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United States Code Annotated Currentness

Title 18. Crimes and Criminal Procedure (Refs & Annos)

↗ Part I. Crimes (Refs & Annos)

↗ Chapter 113B. Terrorism (Refs & Annos)

→ § 2332a. Use of weapons of mass destruction

(a) Offense against a national of the United States or within the United States.--A person who, without lawful authority, uses, threatens, or attempts or conspires to use, a weapon of mass destruction--

(1) against a national of the United States while such national is outside of the United States;

(2) against any person or property within the United States, and

(A) the mail or any facility of interstate or foreign commerce is used in furtherance of the offense;

(B) such property is used in interstate or foreign commerce or in an activity that affects interstate or foreign commerce;

(C) any perpetrator travels in or causes another to travel in interstate or foreign commerce in furtherance of the offense; or

(D) the offense, or the results of the offense, affect interstate or foreign commerce, or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce;

(3) against any property that is owned, leased or used by the United States or by any department or agency of the United States, whether the property is within or outside of the United States; or

(4) against any property within the United States that is owned, leased, or used by a foreign government,

shall be imprisoned for any term of years or for life, and if death results, shall be punished by death or imprisoned for any term of years or for life.

(b) Offense by national of the United States outside of the United States.--Any national of the United States who, without lawful authority, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction outside of the United States shall be imprisoned for any term of years or for life, and if death results, shall be punished by death, or by imprisonment for any term of years or for life.

(c) Definitions.--For purposes of this section--

(1) the term “national of the United States” has the meaning given in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(2) the term “weapon of mass destruction” means--

(A) any destructive device as defined in section 921 of this title;

(B) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(C) any weapon involving a biological agent, toxin, or vector (as those terms are defined in section 178 of this title); or

(D) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life; and

(3) the term “property” includes all real and personal property.

CREDIT(S)

(Added Pub.L. 103-322, Title VI, § 60023(a), Sept. 13, 1994, 108 Stat. 1980, and amended Pub.L. 104-132, Title V, § 511(c), Title VII, § 725, Apr. 24, 1996, 110 Stat. 1284, 1300; Pub.L. 104-294, Title VI, § 605(m), Oct. 11, 1996, 110 Stat. 3510; Pub.L. 105-277, Div. I, Title II, § 201(b)(1), Oct. 21, 1998, 112 Stat. 2681-871; Pub.L. 107-188, Title II, § 231(d), June 12, 2002, 116 Stat. 661; Pub.L. 108-458, Title VI, § 6802(a), (b), Dec. 17, 2004, 118 Stat. 3766, 3767.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1994 Acts. House Report Nos. 103-324 and 103-489, and House Conference Report No. 103-711, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

1996 Acts. Senate Report No. 104-179 and House Conference Report No. 104-518, see 1996 U.S. Code Cong.

and Adm. News, p. 924.

House Report No. 104-788, see 1996 U.S. Code Cong. and Adm. News, p. 4021.

1998 Acts. Statement by President, see 1998 U.S. Code Cong. and Adm. News, p. 582.

2002 Acts. House Conference Report No. 107-481 and Statement by President, see 2002 U.S. Code Cong. and Adm. News, p. 464.

2004 Acts. House Conference Report No. 108-796, see 2004 U.S. Code Cong. and Adm. News, p. 3178.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S51.

Amendments

2004 Amendments. Heading. Pub.L. 108-458, § 6802(b)(1), struck out “certain” before “weapons” in the section heading.

Subsec. (a). Pub.L. 108-458, § 6802(b)(2), struck out “(other than a chemical weapon as that term is defined in section 229F)” following “weapon of mass destruction”.

Subsec. (a)(2). Pub.L. 108-458, § 6802(a)(1), rewrote par. (2), which formerly read: “ (2) against any person within the United States, and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce; or”.

Subsec. (a)(3). Pub.L. 108-458, § 6802(a)(2), struck out the comma and inserted “; or” at the end.

Subsec. (a)(4). Pub.L. 108-458, § 6802(a)(3), added par. (4).

Subsec. (b). Pub.L. 108-458, § 6802(b)(3), struck out “(other than a chemical weapon (as that term is defined in section 229F))” following “weapon of mass destruction”.

Subsec. (c)(1). Pub.L. 108-458, § 6802(a)(4), struck out “and” at the end.

Subsec. (c)(2). Pub.L. 108-458, § 6802(a)(5), struck out the period and inserted “; and” at the end.

Subsec. (c)(3). Pub.L. 108-458, § 6802(a)(6), added par. (3).

2002 Amendments. Subsec. (a). Pub.L. 107-188, § 231(d)(1), struck out “229F), including any biological agent, toxin, or vector (as those terms are defined in section 178)--” and inserted “section 229F)--”.

Subsec. (c)(2)(C). Pub.L. 107-188, § 231(d)(2), struck out “a disease organism” and inserted “a biological agent, toxin, or vector (as those terms are defined in section 178 of this title)”.

1998 Amendments. Sec. heading. Pub.L. 105-277, § 201(b)(1)(A), inserted “certain” before “weapons” in the section heading.

Subsec. (a). Pub.L. 105-277, § 201(b)(1)(B), inserted “(other than a chemical weapon as that term is defined in section 229F)” after “weapon of mass destruction”.

Subsec. (b). Pub.L. 105-277, § 201(b)(1)(C), inserted “(other than a chemical weapon (as that term is defined in section 229F))” after “weapon of mass destruction”.

1996 Amendments. Subsec. (a). Pub.L. 104-132, § 725(1)(A), (B), added “against a national of the United States or within the United States” following “Offense” in catchline, and substituted “, without lawful authority, uses, threatens, or attempts” for “uses, or attempts” in text.


Pub.L. 104-132, § 511(c), inserted “, including any biological agent, toxin, or vector (as those terms are defined in section 178)”.

Subsec. (a)(2). Pub.L. 104-132, § 725(1)(C), added “, and the results of such use affect interstate or foreign commerce or, in the case of a threat, attempt, or conspiracy, would have affected interstate or foreign commerce” following “within the United States”.

Subsecs. (b), (c). Pub.L. 104-132, § 725(2) to (4), as amended Pub.L. 104-294, § 605(m), added subsec. (b), substituted “any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors” for “poison gas” in former subsec. (b)(2)(B), and redesignated former subsec. (b) as subsec. (c).

LIBRARY REFERENCES

American Digest System

Extortion and Threats  25.
Key Number System Topic No. 165.

RESEARCH REFERENCES

ALR Library

37 ALR, Fed. 2nd Series 449, Construction and Application of U.S.S.G. § 2x1.1, Providing Sentencing Guideline for Conspiracy Not Covered by Specific Offense Guideline.

199 ALR, Fed. 1, Validity, Construction, and Application of 18 U.S.C.A. § 2332a Prohibiting Use or Threat, Attempt, or Conspiracy to Use Certain Weapons of Mass Destruction.

197 ALR, Fed. 1, Validity, Construction, and Application of 18 U.S.C.A. § 2339A, Proscribing Providing Material Support to Terrorists.

186 ALR, Fed. 147, Construction and Application of Federal Domestic Terrorism Sentencing Enhancement, U.S.S.G. § 3a1.4.

30 ALR, Fed. 874, Elements of Offense, and Sufficiency of Proof Thereof, in Prosecution for Mailing Threatening Communications Under 18 U.S.C.A. § 876.

45 ALR 4th 949, Validity and Construction of Terroristic Threat Statutes.

125 ALR 605, Necessity of Charging Matter of Aggravation in Indictment or Information, to Justify Imposition of Higher Punishment Under a Statute Which Varies Punishment According to Enormity of Offense.

Encyclopedias

16 Am. Jur. Proof of Facts 2d 493, Liability for Abusive Language.

74 Am. Jur. Proof of Facts 3d 233, Proof of Coverage or Exclusion of Alleged Act of Terrorism Under Commercial Property Insurance.

Am. Jur. 2d Explosions and Explosives § 193, Encouraging or Advocating Use of Explosives.

Am. Jur. 2d Terrorism § 17, Use of Weapons of Mass Destruction.

Am. Jur. 2d Weapons and Firearms § 31, Federal Controls.

Treatises and Practice Aids

Federal Procedure, Lawyers Edition § 22:250, Offenses for Which Interception May be Authorized.

NOTES OF DECISIONS

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Constitutionality 1
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1. Constitutionality

Statute prohibiting use of weapon of mass destruction against federal property or against any person within the United States was within Congress's power under commerce clause and was constitutional as sought to be applied to individuals alleged to have used truck bomb of sufficient explosive power to destroy federal office building, killing and injuring hundreds of its occupants; such an attack produces consequences ranging far beyond local or state interests, and has requisite impact on interstate commerce. *U.S. v. McVeigh*, D.Colo.1996, 940 F.Supp. 1571, affirmed 169 F.3d 1255, certiorari denied 120 S.Ct. 336, 528 U.S. 934, 145 L.Ed.2d 262, post-conviction relief denied 132 F.Supp.2d 931, affirmed 38 Fed.Appx. 534, 2002 WL 511731, certiorari denied 123 S.Ct. 181, 537 U.S. 896, 154 L.Ed.2d 164. Commerce ⚔ 82.50; Explosives ⚔ 2

2. Intent

Proof of intent to kill was not required in prosecution for conspiracy to use weapon of mass destruction to kill and injure persons and to damage federal property, use of such weapon against persons, and destruction of federal property which arose from bombing of Oklahoma City federal building; required intent for conspiracy count was willful participation in agreement to use explosive bomb in truck as weapon to attack building, while charge of use of weapon required showing of intent to use that weapon against persons in building, and destruction charge required finding of malice in use of truck. *U.S. v. McVeigh*, D.Colo.1996, 940 F.Supp. 1571, affirmed 169 F.3d 1255, certiorari denied 120 S.Ct. 336, 528 U.S. 934, 145 L.Ed.2d 262, post-conviction relief denied 132 F.Supp.2d 931, affirmed 38 Fed.Appx. 534, 2002 WL 511731, certiorari denied 123 S.Ct. 181, 537 U.S. 896, 154 L.Ed.2d 164. Conspiracy ⚔ 28(3)

3. Weight and sufficiency of evidence

Defendant's convictions for conspiracy to kill United States nationals, conspiracy to murder internationally protected persons, United States officers and employees engaging in official duties, conspiracy to destroy buildings and property of United States, conspiracy to use weapons of mass destruction against U.S. nationals overseas, bombing American Embassy, use of weapons of mass destruction against U.S. nationals overseas, murder of 213 individuals in course of attack on U.S. facility, murder of U.S. officers and employees, attempted murder of officers and employees of American Embassy, murder of internationally protected persons, attempted murder of internationally protected persons, using and carrying explosive during commission of felony, and using and carrying explosive device during crime of violence, were supported by sufficient evidence, including sketches discovered during search of defendant's apartment which government argued represented area surrounding American Embassy, including depiction of exploding truck bomb at detonation site. In re Terrorist Bombings of U.S.

Embassies in East Africa, C.A.2 (N.Y.) 2008, 549 F.3d 146, withdrawn from bound volume, republished at 552 F.3d 93, rehearing denied in part 553 F.3d 150, certiorari denied 129 S.Ct. 2778, certiorari denied 2010 WL 58776. Homicide 🔑 1168

Evidence was sufficient to prove that defendant made true threat, unprotected by the First Amendment, to use bomb to blow up federal building, as required to support conviction for threatening to use weapon of mass destruction against federal government building; government presented tape recording of conversation between defendant and his cellmate, during which defendant repeatedly and consistently stated that he planned to blow up a specific federal building and described in detail his plans for doing so, and although defendant claimed that he was engaging in prison talk and venting his frustrations against the government, the cell mate testified that defendant's statements were very different from the ordinary antigovernment hyperbole often heard in prisons. U.S. v. Parr, C.A.7 (Wis.) 2008, 545 F.3d 491, certiorari denied 129 S.Ct. 1984, 173 L.Ed.2d 1083. Constitutional Law 🔑 1831; Extortion And Threats 🔑 32

Evidence that e-mails threatening to use a weapon of mass destruction, namely a biological agent and a weapon involving a disease organism, were sent from Texas and were received by government agencies outside of Texas was sufficient to support defendants' convictions for threatening to use a weapon of mass destruction; use of the weapons specified in the threat would have affected interstate commerce. U.S. v. Wise, C.A.5 (Tex.) 2000, 221 F.3d 140, rehearing and suggestion for rehearing en banc denied 233 F.3d 576, certiorari denied 121 S.Ct. 1488, 532 U.S. 959, 149 L.Ed.2d 375, habeas corpus dismissed 2003 WL 22137456, affirmed 89 Fed.Appx. 877, 2004 WL 298571, post-conviction relief dismissed 2007 WL 332257. Extortion And Threats 🔑 32

Evidence in prosecution for attempted use of weapon of mass destruction supported finding that defendant took "substantial steps" toward blowing up Internal Revenue Service (IRS) building, despite his claim that he did not have money to purchase weaponry necessary to do so; defendant led undercover authorities to believe that he was connected to others who did have resources to purchase explosives and other destructive weaponry, defendant had photographs of IRS building and studied it to point of indicating where bombs should be placed so that it would be brought down, and defendant initiated and participated in several meetings in which he "ordered" materials necessary to carry out planned bombing. U.S. v. Polk, C.A.5 (Tex.) 1997, 118 F.3d 286, rehearing and suggestion for rehearing en banc denied 127 F.3d 36, rehearing denied, certiorari denied 118 S.Ct. 456, 522 U.S. 988, 139 L.Ed.2d 390, post-conviction relief denied 2005 WL 1645776. Explosives 🔑 5

Required affect on interstate commerce was not shown, to allow application of statute prohibiting threats to use weapons of mass destruction to case in which prison inmate sent letters threatening to kill by use of anthrax bacilli, in localized areas, when only interstate aspect was possible deployment across state lines of investigative and technical personnel to combat infections. U.S. v. Slaughter, W.D.Va.2000, 116 F.Supp.2d 688, 199 A.L.R. Fed. 719. Extortion And Threats 🔑 26

4. Death penalty hearing

Jury finding that deaths were caused by defendants' conduct would be required before proceeding with death penalty hearing in prosecution for use of weapon of mass destruction against federal property or against persons in the United States, conspiracy to use such a weapon, and destruction of federal property which arose from

bombing of Oklahoma City federal building; while statutes do not require showing of intent to kill, finding would be required to avoid any weakening of constitutional protections afforded to death penalty defendants. U.S. v. McVeigh, D.Colo.1996, 940 F.Supp. 1571, affirmed 169 F.3d 1255, certiorari denied 120 S.Ct. 336, 528 U.S. 934, 145 L.Ed.2d 262, post-conviction relief denied 132 F.Supp.2d 931, affirmed 38 Fed.Appx. 534, 2002 WL 511731, certiorari denied 123 S.Ct. 181, 537 U.S. 896, 154 L.Ed.2d 164. Sentencing And Punishment ⚡ 1669

5. Reasonable suspicion

Law enforcement officer had reasonable suspicion to stop and detain defendant, who was dressed in Postal Service uniform, acting nervous, and going from mailbox to mailbox dropping in mail, for suspected anthrax-related terrorist activity or for impersonating federal employee; stop occurred during period in which anthrax was being spread through mail. U.S. v. Ullah, S.D.N.Y.2003, 2003 WL 1396300, Unreported. Arrest ⚡ 63.5(5)

6. Probable cause for arrest

Law enforcement officer had probable cause to arrest defendant for placing anthrax-tainted letters in mail and/or impersonating a mail carrier; defendant was dressed in Postal Service uniform, defendant's conduct was inconsistent with that of real postal worker going about his duties, in that, he was acting furtively and walking down street dropping mail into different mailboxes. U.S. v. Ullah, S.D.N.Y.2003, 2003 WL 1396300, Unreported. Arrest ⚡ 63.4(15)

7. Threat

Defendant's conduct of mailing white powder that was accompanied by apparent references to anthrax and Osama Bin Laden to a prosecutor's office communicated a sufficiently credible threat, as required to sustain conviction for threatening to use a weapon of mass destruction and delivering a threat to injure through the United States mail. U.S. v. Davila, C.A.2 (Conn.) 2006, 461 F.3d 298, certiorari denied 127 S.Ct. 1485, 549 U.S. 1266, 167 L.Ed.2d 231. Extortion And Threats ⚡ 25.1; Postal Service ⚡ 33

8. Testimony


Testimony of defendant's former girlfriends and neighbors about defendant's pervasive interest in explosives, his history of building pipe bombs and experimenting with chemicals, and his admiration for domestic terrorists was relevant to issues of whether defendant's statements qualified as true threats, which were unprotected by the First Amendment, and whether he actually intended his statements about blowing up a federal government building to be taken as threats, in prosecution for threatening to use weapon of mass destruction against federal building. U.S. v. Parr, C.A.7 (Wis.) 2008, 545 F.3d 491, certiorari denied 129 S.Ct. 1984, 173 L.Ed.2d 1083. Extortion And Threats ⚡ 32

9. Sentencing

In defendant's sentencing for attempting to use a weapon of mass destruction, the district court was not required to consider the defendant's proffered entrapment defense, which the defendant had waived by pleading guilty.

18 U.S.C.A. § 2332a

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U.S. v. Aguilar-Huerta, C.A.7 (Ill.) 2009, 576 F.3d 365, certiorari denied 2009 WL 3642736. Sentencing And Punishment  89

18 U.S.C.A. § 2332a, 18 USCA § 2332a

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