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APPEAL NO.: 21-13891-DD

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

_____

UNITED STATES OF AMERICA,
PLAINTIFF-APPELLEE,

v.

LESLIE MEYERS,
DEFENDANT-APPELLANT.

_____

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION
CASE NO.: 1:18-CR-00058-LAG-TQL-1

APPELLANT'S INITIAL BRIEF

_____

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Appellant's Certificate of Interested Persons and Corporate Disclosure Statement

The undersigned appellate counsel of record for Appellant, Leslie Meyers, in compliance with Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1, certifies that the following listed persons and parties have an interest in the outcome of this case:

Bowen, Julia C., Former Attorney for Plaintiff-Appellee, United States of America;

Brockington, Germany, Co-Defendant;

Bubsey, William E., Attorney for Co-Defendant, Kizzy Solomon;

Cannon, John Phillip, Attorney for Co-Defendant, Terry Driggers;

Charles, Kevin, Co-Defendant;

Crane, James N., Assistant United States Attorney for the Middle District of Georgia;

Curry, Jennifer A., Attorney for Co-Defendant, Kevin Charles;

Debrow, Barry, Jr., Attorney for Co-Defendant, Shadon Johnson;

Dodson, Jonathan, Appellate Attorney for Defendant-Appellant Mr. Meyers, Assistant Federal Defender for the Federal Defenders of the Middle District of Georgia, Inc.;

Driggers, Terry, Co-Defendant;

Eddy, Ethan C., Attorney for Plaintiff-Appellee, United States of America, Trial

Attorney for U.S. Department of Justice;

Gardner, Leslie Abrams, District Court Judge, United States District Court, Middle District of Georgia;

Gibson, Kentre, Co-Defendant;

Glover, Maurice, Co-Defendant;

Harrell, Benjamin David, Attorney for Co-Defendant, Germany Brockington;

Hunt, Christina L., Executive Director for the Federal Defenders of the Middle District of Georgia, Inc.;

Jordan, Alonza, Co-Defendant;

Johnson, Orlando, Co-Defendant;

Johnson, Shadon, Co-Defendant;

King, Demetrice, Co-Defendant;

Kim, Todd Sunhwae, Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice;

Langstaff, Thomas Q., United States Magistrate Judge, Middle District of Georgia;

Leary, Peter D., Acting United States Attorney, Middle District of Georgia;

McLendon, Robert R., IV, Attorney for Co-Defendant, Maurice Glover;

McNeil, Bridget Kennedy, Appellate Attorney for Plaintiff-Appellee, United States of America, Attorney, Environment and Natural Resources Division, U.S.

Department of Justice - **Adding Attorney for Plaintiff-Appellee;**

Metts, Marc G., Attorney for Co-Defendant, Kentre Gibson;

Meyers, Leslie, Defendant-Appellant;

Morgan, Starlin, Co-Defendant;

Pflepsen, Keith Allen, Attorney for Co-Defendant, Kizzy Solomon;

Phillips, Mark Tyson, Attorney for Co-Defendant, Alonza Jordan;

Pinder, Erin Leigh, Former Attorney for Defendant-Appellant, Mr. Meyers;

Smith, Frank Tyrone, Attorney for Co-Defendant, Starlin Morgan;

Solomon, Kizzy, Co-Defendant;

Tapley, Denton Duston, Jr., Attorney for Co-Defendant, Timothy White;

White, Timothy, Co-Defendant;

Williams, Catherine M., Trial Attorney for Defendant-Appellant, Mr. Meyers, First Assistant for the Federal Defenders of the Middle District of Georgia, Inc.;

Williams, Gerald B., Attorney for Co-Defendant, Demetrice King;

Wolfe, Larry David, Attorney for Co-Defendant, Orlando Johnson;

Victims: There are no victims in this case; and

No publicly traded company or corporation has an interest in the outcome of this appeal.

Statement Regarding Oral Argument

Appellant requests oral argument, which would be helpful to the Court in deciding this case.

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Statement of Subject Matter and Appellate Jurisdiction

This is a direct appeal in a criminal case from the 5 October 2021, judgment entered by the United States District Court for the Middle District of Georgia. R547 at 2.[1] The District Court had jurisdiction under 18 U.S.C. § 3231. Mr. Meyers[2] was granted permission, R562, to file an out-of-time notice of appeal, which he did on 3 November 2021. R563. This Court has jurisdiction based on 28 U.S.C. § 1291.

[1] Undersigned counsel cites to the electronic record on appeal of this case (from CM/ECF) as "R[document number] at [page number]," and, to records which include numbered lines "R[document number] at [page number]:[line number]."

[2] Undersigned counsel refers to Appellant as such, or as "Mr. Meyers," refers to the Appellee as "the government," and refers to the District Court as such, or as "the court."

Statement of the Issues

I. The District Court erred by finding that Mr. Meyers killed a dog with his belt, based only on proffered evidence and over his objection.

II. The District Court's sentence of Mr. Meyers was substantively unreasonable.

Statement of the Case

This criminal appeal arises from Mr. Meyers's conviction and sentence for various charges stemming from his participation in an illegal dog-fighting conspiracy. R547 at 2.

Course of Proceedings and Disposition

A grand jury empaneled in the Middle District of Georgia indicted Leslie Meyers (Appellant), in a multi-defendant indictment, with 32 counts. R218. Count One charged him with conspiring to violate the Animal Welfare Act, between 5 May 2016 and 14 February 2019, in violation of 18 U.S.C. § 371 in connection with 7 U.S.C. §2156(a)&(b) and 18 U.S.C. § 49. *Id*. at 2-7. Counts Two and Three each charged him with transporting a dog for use in an animal fighting venture in violation of 7 U.S.C. § 2156(b) and 18 U.S.C. § 49. *Id*. at 7-8. Count Four charged him with sponsoring and exhibiting a dog in an animal fighting venture, in violation of 7 U.S.C. § 2156(a)(1) and 18 U.S.C. § 49. *Id*. at 8. Count Five charged him with knowingly possessing a firearm after knowing he had been convicted of a felony, in violation of 18 U.S.C. §§ 924(a)(2) and 922(g)(1). *Id*. at 8-9. Counts Six Through Thirty-two each charged him with possessing and training a dog for an animal fighting venture, in violation of 7 U.S.C. § 1256(b) and 18 U.S.C. §§ 49 and 2.

Pursuant to a plea agreement, he pleaded guilty to counts One through Five and the government dismissed the other charges. R330 at 2, 6. As part of this plea agreement, he agreed to waive his right to appeal his sentence "except in the event that the District Court imposes a sentence that exceeds the advisory guideline range as that range has been calculated by the District Court at the time of sentencing, ..." *Id*. at 4.

A United States probation officer filed a presentence report ("PSR"), concluding his sentencing range was 77 to 96 months. R522 at 23. The District Court granted a downward departure, reducing his sentencing range to 63 to 78 months, but ultimately sentenced him above this range to a cumulative imprisonment term of 123 months: four 60-month concurrent terms for Counts One through Four, consecutive to a 63-month term for Count Five. R547 at 2.

Mr. Meyers currently resides at Coleman Medium FCI, 846 NE 54th Terrace, Sumterville, FL, 33521. His register number is 04695-094.

Statement of the Facts

A. Relevant Conduct

Mr. Meyers's convictions stem from a dog fight that occurred on 21 January 2017. R522 at 11. He and his co-defendant, Kizzy Solomon, brought two dogs across state lines to the fight. *Id*. at 12. He left one at a local motel, which he intended to sell. *Id*. His other dog fought a dog sponsored by Timothy White. *Id*. His PSR asserts "[t]he dog sponsored and exhibited by Leslie Meyers lost the fight. Leslie Meyers killed this dog by hanging it until dead." *Id*. It also states:

> According to White, Meyers's dog technically won the dog fight but then upset Meyers by failing to complete what is called a 'courtesy scratch.' A courtesy scratch is when one dog has died or become incapacitated to the point of no longer being able to move out of the corner of the pit when separated between rounds (as in a boxing match). The other dog is declared the winner and is given the opportunity to demonstrate his aggressiveness by being allowed to come across the pit to attack the incapacitated opponent or the dead body of the opponent. Meyers then attempted first to hang the god by his (Meyers's) belt from the open tailgate of one of the vehicles, which backfired when the door would not hold the dog's weight. Meyers then swung the dog by his neck in the air and completed the suffocation of the dog using a tree branch.

Id. at 12, 13, ¶32.

When the police raided the fight, the found one dead pit bull, another badly injured pit bull, and two fighting pit bulls. *Id*. at 11. They found a bloody dog fighting pit, scales, dog fighting papers, "break sticks," veterinary drugs, medical and surgical equipment and "several thousand dollars of U.S. currency." *Id*. They searched Mr. Meyers's car, finding his dead dog under the bumper, and in the cab, his "identification, a .45 caliber pistol, dog fighting equipment, cell phones, and his motel key." *Id*. One of the phones "contained ample dog fighting material, including a text message the week before the dog fight indicating that if he won Saturday, he would use his winnings to purchase an additional fighting dog." *Id*. at 13.

About nineteen months later, a mail carrier noticed illegally tethered dogs at a house belonging to Ms. Solomon, who was Meyers's girlfriend. *Id*. After several attempts, officers made contact with Ms. Solomon, who claimed ownership of all the dogs, and declined to permit them to inspect the dogs more closely. *Id*. Officers ultimately executed a search warrant of the property, finding 27 pit bulls, a great Dane, and a German shepherd. *Id*. at 14. "[M]any were emaciated and bore scarring consistent with dog fighting." *Id*. They found two animal treadmills, inside wooden enclosures with fight records notched on the wood. They found animal medications and supplements, including steroids, syringes, a weighted dog harness, and a

logbook. *Id*. Further investigation revealed "financial transactions associated with Meyers' dog transports[.]" *Id*.

B. PSR Calculations

To determine his advisory guidelines range, probation grouped together Counts One through Four under U.S.S.G. §§ 3D1.1 and 3D1.2. It recommended that Mr. Meyers's base offense level for these four counts should be 16 under U.S.S.G. §2X1.1, which directs the court to use the guideline for the "substantive offenses" – in this case, U.S.S.G. §2E3.1(a)(1). R522 at 16.

For Count Five – the firearm conviction – it recommended a base offense level of 20, under U.S.S.G. §2K2.1(a)(4)(A). *Id*. This subsection applied based on having a prior "conviction of either a crime of violence or a controlled substance offense[.]" *Id*. Probation relied on a 2004 Florida conviction for cocaine trafficking. *Id*. (Otherwise, his base offense level would have been 12, under subsection (a)(8)). It recommended adding four levels under U.S.S.G. §2K2.1(b)(6)(B) because he possessed the firearm "in connection with" his dog-fighting offenses. *Id*.

It then derived the combined offense level under U.S.S.G. §3D1.4, by choosing the highest of the two base offense levels – 24. *Id*. at 16-17. It subtracted three levels for acceptance of responsibility, making his total offense level 21. *Id*.

It recommended a criminal history category of VI, based on the following: three criminal history points for an 18-month sentence for unlawful dealing in firearms in the Virgin Islands, three points for an 18-month sentence for the above-mentioned cocaine trafficking conviction, two points for a 180-day sentence in Florida for animal cruelty, two points for another Florida sentence for animal cruelty, and three points for an approximately 3-year Florida sentence for animal cruelty. R522 at 17-19.

A total offense level of 21 with a criminal history category of VI yielded an advisory imprisonment range for 77 to 96 months. *Id*. at 23. But the statutory maximum for counts One through Four is 60 months, making that term his advisory sentencing range for those counts, and 77 to 96 months the range for Count Five only. *Id*.

C. Sentencing Hearing

Prior to his hearing, Mr. Sawyer made only one objection to his PSR, regarding a prior sentence imposed that he adamantly denied, but this prior sentence did not impact his advisory guideline range. R489. The court overruled the objection at sentencing. R561 (sentencing transcript) at 5. The government filed a lengthy motion for upward departure before the hearing, R494, but verbally withdrew that motion. R561 at 7.

At sentencing, defense counsel announced that the parties had agreed that the government would not seek a sentence higher than 72 months. *Id*. She also asked the court to reduce Mr. Meyers's sentence by two levels based on his entering a guilty plea during the COVID trial moratorium, as was the normal practice in the Middle District of Georgia during that moratorium. *Id*. This would reduce his guidelines range to 63 to 78 months. *Id*. Defense counsel ultimately requested a 57-month sentence. *Id*.

In mitigation, eight persons wrote letters attesting to Mr. Meyers's positive impact on their lives: his sister Lisa Meyers, the mother of his children Eboni Chinnery, his cousin Erica Rabsatt, his niece LaToiya Williams, his niece SaToiya Williams-Babineaux, his children Analyn Meyers, and Leah Meyers, and his sister Dionne L. Meyers. R514 at 3-13. Two of Mr. Meyers's family members testified at his sentencings. His nephew, Jordan Meyers, testified that Mr. Meyers was "the backbone for our family[.]" R561 at 8. Jordan was raised by a single mother, and Mr. Meyers had "stepped up to the plate to take care of me and take care of my cousins . . . ." *Id*. Mr. Meyers had been "pivotal to" Jordan's life. *Id*. Mr. Meyers's 16-year-old nephew, Isaiah Meyers, also testified that he was a father figure for him, recounting how he always took his nieces and nephews trick-or-treating. *Id*. at 10.

Mr. Meyers then allocuted, explaining to the court his criminal history. *Id*. at 15-20. He apologized for his actions, explaining "[i]t was negligent on my part to take up, take on doing anything that would possibly cause me to be in this situation once again." *Id*. at 14. He stated "I accept my responsibility for my actions, the foolishness of it, and don't blame anyone for it. It all was on me to make the decisions and what I did. And I accept that." R561 at 20. He explained how his father had pushed him to be manly, and "suck it up," and how he had always tried to win his father's approval. *Id*. at 15. Since moving from the Caribbean to the United States, he has become more aware of and conversant in mental health generally, and wondered aloud whether, had counseling been available to him growing up, he would have "made changes in [his] life[.]" *Id*. He noted that during his periods of incarceration, he never had "a write-up for any violence," adding "I don't have no streak of craziness or violence in me as far as that." *Id*. at 20.

The court granted the government's motion for a downward departure for entering a guilty plea during the trial moratorium, under U.S.S.G. §5K2.0(a)(2)(B). *Id*. at 21. It thus departed two levels, which lowered his advisory sentencing range of 63 to 78 months. *Id*. at 21-22.

Before pronouncing sentence, the court addressed Mr. Meyers:

> I just heard from two outstanding young men who say that a good part of why they are doing so well and their trajectory is because of the defendant. And I can't deny that at all. Both of them are dedicated or are focusing on careers that deal with the care of animals. And they both say that they got that from you as well. I don't understand how that is. I don't understand how someone who could teach or impact these two impressive young men and encourage them to go into field that help animals could actively participate in the torture of animals. And that's what dog fighting is.

Id. at 22. The court recounted the evidence that the dogs taken from Ms. Solomon's property had been injured, some having to be euthanized. *Id*. It was especially disturbed by the fact that:

> that dog would win the dogfight and earn you money by winning but because he didn't then go over and continue to maul an incapacitated and/or dead animal, you hung that dog from your truck. And then when the truck couldn't hold the weight, you picked up that dog with a belt around its neck and choked it until it suffocated to death.

Id. at 23. This allegation had troubled the judge throughout the case:

> That I cannot reconcile[.] I do not understand, and I have been fighting for the months that this case has been in front of me to understand it. So far I don't. And I probably will not. But I have to consider that and take that into account and incorporate that into the nature and circumstances of the offense. The offense is horrific as it is, but that, that makes it even worse.

Id.

At this, Mr. Meyers indicated he would like to interject, so the court allowed him to address this allegation. *Id*. He adamantly denied hanging his dog with a belt, stating that this allegation came from Timothy White and was "a complete lie." R561 at 23-24. "If anyone sees and views the video, the only person who was acting irate and crazy that night was him. He was hollering in the box and screaming and acting crazy at his animal and then afterwards tells that story about me doing that." *Id*. at 24. He added "I didn't even wear a belt that night . . . ." *Id*. at 25. He claimed he left the dog with one of the hosts of the event, either Orlando or Alonzo Jordan. *Id*. at 24.

The court explained "the evidence in the case is that that did occur[,]" but added "I sincerely hope that it didn't because that is thoroughly ridiculously disturbing." *Id*. at 25. It stated "I am making a finding of fact that I do believe that you did, in fact, kill that dog as has been described in the record[.]" *Id*. at 27. It then explained that by carrying a firearm to the event, Mr. Meyers "increased the danger to everyone there and also to law enforcement when they came." *Id*. Finally, the court weighed his criminal history against him. *Id*. at 25-26. It emphasized "at least three of [your] convictions . . . are related to animals." *Id*. at 26.

Based on the considerations the court recited, it found the guideline range was inadequate. *Id*. It specifically found that he had killed the dog as described, notwithstanding his denial of that fact at sentencing. *Id*. at 27. It thus sentenced him to the maximum 60 months on each of his first four counts, to be served concurrently with one another, and to 63 months for his firearm account, to be served consecutively, making his total sentence 123 months. *Id*.

Defense counsel lodged an objection to this sentence. *Id*. at 28. She argued it was excessive and the government's recommendation of 72 months was a more appropriate sentence. *Id*.

Summary of the Argument

Point One

The District Court found Mr. Meyers had killed a dog by hanging it with his belt based solely on sections of his presentence investigation report that he disputed. It did not admit any evidence of this fact either at, or prior to, sentencing, and Mr. Meyers did not stipulate to this fact as part of his plea agreement. Hence the court violated Federal Rule of Criminal Procedure 32(i)(3)(B), which requires it to resolve disputed sentencing facts by a preponderance of the *evidence*.

Point Two

The District Court abused its discretion by imposing a substantively unreasonable sentence. It heavily weighed its erroneous factual finding that Mr. Meyers had killed a dog by hanging it with his belt. It also relied on the cruelty inherent in dog fighting, which was already factored into the the Guideline, especially as recently amended, and on his criminal history, which had already increased his base offense level by eight points and his criminal history category by three levels. Its sentence caused a disparity with similar offenders whose dog fighting conspiracies involved more dogs and greater cruelty.

Standards and Scopes of Review

This Court reviews the District Court's sentence for procedural and substantive reasonableness. *United States v. Booker*, 543 U.S. 220, 261 (2005). This standard of review is equivalent to the abuse of discretion standard. *Gall v. United States*, 552 U.S. 38, 46 (2007).

Argument and Citations of Authority

I. The District Court erred by finding that Mr. Meyers killed a dog with his belt, based only on proffered evidence and over his objection.

The District Court erred by relying only on disputed sections of Mr. Meyers's PSR in finding that he had killed his dog by hanging it with his belt. This contravenes the rule that the proponent of a disputed fact at sentencing must prove that fact by a preponderance of the *evidence*.

The guidelines allow the District Court to "consider relevant information without regard to its admissibility under the rules of evidence applicable at trial, provided that the information has sufficient indicia of reliability to support its probable accuracy." U.S.S.G. §6A1.3(a). However, "this relaxed evidentiary standard does not grant district courts a license to sentence a defendant in the absence of sufficient evidence when that defendant properly objects to a PSR's conclusory factual recitals." *United States v. Lawrence*, 47 F.3d 1559, 1566-67 (11th Cir. 1995). Thus, when a defendant challenges a fact in the PSR that the government wants the court to rely on, the government has the burden of proving the disputed fact by a preponderance of the evidence. *Id*. at 1566.

To meet its burden of proof, the government must present "reliable and specific evidence." *United States v. Sepulveda*, 115 F.3d 882, 890 (11th Cir. 1997).

This may include "evidence heard during trial, facts admitted by a defendant's plea of guilty, undisputed statements in the presentence report, or evidence presented at the sentencing hearing." *United States v. Wilson*, 884 F.2d 1355, 1356 (11th Cir. 1989).

"[T]he preponderance standard is not toothless." *Lawrence*, 47 F.3d at 1566.

> [It] does not relieve the sentencing court of the duty of exercising the critical fact-finding function that has always been inherent in the sentencing process.... [The standard signifies] a recognition of the fact that if the probation officer and the prosecutor believe that the circumstances of the offense, the defendant's role in the offense, or other pertinent aggravating circumstances, merit a lengthier sentence, they must be prepared to establish that pertinent information by evidence adequate to satisfy the judicial skepticism aroused by the lengthier sentence that the proffered information would require the district court to impose.

Id. at 1566 – 67 (quoting *United States v. Wise,* 976 F.2d 393, 402-03 (8th Cir. 1992)).

Federal Rule of Criminal Procedure 32(i)(3)(B) requires the District Court to either resolve the dispute, or not consider the disputed fact in determining the sentence. Specifically, it provides: "the district court must – for any disputed portion of the presentence report or other controverted matter – rule on the dispute or determine that a ruling is unnecessary either because the matter will not

affect sentencing, or because the court will not consider the matter in sentencing[.]" Fed. R. Crim. P. 32(i)(3)(B).

Here, the defendant clearly objected to the allegation that he had killed a dog by hanging it with a belt. R561 at 23-25. Although his objection was untimely under Federal Rule of Criminal Procedure 32(f)(1), which requires a party to file written objections within 14 days of the PSR, the District Court was empowered to excuse the timeliness requirement. It did so, by permitting him to state his objection at sentencing and then resolving his objection on the merits. *Compare United States v. Aguilar-Ibarra*, 740 F.3d 587, 591 (11th Cir. 2014) (where court expressly overruled objection as untimely, and only addressed the merits in the alternative, it did not excuse the timeliness requirement).[3]

Here, the District Court explicitly resolved the objection, without referring to its untimeliness. It made a factual finding that Mr. Meyers killed the dog, as alleged in the PSR. R561 at 27. But it did so without any reliable, specific evidence. The court did not admit any evidence of the fact at sentencing. Nor did it admit any such evidence prior to sentencing, since Mr. Meyers did not go to trial. Mr. Meyers did not stipulate to killing the dog as part of his plea agreement. And his objection

[3] Moreover, as explained under the next point heading, Mr. Meyers did not waive his right to appeal an above-Guidelines sentence.

to the allegation means there were no *undisputed* sections of his PSR that the court could rely upon.

The disputed PSR allegations are disputed proffers – not evidence. But even if the disputed PSR could satisfy the government's burden, the proffer in this case was suspect. First, the PSR was inconsistent as to the circumstances around the killing of the dog. One section said Mr. Meyers killed the dog because it lost the fight, and another said he killed the dog after the dog won the fight. R522 at 12, ¶26, ¶31, and ¶32. Second, the PSR reveals that the source of the allegation that Mr. Meyers killed the dog was a co-defendant with an interest in currying favor with authorities. *Id*. at ¶32. Not only that, but this co-defendant was none other than Mr. Meyers's adversary in the dog fight – Timothy White. If Mr. White's dog lost the fight, then Mr. White likely lost money. Dog fighting is not known for sportsmanship. Mr. White had two obvious motivations for lying – his self-interest, and revenge over the fact that Mr. Meyers's dog apparently beat his dog in the fight.

At any rate, the PSR was not evidence, and this Court is not the appropriate court to evaluate the credibility of the allegation. Suffice it to say the source of the allegation, without more evidence, casts doubt on the District Court's finding. Because the court did not rely on an adequate source in finding Mr. Meyers killed

the dog, and did not even reference the preponderance of the evidence standard, its finding was clearly erroneous.

II. The District Court's sentence of Mr. Meyers was substantively unreasonable.

A. Mr. Meyers preserved an objection to the reasonableness of the sentence.

In *Holguin-Hernandez v. United States*, __U.S.__, 140 S.Ct. 762 (2020), the Supreme Court found that the defendant's request for a specific sentence – there, no more than 12 months – preserved an objection to the substantive reasonableness of a sentence in excess of that term. Here, Mr. Meyers requested a specific, below-guidelines sentence of 57 months. R561 at 7. This alone preserved his argument here that the 123-month sentence he received was substantively unreasonable. Moreover, immediately after he was sentenced, he objected that his sentence was "excessive." *Id*. at 28.

B. Mr. Meyers did not waive the right to appeal an above-Guidelines sentence in his plea agreement.

Mr. Meyers's plea agreement waived "any right to appeal the imposition of sentence upon Defendant," but the waiver did not apply "in the event that the District Court imposes a sentence that exceeds the advisory guideline range as that range has been calculated by the District Court at the time of sentencing, ..." R330 at 4. Here, the District Court calculated Mr. Meyers's sentencing range to be

63 to 78 months. R561 at 21-22. It sentenced him to 123 months. *Id*. at 27. By the terms of his plea agreement, Mr. Meyers did not waive his right to appeal his sentence under these circumstances.

C. This Court's standard of review.

After "ensur[ing] that the district court committed no significant procedural error," this Court "then consider[s] the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard." *Gall*, 553 U.S. at 51. It must "take into account the totality of the circumstances, including the extent of any variance from the Guidelines range." *Id*. The sentencing factors of 18 U.S.C. § 3553(a) should "guide appellate courts, as they have in the past, in determining whether a sentence is unreasonable." *Booker*, 543 U.S. at 261. It may not presume that a sentence is unreasonable because it is outside the Guidelines range, and "must give due deference to the district court's decision that the § 3553(a) factors, on a whole, justify the extent of the variance." *Id*.

Due deference, however, does not mean that substantive reasonableness review is toothless. This Court does not rubber stamp the District Court's sentencing decisions. The Supreme Court envisioned appellate review of sentences under the abuse-of-discretion standard "would tend to iron out sentencing differences[.]" *Booker*, 543 U.S. at 263; *see also Kimbrough v. United States*, 552

U.S. 85, 107 (2007) ("advisory Guidelines combined with appellate review for reasonableness and ongoing revision of the Guidelines in response to sentencing practices will help to 'avoid excessive sentencing disparities.' ") (quoting *Booker*, 543 U.S. at 264). Appellate review can only "iron out sentencing differences" if substantive reasonableness review is a meaningful check on District Court discretion. *Id*. at 263. Hence, due deference is not absolute deference.

D. The scope of the District Court's discretion.

The District Court must "begin all sentencing proceedings by correctly calculating the applicable Guidelines range." *Gall*, 552 U.S. at 49. This range "should be the starting point and the initial benchmark." *Id*. After hearing argument from the parties, it "should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party." *Id*. at 49-50. The court "must make an individualized assessment based on the facts presented. If [it] decides that an outside-Guidelines sentence is warranted, [it] must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of variance." *Id*. at 50. Finally, it must "adequately explain the chosen sentence to allow for meaningful review and to promote the perception of fair sentencing." *Id*.

The sentencing factors enumerated in 18 U.S.C. § 3553(a) include (1) "the nature and circumstances of the offense[,]" (2) "the history and characteristics of the defendant[,]" the need to "impose a sentence sufficient, but not greater than necessary," to (3) "reflect the seriousness of the offense," (4) "promote respect for the law," (5) "provide just punishment for the offense[,]" (6) "afford adequate deterrence to criminal conduct[,]" (7) "protect of the public from further crimes of the defendant[,]" and (8) "avoid unwarranted sentencing disparities[.]"

E. The court's sentence was greater than necessary to satisfy the relevant sentencing factors, and it caused an unwarranted sentencing disparity.

In deciding to sentence Mr. Meyers above both his guidelines imprisonment range and the requested sentences of the parties, the District Court zeroed in on several factors. It emphasized that the dogs were "tortured mentally and physically" – most showing signs of injury or malnutrition. R561 at 22. It pointed to the cruelty of putting a dog down by hanging it with a belt. *Id*. at 23. After Mr. Meyers vehemently denied doing so, it explicitly found that the record showed otherwise, notwithstanding its "sincere[] hope" that it did not occur. *Id* at 23-25. It explicitly found he had killed the dog "as has been described in the record[.]" *Id*. at 27. It stressed he had the highest criminal history category. *Id*. at 25. At least three of his convictions were "related to animals." *Id*. at 26. It returned to the cruelty to

the dogs, stating it had seen the pictures of them "and there's no explanation that is going to mitigate the state of . . . 24 of those 27 animals." *Id*. It thus found the advisory range inadequate. *Id*.

There are several problems with the District Court's analysis, which cumulatively establish an abuse of its discretion. First, it largely relied on its erroneous factual finding that Mr. Meyers killed a dog by hanging it with a belt. Second, it emphasized the cruelty to animals, which the guidelines account for – without explaining how M. Meyers's case was different than the typical case involving dog fighting, or articulating a policy disagreement with the applicable guidelines. Third, it relied on Mr. Meyers's criminal history, notwithstanding that that criminal history had already dramatically impacted both his offense level and his criminal history score. Finally, the extent of the court's variance caused an unwarranted sentencing disparity.

Erroneous Factual Finding. The erroneous factual finding was perhaps the biggest factor in the court's decision. It returned to this allegation several times while explaining its decision to vary upward. *See* R561 at 23, 25, 27. The court said that it had been preoccupied with the killing of this dog throughout the litigation of the case, stating:

> [Y]ou picked up that dog with a belt around its neck and choked it until it suffocated to death. That I cannot reconcile, I do not understand, and *I have been fighting for the months that this case has been in front of me to understand it*. So far I don't. And I probably will not. But I have to consider that and take that into account and incorporate that into the nature and circumstances of the offense. The offense is horrific as it is, but that, that makes it even worse.

Id. at 232 (italics added). The unsupported factual finding was the most important factor in the court's decision to vary upward from the guidelines and recommendations of the parties.

Cruelty of Dog Fighting. The court also emphasized the cruelty inherent in dog fighting, but the Guidelines already accounted for this factor. Indeed, as the government pointed out in its aborted motion for upward departure, the Sentencing Commission has increased the base offense level to account for this cruelty. R494 at 120. Specifically, in November of 2016 it increased the base offense level for animal cruelty offenses from 10 to 16, as this "better accounts for the cruelty and violence that is characteristic of these crimes." Sentencing Guidelines for United States Courts, 81 Fed. Reg. 27,262, 27,265 (May 5, 2016); *see* U.S.S.G. §2E3.1.

Here, of course, that base offense applicable to Mr. Meyers's firearm charge drove his imprisonment range. But that base offense level was even higher – at 20.

See U.S.S.G. §2K2.1(a)(4)(A). And while the District Court mentioned the firearm as an aggravating circumstance, its primary reason for departing upward was the cruelty inherent in the animal cruelty offenses, not the firearm offense. But it did not explain why a base offense level four levels higher than the level that the Sentencing Commission established to account for the cruelty to animals inherent in dog fighting offenses was inadequate.

Mr. Meyers cannot deny that district courts have commonly varied upwardly from the ranges produced by §2E3.1. But of the "few dozen" federal prosecutions for this offense, R494 at 3, the government did not cite one case involving a sentence as lengthy as Mr. Meyers's. *Id*. at 4-6 (citing upward variances of 12-18 months to 96 months, 0-6 months to 60 months, 12-28 months to 6 months, 6-12 months to 24 months, 0-6 months to 12 months, 8-14 months to 29 months, 18-24 months to 54 months, 15-18 months to 48 months, 15-21 months to 45 months). Hence, it is unsurprising that the government did not seek such a lengthy sentence.

Criminal History. Similarly, the court's emphasis on Mr. Meyers's criminal history overlooked the dramatic role that his criminal history already played into his advisory sentencing range. First, his base offense level was 20 under U.S.S.G. §2K2.1(a)(4)(A), based on his prior Florida trafficking conviction. Absent that conviction, his base offense level would have been 12 under U.S.S.G.

§2K2.1(a)(7). Based on the grouping rules, his base offense level for Counts One through Four would have driven his sentence, but that base offense level would be 16, instead of 20. After reducing his offense level based on his acceptance of responsibility and pleading guilty during the trial moratorium, his total offense level would have been 11, and his ultimate sentencing range would have been 27 to 33 months. So his prior cocaine conviction alone more than doubled his sentencing range.

Moreover, his category VI criminal history incorporated 8 points assessed against him for the three animal cruelty convictions that the District Court noted. R522 at 19. Absent those points, his criminal history score would have been 5, making his criminal history category III. His advisory sentencing range would have been 37 to 46 months. So his prior animal cruelty convictions nearly doubled his advisory sentencing range.

Sentencing Disparity. Finally, the court's 123-month sentence created a disparity. Looking again to the government's thorough analysis of the "few dozen" dog fighting cases that it has prosecuted shows that Mr. Meyers's sentence was 29 months higher than the next-highest sentence imposed in a dog fighting case. It was at least double the sentences imposed in all but two of the cases the

government cited. This includes cases involving crueler (and presumably adequately proven) facts.

Consider a case involving the next-highest sentence (96 months) imposed for a dog fighting conspiracy: *United States v. Anderson*, 3:13-cr-100 (M.D. Ala. Nov. 17, 2014). *Anderson* involved a much larger dog-fighting conspiracy than the present case. The district court imposed on the co-conspirator who it believed to be most culpable an upward departure sentence of 96 months for extraordinary cruelty. *Anderson*, sentencing transcript (ECF #723) at 84, 86. It relied on "overwhelming, beyond a preponderance" of the evidence that the dog-fighting conspiracy there involved 451 dogs, about half of which were abused or sick, 70 of which had to be euthanized, and 114 of which Mr. Anderson kept in a horrendous condition in his yard. *Id*. at 67, 73-74, 80. It counted 22 fights that Mr. Anderson had hosted. *Id*. at 75. It noted testimony that "[a]ny dog that would lose stands a high probability of being executed by hanging or electrocution if it doesn't die in the fight or as a result of the fight." *Id*. at 73-74. The government had reminded the court "[y]ou have heard repeatedly that Mr. Anderson killed the losing dogs." *Id*. at 67. Authorities had found "four to five [dead] dogs in a pile at the parking area after a fight at Mr. Anderson's." *Id*. at 81. Moreover, the government noted that authorities found "two pistols, four long guns, crack cocaine in the back of a toolbox

of a white truck" that officers observed Mr. Anderson driving "over 50 times." *Id*. at 69; *see also United States v. Hargrove*, 701 F.3d 156, 158 (4th Cir. 2012) (affirming 60-month upward departure sentence of offender who had participated in dog-fighting for over 40 years, at one point kept 250 dogs on his property, was found with modified jumper cables used to electrocute dogs, and whose property contained a large debris pit containing, among other things, dog carcasses).

Mr. Meyers' conspiracy involved one confirmed fight between two dogs, one dead dog, and 27 dogs on Mr. Meyers's property, of which the District Court found 24 showed evidence of abuse. R561 at 26, 27. His case involved one firearm. Yet his sentence was still about 25% lengthier than Mr. Anderson's. Without a doubt, the dog-fighting conspiracy in which Mr. Meyers played a significant role was cruel. But everything about it – from the poor treatment and grueling training of the dogs, to the fight itself, to the apparent execution of one dog by someone – was typical of these enterprises, and no crueler than the conduct proven in other cases. Hence, even if some upward variance was appropriate, the extent of the variance in this case was not. It caused a disparity between Mr. Meyers's sentence and those of similar offenders with similar offenses.

In sum, these factors in combination show that Mr. Meyers's sentence was substantively unreasonable. Most importantly, the court heavily weighed the

allegation that Mr. Meyers killed a dog without adequate evidence. It found the enterprise involved exceptional cruelty, though a survey of similar cases show it did not. Rather, the cruelty inherent in the conspiracy is typical of dog-fighting and already factored into the recently increased base offense level. It overweighed Mr. Meyers's criminal history, which had already increased his base offense level by 8 points, and caused his criminal history category to be VI. Its sentence was longer than the 78-month sentence requested by the government. And a review of the relevant district court cases collected by the government suggests its ultimate sentence may be the longest sentence ever imposed in a federal dog-fighting case.

Conclusion

For these reasons, Mr. Meyers asks this Court to reverse the District Court's judgment and remand for a resentencing to a reasonable sentence.

Dated this 22nd day of February, 2022.

Respectfully submitted,

s/ Jonathan Dodson

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Certificate of Compliance

Pursuant to Fed. R. App. P. 32(a)(7)(C), I, Jonathan Dodson, appellate counsel for Mr. Pierre Cannon, hereby certify that the number of words in this brief, as counted by the Microsoft Office Word processing system, according to the method described in 11th Cir. R. 32-4, is **6,172** words; which is less than the 13,000 allowed for appellate briefs by Fed. R. App. P. 32(a)(7)(B)(i).

Certificate of Service

I, Jonathan Dodson, appellate counsel of record for the Appellant, Mr. Leslie Meyers, hereby certify that I have, on this 22nd day of February, 2022, filed the foregoing *Initial Brief* with the Clerk of Court using the Eleventh Circuit's CM/ECF system, which will send electronic notification of filing to counsel of record. I also certify that I caused a copy of the foregoing *Initial Brief* to be served in paper format to Mr. Meyers by placing a copy of the same in the United States Mail, postage prepaid, addressed to: Mr. Leslie Meyers, Fed. Reg. No. 04695-094, Coleman Medium FCI, P.O. Box 1032, Coleman, FL 33521. I further certify that, on the date set forth above, I caused the foregoing submission to be dispatched for filing with the Clerk of Court by Federal Express overnight delivery.

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