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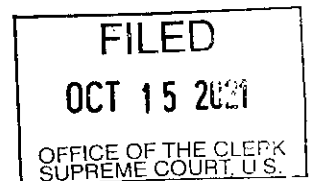
21-6161

IN THE
SUPREME COURT OF THE UNITED STATES

ADAM RENE RODRIGUEZ - PETITIONER

VS.

UNITED STATES OF AMERICA - RESPONDENT



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

PETITION FOR WRIT OF CERTIORARI

ADAM R. RODRIGUEZ #58780177
YAZOO MEDIUM
P.O. BOX 5000
YAZOO CITY, MS 39194

LIST OF PARTIES

A LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGEMENT IS THE SUBJECT OF THIS PETITION IS AS FOLLOWS:

PETITIONER

ADAM RENE RODRIGUEZ, DEFENDANT

MR. JAMES W. VOLBERDING, APPOINTED ATTORNEY FOR APPEAL
110 N. COLLEGE AVENUE, SUITE 1850
TYLER, TX 75702

MR. FRANK W. HENDERSON, APPOINTED ATTORNEY FOR TRIAL
OFFICE OF THE FEDERAL DEFENDER
600 E. TAYLOR, SUITE 4000
SHERMAN, TX 75092

COUNSEL FOR THE GOVERNMENT

MS. MARISA J. MILLER, ASST. U.S. ATTORNEY
U.S. ATTORNEY'S OFFICE
101 E. PARK BLVD., SUITE 500
PLANO, TX 75074

QUESTION PRESENTED

WHETHER DEFENDANT'S CONVICTION IS IN VIOLATION OF THE SEARCH AND SEIZURE PROTECTION OF THE FOURTH AMENDMENT, AND THE DUE-PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT, AS WELL AS, OPINIONS OF THE U.S. SUPREME COURT AND FEDERAL APPEALS COURTS?

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TABLE OF AUTHORITIES CITED

U.S. CONST.

FOURTH AMENDMENT 6

THE RIGHT OF THE PEOPLE TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES, SHALL NOT BE VIOLATED, AND NO WARRANTS SHALL ISSUE, BUT UPON PROBABLE CAUSE, SUPPORTED BY OATH OF AFFIRMATION, AND PARTICULARLY DESCRIBING THE PLACE TO BE SEARCHED AND THE PERSONS OR THINGS TO BE SEIZED.

FOURTEENTH AMENDMENT, SECTION 1 11, 12

ALL PERSONS BORN OR NATURALIZED IN THE UNITED STATES, AND SUBJECT TO THE JURISDICTION THEREOF, ARE CITIZENS OF THE UNITED STATES AND OF THE STATE WHEREIN THEY RESIDE. NO STATE SHALL MAKE OR ENFORCE ANY LAW WHICH SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES OF CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY TO ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAW.

CASES

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

PETITIONER RESPECTFULLY PRAYS THAT A WRIT OF CERTIORARI ISSUE TO REVIEW
THE JUDGMENT BELOW.

OPINION BELOW

FOR CASE FROM FEDERAL COURT:

THE OPINION OF THE UNITED STATES COURT OF APPEALS APPEARS AT
APPENDIX A TO THE PETITION AND IS UNPUBLISHED.

JURISDICTION

FOR CASE FROM FEDERAL COURT:

THE DATE ON WHICH THE UNITED STATES COURT OF APPEALS DECIDED
MY CASE WAS AUGUST 2, 2021.

THE JURISDICTION OF THIS COURT IS INVOKED UNDER 28 U.S.C. § 1254 (1).

STATEMENT OF THE COURSE OF PROCEEDINGS

THE GOVERNMENT INDICTED DEFENDANT FOR ATTEMPTED COERCION AND ENTICEMENT OF A MINOR IN VIOLATION OF THE TELECOMMUNICATION ACT OF 1996, 18 U.S.C. § 2422 (B), ROA. 10. I WAS DETAINED, ROA. 26, 29. A JURY CONVICTED ME AS CHARGED, ROA. 166, 853.

THE AMENDED PSR ASSIGNED A BASE OFFENSE LEVEL OF 28, ROA. 1241. HIS SENTENCE WAS ENHANCED TWO LEVELS FOR USING A COMPUTER, ROA. 1241. I WAS ASSIGNED CRIMINAL HISTORY CATEGORY VI.

THE COURT ADOPTED THE PSR, ROA. 1266. THE COURT SENTENCED ME TO 210 MONTHS CONFINEMENT, THE GUIDELINES MAXIMUM, FOLLOWED BY 10 YEARS SUPERVISED RELEASE, ROA. 180, 182, 881, 1258. UPON RELEASE, I WILL BE REQUIRED TO COMPLY WITH SEX OFFENDER REGISTRATION REQUIREMENTS OF THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT, 34 U.S.C. § 20901, ET SEQ., ROA. 1263. I TIMELY APPEALED, ROA. 189.

DEFENDANT WAS APPOINTED CJA COUNSEL BY THE DISTRICT COURT. COUNSEL IDENTIFIED A SINGLE ISSUE FOR PRESENTATION TO THE FIFTH CIRCUIT. A CHALLENGE OF INSUFFICIENT EVIDENCE.

THE COURT OF APPEALS FOR THE FIFTH CIRCUIT DENIED MY DIRECT APPEAL. CJA APPOINTED COUNSEL FILED MOTION TO WITHDRAW WHICH WAS GRANTED. IN SAME MOTION, COUNSEL REQUESTED AN EXTENSION TO FILE PETITION FOR REHEARING EN BANC ON MY BEHALF. THIS EXTENSION WAS GRANTED. I HAVE FILED PETITION FOR REHEARING EN BANC IN PRO SE.

STATEMENT OF FACTS

THE INDICTMENT CHARGED THAT ON OR ABOUT APRIL 10, 2019, AND ON OR ABOUT MAY 3, 2019, THE DEFENDANT USED A MEANS AND FACILITY OF INTERSTATE COMMERCE TO ATTEMPT TO PERSUADE, INDUCE, ENTICE, AND COERCE A MINOR TO ENGAGE IN ILLEGAL SEX.

PLANO POLICE DET. JEFF RICH TESTIFIED THAT HE CREATED THE BECKA GERL PROFILE OVER SIX YEARS EARLIER. THE PROFILE IDENTIFIES ITS LENGTH OF EXISTANCE TO ANY VIEWER, ROA. 411, 426-27, GOVT. EX. 2.

THE PROFILE PHOTO OF BECKA GERL USED BY DET. RICH WAS A PARTIAL FACE PHOTO OF A WOMAN, WITH BRACES, WEARING A PINK SWEATER OR HOODIE, BUT NOT SHOWING EYES OR TOP OF HEAD, ROA. 412-13, 426-27, GOVT. EX. 2. THE WOMAN WAS ANOTHER PLAND OFFICER, OFFICER HAYLEY DICK, TAKEN WHEN SHE WAS AN ADULT, ROA. 509.

FBI SPECIAL AGENT MULLICAN USED DET. RICH'S CELL TO ADAPT THE BECKA GERL PERSONA. ON APRIL 10, 2019, SHE FOUND A KIK MESSENGER GROUP CALLED 'DFW BAD GIRLS 4 HUNG,' AND DECIDED TO TARGET IT WITH THE BECKA GERL PERSONA.

UPON FIRST REQUEST TO JOIN THE GROUP, BECKA GERL WAS NOTIFIED OF GROUP RULES, GOVT. EX. 1, AND THAT AN ADMINISTRATOR WOULD CONTACT HER FOR VERIFICATION. A FEW MINUTES LATER BECKA GERL WAS ASKED IN A PRIVATE MESSAGE FOR A PHOTO VERIFICATION BY TEXASARDD, A GROUP ADMINISTRATOR.

BECKA GERL'S PROFILE WAS THE FIRST BIT OF INFORMATION TEXASARDD SAW UPON HER ENTERING THE GROUP AND MAKING CONTACT FOR VERIFICATION WHICH STATED SHE HAD BEEN A KIK MEMBER FOR 2,234 DAY'S (OVER 6 1/2 YEARS), ROA. 718-19, GOVT. EX. 2.

AS BECKA GERL, AGENT MULLICAN SENT A PHOTO OF A WOMAN (OFFICER HAYLEY DICK AS AN ADULT), SHE FOUND ON DET. RICH'S PHONE, ROA. 516, 525-28, GOVT. EX. 3C-1 (PHOTO).

AGENT MULLICAN CONCEDED SHE DID NOT KNOW MUCH ABOUT THE PROFILE SET-UP JUST OVER SIX YEARS EARLIER BY DET. RICH, ROA. 508-09.

BASED ON THE PHOTO BECKA GERL SENT THAT APPEARED TO HIM TO BE OF AN ADULT, ROA. 721, AND THE LENGTH OF TIME SHE HAD BEEN A MEMBER, TEXASARDD ALLOWED HER INTO THE GROUP, ROA. 527-28.

DET. RICH NEVER INFORMED AGENT MULLICAN THE PHOTO ON HIS PHONE WERE OF A 14-YEAR-OLD FEMALE, AGENT MULLICAN ASSUMED THEY WERE OF A 14-YEAR-OLD FEMALE, ROA. 509.

UNEXPECTEDLY, AFTER FOURTEEN MINUTES, ANOTHER ADMINISTRATOR REMOVED HER FROM THE GROUP WHEN SHE STATED SHE WAS ONLY 14, ROA. 530. THE DEFENDANT DID NOT IN FACT SEE THE BECKA GERL'S EXCHANGE WITH GROUP MEMBERS STATING SHE WAS 14, TRIGGERING HER SUMMARY EXPULSION, ROA. 717, 744. HE HAD ALREADY BEGUN DIRECT COMMUNICATION WITH HER AND MISSED THAT CHAT DIALOG, ROA. 717. AGENT MULLICAN CONFIRMED

YOU WOULD NOT SEE OTHER CHAT DIALOG IF YOU WERE IN DIRECT COMMUNICATION WITH ANOTHER MEMBER, ROA. 690.

EVENTUALLY BECKA GERL TOLD TEXASAROD SHE WAS 14 AT WHICH TIME HE STOPPED COMMUNICATION, ROA. 538-39. GOVT. EX. 26 AT P. 9, 3B AT P. 6. THE DEFENDANT EXPLAINED HE REINITIATED CONTACT BECAUSE HE GENUINELY BELIEVED BECKA GERL WAS AN ADULT WOMAN WITH HER OWN FANTASY OF BEING SEDUCED AND RELIVING HER YOUNGER YEARS, WELL WITHIN REASON OF THE CONTEXT OF THE GROUP, ROA. 719, 721-22, GOVT. EX. 1.

THERE WERE LEGITIMATE REASONS WHY HE BELIEVED SO.

- BECKA GERL'S ONLINE PROFILE PRESENTED HER AS AN EXPERIENCED 6 1/2 YEAR MEMBER OF THE APPLICATION. CONSEQUENTLY, HE REASONABLY DEDUCED SHE HAD TO BE AN ADULT BECAUSE AN 7-YEAR-OLD COULD NOT HAVE OPENED SUCH AN ACCOUNT, ROA. 722.
- BECKA GERL'S PHOTOGRAPH APPEARED CONSISTANT TO HIM OF THOSE OF AN ADULT BETWEEN NINETEEN AND TWENTY-FOUR YEARS OLD, ROA 722. LATER REVEALED WERE OF AN ADULT IN THAT RANGE, ROA. 509.
- HE WORKED FOR A DENTAL COMPANY AND KNEW THE CLEAR TYPE BRACES IN HER PHOTO ARE NORMALLY RESERVED FOR ADULTS, ROA. 720-21.
- BECKA GERL'S BANTER WAS CONSISTANT TO HIM AS A WOMAN FANTASIZING ABOUT BEING SEDUCED, ROA. 721.
- HIS ELECTRONIC DEVICES CONTAINED NOT A SINGLE IMAGE OR VIDEO OF A CHILD, THEREFOR INCONSISTENT WITH A ROAMING CHILD PREDATOR, ROA. 687.

TEXASAROD SENT BECKA SEVERAL GRAPHIC IMAGES AND VIDEOS FEATURING A MALE AND ADULT WOMAN IN SEXUAL ACTS, ROA. 1457 GOVT. EX. 26. DEFENDANT SENT BECKA HIS "CALLING CARD," A COMPOSITE IMAGE OF PHOTOS FOLLOWED BY: TEN INCHES INTEREST, CHOKING, HAIR PULLING, BONDAGE, NIPPLE PLAY, WAX, DP, BITING, COLLAR/LEASH, IMPREGNATION, FANTASY, VOYEURISM, DADDY-DOM, ROA 1475 GOVT. EX. 26.

TEXASAROD AND BECKA GERL CONTINUED THEIR BANTER OVER SEVERAL WEEKS OF DIALOGUE. THEY PROPOSED MEETING FOR SEXUAL INTERCOURSE AND DISCUSSED DATE AND MEANS SETTLING ON FRIDAY, MAY 3, 2019.

BECKA PROPOSED MEETING AT AN APARTMENT OF A FRIEND WHO WAS GONE FOR THE WEEKEND, ROA. 584-85. THE APARTMENT WAS AN EAST PLANO APARTMENT. THE DEFENDANT INFORMED BECKA THEY WOULD GO TO A HOTEL AFTER THEY MET, ROA. 580, 1513 GOVT. EX. 26.

ANTICIPATING MEETING A ROLE-PLAYING ADULT WOMAN, THE DEFENDANT ARRIVED AT A SHOPPING CENTER ACROSS THE STREET FROM THE BEL-AIR OAKS APTS. HE ASKED BECKA GERL TO COME OUT OF THE APARTMENT TO AN OPEN PARKING LOT SO HE COULD VERIFY WHO SHE WAS FOR HIS SAFETY, ROA. 725-26. HE WORRIED SHE MIGHT BE MARRIED, ROA. 732, 747-48.

AFTER GOING BACK AND FORTH IN THEIR COMMUNICATION, AND BECKA GERL NOT COMING OUT TO MEET HIM AS SHE STATED SHE WOULD, ROA. 687-88, HE FINALLY BROKE OFF AND DROVE AWAY TO MEET FRIENDS AT A CLUB IN EULESS, ROA. 727. HE HAD BEEN SIMULTANEOUSLY TEXTING AN ADULT WOMAN, "JUICY K," IN THE CHAT GROUP, ROA. 727, GOVT. EX. 15.

SERGEANT RICHARD GLENN OF THE PLANO POLICE DEPT. STOPPED THE DEFENDANT FOR A TRAFFIC VIOLATION, ROA. 458-60. AS SGT. GLENN APPROACHED THE VEHICLE ON THE DRIVERS SIDE, THE DEFENDANT CAN BE SEEN PLACING A CELL PHONE ON THE PASSENGER SEAT, ROA. 462-63, GOVT. EX. 5A.

AS SGT. GLENN SPEAKS WITH THE DEFENDANT, PLANO OFFICER T.J. BRANTLEY AND FBI SPECIAL AGENT JENNIFER MULLICAN APPROACH DEFENDANTS PASSENGER SIDE DOOR, ROA. 488, 497.

OFFICER BRANTLEY IS SEEN SHINNING HIS FLASHLIGHT INTO THE VEHICLE CALLING DEFENDANTS ATTENTION AFTER SEEING A CELL PHONE SITTING ON THE PASSENGER SEAT, ROA. 471-73, DEF. EX. 1, VIDED CLIP.

WHEN THE DEFENDANT TURNS TO LOOK BACK AT SGT. GLENN, OFFICER BRANTLEY REACHES INTO THE PASSENGER WINDOW, UNLOCKS THE DOOR, THEN OPENS IT ALLOWING AGENT MULLICAN TO REACH IN AND GRAB DEFENDANTS CELL PHONE OFF THE PASSENGER SEAT, ROA. 488-89, 599-600, GOVT. EX. 5A, 6A.

AFTER SEIZING THE CELL PHONE, AGENT MULLICAN PROCEEDS TO THE REAR OF THE VEHICLE OUT OF DEFENDANTS SIGHT, AND SENDS A MESSAGE FROM DET. RICH'S UNDERCOVER PHONE SAYING "TEST." ROA. 600-01. WHILE DEFENDANT WAS STILL SITTING IN HIS VEHICLE, AGENT MULLICAN PROCEEDS TO TAKE A PHOTO TO CAPTURE THE CONTENTS OF HIS INCOMING TEXT MESSAGES USING HER UNDERCOVER PHONES CAMERA, ROA. 601-03, 726-27, GOVT. EX. 15.

AFTER AGENT MULLICAN IDENTIFIED THE DEFENDANT WAS WHOM SHE HAD BEEN COMMUNICATING WITH THROUGH A SEARCH OF HIS CELL PHONE DATA, ROA. 600, 691-92. THE DEFENDANT WAS REMOVED FROM HIS VEHICLE, QUESTIONED, PLACED IN CUSTODY, AND TAKEN TO JAIL.

REASONS FOR GRANTING THE PETITION

IN SEVERAL LETTERS TO APPELLATE COUNSEL I POINTED OUT CONSTITUTIONAL VIOLATIONS IN SUPPORT OF AN INSUFFICIENT EVIDENCE CLAIM. COUNSEL REFUSED TO ACKNOWLEDGE THERE HAD BEEN AN UN-WARRANTED SEARCH OF CELL PHONE DATA ON SIDE OF THE ROAD BEFORE A WARRANT HAD BEEN OBTAINED.

THERE WERE NO STATE OR FEDERAL WARRANTS TO EXTRACT OR SEARCH DATA FROM MY CELL PHONE IN THE RECORD. NOR DID I GIVE CONSENT TO EXAMINE MY CELL PHONE AFTER MULTIPLE REQUEST BY LAW-ENFORCEMENT TO DO SO.

IN A JANUARY 11, 2021 AND JANUARY 25, 2021 LETTER, APPELLANT COUNSEL STATED THE SEARCH AND SEIZURE WAS JUSTIFIED UNDER THE SEARCH INCIDENT TO ARREST EXCEPTION. HE FURTHER STATED, THE GOVERNMENT GOT A SEARCH WARRANT TO EXTRACT THE CONTENTS OF THE CELL PHONE LATER ANYWAY SO THERE'S NO FOURTH AMENDMENT VIOLATION. IN A LATER LETTER DATED SEPT. 9, 2021, HE ADMITTED THAT HE IN FACT DID NOT HAVE A COPY OF THESE WARRANTS OR WERE THEY APART OF THE RECORD.

I ALSO VOICED MY CONCERNS OF THE GOVERNMENT INTRODUCING ADDITIONAL EVIDENCE IN CLOSING STATEMENTS. HE INFORMED ME HE DID NOT SEE ANY STATEMENTS BY THE PROSECUTOR THAT WOULD SUPPORT A FOURTEENTH AMENDMENT CHALLENGE. AND SINCE THERE WAS NO OBJECTION TO LATE SUPPLIED EVIDENCE, THE COURT WOULD NOT CONSIDER THIS CHALLENGE.

HOWEVER, APPELLATE COUNSEL'S OPINION IS IN DIRECT CONFLICT WITH A DECISION OF THE UNITED STATES SUPREME COURT (RILEY V. CALIFORNIA, 573 U.S. 373, U.S. SUP. CT. 2014), AND WITH AUTHORITATIVE DECISIONS OF CIRCUIT APPEALS COURTS. THESE ACTIONS BY APPELLATE COUNSEL CAUSED THE FIFTH CIRCUIT TO BASE THEIR DECISION ON MISLEADING, AND A LACKING PRESENTATION OF TRIAL RECORDS THAT CONFLICT WITH THE FIFTH CIRCUITS OWN PRECEDENCE AND U.S. SUPREME COURT DECISIONS.

THERE ARE TWO CONSTITUTIONAL VIOLATIONS IN SUPPORT OF MY CLAIM OF INSUFFICIENT EVIDENCE.

THE FIRST IS EVIDENCE OBTAINED AND PRESENTED DURING TRIAL IN VIOLATION OF THE FOURTH AMENDMENT.

SUPPORTING FACTS OF RECORD CONFIRMING MY CLAIM OF ILLEGALLY OBTAINED AND PRESENTED EVIDENCE IS AS FOLLOWS:

- Q. OKAY. AND ONCE YOU UNLOCK -- ONCE THAT DOOR IS UNLOCKED, THEY'RE ABLE TO OPEN THE OTHER SIDE OF THE DOOR, AREN'T THEY?
- A. THEY WERE.
- Q. OKAY. AND WHEN THEY OPENED THAT DOOR, THEY'RE ABLE TO PULL OUT A PHONE, AREN'T THEY?
- A. CORRECT.
- Q. OKAY. SO I GUESS THE QUESTION IS; IN A NORMAL TRAFFIC STOP, WHEN YOU'RE STOPPING SOMEBODY JUST NORMALLY, DO YOU NORMALLY REACH IN TO UNLOCK THEIR DOOR?
- A. NO.
- Q. AND AT THE TIME THAT HE WAS STOPPED, DID IT APPEAR TO YOU, SERGEANT, THAT MR. RODRIGUEZ WAS TRYING TO DESTROY ANY EVIDENCE?
- A. NO.
- TR. CROSS-EXAMINATION, SERGEANT RICHARD GLENN, ROA. 473-74.

- Q. ... DO YOU RECALL, WHEN THIS INDIVIDUAL IS INITIALLY STOPPED, WHETHER YOU APPROACHED ON THE DRIVER'S SIDE OR THE PASSENGER'S SIDE OF THAT VEHICLE?
- A. I APPROACHED ON THE PASSENGER'S SIDE OF THE VEHICLE.
- Q. OKAY. AND DID YOU USE ANY OF THE TOOLS IN YOUR OFFICER'S TOOLBOX, YOUR BELT, IN ORDER TO GET A BETTER VANTAGE ON WHAT WAS GOING ON INSIDE THAT VEHICLE WHEN YOU APPROACHED?
- A. YES, MA'AM. I UTILIZED MY DEPARTMENT-ISSUED FLASHLIGHT.
- Q. OKAY. SO IT'S YOU THAT WE SEE APPROACHING THE VEHICLE ON THE PASSENGER'S SIDE AND LIGHTING YOUR FLASHLIGHT RIGHT INTO THE PASSENGER'S SIDE OF THAT VAN?
- A. YES, MA'AM.
- Q. AND WHAT DID YOU SEE, IF ANYTHING, WHEN YOU LOOKED IN THERE?
- A. I SAW A DRIVER AND THEN A CELL PHONE ON THE PASSENGER'S SEAT.
- TR. DIRECT, OFFICER T.J. BRANTLEY, ROA. 487-88.

- Q. AND DO YOU RECALL WHETHER OR NOT THE PASSENGER'S SIDE WINDOWS WAS UP OR DOWN, OR PARTIALLY UP OR DOWN?
- A. IT WAS PARTIALLY DOWN.
- Q. OKAY. AND WERE ANY OTHER OFFICERS OR AGENTS ON THAT SIDE OF THE VEHICLE WITH YOU ON THE PASSENGER'S SIDE?
- A. YES. AGENT MULLICAN WAS.
- Q. AGENT MULLICAN WAS?

A. YES.
Q. AND AS FAR AS-- AT SOME POINT, WE SEE-- WE SAW SERGEANT GLENN'S VIDEO JUST NOW, DO YOU REACH INSIDE THAT VEHICLE?
A. YES, I DO.
Q. WHY?
A. TO UNLOCK THE DOOR SO AGENT MULLICAN COULD RETRIEVE THE CELL PHONE.
Q. OKAY. SO DID YOU ACTUALLY UNLOCK THE DOOR, OR DID SERGEANT GLENN UNLOCK THE DOOR?
A. I BELIEVE I UNLOCKED THE DOOR.
TR. DIRECT, OFFICER T.J. BRANTLEY, ROA. 4/89.

Q. AND YOU ALSO HAD SPECIAL AGENT MULLICAN-- SHE WAS OVER THERE ON THE PASSENGER'S SIDE TOO?
A. YES, SIR.
Q. OKAY. BECAUSE BOTH OF YOU WERE-- ALL THREE OF YOU WERE KIND OF OVER THERE HUDDLED AROUND, TRYING TO SEE IF YOU COULD SEE A PHONE. CORRECT?
A. CORRECT.
Q. AND YOU KNEW YOU WERE LOOKING FOR A PHONE, DIDN'T YOU?
A. YES, SIR.
Q. AND YOU SAW A PHONE IN THE PASSENGER'S SEAT. CORRECT?
A. YES, SIR, I DID.
Q. AND AT THE TIME THAT YOU SEE THIS PHONE ON THE PASSENGER'S SEAT, MR. RODRIGUEZ-- HE WASN'T TRYING TO REACH OVER THERE TO GET IT, WAS HE?
A. NOT THAT I REMEMBER.
Q. IT WAS JUST LYING OVER THERE. CORRECT?
A. YES, SIR.
TR. CROSS-EXAMINATION, OFFICER T.J. BRANTLEY, ROA. 498-99.

Q. OKAY, YOU TALKED ABOUT THIS STOP OF MR. RODRIGUEZ, AND WE'VE SEEN VIDEOS OF IT. I THINK YOU INDICATED THAT YOU WANTED TO GET THAT PHONE OR ONE OF THE PHONES BECAUSE YOU WANTED TO CONFIRM WHO YOU WERE TALKING TO. IS THAT CORRECT?
A. YES, SIR, I WANTED TO CONFIRM THAT THE INDIVIDUAL THAT WAS STOPPED WAS THE INDIVIDUAL THAT HAD BEEN COMMUNICATING WITH THE 14-YEAR-OLD FEMALE (UNDERCOVER PERSONA) THAT EVENING.
TR. CROSS-EXAMINATION, FBI AGENT JENNIFER MULLICAN, ROA. 691.

Q. NOW, WHILE YOU'RE STANDING ON THE SIDE OF THE ROAD, WERE YOU HOLDING HIS PHONE?

A. YES, I WAS.

Q. WHAT DID YOU DO WITH YOUR UNDERCOVER PHONE?

A. I UTILIZED MY UNDERCOVER TELEPHONE TO SEND ONE LAST MESSAGE TO TEXASROD, AND I SENT THE MESSAGE, "TEST," AND IT SHOWED UP ON HIS CELLULAR DEVICE.

TR. DIRECT, FBI AGENT JENNIFER MULUCAN, ROA. 601.

Q. OKAY. AND IF I CAN HAVE YOU TAKE A LOOK AT THE DOCUMENT BEHIND TAB 15.

A. YES, MA'AM.

Q. DO YOU RECOGNIZE THAT?

A. YES, I DO.

Q. WHAT IS IT?

A. IT'S A PICTURE OF THE FRONT SCREEN OF TEXASROD, THE DEFENDANT'S, CELLULAR TELEPHONE.

Q. WHEN WAS THAT PHOTO TAKEN?

A. THE VERY MINUTE I SENT THAT "TEST" MESSAGE.

Q. OKAY. IS THIS WHAT THE SCREEN OF ADAM RENE RODRIGUEZ'S PHONE APPEARED TO YOU TO BE ON THE SIDE OF THE HIGHWAY MAY 3RD, 2019?

A. YES, MA'AM.

TR. DIRECT, FBI AGENT JENNIFER MULUCAN, ROA. 602.

GOVT. EX. 15, SHOWS PHOTOGRAPHIC PROOF OF THE SEARCH WITH THE "TEST" MESSAGE AGENT MULUCAN SENT, ALONG WITH POLICE TESTIMONY AND BODY CAM VIDEO CORROBORATING THE SEARCH AND SEIZURE.

THE FOLLOWING WAS TESTIMONY OF SGT. RICHARD GLENN, A TWENTY-ONE YEAR MEMBER OF THE PLANO POLICE DEPT. WHOM INITIATED THE TRAFFIC STOP.

Q. OKAY. AND IF YOU HAD ACTUALLY-- SERGEANT GLENN, IF YOU HAD WANTED TO JUST ARREST HIM FOR RUNNING A STOPLIGHT OR FAILURE TO STOP AT A SIGNAL, CONTROL SIGNAL, OR IF YOU WANTED TO ARREST HIM FOR FAILURE-- YOU KNOW, TO DRIVE IN A-- I GUESS A SINGLE LANE OR TO MAKE THE WIDE TURN, IF YOU WANTED TO ARREST HIM, YOU COULD HAVE ARRESTED HIM RIGHT THEN, COULDN'T YOU?

A. CORRECT.

Q. AND YOU COULD HAVE GOTTEN HIM OUT OF THE CAR ON YOUR OWN. CORRECT?

- A. YES.
- Q. AND YOU COULD HAVE HANDCUFFED HIM AND TAKEN HIM OFF. CORRECT?
- A. CORRECT.
- Q. AND THEN YOU COULD HAVE-- IF YOU WANTED TO, THEY COULD HAVE-- YOU COULD HAVE HAD THE CAR SEARCHED. CORRECT?
- A. WE CAN-- WE CAN FRISK THE CAR, WE DON'T HAVE SEARCH INCIDENT TO ARREST ON VEHICLES ANYMORE, SO --
- Q. WELL, ACTUALLY YOU CAN GET A WARRANT TO SEARCH THE CAR IF YOU NEED TO. CORRECT?
- A. YOU COULD.
- Q. OKAY. AND ACTUALLY, ONCE HE'S OUT OF THE CAR AND HE'S ARRESTED, HE CAN'T DO ANYTHING TO THE CAR, CAN HE?
- A. CORRECT.
- Q. OKAY. AND SO LATER ON, IF YOU NEED TO GET A WARRANT TO GO SEARCH THE CAR, YOU CAN DO THAT, AND HE'S NOT GOING TO BE ABLE TO MESS WITH THE CAR. CORRECT?
- A. HE WOULD NOT HAVE ACCESS TO THE CAR.
- TR. CROSS-EXAMINATION, SERGEANT RICHARD GLENN, RDA. 474-75.

AN OPINION BY CHIEF JUSTICE ROBERTS, IN *RILEY V. CALIFORNIA*, 573 U.S. 373 (U.S. SUP. CT. 2014) SAYS THAT A WARRANTLESS SEARCH OF A CELL PHONE IS JUSTIFIED WHEN THE CELL PHONE IS REASONABLY BELIEVED TO CONTAIN EVIDENCE OF THE CRIME OF ARREST IS FLAWED. AND TO SEARCH A CELL PHONE TO IDENTIFY A SUSPECT IS ALSO FLAWED.

RILEY ALSO STATES THE GRANT STANDARD CANNOT BE IMPORTED TO THE CONTENTS OF A CELL PHONE. DIS-ALLOWING A WARRANTLESS SEARCH OF A ARRESTEE'S PHONE WHENEVER IT IS REASONABLE TO BELIEVE THAT A CELL PHONE CONTAINS EVIDENCE OF THE CRIME OF ARREST. CHIEF JUSTICE ROBERTS, AND JUSTICE SCALIA - RILEY.

"A SEARCH OF INFORMATION IN A CELL PHONE IS NOT A PROPER SEARCH INCIDENT TO AN ARREST. DUE TO THE PERSONAL NATURE AND QUANTITY OF INFORMATION STORED IN A CELL PHONE, A SEARCH WARRANT MUST FIRST BE OBTAINED." AND "THE RULES OF A PHYSICAL SEARCH DO NOT APPLY TO CELL PHONE DATA." *RILEY V. CALIFORNIA*, (SUP. CT. 2014). ESTABLISHING THE PLAIN VIEW DOCTRINE TO A WARRANTLESS SEARCH AND SEIZURE DOES NOT APPLY TO A CELL PHONE. THE FIFTH CIRCUIT AGREED, *U.S. V. JACKSON*, CASE NO. 3:19-CR-0200-01 (5TH CIR. 2020), "A SEARCH WARRANT OR CONSENT IS NEEDED TO SEARCH A CELL

PHONE." QUOTING U.S. V. ESCAMILLA, 852 F.3d 474, 485 (5TH CIR. 2017) CITING RILEY. I DID NOT GIVE CONSENT NOR WAS A WARRANT OBTAINED BEFORE THEIR SEARCH AND SEIZURE.

THE SUPREME COURT ESTABLISHED THAT "EVIDENCE OBTAINED IN VIOLATION OF THE FOURTH AMENDMENT CANNOT BE USED IN A CRIMINAL PROCEEDING AGAINST THE VICTIM OF THE ILLEGAL SEARCH AND SEIZURE." U.S. V. OGLESBY (5TH CIR. 2019) QUOTING: MAPP V. OHIO, 367 U.S. 643, 81 S. CT. 1684, 6 L. ED. 1081, 86 OHIO LAW. 513 (1961). ALSO U.S. V. WALLACE, 885 F.3d 806, 810 (5TH CIR. 2018).

U.S. V. OGLESBY, LEXIS 71238 (5TH CIR. 2019), ADDRESSES WHICH EVIDENCE MUST BE EXCLUDED FROM BEING PRESENTED TO THE JURY OR THE COURT FOR CONSIDERATION IN A DECISION. "THE EXCLUSIONARY RULE REQUIRES SUPPRESSION OF ALL EVIDENCE SEIZED DURING THE CELL PHONE SEARCH." QUOTING: MURRAY V. U.S., 487, U.S. 533, 536 R 37, 108 S. CT. 2529, 101 L. ED. 2d 472, (1988). NOTING: THIS RULE APPLIES AS WELL TO THE FRUITS OF EVIDENCE ACQUIRED "AS AN INDIRECT RESULT OF THE UNLAWFUL SEARCH AND SEIZURE."

THE FOLLOWING EVIDENCE WOULD AND SHOULD BE EXCLUDED, GOVT. EX. 14-25, 28, 33-34 AND 35-36 AS THESE EXHIBITS WERE EXTRACTED FROM MY CELL PHONE OR LINKED TO IT. THESE EXHIBITS WERE USED TO ESTABLISH A PHYSICAL CONNECTION TO INTERSTATE COMMERCE, AN ELEMENT OF THE OFFENSE, AS WELL AS MY IDENTITY.

THIS ARGUMENT FALLS IN LINE WITH FIFTH CIRCUIT AND SUPREME COURT OPINION OF RILEY V. CALIFORNIA. IT ALSO SHOWS APPELLANT COUNSEL'S MISLEADING INTERPRETATION OF CONSTITUTIONAL LAWS.

THE SECOND ISSUE THAT TIES INTO MY PETITION WAS THE PROSECUTION PRESENTING EVIDENCE OUTSIDE WHAT WAS PRESENTED OR CONSIDERED ADMISSABLE IN VIOLATION OF THE DUE-PROCESS CLAUSE OF THE FOURTEENTH ADMENTMENT.

DURING ASST. U.S. ATTORNEY MRS. WILLER CLOSING STATEMENT, SHE ASKED THE JURY TO EXAMINE THE PRINTED CONTENTS OF MY CELL PHONES PHOTO ALBUM, GOVT. EX. 23.

"ANYTHING YOU WANT TO SEE, ANY FURTHER PICTURES, IT'S ALL CONTAINED WITHIN THIS BINDER RIGHT HERE, THE CONTENTS OF THE PHONE. AND I SUBMIT TO YOU THAT WHEN YOU LOOK AT ALL, IT WILL DEFINITELY PROVE THAT ADAM RENE RODRIGUEZ INTENDED TO PERSUADE, INDUCE, AND COERCE A MINOR TO ENGAGE IN ILLEGAL SEXUAL ACTS."
ROA. 817-18.

IN REBUTTAL CLOSING STATEMENTS, ASST. U.S. ATTORNEY MRS. BROOKS WENT ON TO SAY.

"WE DIDN'T SHOW YOU EVERY SINGLE ONE OF THESE EXPLICIT IMAGES BECAUSE WE PROMISED YOU IN VOIR DIRE THAT WE WOULD'NT. WE PLEDGED TO YOU TO ONLY SHOW YOU WHAT WAS REQUIRED, WHAT WAS NECESSARY TO PROVE OUR CASE BEYOND A REASONABLE DOUBT, AND WE KEPT OUR WORD. BUT YOU LOOK IN THAT BINDER. YOUR GOING TO SEE ALL SORTS OF DICK PICS."

ROA. 839

MY CELL PHONES PHOTO ALBUM, GOVT. EX. 23 WAS NOT ADMITTED DURING THE COURSE OF THE TRIAL. THERE WERE SEVERAL PHOTOS AND VIDEOS ADMITTED BY THE GOVERNMENT, BUT THESE PHOTOS AND VIDEOS WERE EXTRACTED FROM THE CHAT COMMUNICATION ON AGENT MULLICANS UNDERCOVER PHONE, NOT MINE. ROA. 516-23, GOVT. EX. 3C- ATTACHMENTS TO CHATS, GOVT. EX. 4C- ATTACHMENTS TO CHATS, GOVT. EX. 26- UNDERCOVER SCREEN SHOTS OF MESSAGES.

THIS IS IN DIRECT CONFLICT WITH FIFTH CIRCUIT DECISIONS AND PRECEDENCE, "A PROSECUTOR IS CONFINED IN ARGUMENTS TO DISCUSSING PROPERLY ADMITTED EVIDENCE." U.S. V. MENDOZA, 522 F.3d 482 (5TH CIR. 2008), QUOTING: U.S. V. MURRAH (5TH CIR. 1989). AND, "A PROSECUTOR MAY NOT SUGGEST, DIRECTLY REFER TO, OR EVEN ALLUDE TO OTHER SUPPORTIVE EVIDENCE EXIST WHICH THE GOVERNMENT CHOSE NOT TO DEVELOPE IN TRIAL." U.S. V. MURRAH (5TH CIR. 1989), QUOTING: GINSBERG V. U.S., 257 F.2d 950 (5TH CIR. 1958).

THE PROSECUTION'S ACTIONS VIOLATE THE DUE-PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT THAT GAURANTTEE THE RIGHT OF A FAIR TRIAL. "PROSECUTORS HAVE A DUTY TO REFRAINE FROM IMPROPER METHOD'S CALCULATED TO PRODUCE A CONVICTION." BERGER V. U.S. (SUP. CT. 1935).

THE GOVERNMENT MUST OF FELT THEIR PRESENTION WAS INSUFFICIENT AND DECIDED TO INTRODUCE ADDITIONAL EVIDENCE IN CLOSING. THIS WAS AN OBVIOUS PLANNED TACTIC, FOR NOT ONE, BUT TWO SEPERATE ASST. U.S. ATTORNEY'S MADE THESE STATEMENTS IN CLOSING AND REBUTTAL. BOTH, INFLUECING THE JURY TO FIND ME GUILTY ON MY CHARACTER, ADULTERY, AND CONDUCT MOST PEOPLE WOULD CONSIDER IMMORAL IF NOT THE FACTS OF THE CASE.

THIS BLANTANT INSTANCE OF INJUSTICE DOES NOT OCCUR OFTEN. THE FIFTH CIRCUIT HAS REVERSED A CONVICTION FOR IMPROPER ARGUMENT IN GINSBERG V. U.S., 257 F.2d 950, (5TH CIR. 1958), WHERE THERE WAS NO OBJECTION TO THE ARGUMENT AND NO CORRECTIVE CHARGE GIVEN. THE COURT SAID: THE STATEMENTS OF THE PROSECUTING ATTORNEY'S CONSTITUTED PLAIN ERROR

AFFECTING SUBSTANTIAL RIGHTS UNDER RULE 52 (B), 18 U.S.C.A. GOVERNING CRIMINAL PROCEDURES. IT WAS AN ERROR, ALSO, AS WOULD HAVE BEEN MAGNIFIED IN ITS INFLUENCE ON THE JURY BY AN OBJECTION.

THE COURT ALSO REVERSED A CONVICTION FOR A STATEMENT MUCH LESS PREJUDICIAL THAN THE TWO INVOLVED HERE WITHOUT AN OBJECTION IN *NALLS V. U.S.*, 240 F.2d 707, (5TH CIR. 1957).

CONCLUSION

THESE STATEMENTS MAKE IT OBVIOUS THAT THE CELL PHONE AND ITS CONTENTS WERE VITAL TO THE GOVERNMENTS BURDEN TO PROVE THE SUFFICIENCY OF EVIDENCE AND INTERSTATE COMMERCE, AN REQUIRED ELEMENT OF THE OFFENCE.

THE GOVERNMENTS OWN EVIDENCE FULLY SUPPORT AND GIVES CREDABILITY TO MY TESTIMONY. THE BECKA GERL PROFILE STATING SHE WAS A 6'1/2 YEAR MEMBER OF THE MOBILE APPLICATION IN QUESTION, GOVT. EX. 2 (THE 5TH CIR. COURT OF APPEALS OPINIONED: "TRUE, RODRIGUEZ TESTIFIED THAT HE THOUGHT BECKA WAS AN OLDER WOMAN FANTASYING AS A 14-YEAR-OLD GIRL, AND DETECTIVE RICH CONFIRMED THAT BECKA'S ACCOUNT HAD BEEN ACTIVE FOR OVER SIX YEARS." NO. 20-40521); THE VERIFICATION PHOTO OF AN ADULT WOMAN, GOVT. EX. 3C-1; THE "CALLING CARD" I SENT STATING I WAS INTERESTED IN FANTASY, ROA. 1475, GOVT. EX. 26; AND AGENT MULLICAN'S TESTIMONY POINTING TO THE LACK OF CHILD PORNOGRAPHY AND COMMUNICATION, ROA. 686-87, 533-35, 564-66, 688. ALL SUPPORTING MY TESTIMONY THAT I BELIEVED I WAS COMMUNICATING WITH A ROLE-PLAYING ADULT WOMAN.

THE FIFTH CIRCUIT HAS SET PRECEDENCE ON THIS ISSUE, "WHEN REVIEWING A CHALLENGE TO THE SUFFICIENCY OF THE EVIDENCE, 'THE COURT' CONSIDERS 'WHETHER ANY RATIONAL TIER OF FACT COULD HAVE FOUND THE ESSENTIAL ELEMENTS OF THE CRIME BEYOND A REASONABLE DOUBT.'" *U.S. V. ANDRUS*, NO. 18-40173 (5TH CIR. 2014), QUOTING *U.S. V. IMO*, 737 F.3d 699, 701 (5TH CIR. 2007). HOWEVER, IF THE EVIDENCE "GIVES EQUAL OR NEARLY EQUAL CIRCUMSTANTIAL SUPPORT TO A THEORY OF GUILT OR INNOCENSE," A JUDGEMENT OF ACQUITTAL IS APPROPRIATE AND THE COURT SHOULD REVERSE BECAUSE "UNDER THESE CIRCUMSTANCES A REASONABLE JURY MUST NECESSARILY ENTERTAIN A REASONABLE DOUBT." *U.S. V. MEENDOZA*, 522 F.3d AT 488-89, (5TH CIR. 2008), QUOTING: *U.S. V. RAMOS-GARCIA*, 184 F.3d 463, 465 (5TH CIR. 1999).

ACCORDINGLY, I RESPECTFULLY REQUEST THAT THIS COURT GRANT THIS
PETITION FOR WRIT OF CERTIORARI, IN ACCORDANCE WITH THE RIGHT GRANTED
ME BY THE FOURTEENTH AMENDMENT OF EQUAL PROTECTION OF THE LAW.

RESPECTFULLY SUBMITTED,

Adam R. Rodriguez

ADAM R. RODRIGUEZ
58780177
YAZOO MEDIUM
P.O. BOX 5000
YAZOO CITY, MS 39194

DATE: 10-15-2021