

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Criminal No. 2:25-cr-20027-SHL
v.	)	Criminal No. 2:25-cr-20042-SHL
	)	
STEVEN R. HALE,	)	
	)	
Defendant.	)	

THE UNITED STATES' POSITION REGARDING PRESENTENCE REPORT

COMES NOW the United States of America, by and through its counsel, Matthew R. Galeotti, Acting Assistant Attorney General and Head of the Criminal Division, U.S. Department of Justice, Matthew A. Lamberti, Senior Counsel, U.S. Department of Justice, Joseph C. Murphy Jr., Interim United States Attorney, and Assistant United States Attorney Raney Irwin, and submits the following position regarding the draft presentence report ("PSR") filed in this case (ECF No. 34 in 25-cr-20027 and ECF No. 32 in 25-cr-20042) pursuant to Rule 32 of the Federal Rules of Criminal Procedure, Local Criminal Rule 32.1, and § 6A1.2(b) of the U.S. Sentencing Guidelines.

The United States has conferred and will continue to confer with opposing counsel and the U.S. probation officer assigned to the case in good faith to resolve any disputed matters through this document and telephonically. Furthermore, the United States anticipates that the sentencing hearing will last approximately one hour but does not anticipate presenting evidence though more than one witness. The United States

notes that a representative of the Motion Picture Association (“MPA”), which represents victims in this case, would like to address the Court at sentencing.

I. Objections to the Draft PSR

The United States objects to the PSR as follows:

- ¶ 27: Victims include MPA and various MPA members including Disney, Paramount, Sony, Universal, and Warner Bros. Discovery.
- ¶ 32: The government disagrees that the counts in 25-cr-20027 and 25-cr-20042 are grouped for U.S. Sentencing Guidelines calculation purposes under § 3D1.2(c). Section 3D1.2 provides that “[a]ll counts involving substantially the same harm shall be grouped together into a single Group” and § 3D1.2(c) states that “the same harm” occurs “[w]hen one of the counts embodies conduct that is treated as a specific offense characteristic in, or other adjustment to, the guidelines applicable to another of the counts.” U.S.S.G. §§ 3D1.2 and 3D1.2(c).
- While the grouping rules can apply to counts in different indictments for which sentences are to be imposed at the same time or in a consolidated proceeding, U.S.S.G. § 3D1.1 applic. nt. 1(B), the defendant’s possession of a firearm was not connected to his copyright infringement; the counts at issue do not involve “substantially the same harm”; none of the counts embodies conduct that is a specific offense characteristic or other adjustment applicable to another count; and the counts are not “closely related” for purposes of § 3D1.2. Accordingly, § 3D1.2(c) simply does not apply here.

- First, the Guidelines' application note for § 3D1.2(c) make clear that this provision "applies only if the offenses are closely related" and that it is intended to prevent "double counting" of offense behavior. U.S.S.G. § 3D1.2 applic. nt. 5. As an example, the application note points out that a bank robbery on one occasion and an assault causing bodily injury on another occasion would not group because the bodily injury from the assault would not be a specific offense characteristic of the bank robbery and thus be a different harm. In contrast, the application note states that the use of a firearm in a bank robbery and unlawful possession of a firearm *would* group. Note that the Guidelines provision for bank robbery, § 2B3.1, *includes a specific offense characteristic for use of a firearm*. See U.S.S.G. § 2B3.1(b)(2).
- In this case, there is no indication that the defendant possessed or used a firearm to steal DVDs from his employer or commit copyright infringement. Moreover, the Guidelines provision for copyright infringement, § 2B5.3, does not include any specific offense characteristic involving possession or use of a firearm. And there are no adjustments that would apply to the defendant's copyright infringement that would relate to being a felon in possession of a firearm since there is no evidence at all that he possessed or used that firearm to commit copyright infringement. The mere fact that law enforcement seized the gun at issue from a car registered to the defendant that also had packages with movies already labeled and ready to ship (see PSR § 19) hardly shows that the defendant possessed or used the gun in connection with copyright infringement. If the defendant had used the firearm to steal DVDs from his employer at

gunpoint or used the firearm to sell those DVDs, maybe § 3D1.2(c) would apply.

But that is not what happened in this case. Clearly, copyright infringement and being a felon in possession of a firearm—given the facts of the case—do not involve “substantially the same harm.” U.S.S.G. § 3D1.2.

- Second, controlling Sixth Circuit precedent makes clear that § 3D1.2(c) does not apply here and the counts do not group. For example, the Sixth Circuit has held that “[w]here distinct societal interests are infringed by conduct in different counts they should not be grouped together, even if they are generally considered part of a common plan or scheme” and that, as a general matter, grouped counts should involve the “same conduct.” *United States v. Reyes-Perez*, 239 Fed. Appx. 222, 226-27 (6th Cir. 2007). Here, the defendant’s copyright infringement and being a felon in possession of a firearm involve totally different conduct and different societal interests. Similarly, the Sixth Circuit has held that where counts “consisted of different elements, affected different victims, and involved different criminal conduct,” they “involve[d] different types of crimes resulting in different harms”: and thus should not be grouped together under § 3D1.2. *Weinberger v. United States*, 268 F.3d 346, 355 (6th Cir. 2001). Similarly, here copyright infringement and being a felon in possession of a firearm involve different crimes with different harms.
- ¶ 35: For similar reasons, the government disagrees with the PSR that the defendant possessed a firearm in connection with the offense of criminal copyright infringement. The defendant did not use a firearm to steal DVDs from his employer or sell them over the internet. Moreover, the government also disagrees with the

PSR that the defendant possessed a firearm in connection with unlawful possession of a controlled substance with intent to sell/deliver. As the PSR notes, the gun in question was found in the defendant's car but marijuana was found in his bedroom and that was only 28.2 grams, which is about an ounce. PSR ¶ 18. That does not show sufficient evidence that the defendant was using a firearm to sell or deliver a controlled substance.

- ¶¶ 31-44 and 84-86: Since the counts in 25-cr-20027 and 25-cr-20042 do not group, that means that the defendant would have a total offense level of 12 for his conviction in 25-cr-20027 and a Criminal History Category of IV. That results in a Guideline range of 21 to 27 months for 25-cr-20027. Similarly, assuming that § 2K2.1(b)(6)(B) does not apply, the defendant would have a total offense level of 21 for his conviction in 25-cr-20042 and a Criminal History Category of IV. That results in a Guideline range of 57 to 71 months for 25-cr-20042.

II. Response to the Defendant's Position with Regard to Sentencing Factors

In the defendant's Position with Regard to Sentencing Factors (ECF No. 40 in 25-cr-20027 and ECF No. 38 in 25-cr-20042), he claims that he committed his crimes in 2021 and 2022 but, effective November 1, 2023, the Sentencing Commission moved the definition of attempt crimes out of the application notes into the text of § 4B1.2 and thus the U.S. Constitution's Ex Post Facto clause bars the use of his 2008 attempted robbery conviction to increase his base offense level from 20 to 24 under § 2K2.1(a)(2). Def's Position, at 2-3. That is incorrect. The defendant's base offense level for his gun crime is 24 regardless of whether the Court uses the 2021 Guidelines, as the defendant suggests, or the current Guidelines.

The defendant has a 2008 felony conviction for criminal attempted robbery, a violation of Tennessee Code Annotated Section 39-13-401, which involved attempting “the intentional or knowing theft of property from the person of another by violence or putting the person in fear.” PSR ¶ 48; Tenn Code Ann. § 39-13-401. A “crime of violence” is defined under both the 2021 and current versions of the Guidelines as having an element of use, *attempted use*, or threatened use of physical force. U.S.S.G. § 4B1.2(a)(1). Moreover, the application note under the 2021 Guidelines clearly states that attempting to commit a crime of violence is a crime of violence. U.S.S.G. § 4B1.2 applic nt. 1 (2021).

Effective November 1, 2023, the Sentencing Commission essentially moved the application note to the text. See § 4B1.2(d); https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/202305_Amendments.pdf, at 57-59.. However, it did not make any change in the definition of a crime of violence. U.S.S.G. § 4B1.2(d). Not only is this clear from the Guidelines themselves but caselaw as well. Under previous versions of the Guidelines, including the 2021 one, an attempt to commit a crime of violence is still a crime of violence. See, e.g., *United States v. Bartee*, 529 F.3d 357, 359 (6th Cir. 2008) (stating that under the Guidelines at the time a “crime of violence” includes attempting to commit such an offense).

As a result, the PSR correctly determines that the base offense level for the defendant’s gun conviction is 24.

III. United States' Position on Sentencing

The United States believes that the convictions in 25-cr-20027 and 25-cr-20042 do not group. With regard to 25-cr-20027, the government calculates a total offense level of 12—assuming an acceptance of responsibility credit of minus 2 levels—and a Criminal History Category of IV, which results in a Guidelines range of 21 to 27 months. See PSR ¶ 90. With regard to 25-cr-20042, the government calculates—assuming an acceptance of responsibility credit of minus 3 levels and not counting plus 4 levels under § 2K2.1(b)(6)(B)—a total offense level of 21 with a Criminal History Category of IV, which results in a Guidelines range of 57 to 71 months. *Id.*

A. 18 U.S.C. § 3553(a) Factors

The § 3553(a) factors include the nature and circumstances of the offenses, the history and characteristics of the defendant, and the seriousness of the offenses and need to promote respect for law and deterrence. 18 U.S.C. § 3553(a).

i. Nature and Circumstances of the Offenses

The defendant was a trusted employee at his company, handling very valuable and restricted items. When the defendant began employment there, he was given a security briefing about how employees should handle sensitive items such as pre-release DVDs. PSR ¶ 25. However, by at least February 2021, the defendant was stealing these goods from his employer and selling them over the internet. *Id.* In fact, he often stole boxes of DVDs by hiding them near a malfunctioning emergency door in the warehouse and moving them to his vehicle after hours when fewer people were around. *Id.* In fact, to help conceal the thefts, the defendant would cut the security tape

on the emergency exit door and then make the tape look intact so he could enter and exit through the door without detection. *Id.*

Over the course of more than a year, the defendant stole over a 1000 pre-release DVDs that were not available anywhere else in the world. PSR ¶ 24. He then sold many of those pre-release DVDs to customers over the internet where they ended up in circulation. At least one of the DVDs—that of “Spider Man: No Way Home,” one of the most popular movies of all time—was “ripped” and distributed tens of millions of times over the internet through pirate sites, causing the copyright owner tens of millions of dollars in damages. PSR ¶ 20. Based on empty boxes recovered from the defendant during execution of a search warrant, it appears that—at the time of the search—he had already sold 260 copies of just that movie. PSR ¶ 17.

During the search of the defendant’s bedroom, law enforcement also found over \$3000 in cash, a firearm box, nine rounds of ammunition, marijuana, and a scale. PSR ¶ 18. A search of a car registered to the defendant further revealed a firearm with one round in the chamber and 13 rounds in the magazine matching the rounds of ammunition found in the defendant’s bedroom. PSR ¶ 19. Even with two felonies, the defendant still possessed a firearm and ammunition.

ii. History and Characteristics of the Defendant

The defendant has an extensive criminal record involving armed robbery, attempted robbery, theft of property, and driving with a suspended license as well as pending gun and drug charges. PSR ¶¶ 46-58. Now, he has convictions for criminal copyright infringement and being a felon in possession of a firearm.

Moreover, the defendant did not just occasionally steal DVDs but did so repeatedly over many days over the course of a year. Moreover, he only stopped after his thefts were reported to law enforcement. For example, in a chat on April 8, 2022, an individual asked the defendant “WHO stopped you? So will you be getting anymore movies early?” PSR ¶ 21. In response, the defendant stated, “Naw Sony wanted to sue and called twelve [law enforcement] on me, so I got to shut down.” *Id.*

iii. Seriousness of the Offense and the Need to Promote Respect for Law and Deterrence

Piracy represents one of the biggest crimes in the United States and the world. One estimate suggests that digital video piracy costs the US economy *between \$29 billion and \$71 billion each year*, and that the illegal downloading of copyrighted materials takes *up to 24% of the global bandwidth*. See <https://dataprot.net/statistics/piracy-statistics/> (also noting that there are more than 230 billion visits to pirate sites a year, 126.7 billion in United States television shows alone). Many people visit pirate sites and stream and download pirated works; they steal intellectual property with no compensation to the copyright owner.

Pre-release piracy is particularly harmful to a movie’s success. See, e.g., <https://www.cmu.edu/entertainment-analytics/documents/impact-of-piracy-on-sales-and-creativity/an%20empirical-analysis-of-the-impact.pdf> (finding that pre-release piracy causes an additional almost 20 percent loss in revenue compared to post-release piracy).

The fact is that the defendant sold hundreds of pre-release DVDS, apparently indifferent or oblivious to the damages he was causing. ¶ 24. He also sold DVDs to buyers in at least 48 states, as well as overseas. ¶ 23. Once these DVDs had been

released “in the wild,” they could—and some were—easily copied and distributed further, causing further injury to copyright owners. Indeed, one DVD that the defendant stole and sold for around \$20 ended up causing a single copyright owner hundreds of millions of dollars in damages. PSR ¶ 20.

As MPA notes in its victim impact statement:

The harm caused to the MPA Member Studios by Defendant’s unlawful acts is likewise significant, and cannot be calculated with precision. Copyright infringement has a domino effect. The initial act of selling stolen content does not merely deprive the copyright owners of profit at the initial point of sale or subscription; it also puts a stolen, unlicensed copy of the content into the marketplace—allowing countless duplicate copies to be quickly made and further illegally shared and exploited.

That is exactly what happened here. While the infringement amount in the plea agreement reflects the immediate conduct to which Defendant admitted guilt and the losses agreed upon in that resolution, the harm Defendant caused did not end with his sale of the stolen DVDs or Blu-rays. His actions set off a ripple effect that would not have occurred absent his illegal acts.

Exh. 1.

On balance, the United States believes that the § 3553 factors weigh in favor of a lengthy prison sentence in this case.

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IV. Conclusion

For the above-stated reasons, and after consideration of the 18 U.S.C. § 3553 factors, the United States respectfully recommends this Court sentence the defendant to **57 months in prison for the conviction in 25-cr-20042 and a concurrent sentence of 21 months in prison for the conviction in 25-cr-20027.**

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, MATTHEW A. LAMBERTI, Senior Counsel, U.S. Department of Justice, do hereby certify that a copy of the foregoing motion has been forwarded via the Court's electronic filing system.

This 26th day of August 2025.

/s/ Matthew A. Lamberti
MATTHEW A. LAMBERTI
Senior Counsel
U.S. Department of Justice