

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND :
 :
 v. : Crim. Nos.
 00CR0270/1/2/3 :
 :
 STEPHEN KELLY :
 ELIZABETH WALZ :
 PHILIP BERRIGAN : (consolidated for same
 SUSAN CRANE : trial date)
 :
 Defendants. :

DEFENDANTS' AMENDMENT TO MOTION TO DISMISS THE CHARGING DOCUMENT

COME NOW all Defendants, by and through undersigned counsel, Jonathan L. Katz, and the law firm of Marks & Katz, LLC, and hereby add the following arguments to Defendants' respective Motions to Dismiss the Charging Document. This Amendment supplements, but does not supersede, Defendants' Motions to Dismiss the Charging Document.

Specifically, this Amendment argues that Count I (sabotage) and Count VI (assault as to Defendant Crane) of the Indictment should be dismissed for failing to be supported by sufficient evidence.

I. INTRODUCTION

In the District Court Statement of Probable Cause for this case, the reporting officer alleges that, among other things, co-Defendants Susan Crane, Stephen Kelly, and Philip Berrigan were hammering on two A-10 warplanes at the Air National Guard

facility in Baltimore County on December 19, 1999. The reporting officer further alleges that Defendant Elizabeth Walz threw blood on one of the A-10 warplanes.

The Statement of Probable Cause further alleges that the co-Defendants made statements including the following at the scene: "We were hammering weapons into plowshares" and "Spilling our own blood so that the blood of others will be spared."

In other words, even viewing the facts in the light most favorable to the State, the co-Defendants were engaging in action that included non-violent symbolic expression. The co-Defendants are expected to testify at the hearing on this Motion that their protest was against the government's use of radioactive depleted uranium, which was fired in massive quantities by A-10 warplanes during the 1991 Persian Gulf War. The Defendants did not expect, by their action, to be able to prevent the A-10 warplanes from being operable. Instead, the Defendants were symbolically and non-violently expressing their opposition to the use of depleted uranium -- which is fired by the A-10 warplanes to pierce armor -- through such religiously symbolic actions as using their hammers to beat swords (the A-10 warplanes) into plowshares, see Isaiah 2:4; the use of blood in relation to the blood of Jesus; and hanging a large rosary from one of the planes.

II. ARGUMENT

A. The Evidence is Insufficient to Sustain a Sabotage Conviction

For the following reasons, the evidence is insufficient to sustain a conviction under Indictment Count I, which alleges sabotage under Md. Ann. Code art. 27, § 536 (the "sabotage statute"). Section 536 provides for prosecution of whoever "[1] intentionally destroys, impairs, injures, interferes or tampers with real or personal property [2] with reasonable grounds to believe that such act will hinder, delay or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, or by any country with which the United States shall maintain friendly relations.

The sabotage statute was enacted in 1941 -- the year the United States entered World War II -- to cover wartime, and not to cover periods of peace that exist now or at any other time. See Md. Ann. Code § 576P (1947 Cum. Supp.) (attached hereto) (providing that the sabotage statute "shall be in force until May 15, 1945, and thereafter whenever the United States is at war"). The parts of the sabotage statute that are relevant to the current prosecution have undergone no significant change. Compare Md. Ann. Code § 576C (1947 Cum. Supp.), Md. Ann. Code § 612 (1951), and Md. Ann. Code § 536 (1996) (all attached hereto).

Based on the foregoing discussion, sabotage cannot have taken place where, as here (1) the United States was not at war at the time of the incident on December 19, 1999, (2) the co-Defendants' actions did not alter the performance ability of the A-10 warplanes, (3) the co-Defendants did not have reasonable grounds to believe that their acts act would hinder, delay or interfere with the preparation of the United States for defense or for war, and (4) the co-Defendants acted out of compassion for all human beings, and with no intention or ability to cause anybody harm.

B. The State Improperly Overreached by Obtaining a Sabotage Indictment

For the forgoing reasons, the State has improperly overreached by obtaining a sabotage indictment, the State should not be permitted to move forward on this Count, and the State should not be permitted to require the co-Defendants to spend the time, expense and apprehension of defending against sabotage. By charging sabotage, the State has over-strained to charge a felony, even though (a) sabotage was never alleged in the District Court statement of charges and (b) the sabotage statute has been applied so rarely that a search of Maryland's published appellate opinions revealed not one appeal involving a conviction under the sabotage statute.

C. The Evidence is Insufficient to Sustain an Assault Conviction

Defendant Susan Crane has been improperly charged with assault, under Count VI. The District Court Statement of Probable Cause reports that complaining witness Thomas Piddington alleged that, at the scene, Defendant Susan Crane raised her right hand that held her hammer used on the A-10 warplane, and "appeared" she was going to strike him. The Statement of Probable cause fails to allege that Defendant Crane **intended** to strike witness Piddington, and she did not. As described above, Defendant Crane's sole purpose with her hammer was to non-violently protest against the military's use of radioactive depleted uranium.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Defendants respectfully move to dismiss Count I (sabotage), Count IV (conspiracy to commit sabotage), and Count VI (assault).

Respectfully submitted

MARKS & KATZ, L.L.C.

Jonathan L. Katz
1400 Spring St., Suite 410
Silver Spring, MD 20910
(301) 495-4300

Attorneys for Defendant

REQUEST FOR A HEARING

Defendant respectfully requests a hearing on this Motion.

Jonathan L. Katz

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Amendment to Motion to Dismiss was served by first-class mail, postage prepaid, on March 1, 2000, to:

Mickey Norman, Esquire
State's Attorney's Office
401 Bosley Avenue
Towson, MD 21204

cc: Honorable James Smith
Circuit Court
401 Bosley Avenue
Towson, MD 21204

Jonathan L. Katz