No. 20-7482

IN THE SUPREME COURT OF THE UNITED STATES

LAVELLOUS PURCELL, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

ELIZABETH B. PRELOGAR
Acting Solicitor General
Counsel of Record

NICHOLAS L. McQUAID
Acting Assistant Attorney General

ANGELA M. MILLER
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

1. Whether the district court was required to suppress evidence of petitioner's sex trafficking that officers obtained pursuant to warrants authorizing the search of petitioner's Facebook account.

2. Whether the evidence presented at trial was sufficient to support petitioner's conviction for transporting another person in interstate commerce for prostitution, in violation of 18 U.S.C. 2421(a).

3. Whether the district court plainly erred under Federal Rule of Evidence 801(d)(1)(B) in admitting testimony about a witness's prior interview, after petitioner's counsel had attempted to impeach the witness's trial testimony on the theory that it was inconsistent with the interview.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (S.D.N.Y.)

United States v. Purcell, No. 18-cr-81 (Jan. 13, 2019)

United States Court of Appeals (2d Cir.):

United States v. Purcell, No. 19-238 (July 23, 2020)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-86) is reported at 967 F.3d 159. The order of the district court is unreported but is available at 2018 WL 4378453.

JURISDICTION

The judgment of the court of appeals was entered on July 23, 2020. A petition for rehearing was denied on October 15, 2020 (Pet. App. 89). By order of March 19, 2020, this Court extended the deadline for all petitions for writs of certiorari due on or after the date of the Court's order to 150 days from the date of the lower court judgment or order denying a timely petition for

rehearing. The petition for a writ of certiorari was filed on March 12, 2021. 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 Southern District of New York, petitioner was convicted of enticing another person to engage in unlawful sexual activity, in violation of 18 U.S.C. 2422(a) and 2 (Count 1); transporting another person in interstate commerce to engage in prostitution, in violation of 18 U.S.C. 2421(a) and 2 (Count 2); using facilities of interstate commerce to promote unlawful activity, in violation of 18 U.S.C. 1952(a)(3) and 2 (Count 3); conspiring to use interstate commerce to promote unlawful activity, in violation of 18 U.S.C. 371 (Count 4); and sex trafficking by force, fraud, and coercion, in violation of 18 U.S.C. 1591(a)(1), (a)(2) and 2 (Count 5). Second Am. Judgment 1-2. He was sentenced to 216 months of imprisonment, to be followed by five years of supervised release. Id. at 3-4. The court of appeals reversed his conviction on Count 1 and affirmed his convictions on the remaining counts. Pet. App. 1-86.

1. Between 2012 and 2017, petitioner operated a commercial sex trafficking business for which he recruited women from across the country to work as prostitutes. Presentence Investigation Report (PSR) ¶ 13; Pet. App. 5. He promoted his prostitution business and recruited women largely through postings on social

media platforms, such as Backpage.com, Instagram, and Facebook. PSR ¶ 13. He recruited some women with promises of material wealth, representing that they could obtain houses or apartments or make as much as $100,000 per year if they worked for him. Ibid.; Pet. App. 6. Petitioner required the women who worked for him to follow numerous "rules," including having sex with him, giving him the money they earned through prostitution, calling him "Daddy," and relinquishing their cellular phones to him. Pet. App. 7. Petitioner also employed threatening language and violence against those women. Id. at 7-8.

Petitioner transported the women across the country to engage in commercial sex. See PSR ¶ 18; Pet. App. 6. Petitioner's cousin and co-defendant, Gloria Palmer, used her position in the hotel industry to book discounted hotel rooms for petitioner and the women to use for prostitution. PSR ¶¶ 29-31; Pet. App. 6. Palmer often booked rooms through websites and Internet-based applications, and she coordinated these arrangements with petitioner through Facebook messages. PSR ¶ 29. The evidence at trial indicated that petitioner and the women traveled to at least 14 States in connection with petitioner's prostitution business. Pet. App. 6.

For example, petitioner found Marie Ann Wood alone in a hotel room in New York, working as a prostitute for another pimp who was not present. Pet. App. 8-9. Petitioner told Wood that "this was his city and [she] should not be alone," collected her belongings,

took her money, and led her out of her hotel. Id. at 9 (brackets in original). Wood "felt that she had no choice" but to accompany him. Ibid. Petitioner had Wood change her cellular phone number, making communication with her contacts more difficult, and also took possession of Wood's phone. Id. at 10. When Wood needed to use the bathroom, petitioner required her to leave the door ajar. Id. at 11-12. Wood met other prostitutes working for petitioner, who instructed her about his "rules" for them. Id. at 10.

Petitioner transported Wood from New York to State College, Pennsylvania to engage in prostitution, posting an advertisement for her services on Backpage.com. Pet. App. 11-12. Wood had one "date" in Pennsylvania, and petitioner collected the money she earned (a $150 fee plus a $50 "tip"). Id. at 12. When petitioner left to get pizza, Wood fled the Pennsylvania hotel, running barefoot into the "freezing cold." Id. at 14. Wood made her way to a police station, where she told the police, "I'm a prostitute, I'm running for my life, and I need help." Ibid. (citation omitted). She was then interviewed by officers. Ibid. While at the police station, Wood received a text message from petitioner that read "Imma kill your fat nasty ass bitch you betta get away from my city." Ibid.

Samantha Vasquez, who did not testify at petitioner's trial, worked for petitioner in 2016 and 2017. Pet. App. 17-19. At trial, the government presented evidence from Facebook, Backpage.com, and hotel records demonstrating that Vasquez

traveled to and from New York, North Carolina, Virginia, California, and Arizona to engage in prostitution and that petitioner's cousin Palmer had, at petitioner's direction, booked accommodations for both Vasquez and petitioner for several of those trips. Ibid.; C.A. App. 722-729; PSR ¶ 30. Petitioner also posted on Facebook about Vasquez, proclaiming that he was "very proud of her hoing and loyalty to [his] pimping" and once announcing that he was "[a]rriving at my lady of the night @Samantha Vazquez hotel room." Pet. App. 19 (citation omitted; brackets in original).

2. In the course of investigating petitioner's sex-trafficking activities, the New York County District Attorney's Office obtained three warrants to search the contents of his Facebook account. Pet. App. 21. Each warrant stated that it would be "executed" when served on Facebook, Inc., authorized Facebook, Inc., to search its own records for responsive material without law-enforcement presence, and classified any subsequent review by law enforcement as "analysis." Id. at 21-26.

The first warrant, issued in August 2016, was supported by a senior investigator's affidavit explaining that evidence of specific state prostitution offenses would likely be found in 24 "categories of Facebook data" associated with the account, including subscriber information, contact information, chat histories, public and private messages, and photographs. Pet. App. 22-24. The affidavit described petitioner's public Facebook posts referring to himself as a pimp and discussing women earning

money for him as prostitutes. Id. at 21-23. The warrant itself, however, did not explicitly incorporate the affidavit, and did not separately specify the suspected criminal offense. Id. at 23.

The second warrant, issued in November 2016, incorporated by reference the same affidavit that had supported the August 2016 warrant application, but did not rely upon any evidence obtained from that earlier warrant. Pet. App. 24. The November 2016 warrant, unlike the August 2016 warrant, listed the specific state prostitution offenses for which there was probable cause to believe that the 24 "enumerated categories of Facebook data" would provide evidence. Id. at 24-25. The information provided to law enforcement under the second warrant included all the information that had been produced pursuant to the first warrant. Id. at 25.

The third warrant, issued in September 2017, again incorporated the same affidavit used in the August 2016 and November 2016 warrants, and identified additional posts on petitioner's account suggesting that the account was being used to recruit women to work for him as prostitutes. Pet. App. 25-26. The warrant itself stated that probable cause existed to believe that the target Facebook account contained evidence of an unspecified "offense." Id. at 26.

3. In January 2018, a federal grand jury sitting in the Southern District of New York returned an indictment charging petitioner with enticing another person to engage in unlawful sexual activity, in violation of 18 U.S.C. 2422(a) and 2;

transporting another person in interstate commerce to engage in prostitution, in violation of 18 U.S.C. 2421(a) and 2; using facilities of interstate commerce to promote unlawful activity, in violation of 18 U.S.C. 1952(a)(3) and 2; conspiring to use interstate commerce to promote unlawful activity, in violation of 18 U.S.C. 371; and sex trafficking by force, fraud, and coercion, in violation of 18 U.S.C. 1591(a)(1), (a)(2) and 2. Indictment 1-5.

Before trial, petitioner moved to suppress the evidence obtained from his Facebook account pursuant to the three state warrants, asserting that the warrants violated the Fourth Amendment's particularity requirement. Pet. App. 27. The government disclaimed any reliance on the August 2016 warrant but opposed the motion with respect to the November 2016 and September 2017 warrants. Ibid. The district court denied the motion, finding the November 2016 warrant sufficiently particularized and law enforcement's reliance on the September 2017 warrant objectively reasonable. Id. at 27-28.

Also before trial, the parties agreed that Wood's initial statements to the police would be admissible under the "excited utterance" exception to the hearsay rule, see Fed. R. Evid. 803(2), but that the government would not introduce statements from her police interview. Pet. App. 28. At trial, however, petitioner's counsel cross-examined Wood about statements made during her police interview, highlighting asserted discrepancies between

Wood's statements during that interview and her testimony at trial. Id. at 29. The government thereafter, without objection, called one of the officers who had interviewed Wood to testify about that interview. Id. at 30.

The jury found petitioner guilty on all counts. Pet. App. 30. The district court sentenced petitioner to 216 months' imprisonment, to be followed by five years' supervised release. Id. at 31.

4. The court of appeals reversed the conviction on Count 1 for failure to establish sufficient evidence of venue, but otherwise affirmed. Pet. App. 1-86.

a. As relevant here, the court of appeals first determined that the district court did not err in denying petitioner's motion to suppress evidence from the November 2016 and September 2017 warrants. Pet. App. 32-52. The court rejected petitioner's argument that the September 2017 warrant had been overbroad, finding that the warrant "identified the kinds of data subject to seizure with specificity" and "did not leave decisions over which data to seize 'entirely to the discretion of the officials conducting the search.'" Id. at 40-41 (citation omitted). The court found the warrant "justifiably broad" notwithstanding that each category of data "potentially encompassed a large volume of information," because "there was reason to believe that the suspected criminal activity 'pervade[d] th[e] entire' account." Ibid. (first set of brackets in original). The court also noted

that the warrant directed Facebook to "turn over the specified categories of data * * * without exercising its own judgment about" the data's incriminating nature, which permitted the warrant to be executed "in a minimally invasive manner * * * without the physical presence or supervision of law enforcement officers." Id. at 43.

The court of appeals did view the September 2017 warrant's failure to list the "specific offense for which probable cause existed" as a "facial defect," but determined that "under the unusual circumstances presented by this warrant," suppression was inappropriate because "the officers who executed the warrant relied on it in objectively reasonable good faith." Pet. App. 39-40, 45 (internal quotation marks omitted). The court observed that the deficiency did not affect the scope of Facebook's efforts to gather responsive materials, which was "not tethered to [Facebook's] cognizance of the suspected criminal conduct," nor did it affect the scope of law enforcement's analysis, which was conducted by officers aware of the "purpose and parameters of the investigation." Id. at 44-45. As a result, no one carrying out the warrant "had any particular reason * * * to notice whether it did or did not identify the crimes expected to be evidenced by the account." Id. at 45-46. And the court reasoned that in such circumstances -- where "the warrant's defect was an 'inadvertent error,' and all evidence indicates that 'the officers acted reasonably' and 'proceeded as though the limitations contemplated

by the supporting documents were present in the warrant itself'" -- application of the exclusionary rule "would have '[p]enaliz[ed] the officer for the magistrate's error, rather than his own,'" would not deter Fourth Amendment violations, and was inappropriate. Id. at 47-49 (citation omitted; brackets in original).

The court of appeals similarly declined to apply the exclusionary rule to the evidence obtained under the November 2016 warrant. Pet. App. 52. Petitioner argued that it was also insufficiently particular "despite its specification of state-law prostitution-related offenses, because it asserted that there was probable cause to believe that offenses 'including, but not limited to' the enumerated crimes had been committed." Id. at 50 (citation omitted). The court assumed without deciding that it was insufficiently particular for that reason, but found the officers' reliance upon the warrant reasonable, and suppression unwarranted, on the same logic it had applied in considering the September 2017 warrant. Id. at 51-52.

b. The court of appeals separately rejected petitioner's sufficiency-of-the-evidence challenge to his conviction for transporting Vasquez in interstate commerce to engage in prostitution. Pet. App. 65-69. The court explained that although the precise manner in which Vasquez had traveled to various States while working for petitioner was unknown, the evidence indicated that petitioner dictated when and where she would engage in

commercial sex, required her to travel to and from different States on successive days, arranged her accommodations, and himself traveled to at least some of those States along with her. Id. at 67-68. The court explained that even assuming Vasquez arranged and paid for her own transportation and traveled separately from petitioner -- an assumption the court found "far-fetched under the circumstances" -- the evidence still supported petitioner's conviction because he "facilitated [Vasquez's] travel" by making and paying for her hotel arrangements. Id. at 68-69. The court observed that petitioner had, for example, arranged to have hotel reservations for both himself and Vasquez in Virginia (on December 14-15, 2016) and in California (on December 16-18, 2016), indicating that he had traveled with her to those locations so that she could work as a prostitute there. Id. at 68. In a footnote, the Second Circuit rejected petitioner's reliance on the D.C. Circuit's decision in United States v. Jones, 909 F.2d 533 (1990), in which that court had found insufficient evidence that a telephone dispatcher for an escort service "transported" a prostitute in violation of Section 2421 by relaying phone orders for escort services. Pet. App. 69 n.17.

c. Finally, the court of appeals rejected petitioner's claim that the district court had plainly erred by admitting a police officer's testimony about Wood's interview. Pet. App. 80-84. The court determined that the testimony was "admissible non-hearsay" under Federal Rule of Evidence 801(d)(1)(B), which allows

for "the 'substantive admissibility of consistent statements that are probative to explain what otherwise appears to be an inconsistency in the witness's testimony,'" because the government had presented the evidence "to rebut the charge of inconsistency" made by petitioner's counsel "and to rehabilitate Wood's credibility by placing the alleged discrepancies in context." Id. at 84 (quoting Fed. R. Evid. 801 advisory committee's note (2014 Amendment)).

ARGUMENT

Petitioner renews his contentions (Pet. 14-28) that he was entitled to suppression of evidence from the warrant-based searches of his Facebook account, that the evidence was insufficient to support his conviction under the Mann Act, and that the district court plainly erred by admitting testimony about a victim's prior consistent statements following petitioner's attack on her credibility. The court of appeals correctly rejected each of those contentions, and its fact-bound decision does not conflict with any decision of this Court or another court of appeals. No further review is warranted.

1. The court of appeals correctly determined that any flaws in the Facebook warrants did not justify application of the exclusionary rule.

a. The Fourth Amendment provides that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the

persons or things to be seized." U.S. Const. Amend. IV. The probable cause requirement ensures "a careful prior determination of necessity" for a search or seizure. Coolidge v. New Hampshire, 403 U.S. 443, 467 (1971). The principal purpose of the particularity requirement, in turn, is to prevent general searches. Maryland v. Garrison, 480 U.S. 79, 84 (1987). By "limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit." Ibid.

Suppression of evidence under the "'judicially created remedy'" of the exclusionary rule is "designed to deter police misconduct rather than to punish the errors of judges and magistrates." United States v. Leon, 468 U.S. 897, 906, 916 (1984) (citation omitted). To justify suppression, a case must involve police conduct that is "sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system" in suppressing probative evidence of criminal activity. Herring v. United States, 555 U.S. 135, 144 (2009). Thus, suppression will be warranted "only if it can be said that the law enforcement officer had knowledge, or may properly be charged with knowledge,

that the search was unconstitutional under the Fourth Amendment." Leon, 468 U.S. at 919 (citation omitted).

The court of appeals correctly declined to apply the exclusionary rule here. Although the parties did not dispute that the September 2017 warrant failed to specify the precise crimes under investigation, the court explained that such an "inadvertent error" made no practical difference to how this particular warrant was executed or what evidence was obtained therefrom, because neither the acquisition nor the analysis of the data was broadened by the omission. Pet. App. 47 (citation omitted); see id. at 50-52 (same analysis for November 2016 warrant). And it emphasized that suppressing evidence under those circumstances would have no deterrent effect on police misconduct, but would instead needlessly punish what was essentially a technical oversight on the warrant. See id. at 49. As it correctly recognized, such an application of the exclusionary rule would not be "worth the price paid by the justice system." Herring, 555 U.S. at 144; see Pet. App. 49. Petitioner does not meaningfully dispute either of those points in this Court.

Petitioner instead asserts (Pet. 17-22) that the warrants' breadth turned them into unconstitutional "general warrants." But a warrant is not impermissibly general, and does not violate the particularity requirement, unless it enumerates "vague categories of items" and thereby "'vest[s] the executing officers with unbridled discretion to conduct an exploratory rummaging through

[a defendant's] papers.'" United States v. $92,422.57, 307 F.3d 137, 149 (3d Cir. 2002) (Alito, J.) (citation omitted); see Coolidge, 403 U.S. at 467 ("the problem is not that of intrusion per se, but of a general, exploratory rummaging in a person's belongings") (emphasis omitted). Here, as the court of appeals observed, the warrants listed specific "categories of Facebook data" to be seized and therefore "did not leave decisions over which data to seize" to the discretion of the people conducting the search. Pet. App. 40. Although those categories of Facebook data "potentially encompassed a large volume of information," the court of appeals correctly found probable cause to support the search's scope, because petitioner's prostitution-related activity "pervade[d] th[e] entire[ty]" of his Facebook account. Id. at 40-41 (first set of brackets in original). For example, the warrant application materials identified numerous posts on petitioner's account in which he described himself as a pimp and solicited women to work for him as prostitutes. Id. at 22-26. The court of appeals correctly recognized that, where probable cause supports the belief that the location to be searched contains extensive evidence of suspected crimes, a broad search of that area is appropriate. Id. at 41.

b. Petitioner's assertion (Pet. 17-20) of a conflict in the federal courts is likewise mistaken. Petitioner identifies (Pet. 18-19) one appellate decision that he claims conflicts with the decision below, United States v. Blake, 868 F.3d 960 (11th Cir.

2017), cert. denied, 138 S. Ct. 753, and 138 S. Ct. 1580 (2018). But while the Eleventh Circuit in Blake did suggest that the government could have obtained more targeted warrants for specific evidence within the defendant's Facebook account, the court ultimately did "not decide whether the Facebook warrants violated the Fourth Amendment because, even if they did," the "'good-faith exception' to the exclusionary rule" applied. Id. at 974; see id. at 975 ("[W]hile the warrants may have violated the particularity requirement, whether they did is not an open and shut matter; it is a close enough question that the warrants were not 'so facially deficient' that the FBI agents who executed them could not have reasonably believed them to be valid."). The result in Blake is thus fully consistent with the decision below.

Petitioner errs in contending (Pet. 22-23) that the warrants were so overbroad that officers could not have relied upon them in good faith, and that the Second Circuit "flout[ed] Groh v. Ramirez, 540 U.S. 551 (2004)" in finding otherwise. Unlike the warrant here, which listed 24 categories of Facebook data, the warrant in Groh "did not describe the items to be seized at all." 540 U.S. at 558. And petitioner himself acknowledges that "[m]ost courts, like the Second Circuit," have approved of social-media search warrants like the ones at issue here, further demonstrating the officers' good-faith reliance on the warrants in searching petitioner's Facebook account. Pet. 17; cf. Davis v. United States, 564 U.S. 229, 232 (2011) (holding "that searches conducted

in objectively reasonable reliance on binding appellate precedent are not subject to the exclusionary rule").

c. In any event, this case is a poor vehicle to consider the appropriate scope and specificity of a warrant for Facebook data. Even assuming the evidence obtained pursuant to either of the Facebook warrants should have been suppressed, the admission of that evidence at trial was harmless and its absence would not have affected the jury's verdict. See Gov't C.A. Br. 31-33; see also Fed. R. Crim. P. 52(a). The majority of the Facebook evidence admitted at trial consisted of public postings accessible without a warrant, and other non-Facebook evidence admitted at trial -- including victim testimony, electronic records, and petitioner's own statements -- amply supported the jury's verdict. Thus, even if the Court were to agree with petitioner on the exclusionary-rule issue, it would make no difference to his criminal convictions.

2. Petitioner also errs in contending (Pet. 23-26) that the evidence was legally insufficient to support his conviction under Section 2421, which prohibits knowingly transporting or attempting to transport a person in interstate commerce with the intent that the person will engage in prostitution or other unlawful sexual activity. The court of appeals here distinguished between cases "where the evidence shows that the defendant personally or through an agent performed the proscribed act of transporting," which it recognized supports a Section 2421 conviction, and "situations

where the victim travels under her own steam, without need of anyone to 'transport' her." Pet. App. 66 (quoting United States v. Holland, 381 F.3d 80, 86 (2d Cir. 2004), cert. denied, 543 U.S. 1075 (2005)). It correctly explained that evidence showing a "defendant 'invit[ed] travel, purchas[ed] tickets, and accompan[ied] individuals on trips is more than sufficient to establish' that the defendant 'transport[ed]' those individuals." Ibid. (quoting Holland, 381 F.3d at 87) (brackets in original). And it found evidence that petitioner had engaged in precisely such activity with respect to Samantha Vasquez. Id. at 66-68.

Petitioner claims the court of appeals erred by "[a]llowing a § 2421 conviction * * * simply because he provided attractive opportunities across state lines" for Vasquez. Pet. 25. But the court of appeals did not uphold his Section 2421 conviction on that basis. Instead, the court reasoned that criminal liability under Section 2421 may attach if a defendant both "provide[s] a prostitution job" and "coordinat[es] and prearrang[es] the date and time" of a victim's travel, and that petitioner had done at least that much -- and more -- in this case. Pet. App. 69 n.17; see id. at 68 (observing that petitioner's active role in "arranging Vasquez's accommodations was tantamount to arranging her travel").

Petitioner thus also errs in contending (Pet. 23-25) that the decision below conflicts with United States v. Jones, 909 F.2d 533 (D.C. Cir. 1990), or similar cases in which defendants merely

encouraged their victims to cross state lines without facilitating their transportation. In Jones, the D.C. Circuit found insufficient evidence for a Section 2421 conviction where the defendant worked as a "telephone dispatcher" for an escort service, relaying client contact information to women who "made their own travel arrangements" and "transported themselves" unaccompanied across state lines. Id. at 536, 540. The court distinguished cases in which a defendant made advance arrangements, paid travel costs, and physically accompanied the women, see ibid. -- all actions that petitioner engaged in here.

3. Finally, petitioner is also wrong in contending (Pet. 26-28) that the district court plainly erred in admitting testimony of Wood's statements to law enforcement. As the court of appeals explained, Federal Rule of Evidence 801(d)(1)(B)(ii) specifically permits the introduction of a witness's prior consistent statements "to rehabilitate the declarant's credibility as a witness when attacked." Pet. App. 81. Petitioner's counsel cross-examined Wood about her statements to law enforcement in an effort to undermine her credibility at trial, and the government appropriately responded by eliciting testimony about those prior statements which would "plac[e] the alleged discrepancies in context" and rehabilitate her credibility. Id. at 84; cf. United States v. J.A.S., Jr., 862 F.3d 543, 545 (6th Cir. 2017) (videotaped interview of child victim of sexual assault, which was "largely consistent" with witness's testimony, was properly

admitted under Rule 801(d)(B)(ii) after defendant sought to impeach witness).

Contrary to petitioner's claim (Pet. 26-27), nothing about that straightforward evidentiary determination violated this Court's decision in Williamson v. United States, 512 U.S. 594 (1994). Williamson interpreted the term "statement" as it appears in the context of a different Rule, which relates to the admissibility of self-inculpatory statements, and focused on the "principle behind" that specific Rule in adopting its interpretation. See id. at 599-600 (adopting "narrower reading" of Rule 804(b)(3) based on the "commonsense notion" that speakers might mix truthful inculpatory statements with false exculpatory statements). Petitioner points to no case holding that Williamson applies to Rule 801(d)(1)(B)(ii), nor any case finding evidentiary error in similar circumstances.

In any event, petitioner did not contemporaneously object to the testimony about Wood's prior statements, and his claim is therefore reviewable only for plain error. See Fed. R. Crim. P. 52(b); United States v. Olano, 507 U.S. 725, 731-732 (1993). To establish reversible plain error, petitioner must demonstrate (1) error; (2) that is plain or obvious; (3) that affected substantial rights; and (4) that seriously affected the fairness, integrity, or public reputation of judicial proceedings. Olano, 507 U.S. at 732-736; see, e.g., Puckett v. United States, 556 U.S. 129, 135 (2009). Petitioner does not explain how he could make those

showings, and he therefore cannot obtain relief on this defaulted evidentiary objection.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Acting Solicitor General

NICHOLAS L. McQUAID
Acting Assistant Attorney General

ANGELA M. MILLER
Attorney

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