No. 06-16641-AA

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JASON HARDY HUNT,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

BRIEF FOR THE UNITED STATES AS APPELLEE

DEBORAH J. RHODES
United States Attorney
Southern District of Alabama

WAN J. KIM
Assistant Attorney General

JESSICA DUNSAY SILVER
DIRK C. PHILLIPS
Attorneys
United States Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, DC 20044-4403
(202) 305-4876

United States v. *Jason Hardy Hunt*
No. 06-16641-AA

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Counsel for United States of America hereby certifies, in accordance with Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1, that the following persons may have an interest in the outcome of this case and were not included in the appellant's certificate of interested persons and corporate disclosure statement:

1. James Woodard;
2. Wan J. Kim, Assistant Attorney General, Civil Rights Division, United States Department of Justice;
3. Jessica Dunsay Silver, Civil Rights Division, United States Department of Justice, appellate counsel for the United States;
4. Dirk C. Phillips, Civil Rights Division, United States Department of Justice, appellate counsel for the United States.

STATEMENT REGARDING ORAL ARGUMENT

Because the legal issues presented in this appeal are straightforward, the United States does not believe that oral argument is necessary. However, the United States does not object to oral argument should the Court feel it would be useful.

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS (continued): **PAGE**

TABLE OF CITATIONS

CASES: **PAGE**

CASES (continued): **PAGE**

CASES (continued): **PAGE**

STATUTES:

RULES:

LEGISLATIVE HISTORY:

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 06-16641-AA

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JASON HARDY HUNT,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

BRIEF FOR THE UNITED STATES AS APPELLEE

STATEMENT OF JURISDICTION

The district court had jurisdiction under 18 U.S.C. 3231. The district court entered judgment on December 15, 2006, Doc. 72,[1] and defendant filed a timely notice of appeal the same day, Doc. 74. This Court has jurisdiction pursuant to 28 U.S.C. 1291.

[1] "Doc. __, p. __" refers to the document number on the district court docket and page number within the document. "Br. __" refers to page numbers in defendant's opening brief to this Court.

STATEMENT OF ISSUES

1. Whether the evidence is sufficient to support defendant's conviction.

2. Whether the statute at issue, 18 U.S.C. 1519, applies to defendant's falsification of a police report and provides adequate notice that such behavior is unlawful.

3. Whether defendant satisfied his burden of establishing that his sentence is unreasonable.

STATEMENT OF THE CASE

This case arose out of a March 2005 incident in which defendant Jason Hardy Hunt – a member of the Prichard, Alabama police department – inflicted a number of physical injuries on James Woodard, an unarmed suspect who was not resisting arrest.

On March 31, 2006, a federal grand jury returned an indictment charging Hunt with violation of constitutional rights by use of unreasonable force under color of law in violation of 18 U.S.C. 242 (Count I), knowingly making a false entry in a police report in violation of 18 U.S.C. 1519 (Count II), and knowingly making a false entry in a criminal complaint, also in violation of 18 U.S.C. 1519 (Count III). Doc. 1, pp. 1-3. Following a jury trial in August 2006, Hunt was convicted on Count II and acquitted on Counts I and III. Doc. 72, p. 1.

On December 12, 2006, Hunt was given a sentence of ten months, with five months of the sentence to be served in prison and five months in home confinement. Doc. 85, p. 35; Doc. 72, p. 2. This appeal followed.

STATEMENT OF FACTS[2]

1. The March 22 Incident

On the evening of March 22, 2005, James Woodard – a 23-year-old native of Prichard, Alabama – returned home from his job as heavy-equipment operator and deckhand for an export company. Doc. 81, pp. 54-55, 57-58. Woodard went to a local convenience store in Prichard around 8:30 p.m. to buy cigarettes. Doc. 81, p. 60. After doing so, he walked to the street corner to see if a friend of his was home. Doc. 81, p. 60. Having determined his friend was not home, Woodard walked back to the front of the convenience store and lit a cigarette. Doc. 81, p. 60.

Woodard's neighborhood is known to be an area in which drug-related activity frequently occurs, and officers of the Prichard police department were out that evening looking for signs of such behavior. Doc. 82, p. 505-507. Officers Walter Knight and George Lyons believed they saw Woodard walking back-and-forth between cars and the convenience store, and concluded this conduct was sufficient to justify stopping Woodard. Doc. 82, pp. 461, 506-508. Lyons and another officer, Jonathan Waite, pulled up alongside Woodard in an unmarked red Jeep driven by Lyons. Doc. 82, pp. 284-286, 289-290. Waite exited the Jeep, grabbed Woodard by the arm, identified himself as a police officer, and told Woodard they wanted to speak with him. Doc. 82, pp. 289-290.

---

[2] The factual recitation contained herein is set forth in the light most favorable to the government.

Woodard complied with this request at first, but then told Waite that he did not have any drugs, and that Waite "needed to get [his] fucking hands off of him." Doc. 82, p. 292. Woodard jerked his arm away from Waite, causing Waite to believe Woodard might attempt to flee. Doc. 82, pp. 292-293. As a result, Waite took Woodard to the ground and placed him in handcuffs. Doc. 82, pp. 293-294. At this point, Woodard again became agitated and began cursing. Doc. 82, p. 294.

Waite then walked Woodard across the street to a car where Hunt and two other officers, Knight and Lt. Gardner, were waiting. Doc. 82, p. 296. The officers searched Woodard and checked to see if there were any outstanding warrants in his name. Doc. 81, pp. 64-65, 82; Doc. 82, p. 481. Finding nothing, the officers eventually removed the handcuffs from Woodard and told him he was free to leave. Doc. 81, p. 65; Doc. 82, p. 298. Upset at having been detained, Woodard – after the handcuffs were removed – said to the officers, "y'all just wanted to fuck with somebody," and "Prichard ain't shit." Doc. 81, p. 65. Hunt responded "your Daddy ain't shit." Doc. 81, p. 66.

While walking away, Woodard began shouting back at the police. According to Officer Knight, Woodard said he would "fuck [the officers] up," or something to that effect. Doc. 82, pp. 466-467, 481. Officer Waite remembered Woodard saying that "if [they] didn't have [their] badges he would take care of it, he would kick [their] ass." Doc. 82, p. 299.[3] Some police officers, including Hunt,

[3] Officer Ralph Howze gave a similar account of what was said. Doc. 81, p. (continued...)

began responding. Doc. 82, p. 299. Woodard stopped walking and a verbal exchange ensued. Doc. 82, p. 299. According to Officer Howze, Hunt said something to the effect of "Bitch, you don't want to fuck with me or, bitch, you don't really want none of this." Doc. 81, p. 124. Officer Waite testified that Hunt "gave as much as he got" during this verbal exchange, and did not act in a professional manner. Doc. 82, p. 355.

At one point Woodard and Hunt "got up in each other's face" and were "bumping chests." Doc. 82, p. 301. Tensions eased when Knight said the officers had "work to do" and that it was time to leave. Hunt returned to his vehicle. Doc. 82, p. 303. Woodard began to verbally berate the officers again, this time focusing on Hunt. Doc. 82, pp. 303-304. At that point, Knight gave an order to arrest Woodard for disorderly conduct. Doc. 82, p. 328, 427-428. Knight testified that he gave the order based solely on the fact that Woodard was "mouthing off," not on any perceived threat Woodard posed to the officers. Doc. 82, p. 483.

Hunt and Waite both headed toward Woodard to place him under arrest. Doc. 82, p. 339. Walking quickly, Doc. 82, pp. 305-306, Hunt reached Woodard first. Doc. 82, p. 339. According to Knight and Lyons, about the time he reached Woodard, Hunt said something to the effect of "you don't want none of this," or

---

[3](...continued)
123.

"this ain't what you want." Doc. 82, pp. 483-484, 519.[4] Hunt then initiated physical contact, Doc. 82, p. 484-485, grabbing Woodard in a bear-hug fashion and, while holding him, ordered Woodard to go to the ground. Doc. 82, p. 306.[5] Woodard's arms were pinned to his body, and as he pulled them up to try to gain balance, Hunt lifted Woodard and threw him to the ground head first, saying something to the effect of "[w]ho is the MF now?" or "you want some of me?" Doc. 81, p. 191; Doc. 82, pp. 306, 471-472.[6] Officers Howze and Jacqueshanda Matthews likened Hunt's takedown of Woodard to moves commonly used in professional wrestling. Doc. 81, pp. 159-162, 204-206. And Officers Howze and Waite likened the sound of Woodard's head hitting the concrete to that "of a melon popping" or "a watermelon falling." Doc. 81, pp. 126-127; Doc. 82, p. 307.

After being taken to the ground, Woodard lay motionless. Doc. 82, p. 308-309. Hunt nevertheless grabbed Woodard's head and slammed it into the concrete two or three more times, saying "[b]itch, I told you you didn't want to fuck with me" and "I'm the wrong one for you to fuck with." Doc. 81, pp. 127-128, 159.[7]

---

[4] Woodard remembers Hunt saying "what you want to do little punk[?]" Doc. 81, pp. 68, 105.

[5] Hunt maintained that his grabbing of Woodard was in reaction to Woodard turning abruptly as Hunt approached him. Doc. 83, p. 615.

[6] Hunt claimed that he never lifted Woodard off the ground, and implied he took Woodard to the ground due in part to the fact that Woodard's hands were near Hunt's waist and holster. Doc. 83, pp. 617-618, 621-622.

[7] Officer Waite remembers Hunt saying "do you want some more[?]" Doc.

(continued...)

After Hunt finished with him, Waite and Lyons, who both had emergency medical training, sat Woodard up. Doc. 82, pp. 281, 311-312. Woodard was vomiting and appeared disoriented; he did not know where he was, his eyes were "glassed," and blood was coming from his ear. Doc. 82, pp. 487-488.

Worried about Woodard's injuries, the officers called for medical assistance. Doc. 82, p. 488. Woodard left the scene by ambulance and was taken to the Mobile Infirmary, where he stayed for eight days. Doc. 81, p. 70-71. As a result of the incident, Woodard suffered a skull fracture and is now deaf in one ear. Doc. 81, pp. 71-72. Woodard did not return to work until approximately eight months after the incident. Doc. 81, p. 87.

According to the collective testimony of Officers Howze, Matthews, Waite, and Knight, Woodard did not resist arrest or pose a risk to others at the time of his confrontation with Hunt. Doc. 81, pp. 129-130, 189; Doc. 82, pp. 304, 484-485, 491-492. Officers Howze, Matthews, and Knight also testified that Woodard never reached for Hunt's gun. Doc. 81, pp. 131, 189; Doc. 82, pp. 484-485. And Hunt conceded he knew Woodard previously had been searched and had no weapons. Doc. 83, pp. 687-688. Nevertheless, Hunt did not use verbal commands – such as telling Woodard to turn around and place his hands behind his back – as officers

---

[7](...continued)
82, p. 306. Hunt denied having struck Woodard's head against the ground following the initial takedown, claiming that what the other officers must have seen was Hunt pushing off Woodard in an effort to stand up. Doc. 82, p. 418; Doc. 83, p. 633.

are taught in their academy training to do in making such arrests. Doc. 81, pp. 132-133, 231; Doc. 82, pp. 486.

Officer Howze testified that, based on his experience in law enforcement, Woodard's actions did not justify Hunt's takedown of Woodard or Hunt's actions in striking Woodard's head against the concrete following the takedown. Doc. 81, pp. 127-128. Officer Matthews similarly testified that she did not see anything that justified the takedown. Doc. 81, p. 192. And Officer Waite testified there was no reason for Hunt to approach Woodard alone and attempt to arrest Woodward by himself in the first place, as eight other officers were present. Doc. 82, p. 339.[8]

Immediately following the incident, Lt. Gardner ordered Knight to take Hunt back to the police station so Hunt could begin writing his report and fill out the required use-of-force form. Doc. 82, pp. 410, 473; Doc. 83, p. 719. On the way back to the station, Hunt asked Knight whether he had done anything wrong. Doc. 82, p. 476. Knight responded that if Woodard had in fact made the first move, then taking him to the ground was appropriate. Doc. 82, p. 478. But Knight conceded at trial that what Hunt told him regarding Woodard making the first move did not match what Knight had seen. Doc. 82, pp. 488-489.

---

[8] The former head of the police academy Hunt attended also testified that police officers are not taught to initiate bear hugs because doing so puts an officer's weapon in jeopardy. Doc. 81, p. 234.

2. The False Entry In Defendant's Police Report

Hunt conceded at trial that his police academy training included instruction regarding writing reports, and that such reports should be truthful. Doc. 83, pp. 671-672. Despite this training, Hunt's arrest report contained the following false statement regarding who first initiated contact during the March 22 incident: "when I (Det. Hunt) got between 2-3 feet to him (Mr. Woodard) he grabbed me (Det. Hunt) and tried to slam me, but I (Det. Hunt) was strong enough to get my hands free around his and take him (Mr. Woodard) to the ground." Ex. 11.

Hunt admitted at trial that the foregoing statement was inaccurate. Doc. 83, p. 716. He conceded he finished the report the night of the incident, while still close in time to the events described therein. Doc. 83, p. 671. But Hunt maintained at trial that the events were not clear in his mind at that point. Doc. 83, p. 671. Hunt's explanation for the false statement was that he "was still caught up in the heat of the moment" at the time he drafted the report. Doc. 83, p. 716. He maintained the statement was not "a lie" or "a false statement," but simply an "inaccurate" statement. Doc. 83, p. 716.

3. Defendant's Meetings With The FBI

A federal investigation was opened into the March 22 incident. As part of this investigation FBI Agent George Glaser met with Hunt on two occasions; first on February 8, 2006, and then again two days later on February 10. During the February 8 meeting, Hunt claimed – as he had in his police report – that Woodard made the first move, grabbing Hunt around the waist near his weapon. Doc. 82,

pp. 408-409. Hunt told Glaser he feared Woodard would lift him up and take him to the ground. Doc. 82, p. 409. According to Hunt's version of events, he defended himself by grabbing Woodard and placing his foot behind Woodard's leg in order to trip him. Doc. 82, p. 409.

During the course of this meeting, Agent Glaser asked Hunt how the situation might have been avoided. Doc. 82, pp. 411-412. Hunt replied that the situation probably would not have occurred if Woodard had not grabbed him. Doc. 82, p. 412. Hunt referred to his use-of-force report during the course of the interview, telling Agent Glaser that it had been signed by his supervisor and indicated that Hunt's use of force had been appropriate. Doc. 82, p. 414.

After reviewing information collected from Hunt and comparing it to other information he gathered, Agent Glaser asked Hunt to meet with him again on February 10. Doc. 82, p. 414. At that meeting Agent Glaser told Hunt he had noticed "a number of inconsistencies" between what Hunt told him during the February 8 meeting and what he had heard from others who witnessed the incident. Doc. 82, p. 415. Specifically, Agent Glaser testified that he "challenged" Hunt as to who first initiated contact during the March 22 incident. Doc. 82, p. 423. During the February 10 meeting, Hunt and Agent Glaser conducted a re-enactment of the March 22 incident. Doc. 82, p. 416.

At the end of the meeting, Hunt conceded that Woodard did not make the first move. Doc. 82, p. 416. Rather, Hunt admitted "he grabbed Woodard around the waist first, pinning his arms to his side." Doc. 82, p. 416. This clearly

contradicted Hunt's report and his previous statements to Agent Glaser, Doc. 82, p. 416, and Hunt admitted that the statement in his report indicating Woodard made the first move was inaccurate. Doc. 82, p. 416. He attributed the false statement in the report to "the heat of the moment," and indicated that his recollection had now changed. Doc. 82, p. 418.

4. Defendant's Knowledge Of Federal Civil Rights Law

Hunt attended the Southwest Alabama Police Academy (SWAPA) from January through April 2004. Doc. 82, p. 402. While there, he took a civil-rights course taught by Judy Newcomb, who at that time was the Chief Assistant District Attorney for Baldwin County. Doc. 82, pp. 533-534. Newcomb testified at trial, confirming that, as part of the course, she covered federal civil rights liability under 18 U.S.C. 241 and 242, including the elements of Section 242. Doc. 82, pp. 536-537.

Specifically, Newcomb instructed her students that "[s]ince the reconstruction period the United States Department of Justice has been empowered to prosecute local officials for the willful violation" of these statutes. Doc. 82, p. 536. Newcomb confirmed that, as part of the class, Hunt correctly answered an exam question regarding liability under Section 241. Doc. 82, pp. 538-539. In addition, Hunt admitted during cross-examination that he was "pretty sure [the FBI] would investigate" excessive force complaints. Doc. 83, p. 737.

SUMMARY OF ARGUMENT

On appeal, Hunt argues (1) there was insufficient evidence supporting his conviction; (2) 18 U.S.C. 1519, the statute under which he was convicted, (a) does not apply to his falsification of the police report, and (b) does not provide sufficient notice that such actions are unlawful; and (3) his sentence was unreasonable. All of Hunt's arguments fail. This Court therefore should affirm the judgment below.

1. The evidence adduced at trial was more than sufficient to support Hunt's conviction for violating 18 U.S.C. 1519. Hunt conceded the statement at issue from his police report, in which he asserts Woodard initiated the incident, was inaccurate. Thus, the only questions in this case are whether the false statement was made knowingly and with the intent to interfere with a federal investigation. Evidence demonstrated that Hunt's police-academy training included instruction on federal civil rights laws, knowledge of which Hunt demonstrated by correctly answering a police-academy exam question regarding federal civil rights liability. And Hunt admitted he was "pretty sure [the FBI] would investigate" excessive force complaints.

The evidence belies Hunt's contention that the false entry was a simple mistake. The entry clearly did not reflect what actually happened during the March 22 incident. And Hunt began to demonstrate consciousness of guilt almost immediately, asking his supervisor soon after the incident whether he had done anything wrong. Moreover, it simply is not credible that Hunt, in drafting his report immediately after the incident, would innocently misstate the most

fundamental fact of all: who initiated the physical altercation. This is particularly true in light of the level of detail in the false statement, in which Hunt describes how he overpowered Woodard. Simply put, the jury had to choose between competing explanations for the false statement, and it rejected the one offered by Hunt.

2. Hunt's arguments that his conduct is not covered by Section 1519 and that the statute fails to give proper notice of prohibited conduct fare no better. The false statement in Hunt's police report falls squarely within the plain language of the statute, which provides adequate notice of prohibited conduct. Hunt's argument to the contrary is based on his reading of the statute's purpose and legislative history. But neither trumps the plain language of the statute. And neither properly is considered where, as here, the statutory text is unambiguous. In any event, those sources support the conclusion that Hunt's behavior is covered by the statute. Hunt's challenge to the application of Section 1519 to his actions therefore fails.

3. Finally, Hunt fails to carry his burden of demonstrating his sentence is unreasonable. The district court – over the government's objection – lowered Hunt's advisory guideline range from 15-21 months to 10-14 months. The court then sentenced Hunt to the bottom of the reduced guideline range, allowed him to serve half his sentence in home confinement, and did not impose a fine. In doing so, the district court considered the relevant factors under 18 U.S.C. 3553(a),

determining that Hunt's offense was serious and that a sentence of probation would not provide adequate deterrence. In no way was this sentence unreasonably harsh.

ARGUMENT

I

THE EVIDENCE WAS SUFFICIENT TO SUPPORT DEFENDANT'S CONVICTION FOR VIOLATING 18 U.S.C. 1519

A. Standard Of Review

This Court "review[s] the sufficiency of evidence to support a conviction *de novo*, viewing the evidence in the light most favorable to the government and drawing all reasonable inferences and credibility choices in favor of the jury's verdict." *United States* v. *Taylor*, 480 F.3d 1025, 1026 (11th Cir. 2007). This Court is "bound by the jury's credibility determinations, and by its rejection of the inferences raised by the defendant." *United States* v. *Peters*, 403 F.3d 1263, 1268 (11th Cir. 2005). "The evidence need not exclude every hypothesis of innocence or be completely inconsistent with every conclusion other than guilt because a jury may select among constructions of the evidence." *United States* v. *Ramirez*, 426 F.3d 1344, 1351 (11th Cir. 2005). "A factual finding will be sufficient to sustain a conviction if, 'after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *United States* v. *Ward*, 486 F.3d 1212, 1221 (11th Cir. 2007) (quoting *Jackson* v. *Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979)). In short, a conviction "must stand 'unless the jury could not have

found the defendant guilty under any reasonable construction of the evidence.'" *United States* v. *Kelley*, 412 F.3d 1240, 1245 (11th Cir.) (quoting *United States* v. *Byrd*, 403 F.3d 1278, 1288 (11th Cir. 2005)), cert. denied, 126 S. Ct. 317 (2005).

B. Applicable Law

The statute at issue, 18 U.S.C. 1519, provides that "[w]hoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States * * * or in relation to or contemplation of any such matter or case," shall be punished as set forth therein. 18 U.S.C. 1519. As the jury was instructed, in order to establish a violation of this provision, the government was required to prove that defendant (1) "made a false entry in a record or document"; (2) "did so knowing it was false"; and (3) "did so with the intent to impede, obstruct or influence the investigation of a matter within the jurisdiction of an agency of the United States, or in relation to or in contemplation of any such matter or case." Doc. 83, p. 806.

C. There Was Ample Evidence At Trial For The Jury To Determine Guilt Beyond A Reasonable Doubt

1. All Elements Of A Section 1519 Violation Were Sufficiently Established

Count II, on which Hunt was convicted, charged that the following statement from Hunt's incident report was false: "when I (Detective Hunt) got between 2-3 feet to him [James Woodard] he grabbed me (Detective Hunt) and tried to slam me, but I (Detective Hunt) was strong enough to get my hands free around his and take him [James Woodard] to the ground." Doc. 1, pp. 2-3. The evidence adduced at trial was more than sufficient to establish all three elements of a Section 1519 violation with respect to this statement.

The first element – that the statement is false – was established by Hunt's admission at trial that the above-quoted statement was inaccurate. Doc. 83, pp. 697, 713. This admission was reiterated in Hunt's appellate brief. Br. 22, 24. Accordingly, the first element of the offense is not at issue.

The second and third elements – that Hunt made the false statement knowingly and with the intent to impede, obstruct, or influence a federal investigation – are also established. Hunt knew there was a strong likelihood of a federal investigation into his actions. While at the police academy, Hunt was instructed on civil rights law. Doc. 82, pp. 533-539. The instructor testified at trial that she taught Hunt's class about both 18 U.S.C. 241 (conspiracy to violate rights) and 18 U.S.C. 242, including the elements of a Section 242 violation. Doc. 82, pp. 536-537. The government also introduced one of Hunt's police-academy exams,

which showed that – consistent with what he was taught – Hunt correctly answered a test question regarding federal civil rights liability. Doc. 82, pp. 537-539; Ex. 5A, 5B & 5C. And Hunt conceded during cross-examination that he was "pretty sure [the FBI] would investigate" excessive force complaints. Doc. 83, p. 737. This evidence provided a sufficient basis for concluding Hunt knew immediately that what he had done could be considered excessive force and likely would result in a federal investigation.

That Hunt's statement was not an innocent mistake was demonstrated by the fact that it clearly did not match what actually transpired, as evidenced by testimony from other officers on the scene. Contrary to Hunt's version of events, the testimony of Officers Howze, Matthews, Waite, and Knight collectively established that Woodard did not resist arrest or pose a risk to others at the time of his confrontation with Hunt. Doc. 81, pp. 129-130, 189; Doc. 82, pp. 304, 484-485, 491-492. And Officers Howze, Matthews, and Knight testified that Woodard never reached for Hunt's gun. Doc. 81, pp. 131, 189; Doc. 82, pp. 484-485. The fact that Hunt knew his actions were improper is further demonstrated by the conversation he had with his supervisor, Knight, immediately after the incident, in which Hunt asked Knight whether he had done anything wrong. Doc. 82, p. 476; Doc. 83, p. 639. Knight responded that Hunt had not done anything wrong, provided Woodard did in fact make the first move. Doc. 82, p. 478.

Further, it strains credulity to suggest that, in drafting his report almost immediately after the incident, Hunt could have innocently misstated the most

fundamental fact of all: who initiated the physical altercation. Hunt either reacted to being grabbed by Woodard, or not. There is no middle ground with respect to this issue. The level of detail given in the false statement is also evidence that Hunt acted with knowledge that his statement was false. That is, Hunt did not simply misstate who made the first move in the altercation. Rather, he concocted a narrative regarding how Woodard first "grabbed [him] * * * and tried to slam [him]," and how Hunt, in response, was able to free his hands and take Woodard to the ground. Ex. 11.

Even assuming, as Hunt claims, he was still "in the heat of the moment" at the time he drafted his report, this does not adequately explain the making of a false statement, particularly one as detailed as the one at issue here. And it does not explain why Hunt failed to realize his purported mistake until his second interview with FBI Agent Glaser, at which Glaser told Hunt there were "a number of inconsistencies" between Hunt's prior statements and information provided by other witnesses, and "challenged" Hunt regarding who initiated the March 22 incident. Doc. 82 at 415, 423.

Hunt's "in the heat of the moment" excuse was simply an alternative explanation for the misstatement. It does not – and cannot – change the fact that sufficient evidence existed by which the jury could conclude beyond a reasonable doubt the statement was made knowingly and with the intent to impede, obstruct, or influence a federal investigation. Simply put, the jury had to choose between Hunt's claim that his false statement was innocently made and the government's

assertion the false statement was made intentionally with an eye toward a potential federal investigation into the March 22 incident. The jury rejected Hunt's claim, and the evidence plainly supports this choice.

2. Defendant's Arguments To The Contrary Fail

Hunt makes several assertions in support of his argument that the evidence is not sufficient to establish the elements of a Section 1519 violation. Specifically, he contends that (1) in light of his testimony blaming the false statement on his emotional state at the time he drafted the report, the government's circumstantial evidence of intent was insufficient to establish beyond a reasonable doubt that his false statement was made knowingly and with the intent to interfere with a federal investigation; (2) the government lacks sufficient evidence of intent; (3) he voluntarily pointed out the false statement to Agent Glaser; and (4) reversal is required in light of comments made by the district court indicating the sufficiency of the evidence presented a close question. Br. 19-31. Each argument fails.

First, there is no reason to assume – as Hunt's argument implicitly does – that the jury believed Hunt's testimony. The jury might just as easily have disbelieved his explanation for the false statement as too far-fetched to be credible, and therefore weighed the testimony against him, as it was entitled to do. See *United States* v. *Williams*, 390 F.3d 1319, 1325 (11th Cir. 2004) ("This Circuit has said that 'when a defendant chooses to testify, he runs the risk that if disbelieved the jury might conclude the opposite of his testimony is true.'") (quoting *United States* v. *Brown*, 53 F.3d 312, 314 (11th Cir. 1995)). In *Brown*, this Court held that

"a statement by a defendant, if disbelieved by the jury, may be considered as *substantive evidence* of the defendant's guilt." 53 F.3d at 314. That is, the jury, after "hearing [defendant's] words and seeing his *demeanor*, was entitled to disbelieve [defendant's] testimony and, in fact, to believe the opposite of what [defendant] said." *Ibid.*

This Court has not hesitated to apply this principle where, as here, the defendant takes the stand to testify about what he or she knew or intended. See, *e.g.*, *Williams*, 390 F.3d at 1325-1326; *United States* v. *Rudisill*, 187 F.3d 1260, 1268 (11th Cir. 1999); *United States* v. *Vazquez*, 53 F.3d 1216, 1226 (11th Cir. 1995). Accordingly, the fact that Hunt took the stand and testified that the false statement in his report was unintentional hurts – rather than helps – his argument, as the jury obviously did not find him credible with respect to this issue. Weighing the credibility of Hunt's testimony is a quintessential jury function that cannot be overturned on appeal. See *Peters*, 403 F.3d at 1268 (in reviewing challenges to the sufficiency of evidence, this Court is "bound by the jury's credibility determinations, and by its rejection of the inferences raised by the defendant").

Second, although Hunt makes much of the fact that the government lacks direct evidence of his intent, Br. 23-27, that does not render the government's evidence insufficient. As this Court has recognized on several occasions, the element of intent often must be proven by circumstantial evidence. See, *e.g.*, *United States* v. *Grant*, 431 F.3d 760, 764 (11th Cir. 2005) ("[A] defendant's intent is often difficult to prove and often must be inferred from circumstantial

evidence.") (internal quotations omitted); *United States* v. *Nosrati-Shamloo*, 255 F.3d 1290, 1292 (11th Cir. 2001) (same); *United States* v. *Hurley*, 755 F.2d 788, 790 (11th Cir. 1985) ("Because it is difficult to prove intent by direct evidence, it normally must be inferred from circumstantial evidence.").

Third, Hunt's assertion on appeal that he voluntarily pointed out the false statement to Agent Glaser, Br. 26 & 30-31, is not supported by the evidence, particularly when viewed in the light most favorable to the government. As previously noted, Agent Glaser told Hunt there were "a number of inconsistencies" between his statements during their first meeting and information provided by other witnesses. Doc. 82, p. 415. And Agent Glaser testified that he "challenged" Hunt regarding who initiated the incident. Doc. 82, p. 423. It was only at that point that Hunt admitted "grabb[ing] Woodard first." Doc. 82, p. 423. Accordingly, Hunt's assertion that he admitted the false statement entirely of his own volition must be rejected.

Finally, Hunt's assertion that the district court's comment that it was "of the opinion that the evidence would have sufficiently supported either way" requires reversal, Br. 27-28, misinterprets what the district court said. When read in context, it is clear this statement by the district court was meant to convey that the question whether the evidence supported guilt on Count II beyond a reasonable doubt could have gone either way. The district court was not saying the evidence

was in equipoise, as Hunt asserts on appeal.[9] There is nothing unusual about such an observation, as this Court has made similar statements. See, *e.g.*, *United States* v. *Utter*, 97 F.3d 509, 512 (11th Cir. 1996) ("Although this is a close case, we conclude that the government presented sufficient evidence to support the convictions."); *United States* v. *Morris*, 20 F.3d 1111, 1114 (11th Cir. 1994) ("[D]espite the close balance of the evidence in this case, we find that the evidence was sufficient to support the jury's verdict.").

Significantly, this Court's decision in *Cosby* v. *Jones*, 682 F.2d 1373 (11th Cir. 1982), upon which Hunt relies, Br. 27 & 34, is not to the contrary. There, this

---

[9] The district court stated in relevant part as follows:

> The Court has no intention of overturning the jury's verdict either way today. I feel that it was a very unique case and that it's not a situation where, you know, it wasn't beyond a reasonable doubt, it was a situation where there were two versions of the story, and the jury chose not to believe the Government's version of the story as it relates to Count One.
>
> There's also two versions of the story as it relates to Count Two, and the jury chose to believe the Government's version as it relates to Count Two. I am of the opinion that the evidence would have sufficiently supported either way and I am not going to overturn the Government's – I mean, excuse me, the jury's verdict by considering evidence as to Count One or considering evidence that you have to – that, again, because I've already heard it one time and the jury rejected that as to why he's not liable for Count Two, which he has been convicted.

Doc. 85, pp. 2-3.

Court addressed the proper standard for cases in which "the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence." 682 F.2d at 1383. As noted above, such is not the case here. The district court twice found – once at the close of the government's case and again at the close of defendant's case – that the evidence was sufficient to support convictions on all three counts in this case. Doc. 82, pp. 545-546; Doc. 83, p. 749. When read in context, the district court's statement at sentencing supports – rather than undercuts – this finding.

3. Defendant's Alternative Request For New Trial Also Fails

In addition to challenging the sufficiency of the evidence, Hunt also appeals the denial of his request for a new trial pursuant to Federal Rule of Criminal Procedure 33. Br. 31-35. Hunt bases this request on his claim that the verdict was against the weight of the evidence.[10] As noted above, this Court reviews challenges to the sufficiency of the evidence *de novo*. *Taylor*, 480 F.3d at 1026. But it "review[s] a district court's denial of a motion for new trial for abuse of discretion." *United States* v. *Campa*, 459 F.3d 1121, 1151 (11th Cir. 2006). Thus, if the evidence is sufficient to support Hunt's conviction when reviewed *de novo*, it necessarily also satisfies the more deferential abuse-of-discretion standard applied

[10] Hunt also notes that he sought an evidentiary hearing below regarding whether the jury improperly considered punishment during its deliberations. Br. 32. But this argument is not pressed on appeal, and therefore has been waived. See *Flanigan's Enter., Inc.* v. *Fulton County*, 242 F.3d 976, 987 n.16 (11th Cir. 2001) (citing Fed. R. App. P. 28(a)(9)).

to motions for new trial. Accordingly, the government incorporates by reference the points made above, and asserts that for the same reasons the evidence is sufficient to support Hunt's conviction, it also is sufficient to demonstrate that the district court did not abuse its discretion in denying Hunt's motion for new trial.

II

DEFENDANT'S CONDUCT IS COVERED BY 18 U.S.C. 1519

Hunt argues that his conduct is not covered by Section 1519. He also contends the statute does not provide adequate notice, and therefore violates due process. Br. 35-41. Both arguments fail.

A. Defendant's Actions Fall Within The Plain Terms Of The Statute

As noted above, Section 1519 covers anyone who, acting with the requisite intent to interfere with a federal investigation, "knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object." 18 U.S.C. 1519. By convicting Hunt on Count II, the jury concluded he knowingly made a false entry in his report with the intent to interfere with a potential federal investigation into his actions on the evening in question. Thus, he plainly "falsifie[d], or ma[d]e[] a false entry in * * * [a] document * * * with the intent to impede, obstruct, or influence" a federal investigation, as required by the statute. Hunt's actions accordingly fall within the plain terms of the statute.

B. Legislative History Does Not Alter This Conclusion

1. Examination Of Legislative History Is Not Appropriate In This Case

Hunt's assertion that his actions are not covered by the statute is based not on the statutory text, but on the act's legislative history. See Br. 36 ("In reviewing the legislative purpose articulated in the Sarbanes-Oxley Act, it does not appear that Hunt's conduct was contemplated by this Act."). Specifically, Hunt asserts the purpose of the act of which Section 1519 is a part was to address cases involving corporate fraud, Br. 36, and then argues "[i]t is necessary to consider this legislative history to assess Congress's intent in passing this law." Br. 37.

It is well established, however, that "[i]n interpreting a statute [this Court] look[s] first to the plain meaning of its words, and do[es] not consider legislative history unless the statutory text is unclear." *United States* v. *Maung*, 267 F.3d 1113, 1121 (11th Cir. 2001). See also *United States* v. *Gonzales*, 520 U.S. 1, 6, 117 S. Ct. 1032, 1035 (1997) ("Given the straightforward statutory command, there is no reason to resort to legislative history."); *Harry* v. *Marchant*, 291 F.3d 767, 772 (11th Cir. 2002) ("Where the language of a statute is unambiguous, as it is here, we need not, and ought not, consider legislative history."). This is true even when aspects of the legislative history may contradict the statute's plain text. See *Ratzlaf* v. *United States*, 510 U.S. 135, 147-148, 114 S. Ct. 655, 662 (1994) (holding that the Court "do[es] not resort to legislative history to cloud a statutory text that is clear," even when there are "contrary indications in the statute's legislative history") (footnotes omitted); *Harry*, 291 F.3d at 772; *National Coal Ass'n* v. *Chater*, 81 F.3d 1077, 1082 (11th Cir. 1996). Thus, if the statutory text is

clear, this Court "may only look to legislative history if that plain meaning produces a result that is not just unwise but is clearly absurd." *Maung*, 267 F.3d at 1121 (internal quotations omitted).

Moreover, as this Court has held, "a general appeal to statutory purpose" cannot "overcome the specific language of the Act, because the text of a statute is the most persuasive evidence of Congress's intent." *National Coal*, 81 F.3d at 1082. See also *Great-West Life & Annuity Ins. Co.* v. *Knudson*, 534 U.S. 204, 220, 122 S. Ct. 708, 718 (2002) ("[V]ague notions of a statute's 'basic purpose' are * * * inadequate to overcome the words of its text regarding the *specific* issue under consideration.") (internal quotations omitted); *Orca Bay Seafoods* v. *Northwest Truck Sales, Inc.*, 32 F.3d 433, 436 (9th Cir. 1994) ("It is one thing to construe the statutory language to see whether one construction makes more sense than the other as a means of attributing a rational purpose to Congress. It is quite another to treat the purpose, and not the operative words of the statute, as the law."). Thus, because Section 1519 is unambiguous, and because the application of its plain meaning does not lead to an absurd result in this case, there is no basis for this Court to examine the statute's legislative history or general purpose.

2. Even If Considered, The Legislative History Does Not Compel A Contrary Result In This Case

Even if resort to legislative history were appropriate in this case, none of the excerpts cited by Hunt bars the application of Section 1519 to his actions. Rather, the legislative history indicates the statute was intended to be given a broad construction. In passing the law of which Section 1519 was a part, Congress noted that existing "federal obstruction of justice statutes relating to document destruction [were] riddled with loopholes and burdensome proof requirements." S. Rep. No. 146, 107th Cong., 2d Sess. 6 (2002) (*2002 Senate Report*). Congress concluded these laws were "full of ambiguities and limitations that must be corrected." *Id.* at 7.

The Senate report specifically states that "[s]ection 1519 is meant to apply broadly to *any* acts to destroy *or fabricate* physical evidence so long as they are done with the intent to obstruct, impede or influence the investigation or proper administration of any matter, and such matter is within the jurisdiction of an agency of the United States, or such acts done either in relation to or in contemplation of such a matter or investigation." *2002 Senate Report* 14 (emphases added). See also *United States* v. *Jho*, 465 F. Supp. 2d 618, 635-636 (E.D. Tex. 2006) (discussing the legislative history of Section 1519). Hunt fabricated evidence with the intent to interfere with a potential federal investigation. His actions therefore fall not only within the scope of the statutory

text, but also within the scope of Section 1519 as described in its legislative history.

C. Section 1519 Provides Adequate Notice

Hunt also contends Section 1519 failed to provide adequate notice that he could be punished for a false statement in a police report – and that his right to due process accordingly was violated – because the statute is aimed primarily at corporate crime and has as its main goal evidence preservation. Br. 37-41. These arguments fail for the same reason stated above: the statutory text is controlling, and Hunt's actions clearly fall within the scope of the statute.

Concerns regarding due process relate to "the basic principle that a criminal statute must give fair warning of the conduct that it makes a crime." *Rogers* v. *Tennessee*, 532 U.S. 451, 457, 121 S. Ct. 1693, 1698 (2001) (internal quotations omitted). "Deprivation of the right to fair warning * * * can result both from vague statutory language and from an unforeseeable and retroactive judicial expansion of statutory language that appears narrow and precise on its face." *Ibid.*

Neither concern is present here. As previously noted, the plain text of the statute prohibits, *inter alia*, the "falsif[ying], or mak[ing] [of] a false entry in any record, document, or tangible object" with the intent to interfere with a federal investigation. 18 U.S.C. 1519. That is precisely what Hunt did in this case when he made a false entry in his police report in order to interfere with a potential federal investigation into the March 22 incident. There is no ambiguity in the statute, and accordingly no argument regarding lack of notice or due process. See

United States v. *Nelson*, 221 F.3d 1206, 1210 (11th Cir. 2000) (rejecting due process argument where the "statute provides sufficient notice and does not encourage arbitrary and discriminatory enforcement").

Further, Hunt's argument regarding lack of notice also fails because Section 1519 contains a specific intent requirement, in that it punishes only knowing behavior. As this Court has noted, "[t]he constitutionality of a vague statutory standard is closely related to whether the standard incorporates a requirement of *mens rea*." *United States* v. *Waymer*, 55 F.3d 564, 568 (11th Cir. 1995). "A statutory requirement that an act must be willful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. *But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware*." *Ibid.* (internal quotations omitted) (emphasis added). See also *United States* v. *Castro*, 89 F.3d 1443, 1455 (11th Cir. 1996). Accordingly, Hunt's claim regarding lack of notice fails for this reason as well.

In addition, while it is true Section 1519 is likely to most often be applied to fact patterns involving the destruction of existing evidence, nothing in the statutory text limits its application to such situations. Rather, the statute clearly applies to anyone who, acting with the requisite intent, "falsifies, or makes a false entry in any record, document, or tangible object." 18 U.S.C. 1519. And, as noted above, this interpretation is supported by the legislative history. *2002 Senate Report* 14 ("[s]ection 1519 is meant to apply broadly to *any* acts to destroy *or fabricate*

physical evidence") (emphases added). Thus, in addition to applying to the destruction of existing evidence, the statute's plain text clearly reaches the creation of false evidence as well.

Moreover, Section 1519 has been applied to facts analogous to those presented here. See *United States* v. *Jackson*, No. 05-10642, 2006 WL 1737193, at *1 (9th Cir. June 20, 2006) (unpublished) (affirming conviction under section 1519 of a criminal investigator from the Federal Protective Service for omitting information from his official report); see also *United States* v. *Perkins*, 470 F.3d 150, 153 n.2 (4th Cir. 2006) (noting that a co-defendant was initially charged under Section 1519 with making a false entry in a police report). Accordingly, Hunt's claims that the statute fails to provide adequate notice and does not cover the creation of false evidence both fail.

Finally, Hunt's claim, Br. 39-41, that the "nexus" requirement established in *United States* v. *Aguilar*, 515 U.S. 593, 115 S. Ct. 2357 (1995), is not satisfied in this case also misses the mark. The Court's decision in *Aguilar* addressed 18 U.S.C. 1503, a different provision from the one at issue here. And Congress specifically rejected the ruling in *Aguilar* when it passed Section 1519. See *2002 Senate Report* 14 (noting *Aguilar*'s narrow interpretation of Section 1503, as well as other limitations in the current statutory scheme, and concluding: "In short, the current laws regarding destruction of evidence are full of ambiguities and technical limitations that should be corrected. This provision is meant to accomplish those ends."). Accordingly, there is no nexus requirement with respect to Section 1519.

But even if there were, it would be satisfied in this case. *Aguilar* requires only "a relationship in time, causation, or logic" between the challenged act and the proceeding sought to be interfered with. 515 U.S. at 599, 115 S. Ct. at 2362. As previously noted, the evidence here was sufficient for the jury to conclude beyond a reasonable doubt that Hunt knowingly made the false entry in his report in anticipation of a federal investigation into the March 22 incident. Thus, Hunt's false statement clearly bore "a relationship in time, causation, or logic," *ibid.*, to the subsequent federal investigation. Accordingly, even if applicable, *Aguilar*'s nexus requirement is satisfied here.

III

DEFENDANT'S SENTENCE IS REASONABLE

A. Standard Of Review

This Court "review[s] the sentence imposed by the district court for reasonableness." *United States* v. *Talley*, 431 F.3d 784, 785 (11th Cir. 2005). "In conducting [its] reasonableness review, which is highly deferential, [this Court] do[es] not apply the reasonableness standard to each individual decision made during the sentencing process; instead, [it] review[s] only the *final* sentence for reasonableness, in light of the § 3553(a) factors." *United States* v. *Bohannon*, 476 F.3d 1246, 1248 (11th Cir. 2007). It is not necessary for the district court to discuss or state that it has considered each of the statutory factors. *Ibid.* "Rather, an acknowledgment by the district court that it has considered the defendant's arguments and the § 3553(a) factors will suffice." *Ibid.*

"[T]he burden of proving that the sentence is unreasonable in light of the record and the § 3553(a) factors rests on the party challenging the sentence." *Id.* at 1253. This Court "may apply a presumption of reasonableness to a district court sentence that reflects a proper application of the Sentencing Guidelines." *Rita* v. *United States*, No. 06-5754, 2007 WL 1772146, at *6 (June 21, 2007). This "presumption is not binding." *Ibid.* But it does "reflect[] the fact that, by the time an appeals court is considering a within-Guidelines sentence on review, *both* the sentencing judge and the Sentencing Commission will have reached the *same* conclusion as to the proper sentence in the particular case." *Ibid.* As the Supreme Court observed, "[t]hat double determination significantly increases the likelihood that the sentence is a reasonable one." *Ibid.*

B. Bases For The District Court's Sentence

Pursuant to Section 2J1.2 of the Sentencing Guidelines, Hunt had a base offense level of 14. With a criminal history category of I, it is uncontested that his initial advisory guideline range was 15-21 months. Doc. 85, p. 2. Hunt requested a downward departure for aberrant behavior pursuant to Section 5K2.20 of the guidelines, which the district court granted over the government's objection. Doc. 85, pp. 8-11, 35-36. Specifically, the district court determined that a two-level reduction for aberrant behavior was appropriate, providing a new range of 10-16 months. Doc. 85, p. 35.

In considering the relevant Section 3553(a) factors, the district court first concluded that the offense of which Hunt was convicted was "very serious." Doc.

85 at 33. The court noted that offense reports are relied upon for a number of reasons, and that they have the potential to affect lives. *Ibid.* The court therefore concluded that it is "crucial" that such reports are accurate. *Ibid.*

Next, the district court noted the need for deterrence. Doc. 85, p. 34. Specifically, the court noted the need to deter other police officers, and cited this as the reason the court would not give Hunt "a straight probation sentence." *Ibid.* See also *id.* at 36 (statement by the district court that the sentence "addresses the seriousness of the offense," and that the court "believe[s] a term of incarceration is needed for the deterrent affect [*sic*] and to address the seriousness of it, as well as punishment"). But the district court then balanced this need against its conclusion that Hunt did not pose a danger to the public, and that there accordingly was no need for lengthy incarceration. *Id.* at 34.

As noted above, this Court "may apply a presumption of reasonableness" to a sentence that falls within a properly calculated advisory guideline range. *Rita*, 2007 WL 1772146, at *6. See also *Bohannon*, 476 F.3d at 1253 (holding pre-*Rita* that, while a sentence within the advisory range is not reasonable *per se*, "[the Court] ordinarily will expect" such a sentence to be reasonable) (internal quotations omitted). Here, the district court sentenced Hunt to 10 months' imprisonment – the low end of the already-reduced guideline range – allowing him to serve half that sentence in home confinement. Doc. 85, p. 35. The district court did not impose a fine. Doc. 85, p. 36.

While this Court has observed that there will be cases in which "the Guidelines range will not yield a reasonable sentence," *United States* v. *Hunt*, 459 F.3d 1180, 1184 (11th Cir. 2006), the government respectfully submits this is not one of them. This fact is underscored by Hunt's position on appeal, which amounts to little more than a claim that *any* sentence including incarceration would be unreasonable. Simply put, the district court was extremely generous toward Hunt at sentencing, and there is no credible basis for claiming his sentence is unreasonable. Certainly Hunt has not successfully carried his burden of demonstrating unreasonableness in light of the Section 3553(a) factors. Accordingly, Hunt's challenge to his sentence should be rejected.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment below.

Respectfully submitted,

DEBORAH J. RHODES
United States Attorney
Southern District of Alabama

WAN J. KIM
Assistant Attorney General

/s Dirk C. Phillips
JESSICA DUNSAY SILVER
DIRK C. PHILLIPS
Attorneys
United States Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, DC 20044-4403
(202) 305-4876

CERTIFICATE OF COMPLIANCE

I hereby certify that pursuant to Fed. R. App. P. 32(a)(7)(C), the attached Brief for the United States as Appellee is proportionally spaced, has a typeface of 14 points, and contains 8,673 words.

/s Dirk C. Phillips
DIRK C. PHILLIPS
Attorney

Date: July 5, 2007

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2007, two copies of the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE were served by overnight mail, postage prepaid, on the following counsel:

Latisha V. Colvin
Carlos A. Williams
Southern District of Alabama
Federal Defenders Org., Inc.
2 South Water Street, Second Floor
Mobile, Alabama 36602

/s Dirk C. Phillips
DIRK C. PHILLIPS
Attorney