No. 19-7021

IN THE SUPREME COURT OF THE UNITED STATES

OTIS HUNTER AND DESHAWN EVANS, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court violated the Confrontation Clause of the Sixth Amendment by limiting petitioners' ability to cross-examine the cooperating witnesses who testified against them about the precise statutory minimum sentences the witnesses would have faced in the absence of cooperation with the government.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-22) is reported at 932 F.3d 610.

JURISDICTION

The judgment of the court of appeals was entered on August 5, 2019. A petition for rehearing was denied on September 18, 2019 (Pet. App. 27). The petition for a writ of certiorari was filed on December 17, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of Wisconsin, petitioner Hunter was convicted on one count of conspiracy, in violation of 18 U.S.C. 371; three counts of robbery affecting interstate commerce, in violation of the Hobbs Act, 18 U.S.C. 1951(a) and 2; two counts of carjacking, in violation of 18 U.S.C. 2119(1) and 2; and five counts of brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2. Hunter Judgment 1. He was sentenced to 1284 months and one day of imprisonment, to be followed by three years of supervised release. Hunter Judgment 3-4. Petitioner Evans was convicted on one count of conspiracy, in violation of 18 U.S.C. 371; one count of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) and 2; one count of carjacking, in violation of 18 U.S.C. 2119(1) and 2; and two counts of brandishing a firearm in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2. Evans Judgment 1. He was sentenced to 384 months and one day of imprisonment, to be followed by three years of supervised release. Evans Judgment 3-4. The court of appeals affirmed. Pet. App. 1-22.

1. On November 17, 2016, petitioner Hunter, Dominique Rollins, and Kelly Scott robbed Roman's Food Market in Milwaukee, Wisconsin. Pet. App. 2; Hunter Presentence Investigation Report (PSR) ¶¶ 18, 20. In the course of the robbery, Hunter pressed a semiautomatic handgun into the back of a store employee's neck

while forcing him to open a cash register, and then struck him on the head with the gun and robbed his person. Pet. App. 2; Hunter PSR ¶ 18; Gov't C.A. Br. 24. The three robbers stole money and a large quantity of Newport cigarettes. Gov't C.A. Br. 24.

On November 20, 2016, petitioners carjacked a food delivery driver outside of Aurora Sinai Hospital in Milwaukee. Pet. App. 3; Hunter PSR ¶ 24; Evans PSR ¶ 14. As the driver exited his car, petitioners approached him and struck him on the head with a handgun, knocking him to the ground. They then stole his cellphone and wallet and drove off with his car, a black Cadillac. Pet. App. 3; Gov't C.A. Br. 27.

On November 22, 2016, petitioner Hunter, Scott, and Anthony Lindsey robbed a George Webb restaurant in Milwaukee. Pet. App. 3; Hunter PSR ¶ 30. In the course of the robbery, Hunter put his gun to the heads of both a customer and an employee of the restaurant. Gov't C.A. Br. 29. The robbers stole approximately $70 and several credit card receipts from the cash register drawer before fleeing in the black Cadillac stolen during the carjacking described above. Hunter PSR ¶¶ 30-31; Gov't C.A. Br. 28. Law enforcement officers recovered the stolen Cadillac the next day and found a credit card receipt from the George Webb restaurant dated November 22, 2016 inside the car. Pet. App. 3; Hunter PSR ¶¶ 25, 31; Evans PSR ¶¶ 15, 21.

On November 25, 2016, petitioners attempted to rob a Walgreens store in Milwaukee. Pet. App. 3-4; Hunter PSR ¶ 34; Evans PSR

¶ 24. Petitioners ordered the cashier to open the register, and when he was unable to do so, Evans struck him on the head with the butt of his gun. Pet. App. 3-4; Gov't C.A. Br. 31. Petitioners then attempted to rob the customers standing near the register, but were unable to obtain anything of value. Gov't C.A. Br. 31. Petitioners eventually left the store. Ibid.

On December 4, 2016, petitioner Hunter and D.H., a juvenile, committed a carjacking on South 15th Place in Milwaukee. Pet. App. 4; Hunter PSR ¶ 38. When the victim approached his Ford Focus, they boxed him in beside the car. Hunter then pushed a handgun into the victim's stomach and stole his cellphone, wallet, and credit cards, along with the car. Ibid. Shortly thereafter, Hunter and D.H. used the victim's stolen credit cards to purchase multiple items at a Foot Locker store. Ibid.

The next day, law enforcement officers located the stolen Ford Focus parked outside a residence and arrested petitioner Evans, Lindsey, and D.H. when they entered the car. Pet. App. 4; Hunter PSR ¶ 40. Hunter fled to Ohio, where law-enforcement officers arrested him five days later. Inside his vehicle, they found receipts and merchandise corresponding to the Foot Locker purchases that had been made with the carjacking victim's stolen credit cards. Pet. App. 4; Hunter PSR ¶ 42; Gov't C.A. Br. 4, 35.

2. A federal grand jury charged petitioner Hunter with one count of conspiracy, in violation of 18 U.S.C. 371; three counts of robbery affecting interstate commerce, in violation of the Hobbs

Act, 18 U.S.C. 1951(a) and 2; two counts of carjacking, in violation of 18 U.S.C. 2119(1) and 2; and five counts of brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2. Pet. App. 4; Second Superseding Indictment 1-12. The grand jury charged petitioner Evans with one count of conspiracy, in violation of 18 U.S.C. 371; one count of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) and 2; one count of carjacking, in violation of 18 U.S.C. 2119(1) and 2; and two counts of brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2. Pet. App. 4; Second Superseding Indictment 1-2, 5-6, 9-10. The grand jury charged Rollins, Scott, and Lindsey with several overlapping offenses. See Second Superseding Indictment 1-4, 7-8. The latter three defendants pled guilty, Pet. App. 2, but petitioners proceeded to trial, Gov't C.A. Br. 5.

At trial, the government presented surveillance footage -- accompanied by narration and explanation by witnesses -- from every robbery except the South 15th Place carjacking, as well as from Foot Locker. It also elicited testimony from victims of each of the robberies; a Foot Locker employee; and Doris Brown, who was Lindsey's mother and Scott's fiancée. The government also presented corroborating physical evidence. As noted, police recovered both stolen vehicles; a George Webb receipt from the

stolen Cadillac; and Foot Locker merchandise and receipts from petitioner Hunter's vehicle. Pet. App. 2-4; Gov't C.A. Br 24-35.

In addition, the government presented testimony from Scott, Rollins, and Lindsey. Pet. App. 2-4. Each of the three had agreed to cooperate in exchange for the government agreeing to dismiss certain charges or to recommend a lower sentence. See Gov't C.A. Br. 59-61 (describing the terms of each witness's cooperation agreement with the government). Petitioners' counsel sought to cross-examine those witnesses regarding the precise statutory minimum sentences that they would have faced had they declined to cooperate. Pet. App. 9. The government objected on the ground that the witnesses had been charged with many of the same offenses as petitioners, arguing that disclosing their possible sentences would effectively disclose the sentences that petitioners themselves would face if convicted, which could then improperly influence or confuse the jury's consideration of the issue of guilt. Ibid. The district court adopted an approach under which petitioners were "entitled to explore the fact that the[] cooperating defendants" had faced "substantial" sentences, but could not "get into the minutia of exactly how many years and months." Id. at 25.

Defense counsel accordingly cross-examined Scott, Rollins, and Lindsey about their cooperation with the government and their potential criminal exposure in the absence of cooperation. Defense counsel elicited from Scott the fact that the government had agreed

to dismiss a second count of brandishing a firearm under 18 U.S.C. 924(c) as well as a "conspiracy" count, and that the government was planning to "recommend the low end of the guidelines for [him]." Trial Tr. 313-314. Scott conceded that he was "looking at big federal time," "substantial * * * time," id. at 314, and that dismissal of the brandishing count "was important to [him]," id. at 313. He testified that the "924 brandishing carried with [it] substantial prison time consecutive to whatever [he was] convicted of," and that the sentence for a "second 924(c)" "has to be more than the first one" and "has to also be consecutive." Id. at 314-315. Scott agreed that, in the absence of cooperation and given his age -- 49 -- he faced a "substantial prison sentence" under which he "might never [have] see[n] the light of day" again. Ibid.

Defense counsel elicited similar testimony from Rollins. Rollins conceded that in exchange for his cooperation, the government had agreed to recommend a total sentence of "no more than nine years in prison[,] which is the low end of the sentencing guidelines." Trial Tr. 462. He acknowledged that he was "hoping that [he received] some consideration," and in particular a "lower sentence," in light of his testimony. Id. at 453, 461. And he admitted that "time" was "more important" to him than "money," id. at 466, and that he would "do whatever is necessary to get a lower sentence," id. at 453.

Lindsey's cross-examination elicited testimony that the government had agreed to dismiss a conspiracy charge and a brandishing charge against him, Trial Tr. 692-693, and that dismissal of the brandishing charge was "very important to [him]," id. at 693. Lindsey also confirmed that the brandishing count would have "carrie[d] substantial prison that has to be consecutive," which meant Lindsey would have "be[en] doing a lot of prison time." Ibid. And although Lindsey was never charged with or facing a second brandishing count, Gov't C.A. Br. 61, defense counsel prompted Lindsey to concede that "if [he] had a second brandishing count [he was] going to be doing even a lot more substantial prison time," Trial Tr. 693.

The jury found petitioners guilty on all counts. Hunter Verdict Form 1-3; Evans Verdict Form 1-2. The district court sentenced Hunter to 1284 months and one day of imprisonment, to be followed by three years of supervised release. Hunter Judgment 3-4. It sentenced Evans to 384 months and one day of imprisonment, to be followed by three years of supervised release. Evans Judgment 3-4.

3. The court of appeals affirmed. Pet. App. 1-22. As relevant here, the court rejected petitioners' contention that the district court violated the Confrontation Clause of the Sixth Amendment by declining to permit them to cross-examine the cooperating witnesses about the specific statutory minimum

sentences that they would have faced in the absence of cooperation. Id. at 14-16.

The court of appeals observed that, when a defendant and cooperating witness face overlapping criminal charges, a restriction on testimony about the cooperating witness's sentencing terms is "sometimes necessary" in order to prevent the jury from inferring the sentence faced by the defendant, because "the reality of a serious sentence could prejudice the jury and cause it to acquit the defendant[] of crimes [he or she] actually committed." Pet. App. 15. Relying on its prior decision in United States v. Trent, 863 F.3d 699 (7th Cir.), cert. denied, 138 S. Ct. 2025 (2018), the court explained that in such circumstances, "[t]o satisfy the Confrontation Clause, it is enough that a defendant can elicit that witnesses will receive a 'substantial' reduction in imprisonment" from cooperation. Pet. App. 14-15 (quoting Trent, 863 F.3d at 706). And the court of appeals determined that the district court's approach in this case had allowed petitioners to "expose[] enough information for the jury to deduce that the witnesses received a serious benefit from cooperating with the government," and had not "significantly impact[ed]" petitioners' ability to cross-examine the witnesses. Id. at 16.

The court of appeals declined to accept petitioners' suggestion that Trent should be overruled. See Pet. App. 15. The court disagreed with petitioners' assertion that it conflicts with the decisions of other circuits in United States v. Chandler, 326

F.3d 210 (3d Cir. 2003), United States v. Cooks, 52 F.3d 101 (5th Cir. 1995), and United States v. Larson, 495 F.3d 1094 (9th Cir. 2007) (en banc), cert. denied, 552 U.S. 1260 (2008). The court explained that neither Chandler nor Cooks adopted a categorical rule permitting cross-examination concerning potential sentences, but instead held that the analysis depends on whether the jury had sufficient information to appraise the witnesses' motives. Pet. App. 15. And it observed that Larson hinged on the fact that the witness in that case (unlike the witnesses here) faced a sentence of life imprisonment. Id. at 16.

ARGUMENT

Petitioners renew their contention (Pet. 9-19) that the district court violated the Confrontation Clause by declining to allow them to elicit testimony about the precise statutory minimum sentences that the cooperating witnesses faced. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court. Petitioner asserts (Pet. 19-20) that lower courts have reached differing results in resolving claims that the Confrontation Clause entitles defendants to cross-examine cooperating witnesses on sentencing matters. But those fact-specific decisions do not create any conflict warranting this Court's review, and the Court has repeatedly and recently denied petitions for writs of certiorari raising the same issue and asserting similar circuit conflicts, including a request for review of the circuit precedent on which the decision below

relied. See, e.g., Wright v. United States, 138 S. Ct. 2026 (2018) (No. 17-1059); Trent v. United States, 138 S. Ct. 2025 (2018) (No. 17-830); Lipscombe v. United States, 574 U.S. 1081 (2015) (No. 14-6204); Heinrich v. United States, 564 U.S. 1040 (2011) (No. 10-9194); Wilson v. United States, 564 U.S. 1040 (2011) (No. 10-8969); Reid v. United States, 556 U.S. 1235 (2009) (No. 08-1011). The same result is warranted here. Indeed, this case would be an especially poor vehicle for considering the question presented, because other evidence of petitioners' guilt rendered any potential error harmless.

1. The court of appeals correctly determined that the limitation on petitioners' cross-examinations of the cooperating witnesses did not violate the Confrontation Clause.

a. This Court has recognized that "exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." Delaware v. Van Arsdall, 475 U.S. 673, 678-679 (1986) (quoting Davis v. Alaska, 415 U.S. 308, 316-317 (1974)). The Court has thus cautioned that a trial court may violate the Confrontation Clause if it "prohibit[s] all inquiry" into a potential basis for a witness's bias or prejudice. Id. at 679; see Olden v. Kentucky, 488 U.S. 227, 231-232 (1988) (per curiam); Davis, 415 U.S. at 316-318.

This Court has simultaneously recognized, however, that "trial judges retain wide latitude insofar as the Confrontation

Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." Van Arsdall, 475 U.S. at 679; cf. Fed. R. Evid. 403 ("The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of," inter alia, "unfair prejudice" or "confusing the issues"). The Court has thus emphasized that "the Confrontation Clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." Van Arsdall, 475 U.S. at 679 (citation omitted). Accordingly, to establish that a limitation on cross-examination violated the Confrontation Clause, a defendant must demonstrate that "[a] reasonable jury might have received a significantly different impression of [the witness's] credibility had [the defendant's] counsel been permitted to pursue his proposed line of cross-examination." Id. at 680.

b. Here, the district court's limitation on cross-examination fell well within its "wide latitude * * * to impose reasonable limits on such cross-examination." Van Arsdall, 475 U.S. at 679. The information that petitioners sought to elicit was highly prejudicial to the proper conduct of the trial because petitioners were charged with many of the same offenses as the cooperating witnesses. If the jury had been informed of the

precise statutory minimums for the witnesses' offenses, it likely would have inferred that petitioners themselves faced the same minimum sentences. That inference would have created a significant risk of prejudice to the jury's unbiased evaluation of the evidence. "[P]roviding jurors sentencing information invites them to ponder matters that are not within their province, distracts them from their factfinding responsibilities, and creates a strong possibility of confusion." Shannon v. United States, 512 U.S. 573, 579 (1994).

At the same time, although the district court prohibited disclosure of the precise minimum sentences that the cooperating witnesses faced, it otherwise allowed petitioners' counsel to cross-examine them and "expose[] enough information for the jury to deduce that the witnesses received a serious benefit from cooperating with the government." Pet. App. 16. For example, the court allowed defense counsel to elicit testimony that Scott and Lindsey agreed to cooperate in exchange for the government dismissing charges for which they were facing "substantial" prison time that had to be "consecutive" to any other sentences imposed. Trial Tr. 314, 693. Scott also confirmed that the potential sentence for a dismissed brandishing charge was long enough that he, a 49-year-old man, "might never see the light of day." Id. at 315. And the court instructed the jury to consider "with caution and great care" testimony from witnesses who "expect to receive

benefits in return for their cooperation with the Government." Id. at 815.

Under those circumstances, the district court's narrow restriction on inquiry into the precise statutory minimum sentences faced by the cooperating witnesses reasonably balanced the limited incremental probative value of such information against the substantial risk of prejudice to the jury's impartial evaluation of the evidence. The court of appeals therefore correctly found that the precise minimum sentences would not have given the jury "a significantly different impression of [the witnesses'] credibility," Van Arsdall, 475 U.S. at 680, and that the Confrontation Clause was not violated.

c. Petitioners contend (Pet. 9-14) that the Confrontation Clause categorically entitles a defendant to elicit the precise minimum sentences that cooperating witnesses would have faced absent cooperation. That rigid rule, however, is inconsistent with this Court's admonition that the Confrontation Clause leaves trial judges with "wide latitude," Van Arsdall, 475 U.S. at 679, and "broad discretion," Davis, 415 U.S. at 316, to impose reasonable limits on cross-examination based on the circumstances of a particular case. Petitioners identify no other context in which the Court has interpreted the Confrontation Clause to mandate that defendants be permitted not only to explore a given topic, but also to ask a specific question. In arguing that such a categorical rule is required here, petitioners both greatly

overstate the probative value of the precise sentences faced by cooperating witnesses and greatly understate the prejudicial effect of revealing sentencing information to the jury.

First, petitioners err in asserting (Pet. 11-14) that, as a categorical matter, only the precise statutory minimum sentence that a cooperating witness faced can adequately convey the witness's potential bias to the jury. As this case illustrates, defense counsel need not precisely quantify the sentences that a cooperating witness would have faced in order to thoroughly cross-examine the witness and expose his incentive to provide testimony favorable to the government. Under questioning from defense counsel, for example, Scott confirmed that he was "looking at big federal time," Trial Tr. 314, and that dismissal of the brandishing count "was important to [him]," id. at 313; see also id. at 693 (similar admissions by Lindsey). Rollins, who claimed that he would "do whatever is necessary to get a lower sentence," id. at 453, acknowledged that he was "hoping that [he received] some consideration" in light of his testimony, id. at 453, 461. Far from being "inherently ambiguous" (Pet. 14), the witnesses' admissions in this case made clear that they had powerful incentives to provide testimony favorable to the government.

Second, petitioners contend (Pet. 14-19) that concerns about disclosing a defendant's potential sentence to a jury are based on "generalized, non-empirical assumptions" and could be ameliorated by appropriate jury instructions. But this Court has endorsed the

"familiar precept[]" that "providing jurors sentencing information * * * creates a strong possibility of confusion." Shannon, 512 U.S. at 579. Courts of appeals have similarly recognized the "certain prejudicial impact" that results when a jury learns the sentencing consequences of its verdict. United States v. Cropp, 127 F.3d 354, 359 (4th Cir. 1997), cert. denied, 522 U.S. 1098 (1998); see, e.g., United States v. Wright, 866 F.3d 899, 906 (8th Cir. 2017) (sentencing information would "introduce improper and confusing considerations before [a jury]") (citation omitted), cert. denied, 138 S. Ct. 2026 (2018); United States v. Trent, 863 F.3d 699, 705 (7th Cir. 2017) (sentencing information "might confuse or mislead the juries"), cert. denied, 138 S. Ct. 2025 (2018); United States v. Rushin, 844 F.3d 933, 939 (11th Cir. 2016) (sentencing information "could invite jury nullification").

2. The court of appeals' decision is consistent with many other decisions that have applied similar reasoning to uphold restrictions on the disclosure of the precise sentences that cooperating witnesses avoided or hoped to avoid. See, e.g., Wright, 866 F.3d at 905-908; Trent, 863 F.3d at 704-706; Rushin, 844 F.3d at 938-940; Cropp, 127 F.3d at 360; United States v. Luciano-Mosquera, 63 F.3d 1142, 1153 (1st Cir. 1995), cert. denied, 517 U.S. 1234 (1996). Petitioners contend (Pet. 19-20) that those decisions conflict with decisions of the Third and Ninth Circuits.

As the court of appeals here recognized (Pet. App. 15), that contention lacks merit.

In United States v. Chandler, 326 F.3d 210 (2003) (cited at Pet. 19), the Third Circuit specifically declined to adopt a "categorical[]" rule that the Confrontation Clause permits every defendant to inquire into "the specific sentence [a cooperating] witness may have avoided through his cooperation." Id. at 221. Instead, the court concluded that whether such an inquiry must be permitted "depends on 'whether the jury had sufficient other information before it * * * to make a discriminating appraisal of the possible biases and motivation of the witnesses.'" Id. at 219 (citation omitted). Accordingly, the Third Circuit has upheld a district court's order prohibiting cross-examination on "mandatory * * * specific sentences like [ten] years or maximum of life" where, as here, the court allowed counsel to convey the severity of the sentence using qualitative terms. United States v. Noel, 905 F.3d 258, 269 (3d Cir. 2018) (citation omitted). The Third Circuit has also stated, in direct opposition to petitioners' contentions here, that it has found "no cases" recognizing "a categorical right to inquire into the penalty a cooperating witness would otherwise have received." United States v. Mussare, 405 F.3d 161, 170 (2005), cert. denied, 546 U.S. 1225 (2006).

The Ninth Circuit's decision in United States v. Larson, 495 F.3d 1094 (2007) (en banc), cert. denied, 552 U.S. 1260 (2008) (cited at Pet. 20), also did not purport to adopt a categorical

rule. The court instead recognized, consistent with this Court's precedents, that the relevant question is whether a "reasonable jury might have received a significantly different impression of the witness' credibility had . . . counsel been permitted to pursue his proposed line of cross-examination." Id. at 1106 (brackets and citation omitted). In Larson itself, a bare majority of the en banc court found a violation of the Confrontation Clause where a cooperating witness faced a minimum sentence of life imprisonment and where the defendant was not allowed to elicit any testimony about the existence or magnitude of that mandatory minimum. Id. at 1105-1107; see id. at 1108 (Graber, J, concurring in part and specially concurring in part). The court suggested that a mandatory life sentence is particularly probative of a cooperating witness's potential bias. Id. at 1105-1107. But the court had no occasion to consider a circumstance where, as in this case, the defendants were permitted to cross-examine cooperating witnesses about the existence of a "substantial" mandatory minimum, and where that sentence was something less than life in prison. Pet. App. 15-16. The Ninth Circuit thus has not treated Larson as establishing a categorical rule permitting inquiry into the specific details of any mandatory minimum sentence faced by a cooperating witness. For example, the court found no error in the preclusion of specific inquiry into maximum or mandatory minimum penalties the cooperating witnesses would have faced where "sufficient" other evidence allowed "the jury to properly evaluate

the credibility of the cooperating witnesses." United States v. Tones, 759 Fed. Appx. 579, 585 (9th Cir. 2018), cert. denied, 140 S. Ct. 67 (2019).

Although petitioners assert a conflict only with respect to the Third and Ninth Circuits, they also suggest in a string cite that two other courts similarly fall on the opposite side of the alleged conflict. See Pet. 20 (citing United States v. Cooks, 52 F.3d 101 (5th Cir. 1995); State v. Gracely, 731 S.E.2d 880 (S.C. 2012)). Neither case is apposite. Cooks declined to adopt a categorical rule and recognized that restrictions on cross-examination about specific sentences do not violate the Confrontation Clause "if 'the jury has sufficient information to appraise the bias and motives of the witness.'" 52 F.3d at 104 (brackets and citation omitted). Moreover, because that case involved cross-examination about a witness's potential sentences on unrelated state charges, the court had no occasion to consider the substantial risk of prejudice that arises where, as here, disclosure of the sentence faced by a cooperating witness would allow the jury to infer the sentence to which a conviction would subject the defendant himself. Id. at 103-104 & n.13. And in Gracely, the court stated that "[t]he fact that a cooperating witness avoided a mandatory minimum sentence is critical information that a defendant must be allowed to present to the jury." 731 S.E.2d at 886 (emphasis omitted). But the trial court in that case had precluded all questioning about the existence or

extent of the mandatory minimum sentences faced by cooperating witnesses for charges they had in common with the defendant, not just questioning about the precise length of such a sentence. Id. at 882-883.

In sum, courts treat the inquiry into whether and to what extent a defendant should be permitted to question a cooperating witness about the benefits he hopes to receive in exchange for his cooperation as fact-intensive and case-specific. The courts have resolved that question in different ways when considering different sets of facts. That is neither unexpected nor problematic, and it does not indicate the existence of a conflict warranting this Court's intervention.

3. Even if the question presented otherwise warranted this Court's review, this case would not be a suitable vehicle in which to consider it because any Confrontation Clause violation was harmless beyond a reasonable doubt. See Van Arsdall, 475 U.S. at 684 ("[T]he constitutionally improper denial of a defendant's opportunity to impeach a witness for bias, like other Confrontation Clause errors, is subject to * * * harmless-error analysis."). As this Court has explained, a "host of factors" can demonstrate the harmlessness of a limitation on the cross-examination of a cooperating witness, including "the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the

extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." Ibid.

In this case, other evidence powerfully corroborated the testimony from the cooperating witnesses and confirmed petitioners' guilt. Four of the five robberies were captured on surveillance footage, and victims from each of the robberies testified. See p. 5, supra. Much of this evidence directly confirmed petitioners' personal involvement in the crime spree. Doris Brown (Scott's fiancée and Lindsey's mother, who lived nearby and knew petitioners personally) identified Hunter as a gunman in the Roman's Food Market and George Webb surveillance footage, and identified both Hunter and Evans in the Walgreens footage. See Gov't C.A. Br. 26, 30-31. Both Brown and the victim of the carjacking on South 15th Place identified Hunter in the surveillance video from Foot Locker, where Hunter used the victim's stolen credit cards to purchase merchandise. Id. at 33-34. Evans was arrested in the stolen Ford Focus, and when Hunter was arrested, police discovered new Foot Locker merchandise and receipts from the date of the carjacking reflecting Hunter's purchases using the stolen credit cards. Id. at 34-35.

Particularly because petitioners' counsel thoroughly cross-examined the cooperating witnesses about their incentives to lie, the additional evidence confirms that any Confrontation Clause error was harmless beyond a reasonable doubt. See Larson, 495 F.3d at 1108 (finding the error in that case to be harmless because

"the Government offered significant evidence" of guilt and because defense counsel was allowed to explore the cooperating witness's "desire to obtain a lesser sentence"). Accordingly, petitioners would not be entitled to relief even if they prevailed on the question presented.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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