

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:09-CR-216-2-FL

UNITED STATES OF AMERICA

v.

HYSEN SHERIFI,

Defendant.

**Motion for Variance and
Sentencing Memorandum**

Defendant Hysen Sherifi, through counsel, moves the Court, pursuant to 18 U.S.C. § 3553(a) and the United States Sentencing Guidelines (USSG), to impose a sentence herein below the recommended range calculated by the advisory Guidelines, of less than life imprisonment on Counts Two and Eleven of the Second Superseding Indictment. In support of this request, defendant submits the following sentencing memorandum.

Statement of the Case

Defendant and seven others were named in an Indictment in the Eastern District of North Carolina on July 22, 2009, with several offenses: (Counts:) (1) conspiracy to provide material support to terrorists; (2) conspiracy to commit murder, kidnaping and maiming persons in a foreign country; (4) possession of a firearm in furtherance of a crime of violence; and (8) possession of a firearm in furtherance of a crime of violence. On September 24, 2009, the Government obtained a Superseding Indictment, and added the following charge against Mr. Sherifi: (Counts:) (11) conspiracy to kill federal officers or employees.

On November 24, 2010, the Government sought and obtained a Second Superseding Indictment, which added Counts Twelve and Thirteen to the Superseding Indictment. Counts

Twelve and Thirteen are alleged against co-defendant Anes Subasic only, and charge Mr. Subasic with: (12) making a false statement as part of his naturalization application; and (13) making a separate false statement as part of his naturalization application and previous immigration documents. Both additional counts are alleged to be violations of 18 U.S.C. § 1425(a). (The Second Superseding Indictment also alleges that Mr. Subasic has an alias of “Mladen Subasic”.)

On February 9, 2011, Daniel Boyd entered a negotiated guilty plea to counts 1 and 2, above. Similarly, Dylan Boyd and Zakariya Boyd later entered guilty pleas, and have been sentenced by this Court, following their testimony given at the trial herein. Daniel Boyd’s sentencing remains open pending further proceedings.

Statement of Pertinent Facts

Jury trial in this case took approximately four weeks, and involved the testimony of a number of witnesses, both law enforcement, co-defendants, experts and lay witnesses. The jury returned a verdict against Mr. Sherifi of guilty on all counts against him.

The Presentence Investigation Report calculates recommended sentences under the advisory Guidelines, to include: 180 months on Count One; life imprisonment on Counts Two and Eleven, each; 60 months on Count Four (consecutive to any other sentence); and 300 months on Count Eight (also consecutive to any other sentence). The net result is a recommended sentence of life imprisonment plus thirty years.

Discussion of 18 U.S.C. § 3553(a) Factors

Counsel is well aware of the Court’s familiarity with the applicable sentencing factors set forth in 18 U.S.C. § 3553(a); suffice it to say that Mr. Sherifi suggests that a sentence of less than life imprisonment on Counts Two and Eleven – given the mandatory consecutive sentences that must

thereafter follow – would be a sentence that is “sufficient, but not greater than necessary” to achieve the goals of 18 U.S.C. § 3553(a).

Applicability to Mr. Sherifi

A. Nature of the Offense

The case against the defendant concerns three conspiracies and two gun possessions in furtherance of one of the conspiracies; in short, while the indictment involves deadly serious allegations of terrorism, the evidence in support of the convictions had more to do with *discussions* of terrorism than with terroristic *acts*.

At its core, the evidence in support of Counts One, Four and Eight involved testimony from witnesses indicating that Mr. Sherifi undertook “training” in the form of shooting someone else’s guns in a rural field and rudimentary tactical maneuvers, in an effort to provide himself to an unknown and unidentified terrorist movement or organization (i.e., provision of “personnel” as a form of providing material support). In addition, Mr. Sherifi obtained money (\$ 15,000) which the jury found was involved in the provision of support to terrorists, although it was seized from Mr. Sherifi upon his arrest.

Mr. Sherifi also circulated various emails and online chats containing documents, books, photographs and video clips which ran the gamut from innocuous political rhetoric to biographies of known terrorists to propaganda used by terror groups in their recruiting efforts. The majority of this electronic commerce, however, appears to have occurred between Mr. Sherifi and the three Government informants, rather than between Mr. Sherifi and third persons or co-defendants. Nevertheless, it was evidence of Mr. Sherifi’s interest in the topics depicted or described in the emails. Such evidence, though considered by the jury in the case as a whole, obviously also

supported its verdict as to Count Two, a conspiracy to harm persons overseas. The lion's share of the electronic media referenced overseas locations, groups, wars and Islamist movements, although it also discussed American and Western influences, military actions and politics. Mr. Sherifi's travel to and from Kosovo, his native country, was also offered by the Government to show his intention to travel overseas, presumably to fulfill the conspiratorial aims, although those aims were not given any specificity by the witnesses at trial. As counsel attempted to highlight at trial, none of the witnesses who testified were able to point to any kind of specific, concrete purpose or goal of the conspiracy – and, although no such specific goal is required by the statute charging the offense, it begs the question whether a true conspiracy could exist if no one really knew what the plan was.

Finally, the evidence provided at trial as to Count Eleven regarding an attack on MCB Quantico was provided by three witnesses: Abdullah Eddarkoui (the Government informant known as “Jawbreaker”), Daniel Boyd, and Dylan Boyd. Eddarkoui testified that Daniel Boyd elaborated a plan of attack on Quantico during a recorded conversation (played at trial), in which he blithely included Mr. Sherifi as a possible participant and one that he had already consulted regarding such an attack. Daniel Boyd, however, contradicted Mr. Eddarkoui and stated that there was no plan to attack Quantico, and that the recorded speech by Boyd was mere braggadocio, and Sherifi had no part in it. Dylan Boyd testified that he observed Sherifi talking with Boyd and Eddarkoui on the day of the recorded conversation, but was not able to determine the actual content of the conversation. Daniel Boyd, on his own and without Sherifi's knowledge, then obtained aerial maps of Quantico having already visited the base and driven in the residential/housing area open to the public. Mr. Sherifi has never been to MCB Quantico, and, other than having delivered blood plasma aboard Fort Bragg on one occasion, has not been aboard any U.S. military installation.

None of the counts of conviction involve any form of actual, physical or mental harm to any other person.

B. History and Characteristics of the Defendant. The Court has had the benefit of hearing Mr. Sherifi's testimony at trial, which focused, in limited fashion, on his own background and upbringing in Kosovo and the United States. The undersigned has also provided the Court with scores of character letters in support of the defendant, further describing his good character, good deeds, and honorable intentions. Some of those letters were from Mr. Sherifi's immediate family, who have given the Court an overview of his biography, including the following notable points: (1) defendant was raised in conditions of political upheaval and oppression by what was perceived of as an invading force of Serbian military personnel; (2) defendant's family underwent several economic devastations, such that Mr. Sherifi, at age 7 or 8, took to selling cigarettes on the streets in Kosovo in order to earn money to contribute to his family; (3) when the Kosovan war erupted, the family fled to a refugee camp in a neighboring country, where Mr. Sherifi, who was the only family member who spoke English, took to teaching other refugees what English he knew; (4) upon settling in the Raleigh area, Mr. Sherifi continued to teach English to his family, to help them acclimate and find employment; (5) Mr. Sherifi acted as a surrogate parent to his younger siblings, watching over them every night as his parents furthered their English education; (6) Mr. Sherifi obtained a job at age 15, again to help out the newly-relocated family, and continued his employment thereafter on a regular basis, at times holding down two or three jobs to fill his time; and (7) Mr. Sherifi, when on a trip to Kosovo as part of his own renewed interest in his Islamic and Kosovan heritage, became engaged, and married, to Ikmete Sherifi. Defendant's daughter, Sumeja, was born some three months after his arrest in this case, and, as noted at trial, Mr. Sherifi, now 27 years old, is a loving

father to a child he has never held in his own arms.

Early in his representation of Mr. Sherifi, undersigned counsel obtained a copy of an autobiography that Mr. Sherifi wrote as part of a Sociology class he was taking at Wake Tech Community College. That autobiography is attached hereto as Exhibit A, and is the best sketch of Mr. Sherifi's life, as it is given in his own words.

Mr. Sherifi's only prior convictions of any kind are for traffic offenses.

As the Court may recall from trial testimony or prior filings, Mr. Sherifi has not yet become a naturalized citizen of the United States, although every other member of his immediate family did. Mr. Sherifi was scheduled to undergo a final interview with the Charlotte field office of USCIS, with an eye toward obtaining his citizenship, but the interview was scheduled for several days after he was planning to fly back to Kosovo (using a ticket purchased by the FBI, through its informant, Eddarkoui). He never fulfilled that interview, and now faces removal as a consequence of these convictions. Part of the reason Mr. Sherifi never placed great urgency on obtaining his citizenship was that, following a period after he graduated high school, he began to yearn to return to Kosovo and an Islamic community where he was more accepted and comfortable than in the United States. Toward that end, he traveled to Kosovo in 2007-2008, staying more than six months. After the period in which he became acquainted with the Boyds and the co-defendants herein, he made the decision to return to Kosovo to pursue a life there. (The Government's witnesses characterized his return as a kind of "mission" to go overseas to pursue violent *jihad*.) He stayed in Kosovo from August 2008 until April 2009, when he returned at the urging of Eddarkoui, and on a ticket purchased by Eddarkoui, and he thereafter was steeped in the Daniel Boyd "corrupt ideology" described at trial. None of Mr. Sherifi's travel, however, was illegal in and of itself: he broke no

immigration laws in either country, and did not use any kind of deceit in obtaining and using his travel documents and tickets. (He also used no similar deceit in putting much of the the \$ 15,000 donation in the bank under his own name.) Despite some talk of “covert operations” at trial by Eddarkoui and the Boyds, Mr. Sherifi did not engage in any such behavior either while traveling or while living in Kosovo.

C. Sentencing Purposes, Available Sentences, and Advisory Guidelines. The statutory maximum sentences for each numbered count are: (1) 15 years (180 months); (2) life; (4) 5 years (consecutive)(60 months); (8) 25 years (consecutive)(300 months); and (11) life. The Guidelines calculation in the PSR recommends the very same thing: life, plus 30 years.

There are no statutory minimum sentences in this case, other than those consecutive sentences required for Counts Four and Eight. Theoretically, the Court could impose a one-year sentence on Mr. Sherifi for Counts One, Two and Eleven, and he would still have to serve 31 years in prison. Again, he is 27 years old now, so the lowest possible sentence available to the Court would put Mr. Sherifi in prison for a period longer than he has been alive. For every year that is added to that minimum, the more the sentence approaches a *de facto* life sentence, and, given the nature of long-term imprisonment, the more a life sentence approaches a *de facto* death sentence.

Would a life sentence – consigning defendant to die in prison – serve the purposes of sentencing in this American court? Certainly it would be held out as an example of a sentence that achieves punishment, incapacitation, and deterrence of others, but such a sentence could be handed out with little thought by a third-world court on charges much less headline-grabbing than these. It is the discretion given to this Court that elevates it, and our criminal justice system as a whole, above tribal vengeance or, frankly, Islamist extremism. That discretion allows for a sentence of less than

life imprisonment. The Court is not required to impose draconian prison terms in order to promote respect for the law or to address the seriousness of the offense; it is the quality of mercy and the need for pragmatic sentences that both, perhaps quietly, suggest that a term of imprisonment that allows defendant the hope of release one day that would achieve further sentencing aims – those of rehabilitation, education and treatment, and lasting respect for the law as applied to persons who are subject to it. Without such hope, Mr. Sherifi would have no motivation to eschew radical Islamist beliefs, or to repent for any wrongs he has committed, or to equip himself to become a better man, one who does not lightly engage in conversation about terror, explosives, guns, or fighting the way a foolish young man does, and did.

Conclusion

For the foregoing reasons, and upon the foregoing authorities, defendant Hysen Sherifi prays the Court impose a sentence in this matter consistent with 18 U.S.C. 3553, of a term of less than life imprisonment on Counts Two and Eleven, and an overall sentence of less than life imprisonment, as a sentence that is sufficient, but not greater than necessary, to serve the purposes of criminal sentencing.

This the 10th day of January, 2012.

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT THE UNDERSIGNED HAS PERSONALLY SERVED A COPY OF THE FOREGOING DOCUMENT, WITH ATTACHMENTS UNLESS OTHERWISE NOTED, ACCORDING TO THE APPLICABLE CIVIL PROCEDURE RULES OF THIS COURT, TO-WIT:

 X CM/ECF (U.S. DISTRICT COURTS; U.S. COURTS OF APPEAL)

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Hysen Sherifi

Mrs.

Soc 210

April 23, 2007

Autobiography

I am Hysen Sherifi, from the city of Gjilan of Kosovo. I was born in august second of year 1984. My name was given to me by my great grandfather, whom my father made a promise that if he had a son he would name him Hysen. Hundred and twenty years ago my great grandparents moved from a small village called Kufca, to the city of Gjilan when the city was just starting to build. Then hundred and twenty years later the city grew and population became larger and then I was born, in 1984. During this time, Kosovo was autonomous country under the rule of Yugoslavia. During this year there were many protests about separating with Yugoslavia and many students were involved. There were riots and also police brutality. People of Kosovo, Albanians developed and underground government, and held their own presidential elections. Because of Yugoslavian oppression and control they were not allowed public election because Kosovo was under Yugoslavian rule and Yugoslavia did not want to give Kosovo independence. At the time when I was born my parents stayed with my grand parents of my dad's side but two years later my parents moved in an apartment. It was a house that we shared with another family who had two girls. During this time my dad was working as an accountant and was able to save enough money to build a new house. We lived in the apartments for about six years. When I turned two my dad had bought a turkey and had left it behind the house where we had a small yard surrounded by a wall. I

was mischievous as a youngster and I could not help but go and tease the animal. It was fun especially the funny noise it would make. "Gable, gable, gable..." every time I threw a rock at the turkey. It was fun for me at the time, something I never heard before. I was only three I did not know much. Being in the lower class, you don't get much better things to do sometimes but chasing turkeys around. But the next day it turned on me started chasing me, out of fear I ran to a bathroom that we had outside in the yard stayed in there while crying for my mother "mama, mama..." until she came to get me. There was a good lesson that I learned, that day at least for that day. My group of friends was usually made of dyads or triads I would gather them and give them an ideology to complete a task for me or we would do it together. After the turkey incident it seems that I did not learn much. My neighbor had some chickens and roosters; he did not want to buy eggs. I had gathered my friends one of them who was my neighbor's son and we started chasing the little chicks trying to catch them. We trying but they outran us. The plan backfired and we had a contra attack. The rooster started chasing us and I don't know why but it started chasing me specifically. Luckily physically I was fast and I outran the rooster, I went across the street on the other side of the neighborhood and into the building where the rooster got stuck. We left it there in confusion, the rooster did not know where to go but we were laughing for a long time. When you are a kid things like these though sinister they make you laugh. When I was five years of age I started playing soccer. I was always outside playing soccer with my friends, all day everyday. My dad had bought me three soccer balls. It was fun I not only had a soccer ball but I had three to choose from and played all day. My dad at the time was coaching a soccer team and at times he would take me with him to watch the games. The tournaments were fun for me

and it was a place of learning, where I would learn how the game is played. At one of the games my dad took the balls that he bought for me and gave them to the players to use them just for the game. During that one game all the three balls were lost and I came home that day with no soccer ball. From that day I did not want to share anything anymore. Even though there were some downs life was good until a Serbian president became the president of Yugoslavia that changed our economic class from relative poverty to almost absolute poverty. My dad had lost his job, we moved back in with the grandparents, lost all my friends had to make new friends. At the age of six and a half around 1992-93 my dad started his own shoe business. My dad employed my aunt as employee and also would work there himself. The business ran for about less than a year and it was shut down. Because of the poverty many people were in the business of selling cigarettes on hand. They would walk around the city and sell them by packages or cartons. My father took this opportunity and started traveling to country of Turkey to buy them cheaper and sell them in Kosovo. I was just turning seven but we had no choice and I became salesman also. I would walk around the city with a backpack full of cigarettes. There was also a spot where a big group of people who sold cigarettes would gather and stay there for couple of hours so people knew where to find them. I had also developed a number of customers that I regularly went to. Selling cigarettes on hand on the street it was illegal of course so we always had to watch out for the police. When they would come especially at the spot we would break up running. I was always fast and I never got caught but some of my friends were not as fast and did not meet the same fate as I did. I remember two of my friends that were caught police put the into a building, made them trample the cigarettes and beat them. We did this business for about 2 years and then my

dad saw another opportunity and the flea market. But during the time that I sold cigarettes I developed a group of friends that I would occasionally sell cigarettes together mostly of older people than myself. With these friends I had picked up smoking at the age of seven, and did not quit till the age of 15. The smoking changed my life in a bad way. I became slower and especially at soccer games. In the new business my father would go to turkey where materials were cheaper and he would buy different kind of materials and sell them in my country at the flea market. The good thing was that the flea market was in front of my door. Flea market in my city is surrounded by a metal fence and is the size of six football fields and it would extend out through the street I was living in and some parts of the city. For our convenience we would set up the kiosk right outside our house in front of the front door. We stayed in the flea market business up until we moved to United States. During 1999 when the war in Kosovo was at its peak before NATO troops came in an incident change the way I thought. I was playing outside near the flea market I don't remember what day but the flea market was empty. It was just bunch of teenagers playing soccer. So I joined them up and we played for about half an hour and in the meantime there were NATO planes hovering over us and bombing Serbian troops and artillery. The younger kids including my brother were playing close to us but not paying attention to us. As we were playing a Serbian soldier (our enemy) was passing by and at the same time there was NATO plane over us bombing. The soldier got angry and pointed his machine gun towards us and told us to run. We did not really see him as we were busy engaging in the soccer game. When he told us to run for the second time we took off like a jet. While we were running I remembered my brother and the other kids so I turned back and they did not see us running at all, they were also busy at their game.

While I was going back the soldier saw me but I did not pay attention to him I was busy getting to my brother and his friends. As soon as we almost got to the houses we heard some shots I don't remember how many but I saw and felt the one shot that hit the ground couple of inches next to my left foot. As if I saw it in slow motion I even remember the dust rising up from the ground where it hit. That day I realized that God saved us from those bullets. From that day we did not go out to play as we learned from that day God will save us but if we keep taking risks then only God knows what could happen. Couple of months after this incident which happened around the middle of June, and before NATO troops came, my parents had an opportunity to go to America. We had to go through a refugee camp and my uncle in America would guarantee for us and we would be able to go to America with his guarantee. My dad really did not want to go but it was my mother who was trying to take charge of the situation. My dad finally showed his authority and decided to us should leave. When my dad decided to go he asked some other people to come with us and one of the people that came with us was the brother of the uncle who was in America. He had very young kids at the time they were three years and two years old. We set out on the road with a bus towards the refugee camps. There were controls everywhere as it still was war but God helped us and we made it. Life in the camp was fun for kids and teenagers there were people I had never met before or that I would have never met before. There were people with all kinds of stories. Some have lost their parents in war; some had lost brothers, sisters, uncles, children and many others. I had a in-group of friends made of five to ten people. I got to share stories with them and learn a lot from them. Many of the people in the refugee camps were from low classes very friendly and always willing to share anything they had. With the friends I made

there we always went outside the camp that was located on a valley surrounded by mountains. The camp was located near a village in the city of Tetovo, Macedonia. We would go to the mountains even though we did not know where we were going we made sure we knew how to come back. We had located a small waterfall and we always went there to shower. The summer there was very hot the waterfall was just perfect. Amongst us was this older guy who was from a village in the city of Pristina, of Kosovo, whose role was the pathfinder. He was not very old only two years older than my generation but he was big and very strong we just called him older. He always found the way to get there and back. As the days were getting hotter we were making more trips to the water falls. The time spend there were just like living in another world. After we separated I never have seen those friends and it has been eight years now. I came to America in August 29 of 1999. This was a major change in my life especially when I got here. When I came to America I could not wait to see the big city, all the big buildings and busy streets I was working on presentation of self to make sure I am ready when I meet other people. I spoke English when I came here to America. Though it was not as good as today the language barrier was very small. Unfortunately I came to a North Carolina which did not have all those things I dreamed about America. After a month I started attending Broughton high school. It was a big school and there were many foreign students there so I did not feel very left out. My physical education teacher happened to be the soccer coach of the varsity team. When we did the physical part of the class and we were playing a game of soccer he saw me play and asked me to join the varsity team. I played with varsity for two days only. I found out that there is a junior varsity so I decided to join it instead of varsity. I joined the junior varsity team because I did not have to try as

hard whereas in varsity I would have to do extra running and other exercise. While I was in Broughton junior varsity team I was the best player of the team. I played for one year then later I was asked again to play for the varsity team but I refused. About three months after starting school in America I had started a job. My first job in America was Mrs. Field's cookies. I worked there for about four months then I had a hernia surgery and after the surgery I did quit working there. I started to also play in a club called castle outside of school where I spend two years playing. While going to Broughton I met a friend who was from Bangladesh and who until today is one of my very good friends. With him I could communicate nonverbally. We understood each other sometimes with just a nod. We were both new to North Carolina. My friend and I felt the same way about this state. It was very slow, nothing to do, almost nobody plays soccer, and it was boring. We decided to explore this states so we can find something to do. He was seventeen I was sixteen at the time when we decided to travel. He sometimes drove his father's car even though he did not have a license. From time to time we would take the car and travel. First we started the city of Raleigh. We would drive and simply get lost and then find our way back. Later when we got licenses we started traveling to other cities like Ashville and Wilmington. By the time I turned eighteen my friend moved back to New York. That's when I went to my secondary group of friends and developed a relationship with a friend from Ukraine. He was a guitar player and I was interested in learning how to play guitar. I soon had bought one guitar and I learned how to play better than him and we started performing for friends and for other people and at a public place for free. This did not last long because I lost interest in it and decided to move on. At the age of eighteen I had graduated from a different school that I started in because my parents bought a house.

And shortly at the age of nineteen I was involved in an internet business of my own and continued it while a year later I had lost money and quit. From that year to year twenty one I was in the dark ages. Just recently in at the age of twenty two I got my life on track I have been attending wake technical college and working for a better future. This concludes parts of my autobiography.

You have had many interesting experiences that have influenced you (You were exposed to a lot of interesting concepts you used in your autobiography)

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