
No.

in the
Supreme Court
of the
United States

Term,

DANNY COLLINS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI FROM
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTIONS PRESENTED

I.

Does a trial structure which denies the right to cross-examine government witnesses after redirect testimony, based upon a judicial determination that the testimony is reliable, violate the Sixth Amendment's Confrontation Clause?

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The Petitioner, Danny Collins, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled proceeding on July 26, 2021.

OPINION BELOW

The Sixth Circuit's opinion in this matter was not published and is attached hereto in Appendix 1.

JURISDICTION

The Sixth Circuit denied Petitioner's appeal on July 26, 2021. The mandate was filed: August 17, 2021. This petition is timely filed. The jurisdiction of this Court is

invoked under 28 U.S.C. § 1291 and Supreme Court Rule 12.

CONSTITUTIONAL PROVISION INVOLVED

The Sixth Amendment to the United States Constitution states:

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

STATEMENT OF THE CASE

Petitioner was accused of Count One, Conspiracy to Distribute Methamphetamine 21U.S.C. § 846; Count Two, Possession of a Firearm in furtherance of a drug trafficking offense 21 U.S.C. § 924(c); and Count Three, Felon in Possession of Firearm 18 U.S.C. §§ 922(g)(1). [R. 1 Indictment, PageID 1-5].

On March 12-13, 2020 a jury trial was conducted. [R. 167: Minute Entries 135-36]. Stipulations were read to the jury. [Id., PageID 1247-48].

The government's first witness was Michael Sloan. Sloan testified that he took Collins to Louisville to introduce Collins to some people to buy methamphetamine. Sloan testified that in payment, Collins gave Sloan a quarter of an ounce of methamphetamine. Sloan testified that typically he and Collins would borrow a vehicle to use on the trip. Sloan testified that typically they paid the owner of the vehicle with some methamphetamine. They would use some of the methamphetamine themselves to assure its quality. They would purchase one to two pounds of methamphetamine on these trips and bring the methamphetamine to Collins' residence. Sloan testified that Collins always was armed with a pistol. [Id., PageID 1250-54].

Sloan testified that there was a gun safe in the bedroom of Collins' residence, which was a trailer, and that Collins' daughter also resided at Collins' residence. He testified that he witnessed Sabrina Chaffins selling methamphetamine out of Collins' trailer and that an individual by the name of Sherrell Sandlin also went

with Collins and Sloan to Louisville to buy methamphetamine. Sloan testified that he had pled guilty and was convicted of conspiracy to traffic methamphetamine. [Id., PageID 1254-59].

On cross examination, Sloan testified that he made four or five trips with Collins to Louisville to buy methamphetamine. Sloan testified that he would receive no benefit from the government for his testimony. Sloan testified that he knew many people involved in the illegal drug trade but that he travelled with Collins to Louisville to buy methamphetamine because the drugs Collins gave him were cheaper than having to buy it locally and that he went with Collins because Sloan had no funds with which to buy drugs. [Id., PageID 1261-67].

On redirect examination, Sloan testified that he received a fourth of an ounce of methamphetamine, which had a value of about 750 or 800 dollars. Although previously asked about not having thousands of dollars to buy drugs, Sloan was not asked about having enough currency to purchase the volume of drugs he received for traveling with Collins. Sloan testified that he would receive cooperation credit under his plea agreement, but that to receive it he would have to tell the truth. Sloan did not disclose the particulars of the benefits he would receive under the plea agreement for his co-operation or why he had denied receipt of the benefits in his direct testimony. [Id., PageID 1267-69].

The Court did not allow recross examination, there was no examination of what other benefits Sloan might have received nor why he had denied having them.

The government next called state police detective Omen Wesley Sandlin. Sandlin testified that he was contacted by an attorney who represented an individual named Scotty Couch, who wished to be a confidential informant. Couch worked as an informant to receive leniency on pending charges, but continued to be a confidential informant after the conclusion of all charges against him. [Id., PageID 1270-73].

Sandlin, without objection, detailed reasons why, in general, confidential informants cooperate. The reasons included: to better their community, wanting to get drug dealers out of their community, to receive payment, and to receive leniency on pending charges. Sandlin testified to the police payment policies for drugs. [Id., PageID 1273].

Sandlin, without objection, detailed reasons why confidential informants don't feel safe, and what, in general, Sandlin does when he does not believe confidential informants are safe entering a residence or parking lot to attempt to buy illegal drugs. Sandlin testified that he always attempts to arrange the purchase of illegal drugs to be as safe as it can be made because his first priority was officer safety and confidential informant safety. [Id., PageID 1274-75].

Sandlin testified to the general procedures he takes to ensure the safety of informants. Sandlin testified that usually a confidential informant first contacts police concerning somebody dealing drugs. Sandlin testified that the police then perform a background check on the purported drug dealer to determine how

dangerous he/she is and how many other people are likely to be present assisting the drug dealer. [Id.].

Sandlin was asked what general procedures are taken in arranging for a controlled buy to be made. Sandlin testified that usually the police meet the confidential informant at a predetermined location. Sandlin was asked what happens after a confidential informant arrives at the predetermined location. According to Sandlin, the police then search the informant and any vehicle they might be driving to make sure there is no contraband; police then ensure an informant does not have a firearm to make the purchase of drugs as safe as possible. Police have a lot of rules for confidential informants, some of which prohibit them from using drugs or alcohol. [Id., PageID 1275-76].

Sandlin testified that on this particular case the police had more people involved, ensuring that somebody was always really close to the informant and was watching him/her. [Id., PageID 1276].

Sandlin testified that on eight occasions Couch met police at a predetermined location for eight controlled buys. Sandlin testified that: Couch was searched along with his vehicle; Couch was given marked funds for “buy money” by either the Kentucky State Place or ATF; police utilized a covert camera to audio-video record; and Couch would come back to the same predetermined location unless Couch did not feel safe coming back to that location in which case the location would be changed. Sandlin testified that once the purchase was completed Couch would

deliver the drugs or guns he had purchased to the police and that Couch would give the police the audio-video device and the recording, which was reviewed. Then Couch and his vehicle would be searched again. Sandlin testified that this procedure was repeated for every controlled buy. Sandlin then testified to procedures which were followed when an informant engaged in misconduct. Sandlin testified that there were no issues of misconduct with Couch. [Id., PageID 1276-79].

The video recording taken by Sandlin, the drugs obtained by Sandlin, and the laboratory reports concerning drugs obtained by Sandlin were admitted into evidence without objection. [Id., PageID 1279-84].

Cross examination disclosed that Couch's motivation to cooperate was initially driven by Couch's need to obtain leniency for charges which were pending when he first became an informant, which had not been brought out in his testimony and that he was being paid for Collins' investigation and for other investigations. Couch was paid \$800.00 by the Kentucky State Police for the Collins investigation and a total of almost \$4,000.00 for all of the investigations he worked; additionally, he was paid by the Bureau of Alcohol Tobacco and Firearms. Cross examination also disclosed that there was no video recording of the transaction giving rise to Count 4 of the Indictment and no fingerprints ever were taken from any of the baggies in which the drugs purportedly sold by Collins were contained. [Id., PageID 1285-92].

Redirect examination disclosed that no surveillance was possible inside Collins' trailer because of the dark tint on the trailer's windows. Extensive new

testimony was adduced concerning the quality of the video recordings, how they compared to other video recordings by informants in general, and the amount of light in Collins' residence. [Id., PageID 1293-95].

The court announced its trial structure: When the defense attempted to recross Sandlin the court stated, “I only allow recross with leave” and denied the defense an opportunity to recross Sandlin. Presumably because the court determined that the testimony was reliable the court determined that recross would yield nothing significant. Thus, there was no opportunity to recross regarding the poor quality of some of the video recordings or other issues. [Id., PageID 1296].

The government's next witness was Scotty Couch. Couch testified that he continued to work as an informant after there were no charges against him because it was the right thing to do. Couch testified to similar “controlled buy” procedures as those to which Sandlin had testified, adding that Couch was given buy money. [Id., PageID 1297-1300].

Couch testified that he made a series of eight illegal drug purchases from Collins.

Couch testified that his first buy of illegal drugs actually was from Samantha Collins for an 8-ball of methamphetamine on November 29, 2017. The deal was arranged through Sabrina Chaffins. Couch testified that the deal took place at Danny Collins' and Samantha Collins' joint residence.

Couch testified that the second buy again was arranged through Sabrina

Chaffins and that the purchase was from Samantha Collins for an 8-ball of methamphetamine on December 8, 2017.

Couch testified that the third buy was on December 12, 2017. That time Couch testified that he had to wait for Danny Collins to bring methamphetamine. Danny Collins entered the residence and sold Couch another 8-ball of methamphetamine.

Couch testified that the fourth buy was on January 24, 2018, again from Samantha Collins. On that occasion Couch testified that he purchased an ounce of methamphetamine and a firearm.

Couch testified that the next purchase of methamphetamine occurred on February 3, 2018. Couch testified that he was unsure of the amount but believed that he purchased another ounce of methamphetamine. Couch testified that he purchased a rifle and shotgun from a Mr. Quillen. Danny Collins was not present for the purchases and Couch thought he was in the residence's garage.

Couch testified that on February 21st of 2018, he went back to the residence which was a trailer again to purchase methamphetamine but on that occasion Danny and Samantha Collins believed they were about to be robbed. Couch testified that Danny Collins had a gun drawn and Samantha Collins had a knife. Couch testified that Samantha Collins sold him methamphetamine on that occasion. [Id., PageID 1301-20].

Couch testified that he went back to the trailer one more time on March 2,

2018, for a final purchase of a 20-gauge shotgun from Danny Collins. Couch testified that as with all the purchases, he took the shotgun to law enforcement. [Id., PageID 1320-24].

On cross examination, Couch testified that he made one of the drug purchases from a Mr. Quillen, contrary to his previous testimony. Couch testified that he purchased two handguns from Samantha Collins and that he was working other cases simultaneously with the Danny Collins investigation. [Id., PageID 1330-33].

Couch testified that he originally faced drug trafficking charges. Couch testified that because of his cooperation, some charges were dismissed and ultimately, he was given probation. Couch testified that after he became an informant he never went to jail. [Id., PageID 1333-1335].

Couch testified that he was “going into a situation with an individual with a cocked and ready firearm and trying to buy drugs” although there had been no testimony from this or any other witness concerning “cocked and ready firearm[s].”

Following the government’s redirect examination, the court inquired of the government if they had any further questions. The government responded that they had no further questions. The court asked the prosecution, “All right. Thank you. May this witness be finally excused?” The prosecution responded in the affirmative and the court said, “Thank you, sir. You can step down and you’re free to go.” The defense was not included in the colloquy. **Again, there was no opportunity for recross examination.** [Id., PageID 1335].

The next witness was Raymond Barry Engle, a retired administrative sergeant with the Kentucky State Police and most recently a deputy sheriff. Engle testified that he was the evidence custodian for the Kentucky State Police and was in charge of logging in items of evidence. Engle testified that he was involved in a search warrant that was executed at the residence of Danny Collins on March 12, 2018. Engle testified that Danny Collins was found unconscious in a pickup truck and was arrested. Found in the vehicle with Collins was \$1,272 in currency and over 26 grams of methamphetamine. Engle testified that after he was read his Miranda rights, Collins was informed that there was a search warrant for his residence, that the police could destroy Collins' safe in order to open it, or Collins could open it for the police. Collins agreed to open the safe and did so. The safe contained over four pounds (550 grams) of methamphetamine along with one or two firearms. [Id., PageID 1335-1346].

Engle testified that inside the residence there were various other smaller bags containing methamphetamine. Engle was allowed to testify without objection to the reaction of the Kentucky State Police laboratory workers when presented with the volume of seized methamphetamine, "they about had a stroke." Engle testified, pursuant to leading questions, that the laboratory does not test every piece of the drugs he brings to them because if they attempted to do so they would be overwhelmed. Engle testified that the laboratory could never manage to test all of the drugs Engle presented to them. [Id., PageID 1346-1351].

On cross examination, Engle testified that there actually were two safes in the trailer, one opened by Samantha Collins and one by Danny Collins. Engle testified that he did not know who would normally operate a Mazda vehicle found on the property, or to whom the license plates belonged, or whether the Mazda vehicle had been impounded. [Id., PageID 1358-1361].

In the government's redirect examination the government presented new testimony concerning the alleged opening of a safe by Collins and whether or not there had been an opportunity for someone to inform Collins of the safe's combination. Engle further gave new testimony that the police kept Collins and his daughter separate so that they could not conform their stories. Following this redirect the court stated, "Thank you, sir. That concludes your testimony." **There was no opportunity for recross examination** concerning whether or not the precise circumstances might have allowed someone to tell Collins the safe's combination or if Collins made any effort to conform his story to his daughter's "story." [Id., PageID 1364].

The next witness was Sergeant Alisha Congleton who testified that, "As the meth became more prevalent in Letcher County, our office received several complaints regarding the residence of Danny and Samantha Collins." Congleton testified that she conducted surveillance and saw heavy traffic which she said was consistent in her experience with drug trafficking activity. Congleton testified that she saw individuals going into the trailer for a short time and then leaving.

Congleton testified that she saw Danny Collins at the trailer during her surveillance. Congleton testified that she also saw Danny Collins speaking to Sherrell Sandlin. Congleton testified that there was a teenager who she learned was Danny Collins' daughter. Congleton testified that suspected methamphetamine and drug paraphernalia were found inside of a purse in Samantha Collins's bedroom.

Congleton testified that a firearm was located either underneath the pillow or mattress. Congleton testified that there was also a safe inside Samantha Collins's bedroom containing methamphetamine, drug paraphernalia, money, and various other items. Congleton testified that there was also a safe inside the bedroom Danny Collins said was his bedroom. Congleton testified that there were prescription pills, some of which were prescribed for Danny Collins, inside the bedroom he had referred to as his bedroom and inside a bathroom in the trailer. Congleton testified that Samantha Collins said that she could not open the safe in the bedroom which was not hers because it belonged to her dad. Congleton testified that she could not say whether Danny Collins was passed out in the Mazda or the Ford pickup truck but that she considers them both pickup trucks. [Id., PageID 1365-1381].

Following redirect examination the court thanked the prosecutor and informed the witness, "That concludes your testimony. You can step down." The defense was not addressed by the Court. **There was no opportunity for recross.** [Id., PageID 1381].

The government called Special Agent Jeffrey Baker.

Prior to any testimony from Baker and without consulting the defense, the Court gave a jury instruction in the middle of the trial, without objection, stating:

“Again, occasionally I give you an instruction as we're in the middle of the trial. You're about to hear the testimony of Agent Baker, who is expected to testify regarding both facts and opinions. You should give each of these types of testimony as much weight as you think it deserves considering the factors that I instruct you on at the end of the proof. These factors generally include the witness's ability or inability to perceive the relevant events, his memory, his behavior while testifying, and any potential motives. Another relevant factor is how believable the testimony is in light of all of the other evidence. You should consider these factors, which I will explain in more detail when I give my final instructions at the end of the proof, in weighing the credibility of this witness in considering his factual testimony. As to Agent Baker's testimony regarding his opinions, you do not have to accept any of the witness's opinions. In addition to the general factors that I just described in deciding how much weight to give an opinion, you should consider the witness's qualifications and how he reached his conclusions. You should also consider this witness's dual fact and opinion roles in determining what weight, if any, to give his opinion testimony...” [Id., PageID 1381-1382].

Baker testified to his experience, which included a previous position with the Kentucky State Police and currently with the Bureau of Alcohol, Tobacco, Firearms

and Explosives.

Profiling drug cases: Baker was asked if in the area he served [Kentucky], in his experience, his cases overlapped with regard to firearms and drugs. Baker responded that they did. Baker was asked if methamphetamine was “prevalent.” Baker responded, “Very much so.” Baker was asked if he had experience with numerous other methamphetamine investigations overlapping with firearms. Baker responded, “Lately that's the most common investigation when it comes to drugs and methamphetamine.” [Id., PageID 1383].

Eventually the prosecutor asked about the Danny Collins case. The government elicited that Baker had been informed of controlled buys and possible firearms in the Danny Collins case. The government asked if Baker was present for numerous controlled buys by Couch of methamphetamine or firearms, or both. Baker responded, “I was.”

Baker was asked if he recalled a specific buy that occurred on March 2, 2018. Baker responded, “I do.” Baker was asked what was purchased and Baker said that a Winchester Model 37 20-gauge shotgun was purchased. Baker was asked what procedures were employed for these controlled buys. Baker recounted the procedures and stated that there were no discrepancies from these procedures by Couch. Baker was asked if he continues to use Couch as a confidential informant. Baker replied, “I do.” Baker was asked if Couch continues to work as a confidential informant after there were no criminal charges pending against him. Baker replied, “He does.” Baker

testified that the shotgun functioned and that it was manufactured outside of Kentucky. Baker testified that Collins occupied the residence in question as shown on his driver's license. [Id., PageID 1383-1390].

Baker reiterated that there were buys in November 2017, and December 8, 2017. The prosecutor said there was a buy on December 12, 2017, and asked Baker to describe it. The prosecutor said that Couch was sent "in" again on January 17, 2018. The prosecutor said that that was the first buy involving a firearm, Baker replied, "That is correct." The prosecutor asked Baker to describe the transaction and Baker said that the purchase was from Samantha Collins and Kevin Quillen and that the gun was a Savage Stevens 94H. Baker testified that the purchase also involved another 8-ball of methamphetamine. The prosecutor asked how much the "Collins organization" was charging for an 8-ball. Baker replied, "\$300, give or take." The prosecutor asked how much they were charging for an ounce and Baker said 12 to 14 hundred dollars. [Id., PageID 1390-1392].

The prosecutor said that there had been testimony that "the defendant was receiving up, anywhere from a pound, all the way to a kilogram when he was traveling to Louisville." (There had been no such testimony.) The prosecutor asked how much "a pound" would go for at that time. Baker replied, "approximately 5,000." The prosecutor asked the price of "a kilogram" and Baker estimated "10,000." [Id., PageID 1392-1393].

Baker testified that on January 24, 2018, there was another buy for an ounce

of methamphetamine and two pistols. Baker testified that on February 13, 2018, there was a buy for an ounce of methamphetamine. Baker testified that on February 13, 2018, outside of the residence two firearms were purchased from Kevin Quillen. Baker testified that on February 21, 2018, there was a buy for an ounce of methamphetamine but this time the Collins's thought they were being robbed. [Id., PageID 1393-1398].

Baker testified that a search of the Collins' residence occurred on March 12, 2018, and at that time there was over \$10,000 worth of methamphetamine in the residence. [Id., PageID 1398].

Again profiling drug cases, the government asked:

Q. Is it common for methamphetamine dealers to be robbed for either their drug money or methamphetamine?

A. It is always a risk. The drug dealer business is cutthroat. It is always a risk. Individuals who are buying the drugs or trafficking with them know they have got cash, or they have got drugs that are valuable, so it is the nature of the beast. [Id., PageID 1399].

On cross examination Baker testified that although prerecorded bills were utilized during the investigation none were recovered. Baker testified that there were no fingerprints in the firearms involved in the case. Baker testified that he was not inside the residence or garage when the transactions took place. Baker testified that Kevin Quillen was present for the transactions. Baker testified that when

arrested Danny Collins did not possess firearms. [Id., PageID 1399-1404].

On redirect examination Baker gave new testimony to an inaudible portion of a video and a portion of a video upon which the camera was covered to the effect that it was Danny Collins who gave a firearm to Kevin Quillen based upon a “hand” appearing in the video. Although the Court granted the defense an opportunity to recross upon the hand and to police testifying to inaudible portions of the audio, the defense declined. [Id., PageID 1404-1405].

For its final witness the government called William Farley. Farley testified that Danny Collins was his brother-in-law. Farley testified that Danny Collins’ residence was no more than a hundred feet from Farley’s residence. Farley testified that Danny Collins and his daughter lived at that address. Farley testified that there was a high volume of traffic at Collins’ residence with cars going in and out day and night. Farley denied his statement to federal law enforcement that Collins admitted to Farley that he was a methamphetamine dealer but Farley admitted that he might have said it. [Id., PageID 1407-1414].

On cross examination Farley testified that Danny Collins received approximately \$4,000.00 a month in disability and social security payments. Farley testified that he and his wife were raising Samantha Collins’ children. Farley testified that Danny Collins spent periods of time living in Virginia. [Id., PageID 1415-1417].

There was no redirect examination and the prosecution rested.

The defense rested without calling any witnesses.

The jury convicted on all counts, i.e., Count One, Conspiracy to Distribute Methamphetamine, 500 grams or more 21U.S.C. § 846; Count Two, Possession of a Firearm in furtherance of a drug trafficking offense 21 U.S.C. § 924(c); and Count Four, Felon in Possession of Firearm 18 U.S.C. §§ 922(g)(1). [R. 137: Verdict 413-414].

On July 14, 2020, Court entered Judgment sentencing Danny Collins to 251 months imprisonment on Counts 1, 2 and 4 followed by ten years supervised release, and the special assessment of \$300.00. [R. 191: Order, PageID 742-52.]

On July 20, 2020, Collins filed a Notice of Appeal. [R. 195: Motion, PageID 758-60.]

REASONS FOR GRANTING THE WRIT

- 1. Because courts are not following this Court's precedent that there is always a right to cross examine witnesses regarding their testimony and the Sixth Circuit has authorized the denial of cross examination concerning redirect testimony.**

Petitioner submits that certiorari should issue because some courts have adopted a policy, i.e., a trial structure, that a court may refuse cross examination concerning redirect testimony unless the court deems the redirect testimony to be unreliable. The Sixth Circuit rejected structural error analysis. The Sixth Circuit

approved the practice of refusing cross examination concerning redirect testimony without leave of court. The Sixth Circuit used exactly the same analysis as did the district court in disallowing recross examination in affirming the conviction. The Sixth Circuit's held that courts are given wide latitude in limiting cross examination and, therefore, even the complete denial of cross examination will be judged by harmless error analysis. The Sixth Circuit determined that recross examination was unlikely to significantly weaken the redirect testimony as the redirect testimony seemed to be reliable.

This Court stated:

“The text of the Sixth Amendment does not suggest any open-ended exceptions from the confrontation requirement to be developed by the courts. Rather, the “right ... to be confronted with the witnesses against him,” Amdt. 6, is most naturally read as a reference to the right of confrontation at common law, admitting only those exceptions established at the time of the founding.” (Emphasis added.) Crawford v. Washington, 541 U.S. 36, 54 (2004).

This Court has instructed:

“The Confrontation Clause commands that reliability be assessed in a particular manner: by testing in the crucible of cross-examination. Roberts allows a jury to hear evidence, untested by the adversary process, based on a mere judicial determination of reliability, thus replacing the constitutionally

prescribed method of assessing reliability with a wholly foreign one.” Id., 541 U.S. at 37.

The trial structure devised and used to try Collins permitted recross examination only with leave of court. This trial structure is precisely the type of exception to the confrontation requirement developed by the courts which is prohibited by this court. As such, it constitutes structural error.

The Sixth Circuit endorsing the prohibited procedure of judicial determination of testimony’s reliability, applied harmless error analysis and found no abuse of discretion in the district court’s denial of cross examination, and so, no error. (Appendix 1). This holding is in conflict with this Court’s precedent in Crawford, supra.

This Court has instructed:

That “the purpose of the structural error doctrine is to ensure insistence on certain basic, constitutional guarantees that should define the framework of any criminal trial.” Weaver v. Massachusetts, __ U.S. __, 137 S. Ct. 1899, 1907 (2017). This Court has instructed that all testimony must be subject to cross examination as a matter of Constitutional Right, not as a privilege permitted only with leave of court.

Petitioner’s convictions were obtained in violation of Petitioner’s right to Confront witnesses against him as guaranteed by the Sixth Amendment to the

United States Constitution and should be vacated.

CONCLUSION

Petitioner, Danny Collins, requests that this Court grant certiorari, reverse the Sixth Circuit's affirmance, and remand for further proceedings.

Respectfully submitted,

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APPENDIX

1. COURT OF APPEALS OPINION July 26, 2021.