

The Hon. Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	NO. CR10-0284-RAJ
)	
Plaintiff,)	
)	GOVERNMENT’S SENTENCING
v.)	MEMORANDUM
)	
LOUIE ROY PABLO, JR.,)	
)	
Defendant.)	

I. INTRODUCTION

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Darwin P. Roberts, Assistant United States Attorney, hereby respectfully files the following Sentencing Memorandum. The United States recommends a sentence of nine months’ imprisonment, followed by three months of home confinement with electronic monitoring, and two years of supervised release, including the special condition that Mr. Pablo not engage in or associate with the fireworks business. The United States submits that this sentence is appropriate, but not longer than necessary, to emphasize the seriousness of Mr. Pablo’s criminal conduct in selling “fireworks” that are legally classified as dangerous explosives. It is also appropriate to deter others from engaging in similar activity.

1 **II. FACTUAL BACKGROUND**

2 **A. Facts of the Case**

3 This matter is set for a sentencing hearing on Friday, February 11, 2011, at 11:00
4 a.m. As described in the Presentence Report, the defendant is a 52-year old United States
5 citizen. Mr. Pablo is Native American and a member of the Tulalip Tribe. *See*
6 Presentence Report, at 1, and ¶¶ 54-55.

7 The facts of this case are accurately described in the Presentence Report. The
8 government notes the importance of the following facts.

9 Mr. Pablo ran a fireworks stand at the “Boom City” fireworks sales area on the
10 Tulalip Reservation, near Marysville, Washington. He was well experienced in the
11 business, having sold fireworks for 30 years. Presentence Report, ¶ 72. As a fireworks
12 seller licensed by the Tulalip Tribe, Mr. Pablo was only allowed to sell fireworks that
13 were permitted by Tulalip tribal ordinance, and these were limited to “class C”
14 (consumer-grade) fireworks. Presentence Report, ¶¶ 7-8. By law, consumer-grade
15 fireworks may only contain up to a certain amount of explosive material. They are
16 regulated by the Consumer Products Safety Commission. Complaint (Dkt #1), ¶¶ 3-5.

17 In contrast to consumer fireworks, commercial display fireworks, including “class
18 1.3G” fireworks, are fireworks intended only for professional displays and fireworks
19 shows. They are regulated as explosives by ATF and may be sold only to federally
20 licensed personnel. Their sale and use may also be subject to additional state and local
21 regulations. Display fireworks are required to carry warning labels notifying users of
22 their restricted purpose and their especially dangerous nature. Complaint (Dkt #1), ¶ 6.

23 Sometimes, fireworks devices may be manufactured or made with more than the
24 legal amount of pyrotechnic filler composition material. Fireworks of this type are
25 classified as forbidden explosives or improvised explosive devices. Complaint (Dkt #1),
26 ¶ 19. These are also called “illegally manufactured flash pyrotechnic devices.” Plea
27 Agreement (Dkt #21), ¶ 9.
28

1 In late June of 2009, a Confidential Source gave Tulalip Tribal Police information
2 that Mr. Pablo was selling commercial display fireworks and illegal fireworks known as
3 “tennis ball bombs” out of his stand at Boom City. Presentence Report, ¶ 9; Complaint
4 (Dkt #1), ¶ 12. Tulalip Police inspected the stand pursuant to their regulatory authority
5 and found a number of fireworks that appeared illegal. The stand was subsequently
6 searched by ATF, along with a nearby storage container that Mr. Pablo later
7 acknowledged was under his custody and control. Plea Agreement (Dkt #21), ¶ 9.
8 Consistent with the information received from the Confidential Source, the search
9 revealed Mr. Pablo was in possession of approximately 750 illegal items, including class
10 1.3G display fireworks, and illegally manufactured flash pyrotechnic devices. Included
11 among the illegal devices were tennis ball bombs, “M-type” devices, and “Thunder &
12 Diamonds” single launch tubes. The items in Mr. Pablo’s stand appeared to be placed for
13 easy access for sale to the general public, including numerous commercial display shells
14 stored in a cardboard box under the front counter. Presentence Report, ¶ 10; *see also*
15 photographs below. The total weight of the illegal explosives was 323 lbs. Plea
16 Agreement (Dkt #21), ¶ 9.

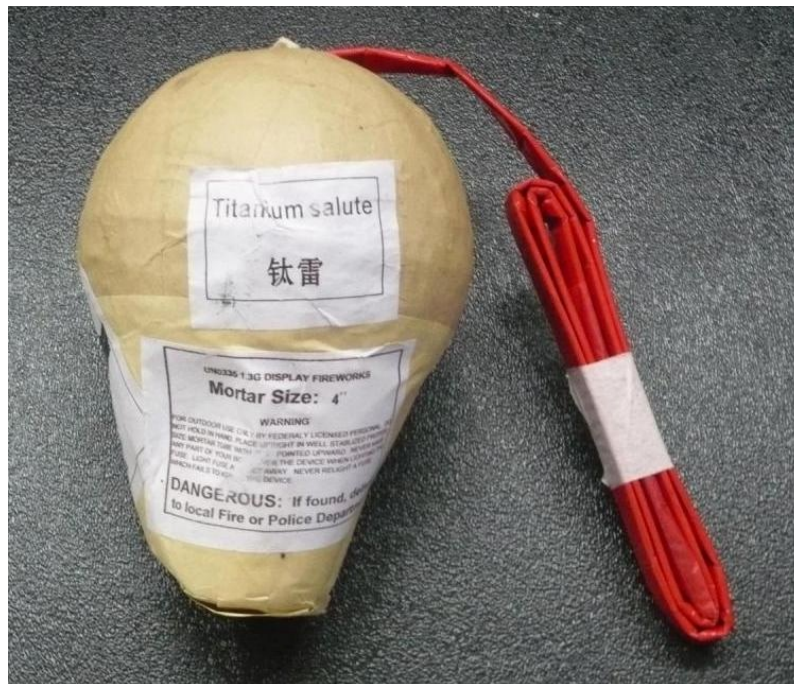
17 On November 9, 2010, Mr. Pablo pled guilty to the charge of Dealing in Explosive
18 Materials Without a License, in violation of 18 U.S.C. §§ 842(a)(1) and 844(a). Plea
19 Agreement (Dkt #21).

20 **B. Dangerousness of the Illegal Explosives**

21 The illegal fireworks that Mr. Pablo was selling were much more powerful, and
22 dangerous, than consumer-grade fireworks. That is why they are classified by law as
23 explosives.

24 The commercial display shells are particularly hazardous. They are intended for
25 professional use only. They normally bear safety warnings such as “For Outdoor Use
26 Only by Federally Licensed Personnel” and “DANGEROUS: If found, deliver to local
27 Fire or Police Department.” A number of the shells confiscated from Mr. Pablo’s stand,
28 however, had these warnings blacked out. Presentence Report, ¶ 10; Plea Agreement, ¶ 9.

1 In addition, the long fuse on these commercial display shells may deceive
 2 inexperienced individuals. While the long fuse appears as if it would take a long time to
 3 burn, it is actually a “quick fuse” intended for professional applications using a launch
 4 tube (and, usually, remote ignition). The fuse will burn through and ignite the shell in as
 5 little as one or two seconds’ time. After lighting the fuse, a person who happened to be
 6 holding the shell would likely not have time to throw it before its first charge went off.



4" commercial display shell with warning label intact

22 As noted above, when Mr. Pablo’s stand was searched, law enforcement
 23 discovered that he was keeping at least two dozen of these commercial display shells, in
 24 varying sizes, in a box that was in immediate reach underneath the front counter of his
 25 stand. ATF discovered dozens more of these shells readily accessible in the nearby
 26 storage container.



Assorted 2" to 5" commercial display shells, some with safety warnings obliterated, as discovered in a box underneath the front counter of Mr. Pablo's stand



Some of the additional display shells discovered in the nearby storage container; the box in the foreground contains more than 3 dozen of the 3" shells

1 These commercial shells were capable of doing serious damage. On May 27,
2 2010, ATF conducted a demonstration, for law enforcement and the news media, of the
3 danger posed by commercial fireworks and overloaded consumer fireworks. Ten (10) 3”
4 display shells, functionally identical to those sold by Mr. Pablo--and fewer in number
5 than Mr. Pablo was keeping in the box next to his feet--were placed in the trunk of a car
6 and then simultaneously ignited, simulating an accidental discharge during transport. A
7 video of the resulting explosion has been submitted to the Court as an addendum to this
8 memorandum. This was the condition of the car afterwards:



21 While the other illegal explosives being sold by Mr. Pablo were not as powerful as
22 the commercial display shells, they too were quite dangerous. The “tennis ball bombs”
23 are simply a tennis ball filled with explosive powder and glued shut with a fuse inserted.
24 They contain substantially more explosive material than would be allowed in a legal
25 consumer firework. They are powerful enough to blow a hole through a sheet of
26 plywood:



Left: Tennis ball bombs seized from Mr. Pablo;
Right: hole blown through plywood by one tennis ball bomb (ATF demo, 5/27/2010)

The “Thunder & Diamonds” launch tubes look cosmetically similar to legal consumer fireworks, but again are substantially more powerful and dangerous. They contain much more explosive material than a similar consumer-grade launch tube. They also contain a projectile shell made out of hard plastic instead of cardboard, which could easily injure a bystander if it exploded nearby.



Disassembled “Thunder & Diamonds” tube, showing components including hard plastic projectile shell (at top right corner of orange card)

Finally, Mr. Pablo was also selling other overloaded consumer-type fireworks, including “M-type” devices. Some of these were leaking flash powder in a hazardous manner. Presentence Report, ¶ 10.

III. GUIDELINES RANGE AND SENTENCING RECOMMENDATION

A. Government’s Offense Level Calculations

The United States agrees with U.S. Probation’s calculation of Mr. Pablo’s applicable Sentencing Guidelines range and criminal history category. Both the United States and U.S. Probation calculate Mr. Pablo’s offense level as follows:

Base Level, §2K1.3(a)(5)	12
Amount of explosives between 250 and 500 lbs., §2K1.3(b)(1)(C)	+3
Acceptance of Responsibility, §3E1.1(a) and (b)	-2
TOTAL	13

Mr. Pablo’s criminal history category is I. Based on a total offense level of 13, and a Criminal History Category of I, Mr. Pablo has a Guidelines sentencing range of 12 to 18 months. The United States agreed in the Plea Agreement to recommend a sentence not longer than 12 months.

B. Government’s Sentencing Recommendation

The United States respectfully recommends a sentence of imprisonment of nine months, followed by three months’ home confinement with electronic monitoring, and two years’ supervised release.

Mr. Pablo pled guilty to dealing in explosive materials without a license. As illustrated by the photographs above, the fireworks/explosives he sold are much more dangerous than the consumer-grade fireworks that may permissibly be sold on the Tulalip Reservation. Moreover, many of the items had their warning labels deliberately obscured. Some of the illegally manufactured explosives had no labels at all, or labels that made

1 | them look like “safe” consumer fireworks. Mr. Pablo had a very large quantity of these
2 | items: 750 items, weighing over 300 pounds. By selling these powerful, misleadingly
3 | labeled fireworks/explosives to untrained, unlicensed individuals, Mr. Pablo endangered
4 | not only his customers, but other members of the community. Having worked in
5 | fireworks sales for 30 years, and being aware of the Tulalip Tribe’s regulations, Mr.
6 | Pablo knew better. But he deliberately chose to ignore the law, and the Tulalip Tribe’s
7 | regulations, in order to enrich himself.

8 | While Mr. Pablo pled guilty to the charge against him, he still seems to have
9 | difficulty acknowledging the wrongfulness of his conduct. Mr. Pablo told U.S. Probation
10 | that “he and others possessed such fireworks in order to put on a large firework show
11 | each year in honor of his son’s death.” PSI Sentencing Recommendation, at 3. Even if
12 | that were true, and that activity were legal--and again, Mr. Pablo has never possessed the
13 | licenses necessary to possess the confiscated fireworks, much less to put on a show with
14 | them--this offers no justification whatsoever for why Mr. Pablo was selling illegal
15 | fireworks and explosives to members of the general public. In addition, while the
16 | Presentence Report describes Mr. Pablo as “cooperative” with the criminal process, *see*
17 | *id.* at ¶ 14, the United States notes that Mr. Pablo has not taken any action to cooperate
18 | with the government other than pleading guilty two weeks prior to trial.

19 | For all of these reasons, the United States recommends a sentence of nine months
20 | of imprisonment. This sentence is appropriate in light of the factors set forth in 18 U.S.C.
21 | § 3553(a), including the nature and circumstances of the offense, and the need to promote
22 | respect for the law. A term of imprisonment is necessary to emphasize the seriousness of
23 | this criminal activity, and to deter others who might consider engaging in criminal sales
24 | of illegal fireworks and explosives to the general public.

25 | The United States agrees with U.S. Probation’s recommendation that it is
26 | appropriate to allow Mr. Pablo to spend some period of time on home confinement. But
27 | the United States respectfully submits that the facts of this case (in particular, the large
28 | quantity of materials involved) weigh in favor of somewhat more imprisonment, leading

1 to the government recommendation of nine months, followed by three months' home
 2 confinement, rather than U.S. Probation's recommendation of six months of each.

3 Finally, the United States is also concerned that Mr. Pablo had a reported violation
 4 of his pretrial release condition related to the specific criminal conduct at issue here
 5 (though Mr. Pablo did not admit a violation and the Court did not make such a finding).
 6 See Dkt #25, 28. Despite a pretrial release condition that he not associate with the
 7 business of fireworks, Mr. Pablo was reported to be transporting fireworks stands to the
 8 Boom City area during the New Year's fireworks sales season, and then spending time in
 9 the vicinity of his former stand as it was being run by his daughter. For those reasons, the
 10 United States strongly endorses the special conditions of supervision recommended by
 11 U.S. Probation that Mr. Pablo be restricted from associating with or engaging in the
 12 business of the sale of fireworks or pyrotechnic devices.

13 IV. CONCLUSION

14 For all the foregoing reasons, the United States respectfully recommends a
 15 sentence of nine months' imprisonment, followed by three months of home confinement
 16 with electronic monitoring, and two years of supervised release, with all the supervised
 17 release conditions recommended by U.S. Probation.

18
 19 DATED this 7th day of February, 2011.

20 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/Darwin P. Roberts
DARWIN P. ROBERTS
Assistant U.S. Attorney