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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 SAMMY SULTAN,

17 Defendant.

) NO. CR 17-00585 PJH

) **UNITED STATES' SENTENCING**
) **MEMORANDUM**

) Sentencing Date: March 7, 2018

) Time: 1:30 p.m.

) Judge: Hon. Phyllis J. Hamilton

1 **I. INTRODUCTION**

2 The defendant, Sammy Sultan, stands before the Court to be sentenced following his guilty plea
3 to Count One of the Indictment, charging him with making obscene or harassing phone calls, in
4 violation of 47 U.S.C. § 223(a)(1). The charges against Mr. Sultan followed an extended investigation
5 to identify Mr. Sultan as the perpetrator of hundreds of hoax calls to law enforcement agencies in the
6 United States, Canada and Europe. The calls typically involved Mr. Sultan demanding to speak with a
7 female officer, and many times included claims that he was holding a women hostage. On many
8 occasions law enforcement scrambled to respond to the threatening crimes defendant reported, causing
9 substantial disruption to law enforcement offices throughout the United States and abroad.

10 The United States files this memorandum in support of the sentence recommended by U.S.
11 Probation, and respectfully recommends that the Court sentence defendant to two years in prison
12 followed by a year of supervised release, the maximum period of supervised release permitted by
13 statute.

14 **II. OFFENSE CONDUCT (PSR ¶¶ 7-20) & CRIMINAL HISTORY (PSR ¶¶ 35-66).**

15 The PSR summarizes the offense conduct in this case, which is not disputed. Defendant made
16 hundreds of the types of calls described in the PSR, with the first known call being in February 2015 to a
17 police station outside of Boston area, and the last know call to a law enforcement agency in Finland in
18 2017 while on Pretrial Release. See PSR ¶18. The calls often included claims that he had escaped a
19 mental institution and was armed, or that he had a hostage bound in a motel room. See PSR ¶8. Audible
20 screams could be heard in the background of some such calls, consistent with a recording of a women
21 screaming that was found during the execution of a search warrant at defendant's residence. Law
22 enforcement mobilized substantial resources in response to defendant's calls. One law enforcement
23 agency, the Rensselaer Indiana Police Department, has provided a victim impact statement for the
24 Court's consideration, which is attached as Attachment A to this memorandum. The statement describes
25 the dangerous consequences of even one call, as Mr. Sultan effectively shot down the entire Rensselaer
26 police department for an hour as it scrambled to identify and locate the defendant in response to his
27 claims that he would harm a hostage he had taken. Due to the extreme nature of the threat presented by
28 the call, the dispatcher was unable to answer other incoming calls seeking police aid for real problems,

1 including a reported rape. Mr. Sultan also called the Rensselaer Mayor's office and made similar claims
2 to the Mayor's secretary, a women untrained in responding to law enforcement distress calls.

3 Defendant undertook substantial efforts to conceal his identity and location from law
4 enforcement, including using spoofing technology so that his true phone number remained hidden to
5 victims and law enforcement. *See* PSR ¶13. The defendant's behavior would have likely continued
6 unabated had law enforcement not been able to obtain information from phone companies identifying
7 defendant's location on account of the emergency response required. Mr. Sultan speaks with a stilted
8 accent, which enabled law enforcement to ultimately tie Mr. Sultan to the calls being experienced
9 throughout the United States and Canada. At least 17 states reported such calls, and the FBI was in
10 constant contact with the Royal Canadian Mounted Police for the better part of a year in response to the
11 many dozens if not hundreds of calls made to police offices in Canada.

12 Defendant has a long criminal history, which is described in the PSR and need not be repeated.

13 **III. SENTENCING GUIDELINES CALCULATIONS.**

14 The government concurs with the PSR's Guidelines calculation of a final adjusted offense level
15 of 15 after three points are subtracted for acceptance of responsibility. The government contends that
16 defendant should have an additional two criminal history points for his 120 day sentence imposed on
17 February 7, 2005, for receipt of stolen property. *See* PSR ¶45. This conviction is exactly 10 years prior
18 to the first known call in this case, and thus "was imposed within ten years of defendant's
19 commencement of the instant offense." U.S.S.G. § 4A1.2(e)(2). Counting ten full years back begins
20 with counting one day back from the offense, to February 6, 2015, and a full year back is not counted
21 until you reach the 365th day, or February 7, 2014. To back track a full year from February 7, 2015, one
22 has to go back a full year, to February 7, 2014, and not stop counting at 364 days, or on February 8,
23 2014. By extension, in order to meet the plain words of the section 4A1.2(e)(2), any conviction "within
24 ten years" of the events of February 7, 2015 counts towards defendant's criminal history points, and
25 includes the events of February 7, 2005, when defendant suffered his conviction for receipt of stolen
26 property. *See* PSR ¶45. Including two points for defendant's February 7, 2005 conviction raises
27 defendant's criminal history score to eleven (11) points, and establishes a criminal history category of V.

28 The Guidelines range for offense level 15 and CHC V is 37 to 46 months in prison. If the Court

1 agrees that defendant's February 7, 2005 crime does not score criminal history points, he drops to CHC
2 IV, and a guideline sentence of 30 to 37 months. Under either calculation, the applicable guideline
3 range is in Zone D of the Sentencing Table, which eliminates probation as an option under the
4 guidelines. And under either calculation, defendant's guideline sentence reduces to a 24 month sentence
5 on account of two years being the statutory maximum sentence defendant faces for his crime.

6 **IV. SENTENCING RECOMMENDATION**

7 **A. Applicable Law**

8 Section 3553(a) directs courts to consider a number of factors in determining an appropriate
9 sentence. In this case, these factors indicate that a low end guideline sentence is sufficient, but not
10 greater than necessary, to achieve the goals of sentencing. *See United States v. Carty*, 520 F.3d 984, 991
11 (9th Cir. 2008). The key factors are the nature and circumstances of the offense and the history and
12 characteristics of the defendant, 18 U.S.C. § 3553(a)(1), the need to afford adequate deterrence to
13 criminal conduct, *id.* § 3553(a)(2)(B), and the need to protect the public from further crimes of the
14 defendant, *id.* § 3553(a)(2)(C).

15 Although the Supreme Court's decision in *Booker* has rendered the Sentencing Guidelines
16 advisory, the Guidelines still remain the "starting point and initial bench-mark" for sentencing.
17 *Kimbrough v. United States*, 552 U.S. 85, 108, (2007) (internal quotation marks and citation omitted);
18 *see Carty*, 520 F.3d at 991 (en banc); *United States v. Ellis*, 641 F.3d 411, 415 (9th Cir. 2011). While
19 there is no presumption of reasonableness for a Guidelines range sentence, if a district judge "decides
20 that an outside-Guidelines sentence is warranted, he must consider the extent of the deviation and ensure
21 that the justification is sufficiently compelling to support the degree of the variance." *Carty*, 520 F.3d at
22 991-992 (citing *Gall v. United States*, 552 U.S. 38, 50, (2007)); *see also United States v. Munoz-*
23 *Camarena*, 631 F.3d 1028, 1030 (9th Cir. 2011) ("district court must start with the recommended
24 Guidelines sentence, adjust upward or downward from that point, and justify the extent of the departure
25 from the Guidelines sentence."). As the Supreme Court recognized in *Gall*, "a major departure should
26 be supported by a more significant justification than a minor one." 552 U.S. at 50. Finally, "[a]s a
27 general rule, the preponderance of the evidence standard is the appropriate standard for factual findings
28 used for sentencing." *United States v. Armstead*, 552 F.3d 769, 777-78 (9th Cir. 2008); *see, e.g., United*

1 *States v. Treadwell*, 593 F.3d 990, 1001 (9th Cir. 2010).

2 **B. The Sentence Recommended by the Probation Office Vindicates the Interests of 18**
3 **U.S.C. § 3553(a).**

4 The defendant's crime persisted for more than two years. A sentence at the statutory maximum
5 term of two years is required to adequately punish defendant for the scope of his conduct and deter his
6 future crimes, which persisted even while on pretrial release and after multiple trips by the Hayward
7 police to his residence. A two year sentence is also required to protect the public from future crimes, as
8 defendant has already demonstrated his willingness to violate pretrial release terms and engage in efforts
9 to conceal his scheme from law enforcement. Defendant also only faces a maximum term of one year of
10 supervised release to follow his incarceration. A two year prison term followed by a year of supervision
11 will provide three years, and only three years, to provide defendant with treatment for any dependency
12 or mental health issues he faces. A shorter prison term in this case hinders the opportunity to provide
13 defendant with services that may be needed to reduce the likelihood of recidivism. A two year term
14 represents a modest prison term in comparison to the scope of defendant's crimes and the guideline
15 sentence he would face but for the statutory maximum sentence allowed.

16 Defendant has also agreed to the expanded search condition referenced in the PSR, an important
17 condition in light of defendant's crimes in this case.

18 **V. CONCLUSION**

19 In full consideration of the defendant's history and characteristics together with the goals of
20 sentencing, the government respectfully requests that the Court sentence the defendant to a two year
21 sentence, followed by one year of supervised release, with the special conditions recommended by the
22 Probation Office, and a \$100 special assessment.

24 DATED: February 28, 2018

Respectfully submitted,

25 ALEX G. TSE
26 Acting United States Attorney

27 /s/
28 THOMAS R. GREEN
Assistant United States Attorney

ATTACHMENT A

RECEIVED
U.S. ATTORNEY'S OFFICE
SAN FRANCISCO, CA

VICTIM IMPACT STATEMENT

2018 FEB 12 AM 10:00

Victim: Matt Anderson

Rensselaer Indiana Police Department

USAO Number: 2016R01400

Court Docket Number: 17-CR-00585

I (Matthew A. Anderson) am writing on behalf of the City of Rensselaer to describe the impact that Mr. Sultan had on our Police Department. Mr. Sultan called multiple times tying up a dispatcher for nearly an hour. As a small department with often only one dispatcher working, this is crippling to our operations. During the calls Mr. Sultan claimed to have a hostage and that he was armed and if the dispatcher did not listen to him, he would harm the hostage. Due to this the dispatcher could not hang up the phone to answer other calls that came in which would include any 911 or other emergency calls.

In addition to 100% of our dispatch being occupied by Mr. Sultan, multiple officers were trying to locate him due to the serious nature of his call and to try and come to the aide of the hostage he claimed to have. Again, with a small department of only 11 officers and normally only two or three on duty during the day, this brings everything to a stop. A check of the calls that were received by dispatch during the time she was staying on the phone with him include a reported rape, an intoxicated subject acting disorderly and a trespassing complaint. All of these calls had to be pended while officers tried to locate Mr. Sultan and his hostage.

Further, Mr. Sultan called the Mayor's office and spoke with his secretary. She was not sure how long Mr. Sultan was on the phone with her but she stated it was an extended period of time. These calls were similar in nature to the calls made to our dispatch center. This type of call can be very stressful to someone like this who is not trained in handling these types of calls.

After receiving this paperwork we did some searching online for Mr. Sultan and found several articles stating that this was an extensive ordeal involving a large number of police departments. It is my opinion that Mr. Sultan needs to be made an example of to deter any others from committing these types of acts.