

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

CARLOCITO SLIM

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

I. Whether a defendant can be convicted under 18 U.S.C. §§ 2422 (b) or 1591 (a)(1) on the basis of inconsistent ages of a single non-existent victim given by law enforcement, one age being under the age of 18 years and the other age being over the age of 18 years, because it is impossible to ascertain the intent of a defendant.

PARTIES TO THE PROCEEDING

Petitioner is Carlocito Slim, the defendant-appellant below.

Respondent is the United States of America, the plaintiff-appellee below.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Carlocito Slim, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINION BELOW

The judgment and opinion of the United States Court of Appeals for the Eighth Circuit, which was published at 34 F4th 642, was issued on May 17, 2022, and is reprinted in Appendix A to this Petition (“App.A”) at 1a-9a.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (a). The decision of the United States Court of Appeals for the Eighth Circuit for which petitioner seeks review was issued on May 17, 2022. A petition for rehearing was timely filed on May 25, 2022, and denied on June 15, 2022. This petition is filed within 90 days of the date that the Eighth Circuit Court of Appeals issued its order denying petition for rehearing.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Amendment 5, provides in pertinent part: No person shall be...deprived of life, liberty, or property, without due process of law... .

United States Constitution, Amendment 6, provides, in relevant part: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...

STATEMENT OF THE CASE

Carlocito Slim, petitioner, was arrested without a warrant for soliciting a minor who had not attained the age of 18 years. A few days later he was indicted for and subsequently convicted in a trial to the court of attempted commercial sex

trafficking of a minor in violation of 18 U.S.C. §§ 1591 (a)(1) and 1594 (a) and attempted enticement of a minor using the internet in violation of 18 U.S.C. § 2422 (b). The indictment is attached at Appendix B. Petitioner was sentenced to the mandatory minimum 10 years imprisonment.

In the first part of August, 2017, during the Sturgis Motorcycle Rally in the Black Hills of South Dakota, a task force of state and federal agents embarked upon an effort to identify and prosecute adults seeking to have sex with minor children. An internet ad was placed on Backpage showing a photograph of a female that said she was 20 years old. However, anyone responding to such offer would then be told that the female was 15 going on 16 and the confusion began. In the present case, it is undisputed that petitioner, Carlocito Slim, an iron worker, injured his back at work and was told to get a massage. A co-worker told him to go on Backpage and he would find people to contact who would perform massages. Slim made contact and inquired about a massage on August 9, 2017, that continued into August 10, 2017. The complete communication between Slim and an agent posing as a pimp is set forth verbatim in trial exhibit 102 at 11-14. Slim was confused because he was not looking to have sex but for someone to massage his injured back. This confusion is shown by the communication not only through the internet, but also by his interrogation by the agents after he was arrested on August 10, 2017, on the premises of the Flying J Truckstop near Rapid City, South Dakota.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD IMPOSE A BRIGHT LINE STANDARD

PROHIBITING THE UNITED STATES FROM DECEPTIVELY ALLEGING AN IMAGINARY, NON-EXISTENT VICTIM IS AN ADULT, AND THEN CHANGING THE SCRIPT TO MAINTAIN THE VICTIM IS A MINOR, BECAUSE IT IS IMPOSSIBLE UNDER THOSE CIRCUMSTANCES TO PROVE A DEFENDANT INTENDED TO DEAL WITH A MINOR.

Under 18 U.S.C. § 1591 (a), the government, unless the defendant had a reasonable opportunity to observe the victim, must prove that defendant knew the victim was under age of 18 years or recklessly disregarded the victim's underage status. *E.g., United States v. Robinson*, 702 F3d 22, 26 (2nd Cir. 2012). Under 18 U.S.C. § 2242 (b), the government must prove a knowing persuasion, inducement, or coercion of a female under the age of 18 years old, a specific intent to engage in prohibited activity, and that defendant believed the female was a minor. *United States v. Panfil*, 338 F3d 1299 (11th Cir. 2003); *United States v. Helder*, 452 F3d 751, 755 (8th Cir. 2006).

On slip opinion at 2, the Court says defendant on the day after August 9 texted Russell by asking “whether the alleged minor was available that night.... .” The same error occurred at slip opinion 5 (“...to ask whether the alleged minor ...was available...”). The statements are inaccurate. Defendant did not know if the person was 20 years of age or a minor.

In discussing the standard of proof, the Court at slip opinion 7 recites that a person intends to commit a sexual act with a minor “when he subjectively intends to engage in a commercial sex act with someone he believed to be a minor female.”

The opinion then found further on in the same paragraph that the evidence showed it was “Slim’s subjective intent to engage in a commercial sex act with someone he believed to be a minor” under § 1591 (a) and his subjective intent “to entice a fictitious minor female to engage in illegal sexual conduct” under § 2422 (b). This is not proof, as required, that defendant under § 1591 (a) knew the female was under 18 years or recklessly disregarded the female’s under age status or under § 2422 (b) a knowing persuasion or coercion of an underage female, specific intent to engage in a prohibited activity, or a belief that a female was a minor.

The ad at issue states specifically the person placing the ad was 20 years of age. The word pimp, juvenile, escorts, prostitute, dating or sexual intercourse did not appear in the ad. Trial Transcript (TT) 91, 98-99. There was no dispute that defendant had injured his back and was looking for a massage. His first response to the Ad on August 9 was whether the person gave massages. TT 73. The agent then said the girl was 15 going on 16. TT 101. Defendant asked to see her first. TT 76. The agent testified that it was their standard procedure, not followed in this case, to approach defendant personally to make sure that he wanted to have sex with an underage female. Defendant in his post arrest interview said many, many times that he was confused as to age in view of the representation that the girl was 20 but then the statement of agent Russell that she was 15. TT 77-83, 89, 93-95. In *United States v. Ciesiolka*, 614 F3d 347 (7th Cir. 2010), the court recognized the unfairness to a defendant of, like here, representing different ages of a female, one being an adult age and another being a minor age. Such a tactic makes it

impossible to come to any conclusion that a defendant either objectively or subjectively thought he was dealing with an underage female. If defendant was only intending to secure from an adult a massage or for that matter anything else of sexual nature, the fact that he showed up at designated time with a condom is irrelevant.

CONCLUSION

The Court should accept the petition in this case and hold that agents cannot give conflicting ages resulting in uncertainty on the part of any defendant as to the age of the victim making it impossible to reach the conclusion that a defendant knew the victim was under the age of 18 years.

Dated August 10, 2022.

Respectfully submitted,

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