (USAMN) <(b)(6); (b)(7)(C)>
Sent: Thursday, September 30, 2021 12:57 PM
To: Kovats, Charles (USAMN) <(b)(6); (b)(7)(C)>
Cc: Calhoun-Lopez, Thomas (USAMN) <(b)(6); (b)(7)(C)>
Subject: FW: Montez Lee Sentencing (Max It Pawn Arson)

Hi Charlie –

Tom spent a lot of time and effort considering would be a fair sentence for Montez Lee. (b)(5)

(b)(5)

Thank you, and thank you Tom for your hard and thoughtful work on this case.

Amber

Duplicate

FW: Montez Lee Sentencing (Max It Pawn Arson)

To: "Kovats, Charles (USAMN)" <(b)(6); (b)(7)(C)>
Cc: "Calhoun-Lopez, Thomas (USAMN)" <(b)(6); (b)(7)(C)>
Date: Thu, 30 Sep 2021 11:45:27 -0500
Attachments: Sentencing_Position_Montez_Lee.docx (876.85 kB); Request_for_Departure_Montez_Lee.docx (21.65 kB)

Hi Charlie –

Can you take a look at this and please discuss with Anders. Feel free to

Duplicate

Plea Agreement, U.S. v. Montez Lee

From: "Calhoun-Lopez, Thomas (USAMN)" <(b)(6); (b)(7)(C)>
To: "Bruce M. Rivers (riverslawyers@aol.com)" <riverslawyers@aol.com>
Cc: "Brennan, Amber (USAMN)" <(b)(6); (b)(7)(C)>
Date: Tue, 08 Jun 2021 12:25:35 -0500
Attachments: Plea_Agree_Draft.pdf (159.09 kB)

Bruce:

(b)(6); (b)(7)(C)

Please let me know if I can provide anything else.

Thank You,
Tom

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(b)(6); (b)(7)(C)
thomas.calhoun-lopez@usdoj.gov

Plea Agreement, U.S. v. Lee

From: "Calhoun-Lopez, Thomas (U)" (b)(6); (b)(7)(C) >
To: "Costa, RaeAnn (USAMN)"
Cc: "Brennan, Amber (USAMN)"
Date: Tue, 08 Jun 2021 12:23:32 -0500
Attachments: Plea_Agree_Draft.pdf (159.09 kB)

RaeAnn:

(b)(5); (b)(6); (b)(7)(C)

Thank You,
Tom

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(b)(6); (b)(7)(C)

thomas.calhoun-lopez@usdoj.gov

Montez Lee Update

From: "Calhoun-Lopez, Thomas (USAMN)" <(b)(6); (b)(7)(C)>
To: "Brennan, Amber (USAMN)" <(b)(6); (b)(7)(C)>
Date: Thu, 09 Sep 2021 14:38:48 -0500
Attachments: Initial_PSR.pdf (236.33 kB)

Amber:

(b)(5); (b)(6); (b)(7)(C)

Please let me know if I can send anything else.

Thanks,
Tom

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RE: Montez Lee Sentencing (Max It Pawn Arson)

From: "Calhoun-Lopez, Thomas (USAMN)" <(b)(6); (b)(7)(C)>
To: "Kovats, Charles (USAMN)" <ckovats@usa.doj.gov>
Date: Thu, 30 Sep 2021 20:11:51 -0500

Agreed! Thanks, Charlie—I will reach out to the family through RaeAnn.

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600 U.S. Courthouse | 300 South Fourth Street | Minneapolis, MN 55415
(b)(6); (b)(7)(C)
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Duplicate

Sentencing in MN Arson Case

From: "Calhoun-Lopez, Thomas (USAMN)" (b)(6); (b)(7)(C)

To: (b)(6)

Cc:

Date: Thu, 04 Nov 2021 15:17:04 -0500

Attachments: Sentencing_Position.pdf (335.2 kB)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) I just filed the government's sentencing position in the case, in case you would like to read it. (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Love,
Tom

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No.: 20-168 (WMW/ECW)

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	POSITION OF THE UNITED
v.)	STATES WITH RESPECT TO
)	SENTENCING
MONTEZ TERRIEL LEE, JR.,)	
)	
Defendant.)	

The United States of America, by and through its attorneys, W. Anders Folk, Acting United States Attorney for the District of Minnesota, and Thomas Calhoun-Lopez, Assistant United States Attorney, hereby submits this memorandum setting forth its position with respect to sentencing factors in this matter.

For the reasons delineated below, the United States asks this Court to sentence Defendant Montez Terriel Lee, Jr. to a term of imprisonment of 144 months.

I. BACKGROUND

a. *Offense Conduct.*

As the Court is well aware, on May 26, 2020, thousands of people gathered in the area of 38th and Chicago Avenue to protest the death of George Floyd at the hands of Minneapolis police officers. Following the mostly peaceful protests that occurred on that night, the Cities of Minneapolis and St. Paul, and some surrounding communities, endured three nights of violence and destruction. Between Wednesday night and the early hours of Saturday morning, following several organized and peaceful protests, hundreds of individuals carrying on into the night vandalized and looted local businesses and destroyed

buildings, vehicles, and other property through arson, smashing doors and windows, hurling objects, and other means.

As part of that unrest, on May 28, Mr. Lee and others broke into the Max It Pawn Shop located at 2726 East Lake Street. Mr. Lee poured fire accelerant around the pawn shop and lit it on fire. The subsequent fire destroyed the business.

On June 8, 2020, ATF Special Agent Certified Fire Investigators received three videos from the arson of the Max It Pawn.

The first video begins with people looting the Max It Pawn. Then a masked man, later identified as Mr. Lee, is shown pouring liquid out from a metal container throughout the pawn store. The video then cuts to outside the pawn shop, which is now on fire. Mr. Lee is shown, now not wearing a shirt, holding his fist up. The man taking the video exclaims “Oh, shit—you really did it!”

The second video begins with the man identified as Mr. Lee standing in front of the pawn shop as it is in flames. The individual filming asks Mr. Lee “What you do, Tez?” Mr. Lee responds “Fuck this place. We’re gonna burn this bitch down.”

The third video begins with a group of men, including the man identified as Mr. Lee, joking about restaurants they are going to “hit” next. It then cuts to a recording of a cell phone showing the looting of the pawn shop.



Fig. 1: A still from the first video, showing Mr. Lee pouring accelerant around the pawn shop.



Fig. 2: Mr. Lee in front of the burning pawn shop.

On June 5, 2020, a man named Oscar Lee Stewart, 30, was reported missing to the Burnsville Police Department by his mother. Mr. Stewart's mother reported that she had not seen her son since May 28, 2020. Investigators learned that Mr. Stewart's vehicle had been found near the Max It Pawn.

On July 20, 2020, authorities located Mr. Stewart's body in the rubble of the Max It Pawn. Mr. Stewart's remains were submitted to the Hennepin County Medical

Examiner's Office. That office attributed Mr. Stewart's death to "probable inhalation of products of combustion and thermal injury (building fire)."

b. *The Presentence Investigation Report.*

1. The Government's Position.

The United States agrees with the conclusions set forth in the Presentence Report ("PSR") concerning the Guidelines calculations. Because a death resulted from the offense, the provisions of U.S.S.G. § 2A1.2 apply. (PSR ¶ 16, citing U.S.S.G. § 2K1.4(c)(1).) The adjusted offense level is therefore 38. (PSR ¶ 16, citing U.S.S.G. § 2A1.2(a).) With full credit for acceptance of responsibility, the total offense level is 35. (PSR ¶ 25.) Mr. Lee's prior convictions of burglary, assault, violation of no contact order, and theft of property yield five criminal history points. (PSR ¶¶ 30, 33, 34, 35.) Because Mr. Lee was under a criminal justice sentence for his prior assault conviction in Olmsted County, two additional points are added. (PSR ¶ 39.) Mr. Lee's criminal history category is therefore IV. (PSR ¶ 40.) The resulting Guideline range would be 235–293 month's imprisonment. (PSR ¶ 78.) Because this exceeds the statutory maximum term of 240 months, the Guideline range is 235–240 months' imprisonment. (*Id.*, citing U.S.S.G. § 5G1.1(c)(1).)

2. Mr. Lee's Objections.

Consistent with his plea agreement, Mr. Lee has objected to the determination by the PSR that Mr. Stewart's death resulted from his offense, and the subsequent application of application of U.S.S.G. § 2A1.2(a). (PSR A.1–A.2.) The United States opposes this objection. The United States has sought an evidentiary hearing to establish the relevant

facts at sentencing. (Document No. 66.)

II. ARGUMENT

As the Court knows, in addition to determining Mr. Lee's Sentencing Guideline range (18 U.S.C. § 3553(a)(4)), the Court is required to assess the other applicable sentencing factors under Section 3553(a) of federal sentencing law. Those factors include the nature and circumstances of the offense; the history and characteristics of the defendant; the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant; the need to avoid unwarranted sentencing disparities; and the need to provide restitution to victims. 18 U.S.C. § 3553(a).

Pursuant to these factors, the United States requests the Court sentence Mr. Lee to a term of imprisonment of 144 months.

a. *The Nature and Circumstances of the Offense.*

Mr. Lee committed a crime that cost a man his life. His assertion that he did not intend to hurt anyone is of little comfort to the family and friends Mr. Stewart left behind. Their loved one has been cruelly taken away from them. Mr. Stewart's life has been cut short.

It is for precisely this reason, of course, that the applicable Guideline provision for arson cross-references the homicide provisions, including the guidance regarding "felony murder." U.S.S.G. §§ 2K1.3(c)(1)(B), 2A1.1, comment. (n.2(B)). Arson in particular is an inherently dangerous and unpredictable felony offense. The arsonist who sets a building

ablaze cannot know the extent of the damage or death he or she will cause—the crime is by its nature chaotic and uncontrollable. Surrounding homes and businesses may be inadvertently destroyed; firefighters, people trapped in buildings, or the arsonist him or herself may be killed. In this case, Mr. Stewart paid the cost for Mr. Lee’s flagrantly dangerous disregard for others. Mr. Lee states that he checked the building before he set the fire to make sure no one would be hurt. (PSR ¶ 13.) If true, this is at least some small measure of precaution. But as the evidence makes clear, it was woefully inadequate. Mr. Lee’s check of the building did not save Oscar Stewart’s life; nor would it have been effective in saving the lives of any firefighters had they become trapped; nor would it have saved the lives and property of nearby neighbors if the wind carried the conflagration to their homes.

A significant sentence is necessary in this case. It is necessary to provide just punishment for a crime that cost Mr. Stewart his life; that deprived Mr. Stewart’s family of their loved one; that risked the lives, homes, and businesses of Minnesotans. The question before the Court is what this sentence should be.

b. *Applicability of the U.S. Sentencing Guidelines.*

The value of human life is, of course, incalculable. Civil law attempts to monetize it for purposes of remedy. Criminal law attempts to account for it for purposes of punishment. But for Mr. Stewart’s family and friends, his life was invaluable. No price tag can be put on it, and no amount of punishment can equal the loss.

The Sentencing Guidelines note that for cases of felony murder where “the defendant did not cause the death intentionally or knowingly, a downward departure may

be warranted.” U.S.S.G. § 2A1.1, comment. (n.2(B)). The Guidelines add that the “extent of the departure should be based upon the defendant’s state of mind (e.g., recklessness or negligence), the degree of risk inherent in the conduct, and the nature of the underlying offense conduct.” *Id.* The Guidelines note, however, that “departure below the minimum guideline sentence provided for second degree murder in § 2A1.2 (Second Degree Murder) is not likely to be appropriate. *Id.* Thus, the PSR’s assignment of base offense level 38. (PSR ¶ 16.)

The Guidelines state that departure below this range is not *ordinarily* appropriate. However this is an extraordinary case. The United States therefore seeks a downward variance, and a sentence of 144 months.

Mr. Lee’s motive for setting the fire is a foremost issue. Mr. Lee credibly states that he was in the streets to protest unlawful police violence against black men, and there is no basis to disbelieve this statement. Mr. Lee, appropriately, acknowledges that he “could have demonstrated in a different way,” but that he was “caught up in the fury of the mob after living as a black man watching his peers suffer at the hands of police.” (PSR ¶ 13.) As anyone watching the news world-wide knows, many other people in Minnesota were similarly caught up. There appear to have been many people in those days looking only to exploit the chaos and disorder in the interests of personal gain or random violence. There appear also to have been many people who felt angry, frustrated, and disenfranchised, and who were attempting, in many cases in an unacceptably reckless and dangerous manner, to give voice to those feelings. Mr. Lee appears to be squarely in this latter category. And even the great American advocate for non-violence and social justice, Dr. Martin Luther

King, Jr., stated in an interview with CBC’s Mike Wallace in 1966 that “we’ve got to see that a riot is the language of the unheard.” Lily Rothman, *What Martin Luther King Jr Really Thought About Riots*, Time Magazine (2015), <https://time.com/3838515>.

In light of these circumstances, the analysis of the Guidelines does not appear appropriate. Consider, for example, that both assault with intent to commit murder and attempted murder have a base offense level of 33. U.S.S.G. § 2A2.1(a). This means that, if Mr. Lee had assaulted Mr. Stewart with the intent to kill him, his Guideline range would be 135–168 months’ imprisonment—about ten years less than the current range. But the criminal culpability, and the danger to society, that an attempted murderer poses appears much greater than the culpability and danger of Mr. Lee.

c. *Comparable Sentences.*

This case can be compared and contrasted with other cases the United States found in which arson or the detonation of a destructive device took a human life.

- In *United States v. Martinez*, the defendants detonated a bomb to destroy a commercial building as part of a protection money scheme. 16 F.3d 202, 204 (7th Cir. 1994). The bomb killed a co-conspirator. *Id.* The defendants received sentences ranging between three and ten years, depending upon roles in the offense and criminal histories. *Id.* at 205.
- In *United States v. Paden*, the defendant was convicted of setting an electrical fire in a commercial building to commit insurance fraud. 908 F.2d 1229, 1232–33 (5th Cir. 1990). A firefighter responding to the fire was trapped by falling debris and killed. *Id.* at 1233. The defendant was sentenced to 140 months’ imprisonment. *Id.*
- In *United States v. Martin*, the defendant destroyed a two-story residential apartment building in retaliation for an occupant’s having informed on his drug dealing activities. 63 F.3d 1422, 1424 (7th Cir. 1995). Three firefighters were trapped when a wall collapsed, and two died. *Id.* The defendant was sentenced to 50 years’ imprisonment. *Id.*

- In *United States v. El-Zoubi*, the defendant paid his 20-year-old nephew to burn his store down to collect insurance money. 993 F.2d 442, 445 (5th Cir. 1993). The nephew was killed in the fire. *Id.* The defendant was sentenced to 120 months' imprisonment. *Id.*

How does the Defendant's conduct compare with that of the defendants in these cases? The analysis is complicated. Unlike the cases of *Martinez* and *El-Zoubi*, Mr. Stewart was not a co-conspirator to the crime—he neither contributed to the danger nor assumed the risk of the crime. He was unlawfully in the pawn shop, but he did nothing to hurt or endanger anyone. Unlike *Martin*, Mr. Lee burned down a commercial building, not a residential one. And unlike all the cases above, however (particularly *Martin*), Mr. Lee did not commit the offense as part of a separate felony crime, or otherwise for any personal gain. The raised fist Mr. Lee showed, and his brazenness in committing the crime (*see* Fig. 2, *supra*) is telling. Mr. Lee was terribly misguided, and his actions had tragic, unthinkable consequences. But he appears to have believed that he was, in Dr. King's eloquent words, engaging in "the language of the unheard."

Also telling is Mr. Lee's candor to agents of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) after he was arrested. The interview took place on June 15, 2020, before the discovery of Mr. Stewart's body. But Mr. Lee took responsibility for his actions and admitted to having set the fire, to his credit. He explained the reasons he had done so, consistent with his statement of acceptance of responsibility (PSR ¶ 13).

d. *The § 3553(a) Factors.*

The United States now turns to the sentencing objectives of federal law. The law specifically delineates four categories of requirements for a sentence. 18 U.S.C. §

3553(a)(2)(A)–(D). Each is addressed separately below.

The Court’s sentence must “afford adequate deterrence to criminal conduct.” 18 U.S.C. § 3553(a)(2)(B). Specific deterrence does not appear to be a driving factor in this case. Mr. Lee appears to be a thoughtful, intelligent man. He does have a terrible incident of domestic violence in his criminal history, in which he viciously assaulted a woman and ruptured her left eardrum. (PSR ¶ 33.) However his non-vehicular criminal history ends in 2016, when he was 21 years old. (*Id.*) His longest sentence has been 60 days’ jail, for the domestic assault. (*Id.*) And his criminal actions as a younger man appear informed by the abusive and unstable environment in which he grew up, for which he has sought treatment. (PSR ¶¶ 44–47, 64.) A long sentence does not appear necessary to deter Mr. Lee from future crime. General deterrence likewise seems to be of limited import here. The events of late May of 2020 were informed by forces that have been present in this country since its inception. General deterrence appears to be of limited relevance given the passions and historical forces at work in the crime.

The Court’s sentence must also “protect the public from further crimes of the defendant.” 18 U.S.C. § 3553(a)(2)(C). This factor too appears to be of limited relevance. For the reasons noted in the discussion about deterrence above, Mr. Lee does not appear to pose a danger to the public.

The Court’s sentence must “provide the defendant with needed educational or vocational training, medical care, or other correctional treatment.” 18 U.S.C. § 3553(a)(2)(D). Here again, this does not appear to be a factor that would drive the Court’s sentence. Mr. Lee reports no illegal drug use since 2019, and has completed substance

dependency treatment. (PSR ¶¶ 61–62.) He states that he obtained his GED. (PSR ¶ 64.) He has had significant troubles in school, but this trouble, as well as his history of drug abuse, again appears to be the result of the abusive and unstable environment in which he grew up. (PSR ¶¶ 44–47, 64.) Mr. Lee had a plan to turn his life around, which appears to have been upended by the COVID-19 pandemic. (PSR ¶ 48.) Though he would no doubt benefit from prison programming, a lengthy sentence does not appear necessary to provide training, care, or treatment.¹

That leaves the first requirement that the law imposes: the need for the Court’s sentence “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.” 18 U.S.C. § 3553(a)(2)(A). In the view of the United States, this is the factor that must drive the Court’s sentence. The Court’s sentence must account for the fact that Mr. Lee’s crime took Oscar Stewart’s life. It is for this reason that the United States requests a sentence of 144 months’ imprisonment.

In the *Martinez* case, Seventh Circuit Chief Judge Richard Posner discussed the difficulty in sentencing someone whose reckless actions had taken a human life. 16 F.3d at 205–06. He discussed “the difference in culpability between endangerment and death,” and described what philosophers call “moral luck”:

It is true that in a system of morality in which only intentions and behaviors, but not consequences, count, there is no moral distinction between dangerous conduct that causes harm and otherwise identical dangerous conduct that does not. The only difference is luck, not usually considered a moral attribute. But “moral luck,” as philosophers refer to distinctions in

¹ The United States likewise acknowledges that, as the Supreme Court has noted, sentencing courts may not impose a prison term to promote an offender’s treatment or rehabilitation. *Tapia v. United States*, 564 U.S. 319, 326–27 (2011).

culpability that are based on consequences rather than intentions, is, rightly or wrongly, a pervasive characteristic of moral thought in our society, at least the moral thought that informs the criminal law. Two people drive at the same unlawful speed under identical road conditions. One hits a child; one hits no one. The first is guilty of involuntary manslaughter; the second of a violation of the highway code. The only difference between their conduct is the consequence. The difference, though fortuitous, counts for the severity of the punishment deemed appropriate for the defendants' behavior.

Id.

Judge Posner's analysis applies no less in this case. "Moral luck" casts a long shadow over this case. Had circumstances been just a little different, Mr. Stewart would be alive today, and Mr. Lee would face significantly less criminal liability (a Guideline range of 60 months, approximately 15 years less than the PSR's calculation)—the cruel caprices of fate. But consequences matter. As in *Martinez*, Mr. Lee must face responsibility for the consequences of his actions, not just his intent.

No term of imprisonment will bring Mr. Stewart back, or adequately reflect the loss of his life. A sentence of 144 months will reflect the seriousness of Mr. Lee's offense, promote respect for the law, and provide just punishment for that offense. It is 73 times more than the longest sentence Mr. Lee has ever previously served (60 days). It is sufficient to address the sentencing factors of 18 U.S.C. § 3553(a).

III. CONCLUSION

In light of all the facts of the facts in this case, and pursuant to the sentencing objectives of 18 U.S.C. § 3553(a), the United States asks this Court to sentence the Defendant to a term of imprisonment of 144 months.

Date: November 4, 2021

Respectfully Submitted,

W. ANDERS FOLK
Acting United States Attorney

s/ Thomas Calhoun-Lopez

BY: THOMAS CALHOUN-LOPEZ
Assistant U.S. Attorney
Attorney ID No. 480908DC

FW: Max It Pawn Arson Case

From: "Calhoun-Lopez, Thomas (USAMN)" <(b)(6); (b)(7)(C)>
To: "Provinzino, Laura (USAMN)" <(b)(6); (b)(7)(C)> <[REDACTED]@usdoj.gov>
Cc: "Zerna, Tasha (USAMN)" <[REDACTED]>, "Brennan, Amber (USAMN)" <[REDACTED]>, "LaTour, Angella (USAMN)" <(b)(6); (b)(7)(C)>, "Costa, RaeAnn (USAMN)" <(b)(6); (b)(7)(C)>
Date: Mon, 19 Jul 2021 17:37:57 -0500
Attachments: Plea_Agree.pdf (133.31 kB)

Laura:

Sorry—meant to copy you on this email as well.

I have also copied RaeAnn, who has been coordinating with Mr. Stewart's family.

Thanks,
Tom

TOM CALHOUN-LOPEZ | Assistant United States Attorney
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Duplicate

RE: Montez Lee

From: "Brennan, Amber (USAMN)" <(b)(6); (b)(7)(C)>
To: "Costa, RaeAnn (USAMN)" <(b)(6); (b)(7)(C)>
Cc: "Calhoun-Lopez, Thomas (USAMN)" <(b)(6); (b)(7)(C)>
Date: Tue, 22 Jun 2021 18:41:07 -0500

Hi RaeAnn –

(b)(5); (b)(6); (b)(7)(C)

Thanks!
Amber

From: Costa, RaeAnn (USAMN) <(b)(6); (b)(7)(C)>
Sent: Tuesday, June 22, 2021 4:42 PM
To: Brennan, Amber (USAMN) <(b)(6); (b)(7)(C)>
Cc: Calhoun-Lopez, Thomas (USAMN) <(b)(6); (b)(7)(C)>
Subject: Montez Lee

Hi Amber,

(b)(5); (b)(6); (b)(7)(C)

Let me know what would work best for your schedule and we can go from there.

RaeAnn Costa, M.S. | Victim Witness Specialist
United States Attorney's Office | District of Minnesota
300 South 4th Street | Suite 600 | Minneapolis, MN 55415
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RE: Montez Lee

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To: "Brennan, Amber (USAMN)" <(b)(6); (b)(7)(C)> "Costa, RaeAnn (USAMN)" <(b)(6); (b)(7)(C)>
Date: Wed, 23 Jun 2021 07:58:29 -0500

Thank you both for your help with this.

(b)(5); (b)(6); (b)(7)(C)

Thanks,
Tom

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