

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

UNITED STATES OF AMERICA,)	CASE NO.: 1:23CR226
)	
Plaintiff,)	JUDGE BRIDGET MEEHAN BRENNAN
)	
v.)	
)	
AIMENN PENNY,)	<u>GOVERNMENT'S SENTENCING</u>
)	<u>MEMORANDUM</u>
Defendant.)	

Now comes the United States of America, by and through its attorneys, Rebecca C. Lutzko, United States Attorney and Brian S. Deckert and Matthew Shephard, Assistant United States Attorneys, and hereby files this sentencing memorandum. The Government agrees with the calculations contained within the Presentence Investigation Report filed on January 16, 2024. (R. 30: PSR, PageID 197-98). The Government recommends an upward variance to a term of 240 months in accordance with the following memorandum.

I. INTRODUCTION

Church burnings have a long and sordid history in the United States. Most prominently, opponents of the Civil Rights Movement burned predominantly Black churches to intimidate the Black community and those who sought to overturn the evils of segregation. Others have targeted the houses of worship for other religions, including synagogues and mosques, to show their hatred for other religions or groups of people different than them. Because of the prominent roles that churches and other houses of worship play in a community, attacking a church strikes at the very heart of a community. Burning a church is as potent a symbol of hate as burning a cross on a lawn or leaving a hanging noose. When Defendant Aimenn Penny (“Penny”) threw Molotov cocktails at the Community Church of Chesterland, he joined this shameful history of hatred and attacked the heart of the local community, trying to intimidate and

frighten those who disagreed with him. Since being arrested, Penny has shown no remorse or regret for his actions. Penny deserves a substantial sentence for using violence to show his hatred for others. As explained below, based on the consideration of all of the 18 U.S.C. § 3553(a) factors, an upward variance to a total sentence of 240 months of imprisonment is appropriate and necessary.

II. OFFENSE CONDUCT AND GUIDELINE CALCULATION

A. Offense Conduct

The Presentence Investigation Report (“PSR”) provides a detailed description of Penny’s conduct, the ensuing investigation, and Penny’s communications while incarcerated. (R. 30: PSR, PageID 189-96). The Factual Basis section of Penny’s plea agreement to which he admitted also provides a similarly detailed description of Penny’s conduct. (R. 25: Plea Agreement, PageID 79-81). The following summarizes the conduct described in the PSR and Plea Agreement.

On Saturday, March 25, 2023, the Community Church of Chesterland (“CCC”), located in Chesterland, Ohio, reported to Chester Township Police that the church had been damaged by what appeared to be Molotov cocktails during the night. During the same time, a sign on CCC’s property was damaged. CCC believed the acts were perpetrated in response to the church’s planned hosting of two drag show events on April 1, 2023. Representatives of CCC reported that they received hate mail and messages containing non-specific threats of protest and violence against the drag events.

Chester Township Police recovered from the scene broken glass pieces from a bottle with a “Denaka Vodka” label, and broken glass pieces of a Corona Beer bottle. Each bottle contained a cloth type material that appeared to be pink or purple in color. The bottles also had blue painter’s tape across their exterior. Additionally, a burnt matchstick and a blue plastic spray

bottle filled with gasoline were found near the damaged door. The Lake County Crime Lab was able to determine that the accelerant used in the bottles was gasoline.

During its investigation, the FBI identified Penny as a suspect in the firebombing. Penny is a member of White Lives Matter, Ohio, a group with racist, pro-Nazi, and homophobic views. The Wadsworth Police Department identified Penny as an individual who travelled to Wadsworth, Ohio in advance of a March 11, 2023, drag queen story hour to distribute propaganda flyers representing White Lives Matter, Ohio's anti-drag queen views. Penny then attended the drag queen story hour event on March 11, 2023, and was identified by Wadsworth Police as a protester with White Lives Matter, Ohio. Penny was wearing military style gear including camouflage pants, a tactical vest, and jacket with a patch showing a firearm. According to news reports, members of White Lives Matter were carrying swastika flags and shouting racial and homophobic slurs and "Heil Hitler."

Penny's phone was identified, and a court order permitted law enforcement to obtain historical location information for the device. These records revealed that on March 25, 2023, between 12:33:43 AM and 1:31:17 AM, Penny's phone traveled from his residence to CCC property. Based on the investigation and patrols by Chester Township Police on the night of March 24, 2023, it is believed that the arson and other damage occurred between approximately 12:00 a.m. and 2:00 a.m. on March 25, 2023.

On March 31, 2023, a duly authorized search warrant was executed at Penny's residence, vehicle, and his person. The FBI conducted a recorded interview, during which Penny admitted to building the Molotov cocktails and deploying them at CCC with the intent to burn the structure. Penny stated that he was trying to protect children and stop the drag show event. Penny described using bottles from his bedroom and detailed the ingredients and steps he used to

build and deploy the devices. Penny stated that night he became more and more angry after watching internet videos of news feeds and drag shows in France and decided to attack the church. Penny stated that he would have felt better if the Molotov cocktails were more effective and burned the entire church to the ground. Penny stated that the items that he used that night were still located inside of his vehicle.

A search of Penny's vehicle revealed, among other things: a M4 A1 Carbine 5.56mm assault rifle with scope, 7 rifle magazines containing 5.56mm ammunition, a Ruger handgun, 3 magazines containing 9mm ammunition, a tactical vest, a shield, and 3 knives in sheaths. A search of Penny's residence revealed: a Glock 9mm handgun, 4 magazines containing 9 mm ammunition, a Smith and Wesson MP-15 rifle, a Walther Pistol Model P22, Iver Johnson Arms & Cycle Works 12-gauge shotgun, 15 magazines loaded with ammunition, various boxes of ammunition, and Nazi memorabilia. Additionally, investigators found gas cans and blue painter's tape matching the tape found on broken bottles at the church.

B. Relevant Conduct

On March 31, 2023, a criminal complaint in the Northern District of Ohio, Eastern Division was filed against Penny. Penny was arrested, detained, and housed at the Northeast Ohio Correctional Center in Youngstown, Ohio. In early April of 2023, the FBI obtained letters and a manifesto that Penny wrote while in jail and then attempted to transmit out of the facility.¹ The letters are quoted in the PSR. In them, Penny showed no remorse, but only pride in what he had done, even bragging that he "was respected for it" in jail. (R. 30: PSR, PageID 196).

¹ The written materials were submitted to the FBI laboratory in Quantico, Virginia for comparison to known writings of Aimenn Penny. The FBI Forensic Examiner opined that Aimenn Penny prepared the written materials.

The manifesto is attached to the PSR. (R.30: PSR, PagedID 213-228). In it, Penny described his ideology and motivation for attacking the church. The manifesto is full of twisted and false historical narratives, calls for war and violence, justifications for his actions, and the spewing of transphobic and anti-Semitic hatred. For example, Penny wrote:

My people, use your sadness – use your rage – Ignite the Flame of Ambition that resides in your blood, show these k---s that we shall be silent no longer!

No longer shall we suffer these false churches and synagogues of Satan to exist – No longer shall our children suffer in silence. Like an infection we must burn them out of our Nation’s system – Purify and wipe the slate clean. Our mission is pure – our purpose has been revealed.

We must take pure action against the Akron Civic theatre April 20th, 2023 and the tranny scum who threaten the innocence and the future of our children – no more simple protests, no more meek rallies – Arm up, set these wretched buildings of wood and stone alight – show them who to fear. No longer shall we suffer the degenerate to live – Now is the time to fight, to die, and to live again –

*For children.
For our folk.
For our progeny.*

Gather the bottles, gather the fuel.

Collect your ammunition my friends, load up – For it is time to show the hyenas and the jackals just who the lions are.

Bear(sic.) your fangs, my brethren – remind them what true fear feels like.

- T.R.

For in our hearts burns a great fire – And if I must be the spark that ignites the great flame of ambition – so be it. Capitulation? NEIN! For if we must burn, THEY SHALL BURN WITH US.

(*Id.*, PageID 213-15).

In addition to the letters and manifesto quoted and attached to the PSR, Penny also attempted to send a communication to members of White Lives Matter Ohio and the Blood Tribe calling for additional violence. (See Exhibit 1). Penny was a member of these extremist groups that espoused white supremacist ideology and argued for the use of violence. Penny urged members of the Blood Tribe to commit further acts of arson against an upcoming drag event at the Akron Civic Theatre that was then scheduled to take place on April 29, 2023. Penny included his recipe for Molotov cocktails with a notation stating “[e]njoy results” and a swastika. In a directive to the other members, Penny stated:

My friends, my brothers – You know who I am, and I bring a message of great importance ... a great day of action is almost upon us. Gear up for April 29th, 2023 – for the world shall see us this day. The call for Blood has been made, and blood shall flow that day. Prepare, and make your peace – Fire and ammo, Blood and Bone. – T.R.²

Brothers, our time is now. For too long has degeneracy festered within our streets – For too long have our children’s cries fallen on deaf ears – And for too long, have the wicked and the unnatural lived without fear.

In your hearts, you all know what must be done – And the answer to our Nation’s problem, is not “rallying” or “protesting” – It is great violence, for only that will erase the filth, for only that will set our people free!

Show them the Fangs of Retribution – Tooth and nail, Blood and Bone.

They have drawn first blood – PAY THEM IN FULL.

Our Great RECLAMATION(sic.) has begun. – T.R.

Additionally, Penny included a notation stating, “***Akron Civic Theatre – April 29th, 2023***
– The Fire shall Rise, and God’s fury Shall be remembered by ALL.”

² T.R. is short for The Reclaimer, which was Penny’s Telegram handle in chat groups.

C. Guideline Calculation

The PSR set forth the following computation of Penny’s advisory sentencing guidelines (R. 30: PSR, PageID 198), which is consistent with the calculation in the Plea Agreement (R. 25: Plea Agreement, PageID 77):

Count 1		
Base offense level	24	§ 2H1.1, 2K1.4(a)(1)(B)
Hate crime motivation	+3	§ 3A1.1(a)
Total Offense Level before Acceptance of Responsibility	27	
Acceptance of Responsibility	-3	§ 3E1.1(a) and (b)
Total Offense Level	24	

The U.S.S.G. § 3A1.1 hate crime motivation upward adjustment requires the finder of fact at trial, or the sentencing court in the case of plea, to “determine beyond a reasonable doubt that the defendant intentionally selected any victim or any property as the object of the offense of conviction because of the actual or perceived . . . gender identity . . . or sexual orientation of any person.” U.S.S.G. § 3A1.1(a). Thus, even though Penny agreed to the application of this enhancement in his Plea Agreement, the Court must still make a finding beyond a reasonable doubt that it applies.

This enhancement requires proof that a victim or property was selected because of an actual or perceived characteristic listed in § 3A1.1. *See United States v. Horsting*, 204 F. App’x 441, 444 (5th Cir. 2006). That is, that the victim or associated property would not have been targeted but-for the protected characteristic. *See Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731 (2020); *Burrage v. United States*, 571 U.S. 204 (2014). As the Supreme Court has explained, a “but-for test directs us to change one thing at a time and see if the outcome changes. If it does, we have found a but-for cause” *Bostock*, 140 S. Ct. at 1739; *Burrage*, 571 U.S. at 211 (“Thus, if poison is administered to a man debilitated by multiple diseases, it is a but-for

cause of his death even if those diseases played a part in his demise, so long as, without the incremental effect of the poison, he would have lived”).

Here, the enhancement clearly applies, and this Court should find beyond a reasonable doubt that Penny intentionally selected CCC because of a protected characteristic under § 3A1.1(a).

As an initial matter, the enhancement’s application here is not in dispute, as Penny stipulated to its application in the plea agreement. (R. 25: Plea Agreement, PageID 77). Regardless, the enhancement clearly applies to Penny’s actions as the facts as alleged by the government and agreed to by Penny at the change of plea hearing support a finding beyond a reasonable doubt that Penny “intentionally selected” the CCC because of the actual or perceived “gender identity . . . or sexual orientation of any person.”

As documented in the plea agreement’s factual basis, Penny admitted to the FBI that “he was trying to protect children and stop the drag show event” and that on the night of the incident, “he became more and more angry after watching internet videos of news feeds and drag shows in France and decided to attack the church.” (*Id.*, PageID 80-81).

In addition to the material in the uncontested factual basis, significant additional evidence leaves no question that he picked this specific church because of gender identity and sexual orientation. In Penny’s recorded interview with the FBI, he stated that he believed he was doing “God’s work” and that he “steered history,” bringing attention to his cause by attacking the church. Penny viewed inaction as “cowardice” and realized that he “had to do” it, and if he believed another similar situation arose where people were “grooming kids,” he would do it again. (R. 30: PSR, PageID 193-94). Moreover, after attempting to burn the CCC, Penny wrote a manifesto that “we must take pure action against the (Akron) Civic Theatre (April 29th, 2023)

and the tranny scum who threaten the innocence and the future of our children – no more simple protests, no more meek rallies – arm up, set these wretched buildings of wood and stone alight – show them who to fear.” (*Id.*, PageID 214).

Likewise, the PSR found that one of Penny’s motivations in selecting CCC was his watching of internet videos of transexuals. (*Id.*, PageID 193). See *United States v. Cromitie*, No. 09 CR. 558 CM, 2011 WL 2693293 (S.D.N.Y. June 29, 2011) (sentencing court applying the hate crime enhancement “based on its findings of facts as set forth in the presentence investigation report.”).

Because there is no dispute by Penny, and because the evidence unquestionably proves that he selected the CCC because of protected characteristics under § 3A1.1(a), we request that this Court find so at sentencing beyond a reasonable doubt and apply the enhancement.

Penny had a prior conviction for Disorderly Conduct in 2018 for which he received 6 months of community control. (R. 30: PSR, PageID 199). This places him in criminal history Category I.

After acceptance of responsibility, Penny’s offense level is 24. With an offense level 24 and a criminal history category of I, Penny’s guideline imprisonment range for Count 1 is 51 to 63 months and is in zone D. Any sentence imposed must be served consecutively to the 120-month sentence for the conviction in Count 2 for 18 U.S.C. § 844(h)(1).

III. SENTENCING FACTORS 18 U.S.C. § 3553(A)

Upon properly calculating the advisory guideline range, this Court is required to follow 18 U.S.C. § 3553(a), which states:

This Court is required to consider the following factors in determining the sentence.

(a) Factors to be considered in imposing a sentence.--The court shall impose a sentence sufficient, but not greater than necessary,

to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider--

- (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 range established for--
- (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.

18 U.S.C. § 3553(a). Most relevant among these factors to this case are the nature and circumstances of the offense; the history and characteristics of Penny; and the need to reflect the seriousness of the offense, to promoted respect for the law, to provide just punishment, to afford adequate deterrence, and to protect the public.

The nature and circumstances of this offense have been more fully set forth in the PSR and the section above and are incorporated herein by reference. In summary, Penny, motivated

by hatred of a protected class, created destructive devices and drove approximately an hour to a church in Alliance, Ohio. Once at the church, Penny attempted to burn down the church by throwing two Molotov cocktails at it. Penny also destroyed a sign for the church. When interviewed by the FBI, Penny's only regret was that he did not burn the entire church to the ground.

Although the physical damage to the CCC was minor, the offense conduct was still egregious. While no one was present in the church when he fire-bombed it, Penny committed a violent attack on an entire community. The name of the church says it all—the *Community* Church of Chesterland. The CCC is an institution designed to serve all members of the local community. The CCC's website proclaims itself as a "home for friendships, support, and community." The church describes itself: "We are small faith community of the United Church of Christ who lives our faith by welcoming and serving all those in need. This is not just a place to worship, it's a home for friendships, support, and community, a place to find God on your own terms with an amazing group of supportive, friendly people."³ Solely because Penny disagreed with their theology and worldview, Penny rejected this call for inclusion and intentionally chose to attack this institution that existed to bring people together in faith. By doing so, he attacked everyone in that local community, regardless of how much physical damage he actually caused. This egregious offense conduct calls for a substantial sentence.

Although he is a young man with a limited criminal history, looking closer at Penny demonstrates that he was increasingly radicalized via online interactions since at least 2017 where social media posts indicated hostility towards gay persons. Over the years, Penny's views

³ See <https://www.chesterlanducc.org/>.

evolved into not just hatred towards gays, but non-white and Jewish persons. Penny gravitated towards Nazi ideology and white supremacist groups. Eventually, around the time of the offenses, Penny included transgender individuals in his list of persons that were “evil.”

Likewise, Penny’s expressions of these beliefs evolved over the years. Initially, Penny agitated others, whether online or in school. Penny then found others online and joined like-minded groups. These groups organized protests that Penny participated in. However, that First Amendment-protected conduct was not enough for Penny. In the end, Penny believed that “the answer to our Nation’s problem, is not ‘rallying’ or ‘protesting’ – It is great violence, for only that will erase the filth, for only that will set our people free!” (*See* Exhibit 1). And Penny was about more than just talk about violence—he took violent action himself.

Penny has further not shown any remorse or regret. Instead, Penny remains proud of what he did. The PSR does not identify any change in Penny’s beliefs or willingness to commit violence to accomplish his goals. His writings after being arrested show the extent of his lack of remorse, the depth of his hatred, and his continued willingness to encourage violence. Despite his youth and lack of a long criminal record, Penny’s history and characteristics show that he is unrepentant and remains a danger.

Section 3553(a) requires the Court to consider the need for the sentence to reflect several factors: reflecting the seriousness of the offense, promoting respect for the law, providing just punishment, affording adequate deterrence, and protecting the public. The facts and circumstances of the offense and Penny’s history and characteristics inform the consideration of these factors, which in this case are all interrelated. The egregiousness of attacking a church, combined with Penny’s ideology of hate, progression from belief to violence, and lack of remorse show that a long sentence is needed to reflect how serious it is to attack a church, to

promote respect for the law when a defendant abandons civil discourse in favor of violence, to justly punish an assault on a community, to deter others who might seek to turn debate into violence, and to protect the public from a defendant who is not only unremorseful but proud of what he did. In sum, the relevant Section 3553(a) factors call for a substantial sentence.

IV. THE UNITED STATES REQUESTS THIS HONORABLE COURT VARY UPWARDS AND IMPOSE A COMBINED 240-MONTH PRISON SENTENCE

The United States recommends a combined sentence of 240 months for Penny, which would consist of 120 months on Count 1 and 120 months on Count 2, to be served consecutively. Most prominently among the facts and description of the Section 3553(a) factors above are Penny's continuing pride in what he did, his efforts to encourage further violence even after being arrested and detained in this case, and his motivation. This conduct supports an upward variance.

After his arrest, Penny's lack of remorse became apparent. When confronted by the FBI about his role in the arson of the CCC, Penny regretted that he had not burned the church down to the ground. He also expressed pride and a feeling of accomplishment. (R. 30, PSR, PageID 193). After his arrest, he bragged in letters home that he was "respected for it." (*Id.*, PageID 196). His manifesto also clearly shows that he had no regrets and still believed in using violence to advance his cause.

Being arrested and jailed was not enough to cause Penny to repudiate violence. As Exhibit 1 shows, Penny tried to encourage other members of the Blood Tribe, a pro-Nazi white supremacist group that Penny joined and accompanied to protests, to commit further acts of violence. Penny attempted to send instructions that included a target, a drag show at the Akron

Civic Theatre, and the means to attack it, his Molotov cocktail recipe.⁴ Penny's efforts to attempt to coordinate further attacks after being arrested shows the depth of his devotion to using violence and how even being arrested has not deterred him.

While Penny has claimed that his intention was to protect children from transgender persons, his true purpose was intimidation of those who disagreed with him. He was not freeing any children held at the church that night. He firebombed a church that prided itself on welcoming everyone to make the point that those who disagreed with him were not welcome here. As the PSR describes it, when asked by the FBI what kind of message he was trying to send, Penny explained it was "intimidation mostly, like they're not welcome here." Interestingly, despite his claim that he was only trying to help kids, Penny does not address how his firebombing of a church protected the children who attend it for preschool. *See* <https://www.cleveland19.com/2023/03/28/parents-community-preschool-worry-about-kids-safety-ahead-drag-story-hour-church-chesterland/>. Simply put, Penny's motivation was hate—hate of those different than him and hate of those who disagreed with him.

Penny has shown an extreme lack of remorse for his criminal actions. He is proud of what he has done and he continues to persist in his hateful ideology, even seeking to coordinate additional acts of violence. This combination of a lack of any remorse, efforts to incite further attacks from jail, and hateful ideology takes this case out of the heartland of arson cases covered

⁴ The FBI initiated an investigation into the potential attack on the Akron Civic Theatre in order to determine if there was a threat to the event. The FBI did not identify any pre-existing conspiracy to attack the event. The drag event was postponed for three months due to unrelated circumstances and was ultimately held on July 29, 2023, without incident.

by the sentencing guidelines range. For all of these reasons, the United States requests an upward variance to a total sentence of 240 months.⁵

V. CONCLUSION

Just like those who have shamefully used church burnings to intimidate communities and people who disagreed with them throughout our history, Penny attempted to burn down a church to intimidate and keep out those who are different than him. For all of the reasons described above, Penny should not have the chance to continue to use violence against those who disagree with him. The Government respectfully requests that this Court sentence Penny above the advisory guideline range to a total term of 240 months in prison.

Respectfully submitted,

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⁵ This sentence is not disparate from other sentences that have been imposed in cases such as this. For example, in 2013 a defendant was sentenced to 240 months in prison for setting fire to the Islamic Center of Greater Toledo motivated by his hatred of Muslim persons and the religion of Islam. *See United States v. Linn*, Case No. 3:12CR495 (N.D. Ohio, 2013).