

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) Criminal No. 23-cr-10290-ADB
)
 FERNANDO BOST,)
 Defendant)

GOVERNMENT’S SENTENCING MEMORANDUM

The United States submits this Sentencing Memorandum in the above-captioned case, currently scheduled for sentencing on March 7, 2024. For the reasons outlined in this memorandum, the government believes that the joint recommendation of 102 months of incarceration is an appropriate sentence in this matter. Following the completion of this sentence, the parties also jointly request that the defendant be on supervised release for a period of 36 months. In addition, the defendant should be ordered to pay restitution to the various convenience stores restitution and be required to pay the mandatory special assessment of \$300 in this case.

I. PROCEDURAL HISTORY

On Wednesday, December 6, 2023, the defendant, Fernando Bost (“BOST”) plead guilty, to a three-count Information charging him with two counts of Hobbs Act Robbery, in violation of 18 U.S.C. § 1951(a); and one count of Felon in Possession of Firearm and Ammunition, in violation of 18 U.S.C. § 922(g)(1).

II. THE OFFENSE CONDUCT

On March 29, 2023, at approximately 11:05 P.M., BOST entered the RJ Smoke and Convenience Store located at 844 Blue Hill Avenue in Dorchester, Massachusetts, approached

the cashier, Victim 1, and brandished a black colored handgun. BOST walked behind the counter while assuming a crouching position and aimed the handgun directly at Victim 1. While at gunpoint, BOST issued commands to Victim 1, who took a kneeling position behind the cash register. Victim 1 opened the cash register and raised his hands up. BOST took cash out of the tray in the register while forcing Victim 1 to kneel with his face towards the floor and his hands on the ground. BOST took approximately \$700 to \$800 in U.S. currency and fled the store. RJ Smoke and Convenience Store is a business that receives inventory through interstate commerce and provides that inventory for sale.

Investigators reviewed the surveillance footage and observed BOST to have worn a black mask, black hooded sweatshirt, blue nitrile gloves, black sweatpants with the word "Ice Cream" written down the left leg in white lettering, as well as black sneakers.

Subsequently, investigators from the FBI's Violent Crimes Task Force ("VCTF") conducted a video canvass in the vicinity of the store. The canvass included retrieving video from commercial, city, and private cameras for review. The video footage included a vehicle of interest, which appeared to be a red colored sport utility vehicle ("SUV") with a different color rear bumper and silver roof racks, possibly a Kia Sorento. Video footage captured the vehicle arriving in the vicinity of the store before the robbery and then leaving the area immediately after the robbery. In addition, investigators observed an individual who was ultimately identified as BOST, heading toward the vehicle after the robbery. The following day, the Boston Police Department disseminated a BOLO for this vehicle of interest. The flyer included photographs of the vehicle and a description. Officers on patrol in the area of Codman Square in Dorchester, subsequently observed a vehicle matching the photographs and description in the BOLO and noted the license plate number, Massachusetts registration, 2LER88. RMV records confirmed the vehicle was a 2012

Kia Sorento, color red.

VCTF investigators learned that a 7-Eleven, located at 411 Pleasant Street in Brockton, Massachusetts was also robbed on the same day, March 29, 2023, approximately 45 minutes earlier at 10:20 P.M. Brockton Police responding to the robbery ascertained that BOST had walked into the 7-Eleven, brandished a black colored handgun, and demanded money from the cashier, Victim 2. BOST took approximately \$160 in U.S. currency. Surveillance footage from the store showed that BOST appeared to be wearing the same dark colored hoodie and black pants, with the word “Ice Cream” written in white on the left leg, as he did in the subsequent Dorchester robbery. 7-Eleven is a business that receives inventory through interstate commerce and provides that inventory for sale.

VCTF investigators reviewed information from Massachusetts State Police License Plate Readers (LPRs) located between Brockton and Boston for the day of the robberies, March 29, 2023. The red Kia Sorento was observed on LPRs located on Pleasant Street in Brockton approximately 440 feet from the 7-Eleven at the time it was robbed. The Kia was then captured by the LPRs on Route 24 traveling northbound towards Boston, after the robbery of the 7-Eleven and just prior to the robbery in Dorchester.

Investigators spoke with the registered owner of the Kia Sorento, who rents out the vehicle using the online application, Getaround, Inc. The registered owner shared with investigators that there was only one customer who rented the Kia Sorento during the time of the robberies. This customer’s rental started on March 22, 2023 and went until April 2, 2023. Records subpoenaed from Getaround verified there was only one customer for the Kia Sorento during that time period. In addition, Getaround provided investigators with location data for the Kia during that same period of time. The location data from Getaround placed the Kia during the relevant periods of

time, in the immediate vicinity of both robberies.

VCTF investigators then identified the individual who rented the suspect vehicle at the time of the robberies as a female associate of BOST. Investigators reviewed BOST's license photo, previous booking photos, and physical descriptors and believed he matched the general description of the robber observed on surveillance footage.

Upon identifying BOST as a potential suspect, investigators sought records and information about BOST. As a result, VCTF investigators learned that BOST went to a Target in Framingham on the same day as the robberies in Brockton and Dorchester. Investigators retrieved surveillance footage from that Target. In the surveillance footage from the day of the robberies, an individual who appears to be BOST is seen wearing dark colored sweatpants with white lettering on the left leg of the pants.

On April 5, 2023, Investigators contacted Springfield Police Department based on BOST's connections to the Springfield area. VCTF investigators were aware that BOST was potentially traveling in the area in a green colored Infiniti JX35, registered to the same female listed on the rental from Getaround. Investigators informed Springfield Police that BOST was wanted on three outstanding warrants and was a suspect in approximately a dozen armed robberies in the Greater Boston area.

As a result, on April 6, 2023, law enforcement conducted a traffic stop of a green colored Infiniti JX35 and observed BOST in the front passenger seat and a female in the driver's seat. BOST was removed from the vehicle and placed in handcuffs. During a search incident to arrest, officers retrieved a black firearm located in the front sweatshirt pocket worn by BOST. The firearm was later identified as a Glock 43x, nine-millimeter handgun with serial number BPLS383. The firearm was loaded with a magazine containing ten rounds of nine-

millimeter ammunition, with one round in the chamber. The handgun recovered from BOST's person resembles the handgun observed on video during the robberies.

Massachusetts State Police conducted a forensic firearm examination of the Glock, which included the firearm being test fired, and determined that it was a firearm within the meaning of and as defined by both Massachusetts and Federal law. Furthermore, the Glock firearm and ammunition recovered from BOST were not commercially manufactured in Massachusetts and thus necessarily crossed one or more state lines before being found in BOST's possession on April 06, 2023. As such the Glock firearm traveled in and affected interstate commerce.

A review of BOST's criminal history reveals that he has several felony convictions including, but not limited to, a 2017 conviction for Armed Robbery out of the Hampden Superior Court, on docket # 1779CR00027A, for which BOST received a sentence of six years to six years plus one day incarcerated. BOST was also convicted in 2011 for Armed Robbery out of the Hampden Superior Court, on docket #1179CR00621, for which he received a sentence of four and a half years to five and a half years incarcerated. Therefore, prior to possessing the Glock firearm and ammunition, BOST knew he had previously been convicted of a crime punishable by more than one year in prison.

Finally, investigators conducted a custodial interview of BOST at the State Police Barracks in Westfield. BOST was advised of his rights and waived them in writing. The interview was audio recorded. BOST confessed to the robbery at the RJ Smoke and Convenience Store in Dorchester. During a subsequent search of the Infiniti pursuant to warrant, law enforcement recovered a black sweatshirt with the words "Ice Cream" written on and a matching pair of black sweatpants with the words "Ice Cream" written on the left leg.

The facts, as stated in the Presentence Investigation Report ("PSR"), are uncontested.

III. GUIDELINE ANALYSIS

The guidelines as determined by U.S. Probation in the Pre-Sentence Report (“PSR”) dated February 29, 2024, were not contested by the parties. The parties, however, by way of an 11(c)(1)(C) plea, have agreed to a slightly different guideline range, as noted below.

A. Offense Level Computation

¶ 27 - Grouping

Since Counts 1 and 2 do not group, a combined offense level will be used. Count 3 groups with Counts 1 and 2 because one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, another of the counts.

¶¶ 28 & 35 - Base Offense Level

The Base Offense Level for each Hobbs Act robbery is 20.

¶¶ 29 & 36 – Specific Offense characteristics

The Base Offense Level for Hobbs Act Robbery (Victim 1) is increased by 6-levels because a firearm was otherwise used. (**The parties agreed to a 5-level increase here*)

The Base Offense Level for Hobbs Act Robbery (Victim 2) is increased by 5-levels because a firearm was brandished or possessed.

¶¶ 33 & 40 – Adjusted Offense Level

The Adjusted Offense Level for Hobbs Act Robbery (Victim 1) is therefore 26. (** The parties therefore calculated this adjusted offense level to be 25*)

The Adjusted Offense Level for Hobbs Act Robbery (Victim 2) is therefore 25.

¶ 41 – Multiple Count Adjustment

The defendant is responsible for committing multiple Hobbs Act robberies here (*as well as the felon in possession count*). The defendant committed two robberies, each is a unit of

prosecution, pursuant to USSG §3D1.4(a), (b) and (c). The offense level is increased pursuant to the number of units assigned in USSG §3D1.4. The defendant's Offense Level is thus adjusted 2-levels to 28.

¶ 48- Total Offense Level

With prompt acceptance of responsibility, the defendant's Total Offense Level is 25 as calculated by US Probation (**24 as calculated by the parties in the plea agreement*).

B. The Defendant's Criminal History

¶¶56, 57, & 58 - Criminal History Computation

The defendant has an extensive criminal history and some his past convictions have timed out; he still has been classified to have a criminal history score of 9.

In addition, the defendant committed the instant offense while under a criminal justice sentence for Docket No.: 1779CR0027 in Massachusetts State Court; therefore, one additional points is added to the criminal history score.

Accordingly, the defendant's criminal history score is 10 establishing the defendant as a category V.

C. Sentencing Options

¶ 84 - Guideline Provisions

Based upon a Total Offense Level of 25 and a Criminal History Category of V, the defendant's advisory guideline range is 100 – 125 months' imprisonment as calculated by U.S. Probation.¹

¹ The guideline range based on the parties' agreed calculation in the plea agreement would be 92 – 115 months incarceration.

IV. LEGAL FRAMEWORK

The United States Sentencing Guidelines (“Guidelines”) are “the starting point and the initial benchmark” in sentencing. Gall v. United States, 552 U.S. 38, 49-50 (2007). Following the Supreme Court’s decision in Gall v. United States, “District Court judges can choose sentences that differ from the Sentencing Commission's recommendations—provided of course that they stay within the range set by the statutes of conviction and consider the sentencing factors arrayed in § 3553(a).” *See e.g.*, Gall, 552 U.S. at 41, 49–50 & n. 6. While Gall made the Guidelines advisory, “[t]his is not a blank check for arbitrary sentencing.” Id. “Judges *still* must start out by calculating the proper Guidelines range—a step so critical that a calculation error will usually require resentencing.” Id. “The reason for this is simple. Congress wants judges to do their best to sentence similar defendants similarly.” *See* Booker, 543 U.S. at 250–54, 259–60. “And starting with the Guidelines' framework—which gives judges an idea of the sentences imposed on equivalent offenders elsewhere—helps promote uniformity and fairness.” *See* Gall, 552 U.S. at 49; Booker, 543 U.S. at 245–60.

After consulting the Guidelines, the Court must craft a sentence that sufficiently accounts for the sentencing factors and objectives outlined in 18 U.S.C. § 3553(a). *See* Gall, 552 U.S. at 50. In doing so, the statute directs judges to “impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing. *See* 18 U.S.C. § 3553(a). The Court must consider the nature and circumstances of the offense and the history and characteristics of the defendant; must impose a sentence that sufficiently reflects the seriousness of the crime, promotes respect for the law, and provides just punishment, and the sentence should adequately deter criminal conduct, protect the public, and provide any necessary education, training, or treatment. *See* 18 U.S.C. §§ 3553(a)(2)(A)-(D). The Court must also strive to avoid unwarranted

sentencing disparities among defendants with similar records who have been found guilty of similar conduct. *See* 18 U.S.C. § 3553(a)(6). After determining the appropriate sentence, the Court should adequately explain its rationale to “allow for meaningful appellate review and to promote the perception of fair sentencing.” *See Gall*, 552 U.S. at 50.²

“Variances are ‘non-Guidelines sentences that result from the sentencing judge’s consideration of factors under 18 U.S.C. § 3553(a),’ while departures are a term of art referring to non-Guidelines sentences authorized and ‘imposed under the framework set out in the Guidelines.’” *See United States v. Tirado-Nieves*, 982 F.3d 1 (1st Cir. 2020) (quoting *Irizarry*, 553 U.S. at 714); *United States v. Adorno-Molina*, 774 F.3d 116 (1st Cir. 2014). After the guideline range is determined, the court may “depart” from the guideline range where “there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission.” *See Pepper v. United States*, 562 U.S. 476, 494 (2011). “If the court departs from the applicable guideline range, it shall state, its specific reasons for departure in open court at the time of sentencing and...shall state those reasons with specificity in the statement of reasons form.” *See* 18 U.S.C. § 3553(c).

V. SENTENCING RECOMMENDATION

18 U.S.C. § 3553(a) requires a sentencing court to consider specific enumerated factors when determining an appropriate sentence. These factors include: 1) the nature and circumstances of the offense and the history and characteristics of the defendant and 2) the need

² “In reviewing a sentence for reasonableness, the Court of Appeals first examine whether, in arriving at sentence, the district court committed any procedural errors, such as failing to calculate, or improperly calculating, the advisory Guidelines range, treating the Guidelines as mandatory, failing to consider the statutory sentencing factors, selecting a sentence based on clearly erroneous facts, or failing to adequately explain the chosen sentence, including any deviation from the Guidelines range” *See United States v. Contreras-Delgado*, 913 F.3d 232 (1st Cir. 2019).

for the sentence imposed 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 for the needs of the defendant.

The Court must impose a sentence which reflects the nature and circumstances of the defendant's offense and his history and characteristics, and is "sufficient, but not greater than necessary" to serve the purposes of sentencing set forth at 18 U.S.C. § 3553(a)(2). *United States v. Kimbrough*, 128 S.Ct. 558 (2007); *United States v. Booker*, 125 S.Ct. 738 (2005); *United States v. Martin*, 520 F.3d 87 (1st Cir. 2008); *United States v. Rodriguez*, 527 F.3d 221 (1st Cir. 2008).

BOST, age 32, already has a significant criminal history of arrests and convictions, which escalate in seriousness and span most of his adult life. These convictions include:

- 2022 – Breaking and Entering in the Day Time with Intent to Commit a Felony & Receiving Stolen Property (MA) – Open Case in Default Status.
- 2017 – Armed Robbery, Assault Deadly Weapon (x4), Kidnapping (x4) (MA) – Guilty, Incarceration for 6 yrs. to 6 yrs. and one day.
- 2012 – Armed Robbery (x4) (MA) – Guilty, Incarceration for 4.5 yrs. to 5.5 yrs.
- 2012 – Larceny from a Person (MA) – Guilty, Incarceration for 2 yrs. with 1 yr. suspended. After violation of probation additional 1 yr. served.
- 2009 – Receiving Stolen Property, Resisting Arrest, & Leaving the Scene (MA) – Guilty, Incarceration for thirty days after violation of probation.

BOST has been sentenced to prison on numerous occasions and more than once for lengthy periods of time, indeed he has spent a significant portion of his adult life thus far in and out of incarceration. BOST endured a challenging childhood fraught with instability and potential abuse. PSR at ¶¶ 64 -66. This appears to have translated into his limited capacity to hold down any consistent employment during his adult life. PSR at ¶¶ 75 -78. In spite of these challenges, BOST alleges no history of mental illness or significant drug and alcohol abuse. PSR

at ¶ 73. Still, notwithstanding these lengthy periods of imprisonment, starting from the time he was a juvenile and running consistently until the present day; BOST seemingly has made little effort to avail himself of any potential opportunities to better himself or change direction. Instead of correcting his behavior, it appears that time and time again, he has reoffended and done so with somewhat concerning intensification both with regard to the seriousness of the offenses and the level of violence he is utilizes. The government is placed in a difficult position of how best to calculate the metrics and measures for an appropriate sentence here and it seems the only solution to solving BOST's seeming inability to keep from reoffending, is to apply another lengthy period of incarceration. A period of incarceration longer than his last.

In this case, as in his past, when presented with the opportunity, BOST returns to what he knows, a familiar life, a life of crime. As a result, the jointly proposed sentence in this case, reflects a significant one for the defendant. The recommendation here is consistent with the past pattern of dispositions for BOST's criminal conduct, one which has escalated in sentence length keeping pace with the similarly escalating criminal conduct. Here the joint recommendation will impose on BOST the longest period of incarceration to date, one that is commensurate with this federal conviction, his first. He faces incarceration for almost a decade, and thereafter a period of supervision which will hopefully assist him in revising his problematic behavioral patterns and help him achieve success in a life outside of the criminal world. The government feels that this period of imprisonment, while not insignificant, is necessary to keep him out of trouble, the public safe, and under appropriate supervision. BOST should finally get the help he needs while in custody to get on track and lead a productive life upon release. The joint recommended sentence is sufficient but not greater than necessary.

A 102-month sentence of incarceration adequately accounts for the seriousness of the offense, promotes a respect for the law, protects the public, and serves as an adequate deterrent to both BOST personally and others more generally.

V. CONCLUSION

These crimes – Hobbs Act Robberies, particularly armed robberies are violent offenses; the addition of illegal firearm possession by the defendant, especially as a prohibited person is disconcerting in combination. These events are not random. BOST, sought to commit each robbery, he planned and executed these crimes with clear intent, he selected these convenience stores, entered them using threats and chilling violence to carry them out, and in doing so imposed significant trauma on the victims in the process.

BOST's actions in continuing this pattern of robbing and use of violence throughout the course of his adult life is unacceptable and this behavior cannot continue going forward as he contemplated the remainder of his adult life following this period of incarceration. The employees of these stores and the members of the public should not have to be subjected to this type of behavior. The government is well within its rights to demand a considerably longer sentence of imprisonment here. The government however, for the reasons stated herein, requests this Court impose the jointly recommended sentence of 102 months' imprisonment. Following the completion of this sentence, the government requests that BOST be placed on Supervised Release for the statutory maximum period of 3 years, be ordered to pay restitution to the stores and a be ordered to pay a mandatory special assessment fee of \$300.

While incarcerated the government implores BOST to take advantage of any and all counseling opportunities and reach out to those who can help him to avoid the same pitfalls that

landed him in this repeated situation. During his period of incarceration, he should strive to equip himself with technical and or other skills to assist him when released.

The government recognizes that this is a significant sentence but nevertheless it is justified and appropriate as it is dictated by BOST's own senseless actions. This type of sentence sends a clear message that this type of violent criminal behavior cannot and will not be accepted.

Respectfully submitted,

JOSHUA S. LEVY
Acting United States Attorney

By: /s/ Luke A. Goldworm
LUKE A. GOLDWORM
Assistant U.S. Attorney

February 29, 2024

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

/s/ Luke A. Goldworm
LUKE A. GOLDWORM
Assistant U.S. Attorney

February 29, 2024