

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2025

DEMETRIS MACKIE,

PETITIONER,

VS.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

ISSUE 1: The district court erred in denying petitioner's motion for judgment of acquittal as to count 1 felon in possession of a firearm-and or; the evidence was insufficient to sustain the guilty verdict as to count 1; where the trial evidence failed to prove knowing possession of a firearm by petitioner on April 12, 2023 or April 20, 2023.

ISSUE 2: The district court erred in denying petitioner's objection to the PSI Report inclusion of the reference and evidence of the uncharged-unproved shooting on April 15, 2023 where no evidence was presented at trial and no witnesses identified petitioner as the shooter and evidence of gang membership.

ISSUE 3: The district court erred in denying petitioner's motion for downward variance grounded upon his disadvantaged upbringing and mental health issues.

ISSUE 4: The district court erred in granting the government's motion for upward variance grounded upon petitioner's overstated criminal history, the April 15, 2023 uncharged shooting unproven gang membership and unwarranted sentencing disparity.

ISSUE 5: The district court erred in denying petitioner's motion to exclude evidence of victim injury photos and

hospital video where this evidence does not prove any element of the offense of possession of a firearm by a convicted felon.

ISSUE 6: The district court erred in allowing over petitioner's objection evidence of the April 12, 2023 shooting as Fed.R.Evid. 404(b) evidence for possession of a firearm.

- Prefix-

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The Petitioner, DEMETRIS MACKIE, respectfully prays
that a writ of certiorari issue to review the judgment-
order of the United States Court of Appeals for the
Eleventh Circuit entered on March 11, 2026 Case No. 24-
10410; Southern District of Florida Case No. 23-cr-20204-
RAR-1.

LIST OF PARTIES TO THE PROCEEDINGS-RULE 14(b)1

1. Demetris Mackie.
2. United States of America
3. (There are no stock ticker symbols to report)

CORPORATE DISCLOSURE STATEMENT-RULE 29.6

There is no parent or publicly held companies
concerned in this appeal.

LIST OF ALL DIRECTLY RELATED PROCEEDINGS

1. United States v. Mackie-Southern District of Florida-
Case No. 23-cr-20204-RAR.
2. United States v. Mackie, Eleventh Circuit Court of
Appeals-Case No. 24-10410.

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OPINION BELOW

On March 11, 2026, the Eleventh Circuit Court of Appeals entered its opinion-order affirming Petitioner's final judgement; Case No.24-10410. A copy of the opinion-order is attached hereto as Appendix A.

STATEMENT OF BASIS OF JURISDICTION

Jurisdiction of this Court is invoked under Title 28, United States Code §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner has been deprived of his liberty without due process of law as guaranteed by the Sixth and Fourteenth Amendment to the Constitution of the United States.

STATEMENT OF THE CASE

Petitioner was the petitioner in the District Court and will be referred to by his name or as the petitioner. The respondent, the United States of America, will be referred to as the respondent. The record will be noted by reference to the volume number, docket entry number of the Record on Appeal as prescribed by the rules of this Court. References to the transcripts will be referred to by the docket entry number and the page of the transcript.

The petitioner is incarcerated and is serving his sentence in the Federal Bureau of Prisons at the time of this writing.

Course of Proceedings and Disposition in Court Below

Petitioner was charged by indictment on May 11, 2023 with; convicted felon in possession of a firearm in

violation of 18 U.S.C. §922(g)(1) in count 1. DE 12. On May 8, 2023 petitioner was ordered detained pre-trial without bail and on May 16, 2023 petitioner entered a plea of not guilty at arraignment. DE 11 and 13. The government served discovery responses on May 30, 2023; DE 18; July 11, 2023; DE 25; July 18, 2023; DE 26; August 29, 2023; DE 30. On September 24, 2023 the government filed a motion to admit petitioner's prior felony robbery convictions under Fed.R.Evid. 404(b); evidence of two armed assaults during the firearm possession timeframe; petitioner's attempted flight during his April 20, 2023 arrest at TGI Friday's in Miami Beach, Florida; and, to exclude the victim's criminal history evidence as irrelevant. DE 35. On September 28, 2023 petitioner filed his response in objection to the foregoing motion. DE 39. On September 28, 2023 petitioner filed a motion to suppress evidence from the cellular phone used to track and locate petitioner for his arrest as the warrant therefore lacked probable cause and that his backpack and the contents thereof were the fruits of an unlawful arrest. DE 40. On October 9, 2023, the court denied the motion finding that cellular phone warrant was based upon probable cause and once petitioner was located that he was arrested on an outstanding state court bench warrant. DE 52. On September 29, 2023 petitioner filed a

motion in limine seeking to exclude from evidence at trial evidence of victim's injury and medical records under Fed.R.Evid. 403 as probative value was outweighed by extreme prejudice and the victim injury evidence did not relate to any element of the charged violation. DE 41. On October 10, 2023 the district court held a hearing on the pretrial motions; DE 55; and granted in part and denied in part the government's motion in limine; DE 56; and denied petitioner's motion in limine; DE 57. On October 10, 11, 12 and 13, 2023; DE 58, 60, 62 and 63 a jury trial was held and petitioner was found guilty of count 1 on October 13, 2023. DE 66 and 69. On October 20, 2023 petitioner filed a motion for new trial and motion for judgment of acquittal. DE 77 and 78. On December 29, 2023 a presentence investigation report (hereinafter referred to as a PSI Report) was filed. On January 6, 2024, the district court denied the motions for new trial and judgment of acquittal. DE 83. On January 18, 2024 petitioner filed a motion for downward variance sentence. DE 86. On January 18, 2024 the government filed its sentencing memorandum. DE 87. On January 19, 2024 the petitioner filed his objections to the PSI Report. DE 88. On January 22, 2024 petitioner filed letters of support for mitigation of his sentence. DE 92. On January 23, 2024 the government filed a response to

petitioner's objections to the PSI Report. DE 94. On January 25, 2024 the district court sentenced petitioner to 360 months in prison, followed by 5 years supervised release and a \$100 special assessment. DE 96 and 99. The district court denied petitioner's motion for downward variance sentence. DE 97. The district court granted the government's motion for upward variance sentence. DE 98.

On February 6, 2024, petitioner filed his notice of appeal. DE 104. On March 11, 2026 the Eleventh Circuit Court of Appeals affirmed-the opinion is attached as the appendix to this petition.

Statement of the Facts

The facts and factual basis on appeal arise from the transcripts of testimony at motion hearing and jury trial as well as the sentencing hearing transcripts. DE 113, 115, 116, 117, 118 and 119. The evidence of the indicted offense was as follows:

In jury trial day 1 government exhibit 6 was admitted into evidence over objection based upon petitioner's motion in limine directed to unnecessary evidence of victim's injury and medical treatment and records and photographs of the blood-trail evidence. DE 117-4 and 8-11 (the court

restricted the number of blood-trail photographs but did admit 5 into evidence over objection).

The first government witness called was Reshwanda Toombs; Miami-Dade Police Department detective who testified as follows: She became a detective in January 2023 was assigned to general investigations; she had training a attended the police academy and worked previously as a corrections officer for 5 years and she responded to the scene of a suspected shooting on April 12, 2023. DE 27-30. The location of the response was 1660 N.W. 4th Avenue, North Miami Beach, Florida-within the Southern District of Florida and Miami-Dade County; DE30. Toombs was informed that a male had been shot and was transported to Aventura Hospital; she responded to the scene which was a shopping plaza with a coin laundry; she described the photographs in evidence depicting the scene; on the scene she observed 2 firearm casings near the laundry which were placed into evidence and a blood-trail (exhibit 39); she followed the blood-trail to 16850 N.E. 3rd Court where the victim had stopped and located a cellular telephone and a \$1 bill which were placed into evidence. DE 31-41. A canine detective was summoned to attempt to locate additional casings or firearms however none were found; the scene was documented; she travelled to the

hospital and met the victim who did not want to speak with her; Exhibit 6 was published; thereafter she travelled to the police department and spoke to 2 possible suspects; the first had no information and the second was a witness who provided information which led her to social media data for petitioner with a photograph and a date of birth and she identified petitioner in open court. DE 42-47. She remembered petitioner from her prior employment and was shown a telephone number from the witnesses telephone which was passed through the police data base and registered to the name Big Blocka; thereafter she returned to the hospital and took a recorded statement from Gregory Black government exhibit 5 which was admitted over hearsay objection; after the hospital she returned to the laundromat to canvas for video cameras and located 3 cameras; 1 of the cameras faced the location where the firearm casings were found; Toombs viewed the video and observed 2 males on a sidewalk exchange words then one hit Gregory Black in the head with a firearm and then fired 2 rounds as the muzzle flashed twice; the video was published to the jury. DE 48-58. Toombs narrates the video; explains that a cellular phone tracking warrant was obtained from the telephone number observed by her from the witnesses telephone; identified 3 social media photographs

alleged to be petitioner (exhibits 11, 33 and 33A); Toombs identified petitioner from exhibit 11, recognizing his face and the shirt he was wearing, the same worn during petitioner's interview; Toombs identified exhibit 34 as a photograph of petitioner on April 20, 2023 the date of his arrest and facial hair and tattoos; Toombs. DE 59-70. On cross-examination, Toombs testified that: she had been a detective for 4 months prior to the April 2023 investigation; she worked 10 hour shifts; was called out after leaving her shift to the scene on April 12; the laundromat was open to the public; it was a commercial area; crime scene personnel collected the firearm casings; did not know if any DNA or fingerprint evidence was collected from the casings; the 2 witnesses in custody were brought in by other units; the 2 witnesses were both black males, normal build one taller than the other; the first witness was near the Krispy Kreme restaurant and the second witness was arrested within the crime scene perimeter; neither of the witnesses provided any information connecting the shooting to petitioner; the purpose of the perimeter was to catch the perpetrator; and she did not include in any of her reports that she recognized petitioner from the surveillance video and the social media photographs; she did not investigate the name Big Blocka

and the telephone number for the social media accounts. DE 70-87. Toombs described Gregory Black as between 5'5 and 5'9 height and slim build. DE 88-89.

The next witness called was detective Daritza Machado who testified as follows: She identified petitioner in court based upon the investigation as a suspect in the case; she proceeded to follow petitioner on Instagram social media platform in addition to the cellular phone tracking warrant; she was present when petitioner was arrested on April 20, 2023; she responded to Ocean Drive, Miami Beach, Florida where the phone was located and saw petitioner walking at 5:30 p.m. in the afternoon that date; petitioner was wearing a white shirt, red shorts, and a multicolored T-shirt with a satchel across his body; earlier that day she observed a social media post of petitioner wearing the same shirt; she observed petitioner and 2 other persons enter the T.G.I. Fridays restaurant; once her arrest squad arrived the decision was made to arrest petitioner inside the restaurant to use the element of surprise; upon entering petitioner moved toward the restrooms; her bodyworn camera exhibit 13-B was narrated; petitioner was ordered to stop and continued walking and was physically taken to the ground by officers; afterward she removed the green satchel from petitioner's person; she

identified the green satchel; detective Gomez opened the satchel and observed a firearm inside. DE 118-19-35. She closed the bag to maintain the integrity of any DNA and fingerprints on the firearm; back at the station Detective Armenteros processed the bag; she identified the firearm and ammunition from the bag; the firearm and ammunition were admitted into evidence subject to the pretrial motion. DE 118-36-38. On cross-examination she testified that: her arrest affidavit listed petitioner as 5'11 high and 230 pounds; she arrived at the scene on April 12, 2023 after the crime scene perimeter had been established; she began watching the social media platforms on April 15, 2023 and periodically checked the Instagram page until April 20, 2023; when arrested petitioner's 2 companions were detained; one was arrested Isaiah Johnson; she knew that April 20, 2023 was celebrated World Marijuana day; while observing petitioner walk down Ocean Drive from 10th Street down to 5th Street she never observed petitioner open or look into the satchel he was wearing; upon entering the restaurant it was a few seconds before Detective Gomez took petitioner to the ground; petitioner was arrested peacefully after the take down; there was no identification for petitioner located in the satchel. DE 118-41-61.

Detectives Javier Gomez testified as follows: he is a detective with Miami-Dade Police Department; on April 20, 2023 he responded to Miami Beach, Florida reference taking a wanted individual into custody; he received a photograph of petitioner from Detective Machado taken earlier in the day from social media; driving south on Ocean Drive he observed petitioner with 2 others and wearing a green sling-back bag; he advised other officers he had located petitioner; he sees petitioner enter the restaurant and waited for the squad to arrive; he is wearing a body camera with his tactical marked police vest; there were 10 detectives responded total; upon entering he observes petitioner walking toward the restrooms; petitioner was taken to the ground and arrested; during the take down he had his firearm drawn; Machado removed the bag from petitioner's person; he narrates his body worn camera; he observes the firearm in the bag; DE 61-80. He identifies the social media photo of petitioner; DE 118-80. On cross-examination he testified that: in the social media photograph of petitioner, petitioner was not wearing the green satchel which contained the firearm; the entire event lasted no longer than 10 minutes; the 2 companions with petitioner were connected to a Range Rover automobile; he did not do any follow up investigation with the vehicle,

owner or driver; that the firearm depicted in the photograph of the green satchel was underneath the packages; the body worn cameras were operated manually; when petitioner was arrested there was no fight; DE 118-84-95.

Victor Morello testified that: he is employed at the Miami-Dade crime lab; the lab is accredited by ANAB; his work involves serology and DNA; he describes the DNA analysis process in general; he identifies exhibit 30 the firearm swabs and exhibit 31 the swab from petitioner; he described his analysis of the swabs from the firearm and there were a mixture of at least 4 contributors with 1 being male; and that no comparison could be made to petitioner's DNA swab due to the complex nature of the mixture (there was no DNA identification between the firearm and petitioner); the same conclusion applied to the second firearm swab and the magazine swab exhibit 43; DE 118-109-120. He testified on cross-examination that: at least 4 different persons made contact with the firearm, 2 being males; that he has in the past had cases where he has been able to make a comparison of a DNA profile from a mixture however it was not possible in this case; that he had processed DNA samples that were over 20 years old in other cases; the samples tested in this case could have

been left there up to a month before they were collected; that no shell casings were submitted for analysis; that DNA can be obtained from shell casings; DE 118-125-131.

Julio Betancourt testified as follows: he is employed at the Miami-Dade Police Department Forensic Service Bureau as a latent fingerprint examiner; he generally described the fingerprint process; he examined exhibits 1 (the firearm), 2 (the magazine) and 26 (the ammunition) for possible fingerprint evidence; after processing the 3 exhibits there were no fingerprints found to be compared to standard prints in this case. DE 118-132-146. On cross-examination he testified that: he employed a 4 step technique to try to get latent prints off of the case evidence; visual examination; super glue examination; the RG6 dye stain method and fluorescent light method all of which were negative for fingerprints as to the firearm, the magazine and the ammunition; and that it is possible that fingerprints are found on firearms, magazines and ammunition. DE 118-147-151.

Adrian Halley testified that: he is employed at the Bureau of Alcohol Tobacco and Firearms (ATF) as a special agent for 16 years and he has examined hundreds of firearms and that the exhibit 1 firearm being a Ruger brand firearm had travelled in interstate commerce having travelled from

Arizona to Connecticut and then being impounded in Florida; and that the ammunition had travelling in interstate commerce from Nebraska and Illinois where they were manufactured to Florida. DE 118-152-161. On cross-examination he testified that: the particular Ruger SR9c firearm is available with a black colored slide or a stainless-steel slide on the top and that his knowledge of the firearm was based upon his tracing of the serial number. DE 118-164-165.

Angela Garvin testified that: she is employed at the Miami-Dade Police Department as a firearm examiner; her training and experience, and generally how firearm examination is made; she identified the 2 shell casings in evidence exhibits 24 and 26 and described her examination thereof as well as test fired casings from exhibit 1 and classification examination; the way that minute imperfections are randomly imparted to the surface of firearms which are imparted onto the firearm evidence so that each firearm has its own set of markings. DE 118-167-183. In her analysis of the April 12, 2023 shell casings she determined that they were both fired from the same 9 milliliter firearm and that the individual characteristics were in agreement that the casings were fired from the Ruger firearm exhibit 1. DE 118-184-190.

On cross-examination she testified that: the Ruger firearm had a black metal slide piece on top; in her experience she has seen stainless-steel metal slides on the tops of firearms; she described the firearm manufacturing process and had visited several factories. DE 118-194-223.

The government rested its case. DE 118-200.

The defense rested its case. DE 118-200.

Petitioner moved for a judgment of acquittal under FRCrP 29 which was denied. DE 118-252-254.

The district court instructed the jury. DE 119-5-16

The government and petitioner gave closing arguments. DE 119-17-62.

The jury retired to deliberate and reach a verdict. DE 119-64.

The jury returned a verdict of guilty as to count 1. DE 119-67.

The jury was polled as to a unanimous verdict. DE 119-69.

The government offered prior conviction evidence as to petitioner and was instructed as to the supplemental verdict. DE 119-71-73.

The jury returned the supplemental verdict finding the 3 prior convictions committed on occasions different from one another. DE 119-74.

The jury was polled as to a unanimous supplemental verdict. DE 119-76.

On January 25, 2024, the district court held a sentencing hearing. DE 113-1. At the hearing the court considered numerous objections to the PSI Report and denied them as moot as they did not impact the ultimate Total Offense Level 34, category VI-262-327 guideline sentencing range. DE 113-39.

In considering petitioner's motion for downward variance, the district court recognized petitioner's lengthy history of mental illness and mental health concerns initially finding that mental health treatment is needed for petitioner and denied the motion for downward variance finding the mitigation evidence outweighed by petitioners criminal record. DE 113-49-50.

In considering the government's motion for upward variance, the district court considered the testimony of Agent Alfredo Armenteros of ATF who testified that: DE 113-53, he is an ATF task force agent with Miami-Dade Police Department; he investigated an uncharged shooting from April 15, 2023; he spoke with the victim witness Gabriel Castillo who advised that 2 males unsuccessfully attempted to rob him and that shots were fired from the fleeing vehicle and that Castillo identified petitioner as

the shooter from a photo array; he testified that the casings collected after the April 15, 2023 shooting matched the firearm impounded on April 20, 2023; further he identified an affidavit that represented that petitioner was a gang member and has gang tattoos on his person; DE 113-55-62. On cross-examination he testified that: Gabriel Castillo did not testify at petitioners jury trial because he could not be located and that the government had paid his room and board before the trial; and that the gang affidavit was prepared by a third party corrections officer E. Obrer, No. 7248 while petitioner was in custody on an unrelated case. DE 113-63-65.

The district court overruled petitioner's objection to the PSI Report concerning the April 15, 2023 shooting adopting the testimony of Armenteros. DE 113-74.

The district court overruled petitioner's objection to the PSI Report that he was a documented gang member adopting the report and affidavit offered by Armenteros. DE 113-75.

The district court granted the government's motion for upward variance and imposed a sentence of 360 months an upward variance from the 327 month high end limit on the guideline range. DE 113-79.

Petitioner renewed all of his prior objections. DE 113-82.

REASONS FOR GRANTING THE WRIT

ISSUE 1: The district court erred in denying petitioner's motion for judgment of acquittal as to count 1 felon in possession of a firearm-and or; the evidence was insufficient to sustain the guilty verdict as to count 1; where the trial evidence failed to prove knowing possession of a firearm by petitioner on April 12, 2023 or April 20, 2023.

The trial evidence viewed in a light most favorable to the government fails to establish knowledge on the part of petitioner as to the firearm in the backpack and during the April 12, 2023 shooting at the laundromat. Petitioner did not admit to possession of any firearm at any time. No witness identified petitioner with any firearm in his hand on April 12, 2023 or April 20, 2023. The firearm in the video from April 12, 2023 has a silver slide while the firearm in evidence exhibit 1, has a black slide. The firearm witnesses testified that he firearms are made in both back and stainless-steel finishes. The witnesses who conducted surveillance of petitioner on April 20, 2023 never observed petitioner holding the firearm in his hand. The firearm was concealed within the green bag and could

have been there without petitioner's knowledge. The DNA expert testified that 4 separate DNA profiles were found on the firearm evidence taken from the green bag, none of the profiles matched petitioner's DNA profile and prove that at least 4 persons handled the firearm, not petitioner. No fingerprints were found on the firearm evidence. If petitioner ever possessed the firearm on April 20, 2023 his fingerprints would have been all over it. The social media photograph of petitioner earlier from the day April 20, 2023 had no firearm evidence or the green bag, so petitioner would have been wearing the bag only for a short time and did not know the firearm evidence was contained therein. Upon being arrested petitioner did not attempt to remove anything from the green bag. There were no identifying documents contained within the green bag. The evidence presented was circumstantial at best and failed to prove knowing possession beyond a reasonable doubt.

Whether the evidence is sufficient to sustain petitioner's conviction is a question of law which is reviewed de novo. United States v. To, 144 F.3d 737 (11th Cir. 1998) The court must view the evidence in the light most favorable to the government. Glasser v. United States, 315 U.S. 60, 62 (1942) The court is required to affirm unless under no reasonable construction of the

evidence could the jury have found the petitioner guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307 (1979) The court cannot affirm a criminal conviction based upon a theory not contained in the indictment or not presented to the jury. United States v. Ross, 131 F.3d 970 (11th Cir. 1997) The trial evidence need not exclude every reasonable hypothesis of innocence, instead, the question is whether a reasonable trier of fact, when choosing among reasonable constructions of the evidence could have found the petitioner guilty beyond any reasonable doubt. United States v. Knowles, 66 F.3d 1146 (11th Cir. 1995) The jury is of course free to choose among reasonable constructions of the evidence. United States v. Abbell, 271 F.3d 1286 (11th Cir. 2001) In reviewing the government's case this court draws no distinction between circumstantial and direct evidence. United States v. Silvestri, 409 F.3d 1311, 1328 (11th Cir. 2005) The evidence offered against petitioner failed to establish the element of knowing possession of a firearm on either April 12, 2023 or April 20, 2023. No witness identified petitioner in knowing possession, in his hand, of the firearm on either April 12, 2023 or April 20, 2023. On April 12 the evidence from the video and photographic evidence contradicts the firearm evidence admitted as the April 12 firearm had a

stainless-steel slide whereas the April 20 firearm was all black in color. The absence of any admission by petitioner or physical evidence linking petitioner to the April 20 firearm amounts to no more than mere suspicion of knowing possession. As for the green bag, there was no evidence that petitioner owned by bag or it's contents, only that he was wearing it when arrested (no photographs of petitioner with the bag from social media or documentation for petitioner inside the bag) While petitioner stipulated that the firearm was in fact a firearm and he was a convicted felon, this does not cure the dearth of evidence as to knowing possession requiring reversal by this court. ISSUE 2: The district court erred in denying petitioner's objection to the PSI Report inclusion of the reference and evidence of the uncharged-unproved shooting on April 15, 2023 and evidence of gang membership where no evidence was presented at trial and no witnesses identified petitioner as the shooter or gang membership.

At a sentencing hearing the district court may consider any information including reliable hearsay, regardless of the information's admissibility at trial provide that there are sufficient indicia of reliability to support its probable accuracy. United States v. Ghertler, 605 F.3d 1256 (11th Cir. 2010) This matter is analogous with

United States v. Lee, 68 F.3d 1267 (11th Cir. 1995) where the district court relied upon the statement of a co-conspirator made to a DEA agent where the co-conspirator later became a fugitive. This court held that the statement of a co-conspirator was not sufficiently reliable at least without some corroborating information. The same logic applies here where the hearsay regarding the identification from the uncharged April 15, 2023 shooting was from a witness who was being housed by the government pre-trial in anticipation of testimony and then ran away from the agents and did not appear at trial. Further, the trial court's failure to make explicit findings regarding the reliability of hearsay evidence at sentencing is reversible error. United States v. Anton, 546 F.3d 1355 (11th Cir. 2008) Respectfully the district court relied upon the unreliable uncorroborated hearsay testimony of a questionable witness to support an upward variance sentence requiring reversal by this court.

ISSUE 3: The district court erred in denying petitioner's motion for downward variance grounded upon his disadvantaged upbringing and mental health issues.

This court reviews the reasonableness of a sentence under the deferential abuse of discretion standard. Gall v. United States, 552 U.S. 38, 41, 128 S. Ct. 586, 591 (2007).

The court must first ensure that the district court made no significant procedural error, then examine whether the sentence was substantively reasonable in light of the totality of the circumstances. *Id.* at 51. United States v. Pugh, 515 F.3d 1179, 1190 (11th Cir. 2008). The party challenging the sentence bears the burden to show that the sentence was unreasonable in light of the record and the 18 U.S.C. § 3553(a) factors. United States v. Tome, 611 F.3d 1371, 1378 (11th Cir. 2010). The district court erred in concluding that a downward variance was not warranted in the light of the 18 U.S.C. § 3553(a) factors. The sentencing judge should set forth enough to satisfy the appellate court that he has considered the parties' arguments and has a reasoned basis for exercising his own legal decision-making authority. Rita v. United States, 551 U.S. 338, 356 (2007). When a judge decides simply to apply the Guidelines to a particular case, doing so will not necessarily require lengthy explanation. *Id.* The district court need not state that it considered the evidence and argument or why it rejected the arguments for a variance. It is enough that the context and record indicated the reasoning behind its conclusion. United States v. Irely, 612 F.3d 1160, 1195 (11th Cir. 2010) (citing Rita, 551 U.S. at 359). As argued above the district court denied petitioner's motion for

downward variance under 18 U.S.C. § 3553(a) finding that while petitioner did suffer terrible disadvantages during his childhood, and has a long history of mental illness and related difficulties that his prior record and the uncharged uncorroborated April 15, 2023 shooting mitigated against a downward variance. These factors were already considered in the PSI Report wherein the court cites petitioner's prior record for which he was originally punished, then punished again as prior convictions in the PSI Report, then punished again in the ACCA enhancement and then punished again in the career offender enhancement and then punished a final time in the upward variance sentence. The district court held that: "The Court is certainly sensitive to the background of the petitioner. And there's no question that he has been in an environment, I think since childhood, that has given him very few options and presented him with very difficult surroundings and as I think undoubtedly caused trauma and has exposed him to very difficult episodes that no child or young adult should have to encounter. That being said, the request I'm getting here today is to impose a minimum mandatory sentence of 15 years or bottom of the guideline sentence. It's wholly inappropriate that someone like Mr. Mackie, who warranted an ACCA designation, and who has such a very lengthy

criminal history -- I can't justify on this record any sort of downward variance at all." DE 113-49-50. The district court has over-weighed petitioner's prior record which includes juvenile cases as well as cases while in jail. The criminal history is adequately accounted for in the criminal history, ACCA designation, career offender designation sections of the PSI Report and to rely upon this again to deny any downward variance was reversible error.

ISSUE 4: The district court erred in granting the government's motion for upward variance grounded upon petitioner's overstated criminal history, the April 15, 2023 uncharged shooting unproven gang membership and unwarranted sentencing disparity.

Petitioner reasserts the argument set forth in Issue on Appeal 3 herein concerning his mitigation of sentence. The court in granting an upward variance sentence held: "I think this is certainly a serious case on its face. You look at it, and you believe it's a 922 felon-in-possession case, but that would really, I think, misrepresent just how serious the underlying circumstances of the case are. And we know that that is absolutely what we have to consider -- it's probably the first 3553(a) factor that we look at -- and that is the nature and circumstances of the offense.

This offense, as now established through the evidence and at trial, involved two shootings. And he is facing charges for those shootings in state court. They've been charged as attempted murder in state court, as we've discussed and as reflected in the PSI. So these are very serious circumstances that led to this case. It is not simply a felon in possession or an ordinary felon-in-possession case. That's number one. And so a sentence has to be handed down that reflects that seriousness. Second thing is the criminal history is extensive. I don't want the government to think that I'm not considering incidents in jail, but I think we have to look at the full criminal history and recognize that some of his criminal episodes are certainly more serious than others. I'm not making light of some of the lesser offenses while he's been incarcerated. They are still serious. But I think it's less about the offenses and their nature and more-about the fact that even while incarcerated, unfortunately Mr. Mackie finds it difficult to abide by the law. And that doesn't give me a lot of hope that if we were to entertain a low sentence, it would be sufficient but not greater than necessary of a sentence as the guidelines call for certainly, the Court will note that he is gang affiliated. I don't know that simply being gang affiliated in and of itself is a stand-alone factor that

would generate a need for a higher range of punishment. But I will note, it definitely, it definitely suggests that a period of incarceration needs to be serious and lengthy enough to protect the public if someone is engaging with or a member of a gang and that would obviously be a window to promote crime. DE 113-74-79. As stated above the grounds for the upward variance center upon petitioner's criminal history which was already factored into the very high guideline range, the unproved identification in the April 15, 2023 uncharged shooting and the unproven gang membership. We review the sentence a district court imposes for "reasonableness," which "merely asks whether the trial court abused its discretion." United States v. Pugh, 515 F.3d 1179, 1189 (11th Cir. 2008) (quoting Rita v. United States, 551 U.S. 338, 351 (2007)). The party challenging the sentence bears the burden to show it is unreasonable. United States v. Tome, 611 F.3d 1371, 1378 (11th Cir. 2010). The 18 U.S.C. § 3553(a) factors include: (1) the nature and circumstances of the offense and the history and characteristics of the petitioner; (2) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (3) the need for the sentence imposed to afford adequate deterrence; (4) the

need to protect the public; (5) the need to provide the petitioner with educational or vocational training or medical care; (6) the kinds of sentences available; (7) the Sentencing Guidelines range; (8) the pertinent policy statements of the Sentencing Commission; (9) the need to avoid unwanted sentencing disparities; and (10) the need to provide restitution to victims. None of these factors support a sentence of an upward variance sentence of 360 months from a guideline cap of 327 months. The district court committed reversible error in granting the upward variance and the sentence must be reversed and remanded.

ISSUE 5: The district court erred in denying petitioner's motion to exclude evidence of victim injury photos and hospital video where this evidence does not prove any element of the offense of possession of a firearm by a convicted felon.

The district court admitted evidence at trial that a the shooting victim from the April 12, 2023 shooting at the laudromat was injured and was treated at Aventura hospital over petitioner's objection pursuant Fed.R.Evid. 403 that the probative value which was none was outweighed by the great actual prejudice concerning the injury and hospital video which do not establish any element of the charged offense. The term unfair prejudice relates to the capacity

of some possibly relevant evidence to lure the fact-finder into declaring guilty on a ground different from proof specific to the offense charged. Unfair prejudice within the context of Rule 403 means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily and emotional one. Old Chief v. United States, 519 U.S. 172 (1997) There was no connection at all established between petitioner and the shooting victim sufficient to support the evidence of victim injury and the blood photographs admitted at trial. The evidence established that the episode was a random event unconnected with any other activity between petitioner and the victim, thus the evidence regarding the hospital, the injuries and the blood photos offered nothing in the way of proof of the element of knowing possession by petitioner. In United States v. Ross, 33 F.3d 1507 (11th Cir. 1988) the district court allowed the government to introduce evidence of petitioner's acts of violence connected with his drug enterprise, even though the indictment did not allege any acts of violence which was affirmed by this court as the evidence demonstrated petitioner's control over his continuing criminal enterprise. Absent any such nexus to the indictment in this case it was reversible error to

admit the victim injury and blood evidence requiring reversal of the conviction.

ISSUE 6: The district court erred in allowing over petitioner's objection evidence of the April 12, 2023 shooting as FRCcP 404(b) evidence for possession of a firearm.

Fed.R.Evid.404(b) provides that evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident. The rule permits the introduction of evidence of a prior or uncharged act if the government can demonstrate: (1) a proper purpose for introducing the evidence; (2) that the prior act occurred and that the petitioner was the actor; (3) that the probative value of introducing the evidence outweighs any prejudicial effect the evidence might have. United States v. Troya, 733 F.3d 1125 (11th Cir. 2013) Whether the accused's culpability for the prior act is to be decided by the court by simply determining whether a jury could determine that the petitioner committed the prior act. Huddleston v. United States, 485 U.S. 681 (1988) The court committed reversible

error by admitting shooting evidence where the evidence proved nothing to advance the felon in possession charge and no one identified petitioner as the perpetrator of the shooting in court. This court has held that it will not condone the introduction of extrinsic evidence if the extrinsic offenses which is likely to sway the jury irrevocably to a decision of guilty, then it must be excluded by the district court. United States v. Williams, 816 F.2d 1527 (11th Cir. 1987) The court committed reversible error by admitting shooting evidence where the evidence proved nothing to advance the felon in possession charge and no one identified petitioner as the perpetrator of the shooting in court.

CONCLUSION

For the foregoing reasons, petitioner respectfully submits that the petition for writ of certiorari should be granted.

DATED this 8th day of June, 2026.

/s/ A. Wallace

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APPENDIX "A"

