

United States District Court
EASTERN DISTRICT OF WASHINGTON

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEC 19 2006

JAMES R. LARSEN, CLERK
DEPUTY
SPOKANE, WASHINGTON

UNITED STATES OF AMERICA

V.

CRIMINAL COMPLAINT

ELLREESE N. DANIELS

CASE NUMBER: MJ-06-308

(Name & Address of Defendant)

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief.

COUNT ONE

On or about July 10, 2001, in the Okanogan-Wenatchee National Forest, in the Eastern District of Washington, Defendant ELLREESE N. DANIELS did commit a lawful act or a series of lawful acts, specifically, supervising firefighters who were working to suppress a wildfire in the Chewuch River Canyon, which was referred to as the Thirtymile Fire, in a manner that was grossly negligent, meaning in a manner that was in wanton and reckless disregard for human life, with the Defendant knowing of circumstances that reasonably would cause the Defendant to foresee that the Defendant's course of conduct in the supervision of the firefighters might place the lives of firefighters in danger, which was the proximate cause of the death of Tom Craven, a firefighter who was employed by the Forest Service, U.S. Department of Agriculture, while Tom Craven was engaged in the performance of his official duties; all in violation of Title 18, United States Code, Sections 1112 and 1114.

Continued on the attached sheet incorporated herein by this reference. Yes No
I further state that I am a Special Agent and that this complaint is based on the following facts:

J. R. Parker
Signature of Complainant J. R. Parker
Special Agent, OIG, U.S.D.A.

Sworn to before me, and subscribed in my presence
December 19, 2006
Date
Cynthia Imbrogno
United States Magistrate Judge
Name and Title of Judicial Officer

at Spokane, Washington
City and State
[Signature]
Signature of Judicial Officer

COUNT TWO

On or about July 10, 2001, in the Okanogan-Wenatchee National Forest, in the Eastern District of Washington, Defendant ELLREESE N. DANIELS did commit a lawful act or a series of lawful acts, specifically, supervising firefighters who were working to suppress a wildfire in the Chewuch River Canyon, which was referred to as the Thirtymile Fire, in a manner that was grossly negligent, meaning in a manner that was in wanton and reckless disregard for human life, with the Defendant knowing of circumstances that reasonably would cause the Defendant to foresee that the Defendant's course of conduct in the supervision of the firefighters might place the lives of firefighters in danger, which was the proximate cause of the death of Karen Fitzpatrick, a firefighter who was employed by the Forest Service, U.S. Department of Agriculture, while Karen Fitzpatrick was engaged in the performance of her official duties; all in violation of Title 18, United States Code, Sections 1112 and 1114.

COUNT THREE

On or about July 10, 2001, in the Okanogan-Wenatchee National Forest, in the Eastern District of Washington, Defendant ELLREESE N. DANIELS did commit a lawful act or a series of lawful acts, specifically, supervising firefighters who were working to suppress a wildfire in the Chewuch River Canyon, which was referred to as the Thirtymile Fire, in a manner that was grossly negligent,

Criminal Complaint (Continued)

Page 3

December 19, 2006

Ellreese N. Daniels

meaning in a manner that was in wanton and reckless disregard for human life, with the Defendant knowing of circumstances that reasonably would cause the Defendant to foresee that the Defendant's course of conduct in the supervision of the firefighters might place the lives of firefighters in danger, which was the proximate cause of the death of Jessica Johnson, a firefighter who was employed by the Forest Service, U.S. Department of Agriculture, while Jessica Johnson was engaged in the performance of her official duties; all in violation of Title 18, United States Code, Sections 1112 and 1114.

COUNT FOUR

On or about July 10, 2001, in the Okanogan-Wenatchee National Forest, in the Eastern District of Washington, Defendant ELLREESE N. DANIELS did commit a lawful act or a series of lawful acts, specifically, supervising firefighters who were working to suppress a wildfire in the Chewuch River Canyon, which was referred to as the Thirtymile Fire, in a manner that was grossly negligent, meaning in a manner that was in wanton and reckless disregard for human life, with the Defendant knowing of circumstances that reasonably would cause the Defendant to foresee that the Defendant's course of conduct in the supervision of the firefighters might place the lives of firefighters in danger, which was the proximate cause of the death of Devin Weaver, a firefighter who was employed by the Forest Service, U.S. Department of Agriculture, while Devin Weaver was

Criminal Complaint (Continued)

Page 4

December 19, 2006

Ellreese N. Daniels

engaged in the performance of his official duties; all in violation of Title 18, United States Code, Sections 1112 and 1114.

COUNT FIVE

On or about July 12, 2001, in the Eastern District of Washington, in a matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation concerning his conduct while supervising firefighters on the Thirtymile Fire; specifically, during an interview with a member of the Forest Service Safety and Accident Investigation Team and a representative of the Occupational Safety and Health Administration, while describing the events following the entrapment of a portion of the Northwest Regular # 6 firefighting crew and through the deployment of fire shelters by those crew members, the Defendant stated that he told a female firefighter to get two civilians into her fire shelter and to keep them in her shelter; when in truth and in fact the Defendant knew during the interview that he had not given any instruction to the female firefighter to get the two civilians into her fire shelter; all in violation of Title 18, United States Code, Section 1001.

COUNT SIX

On or about July 12, 2001, in the Eastern District of Washington, in a

Criminal Complaint (Continued)

Page 5

December 19, 2006

Ellreese N. Daniels

matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, and the Occupational Safety and Health Administration, U.S. Department of Labor, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation concerning his conduct while supervising firefighters on the Thirtymile Fire; specifically, during an interview with a member of the Forest Service Safety and Accident Investigation Team, in response to a question about what communication took place between the Defendant and a small group of firefighters who were on a scree slope above a road at the site where the entrapped members of the Northwest Regular # 6 firefighting crew eventually deployed their fire shelters, the Defendant stated that he told the group at least three times to come down out of the rocks because that is not the place to be; when in truth and in fact the Defendant knew during the interview that he had not told the small group of firefighters to come down out of the rocks; all in violation of Title 18, United States Code, Section 1001.

COUNT SEVEN

On or about July 12, 2001, in the Eastern District of Washington, in a matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, and the Occupational Safety and Health Administration, U.S. Department of Labor, Defendant ELLREESE N. DANIELS did knowingly and

Criminal Complaint (Continued)

Page 6

December 19, 2006

Ellreese N. Daniels

intentionally make a false and fictitious material statement and representation concerning his conduct while supervising firefighters on the Thirtymile Fire; specifically, during an interview with a member of the Forest Service Safety and Accident Investigation Team, while discussing a small group of firefighters who were on a scree slope above a road at the site where the entrapped members of the Northwest Regular # 6 firefighting crew eventually deployed their fire shelters, and in response to a question about whether the Defendant had any idea why the small group of firefighters did not do as he asked to come down out of the rocks, the Defendant stated that he did not have any idea and that he wished that he could have made them listen; when in truth and in fact the Defendant knew during the interview that he had not told the small group of firefighters to come down out of the rocks; all in violation of Title 18, United States Code, Section 1001.

COUNT EIGHT

On or about August 9, 2001, in the Eastern District of Washington, in a matter within the jurisdiction of the Occupational Safety and Health Administration, U.S. Department of Labor, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation concerning the conduct of Forest Service employees who were operating fire engines on the Thirtymile Fire, during an interview with a

Criminal Complaint (Continued)

Page 7

December 19, 2006

Ellreese N. Daniels

representative of the Occupational Safety and Health Administration; specifically, in response to a question as to whether the Defendant knew that two fire engines had arrived at the fire, the Defendant stated that neither of the two fire engines, which were designated as Engine 701 and Engine 704, stopped to talk to the Defendant or to the Crew Boss Trainee for the Northwest Regular # 6 firefighting crew when they arrived at the Thirtymile Fire on the afternoon of July 10, 2001; that the engines were "doing their own thing;" and that neither of the engines ever contacted the Defendant or the Crew Boss Trainee; when in truth and in fact the Defendant knew during the interview that the foreman of the larger of the two fire engines, Engine 701, had stopped, checked in with the Defendant, and confirmed with the Defendant that the engines would proceed up the Chewuch River Canyon to patrol for spot fires; all in violation of Title 18, United States Code, Section 1001.

COUNT NINE

Between on or about March 14, 2002, and on or about March 28, 2002, in the Eastern District of Washington, in a matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation on or about March 14, 2002, during an interview with members of the Forest Service Administrative Review Team that was

examining the conduct of Forest Service employees who worked on the Thirtymile Fire, and did knowingly and intentionally document that false and fictitious material statement and representation in a declaration that the Defendant signed on or about March 28, 2002; specifically, the Defendant stated that neither of the two fire engines, which were designated as Engine 701 and Engine 704, checked in with the Defendant when they arrived at the Thirtymile Fire on the afternoon of July 10, 2001; when in truth and in fact the Defendant knew during the interview that the foreman of the larger of the two fire engines, Engine 701, had stopped, checked in with the Defendant, and confirmed with the Defendant that the engines would proceed up the Chewuch River Canyon to patrol for spot fires; all in violation of Title 18, United States Code, Section 1001.

COUNT TEN

Between on or about March 14, 2002, and on or about March 28, 2002, in the Eastern District of Washington, in a matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation on or about March 14, 2002, during an interview with members of the Forest Service Administrative Review Team that was examining the conduct of Forest Service employees who worked on the Thirtymile Fire, and did knowingly and intentionally document that false and

Criminal Complaint (Continued)

Page 9

December 19, 2006

Ellreese N. Daniels

fictional material statement and representation in a declaration that the Defendant signed on or about March 28, 2002; specifically, while describing the events from the time that a portion of the Northwest Regular # 6 firefighting crew re-engaged the wildfire through the deployment of fire shelters by the entrapped crew members, the Defendant stated that he told Tom Craven and the other firefighters who were with Tom Craven in a loud voice to come down from the scree slope to the road, but that the firefighters did not come down from the scree slope; when in truth and in fact the Defendant knew during the interview that he had not told the small group of firefighters to come down from the scree slope to the road; all in violation of Title 18, United States Code, Section 1001.

COUNT ELEVEN

Between on or about March 14, 2002, and on or about March 28, 2002, in the Eastern District of Washington, in a matter within the jurisdiction of the Forest Service, U.S. Department of Agriculture, Defendant ELLREESE N. DANIELS did knowingly and intentionally make a false and fictitious material statement and representation on or about March 14, 2002, during an interview with members of the Forest Service Administrative Review Team that was examining the conduct of Forest Service employees who worked on the Thirtymile Fire, and did knowingly and intentionally document that false and fictitious material statement and representation in a declaration that the Defendant

Criminal Complaint (Continued)

Page 10

December 19, 2006

Ellreese N. Daniels

signed on or about March 28, 2002; specifically, while describing the events from the time that a portion of the Northwest Regular # 6 firefighting crew re-engaged the wildfire through the deployment of fire shelters by the entrapped crew members, the Defendant stated that he told a female firefighter to get a female civilian and a male civilian into her fire shelter and to keep them in her shelter; when in truth and in fact the Defendant knew during the interview that he had not given any instruction to the female firefighter to get the two civilians into her fire shelter; all in violation of Title 18, United States Code, Section 1001.

perform enforcement and other duties as imposed by the Secretary of Agriculture or authorized by the Inspector General Act of 1978 (Public Law 95-452), the Agriculture and Food Act of 1981 (Public Law 97-98), or other law or department regulation.

In addition to investigating all criminal acts of violations of USDA program requirements and related criminal violations, I am also authorized to conduct wildland fire fatality investigations as authorized by Public Law 107-203. This law enacted in July of 2002, and subsequently codified in 7 U.S.C. § 2270b, Department of Agriculture Inspector General Investigation of Forest Service Firefighter Deaths, states that:

In the case of each fatality of an officer or employee of the Forest Service that occurs due to wildfire entrapment or burnover, the Inspector General of the Department of Agriculture shall conduct an investigation of the fatality .

..

After this law was enacted, USDA-OIG formed a Wildland Fire Investigation Team (WFIT) comprised of various senior special agents throughout the United States. Since its inception, I have completed the U.S. Forest Service's Wildland Fire Cause and Origin Training at the Federal Law Enforcement Center (FLETC), Glynco, Georgia; the Forest Service/Bureau of Land Management

Serious Accident Investigation Training, Phoenix, Arizona; the Forest Service Basic Wildland Firefighter Academy Training, Boise, Idaho; Forest Service Wildland Firefighter Crew Boss Training, Boise, Idaho; and Forest Service Annual Fire Refresher Training. Additionally, I have completed numerous Incident Command System (ICS) online training modules.

I am currently involved in the investigation of the deaths of four wildland firefighters who were killed as a result of a burnover on the Thirtymile Fire on July 10, 2001. The facts that I have set forth in this affidavit are based upon information that I have acquired from my personal participation in the investigation. I obtained access to voluminous materials from the Forest Service, U.S. Department of Agriculture, and from the Occupational Safety and Health Administration, U.S. Department of Labor. In the course of the investigation, which I have pursued in concert with the U.S. Attorney's Office in the Eastern District of Washington, I have conducted numerous interviews.

This affidavit is being produced for the limited purpose of establishing probable cause to support the issuance of a Criminal Complaint against Ellreese N. Daniels. Therefore, I have not included in this affidavit each and every fact known to me regarding this investigation.

Overview of the Thirtymile Fire

In early July of 2001, a year of severe drought, numerous wildfires were burning in Washington. On the afternoon of July 10, 2001, four Forest Service firefighters died while participating in an operation to suppress a wildfire in the Chewuch River drainage within the Okanogan-Wenatchee National Forest. The drainage was a box canyon, which contained a single road in to a campground near the north end of the canyon. There were no houses, businesses, or Forest Service buildings in the drainage.

The wildfire, which was designated the Thirtymile Fire, had started the previous day as a result of an abandoned camp fire. The fire burned generally northeast, up the canyon, from the point of origin. During the early morning hours of July 10th, the fire was only about five acres and was burning slowly in a riparian area adjacent to the river. According to the Okanogan National Forest Dispatch Log, the Entiat Interagency Hotshot crew arrived at the fire at approximately 1:30 a.m. The Hotshot crew worked to build a line around the fire. The vegetation was dense, making the work to cut a control line arduous.

The 21-member Northwest Regular # 6 Type 2 crew (NWR # 6) relieved the Hotshots about 9:30 a.m. NWR # 6 consisted of a Crew Boss Trainer, who was

Affidavit of John R. Parker

4 of 52

Ellreese N. Daniels; a Crew Boss Trainee, who was Pete Kampen; and three squads of firefighters. Each squad had a squad boss. Approximately half of the crew members were rookies.

Upon arriving at the fire, Mr. Daniels, the Crew Boss Trainer, and Mr. Kampen, the Crew Boss Trainee, obtained a briefing and a walk-through with the Hotshot Superintendent, who was Marshall Brown, and the Assistant Superintendent, who was Kyle Cannon. Mr. Kampen then briefed the crew. NWR # 6 actually starting working on the fire at about 11:00 a.m. The Hotshots went down the road to a camping area to eat and get some sleep.

The day was hot and the relative humidity was dropping. The active fire was on the east side of the Chewuch River, which itself was east of the road. Mr. Daniels and Mr. Kampen had NWR # 6 cross the river and set up two pumps to support firefighting efforts. The crew was largely unsuccessful, apparently as a result of inexperience, in operating two water pumps. The vegetation was dense, making hand-line construction slow and hard. Several hand tools broke. The intensity of the fire increased, single trees began to torch, and extensive spotting occurred. The spots started to jump the control line. The fire started to move out of the riparian area, into drier material, toward the east wall of the canyon.

According to the Okanogan National Forest Dispatch Log (Dispatch Log), Mr. Daniels asked at 12:08 p.m. for Helicopter 13N to launch for the purpose of dropping buckets of water on the fire. The helicopter was delayed until about 2:30 p.m. because of an issue about available dip sites. The Dispatch Log reflects that at 12:30 p.m., Mr. Daniels asked for one or two additional crews. At 12:40 p.m., the Dispatch Center arranged for an Air Attack aircraft, a single engine plane with a pilot and a passenger who would coordinate air resources to include air tankers and helicopters. Forest Service employee Gabe Jasso was the passenger/coordinator in Air Attack. The Dispatch Log reflects that at 12:46 p.m., Mr. Daniels stated that they did not need an air tanker at this time. A few minutes later, the Dispatch Log shows that Mr. Daniels decided to send a runner to wake up the Hotshots and to ask them to return to the fire.

According to the Dispatch Log, Air Attack reported at 1:38 p.m. that the fire was getting active and had grown in the last half hour. Five minutes later, through Air Attack, Mr. Daniels repeated his request for two more crews and also asked for a small air tanker.

Mr. Daniels and Mr. Kampen disengaged the fire at around 2:00 p.m. and withdrew their crew across the river to the "lunch spot," which was along the road

just north of the point of origin. They indicated to the crew that they had lost the fire and that it would be an "air show." Crew members ate, and some slept while others worked on their tools. The first air tanker drop was unsuccessful in slowing the fire's advance up the east slope.

According to the Dispatch Log, at 2:27 p.m., Gabe Jasso in Air Attack arranged for two fire engines to travel to the Thirtymile Fire. At about 2:45 p.m., Helicopter 13N arrived with a 135-gallon bucket. I interviewed the helicopter pilot, Paul Walters. He told me that he had expected to work in coordination with NWR # 6, but the crew, to his surprise, was further up canyon. Mr. Walters could not see the crew at the lunch spot, let alone up canyon beyond the first tree line as a result of smoke. After consulting with Mr. Daniels and Air Attack, Mr. Walters made bucket drops along the east flank of the fire, first on the slope (ineffective) and then south of the lunch spot along the road. Helicopter 13N could not fly further into the canyon because Mr. Walters could not see as a result of the smoke. The helicopter was a non-factor in the events of the afternoon.

Air Attack left to refuel at 2:54 p.m. Lead 65, piloted by Gregory House, replaced Air Attack as the aerial platform for the fire. Mr. House, who was a former air tanker pilot, had as his primary responsibility, guiding air tankers on

their runs. Lead 65 made contact with Mr. Daniels and remained over the fire until Air Attack returned at approximately 4:24 p.m.

According to the Dispatch Log, Engine 701 arrived at the fire at 3:24 p.m. and Engine 704 arrived at 3:27 p.m. Harry Dunn, the foreman of Engine 701, which was the larger of the two engines, stopped the engine at the lunch spot and checked in with Mr. Daniels. As the Incident Commander, Mr. Daniels had responsibility for managing the use of the engines. Mr. Dunn told Mr. Daniels that he would take the engines up canyon to patrol the road for spot fires in an effort to keep the fire on the east side of the road. At this point, the fire was burning up the east slope of the canyon and along the river.

Mr. Dunn, with Engine 701, drove a couple miles up (north) the canyon road and turned around. On the way back down the canyon (south), Engine 701 encountered a spot fire on the east side of the road (but west of the river). Mr. Dunn and his crew sprayed the spot fire, which was about 100 feet in diameter and had four-foot flame lengths. He then called for a hand crew to come up canyon to dig a line around a spot that his engine had hosed down. Mr. Daniels and Mr. Kampen, without scouting the fire, without notifying the aerial platform, and without posting a lookout, took two of the three squads of NWR # 6 up canyon.