

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION**

UNITED STATES OF AMERICA,
Plaintiff,

CASE:. 9:24-cr-80103-AMC-1

V.

DUSTIN SEAN MCCABE
Defendant.

_____/

DEFENDANT’S COMPREHENSIVE OBJECTIONS TO THE PRESENTENCE INVESTIGATION REPORT

COMES NOW the Defendant, Dustin Sean McCabe, by and through counsel, and pursuant to Rule 32(f) of the Federal Rules of Criminal Procedure, respectfully submits the following comprehensive objections to the Presentence Investigation Report (PSR) prepared on May 8, 2025. These objections are intended to correct, clarify, or strike language that is inaccurate, prejudicial, conclusory, or beyond the factual findings of the jury. The PSR must reflect a fair, impartial, and legally supportable record.

Objection 1: Language Implying Direct Causation of Death (¶1, ¶20)

The PSR repeatedly states that Mr. McCabe 'caused the death' of M.C.G.F. by 'misconduct, negligence, and inattention.' This implies a degree of direct and intentional causation not found by the jury. The jury found Mr. McCabe guilty under 18 U.S.C. § 1115 based on criminal negligence—not that he personally or intentionally caused the death. The language should be revised to: 'Mr. McCabe was convicted under 18 U.S.C. § 1115 based on a jury finding of criminal negligence.'

Objection 2: Prosecutorial Language in Fraud Descriptions

Phrases such as 'scheme and artifice to defraud,' 'used to enrich himself,' and 'in furtherance of the scheme' appear multiple times. These mirror the government’s charging

language and go beyond the jury's verdict. The defense requests that such phrasing be replaced with: 'Mr. McCabe was convicted of submitting materially inaccurate PPP loan applications, which the jury determined met the elements of 18 U.S.C. § 1343.'

Objection 3: Language Suggesting Intent Beyond the Verdict

Paragraphs referencing Mr. McCabe's same-day statements about business income and loan submissions imply deliberate deception beyond the evidence. Paragraph 32 states he 'used proceeds to enrich himself,' although no evidence at trial established misuse or personal gain from the loans. This should be revised to reflect the actual finding: 'Mr. McCabe was convicted of submitting PPP loan applications containing material misstatements.'

Objection 4: Obstruction of Justice Language Based on Alleged Perjury

Paragraph 36 applies a two-level enhancement for obstruction of justice based on eight government-alleged claims of perjury. However, Mr. McCabe was never charged with perjury, and the Court has made no formal finding that he willfully provided false testimony under the legal standard established in United States v. Dunnigan, 507 U.S. 87 (1993). The Supreme Court requires an independent judicial determination that the defendant gave false testimony about a material matter with willful intent to mislead. No such finding was made at any point to date.

The enhancement is therefore not supported by the record, lacks legal justification, and unfairly inflates the guideline range. It should be stricken in full. Paragraph 36 must also be revised to remove all references to obstruction of justice and perjury. This language constitutes improper and prejudicial surplusage.

Objection 5: Inclusion of Funeral Expenses and Emotional Losses

The PSR includes a letter from the decedent's sister requesting restitution for funeral and emotional losses. However, Count One—seaman's manslaughter under 18 U.S.C. § 1115—is not a qualifying offense under the Mandatory Victim Restitution Act (MVRA). Restitution for emotional suffering, funeral costs, or death-related losses is not legally permissible unless expressly authorized by statute. See 18 U.S.C. § 3663A; United States v. Johnson, 440 F.3d 832 (6th Cir. 2006). To include such claims in the PSR is improper and prejudicial, and suggests to the Court an entitlement that the law does not support.

Moreover, the victim's family has already received a \$300,000 insurance settlement paid by Mr. McCabe's carrier in 2020, fully resolving all civil claims associated with the death. This payout further underscores the inappropriateness of duplicative restitution and rebuts any suggestion that no compensation has been made.

The defense respectfully requests that all references to funeral expenses, emotional distress, and victim impact letters relating to Count One be removed from the PSR.

Objection 6: Inclusion of Non-Adjudicated Employment Complaints

Paragraph 98 references employment complaints from a former employer, including 'reprimands' and 'altercations' unrelated to the instant offense. These incidents were never adjudicated, did not result in discipline relevant to this case, and have no probative value regarding the defendant's character or criminal history.

Inclusion of such material is unfairly prejudicial and invites the Court to rely on unverified hearsay to assess the defendant's conduct. See United States v. Oliver, 525 F. App'x 241, 243 (4th Cir. 2013) (reversible error to rely on unsupported PSR allegations not corroborated by evidence); United States v. Greene, 71 F.3d 232, 235 (6th Cir. 1995) (sentencing decisions may not be based on unreliable or uncorroborated information).

Because these allegations are not linked to any criminal conviction or formal misconduct, they serve no legitimate purpose and should be stricken in their entirety from the Presentence Investigation Report.

Objection 7: Language Suggesting Evasion or Dishonesty

Paragraphs 14 and 15 reference Mr. McCabe allegedly walking away from a law enforcement conversation and suggest that he misrepresented the purpose of his boat. These statements are unverified, not supported by any criminal charge or official misconduct finding, and were not relevant to any issue adjudicated at trial.

Including this language in the PSR is highly speculative, prejudicial, and inflammatory. It implies deceptive intent without factual foundation and has no bearing on the guideline calculation or statutory sentencing factors under 18 U.S.C. § 3553(a). Courts have repeatedly warned against the use of unsupported allegations that improperly influence sentencing outcomes. See United States v. Rone, 743 F.2d 1169, 1175 (7th Cir. 1984) (PSRs must be free from misleading information).

The defense emphatically requests that this language be stricken in its entirety from the Presentence Investigation Report.

Objection 8: Use of Guidelines Language Absent Enhancement

The PSR makes references that imply Mr. McCabe exercised a 'special skill' or held a 'position of trust' in a manner warranting heightened culpability. However, the Probation Office did not formally apply enhancements under U.S.S.G. §§ 3B1.3 (abuse of trust) or 3B1.1 (aggravating role), nor did the Court make any such finding.

Inclusion of this language without corresponding guideline application is misleading and prejudicial. It subtly suggests aggravating factors that were not charged, litigated, or adopted. Courts have held that sentencing decisions must not be based on uncharged enhancements or insinuations. See United States v. Stallings, 701 F. App'x 164, 167 (3d Cir. 2017) (reversing sentence based on reliance on uncharged conduct); United States v.

Sawyer, 588 F.3d 548, 554 (8th Cir. 2009) (sentencing court erred by considering position of trust where enhancement not applied).

The defense requests that all such suggestive language be removed to preserve the integrity of the sentencing process.

Objection 9: Mischaracterization of Recreational Vessel Classification (¶¶5, 18, 22, 24)

The PSR repeatedly implies that Mr. McCabe engaged in intentional wrongdoing or deception by operating his vessel as a recreational boat. This mischaracterization appears in Paragraphs 5, 18, 22, and 24. However, Mr. McCabe's vessel was lawfully classified as a recreational vessel under the Uninspected Passenger Vessel Act (UPVA) of 1993. The law explicitly permits the operation of vessels carrying six or fewer passengers for hire without a formal Coast Guard inspection or certification as a commercial passenger vessel.

The classification was legally appropriate and consistent with federal maritime regulations. Suggesting that Mr. McCabe acted with criminal intent simply for using a lawful and recognized vessel classification distorts the facts and improperly colors the narrative of both the manslaughter and fraud charges.

See United States v. Phillips, 367 F.3d 846, 856 (9th Cir. 2004) (regulatory violations must be distinguished from criminal misconduct); United States v. Peterson, 538 F.3d 1064, 1070 (9th Cir. 2008) (conduct consistent with lawful interpretation of maritime regulations cannot form the basis for intent-based enhancements).

The defense requests that all references to the vessel classification as misleading, deceptive, or improper be removed or revised to reflect its legal basis under the UPVA.

Objection 10: Misleading Narrative Regarding PPP Forgiveness Documentation (¶¶22, 24)

Paragraphs 22 and 24 of the PSR suggest that Mr. McCabe's loan forgiveness applications were fraudulent due to insufficient documentation. However, under the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act of December 2020, PPP loans under \$150,000 were eligible for streamlined forgiveness. Borrowers were not required to submit supporting documentation with their forgiveness applications. Instead, they were allowed to certify compliance using a simplified form describing the number of employees retained, estimated payroll costs, and total loan value.

The Small Business Administration's Procedural Notice 5000-20086 (January 2021) specifically stated that forgiveness for loans below \$150,000 could be granted based on a one-page certification. This requirement did not change the borrower's obligation to maintain records, but it eliminated the need to submit those records for forgiveness processing.

Accordingly, the PSR's implication that the absence of submitted documentation constitutes fraud is factually and legally inaccurate. See 15 U.S.C. § 9005(e); SBA Procedural Notice 5000-20086 (2021). The defense requests that any assertion of fraud based on the lack of documentation in the forgiveness process be removed or revised to reflect the regulatory standards in effect at the time.

WHEREFORE, the Defendant respectfully requests that the U.S. Probation Office and the Court consider and sustain these objections, and revise the Presentence Investigation Report to reflect accurate, impartial, and legally supported findings consistent with the record and applicable law.

Respectfully submitted,

TERRENCE O'SULLIVAN

FLA BAR 0644031

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically noticed through the CM/ECF system to Zachary A. Keller, AUSA, and all other parties of record, on this 22nd Day of May, 2025.

Respectfully submitted,
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