

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
v.)
)
GARY EYE and)
STEVEN SANDSTROM,)
)
 Defendants.)

Case No. 05-00344-01/02-CR-W-ODS

ORDER OVERRULING DEFENDANTS' OBJECTIONS, ADOPTING THE
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION, AND DENYING
DEFENDANTS' MOTION TO DISMISS COUNTS VII AND VIII

On August 14, 2006, the Honorable Robert E. Larsen, United States Magistrate Judge for the Western District of Missouri, issued two separate Report and Recommendations ("the Reports") recommending the Court deny Defendants' Motions to Dismiss Counts Seven and Eight. Defendants have filed timely objections, and the Court has reviewed the Reports and the parties' submissions on the matter; having done so, the Court adopts the Report as the Order of the Court and denies Defendants' Motions to Dismiss.

The Reports are comprehensive and well-written, and little needs to be added to their discussion of the issues. Count VII charges Defendants with violating 18 U.S.C. § 1519 by knowingly destroying a motor vehicle with the intent of impeding, obstructing or influencing a criminal investigation. Defendants' contention that the statute applies only to documents is belied by the statute's language, which applies to anyone who destroys "any record, document, or *tangible object*" (emphasis supplied). If Congress intended to limit the statute's application to records and documents, there would have been no reason for Congress to include a reference to "tangible objects." The phrase "tangible objects" is not vague and clearly refers to items other than records and documents.

Defendants find significance in the statute's title: "Destruction, alteration, or falsification of records in Federal investigations and bankruptcy." The title of a statute is ordinarily not relevant in determining the meaning of a statute. "[T]he title of a statute is of use only when it sheds light on some ambiguous word or phrase in the statute itself." Carter v. United States, 530 U.S. 255, 267 (2000) (quotations and citations omitted). The statute contains no ambiguous language, and the title cannot create an ambiguity where none otherwise exists.

Defendants also attempt to support their narrow interpretation of section 1519 by contending it is located amidst other "white collar crimes." To the extent that other "nearby" statutes are relevant to determining the reach of what is otherwise a clearly-worded statute, the Court observes section 1519 is located in Chapter 73 of Title 18, which addresses "Obstruction of Justice." Certainly, a statute criminalizing the destruction of tangible objects with the intent to thwart an investigation fails within this ambit.

Defendants' final statutory argument is based on the Sentencing Guidelines. Without addressing whether these arguments accurately apply the Guidelines, the Court simply observes the Sentencing Commission cannot create ambiguity in a statute where Congress has spoken clearly.

Defendants next raise constitutional issues. They first argue the statute is unconstitutionally vague. The Court disagrees; there is nothing vague about the statute's language. Next, Defendants contend the statute is beyond Congress' power because it relates to purely intrastate conduct. This analysis presupposes section 1519 was passed pursuant to Congress' power under the Commerce Clause, and does not address Congress' power under the Necessary and Proper Clause to criminalize conduct that impacts federal law enforcement efforts and the federal judicial process.

Defendants' arguments regarding Count VIII depend on a favorable ruling regarding Count VII. The Court holds a motor vehicle is a "tangible object" within the meaning of section 1519, and the knowing destruction of a motor vehicle with the intent of impeding or obstructing a federal investigation violates the statute. Count VIII

charges Defendants used fire to commit this crime. Count VIII remains a viable charge and will not be dismissed.¹

Defendants' objections are overruled, the Reports are adopted as the Orders of the Court, and the Motions to Dismiss Counts VII and VIII are denied.

IT IS SO ORDERED.

DATE: September 18, 2006

/s/ Ortrie D. Smith _____
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT

¹ Defendants also contend Judge Larsen erred in failing to conduct a hearing on his motion. The Court disagrees. A hearing is necessary when factual findings are necessary. Absent a need for factual findings, there is no need to develop a factual record. Defendants' motions do not depend on the resolution of factual matters; it requires resolution of purely legal matters.