

**Example For Group Work:**            *United States v. William Firebrand*

Summary:

- Defendant was charged and convicted of illegally returning to the United States after being deported, in violation of 8 U.S.C. § 1326(a).
- The defendant was convicted in Nevada under Sections 199.480 and 205.010(1) for conspiracy to commit the crime of arson in the first degree. He was given a 3 year sentence.
- The prosecutor is arguing for a 16-level enhancement because of the defendant's prior "crime of violence." At a minimum, the prosecutor argues the 8-level aggravated felony enhancement should apply.
- The defense is arguing for a 4-level felony enhancement because the Nevada felony the defendant was convicted of is not a crime of violence (16 levels) or an aggravated felony (8 levels).

4. *Prior Convictions Under Subsection (b)(3).*—Prior felony conviction(s) resulting in an adjustment under subsection (b)(3) are also counted for purposes of determining criminal history points pursuant to Chapter Four, Part A (Criminal History).
5. *Application of Subsection (b)(6).*—Reckless conduct to which the adjustment from subsection (b)(6) applies includes a wide variety of conduct (e.g., transporting persons in the trunk or engine compartment of a motor vehicle, carrying substantially more passengers than the rated capacity of a motor vehicle or vessel, or harboring persons in a crowded, dangerous, or inhumane condition). If subsection (b)(6) applies solely on the basis of conduct related to fleeing from a law enforcement officer, do not apply an adjustment from §3C1.2 (Reckless Endangerment During Flight). Additionally, do not apply the adjustment in subsection (b)(6) if the only reckless conduct that created a substantial risk of death or serious bodily injury is conduct for which the defendant received an enhancement under subsection (b)(5).
6. *Inapplicability of §3A1.3.*—If an enhancement under subsection (b)(8)(A) applies, do not apply §3A1.3 (Restraint of Victim).

**Background:** This section includes the most serious immigration offenses covered under the Immigration Reform and Control Act of 1986.

**Historical Note:** Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendments 35, 36, and 37); November 1, 1989 (see Appendix C, amendment 192); November 1, 1990 (see Appendix C, amendment 335); November 1, 1991 (see Appendix C, amendment 375); November 1, 1992 (see Appendix C, amendment 450); May 1, 1997 (see Appendix C, amendment 543); November 1, 1997 (see Appendix C, amendment 561); November 1, 2006 (see Appendix C, amendments 686 and 692); November 1, 2007 (see Appendix C, amendment 702); November 1, 2009 (see Appendix C, amendment 730).

### **§2L1.2. Unlawfully Entering or Remaining in the United States**

- (a) Base Offense Level: **8**
- (b) Specific Offense Characteristic
  - (1) Apply the Greatest:

If the defendant previously was deported, or unlawfully remained in the United States, after—

- (A) a conviction for a felony that is (i) a drug trafficking offense for which the sentence imposed exceeded 13 months; (ii) a **crime of violence**; (iii) a firearms offense; (iv) a child pornography offense; (v) a national security or terrorism offense; (vi) a human trafficking offense; or (vii) an alien smuggling offense, **increase by 16 levels** if the conviction receives criminal history points under Chapter Four or by **12 levels** if the conviction does not receive criminal history points;
- (B) a conviction for a felony drug trafficking offense for which the sentence imposed was 13 months or less, increase by **12 levels** if the conviction receives criminal history points under Chapter Four or by **8 levels** if the conviction does not receive criminal history points;

- (C) a conviction for an **aggravated felony, increase by 8 levels;**
- (D) a conviction for **any other felony, increase by 4 levels;** or
- (E) three or more convictions for misdemeanors that are crimes of violence or drug trafficking offenses, increase by **4 levels.**

Commentary

Statutory Provisions: 8 U.S.C. § 1325(a) (second or subsequent offense only), 8 U.S.C. § 1326. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. Application of Subsection (b)(1).—

(A) In General.—For purposes of subsection (b)(1):

- (i) *A defendant shall be considered to be deported after a conviction if the defendant has been removed or has departed the United States while an order of exclusion, deportation, or removal was outstanding.*
- (ii) *A defendant shall be considered to be deported after a conviction if the deportation was subsequent to the conviction, regardless of whether the deportation was in response to the conviction.*
- (iii) *A defendant shall be considered to have unlawfully remained in the United States if the defendant remained in the United States following a removal order issued after a conviction, regardless of whether the removal order was in response to the conviction.*
- (iv) *Subsection (b)(1) does not apply to a conviction for an offense committed before the defendant was eighteen years of age unless such conviction is classified as an adult conviction under the laws of the jurisdiction in which the defendant was convicted.*

(B) Definitions.—For purposes of subsection (b)(1):

- (i) *"Alien smuggling offense" has the meaning given that term in section 101(a)(43)(N) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(43)(N)).*
- (ii) *"Child pornography offense" means (I) an offense described in 18 U.S.C. § 2251, § 2251A, § 2252, § 2252A, or § 2260; or (II) an offense under state or local law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.*

- (iii) *"Crime of violence" means any of the following offenses under federal, state, or local law: murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses (including where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced), statutory rape, sexual abuse of a minor, robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or any other offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another.*
- (iv) *"Drug trafficking offense" means an offense under federal, state, or local law that prohibits the manufacture, import, export, distribution, or dispensing of, or offer to sell a controlled substance (or a counterfeit substance) or the possession of a controlled substance (or a counterfeit substance) with intent to manufacture, import, export, distribute, or dispense.*
- (v) *"Firearms offense" means any of the following:*
- (I) *An offense under federal, state, or local law that prohibits the importation, distribution, transportation, or trafficking of a firearm described in 18 U.S.C. § 921, or of an explosive material as defined in 18 U.S.C. § 841(c).*
  - (II) *An offense under federal, state, or local law that prohibits the possession of a firearm described in 26 U.S.C. § 5845(a), or of an explosive material as defined in 18 U.S.C. § 841(c).*
  - (III) *A violation of 18 U.S.C. § 844(h).*
  - (IV) *A violation of 18 U.S.C. § 924(c).*
  - (V) *A violation of 18 U.S.C. § 929(a).*
  - (VI) *An offense under state or local law consisting of conduct that would have been an offense under subdivision (III), (IV), or (V) if the offense had occurred within the special maritime and territorial jurisdiction of the United States.*
- (vi) *"Human trafficking offense" means (I) any offense described in 18 U.S.C. § 1581, § 1582, § 1583, § 1584, § 1585, § 1588, § 1589, § 1590, or § 1591; or (II) an offense under state or local law consisting of conduct that would have been an offense under any such section if the offense had occurred within the special maritime and territorial jurisdiction of the United States.*
- (vii) *"Sentence imposed" has the meaning given the term "sentence of imprisonment" in Application Note 2 and subsection (b) of §4A1.2 (Definitions and Instructions for Computing Criminal History), without regard to the date of the conviction. The length of the sentence imposed includes any term of imprisonment given upon revocation of probation, parole, or supervised release, but only if the revocation occurred before the defendant was deported or unlawfully remained in the United States.*

- (viii) "Terrorism offense" means any offense involving, or intending to promote, a "Federal crime of terrorism", as that term is defined in 18 U.S.C. § 2332b(g)(5).
- (C) Prior Convictions.—In determining the amount of an enhancement under subsection (b)(1), note that the levels in subsections (b)(1)(A) and (B) depend on whether the conviction receives criminal history points under Chapter Four (Criminal History and Criminal Livelihood), while subsections (b)(1)(C), (D), and (E) apply without regard to whether the conviction receives criminal history points.
2. Definition of "Felony."—For purposes of subsection (b)(1)(A), (B), and (D), "felony" means any federal, state, or local offense punishable by imprisonment for a term exceeding one year.
3. Application of Subsection (b)(1)(C).—
- (A) Definitions.—For purposes of subsection (b)(1)(C), "aggravated felony" has the meaning given that term in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(43)), without regard to the date of conviction for the aggravated felony.
- (B) In General.—The offense level shall be increased under subsection (b)(1)(C) for any aggravated felony (as defined in subdivision (A)), with respect to which the offense level is not increased under subsections (b)(1)(A) or (B).
4. Application of Subsection (b)(1)(E).—For purposes of subsection (b)(1)(E):
- (A) "Misdemeanor" means any federal, state, or local offense punishable by a term of imprisonment of one year or less.
- (B) "Three or more convictions" means at least three convictions for offenses that are not counted as a single sentence pursuant to subsection (a)(2) of §4A1.2 (Definitions and Instructions for Computing Criminal History).
5. Aiding and Abetting, Conspiracies, and Attempts.—Prior convictions of offenses counted under subsection (b)(1) include the offenses of aiding and abetting, conspiring, and attempting, to commit such offenses.
6. Computation of Criminal History Points.—A conviction taken into account under subsection (b)(1) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).
7. Departure Based on Seriousness of a Prior Conviction.—There may be cases in which the applicable offense level substantially overstates or understates the seriousness of a prior conviction. In such a case, a departure may be warranted. Examples: (A) In a case in which subsection (b)(1)(A) or (b)(1)(B) does not apply and the defendant has a prior conviction for possessing or transporting a quantity of a controlled substance that exceeds a quantity consistent with personal use, an upward departure may be warranted. (B) In a case in which the 12-level enhancement under subsection (b)(1)(A) or the 8-level enhancement in subsection (b)(1)(B) applies but that enhancement does not adequately reflect the extent or seriousness of the conduct underlying the prior conviction, an upward departure may be warranted. (C) In a case in which subsection (b)(1)(A) applies, and the prior conviction does not meet the

*definition of aggravated felony at 8 U.S.C. § 1101(a)(43), a downward departure may be warranted.*

8. Departure Based on Cultural Assimilation.—*There may be cases in which a downward departure may be appropriate on the basis of cultural assimilation. Such a departure should be considered only in cases where (A) the defendant formed cultural ties primarily with the United States from having resided continuously in the United States from childhood, (B) those cultural ties provided the primary motivation for the defendant’s illegal reentry or continued presence in the United States, and (C) such a departure is not likely to increase the risk to the public from further crimes of the defendant.*

*In determining whether such a departure is appropriate, the court should consider, among other things, (1) the age in childhood at which the defendant began residing continuously in the United States, (2) whether and for how long the defendant attended school in the United States, (3) the duration of the defendant’s continued residence in the United States, (4) the duration of the defendant’s presence outside the United States, (5) the nature and extent of the defendant’s familial and cultural ties inside the United States, and the nature and extent of such ties outside the United States, (6) the seriousness of the defendant’s criminal history, and (7) whether the defendant engaged in additional criminal activity after illegally reentering the United States.*

Historical Note: Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendment 38); November 1, 1989 (see Appendix C, amendment 193); November 1, 1991 (see Appendix C, amendment 375); November 1, 1995 (see Appendix C, amendment 523); November 1, 1997 (see Appendix C, amendment 562); November 1, 2001 (see Appendix C, amendment 632); November 1, 2002 (see Appendix C, amendment 637); November 1, 2003 (see Appendix C, amendment 658); November 1, 2007 (see Appendix C, amendment 709); November 1, 2008 (see Appendix C, amendment 722); November 1, 2010 (see Appendix C, amendment 740); November 1, 2011 (see Appendix C, amendment 754); November 1, 2012 (see Appendix C, amendment 764).

### §2L1.3. [Deleted]

Historical Note: Section 2L1.3 (Engaging in a Pattern of Unlawful Employment of Aliens), effective November 1, 1987, was deleted effective November 1, 1989 (see Appendix C, amendment 194).

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## 2. NATURALIZATION AND PASSPORTS

### §2L2.1. Trafficking in a Document Relating to Naturalization, Citizenship, or Legal Resident Status, or a United States Passport; False Statement in Respect to the Citizenship or Immigration Status of Another; Fraudulent Marriage to Assist Alien to Evade Immigration Law

- (a) Base Offense Level: **11**
- (b) Specific Offense Characteristics
- (1) If the offense was committed other than for profit, or the offense involved the smuggling, transporting, or harboring only of the defendant’s spouse or child (or both the defendant’s spouse and child), decrease by **3** levels.

son who is within the country of such person's nationality or, in the case of a person having no nationality, within the country in which such person is habitually residing, and who is persecuted or who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The term "refugee" does not include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion. For purposes of determinations under this chapter, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.

**(43) The term "aggravated felony" means--**

**(A)** murder, rape, or sexual abuse of a minor;

**(B)** illicit trafficking in a controlled substance (as defined in section 802 of Title 21), including a drug trafficking crime (as defined in section 924(c) of Title 18);

**(C)** illicit trafficking in firearms or destructive devices (as defined in section 921 of Title 18) or in explosive materials (as defined in section 841(c) of that title);

**(D)** an offense described in section 1956 of Title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded \$10,000;

**(E)** an offense described in--

**(i)** section 842(h) or (i) of Title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

**(ii)** section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of Title 18 (relating to firearms offenses); or

**(iii)** section 5861 of Title 26 (relating to firearms offenses);

**(F)** a crime of violence (as defined in section 16 of Title 18, but not including a purely political offense) for which the term of imprisonment at [FN4] least one year;

**(G)** a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at [FN4] least one year;

**(H)** an offense described in section 875, 876, 877, or 1202 of Title 18 (relating to the demand for or receipt of ransom);

**(I)** an offense described in section 2251, 2251A, or 2252 of Title 18 (relating to child pornography);

**(J)** an offense described in section 1962 of Title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

**(K)** an offense that--

**(i)** relates to the owning, controlling, managing, or supervising of a prostitution business;

**(ii)** is described in section 2421, 2422, or 2423 of Title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

**(iii)** is described in any of sections 1581-1585 or 1588-1591 of Title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

**(L)** an offense described in--

**(i)** section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of Title 18;

**(ii)** section 421 of Title 50 (relating to protecting the identity of undercover intelligence agents); or

**(iii)** section 421 of Title 50 (relating to protecting the identity of undercover agents);

**(M)** an offense that--

**(i)** involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000; or

**(ii)** is described in section 7201 of Title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds \$10,000;

**(N)** an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter [FN5]

**(O)** an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

**(P)** an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of Title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

**(Q)** an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

**(R)** an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

**(S)** an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

**(T)** an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

**(U)** an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conviction was entered before, on, or after September 30, 1996.

**(44)(A)** The term “managerial capacity” means an assignment within an organization in which the employee primarily--

**(i)** manages the organization, or a department, subdivision, function, or component of the organization;

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TITLE 18. CRIMES AND CRIMINAL PROCEDURE  
PART I. CRIMES  
CHAPTER 1. GENERAL PROVISIONS

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*18 USCS § 16*

§ 16. Crime of violence defined

The term "crime of violence" means--

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

Federal Case Law:

*United States v. Garcia-Santana*, 743 F.3d 666, 674-75 (9th Cir. 2014):

The agreement of a majority of states, the federal general conspiracy statute, the MPC, and scholarly commentary reflects the importance of an overt-act requirement to contemporary criminal jurisprudence. . . .

The move toward requiring proof of an overt act was but one manifestation of a larger shift in legal thought concerning the general crime of conspiracy, as jurists and scholars began to "view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecutions." *Grunewald v. United States*, 353 U.S. 391, 404, 77 S. Ct. 963, 1 L. Ed. 2d 931 (1957); see also 2 LaFave, *supra*, § 12.1 (describing some common criticisms of conspiracy). A range of concerns informed that jurisprudential disfavor, among them the observation that "the minimum of proof required to establish conspiracy is extremely low," *Krulewitch v. United States*, 336 U.S. 440, 452, 69 S. Ct. 716, 93 L. Ed. 790 (1949) (Jackson, J., concurring), and recognition that the procedural rules attached to conspiracy allegations make convictions easier to obtain than for substantive crimes, *id.* at 452-54. Proof of an overt act is often the only external evidence of a crime "predominantly mental in composition." *Krulewitch*, 336 U.S. at 447-48 (internal quotation marks omitted). For this reason, "[t]he function of the overt act in a conspiracy prosecution is simply to manifest that the conspiracy is at work and is neither a project still resting solely in the minds of the conspirators nor a fully completed operation no longer in existence." *Yates v. United States*, 354 U.S. 298, 334, 77 S. Ct. 1064, 1 L. Ed. 2d 1356 (internal quotation marks and citation omitted), overruled on other grounds by *Burks v. United States*, 437 U.S. 1, 98 S. Ct. 2141, 57 L. Ed. 2d 1 (1970); see generally Peter Buscemi, Note, *Conspiracy: Statutory Reform Since the Model Penal Code*, 75 Colum. L. Rev. 1122, 1153-59 (1975) (tracking legislative revision of the common law of conspiracy to include an overt-act requirement and outlining the motivations for reform). The contemporary overt act requirement thus developed to guard against the punishment of evil intent alone, and to assure that a criminal agreement actually existed.

As all the indicia we have been instructed to use under *Taylor* and its progeny to determine the elements of the general crime of conspiracy point toward an overt act element, we conclude that such an overt act is an element of the generic definition of conspiracy.

*United States v. Velasquez-Reyes*, 427 F.3d 1227, 1230 (9th Cir. 2005):

The modern generic definition of arson includes a "willful and malicious burning" of property. *Hathaway*, 949 F.2d at 610; see *United States v. Doe*, 136 F.3d 631, 634 (9th Cir. 1998) (describing the common law definition of arson as the "willful and malicious burning of a building").

*Jordison v. Keisler*, 501 F.3d 1134, 1135 (9th Cir. 2007):

18 U.S.C. § 16(b) defines "crime of violence" as an "offense that . . . involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense." The government argues that setting a fire "involves a substantial risk" that other people and their property will be harmed by the "physical force" of the flames.

But an incendiary can violate section 452(c) by "set[-ting] fire" to his own "structure or forest land." California law defines "structure" and "forest land" to include any building and any forest land. Cal. Penal Code § 450(a)-(b). Section 452(c)'s prohibition is not limited to fires that damage the property of others, unlike other California crimes of burning, which do require proof that someone else's property was damaged. n2 Comparing section 452(c) with neighboring sections makes it clear that the state was not required to prove that Jordison set fire to someone else's structure or forest land in order to obtain a conviction.

#### FOOTNOTES

n2 See Cal. Penal Code § 451(d) ("For purposes of this paragraph, arson of property does not include one burning or causing to be burned his or her own personal property unless there is an intent to defraud or there is injury to another person or another person's . . . property."); *id.* § 452(d) ("For purposes of this paragraph, unlawfully causing a fire of property does not include one burning or causing to be burned his own personal property unless there is injury to another person or to another person's . . . property.").

Section 16(b), by contrast, does require such proof: A crime of violence involves risk that physical force may be used against the person or property "of another." Therefore, not every violation of section 452(c) is a "crime of violence" under 18 U.S.C. § 16(b). See *United States v. Grisel*, 488 F.3d 844, 850 (9th Cir. 2007) (*en banc*) ("Where, as here, a state statute explicitly defines a crime more broadly than the generic definition, no 'legal imagination' is required to hold that a realistic probability exists that the state will apply its statute to conduct that falls outside the generic definition of the crime." (quoting *Gonzales v. Duenas-Alvarez*, 127 S. Ct. 815, 822, 166 L. Ed. 2d 683 (2007) (citation omitted))).

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Title 15. Crimes and Punishments.  
Chapter 199. Crimes Against Public Justice.  
Conspiracy

**GO TO NEVADA STATUTES ARCHIVE DIRECTORY**

*Nev. Rev. Stat. Ann. § 199.480 (2014)*

**199.480. Penalties.**

1. Except as otherwise provided in subsection 2, whenever two or more persons conspire to commit murder, robbery, sexual assault, kidnapping in the first or second degree, arson in the first or second degree, involuntary servitude in violation of NRS 200.463 or 200.464, a violation of any provision of NRS 200.465, trafficking in persons in violation of NRS 200.467 or 200.468, sex trafficking in violation of NRS 201.300 or a violation of NRS 205.463, each person is guilty of a category B felony and shall be punished:

(a) If the conspiracy was to commit robbery, sexual assault, kidnapping in the first or second degree, arson in the first or second degree, involuntary servitude in violation of NRS 200.463 or 200.464, a violation of any provision of NRS 200.465, trafficking in persons in violation of NRS 200.467 or 200.468, sex trafficking in violation of NRS 201.300 or a violation of NRS 205.463, by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years; or

(b) If the conspiracy was to commit murder, by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years,

and may be further punished by a fine of not more than \$ 5,000.

2. If the conspiracy subjects the conspirators to criminal liability under NRS 207.400, they shall be punished in the manner provided in NRS 207.400.

3. Whenever two or more persons conspire:

(a) To commit any crime other than those set forth in subsections 1 and 2, and no punishment is otherwise prescribed by law;

(b) Falsely and maliciously to procure another to be arrested or proceeded against for a crime;

(c) Falsely to institute or maintain any action or proceeding;

(d) To cheat or defraud another out of any property by unlawful or fraudulent means;

(e) To prevent another from exercising any lawful trade or calling, or from doing any other lawful act, by force, threats or intimidation, or by interfering or threatening to interfere with any tools, implements or property belonging to or used by another, or with the use or employment thereof;

(f) To commit any act injurious to the public health, public morals, trade or commerce, or for the perversion or corruption of public justice or the due administration of the law; or

(g) To accomplish any criminal or unlawful purpose, or to accomplish a purpose, not in itself criminal or unlawful, by criminal or unlawful means,

each person is guilty of a gross misdemeanor.

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Chapter 199. Crimes Against Public Justice.  
Conspiracy

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*Nev. Rev. Stat. Ann. § 199.490 (2014)*

**199.490. Overt act not necessary.**

In any such proceeding for violation of NRS 199.480, it shall not be necessary to prove that any overt act was done in pursuance of such unlawful conspiracy or combination.

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Title 15. Crimes and Punishments.  
Chapter 205. Crimes Against Property.  
Arson

**GO TO NEVADA STATUTES ARCHIVE DIRECTORY**

*Nev. Rev. Stat. Ann. § 205.010 (2014)*

**205.010. First degree.**

A person who willfully and maliciously sets fire to or burns or causes to be burned, or who aids, counsels or procures the burning of any:

1. Dwelling house or other structure or mobile home, whether occupied or vacant; or

2. Personal property which is occupied by one or more persons,

whether the property of the person or of another, is guilty of arson in the first degree which is a category B felony and shall be punished by imprisonment for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$ 15,000.

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Title 15. Crimes and Punishments.  
Chapter 205. Crimes Against Property.  
Arson

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*Nev. Rev. Stat. Ann. § 205.050 (2014)*

**205.050. Ownership of building.**

To constitute arson it shall not be necessary that another person than the  
defendant should have had ownership in the building or structure set on fire.

State Case Law:

*Bolden v. State*, 124 P.3d 191, 194 (Nev. 2005):

*Conspiracy to commit robbery and/or kidnapping*

The State alleged that Bolden and the other defendants met with each other and willfully, unlawfully, and feloniously conspired and agreed to commit robbery and/or kidnapping. Additionally, the State alleged that in furtherance of the conspiracy the defendants in fact committed the crimes of robbery and kidnapping. Nevada law defines a conspiracy as "an agreement between two or more persons for an unlawful purpose." n6 "A person who knowingly does any act to further the object of a conspiracy, or otherwise participates therein, is criminally liable as a conspirator . . . ." n7 "Evidence of a coordinated series of acts furthering the underlying offense is sufficient to infer the existence of an agreement and support a conspiracy conviction." n8 "However, absent an agreement to cooperate in achieving the purpose of a conspiracy, mere knowledge of, acquiescence in, or approval of that purpose does not make one a party to conspiracy." n9

FOOTNOTES

n6 *Doyle v. State*, 112 Nev. 879, 894, 921 P.2d 901, 911 (1996), *overruled on other grounds by Kaczmarek v. State*, 120 Nev. 314, 120 Nev. 314, 91 P.3d 16 (2004).

n7 *Id.*

n8 *Garner v. State*, 116 Nev. 770, 780, 6 P.3d 1013, 1020 (2000), *overruled in part by Sharma v. State*, 118 Nev. 648, 56 P.3d 868 (2002).

n9 *Id.*

## Castle City Freedom Press

### Christmas Fire Suspect: "I've Been Set Up!"



Castle City, Nev. – Suspected arsonist Michael Ringer testified in his own defense yesterday and claimed he is the victim of a plot by his co-defendants, William Firebrand and Debbie Danger, to get vengeance against Mr. Ringer and his ex-wife, Velma Ringer.

According to Mr. Ringer, he has no hard feelings toward his ex-wife, but Mr. Firebrand "hates me and Velma" has previously accused Mr. Ringer and his then-wife of stealing from him and of telling the police that Mr. Firebrand was dealing methamphetamine. "He thinks I took his truck, which I didn't, and

that Velma called the police on him." Mr. Ringer testified that Ms. Danger is Mr. Firebrand's girlfriend and likely helped him set the fire that destroyed Ms. Ringer's residence on December 23.

Mr. Ringer denies any involvement in the fire and says he was home by himself on the evening in question. "I never spend time with Billy [Firebrand] or Debbie [Danger]. Everyone knows they're bad news." The Ringers divorced last year after five years of marriage.

Mr. Firebrand, a Canadian citizen who has been living in Castle City for seven years, testified against Mr. Ringer earlier this week. He said that he and Ms. Danger were drinking with Mr. Ringer when Mr. Ringer started "going off" about his ex-wife and became belligerent. "He wanted to teach her a lesson," Mr. Firebrand testified. He says Mr. Ringer concocted the plan to make Molotov cocktails and throw them at Ms. Ringer's home. When the first Molotov cocktail did not break the window, Mr. Firebrand said that Mr. Ringer started breaking windows and tossing lit Molotov cocktails inside.

The arson shocked the community. "The flames were shooting out everywhere!" according to a neighbor, Nice Lady. "I'd never seen anything like it," Officer Jared Bloodhound said about the burnt residence. "It was just a shell. You could barely tell it used to be a house."

Police soon found a lead, though. Mr. Firebrand's identification card was located near the home and, when police questioned him, Mr. Firebrand agreed to help the investigation. "He confessed immediately," said Detective Lawrence J. Driver, "and told us they were all drunk and Mikey Ringer had convinced him and Debbie Danger to help burn down his ex-wife's house." Mr. Firebrand gave the police details about the fire, including how they made the Molotov cocktails from the empty beer bottles and a variety of flammable liquids.

"I'm sorry I went along with it," Mr. Firebrand says. "It was a bad idea and I should have told Mikey [Mr. Ringer] to calm down." As part of his cooperation with the prosecution, Mr. Firebrand has been allowed to plead guilty to conspiracy. Police are still looking for Ms. Danger, who was last seen on Christmas Day.

Castle City Police Department

CONTINUATION REPORT

ID/Event Number: 122497-54897

Date Written: 12/26/97

Written by: Detective Lawrence J. Driver

Officer Jared Bloodhound and I responded to a report of a fire at 334 E. Widmore Lane. The firefighters had not contained the fire. Officer Bloodhound interviewed Valma Ringer, the owner of the residence, while she received medical care from EMTs at the scene. She said that she had been getting ready for bed when she heard a bang. At first she was not concerned because she said it sounded like an old car backfiring. She then heard the sound of glass breaking and was scared. She hid in her kitchen and called 911. She could hear people yelling outside but did not recognize any voices. She kept hearing glass break and could tell that her house was on fire. She crawled to door that leads from the kitchen to the backyard and managed to escape the house. She did not remember seeing anyone. Ms. Ringer appeared intoxicated and hospital records later confirmed that she had methamphetamine in her system as well as BAC of .15.

Officer Bloodhound and I returned to the residence the next day. The house was completely charred and was not safe to enter. I searched the perimeter and found several pieces of broken beer bottles. In the southeast corner of the lot, about 20 feet from the house, I located an identification card with the name William Firebrand. The card did not look weathered and appeared to have been dropped recently. I called Velma Ringer, who said that she did not think William Firebrand had been to her home since before she divorced Mike Ringer, at least a year ago.

Officer Bloodhound and I went to William Firebrand's residence on December 25. Officer Bloodhound advised Firebrand of his rights and Firebrand agreed to speak with us. He admitted it was his identification card and said he must have dropped it. We told him we had found it at Velma Ringer's house and that her house had been set on fire. I asked if he knew anything about it. Firebrand said Mikey Ringer set the fire. I asked him how he knew that and he said Mikey had been at Firebrand's house drinking that night. Firebrand said Mikey was a drinking buddy and they had been drinking since about 2 in the afternoon. Firebrand said Mikey started getting angry about his life and complained that he didn't have any money since his ex-wife got everything. Firebrand said Mikey was ranting about the divorce and said Velma had cheated on him, but she still got the house and he had to pay her every month when he was barely making ends meet. Firebrand said his girlfriend, Debbie Danger, was there too and they both were afraid of Ringer. Firebrand said that he (Ringer) suddenly got very serious and said they needed to make Velma pay for what she did and to take back the property. Firebrand didn't think Ringer would go through with it, but then he started talking about setting the place on fire and then said he could really show her (Velma) by throwing Molotov cocktails at her. Firebrand said Ringer said he knew how to make Molotov cocktails because he is a mechanic. Firebrand said Ringer started collecting old beer bottles and running around looking for lighter fluid and gasoline. Firebrand said Ringer made him help, that Ringer told him he was either with him or against him. Firebrand said he and Danger were scared because they knew Ringer owned a gun.

Firebrand said he drove Ringer and Danger to Velma Ringer's house and Ringer lit a Molotov cocktail and threw it at a window, but it didn't break. Ringer then told Firebrand to start breaking windows. Firebrand took a tire iron from the car and started breaking windows. Ringer would follow him, throwing Molotov cocktails inside the home. Firebrand said Danger stayed in the car because she was afraid. Firebrand initially denied throwing any Molotov cocktails, but then admitted he "might have thrown a few." Firebrand said he was drunk and at first he didn't think Ringer was going to go through with it. Firebrand said he didn't like Velma and she was "a nasty piece of work" and a "meth head," but he felt bad about the house. After they threw all the Molotov cocktails, they took off running toward the car and that is when he must have lost his ID card. The car was parked down the street a little bit so Velma wouldn't see it.

I asked Firebrand if he knew where Mike Ringer was and he said he didn't know. I asked Firebrand if he knew how to reach Debbie Danger. Firebrand said he hadn't seen her since they got back from the fire. He said she was scared and she probably "took off." Firebrand said Debbie had been his girlfriend for a few months and he did not know her very well. Firebrand said that he and Debbie helped make the Molotov cocktails with Ringer.

I took Firebrand into custody without incident and transported him to the Castle City jail.

1 Case No. C-51358  
2 Dept. No. 32  
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4 IN THE 70TH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5 IN AND FOR CASTLE CITY

6 THE STATE OF NEVADA,  
7 Plaintiff,  
8 v.

CRIMINAL COMPLAINT

9 WILLIAM A. FIREBRAND,  
10 DEBBIE DANGER, and  
11 MICHAEL RINGER  
12 Defendants.

\_\_\_\_\_/  
13 STATE OF NEVADA, )  
14 Castle City. ) SS.  
15 )

16 The Defendants above named having committed the crimes of  
17 CONSPIRACY TO COMMIT ARSON (NRS 199.480, 205.010) AND FIRST DEGREE  
18 ARSON (NRS 205.010) in the manner following, to-wit: That the said  
19 Defendants, on or about the 23rd day of December, 1997, at and within  
20 Castle City, State of Nevada,

COUNT 1 - CONSPIRACY TO COMMIT ARSON

21 Defendants did meet with each other and between themselves,  
22 and each of them with the other, willfully and unlawfully conspire  
23 and agree to commit a crime, to-wit: first degree arson, and in  
24 furtherance of said conspiracy, Defendants did commit the acts as  
25 set forth in Count 2, said acts being incorporated by this reference  
26 as though fully set forth herein.

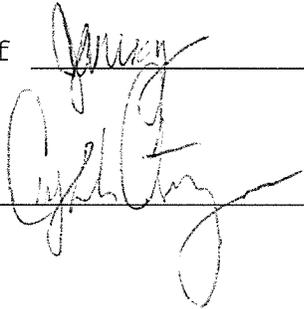
COUNT 2 - FIRST DEGREE ARSON

27 Defendants did willfully and maliciously set fire to the home

1 of Velma Ringer, located at 334 E. Widmore Lane, by throwing Molotov  
2 cocktails at the residence, by breaking the windows, and causing  
3 the home to burn.

4 All of which is contrary to the form of the Statutes in such  
5 cases made and provided and against the peace and dignity of the  
6 State of Nevada. Said Complainant makes this declaration subject  
7 to the penalty of perjury.

8 DATED this 10th day of January, 1998.

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1 Case No.  
2 Dept. No.

C-51358  
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4 IN THE 70TH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
5 IN AND FOR CASTLE CITY

6 THE STATE OF NEVADA,  
7 Plaintiff,  
8 v.

Amended 3-12-98  
CRIMINAL COMPLAINT

9 WILLIAM A. FIREBRAND,  
10 DEBBIE DANGER, and  
11 MICHAEL RINGER  
12 Defendants.

13 \_\_\_\_\_ /  
14 STATE OF NEVADA, )  
15 ) SS.  
16 Castle City. )

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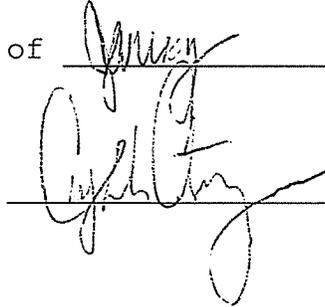
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1 Case No. C-51358

2 Dept. No. \_\_\_\_\_

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6 IN THE 70TH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR CASTLE CITY

8 THE STATE OF NEVADA  
9 Plaintiff,

10 v.

MEMORANDUM OF PLEA NEGOTIATION

11 WILLIAM A. FIREBRAND,  
12 Defendant.  
13 \_\_\_\_\_/

14 I, WILLIAM A. FIREBRAND, state that the following is a true and correct account of the Plea  
15 Negotiation Agreement between myself, Mary Defender, Deputy Nevada State Public Defender, and  
16 Perry Prosecutor, Deputy District Attorney of Castle City.

17 I, WILLIAM A. FIREBRAND, agree to plead guilty to Conspiracy to Commit First Degree  
18 Arson, a Felony in violation of NRS 199.480 and 205.010. I realize that this offense is punishable by  
19 imprisonment in the Nevada State Prison for not less than one (1) year nor more than six (6) years, or a  
20 fine of not more than \$5,000, or by both fine and imprisonment.

21 In consideration thereof, the District Attorney agrees not to file nor pursue any other criminal  
22 charges arising out of this incident. The District Attorney further agrees to concur with the  
23 recommendation of the Department of Parole and Probation at the time of sentencing.

24 The elements of the crime to which I am pleading and that the District Attorney must prove  
25 beyond a reasonable doubt are:

- 26 1. That on or about December 23, 1997, I conspired with Debbie Danger and Michael  
27 Ringer
- 28 2. To commit the crime of first degree arson, to willfully and maliciously set fire to a  
29 dwelling house or other structure or mobile home.

1 It has been explained to me and I fully understand that this agreement in no way binds the Judge  
2 or the Department of Parole and Probation and the matter has not been discussed with them. The  
3 Department of Parole and Probation may conduct an independent investigation and make its  
4 recommendation to the Court. I understand that the matter of sentencing is solely within the discretion of  
5 the Judge.

6 I, WILLIAM A. FIREBRAND, further understand that I am waiving certain rights by entering  
7 into this agreement which include:

- 8 1. The right to a speedy trial by jury.
- 9 2. The right to confront witnesses against me.
- 10 3. My Fifth Amendment right against self-incrimination.
- 11 4. The right to call witnesses on my behalf.
- 12 5. The right to appeal certain defects that may exist in my case to this point.

13 The Public Defender's Office has assured me that if I wish to go to trial, I have the constitutional  
14 right to do so and that I will be represented to the best of that office's ability.

15 I have read this statement and have given it of my own free will without threat or promise on the  
16 part of anyone other than expressed herein.

17 DATED this 4th day of April, 1998.

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\_\_\_\_\_  
WILLIAM A. FIREBRAND

22 D.A. LAW  
23 District Attorney

B.B. DEFENSE  
Nevada State Public Defender

24  
25 By:   
\_\_\_\_\_  
PERRY PROSECUTOR  
26 Deputy  
27

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25 By:   
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MARY DEFENDER  
26 Deputy  
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In The 70th Judicial District Court of the State of Nevada

In and for Castle City

THE STATE OF NEVADA,  
  
Plaintiff,  
  
vs.  
  
William A. Firebrand  
  
Defendant.

JUDGMENT OF CONVICTION

On the 15th day of April, 1998, the Defendant above-named appeared before the Court with his counsel, Mary Defender, and entered a plea of guilty to the crime of conspiracy to commit first degree arson, a felony

committed on the 23rd day of Dec., 1997 in violation of NRS 199.480 205.010

On the 30th day of Aug, 1998, the Defendant above-named appeared before the Court for sentencing with his counsel, Mary Defender, and the State was represented by Perry Prosecutor. No sufficient legal cause was shown by the Defendant as to why judgment should not be pronounced against him. The Court adjudged the Defendant guilty to the crime of conspiracy to commit first degree arson, a felony

The Court then sentenced the Defendant to imprisonment in the Nevada State Prison for three (3) years.

The Defendant was given credit for 243 days pre-sentence confinement time.

DATED this 30th day of August, 1998.

Judge Judy Justice  
DISTRICT JUDGE

