IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

THE STATE OF OREGON, Plaintiff, v. ALAN SWINNEY Defendant.	No. C 20CR-50067 DA 2426200 STATE'S MEMORANDUM REGARDING THE SENTENCING OF ALAN SWINNEY

INTRODUCTION

COMES NOW the State of Oregon, by and through NATHAN VASQUEZ and REID SCHWEITZER, Deputy District Attorneys, asking the Court to consider this memorandum regarding the state's position on the sentencing of Alan Swinney. The State of Oregon moves this court to impose consecutive sentences totaling 130 months in prison, of which 70 months will be subject to ORS 137.700 and 60 months will be subject to ORS 161.610 4(a).

STATE'S POSITION

Oregon sentencing guidelines provide that a sentencing judge may impose sentences consecutively, OAR 213-012-0020(1), ORS 137.123. In this case, the crimes committed by the defendant occurred during two separate criminal episodes, involved multiple victims, and evidence a willingness to commit multiple additional offenses under ORS 137.123(5)(a) and constitute qualitatively different injury to the various victims under ORS 137.123(5)(b).

FINDINGS

The State requests that the defendant be sentenced consecutively on count 5 (Assault 2) and Count 8 (Unlawful Use of a Weapon with a Firearm). The State requests findings that Count 5 and Count 8, constituted criminal offenses that occurred during two separate criminal episodes.

This finding is based on the indictment and the verdicts of the jury. Additionally, the evidence presented to the jury clearly indicated that the crimes committed by the defendant occurred during two separate criminal episodes. Finally the evidence demonstrated the defendant's willingness to commit multiple additional offenses under ORS 137.123(5)(a) and constitute qualitatively different injury to the various victims under ORS 137.123(5)(b).

The conviction on count 5 requires a 70 month prison sentence per ORS 137.700. This statute requires the imposition of the prison sentence unless the court makes a series of findings under ORS 137.712(2)(b). The statutory construction requires the court to find mitigating factors that are substantial and compelling to allow the court to depart from the mandatory sentence. Additionally, the court must find that the victim did not suffer a "substantial injury." For the reasons outlined below in the rationale section the defendant, his statements, and the facts of the case provide only aggravating factors which weigh heavily against such a departure. Further the eye injury suffered by the victim constituted a "substantial injury" and thus the defendant is not eligible for a downward departure under ORS 137.712(2)(b). The evidence at trial clearly indicated that the victim suffered a long lasting injury to his eye. His injury was still present at the time of trial approximately a year after the assault. This injury is better described as a "serious physical injury" as defined by ORS 161.015(8) and certainly constitutes a substantial injury.

CRIMINAL HISTORY

This defendant comes to this court for sentencing with a limited criminal conviction record and would start as an "I" on the sentencing grid. While the multiple victims and two separate criminal episodes would allow for the court to move the defendant's criminal history

score to an "A" that will not be necessary due to mandatory minimum sentences for counts 5 and 8.

SENTENCE RECOMMENDATION

Count 1: Attempted Assault IV

The State requests that the court impose six months jail concurrent to Counts 5 and 8.

Count 2: Unlawful Use of Mace II

The State requests that the court impose six months jail concurrent to Counts 5 and 8.

Count 3: Attempted Assault II

The State requests that per Sentencing grid-block 7-I the court impose 2 years of probation with 30 days jail. Concurrent to Counts 5 and 8.

Count 4: Unlawful Use of a Weapon

The State requests that per Sentencing grid-block 6-I the court impose 2 years of probation with 30 days jail. Concurrent to Counts 5 and 8.

Count 5: Assault II

The State requests that the defendant be sentenced per ORS 137.700. Defendant's sentencing grid-block is a 9-I. The state requests that the court sentence the defendant to 70 months prison followed by 36 months of post-prison.

Count 6: Assault II (NOT GUILTY JURY FINDING)

Count 7: Unlawful Use of a Weapon

The State requests that per sentencing grid-block 6-I the court impose 2 years of probation with 30 days jail. Concurrent to Counts 5 and 8.

Count 8: Unlawful Use of a Weapon with Firearm

The State requests that per ORS 161.610 (4)(a) the court impose 60 months prison consecutive to Count 5. With a 60 month prison sentence there will be NO Post Prison Supervision for this count.

Count 9: Menacing

The State requests that the court impose six months jail concurrent to Counts 5 and 8.

Count 10: Pointing a Firearm at Another

The State requests that the court impose six months jail concurrent to Counts 5 and 8. ORS 166.190 requires a fine be imposed and the state request the maximum fine of $500 be imposed.

Count 11: Unlawful Use of Mace II

The State requests that the court impose six months jail concurrent to Counts 5 and 8.

Count 12: Assault IV

The State requests that the court impose six months jail concurrent to Counts 5 and 8.

SENTENCING RATIONALE

The state is recommending 130 months prison because the defendant represents a future danger to this community and due to the gravity of his crimes. As evidenced by the defendant's escalating violence, letters, social media statements and testimony, the defendant has no remorse for his actions, no desire to change and every intention of engaging in future acts of violence. The defendant takes great pride in his actions and has a complete inability to recognize the criminality of his conduct. The only option to mitigate the potential risk that the defendant poses to this community is substantial incarceration.

The future dangerousness of the defendant is most apparent due to the fact that the defendant actively seeks conflict. He wants to find conflict to help create and engage in what he believes is an ongoing civil war. His intentions were made clear by the evidence in this case, his testimony at trial, his actions on August 15 and August 22, 2020, and Attachment A. The defendant traveled to the City of Portland for the express purpose of "dealing" with Antifa. In the defendant's social media post presented at trial, the defendant actively attempted to recruit people to form an armed militia. His expressed goal was to have this group fight in his ongoing civil war. On August 15, 2020, the defendant led a small group of like-minded individuals and engaged in multiple acts of violence. In addition to the defendant's acts of violence on August 15, 2020, an associate of the defendant fired a handgun from a moving car in the direction of a group of people after engaging in acts of violence with the defendant (See State v. Skylor Jernigan 20CR-45800; Convicted of two counts of Unlawful Use of a Weapon with a Firearm). The violence of August 15, 2020, which injured several people and seriously injured victim Jason Britton, only emboldened the defendant and motivated him to escalate his violence.

The events of August 22, 2020, highlight the extreme danger that the defendant represents to this community. The defendant promoted that event and acted as a leader within the riot that occurred. The videos presented during the trial detailed countless assaults including multiple assaults that the defendant either directly participated in or encouraged others to engage in. On that date the defendant prepared to engage in a mass shooting when he pulled out his handgun and pointed it at a crowd of people (See Attachment B). Through all of this the defendant has no ability to see how or why his actions were wrong. During the trial, he quickly labeled all of the people that opposed him as terrorists, he expressed joy for those that were hurt, bragged about his actions, and strongly asserted that he would do it all over again if given the

chance (See also Pre-Sentence Investigation Pages 13-14). The defendant represents both a catalyst and a lightning rod for political violence. This violence continues to occur in our community and the defendant wants to promote, organize and engage in this violence.

The defendant's grandiose actions and callous crimes warrant a sentence of 130 months in prison. The defendant's desire to organize violent hate-filled militia groups, his desire to create riots in the Portland Metro Area, and his desire to engage in violent conflicts represent an extreme danger to this community. That danger, when combined with his Pro-Criminal Attitudes, the injuries he inflicted, and the nature of his crimes warrant a sentence of 130 months.

The State respectfully requests 130 months in prison for the defendant Alan Swinney.

RESPECTFULLY SUBMITTED: Dated this 9th day of December, 2021.

MIKE SCHMIDT
District Attorney
Multnomah County, Oregon

By: _____
Nathan Vasquez, OSB 014437
Deputy District Attorney

CERTIFICATE OF SERVICE

I, Nathan Vasquez, hereby certify that I served a true copy of the **STATE'S SENTENCING MEMORANDUM**, in State v. Alan Swinney, on counsel for the defendant; to wit:

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Courtesy Copy to the Court
The Honorable Heidi Moawad

by delivering to their offices, placing in their discovery box, emailing or faxing on the 9th day of December, 2021.

Nathan Vasquez, OSB #014437
Deputy District Attorney

Attachment A

Alan Swinney 825585
11540 NE Inverness Dr.
Portland OR 97220

Derek Chauvin 261557
5329 Osgood AVE N.
Stillwater Mn 55082

Hey Derek. Im sorry brother. I was really hoping they wouldnt get you on all charges, but keep your head up. You still have a couple of ways out of this. You and I are connected in a way. The riots that sparked up after are part of the reason Im in jail right now. Im from Texas but I went to Portland to deal with Antifa and Burn Loot Murder protestors. We had a flag wave in front of Central Precinct on the Sidewalk and the same group of protestors that came out to attack the police every night for months straight showed up to attack us. We fought back though and because we defended ourselves, im sitting in jail for going on 8 months now. I was marking the protestors who were attacking us with paintballs and they are bringing charges on me for shooting my attackers with paintballs. Go figure.
You will have an appeal and if they change the venue; you wont

get all the charges dropped.

Another thing that may end up working in your favor is that this country is headed toward civil war. We've been fighting with the left for years now. We've been to rallies from coast to coast and we've got 96 Antifa and BLM agitators arrested. We've been fighting this civil war for awhile now. I see it ramping up. Civil war will get you out of jail. It'll get me out too.

Our country has too many George Floyds in it. It's time to clean house. I don't believe you meant to kill the guy, but the thing is... The world's a little bit better and safer place without him in it. He was a POS. Thank you for your service. I'm sorry this happened to you, but like I said... A civil war will get you out of there. I don't think it'll be long now.

If you need a friend to write me. I'm a vet, proud boy, and a patriot. Drive on soldier. Chin up! You got this!

Attachment B