

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-cr-20522-CMA

UNITED STATES OF AMERICA

vs.

**BRYAN DENEUMOSTIER,
a/k/a "susanleon33326,"**

Defendant.

**UNITED STATES' SENTENCING MEMORANDUM,
OBJECTIONS TO THE PRE-SENTENCE INVESTIGATION
REPORT, AND MOTION FOR UPWARD VARIANCE OR DEPARTURE**

The United States of America, by and through the undersigned Assistant United States Attorney, hereby submits its sentencing memorandum and motion for upward variance or departure. As further explained below, and pursuant to 18 U.S.C. § 3553(a), the United States respectfully submits that an upward variance or departure for a sentence of ninety-six (96) months' imprisonment is appropriate in this case.

I. PROCEDURAL BACKGROUND

On June 19, 2018, a federal grand jury in the Southern District of Florida returned a five-count Indictment charging the Defendant, Bryan Deneumostier, with prohibited interception of oral communications, in violation of 18 U.S.C. § 2511(1)(b)(iii) (Counts 1 and 2), and failure to comply with record keeping requirements when producing videos that contained sexual activity, in violation of 18 U.S.C. § 2257 (Counts 3-5) (ECF No. 1). On September 20, 2018, Defendant timely plead guilty to Counts One and Two of the Indictment. (ECF No. 25). Each count permits a maximum term of five years' imprisonment, which can be run consecutively for a term of 10 years' imprisonment. Sentencing is scheduled for December 3, 2018. (ECF No. 29).

II. FACTUAL BACKGROUND

From 2014 through early 2018, the Defendant assisted in the operation of a subscription-based commercial website called www.straightboyz.net (“Straightboyz”). Users could pay approximately \$35.00 a month to stream pornographic videos from the website, which featured approximately 619 videos of “hook-ups” between the Defendant and other men, including Victim 1, Victim 2, and Victim 3. Straightboyz had affiliate marketing programs with several additional pornographic websites, including popular free websites, which allowed for the victims’ videos to be viewed on both the Straightboyz website and the affiliate marketing websites. PSI at ¶ 8.

In many cases, Defendant would use social media accounts or Craigslist to post that he would be hosting sexual parties or encounters at his residence. In several of these advertisements, Defendant would state he was either a man looking for men (m4m), a transvestite looking for men (t4m), or a woman looking for men (w4m). In most advertisements he stated he was looking for “young sexy guys.” *Id.* at ¶¶ 9, 28.

In many of the videos, including the videos of Victim 1, Victim 2, and Victim 4, the individuals, at Defendant’s direction, wore a blindfold and restraints and could not see the Defendant or the room in which they were located. The room, however, was in Defendant’s residence located in Homestead, Florida. Further, unknown to several of the individuals, including Victim 1 and Victim 2, the Defendant would make audio and video recordings of the sexual encounter, without the victim’s knowledge or consent, and later post the pornographic videos onto the Straightboyz website. *Id.* at ¶¶ 14, 16, 23, 27.

The Defendant used Apple devices, including an iPhone and iPad, to make the unauthorized audio and video recordings of his sexual encounters. The Defendant then sent the videos to a co-conspirator in Madrid, Spain, who would post the videos onto the Straightboyz

website. In one video, marked “Hook-Up 613,” toward the end of the video, while an unknown male is still blindfolded, the video shows Defendant hide three separate recording devices out of sight in a separate area in the room. *Id.* at ¶¶ 18, 19, 23.

On April 11, 2018, a federal search warrant was executed at defendant’s residence in Homestead, Florida. After being read his *Miranda*-rights by special agents for Homeland Security Investigations (“HSI”), Defendant admitted that approximately 150 men were featured on his website and approximately half did not know they were being recorded. The Defendant explained—and as the videos themselves corroborate—that the individuals would, at his direction, blindfold themselves and the Defendant would then set up the Apple devices on tripods to film the encounters. *Id.* at ¶¶ 22, 23.

During the search, Defendant provided approximately 30 consent forms—mostly completed in 2013 or 2014—from men agreeing to have their pornographic films posted online - far short of the 619 videos posted and featured on the Straightboyz website. Defendant also confirmed that he was paid approximately \$3,000 each month by the website’s operator in Spain. *Id.* HSI uncovered an official Licensing Agreement between Defendant, the distributor, and a person in Madrid, Spain, the licensor, in which the licensor would pay Defendant fifty percent (50%) of all net revenue generated from the licensed footage. *See* Bates Number 00541. Defendant, the distributor, also certified in the Licensing Agreement that he would maintain records to establish that all performers were eighteen years of age and that records would be maintained by him pursuant to 18 U.S.C. § 2257 and 28 CFR 75.¹ *Id.* at 00536-37.

¹ Defendant was charged with substantive violations of 18 U.S.C. § 2257 that the government will move to dismiss after sentencing, pursuant to the parties’ plea agreement. The statute provides that:

“[w]hoever produces any [film] of an actual human being, picture, or other matter which (1) contains one or more visual depictions made after November 1, 1990 of actual sexually explicit conduct; and (2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported . . . in interstate and foreign commerce” ascertain,

III. VICTIM STATEMENTS AND IMPACT

a. Victim 1

Victim 1 was approximately 22 years old when he observed an online posting on Craigslist made by the Defendant as a “w4m” seeking physically fit young men. PSI at ¶ 9. Victim 1 then communicated with Defendant over the Kik messaging app and drove to Defendant’s house. Victim 1 went to the house on approximately eight (8) occasions, the last visit occurring in approximately December 2017, each time receiving oral sex from the Defendant. *Id.* at ¶ 11. During these visits, Victim 1 was instructed by Defendant to wear swim-type blacked out goggles, and Defendant would tie Victim 1’s hands to a chair or object. During several of these encounters, Victim 1 repeatedly told Defendant that he did not want be photographed or filmed, and Defendant assured Victim 1 that the encounter was not being recorded. At no time did Victim 1 observe any photographic, video, or audio equipment in the Defendant’s residence. *Id.* at ¶¶ 11, 13. Victim 1 told HSI that on one of the affiliate websites his video had been viewed several thousand times.

In March 2018, when Victim 1 discovered the videos online, he contacted Defendant through Defendant’s Kik username susanleon33326. In the messages—obtained by HSI—Victim 1 asked what the videos were doing posted on the internet. Defendant lied and said the videos were posted years ago by mistake and taken down at the time, but other people must have re-posted the videos. Defendant then told Victim 1 not to worry because Victim 1 was wearing goggles, had no tattoos, and was just another white boy. Bates Number 0377-0381.

by examination of an identification document containing such information, the performer’s name and date of birth, and require the performer to provide such other indication of his or her identity as may be prescribed by regulations.”

Victim 1, Victim 2, and Victim 3 never provided there identification to the Defendant, and such records were not maintained by him.

Victim 1's videos were posted onto the Straightboyz website as Hookup 2** on August 2, 2014 and Hookup 4** on September 3, 2015.² PSI at ¶ 29.

b. Victim 2

Victim 2, then 23 years old, saw the Defendant's Craigslist advertisements sometime in 2015 in the "w4m" Craigslist section. He was interviewed by HSI and also stated he never knew that he was being filmed, let alone put on the internet. Victim 2 was posted onto the Straightboyz website on four separate occasions as Hookup 4** on September 18, 2015; Hookup 4** on October 8, 2015; Hookup 4** on July 19, 2016; and Hookup 5** on July 28, 2016. During the July 28, 2016 video he is seen wearing restraints. Victim 2 told law enforcement that when he discovered the videos he initially had thoughts of suicide. *Id.* at ¶ 24.

After agents had executed a search warrant at Defendant's home, Victim 2 and Defendant got into an argument over a jacket that Victim 2 accused Defendant of stealing. Defendant responded that if Victim 2 continued to accuse him, then Defendant would post a video of the two engaged in sexual activities to Victim 2's Facebook friends. To heighten the threat, Defendant then sent text messages to Victim 2 with screenshots of Victim 2's Facebook friends. *Id.* at ¶ 25.

c. Victim 3

Victim 3 met Defendant on the dating website Grindr, and later learned that Defendant operated an adult website. Victim 3 agreed to have sex with Defendant knowing that it would be filmed for Defendant's private collection, and Defendant assured Victim 3 the video would not be posted onto the internet. Defendant broke his promise and later posted the video on the internet, listed as "Hook Up 5**," and posted to the internet on October 5, 2017. Victim 3 later texted

² The Straightboyz website has been taken down during this investigation. In an abundance of caution, however, the "hookup" number is redacted to protect the victims' information.

Defendant and demanded that Defendant remove the video from the internet, and Defendant at some point complied. *Id.* at ¶ 26.

d. Victim 4 – Minor 1

Victim 4 was 16 years old at the time of his initial sexual encounters with Defendant. Victim 4 responded to one of Defendant’s Craigslist advertisements in which Defendant, posting as “Susan” or “Jessica,” was a woman looking for a man interested in receiving oral sex. In 2016-2017, Victim 4 went to Defendant’s residence on three occasions and would wear the blacked out goggles, allow restraints to be placed on his arms, and Defendant would perform oral sex on him. On his fourth encounter, Victim 4 learned that Defendant was a man and Victim 4 left the room. Soon thereafter, Defendant started to send threatening text messages to Victim 4. At this point, Victim 4 advised Defendant that he was only 16 years old. Despite learning this information, Defendant still threatened to send pictures of Victim 4 naked and blindfolded to all of Victim 4’s Facebook friends. Victim 4 then deleted his Facebook account. HSI reviewed the videos stored on Defendant’s external hard drive and found a video from August 10, 2016 of Victim 4 and Defendant engaged in sexual activities, which was recorded by Defendant without Victim 4’s knowledge or consent. Law enforcement is not aware whether the video was ever posted onto the internet. *Id.* at ¶ 27.

e. Minor Victim 2 – State Case F18-012153

On June 15, 2018, Homestead Police responded to the Floridian Hotel in Homestead, Florida. They responded to a hotel room where a minor victim was found on the floor inebriated and disoriented. The minor victim could not stand on his own and was taken to a local hospital. Defendant waived his *Miranda* rights and admitted that he and the minor victim had been drinking, smoking marijuana, and engaged in consensual sex – the Defendant believing that the minor was

19. He faces pending charges in case F18-012153, charged with unlawful sexual activity with a specified minor, which carries a maximum penalty of 10-years imprisonment. *Id.* at ¶ 69.

f. Unidentified Victims – Non-Consensual Sex with the Defendant

During the search of Defendant’s home, law enforcement seized several computers and hard drives from the Defendant’s bedroom. On one of the saved hard drives, law enforcement found videos created in late 2012—saved for more than five years by the Defendant—that show the Defendant having sex and oral sex with two unconscious men.

As to the first unidentified male (“UM1”), in a folder saved by Defendant as “Frank,” several videos were created in the early morning on September 26, 2012. The videos show UM1 passed out and in a state of unconsciousness on the bed. For several minutes the Defendant ties UM1’s legs in the air with restraints, and UM1 never moves. Defendant proceeds to have anal and oral sex with UM1 who does not move. When the sexual encounter ends, the Defendant turns off the light and leaves UM1 naked on the bed. Another video in the “Frank” folder, recorded on August 4, 2012 once again shows Defendant have sex and oral sex with UM1, who again is unconscious the entire time and appears unable to provide consent.

As to the second unidentified male (“UM2”), in a folder saved by the Defendant as “Georgy,” a video taken by the Defendant on October 14, 2012, shows UM2 unconscious lying on a bed. Defendant repeatedly pokes him to gauge his level of consciousness. Defendant then undresses UM2 and engages in oral and anal sex with UM2. The sexual encounters last for several hours.³

³ At this time law enforcement has not been able to identify UM1 and UM2, whose videos were uncovered when law enforcement executed the search warrant at Defendant’s residence. The United States sent the videos to defense counsel during discovery. Composite Exhibit 1 contains photographic screenshots of the videos, extracted by HSI, and will be provided to the Court under seal in a motion filed contemporaneous with the instant sentencing memorandum.

IV. PSI CALCULATIONS AND OBJECTION

a. PSI Calculations

The United States has no objection to the following guidelines:

The Presentence Investigation Report sets Defendant's base offense level at nine (9) pursuant to U.S.S.G. § 2H3.1.

The PSI provides for a three-level enhancement because the purpose of the offense was to obtain economic gain, pursuant to § 2H3.1(b)(1). This enhancement is established given the Licensing Agreement found in Defendant's home that stated Defendant would split 50% of profits with the licensor in Spain, and Defendant's own admission that he was being paid \$3,000 a month by the licensor.

The PSI also provides a two-level enhancement because the victims were physically restrained, pursuant to § 3A1.3. Here, Victim 1, Victim 2, and Victim 4, at Defendant's insistence, all wore restraints while the Defendant recorded them. Another victim, UM1, was recorded while unconscious and the Defendant physically tied up his legs due to UM1's state of unconsciousness.

Finally, Defendant's grouping of separate offenses for Victim 1, Victim 2, and Victim 4 amount to three (3) additional offense levels as indicated in the table at § 3D1.4. As applicable to the victims in this case, the application notes provide that "cases involving injury to distinct victims are sufficiently comparable, whether or not the injuries are inflicted in distinct transactions, so that each such count should be treated separately rather than grouped together." § 3D1.2 App. Note 8. Here, Defendant pled guilty to Counts 1 and 2 of the Indictment as to Victim 1 and Victim 2. He also agreed in his plea agreement that his conduct toward Victim 4 would qualify as a separate count of conviction under the table in § 3D1.4. (ECF No. 25). Thus, three offense levels are added pursuant to § 3D1.4.

b. The United States objects to the PSI's omission of a vulnerable victim enhancement

The United States objects to the PSI's omission of a vulnerable victim enhancement pursuant to §3A1.1(b)(1)-(b)(2).

USSG § 3A1.1(b)(1) provides for a two-level adjustment “if the defendant knew or should have known that a victim of the offense was a vulnerable victim.” The definition of “vulnerable victim” includes not only a victim of the “offense of conviction,” but also a victim of “any conduct for which the defendant is accountable under 1B1.3 (Relevant Conduct).” *See* USSG § 3A1.1, App. Note 2. The commentary further instructs that a “‘vulnerable victim’ means a person...who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct.” *Id.* Further, the enhancement is appropriate whenever “a defendant selected his victim to take advantage of that victim’s perceived susceptibility to the offense. *United States v. Duran*, 620 Fed. Appx. 687, 691 (11th Cir. 2013).

In particular, the Eleventh Circuit has recognized that vulnerability can be established through a victim’s age or inability to detect the crime. For example, in *United States v. Kapordelis*, 569 F.3d 1291 (11th Cir. 2009), the defendant, an anesthesiologist, was convicted of distributing and producing child pornography. The Eleventh Circuit affirmed the vulnerable victim enhancement where the victims were minor children that were asleep or otherwise nonresponsive “and thus unable to object or respond in any way when [defendant] pulled down their underwear and exposed their genitalia or anuses for the camera.” *Id.* at 1315.

Similarly, in *United States v. White*, 654 Fed. App’x 956 (11th Cir. 2016), the Eleventh Circuit affirmed the vulnerable victim enhancement where the defendant sent threats to a state attorney that he would kidnap and kill his two young daughters if the state did not drop charges against the defendant’s relative. There, the district court determined that the state attorney was a

vulnerable victim because he was a susceptible victim given the young age of his daughters. *Id.* at 969.

Moreover, several Circuit Courts have also applied the vulnerable victim adjustment upon consideration of the victim's intoxicated state. *See e.g., United States v. Talk*, 446 F. App'x 114, 124 (10th Cir. 2011) (affirming application of vulnerable victim adjustment, reasoning that "when an individual's level of intoxication reaches the point that he is incapable of protecting himself from the harm that is a reasonably foreseeable product of the defendant's criminal conduct—and, therefore, he is particularly susceptible to such conduct—we conclude that the vulnerable-victim enhancement may be properly applied"); *United States v. Bruguier*, 703 F.3d 393 (8th Cir. 2012) (determining there was no error in including vulnerable victim adjustment where sexual abuse victim was apparently unconscious from intoxication).

Here, Victim 4, Victim 2, UM1 and UM2 each qualify as vulnerable victims given their age, the nature of the crime, and Defendant's knowledge of their vulnerability. Importantly, a single victim provides an independent basis for applying the adjustment.

Specifically, Victim 4 was 16 years old when he first encountered Defendant's advertisements in the "w4m" section on Craigslist. In fact, in several of Defendant's advertisements he stated that he was looking to host sexual experiences for younger, fit men.⁴ At first, Victim 4 told Defendant that he was 19. In effect, however, he was a juvenile male, at all

⁴ For example, in one October 2017 Craigslist ad, Deneumostier posted in the "w4m" section, "Boy friend over seas on deployment, so is time for me to be naughty hole in my door must be use for ur big cock to be suck off You need to be ready clean trim only *into younger guys*. Kik blondbossXo." In a March 2017 Craigslist ad, Deneumostier posted in the "w4m" section, "Hi guys we are looking for a sexy hung guy to come over tonight this is for fun only and we are 2 sexy girls. *Only young sexy guys* I can host." In a May 2017 Craigslist ad, Deneumostier posted in the "w4m" section, "I am looking to use my agujero/de Gloria esta noche I want big cocks *young guys* in shape No hairy cocks only shave clean trimmed. No gennnerouss/Need it" In December 2017, Deneumostier posted a Craigslist ad in the "w4m" section, "hosting now sexy guys *young* and sexy only looking to do this now you must be ready to travel only host here." (Emphasis added).

times blindfolded, and unknowingly having his sexual encounters with a 32-year old man audio and video recorded without his knowledge or consent. Deneumostier also knew that he had obtained highly private and compromising video recordings of Victim 4 that he could use to threaten Victim 4. In fact, when Victim 4 stopped seeing him, Defendant threatened to post the naked pictures to Victim 4's Facebook friends even after Victim 4 advised that he was only 16. Accordingly, Victim 4 was a vulnerable victim given his age and Defendant's ability to exert control by possessing the unauthorized video and threatening to use the video against Victim 4.

Similarly, Victim 2 was 23 when he first responded to Defendant's Craigslist advertisements in the "w4m" section. Like Victim 4, once his falling out occurred with Defendant, Victim 2 also received threats from Defendant that Defendant would expose his videos to his Facebook friends. Victim 2 stated that he tried to "play nice" with Defendant after he learned about the website hoping that the Defendant would take down the videos. Accordingly, Defendant had reason to know that he had recorded another young, vulnerable person who would be unlikely to give him trouble to avoid the compromising video being sent to his Facebook friends.

Finally, UM1 and UM2 are unidentified males depicted in recordings that Deneumostier made, where Deneumostier is having sexual intercourse with them. In the videos, UM1 and UM2 are motionless and non-responsive. Defendant prods them at times to confirm that they are in fact unable to react. As to UM1, Defendant then applies leg restraints which did not wake up UM1. Like in *Kapordelis*, 569 F.3d at 1316, the victims are audio and video recorded while asleep or otherwise unable to detect that they are surreptitiously being recorded by the Defendant, and unable to protect themselves from being recorded.

Accordingly, Victim 4, Victim 2, and UM1 and UM2 all qualify as vulnerable victims pursuant to § 3A1.1(b)(1).

V. REQUEST FOR UPWARD VARIANCE OR DEPARTURE

A sentence within the advisory sentencing guidelines range would be insufficient to comply with the purposes set forth in 18 U.S.C. § 3553(a)(2). Indeed, the applicable base-offense level guideline, §2H3.2, Application Note 5, expressly states that “there may be some cases in which the offense level determined under this guideline substantially understates the seriousness of the offense” including offenses that may have led to psychological harm, severe emotional trauma, or resulted in a substantial invasion of privacy interest. In those cases, a departure may be warranted. U.S.S.G. § 2H3.2, App. Note 5.

Here, either a departure pursuant to § 5K2 or a variance is warranted due to Defendant’s criminal conduct and the vast number of victims.

First, the Defendant admitted that at least 80 men did not know they were being videotaped and later broadcast on the internet—given that 619 videos were posted on the website this is a conservative number at best. However, even taking Defendant at his word, the years’ long endeavor to record 80 individuals without their knowledge and consent, and post their pornographic videos on the internet for the public at large would cause the substantial psychological harm or emotional trauma envisioned by Application Note 5. In fact, Victim 2 told law enforcement he considered suicide when he learned about his videos being posted onto the internet.

Second, HSI seized Defendant’s hard-drives pursuant to a search warrant. The Defendant kept videos from 2012 showing himself having sex with two unconscious individuals. UM1 and UM2 appear not to have consented to the video recording—let alone having sex with the Defendant—and such conduct should be considered by the Court as to the seriousness of the offense.

Third, HSI has identified two separate sixteen (16) year old minors who had sex or oral sex with Defendant, as minors. Importantly, for one victim the Defendant has been charged with statutory rape by the State Attorney's Office. When law enforcement found the victim and Defendant alone in the hotel, the victim was unable to stand and was taken to a local hospital.

Fourth, as to at least two victims, Victims 2 and 4, the Defendant got into fights with them and threatened to post their naked videos onto their Facebook pages for all of their Facebook followers to see. The behavior is indicative that Defendant knew the power he held over his victims once he could intimidate them with videos of the unauthorized recordings.

Accordingly, in consideration of the factors outlined in 18 U.S.C. § 3553(a), and noting the seriousness of this offense, the large number of victims, and the need to deter others from committing similar acts, the United States submits that the guidelines do not adequately take into account Defendant's egregious behavior, and that an upward variance or departure is appropriate in this case.

VI. CONCLUSION

WHEREFORE, the United States respectfully requests that this Court vary or depart upwards and sentence the Defendant, Bryan Deneumostier, to a term of imprisonment of ninety-six (96) months.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via cm/ecf to all counsel of record on November 16, 2018

s/Cary O. Aronovitz
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