

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,

Plaintiff-Respondent,

v.

ALAN JAMES SWINNEY,

Defendant-Appellant.

Multnomah County Circuit Court
Case No. 20CR50067

NOTICE OF APPEAL

1.

Defendant hereby gives notice of appeal from the judgment entered in this case on January 7, 2022, by Judge Heidi Moawad in the Multnomah County Circuit Court. A motion for new trial was timely filed on December 17, 2021, and it was deemed denied on February 10, 2022.

2.

The parties to this appeal are the State of Oregon (Respondent) and Alan James Swinney (Appellant).

3.

The names, bar numbers, addresses, and telephone numbers of the attorneys for the parties are as follows:

Attorney for Appellant:

Kristin A. Carveth OSB #052157
Office of Public Defense Services
1175 Court Street NE
Salem, OR 97301-4030
Kristin.Carveth@opds.state.or.us
(503) 378-3349

Attorney for Respondent:

Benjamin Gutman #160599
Solicitor General
1162 Court Street NE
Salem, OR 97301-4096
benjamin.gutman@doj.state.or.us
(503) 378-4402

4.

Appellant designates the record in its entirety (excluding voir dire), including the trial court file, all exhibits offered and/or received into evidence, and the entire record of the oral proceedings listed below:

1. The pretrial hearings held on or about October 19, 2020; October 28, 2020; November 3, 2020; November 13, 2020; December 18, 2020; January 7, 2021; January 15, 2021; January 26, 2021; February 16, 2021; February 17, 2021; February 18, 2021; February 23, 2021; March 2, 2021; April 9, 2021; May 4, 2021; May 11, 2021; May 12, 2021; May 13, 2021; May 14, 2021; June 17,

- 2021; July 22, 2021; August 5, 2021; August 30, 2021; August 31, 2021; September 8, 2021; September 9, 2021; September 14, 2021; September 15, 2021.
2. The motion hearings held on or about September 15, 2021, September 24, 2021, and February 25, 2022.
 3. The jury trial proceedings beginning on or about September 27, 28, 29, 30, 2021, and October 1, 4, 5, 2021.
 4. The sentencing proceedings held on or about December 10, 2021.

5.

The record includes one or more audio or video recordings that were played in the trial court, and the record on appeal should include a transcription of those recordings. Oregon Rules of Appellate Procedure, Rule 3.33(4)(b). The dates of each hearing at which such a recording was played are as follows:

The audio recording played in court on or about September 29, 2021.

6.

I hereby certify that I served the foregoing Notice of Appeal on March 10, 2022, by having a true copy delivered to Benjamin Gutman #160599, Solicitor General, 1162 Court Street NE, Salem, OR 97301-4096, and by mailing a true copy to each of the following:

Trial Court Administrator
Multnomah County Courthouse
1200 SW First Avenue
Portland, OR 97204

Transcript Coordinator
Multnomah County Courthouse
1200 SW First Avenue
Portland, OR 97204

Multnomah County District Attorney
1200 SW First Avenue
Portland, OR 97204

Joseph C Westover
Attorney at Law
522 SW 5th Ave Ste 1000
Portland, OR 97204

7.

I certify that on March 10, 2022, I electronically filed the original of this notice of appeal with the Appellate Court Administrator.

DATED March 10, 2022.

Respectfully submitted,

ERNEST G. LANNET
CHIEF DEFENDER
CRIMINAL APPELLATE SECTION
OFFICE OF PUBLIC DEFENSE SERVICES

Signed

By Kristin Carveth at 5:44 pm, Mar 10, 2022

KRISTIN A. CARVETH OSB #052157
SENIOR DEPUTY PUBLIC DEFENDER
Kristin.Carveth@opds.state.or.us

Attorneys for Defendant-Appellant
Alan James Swinney

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

State of Oregon,)	
Plaintiff)	
)	Case No.: 20CR50067
vs.)	
)	JUDGMENT
)	
Alan James Swinney,)	Case File Date: 09/11/2020
Defendant)	District Attorney File #: 2426200-1D

DEFENDANT

True Name: Alan James Swinney	Sex: Male
Date Of Birth: 05/18/1970	State Identification No (SID): 23916733OR
Fingerprint Control No (FPN): JMUL120232987	

HEARING

Proceeding Date: 12/10/2021
Court Reporter: Recording, FTR

Defendant appeared in person and was in custody. The court determined that the defendant was indigent for purposes of court-appointed counsel, and the court appointed counsel for the defendant. The defendant was represented by Attorney(s) Joseph C Westover, OSB Number 141275, Attorney(s) Megha H Desai, OSB Number 141441. Plaintiff appeared by and through Attorney(s) NATHAN TRUMON VASQUEZ, OSB Number 014437, Attorney(s) Reid C Schweitzer, OSB Number 191962.

COUNT(S)

It is adjudged that the defendant has been convicted on the following count(s):

Count 1 : Attempt to Commit a Class A Misdemeanor - Assault in the Fourth Degree

Count number 1, Attempt to Commit a Class A Misdemeanor - Assault in the Fourth Degree, 161.405(2)(e), Misdemeanor Class B, committed on or about 08/15/2020. Conviction is based upon a Jury Verdict of Guilty on 10/05/2021.

Incarceration

Defendant is sentenced to the custody of County Jail, for a period of 90 day(s). Defendant is remanded to the custody of the Multnomah County Sheriff for transportation to the Supervisory Authority for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, and the Defendant shall pay any required per diem fees.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine	\$100.00	Waived	\$100.00	\$0.00
Total	\$100.00		\$100.00	\$0.00

All fines, fees and assessments waived.

Count 2 : Use of ESG/Tear Gas/Mace in the Second Degree

Count number 2, Use of ESG/Tear Gas/Mace in the Second Degree, 163.212, Misdemeanor Class A, committed on or about 08/15/2020. Conviction is based upon a Jury Verdict of Guilty on 10/05/2021.

Incarceration

Defendant is sentenced to the custody of County Jail, for a period of 180 day(s). Defendant is remanded to the custody of the Multnomah County Sheriff for transportation to the Supervisory Authority for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, and the Defendant shall pay any required per diem fees.

This sentence shall be concurrent with the following cases Count 1.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine	\$100.00	Waived	\$100.00	\$0.00
Total	\$100.00		\$100.00	\$0.00

All fines, fees and assessments waived.

Count 3 : Attempt to Commit a Class B Felony - Assault in the Second Degree

Count number 3, Attempt to Commit a Class B Felony - Assault in the Second Degree, 161.405(2)(c), Felony Class C, committed on or about 08/15/2020. Conviction is based upon a Jury Verdict of Guilty on 10/05/2021.

Sentencing Guidelines

The Crime Severity Classification (CSC) on Count Number 3 is 7 and the Criminal History Classification (CHC) is H.

This sentence is pursuant to the following special factors:

- This is a Presumptive Sentence

Probation

Defendant is sentenced to Supervised Probation for a period of 36 month(s) and shall be subject to the following conditions of Probation:

Defendant is subject to all general conditions of probation (ORS 137.540).

Furthermore, Defendant is subject to the following Special Conditions of Probation (ORS 137.540(2)):
Defendant shall:

- Be assigned to Judge Heidi H. Moawad for judicial supervision of probation.

Statutory Provisions

Defendant is ordered to submit blood or buccal sample and thumbprint pursuant to ORS 137.076.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine - Criminal	\$200.00	Waived	\$200.00	\$0.00
Total	\$200.00		\$200.00	\$0.00

All fines, fees and assessments waived.

Count 4 : Unlawful Use of a Weapon

Count number 4, Unlawful Use of a Weapon, 166.220, Felony Class C, committed on or about 08/15/2020. Conviction is based upon a Jury Verdict of Guilty on 10/05/2021.

Sentencing Guidelines

The Crime Severity Classification (CSC) on Count Number 4 is 6 and the Criminal History Classification (CHC) is H.

This sentence is pursuant to the following special factors:

- This is a Presumptive Sentence

Probation

Defendant is sentenced to Supervised Probation for a period of 24 month(s) and shall be subject to the following conditions of Probation:

Defendant is subject to all general conditions of probation (ORS 137.540).

Furthermore, Defendant is subject to the following Special Conditions of Probation (ORS 137.540(2)):
Defendant shall:

- Be assigned to Judge Heidi H. Moawad for judicial supervision of probation.

Statutory Provisions

Defendant is ordered to submit blood or buccal sample and thumbprint pursuant to ORS 137.076.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine - Criminal	\$200.00	Waived	\$200.00	\$0.00
Total	\$200.00		\$200.00	\$0.00

All fines, fees and assessments waived.

Count 5 : Assault in the Second Degree

Count number 5, Assault in the Second Degree, 163.175, Felony Class B, committed on or about 08/15/2020. Conviction is based upon a Jury Verdict of Guilty on 10/05/2021.

Sentencing Guidelines

The Crime Severity Classification (CSC) on Count Number 5 is 9 and the Criminal History Classification (CHC) is H.

This sentence is pursuant to the following special factors:

- Sentence per ORS 137.700

Incarceration

Defendant is sentenced to the custody of Oregon Dept of Corrections, for a period of 70 month(s). Defendant is remanded to the custody of the Multnomah Sheriff for transportation to the Oregon Dept of Corrections for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the executing or releasing authority for any form of reduction in sentence, temporary leave from custody, work release, or program of conditional or supervised release authorized by law for which the Defendant is otherwise eligible at the time of sentencing. The Defendant may not be considered for release on post-prison supervision under ORS 421.508(4) upon successful completion of an alternative incarceration program.

This sentence shall be concurrent with the following cases Counts 1 & 2.

Post-Prison Supervision

The term of Post-Prison Supervision is 3 year(s). If the Defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Statutory Provisions

Defendant is ordered to submit blood or buccal sample and thumbprint pursuant to ORS 137.076.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine - Criminal	\$200.00	Waived	\$200.00	\$0.00
Total	\$200.00		\$200.00	\$0.00

Compensatory Fine/Restitution:

Restitution is ordered to be paid to the court and disbursed to the payee(s) named below.

Payee	Not To Exceed	Amount
Jason Britton		\$348.80
Total		\$348.80

Except for restitution all other fines, fees and assessments waived.

Count 7 : Unlawful Use of a Weapon

Count number 7, Unlawful Use of a Weapon, 166.220, Felony Class C, committed on or about 08/22/2020. Conviction is based upon a Jury Verdict of Guilty on 10/05/2021.

Sentencing Guidelines

The Crime Severity Classification (CSC) on Count Number 7 is 6 and the Criminal History Classification (CHC) is A.

This sentence is pursuant to the following special factors:

- This is a Presumptive Sentence

Incarceration

Defendant is sentenced to the custody of Oregon Dept of Corrections, for a period of 30 month(s). Defendant is remanded to the custody of the Multnomah Sheriff for transportation to the Oregon Dept of Corrections for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the executing or releasing authority for any form of reduction in sentence, temporary leave from custody, work release, or program of conditional or supervised release authorized by law for which the Defendant is otherwise eligible at the time of sentencing. The Defendant may not be considered for release on post-prison supervision under ORS 421.508(4) upon successful completion of an alternative incarceration program.

This sentence shall be concurrent with the following cases Counts 1, 2 & 5.

Post-Prison Supervision

The term of Post-Prison Supervision is 24 month(s). If the Defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Statutory Provisions

Defendant is ordered to submit blood or buccal sample and thumbprint pursuant to ORS 137.076.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine - Criminal	\$200.00	Waived	\$200.00	\$0.00
Total	\$200.00		\$200.00	\$0.00

All fines, fees and assessments waived.

Count 8 : Unlawful Use of a Weapon - Firearm

Count number 8, Unlawful Use of a Weapon - Firearm, 166.220, Felony Class C, committed on or about 08/22/2020. Conviction is based upon a Jury Verdict of Guilty on 10/05/2021.

Sentencing Guidelines

The Crime Severity Classification (CSC) on Count Number 8 is 6 and the Criminal History Classification (CHC) is A.

This sentence is pursuant to the following special factors:

- Sentence per ORS 161.610

Incarceration

Defendant is sentenced to the custody of Oregon Dept of Corrections, for a period of 60 month(s). Defendant is remanded to the custody of the Multnomah Sheriff for transportation to the Oregon Dept of Corrections for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the executing or releasing authority for any form of reduction in sentence, temporary leave from custody, work release, or program of conditional or supervised release authorized by law for which the Defendant is otherwise eligible at the time of sentencing. The Defendant may not be considered for release on post-prison supervision under ORS 421.508(4) upon successful completion of an alternative incarceration program.

For the reasons stated on the record, this sentence shall be consecutive to the sentence(s) on the following cases: 50 months consecutive to Counts 1, 2, 5 & 7. This sentence shall be concurrent with the following cases 10 months concurrent with Counts 1, 2, 5 & 7.

Post-Prison Supervision

The term of Post-Prison Supervision is 60 month(s) minus time actually served pursuant to ORS 144.103. If the Defendant violates any of the conditions of post-prison supervision, the defendant shall be subject to sanctions including the possibility of additional imprisonment in accordance with the rules of the State Sentencing Guidelines Board.

Statutory Provisions

Defendant is ordered to submit blood or buccal sample and thumbprint pursuant to ORS 137.076.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine - Criminal	\$200.00	Waived	\$200.00	\$0.00
Total	\$200.00		\$200.00	\$0.00

All fines, fees and assessments waived.

Count 9 : Menacing

Count number 9, Menacing, 163.190, Misdemeanor Class A, committed on or about 08/22/2020. Conviction is based upon a Jury Verdict of Guilty on 10/05/2021.

Incarceration

Defendant is sentenced to the custody of County Jail, for a period of 180 day(s). Defendant is remanded to the custody of the Multnomah County Sheriff for transportation to the Supervisory Authority for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, and the Defendant shall pay any required per diem fees.

This sentence shall be concurrent with the following cases Counts 1, 2, 5, 7 & 8.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine	\$100.00	Waived	\$100.00	\$0.00
Total	\$100.00		\$100.00	\$0.00

All fines, fees and assessments waived.

Count 10 : Pointing a Firearm at Another

Count number 10, Pointing a Firearm at Another, 166.190, Misdemeanor Unclassified, committed on or about 08/22/2020. Conviction is based upon a Jury Verdict of Guilty on 10/05/2021.

Incarceration

Defendant is sentenced to the custody of County Jail, for a period of 180 day(s). Defendant is remanded to the custody of the Multnomah County Sheriff for transportation to the Supervisory Authority for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, and the Defendant shall pay any required per diem fees.

This sentence shall be concurrent with the following cases Counts 1, 2, 5, 7, 8 & 9.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine	\$100.00	Waived	\$100.00	\$0.00
Total	\$100.00		\$100.00	\$0.00

All fines, fees and assessments waived.

Count 11 : Use of ESG/Tear Gas/Mace in the Second Degree

Count number 11, Use of ESG/Tear Gas/Mace in the Second Degree, 163.212, Misdemeanor Class A, committed on or about 08/22/2020. Conviction is based upon a Jury Verdict of Guilty on 10/05/2021.

Incarceration

Defendant is sentenced to the custody of County Jail, for a period of 180 day(s). Defendant is remanded to the custody of the Multnomah County Sheriff for transportation to the Supervisory Authority for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS

423.478, and the Defendant shall pay any required per diem fees.

This sentence shall be concurrent with the following cases Counts 1, 2, 5, 7, 8, 9 & 10.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine	\$100.00	Waived	\$100.00	\$0.00
Total	\$100.00		\$100.00	\$0.00

All fines, fees and assessments waived.

Count 12 : Assault in the Fourth Degree

Count number 12, Assault in the Fourth Degree, 163.160(2), Misdemeanor Class A, committed on or about 08/22/2020. Conviction is based upon a Jury Verdict of Guilty on 10/05/2021.

Incarceration

Defendant is sentenced to the custody of County Jail, for a period of 180 day(s). Defendant is remanded to the custody of the Multnomah County Sheriff for transportation to the Supervisory Authority for service of this sentence. Defendant may receive credit for time served.

The Defendant may be considered by the supervisory authority for any form of alternative sanction authorized by ORS 423.478, and the Defendant shall pay any required per diem fees.

This sentence shall be concurrent with the following cases Counts 1, 2, 5, 7, 8, 9, 10 & 11.

Monetary Terms

Defendant shall be required to pay the following amounts on this count:

Fees and Assessments: Payable to the Court.

Type	Amount	Modifier	Reduction	Actual Owed
Fine	\$100.00	Waived	\$100.00	\$0.00
Total	\$100.00		\$100.00	\$0.00

All fines, fees and assessments waived.

COUNTS DISPOSED WITH NO CONVICTION

Count # 6, Assault in the Second Degree is Acquitted.

If convicted of a felony or a crime involving domestic violence, you may lose the right to buy, sell, transport, receive, or possess a firearm, ammunition, or other weapons in both personal and professional endeavors pursuant to ORS 166.250, ORS 166.291, ORS 166.300, and/or 18 USC 922(g).

MONEY AWARD INCLUDING RESTITUTION

Judgment Creditor: State of Oregon

Judgment Debtor: Alan James Swinney

Restitution

Payee	Amount
Jason Britton	\$348.80

Payees are to be paid as ordered under Monetary Terms.

Defendant is ordered to pay the following monetary totals, including restitution or compensatory fine amounts stated above, which are listed in the Money Award portion of this document:

Type	Amount Owed
Restitution	\$348.80
Total	\$348.80

Money Award total does not include reduced amounts of \$1,600.00 as stated in the individual counts.

The court may increase the total amount owed by adding collection fees and other assessments. These fees and assessments may be added without further notice to the defendant and without further court order.

Subject to amendment of a judgment under ORS 137.107, money required to be paid as a condition of probation remains payable after revocation of probation only if the amount is included in the money award portion of the judgment document, even if the amount is referred to in other parts of the judgment document.

Any financial obligation(s) for conviction(s) of a violation, which is included in the Money Award, creates a judgment lien.

Payment Schedule

Payment of the fines, fees, assessments, and/or attorney's fees noted in this and any subsequent Money Award shall be scheduled by the clerk of the court pursuant to ORS 161.675.

Payable to:

**Multnomah County Circuit Court
1200 SW First Avenue
Portland, Oregon 97204
P: 971-274-0545
F: <http://courts.oregon.gov/multnomah>**

Dated the _____ day of _____, 20____, **1/7/2022 12:28:05 PM**

Signed: _____

Circuit Court Judge Heidi H. Moawad