



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
219 S. DEARBORN STREET
CHICAGO, ILLINOIS 60604

312-435-5840

THOMAS_DURKIN@ILND.USCOURTS.GOV

CHAMBERS OF
THOMAS M. DURKIN
JUDGE

May 25, 2022

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC, 20002-8002

Re: *Ambiguity in United States Sentencing Guideline 2A2.4(b)(1)(B)*

Dear Honorable Commissioners:

In a sentencing I recently presided over, the parties faced some difficulty determining the appropriate application of U.S.S.G. Sec. 2A2.4(b)(1)(B). As you well know, Section 2A2.4(b)(1) provides for a three-level enhancement where (A) the offense involved physical contact; or (B) a dangerous weapon was possessed and its use was threatened.

The defendant in the relevant case, *United States v. Rea*, 20 CR 316, was convicted of attempting to disrupt, impede, and interfere with a law enforcement officer in violation of 18 U.S.C. 231(a)(3). Specifically, Mr. Rea threw a lit commercial firework toward a group of police officers during a protest, resulting in several serious injuries, including one officer having permanent hearing loss.

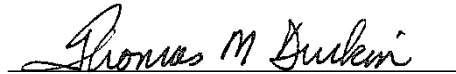
In their sentencing memoranda, the Government and defense agreed that Section 2A2.4(b)(1)(B) was inapplicable because Mr. Rea did not *threaten* the use of a dangerous weapon—he actually used it. The time from picking it up off the ground (it fell out of someone else’s backpack), lighting it, and throwing it was brief. Probation posited that the enhancement was applicable because by nature of throwing the firework, Mr. Rea necessarily threatened the use of it.

Ultimately, I agreed with the parties, based in large part on their argument that if the Sentencing Commission intended the enhancement to apply to the actual use of the dangerous weapon, the provision would have been written as such. However, we all agreed that there was some ambiguity as to the application of the enhancement to the facts of Mr. Rea’s case, and the caselaw on the issue is sparse.

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The Sentencing Guidelines are a clear and well-thought-out roadmap for judges and lawyers alike to aid in determining the appropriate sentencing range for criminal defendants. The language regarding threatening use of a dangerous weapon in Section 2A2.4(b)(1)(B) is one of the few times the Guidelines present some ambiguity in their application. I write to respectfully suggest that the Sentencing Commission consider this potential confusion among the courts and provide some guidance on the application of Section 2A2.4(b)(1)(B) where a defendant possesses and uses a dangerous weapon, as opposed to or in conjunction with threatening its use, in carrying out his or her offense.

Very Truly Yours,

A handwritten signature in cursive script, reading "Thomas M. Durkin", is written over a horizontal line.

Honorable Thomas M. Durkin
United States District Court