UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 8:22-cr-156-KKM-CPT

JORDAN PATRICK LEAHY

UNITED STATES' SENTENCING MEMORANDUM

The United States of America, by and through the undersigned Assistant United States Attorney, hereby submits its sentencing memorandum. As further explained below, and pursuant to 18 U.S.C. § 3553(a), the United States respectfully submits that a high-end guideline-sentence is appropriate in this case.

I. Procedural History

On April 28, 2022, a federal grand jury in the Middle District of Florida, Tampa Division, returned a two-count indictment charging the defendant, Jordan Patrick Leahy, with Interference with Federally Protected Activities, in violation of 18 U.S.C. § 245(b)(2)(B). Doc. 1. Count One is a felony offense, while Count Two is a misdemeanor. The charges arose from an incident that took place on August 8, 2021, where the defendant physically and verbally assaulted a family returning home from dinner, all while shouting racial slurs at them. *See* Presentence Investigation Report ("PSR"), Doc. 98, ¶¶ 7-12. The defendant proceeded to trial and, on August 24, 2022, the jury convicted him of the felony count, but acquitted him of the misdemeanor. *See* Verdict Form, Doc. 74. The court has scheduled the sentencing hearing in this case to take place on November 7, 2022. Doc. 95.

II. Presentence Investigation Report

On November 3, 2022, the U.S. Probation Office issued its final Presentence Investigation Report ("PSR"). Doc. 98. It determined the defendant's applicable guideline-range for the underlying offense as 57 to 71 months' imprisonment, based on an adjusted total-offense level of 21 and a criminal history category of IV. *Id.* at ¶ 86. The United States has no legal or factual objections to the PSR. In relevant part, the defendant maintains legal objections to paragraph 20, which sets the base offense level at 14 because the offense underlying the count of conviction is Aggravated Assault, and paragraph 21, which increases the offense level by three because the defendant selected the victim based upon race or color. For the reasons that follow, this court should overrule these objections.

A. Base Offense Level Objection

In the instant case, the court must apply a base offense level of 14 for the underlying offense (*see* U.S.S.G. § 2H1.1(a)(1)), which is Aggravated Assault (see U.S.S.G. § 2A2.2). Aggravated assault is any felonious assault involving a dangerous weapon and intent to cause bodily injury with that weapon. U.S.S.G. § 2A2.2, cmt. n. 1. There is no doubt that the defendant's assault involved a dangerous weapon, as the jury has already made that determination beyond a reasonable doubt. *See* Doc. 74. The only remaining question is whether the defendant's tailgating, swerving, and colliding with victim J.T.'s car was done with the intent to cause bodily injury or—as the defendant contends—simply to frighten the victim.

At trial, J.T. testified that on August 8, 2021, the defendant drove his car alongside J.T.'s car. Trial Transcript, Doc. 84 at 39-40. The defendant appeared "upset" and "enraged," and gestured with his hands as if he was shooting into J.T.'s car. *Id.* at 40-42. The defendant tried to run J.T. off of the road, which J.T. evaded. *Id.* at 43. The defendant then followed so closely that J.T. believed that the defendant was attempting to strike his bumper and cause J.T. to lose control of his car. *Id.* at 43-44. Finally, the defendant tried to run J.T. off of the road again—this time, making contact with J.T.'s car. *Id.* at 45. J.T. was only able to avoid the brunt of the crash by swerving into an adjacent lane. *Id.* While certainly frightening, the defendant's prolonged vehicular assault of the victim and his family independently establishes that the defendant intended to cause bodily injury.

But, moreover, the defendant's own statements belie the argument that he only intended to only frighten J.T. As the defendant was being transported from the scene, he made a series of statements reflecting his desire to kill or harm others, all of which were captured on the patrol vehicle's camera. *See* Doc. 50, Exhibit B, p. 4. For example, the defendant asked, "Do you know how bad I want to kill people?" The defendant made his intention even more explicit that evening when he explained what he intended to do to a responding officer. Specifically, the defendant stated that he was "trying to pick a fight with some random-ass fucking colored people." Considering the defendant's actions and statements in conjunction, it is clear that his conduct was not done to merely to frighten J.T.

B. Victim Related Adjustment Objection

The court must apply a three-level increase to the defendant's offense level if it finds that he intentionally selected J.T. because of actual or perceived race or color. U.S.S.G. § 3A1.1(a). This determination must be made beyond a reasonable doubt by the finder of fact at trial. *Id*. In the instant case, the jury has already decided that the defendant selected J.T. because he was black, therefore, the three-level increase should be assessed.

On August 24, 2022, the jury unanimously found the defendant guilty of Interference with Federally Protected Activities, in violation of 18 U.S.C. § 245(b)(2)(B). *See* Doc. 74. Necessarily, the jurors agreed that the United States had proven beyond a reasonable doubt that the third element of that offense had been met, specifically, that "the defendant acted because of J.T.'s race or color; in other words, that the defendant acted because J.T. was black." *See* Court's Jury Instructions, Doc. 77, p. 6. Furthermore, in evaluating this issue, this court may presume that the jury followed the court's instructions. *See United States v. Almanzar*, 643 F.3d 1214, 1222 (11th Cir. 2011) (citing *United States v. Ramirez*, 426 F.3d 1344, 1352 (11th Cir. 2005)).

Additionally, the evidence supporting the jury's verdict was overwhelming. The defendant has exhibited animosity toward black people for years. His ex-girlfriend, Gabriella Bolt, testified at trial that from 2017-2019, the defendant regularly referred to black people unknown to him as "niggers," and, at times, stated that he wanted to fight or kill them. Doc. 84 at 150-152, 57-58. Even the defendant's own mother, Kristin Nuzum, was aware of his racial animus. In an interview, she explained

to investigators that her son referred to black people as "niggers" in her presence. PSR at ¶ 42.

On the night of August 8, 2021, defendant acted in accord with his racial animus when he tailgated, swerved at, and collided with J.T.'s vehicle, all while shouting "nigger" at J.T. and his family. Doc. 84 at 39-47. After being arrested by law enforcement, and while waiting to be transported in the back of a patrol vehicle, the defendant was asked about the incident. He responded, "I just remember throwing up the Nazi salute and trying to pick a fight with some random-ass fucking colored people, bro, that's all I remember." Here, the defendant plainly sums up his motives. Just as the jury found and the evidence at trial established, the defendant intentionally selected J.T. because he was black.

III. Argument in Support of a Guideline Sentence

The Supreme Court has declared, "[a]s a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." *Gall v. United States*, 552 U.S. 38, 41 (2007). Although this Court may not presume that a guideline-range sentence is reasonable, the Sentencing Guidelines remain a significant and pivotal component of the sentencing process. *United States v. Delva*, 922 F.3d 1228, 1257 (11th Cir. 2019); *United States v. Hunt*, 526 F.3d 739, 746 (11th Cir. 2008) ("[W]hile we do not presume that a sentence falling within the guidelines range is reasonable, we ordinarily expect it to be so."). This Court, therefore, "must first calculate the Guidelines range, and then consider what sentence is appropriate for the individual defendant in light of the statutory sentencing factors,

18 U.S.C. § 3553(a), explaining any variance from the former with reference to the latter." *Nelson v. United States*, 129 S. Ct. 890, 891–92 (2009).

Section 3553(a)(1) provides that, in determining a sentence, courts must consider the nature and circumstances of the offense, as well as the history and characteristics of the defendant. Additional factors outlined in section 3553(a)(2) include the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, and to provide the defendant with needed education or vocational training, medical care, or other corrective treatment in the most effective manner.

A. Nature and Circumstances of the Offense

On the evening of August 8, 2021, the defendant attacked and threatened a family traveling home from dinner in Seminole, Florida. *See* PSR. As the family—J.T., his girlfriend (B.P.M.), and his four-year-old daughter—drove southbound in J.T.'s car on Starkey Road, the defendant pulled alongside J.T.'s car in his own vehicle. *Id.* at ¶ 7. The defendant made gun gestures with his hands, pretending to shoot at J.T.'s vehicle. *Id.* While making the gestures, the defendant yelled racial slurs at J.T., and then swerved into J.T.'s lane. *Id.* When J.T. tried to escape by driving away, the defendant aggressively tailgated J.T., then pulled alongside J.T. again and swerved aggressively into J.T.'s lane, forcing J.T. to swerve into a turn lane. *Id.* As he did so, the defendant's car sideswiped J.T.'s car. *Id.* This conduct is apparently not aberrant, as in 2018, the defendant told his physician that he drove on the wrong side of the road

in an attempt to run others off of the road. *Id.* at ¶ 62.

After being arrested in the instant case on August 8, 2021, the defendant made a series of violent and disturbing comments. For example, he asked a law-enforcement officer, "[d]o you know how bad I want to kill people," and graphically described his desire to commit a mass shooting and then kill himself. *Id.* at ¶ 12. The defendant followed up by stating, "[d]o you know how fucking amazing that would feel? That would feel so much more fulfilling than anything in this life at all." *Id.*

B. History and Characteristics of the Defendant

The defendant's criminal history reflects both threats and acts of violence. In April 2018, he was arrested and charged with battery. PSR at ¶ 31. The arrest stemmed from the defendant's unprovoked punching of a victim in the face. *Id.* He ultimately pleaded *nolo contendere* and the court withheld adjudication. *Id.*

Two years later, in May 2020, the defendant was convicted of two counts of aggravated stalking and sentenced to 21 months in prison. *Id.* at ¶ 33. Those charges related to graphic threats the defendant made to, and about, his ex-girlfriend Gabriella Bolt. *Id.* Specifically, over the span of several weeks, the defendant said that he wanted to kill Ms. Bolt, stomp and pummel her, rip her hair out, crush her skull, smash her face in, make her unrecognizable, and put her in a coma. He even sent her of pictures of child-victims from school shootings. *Id.* The defendant made clear that his words were sincere by stating, "[t]rust me I don't make empty threats," as well as showing up uninvited (and unwelcomed) at Ms. Bolt's home and work place. *Id.* at ¶¶ 33, 36.

The defendant not only threatened to exact revenge on Ms. Bolt by hurting or killing her, but also by perpetrating a mass shooting. At one point he stated to her, "why do you think people go on fucking shooting sprees? It's mean to be cruel to weird people like me and I will get my revenge. God, it's gonna feel amazing." *Id.* at ¶ 33.

C. Protect the Public from Further Crimes of the Defendant

Over the years, the defendant has displayed an increasing propensity to commit acts of violence. The defendant self-reported having been involuntarily committed approximately 100 times since the age of 16, and as recently as April 2022. *See* PSR at ¶ 54. A selection of records from these commitments tell a troubling story. *See id.* at ¶¶ 53-64. The defendant has studied active shooter incidents, sympathizes with and idolizes mass shooters, has stated his desire to become a "mass murderer," and stated that he would hurt others if he had a gun. *Id.* All of this behavior is consistent with his threatening Ms. Bolt with committing a mass shooting and telling law-enforcement in the instant case of his desire to commit a mass shooting.

The defendant's probation officer described the defendant as "angry all the time," and believed that characteristic was getting worse as the defendant grew older. *Id.* at ¶ 61. The defendant's mother, Kristine Nuzum, also told investigators that she was worried the defendant would do something if he did not receive the requisite mental health treatment. *Id.* at ¶ 42. Even as the defendant has awaited trial in the instant case, he has continued to rack up disciplinary infractions and display concerning behavior. For example, on March 7, 2022, the defendant told a Pinellas County Jail Employee, "[y]ou don't know me, you don't know what I'm capable of."

Id. at ¶ 56. That much is true; we don't yet know what the defendant is capable of. A high-end sentence, however, would serve to protect the public from further crimes of the defendant.

IV. Conclusion

Based on Leahy's history and characteristics, considered in conjunction with the nature and circumstances of the offense and the need to protect the public from further crimes, the United States respectfully requests a high-end guideline-sentence.

Respectfully submitted,

ROGER B. HANDBERG
United States Attorney

/s/ Carlton C. Gammons
CARLTON C. GAMMONS
Assistant United States Attorney
Florida Bar Number 85903
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602-4798
Telephone: (813) 274-6000
Facsimile: (813) 274-6358
Email: Carlton.Gammons@usdoj.gov

KRISTEN CLARKE
Assistant Attorney General

/s/ David N. Reese
DAVID N. REESE
Trial Attorney
Alabama Bar Number ASB-0887-I67R
950 Pennsylvania Ave. NW, 4CON 7.1132
Washington, DC 20530
Telephone: (202) 598-5129
Facsimile: (202) 514-8336
Email: David.Reese@usdoj.gov

/s/ Laura-Kate Bernstein
LAURA-KATE BERNSTEIN
Trial Attorney
Maryland Bar Number 1212110224
950 Pennsylvania Ave. NW, 4CON 7.109
Washington, DC 20530
Telephone: (202) 598-3519
Facsimile: (202) 514-8336
Email: Laura-Kate.Bernstein2@usdoj.gov

U.S. v. Leahy **Case No. 8:22-cr-156-KKM-CPT**

CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to counsel of record.

/s/ Carlton C. Gammons
Carlton C. Gammons
Assistant United States Attorney
Florida Bar Number 85903
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602-4798
Telephone: (813) 274-6000
Facsimile: (813) 274-6358
E-mail: Carlton.Gammons@usdoj.gov