

1
2 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**
3 **FOR MULTNOMAH COUNTY**

4 THE STATE OF OREGON,

5 Plaintiff,

No. C 20CR-50067

DA 2426200

6 v.

7 ALAN SWINNEY

8 Defendant.

STATE'S MEMORANDUM
REGARDING THE SENTENCING
OF ALAN SWINNEY

9 **INTRODUCTION**

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

15 **STATE'S POSITION**

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

21 **FINDINGS**

22 The State requests that the defendant be sentenced consecutively on count 5 (Assault 2)
23 and Count 8 (Unlawful Use of a Weapon with a Firearm). The State requests findings that Count
24 5 and Count 8, constituted criminal offenses that occurred during two separate criminal episodes.

1 This finding is based on the indictment and the verdicts of the jury. Additionally, the evidence
2 presented to the jury clearly indicated that the crimes committed by the defendant occurred
3 during two separate criminal episodes. Finally the evidence demonstrated the defendant's
4 willingness to commit multiple additional offenses under ORS 137.123(5)(a) and constitute
5 qualitatively different injury to the various victims under ORS 137.123(5)(b).
6

7 The conviction on count 5 requires a 70 month prison sentence per ORS 137.700. This
8 statute requires the imposition of the prison sentence unless the court makes a series of findings
9 under ORS 137.712(2)(b). The statutory construction requires the court to find mitigating
10 factors that are substantial and compelling to allow the court to depart from the mandatory
11 sentence. Additionally, the court must find that the victim did not suffer a "substantial injury."
12 For the reasons outlined below in the rationale section the defendant, his statements, and the
13 facts of the case provide only aggravating factors which weigh heavily against such a departure.
14 Further the eye injury suffered by the victim constituted a "substantial injury" and thus the
15 defendant is not eligible for a downward departure under ORS 137.712(2)(b). The evidence at
16 trial clearly indicated that the victim suffered a long lasting injury to his eye. His injury was still
17 present at the time of trial approximately a year after the assault. This injury is better described
18 as a "serious physical injury" as defined by ORS 161.015(8) and certainly constitutes a
19 substantial injury.
20
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23 CRIMINAL HISTORY

24 This defendant comes to this court for sentencing with a limited criminal conviction
25 record and would start as an "T" on the sentencing grid. While the multiple victims and two
26 separate criminal episodes would allow for the court to move the defendant's criminal history
27

1 score to an "A" that will not be necessary due to mandatory minimum sentences for counts 5 and
2 8.

3
4 **SENTENCE RECOMMENDATION**
5

6 **Count 1: Attempted Assault IV**

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

8 **Count 2: Unlawful Use of Mace II**

9 The State requests that the court impose six months jail concurrent to Counts 5 and 8.
10

11 **Count 3: Attempted Assault II**

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

14 **Count 4: Unlawful Use of a Weapon**

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

17 **Count 5: Assault II**

18 The State requests that the defendant be sentenced per ORS 137.700. Defendant's
19 sentencing grid-block is a 9-I. The state requests that the court sentence the defendant to
20 70 months prison followed by 36 months of post-prison.
21

22 **Count 6: Assault II (NOT GUILTY JURY FINDING)**

23 **Count 7: Unlawful Use of a Weapon**

24 The State requests that per sentencing grid-block 6-I the court impose 2 years of
25 probation with 30 days jail. Concurrent to Counts 5 and 8.
26

27 **Count 8: Unlawful Use of a Weapon with Firearm**
28

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

4 **Count 9: Menacing**

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

6 **Count 10: Pointing a Firearm at Another**

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

8 ORS 166.190 requires a fine be imposed and the state request the maximum fine of \$500
9 be imposed.

10 **Count 11: Unlawful Use of Mace II**

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

12 **Count 12: Assault IV**

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

14 **SENTENCING RATIONALE**

15 The state is recommending 130 months prison because the defendant represents a future
16 danger to this community and due to the gravity of his crimes. As evidenced by the defendant's
17 escalating violence, letters, social media statements and testimony, the defendant has no remorse
18 for his actions, no desire to change and every intention of engaging in future acts of violence.
19 The defendant takes great pride in his actions and has a complete inability to recognize the
20 criminality of his conduct. The only option to mitigate the potential risk that the defendant poses
21 to this community is substantial incarceration.
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1 The future dangerousness of the defendant is most apparent due to the fact that the
2 defendant actively seeks conflict. He wants to find conflict to help create and engage in what he
3 believes is an ongoing civil war. His intentions were made clear by the evidence in this case, his
4 testimony at trial, his actions on August 15 and August 22, 2020, and Attachment A. The
5 defendant traveled to the City of Portland for the express purpose of “dealing” with Antifa. In
6 the defendant’s social media post presented at trial, the defendant actively attempted to recruit
7 people to form an armed militia. His expressed goal was to have this group fight in his ongoing
8 civil war. On August 15, 2020, the defendant led a small group of like-minded individuals and
9 engaged in multiple acts of violence. In addition to the defendant’s acts of violence on August
10 15, 2020, an associate of the defendant fired a handgun from a moving car in the direction of a
11 group of people after engaging in acts of violence with the defendant (See State v. Skylor
12 Jernigan 20CR-45800; Convicted of two counts of Unlawful Use of a Weapon with a Firearm).
13 The violence of August 15, 2020, which injured several people and seriously injured victim
14 Jason Britton, only emboldened the defendant and motivated him to escalate his violence.

17 The events of August 22, 2020, highlight the extreme danger that the defendant
18 represents to this community. The defendant promoted that event and acted as a leader within
19 the riot that occurred. The videos presented during the trial detailed countless assaults including
20 multiple assaults that the defendant either directly participated in or encouraged others to engage
21 in. On that date the defendant prepared to engage in a mass shooting when he pulled out his
22 handgun and pointed it at a crowd of people (See Attachment B). Through all of this the
23 defendant has no ability to see how or why his actions were wrong. During the trial, he quickly
24 labeled all of the people that opposed him as terrorists, he expressed joy for those that were hurt,
25 bragged about his actions, and strongly asserted that he would do it all over again if given the
26

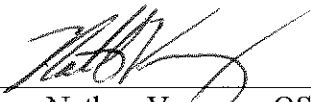
1 chance (See also Pre-Sentence Investigation Pages 13-14). The defendant represents both a
2 catalyst and a lightning rod for political violence. This violence continues to occur in our
3 community and the defendant wants to promote, organize and engage in this violence.

4 The defendant's grandiose actions and callous crimes warrant a sentence of 130 months
5 in prison. The defendant's desire to organize violent hate-filled militia groups, his desire to
6 create riots in the Portland Metro Area, and his desire to engage in violent conflicts represent an
7 extreme danger to this community. That danger, when combined with his Pro-Criminal
8 Attitudes, the injuries he inflicted, and the nature of his crimes warrant a sentence of 130 months.
9

10
11 **The State respectfully requests 130 months in prison for the defendant Alan**
12 **Swinney.**
13

14
15 RESPECTFULLY SUBMITTED: Dated this 9th day of December, 2021.
16

17 MIKE SCHMIDT
18 District Attorney
19 Multnomah County, Oregon

20
21 By: 
22 Nathan Vasquez, OSB 014437
23 Deputy District Attorney
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25
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1
2 **CERTIFICATE OF SERVICE**

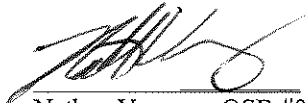
3 I, Nathan Vasquez, hereby certify that I served a true copy of the **STATE'S SENTENCING**
4 **MEMORANDUM**, in State v. Alan Swinney, on counsel for the defendant; to wit:

5
6 Joseph Westover
OSB 141275
Metropolitan Public Defender
7 630 SW 5th Ave. Suite 500
Portland, Or 97204
8 jwestover@mpdlaw.com

9
10 Ms. Megha H Desai
Multnomah Defenders Inc
522 SW 5th Ave Ste 1000
11 Portland OR 97204
mdesai@multnomahdefenders.org

12
13 Courtesy Copy to the Court
The Honorable Heidi Moawad

14 by delivering to their offices, placing in their discovery box, emailing or faxing on the 9th day of December,
15 2021.

16
17 
18 Nathan Vasquez, OSB #014437
Deputy District Attorney

Alan Swinney 825585
11540 NE Inverness Dr.
Portland OR 97220



Derek Chauvin 261557
5329 Osgood AVE N.
Stillwater Mn 55082

Attachment A

Hey Derek. I'm sorry brother.
I was really hoping they wouldn't
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 I'm in jail right now.
I'm from Texas but I went to
Portland to deal with Antifa
and Burn Lord Murder protestors.
We had a flag, were in front
of Central Percent 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, I'm 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. So figure.

You will have an appeal and
if they change the venue, you won't

get all the charges I put.

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

Our Country has too many George Flocks 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... Civil war will get you out of there. I don't think it'll be long now.

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

Attachment B

