

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 2:21-cr-74-TPB-MRM

AMBER BRUEY

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SENTENCING MEMORANDUM

Amber Bruey, through counsel, hereby files this memorandum in support of a sentence sufficient but not greater than necessary to achieve the goals of sentencing. In furtherance of that effort, Ms. Bruey respectfully submits that a downward variance is warranted in this case. Although, Ms. Bruey scores in Zone D, for the reasons presented in the PSR and in this memorandum, it is respectfully submitted that a sentence of time served followed by a term of supervised release is sufficient but not greater than necessary to achieve the goals of sentencing.¹

There are two factual sources for the information presented herein.

¹ Under the parsimony principle at 18 U.S.C. § 3553, the goal of sentencing “is to lock in a sentence that is not too short and not too long, but just right to serve the purposes of § 3553(a).” *United States v. Irey*, 612 F.2d 1160, 1197 (11th Cir. 2010) (*en banc*) cert. denied 563 U.S. 917 (2011). See *United States v. Johnson*, 635 F.3d 983, 989 (7th Cir. 2011) (parsimony provision must account for individual circumstances of each defendant); *United States v. Olhovsky*, 562 F.3d 530, 549, 550, 552 (3rd Cir. 2009) (citing *Gall v. United States*, 552 U.S. 38, 52 (2007)).

First, three months ago, on March 25, 2022, counsel for Ms. Bruey filed under seal a report dated March 4, 2022, and entitled “Psychosocial History and Assessment of Ms. Amber Bruey, d/o/b 2-21-1987” and authored by Alice L. Twining, a licensed clinical psychologist with offices in Virginia Beach, Virginia. A copy of this sealed report was provided to AUSA Reichling on March 25, 2022. All references in this memo to Dr. Twining’s report are nominated as “T. at ____.”

The other factual source is the presentence report dated June 16, 2022, and referenced through this memo as “PSR.”

1. The offense and the spoils of the offense

From the proceeds of this fraud, it is true that the defendants paid² \$23,566 in restitution related to Ms. Bruey criminal disposition (PSR ¶ 7). It is also true that the defendants bought a \$211,457.57 residence in North Carolina (PSR ¶ 6). Undoubtedly, each of these criminal acts directly benefitted Ms. Bruey.

² It is understood that Amber Bruey signed the checks for the Brueys. It is understood that Amber Bruey filed the majority of fraudulent applications. It is understood that the government charged the Brueys as conspirators and secured a conviction on that charge. This charging decision and its result are consequential: the Brueys are vicariously liable for the criminal actions of each other. However, as to the individual contributions and actions of each co-conspirator upon each other, the report of Dr. Alice Twining and the factual content of the PSR stand unchallenged.

Equally true, almost \$42,000 was consumed on “boy toys.” PSR ¶ 8 reports that criminal proceeds are traceable to the following:

- A 2019 GMC Yukon XL pickup truck, titled to Anthony Bruey.
- A 2020 Polaris PZR four-wheeler, titled to Anthony Bruey.
- A 2020 Honda Talon four-wheeler, titled to Anthony Bruey.³

Alice Twining noted that “according to documents provided by Ms. Bruey’s attorney, Ms. Bruey also spent almost \$42,000 on two motorcycles and three off-road vehicle and accessories.” (T. at 6). The documents Ms. Bruey’s counsel provided Dr. Twining are annexed hereto as “*Exhibit A*.” The source of all documents appearing in “*Exhibit A*” is the government’s discovery.

In addition to the equipment appearing at PSR ¶ 8, then, the \$42,000 amount was arrived at through consideration of the following items which were also purchased with the criminal proceeds:

- Two motorcycles for a total of \$3,630.54. (Item A of Exh. A).
- A Yamaha TT-R110E motorcycle. (Item B of Exh. A).
- Recreational vehicle accessories & safety equipment & clothing totaling \$2,372.08.

³ A total of these two off-road vehicles, plus the Yamaha motorcycle addressed *infra* totals \$35,878.60. See Items B & C of Exhibit A, *infra*.

Other than potential use of the GMC Yukon, none of the aforementioned purchases served a purpose for Ms. Bruey.

2. The married co-defendants

Anthony Bruey was abusing his former wife before he met Amber Bruey. According to Dr. Twining: “there is also history with documentation that he committed violence against his former wife, Meghan Bruey. His arrests and convictions are documented and presented as evidence, including assault on Meghan Bruey, going to her workplace, harassing her and violating her Protective Order.” (T. at 3). More specifically, and as it appears in “*Exhibit B*” to this memorandum, Meghan Bruey secured a no-contact Order of Protection in December 2007 after Mr. Bruey “said I’ll hit you bitch in my stomach because I am pregnant.”

Anthony and Meghan Bruey divorced in 2008.

Before Anthony and Amber Bruey married, he concealed his use of alcohol and illicit drugs for Ms. Bruey. (T. at 2). He also did not tell Ms. Bruey he had been hospitalized for drug rehabilitation. (T. at 3). Ms. Bruey advised Dr. Twining that her husband’s raging “could last all day and into the night.” *Id.* Marissa Higginbotham, Ms. Bruey’s sister “witnessed some of his [Anthony Bruey’s] hours-long rages, consisting of violent, uncontrollable anger.” *Id.* At PSR ¶ 81, Marissa Higginbotham reiterated

the concerns she expressed to Dr. Twining, advising Officer Primrose that “Anthony has untreated anger and substance abuse issues, which contribute to difficulties in their marriage.” According to Ms. Bruey:

During his rages, usually when Mr. Bruey was drinking heavily and/or doing drugs, or in withdrawal, he would break things in the home, including over time all the framed photographs of their family on the living room walls, her phone, and her key fob when Anthony threw it at a wall, putting a hole in the wall. He kicked the dishwasher so hard he put a dent in the door, breaking it. He broke other things in the kitchen and living room (...) He texted her obsessively, calling her terrible names, swearing at her, and making demands on her.

(T. at 3).

In a Cellebrite extraction of the Bruey’s cell phones provided in the government’s discovery, and apparently in the aftermath of the destroyed key fob mentioned above, the following takes place after Mr. Bruey departed the residence and *via* text message from 3:27 to 3:47 a.m. on August 8, 2021:

Anthony: I will prove to everyone that I don’t need anybody.

Amber: Yes you do. You have me and the kids.

Anthony: No I don’t.

Amber: You don’t need anymore [sic] but we want you.

Yes you do have us.

Anthony: I will continue to stay mad and continue to push everyone away Bc I only get hurt in the end.

I’m honestly not giving in this time.

3:30 in the morning! Now you know why I don't like anyone.

Amber: Why can't we just lay in bed together and get a few hours sleep? I want to be by you

Anthony: U didn't want to be by me when u left me at the clubhouse did u? Forgot already?

Or when I walked to the store.

Don't act like everything will be fine.

Amber: I didn't see you. I thought you left. I asked [M]ason where you were when he got in and he said he didn't know. I did want to be with you. You got out and walked off and I didn't see you even when we driving out.

And I didn't know you walked to the store.

Anthony: Excuses.

Amber: I kept asking where you were.

Anthony: After I was back?

Amber: I thought you were just sitting out front. You didn't say you were going anywhere. Then yes I was asking you where you were in between trying to talk to ppl about coming out to give us a new key.

I'm not saying you are going to be ok with everything I'm just asking that you come lay in a bed with me and let's get a little sleep.

Will you[?]

Anthony: No.

Amber: We can go upstairs or I can move Andrew.

Anthony: I'll sleep the same way I feel!!! Alone.

Amber: Ok. I'm sorry honey. I love you and I'm sorry.

Anthony: Yes I am! Go ahead call Mel and Ted bc they love you more.

Amber: No they don't.

Anthony: There will be life changing transitions when we get keys.

Right it's because they don't care.

Amber: Transitions like what[?]

Anthony: I'm going back to Lehigh.

Amber: And yes you are probably right. They don't like dealing with anything and I'm sorry they are like that.

You've already decided you don't want to be with me anymore?

Or you're just wanting time by yourself?

I want you and only you.

Anthony: I'll see what tomorrow brings but as of now! [sic]
We're enemies.

U let me out to hang so it's only right to treat u the same way you treat me.

Not giving a damn.

U wanted to play badass with the silent treatment so

I will get revenge.

Amber: I've apologized so many times. I thought everyone was joking around. I wasn't trying to leave you or hang out or hurt your feelings. I wasn't trying to be a badass by not talking. I didn't know what to say and [sic] I didn't want to say something and make you more mad.

Anthony: You should feel what it's like to be alone.

U got ur sister here to talk and help u! Fuck both of u.

Amber: I do. I don't like being away from you. That's why I've been asking you to come lay in bed with me. Even if we are mad or not talking I still want to be with you.

Anthony: So I am supposed to just let everything go and continue on with a miserable life[?]

U don't even show me the attention I ask for! Why should I even try anymore? It's all about what u want like always.

Amber: No I don't want you to be miserable. I'm just asking for a truce to rest and regroup and we can talk about it again in the morning after we've gotten some rest. I know you have to be tired.

Vicious words, although poisonous to any relationship, are not lethal.

Putting a loaded firearm to another's head is.

And that is exactly what Anthony Bruey did to Amber Bruey on July 1, 2016.

Describing the events that resulted in Mr. Bruey's St. Lucie County conviction for, among other violent crimes, aggravated assault with a deadly weapon, Officer Primrose writes at PSR ¶ 83:

Amber Bruey was the victim in a domestic violence incident for which her husband was convicted as the perpetrator. The arrest report from that case reflected deputies were dispatched to respond to a 911 text message where Amber Bruey indicated that her husband was threatening to kill her with a gun. Responding deputies spoke with Amber and observed her left eye was purple/black in color, which she indicated was the result of Anthony punching her. While speaking with deputies, Amber explained that days earlier during a social gathering, she was intoxicated and had grabbed a neighbor's hand which enraged Anthony. Anthony responded by slapping Amber in the face and giving her a black eye. Amber stated that Anthony then grabbed her by the throat for a few seconds, and she was unable to breathe. Amber said that Anthony punched a hole in the bedroom door before he went in their bedroom, grabbed an assault rifle, and pointed it at Amber threatening to kill her. Amber told deputies she watched Anthony put a fully loaded magazine in the weapon just prior to the threats. Amber said she didn't call 911 at the time because she was scared of her husband. According to Amber's statement to deputies, on the evening of this 911 call, another argument began about Amber holding the neighbor's hand threatened to cut the tattoo off Amber's back and ankle. He told their three children that Amber was a 'whore,' and that she wished Anthony was not their 'daddy.' Anthony forced Amber to tell their children that Amber had held another man's hand. Anthony said he would shoot Amber if she didn't tell this to the children. Anthony subsequently grabbed a large kitchen knife, and told Amber to put down their young son she was holding. Amber told deputies Anthony demanded she go into the kitchen so he could cut her tattoos, and she begged him not to. According to Amber, Anthony said he would cut her throat instead. Anthony eventually put the knife down, but he told Amber after the children went to bed, he would kill her. Amber texted 911 because she did not want Anthony to hear her calling

them instead. During the incident at their home, deputies interviewed the children and one of the couple's children indicated that 'daddy was being mean' to mommy earlier in the evening. During the encounter with deputies, Amber showed deputies where Anthony kept his firearms under the bed. While Amber did this, one of their children told deputies that one of the firearms was the one that 'daddy pointed at mommy.'

Unmentioned by the Office of Probation is the other documented incident of domestic violence that originally appeared in Ms. Bruey's May 31, 2022, objection letter and now appears at page 82 of the PSR: the August 2009 event where Ms. Bruey fled the marital residence after her husband punched her in the face. Although unsuccessful in convincing the Office of Probation that what follows is pertinent to § 3553(a) sentencing factors in this matter, Ms. Bruey nonetheless offered at page 82 of the PSR:

On August 26, 2009, in Wayne County, North Carolina, the defendant called law enforcement from a business. She reported to police that she left her residence after Anthony Bruey punched her in the face following a discussion over whether Anthony Bruey used money the defendant gave him to buy drugs. Police went to her residence and detained Anthony Bruey. After speaking with members of her family, the defendant declined to press charges.

The emotional and physical turbulence in the Bruey marriage is not limited to physical violence. Dr. Twining observes:

Ms. Bruey told this examiner that her husband Anthony watches a lot of pornography on media. He told his wife, Amber that she must have pornographic sex with him or he'd find some other

woman who would do it.⁴ Amber knew that he was exchanging pornography via mobile phone with a woman friend who had been his client, as well as other people. In light of this, feeling that she had no choice, Amber agreed to pornographic sex, which she described as ‘gross and very painful.’ With Ms. Bruey’s knowledge, and feeling she had no choice, Mr. Bruey also recorded some of these sex acts on his phone. (Ms. Bruey’s attorney has seen said videos).

Anthony Bruey controls Amber Bruey’s access to others by forbidding her from continuing to associate with her friends. See T. at 5. Thus, as inventoried *supra*, Mr. Bruey (i) used actual violence against Ms. Bruey, (ii) threatened violence against Ms. Bruey, (iii) threatened violence against himself,⁵ (iv) directly exposed their children to a degenerate home life⁶ and, yet accused Ms. Bruey of disparaging him to their children,⁷ (v) consumed

⁴ The government’s Cellebrite extraction on the Brueys’s cell phones corroborates these extraordinary demands. Undersigned counsel will spare the Court the details.

⁵ Previous to the text conversation appearing at pages 5 through 8, *supra*, Mr. Bruey texts his wife that “suicide is best for me” because “kids hate me and I have absolutely nobody! Not even u! Ur more concerned about everything else.”

⁶ At pages 9-10, *supra*, Officer Primrose notes the presence of the Bruey children during their father’s armed assault on their mother. Additionally, and returning to the government’s Cellebrite extraction, at 8:39 a.m. on May 15, 2018, Mr. Bruey sends Ms. Bruey the following four texts in succession: “Bring my fucking kids back to house/ I am not going back to work ever! U will not get anymore money from me/ I’m leaving you and the kids bc Id rather not talk about drugs and argue around the kids and them think bad about me/ I know you don’t care but I do.” Further, on page 3 of Dr. Twining’s report, Ms. Bruey reports that when she was unable to provide her husband cash to buy crack cocaine, Mr. Bruey grabbed their infant son from her arms and refused to return him.

⁷ At 9:22 am and at 9:33 a.m. on April 25, 2019, Mr. Bruey texted his wife: “So I obviously never made you happy and u think u and the kids never made me happy! I’ve made you miserable and I’m sorry for that! I’m gonna move out so u can be here with

almost \$42,000 in criminal proceeds on leisure equipment entirely disconnected from Ms. Bruey's interests and (vi) "told Amber how to dress so that men wouldn't look at her."⁸ As to this final point, and along the line of Mr. Bruey's armed insistence that Ms. Bruey admit her indiscretions to their children, Mr. Bruey (vii) routinely insisted his wife was unfaithful. Referring once more to the government's Cellebrite extraction, from 10:31 a.m. to 10:48 on June 9, 2021, the following exchange of text messages occurs:

Anthony: I really thought we were past a certain point but we aren't! And I will not wait anymore! I think tomorrow I'm going to my mom and dads! I'm gonna finish O'Neal's and cash the check! U can do whatever the fuck u want.

Your [sic] unbelievable.

Amber: What are you talking about? I didn't push you away. I turned over to slide over. Why would you go to your mom and dads?

Anthony: Bc it's the only place I can go to get my own shit.

U got what you want! I'll start over.

Amber: This is what I said the other day about when you get mad at me you say you want to leave. I've never said

kids and we will figured [sic] when I can see the boys if that's ok/ If u want u can bring the kids here and have some time to ur self if that's what they want to do! I don't know how much shit u talked about me around them! I know u like to tell them I don't care and stuff like that."

⁸ See T. at 4.

I don't want to be with you ever Bc you are the only one I want to be with.

Anthony: Bullshit.

Amber: Everything is yours here. You have your own stuff here.

Anthony: That's why u cheated on me.

No it's yours.

Amber: How it is mine?

It's all ours. Nothing is just mine.

Anthony: Bc I don't care.

Amber: Why don't you care? It's everything you worked for.

You are what I want. Nothing else so there's no reason for you to think differently.

Anthony: Yea worked on [sic] for you and it's never enough! Right! Nice try avoiding the u cheated comment. Ur still a cheater and starving for attention Bc I don't give you enough.

U don't give a fuck.

I know ur gonna want/find someone else so why should I even try anymore!

U can't respond to me Bc ur probably messaging someone else!

As to items (i) through (vii), Dr. Twining included the Power and Control Wheel in her report, a copy of which is annexed hereto as "*Exhibit*

C.” Adopting the Power and Control Wheel into her conclusions, Dr. Twining observes at T at 8:

1. Mr. Bruey controls the money (even though she pays their bills, as evidenced by her signature on the checks for his motorcycles and off-road vehicles), and he demands funds for drugs and alcohol, even though they are usually short of money. He controls where she goes and what she does. He texts her frequently to keep track of her and make demands on her. Ms. Bruey stated that his texts are like an adolescent who is angry. His texts are vicious and attack her. He writes hurtful things to her and criticizes her for little things.
2. Ms. Bruey has kept the sexual abuse secret from her family and her medical doctors. She describes being nervous and on edge because she does not know when he will blow up about something, or demand pornographic sex (See Appendix B: The Power and Control Wheel). In this context, Ms. Bruey does everything she can to prevent Mr. Bruey’s abuse. Her response to his rages has been to comply, go into other rooms in the house (although he often follows her from room to room), crying and asking him to calm down.
3. It is this examiner’s professional opinion that Ms. Bruey is highly influential and susceptible to coercion due to the power and control that Mr. Bruey exerts over her. She is not allowed to question his authority for fear of being attacked verbally and physically. She lives with high anxiety and stress, and fears that Mr. Bruey will explode at any time.

And so, while the government is free to believe the “a lot of the brains behind this operation was the wife,” (Doc. 95 at 9:17-18), Amber Bruey was certainly the peon of the operation. The PSR and Dr. Twining’s report

demonstrate the balance of control in “this operation” was wildly asymmetrical as it was driven and derided by physical and emotional spousal abuse -- a well-documented affliction that preceded the Amber Bruey’s marriage. It is respectfully submitted that, as in harness racing and dog sledding, the most responsible party is the one holding the reins. In this offense, that party decidedly and demonstrably was Anthony Bruey.

3. The history and the characteristics of Amber Bruey

The realm of 18 U.S.C. § 3553(a) includes consideration of the defendant’s life history. *See United States v. Battiest*, 553 F.3d 1132, 1136 (8th Cir. 2009) *cert. denied* 556 U.S. 1265 (2009). This only make sense as Ms. Bruey has a constitutional right to individualized sentencing⁹ where the Court must approach every defendant “as an individual and every case as a unique study in the human failings that sometimes mitigate, sometime magnify, the crime and the punishment to ensue,” *Koon v. United States*, 518 U.S. 81, 113 (1996).

Beginning where Part I of this memo concluded – Ms. Bruey’s anxiety and stress -- PSR ¶ 92 reports that Ms. Bruey is seeing a mental-health counselor and PSR ¶ 91 reports Ms. Bruey is currently taking the following

⁹ *United States v. Brown*, 772 F.3d 1262, 1266 (11th Cir. 2014).

medication for depression, anxiety and insomnia: Klonopin, Wellbutrin, Doxepin, Ambien and “a third medication, often used to treat depression[.]”

At page 4 of her report, Dr. Twining writes:

This writer reviewed Ms. Bruey’s medical records of four (4) visits with medical doctors in Florida, from 2018-2019. Ms. Bruey reported anxiety, depression, sleep difficulties and high stress to her doctor. Sometimes she reported headaches and painful urination, back and neck problems. She was prescribed multiple medications (10 total) for depression, anxiety and sleep disorders, and for allergies, headaches and urinary and back pain. For someone Ms. Bruey’s age, this examiner believes it is extraordinary to prescribe this amount of medications which may be due to her misdiagnosis. Unfortunately there is no record of screening for Intimate Partner Violence (IPV) or PTSD.

Contributing further to the stress of a volatile and precarious marriage, her father died when she was two, her step-father walked out on her when she was 19 and her first husband cheated on her when she was 22. See T. at 2; PSR ¶ 80. Returning to the abandonment by her step-father, Ms. Bruey’s mother was awarded custody of Ms. Bruey and her four, younger step-siblings. (T. at 2). Ms. Bruey helped her mother raise her other children before Ms. Bruey dropped out of a nursing program when she met her co-defendant/husband. *Id.*

Unsurprisingly, Ms. Bruey’s physical health is less than would be desired. She suffers from scoliosis for which she has been prescribed analgesics and muscle relaxers, to include at least one narcotic analgesic.

See PSR ¶ 89. Ms. Bruey's spine is fused at her hip and she requires surgery – albeit she has postponed the surgery until her children are older as there is a risk of paralysis. *Id.* at ¶ 89 and at page 84. To add to this physical pain, Ms. Bruey suffers migraine headaches and asthma for which she is prescribed medications. See PSR ¶¶ 88, 90.

Ms. Bruey's mother was awarded custody of Ms. Bruey and her four, younger step-siblings. *Id.* Ms. Bruey helped her mother raise her other children before Ms. Bruey dropped out of a nursing program when she met her co-defendant/husband. *Id.*

(3)(A). Ms. Bruey's parenting and family

Amber Bruey's in-laws described her as a great mother and described the Bruey children "as smart and very well behaved." See PSR ¶ 82. Her sister, Ms. Higginbotham, "expressed shock over the defendant's arrest for the instant offense." See PSR ¶ 77. Notwithstanding unusual resistance, Ms. Bruey remains employed. See PSR ¶ 101.¹⁰

The Brueys have four boys, ages 2 through 12. See PSR ¶ 82. The two-year-old is still breast feeding. *Id.* The eight-year-old suffers from separation anxiety as well as allergies that require him to carry an EpiPen,

¹⁰ Ms. Bruey has lost her previous job and her previous volunteer position as a result of malevolent and anonymous callers. See PSR ¶¶ 102-103. Her current job requires a round-trip drive of over 200 miles. See PSR ¶ 101.

consume multiple medications and daily and begin weekly allergy shots soon. *Id.* The 10-year-old requires a special diet as he “was diagnosed as a baby with a disorder that prevents his body from processing certain foods.” *Id.* Finally, the oldest son is scheduled for a surgical procedure to remove moles. *Id.*

As parental incarceration has been demonstrated to directly contribute to the disintegration of the family through increased incidence of juvenile delinquency, mental illness, drug abuse, academic decline and subsequent unemployment.¹¹ The Court may thus consider the deleterious effect that imprisoning Ms. Bruey will have on her four children. *United States v. Rivera*, 994 F.2d 942, 953-54 (1st Cir. 1993) (pre-*Booker*) (citing cases); *United States v. Chambers*, 885 F.Supp. 12, 14-15 (D.D.C. 1995 (pre-*Booker*); *United States v. Strong*, No. 96-CR-392-2, 1996 WL 745397, *1 (N.D. Ill. 1996) (pre-*Booker*) (citing *United States v. Pena*, 930 F.2d 1486, 1494-95 (10th Cir. 1991) (“[c]ourts have found that when a defendant is the sole caretaker for others that qualifies as an extraordinary circumstance”) see *United States v. Alba*, 933 F.2d 1117, 1122 (2nd Cir. 1991) (“[t]he sentencing court found that Gonzalez' incarceration in accordance with the Guidelines

¹¹ See generally Austin, Clear, et. al, *Unlocking America: Why and How to Reduce America's Prison Population*, Department of Justice, Office of Justice Programs (Nov. 2007).

might well result in the destruction of an otherwise strong family unit and concluded that these circumstances were sufficiently extraordinary in this case to support a downward departure”); *United States v. Hammond*, 37 F.Supp.2d 204, 207 (E.D.N.Y. 1999) (“[a] sentence without a downward departure would contribute to the needless suffering on young, innocent children”); *see also United States v. Antonakopoulos*, 399 F.3d 68, 83 (1st Cir. 2007) (failure to secure downward departure for parental responsibility pre-*Booker* does not foreclose basis for downward variance on same ground post-*Booker*). Such an argument is only fortified where the health of the children -- as in this case -- is not the best. Indeed, Dr. Twining recommends professional help for all of the Bruey children “to counteract the violence and abuse they have witnessed and overheard, and to help them learn to self-regulate their feelings and manage their anger.” (T. at 8).

(3)(B). Ms. Bruey’s overstated criminal history

Part of Amber Bruey’s life history are her criminal dispositions, all of which are reported at PSR ¶¶ 65-66.

Almost eight years ago, Ms. Bruey was granted a withheld adjudication on the retail theft of less than \$300 of toys and household goods from a Port St. Lucie Walmart.¹² For this seven-year-old, non-adjudication, Ms. Bruey

¹² Although the narrative at Paragraph 65 reports that documentation provided by the

scores one criminal history point.

Four years ago, Ms. Bruey was granted a withheld adjudication for the felony of public-assistance fraud. Other than Ms. Bruey's failure "to disclose a material fact used in making a determination of her qualifications to receive aid or benefits from the public assistance programs of the State of Florida or the Federal Government," (PSR ¶ 66) nothing is known about this adjudication. While the government is entitled to believe that, because of this non-adjudication, Ms. Bruey has "more of the white-collar mind than Mr. Bruey[,]" see Doc. 95 at 8:20-21, all that is known about the non-adjudication is that which appears above.

Did Ms. Bruey connive with heightened premeditation in the commission of a non-adjudicated felony? It is surely possible – albeit less likely than usual insofar as the matter was non-adjudicated. We just don't know.

On the other hand, did Ms. Bruey sincerely secure benefits by reporting the father of her children had abandoned the family and then fail to

defendant states "the items taken during this offense included houseware and toys[,]" in fact the documentation that was provided by the defendant is documentation provided by the St. Lucie County Court which contained documentation from Wal-Mart stating that Ms. Bruey, indeed, did steal toys and housewares. This objection related to Paragraph 65 of the initial disclosure and was supported by an exhibit annexed to the objection letter. That exhibit from the objection letter is now annexed hereto as "**Exhibit D**" to this memorandum.

discontinue those benefits after the father decided to return to the family? That is also surely possible. But we just don't know.

Unless a withheld adjudication in a public-assistance fraud case where no facts are known reliably supports a contention that the perpetrator of those acts is predisposed to white-collar offense, then there is no reliable basis to support that contention.

Here's what we do know: Ms. Bruey picks up a total of three criminal history points for this non-adjudication. She picks up one point for the non-adjudication itself and an additional two points for being on probation for the non-adjudication at the time of the instant offense. See PSR ¶¶ 66, 68. As such, for a withheld adjudication on a non-violent felony wherein the defendant was sentenced to five years of probation, Ms. Bruey scores the maximum amount of points allowed for any single sentence under USSG § 4A1.1(a).

Because Ms. Bruey picks up a total of four criminal history points for these non-adjudications, see PSR ¶ 69, proceeding from the total offense level reported in the PSR at ¶ 61, these criminal history points in isolation raise Ms. Bruey's advisory low-end by 20 percent: from 51 to 63 months.

It is therefore respectfully submitted that Criminal History Category III for Ms. Bruey is disproportionate to her criminal history.¹³

4. Conclusion

Before the Court is a 35-year-old victim of domestic violence. Notwithstanding the violent chaos of her homelife, her abuser's family believes she is a good mother. Notwithstanding the obstacles created by unknown malevolents, she has managed to secure employment far from her current home, but much closer to where her family will move should the Court not incarcerate her. See PSR ¶¶ 85, 101. As Ms. Bruey advised Officer Primrose at PSR ¶ 46:

[S]he is very sorry for her involvement in the [offense] and that she wishes she could 'take it back.' The defendant further stated that she cooperated with police 'from the beginning' including 'signing over stuff' to the police.¹⁴

In arriving at a sentence for Ms. Bruey that (i) takes into account her history and characteristics, see 18 U.S.C. § 3553(a)(1), and (ii) that is

¹³ According to the Introductory Commentary at Part A of Chapter 4 of the United States Sentencing Commission Guidelines Manual, the specific factors included in scoring criminal history "are consistent with the extant empirical research assessing correlates of recidivism and patterns of career criminal behavior." In the matter at bar, it is respectfully submitted that nescience as to the facts supporting one felony charge and the theft of toys and housewares supporting a misdemeanor charge should not aggregate to Criminal History Category III.

¹⁴ One of the items "signed over" was about \$20,000 in a bank account. Investigators were not aware of the existence of these proceeds at the time they were surrendered.

sufficient but not greater than necessary to comply with the need for retribution, deterrence, incapacitation and rehabilitation, *see* 18 USC § 3553(a)(2), *see also* Footnote 1, *supra*, and (iii) that embodies Ms. Bruey's constitutional right to individualized sentencing, *see Koon, supra; Brown, supra*, Ms. Bruey respectfully submits that before the Court is a mother of four children who has never had the benefit of a wholesome experience with a male – as father or husband. She would not only benefit from continued mental-health treatment, *see* PSR ¶¶ 91-92 and T. at 8,¹⁵ while serving a term of supervised release, but it is respectfully submitted that a sentence of supervised release will adequately address all of the constitutional and statutory factors inventoried in the preceding sentence.¹⁶ *United States v. Holland*, 874 F.2d 1470, 1475 (11th Cir. 1989) (twin goals of probationary sentence are rehabilitation of the probationer and protection of the public).

¹⁵ As her second recommendation, Dr. Twining writes: “Ms. Bruey needs treatment from a psychotherapist who is well versed in the dynamics of interpersonal violence. She would also benefit from a referral to a certified community program that focusses on support and recovery for persons living with sexual and interpersonal violence.” (T. at 8).

¹⁶ *See, e.g., Gall v. United States*, 552 U.S. 38, 48, 53-54 (2007) (as probationers are subject to conditions that substantially restrict their freedom, term of probation may be reasonable under § 3553(a) so long as it takes into account real conduct and circumstances). *See generally United States v. Edwards*, 595 F.3d 1004, 1016 n.9 (9th Cir. 2010) (quoting Senate Report No. 98-225 [August 4, 1983] at 92: “It may very often be that release on probation under conditions designed to fit the particular situation will adequately satisfy any appropriate deterrent of punitive purpose”).

For the reasons appearing in the PSR, in Dr. Twining's report, in this memorandum and to be presented at the forthcoming sentencing hearing in this matter, Mr. Bruey respectfully seeks a downward variance and asks the Court to consider a sentence of time-served to be followed by a term of supervised release.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 21st day of June 2022, a true copy of the foregoing was electronically filed and served electronically to Trent Reichling, Office of the United States Attorney, 2110 First Street, Fort Myers, Florida.

/s/ James Lappan
James Lappan, Esq.
Assistant Federal Defender