

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 15-340 (JRT/LIB)

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| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | GOVERNMENT’S POSITION |
| |) | ON SENTENCING |
| DANNY JAMES HEINRICH, |) | |
| |) | |
| Defendant. |) | |

The United States of America, by and through its attorneys, Andrew M. Luger, United States Attorney for the District of Minnesota, and Julie E. Allyn and Steven L. Schleicher, Assistant United States Attorneys, hereby respectfully submits its position and memorandum on sentencing.

The United States recommends the Court impose a sentence of 240 months’ imprisonment. While this sentence is a significant upward variance from the recommended Sentencing Guidelines range of 121-151 months, all of the relevant parties in this case – the United States, Defendant, the victims and their families, the federal and state law enforcement authorities, and the local prosecution authorities – agree this is the only appropriate and just sentence under the unique circumstances presented in this matter.

As set forth more fully below, this sentence is also well-supported by the facts of the case and the law, which allows this Court to base its sentence upon the evaluation of the offense and the offender, rather than mere calculation of the advisory guidelines. Defendant is a dangerous sexual predator who has committed assault, rape and

murder. He has stolen the innocence of young boys for sexual gratification and committed a heinous murder for the sole purpose of concealing his sexual crimes. He displayed particular cruelty by keeping his secret with the full knowledge that an innocent family was searching, grieving and waiting for over 26 years. He has caused irreparable and inalterable devastation to victims and their families and fundamentally changed the way parents in this State raise their children. Defendant spent those 26 years continuing to commit crimes against children by amassing a collection of child pornography – images of abused and exploited children – for the purpose of satisfying his deviant sexual urges, a practice he continued up until the day he was arrested and detained. The stipulated sentence of 240 months is well-supported and the United States urges this Court to adopt and impose the recommended sentence.

RELEVANT FACTS AND PROCEDURAL BACKGROUND

On July 28, 2015, law enforcement found a large collection of child pornography while executing a search warrant at Defendant's home in Annandale, Minnesota. The pornographic images of children consisted primarily of color photographs meticulously categorized and neatly organized in 3-ring binders found throughout Defendant's home. A forensic examination of Defendant's desktop computer also found child pornography images on the hard drive of the computer. Defendant subsequently admitted to seeking out, downloading, and printing the pornographic images from the internet.

The search of Defendant's home in July 2015 was the culmination of a decades long investigation into the sexual assault of J.S. and the disappearance of J.W. Law enforcement

hoped they would find evidence, and finally resolve, those assaults and abductions when they entered Defendant's home in July 2015.

A. The January 13, 1989 Abduction of J.S.

On January 13, 1989, J.S. was a 12-year-old boy walking home one evening when a man drove by and asked J.S. "whether he knew where [John Doe] lived." J.S. did not run away or refuse to answer, because, as a young boy in a small town in 1989, he simply did not have reason to be concerned. But, as J.S. began to answer, the driver got out of the car and grabbed J.S. The driver forced J.S. into the back seat and drove away, abducting the young boy. The driver told J.S. that he had a gun and was not afraid to use it.

More than twenty years later, we now know, by his own admission, that Defendant Heinrich was the driver of this car who kidnapped J.S.

Defendant drove for a while and eventually stopped the car on a gravel road. Defendant climbed into the backseat of the car with J.S. and Defendant told him to remove his snowmobile suit and to pull down his pants and underwear. Trapped and fearful in the car, J.S. complied. Defendant touched J.S.'s penis with his hand and ordered J.S. to touch the Defendant's genital area. Defendant put J.S.'s penis in his mouth and then Defendant orally penetrated J.S. by putting his own penis in J.S.'s mouth. Defendant ejaculated and threatened to kill J.S. if he did not swallow the semen. Defendant also tried to anally rape J.S. Defendant, however, was unsuccessful in this attempt to anally penetrate J.S.

After he sexually assaulted J.S., Defendant returned to the driver's seat and gave J.S. his snowmobile suit back, but Defendant kept J.S.'s pants and underwear as a souvenir. Defendant told J.S. that he was lucky to be alive and if the police ever got a "lead" on the

him he would find J.S. after school and shoot him. Defendant then finally released J.S. out into the cold night, a few miles from his home. Defendant told J.S. to roll around in the snow to wipe off his snow suit. Defendant then told J.S. to run and not to look back or he would be shot. J.S. made it home and reported the assault to authorities.

Only three days after this abduction and assault, law enforcement considered Defendant a potential suspect in the rape of J.S. Accordingly, J.S. was shown photographs of Defendant and five other individuals with similar builds and characteristics. J.S., however, was unable to conclusively identify that a photo of Defendant was his attacker. Law enforcement collected and maintained in evidence several pieces of clothing worn by J.S., including his sweatshirt.

B. The October 22, 1989, Abduction and Disappearance of J.W.

On October 22, 1989, J.W., at the age of 11, was abducted by a masked man while he was biking home with his brother and friend in St. Joseph Township. The masked man approached the three boys on foot and displayed a handgun. The masked man asked the boys how old they were and the boys told him their ages. The masked man ordered two of the boys to run and not to look back or he would shoot them. The abductor then led J.W. away and he was never seen again.

The abduction of J.W. was a mystery that haunted this State for 26 years. On September 6, 2016, Defendant admitted in Court that he was the masked man who abducted, assaulted, and murdered, J.W.

The immediate and continuing law enforcement response to the abduction of J.W. was unprecedented. Starting on the night J.W. disappeared, law enforcement diligently

attempted to locate J.W. and find the abductor. Within two months of J.W.'s abduction, law enforcement linked J.W.'s disappearance to previous sexual assaults, including the abduction and assault of J.S. On December 13, 1989, law enforcement obtained a sketch from J.S. of his abductor to disseminate to the public. This sketch bore a striking resemblance to Defendant. Three days later on December 16, 1989, the FBI interviewed Defendant as a suspect in the abductions of J.S. and J.W. By the time of this interview, J.W.'s disappearance had become widely publicized national news. The abductor – this Defendant – knew full well the sorrow and anguish he had visited upon the family, and the desperation with which the nation was trying to find answers. Nevertheless, months after J.W.'s disappearance, Defendant sat through an interview with FBI agents and lied the entire time – denying all involvement in both abductions.

A few weeks later, in January 1990, the then-Paynesville police chief told the law enforcement officers investigating J.W.'s case about a cluster of molestations that had occurred in his town and that Defendant should be considered a suspect in those assaults, and by extension, continue to be a suspect in the J.S. and J.W. abductions. The Paynesville clusters involved eight reported assaults on seven juvenile male victims (one victim was assaulted twice) and all involved a very similar pattern. The attacks typically involved the assailant approaching boys approximately 12 years old in a public place, such as while the boys were walking or biking home, then attacking the children by groping or attempting to grope their genitals, either over or under their clothing.

After obtaining the Paynesville information, on January 12, 1990, law enforcement again interviewed Defendant. Yet again, Defendant had an opportunity to tell law

enforcement the truth. He did not. He lied and adamantly denied any involvement in the abductions of J.S. and J.W. Police, however, thereafter collected evidence from Defendant like his shoes, tires and a sample of Defendant's hair.

Police persisted in their investigation of Heinrich. On January 24, 1990, officers conducted a search of Defendant's home. During the execution of the search warrant, law enforcement interviewed Defendant yet a third time. Still, Defendant continued to assert his innocence, claiming he was home alone when J.W. was abducted.

A few days later, on January 26, 1990, law enforcement had Defendant participate in a physical lineup. J.S. was unable to conclusively select Defendant from the lineup as his attacker.

At about this same time, the tire and shoe print evidence that police had collected from Defendant were compared to impressions of tire tracks and shoe prints obtained from the J.W. abduction site. While the tire treads and Defendant's shoes were determined to be consistent with the treads and footprints left at the J.W. abduction site, unfortunately, no unique markings existed to confirm an exact match of either comparison.

On February 9, 1990, police arrested Defendant on probable cause for the kidnapping and rape of J.S. By this time, J.W. had been missing for almost four months. During this entire time, J.W.'s family publicly pleaded for answers. Pictures and symbols of J.W. (like mailboxes wrapped in white ribbons) permeated the community.¹ Defendant,

¹ As similarly requested by the defense in their Motion for Transfer of Venue (Doc. No. 50), the Government believes the Court can take judicial notice as to the extent the abduction of J.W. was widely-publicized and the corresponding community engagement in what became a state-wide tragedy.

however, remained unfazed and continued to emphatically deny any guilt, accusing law enforcement of framing him, and demanded to see a lawyer. Defendant could not be charged and was released.

Stone-walled by Heinrich, law enforcement was left with no choice but to continue to pursue other leads and investigated the case throughout the years. For decades investigators pursued thousands of leads. At varying times investigators continued to test forensic evidence in the case. For example, in 2015, law enforcement was able to compare Defendant's DNA profile to a DNA profile developed from J.S.'s sweatshirt. According to the laboratory report, the predominant male DNA profile on J.S.'s sweatshirt matched Defendant's DNA profile.

C. 2015 Search Warrant of Defendant's Home

Armed with scientific proof connecting Defendant to J.S.'s sexual assault – and by extension to J.W.'s abduction – in July 2015, law enforcement obtained the search warrant for Defendant's home wherein they found the binders of child pornography. Approximately 19 of these three-ring binders contained images of nude photographs of pre-pubescent children that would fit the legal definition of child pornography. Although only about 110 images could be criminally labeled as child pornography with certainty, Defendant possessed countless other photographs of child erotica, age-questionable (child) pornography, images of teenagers from catalogs, and pictures of famous teenage celebrities.

Closer investigation of the binders containing pornographic pictures of children also revealed one binder filled with what is called "morphed" pornographic pictures. Defendant

created his morphed child pornographic images by using a boy's head taken from a non-pornographic image (like a yearbook photograph or an advertisement), and placing that child's head on a naked body. The naked bodies were of different genders and ages; for example, some images included a boy's head morphed onto the body of a naked adult woman, while several of the images involved a child's head morphed onto a child's naked body. One morphing scheme done by Defendant involved him taking the yearbook photographs of boys' heads from Paynesville High School yearbooks, circa the late 1970s, and placing those heads on naked bodies. Law enforcement identified several of the Paynesville boys whose heads were placed on naked bodies. These individuals, now grown men, had known of Defendant from attending the same school.

Materials collected from Defendant's home included boxes filled with VHS tapes. Law enforcement reviewed these tapes and discovered more than 100 hours of video footage apparently surreptitiously recorded by Defendant. The footage on these recordings is profoundly disturbing and reveals Defendant as a voyeuristic stalker obsessed with children. The recordings included videos of children delivering newspapers, riding bicycles, playing in public playgrounds, and participating in sporting activities. The videos often focused and zoomed-in on the buttocks and genital regions of the children. Several videos show footage of juvenile males delivering newspapers in a multi-dwelling apartment building. These videos were shot using a hidden camera apparently set up by Defendant. The hidden camera was pointed at a set of stairs. On numerous occasions, Defendant can be seen in the videos stepping in front of the camera and dropping what appears to be a coin on one of the stairs and then exiting the view of the camera. After a

period of time, newspaper delivery boys enter the building, stop on the stairway and bend over to retrieve the coin. The video camera is set up in a manner to capture the image of the boys bending over with their buttocks oriented toward the camera.

Among Defendant's VHS tapes, law enforcement discovered that Defendant had recorded, throughout the years, various news reports, like anniversary specials, concerning the abduction of J.W.

With respect to the forensic examination of the computer, in addition to uncovering child pornographic images, analysis further exposed evidence of Defendant's pervasive sexual interest in children. For example, the examination uncovered that Defendant used the following internet search terms in his computer: "Justboys.com," "Teenpornpictures.com," "Gay teen photos," "Nude teen girl photos," "My naked teens," "Boys boners," and "Nude young boys." The search history also included Defendant's attempts to seek out materials that could be used to create his morphed child pornography. These terms included: "1976 7th grade class photos," "2013 7th grade class photos," "Kids Christmas photos 1978," "2013 7th grade wrestling photos," "Boys in Toughskins jeans photos," "Boys in undies photos," "1977 summer camp photos," "13 year old boy," "Pre-teen boy models," "Paynesville Minnesota school photos" and "Paynesville Minnesota kids photos."

Finally, a review of the computer also uncovered a deleted picture of J.W.

Both during the 2015 search warrant, and several months after the search warrant, investigators interviewed Defendant about J.S. and J.W. This time investigators were armed with the DNA evidence linking Defendant as J.S.'s attacker. Law enforcement

talked to Defendant for hours. They tried various approaches – ranging from gently cajoling him to talk about J.W., to pushing Defendant to admit his role. No amount of time and no approach worked. Defendant persisted that he was innocent of any crime involving J.S. or J.W.

Thereafter, Defendant was charged by federal indictment with twenty-five counts of possessing or receiving child pornography.

D. Guilty Plea

On September 6, 2016, Defendant plead guilty to Count 24 of the indictment, which charged him with Receipt of Child Pornography, in violation of 18 U.S.C. §§ 2252A(a)(2)(A), (b)(1) and 2256(8)(A). (PSR ¶ 2). As part of the plea agreement, Defendant acknowledged and admitted the additional relevant conduct of sexually assaulting J.S., and abducting, sexually assaulting, and murdering J.W.

Defendant's admissions to his crimes perpetrated against J.S. and J.W. were the result of extensive negotiations and a unique global agreement between federal and state authorities. Despite decades of suspicion, the Stearns County Attorney could not prosecute Defendant for the abduction and presumed murder of J.W. Even the advent of "jail house snitches" could not resolve the mystery of what happened to J.W.

That is, after Defendant was taken into custody, the jail housed Defendant in the same area as other child-sex offenders. These men were eager to report to the government on any interaction or comment made by Defendant in hopes that conveying information to the government would result in receiving a reduced sentence. These fellow pedophiles, however, had themselves committed despicable and horrific acts against children and were

known manipulators and liars. Any information from Heinrich to these pedophiles was information coming from one calculating and deplorable pedophile to another and could not be sufficiently corroborated. To the extent they could claim to have information from Heinrich about a crime, their testimony would inherently be unreliable.

For example, Defendant Anton Martynenko, a pedophile with over 150 child victims, now seems to imply that he relayed to law enforcement location information he obtained from Heinrich about J.W.'s body and Highway 23. But, Martynenko never told law enforcement any information regarding the location of J.W.'s body from Heinrich, or that Heinrich gave him any information specific to Highway 23 as it related to J.W. Rather, Martynenko simply told law enforcement that Heinrich was familiar with western Minnesota roads, including highway 23. Martynenko is trying to overstate the value of the information he provided to reduce his otherwise substantial sentence.

As from the beginning, the only person who could resolve this matter was Defendant. Perhaps even more preeminent than a conviction, was the ability to find J.W. The last resort was to convince Defendant to confess to a murder for which he could not be charged. The only incentive to accomplish this would be to offer Defendant a chance to serve far less prison time than he would otherwise serve if he could have been convicted of intentional murder. Ultimately, through extensive negotiations, all parties, including State authorities, agreed that if Defendant assisted in locating J.W.'s remains, and confessed to his crimes against J.S. and J.W., he would not be charged with murder and only be exposed to a maximum sentence of twenty years' imprisonment in federal custody. On August 31, 2016, Defendant executed his part of the bargain and led authorities to

J.W.'s remains. Thereafter, he provided a detailed confession of his crimes against J.S. and J.W.

On September 6, 2016, in open court, for the first time in over 26 years, Defendant admitted to kidnapping and sexually assaulting J.S. Defendant admitted he abducted, sexually assaulted, and murdered J.W. Defendant provided, in graphic detail, how he molested and killed J.W. Those chilling details of the night Defendant murdered J.W. are well known to the Court and need not be repeated here.

ARGUMENT

In following the sentencing methodology laid out by the Supreme Court, “a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range.” *Gall v. United States*, 552 U.S. 38, 49 (2007). “[A]fter giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party.” *Id.* at 49-50. Section 3553(a) requires the Court to consider a number of factors, including “the nature and circumstances of the offense,” “the history and characteristics of the defendant,” “the need for the sentence to reflect the seriousness of the offense,” “the need for deterrence,” “the need to protect the public from further crimes of the defendant,” and “the need to avoid unwarranted disparities.” 18 U.S.C. § 3553(a). But a district court is not required to provide a mechanical recitation of the Section 3553(a) factors and “has wide latitude to weigh the § 3553(a) factors in each case and assign some factors greater weight than others in determining an appropriate sentence.” *United States v. San-Miguel*, 634 F.3d 471, 475-76 (8th Cir. 2011).

A. The Guidelines Calculations

Following the guilty plea, probation prepared a Presentence Investigation Report (APSR@). The PSR accurately determined the total offense level to be 32, the criminal history to be level I, and the resulting guideline range to be 121 to 151 months in prison. (PSR §§ 54, 64, 104).

The United States agrees with the calculation in the PSR resulting in an effective advisory Guidelines range of 121 to 151 months' imprisonment (PSR ¶ 104). The parties, however, agreed in the plea agreement to advocate for an upward variance from the Sentencing Guidelines and request the Court sentence Defendant to the statutory maximum sentence of 240 months' imprisonment in light of the relevant conduct and the factors set forth in Section 18 U.S.C. 3553(a).

B. The 3553(a) Factors

A full consideration of the 3553(a) factors advises that the only just and fair sentence in this case is the sentence recommended by the parties – a sentence of 240 months in prison.

1. Nature and Circumstances of the Offense

Defendant pled guilty to one count of possession of child pornography. Defendant admitted his collection of child pornography included some sadomasochist images. Possessing child pornography is an insidious crime that victimizes and haunts the children depicted in those pictures for decades. The overall impact on all these victims may never be fully determined or revealed. The Court has before it in the PSR a sampling of letters from a few of the known victims portrayed in some of the specific photographs possessed

by Defendant. The letters are heartbreaking and detail the devastation caused to the lives of the victims – not just at the time the picture is taken, but the constant re-victimization that occurs each time, day after day, that a man like Defendant views the pictures. The reprehensible behavior of Defendant in possessing child pornography begins to justify a sentence of 240 months in prison.

As the Court well knows, the heart of this case is not Defendant's reprehensible and predatory possession of child pornography. Defendant, above all, is a rapist and a child murderer. Murder is always cruel and inhuman. But the murder of J.W. is especially beyond comprehension as it was utterly senseless and selfish. The Court heard the heartbreaking details of J.W.'s abduction and eventual murder. The Court heard how J.W. asked Defendant "what did I do wrong?" when Defendant handcuffed him, and how, after Defendant sexually assaulted him, J.W. cried at the thought he would be dropped off far from home. Instead of simply driving J.W. towards home, Defendant, in a steady voice, told the Court how he shot J.W. twice in the back of the head. Defendant decided his own selfish depraved needs were more important than a child's life.

Ultimately, there is no possible way to convey in words the enormity of Defendant's deplorable actions. The Court is privy to the letters from J.S. and J.W.'s family and can see that the pain and suffering caused by these crimes is beyond measure. The letters speak to lives torn apart, to never-ending sadness, to constant fear, to identities stolen as the trajectory of each person's life was halted and altered to become lives defined by tragedy. Heinrich killed a little boy who did nothing wrong and deserved to live. This little boy's family deserved to watch him grow-up, to hold him, and to love him not just

for who he was, but for who he would become. Heinrich stole all that in a moment, and now 27 years later he deserves his punishment.

Although twenty years in prison could not begin to account for the horrific circumstances of these crimes, this is the maximum sentence available and the Government requests the court sentence accordingly.

2. History and Characteristics of the Defendant

There is nothing that could be said to redeem the reprehensible character of this Defendant. The murder of J.W. is incomprehensible. Heinrich did not need to kill him. Defendant at his plea hearing attempted to explain the killing as induced by his panic from seeing a police response to the abduction. But J.W. was simply a young boy crying at the thought he would not be brought home. Heinrich could have and should have let J.W. live. Defendant chose his own self-protection over the life of another human being, over the life of a young boy. Defendant's conscious choice to kill this child reveals him to be a predator who placed self-preservation and his own criminal sexual desires over the innocence and life of a young boy who never had the chance to grow to be a man.

No sentence could ever truly reflect the cruel, sadistic, and narcissistic character of this Defendant. Defendant's narcissism extended beyond the night he murdered J.W., as Defendant allowed this murder to go unsolved for over twenty-six years. In this, Defendant victimized the family again and again with each year they were left to wonder and hope.

For decades, Defendant watched J.W.'s family, friends, and community grieve and struggle with the disappearance of J.W. With each passing year, as Defendant watched the continued coverage of J.W.'s abduction, he would have seen and heard the pain and

anguish of J.W.'s family and friends. He would have heard the pleas for answers. Defendant watched the suffering and did nothing but continue his self-preservation.

It is one thing to have your loved one murdered, and it is an even greater tragedy to have them disappear into thin air with no idea whether they are dead or alive. A known death can be grieved and processed with the hope of future healing. But a disappearance like this with no answers left J.W.'s family to seek and search, to let hope grow only to be dashed, not knowing if any day they will see their child, not knowing if the boogey man who stole their son lurked in the house down the street. Every single day that this Defendant remained silent he let this family suffer.

Defendant's silence let this unsolved disappearance grow like a cancer throughout the community. Defendant must have known of the innocent people who became targets of police interest. Defendant let those blameless people suffer as suspects, never saying a word. There could be second-guessing for years about what could have or should have been done to charge this Defendant sooner, but, there was one person and one person only who could have stopped the investigation and the speculating, and it was this Defendant. Year after year, Defendant failed to come forward, and in that failure he let the community spin with finger pointing and blame. Only Defendant is to blame. This Defendant has no empathy and he should spend the next two decades in prison.

Defendant, after twenty-six years, seized an opportunity to obtain a favorable sentence for a ghastly act, and perhaps, he also cared enough to end the anguish. For this, although Defendant deserves a lifetime in prison, the Government request the court sentence him to the maximum sentence of twenty-years.

3. The Need for the Sentence Imposed to Reflect the Seriousness of the Offense, to Promote Respect for the Law, and to Provide Just Punishment for the Offense.

This Defendant is a voyeur, a molester, a rapist, and a murderer. No sentence imposed could ever reflect the seriousness of Defendant's crimes. Justice here is a different kind of justice than what comes from only a lengthy prison term. This is the justice of answers and resolutions. As deplorable and reprehensible as Defendant's crimes were, at some point each additional year in prison is outweighed by the need for answers, for peace, and for a family's ability to bury their child. Defendant's confessions ended the investigations, and accusations, and most importantly, gave the family, and even the community, that opportunity to grieve and hope for healing. In balance, to have the answers and the chance at peace and healing, twenty years in prison for this Defendant will serve as just punishment.

4. The Need for the Sentence to Afford Adequate Deterrence to Criminal Conduct, and the Need for the Sentence Imposed to Protect the Public from Future Crimes of this Defendant.

A significant sentence in this case is needed for individual deterrence and to protect the public from this Defendant. Given the horrifying nature of Defendant's crimes, and the unrepentant manner in which Defendant has lived his life since, incarcerating Defendant for decades might possibly deter this Defendant. Given his age, twenty years in prison could be sufficient to protect the public from the Defendant. The best this court can and should do is sentence Defendant to the maximum amount of time possible and impose a sentence of 240 months' imprisonment.

CONCLUSION

For all the foregoing reasons, the United States respectfully recommends that the Court impose the maximum sentence of 240 months' imprisonment.

Dated: November 17, 2016

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s/ Julie E. Allyn

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