

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA      )  
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                                    )  
v.                                )      Cr. No. 14-10210-MLW  
                                    )  
                                    )  
STEPHEN SILVA,                )  
Defendant.                    )  
                                    )



GOVERNMENT'S MOTION FOR A DOWNWARD DEPARTURE  
BASED ON THE DEFENDANT'S SUBSTANTIAL ASSISTANCE

The United States of America, through undersigned counsel, moves pursuant to Section 5K1.1 of the United States Sentencing Guidelines, and 18 U.S.C. § 3553(e), and requests that the Court downwardly depart in sentencing the defendant. The government certifies that the defendant has provided "substantial assistance" in connection with federal cases and investigations.

The Presentence Report ("PSR") prepared by the United States Probation Office, dated October 7, 2015, calculates that the defendant's guideline sentencing range ("GSR"), prior to any potential reduction based on the so-called "safety valve", is 46 to 57 months, based on an offense level of 23 and a Criminal History Category ("CHC") of I, with a five-year, statutory mandatory minimum. PSR ¶ 102.

As indicated in the parties' Plea Agreement, the government takes the position that, pursuant to USSG § 2D1.1(c)(8), the defendant's offense level is increased by two because a firearm was possessed, and, therefore, the defendant is also ineligible for the safety valve, leading to a GSR of 57-71 months (TOL 25; CHC I). The government therefore takes the position that the 60-month mandatory minimum is the appropriate starting point from which the substantial assistance reduction should be calculated. Based on this calculation, the government recommends a 60% reduction from the low end of the GSR, leading to a sentencing recommendation of 24 months imprisonment followed by a term of supervised release.

The PSR determined that USSG § 2D1.1(c)(8) (possession of a firearm enhancement) does not apply and therefore concluded that the defendant is safety valve eligible. PSR ¶ 103. See also Addendum to the PSR, Government Objections. With application of the potential safety valve, the defendant's GSR would be 37 to 46 months (TOL 21; CHC I). Under this rubric, if adopted by the Court, the government would recommend a 60% reduction from the high end of the GSR, leading to a sentencing recommendation of 18 months imprisonment followed by a term of supervised release.

**A. THE INVESTIGATION**

From early June 2014 through early July 2014, Stephen Silva made nine controlled sales of heroin, totaling approximately 284 grams, to an FBI undercover law enforcement officer (the "UC") and/or an FBI cooperating witness working with the FBI's North Shore Gang Task Force ("CW-1").<sup>1</sup> During the controlled buys, Silva repeatedly discussed, in detail, and on audio/video tape, with both the UC and CW-1, the fact that, in February 2013, he provided the Ruger handgun to Dzhokhar Tsarnaev (hereinafter "Dzhokhar") that was subsequently used to kill MIT Police Officer Sean Collier on April 18, 2013. Silva told the UC that Dzhokhar wanted the gun to rob a drug dealer in Rhode Island, and that Silva did not know anything about Dzhokhar's plans to bomb the Boston Marathon.<sup>2</sup>

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<sup>1</sup> On each of the buys, which were recorded on audio and/or video tape, Silva got the heroin from his supplier, [REDACTED]  
[REDACTED]

<sup>2</sup> After Dzhokhar was charged in connection with the marathon bombing, the government identified Stephen and Steven Silva, two high school classmates of Dzhokhar who were well known Cambridge marijuana dealers, as individuals with potential information about the Ruger handgun that was used to kill MIT Police Officer Sean Collier. The Silva brothers refused to cooperate and both invoked their 5th Amendment rights. The government subsequently commenced this investigation of Stephen Silva with the goal of developing information about the gun that was used to kill Officer Collier.

The government confirmed that the gun in question, a Ruger model P95 9mm pistol, with an obliterated serial number (the "Ruger"), was in fact the gun used to kill Officer Collier.

the government traced the path of the Ruger from a Portland, Maine, gang leader and crack dealer named Biniam "Icy" Tsegal, who recently pled guilty to crack trafficking charges in federal court in Portland, to an associate named Merhawi Berhe (a/k/a "Howie"), who was subsequently charged in federal court in Boston with possession of the same gun, to [REDACTED], a high school friend of Silva's, to Silva.<sup>3</sup>

**B. THE COOPERATION**

Stephen Silva started cooperating on the day of his initial appearance. He was interviewed on numerous occasions, and testified at the marathon bombing trial of Dzhokhar Tsarnaev, who was convicted of a host of terrorism crimes and sentenced to death.

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<sup>3</sup> Silva and the UC also discussed on tape the possibility of Silva hiring the UC to kill an individual who had previously robbed Silva. Despite several conversations, Silva never took any of the steps requested by the UC to further this activity, and repeatedly put off the UC on the subject. During the investigation (i.e., before the arrest and before any cooperation had commenced), the government ultimately concluded that Silva was not serious about this matter and therefore did not pursue it any further.

The marathon bombing trial team has advised that Silva was an important and credible witness at trial. In particular, his testimony cut against the defense argument that Dzhokhar's older brother, Tamerlan Tsarnaev, was the driving force behind the entire operation and that Dzhokhar was essentially under his sway. Silva's testimony that it was Dzhokhar, not Tamerlan, who procured the Ruger was an important piece of evidence refuting this defense narrative.

In terms of risks undertaken, Silva cooperated in, and testified at, one of the most important terrorism cases in Massachusetts history, which was widely covered by the national and international press. Silva's name will forever be tied to that case. Because he testified that he gave the gun to Dzhokhar Tsarnaev that was used to kill MIT Police Officer Sean Collier (albeit not knowing that it would be used for that purpose), he may be simultaneously labeled a cooperator (with all that entails) and potentially (though wrongly)

a terrorist sympathizer, or worse.

**CONCLUSION**

For the reasons presented herein, in the PSR, and at the sentencing hearing, the government moves for a downward departure, based on the defendant's substantial assistance, to a sentence of 24 months imprisonment followed by a term of supervised release.



Respectfully submitted,

CARMEN M. ORTIZ  
United States Attorney,

BY:

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October 14, 2015

CERTIFICATE OF SERVICE

I, Peter K. Levitt, do hereby certify that a copy of the foregoing was served on Jonathan Shapiro, counsel for the defendant, by electronic mail and regular mail on October 14, 2015.

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PETER K. LEVITT  
ASSISTANT UNITED STATES ATTORNEY