

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
CEDAR RAPIDS DIVISION

UNITED STATES OF AMERICA,            )  
  )  
  )            Case No. CR 18-0086 CJW  
  )  
  )  
  )            vs.  
  )  
ROSSI LORATHIO ADAMS II,            )  
  )  
  )            Defendant.  
  )

Sentencing Memorandum

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I. Background.

The defendant was convicted by a jury of Conspiracy to Interfere with Commerce by Threats and Violence in violation of 18 U.S.C. Section 1951. Despite the guilty verdict, the defendant maintains his innocence. He denies any planning or involvement in the offense.

At trial, the government alleged that the purported co-conspirator, Sherman Hopkins, forced the alleged victim to transfer an internet domain name to the account of defendant. The transfer was to be made to the defendant’s GoDaddy.com account, where a record would clearly exist as to whom and where the domain name was transferred. The transfer process also takes at least 48 hours. The defendant, who the government alleges is a “sophisticated user” of mobile technology, knew that the transfer of any domain name is traceable to the recipient. There is an electronic record of all transactions. With all due respect to the verdict, the government’s case is inconsistent with what any thief would do – steal something unique, and then place the stolen property into the thief’s account, knowing that the property can be easily traced.

An objective view of the evidence shows that Hopkins, who knew little to nothing about the transfer of domain addresses, acted alone; his involvement was merely an attempt to curry favor with defendant (his cousin) at some later point in time. The contacts that the defendant made to GoDaddy.com in the days following the robbery were not to confirm the transfer – the defendant inquired with

GoDaddy.com as to the reasons for the emails that the defendant was receiving from GoDaddy.com regarding the transfer. Unfortunately, this critical piece of evidence was never presented to the jury.

The sentencing hearing for the defendant is set for December 9, 2019. There are several issues that are addressed in the defendant's sentencing memorandum (see below).

## II. Sentencing Guideline Issues.

The government argues that the defendant is responsible for the acts of alleged co-conspirator Sherman Hopkins, Jr. during Hopkins' commission of the robbery—specifically Hopkins' making a threat, use of a firearm, inflicting serious bodily injury, and physical restraint of Ethan Deyo.

However, under the Sentencing Guidelines, and the law of the United States Court of Appeals for the Eighth Circuit, “the concepts of relevant conduct under the Guidelines, on the one hand, and conspiracy liability, on the other, are not the same”. *United States v. Spotted Elk*, 548 F.3d 641, 673 (8th Cir. 2008). “The focus of the Guidelines is on the specific acts and omissions for which the defendant is to be held accountable in determining the applicable guideline range, rather than on whether the defendant is criminally liable for an offense as a principal, accomplice, or conspirator.” *Id.* (quoting USSG Section 1B1.3, comment n. 1). “The emphasis in substantive conspiracy liability is the scope of the *entire conspiracy*”, while “the emphasis under the Guidelines is the scope of the *individual defendant's* undertaking.” *Id.* at 673-74 (emphasis in original).

“Conspiracy liability, as defined in *Pinkerton v. United States*, 328 U.S. 640, 646-48 (1946), is generally much broader than jointly undertaken criminal activity

under USSG Section 1B1.3.” *United States v. Soto-Piedra*, 525 F.3d 527, 531 (7th Cir. 2008); see also, *United States v. Perrone*, 936 F.2d 1403, 1416 (2d Cir. 1991) (“...the scope of conduct for which a defendant can be held accountable under the sentencing guidelines is significantly narrower than the conduct embraced by the law of conspiracy.”). It is with this analysis that the defendant addresses the Guideline enhancements.

A. Use of a Firearm.

In regards to paragraph 30, the probation office recommends a 6-level upward adjustment pursuant to USSG Section 2B3.2(b)(3)(A)(ii) (“if a firearm was otherwise used, increase by 6 levels”).

The use of a firearm by Hopkins is an act that is not attributable to the defendant as it was not foreseeable by the defendant.<sup>1</sup> At trial, Hopkins testified that despite being a convicted felon (trial transcript at 324), he had purchased the firearm from someone “off the streets”. *Id.* Hopkins testified that he could not recall the name of the person from whom he purchased the gun. *Id.* at 324, 379. Hopkins testified that despite living in a homeless shelter (trial transcript at 304), he couldn’t recall the amount of money he spent on the firearm – only that it “was 150, 200 bucks, something like that”. *Id.* at 324. Hopkins also testified that he was “somewhat intoxicated” during the offense, having consumed alcohol and marijuana prior thereto. Tr. Tr. 358. Hopkins testified that he purchased the firearm (a 9-mm. black “sliding” handgun) (*Id.*) for protection. According to his testimony, he had purchased the firearm before the planning of the break-in. *Id.*

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<sup>1</sup> It is a difficult exercise to imagine what was foreseeable to the defendant because the defense must assume the defendant is guilty of the crime in order to address foreseeability.

As noted above, the focus of the Guidelines is on the specific acts or omissions of the defendant. As a participant in a criminal conspiracy, the defendant is responsible for the acts of Hopkins that were (1) within the scope of the conspiracy; (2) in furtherance of the conspiracy; and, (3) reasonably foreseeable in connection with the conspiracy. Whereas the defendant may be criminally responsible for the acts of Hopkins' through *Pinkerton* conspiracy liability, the defendant is not responsible for Hopkins' acts for sentencing purposes, as Hopkins' use of the firearm was not foreseeable to the defendant.

The evidence showed that Hopkins purchased the firearm sometime prior to the incident. Hopkins purchased the firearm for his personal protection (the trial transcript does not show why or from whom Hopkins was in need of protection other than Hopkins' self-reported need to protect himself from "all these guys from out of town, you never know who you are going to run into nowadays"). Tr. Tr. 377. We know that Hopkins has prior convictions for crimes of violence (in addition to his perjury and forgery felony convictions), as Hopkins testified that he has convictions for a domestic assault and other assaults. Tr. Tr. 306. Hopkins' use and/or discharge of the firearm was not a foreseeable act for the robbery of the internet domain address.

B. Serious Bodily Injury.

In regards to paragraph 31, the defendant objects to the four level enhancement pursuant to USSG Section 2B3.2(b)(4) ("if any victim sustained bodily injury, increase the offense level according to the seriousness of the injury: (A) bodily injury add 2, (B) serious bodily injury add 4...(D) if the degree of injury is between that specified in subdivisions (A) and (B) add 3 levels.").

The probation office again relies upon the acts of Sherman Hopkins to impose this enhancement on the defendant. The probation office determined that during the offense, Deyo suffered a “serious bodily injury” when he was shot in the right leg after Hopkins’ firearm discharged during a struggle between Hopkins and Deyo.

The defendant objects to the enhancement for two reasons. First, as indicated above, the specific acts of Hopkins holding Deyo at gunpoint and the resulting injury caused by the firearm were not foreseeable to the defendant.

Second, if the district court finds that said acts of Hopkins were foreseeable to defendant, Deyo did not receive a “serious bodily injury”. Deyo received a bodily injury which requires only a 2-level enhancement.

USSG Section 1B1.1, application note (L), defines “serious bodily injury”:

“Serious bodily injury” means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation.

CRPD Officer Daniel Lahr was the first person to arrive at the Deyo residence in response to Deyo’s 911 call – Officer Lahr testified that “I determined that he [Deyo] didn’t need any immediate medical attention.” Tr. Tr. 21. The second police officer, Investigator Randy Jernigan, arrived shortly thereafter. Upon Officer Jernigan’s arrival, he saw Deyo “standing on top of the landing, talking on the phone”. Tr. Tr. 30. Officer Jernigan testified, “I asked him where his injuries were and he lifted up his right shorts and showed me a gunshot wound where he said he was shot in the right thigh.” Tr. Tr. 31. The Officer further testified that Deyo was “pacing back and forth” while waiting. Tr. Tr. 33.

During the incident, Deyo shot Hopkins several times. Hopkins was in

serious medical condition. As Hopkins laid injured on the floor, Deyo testified he did the following:

The first thing I do, I think, is look for my phone, which I didn't know where it was. He had taken it at the time.

The second thing I did was I think I picked my laptop up, my MacBook, and put it on my bed in my bedroom. I went to my closet. I had a safe in there.

And I got my brother's firearm that was in there. And I loaded it. I didn't know if there were other people in the house at the time where I would need to further defend myself.

So I ran downstairs and went out the front door, looked for both of my neighbors. Neither one of them were home that I could tell.

I ran back upstairs and saw his – the black phone on the floor. It was still open. So I don't know if the phone call was still going on, but I think I ended the phone call and called 911.

Trial Vol. 3, pp. 43-44. From Deyo's own description of his actions after receiving the injury, and the testimony of Officers Lahr and Jernigan, it is clear that Deyo did not receive a "serious bodily injury". There is no other evidence in the trial record regarding the extent of Deyo's injury or medical treatment.

In preparation for the sentencing hearing in the instant case, the defense requested the government provide a copy of Deyo's medical records, as the Cedar Rapids Police Department had obtained a copy of Deyo's medical records on June 27, 2017, six days after the incident. The medical records also show that Deyo's injury was not serious. Deyo initially stated that he did not wish to be transported to the hospital. He eventually went to the hospital after he was encouraged to do so.

According to the doctor's records, Deyo did not appear anxious about the situation. Deyo refused any pain medication. He reported no headache, no nausea, no vomiting, no abdomen pain, no fever, no neck pain, no back pain, and he had no

other acute medical complaints. Deyo denied numbness or tingling in his extremities. The laceration from the wound on the upper leg was approximately 3 centimeters in length, and it took 2 stitches to repair; the laceration from the wound on the lower leg was approximately 3 centimeters, and it also took 2 stitches to repair. It took approximately one minute to suture each of the wounds, for a total suture time of 2 minutes.

X-rays showed that no bullet was located. There was no surgery. Deyo was discharged and was given a 48-hour follow-up appointment. Deyo arrived at the hospital at 1:37 p.m., he was discharged at 4:08 p.m. on the same date.

No “serious bodily injury” occurred requiring a 4-level enhancement. The defendant concedes that a “bodily injury” occurred which is a 2-level enhancement.

C. Physical Restraint of Victim.

In regards to paragraph 32, the defendant objects to the two level enhancement pursuant to USSG Section 2B3.2(b)(5)(B) (“if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by 2 levels”).

The probation office again relies upon the acts of Sherman Hopkins to impose this enhancement on the defendant. The probation office determined that during the offense, Hopkins held Ethan Deyo at gunpoint and forced Deyo into Deyo’s home office of his home. Also, Deyo was not allowed to leave Hopkins’ immediate area during the offense.

The defendant objects to the enhancement for two reasons. First, as indicated above, the specific act of Hopkins holding Deyo at gunpoint and forcing Deyo from leaving Hopkins’ immediate area was not foreseeable to the defendant.

Second, if the district court finds that said acts of Hopkins were foreseeable to defendant, the acts of Hopkins do not satisfy the Guidelines' definition of "physical restraint". Physical restraint is defined as "the forcible restraint of the victim such as by being tied, bound, or locked up." USSG Section 1B1.1, application note 1(K). See, *United States v. Keller*, 413 F.3d 706 (8th Cir. 2005) (two-level increase for restraint of a victim affirmed where victim was beaten, then tied to a lawn chair with zip ties cutting off circulation in victim's legs); *United States v. Kime*, 99 F.3d 870 (8th Cir. 1996) (two-level increase for restraint of victim affirmed where robbery defendant and coconspirator pulled victim into back of van, beat victim severely, held gun to his head, and held him down while defendant attempted to cut off victim's finger with wire cutters); *United States v. Kirtley*, 986 F.2d 285 (8th Cir. 1993) (two level physical restraint enhancement affirmed where during bank robbery, bank tellers bound themselves by their feet after being instructed to do so by robber).

D. Role in the Offense.

In regards to paragraph 34, the defendant objects to the two level enhancement pursuant to USSG Section 3B1.1(c) in that the defendant was an organizer, leader, manager, or supervisor. The probation office determined that the defendant recruited Hopkins. Probation also determined that defendant provided Hopkins with written instructions to effectuate the domain transfer, the Taser possessed by Hopkins during the robbery, and transportation to the Deyo residence.

Assuming for the sake of argument only, that Hopkins acted in a conspiracy with the defendant, the facts show that Hopkins was the person primarily

responsible for the offense. Hopkins broke into Deyo's residence; he assaulted Deyo; and, he threatened Deyo. Hopkins brought his 9-mm firearm to the Deyo residence – the firearm that Hopkins had earlier purchased. Hopkins pointed the gun to Deyo's head during the incident, and according to trial testimony, struck Deyo several times in the head and face with the gun.

In addition, contrary to the finding of the probation office, the defendant did not provide a Taser to Hopkins for Hopkins' use during the offense. Ms. Sabra Hopkins, the sister of Sherman, testified that in April 2017 (approximately two months prior to the incident), she gave Sherman a ride in her car. Ms. Hopkins saw Sherman possess and carry the same black Taser that was used in the instant offense. Vol. 4, Tr. Tr. 171-72. She testified that Sherman told her that he carried the Taser because he needed it for protection. *Id.*

Regarding the written instructions that were in the possession of Hopkins at the time of the incident, there were two different types of handwriting on the note—one from defendant and one from Hopkins. See, Gov't. trial exhibit 3. The defendant denies that he provided the writing to aid in Hopkins' robbery attempt.

E. Obstruction of Justice.

Fifth, the government is seeking a 2-level enhancement for the defendant's purported obstruction of justice, pursuant to USSG Section 3C1.1. PSR, paragraph 35. The government asserts that the defendant provided materially false information to the probation office in respect to preparation of the presentence report in that (1) on May 9, 2019, the date of completion of the presentence financial questionnaire, the defendant did not disclose the transfer of assets of \$50,000 from the State Snap LLC bank account on April 19, 2019; (2) the defendant

falsely stated that his 80% interest in State Snaps, LLC, was valued at approximately \$500 at the time of completing his financial statement for the presentence report (May 9, 2019); and, (3) that in September 2018, the defendant falsely stated in his pretrial financial affidavit that his current income was \$300.00 per month, whereas the trial testimony showed that the defendant had significant income from defendant's business.

The defendant objects to the government's requested enhancement. To the best of defendant's knowledge, the government has provided no evidence to the defense to support its obstruction claims.

Regarding the government's first claim, the April 2019 monthly statement for the State Snap LLC bank account shows that money was withdrawn in two transactions by "customer withdrawal". Docket No. 92, p. 89. The defendant did not withdraw the money on that date as he was in the custody of the US Marshals. The account has more than one person that has the authority to withdraw funds. In a letter to the Court dated June 4, 2019, the undersigned wrote that the defense was having difficulty obtaining the April 2019 from the other signatory of the account. Docket No. 92, p. 1. At the hearing on June 13, 2019, the undersigned expressed his concern to the Court that the other signatory on the account was withdrawing significant amounts of money without the knowledge or consent of the defendant. The withdrawals from the account were unknown by the defendant. He had no knowledge of them when he completed the financial statement on May 9, 2019.

Regarding the government's second claim, the defendant made a good faith estimate as to the value of State Snaps LLC. If the business has a current value

greater than \$500, the defendant is not aware of it. The defendant does not have internet access in jail - he has been in custody since April 18, 2019. The government states that State Snap LLC “still touts 1.6 million followers and keeps posting low-brow photographs”. The defense has no evidence of the government’s claim.

Regarding the government’s third claim, at the time that defendant completed the financial affidavit regarding his request for court-appointed counsel, the information regarding his monthly income was correct. At the hearing on June 13, 2019, the Court stated that it had reviewed the financial documents submitted by the defense, and that the financial affidavit “is reasonably close to what he was earning per month.” It is indeed true that the defendant’s earnings significantly increased during the pendency of this case. But there was no intentional misstatement of the defendant’s monthly income when the financial affidavit was completed in September 2018.

F. Use of Threats during Offense.

Finally, in regards to paragraph 29, the defendant objects to the two level enhancement pursuant to USSG Section 2B3.2(b)(1) (“if the offense involved an express or implied threat of death, bodily injury, or kidnapping, increase by 2 levels”).

The defendant was convicted of the offense of Conspiracy to Interfere with Commerce by Threats of Violence in violation of 18 U.S.C. Section 1951. An element of the offense was that the victim’s consent was induced “through the wrongful use of actual or threatened force or violence, or through the wrongful use of fear”. See, Final Jury Instructions, Docket No. 66, Instruction No. 13.

Where the Guideline enhancement is an element of the offense, the enhancement does not apply. See, USSG section 3A1.3, application note 2 (applying rule to restraint of victim enhancement); *United States v. Mikalajunas*, 936 F.2d 153, 156 (4th Cir. 1991) (applying rule to murder sentencing – “An act which is merely an element of the underlying offense does not warrant an enhancement for physical restraint.”).

In the instant case, the two level USSG adjustment for threat of death or bodily injury does not apply, as it is an element of the offense. The adjustment is “baked in” to the base offense level.

### III. Final USSG Sentencing Recommendation.

Base offense level 18, final offense level 18; criminal history category I, final recommended range is 27-33 months.

### IV. Special Condition of Release.

The defendant objects to the special condition of release set forth in paragraph 77 – defendant must participate in substance abuse evaluation and complete any treatment; and, the defendant must participate in testing for substance abuse. The probation office bases its recommendation that defendant was diagnosed with “cannabis use disorder – mild”.

The defendant objects to said special condition. The probation office recommends that defendant serve a prison sentence for the next several years. The probation office does not state how evaluation and treatment five, ten, fifteen, or twenty years after the incident will benefit the defendant or the public.

In addition, the defendant has no marijuana related convictions. The defendant did not test positive for marijuana use during his seven months on

pretrial release. He was also tested negative for drug use at the time of his release from jail one date after he was arrested on the instant federal offense.

The proposed special condition is not related to the offense of conviction. 18 U.S.C. Section 3583(d) requires the condition be “reasonably related” to the nature and characteristics of the defendant, the deterrence of criminal conduct, the protection of public from any further crimes of the defendant, and the defendant’s correctional needs. The proposed special condition does neither.

V. Motion for Downward Variance.

If the Court concludes that the recommended Guideline range exceeds 5 years, the defendant moves for a downward variance to 60 months. The defendant relies on 18 U.S.C. Section 3553(a) (in fashioning “a sentence sufficient, but not greater than necessary,” district courts are not only permitted, but required, to consider the history and characteristics of the defendant”). *United States v. White*, 506 F.3d 635, 644 (8th Cir. 2007). The defense also requests a downward variance as a sanction for the unconstitutional conduct of the government during jury selection.

A. Lack of criminal history.

The defendant is Criminal History Category I. He has two simple misdemeanor convictions from April 2012—disorderly conduct and public intoxication—that score no criminal history points.

Despite the defendant’s lack of criminal history, the government is advocating for a Guideline sentence that equals the statutory maximum of 20 years. Usually, a defendant’s lack of criminal history would be reflected in the Guidelines, and a defendant’s sentence would be the lesser for it. However, in this case, the

Guideline sentence, as advocated by the government, provides no lesser sentence for the defendant. Even where a defendant's lack of criminal history has been taken into account in a resulting Guideline range, the Court can still consider the history when making a variance determination. *United States v. Chase*, 560 F.3d 828, 831 (8th Cir. 2009) (factors that have already been taken into account in calculating the advisory guideline range, such as defendant's lack of criminal history, can nevertheless be the basis for a variance).

In the instant case, the defendant has a very minor criminal history—two simple misdemeanor charges from the same incident when he was 19 years old. Each conviction resulted in a fine. Despite the defendant's lack of prior criminal history, the government seeks the statutory maximum sentence. The defendant's lack of criminal history is a good predictor of the defendant's success in the future.

B. Government's striking of only potential black juror.

In the defendant's jury trial, the government used its first peremptory strike to strike the only African-American potential juror on the jury panel. An objective review of the proceedings show that the government struck the sole black juror, and then did not strike similarly situated white jurors. For example, the government stated that it struck the black juror due to the juror's conviction for possession of marijuana, but then it did not strike two white jurors who had convictions for drunk driving, and a third white juror who was convicted of underage possession of alcohol. Also, the government stated that it struck the black juror because the juror was not employed, but then it did not strike a white juror who was also not employed.

The defendant's trial attorney did not bring these important facts to the

attention of the Court at the time of the jury selection process. After the trial, the defendant filed a motion for new trial based upon the defendant's prior attorney's failure to raise these facts with the Court at the time of jury selection. The Court denied the motion for new trial—not because the Court agreed with the government's strike of the black potential juror—but because the Court determined the motion for new trial was not timely made.

Much like where the government is sanctioned when it violates the Fourth Amendment and the Court prohibits the admission of illegally obtained evidence (the “exclusionary rule”), in the instant case, the government must be sanctioned for its improper striking of the sole black juror. The government struck the black juror simply because the juror was black. The reasons it gave for striking the black juror were pretextual. This violates the defendant's right to a fair trial. See, *Batson v. Kentucky*, 476 U.S. 79 (1986).

The defendant was the only African American in the courtroom during his trial. No members of the jury were black, none of the attorneys were black—both of the prosecutors were white, the defendant's court appointed attorney was white. All of the courtroom staff was white. The Judge was white. Everybody was white except for the defendant. The defendant could not receive a fair trial when the only other black person in the courtroom (the black potential juror) was struck by the government.

To determine the appropriate sanction for the government's violation of a defendant's Constitutional and *Batson* rights, other sanctions are compared. When a defendant's Fourth Amendment right is violated, the exclusionary rule applies, no matter how important or valuable the evidence may be for the government's

prosecution. When a defendant's Fifth Amendment or *Miranda* right to counsel is violated, the defendant's statements are suppressed, no matter how incriminating the statements may be. When a defendant's Sixth Amendment right to a speedy trial is violated, the charge(s) are dismissed; when the government raises a defendant's failure to testify at a jury trial, a defendant receives a new trial.

Thus, in the instant case, at a sentencing hearing, the appropriate sanction is to vary downward. When considering all of the other Section 3553(a) factors, the appropriate variance is to 60-months.

C. Compared sentence to Sherman Hopkins.

The evidence showed that Hopkins committed violent acts against the victim. Hopkins was subsequently indicted in the NDIA on 4 counts: (1) possession of a firearm by a felon; (2) interference and attempted interference with commerce by threats and violence; (3) kidnapping; and, (4) using, carrying, brandishing, and discharging a firearm during and in relation to a crime of violence, and possessing a firearm in furtherance of a crime of violence (a crime that requires a ten-year mandatory minimum consecutive sentence). See, Defense Exhibit B (Indictment of Sherman Hopkins).

Hopkins entered into a non-cooperation plea agreement with the government. Defense Exhibit B (non-cooperation plea agreement of Sherman Hopkins). In return for his plea of guilty to Count 2, the government agreed to recommend a sentence of 240 months and dismiss the three other felony counts. On June 13, 2018, Hopkins received a sentence of 240 months. Defense Exhibit B (Sentencing Order). Hopkins has not yet received a substantial assistance motion from the government, but it is very likely that the filing is imminent.

In the instant case, the government is advocating for a 240 month prison sentence for the defendant, despite the fact that the defendant has no other charges to dismiss, the defendant has no prior felony convictions (such as Hopkins), the defendant has never been to prison (unlike Hopkins), and the defendant did not commit the violent acts against the victim. Hopkins was an unemployed drug user at the time of the offense, Hopkins purchased and carried a firearm even though he was a felon. The defendant is a community college graduate and was creating his own business.

D. Entrepreneurial Spirit of Defendant.

The defendant created a social media business that became very popular and profitable. Creating a successful business does not happen by accident – it took time, an entrepreneurial spirit, and work.<sup>2</sup> The defendant was smart enough to see an opportunity. The defendant collected videos or images and placed them in a consolidated digital space where young persons viewed them and were entertained. The defendant worked extremely hard on his business—if it didn't take ingenuity and hard work, everyone would be doing it.<sup>3</sup>

In *United States v. Chase*, supra, the Eighth Circuit identified an “entrepreneurial spirit” of a defendant as an acceptable reason for varying downward. In the instant case, the twenty-six year old defendant has exhibited a strong entrepreneurial spirit.

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<sup>2</sup> The government's criticisms of the nature of the defendant's business are not well-taken – one only needs to navigate social media to see the most popular posts are videos of teen or college aged behavior, and partial nudity (that is the reason for Kim Kardashian for posing nude – because millions of people want to see it and advertisers want the audience that such images attract).

<sup>3</sup> Contrast the entrepreneurial spirit and history of the defendant to Sherman Hopkins, who has done little to nothing productive in his much longer life.

E. Excellent behavior while on pretrial supervision.

Finally, the defendant was on pretrial supervision from September 2018 to April 2019 – a period of seven months. According to the presentence report, there were no violations of any condition. PSR, paragraph 2. This is an excellent indicator of likelihood of success of the defendant – a lengthy prison is not necessary.

VI. Restitution.

In regards to paragraph 89, the defendant objects to payment of \$2,000.00 to Ethan Deyo for his lost wages in order that he attend court proceedings. The amount is not supported by any documentation—the amount appears excessive.

The defendant also objects to payment of \$500.00 for replacement of home security items. There is no documentation to support the claim—the amount appears excessive and arbitrary.

In regards to paragraph 90, defendant objects. No documentation has been received regarding the purported loss amounts.

VII. Defense Witnesses and Exhibits.

**Exhibits –**

A - Letter(s) of support (to be filed separately).

B – pleadings related to prosecution and sentencing of Sherman Hopkins (Indictment, Plea Agreement, Sentencing Order).

C – medical records of Ethan Deyo (the defense will request authority to file said records separately under seal).

The defense will also ask the court to consider the financial documents that are filed in Docket No. 92 and make them part of the sentencing record.

**Witnesses –**

None at this time.

Respectfully submitted,

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