

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2021

JAIMIAN RASHAAD SIMS, also known as Sauce Lean,
Petitioner.

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

Petitioner, JAIMIAN RASHAAD SIMS, pursuant to Rule 39 and 18 U.S.C. § 3006A(d)(6), asks leave to file the accompanying Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit without prepayment of costs and to proceed in forma pauperis. Petitioner was represented by counsel appointed under the Criminal Justice Act, 18 U.S.C. § 3006A (b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit.

Date:
November 22, 2021.

Respectfully submitted,

/s/Yolanda Jarmon
YOLANDA E. JARMON
Attorney of Record For Petitioner
2429 Bissonnet # E416
Houston, Texas 77005
Telephone: (713) 635-8338
Fax : (713) 635-8498

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2021

JAIMIAN RASHAAD SIMS, also known as Sauce Lean,
Petitioner.

v.

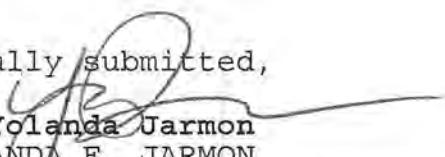
UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

Respectfully submitted,


/s/Yolanda Jarmon
YOLANDA E. JARMON
Attorney of Record For Petitioner
2429 Bissonnet # E416
Houston, Texas 77005
Telephone: (713) 635-8338
Fax : (713) 635-8498

QUESTIONS PRESENTED

I. On Appeal JAIMIAN RASHAAD SIMS challenged the following: (1) the sufficiency of the evidence for the jury conviction for conspiracy to sex traffic a minor victim, and (2) the sufficiency of evidence for the jury conviction for sex trafficking a minor victim and aiding and abetting the same

The Fifth Circuit affirmed the district court's findings.

In light of the foregoing, the question presented is as follows:

Whether the appeals court conducted an adequate review of the district court's denial of a judgment of acquittal and the jury's decision to convict based upon the insufficient evidence presented at trial. Because the proper weighing of the evidence and the application of the beyond reasonable doubt standard of review is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

PARTIES TO THE PROCEEDINGS

All parties to the proceedings are named in the caption of the case before the Court.

TABLE OF CONTENTS

	<u>Page</u>
Questions Presented	i
Parties to the Proceedings.....	ii
Table of Contents	iii
Table of Citations	v
Prayer	1
Opinions Below	1
Jurisdiction	2
Federal Statutes Involved	2
Statement of the Case	4
A. Course of Proceedings	4
B. Statement of the Facts	4
Basis of Federal Jurisdiction In The United States District Court	18
Reasons for Granting the Writ	19
<p>This Court should grant certiorari because the Fifth Circuit rendered only a cursory review of the district court's denial of a judgment of acquittal and the jury's decision to convict based upon the insufficient evidence presented at trial and because the proper weighing of the evidence and application of the beyond reasonable doubt standard is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit. .</p>	
Conclusion	28

Appendix and Attachments

Appendix A: Original Judgment and Sentence of the District Court,
United States v. Sims, 4:18-CR-455-2, (S.D. Tex. December 3, 2019.)

Appendix B: Opinion of the Court of Appeals in United States v. United States v. Sims, 11 F.4th 315 (5th Cir. 2021)

Appendix C: Statutes Involved

TABLE OF CITATIONS

	<u>Page</u>
<u>CASES</u>	
<u>Panci v. United States,</u> 256 F.2d 308 (5 th Cir. 1958)).....	22
<u>United States v. Barrera,</u> 547 F.2d 1250 (5th Cir. 1977)	21
<u>United States v. Blake,</u> 868 F.3d 966 (11th Cir. 2017).....	25
<u>United States v. Blessing,</u> 727 F.2d 353 (5th Cir. 1984)	26
<u>United States v. Copeland,</u> 820 F.3d 809 (5th Cir. 2016)	20, 25
<u>United States v. Galvan,</u> 693 F.2d 417 (5th Cir. 1982)	26
<u>United States v. Ganji,</u> 880 F. 3d 760 (5th Cir. 2018)	20, 22
<u>United States v. Lockhart,</u> 844 F.3d 507 (5th Cir. 2011)	21-22
<u>United States v. Longoria,</u> 569 F.2d 423 (5th Cir. 1978)	21-22
<u>United States v. Martinez</u> 486 F.2d 15 (5th Cir. 1973)	22
<u>United States v. Pringler,</u> 765 F.3d 445 (5th Cir. 2014)	21
<u>United States v. Sims,</u> 11 F.4th 315 (5th Cir. 2021).....	iii, 1-2, 4, 20-23
<u>United States v. Jaimian Sims, No.4:18:CR:552-2</u> (S.D. Tex. December 3, 2019)	1

United States v. Sims,
11 F.4th 315 (5th Cir. 2021).....iii, 1-2, 4, 20-23

United States v. Tyler,
505 F.2d 1329 (5th Cir. 1975).....iii, 1-2, 4, 20-23

United States v. Valas,
822 F.3d 228 (5th Cir. 2016).....25

Statutes

18 U.S.C. § 2.....	2, 18, 20
18 U.S.C. § 1591.....	3, 20-21
18 U.S.C. § 1591(a).....	20
18 U.S.C. § 1591(a) (1)	3
18 U.S.C. § 1591 (b)	4, 18
18 U.S.C. § 1591 (b) (1).....	3-4
18 U.S.C. § 1591 (b) (2).....	3
18 U.S.C. § 1591(c).....	3-4, 18, 20
18 U.S.C. § 1594 (c).....	3-4, 18
28 U.S.C. § 1254(1)	2

Rules

Supreme Court Rule 13.1	2
Supreme Court Rule 13.3	2

Other:

U.S.S.G. § 2G1.3(a) (2)	15
U.S.S.G. § 2G1.3(b) (3) (B)	15
U.S.S.G. § 2G1.3(b) (4) (A)	15

U.S.S.G. § 3B1.1(a)	1, 15-16
U.S.S.G. § 3D1.2(a) (2)	15
U.S.S.G. § 4B1.1	15
U.S.S.G. § 4B1.5(b)	15
U.S.S.G. § 4B1.5(b) (1)	16
U.S.S.G. § Chapter 5, Part A	16

PRAYER

The petitioner, JAIMIAN SIMS (Hereinafter "SIMS"), respectfully prays that a writ of certiorari be granted to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit issued on August 24, 2021.

OPINIONS BELOW

The original judgment United States v. Jaimian Sims, No. 4:18:CR:552-2 (S.D. Tex. December 3, 2019) is attached as (Exhibit A). On August 24, 2021, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming Sims's convictions. United States v. Jaimian Simms, 11 F.4th 315 (5th Cir. 2021) (affirmed). (Exhibit B).

On appeal, Sims argued that reversible error occurred arguing the following: (1) that the evidence was insufficient to support the conviction for sex trafficking a minor, aiding and abetting, and conspiracy to sex traffic a minor; (2) that certain rap videos were improperly admitted into evidence in violation of Federal Rule of Evidence 403; (3) and because the sentencing court erred in enhancing his sentence four-levels for a leadership role pursuant to U.S.S.G. 3B1.1(a).

The Fifth Circuit affirmed Sims's conviction and sentence concluding that Sims had a reasonable opportunity to observe Jane Doe and that Sims recklessly disregarded Jane Doe's age. The Fifth

Circuit also concluded that it was Sims who directed another person, to locate a "white girl" for co-defendant Gary Haynes to pimp. It also concluded that the rap videos were admissible and even if they weren't, no harmful error occurred. United States v. Jaimian Sims, supra, 11F.4th 315 at 322,324.

Furthermore, the Fifth Circuit also concluded that the leadership enhancement applied under U.S.S.G. 3B1.1(a) was not reversible error. It concluded that there was sufficient evidence to establish that Sims exercised a leadership role of Jane Doe. United States v. Jaimian Sims, supra at 324-325.

No petition for rehearing was filed.

JURISDICTION

On August 24, 2021, the United States Court of Appeals for the Fifth Circuit entered its judgment and opinion affirming the judgment of conviction and sentence in this case. United States v. Jaimian Simms, 11 F.4th 315 (5th Cir. 2021) (affirmed). This petition is filed within ninety days after entry of the judgment. See. Sup. Ct. R. 13.1 and 13.3. Jurisdiction of the Court is invoked under Section 1254(1), Title 28, United States Code.

FEDERAL STATUTES INVOLVED

18 U.S.C. § 2

(a)

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b)

Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

18 U.S.C. §§ 1594(c)

(c)

Whoever conspires with another to violate section 1591 shall be fined under this title, imprisoned for any term of years or for life, or both, or both.

18 U.S.C. § 1591 (See Appendix C)

18 U.S.C. § 1591(a)(1) (See Appendix C)

18 U.S.C. § 1591 (a)(2) (See Appendix C)

18 U.S.C. § 1591(b)(1) (See Appendix C)

18 U.S.C. § 1591 (b)(2) (See Appendix C)

18 U.S.C. § 1591 (c) (See Appendix C)

STATEMENT OF THE CASE

A. Course of Proceedings And Facts

Jaimian Rashaad Sims Defendant-Appellant (Hereinafter "Sims") along with several co-defendants was charged in a Three-Count Superseding Indictment. In Count One, Sims, Gary Shawn Haynes Jr. (Hereinafter "Gary"), Tabbetha Destiny Ann Mangis, and Deszmann Broussard (Hereinafter "Broussard") were charged with conspiracy to commit sex trafficking from on or about October 1, 2017 through March 31, 2018 in violation of 18 U.S.C. §§ 1594(c), 1591(a)(1), (a)(2), (b)(1), (b)(2) and (c). (ROA.76-77). Sims and Gary were charged in Count Two with sex trafficking of a minor female, Jane Doe, or aiding and abetting, from on or about October 1, 2017

through November 24, 2017 in violation of 18 U.S.C. §§ 1591(a)(b)(c) and 2. (ROA.77). In Count Three Sims alone was charged with Sex Trafficking Janet Doe by force, fraud, or coercion from on or about October 1, 2017 through March 31, 2018 in violation of §§ 1591(a), 1594(b)(1), (a)(2), (b)(1), and 2. (ROA.78).

A trial was held and the jury convicted Sims of Counts One and Two. Sims was acquitted of Count Three. Sims appealed the convictions for Counts One and Two. The Fifth Circuit of Appeals for the United States affirmed the conviction. United States v. Sims, 11 F.4th 315, 321-323 (5th Cir. 2021). Appointed counsel now files the instant petition for writ of certiorari on Sims behalf.

B. The Facts Adduced at Trial

Tabbetha Mangis (Hereinafter "Mangis") was twenty-two years old at the time of trial. She met Sims in approximately June of 2016. According to Mangis, "The Sauce Factory" was the name of a rap music group made up of Sims, some family members and friends. She testified that in June of 2016, Sims was a "pimp." (ROA.694). Sims also made money as a rap musician. (ROA.695). She eventually moved into a house called the mansion with Simms. (ROA.699-700). The home belonged to someone they called Sauce Walka (Walka). Walka would allow his friends and brothers to live at the mansion.

(ROA.700). Tabbetha sometimes shared a room with Sims at the mansion. (ROA.701-702).

Tabbetha met Gary Haynes (Hereinafter "Gary"), through Sims when she lived in a home with Sims in Katy, Texas prior to their move to the mansion. (ROA.704). When Tabbetha first met Gary, he was a college football player. According to Tabbetha, Gary spoke to Sims about becoming a pimp. (ROA.707). Tabbetha testified that Sims asked her to "find Gary a white girl." She testified that Gary wanted a white girl for his image because everyone in The Sauce Factory had a white girl. (ROA.708).

Tabbetha testified that, in November of 2017, she corresponded with Jane Doe, the underage minor, who was white, via Instagram, a social media website. (ROA.708-709). According to Tabbetha, Jane Doe found her on Instagram and "stalked" her. (ROA.708). Tabbetha already knew Jane Doe because she was actually Tabbetha's younger sister's friend. Jane Doe had been to Houston several times prior to being introduced to Gary. In fact, on one of those occasions Tabbetha taught Jane Doe how to rob "johns." (ROA.816-817, 828).

Tabbetha testified that when she met Jane Doe she did not know how old Jane Doe was, however Tabbetha's sister, Jane Doe's friend, was eighteen years old and pregnant at the time. (ROA.709, 802). When Tabbetha eventually learned that Jane Doe was an underage minor, she never discussed it with Sims or Gary. (ROA.709-710).

Tabbetha connected the underage minor with Gary. Gary did not have a phone so he used Tabbetha's phone to communicate with Jane Doe. Tabbetha, without Sims's knowledge, allowed Gary to use her car to travel to La Grange, Texas and bring the underage minor back with him to Houston, Texas. (ROA.829).

Tabbetha believed that Jane Doe was in Houston when she discovered her car keys on her night stand the next morning, after loaning them to Gary the night before. However, Tabbetha did not hear anything about Jane Doe being in Houston until Jaimian, his brother Kevin, and Janet Doe were eventually arrested on the charges in this case. (ROA.714-715).

Jane Doe, the 17-year-old, minor victim testified that she had known Tabbetha because Tabbetha's sister, Tessa was her best friend.

Jane Doe testified that she had spent time with Tabbetha and Tessa in previous years. (ROA.868). According to the minor, Tabbetha would talk to them about making fast money and about her boyfriend, Sims, also known as Lean. (ROA.869). Jane Doe confirmed that in the summer of 2016 she spent time with Tabbetha at a hotel and robbed people who paid money for sexual acts, therefore she knew that Tabbetha made money prostituting. (ROA.870-872).

Jane Doe telephoned Tabetha in 2017 and told her that she no longer wanted to live with her grandmother. (ROA.868-867, 873). Tabbetha then gave Jane Doe information to Gary's Instagram account. (ROA.873). The minor then reached out to Gary via his

Instagram account and the two continued to communicate. Four months later, she told Gary that she wanted to come to Houston and Gary picked her up in La Grange in Tabbetha's car and then brought her to Houston. (ROA.874-875). She met Gary for the first time when he brought her to Houston. (ROA.874).

Jane Doe testified that in October of 2017 she was only 17 years old when she decided to move from her home to come to Houston, Texas in order to sell her body. (ROA.867). She testified that Gary picked her up and drove her to Houston late one night, November 18, 2017, and she understood she would be stripping or prostituting. (ROA.881, 903).

Upon arrival in Houston, early the next morning, Gary took her to a home called "the mansion" and she slept there. (ROA.904). Later, Gary took her to a hotel in Houston, Texas called the Express Inn. Gary gave her an I.D. and money to get a room. (ROA.906, 909). He gave her the I.D. All of the text messages about her coming to Houston were between her and Tabbetha or her and Gary. (ROA.908). Gary had sex with her the same night. (ROA.909). She testified that Gary got the fake I.D. from an adult prostitute (Janet Doe).¹ (ROA.980).

While at the hotel, Gary introduced her to Janet Doe, the adult prostitute. (ROA.910, 915). Janet taught her the rules about

¹ The trial evidence established that the I.D. was not fake, but belonged to someone named Amanda Garcia who is not involved in this case.

prostituting and advertising for sex work on a website. (ROA.911-914). Janet Doe did all of the posting on the website for Jane Doe. (ROA.913-914, 981). Jane Doe, the minor, with Gary's permission, eventually moved into the hotel room with Janet Doe. (ROA.915). According to Jane Doe, she was in the room for about four days and that's where she performed sex acts for pay. (ROA.917, 928). Janet Doe had an integral part in the sexual activities that the minor, Jane Doe, performed while she was in Houston, Texas. (ROA.981). She earned money for November 20, 2017 to November 23, 2017 and turned all of the money over to Haynes. (ROA.935-936). Jane Doe testified that after about three or four days she desired to leave the hotel and therefore she notified the police. (ROA.938, 981).

Jane Doe testified that she never saw Sims at the mansion. She saw Sims from a distance on one occasion walk into a room on the second floor of the Express Inn. She did not know who else, if anyone, was in the room with him. (ROA.969-970). The only other time Janet Doe saw Sims was when he briefly entered Janet Doe's hotel room one day. The minor did not hear any of Sims conversation with Janet Doe. (ROA.970-971). During the brief visit, the minor went into the bathroom mirror area and did not participate in any conversation because according to her "it was not her business." The minor never gave money to Sims. (ROA.972). She never

communicated with Sims at all throughout the whole time that she was involved in the activities charged. (ROA.980).

Jane Doe, the minor, testified that Officer Castro spoke to her the night of her arrest, but never asked her anything about Sims. (ROA.975). She also testified that Sims had nothing to do with the activities between her and Gary and that she told the investigators this several times. (ROA.976-977, 983). At no time did she ever tell law enforcement or anyone that Sims had anything to do with her participation in the sexual activities or any crimes charged in this case. (ROA.983). She testified further that, prior to coming to Houston, she had never seen Sims in person. When Gary took her to the hotel and introduced her to Janet Doe, the adult prostitute, Sims wasn't there when that exchange occurred. (ROA.978).

Everything the minor learned about prostituting, she learned from Tabbetha and Janet Doe. (ROA.978). Jane Doe knew Janet Doe by another name. However, she was referred to as Janet Doe at trial. (ROA.979). The minor testified that Gary, Tabbetha, and Janet Doe were the people who got her involved in prostitution. (ROA. 979). She never spoke to Sims and knew nothing about what conversations he had with Gary, Tabbetha, or Janet Doe. (ROA.984-985). Jane Doe testified that she was mostly responsible for getting herself into prostitution. (ROA.979, 983).

Craig Tangeman, an investigator, testified about the sex trafficking and pimping culture in general. Prior to testifying in

court with respect to this case, he was not provided with any reports in this case. He did, however, review the three music videos, at issue in this case, prior to testifying. (ROA.1006). Tangeman did not have enough information to determine whether this was a sex trafficking or prostitution case. (ROA.1020).

Tangeman testified that he could not tell by looking at the rap videos whether they were actually factual or fiction. When he viewed the videos, his opinion was that he thought "it was rappers rapping about pimping and making money and demonstrating who they are, what they are, what they have, how glamorous their jewelry might be, things like that." But he had no way of knowing if this were true simply by looking at a video. (ROA.1036). Tangeman admitted that simply because someone uses the word "pimping" does not mean that they are pimping females. More information would be needed before making this determination. (ROA.1037-1038).

Mr. Amit Patel, the general manager of the Express Inn also testified at trial. (ROA.1049-1050). He confirmed that an individual is required to be 18 years or older before renting a room at this hotel. (ROA.1052). According to Patel, any room rented on the night of November 19, 2017, would have been verified by whomever was leasing rooms that day. An I.D. for someone named Amanda Garcia was used to rent the room. (ROA.1059-1060).

Teresita Castro, a human trafficking investigator with the Harris County Sheriff's Office also testified for the Government. (ROA.

1061). She was working on the night of Thanksgiving 2017 when she was asked to respond to the Express Inn. (ROA.1061-1063). That night, Jane Doe told Castro that she was seventeen years old and wanted to be "fake" arrested. (ROA.1063). Jane Doe was 17 years old at the time. (ROA.1070). Jane Doe identified Haynes as her trafficker. (ROA.1071). Haynes was 21 years old at the time. (ROA.1071-1072).

Castro learned that the minor's hotel room was rented with an I.D. for Amanda Garcia. (ROA.1077, 1111). No one knows where that I.D. came from. (ROA.1074, 1077, 1111). Castro learned that Sims rented rooms at the same hotel six nights, from November 18th through November 24th. (ROA.1077-78).

Castro also saw multiple references to TSF (The Sauce Factory) in Jane Doe's phone. (ROA.1089-1090). Castro learned that Sims was affiliated with this group. Castro concluded that Sims was a part of the situation. (ROA.1097). Castro based this conclusion on Sims telling her that he was part of the TSA group. However, Jane Doe did tell Castro that Sims was not her pimp. (ROA.1098).

Janet Doe testified that in November of 2017, she was 22 years old and turned 23 that same month. (ROA.1123). She learned on social media that Sims was a rapper and a pimp. (ROA.1129). Sims was affiliated with a group called The Sauce Factory. He also used the names Lean, JLean and Sauce Lean. She voluntarily decided to come to Houston, Texas to prostitute for Sims. (ROA.1126). She had

prostituted before and Sims was not the first pimp she had worked for. (ROA.1132). She arrived in Houston on November 8, 2017 and rented a room in her name for two weeks at the Express Inn on I-45. (ROA.1127-1128). About 10 days later, Sims rented a room on the second floor of the Express Inn, but Janet Doe, never went to his room. (ROA.969-971, 1175).

Janet Doe first met Jane Doe, the underage minor, at the Express Inn when she walked pass Jane Doe's room. (ROA.1136). Janet Doe met Jane Doe about two or three days before the arrest that Thanksgiving Day. (ROA.1136). Janet Doe also confirmed that Haynes was Jane Doe's pimp. (ROA.1136-1137). Janet Doe, testified that Sims asked her to help Jane Doe make money and to allow Jane to come into her room until she made money. (ROA.1138). Janet Doe did not know Jane Doe's age. Jane Doe told her that she was with Tabbetha and that the two of them robbed "tricks." Janet Doe allowed Jane Doe in her room about two or three nights and helped her take pictures to get on Backpage, a social media site for commercial sex. (ROA.1117, 1139-1140). Janet Doe was very experienced and had been prostituting since she was 16 years old. (ROA.1139).

One of Janet Does friends, who was also a prostitute left and I.D. in Janet's room. Janet gave the I.D. to Sims. (ROA. 1155). Jane Doe eventually ended up with the I.D. , but Janet does not know how Jane Doe ended up with the I.D. (ROA. 155-1156). The friend's name on the I.D. was Monica. But Monica went by the name CoCo.

(ROA.1156). Janet Doe stopped prostituting for Sims in March of 2018, but continued to prostitute on her own. After Janet Doe testified, the United States rested its case in chief. (ROA.1197).

The Defense then moved for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure as to Count One, conspiracy to commit sex trafficking as to a person who had not attained the age of 18. The Defense argued *inter alia* that Sims had no knowledge of the minor's age and that one of the central elements of the conspiracy to commit sex trafficking is that the defendant would have had to benefit financially from the actions of the sex trafficking and that there has been no evidence that anyone -- that Mr. Sims benefited financially from the sex trafficking of the minor victim. (ROA.1199-1200, 1212-1213).

The Defense then moved for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure as to Count Two, sex trafficking of a minor. Sims argued that the only evidence came from the witness stand regarding the minor victim herself. As to that, she never testified that Sims was involved in the conduct giving rise to the sex trafficking or conspiracy charges. The only evidence that Sims had seen her is when she went into a particular room, he went into a particular hotel room with Janet Doe, and the minor said that she went to the side. There is no evidence that he actually saw her and knew that she was under age. (ROA.1201).

The Defense then moved for a judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure as to Count Three, sex trafficking Janet Doe by force. Sims argued that there was no testimony presented at trial that Sims forced Janet Doe into committing commercial sex acts. He argued that the evidence showed that Janet Doe had moved to Houston, Texas voluntarily to perform sex acts. (ROA.1202). The district court denied the motion for judgment of acquittal as to all three counts. (ROA.1216). The Defense elected not to call any witnesses. (ROA.1219).

The Verdict

In this case, the jury found Sims *not guilty* of Count Three, sex trafficking by force, fraud or coercion of Janet Doe. (ROA.227). Thus, Count One, the conspiracy charge, and Count Two, the substantive count of sex trafficking a minor, or aiding and abetting are the only counts at issue in this appeal. (ROA.77).

On the special verdict form the jury checked the space to indicate its conclusion that as it relates to the conspiracy charged in Count One, this case involved a victim under the age of 18. (ROA.226). The jury also checked the space to indicate its conclusion that, as it relates to the sex trafficking charged in count Two, Jane Doe was under the age of 18. (ROA.226).

The Sentence

The 2018 Guidelines were used in this case. (ROA.1451). Counts One and Two were grouped for guideline calculation purposes

pursuant to U.S.S.G. §3D1.2(a) because one of the counts embodied conduct that is treated as a specific offense characteristic in, or other adjustment to, the guideline applicable to another of the count(s). Count One resulted in the highest offense level and was used to portray the guideline computations. (ROA.1451).

The Final PSI (PSI) set the Base Offense Level at a level 30 pursuant to 18 U.S.C. § 1591(b)(2) and U.S.S.G. § 2G1.3(a)(2). (ROA.1451). A two-level increase was added pursuant to U.S.S.G. § 2G1.3(b)(3)(B), because the offense involved the use of a computer or interactive computer service to entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with the minor. (ROA.1451). An additional two-level increase was added pursuant to U.S.S.G. § 2G1.3(b)(4)(A), because the offense involved the commission of a sex act or sexual contact. (ROA.1451). A four-level increase was added pursuant to U.S.S.G. § 3B1.1(a), because the defendant's role in the offense was an organizer of a criminal activity that involved five or more participants. Thus, the Adjusted Offense Level resulted in a level 38. (ROA.1451).

However, a Chapter Four Enhancement was also applied. According to the PSI, the offense of conviction is a covered sex crime; neither §4B1.1 (Career Offender) nor subsection (a) of § 4B1.5 applied; and Sims was deemed a repeat and dangerous sex offender against minors. (ROA.1451). Accordingly, five points were added

resulting in a Total Offense Level of 43, pursuant to U.S.S.G. § 4B1.5(b)(1). (ROA.1451-1452).

Three criminal history points were assessed because of an aggravated robbery conviction where Sims served five years of imprisonment and was released on June 14, 2015. This resulted in a Criminal History Category of II and a Total Offense Level of 43 yielding a guideline range of life imprisonment. U.S.S.G. Chapter Five Part A. (ROA.1453).

At sentencing and in written objections, Sims argued against the two-level enhancement for use of a computer. Sims argued that there was no evidence produced at trial that he participated in the recruitment of the minor, Janet Doe, or that he ever used a computer or interactive computer service to engage in the sex crime alleged against the minor. (ROA.1366, 1430-1431). The objection was overruled. (ROA.1366).

Sims also argued against the four-level enhancement applied for being an organizer or a leader pursuant to U.S.S.G. § 3B1.1(a). He argued that he was not involved in the compelling or any recruitment of the minor to participate in any commercial sex acts nor did he receive any financial gain or anything of value from the minor's sex acts. (ROA.1366, 1431-1432). The objection was denied. (ROA.1366). At sentencing, Sims objected to the five points. The objection was denied. (ROA.1365-1366). Had Appellants objections

been granted the Total Offense Level would have been a 32, and guideline range would have resulted in 135-168 months.

BASIS OF FEDERAL JURISDICTION IN THE
UNITED STATES DISTRICT COURT

This case was brought as a federal criminal prosecution involving conspiracy to commit sex trafficking and sex trafficking of a minor female in violation of 18 U.S.C. §§ 1591(a)(b)(c), 18 U.S.C. §§ 1594(c), and 2. The district court therefore had jurisdiction pursuant to 18 U.S.C. § 3231.

REASON FOR GRANTING THE WRIT

This Court should grant certiorari because the Fifth Circuit rendered only a cursory review of the district court's denial of a judgment of acquittal and the jury's decision to convict based upon the insufficient evidence presented at trial and because the proper weighing of the evidence and application of the beyond reasonable doubt standard is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide this question and, and upon review, should reverse the judgment of the Fifth Circuit.

ARGUMENTS

I. ISSUE ONE RESTATED: WHETHER THE EVIDENCE IS SUFFICIENT TO ESTABLISH BEYOND A REASONABLE DOUBT THE CONVICTIONS FOR SEX TRAFFICKING OF A MINOR, JANE DOE, AIDING AND ABETTING THE SAME, AND CONSPIRACY TO SEX TRAFFICK A MINOR, JANE DOE.

Sims, Tabbetha, Haynes and Broussard were charged with crimes related to the sex trafficking of a minor. The charges against Sims in this case include a substantive count of sex trafficking a minor victim, Jane Doe, and a sex trafficking conspiracy in violation of 18 U.S.C. §1954 (c), §§ 1951 (a)(1), (a)(2) (b)(1) and (b)(2). The evidence adduced at trial establishes that the minor victim in this case was 17 years old during the three to four days the sex trafficking is alleged to have occurred. (ROA.867). Gary Haynes and Tabetha Manges conspired to sex traffic Jane Doe, a minor victim. Gary Haynes provided the minor victim with a fake I.D. to secure a room at an Express Inn hotel in Houston for the purpose of prostituting. Sims, an associate of Gary Haynes's was a pimp of an adult age prostitute and asked the adult age prostitute to assist Jane Doe in making money. Sims, who was convicted of the conspiracy

and the substantive count of sex trafficking in this case maintained at trial, and on appeal that he did not agree to participate in sex trafficking of the minor nor did he sex traffic the minor. United States v. Sims, 11 F.4th 315, 321-323 (5th Cir. 2021)...

The Fifth Circuit's cursory review of the record overlooked key evidence demonstrating that neither the conspiracy Count nor the substantive count were proven beyond a reasonable doubt.

. To prove the conspiracy, the Government must prove beyond reasonable doubt that: (1) two or more persons made an agreement to commit sex trafficking of the minor victim in violation of 18 U.S.C. 1951 (a) (1) or (a) (2);² (2) that Sims knew the unlawful purpose of the agreement; and (3) that Sims joined in the agreement willfully, that is, he knowingly and voluntarily became part of the conspiracy with the intent to further the unlawful purpose of sex trafficking the minor victim. See e.g. United States v. Ganji, 880 F.3d 760 (5th

² Section 18 U.S.C. § 1591 provides, in relevant part, that "[w]hoever knowingly ... in or affecting interstate or foreign commerce ... recruits, entices, harbors, transports, provides, or obtains by any means a person ... knowing that ... the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished...." Id. § 1591(a).

Section 18 U.S.C. § 1591 provides, in relevant part, that "[w]hoever knowingly ... in or affecting interstate or foreign commerce ... recruits, entices, harbors, transports, provides, or obtains by any means a person ... or (a)(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1)...knowing that ... the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished...." Id. § 1591(a)(2).

Section 18 U.S.C. § 1591 (c) provides that under subsection (a)(1) in which a defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew or recklessly disregarded the fact, that the person had not attained the age of 18 years old.

Title 18 U.S.C. § 1591 allows the Government to prosecute anyone who knowingly forces an underage person into prostitution. 18 U.S.C. § 1591. Although § 1591 allows the Government to prove scienter by showing that the defendant (1) knew the victim was underage, (2) recklessly disregarded that fact, or (3) had a reasonable opportunity to observe the victim. United States v. Lockhart, 844 F.3d 501, 513-14 (5th Cir. 2016); United States v. Copeland, 820 F.3d 809 (5th Cir. 2016).

Cir. 2018); United States v. Carro, 569 F.2d 411 (5th Cir. 1978).

See also United States v. Barrera, 547 F.2d 1250 (5th Cir. 1977).

Section 18 U.S.C 1951(c) provides that in a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained, maintained, patronized, or solicited, the Government need not prove that the defendant knew, or recklessly disregarded the fact, that the person had not attained the age of 18 years. 18 U.S.C. § 1591 (emphasis added).

Further the evidence is insufficient to sustain a conviction for aiding and abetting because it does not show beyond a reasonable doubt that Sims knowingly and willfully participated in sex trafficking of the minor victim and purposefully participating in the specific criminal venture. Section 18 U.S.C. 1951(a)(2) requires proof beyond a reasonable doubt that Sims benefited participated in the "criminal venture", specifically sex trafficking of a minor. See United States v. Pringler, 765 F.3d 445, 449 (5th Cir. 2014) (explaining that to be found guilty of aiding and abetting the sex trafficking of children, the Government must show that the underlying crime "occurred and that the defendant associated with the criminal activity, participated in it, and acted to help it succeed.). See also United States v. Longoria 569 F.2d 422, 425 (5th Cr. 1978) ("Proof that mere association with a criminal

... is not without more, sufficient to sustain a conviction for aiding and abetting a criminal venture.)"

An agreement is a necessary element of conspiracy and as such, "the Government must prove [its existence] beyond a reasonable doubt." Ganji at 760. Conspiracy is the agreement to join a common scheme to commit an unlawful goal. Id. at. 768. The agreement itself is the criminal act. Without an agreement, there is no conspiracy. Absent a showing of intent to agree, one may not be convicted of conspiracy. The element of intent must usually be proved by circumstantial evidence. Nonetheless, intent must be shown, and a conviction upon the basis of association alone may not stand. United States v. Tyler, 505 F.2d 1329, 1332 (5th Cir. 1975); United States v. Martinez, 486 F.2d 15 (5th Cir.1973); Panci v. United States, 256 F.2d 308, 312 (5th Cir. 1958) (reversing conspiracy conviction when evidence amounted to no more than defendant seen associating with characters of low repute).

As stated beforehand, Sims argued that the conspiracy conviction must be reversed because the evidence is insufficient to show that he agreed to participate in any conspiracy to sex traffic the minor victim. Sims argued the evidence failed to show that Sims knew the unlawful purpose of the agreement, or had the requisite intent to participate in the unlawful agreement. As to the conspiracy count and the substantive count alleging the sex trafficking of the minor, Jane Doe, Sims argued that he did not instruct anyone to find Haynes

and underage "white girl. Sims also argued that he did not know that Jane Doe was 17 years old, nor did he have a reasonable opportunity to observe Jane Doe.

In this case the minor, Jane Doe, testified that it was Gary Haynes and Tabbetha Manages who persuaded her to prostitute and that Sims had nothing to do with it all; yet the Fifth Circuit affirmed the conviction. The Fifth Circuit affirmed the conviction because it concluded that the evidence was sufficient to prove beyond a reasonable doubt that Sims had a reasonable opportunity to observe Jane Doe at a hotel. United States v. Sims 11 F.4th 315 at 321-323.

In rendering its decision, The Fifth Circuit emphasized that Janet Doe, the adult prostitute testified that Sims and Gary Haynes introduced her to Jane Doe at a hotel. Id. at 321-322. However, the Fifth Circuit reasoning is flawed because it ignores the fact that it was Gary Haynes who introduced Jane Doe, the minor, to Janet Doe at the Express Inn hotel where Janet had a room. (ROA.910, 915). Janet Doe testified that Sims played only a limited role in this case and that is when, on one occasion, Sims asked her to help the minor, Jane Doe, make money and to allow Jane Doe to come into her room until she made money. (ROA.1138). However, there is no evidence that Sims knew Jane Doe's aged when he asked Janet Doe to help the minor make money.

Next, the Fifth Circuit concluded that even if Sims was unaware of Jane Doe's age, Sims had a reasonable opportunity to

observe Jane Doe's age once when Sims came into Jane Doe and Janet Doe's room. Id. at 322. In reaching this conclusion, the Fifth Circuit ignored Jane Doe's testimony stating that on this one occasion, when Sims came to Janet's room where Jane Doe was also, Jane Doe immediately went back into the bathroom and mirror area of the room where Sims could not observe her while he spoke with Janet Doe. Disregarding, Jane Doe's testimony that she removed herself from Sims's view, the Fifth Circuit decided that the jury was undoubtedly able to see photos of Jane and Janet Doe's small room in the motel and therefore rationally concluded that Sims had a reasonable opportunity to observe Jane Doe when he came into the room. Id. at 322. Hence, the Fifth Circuit's decision does not comport with the overwhelming evidence that Sims did not know Jane Doe's age, nor did he have a reasonable opportunity to observe her age.

The Fifth Circuit also reasoned that Sims had a reasonable opportunity to observe Jane Doe's age pointing to Jane Doe's testimony that she saw Sims at the Express Inn from her room on a different floor of the hotel when Sims was outside the hotel traveling up to the second floor. Id. at 322. The Fifth Circuit overlooks the fact that there was no evidence that Sims saw Jane Doe as he was traveling up to the second floor. Here, the Fifth Circuit erroneously concludes that because Jane Doe saw Sims from a distant room, it necessarily follows that Sims saw her as well.

Cf. United States v. Copeland, 820 F.3d 809, 811 (5th Cir. 2016) (affirming conviction where defendant, over a five-day period, directed and transported the victim in selling sex. 820 F.3d 809, 811 (5th Cir. 2016); United States v. Valas, 822 F.3d 228, 235 (5th Cir. 2016) (affirming conviction of a defendant who had sex with a minor prostitute on two different occasions when the defendant had no other contact with the victim and he did not ask her about her background or history; see also United States v. Blake, 868 F.3d 960, 975-76 (11th Cir. 2017) (holding that there was sufficient evidence to prove that a defendant had a reasonable opportunity to observe the victim when he saw the victim only five or six times and when one encounter involved the defendant taking pictures of the girl for twenty minutes).

There is simply no evidence that Sims had an opportunity to observe Jane Doe's age at the hotel or at any other time.. Based upon the foregoing, the evidence does not support the Fifth Circuit's conclusion that Sims had a reasonable opportunity to observe Jane Doe.

The Fifth Circuit also stated that additional circumstantial evidence was presented that could have aided the jury in determining that Sims also recklessly disregarded Jane Doe's age. Id. at 322. In rendering its decision, the Fifth Circuit focused heavily on the fact that Sims had a room on the second floor of the hotel where Jane Doe prostituted for three days. Having a room at

the hotel does not show that Sims knew Jane Doe's age or that he agreed to participate in the conspiracy. The evidence shows that Sims had a room at the hotel to protect Janet Doe and the other girls because he was indeed a pimp, but a pimp to adult women only.

As stated beforehand, mere association or a climate that reeks of something foul is also insufficient evidence of guilt. The Fifth Circuit violated its own precedent in this case because it has previously stated that it will not "lightly infer a defendant's knowledge and acquiescence in a conspiracy." United States v. Blessing 727 F2d 353,355 (5th Cir. 1984); United States v Galvan, 693 F.2d 417, 419 (5th Cir. 1982).

In rendering its decision, the Fifth Circuit also noted that Janet Doe had given Sims an I.D. for someone named Monica that she had previously found. The Fifth Circuit concluded that the jury could rationally infer that Sims in concert with Gary Haynes, was a source of fraudulent identification for Jane Doe simply because Janet had given Monica's I.D. to Sims and Jane Doe was later seen with the same I.D. Id at 322. Here, the Fifth Circuit ignored Janet Doe's testimony that she did not know who had given Monica's I.D. to Jane Doe, the minor. More important, Jane Doe, the minor, did not testify that Sims gave Monica's I.D. to her. Jane Doe did not testify that she ever had Monica's I.D. There is no evidence that Sims gave Monica's I.D. to Gary Haynes for Janet Doe. In fact, there is no evidence as to how Gary Haynes got Monica's I.D. if he

ever had it. There is no evidence that Gary Haynes used Monica's I.D. to rent Jane Doe, a room or for any other purpose.

As to the conspiracy count and the substantive count alleging the sex trafficking of the minor, Jane Doe, Sims argued that he did not instruct anyone to find Gary Haynes and underage "white girl. The Fifth Circuit however, concluded that there was ample evidence that Sims participated in the charged offenses when he agreed to find Gary Haynes a girl to pimp. Id. at 322-323. Tabbetha Manges testified that Sims asked her to "find Gary Haynes a white girl." She testified that Gary Haynes wanted a white girl for his image because everyone in The Sauce Factory had a white girl. (ROA.708). Here, the Fifth Circuit ignored testimony that Sims did not instruct any to find an underage girl. Tabbetha Manges testified that Sims told her to find Gary Haynes a white girl, but Sims never told her to find an underage minor for Gary Haynes or himself to prostitute. (ROA.830).

This Court should grant certiorari because whether **JAMIAN RASHAAD SIMS** sex trafficked the minor Jane Doe, or participated in any conspiracy to do so, involved fact intensive inquiries and the Fifth Circuit's cursory review of the district court record reached the wrong conclusion on both points. Because the proper application of the "beyond reasonable doubt standard" is of exceptional importance to the administration of justice in federal criminal cases, this Court should grant certiorari in this case to decide

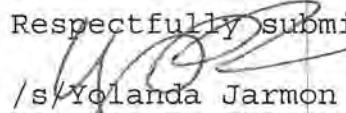
this question and, and upon review, should reverse the judgment of the Fifth Circuit.

CONCLUSION

For the foregoing reasons, petitioner JAMIAN RASHAAD SIMS respectfully prays that this Court grant certiorari, to review the judgment of the Fifth Circuit in this case and reverse the Fifth Circuit's judgment.

Date: November 22, 2021.

Respectfully submitted,


/s/ Yolanda Jarmon
YOLANDA E. JARMON
Attorney of Record for Petitioner
2429 Bissonnet # E416
Houston, Texas 77005
Telephone: (713) 635-8338
Fax: (713) 635-8498

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2021

JAMIAN RASHAAD SIMS,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

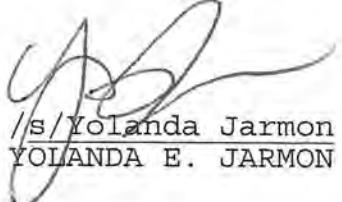
On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit

CERTIFICATE OF SERVICE

YOLANDA E. JARMON, is not a member of the Bar of this Court but was appointed under the Criminal Justice Act 18 U.S.C. § 3006 A(b) and (c), on appeal to the United States Court of Appeals for the Fifth Circuit, certifies that, pursuant to Rule 29.5, On November 22, 2021, she served the preceding Petition for Writ of Certiorari and the accompanying Motion for Leave to Proceed in Forma Pauperis on counsel for the Respondent by enclosing a copy of these documents in an envelope, first-class postage prepaid, Certified Mail No. 7020 0090 0000 6461 2931, return receipt requested, and depositing the envelope in the United States Postal Service located at 3740 Greenbriar, Houston, TX 77098 and further certifies that all parties required to be served have been served and copies addressed to:

The Honorable Elizabeth Prelogar

Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001



//s/Yolanda Jarmon
YOLANDA E. JARMON

CERTIFICATE OF WORD COUNT

This petition for writ of certiorari contains 6,466 words in proportionally spaced typeface.

Appendix

ENTERED

December 03, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
Holding Session in Houston

UNITED STATES OF AMERICA

v.

JAIMIAN RASHAAD SIMS
A/K/A Sauce Lean**JUDGMENT IN A CRIMINAL CASE**CASE NUMBER: 4:18CR00455-002
USM NUMBER: 42721-479Cornel A. Williams
Defendant's Attorney**THE DEFENDANT:**

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) 1S and 2S on May 20, 2019, after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1594(c), 1591(a)(1) and (2), (b)(1) and (2) and (c)	Conspiracy to commit sex trafficking of minors	03/31/2018	1S
18 U.S.C. § 1591(a)(b)(c) and Section2	Sex trafficking of minors	11/24/2017	2S

See Additional Counts of Conviction.

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

November 22, 2019

Date of Imposition of Judgment



Signature of Judge

DAVID HITTNER
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

12/2/19

Date

Appendix A

19-20833.250

DEFENDANT: **JAIMIAN RASHAAD SIMS**
CASE NUMBER: **4:18CR00455-002**

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: Life.

This term consists of LIFE as to Count 1S and 2S, to be served concurrently.

See Additional Imprisonment Terms.

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ on _____

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

Appendix A

19-20833.251

DEFENDANT: **JAIMIAN RASHAAD SIMS**
CASE NUMBER: **4:18CR00455-002**

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of: 5 years.
This term consists of FIVE (5) YEARS as to Count 1S and 2S, to be served concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

See Special Conditions of Supervision.

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

Appendix A

DEFENDANT: **JAIMIAN RASHAAD SIMS**
CASE NUMBER: **4:18CR00455-002**

SPECIAL CONDITIONS OF SUPERVISION

Sex Offender Treatment

You must participate in a sex offense-specific treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). You must pay the costs of the program if financially able.

Computer Restrictions/Monitoring

You must not possess and/or use computers or other electronic communications or data storage devices or media, without the prior approval of the probation officer. If approved, you shall consent to the ongoing monitoring of all devices. To ensure compliance with the computer monitoring, you must allow the probation officer to conduct initial and periodic unannounced searches of any computers (as defined in 18 U.S.C. § 1030(e)(1)) subject to computer monitoring. These searches shall be conducted for the purposes of determining whether the computer contains any prohibited data prior to installation of the monitoring software; to determine whether the monitoring software is functioning effectively after its installation; and to determine whether there have been attempts to circumvent the monitoring software after its installation.

You must warn any other people who use these computers that the computers may be subject to searches pursuant to this condition. You agree to pay the cost of the hardware and/or software monitoring system, including any ongoing monthly service costs, in accordance with your ability to pay, as determined by the probation officer.

Polygraph Examination

You must submit to periodic polygraph testing at the discretion of the probation officer as a means to ensure that you are in compliance with the requirements of your supervision or treatment program.

No Possession of Pornographic Materials

You must not view or possess any visual depiction (as defined in 18 U.S.C. § 2256), including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct (as defined in 18 U.S.C. § 2256).

Sex Offender Minor Prohibition

The defendant shall not have any contact with any minor children under the age of 18 without prior written permission of the United States Probation Officer.

Sex Offender Victim Contact Prohibition

The defendant shall have no contact with the victim, or the victim's family, including letters, communication devices, audio or visual devices, visits, or any contact through a third party, without prior written consent of the United States Probation Officer.

Appendix A

Sex Offender Employment/Activity Prohibition

The defendant shall not seek or maintain employment, supervise, volunteer, or participate in any program and/or activity where minors under the age of 18 would congregate, without prior written approval of the United States Probation Officer. This would include athletic, religious, volunteer, civic, or cultural activities designed for minors under the age of 18.

Mental Health Treatment

You must participate in a mental-health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program, including the provider, location, modality, duration, and intensity. You must pay the cost of the program, if financially able.

You must take all mental-health medications that are prescribed by your treating physician. You must pay the costs of the medication, if financially able.

Substance Abuse Treatment, Testing, and Abstinence

You must participate in an inpatient or outpatient substance-abuse treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program, including the provider, location, modality, duration, and intensity. You must pay the costs of the program, if financially able.

You may not possess any controlled substances without a valid prescription. If you do have a valid prescription, you must follow the instructions on the prescription.

You must submit to substance-abuse testing to determine if you have used a prohibited substance, and you must pay the costs of the testing if financially able. You may not attempt to obstruct or tamper with the testing methods.

You may not knowingly purchase, possess, distribute, administer, or otherwise use any psychoactive substances, including synthetic marijuana or bath salts, that impair a person's physical or mental functioning, whether or not intended for human consumption, except as with the prior approval of the probation officer.

Appendix A

DEFENDANT: **JAIMIAN RASHAAD SIMS**
CASE NUMBER: **4:18CR00455-002**

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$200.00	\$1,570	\$	\$

This total consists of \$100 for Count 1S and \$100 for Count 2S, for a total of \$200.

See Additional Terms for Criminal Monetary Penalties.

The determination of restitution is deferred until _____: An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage
MV1	\$1,570	\$1,570	

See Additional Restitution Payees.

TOTALS	\$	\$
--------	----	----

Restitution amount ordered pursuant to plea agreement \$_____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Appendix A

DEFENDANT: **JAIMIAN RASHAAD SIMS**
CASE NUMBER: **4:18CR00455-002**

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$200.00 due immediately, balance due
 not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ installments of \$_____ over a period of _____, to commence _____ after the date of this judgment; or

D Payment in equal monthly installments of \$100 over a period of 5 years, to commence immediately if released from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Payable to: Clerk, U.S. District Court
 Attn: Finance
 P.O. Box 61010
 Houston, TX 77208

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

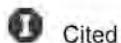
Case Number

Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
Gary Shawn Haynes, Jr. 001	\$1,570	\$1,570	

See Additional Defendants and Co-Defendants Held Joint and Several.
 The defendant shall pay the cost of prosecution.
 The defendant shall pay the following court cost(s):
 The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Appendix A



Cited
As of: November 22, 2021 12:52 PM Z

United States v. Sims

United States Court of Appeals for the Fifth Circuit

August 24, 2021, Filed

No. 19-20833

Reporter

11 F.4th 315 *; 2021 U.S. App. LEXIS 25456 **

UNITED STATES OF AMERICA, Plaintiff—Appellee,
versus **JAIMIAN RASHAAD SIMS**, Defendant—
Appellant.

Prior History: [**1] Appeal from the United States District Court for the Southern District of Texas. USDC No. 4:18-CR-455-2.

Core Terms

videos, sex, trafficking, prostitute, rap, district court, pimp, leadership role, conspiracy, sentence, motel, song, beyond a reasonable doubt, admitting, contends, depicted, observe, lyrics, girl

Case Summary

Overview

HOLDINGS: [1]-Sufficient evidence supported defendant's conviction for sex trafficking a minor under 18 U.S.C.S. § 1591(a) and conspiracy to sex traffic a minor because the jury was presented with sufficient evidence to conclude that defendant had a reasonable opportunity to observe the underage victim. If the jury credited the witness, an introduction where defendant was present supported a finding that defendant had ample time to observe the victim; [2]- The district court did not abuse its discretion in admitting the two rap

videos because, although they spoke only generally to the pimping lifestyle and were cumulative of testimony in that respect, the violence and weapons depicted in the videos were relevant to the force charge—that defendant sex trafficked by force, fraud, or coercion.

Outcome

Judgment affirmed.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Standards of Review > Substantial Evidence > Sufficiency of Evidence

Evidence > Inferences & Presumptions > Inferences

Evidence > Weight & Sufficiency

Evidence > Burdens of Proof > Proof Beyond Reasonable Doubt

HN Substantial Evidence, Sufficiency of Evidence

When a defendant properly preserves the issue of evidentiary sufficiency, an appellate court affirms the conviction if, after viewing all the evidence and all reasonable inferences in the light most favorable to the

Appendix B

prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The appellate court considers whether the inferences drawn by a jury were rational, as opposed to being speculative or insupportable, and whether evidence is sufficient to establish every element of the crime.

[Criminal Law & Procedure > ... > Sex](#)
[Crimes > Pandering & Pimping > Elements](#)

[HN2](#) [Pandering & Pimping, Elements](#)

To convict a defendant of sex trafficking a minor requires the government to establish that the defendant: (1) recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or benefits, financially or by receiving anything of value from the above described venture; and (2) knowledge that the person has not attained the age of 18 years. [18 U.S.C.S. § 1591\(a\)](#). The knowledge or mens rea requirement can be met in one of three ways: (1) actual knowledge; (2) reckless disregard of the minor's age; or (3) a defendant's reasonable opportunity to observe the minor. [18 U.S.C.S. § 1591\(a\), \(c\)](#). The third option regarding observation of the victim has been characterized as a strict liability option for the Government.

[Criminal Law & Procedure > ... > Sex](#)
[Crimes > Pandering & Pimping > Elements](#)

[Criminal Law & Procedure > Trials > Burdens of Proof > Prosecution](#)

[HN3](#) [Pandering & Pimping, Elements](#)

A better reading of [18 U.S.C.S. § 1591\(c\)](#), sex trafficking a minor, is that the government may prove that the

defendant had a reasonable opportunity to view the victim in lieu of proving knowledge.

[Criminal Law & Procedure > ... > Inchoate Crimes > Conspiracy > Elements](#)

[Evidence > Types of Evidence > Circumstantial Evidence](#)

[Evidence > Inferences & Presumptions > Inferences](#)

[Criminal Law & Procedure > Trials > Burdens of Proof > Prosecution](#)

[Criminal Law & Procedure > ... > Sex](#)
[Crimes > Pandering & Pimping > Elements](#)

[HN4](#) [Conspiracy, Elements](#)

To prove that there was a conspiracy to sex traffic a minor, the Government must additionally show beyond a reasonable doubt that an agreement existed to violate the law and each conspirator knew of, intended to join, and voluntarily participated in the conspiracy. The agreement may be tacit rather than explicit, may be established solely by circumstantial evidence, and may be inferred from concert of action.

[Criminal Law & Procedure > ... > Sex](#)
[Crimes > Prostitution > Elements](#)

[International Law > Individuals & Sovereign States > Human Rights > Slavery](#)

[Criminal Law & Procedure > ... > Sex](#)
[Crimes > Pandering & Pimping > Elements](#)

[Criminal Law & Procedure > Trials > Burdens of Proof > Prosecution](#)

HN5 Prostitution, Elements

With respect to an appellate argument that the evidence was insufficient to show beyond a reasonable doubt that the defendant benefitted from or received anything of value from sex trafficking a minor under 18 U.S.C.S. § 1591 or that he aided or abetted anyone in doing so, the Government need not show this benefit element if it alternatively proves that the defendant recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits a person under the age of 18, knowing the person will be caused to engage in a sex act.

Criminal Law & Procedure > ... > Standards of Review > Harmless & Invited Error > Evidence

Evidence > Relevance > Exclusion of Relevant Evidence > Confusion, Prejudice & Waste of Time

Criminal Law & Procedure > ... > Standards of Review > Abuse of Discretion > Evidence

HN6 Harmless & Invited Error, Evidence

Under Fed. R. Evid. 403, relevant evidence may be excluded if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence. A district court's ruling as to Fed. R. Evid. 403 is reviewed with an especially high level of deference to the district court, with reversal called for only rarely and only when there has been a clear abuse of discretion. Courts apply Fed. R. Evid. 403 sparingly, and the rule is not designed to even out the weight of the evidence. Fed. R. Evid. 403's major function is limited to excluding matter of scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect. Any error in admitting

such evidence is subject to harmless error review, and reversal is not required unless there is a reasonable possibility that the improperly admitted evidence contributed to the conviction.

Evidence > Relevance > Exclusion of Relevant Evidence > Confusion, Prejudice & Waste of Time

HN7 Exclusion of Relevant Evidence, Confusion, Prejudice & Waste of Time

The general conclusion from courts that have considered the admissibility of rap videos under Fed. R. Evid. 403 is that explicit rap videos are probative and outweigh substantial prejudice when the defendant performs the song, describes events closely related to the crime charged, and the evidence is not cumulative.

Criminal Law & Procedure > ... > Sentencing Guidelines > Adjustments & Enhancements > Aggravating Role

Evidence > Burdens of Proof > Preponderance of Evidence

HN8 Adjustments & Enhancements, Aggravating Role

Generally, the finding of an aggravating role is reviewed for clear error and need only be supported by a preponderance of the evidence.

Criminal Law & Procedure > ... > Sentencing Guidelines > Adjustments & Enhancements > Aggravating Role

HN9 Adjustments & Enhancements, Aggravating Role

If the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive, his offense level is increased by four levels. Factors relevant to the determination of whether a defendant qualifies as an organizer or leader under *U.S. Sentencing Guidelines Manual § 3B1.1(a)* include: (1) the degree to which the defendant exercised decision-making authority; (2) the nature of the defendant's participation in the offense's commission; (3) the recruitment of accomplices; (4) the defendant's claim of a right to a larger share of the crime's fruits; (5) the degree of the defendant's participation in planning or organizing the offense; (6) the nature and scope of the illegal activity; and (7) the degree of control and authority the defendant exercised over others. A defendant's role in the criminal activity may be deduced inferentially from available facts.

Counsel: For United States of America, Plaintiff - Appellee: Audrey Lynn Maness, Carmen Castillo Mitchell, Assistant U.S. Attorney, U.S. Attorney's Office, Houston, TX.

For *Jaimian* Rashaad *Sims*, also known as Sauce Lean, Defendant - Appellant: Yolanda Evette Jarmon, Esq., Law Office of Yolanda Jarmon, Houston, TX.

Judges: Before DAVIS, HAYNES, and OLDHAM, Circuit Judges.

Opinion by: W. EUGENE DAVIS

Opinion

[*319] W. EUGENE DAVIS, *Circuit Judge:*

A jury found Defendant, *Jaimian Sims*, guilty of sex trafficking a minor and conspiracy to sex traffic a minor. The district court imposed a life sentence. *Sims* appeals his conviction arguing that the evidence was insufficient

to convict, and that certain rap videos were improperly admitted into evidence and shown to the jury. He also appeals his sentence arguing that he should not have received an enhancement based on his leadership role in the crime. For the reasons that follow, we AFFIRM.

I. BACKGROUND

Sims was a Houston-based rap artist (known as "Sauce Lean") and pimp who associated with a group who called themselves "The Sauce Factory" (TSF). TSF members were allowed to use a large house [**2] called "the Mansion" which was owned by one of the top TSF members known as "Sauce Walka." At some point between 2016 and 2017, *Sims* linked up with co-defendant Gary Shawn Haynes, Jr., who was a college football player. Haynes knew *Sims* was a pimp and wanted an opportunity to join that lifestyle.

To get Haynes started, *Sims* instructed his girlfriend and co-defendant, Tabbetha [*320] Mangis, to find Haynes a "white girl" to work as a prostitute for Haynes. Mangis reached out to the 17-year-old minor victim, who throughout proceedings has been referred to as Jane Doe. Mangis knew Jane Doe as a friend of Mangis's younger sister, and she knew that Jane Doe was 17 years old. Several text messages were exchanged between Jane Doe, Mangis, and Haynes, which resulted in Jane Doe agreeing to work as a prostitute for Haynes. Haynes also knew that Jane Doe was underage. Haynes picked up Jane Doe and brought her back to the Mansion where Jane Doe was taught the rules of prostituting.

Shortly after her arrival at the Mansion, Haynes brought Jane Doe to the Express Inn motel where he provided Jane Doe fraudulent identification to obtain a room. Meanwhile, *Sims* had previously checked in to the Express Inn [**3] to oversee his own prostitutes. After Jane Doe's initial check-in, she was relocated to a room

in the Express Inn occupied by one of Sims's prostitutes, referred to as Janet Doe. Janet Doe was instructed by Sims to teach Jane Doe how to make money—"help her," make her "comfortable," and "help her post ads."

Jane Doe then engaged in commercial sex for three days in which all money she earned from these activities was paid to Haynes. After the three days, on November 23, 2017, Jane Doe called the police and asked them to arrest her so that she could escape. The police arrived and recovered Jane Doe, and Sims and several prostitutes at the hotel were arrested.

Sims was charged in a three-count superseding indictment with conspiracy to commit sex trafficking of minors (Count 1), sex trafficking of minors (Count 2), and sex trafficking by force, fraud, or coercion (Count 3). The case went to trial where a jury found Sims guilty of Counts 1 and 2 but not guilty of Count 3.

During pretrial proceedings, Sims filed a motion in limine requesting that the Government not mention song lyrics in any audio or video recording from his rap songs and associated TSF acts. The district court decided to admit [**4] some videos but reserved final determination for trial. At trial, Sims objected to admission of the videos, but his objections were overruled and the videos, which graphically depicted and glorified guns, drugs, prostitution, pimping, and misogyny, were admitted and shown to the jury.

Upon sentencing, the PSR recommended an advisory guidelines range of life imprisonment. Sims received a four-level adjustment in his offense level for being an organizer of criminal activity that involved five or more participants. Sims objected to this increase, but the objection was overruled. The district court sentenced Sims to life imprisonment with five years of supervised release. Sims timely appealed.

II. DISCUSSION

Sims argues that the evidence is insufficient to support his conviction for sex trafficking of a minor because the Government failed to prove beyond a reasonable doubt that he sex trafficked a minor or aided anyone else in doing so. He contends that Haynes and Mangis orchestrated the sex trafficking of Jane Doe and that the Government did not prove that he knew or recklessly disregarded the fact that Jane Doe was under the age of 18 or that he had a reasonable opportunity to observe Jane [**5] Doe. He also contends that the evidence was insufficient to show beyond a reasonable doubt that he benefitted or received anything of value from the sex trafficking of a minor, nor did it show that he aided or abetted anyone in doing so. Similar [*321] arguments are made regarding the conspiracy conviction. Sims also challenges the admission of the rap videos at trial.

A. Standard of Review

HN1 [¶] When, as in this case, a defendant properly preserves the issue of evidentiary sufficiency,¹ this Court affirms the conviction "if, after viewing all the evidence and all reasonable inferences in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime

¹After the Government rested its case, Sims moved for a judgment of acquittal on all counts under Federal Rule of Criminal Procedure 29. The motion was denied, but in his motion, Sims's argument focused on the insufficiency of the evidence regarding his knowledge of Jane Doe's age and how that knowledge was required for the conspiracy crime and the actual sex trafficking crime. This argument regarding knowledge of the minor victim's age is also the focus of Sims's argument on appeal. Therefore, Sims properly preserved his issue of evidentiary sufficiency.

beyond a reasonable doubt.² We consider "whether the inferences drawn by a jury were rational, as opposed to being speculative or insupportable, and whether evidence is sufficient to establish every element of the crime."³

B. The Substantive Conviction

HN2 To convict a defendant of sex trafficking a minor requires the government to establish that the defendant (1) "recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or .^{**6} . . . benefits, financially or by receiving anything of value" from the above described venture, and (2) knowledge that the person has not attained the age of 18 years.⁴ The knowledge or mens rea requirement can be met in one of three ways: (1) actual knowledge; (2) reckless disregard of the minor's age; or (3) a defendant's reasonable opportunity to observe the minor.⁵ The third option regarding observation of the victim has been characterized by this Court as a strict liability option for the Government.⁶

² *United States v. Vargas-Ocampo*, 747 F.3d 299, 301 (5th Cir. 2014) (en banc).

³ *Id.* at 302.

⁴ 18 U.S.C. § 1591(a).

⁵ § 1591(a), (c).

⁶ **HN3** "The better reading of § 1591(c) is that the government may prove that the defendant had a reasonable opportunity to view the victim *in lieu of* proving knowledge."

United States v. Copeland, 820 F.3d 809, 813 (5th Cir. 2016) (quoting *United States v. Robinson*, 702 F.3d 22, 31 (2d Cir. 2012)).

HN4 To prove that there was a conspiracy to sex traffic a minor, the Government must additionally show "beyond a reasonable doubt that an agreement existed to violate the law and each conspirator knew of, intended to join, and voluntarily participated in the conspiracy."⁷ The agreement may be tacit rather than explicit, "may be established solely by circumstantial evidence[,] and may be inferred from concert of action."⁸

In this case, the jury was presented with sufficient evidence to conclude that *Sims* had a reasonable opportunity to observe Jane Doe. First, Janet Doe testified that *Sims* and Haynes together introduced her to Jane Doe at the hotel. Although Jane Doe testified that ^{**7} only Haynes introduced her to Janet, the jury was allowed to weigh and assess credibility on this conflicting ^{**8} testimony. If the jury credited Janet Doe, an introduction where *Sims* was present supports a finding that *Sims* had ample time to observe Jane Doe.

Second, Jane Doe testified that she saw *Sims* at the Express Inn, once while he was outside going up to the second floor, and once when *Sims* came into Jane Doe and Janet Doe's room. When *Sims* came into the room, Jane Doe saw him briefly and then she went back to the bathroom and mirror area of the room while *Sims* spoke with Janet Doe. The jury could reasonably infer that if Jane Doe saw *Sims* while he was traversing the motel, then *Sims* likely also saw Jane Doe. More importantly, however, the jury was able to see photos of Jane and Janet Doe's small room in the motel and conclude that *Sims* had a reasonable opportunity to observe Jane Doe when he came into the room.

Additional circumstantial evidence was presented that

⁷ *United States v. Chon*, 713 F.3d 812, 818 (5th Cir. 2013).

⁸ *Id.* at 818-19 (internal quotation marks and citations omitted).

could have aided the jury in determining that Sims recklessly disregarded Jane Doe's age. Jane Doe testified that upon her arrival with Haynes at the motel, Haynes went "upstairs" at the motel to obtain a fraudulent I.D. [**8] for Jane Doe so she could rent a room.⁹ Testimony revealed that Sims had a room on the second floor. Furthermore, Janet Doe testified that she had previously found an I.D. from her friend, Monica, in her room, and she gave the I.D. to Sims. She later saw that Jane Doe was using that I.D. The jury was entitled to infer from this circumstantial evidence that Sims was providing fraudulent identification for Haynes to give to a minor (Jane Doe) so she could rent a room.¹⁰

HN5 With respect to Sims's argument that the evidence was insufficient to show beyond a reasonable doubt that he benefitted from or received anything of value from sex trafficking a minor or that he aided or abetted anyone in doing so, the Government need not show this benefit element if it alternatively proves that the defendant "recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits" a person under the age of 18, knowing the person will be caused to engage in a sex act.¹¹ The evidence supports a finding that Sims recruited Jane Doe by directing Mangis to get Haynes a "white girl" to work as a prostitute. His direction to Janet Doe to have Jane Doe stay with her at the motel [**9] to help her feel more comfortable so she would make money through prostitution also supports this conclusion that

⁹ The Express Inn General Manager testified that guests were required to show ID and be 18 years old to rent a room.

¹⁰ See United States v. Phea, 755 F.3d 255, 260 (5th Cir. 2015) (acknowledging that the lack of proper identification is some evidence that a jury can consider to conclude that a defendant recklessly disregarded a minor victim's age).

¹¹ See § 1591(a)(1).

Sims participated in enticing her into prostitution.

The evidence also supports the conspiracy conviction. Sims knew about the criminal conduct and voluntarily participated in it when he agreed to find Haynes a girl to pimp, directed Mangis to do the finding, and directed one of his girls, Janet Doe, to essentially teach Jane Doe how to prostitute for Haynes. Furthermore, as discussed previously, circumstantial evidence showed that Sims, in concert with Haynes, was a source of fraudulent identification for Jane Doe. Thus, a rational trier of fact could certainly conclude that Sims, at least tacitly, voluntarily [**323] participated in Jane Doe's trafficking with Mangis and Haynes.

C. Admissibility of the Rap Videos

Sims argues that rap videos admitted at trial were unfairly prejudicial and should have been excluded under Federal Rule of Evidence 403.¹² He contends that the lyrics to the music in the videos, which referred to women as "bitches" and "whores" and glorified the pimp lifestyle, including designer clothes, violence, weapons, money, drugs, jewelry, and "selling white bitches," were fictional and did [**10] not depict his real life. At trial, the Government played three rap videos by TSF—"7:30," "A Lot of That," and "Remix"—and questioned witnesses about the identities of the people in the videos and the phrases and imagery used in

¹² Although a specific objection based on Rule 403 was not made at trial, Sims did argue in pretrial briefing that he objected to the videos as prejudicial under Rule 403. Because the district court considered this evidentiary issue several times and requested briefing on the issue, the fact that Sims argued Rule 403 during the course of litigating this evidentiary issue apprised the judge of the Rule 403 objection. See United States v. Polasek, 162 F.3d 878, 883 (5th Cir. 1998). Thus, the Rule 403 issue is properly preserved for this appeal.

them.

HN6 Under Rule 403, relevant evidence may be excluded if "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence."¹³ A district court's ruling as to Rule 403 is reviewed "with an especially high level of deference to the district court, with reversal called for only rarely and only when there has been a clear abuse of discretion."¹⁴ Courts apply Rule 403 sparingly,¹⁵ and the rule is "not designed to even out the weight of the evidence."¹⁶ Rule 403's major function is limited to excluding matter of scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect.¹⁷ "Any error in admitting such evidence is subject to harmless error review, and reversal is not required unless there is a reasonable possibility that the improperly admitted evidence contributed to the conviction."¹⁸

The admissibility **[**11]** of rap videos is an issue of first impression in our circuit. However, other circuits have analyzed the admissibility of rap videos under Rule 403.

¹³ Fed. R. Evid. 403.

¹⁴ United States v. Dillon, 532 F.3d 379, 387 (5th Cir. 2008) (internal quotation marks and citation omitted).

¹⁵ United States v. Fields, 483 F.3d 313, 354 (5th Cir. 2007).

¹⁶ Baker v. Canadian Nat'l / Ill. Cent. R.R., 536 F.3d 357, 369 (5th Cir. 2008) (internal quotation marks and citation omitted).

¹⁷ *Id.* (internal quotation marks and citation omitted).

¹⁸ United States v. Williams, 620 F.3d 483, 492 (5th Cir. 2010) (internal quotation marks and citation omitted).

HN7 The general conclusion from courts that have considered this type of evidence is that explicit rap videos are probative and outweigh substantial prejudice when the defendant performs the song, describes events closely related to the crime charged, and the evidence is not cumulative.¹⁹

[*324] In this case, Sims performs in all three videos. Regarding the song, "7:30," Mangis testified that 7:30 was made shortly after Sims was arrested for sex trafficking a minor. In 7:30, one verse contains the lyrics "While you was trying to be a top draft pick," and then after a few lines says, "N[***a] trying to put the feds on me, but they won't put me with the dead homies." Mangis testified that these lyrics were about Haynes, the college football star trying to go to the NFL, who got Sims wrapped up in the present federal case. Given the timing of this song, the lyrics that describe the facts of

¹⁹ See United States v. Belfast, 611 F.3d 783, 793, 820 (11th Cir. 2010) (finding no abuse of discretion when defendant performed the song and described violence and killing that was pertinent to defendant's charges under the Torture Act); United States v. Gamory, 635 F.3d 480, 485-93 (11th Cir. 2011) (finding abuse of discretion in admitting videos performed by a non-defendant that corroborated the defendant's general lifestyle but were cumulative of other testimony and highly prejudicial due to the violence, profanity, and general lawlessness); United States v. Stuckey, 253 F. App'x 468, 473-82 (6th Cir. 2007) (unpublished) (finding no abuse of discretion in admission of rap lyrics that described killing snitches and Government witnesses "wrapping them in blankets" and "dumping their bodies in the street," which was exactly what the Government accused the defendant of doing); United States v. Hankton, 2016 U.S. Dist. LEXIS 113566, 2016 WL 10950447 (E.D. La. 2016) (admitting one rap video but not another in a RICO murder in aid of racketeering case where the admissible video described a shooting that was the subject of the charge and the inadmissible video only generally referenced that the crime was on the news).

this case, and the fact that Sims was in the video, we cannot say that the district court abused its discretion in admitting this video. This video connects Sims to Haynes [*12] in this particular case, and it depicts the use of firearms, which was highly relevant for the government's case on Count 3, the force charge.

In the video for "The Remix," Sims and Sauce Walka flash guns and money while rapping about violence and pimping, generally. Mangis testified that the song was about Sims's lifestyle. Similarly, "ALot of That" talks about "selling white bitches" and how rich and famous the performers are. The video depicts drug use and weapons. Although these videos speak only generally to the pimping lifestyle and are cumulative of testimony in that respect, the violence and weapons depicted in the videos are relevant to the force charge—that Sims sex trafficked by force, fraud, or coercion. We are not persuaded the district court abused its discretion in admitting these two videos. However, even if the district court erred in admitting these two videos, we are satisfied that the videos were not harmful to the defense, and any error was harmless.²⁰

D. The Leadership Role

Sims argues that the district court erred in imposing a four-level enhancement for his leadership role in the offense under U.S.S.G. § 3B1.1(a). He contends that there was no evidence adduced at trial that he [*13] told anyone to recruit an underage minor to prostitute, that he directed Jane Doe's sexual conduct, that he directed Haynes to bring Jane Doe or any underage minor to Houston, or that he even spoke with Jane Doe. He contends further that statements in the PSR

²⁰ See U.S. v McCann, 613 F.3d 486, 501 (5th Cir. 2010) ("[E]ven if the district court abused its discretion in admitting the text, any such error would have been harmless.").

regarding his leadership role were not supported by trial testimony and were not reliable due to their inclusion in the PSR alone.

Sims preserved this issue by objecting to this enhancement before sentencing. The district court overruled the objection. HN8 Generally, the finding of an aggravating role is reviewed for clear error and "need only be supported by a preponderance of the evidence."²¹

HN9 "If the defendant was an organizer or leader of a criminal activity that [*325] involved five or more participants or was otherwise extensive," his offense level is increased by four levels.²² Factors relevant to the determination of whether a defendant qualifies as an organizer or leader under § 3B1.1(a) include: (1) the degree to which the defendant exercised decision-making authority; (2) the nature of the defendant's participation in the offense's commission; (3) the recruitment of accomplices; (4) the defendant's claim of a right to a larger share of the crime's [*14] fruits; (5) the degree of the defendant's participation in planning or organizing the offense; (6) the nature and scope of the illegal activity; and (7) the degree of control and authority the defendant exercised over others.²³ A defendant's role in the criminal activity "may be deduced inferentially from available facts."²⁴

Similar evidence that supports the convictions, as well as additional statements in the PSR, support the

²¹ United States v. Fillmore, 889 F.3d 249, 255 (5th Cir. 2018).

²² § 3B1.1(a).

²³ § 3B1.1, comment. (n.4).

²⁴ United States v. Guzman-Reyes, 853 F.3d 260, 265 (5th Cir. 2017) (internal quotation marks and citation omitted).

application of § 3B1.1(a) on clear-error review. Trial testimony regarding Sims's directive to Mangis to find a "white girl" for Haynes and Sims's directive to Janet Doe to allow Jane Doe to stay with her to help her become a prostitute and make her more comfortable and learn to earn money support the PSR's findings regarding Sims's leadership role and his decision-making authority and participation in planning.²⁵ Uncontradicted facts provided in the PSR, as well as trial testimony itself, indicate that, at a minimum, Sims had a leadership role over Jane Doe, as described above; Haynes, who was being encouraged by Sims to become a pimp and who was being taught about pimping by Sims; Mangis, who was Sims's girlfriend and employee; Deszmann Broussard (known as "Lucciani") who [**15] drove Haynes to retrieve Jane Doe; and Janet Doe and Cassandra Cabrales, who were sex workers for Sims.²⁶ In light of the foregoing, trial testimony and the PSR support the § 3B1.1 enhancement by a preponderance of the evidence, and thus Sims has not demonstrated clear error.²⁷

III. CONCLUSION

For the above reasons, we AFFIRM the conviction and sentence.

End of Document

²⁵ § 3B1.1, comment. (n.4).

²⁶ § 3B1.1, comment. (n.4).

²⁷ See Fillmore, 889 F.3d at 255.

§1591. Sex trafficking of children or by force, fraud, or coercion

(a) Whoever knowingly—

(1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or

(2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is—

(1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 20 years, or both.

(e) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "coercion" means—

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

(4) The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

(5) The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.