

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)
) File No. CR-08-291
) (MJD/FLN)
 Plaintiff,)
)
 vs.) Minneapolis, Minnesota
) March 17, 2009
 David Guy McKay,) 9:45 a.m.
)
 Defendant.)
)

BEFORE THE HONORABLE MICHAEL J. DAVIS
UNITED STATES DISTRICT COURT JUDGE

(CHANGE OF PLEA)

APPEARANCES

For the Plaintiff: U.S. Attorney's Office
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Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 MR. DeGREE: Not from our perspective, Your Honor,
2 no.

3 MR. PAULSEN: There are no other conditions.

4 THE COURT: It's a straight plea.

5 All right. Mr. McKay, what is your pleasure on
6 this? Do you wish to enter a plea of guilty to all three
7 counts?

8 THE DEFENDANT: Yes, I do, Your Honor.

9 THE COURT: Let's swear the defendant in.

10 THE CLERK: Please raise your right hand.

11 (Defendant sworn.)

12 **EXAMINATION**

13 BY THE COURT:

14 Q. To Count 1, possession of an unregistered firearm, in
15 violation of Title 26, United States Code, Section 5845,
16 5861(d), and 5871, and Title 18, United States Code,
17 Section 2, how do you plead to that count?

18 A. Guilty, Your Honor.

19 Q. To Count 2, illegal manufacture of a firearm, in
20 violation of Title 26, United States Code, Section 5822,
21 5845 and 5861(f) and 5871, and Title 18, United States Code,
22 Section 2, how do you plead to that count?

23 A. Guilty.

24 Q. Count 3, possession of a firearm with no serial number,
25 in violation of -- Chapter 53 of Title 26, in violation of

1 Title 26, U.S. Code, Section 5845, 5861(i), and 5871, and
2 Title 18, United States Code, Section 2, how do you plead to
3 that count?

4 A. Guilty, Your Honor.

5 Q. Sir, you understand that you have an absolute right to
6 continue on with your plea of not guilty and have a jury
7 trial of 12 persons?

8 A. Yes, sir.

9 Q. And at your jury trial you would be presumed innocent of
10 any and all charges against you. Do you understand that?

11 A. Yes, sir.

12 Q. The burden of proof would be on the Government to prove
13 you guilty beyond a reasonable doubt. Do you understand
14 that?

15 A. Yes, sir.

16 Q. And the way the Government would try to prove you guilty
17 beyond a reasonable doubt is by calling witnesses into open
18 court. Those witnesses would be placed under oath and they
19 would give testimony against you. Do you understand that?

20 A. Yes, I do.

21 Q. And do you understand that you would have a right to
22 confront and cross-examine those witnesses through your
23 attorney, Mr. DeGree?

24 A. Yes, sir.

25 Q. And that you would have an absolute right to take the

1 witness stand and tell your side of the story to the jury,
2 do you understand that?

3 A. Yes, sir.

4 Q. And if you did that, you would be placed under oath like
5 any other witness and you would be subject to cross
6 examination by the Government. Do you understand that?

7 A. Yes.

8 Q. Now, you also understand that you have an absolute right
9 to use the Court's power of subpoena to bring in any
10 witnesses or any documents necessary for your defense; do
11 you understand that?

12 A. Yes.

13 Q. Do you also understand that you have a right, an
14 absolute right, under the Constitution to remain silent and
15 not give evidence against yourself; do you understand that?

16 A. Yes.

17 Q. You could rely on the Government not being able to prove
18 you guilty beyond a reasonable doubt. You would never be
19 forced to give testimony against yourself. Do you
20 understand that?

21 A. Yes.

22 Q. If you chose not to testify at your trial, neither the
23 Government nor the Court could make any negative comments to
24 the jury about you not testifying. Do you understand that?

25 A. Yes.

1 Q. Do you also understand that you have a right to a speedy
2 trial, which means you have a right to a trial within a
3 reasonable amount of time; do you understand that?

4 A. Yes, sir.

5 Q. Do you understand that before a guilty verdict on any of
6 the three charges against you could be brought back by a
7 jury of 12 persons, all 12 members of the jury would have to
8 agree beyond a reasonable doubt that you were guilty of that
9 charge; do you understand that?

10 A. Yes, Your Honor.

11 Q. Do you understand that if I accept your plea of guilty
12 and sentence you, you will not have a jury trial of 12
13 persons or you would not have a trial to the Court; do you
14 understand that?

15 A. Yes, sir.

16 Q. Do you understand if I accept your plea of guilty and
17 sentence you, you will have a limited right of an appeal to
18 the Eighth Circuit Court of Appeals, which sits in
19 St. Louis, and that appeal would be based on my sentence and
20 my sentence alone; do you understand that?

21 A. Yes, sir.

22 Q. It would not be based on whether or not you were
23 innocent of the charges or not guilty of the charges. Do
24 you understand that?

25 A. Yes, sir.

1 Q. Now, this is very important. Have there been any
2 threats made to you by anyone to get you to enter a plea of
3 guilty here today?

4 A. No, sir.

5 Q. We had a hearing yesterday and we've continued it over
6 to today. Has anyone talked to you or threatened you in any
7 shape, fashion, or form or said anything about not angering
8 the judge or anything like that that would get you to enter
9 a plea of guilty here?

10 A. No, sir.

11 Q. Have you been made any promises, other than the
12 agreement that the Government will not seek a four-level
13 enhancement under Guideline Section 2K2.1(b)(6), been made
14 to you to get you to enter a plea of guilty?

15 A. No, sir.

16 Q. Have there been any side deals, any conversations or
17 anything that was communicated to you that has not been said
18 on the record here today?

19 (Discussion off the record between
20 the defendant and defense counsel.)

21 THE DEFENDANT: No, Your Honor.

22 BY THE COURT:

23 Q. Now, so the record is clear, I did meet with the
24 attorneys this morning. Do you understand that?

25 A. Yes, sir.

1 Q. And I did tell both sides that I wanted you to be
2 honest. I didn't want you to tailor your responses in any
3 way. I wanted you to be honest in how you responded. Do
4 you understand that?

5 A. Yes, sir.

6 Q. All right. Are you under the care of a doctor,
7 healthcare practitioner, or nurse at this time?

8 A. No, sir.

9 Q. Are you taking any prescribed medications at this time?

10 A. No, sir.

11 Q. Have you ever seen a psychiatrist, psychologist, or
12 mental health practitioner?

13 A. No, sir.

14 Q. Are you -- have you had any drugs or alcohol within the
15 last 48 hours?

16 A. No, sir.

17 Q. Did you have anything to drink last night --

18 A. No, sir.

19 Q. -- to take off the stress?

20 A. No, sir.

21 Q. Any drugs or anything to make sure --

22 A. Just ate lunch [sic] with my lawyer.

23 Q. Well, last night after the hearing, anything --

24 A. Yeah, that was pretty much the last thing I did before I
25 went to sleep, sir.

1 Q. All right. Are you clearheaded here today?

2 A. Absolutely.

3 Q. Have you had enough time to talk to your attorney about
4 this matter?

5 A. Yes, I have.

6 Q. And we've had one trial in this matter and we've had a
7 hung jury and you had at that trial entered an affirmative
8 defense of -- so we don't get tangled up with legal
9 definitions, but you asserted an entrapment defense. Do you
10 understand that?

11 A. Yes, sir.

12 Q. And people get confused by that, but what you had to do
13 is present enough evidence to convince me that that defense
14 was viable and that the Government would have to come forth
15 and it became the Government's burden to show that
16 entrapment did not occur beyond a reasonable doubt. Do you
17 understand that?

18 A. Yes, sir.

19 Q. So you didn't have to prove that you were entrapped, but
20 you had to show some evidence to that effect. Do you
21 understand that?

22 A. Yes, sir.

23 Q. And the Government had to prove that you were not
24 entrapped beyond a reasonable doubt. The burden was on the
25 Government. Do you understand that?

1 A. Yes, sir.

2 Q. And have you gone over that defense with your attorney
3 since the trial?

4 A. Yes, I have.

5 Q. And I'm sure you have had many conversations about that.

6 A. Yes, sir.

7 Q. Are you satisfied with Mr. DeGree's representation of
8 you?

9 A. Yes, I am.

10 Q. Now, you understand that I'm not a party to any
11 agreement that you have with the Government and I have made
12 no promises to you; do you understand that?

13 A. Yes, I do.

14 Q. And my job is to either -- to handle the trial or if you
15 are going to enter a plea of guilty here today to make sure
16 that you understand your constitutional rights and that if
17 you are going to enter a plea of guilty that you knowingly,
18 voluntarily, and intelligently give up those rights. Do you
19 understand that?

20 A. Yes, I do.

21 Q. Now, there are some issues that you challenged at an
22 evidentiary hearing dealing with statements and search
23 warrants, and I ruled on those matters. And you understand
24 with your plea of guilty that you would be giving up your
25 right to challenge any and all of my rulings on those issues

1 to a higher court; do you understand that?

2 A. Yes, sir.

3 Q. And you've gone over that with Mr. DeGree and you
4 understand that?

5 A. Yes, I have.

6 Q. Do you have any questions about any of the
7 constitutional rights that I've gone over with you here
8 today?

9 A. No, I do not.

10 Q. And you understand that we're ready to go to trial
11 today?

12 A. Yes, sir.

13 Q. And do you knowingly, voluntarily, and intelligently
14 give up those rights?

15 A. Yes, I do.

16 Q. Now we move into the second phase of the plea of guilty.
17 The Court cannot accept a plea of guilty from someone that
18 is innocent of the charges or not guilty of the charges. Do
19 you understand that?

20 A. Yes, I do.

21 Q. And so I will have to hear from you why you are guilty
22 of these three crimes. Do you understand that?

23 A. Yes, I do.

24 Q. And because of the prior trial and your prior testimony,
25 I will have to hear a little bit more than bare bones that I

1 accept responsibility. Do you understand that?

2 A. Yes, sir.

3 THE COURT: Mr. Paulsen.

4 MR. PAULSEN: Could I defer to Mr. DeGree on this?

5 THE COURT: Sure.

6 MR. DeGREE: David, why don't you make sure you
7 stand close to the microphone.

8 **EXAMINATION**

9 BY MR. DeGREE:

10 Q. So you would agree that you --

11 THE COURT: I need you to ask nonleading
12 questions --

13 MR. DeGREE: Okay.

14 THE COURT: -- because I want to hear from him
15 what happened.

16 MR. DeGREE: Okay.

17 BY MR. DeGREE:

18 Q. You came up with a group from Austin, Texas, to come to
19 the Republican National Convention; is that right?

20 A. Yes.

21 Q. And you had some shields that you had made that you
22 brought with you; is that right?

23 A. Yes.

24 Q. Okay. And those were taken from you, right?

25 A. Yes.

1 Q. Okay. And this happened on August 30th -- or 31st,
2 rather, 2008; is that right?

3 A. Yes.

4 Q. Okay. And then can you tell the Judge the group that
5 you traveled with -- there was a meeting, then, that
6 happened after those shields were taken. Can you tell the
7 Judge what happened during that meeting and also what you
8 did that makes you guilty of possession of Molotov
9 cocktails, manufacturing and possessing.

10 A. Okay. Well, there was a discussion between me, Brandon,
11 and Brad Crowder. In that discussion I earlier testified
12 that it was Brandon's idea, that he actually introduced the
13 idea to us in that conversation. As I testified or told you
14 yesterday, I don't remember who actually brought the idea
15 and that is the truth.

16 Me and Jeff were talking about predisposition and
17 if Brandon would not have been there, would me and Brad have
18 still gone through with the plan. And honestly I think I
19 would have. I think that we would have done it anyways. I
20 think we would have had the same result. But I don't
21 think --

22 THE COURT: Why is that? Tell me how you were
23 thinking, what was going through your mind, why you think
24 you were predisposed to that activity of building Molotov
25 cocktails.

1 THE DEFENDANT: Because at the conversation that
2 we had, the tactic that we thought would be necessary in
3 introducing something or bringing something that we -- you
4 know, we were going to bring the shields, but then we didn't
5 have the shields and we were going to bring something else
6 and if that -- I agreed with that idea. I agreed that we
7 had to have something to bring to the group.

8 And if Brandon wouldn't have made -- or if Brandon
9 wouldn't have been there and Brad would have made that
10 suggestion or I would have made that suggestion, then we
11 still would have went through with it. We didn't need
12 Brandon there to make them and I don't think we would have
13 needed him there to come up with the idea.

14 BY MR. DeGREE:

15 Q. And then after the idea came up, what did you do after
16 that?

17 A. You mean built them?

18 Q. Correct.

19 A. We went to Wal-Mart and we bought the supplies, and then
20 we went to the house we were staying at and me and Brad
21 built them in a bathroom.

22 THE COURT: Now, it wasn't just you going to
23 Wal-Mart, you had people go with you?

24 THE DEFENDANT: Yes.

25 THE COURT: And who made up the plans to have some

1 of the women buy tampons and other items and did they know
2 what they were buying them for?

3 THE DEFENDANT: Nobody else -- the way it worked
4 was we had these things called affinity groups where
5 basically, like, you do not share information outside of
6 your group.

7 And us as a whole, we weren't a group. We were
8 just people who traveled together. It was me, James,
9 Brandon, and Brad who had originally built the affinity
10 group and James later left the group, but we weren't
11 supposed to talk about anything outside of that.

12 People in the group quickly realized that we were
13 buying a gas tank and, you know, supplies that could, you
14 know --

15 THE COURT: So it was just the two of you,
16 Mr. Crowder and you, that came up with this plan?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Tell me. I don't want to put words in
19 your mouth. I want to hear from you what you and
20 Mr. Crowder did, talked about, and how you planned to make
21 these Molotov cocktails, so I can be sure that no one else
22 had influence upon you in making these.

23 THE DEFENDANT: The concept of making the Molotov
24 cocktails, Your Honor, came from that conversation. Whoever
25 introduced the idea, I honestly don't have a recollection of

1 it. On my life, I don't have a recollection of it.

2 THE COURT: But you testified at trial that you
3 did.

4 THE DEFENDANT: Because that's what I wanted to
5 believe and Brandon was part of the conversation.

6 THE COURT: All right.

7 THE DEFENDANT: Me and Brad came up with the idea
8 of where to make them. From the time that we left in the
9 van to go to Wal-Mart and what supplies we needed and stuff
10 like that, that was me and Brad. From then on up until the
11 point where we decided not to use them, it was just me and
12 Brad.

13 BY MR. DeGREE:

14 Q. David, how did you get -- you had a list of things that
15 you wanted to buy to make them. Where did that list come
16 from that [inaudible]?

17 COURT REPORTER: Excuse me. Mr. DeGree, if you
18 could move a little closer to the microphone.

19 BY MR. DeGREE:

20 Q. Obviously when you went to Wal-Mart you had a list of
21 items that you wanted to purchase to make the Molotov
22 cocktails with. Where did that list come from?

23 A. It came from the Internet, I believe. I mean, it was a
24 list that we had.

25 Q. Who got it off the Internet?

1 A. Brad was using the Internet to find the location of the
2 Wal-Mart.

3 THE COURT: Okay. Continue.

4 THE DEFENDANT: After we had built them, the plan
5 that we had worked out and the conversation that we had was
6 to bring them to the park and we were supposed to be
7 meeting --

8 THE COURT: Tell me how you built them --

9 THE DEFENDANT: Oh.

10 THE COURT: -- who was involved and who didn't
11 know and who did you bring in that were innocent parties to
12 this matter to make your bombs.

13 THE DEFENDANT: We asked Freia, the girl who
14 testified against me, for a ride to the gas station and we
15 asked the ladies in the van to get some supplies.

16 After the group that we were with realized what
17 supplies we were getting, a couple hours later they had a
18 meeting themselves and that's when they contacted us, but at
19 that time we had already built the Molotov cocktails in
20 Freia's bathroom.

21 BY MR. DeGREE:

22 Q. Tell him about building them, making them.

23 A. Oh.

24 THE COURT: Who was there?

25 THE DEFENDANT: It was just me and Brad. Everyone

1 kind of --

2 THE COURT: Where was Darby at the time?

3 THE DEFENDANT: I have no idea. I think he was at
4 the house with the other people. He was having a foot issue
5 or something of that nature and -- well, he wasn't there
6 when we were making them.

7 THE COURT: Did he go to the store with you?

8 THE DEFENDANT: No, he did not.

9 THE COURT: Okay. Go ahead.

10 THE DEFENDANT: And then we put the gasoline in
11 the bottles and duct taped the tops.

12 THE COURT: When you went in the bathroom to make
13 the bombs, did you lock the door?

14 THE DEFENDANT: There was no lock on the door. I
15 think it was probably about 10:30 at night and Freia was
16 there and another girl was there. They were in the room.
17 It's not a very big place, but they were in the room and I
18 think the general idea was there for them to know, but we
19 weren't going to say anything about it because we weren't
20 supposed to.

21 THE COURT: You talk about an affinity group. You
22 make it sound like a library book club. You're talking
23 about a secret cell?

24 THE DEFENDANT: Yeah, it's like an information
25 barrier or if, like, tactics are going to be used by a

1 certain group of people, you're not supposed to tell anybody
2 else, obviously, because you could jeopardize what you guys
3 are going to be doing.

4 THE COURT: And what is that based on? Who -- is
5 that based on research that has been done by other groups
6 that have been labeled as terrorist organizations?

7 THE DEFENDANT: Not to my knowledge.

8 THE COURT: So tell me -- you've got this
9 structure. It's not a book club, you're not meeting as a
10 book club. You've got cells.

11 THE DEFENDANT: Well, it was the group of people
12 who --

13 THE COURT: So who came up with all this?

14 THE DEFENDANT: Well, it was decided at the first
15 meeting that we had that we trusted each other enough to
16 create an affinity group. From what I was explained and
17 what I understand is an affinity group, it's basically a way
18 to keep -- to stay safe, to keep other people from --

19 THE COURT: Stay safe from what?

20 THE DEFENDANT: I guess from getting caught doing
21 something bad or a group --

22 THE COURT: So you had a predisposition to do
23 something bad and you were trying to set up a barrier so
24 that information would not get out; is that what I'm hearing
25 from you?

1 THE DEFENDANT: From -- I mean, from the point
2 where we created it, which was seven months before we came
3 to the RNC, from what I understood, it was an inner circle.
4 It was people you could trust with tactics, like the
5 shields. Our affinity group was doing that.

6 THE COURT: But why would you want to protect that
7 from --

8 THE DEFENDANT: So that the cops didn't find out
9 about the shields somehow through informants.

10 THE COURT: And why would you not want that to
11 happen?

12 THE DEFENDANT: Because they were illegal, I
13 think, at the time that we had them or they were -- they
14 could be considered a threat to the activities that the cops
15 were enforcing or they could be considered a danger to the
16 RNC.

17 THE COURT: So you knew that before --

18 THE DEFENDANT: Yes, sir.

19 THE COURT: So let's back up dealing with this
20 predisposition. When you walked into the affinity group
21 meetings, what was your reason for getting involved with
22 that group?

23 THE DEFENDANT: I wanted to be with a group of
24 people who were going to go protest and we had all agreed
25 that we were going to be willing to be arrested and I wanted

1 to be with a group of people who, I don't know, would have
2 my back or would -- I could rely on if I was in trouble. I
3 know that's not answering your question really, but --

4 THE COURT: I think it is.

5 THE DEFENDANT: Okay.

6 THE COURT: The affinity group was not based on
7 nonviolence?

8 THE DEFENDANT: It was not based on nonviolence.
9 It was understood that us as an affinity group had a great
10 possibility of being arrested.

11 THE COURT: Well, you also knew that there would
12 be a number of other groups that were going to be there
13 peacefully protesting?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And did you know that your affinity
16 group was going to meet up with other affinity groups to
17 infiltrate those peaceful nonviolent groups to disrupt --

18 THE DEFENDANT: I think, yeah, the main objective
19 was for us as a group to meet -- not to infiltrate
20 necessarily, but to meet with other people to create a
21 non -- a very disgruntled protest.

22 THE COURT: Well, what's disgruntled? Violent?

23 THE DEFENDANT: Not peaceful, yeah.

24 THE COURT: No, not --

25 THE DEFENDANT: Violent.

1 THE COURT: So I'm clear, you did not come to
2 Minneapolis or to St. Paul to peacefully demonstrate?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. You're in a bathroom
5 making these bombs. How did you do it?

6 THE DEFENDANT: How did we make them?

7 THE COURT: Yes.

8 THE DEFENDANT: Well, I was in the tub and I was
9 pouring the gasoline into the bottle and then gave it to
10 Brad and I think he put a little bit of motor oil in it, I
11 believe, and then duct taped the top with a tampon on it.

12 THE COURT: And how many did you make?

13 THE DEFENDANT: Eight.

14 THE COURT: And after you made them, what did you
15 do with them?

16 THE DEFENDANT: We put one in a backpack, which
17 was going to be the one we had for me and him, and then we
18 put the rest in a duffle bag.

19 THE COURT: And where did you take them?

20 THE DEFENDANT: They were sitting next to the door
21 until -- yeah, until after I was released.

22 THE COURT: Next to the door?

23 THE DEFENDANT: She lives on the third-story
24 apartment and there's a very narrow staircase that goes up
25 to her apartment and right at the end of the apartment -- or

1 at the end of the staircase is a wall where her, like, trash
2 can was and a window and stuff like that. They were against
3 that wall right next to the door.

4 THE COURT: Let's back up just a little bit. Why
5 did you have Freia go down and buy the gasoline?

6 THE DEFENDANT: We didn't have a vehicle at the
7 time. It would have been the only way we could have got
8 gasoline without walking through the RNC area with a gas --
9 or a tank of gas.

10 THE COURT: Now, if you had walked, would that
11 have caused some problems?

12 THE DEFENDANT: Most definitely.

13 THE COURT: Why?

14 THE DEFENDANT: Because we were staying next to
15 the cathedral and there was police patrol every two to three
16 minutes on the streets and there was also a walking
17 policeman on the cathedral grounds.

18 THE COURT: Are you saying that you didn't want to
19 be detected?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And why is that?

22 THE DEFENDANT: Because what we were doing was
23 probably very illegal.

24 THE COURT: And was Darby with you when you got
25 the gasoline?

1 THE DEFENDANT: No, he was not.

2 THE COURT: Now, let's move back to Mr. Crowder.
3 He was a good friend of yours?

4 THE DEFENDANT: Yes.

5 THE COURT: When I say "good friend," why don't
6 you tell me what that means.

7 THE DEFENDANT: I've known him since I was 18. We
8 lived really close to each other. We hung out at least two
9 to three times a week.

10 THE COURT: When you came to St. Paul and
11 Minneapolis, would it be correct that you and Mr. Crowder
12 were the leaders of your affinity group?

13 THE DEFENDANT: Of our affinity group as in me and
14 Brad and Brandon and James?

15 THE COURT: Yes.

16 THE DEFENDANT: Well, from what I understand,
17 technically there's not supposed to be a leader, it's
18 supposed to be all equal. Me and Brad came up with the idea
19 for the shields, so we were definitely the leaders of that
20 concept. But most of the people that we came up with,
21 excluding Brandon and James and another person, were not
22 there for the shield idea at all. They were there to be
23 medics and observers.

24 THE COURT: So any activity that would involve
25 violence, it was you and Mr. Crowder that were coming up

1 with the plans?

2 THE DEFENDANT: Our concept would definitely be
3 involved with there being confrontation with the police.
4 The original concept behind the shields was not physical
5 confrontation with the police, but with a group of people
6 who were not obeying their rules or their orders to move.

7 THE COURT: Now, I've seen a video of you in the
8 middle of the street and you didn't look like a shrinking
9 violet.

10 THE DEFENDANT: No.

11 THE COURT: You were active. You were aggressive.
12 Would you say that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And Darby was not whispering in your
15 ear to do that sort of thing?

16 THE DEFENDANT: No, he was not.

17 THE COURT: Were you aware of a number of non --
18 of peaceful demonstrators that were coming to St. Paul to
19 peacefully demonstrate and voice their opposition to the
20 policies of the administration?

21 THE DEFENDANT: My knowledge of peaceful
22 protesters was limited. I knew that there were going to be
23 people protesting peacefully, but that was not who I was
24 associated with. That's not who I was getting my, I guess,
25 information from.

1 THE COURT: Did you know that your activities
2 would have disrupted their peaceful demonstration?

3 THE DEFENDANT: I knew that we were taking steps
4 to not be a part of the same marches that were considered
5 green zones, I think, to stop that from happening. I think
6 there was a conscious effort not to, you know, run and do
7 something bad and run into a crowd of, you know, peaceful
8 protesters.

9 From what I understood, we were specifically
10 targeting inner sections that were not close to where the
11 peaceful march was happening, which I think was from the
12 Capitol to the Xcel Center.

13 THE COURT: Okay. Let's continue on with the
14 factual basis dealing with Counts 1, 2, and 3.

15 BY MR. DeGREE:

16 Q. David, you'd agree that the Molotov cocktails that you
17 and Brad made, you did not take any steps to register those
18 with the National Firearms Registration and Transfer --

19 A. No, I did not.

20 Q. You'd agree that you didn't apply for or seek or receive
21 approval from the Secretary of Treasury?

22 A. Yes.

23 Q. And they also did not bear serial numbers?

24 A. They did not.

25 MR. DeGREE: I don't have anything further, Your

1 Honor.

2 THE COURT: Mr. Paulsen.

3 **EXAMINATION**

4 BY MR. PAULSEN:

5 Q. As far as the actual charges you're pleading guilty to,
6 you think you are guilty of that?

7 A. Yes, I do.

8 Q. And when you actually made the Molotov cocktails, did
9 you do that voluntarily?

10 A. I did that of my own will.

11 Q. You knew it was against the law?

12 A. I knew it was against the law. Not to this extent,
13 but not -- sorry.

14 MR. PAULSEN: I'm satisfied, Your Honor.

15 THE COURT: I need a specific waiver of his
16 defense of entrapment.

17 **EXAMINATION**

18 BY MR. DeGREE:

19 Q. David, obviously we've gone through a trial. You and
20 I -- you would agree that you and I have discussed on
21 numerous occasions the defense of entrapment?

22 A. Yes, sir.

23 Q. And you've had a chance to talk with me about that and
24 ask questions; is that right?

25 A. Yes, sir.

1 Q. And specifically as we prepared to go to trial, you
2 know, we were going to start the trial yesterday or today,
3 we've discussed how that defense would apply in a retrial;
4 is that true?

5 A. Yes, sir.

6 Q. And the Judge talked with you, but you understand that
7 the way that defense -- we'd have to present some evidence,
8 enough evidence that the Judge agreed that a jury could at
9 least review that and find that there was some evidence
10 presented of entrapment; is that right?

11 A. Yes, sir.

12 Q. And then if that were the case, then the Government
13 would have to -- for you to be convicted, then the
14 Government would have to prove beyond a reasonable doubt
15 that you had not been entrapped; is that right?

16 A. Yes, sir.

17 Q. And, again, those are all concepts that you are familiar
18 with having gone through the first trial; is that right?

19 A. Yes.

20 Q. And you understand by entering your plea today, then,
21 that you're giving up the right forever to say that you were
22 entrapped; is that right?

23 A. Yes.

24 Q. Do you have any questions about that at all?

25 A. No, I do not.

1 MR. DeGREE: I don't have any other questions,
2 Your Honor.

3 THE COURT: Mr. McKay, are you saying that you
4 are, in fact, guilty of these crimes?

5 THE DEFENDANT: Yes, I am, sir.

6 THE COURT: Has anyone forced you to say anything
7 that you've said today?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: And you understand you're under oath?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: And it's the truth?

12 THE DEFENDANT: Yes, it is.

13 THE COURT: Are you making any claims that you're
14 innocent?

15 THE DEFENDANT: No, I am not.

16 THE COURT: The Court will accept the plea of
17 guilty. The Court will order a presentence investigation
18 report returnable to this Court within a reasonable amount
19 of time.

20 Sir, within seven days of today's date you will
21 have an interview with a probation officer. Your attorney
22 will be present at that interview.

23 After the presentence investigation report is
24 completed, a copy of the report will be sent to your
25 attorney and also to the Government. You will have a right

1 to read that report or have the report read to you.

2 If there's anything in that report that you object
3 to, you make sure that Mr. DeGree knows about that so he can
4 report that to the probation officer. The Government will
5 have the same opportunity to read the report and make any
6 objections to anything that's in that report. Those
7 objections will be duly noted in the report that I will
8 receive and read and I'll set down a sentencing date.

9 I'm sure you've already talked to Mr. DeGree.
10 There are going to be some motions made to -- more than
11 likely dealing with certain aspects of your sentencing by
12 the Government and also by Mr. DeGree to get a lesser
13 sentence for you. We will have a hearing on all those
14 motions and I have to make a ruling on those motions.

15 After I've made those rulings, then we will have a
16 sentencing hearing. At your sentencing you will have an
17 absolute right, you will have an absolute right to talk to
18 me and tell me anything that you want to tell me about
19 yourself, about this offense, or anything else that I should
20 know before I sentence you.

21 Counsel will have an opportunity to argue for a
22 certain sentence for you and the Government will have an
23 opportunity to respond to anything that you have said or
24 anything that your attorney has said. Then I will sentence
25 you.

1 Do you have any questions about anything that's
2 occurred here today?

3 THE DEFENDANT: No, Your Honor. Thank you.

4 THE COURT: Anything further for the Government?

5 MR. PAULSEN: Your Honor, this is a Mandatory
6 Detention Act case and under 18 U.S.C. Section 3143(a)(2)
7 someone who has been convicted of a crime of violence is to
8 be detained. That's the situation with Mr. Crowder. And
9 I'm moving for Mr. McKay's detention at this time as he now
10 stands convicted of a crime of violence.

11 THE COURT: Mr. DeGree.

12 MR. DeGREE: Your Honor, obviously we would oppose
13 the Government's request in this regard. I think the Court
14 is aware that Mr. McKay has posted bond. I believe he has
15 met every condition. I've spoken with his pretrial agent
16 down in Austin, Texas, who told me that he has been in
17 complete compliance and done everything they've asked down
18 there. I also did check with Mr. Reynolds in the office
19 here. I'm sure the Court -- my understanding is the Court
20 has some information verifying that information, that he has
21 been compliant and done all the things that have been asked
22 of him. We would ask that the Court allow him to remain on
23 bond that was posted pending sentencing.

24 THE COURT: Since this is a mandatory detention
25 case, what exceptions does he fall under? And if he does,

1 let me hear about it. If not, I understand that he's done
2 quite well pretrial, but this is after conviction.

3 MR. DeGREE: I can't cite a specific exception,
4 Your Honor.

5 THE COURT: All right. Step forward, Mr. McKay.
6 The United States Congress has passed a number of laws
7 dealing with the detention of persons that have been
8 convicted of violent offenses. You fit under that statute.
9 There are a few exceptions to that. You do not fit under
10 any of the exceptions.

11 As you well know, I allowed you out pretrial after
12 the hung jury. I know that you've done well, but there is
13 no grounds or provisions under the statute that would allow
14 me to allow you to stay out and you'll be taken into custody
15 at this time.

16 Anything further for the Government?

17 MR. PAULSEN: No, Your Honor.

18 MR. DeGREE: No, Your Honor.

19 (Court adjourned at 10:30 a.m.)

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I, Lori A. Simpson, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: s/ Lori A. Simpson

Lori A. Simpson, RMR-CRR