IN THE SUPREME COURT
OF THE UNITED STATES
October Term 2021

CASE NO: _____

Eleventh Circuit United States Court of Appeals
Case No. 20-13275

(Northern District of Florida No. 3:19-cr-00110-RV-1)

SHANE PATRICK SPRAGUE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETTION FOR A WRIT OF CERTIORARI to the
UNITED STATES COURT OF APPEALS for the ELEVENTH CIRCUIT
With Incorporated Appendix

SHERYL J. LOWENTHAL
CJA Appellate Counsel for
SHANE PATRICK SPRAGUE
Suite 1511
9130 South Dadeland Boulevard
Miami, Florida 33156-7851
Tel: (305) 670-3360
Florida Bar No. 163475

North Florida Office: 221 East Government Street
Pensacola Florida, 32502-6018 Tel: 850-912-6710

Questions Presented

QUESTION ONE

Whether in the exercise of its supervisory jurisdiction over the United States Courts, this Court should correct the correctable injustice that occurred when the Eleventh Circuit affirmed Sprague's conviction where the evidence was insufficient to support a conviction of conspiracy to violate the Animal Welfare Act?

QUESTION TWO

Whether in the exercise of its supervisory jurisdiction over the United States Courts, this Court should correct the correctable injustice that occurred when the Eleventh Circuit affirmed Sprague's conviction where the jury was rushed, coerced, and deliberated beginning at 7:45 Friday evening, continuing until 2:00 Saturday morning, because the court made clear that it did not want to continue deliberations on Saturday, and said that "next week" was not convenient for jury deliberations due to scheduled matters in the courtrooms.

Table of Contents and Citations

TABLE OF AUTHORITIES

Cases:

The United States Constitution

The United States Code

PETITION FOR WRIT OF CERTIORARI

Petitioner Shane Patrick Sprague respectfully petitions this Honorable Court for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit, addressed to the unjust and erroneous decision affirming his conviction entered in violation of the Fifth and Sixth Amendments of the United States Constitution.

PARTIES TO THE PROCEEDINGS

Shane Patrick Sprague and Derek Jedediah Golson were the defendants on trial in the Northern District of Florida. Three codefendants Haley Murph, David Moser, and James Peek, pleaded guilty. Golson was acquitted of all charges. Sprague, acquitted of all charges but one, was the appellant in the Eleventh Circuit Court of Appeals. The plaintiff-prosecution-appellee United States of America is the respondent.

OPINION BELOW

The Eleventh Circuit issued a 21-page nonpublished decision, September 10, 2021, No. 20-13275, affirming Shane Sprague's conspiracy conviction and sentence following a jury trial on dogfighting-related charges under the Animal Welfare Act, 18 U.S.C. §371.

The appeal to the Eleventh Circuit from the final judgment of the Northern District of Florida (No. 3:19-cr-00110-RV-1), was timely. Copies of the district court judgment, the appellate opinion, and the Eleventh Circuit order denying the timely-filed petition for rehearing all are in the attached Appendix.

STATEMENT OF JURISDICTION

Final judgment was entered in the Florida Northern District on August 25, 2020. The district court had jurisdiction. 18 U.S.C. §3231. A notice of appeal was timely filed under FRAP 4(b). The Eleventh Circuit had jurisdiction. 28 U.S.C. §1291. Subject matter jurisdiction is conferred by Supreme Court Rule 10(a). The opinion was entered on September 10, 2021. Sprague timely filed a petition for rehearing that was denied by order of October 14, 2021. This Petition is timely filed timely pursuant to Supreme Court Rule 13.1.

The United States Constitution

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury … nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law…

Sixth Amendment

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

Course of Proceedings, Disposition in the Courts Below, And Relevant Facts

At stated in the opinion, in 2019 a grand jury in the Northern District of Florida indicted Sprague, Golson, Murph, Moser, and Peek, for conspiring to violate the Animal Welfare Act and to sponsor and exhibit dogs in animal-fighting ventures, to possess, train, sell, purchase, transport, deliver, and receive dogs for fighting, and to use interstate commerce to advertise an animal for dogfighting. Count 1 charged Sprague and Golson with creating and operating a kennel that housed and trained "pit-bull-type dogs" for dogfights, acquired, and maintained medical equipment to treat dogs without a veterinarian, planned and carried out dogfights, and communicated with each other and others about dogfighting. The indictment charged overt acts in furtherance of the conspiracy; on April 3, 2017 Sprague advertised a dog for sale online for Golson; and Peek sold and delivered a dog to Sprague who sold and delivered it to a buyer in Montana.

Statement of the Relevant Facts

At trial the government presented ten witnesses and exhibits including photographs, videos, recorded conversations, transcripts of texts, Facebook postings, and items seized during searches of the residences and properties of Sprague, Golson, and others.

The facts in the light most favorable to the government are lengthy and complicated. The government presented evidence of recorded calls in which Sprague seemed to describe dogfighting including: "We did her fourth *** that bitch devastated one of them. One of them was… a one-time winner out of south Florida – a heavy Mayday dog;" "that Skull dog put a… beating on that little pup. But at the same time, that pup … never gave up and, she, when we broke them apart, she wanted more;" I sent one of the males to …Tennessee … the male in Tennessee just killed a heavy-bred Homer dog, what, last week;" and "… out in the woods… one of my bulldogs got gutted …all the way to his chest. . . she stitched [him] up."

Sprague also used Facebook to arrange purchase of a dog from someone preparing two dogs for upcoming fights and told the person that his Gator-line female dog won a contract fighting match, and four of her off-spring won contract match dogfights. Sprague and a codefendant discussed

and shared photographs of a "yard accident" in which two of his dogs killed each other. Sprague wished he could have seen it.

In private messages with a codefendant Sprague wanted the codefendant to fight one of his dogs against a champion named "Eulogy," and offered to walk the codefendant through the process of getting the dog ready to fight. They agreed to "roll" fight their dogs Orca and Batman. On Facebook Sprague posted videos of his dogs being "baited" against one another. In one video he said the two dogs "rolled" or fought before. Sprague's phone contained a video of part of a dogfight. A computer analyst said it was taken with a phone of the same make and model as Sprague's and saved on the phone where videos and photographs were stored.

In another message Sprague and discussed using hog-hunting as a cover for keeping fighting dogs. Sprague discussed intentions to use dog shows as a cover to avoid detection by law enforcement. He fought one of his female dogs four times, once for 27 minutes and she was ready for more.

While executing a search warrant for Sprague's home agents seized dogfighting items including equipment, magazines, two dogs with scarring determined by a forensic veterinarian to be consistent with dogfighting. Other dogs on the property were consistent with use in organized dogfights,

separated from one another on heavy chains, close enough to see and taunt each other, but separated to minimize the possibility that they would attack and kill one another. Sprague's defense was that his communications were not to arrange dogfights or illegal transactions, but to "lure" dogfighters to Pensacola to "Punch their lights out."

Evidence showed that Sprague advertised dogs for sale on social media, based on their fighting bloodlines and the pedigrees on the "Peds Online" website. The "pedigree" links for the advertisements were for twenty dogfighting match wins in the recent lineage of those dogs.

Evidence showed that Sprague received a dog from Peek and sold and shipped the dog to a customer in Montana. There were Facebook messages, an air-waybill, and money order records. Messages showed that Sprague and the customer were interested in the dog's provenance from Peek's bloodline of fighting dogs.

On September 17, 2019, a grand jury in the Northern District of Florida returned a 44-count indictment against Sprague and codefendants Derek Golson, Haley Murph, David Moser, and James Peek. Count 1 charged them all with conspiracy to violate the Federal Animal Welfare Act; and 43 counts charging individual defendants with substantive charges of

animal-fighting ventures violating the prohibition against possession, sale, transporting, delivering, or receiving a fighting animal. An "animal fighting venture" was "any event in or affecting interstate or foreign commerce that involves a fight conducted or to be conducted between at least 2 animals for purposes of sport, wagering, or entertainment." Violating 7 U.S.C.§ 2156(g).

The conspiracy: from April 27, 2011 until June 4, 2019, in the Northern District of Florida, the five defendants and others knowingly and intentionally conspired to: (1) sponsor and exhibit dogs in animal fighting ventures; (2) possess, train, sell, purchase, transport, deliver, and receive dogs for purposes of having the dogs participate in animal fighting venture; and (3) use an instrumentality of interstate commerce for commercial speech for purposes of advertising an animal for use in an animal fighting venture.

Sprague was charged in Counts 1, 5, and 8-14; Golson was charged in Counts 1, 2,3,7, and 15-21, Murph in Counts 1, 4, and 22-24; Moser in Count 1; and Peek in Counts 1, 6, 25-29, 30, and 31-44.

As "manner and means of the conspiracy" the indictment alleged that Sprague and Golson created and operated "C Wood Kennels" for the purpose of possessing, training, purchasing, selling, transporting, delivering, and receiving dogs for use by themselves and others in animal fighting ven-

tures; and that the defendants developed and maintained properties for purposes of housing and training pit bull-type dogs for dogfights, and using and storing dogfighting equipment.

Further it was alleged that they trained and conditioned pit bulls to fight in dog fights; acquired and maintained medical equipment such as intravenous tubing and bags, scalpels, skin staplers, suture removers, and veterinary injectable medications to attempt to treat injured fighting dogs, and to surgically remove dogs' ears prior to dog fights without a veterinarian; that they communicated by telephone, text, and other electronic means about transport, delivery, transfer, exchange, purchase, sale, breeding, training, and receipt of fighting dogs; their possession and ownership interests in fighting dogs; arrangements to fight dogs, including in "roll" fights; the lineage or " bloodline" of fighting dogs, the aptitude, abilities and fighting histories of fighting dogs; and drugs and equipment intended for use on fighting dogs; and planned to fight pit bull-type dogs in dog fights, fought dogs in dogfights including "roll" fights, and they posted, obtained, and forwarded information about fighting dogs and their bloodlines and "pedigrees" including from dogfighting websites. The indictment lists 36 alleged overt acts in violation of 18 U.S.C. § 371.

Count 5 alleged that Sprague sold and delivered a dog by air cargo to a person in Montana for purposes of having the dog participate in an animal fighting venture in violation of 7 U.S.C. § 2156(b) and 18 U.S.C. §§ 49 and 2.

Counts 8 to 14 charged that Sprague knowingly possessed dogs for purposes of having the dogs participate in an animal fighting venture, specifically Count 8 "Jethro;" Count 9 "Beastie;" Count 10 "Elvira," Count 11 "McGregor;" Count 12 "Maggie;" Count 13 "Cain;" and Count 14 "Angel" also known as "Golson's Lil Angel Eyes".

Sprague was not charged in any other counts, but there was an allegation for Criminal Forfeiture for animals involved in a violation of the animal fighting prohibitions of the federal Animal Welfare Act, Title 7, United States Code, Section 2156."

Moser, Peek, and Murph pleaded guilty. Sprague and Golson were tried by a jury. A ten-day trial commenced on February 18, 2020. Trial took place on February 18, 19, 20, 21, 24, 25, 26, 27, and 28, with deliberations continuing until 2 a.m. on Saturday, February 29th .

The government called ten witnesses. Defense witnesses were presented. Defendants made Rule 29 motions for judgment of acquittal at the close of government case in chief and at the close of all of the evidence.

Shane Sprague and his family were astonished, distraught, disappointed, upset, and inconsolable when the Eleventh Circuit affirmed his conviction. Their position is that the case against Sprague and Golson was founded upon evidence similar, if not identical in nature, quantity, scope, seriousness, and severity. After a 16-hour-long day of testimony, closing arguments, jury instructions, and deliberations beginning at 7:45 Friday evening until 2:00 Saturday morning, Sprague was acquitted on all counts except one. The guilty verdict was Count One, **conspiracy to violate the Animal Welfare Act**, 7 U.S.C. Section 2156, in violation of 18 U.S.C. Section 371. **Golson was acquitted on all counts**.

Derek Golson went home to his family after the trial. Sprague was sentenced to incarceration, separated from his family, designated to a facility in Texas, ten hours from his wife, five daughters, newborn son, and his parents. Sadly Mr. Sprague's father fell ill and passed away during his incarceration. Due to a Bureau of Prisons "error" Sprague remained incarcerated for months beyond his eligibility date for release to a halfway house or home confinement. He was imprisoned pursuant to a **mistaken, non-existent "outstanding warrant from another state."** As a result, when emergency relief was requested to immediately release him to travel to

Pensacola for his father's funeral (he was not a violent offender, a firearm offender, or a drug offender), the warden offered only a furlough in custody of Marshals to escort him from Texas to Florida and back at astronomical expense of thousands of dollars for travel, room, and board for two official escorts, which the family could not afford.

The opinion states that Sprague's arguments that the evidence was insufficient to prove that he intended or participated in, assisted, or agreed to dogfighting, highlighted the evidence presented in his defense at trial. The second issue raised was "…after a nine-day trial, the district court coerced the jury to begin deliberations late on a Friday evening and to continue deliberating until 2AM the next day," culminating in a 16-hour final day of trial. The court rejected these arguments and affirmed, and in so doing violated essential requirements of law, necessitating this Court's exercise of supervisory power over federal courts.

Relevant Facts

There was no more evidence to find Sprague guilty of conspiracy to violate the Animal Welfare Act, than there was as to Golson. The jury recognized the lack of evidence, acquitted Golson of all charges, and **also acquitted Sprague of all charges except Count One, conspiracy**. In fact,

as Sprague and his family said, the two dogs seized from his property during execution of the search warrant, were returned. They are home and they watch television in the house with the family. They are children's pets, not fighting dogs.

On p.17 the opinion mentions Tommy Peek who said that he never met Sprague before he picked up the puppy purchased by someone else, and he never saw Sprague again. Peek said he knew Golson, bred and sold dogs to Golson; and Agent Ridgeway testified that he did not know what happened to the puppy; they never followed-up. Agent Ridgeway said that they did not thoroughly vet their informant. Only three calls were recorded. The initial call was not recorded.

Investigators determined that Sprague did not fight his dogs, including Angel, which gives credence to his statement about trying to set-up a fictional fight discussing Angel. Angel was never fought. She was too old. He did say that she was a champion, but that was not true. She never was fought.

David Moser's testimony differed from the original statement that he gave. Obviously, he was trying to say what they wanted him to say to get the best deal for himself. There was no proof to support a conspiracy when

there were no dogs found to have been fought, nor proof of any fight.

To the contrary, Sprague was an animal lover; pit bulls were his passion. He rescued and rehabilitated them. He owned, trained, played, and walked with pit bulls. They were his children's pets. Although he may have "trash talked," making-up or embellishing stories to impress; or if someone was cruel to animals, to lure them to punish their behavior.

After long days working bridge construction Sprague would feed the dogs first-thing when he got home. He attended dog shows with his little girls. Their show dogs won ribbons and trophies. When their property was searched two dogs were seized. That was devastating for the entire family. Also seized were the children's dog show trophies, ribbons, and photographs. Fortunately, the dogs were returned.

The Overworked, Exhausted Jury

So why was Golson acquitted of all charges and Sprague convicted of one count - conspiracy? After nine days of trial, the jury did not want to disappoint the prosecution or the court. They did not want to seem to not diligently perform their civic duty. Virtually the same type, nature, amount, and scope of evidence was presented against both defendants. The jury saw the evidence was insufficient as to both on all charges, but we may speculate

that they persisted in staying, not returning on Saturday which the court clearly did not want, and not returning next week on Monday, which the Court discouraged by saying that his courtroom was unavailable, and the other courtroom would be used for another matter.

Trial started at 9AM on Friday. Deliberations commenced that night at 7:45, after eleven hours in court. Could jury fatigue have deprived Sprague of a fair trial? The jurors did their best to reach a verdict after the court said nobody would want to come back Saturday, and they were "in a box" because the courthouse could not readily accommodate a deliberating jury "next week." They had no choice. The record does not show jurors sleeping from exhaustion, but that does not mean that they were not fatigued and had difficulty concentrating or paying attention as they did hours earlier. Worn-out jurors deprived Sprague of a fair trial.

As a result of the nature of the gruesome, shocking, disturbing evidence we cannot escape the conclusion that this trial was stressful for everyone, especially, the jurors.

Two Jurors Were Excused During the Trial

On the fourth day of trial, a juror sent a note:

> I hit a stray dog on the way to the courthouse … I hit the stray dog with my right front bumper. I don't think I can mentally sit through

> this dog case anymore after hitting the stray dog. This might have an effect on me being unbiased. Signed [juror].

The government wanted the juror to be questioned. Defense counsel wanted to excuse the juror.

The juror was traumatized. It was the first time he hit a dog. He could not stop to help because he would have been late for court. The judge asked if the dog was seriously injured. "I saw a limb flew off its body." The court asked if the dog walked away. The juror responded he did not think so because a limb flew off and separated from its body; and his front bumper was dented. The court asked if this would affect the juror mentally? Could he sit through the trial fairly and unbiased? "How do you think it might affect you?" The juror was traumatized, felt "really bad" for the dog, and was sure he had killed it.

Golson's attorney asked if the juror might be prejudiced against the defendants because they were accused of fighting dogs, and those dogs could die? The juror said "Yes, sir, just slightly." He did not know if he could be unbiased. He was excused and was asked not to discuss it with the other jurors. ***Now there were two alternate jurors***.

On the eighth day of trial, after seeing his doctor a juror asked to be excused. The doctor suggested that the juror be excused due to **anxiety, stress, and dangerously-elevated blood pressure as a result of being on this jury.** When questioned by the court outside the presence of the other jurors, the juror said that in his routine medical visit, his blood pressure was unusually elevated. The doctor concluded that being on the jury could be a contributing factor. The court said if the juror was feeling anxious it was in his best interest to excuse him. ***Now there was one alternate juror***.

Some evidence was graphic and disturbing. Sprague maintains and that he did not conspire to commit such atrocities, and the evidence was not sufficient to prove beyond reasonable doubt that he was guilty of conspiring to do so.

That Friday was a long day. Golson testified on direct and cross. Closing arguments were presented. The jury received instructions from the judge. And then at 7:45 Friday evening, deliberations commenced.

The Saturday Comment

The judge said that if a verdict could not be reached on Friday night, no one would want to continue deliberating on Saturday; or if they did, would the juror(s) please give reason(s) why they could not continue that

evening, and preferred to return on Saturday to deliberate.

Did the judge say "I absolutely do not want to come back to the courthouse over the weekend for continuing deliberations"? No. this issue is not limited to a sterile interpretation of the exact words in the transcript. The question is how did they interpret what they heard?

What were their options? The jurors were not lawyers or judges experienced in legal matters. They were lay people, Sprague's peers, citizens selected as jurors in this federal prosecution.

Federal Courthouses are awe-inspiring edifices. United States district courtrooms are impressive with the Great Seal on the wall behind the judge, and the judge him-or herself elevated above everyone. Without question, the judge is the most important person in the courtroom. Everyone stands when the judge enters and leaves the courtroom. Judges are treated with respect, dignity, and deference by the public, parties who appear before them, attorneys, court staff, and of course by jurors, and rightfully so.

Throughout peoples' lives, their parents at home, teachers at school, and bosses at work, are authority figures. In a courtroom the judge is **the** authority figure. The judge told the jurors they did not want to have to come back to deliberate tomorrow, which was Saturday, did they? Did any-

one want to come in on Saturday? If so please identify yourself and tell me your reasons. This may not be the specific words uttered by the judge, but it was imparted, and what the jurors surely understood.

The judge was kind, polite, and professional when addressing everyone throughout this trial, especially the jurors. His preference regarding the course of deliberations, however, was clear, albeit nicely stated. It is just not reasonable to expect any juror under these circumstances to be brave enough to raise a hand, stand up, and say:

> IMAGINARY JUROR: No, judge. I don't want to continue tonight. I prefer to come back tomorrow, Saturday, to continue deliberations. This has been a long day of testimony and closing arguments, and jury instructions, and I have paid close attention to everything. I have an hour drive to get home. I'm tired. I need to get some sleep. My attention-span is limited after paying close attention to everything that transpired during this busy day in court. It will be difficult and exhausting for me to continue and to concentrate on my most important, serious duty as a juror to deliberate fairly and impartially into the late-night hours in this unpleasant and sometimes gruesome case. Working on Saturday would be better.

That was imaginary. It would not happen. The judge's comments, though well-intentioned, were subception; not going to happen given the options offered and the context in which they were presented.

"***Common sense must not be a stranger in the House of the Law;***" and "***[I]t would be positively inhumane…"*** to rule against

the person seeking relief in this case. *Cantrell v. Kentucky Unemployment Insurance Commission*, 450 SW2d 235 (KY 1970), Palmore, Justice. *Cantrell* is inapplicable on its facts, is neither binding, nor persuasive, nor recent, nor a federal case. Nonetheless, Justice Palmore's words about "common sense" ring true in this and in every case, and every court.

The Comment About Courtroom Availability [vel non] Next Week

The judge said there was no adequate space in the courthouse for continued deliberations on Monday. Again, while perhaps not the exact words, the spirit, meaning, and intent of the words spoken suggested that jurors would be an inconvenience on Monday, and accommodating a deliberating jury would be difficult, moving groups of people from one room to another.

Regarding comments from the bench concerning the potential to continue deliberations until Monday (actually "next week") what the judge specifically said, and what the jury heard, interpreted, and understood was again, subception. At the close of evidence, 4:45 Friday afternoon, before closing arguments and before jury instructions were delivered, the judge addressed the jury (emphasis added):

> Ladies and gentlemen, we have received all the evidence that we're going to get … **We're sort of in a box. This courtroom is not available next week. In fact, the other courtroom is not really suitable to have evidence presented. I don't think that you want to come back tomorrow, do you? I mean, anybody? So my preference is to work on this evening. Anybody that can't do that, tell me why**.

"**We're sort of in a box**." This courtroom is "**not available next week;**" and "**the other courtroom is not really suitable** to have evidence presented." The judge **did not "…think that you [jurors] want to come back tomorrow [Saturday], do you**?" The court expressed its "**preference,**" to continue working into the evening, and if anyone could not, then "**tell me why.**"

What juror wants to disagree with the court's stated preference that deliberations continue that night? Remember, this was before 5PM. The "evening" would be another three or four hours. At 4:45PM no one thought deliberations would commence at 7:45PM and continue until 2AM.

There may be 30 to 50 year old cases affirming verdicts when juries deliberated into early morning hours. The government cited a 1964 Second Circuit decision, more than half a century ago, where a jury was forced to deliberate continuously until 1pm the next day (*Degrandis v. Fay*, pp.32-35 *infra*). The Second Circuit affirmed! They did not have the comments here

that no one wants to work on Saturday, do they? Or "we are in a box" and next week there is not an available courtroom, politely but firmly suggesting that returning next week would be difficult and inconvenient. No juror wants to create scheduling and courtroom assignment problems for a federal judge.

Trial Day 9 commenced at 9:03 a.m. with the continuation of direct testimony of Golson, and then cross, and redirect. The government had no rebuttal. The evidence was closed. The transcript to that point is 264 pages, a full day of trial, almost dinnertime. The court said that all evidence was in, but…

> ***We're sort of in a box. This courtroom is not available next week. In fact, the other courtroom is not really suitable… I don't think you want to come back tomorrow, do you? I mean, anybody? So my preference is to work on this evening. Anybody that can't do that, tell me why.***
>
> All right. Well, we've got menus … order your dinner …. The attorneys are going to [give] …. closing argument – that's probably going to be over two hours and a half…and I'll instruct, and that's about 20 minutes or so – before we get to you. So, you can see that's going to be close to 7:45 or 8:00, but I'd like to press on.

The jury was excused to place dinner orders. Sprague suggested the court ask if it would be a hardship on any juror to continue into the night. The court said that it asked, and no one indicated a problem. But Golson said that the Court, an experienced federal judge, said "Nobody wants to

come back here tomorrow. Who's going to disagree with you?" The Court said there was no courtroom space available. Sprague said he would "…prefer to do it tomorrow instead of tonight," but the prosecutor said:

> …we'd like to go forward. And there is at least some thought that *perhaps that's why we were dragging today* is trying to push this thing, but we're ready to go today.

Golson objected. That was not true. The prosecutor responded that he thought Sprague's counsel repeated things which "[made] one wonder." Sprague moved for a judgment of acquittal due to nsufficient evidence to prove Sprague guilty beyond a reasonable doubt on any charge. The Court acknowledged that it was (emphasis added) …

> [the Government's burden] to prove that each defendant knew, for every one of these charges, that it was for the purposes of dogfighting.
>
> ***
>
> ***And to prove knowledge like that is very difficult. It's questionable whether the Government's done it. That's for sure***.

The Court reserved ruling to let the jury decide *Ibid*.

The court noted that during this break late in the day some jurors had to take medicine that was in their car, and had to make phone calls. There was jury instruction conference. At 5:32PM the jury returned. Counsel presented closing arguments. The court charged the jury. The remaining

alternate was excused, with a request to be available in case another juror was excused before the verdict.

Friday night, February 28, the jury retired to deliberate at 7:45PM. Four hours later, 11:54 p.m. they sent a question: "In the manner and means of the conspiracy, do all eight items have to be deemed true or just one could be true for a conspiracy to be valid?" Counsel and the court conferred. Golson noted that it was almost midnight. The court reiterated that it gave the jury the option of coming back Monday or working further into the night. Counsel responded, at some point "it needs to be called." The court said it would ask the jurors again but would bring them in and respond to their question and tell them to read the instructions again, carefully.

At 11:59PM the jury returned to the courtroom. The court re-read some instructions. It was after midnight:

> THE COURT: Let me remind you that it's now two minutes after midnight. It's now tomorrow [Saturday February 29th]. I don't want to keep you here all evening. And it's up to you what you want to do; but if you want to stay we will stay. But it's your choice, and we will do what you want to do.
>
> So with that, ladies and gentlemen, let me ask you to retire back to the jury room and continue your deliberations.

The record is silent regarding what if anything any juror(s) said between "But it's your choice, and we will do what you want to do" and the next statement: "So with that… let me ask you to retire back to the jury room and continue your deliberations."

Counsel for Golson said "…they've been here now for 15 hours and I think that at some point nobody gets a fair shake when a jury works that long." The court agreed but said the jurors were sincerely trying to finish and not come back; everyone must be patient, and then, "We're in recess pending a verdict." At 1:12AM the jury sent a second note: "We are not able to make a decision tonight. What are our options?"

The court suggested a mistrial. The government objected. Sprague said they had been in deliberations for six and a half hours. Golson said the jury worked for 16 hours and it would be "…counterproductive to ask them to continue to deliberate." The court was "…definitely not going to let them . . . continue tonight," but some had "serious conflicts on Monday" and could not return. Counsel requested a mistrial and offered to come back the next day (Saturday). They could go home, sleep, and return later on Saturday. One had a 100-mile drive back and forth. There was discussion of bringing them back Monday or Tuesday. The jury returned to the courtroom.

One juror absolutely could not return on Monday due to firm work/business commitments and out-of-town appointments that were pushed back to March with the understanding that trial would be concluded in February. Another juror could not return Saturday because it would jeopardize their "love life." They made plans long ago for an out-of-town date that could not be changed. A third juror said that they were short-handed at work, and it was too late to give notice that they could not work on Saturday. The job was a problem, but maybe they could arrange to come on Monday.

The juror with the "love life" said if they had to be there on Saturday the plans would be "busted" but there was nothing they could do about it if ordered to be in court. All jurors but one could come on Monday at 9:30 if necessary; but then the court said the courtroom would be full. New jurors would be assembling downstairs, and that courtroom would not be available until those jurors came to this courtroom.

At counsel's request the court asked if anyone would be unable to concentrate and give undivided attention to the case. No hands were raised. Five jurors had **a long drive of an-hour-or-more to get home, and a sixth had at least a 50-minute drive**. At 1:22AM the Court said:

> Well, I'm going to let you go and I'm going to ask you to come back 9:30 on Monday morning. *** … we are in recess until 9:30 Monday morning. We'll lock up everything in the jury room. Get your personal things and take that. Please, please drive carefully.

At 1:23 the jury was excused. At 1:24 the deputy clerk announced that the jury requested 30 minutes more "***And I just gave it to them. So let's be in recess for another half an hour until we hear something else from the jury."*** That may have been stated by the judge. At 1:24AM after 16 hours and transcribing 360 pages, no court reporter could be faulted for unintentionally misidentifying a speaker.

The court told counsel that the jury was in control; they want to continue to deliberate, so they may; "…and we'll see how we are at 30 minutes." Verdicts came at 2:12AM. Sprague was found guilty as to the conspiracy charged in Count 1, and not guilty on all other counts. Golson was not guilty on all counts. The jury was polled at 2:18AM. Sprague was released pending sentencing. The jury was excused at 2:21AM.

Post-Verdict

Judgment of acquittal was entered for Sprague as to Counts 5 and 8-14. Judgment of acquittal was entered for Golson on all charges. Sprague filed a motion for new trial and a motion for acquittal on Count 1. The government opposed both motions. They were denied.

Co-Defendants' Sentences

Murph was sentenced to prison for 8 months; Peek 15 months; Moser 12 months and one day. All received 3 years' supervised release.

Sentencing Hearing

Sprague was sentenced on August 13, 2020. For Count 1, offense level 18, criminal history 1, the advisory range was 27 to 33 months. After argument of counsel and allocution, Sprague received a downward variance of 18 months, based on his history as a family man, devoted to family, working hard to provide for them, and the nature and circumstances of the offense. The court found that sentence reasonable, appropriate, and not greater than necessary to comply with the statutorily defined purposes of sentencing. Judgment was entered, 18 months' incarceration, 3 years supervised release. Sprague served his prison term and is on supervised release.

REASONS FOR GRANTING THE WRIT

Reason One: The Eleventh Circuit reversibly erred and departed from essential requirements of law where the evidence was insufficient to support beyond a reasonable doubt Sprague's conviction for conspiracy to sponsor and exhibit dogs in animal fighting ventures, or possess, train, sell, purchase transport, deliver, and receive dogs for purposes of having them participate in animal fighting ventures, and to use interstate commerce for commercial speech to advertise an animal for use in an animal fighting venture in violation of the Federal Animal Welfare Act.

The evidence against Sprague was no different from the evidence against Golson. Golson was acquitted. Sprague's guilty verdict was surely borne of exhaustion and fatigue, giving a nod to the prosecution for its time and effort, while acknowledging that the case against both defendants was weak and the evidence insufficient.

At sentencing the court said,:

> I want to make sure that ***I find the evidence supports only the second object of this conspiracy and not the first or the third with respect to Mr. Sprague*** at the trial.
>
> [the prosecutor] indicated that it was applicable to all three objects. ***I want to make sure that, from my perspective, the evidence supported it [only] on 2***, but that's all that's necessary.

The evidence was insufficient to support a conviction on conspiracy to violate the Federal Animal Welfare Act. Evidence showed that dog fighting still occurs in the United States in violation of the 1976 law banning it, but evidence pertaining to Sprague did not show that he was present or participated in dogfighting, or that that his dogs were involved in dogfighting. He was a dog-lover, his dogs, the family pets, had impressive pedigrees. His statements were "trash talk" to lure a dogfighter to Pensacola to beat them up.

The government charged Sprague with conspiring (1) to sponsor and exhibit dogs in animal fighting ventures; (2) to possess, train, sell, purchase, transport, deliver and receive dogs for purposes of having the dogs participate in animal fighting ventures; ***and*** (3) to use an instrumentality of interstate commerce for commercial speech for purposes of advertising an animal for use in an animal fighting venture. The court found that at best, evidence supported a conviction only on the second goal, but not all three. The indictment was charged in the conjunctive. We presume the grand jury stated in its indictment what it meant and meant in the indictment what it said. By using "and" rather than "or" when setting forth three conspiratorial objects, we presume **the grand jury meant "and."** If the court determined

that the evidence supported only the second object, not the first or third, then the evidence was insufficient to support a conspiracy conviction.

To prove conspiracy the government must show the "existence of an agreement to achieve an unlawful objective, the defendant's knowing and voluntary participation in the conspiracy, and the commission of an overt act in furtherance thereof. *United States v. Gupta*, 463 F.3d 1182, 1194 (11th Cir. 2006). The extent of participation in a conspiracy or extent of knowledge of details in a conspiracy does not matter if the proof shows the defendant knew the essential objective of the conspiracy. *Ibid*.

Note the government returned Sprague's property. There was no evidence placing Sprague or his dogs at a dogfight. There was puffing, trash talk, but no evidence of participation in cruel and unlawful dogfighting. Defense witnesses confirmed that Sprague loved dogs and cared for them all his life. He rescued pit bulls from dogfighting and rehabilitated them.

There was no evidence beyond a reasonable doubt that Sprague ever attended or participated in a dogfight or assisted in an animal fighting venture. There was no evidence that he agreed to fights, dates, or times

The Eleventh Circuit reversibly erred in affirming the conviction. It should be vacated, reversed, and remanded with instructions.

Reason Two: The Eleventh Circuit reversibly erred and departed from essential requirements of law when the jury was coerced to commence deliberations at 7:45PM Friday and continue until reaching verdicts after 2:00AM Saturday, a 16-hour court day. When asking the jury if they wanted to stay or come back, the Court suggested "nobody wants to come back on Saturday, do they;" and emphasized more than once that on Monday, courtroom space was unavailable for deliberations.

This violated Sprague's rights to procedural due process and a fair trial with an alert, rested, attentive jury. The jury was "in a box" and reached a verdict following a grueling 16-hour day beginning at 9AM with testimony, closing arguments, and instructions.

The offers to return Saturday or Monday had caveats that rendered them untenable: does anyone want to come back on Saturday, if so tell me why; or come back on Monday, but we will not have anywhere for you. The options were not viable. The jury was coerced and under duress to reach a verdict. Otherwise, Sprague like Golson would have been "not guilty" on all charges.

The government's reliance on *DeGrandis v. Fay,* 335 F.2d 173 (2d Cir. 1964), is fascinating. Decided more than a half century ago, it is perhaps the

strangest decision ever reported. The conduct of the trial judge in that case was unusual, bordering on inhumane indifference and cruelty. The Second Circuit opinion, and earlier affirmances by state courts are bizarre. Three appellants were convicted in a New York state court, of conspiracy, coercion, and extortion. The state courts affirmed.

The defendants filed a writ of habeas corpus in the United States district court, arguing that they were denied due process of law because after charging the jury for three and a half hours, **the judge made the jury deliberate for twenty-four hours including meals, during which the jury foreman twice advised the court that the jurors were fatigued.** The judge's response was to continue deliberations. He provided coffee and sandwiches. He rebuffed subsequent requests for "reasonable rest" throughout the night. Appellants argued that this perverted the deliberative process and forced the verdict.

Fifteen defendants were charged in a sixteen-count indictment. Trial was three-and-a-half months, beginning in February 1960. There were 125 witnesses; over 100 written exhibits, and over 6,400 pages of transcripts. On the last day, at 9:50AM the court charged the jury, concluding at 1:30PM. The jury had lunch and commenced deliberations at 3:00 in the afternoon.

At around 6:30PM jury went to a restaurant for dinner, resuming resumed deliberations at 8 in the evening. At 10:40 the jury foreman sent a note to the judge saying that due to the length of the testimony to be considered, they had made progress, but "fatigue has set in." The judge's response was to let the attendant know if they "desire[d]" coffee and sandwiches.

The foreman wrote back: we are fatigued and feel we cannot make a decision on all counts tonight. How long should we deliberate tonight? The court responded: continue to deliberate.

At 2:30AM the jury received sandwiches and coffee. At 4:10 the foreman sent another note that the jurors were at an impasse, were fatigued, and needed "reasonable rest for clear thinking before econtinuing deliberations."

The judge asked if they'd rather continue deliberations than rest. The jury responded they preferred rest. At around 5:00AM the court told the jury that all area motels were full but that they might be able to get four rooms and put in several cots to accommodate all of the jurors. Alas, there were no rooms, no cots, and the jury had to continue deliberations. They reached a verdict at 1:50 in the afternoon.

DeGrandis is appalling and unacceptable. Even though it was affirmed by the NY state appellate courts and the by the Second Circuit on appeal from denial of a federal habeas petition, it is outrageous, and should not be used as guidance for this case, or any case EVER. That is not acceptable under any civilized standards. It is an anomaly.

If Sprague's jurors wanted to come back next week, no one dared say that in light of the court's comments. It was neither acceptable, reasonable, nor fair to the jurors who must have been exhausted late into the evening. And it was unfair to Sprague. His verdict was rendered by a tired, coerced, rushed jury, in violation of his Fifth and Sixth Amendment rights to due process and a fair trial.

Conclusion

Based upon the foregoing arguments and authorities, Shane Sprague respectfully prays that this Honorable Court will grant its most gracious Writ, vacate the judgment of the Eleventh Circuit, and remand with instructions.

Respectfully submitted,

Sheryl J. Lowenthal

Sheryl J. Lowenthal, Atty at Law
CJA Counsel for Petitioner/Appellant
Shane Patrick Sprague

Dated December 11, 2021 Word Count: 7,305

North Florida Office: 221 East Government Street Pensacola FL 32502
Tel: 850-912-6710

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

Shane Patrick Sprague v. United States of America

JUDGMENT AND SENTENCE
US v. Shane Patrick Sprague
Northern District of Florida
Case No. 3:19-cr-00110-RV-1
Entered on August 25, 2020

OPINION AFFIRMING CONVICTION AND SENTENCE
US v. Shane Patrick Sprague
United States Eleventh Circuit Court of Appeals
Appeal No. 20-13275
Entered on September 10, 2021

ORDER DENYING TIMELY-FILED PETITION FOR REHEARING
Entered on October 14, 2021

UNITED STATES DISTRICT COURT
Northern District of Florida

UNITED STATES OF AMERICA
v.
SHANE PATRICK SPRAGUE

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:19-cr-110-RV-001
USM Number: 26579-017

Ronald W. Johnson, Esquire (CJA)
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☒ was found guilty on count 1 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 371	Conspiracy to Violate the Animal Welfare Act	June 4, 2019	1

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☒ The defendant has been found not guilty on count(s) 5 and 8-14 of the Indictment

☐ Count _____ ☐ ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

August 13, 2020
Date of Imposition of Judgment

Signature of Judge

Roger Vinson, United States Senior District Judge
Name and Title of Judge

8/25/20
Date

DEFENDANT: SHANE PATRICK SPRAGUE
CASE NUMBER: 3:19-cr-110-RV-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a term of:
18 months as to Count 1.

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the Bureau of Prisons that the defendant be designated to serve this sentence at Federal Prison Camp Pensacola, or as near to Pensacola, Florida as reasonably possible.

The Court identifies the defendant as a person in need of a focused, intensive substance abuse treatment program, both during incarceration and on reentry through a residential reentry center.

The Court recommends the defendant's placement into the BOP's Residential Drug Abuse Program. Additionally, while awaiting placement into RDAP, or if deemed ineligible, the Court orders the defendant to complete Drug Education classes and fully participate in the BOP's nonresidential drug abuse treatment program. Further, the Court recommends that the defendant participate in any cognitive behavioral therapy programming, as well as any anger management and mental health counseling programs, that are available.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal in Bay County Florida or at the institution designated by the Bureau of Prisons

- ☐ by 12:00 Noon on November 1, 2019.
- ☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 p.m. on _____ .

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: SHANE PATRICK SPRAGUE
CASE NUMBER: 3:19-cr-110-RV-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: **3 years as to Count 1.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: SHANE PATRICK SPRAGUE
CASE NUMBER: 3:19-cr-110-RV-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: SHANE PATRICK SPRAGUE
CASE NUMBER: 3:19-cr-110-RV-001

SPECIAL CONDITIONS OF SUPERVISION

You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

You will not possess any dogs, including through a third party, with the exception of the dog identified as "Cain," an elderly fawn-colored male dog, and the dog identified as "Angel," a tan colored female dog, as well as any dog approved in advance by the supervising U.S. Probation Officer.

You will be evaluated for substance abuse and mental health and referred to treatment as determined necessary through an evaluation process. Treatment is not limited to, but may include, participation in a Cognitive Behavior Therapy program. You will be tested for the presence of illegal controlled substances at any time during the term of supervision.

DEFENDANT: SHANE PATRICK SPRAGUE
CASE NUMBER: 3:19-cr-110-RV-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 100.00	$	$	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise ir the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS	$ _____	$ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: SHANE PATRICK SPRAGUE
CASE NUMBER: 3:19-cr-110-RV-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☒ Lump sum payment of $ 100.00 due immediately.

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

DEFENDANT: SHANE PATRICK SPRAGUE
CASE NUMBER: 3:19-cr-110-RV-001
DISTRICT: Northern District of Florida

STATEMENT OF REASONS

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A. ☐ **The court adopts the presentence investigation report without change.**

B. ☒ **The court adopts the presentence investigation report with the following changes.** *(Use Section VIII if necessary)*
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report.)

1. ☐ **Chapter Two of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to base offense level, or specific offense characteristics)*

2. ☒ **Chapter Three of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)*
The Court sustained the defendant's objection to the adjustment for role in the offense pursuant to USSG §3B1.1(a), and applied 0 points at paragraph 88, resulting in an adjusted offense level of 18 at paragraph 90, a total offense level of 18 at paragraph 93, a guideline range of 27 to 33 months, and a fine range of $10,000 to $100,000.

3. ☐ **Chapter Four of the United States Sentencing Commission Guidelines Manual** determinations by court: *(briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)*

4. ☒ **Additional Comments or Findings:** *(include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)*

Please see Section VIII below.

C. ☐ **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.**
Applicable Sentencing Guideline: *(if more than one guideline applies, list the guideline producing the highest offense level)* _____

II. COURT FINDING ON MANDATORY MINIMUM SENTENCE *(Check all that apply)*

A. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.

B. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:

☐ findings of fact in this case: *(Specify)* _____

☐ substantial assistance (18 U.S.C. § 3553(e))
☐ the statutory safety valve (18 U.S.C. § 3553(f))

C. ☒ No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF GUIDELINE RANGE: *(BEFORE DEPARTURES OR VARIANCES)*

Total Offense Level: 18
Criminal History Category: I
Guideline Range: *(after application of §5G1.1 and §5G1.2)* 27 to 33 months
Supervised Release Range: 1 to 3 years
Fine Range: $ 10,000 to $ 100,000

☒ Fine waived or below the guideline range because of inability to pay.

DEFENDANT: SHANE PATRICK SPRAGUE
CASE NUMBER: 3:19-cr-110-RV-001
DISTRICT: Northern District of Florida

STATEMENT OF REASONS

IV. GUIDELINE SENTENCING DETERMINATION *(Check all that apply)*

A. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.

B. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: *(Use Section VIII if necessary)*

This sentence is reasonable and appropriate, and takes into account the danger to the public reflected in the numerous prior convictions.

C. ☐ The court departs from the guideline range for one or more reasons provided in the Guidelines Manual. *(Also complete Section V.)*

D. ☒ The court imposed a sentence otherwise outside the sentencing guideline system (i.e., a variance). *(Also complete Section VI)*

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL *(If applicable)*

A. **The sentence imposed departs:** *(Check only one)*
- ☐ above the guideline range
- ☐ below the guideline range

B. **Motion for departure before the court pursuant to:** *(Check all that apply and specify reason(s) in sections C and D)*

1. **Plea Agreement**
   - ☐ binding plea agreement for departure accepted by the court
   - ☐ plea agreement for departure, which the court finds to be reasonable
   - ☐ plea agreement that states that the government will not oppose a defense departure motion.
2. **Motion Not Addressed in a Plea Agreement**
   - ☐ government motion for departure
   - ☐ defense motion for departure to which the government did not object
   - ☐ defense motion for departure to which the government objected
   - ☐ joint motion by both parties
3. **Other**
   - ☐ Other than a plea agreement or motion by the parties for departure

C. **Reasons for departure:** *(Check all that apply)*

☐	4A1.3	Criminal History Inadequacy	☐	5K2.1	Death	☐	5K2.12	Coercion and Duress
☐	5H1.1	Age	☐	5K2.2	Physical Injury	☐	5K2.13	Diminished Capacity
☐	5H1.2	Education and Vocational Skills	☐	5K2.3	Extreme Psychological Injury	☐	5K2.14	Public Welfare
☐	5H1.3	Mental and Emotional Condition	☐	5K2.4	Abduction or Unlawful Restraint	☐	5K2.16	Voluntary Disclosure of Offense
☐	5H1.4	Physical Condition	☐	5K2.5	Property Damage or Loss	☐	5K2.17	High-Capacity, Semiautomatic Weapon
☐	5H1.5	Employment Record	☐	5K2.6	Weapon	☐	5K2.18	Violent Street Gang
☐	5H1.6	Family Ties and Responsibilities	☐	5K2.7	Disruption of Government Function	☐	5K2.20	Aberrant Behavior
☐	5H1.11	Military Service	☐	5K2.8	Extreme Conduct	☐	5K2.21	Dismissed and Uncharged Conduct
☐	5H1.11	Charitable Service/Good Works	☐	5K2.9	Criminal Purpose	☐	5K2.22	Sex Offender Characteristics
☐	5K1.1	Substantial Assistance	☐	5K2.10	Victim's Conduct	☐	5K2.23	Discharged Terms of Imprisonment
☐	5K2.0	Aggravating/Mitigating Circumstances	☐	5K2.11	Lesser Harm	☐	5K2.24	Unauthorized Insignia
						☐	5K3.1	Early Disposition Program

☐ Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual: *(see "List of Departure Provisions" following the Index in the Guidelines Manual.) (Please specify)*

D. **State the basis for the departure.** *(Use Section VIII if necessary)*

DEFENDANT: SHANE PATRICK SPRAGUE
CASE NUMBER: 3:19-cr-110-RV-001
DISTRICT: Northern District of Florida

STATEMENT OF REASONS

VI. COURT DETERMINATION FOR A VARIANCE *(If applicable)*

A. **The sentence imposed is:** *(Check only one)*
- ☐ above the guideline range
- ☒ below the guideline range

B. **Motion for a variance before the court pursuant to:** *(Check all that apply and specify reason(s) in sections C and D)*

1. **Plea Agreement**
   - ☐ binding plea agreement for a variance accepted by the court
   - ☐ plea agreement for a variance, which the court finds to be reasonable
   - ☐ plea agreement that states that the government will not oppose a defense motion for a variance
2. **Motion Not Addressed in a Plea Agreement**
   - ☐ government motion for a variance
   - ☐ defense motion for a variance to which the government did not object
   - ☒ defense motion for a variance to which the government objected
   - ☐ joint motion by both parties
3. **Other**
   - ☐ Other than a plea agreement or motion by the parties for a variance

C. **18 U.S.C. § 3553(a) and other reason(s) for a variance** *(Check all that apply)*

☒ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1)
- ☐ Mens Rea
- ☐ Extreme Conduct
- ☒ Acquitted
- ☐ Role in the Offense
- ☐ Victim Impact
- ☒ General Aggravating or Mitigating Factors *(Specify)* See Section VI.D.

☒ The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
- ☐ Aberrant Behavior
- ☐ Lack of Youthful Guidance
- ☐ Age
- ☐ Mental and Emotional Condition
- ☐ Charitable Service/Good Works
- ☐ Military Service
- ☐ Community Ties
- ☐ Non-Violent Offender
- ☐ Diminished Capacity
- ☐ Physical Condition
- ☐ Drug or Alcohol Dependence
- ☐ Pre-sentence Rehabilitation
- ☒ Employment Record
- ☐ Remorse/Lack of Remorse
- ☒ Family Ties and Responsibilities
- ☐ Other: (Specify) _____
- ☐ Issues with Criminal History: *(Specify)* _____

☒ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))

☒ To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))

☐ To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))

☐ To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))

☐ To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))

☐ To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))

☐ To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) (Specify in section D)

☐ To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

- ☐ Acceptance of Responsibility
- ☐ Conduct Pre-trial/On Bond
- ☐ Cooperation Without Government Motion for Departure
- ☐ Early Plea Agreement
- ☐ Global Plea Agreement
- ☐ Time Served *(not counted in sentence)*
- ☐ Waiver of Indictment
- ☐ Waiver of Appeal

☐ Policy Disagreement with the Guidelines *(Kimbrough v. U.S., 552 U.S. 85 (2007))*: *(Specify)* _____

☐ Other: *(Specify)* _____

D. ***State the basis for a variance.*** See Section VIII on Page 4

DEFENDANT: SHANE PATRICK SPRAGUE
CASE NUMBER: 3:19-cr-110-RV-001
DISTRICT: Northern District of Florida

STATEMENT OF REASONS

VII. COURT DETERMINATIONS OF RESTITUTION

A. ☒ **Restitution Not Applicable.**

B. **Total Amount of Restitution: $** _____

C. **Restitution not ordered:** *(Check only one)*

1. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or . 3663A, restitution is not ordered because the victim(s)'(s) losses were not ascertainable (18 U.S.C. § 3664(d)(5))
5. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. ☐ Restitution is not ordered for other reasons. *(Explain)*

D. ☐ **Partial restitution is ordered for these reasons *(18 U.S.C. § 3553(c))*:**

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE *(If applicable)*

Section I.B.4.: Following numerous objections by the defendant to the Offense Conduct section of the presentence report, the Court clarified that the trial evidence showed C Wood Kennels to be a show dog partnership between Mr. Sprague and Mr. Golson, and that there was no evidence of a dog fighting partnership. In summary, the defendant objected that some of the Government's recitation of facts in the Offense Conduct is contrary to the evidence shown at trial, and that objection was sustained.

Section VI.D.: A variance below the guideline range is appropriate in this case. First, as demonstrated by the jury's acquittal of a co-defendant on all eleven charges and acquittal of this defendant on seven of the eight charges against him, the evidence of dog fighting was very thin. It was almost all equally evidence of a parallel world of American Pit Bull Terrier dog breeders and the competitive shows many participate in. Second, the jury's verdict also reflected a conclusion that this defendant had a strong attachment to his dogs, and was not one to intentionally torture or

Continued on page 5.

DEFENDANT: SHANE PATRICK SPRAGUE
CASE NUMBER: 3:19-cr-110-RV-001
DISTRICT: Northern District of Florida

STATEMENT OF REASONS

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE *(continued)*

Section VI.D. continued:

endanger them as contemplated by the law. Thus, the nature and circumstances of this case are not something that the Sentencing Commission's Guidelines take into account. Third, the defendant's dedication to his family was evident through their testimony at trial, as was their dependence upon him for support. Fourth, the record also reflects that the defendant is a skilled employee who regularly works 60 hours a week to support his large family, including even working the night shift throughout his trial. Fifth, the variance also reflects a sentence consistent with the sentences imposed upon his co-defendants. Finally, he is not a danger to the community. Although some of the evidence at trial was contrary to dog fighting, the jury's finding of guilt was supported from evidence mostly derived from statements made by the defendant himself. A sentence of 18 months imprisonment is reasonable and a greater sentence is not necessary to comply with the statutorily defined purposes of sentencing.

Defendant's Soc. Sec. No.: 213-08-9882

Defendant's Date of Birth: March 22, 1984

Defendant's Residence Address: 7419 Beulah Road
Pensacola, Florida 32526

Defendant's Mailing Address: 7419 Beulah Road
Pensacola, Florida 32526

Date of Imposition of Judgment: August 13, 2020

Signature of Judge

Roger Vinson, United States Senior District Judge
Name and Title of Judge

Date Signed 8/25/20

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13275
Non-Argument Calendar

D.C. Docket No. 3:19-cr-00110-RV-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

SHANE PATRICK SPRAGUE,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

(September 10, 2021)

Before WILSON, JILL PRYOR, and LUCK, Circuit Judges.

PER CURIAM:

Shane Patrick Sprague was convicted by a jury of one count of conspiracy to violate the Animal Welfare Act (Count 1), 7 U.S.C. § 2156, in violation of 18 U.S.C. § 371. He now appeals his conviction, following his unsuccessful motion for a judgment of acquittal pursuant to Fed. R. Crim. P. 29. He argues, first, that the evidence was procedurally insufficient to support his conviction for Count 1 because, under the terms of his indictment, the government failed to show he conspired to violate all three subsections of § 2156. As to his substantive sufficiency-of-the-evidence arguments, he contends that the evidence did not prove that he ever attended or participated in a dog fight, assisted anyone else in an animal fighting venture, or agreed to any fights. He highlights the evidence he presented in his defense to support his arguments. Second, he asserts that, after a nine-day trial, the district court coerced the jury to begin deliberations late on a Friday evening and to continue deliberating until 2:00 AM the next day, culminating in a 16-hour final day of trial. Which, Sprague contends, violated his rights to due process and a fair trial. In this respect, he argues that the district court's comments to the jury, informing them of the possibility of returning either the next day or on the following Monday, constituted a "suggested or implied" *Allen* charge.[1] We reject Sprague's arguments and affirm the district court.

[1] *Allen v. United States*, 164 U.S. 492, 501 (1896).

I.

Because we write for the parties, we assume familiarity with the facts and only set out those necessary to decide this appeal. In 2019, a federal grand jury returned a 44-count indictment against Sprague and four codefendants: Derek Jedidiah Golson, Haley Cook Murph, David Lee Moser, and James Peek. Under Count 1, the grand jury charged Sprague and his four codefendants with conspiring to violate the Animal Welfare Act, in violation of 18 U.S.C. § 371. Specifically, the indictment charged them with conspiring to: (i) sponsor and exhibit dogs in animal fighting ventures, in violation of 7 U.S.C. § 2156(a)(1) and 18 U.S.C. § 49; (ii) possess, train, sell, purchase, transport, deliver, and receive dogs for the same purpose, in violation of 7 U.S.C. § 2156(b) and 18 U.S.C. § 49; and (iii) use an instrumentality of interstate commerce for commercial speech for the purpose of advertising an animal for the same purpose, in violation of 7 U.S.C. § 2156(c) and 18 U.S.C. § 49.

Count 1 charged, inter alia, that Sprague and Golson created and operated "C Wood Kennels," where they housed and trained "pit bull-type dogs" for dog fights, acquired and maintained medical equipment to treat dogs without the assistance of a veterinarian, planned and carried out dog fights, and communicated with each other and others about various subjects related to dogfighting. The indictment charged various overt acts in furtherance of the conspiracy. As relevant

here, the indictment charged that on April 3, 2017, Sprague advertised a dog for sale online on Golson's behalf, and that Peek sold and delivered a dog to Sprague, who then sold and delivered it to another individual in Montana.

Murph, Peek, and Moser pleaded guilty to the offenses they were charged with. Sprague and Golson proceeded to trial together. The nine-day jury trial began on Tuesday, February 18, 2020. The government called ten witnesses during its case-in-chief. The first government witness was Andrew Ridgeway, a special agent with the United States Department of Agriculture (USDA) Office of the Inspector General. Ridgeway testified that, during a previous dogfighting investigation, an informant led him to Sprague as a possible suspect. On several occasions in 2017 and 2018, the informant placed recorded calls to Sprague while Ridgeway was listening remotely. The government played recordings of four such calls for the jury.[2]

Sprague described recent dog fights in some of the recorded conversations. For example, the following exchange occurred regarding a dog belonging to one of Sprague's "kennel partners":

> Sprague: I said, "That bitch ain't no joke. She going to kill whatever steps in front of her." . . . And . . . he threw . . . them two together—for about three minutes, and . . . [she] . . . put a beating on that little pup. But at the

[2] The transcripts, which the jury received as demonstrative aids while listening to the corresponding phone calls, were not introduced into evidence. Nevertheless, Sprague never challenged their authenticity below, and he does not do so on appeal.

> same time, that pup [ ] never gave up and, she, when we broke them apart, she wanted more.
>
> Informant: That's good man, and she's only, she's only ten months [old]?
>
> Sprague: So, she's ten months and . . . I said I wouldn't touch her for about another six months at least.
>
> Informant: Right.
>
> Sprague: Just . . . put her right in front of [Sprague's dog] and [ ] let her just build that attitude up.

In another exchange, Sprague described testing a female dog he owned in several fights, and then using her for breeding puppies based on her performance in those fights. During that conversation, he stated the following:

> Sprague: We . . . did some, some looks with her. We did . . . three looks with . . . one of my Jeep dogs. And . . . they grew up together rolling with each other . . . and then, uh, we did her fourth, . . . we put two on her, uh, back to back.[3]
>
> Informant: Mm-hmm.
>
> Sprague: And, uh, [she] devastated one of them. One of them was a, uh, a one-time winner out of south Florida—a heavy Mayday dog.
>
> . . . .

[3] The government presented expert testimony that the phrase "looked at" could be interpreted to refer to a test match, that a "roll" was language dogfighters used to refer to a test match between dogs, and that "Jeep" and "Mayday" both referred to notable lineages of fighting dogs.

> Sprague: And, . . . she's an insane [ ] dog, bro. We, uh, we didn't want to do too much with her just 'cause we know how she is so we, we used her for breeding, you know . . .

Ridgeway testified that Sprague advertised certain puppies for sale on social media. Ridgeway stated that in a post from April 3, 2017, Sprague explained that he was selling the puppies on behalf of his "kennel partner." Ridgeway also testified that he reviewed Sprague's messages on social media. In one message Sprague described a fight involving his dog named Batman and another dog, and his reluctance to take either of them to a licensed veterinarian for treatment afterward. Later messages revealed that both dogs ultimately succumbed to the injuries sustained in that encounter.

Ridgeway also testified that he had accessed a website called "Peds Online," which showed, under the heading "C Woods Pups," a pedigree showing the lineage for a puppy produced by "Pimpin Cain," whose owner was Sprague, and "Lil Angel," whose owner was Golson.

Ridgeway and Robin Wilcox, another USDA special agent, testified that agents executed a search of Sprague's residence and recovered certain items, including pedigrees attesting to the lineage of certain dogs, single-use syringe needles, and seven pit bulls.

The government also called Dr. Elizabeth Pearlman, a forensic veterinarian with the American Society for the Prevention of Cruelty to Animals (ASPCA).

The government qualified her, without objection, as an expert in veterinary practice as well as in the use, and misuse, of veterinary drugs and instruments. Dr. Pearlman testified that she was present at Sprague's property during the search and that she had an opportunity to walk through the premises. As to the seven dogs seized, she testified that of the four that were of adult age, two had scars suggestive of or consistent with dogfighting. She also evaluated photographs of some of the other items recovered during the search on Sprague's residence. She testified that one of the items appeared to be a used intravenous (IV) bag, and another appeared to be an IV catheter intended for use on animals.

Later, the government called Amy Taylor, a Virginia state government investigator. The government tendered her, without objection, as an expert in dogfighting. She testified that photographs of the items seized from Sprague's residence included "break sticks," used to force open a dog's jaws once it had latched onto another animal. She observed that one of the break sticks depicted in the photograph appeared to bear the writing "C Woods Kennels." She testified that pit bulls were the preferred breed in dogfighting, that dogfighters were often heavily involved in breeding for traits considered to be advantageous in fights, and that pedigrees were of great importance in this respect. She examined other items found at Sprague's residence and testified that they were consistent with tools used to train dogs for dogfighting.

After the government concluded its examination of Taylor and rested its case, Sprague and Golson each moved for a judgment of acquittal. Sprague argued that the evidence only raised a few inferences favorable to the government, but not enough "to prove a prima facie case," and that none of the evidence showed that he possessed any dogs with the intent to fight. The district court denied both defendants' motions.

In defense, Sprague called a number of witnesses, including his father; his mother; his wife; two of his daughters; and an expert witness on pit bulls, dogfighting, dog show competitions, and the preservation of certain dog breeds. These witnesses testified, essentially, that Sprague was a dog lover who treated his dogs well and that the training the government had emphasized was also used for legal dog showing competitions, which Sprague participated in.

Sprague testified, in his own defense, that he had a long history with dogs and loved pit bulls but had never engaged in dogfighting. As to the recorded calls, he testified that the statements he had made during the calls were not true, and he was simply attempting to lure the informant to his house in order to "whoop his ass." He testified that "C Wood Kennels" was merely an informal club that he and Golson ran together for the purposes of keeping dogs and showing them at competitions.

After Sprague rested, Golson presented his defense. Golson rested his case at 4:46 PM on Friday, February 28, 2020. After the government declined to offer any evidence in rebuttal, the district court stated the following:

> All right. Ladies and gentlemen, we have received all the evidence that we're going to get in this case. We're sort of in a box. This courtroom is not available next week. In fact, the other courtroom is not really suitable to have evidence presented.
>
> I don't think you want to come back tomorrow, do you? I mean, anybody? So my preference is to work on this evening. Anybody that can't do that, tell me why.
>
> All right. . . . The attorneys are going to make their closing argument—that's probably going to be over two hours and half, about that; and I'll instruct, and that's about 20 minutes or so—before we get it to you. So you can see that's going to be close to 7:45 or 8:00 o'clock, but I'd like to press on.

At that point, Sprague's counsel asked the court if it would be appropriate to question the jurors to see if continuing to deliberate was "going to put an undue hardship on any of them," or whether it would "prevent them from deliberating." The court responded that it had already asked the jury to identify any problem deliberating would pose, but none of them indicated it would. Golson's counsel claimed that the court had acted "very skillfully," and told the district judge: "You're a federal court judge sitting at the bench who said nobody wants to come back here tomorrow. Who's going to disagree with you?" Sprague's counsel then stated that he would prefer continuing on Saturday instead of that evening. The

court, however, determined that "regardless, we're going to press on this evening as long as the jury's able to endure it. So let's operate on that assumption."

Sprague orally renewed his motion for a judgment of acquittal, restating his argument that the government had failed to put forth sufficient evidence to show that he and Golson possessed, or conspired to possess, dogs for the purpose of using them in a fighting venture. The court, while finding that it was "questionable" whether the government had shown that Sprague and Golson knowingly committed each count of the indictment for the purpose of dogfighting, reserved ruling on the motion pending the jury's final verdict. Golson moved for a judgment of acquittal on, essentially, the same grounds, and the court issued the same ruling as it had as to Sprague.

After the parties' closing arguments, the district court instructed the jury, inter alia, that for Count 1, the government only needed to prove that a defendant conspired to violate one of the subsections under § 2156 charged in the indictment. The parties did not raise any objections to this instruction. The jury began deliberating around 7:45 PM Friday evening.

Just before midnight, the jury submitted a question regarding the elements of the crime to the district court. The court brought the jurors back into the courtroom and gave an additional instruction addressing this question. Then, the court stated:

> Let me remind you that it's now two minutes after midnight. It's now tomorrow [Saturday, February 29, 2020]. I don't want to keep you here all evening. And it's up to you what you want to do; but if you want to stay, we will stay. But it's your choice, and we will do what you want to do.
>
> So with that, ladies and gentlemen, let me ask you to retire back to the jury room and continue your deliberations.

After the jury resumed deliberations, Golson's counsel stated: "I just think—they've been here now for 15 hours, and I think that at some point nobody gets a fair shake when a jury works that long," to which the court responded that the jurors were sincerely trying to finish. The court called a recess pending a verdict.

Eventually the jury returned a note to the district court stating that they could not reach a decision that night and asking what their options were. Then, at 1:12 AM, the district court called the parties back into the courtroom. The court asked the parties for their positions, and Sprague stated: "I don't know if that's making progress or not." Golson stated that, because the jury had already worked for 16 hours that day, he believed it would be counterproductive to ask them to continue deliberating. The court then decided that it would not ask the jury to continue deliberating any longer that night. It recalled the jurors into the courtroom, asked if there were any conflicts, and after three jurors expressed that they would have difficulty returning the next day, it stated the following:

> Well, I think you all feel that you can reach a verdict if you work at it. And I'm going to ask you to come back. And our working hours—you know, Monday is a working day for everybody here in the Court, so we'll have everything here. So I'm going to ask you to come back Monday morning at 9:30.
>
> . . . .
>
> And we have a jury room [on a lower floor] that's all yours, so we can use that. The courtroom down there has got other things that are scheduled, so we may have to take turns in the courtroom if we have to do that. But I'm going to ask that you come back next Monday morning at 9:30.
>
> Anybody that can't do that, period? [No response indicated]. Okay.

Accordingly, the court dismissed the jury and instructed it to return at 9:30 on Monday morning, March 2, 2020. Despite the preceding, at 1:24 AM, the jury asked for 30 more minutes to deliberate, and the district court called a recess.

At 2:12 AM, the district court recalled the jury into the courtroom, and the jury returned a verdict, as to Sprague, of guilty on Count 1, but not guilty on Counts 5, and 8–14.[4] As to Golson, the jury returned a verdict of not guilty on all counts.

Several days later, Sprague filed a written motion for a new trial, arguing that the weight of the evidence did not support the verdict as to Count 1. He also filed a written motion for a judgment of acquittal, in which he argued that there

[4] The jury's verdict form was marked "guilty" as to each of the three individual objectives of the conspiracy charged in the indictment.

was no evidence that he knowingly and willfully conspired to commit any of the three objects of the conspiracy with the intent to do something unlawful, or that he engaged in one of the overt acts in the indictment. Importantly, he did not argue, in either motion, that the court's actions instructing the jury at the end of the trial were coercive or that they deprived him of his constitutional rights.

The government opposed both of Sprague's motions, and the district court denied them in a single order, finding that the evidence supported the jury's verdict. At the sentencing hearing, the district court formally adjudged Sprague guilty of Count 1. With respect to the three objectives of the conspiracy as charged in Count 1, the court found that there was no evidence that Sprague knowingly and intentionally conspired and agreed with other individuals to (i) sponsor and exhibit dogs in animal fighting ventures, or to (iii) use an instrumentality of interstate commerce for commercial speech for purposes of advertising an animal for use in fighting ventures. However, it found that there was evidence that he knowingly and intentionally conspired to train, possess, sell, purchase, transport, deliver, or receive dogs for the purpose of having them participate in animal fighting ventures. It ultimately sentenced him to 18 months' imprisonment and 3 years of supervised release. Sprague appealed.

II.

We review a properly preserved claim that there was insufficient evidence to support a guilty verdict de novo. *United States v. Jiminez*, 564 F.3d 1280, 1284 (11th Cir. 2009). In doing so, we will "view[] the evidence in the light most favorable to the government, and draw[] all reasonable factual inferences in favor of the jury's verdict." *Id.* Where a defendant moves for acquittal at the close of the government's case, the defendant may preserve the claim by renewing the motion for judgment of acquittal at the close of the evidence. *See United States v. Bichsel*, 156 F.3d 1148, 1150 (11th Cir. 1998) (per curiam).

Where a party does not object to a jury's verdict, however, we will review a challenge on appeal only for plain error. *See United States v. Anderson*, 1 F.4th 1244, 1268 (11th Cir. 2021). "Plain error occurs when (1) there was an error, (2) the error was plain or obvious, (3) the error affected the defendant's substantial rights, and (4) the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings." *Id.* at 1268–69.

An appellant "must plainly and prominently" raise each claim on appeal. *United States v. Jernigan*, 341 F.3d 1273, 1283 n.8 (11th Cir. 2003). To properly preserve a challenge to the sufficiency of the evidence, a defendant must raise the same specific challenges before the district court as he brings on appeal. *United States v. Baston*, 818 F.3d 651, 664 (11th Cir. 2016) ("When a defendant raises

specific challenges to the sufficiency of the evidence in the district court, but not the specific challenge he tries to raise on appeal, we review his argument for plain error.").

"The district court's denial of [a] motion[] for a judgment of acquittal will be upheld if a reasonable trier of fact could conclude that the evidence establishes the defendant's guilt beyond a reasonable doubt." *United States v. Rodriguez*, 218 F.3d 1243, 1244 (11th Cir. 2000) (per curiam). We must sustain a verdict where there is a reasonable basis for it in the record. *United States v. Farley*, 607 F.3d 1294, 1333 (11th Cir. 2010). Accordingly, "[i]t is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt." *United States v. Young*, 906 F.2d 615, 618 (11th Cir. 1990).

To convict Sprague of Count 1, the government had to show that he knowingly conspired to (i) "sponsor or exhibit an animal in an animal fighting venture"; (ii) possess, train, sell, transport, deliver, or receive an animal for purposes of having it participate in such a venture; or (iii) use an "instrumentality of interstate commerce for commercial speech for purposes of advertising an animal" for use in such a venture. *See* 18 U.S.C. § 371; 7 U.S.C. § 2156(a)–(c); *see also United States v. Dominguez*, 661 F.3d 1051, 1064–65 (11th Cir. 2011) ("Where an indictment alleges a conspiracy to commit several offenses . . . , the

charge is sustained by adequate pleadings and proof of conspiracy to commit any one of the offenses." (alteration adopted)). To show that Sprague conspired to commit one or more of the foregoing offenses, the government had to prove: "(1) agreement between two or more persons to achieve an unlawful objective; (2) knowing and voluntary participation in that agreement by the defendant; and (3) an overt act in furtherance of the agreement." *United States v. Estepa*, 998 F.3d 898, 908–09 (11th Cir. 2021). The government is not required to demonstrate that a formal agreement existed, and a conviction may be sustained on the basis of "circumstantial evidence [demonstrating] a meeting of the minds to commit an unlawful act." *See United States v. Arias-Izquierdo*, 449 F.3d 1168, 1182 (11th Cir. 2006).

As an initial matter, Sprague's argument concerning the language in his indictment is reviewable only for plain error because he did not object to the district court's jury instructions to that effect. It fails under that standard because under our precedent the jury could have properly convicted him under any one of the objectives charged, and it ultimately convicted him of all three. *See Dominguez*, 661 F.3d at 1064–65.

Sprague objected to the sufficiency of the evidence in his Rule 29 motions for acquittal and therefore preserved his right to appeal on that basis. However, even under de novo review, there was sufficient evidence to convict Sprague. For

example, the government presented evidence that Sprague agreed to sell puppies on behalf of his "kennel partner." Viewing all inferences in favor of the verdict, the jury could have properly found that Sprague's "kennel partner" was Golson, and that Sprague was selling the puppy, on his behalf, for the purpose of dogfighting. Such an inference would be supported by the ample circumstantial evidence the government presented—including the phone calls in which Sprague graphically described what appeared to be prior dog fights—and the fact that two dogs were fatally injured when they fought each other at Sprague's home. The same phone calls, as well as the fact that Sprague was the one advertising Golson's dog for sale, were sufficient to allow the jury to conclude that he participated in the venture knowingly and voluntarily. And any one of the overt acts charged in the indictment would have supported Sprague's conviction. For example, sufficient evidence existed to show Sprague picked up a dog from Peek and sold it to a buyer in Montana soon afterward, as Sprague admitted as much.[5]

And last, the jury was free to disbelieve Sprague's testimony and use it as substantive evidence of his guilt. *See United States v. Wilson*, 979 F.3d 889, 905 (11th Cir. 2020). In particular, Sprague admitted to talking with the informant about dogfighting in graphic detail, albeit he claimed to do this only to convince

[5] Although the jury acquitted Sprague of Count 5 that does not necessarily undermine it as a basis for his conviction on Count 1 because Count 5 included the additional element of "for the purposes of having the dog participate in an animal fighting venture."

the informant to meet him so he could beat the informant up for engaging in such activities. The jury was free to disbelieve Sprague's story. And the jury could have inferred that Sprague's knowledge of dogfighting, and his association with people engaged in dogfighting, was due to his own actual or planned involvement in dogfighting. Likewise, his argument that the evidence he presented in defense rendered the government's evidence insufficient lacks merit, as the government did not need to eliminate every possible innocent explanation for the evidence; his defense case was for the jury to weigh against the government's evidence. *See Young*, 906 F.2d at 618; *United States v. Grow*, 977 F.3d 1310, 1323 (11th Cir. 2020) (per curiam). For all of the foregoing reasons, sufficient evidence supported Sprague's conviction, and we affirm as to this issue.

III.

District courts have broad discretion in conducting trials, and appellate courts will not intervene absent a clear showing of abuse of that discretion. *United States v. Gabay*, 923 F.2d 1536, 1541 (11th Cir. 1991). When appropriate, we will also review the district court's use of an *Allen* charge—something used when jury deliberations initially fail to result in a verdict—for an abuse of discretion. *See United States v. Woodard*, 531 F.3d 1352, 1364 (11th Cir. 2008). We will find an abuse of discretion "only if the charge was inherently coercive." *Id.* "In assessing

whether the charge was coercive, we consider the language of the charge and the totality of the circumstances under which it was delivered[.]" *Id.*

In giving an *Allen* charge, the district court "instructs a deadlocked jury to undertake further efforts to reach a verdict." *United States v. Bush*, 727 F.3d 1308, 1311 n.1 (11th Cir. 2013) (per curiam). "Although we have criticized the practice of giving *Allen* charges, we have squarely held that they are permissible," so long as the district court does not "coerce any juror to give up an honest belief." *Anderson*, 1 F.4th at 1269. When a party fails to object to an *Allen* charge during trial, we review for plain error. *Id.* at 1268. "To determine whether an *Allen* charge is plain error, we must evaluate whether the particular charge is coercive in light of the facts and circumstances of the case and whether further instructions following timely objection could correct the problem." *United States v. Taylor*, 530 F.2d 49, 51 (5th Cir. 1976) (per curiam) (italics added).[6]

Whether the district court gives an *Allen* charge or not, "[d]ue process requires that the accused receive a trial by an impartial jury free from outside influences." *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966). In particular, due process requires a jury that is capable and willing to decide the case on the evidence before it. *United States v. Siegelman*, 640 F.3d 1159, 1182 (11th Cir.

[6] In *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), this court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

2011) (per curiam). We have rejected a coercion-based challenge to a district court's jury instruction when the instruction merely demonstrated the court's "effort to keep the jury updated about the schedule and the availability of the courtroom," and did not have a coercive impact on the jury's deliberations. *Grow*, 977 F.3d at 1329.

We review Sprague's challenge to the district court's conduct on the last day of his trial for plain error only, as he failed to raise any objections in this respect below.[7] Substantively, the court did not plainly err in this respect. As an initial matter, Sprague concedes that the district court did not give a formal *Allen* charge. Moreover, Sprague's more general assertions that the court coerced the jury by giving a "suggested or implied" *Allen* charge fails because it was the jury who decided to stay and deliberate, not the court. Throughout the night, the court told the jurors multiple times that it was their decision whether to continue deliberating or not. And eventually, the court announced to the jurors that they should come back on Monday and finish. But then the jury requested more time, and ultimately reached a verdict on Saturday morning. It follows that any instructions the court gave did not have a coercive impact and were within the court's discretion in

[7] While Golson's counsel expressed some concerns to the district court about allowing the jury to deliberate into Friday night, Sprague cannot rely on that to preserve his own challenge to the instruction. *See United States v. Gray*, 626 F.2d 494, 501 (5th Cir. 1980) (a codefendant's objection is insufficient to preserve a defendant's argument where the defendant fails to raise an objection himself).

conducting a trial. *See id.* Therefore, the district court did not err, let alone plainly err, in allowing the jury to continue deliberating and reach a verdict, and we affirm Sprague's conviction.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

September 10, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-13275-JJ
Case Style: USA v. Shane Sprague
District Court Docket No: 3:19-cr-00110-RV-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Non-incarcerated pro se parties are permitted to use the ECF system by registering for an account at www.pacer.gov. Information and training materials related to electronic filing, are available at www.ca11.uscourts.gov. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Tiffany A. Tucker, JJ at (404)335-6193.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 14, 2021

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 20-13275-JJ
Case Style: USA v. Shane Sprague
District Court Docket No: 3:19-cr-00110-RV-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Tiffany A. Tucker, JJ/lt
Phone #: (404)335-6193

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-13275-JJ

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

SHANE PATRICK SPRAGUE,

Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Florida

BEFORE: WILSON, JILL PRYOR, and LUCK, Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by Shane Patrick Sprague is DENIED.

ORD-41