21-1562-cr
United States v. Watson

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

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At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 14th day of December, two thousand twenty-two.

PRESENT:

SUSAN L. CARNEY,
JOSEPH F. BIANCO,
MYRNA PÉREZ,
Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

v. 21-1562-cr

RONELL WATSON,

Defendant-Appellant.

FOR APPELLEE: FRANCISCO J. NAVARRO, Assistant United States Attorney (Kevin Trowel, Assistant United States Attorney, *on the brief*), *for* Breon Peace, United States Attorney for the Eastern District of New York, Brooklyn, NY.

FOR DEFENDANT-APPELLANT: DANIEL HABIB, Federal Defenders of New York, Inc., New York, NY.

Appeal from a judgment of conviction of the United States District Court for the Eastern District of New York (Kuntz, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Defendant-appellant Ronell Watson appeals from a judgment of conviction, entered against him on June 21, 2021, following a jury trial. Watson was found guilty of: (1) attempted murder of a federal officer, in violation of 18 U.S.C. §§ 1114(3) and 1113; (2) assault of a federal officer through the use of a weapon and the infliction of bodily injury, in violation of 18 U.S.C. § 111(a)(1), (b); and (3) possession and discharge of a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1)(A)(i), (iii). These convictions related to Watson's shooting of FBI Special Agent Christopher Harper ("Special Agent Harper"), who was on duty in an unmarked car in front of Watson's residence in Brooklyn while conducting surveillance on a nearby home. Watson hit Special Agent Harper with one shot in his back as he drove away, seriously injuring him, and also hit the rear of the car. At trial, Watson's counsel did not dispute that Watson shot Special Agent Harper, but rather principally argued that Watson felt he was in danger because he did not know that Special Agent Harper was a law enforcement officer when he approached the unmarked car parked in front of his residence and the car suddenly sped away. Thus, the defense argued that Watson lacked any intent to murder and acted in self-defense when he made the split-second decision to shoot. Subsequent to the jury's guilty verdict on all three counts, Watson was sentenced to 382 months' imprisonment followed by three years of supervised release.

On appeal, Watson argues that: (1) the district court erred in denying his motion for a new trial because he was prejudiced by an *ex parte* interaction between the courtroom deputy and the jurors during trial regarding safety concerns; (2) the district court's self-defense instruction was

erroneous because it did not specifically provide that Watson could use deadly physical force to prevent a perceived robbery or burglary and did not advise the jurors to consider his physical attributes and prior experiences in assessing the reasonableness of his belief about his physical safety; and (3) the district court's statements at sentencing extolling Special Agent Harper reflected improper considerations in determining the appropriate sentence and thereby constituted procedural error and a violation of due process. We assume the parties' familiarity with the underlying facts and procedural history, which we reference only as necessary to explain our decision to affirm.

I. *Ex Parte* Communication with the Jurors

Watson argues that the district court erred in denying his motion for a new trial because his right to be present at every stage of trial was violated by an *ex parte* communication about courtroom safety between the courtroom deputy and the jurors, which occurred outside the presence of the parties. The circumstances surrounding this interaction can be summarized as follows: After trial adjourned for the day, one of the jurors approached the courtroom deputy expressing concerns about the use of cellphones in the courtroom by individuals she believed to be Watson's family members, whom she described as "three black people in the front." App'x at 1063. Other jurors also expressed concern that Watson's family members could photograph them during trial. The courtroom deputy noted that the individuals identified by the jurors may have been allowed to keep their cellphones because they were attorneys, court staff, or inhouse news reporters, but the jurors insisted that those individuals were Watson's family members. The courtroom deputy advised the jurors that he would discuss their concerns with the judge.

As set forth below, although this *ex parte* interaction between the courtroom deputy and the jurors regarding their courtroom security concerns was improper, we conclude that the district

court did not abuse its discretion in denying the motion for a new trial, given its assessment of the potential prejudice against Watson and, in particular, the district court's careful and thorough *voir dire* of the jurors following the interaction.

A district court may vacate a judgment of conviction and grant a new trial "if the interest of justice so requires." Fed. R. Crim. P. 33. We review a district court's denial of a motion for a new trial for abuse of discretion, upholding findings of fact that were made in the course of deciding the motion unless they are clearly erroneous. *United States v. Stewart*, 433 F.3d 273, 295 (2d Cir. 2006).

"A defendant in a criminal case has the right, rooted in the Sixth Amendment Confrontation Clause and Fifth Amendment Due Process Clause, to be present at every trial stage." *United States v. Mehta*, 919 F.3d 175, 180 (2d Cir. 2019). "The right to be present has been extended to require that messages from a jury should be disclosed to counsel and that counsel should be afforded an opportunity to be heard before the trial judge responds." *Id.* (quoting *United States v. Mejia*, 356 F.3d 470, 474 (2d Cir. 2004)). Accordingly, the district court should not respond to a jury concern about the case in an *ex parte* manner. *See id.* at 181. This rule applies not only to jury inquiries during deliberations, but also to any jury concerns about the case raised during the trial. *See, e.g.*, *id.* at 178, 180–82 (applying this rule to safety concerns that jurors raised orally during trial).

Nevertheless, "[n]ot every violation of a defendant's right to be present will result in reversal." *United States v. Collins*, 665 F.3d 454, 460 (2d Cir. 2012). Instead, an *ex parte* communication in response to a jury inquiry "may be considered harmless error where the communication cannot be said to have prejudiced the defendant." *See Mejia*, 356 F.3d at 476; *see also United States v. Henry*, 325 F.3d 93, 106–08 (2d Cir. 2003) (holding that the district court's failure to fully disclose the contents of the jury note did not warrant reversal because this error did

not prejudice the defendant); *Mehta*, 919 F.3d at 181–82 (quoting *United States v. Gagnon*, 470 U.S. 522, 526 (1985) (stating that a district court may "take action to mitigate the prejudicial effects of the *ex parte* meeting" and that "[t]he mere occurrence of an *ex parte* conversation between a trial judge and a juror does not constitute a deprivation of any constitutional right")).

Here, we find no abuse of discretion in the district court's determination that the *ex parte* interaction between the courtroom deputy and the jurors did not prejudice Watson.[1] The district court implemented a thorough procedure to determine whether there was any prejudice to Watson from that interaction. In particular, after receiving and sharing with the parties the courtroom deputy's memorandum summarizing his interaction with the jurors, the district court promptly held sealed *in camera* proceedings, during which it admitted the memorandum into the record and heard from the defense and prosecution as to how to proceed. The district court then conducted an individual *voir dire* of each juror in the presence of defense counsel and the prosecutors to determine whether the jurors could remain fair and impartial in light of the concerns raised during their interaction with the courtroom deputy. The questions utilized by the district court during the *voir dire* were taken from a list of questions developed and approved by counsel for both sides.[2] In response to the district court's questions, each juror confirmed that nothing said during the *ex parte* discussion with the courtroom deputy undermined their ability to presume Watson's

[1] The parties disagree over whether the courtroom deputy's *ex parte* interaction with the jurors should be regarded as "'presumptively prejudicial.'" *See Sher v. Stoughton*, 666 F.2d 791, 793 (2d Cir. 1981) (quoting *Remmer v. United States*, 347 U.S. 227, 229 (1954)). We need not address this issue because, even assuming *arguendo* that a presumption of prejudice applies to this interaction, we conclude that the government, through the district court's findings following a careful *voir dire* of the jurors, has rebutted that presumption. *See Remmer*, 347 U.S. at 229–30 ("The trial court . . . should determine the circumstances, the impact thereof upon the juror, and whether or not it was prejudicial, in a hearing with all interested parties permitted to participate.").

[2] Although Watson was not present during these *in camera* proceedings, his counsel waived his appearance and Watson does not challenge his non-appearance on appeal.

innocence and that they could remain fair and impartial. The district court found all sixteen jurors to be credible in their responses to the questions. Despite the defense's argument that the jurors' concerns about being photographed by Watson's family during trial suggested that they believed Watson to be guilty, the district court found that the jurors' desire to protect their privacy and anonymity was not incompatible with their ability to continue presuming Watson's innocence. Having reviewed the record, we see no reason to disturb the district court's findings regarding the jurors' credibility and impartiality. *See United States v. Greer*, 285 F.3d 158, 171 (2d Cir. 2002) (stating that the district court's determination regarding a juror's bias will not be overturned "absent clear error"); *United States v. Torres*, 128 F.3d 38, 44 (2d Cir. 1997) ("Given the special capacity of the trial judge to evaluate actual bias on the part of prospective jurors, that judge's determination in this regard is accorded great deference . . . ."); *United States v. Ploof*, 464 F.2d 116, 118 (2d Cir. 1972) ("[T]he judge was in the best position to evaluate the juror's demeanor and to determine, by the juror's answers to the judge's questions, whether he could fairly and impartially hear the case and return a verdict based solely on the evidence presented in court.").

To the extent Watson suggests that the district court did not inquire about or address any potential prejudice resulting from the jurors' safety concerns, we disagree. As an initial matter, many jurors did not even mention having any safety concerns. Moreover, those who expressed some concerns about safety explained during the *voir dire* that their concerns had been addressed and therefore would not impact their ability to be fair and impartial. For example, Juror Four noted that she was concerned about the use of cellphone cameras in the courtroom, but then told the district court, "now that you're telling me it's a nonevent, I really don't have a problem with that." App'x at 314. She added, "[i]t was never about the case or the defendant or anything like that, it was about what I was observing." *Id.* Similarly, although Juror Eight had expressed safety

concerns to the courtroom deputy about the ability of someone to take a photograph in the courtroom, she indicated during the individual *voir dire* that she had no continuing concerns. Juror Fifteen was also questioned about her safety concerns and indicated she was "definitely going in with an open mind" and "would definitely continue to be fair and impartial." App'x at 410–11. Based upon our review of the questioning of the jurors, we conclude that the district court adequately assessed any potential prejudice to Watson that could have resulted from juror safety concerns.[3]

In sum, the district court's thorough questioning of the jurors in consultation with both parties and its findings following questioning were sufficient to ensure that the courtroom deputy's interaction with the jurors had not prejudiced Watson. *See, e.g.*, *Sher*, 666 F.2d at 794–95 (finding no prejudice to the defendant where, after an anonymous caller communicated with the jurors, the district court notified the parties and promptly conducted individual *voir dire*, during which each juror assured the district court that he or she could remain impartial). Accordingly, the district court did not abuse its discretion in denying Watson's motion for a new trial.

II. Self-Defense Instruction

Watson argues that the district court's self-defense instruction was erroneous because: (1) it did not specifically advise the jury that Watson could use deadly force in response to a burglary

[3] Although Watson also challenges the district court's individual *voir dire* on the basis that the district court "did not ask any questions about race," Appellant's Br. at 41, we find that argument similarly unpersuasive. As an initial matter, Watson did not request that the district court ask such questions. Furthermore, the defense objected to only one of the jurors as exhibiting potential racial bias—Juror Four, who initially approached the courtroom deputy with concerns about the cellphone use. After giving both the defense and the prosecution an opportunity to respond, the district court concluded that the concerns about cellphone use expressed by Juror Four were not motivated by racial considerations. In short, on this record, we find no error in the district court's handling of any potential concerns of racial bias on the part of the jurors. *See United States v. Peterson*, 385 F.3d 127, 134 (2d Cir. 2004) ("A district court's investigation of juror misconduct or bias is a delicate and complex task. Therefore, a trial judge has broad flexibility in such matters, especially when the alleged prejudice results from statements by the jurors themselves, and not from media publicity or other outside influences." (internal quotation marks and citations omitted)).

or a robbery; and (2) it did not advise the jury to consider whether his physical attributes (such as impaired vision) and prior experiences (such as his experiences as a robbery victim and knowledge of burglaries in the neighborhood) could provide a reasonable basis for his belief that Special Agent Harper intended to harm him.[4] As set forth below, we conclude that there is no basis to reverse the convictions based upon the content of the self-defense instruction.

"We review challenges to jury instructions *de novo* but will reverse only where the charge, viewed as a whole, demonstrates prejudicial error." *United States v. Rivera*, 799 F.3d 180, 186 (2d Cir. 2015) (internal quotation marks omitted). "Instructions are erroneous if they mislead the jury as to the correct legal standard or do not adequately inform the jury of the law." *United States v. Cabrera*, 13 F.4th 140, 146 (2d Cir. 2021).

"Because the law pertaining to self-defense is a matter of federal common law, we find it appropriate to look to state court decisions for guidance." *United States v. Melhuish*, 6 F.4th 380, 396–97 (2d Cir. 2021); *see Jackson v. Edwards*, 404 F.3d 612, 621–28 (2d Cir. 2005) (examining the law of self-defense under New York Penal Law § 35.15). Under New York law, an instruction on self-defense "is warranted whenever there is evidence to support it," and the prosecution bears the burden of disproving it beyond a reasonable doubt. *See Davis v. Strack*, 270 F.3d 111, 124 (2d Cir. 2001) (citing, *inter alia*, N.Y. Penal Law §§ 25.00(1), 35.00)). "[I]f on any reasonable view

[4] The district court's instruction to the jury on self-defense provided in relevant part:

> The law recognizes the right of a person who is not the aggressor to stand his ground and use force to defend himself or another. However, he may use only such force as is reasonably necessary to defend himself or another person against the imminent use of unlawful force. The question is: Would a reasonable person faced with the same facts and circumstances that confronted the defendant at the time of their occurrence have believed that he was in imminent danger of death or grievous bodily injury, such that it was necessary for him to use in his defense, in order to avoid such death or injury, the force or means that might cause the death of his assailant?

App'x at 839.

of the evidence, the fact finder might have decided that the defendant's actions were justified . . . . the trial court should instruct the jury as to the defense and must when so requested." *Id.* (quoting *People v. Padgett*, 60 N.Y.2d 142, 144–145 (1983)); *see also United States v. Dove*, 916 F.2d 41, 47 (2d Cir. 1990) ("[A] criminal defendant is entitled to instructions relating to his theory of defense, for which there is some foundation in the proof, no matter how tenuous that defense may appear to the trial court."). In contrast, "if, after a hearing, the court finds that the defendant's evidence is insufficient as a matter of law to establish the defense, the court is under no duty to give the requested jury charge." *United States v. Zayac*, 765 F.3d 112, 120 (2d Cir. 2014) (alterations omitted).

Under New York law, a person may use "physical force upon another person" when he "reasonably believes such to be necessary to defend himself" from what he "reasonably believes to be the use or imminent use of unlawful physical force by such other person." N.Y. Penal Law § 35.15(1). Moreover, a person may use "deadly physical force upon another person" when he "reasonably believes that such other person is committing or attempting to commit" a robbery or a burglary. N.Y. Penal Law §§ 35.15(2)(b)–(c), 35.20(3). The law of self-defense contains both subjective and objective elements. *See People v. Goetz*, 68 N.Y.2d 96, 110–12 (1986). However, a person is not justified in using deadly physical force if that person is the "'initial aggressor': the first person in an altercation who uses or threatens the imminent use of deadly physical force." *People v. Brown*, 33 N.Y.3d 316, 320 (2019); *see* N.Y. Penal Law § 35.15(1)(b) (providing that the justification of self-defense is not available to an "initial aggressor" unless he "has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the

latter persists in continuing the incident by the use or threatened imminent use of unlawful physical force").

Here, the district court instructed the jury that a person may use physical force as is reasonably necessary to defend himself against the imminent use of unlawful force. Watson argues, however, that the district court erred by failing to separately instruct the jury that a person can use deadly physical force against another person when he reasonably believes the other person is committing or attempting to commit a robbery or a burglary and that he was prejudiced by the omission. We disagree.

The uncontroverted evidence introduced at trial, including video surveillance footage, established that Watson drove towards Special Agent Harper's parked car, then exited his car with a firearm, approached Special Agent Harper who was in the driver's seat with his window up, and shot Special Agent Harper as he attempted to speed away. Even construing the trial evidence most favorably to Watson, no rational jury could find that it was objectively reasonable for Watson to believe, at the time he fired shots at the departing car, that Special Agent Harper was committing or attempting to commit a robbery or a burglary, or that Watson's reaction was that of a reasonable person acting in self-defense. *See Zayac*, 765 F.3d at 120 (emphasizing that a defendant is entitled to a duress instruction only if the defense has "a foundation in the evidence" (internal quotation marks omitted)); *see also People v. Patterson*, 176 A.D.3d 1637, 1639 (4th Dep't 2019) (rejecting, based upon a review of surveillance footage, "defendant's contention that a reasonable person could have believed that the victim was committing or attempting to commit a . . . robbery at the time defendant fired his weapon" and concluding no instruction on that issue was necessary (internal quotation marks omitted)); *People v. Brunson*, 68 A.D.3d 1551, 1554 (3rd Dep't 2009) (rejecting a challenge to the self-defense instruction because "no reasonable view of the evidence"

supported the conclusion that the defendant's assault of the victim was a reasonable response to a threat that the defendant claimed existed). Such a conclusion could only be reached by ignoring the "imminence" requirement. Therefore, given the lack of an evidentiary foundation for this particular defense theory, the district court did not err in declining to give a separate "robbery or burglary" instruction.

Pursuant to the more general self-defense instruction given to the jury by the district court, Watson argued to the jury that he reasonably believed he was in physical danger, apart from whether it was reasonable to believe that Special Agent Harper attempted to rob or burglarize him as the car sped away. *See, e.g.*, App'x at 896 (defense counsel arguing to the jury in summation that "if, when you approach that car with your empty hand outstretched, the driver responds by flooring the gas pedal, it would be natural that you would firmly, sincerely, but mistakenly perceive the occupant in that car as a danger and a threat"); *id.* at 890 ("You're starting from a place that when [Watson] fired those shots, from his perspective, knowing what he knew, and not knowing who was in that car, whether they were armed and whether or not they might turn around and fire on him as [Special Agent Harper] peeled out in that split second[;] he was not intending to kill anyone and that he just used reasonable force to drive away and inadvertently hit that car while lawfully defending himself.").

Watson contends that the district court erred by failing to specifically instruct the jury to consider Watson's physical attributes and prior experiences, including evidence regarding his visual impairment, his prior experiences as a victim of robberies, and his knowledge of burglaries in the area. To be sure, New York courts "have frequently noted that a determination of reasonableness must be based on the 'circumstances' facing a defendant or his 'situation,'" including "physical attributes of all persons involved, including the defendant," and "any prior

experiences he had which could provide a reasonable basis for a belief that another person's intentions were to injure or rob him or that the use of deadly force was necessary under the circumstances." *Goetz*, 68 N.Y.2d at 114; *see also* Leonard B. Sand et al., 1 *Modern Federal Jury Instructions—Criminal*, ¶ 8.08, Instr. 8–9 (explaining that, with respect to the defendant's belief regarding the danger, "[t]he law requires that there must be reasonable grounds for such belief, based on the conduct of the victim and all the facts and circumstances surrounding and preceding the encounter and the relationship between the person killed and the defendant"); *Criminal Jury Instructions (New York), Second Edition*, PL 35.15(2)(B), at 2 (explaining that "[t]he determination of whether a person reasonably believes a certain circumstance to be true" requires, *inter alia*, consideration of whether "a 'reasonable person' in defendant's position, knowing what the defendant knew and being in the same circumstances, would have had those same beliefs" (emphasis omitted)).

Here, consistent with New York law, the district court instructed the jury that, in assessing whether Watson was entitled to use physical force in self-defense, the jury must consider whether "a reasonable person faced with the same facts and circumstances that confronted the defendant at the time of their occurrence [would] have believed that he was in imminent danger of death or grievous bodily injury." App'x at 839. Although the district court did not specifically reference the jury's ability to consider the defendant's physical attributes and prior experiences, we conclude that the failure to do so (even assuming it was error) was harmless. The instruction, as given, was broad enough to include such considerations. *See, e.g.*, *People v. Hagi*, 169 A.D.2d 203, 211 (1st Dep't 1991) (rejecting challenge to the self-defense instruction and explaining that, "in directing the jury to consider 'the circumstances of this case as you find them to be', the court clearly directed the jurors to take into account defendant's particular circumstances" even if the instruction

did not specify the types of circumstances that the jury could consider); *see also United States v. Ford*, 435 F.3d 204, 210 (2d Cir. 2006) ("We do not review portions of jury instructions in isolation, but rather consider them in their entirety to determine whether, on the whole, they provided the jury with an intelligible and accurate portrayal of the applicable law." (alteration adopted) (internal quotation marks omitted)).[5]

Moreover, defense counsel argued during summation these specific factors—at length—to the jury. For example, defense counsel repeatedly argued that the jurors needed to consider Watson's visual impairment in assessing the reasonableness of his perception of the danger as Special Agent Harper's car sped away. *See, e.g.*, App'x at 887 ("Ronell Watson's loss of vision is important because it not only bears on what he was able to perceive and see in those moments, it shows why he might feel particularly vulnerable and feel the need to protect himself in that split second as he reacted to [Special] Agent Harper's flooring of the gas and screeching in front of him."). Similarly, defense counsel argued that both Watson's prior experience as a robbery victim and his knowledge of burglaries in the area reasonably heightened his perception as to the nature of the imminent danger he faced, even if that perception was mistaken. *See, e.g.*, App'x at 895–96 (highlighting that the jurors should place themselves in Watson's situation and imagine that "you have been robbed multiple times and you live in a neighborhood prone to burglaries and you live in a house that stands out in your neighborhood"). Indeed, at one point in the defendant's

[5] Although Watson relies on *People v. Wesley*, 76 N.Y.2d 555 (1990) to support his position, that case is distinguishable. The trial court in *Wesley* not only failed to instruct the jury that they could consider the defendant's characteristics and prior experiences in assessing the reasonableness of his belief regarding danger, but also (unlike the district court here) did not even instruct the jury that reasonableness should be assessed from the standpoint of the circumstances confronting the defendant at the time of the incident. 76 N.Y.2d at 559–60 ("In this case, the jury was never instructed that they should assess the reasonableness of defendant's belief that he was in deadly peril by judging the situation from the point of view of defendant as though they were actually in his place.").

summation of the case, defense counsel specifically mentioned that such factors could be considered under the district court's broad instruction on reasonableness:

> The Government has to prove beyond a reasonable doubt that Ronell Watson wasn't reacting to a perceived threat, didn't believe he was defending himself. And that's as to either charge. You have to find that they proved those things to you beyond a reasonable doubt. And when you're doing that and when you're thinking about how he reacted, you have to think about the circumstances as Ronell Watson reasonably believed them, including his difficulty with his vision, including his knowledge of burglaries in the area, including his history of being a robbery victim, and you have to decide if he was acting out of fear that Agent Harper was casing his house and posed an imminent danger and he was acting in self-defense as Judge Kuntz will define it.

App'x at 925. In its rebuttal summation, the government did not suggest that these factors could not be considered by the jury under the district court's anticipated self-defense instruction, but rather argued that there was a lack of evidence to support these arguments.

Under these circumstances and given the overwhelming evidence disproving the defendant's tenuous self-defense theory, any alleged error in failing to give a more specific instruction regarding particular factors (such as the defendant's physical attributes and prior experiences) under the reasonableness standard was harmless. *See United States v. Levy*, 578 F.2d 896, 903 (2d Cir. 1978) (concluding that the error in the jury instruction was harmless because there was "an abundance of evidence pointing to the defendant's guilt"); *see also People v. Petty*, 7 N.Y.3d 277, 286 (2006) (finding that "the error in the trial court's justification charge was harmless" because "there was overwhelming evidence disproving the justification defense" and "show[ing] that defendant was the initial and only aggressor," thus leaving "no reasonable possibility that the verdict would have been different had the charge been correctly given"). Accordingly, we find no basis to disturb the convictions on this ground.

III. Sentencing

Watson does not challenge the substantive reasonableness of his sentence, but rather asserts that the district court committed procedural error and violated due process by relying upon Special Agent Harper's personal virtues in determining the appropriate sentence. More specifically, Watson contends that, after Special Agent Harper and his wife spoke at sentencing, "the district court concluded its remarks with fulsome praise for Harper's 'heroism'—in contrast to the 'cowardly and unjustified' Watson—lauding Harper as 'the steadfast embodiment of his fellow peace officers who day after day make our streets safer' and 'our homes more secure.'" Appellant's Br. at 3–4 (quoting App'x at 1202–03). Furthermore, Watson notes that, at the conclusion of the sentencing, the district court stated to Special Agent Harper, "You have our back and this court promises you the law will always have your back and that of your wife and that of your children." App'x at 1203–04. Watson contends that, "[i]n relying on these impermissible factors, unrelated to Watson's legal culpability, the court committed procedural error and violated Watson's due process right to an impartial judge." Appellant's Br. at 4.

"We review a criminal sentence for reasonableness, which 'amounts to review for abuse of discretion.'" *United States v. Kourani*, 6 F.4th 345, 356 (2d Cir. 2021). "This standard applies both to the substantive reasonableness of the sentence itself and to the procedures employed in arriving at the sentence." *United States v. Rigas*, 583 F.3d 108, 114 (2d Cir. 2009) (alterations adopted) (internal quotation marks omitted). A district court's reliance on an impermissible factor renders a sentence procedurally unreasonable. *See United States v. Park*, 758 F.3d 193, 199 (2d Cir. 2014). Because Watson did not object to the alleged procedural error during sentencing, we review only for "plain error." *See United States v. Rosa*, 957 F.3d 113, 117 (2d Cir. 2020). To show plain error, a defendant must show that: "(1) there is an error; (2) the error is clear or obvious,

rather than subject to reasonable dispute; (3) the error affected the appellant's substantial rights; and (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.* at 117–18.

We find no basis to conclude that the district court erred by relying upon any improper considerations in determining Watson's sentence. At sentencing, Special Agent Harper and his wife spoke to the district court pursuant to the Victims' Rights Act and described the devastating physical and emotional harm that the shooting had on them and their family. Special Agent Harper spoke about the surgeries he underwent, including the one to remove the bullet lodged in his chest, and the "numerous large scars in [his] torso which serve[] as a daily reminder" of what he endured. App'x at 1173–74. He further emphasized that "[t]he emotional pain . . . is in many ways worse than the physical pain." App'x at 1174. Special Agent Harper's wife likewise described her "paranoia" following the shooting, which resulted in her being "fearful every time [she] left the house, suspicious of every car that drove by," and led to "panic attacks" that made "it difficult to enjoy being with [her] kids." App'x at 1172.

The district court's decision to address Special Agent Harper at sentencing as the victim of Watson's crimes is consistent with the guidance of Rule 32, which provides that, "the court must address any victim of the crime who is present at sentencing and must permit the victim to be reasonably heard" before imposing the sentence. Fed. R. Crim. P. 32(i)(4)(B); *see also* 18 U.S.C. § 3771(a)(4) (providing that victims have "[t]he right to be reasonably heard" at sentencing hearings). Moreover, the mere fact that the district court praised the courage, heroism, and dedicated public service of the victim, and compared those virtues to the defendant's violent conduct, does not reflect reliance on any improper consideration at sentencing or a judicial bias. *See, e.g.*, *United States v. Mangone*, 652 F. App'x 15, 18 (2d Cir. 2016) (summary order) (citing

Liteky v. United States, 510 U.S. 540, 555 (1994)) ("[T]he judge's comments on her personal reaction to [the defendant's] crimes are best taken as a rhetorically emphatic way of expressing a legitimate negative view of his conduct, and they do not show that the court harbored any personal bias against [the defendant].").

Furthermore, the sentencing factors under 18 U.S.C. § 3553(a) allow for consideration of the impact of the criminal conduct on the victim, including "the need for the sentence imposed . . . to reflect the seriousness of the offense . . . and to provide just punishment for the offense." *Id.* at § 3553(a)(2)(A); *see also United States v. Bradley*, 812 F.2d 774, 781 (2d Cir. 1987) ("[I]t goes without saying that the effects of the criminal's activities on his victims is another major, and wholly legitimate, subject of the sentencing judge's consideration . . . . [W]e find no support for the claim that the sentencing judge stepped beyond the bounds of his discretion in his evaluation of the information before him or in his concern for the victims of [the defendant's] repeated violations of the law."). In addition, the sentencing judge may consider the need for the sentence "to afford adequate deterrence to criminal conduct" and "to protect the public from further crimes of the defendant," which would include protecting law enforcement officers who are seriously injured by violent conduct in the performance of their official duties. 18 U.S.C. §§ 3553(a)(2)(B)–(C).

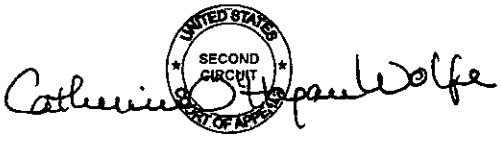
Here, as set forth in the sentencing transcript, the district court meticulously discussed each of the Section 3553(a) factors in explaining the reasons for its sentence. *See generally United States v. Robinson*, 702 F.3d 22, 39 (2d Cir. 2012) (examining "[t]he clear import of the District Court's remarks, taken as a whole" in determining whether there was procedural error at sentencing). Although it may have been unnecessary and unhelpful for the district court to then stray from the language of Section 3553(a) in a rhetorical way during its closing remarks after

carefully analyzing the statutory factors, such as by noting that "the law will always have [the victim's] back," App'x at 1204, we conclude on this record that the comments do not reflect a plain procedural error nor a judicial bias. *See also United States v. Bermúdez–Meléndez*, 827 F.3d 160, 165 (1st Cir. 2016) ("While the court may have engaged in hyperbole, sentencing courts are entitled to broad latitude in their linguistic choices. Consequently, gratuitous rhetorical flourishes, without more, will not render a sentence infirm."). Accordingly, because Watson has not shown that the district court plainly erred, we affirm the sentence of the district court.[6]

* * *

We have considered all of Watson's remaining arguments and find them to be without merit. Accordingly, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



[6] Because we have rejected Watson' various challenges on appeal and affirm the judgment, we need not address Watson's argument that the case should be re-assigned to a different judge on remand.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

RONELL WATSON,

Defendant.

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MEMORANDUM & ORDER
19-CR-004-1 (WFK)

WILLIAM F. KUNTZ, II, United States District Judge:

Ronell Watson ("Defendant") was found guilty following a jury trial of (1) Attempted Murder of a Federal Officer in violation of 18 U.S.C. § 1114(3); (2) Assault of a Federal Officer in violation of 18 U.S.C. §§ 111(a)(1) and 111(b); and (3) Possessing and Discharging a Firearm During a Crime of Violence in violation of 18 U.S.C. §§ 924(c)(1)(A)(i) and 924(c)(1)(A)(iii). The Court now sentences him and provides a complete statement of reasons pursuant to 18 U.S.C. § 3553(c)(2) of those factors set forth by Congress contained in 18 U.S.C. § 3553(a). For the reasons discussed below, Defendant is sentenced to 382 months of imprisonment followed by three (3) years of supervised release.

BACKGROUND

The Government filed a criminal complaint against Ronell Watson ("Defendant") and Molissa Gangapersad on December 10, 2018, and a superseding four-count indictment on January 3, 2019. Presentence Investigation Report ("PSR") at 1, ECF No. 157; Complaint (Compl.), ECF No. 1. The superseding indictment charged Defendant Watson with: (1) Attempted Murder of a Federal Officer in violation of 18 U.S.C. § 1114(3); (2) Assault of a Federal Officer in violation of 18 U.S.C. §§ 111(a)(1) and 111(b); and (3) Possessing and Discharging a Firearm During a Crime of Violence in violation of 18 U.S.C. §§ 924(c)(1)(A)(i) and 924(c)(1)(A)(iii). PSR ¶ 1–3. Defendant Watson was not named in the fourth count. *Id.* ¶ 4. The superseding indictment alleges Defendant Watson knowingly and intentionally attempted to kill a Special Agent of the Federal Bureau of Investigation. Indictment ("Ind.") at 1, ECF No. 11. On July 17, 2019, a jury found Defendant guilty of Counts One through Three. PSR ¶ 1. Defendant Watson has been in custody since his arrest. *Id.* ¶ 82. The Court hereby sentences

Defendant Watson and sets forth its reasons for Defendant's sentence using the rubric of the 18 U.S.C. § 3553(a) factors pursuant to 18 U.S.C. § 3553(c)(2).

DISCUSSION

I. Legal Standard

18 U.S.C. § 3553 outlines the procedures for imposing sentence in a criminal case. The "starting point and the initial benchmark" in evaluating a criminal sentence is the Guidelines sentencing range. *Gall v. United States*, 552 U.S. 38, 49 (2007). If and when a district court chooses to impose a sentence outside of the Sentencing Guidelines range, the court "shall state in open court the reasons for its imposition of the particular sentence, and . . . the specific reason for the imposition of a sentence different from that described" in the Guidelines. 18 U.S.C. § 3553(c)(2). The court must also "state[] with specificity" its reasons for so departing "in a statement of reasons form[.]" *Id.*

"The sentencing court's written statement of reasons shall be a simple, fact-specific statement explaining why the guidelines range did not account for a specific factor or factors under § 3553(a)." *United States v. Davis*, 08-CR-0332, 2010 WL 1221709, at *1 (E.D.N.Y. Mar. 29, 2010) (Weinstein, J.). Section 3553(a) provides a set of seven factors for the Court to consider in determining what sentence to impose on a criminal defendant. The Court addresses each in turn.

II. Analysis

A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant

The first § 3553(a) factor requires the Court to evaluate "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1).

a. Family and Personal Background

Defendant was born Ronell Adrian Watson on September 12, 1987, in Georgetown, Guyana. PSR ¶ 49. Defendant is the only child born to the marital union of Ronald Watson and Theresa (née) Ford. *Id.* Defendant's father died in 1989. *Id.* Defendant's mother (age 61), with whom he has a close relationship, is a retired schoolteacher. *Id.* She is aware of the instant offense and is supportive of Defendant. *Id* ¶ 50. Defendant's mother has been married to Godfrey Frasier (age 68), a retired construction worker, since the Defendant's childhood. *Id.* ¶ 56. Defendant noted he has always maintained a good relationship with Mr. Frasier. *Id.* Defendant has three maternal half-siblings, all of whom live in New York State. *Id.* ¶ 51. The siblings are aware of Defendant's arrest and conviction, and they remain supportive of him. *Id.*

According to the U.S. Immigration and Customs Enforcement ("ICE") database, Defendant entered the United States on August 23, 1996, is legally residing in the United States as a permanent resident, and is amenable to removal proceedings for the instant conviction. *Id.* ¶ 55. Defendant stated, and his mother confirmed, that he is a derivative United States citizen through his mother, and he has a United States passport. *Id.* However, Probation notes Defendant has not provided any proof or other documentation to indicate ICE records are incorrect. Second Addendum to the PSR ("PSR Add. 2") at 3, ECF No. 180.

Defendant's mother raised him in Georgetown, Guyana, until she immigrated to the United States when he was three. *Id.* ¶ 52. Defendant was left in the care of his maternal

grandmother, Shirley Edwards (age 80). *Id.* Although the neighborhood Defendant resided in during his childhood was "very poor," their family was middle-income. *Id.* ¶ 53.

Defendant experienced troubling incidents in his youth. He reported to probation he was physically and sexually "abused by an older cousin," who would also occasionally lock Defendant "in a cage they used for dogs." *Id.* ¶ 54. At age eight, Defendant witnessed "unknown individuals" "slaughter" this cousin "with a machete." *Id.* Furthermore, because of his grandmother's political affiliations, the family often needed army protection during political elections. *Id.* ¶ 53. Defendant reported that when he was four, an unknown group threw a Molotov cocktail through their home window. *Id.*

Defendant also experienced difficulties after moving to the United States. Defendant reports he was bullied at school and assaulted by classmates. *Id.* ¶ 58. Several boys stole his bicycle and assaulted him in front of his home. *Id.* He also witnessed shootings and robberies in his neighborhood. Def.'s Sentencing Mem & Objs. to PSR ("Def. Mem.") at 5, ECF No. 174. Defendant reports that when he was thirteen, a close friend of his died after being stabbed in the neck. *Id.* at 6.

Defendant has been romantically involved with Molissa Gangapersad (age 31), a nurse coordinator, since 2009. PSR ¶ 59. Defendant reports their relationship has remained intact since his instant arrest and conviction. *Id.* However, because Ms. Gangapersad is a co-defendant in the instant offense, she has had no contact with Defendant as part of her bond conditions. *Id.* ¶ 60. Defendant and Ms. Gangapersad have one child, Malia Watson (age 9). Ms. Gangapersad and Defendant's family members financially support the child, but Defendant reports she is "everything to him." *Id.* ¶ 60. Malia Watson is enrolled in school and is essentially healthy, but has poor eyesight. *Id.*

b. Defendant's Physical Condition, History of Substance Abuse

Defendant has had severe vision problems since childhood. *Id.* ¶ 65. At age ten, he was diagnosed with glaucoma and high myopia, a degenerative eye condition that leads to chronic eye disorders and vision difficulties. *Id.* Defendant has had several retina detachments that required surgery and retinal implants in both eyes. *Id.* ¶ 66. He also has tubes in both eyes to relieve the pressure for the glaucoma. *Id.* Since his arrest, Defendant has had two laser eye surgeries and he reports "he has an elastic band to hold his right eye in place." *Id.* Defendant reports he is legally blind. *Id.* However, the New York State Department of Motor Vehicles indicates Defendant has a valid driver's license, which expires on September 12, 2025 and he was operating a motor vehicle at the time of the instant offense. *Id.* ¶ 68.

Defendant reported having difficulty seeing at the Metropolitan Detention Center ("MDC") in Brooklyn, New York. *Id.* He reported suffering from constant headaches, but cannot take most medications because of his glaucoma. *Id.* Defendant's New York Eye and Ear Hospital medical records were reviewed by Dr. Andrew P. Schwartz, M.D., Director of Refractive Surgery and Laser Vision Correction at 5th Avenue Eye Associates. *Id.* ¶ 69. Based solely on his review of those records, Dr. Schwartz believed Defendant suffered from "severe visual impairment, to include degenerative myopia, glaucoma, refractive amblyopia, myopic degeneration, and retinal detachment." *Id.* Dr. Schwartz further believed Defendant's left eye provides little functional vision, and Defendant's right eye has functional vision, but with severe limitations in peripheral vision. *Id.* Dr. Schwartz commented he believes that Defendant is legally blind in both eyes. *Id.* However, Dr. Schwartz also noted Defendant's vision in his right eye permits him to do things such as "recognize persons, identify a car, and recognize

movement." *Id.* Dr. Schwartz's review of the video evidence in this case further supported his belief that Defendant does, in fact, have functional vision. *Id.*

Defendant was shot in the left hand during the instant offense and was treated at Kingsbrook Jewish Medical Center, in Brooklyn, New York. *Id.* ¶ 70. In his interview with Probation, he noted his hand felt numb, he was unable to rotate it, and he was also unable to carry anything with weight. *Id.* Defendant visited the medical center for a follow-up visit post-surgery during which he stated that pain was minimal and reported slight numbness. *Id.* On May 14, 2019, Defendant again visited the medical center and at that time, denied pain, numbness, and tingling sensations in his wrist. *Id.* ¶ 71. Although x-rays showed bullet fragments overlaying Defendant's left wrist, no acute fracture or dislocation was noted. *Id.* Defendant's May 2019 medical records indicate Defendant was prescribed the following medications: "Acetazolamide (used to treat glaucoma); Atropine (eye drops used to treat uveitis and early amblyopia); Brimonidine (used to treat open-angle glaucoma or ocular hypertension); Difluprednate (used to treat an eye condition called endogenous anterior uveitis); Dorzolamide (used to treat pressure in the eyes); and Latanoprost (used to treat pressure in the eyes)." *Id.* ¶ 72. According to Bureau of Prisons SENTRY database, Defendant has been taken to the hospital by MDC staff on multiple occasions. *Id.*

Defendant reports he rarely drinks, but he smoked up to four marijuana cigarettes daily, often to ease headaches, prior to his instant arrest. *Id.* ¶ 74–75. Defendant stated his usage increased in 2012 to relieve the pain from eye surgery. *Id.* ¶ 75. Defendant has never undergone any drug treatment. *Id.* ¶ 77.

c. Legal History, Nature of Offense

Following a jury trial on July 17, 2019, Defendant was found guilty of three counts. *Id.* ¶ 1. Count 1 charges that on December 8, 2018, Defendant attempted to kill an officer and employee of an agency of the United States Government, specifically, a special agent of the Federal Bureau of Investigation (FBI), while such officer and employee was engaged in and on account of the performance of official duties, in violation of 18 U.S.C. § 1114(3) and 18 U.S.C. § 1113. *Id.* Count 2 charges that on December 8, 2018, Defendant forcibly assaulted, resisted, opposed, impeded, intimidated, and interfered with a person designated in 18 U.S.C. § 1114, specifically, a special agent of the FBI, while such officer and employee was engaged in and on account of the performance of official duties, and such act involved physical contact with the victim, the intent to commit another felony, the use of a deadly and dangerous weapon, and the infliction of bodily harm, in violation of 18 U.S.C. § 111(a)(1) and 18 U.S.C. § 111(b). *Id.* ¶ 2. Count 3 charges that December 8, 2018, Defendant used and carried one or more firearms during and in relation to one or more crimes of violence, specifically, the crimes charged in Counts 1 and 2, and possessed said firearms in furtherance of such crimes of violence, one or more of which firearms were discharged, in violation of 18 U.S.C. § 924(c)(1)(A)(i) and 18 U.S.C. §§ 924(c)(1)(A)(iii). *Id.* ¶ 3.

On December 8, 2018, Federal Bureau of Investigation ("FBI") Special Agent Christopher Harper was on duty in the Canarsie section of Brooklyn, New York. *Id.* ¶ 6. Agent Harper was in an unmarked Nissan Maxima parked on a one-way street near 1626 Canarsie Road, Brooklyn, New York, Defendant's then residence. *Id.* As Agent Harper sat in his parked car, a BMW sedan ("sedan") driven by Defendant approached him, driving the wrong direction down Canarsie Road. *Id.* ¶ 7. Defendant parked his car near the front of Agent Harper's car, partially obstructing Agent Harper's ability to drive forward. *Id.* Defendant then exited his car

and approached Agent Harper's driver side door with one hand inside the front pocket of his hooded sweatshirt. *Id.* Agent Harper saw the Defendant grasp something in the front pocket of his hooded sweatshirt, which Agent Harper believed to be a firearm. *Id.* As a result, Agent Harper began to maneuver his car around the sedan to create distance between himself and the Defendant. *Id.* As Agent Harper drove away, Defendant pulled out a firearm and fired at Agent Harper. *Id.* Defendant fired multiple rounds and one struck Agent Harper in the back. *Id.* Agent Harper exited his car and returned fire. *Id.* Defendant fled the scene in his sedan. *Id.*

Agent Harper returned to his car and called 911 for assistance. *Id.* An ambulance transported Agent Harper to Kings County Medical Center in Brooklyn, New York, where the attending trauma surgeon conducted emergency surgery to treat Agent Harper's wounds, including a collapsed lung, fractured scapula, and a broken rib. *Id.* ¶ 8. But for medical intervention, Agent Harper's wounds would have been fatal. *Id.*

After Defendant left the scene, with a gunshot wound to his left hand, he drove to an auto body shop located on Remsen Avenue in Brooklyn, New York. *Id.* ¶ 9. After appearing to look for something inside his vehicle, and after talking to various persons at the shop and on his cellular telephone, Defendant's friend drove him to Kingsbrook Jewish Medical Center in Brooklyn, New York, in a different car. *Id.* The New York City Police Department ("NYPD") officers responded to the hospital and interviewed Defendant, who claimed he was the victim, as opposed to the perpetrator, in a shooting. *Id.*

That same night, an FBI special agent and an FBI Task Force Officer arrived at the hospital and arrested Defendant for the attempted murder of Agent Harper. *Id.* ¶ 10. When questioned about the incident, Defendant claimed someone suddenly started shooting at him, unprovoked and that he did not fire back, as he did not have a weapon at the time. *Id.* However,

multiple videos and other evidence showed the true progression of events, and Defendant was convicted by a jury on the three counts brought against him in the Indictment. *Id.*

Furthermore, a search of Defendant's residence revealed approximately 1.5 pounds of marijuana, $15,000 in cash, firearms accessories (firearm holster and firearm maintenance equipment), and large amounts of jewelry in Defendant's bedroom. *Id.* ¶ 12. The weapon used in the instant offense was not recovered. *Id.* The search and investigation also revealed Defendant is a member of the Crips street gang, as indicated by Crips-associated paraphernalia and photographs. *Id.* Additionally, persons familiar with Defendant, including Ms. Gangapersad, informed the investigating officers that Defendant was a long-time member of the Crips. *Id.*

Defendant has been incarcerated at the MDC in Brooklyn, New York, since December 9, 2018. PSR ¶ 62. The Bureau of Prisons SENTRY "database indicates that the defendant completed the following educational courses: resume management; violence alternative; and alternative to drug dealing." *Id.* Defendant also received a single disciplinary infraction for Possessing a Dangerous Weapon on June 4, 2019, and was sanctioned with 45 days in disciplinary segregation and lost 90 days of commissary and email privileges. *Id.* Defendant has had no work assignments since his instant arrest, and the database indicates that he is not medically cleared to work. *Id.*

B. The Need for the Sentence Imposed

The second § 3553(a) factor instructs the Court to consider "the need for the sentence imposed (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant

with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2).

The instant sentence adequately punishes the Defendant for his crime and provides both general and specific deterrence. Defendant, unprovoked, attempted to shoot and kill FBI Agent Harper who was driving away from him. PSR ¶ 11. And Defendant did, in fact, strike Agent Harper in the back, causing injuries so severe that Agent Harper would have died without medical intervention. *Id.* ¶ 8. This sentence will deter others from engaging in similar conduct, and justly punishes Defendant for the severity of his actions.

C. The Kinds of Sentences Available

The third § 3553(a) factor requires the Court to detail "the kinds of sentences available" for Defendant. 18 U.S.C. § 3553(a)(3).

Statutory provisions regarding terms of custody for Defendant's violations of law are as follows. For Count One, Defendant faces a maximum term of imprisonment of twenty (20) years. 18 U.S.C. § 1114(3) and 18 U.S.C. § 1113. For Count Two, the maximum term of imprisonment is twenty (20) years. 18 U.S.C. § 111(a)(1) and 18 U.S.C. § 111(b). For Count Three, the minimum term of imprisonment is ten (10) years and the maximum term is life. 18 U.S.C. § 924(c)(1)(A)(i) and 18 U.S.C. § 924(c)(1)(A)(iii). The term of imprisonment for Count Three must be imposed consecutively to any other counts. 18 U.S.C. § 924(c)(1)(A)(iii).

The parties do not dispute the statutory options for supervised release. For Count One, the Court may impose a maximum term of three years. 18 U.S.C. § 3583(b)(2). For Count Two, the Court may impose a maximum term of three years. 18 U.S.C. § 3583(b)(2). For Count Three, the Court may impose a maximum term of five years. 18 U.S.C. § 3583(b)(2). Multiple terms of supervised release shall run concurrently. 18 U.S.C. § 3624(e).

Additionally, Defendant faces a maximum fine of $250,000.00 per count pursuant to 18 USC. §3571(b) and a mandatory special assessment of $100.00 per count pursuant to 18 U.S.C. § 3013. The Court may order restitution be paid to any victim of the offense pursuant to 18 U.S.C. § 3663(a)(1)(A).

D. The Kinds of Sentence and the Sentencing Range Established for Defendant's Offenses

The fourth § 3553(a) factor requires the Court to discuss "the kinds of sentence and the sentencing range established for . . . the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines[.]" 18 U.S.C. § 3553(a)(4)(A

i. Count One

For Count One, the parties agree the most appropriate guideline for a violation of 18 U.S.C. § 1114(3) is U.S.S.G. § 2A2.1. However, the parties dispute the applicability of U.S.S.G. § 2A2.1(a)(1). Specifically, Defendant argues the Court should apply the base offense level for attempted second-degree murder, resulting in a base offense level of 27, whereas the Government and Probation argue the Court should apply the base offense level for attempted first-degree murder, resulting in a base offense level of 33. *See* U.S.S.G. § 2A2.1(a), cmt. n.1. The Court addresses each argument in turn.

U.S.S.G. § 2A2.1 defines "first degree murder" as conduct that would constitute first degree murder under 18 U.S.C. § 1111. Pursuant to 18 U.S.C. § 1111, "murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing . . . is murder in the first degree." At trial, the Government proved beyond a reasonable doubt Defendant acted with the requisite malice aforethought. *See* Gov't Resp. to Def.'s Objs. To PSR ("Gov't Resp.")

at 2, ECF No. 177. Accordingly, whether Defendant committed attempted first-degree murder for the purposes of the Guidelines calculation depends on whether he acted with premeditation.

Premeditation requires a showing that a defendant acted with "a 'cool mind' that is capable of reflection," and "did, in fact, reflect, at least for a short period of time before his act of killing." *United States v. Shaw*, 701 F.2d 367, 393 (5th Cir. 1983). "In contrast to malice aforethought, premeditation requires that 'an appreciable time elapse between formation of the design and the [attempted] fatal act within which there is, in fact, deliberation.'" *United States v. Delaney*, 717 F.3d 553, 556 (7th Cir. 2013) (quoting *Fisher v. United States*, 328 U.S. 463, 469 n.3 (1946)). Furthermore, "[f]indings of fact for sentencing purposes need only be found by a preponderance of the evidence." *United States v. Herbert*, 813 F.3d 551, 560 (5th Cir. 2015) (*quoting States v. Simpson*, 741 F.3d 539, 556 (5th Cir. 2014)). "[C]ourts can engage in judicial factfinding where the defendant's sentence ultimately falls within the statutory maximum term." *Herbert*, 813 F.3d at 564. Here, the Court is within its discretion to determine the applicable base offense level because a finding that Defendant's actions were premeditated would neither increase the statutory maximum nor increase the statutory minimum term of imprisonment. *See Powell v. United States of America*, 09-CV-2141, 2014 WL 5092762, at *2 (D. Conn. Oct. 10, 2014) (Burns, J.)

Defendant argues "[t]he totality of this evidence does not establish by a preponderance that Mr. Watson shot Agent Harper with premeditation." Def. Mem. at 10. Instead, it shows "Mr. Watson shot his weapon reactively, without the time or opportunity to deliberate whether he was going to kill the car's driver." *Id.* To support this claim, Defendant points to the interplay between his "childhood trauma, severe visual disability, and later trauma as an adult" and the unique circumstances of the offense. *Id.* at 4.

Throughout his life, Defendant has dealt with a disabling vision impairment and has been a victim of serious violence and abuse. As a child, Defendant was physically and sexually abused, and witnessed horrific violence both when living in Guyana and in the United States. *Id.* at 5–6. As an adult, that violence continued. Defendant reports that in 2015, he and his friends were robbed at gunpoint in a gas station. *Id.* at 9. Several weeks later, armed gunmen tied up Defendant's stepfather and attempted to rob his home before Defendant and his friends intervened. *Id.* Furthermore, Defendant argues his severe visual disability has negatively affected his ability to learn, acquire employment, and interact with others. *Id.* Defendant argues that these experiences show that on the day that he shot Agent Harper, his conduct "was the result of a posttraumatic reaction to a misperceived threat." *Id.*

Defendant claims "how and what [Mr. Watson] did prior to the [shooting]," was not "so particular and exacting that [he] must have intentionally [acted] according to a preconceived design" as is required to find premeditation. *United States v. Cespedes*, 11-CR-1032, 2015 WL 4597539, at *3 (S.D.N.Y. July 30, 2015) (Engelmayer, J.) (*quoting United States v. Blue Thunder*, 604 F.3d 550, 553 (8th Cir. 1979)). He maintains that although Defendant had a firearm when he approached Agent Harper's vehicle, it was not in his hand and he was not brandishing it, meaning that he did not approach the vehicle planning to shoot. *Id.* at 10. His "reaction and decision to fire his weapon" at Agent Harper's car as it started to drive away was a "spontaneous reaction, rather than the product of deliberation." *Id.* at 4. Defendant reasons that not knowing who owned the vehicle idling near his home, and unable to see through the windows, he reacted fearfully based on his previous experiences of violence and abuse. *Id.* at 4.

In contrast, the Government and Probation maintain the evidence at trial clearly established Defendant "acted willfully, deliberately, maliciously, and with premeditation."

Gov't Resp. at 2. They note premeditation "does not require the lapse of days or hours, or even minutes." *United States v. Brown*, 518 F.2d 821, 826 (7th Cir. 1975); *United States v. Cespedes*, 2015 WL 4597539, at *3–4. Rather, "it is the fact of deliberation, of second thought that is important." *United States v. Catalan-Roman*, 585 F.3d 453, 474 (1st Cir. 2009); *Cespedes*, 2015 WL 4597539, at *3. They argue "[p]remeditation can be proven by circumstantial evidence, including facts about what the defendant did prior to the actual killing that show he was engaged in activity directed toward the killing, and facts about the nature of the killing from which it may be inferred that the manner of killing was so particular and exacting that the defendant must have intentionally killed according to a preconceived design." Gov't Resp. at 2; *Cespedes*, 2015 WL 4597539 at *3. The Government and Probation claim that a review of "Defendant's actions clearly establish premeditation." *Id.* at 2.

Defendant was at a nearby barbershop when Ms. Gangapersad called him to tell him there was a car parked outside their home. *Id.* at 2. Defendant left the barbershop, got into his car with an illegal firearm in his possession, intentionally drove the wrong way down Canarsie Road, and then parked his car in a manner that partially blocked Agent Harper's from leaving. *Id.* Defendant had his illegal firearm hidden as he approached Agent Harper's vehicle. *Id.* Only when Agent Harper began to drive away—thereby mitigating any immediate threat—did Defendant pull out his gun and fire into the back of the retreating Federal Agent Harper. *Id.* According to the Government and Probation, this means Defendant made a series of deliberate choices, including the near fatal choice to fire his weapon at Agent Harper. *Id.* They argue Defendant could have acted differently: "he could have chosen not to bring a gun to his interaction with Agent Harper; he could have chosen not to box Agent Harper in with his car; he could have chosen not to approach Agent Harper with a firearm; and he certainly could have

chosen not to brandish and fire his weapon multiple times." *Id.* at 3. This evidence establishes Defendant had "ample time and opportunity for deliberation and premeditation before opening fire on Agent Harper. *Id.* Thus, they conclude "the Court should reject the defendant's claim that his actions were spontaneous." *Id.*

The Court has carefully considered the arguments and evidence presented by all the parties. It finds by a preponderance of the evidence and more, Defendant's actions were clearly and unambiguously premeditated. Thus, the appropriate base offense level is 33.

Regarding adjustments for Count One, the parties agree the victim sustained permanent or life-threatening bodily injury—the victim suffered a collapsed lung, fractured scapula, and a broken rib. PSR ¶ 22. But for medical intervention, the victim's wounds would have been fatal. *Id.* This justifies an increase by 4 levels under U.S.S.G. § 2A2.1(b)(1)(A). *Id.* Therefore, the total offense level for Count One is 37.

ii. Count Two

For Count Two, the parties agree the most appropriate guideline for a violation of 18 U.S.C. § 111(a)(1) is U.S.S.G. § 2A2.2, which provides a base offense level of 14. U.S.S.G. § 2A2.2. Since a firearm was discharged, 3 levels are added per U.S.S.G. § 2A2.2(b)(2)(A). Pursuant to U.S.S.G. § 2A2.2(b)(3)(B), the offense level is increased by 7 because the victim sustained permanent or life-threatening bodily injury, and but for medical intervention, the victim's wounds would have been fatal. Since Defendant was convicted under 18 U.S.C. § 111(b), the offense level is increased by 2 under U.S.S.G. § 2A2.2(b)(7). Therefore, the resulting offense level for Count Two is 26.

iii. Count Three.

For Count Three, the parties agree the correct guideline for a violation of 18 U.S.C. § 924(c)(1)(A)(i) and 18 U.S.C. § 924(c)(1)(A)(iii) is U.S.S.G. § 2K2.4. The guideline sentence is the term of imprisonment required by statute. Chapters Three (Adjustments) and Four (Criminal History and Criminal Livelihood) shall not apply to this count of conviction. U.S.S.G. § 2K2.4(b).

Finally, as of completion of the presentence investigation, Defendant had not clearly demonstrated acceptance of responsibility for the offense and so is not eligible for a corresponding reduction in his offense level. *See* U.S.S.G. §3E1.1. Defendant does not contest this directly, but does claim that Defendant "was prepared to accept responsibility for shooting Agent Harper and plead guilty to the indictment, provided there was some limit or at least agreed-upon recommendation on the maximum sentence he would receive." Def. Mem. at 15. Because the Government "refused to consider any offer," Defendant asks the Court to consider a downward variance instead. *Id.*

iv. Multiple Count Adjustment

Counts One and Two are grouped for guideline calculation purposes because they involve the same victim and the same act or transaction pursuant to U.S.S.G. § 3D1.2(a); PSR ¶ 35. Count Three cannot be grouped with Counts One and Two. *See* Application Note 5 to U.S.S.G. § 2K2.4. Units are assigned pursuant to U.S.S.G. §3D1.4(a), (b) and (c). One unit is assigned to the group with the highest offense level. Here, Count One at 37, is the highest offense level. One additional unit is assigned for each group that is equally serious or from 1 to 4 levels less serious. One-half unit is assigned to any group that is 5 to 8 levels less serious than the highest offense level. Any groups that are 9 or more levels less serious than the group with the highest

offense level are disregarded. In the instant case, 37, from the grouping of Counts One and Two, is more than 9 levels than Count Three's level of 0, and thus, this yields a total of one (1) unit.

The offense level is increased pursuant to the number of units assigned by the amount indicated in the table at U.S.S.G. §3D1.4. The Combined Adjusted Offense Level is determined by taking the offense level applicable to the Group with the highest offense level and increasing the offense level by the amount indicated in the table at U.S.S.G. §3D1.4. Here, there is no adjustment when the unit is equal to one (1). Accordingly, this results in a combined adjusted offense level of 37, or the offense level for Count One according to the Government and Probation.

v. Sentencing Guidelines Calculations

All parties agree to a Criminal History Category of I. PSR ¶ 44; Def. Mem. at 1; Gov't Mem at 4. Based on an adjusted offense level of 37 and a Criminal History Category of I, the Probation Department calculated the applicable Guidelines range of imprisonment for Counts One and Two as 210 to 262 months. PSR ¶ 93. Because there is a mandatory consecutive 120-month sentence for Count Three, this results in a combined adjusted advisory Guidelines range of 330 to 382 months of imprisonment. *Id.*

Because Defendant maintains he did not act with premeditation, he argues the correct adjusted offense level is 31. Def. Mem. at 11. Accordingly, Counts One and Two yield a recommended Guidelines range of 108 to 135 months in Criminal History Category I. *Id.* With the mandatory ten-year consecutive sentence for the § 924(c) violation in Count Three, Defendant's recommended guidelines range is 228 to 255 months of imprisonment. *Id.*

E. Pertinent Policy Statement(s) of the Sentencing Commission

The fifth § 3553(a) factor, requires the Court to evaluate "any pertinent policy statement . . . issued by the Sentencing Commission," 18 U.S.C. § 3553(a)(5). The following factors may warrant departure from the sentencing guidelines.

i. Additional Criminal Conduct

Authorities seized approximately 1.5 pounds of marijuana, $15,000.00 in cash, and firearms accessories from Defendant's bedroom. PSR ¶ 109. Probation notes, and the Government does not dispute, that this indicates additional criminal conduct that could not be factored into Defendant's guideline calculation. *Id.* Pursuant to U.S.S.G. § 5K2.0, it could be considered additional criminal conduct and worthy of sentencing consideration.

Defendant objects to the claim that the items seized from Defendant's home may merit an upward departure. Def. Mem. at 3. Defendant argues the Government introduced the firearm accessories as evidence at trial to support the contention that possessed a gun in connection with a crime of violence. *Id.* Thus, they were fully accounted for in the Guidelines calculation. *Id.* Additionally, Defendant argues that even assuming the government could prove that Defendant unlawfully possessed the marijuana, that offense conduct would not alter his guidelines range since the quantity of marijuana would have qualified Defendant for the lowest offense level under the Guidelines drug quantity table, *see* U.S.S.G. § 2D1.1(17), and would be disregarded

from his total offense level under the guidelines' grouping rules, *see id.* § 3D1.4(c), in light of the severity of the range imposed on the other counts of conviction. *Id.*

Finally, Defendant notes "possession of cash is not a crime and, to the extent the PSR suggests it is evidence of marijuana trafficking, the amount is too small to warrant an upward departure from the dramatically higher guidelines range Mr. Watson already faces." *Id.*

ii. The Defendant's Vision Condition

Probation notes that pursuant to Guideline § 5H1.4, "physical condition or appearance, including physique, may be relevant in determining whether a departure is warranted, if the condition or appearance, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the guidelines." PSR ¶ 111. Defendant has a diagnosed vision condition, which has left him legally blind. *Id.* Defendant has had constant vision problems since age three and at age ten was diagnosed with glaucoma and high myopia. *Id.* ¶ 65. In his adult life, Defendant continues to have severe issues which have required multiple surgeries. *Id.* ¶ 66.

> Defendant argues his disability will result in a uniquely harsh prison environment.
>
> He is unable to participate in much of the programming that is offered because his limited vision prevents him from reading. He also will have trouble moving about a prison facility on his own, especially as his vision decreases. This will limit what he can do while in custody, including participating in recreation, employment, education, training, and other reentry services. It will make the experience of imprisonment feel longer and more punishing than for the average inmate.

Def. Mem. at 13. Accordingly, Defendant argues this condition warrants a downward departure.

iii. Conditions of Confinement and Medical Care

Defendant further argues that a variance is "warranted based upon the abject conditions of confinement Mr. Watson has faced at the MDC for the past two-and-a-half years, and the

challenges he will face in prison due to his visual disability." Def. Mem. at 11. Defendant has been detained at the MDC since his arrest on December 8, 2018. *Id.* Since his incarceration, the MDC has: (1) experienced a weeklong blackout, during which the jail lost heat and power; (2) imposed strict conditions akin to solitary confinement to stop the spread of COVID-19; and (3) cancelled all social visitations until recently, depriving Defendant the company of his family and 11-year-old daughter. *Id.* 10–12. Additionally, like many federal inmates, Defendant contracted COVID-19. *Id.* Defendant argues these are "deprivations that far exceed the normal loss of liberty inherent in pretrial detention" and warrant the Court's consideration of a downward departure, citing several recent sentencing decisions from both the Eastern and Southern Districts of New York. *Id.*

iv. Sentencing Recommendations

Based on this analysis, the Government recommends a term of imprisonment of 382 months or greater. Gov't Mem. at 1. They argue Defendant's "violent and outrageous attack on a law enforcement officer must be met with an equally serious punishment" and that such a sentence is sufficient but not greater than necessary to reflect the nature and circumstances of the offense and the history and characteristics of the defendant, to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, and to afford adequate deterrence to criminal conduct . . . ." Gov't Mem. at 2.

Probation recommends a sentence of 300 months plus three (3) years of supervised release with special conditions. U.S. Probation Sentencing Recommendation ("P. Sent. Rec.") at 1–3, ECF No. 157-1. This sentence consists of 180 months for Counts One and Two, served concurrently in addition to the ten-year mandatory minimum for Count Three served consecutively. *Id.* Probation stated that Defendant's offense "involved extremely serious

conduct, and the defendant's conduct has permanently scarred the victim . . . ." *Id.* However, Probation "believes some consideration should be given for the defendant's difficult childhood and health ailments. As such, based on the history and characteristics of the defendant, and the nature and circumstances of the instant offense . . . we are recommending a combined total sentence of 25 years custody." *Id.*

Defendant requests a sentence of "no more than 180 months—or approximately 80% of the bottom of the guidelines," arguing this "would be sufficient to achieve the ends of sentencing, given the unique set of mitigating factors in this case." Def. Mem. at 1.

F. The Need to Avoid Unwarranted Sentence Disparities

The sixth § 3553(a) factor requires the Court to consider "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct." 18 U.S.C. § 3553(a)(6). For the reasons stated in this Memorandum and Order, and considering the other six § 3553(a) factors, the Court's sentence avoids unwarranted sentence disparities.

G. The Need to Provide Restitution

Lastly, the seventh § 3553(a) factor requires the Court to touch upon "the need to provide restitution to any victims of the offense." 18 U.S.C. § 3553(a)(7). According to Probation, "Since the instant offense occurred after April 24, 1996, restitution is mandatory for Counts 1 and 2 pursuant to 18 U.S.C. § 3663A and Guideline 5E1.1(a)(1). However, to date, an Affidavit of Loss has yet to be received from the victim. As such, restitution cannot be determined with accuracy." P. Sent. Rec. at 3. However, pursuant to 18 U.S.C. § 3664(d)(5), the Court may hold an evidentiary hearing within 90 days after sentencing to determine the specific amount owed to the victims.

CONCLUSION

Finally, the Court has this to say to Agent Harper and to his family. In baseball there exists the tradition of the five-tool player: The player who hits, hits with power, runs, fields, and throws. May I suggest in policing there is a parallel universe: The police officer who patrols, patrols with honor, withdraws from danger, fields threats, and throws down a field of protective fire. Agent Harper is that five-tool player. He patrolled under our Constitution. He patrolled with honor. When danger approached, he strategically withdrew from that danger to secure public safety. When he was shot in the back, he fielded that threat, heroically returning fire and preventing the Defendant from harming others by marking his vehicle as the one used in his cowardly and unjustified attempt to murder him. And finally, he came into this courthouse, looked his assailant in the eye and told the jury precisely what the Defendant had done. In short, Agent Harper personifies the five-tool officer of the law: the heroic peace officer; the guardian peace officer; the warrior peace officer.

The world now knows the name of a certain murderous former police officer who violated his sacred oath and disgraced his badge in a midwestern state. And well it should. Nothing undermines the rule of law more than a criminal cop. All the world, however, should also know Agent Harper's name as the steadfast embodiment of his fellow peace officers who day after day make our streets safer, our homes more secure, and our Constitution stronger.

In 1863, two years before he created this Court for the Eastern District of New York, President Abraham Lincoln spoke at Gettysburg. He stated that "in a larger sense, we cannot consecrate, we cannot hallow – this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but they can never forget what they did here. It is for us,

the living, rather to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced."

This Court cannot consecrate nor hallow Special Agent Harper's heroic actions on that day and the days that followed. But this Court honors him as our five-tool player. This Court salutes his heroism and his courage under fire. He is the real deal. The policeman who personifies the essence of the law, the essence of those wise restraints that make us free. Agent Harper has our back, and this Court promises to always have his.

For all the above reasons, the Court now sentences Defendant Ronell Watson to 382 months of incarceration to be followed by three (3) years of supervised release with the standard and the special conditions recommended by the Probation Department. The Court also imposes the special assessment of one hundred dollars per count which the Court is required to impose in all cases. The Court declines to impose a fine at this time since Defendant appears unable to pay a fine, but the Court reserves the right under law to hold a hearing within the 90-day period under statute should an affidavit of loss be submitted for hearing by the victim.

A sentence of 382 months of imprisonment followed by three (3) years of supervised release is appropriate and comports with the dictates of § 3553. This sentence is consistent with and is sufficient but no greater than necessary to accomplish, the purposes of § 3553(a)(2). The Court expressly adopts the factual findings of the Presentence Investigation Report and any Addenda to the Presentence Investigation Report, barring any errors contained therein.

SO ORDERED.

s/ WFK

HON. WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

Dated: June 16, 2021
Brooklyn, New York

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of March, two thousand twenty-three,

Before: Susan L. Carney,
Joseph F. Bianco,
Myrna Pérez,
Circuit Judges.

United States of America,

Appellee,

v.

Ronell Watson,

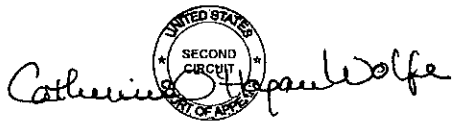
Defendant - Appellant.

ORDER
Docket No. 21-1562

Ronell Watson having filed a petition for panel rehearing and the panel that determined the appeal having considered the request,

IT IS HEREBY ORDERED that the petition is DENIED.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court



Additional material from this filing is available in the Clerk's Office.