No. 22-5366

In the Supreme Court of the United States

William Michael Fields JR,
Petitioner,

V.

UNITED STATES OF AMERICA,
Respondent,

On Petition For a Writ of Certiorari to
the United States Court of Appeals
for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

William Michael Fields JR
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QUESTIONS PRESENTED

I. Whether defendants Sixth Amendment right to retained counsel of choice is violated when the district court fails to engage with the defendant in order to verify the extent of dissatisfaction with counsel; and whether the courts denial of a defendants Motion to Continue in order for newly retained counsel to prepare?

II. Whether it sufficient for a defendant to be found guilty of 18 U.S.C. § 2251(a) by proving just that a picture or video was created without evidence of purpose?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

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FEDERAL STATUTES

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

The Petitioner, William Michael Fields JR, petitions for a Writ of Certiorari to review the affirmation of the Sixth Circuit Court of Appeals of his conviction.

OPINION BELOW

The unpublished Court of Appeals' opinion appears at Appendix A and was filed on March 4, 2022.

JURISDICTION

The Sixth Circuit Court of Appeals entered its judgment and opinion on March 4, 2022.

On March 18, 2022, Petitioner timely petitioned the Sixth Circuit for rehearing to the panel, which that court denied in an order entered April 12,2022.

Petitioner invokes this Court's jurisdiction under 28 U.S.C. § 1254(1) to review a circuit courts decision on a Writ of Certiorari.

CONSTITUTIONAL PROVISION INVOLVED

Not applicable

STATUTORY PROVISION INVOLVED

18 U.S.C. § 2251(a)

STATEMENT OF THE CASE

This case arises out of the United States District Court for the Eastern District of Kentucky, The Honorable Chief Judge Danny C. Reeves, presiding. The Government invoked jurisdiction in the District Court by indictment under 18 U.S.C. 3231. Jurisdiction in the Sixth Circuit Court of Appeals was proper under 18 U.S.C. 1291.

Petitioner Fields stood trial on June 1-2, 2020 on two counts of production of child pornography in violation of 18 U.S.C. § 2251(a). At the conclusion of trial, the jury returned a verdict of guilty. Retained Counsel Christopher Allen Spedding filed a rule 29 Motion for Aquittle in which Chief Judge Reeves Denied.

On October 28, 2020, a sentencing hearing was held. At the conclusion, Honorable Chief Judge Reeves sentenced Petitioner to a total of 420 months incarceration, 360 months on each of the two counts with 300 months of count two to run concurrent with count one and 60 months of count two to run consecutive to count one. In addition, Petitioner was sentenced to 20 years of supervised release on each of count one and count two to run concurrently.

The relevant case and offense-related facts are as follows:

On October 17, 2019, the Grand Jury returned an indictment charging the petitioner with two counts of Production of Child Pornography in violation of 18 U.S.C. § 2251(a). Petitioner Fields surrendered himself to Homeland Security Agents at the Fayette County Detention Center on October 21, 2019 and was taken into custody.

On October 22, 2019, Petitioner Fields entered a not guilty plea at his Initial Appearence through retained counsel Christopher Allen Spedding. A detention hearing was set for October 28, 2019, in which Petitioner Fields was ordered detained by Judge Matthew A. Stinnett on October 30, 2019. A jury trial was set to begin on December 16, 2019.

On November 21, 2019, counsel for Petitioner filed a motion to continue trial (Doc. 15, Case: 5:19-cr-00178-DCR-MAS). In said motion, Counsel pointed to the discovery being in excess of 1800 pages and due to the nature of the discovery, and a protective order between the defendant and the United States, majority of the discovery may be considered contraband by the Fayette County Detention Center and counsel must review same in person with the defendant at the facility, Counsel conferred with the government and there were no objections to the continuance. On November 22, 2019, the motion to continue was granted by Chief Judge Danny C. Reeves and continued to February 10, 2020.

On January 3, 2020, Counsel for Defendant moved the court for a second continuance. Again citing the over 1800 pages of discovery, in addition, the defendants difficulty in being allowed time and resources to review discovery at the Fayette County Detention Center. Also, Counsel was scheduled for a medical procedure the week trial was currently scheduled and would be unavailable for several days following the procedure, a procedure in which "time is of the essence for counsel having this procedure done". Again, Counsel conferred with the government, who had no objections, but the parties did have concerns regarding conflicts in scheduling. On January 6, 2020, Chief Judge Reeves ordered a hearing for the motion of continuance for January 17, 2020. At the hearing, the trial was rescheduled for April 20, 2020.

On March 23, 2020, Chief Judge Reeves entered in a general order that trials scheduled to begin on or before May 1, 2020 be continued Generally. This order was due to the COVID-19 pandemic. On that same date, Chief Judge Reeves entered an order continueing the trial to May 18, 2020.

Notably, all trials were again continued by way of a General order on April 15, 2020, continueing all trials through at least May 17, 2020, due to the COVID-19 pandemic, this continuation did not affect the trial date due to it being scheduled for May 18, 2020.

On May 1, 2020, retained counsel once again filed a motion to continue

trial (Doc. 33, Case: 5:19-cr-00178-DCR-MAS), notifying the court that "counsel and defendant are unable to prepare for trial due to safeguards against the spread of COVID-19 in place at Fayette County Detention Center and all other facilities that currently house federal inmates". On the same day, counsel also filed a Revewed Motion for Detention Hearing or in the Alternative Motion for Release of Custody (Doc: 32, Case: 5:19-cr-00178-DCR-MAS). In this motion, counsel also reinterated the need for defendant and counsel to have access to one another in order to prepare for trial. Counsel spoke of using the video conferencing system in place that allows up to three 20 minute "visits" in a row and that there was no logical way to review discovery, conduct any meaningful discussion regarding trial strategy or in any other way prepare for trial in this case. Also discussed was the inability to meet in person, not only at Fayette County Detention Center, but at any of the facilities that housed federal inmates. In an order on May 4, 2020, Chief Judge Reeves ordered that counsel provide additional documentation on or before 5:00 PM on May 5, 2020. That order was adhered to and on May 5, 2020, Counsel filed an Ex Parte Response noting that in November 2019, Counsel received discovery containing 5 GB of information, additionally on May 1, 2020, Counsel received a second set of discovery containing 34 GB of information. Counsel addressed the inability of the defendant to view discovery due to the facility only having one laptop available, and the discovery provided on May 1, 2020 was to large to put on a disc and that Counsel was looking to alternative methods of providing discovery to the defendant. Counsel advised that he and defendant met several times during his incarceration and in addition to in person and video conferences, counsel and defendant have had countless telephone conversations. But for obvious reasons, communication during these calls was limited in scope and duration. Counsel discussed conversations with the US Marshal's office and considering transfer of defendant to another facility however that would have caused the defendant to quarantine for 14 days effectively "defeating the purpose". It was also discussed that there was a possibility that the defendant could be transported to the courthouse to prepare. Ultimately counsel informed US Marshal Deputy Vanover that he was going to file a motion

to continue because in Counsel's opinion, the uncertainty associated with this process was such that meaningful trial preparation could not be had. Counsel ended with a request of a continuance of no later than June 1, 2020 in which to prepare.

On May 13, 2020, during a video conference, defendant informed counsel that he was retaining another attorney and that he no longer required counsel's services. Defendant informed Mr. Spedding that he had retained new council (Mr. Jay Oakley of Oakley and Oakley Law Services) and that he would be in touch to retrieve records. It was at this time Mr. Spedding advised Mr. Fields that he had made arrangements to have Mr. Fields transferred to the U.S. Courthouse one day to prepare for trial. Defendant advised Mr. Spedding that would'nt be neccessary due to the change of counsel.

On May 19, 2020, defense counsel filed a motion to withdraw from the case. Defense councel filed a supplemental motion the following day citing recordings of phone calls from the jail in which Mr. Fields indicated he "had fired undersigned and retained new counsel". In addition, Mr. Fields indicated that he would be filing a bar complaint against counsel. Mr. Spedding noted that "the attorney-client relationship had deteriorated" to the point that an "obvious conflict" had arisen.

The district court scheduled a hearing on counsel's motion to withdraw for Friday May 29, 2020, three days before the trial was scheduled to begin on Monday June 1, 2020. At the hearing, defense counsel noted that he filed the motion to withdraw shortly after Mr. Fields informed him that he had been terminated. Counsel also pointed to the additional discovery including jail calls where Mr. Fields could be heard threatening to file a bar complaint against him, which "raised red flags" and made him concerned about an "actual conflict". Counsel said he had reviewed additional jail calls since filing the motion and it was "abundantly clear" that the "attorney-client relationship" had "eroded to the point" where he did

not believe he could "be effective as his attorney". Counsel told the court he "would not be able" to announce that he was ready for trial if the case proceeded as scheduled.

Chief Judge Reeves said that defense counsel had not provided sufficient proof that a "real conflict" exists. Counsel responded that there was evidence of Mr. Fields' dissatisfaction - "conversations between the defendant and other individuals" - in which Mr. Fields indicated counsel had been terminated and that he was considering filing a bar complaint against him. Without citing any evidence, the court said it believed Mr. Fields was strategically attempting to delay because he was "perhaps wishing that the victim is no longer present in the state and therefore may not have to go to trial". The court gave three options, Mr. Fields could represent himself, represent himself with counsel as stand by, or allow counsel to represent him, but that trial would continue as scheduled on Monday.

As trial began on June 1, 2020, Counsel again advised the court he was not ready. Counsel further noted that "another legistical issue" arose over the weekend preventing him from visiting with Mr. Fields on Saturday. The district court responded that it was "of the opinion, based upon defendant's actions, he has intentionally not prepared for trial in an effort to have the matter continued beyond the trial date", again pointing to no evidence of such.

In its opening statement, the government noted Mr. Fields was a deputy constable in Harrison County and also a volunteer firefighter and EMT instructor in Bourbon County. [R. 102: Transcript, Jury Trial, Openings, Page ID # 762]. After meeting her the fire station, Mr. Fields asked E.Y. "add" him on Snapchat. Id. at Page ID # 763, Line 12. The government said Mr. Fields "continued to pursue" E.Y. "as months went on". Id. at Lines 19-20. Mr. Fields began visiting her workplace and socializing with her and her friends. Id. at Lines 20-22. Mr. Fields also "asked if he could start attending the Police Explorers program" where she was enrolled. Id. at Lines 22-23. Mr. Fields talked to her about EMT classes, gave her a police radio, and

took her to hang out at the facility where ambulances were stored. Id. at Lines 7-10. The government then said Mr. Fields "did not just want to use her sexually", but he also "wanted to videotape and film and photograph himself using her sexually". Id. at Lines 11-14.

Defense counsel began his opening statement by acknowledging that what the jury would see "is graphic[.]" Id. at Page ID # 769, Lines 6-7. Counsel then approached the bench. Id. at Page ID # 769-70. Counsel said he wanted to discuss the distinction between "legal consent" and what he would characterize as "physical consent" based on the government's characterization of the encounters between Mr. Fields and E.Y. Id. at Page ID # 770, Lines 1-7. Counsel insisted it was important to do so because "we're not here on a rape charge[,]" yet the government had created "the impression" that Mr. Fields had "forcibly engaged in these acts" and videotaped them. Id. at Lines 8-10. The district court told counsel it believed he was attempting to "instruct the jury about legal issues" and relied on its prior ruling on the government's motion in limine to deny the request. Id. at Lines 13-23.

The government's first witness was E.Y. See [R. 97: Transcript, Jury Trial, Day 1, Page ID # 482]. E.Y. recalled being invited to the Bourbon County fire station on March 17, 2019 by a friend. Id. at Page ID # 490. E.Y. and her friend helped Mr. Fields put "decals" on a vehicle. Id. at Lines 7-10. Mr. Fields asked E.Y. to come with him "to the guy's house to drop the vehicle off". Id. at Lines 13-14. When they arrived back at the fire station, Mr. Fields grabbed E.Y.'s thigh. Id. at Lines 19-20. E.Y. "let it slide" and went home. Id. at Lines 20-22. Mr. Fields asked her to "text [him] later with Snapchat". Id. at Page ID # 491, Lines 15-17.

E.Y. said Mr. Fields was "trying to get to know" her "like a normal person would". He seemed "really nice" and she was not "creeped out" although she did think it was a "little weird" that he grabbed her thigh when they returned to the fire station. Id. at Page ID # 491-92. Later that night, Mr. Fields messaged E.Y. through Snapchat. Id. at Line 19. E.Y. did not "remember the exact conversation" but said "it

was probably just getting to know me still[.]" Id. at Lines 22-23. E.Y. recalled Mr. Fields sending her a "dick pic that night". Id. at Lines 24-25.

E.Y. and Mr. Fields then began to communicate "a couple of times a week". Id. at Page ID # 493, Lines 14-16. E.Y. said she was interested in having a friendship with Mr. Fields because he was "a really nice guy" and "had the same interests" that she did. Id. at Page ID # 494, Lines 15-17. E.Y. recalled Mr. Fields providing her with a police radio so she could monitor call traffic to learn. Id. at Lines 21-25. Mr. Fields and E.Y. also discussed her signing up for an EMT class he taught. Id. at Page ID # 495 Lines 1-9.

E.Y. recalled seeing Mr. Fields in person on several occasions, typically with her friends. Id. at Page ID # 495-96. These encounters were "pretty casual". Id. at Page ID # 495, Lines 18-21. E.Y. said Mr. Fields became involved with the Police Explorers program in April 2019. Id. at Page ID # 496, Lines 3-8. E.Y. then reviewed several photographs of her, her friends, and Mr. Fields taken around this time. Id. at Page ID # 497-98.

E.Y. said the relationship eventually turned sexual "after a while". Id. at Page ID # 499, Lines 10-11. E.Y. still throught Mr. Fields "was a pretty cool dude at the time". Id. at Lines 12-13. E.Y. "didn't really want to say no" because she was "scared something would happen...or something would get out". Id. at Lines 16-18. E.Y. was most concerned about her mother "finding out" Id. at Lines 18-19.

Regarding the March 17, 2019 incident, E.Y. recalled Mr. Fields messaging her while she was sitting in the Wal-Mart parking lot with her friends. Id. at Page ID # 500, Lines 9-11. E.Y. "ended up meeting" Mr. Fields and riding with him to the EMT training facility in Paris, Kentucky. Id. at Lines 16-19. E.Y. said she was intoxicated at the time, but she did not know if Mr. Fields realized it. Id. at Lines 20-22. Mr. Fields and E.Y. "sat in the back" of an ambulance and eventually had vaginal intercourse. Id. at Page ID # 501, Lines 1-8. E.Y. said Mr. Fields "ended up videoing it". Id. at Page ID # 501,

Lines 8-10.

E.Y. recalled that her phone was "laying on her chest or like right next to her" when the incident occurred. Id. at Page ID # 502, Lines 9-10. E.Y. said Mr. Fields "asked if he could video it" and she gave him her phone. Id. at Lines 12-14. E.Y. saw the video in her Snapchat camera roll the following morning. Id. at Page ID # 502-03. E.Y. also noticed the video "had been sent to" Mr. Fields. Id. at Page ID # # 503, Line 18. E.Y. said she eventually "ended up deleting" the video "after a while". Id. at Page ID # 504, Lines 4-6.

E.Y. also discussed her March 23, 2019 interaction with Mr. Fields. Id. at Page ID # 506. E.Y. said she and a friend went to the EMT training facility that night to meet Mr. Fields. E.Y.'s friend observed as E.Y. sat on Mr. Fields's lap. Id. at Lines 9-15. E.Y. and her friend then went home and began drinking. Id. at Page ID #507, Lines 8-9. Mr. Fields messaged to ask her to return to the fire station. The two eventually had sex in the office of the EMT building. Id. at Page ID # 508, Lines 5-11. E.Y. said Mr. Fields took videos with her phone. Id. at Lines 13-16. There were approximately five videos lasting a total of "three or four minutes". Id. at Page ID # 509, Lines 1-6. E.Y. then drove Mr. Fields back to the fire station and returned home. Id. at Lines 9-10.

E.Y. said she saw the videos the following morning and it "freaked [her] out". Id. at Lines 11-12. E.Y. said she was "scared of [her] mom at the time". Id. at Lines 17-19. E.Y. did not see any indication that the videos had been sent to anyone else through Snapchat. Id. at Page ID # 509-10. But E.Y. later realized Mr. Fields had the videos when she saw the "photo vault" associated with his Snapchat account. Id. at Page ID # 510, Lines 5-15.

E.Y. continued to see Mr. Fields. Id. at Page ID # 512. E.Y. recalled Mr. Fields inviting her and other Police Explorer program participants to his house for a bonfire following a fundraising event. Id. at Page ID # 512-13. Another female officer joked about there being no alcohol, and Mr. Fields emerged from his house with

two bottles. Id. at Page ID # 514, Lines 11-16. E.Y. and several other minors ended up driving back after drinking. Id. at Page ID # 514-15.

Following the bonfire, Cynthiana, Kentucky Police Department (CPD) Detective Justin Jett visited E.Y.'s residence to ask her about the party. Id. at Page ID # 516, Lines 3-5. Jett inquired about Mr. Fields, and E.Y. provided him with her phone. Id. at Lines 6-8. E.Y. initially did not admit to having a physical relationship with Mr. Fields. Id. Lines 9-16. E.Y. later confirmed the relationship and had no further contact with MR. Fields. Id. at Lines 17-21.

On cross-examination, E.Y. admitted she had denied remembering what happened on the two nights in question during the majority of the "ten or 12 times" she spoke with investigators. Id. at Page ID # 517-18. E.Y. said she "just didn't want to talk about it". Id. at Page ID # 518, Lines 6-7. E.Y. also confirmed that she previously videoed herself with Mr. Fields. Id. at Lines 8-10.

Regarding March 17, 2019, E.Y. acknowledged she was intoxicated prior to interacting with Mr. Fields. Id. at Page ID # 519, Lines 4-6. E.Y. also agreed there was "no way" to tell "who took the actual video". Id. at Lines 7-10.

When defense counsel asked if she had "engaged in the activity voluntarily" the government objected. Id. at Page ID # 523, Lines 6-8. The government argued that counsel's line of questioning was prohibited by the district court's prior order on the government's motion in limine excluding any testimony about consent. Id. at Page ID # 523-24. Counsel argued that the government's previous questioning had left "the impression" that E.Y. "was forced to do this". Id. Page ID # 524, Lines 4-5. The court disagreed: "No. I had not gotten that impression at all from any of the questions that were asked". Id. at Lines 6-7. The government added: "Nor the testimony that was given". Id. at Line 8. Without further comment, the district court granted the objection and provided a coutionary jury instruction. Id. at Page ID # 524, Lines 15-25. Counsel asked no additional questions. Id. at Page ID # 525, Lines 5-6.

The government's second witness was CPD Sergeant Nathan Linville. Id. at Page ID # 531. Sergeant Linville said he had been friends with Mr. Fields for some time and recalled him being "very active in the community". Id. at Page ID # 533. Linville said Mr. Fields asked if he could assist with the Police Explorers program. Id. at Page ID # 535, Lines 18-23. Linville said it was alleged that "a couple of members" of the Explorers program went to Mr. Fields's house for a party after a truck pull event. Id. at Page ID # 537-38. An investigation ensued, leading law enforcement to inquire about Mr. Field's relationship with E.Y. Id. at Page ID # 538.

The government's next witness was CPD Detective Ronald Judy. Id. at Page ID # 542. Detective Judy performed a Cellbrite extration on E.Y.'s cell phone on April 24, 2019. Id. at Page ID # 546. Judy provided an extration report to Detective Jett so he could review it as part of his investigation. Id. at Page ID # 549.

The government then called Detective Michael Littrell, forensic examiner with the Kentucky Attorney General's Office. Id. at Page ID # 553. Detective Littrell said it was his responsibility to "determine which type of extration is best suited" for a particular device and then to "examine the data that comes from the device...for information related to an investigation". Id. at Page ID # 555, Lines 1-4. Littrell confirmed information about prior communications on Snapchat between Mr. Fields and E.Y. "was not preserved by Snapchat". Id. at Page ID # 571, Lines 19-24.

Detective Littrell said he performed a "full file system extration" of E.Y.'s iPhone and provided his report to Detective Jett. Id. at Page ID # 573-75. Littrell also reviewed photographs and videos "located in a specific folder" labeled "DCIM". Id. Page ID # 576, Lines 6-13. Littrell said they depicted sexual activity. Id. at Page ID # 578-81. Littrell also indicated the videos and photographs contained associated GPS location data establishing where and when they were created. Id. at Page ID # 582-84.

Detective Littrell also examined the Samsung cell phone belonging to

Mr. Fields. Id. at Page ID # 585. The device was sent to the Secret Service Laboratory in Cleveland, Ohio. Id. at Lines 13-14. The lab was able to unlock the phone and to perform a physical extration of data. Id. at Lines 17-18. Littrell then used Cellbrite to decode the data and provided his report to Detective Jett. Id. at Page ID # 587. Littrell said he discovered "19 photographs on the phone". Id. at Page ID # 588.

Detective Littrell was able to "locate some images and video folders that had once existed" within an application on Mr. Fields's phone. Id at Page ID # 591, Lines 15-17. The folders where the images initially were stored had been deleted, but the images were still visible in the cache folder. Id. at Page ID # 592, Lines 6-8. Thumbnails of certain images were still available. The time stamps on the thumbnails and the information about the deleted images matched. Id. at Page ID # 593. Littrell reviewed several images recovered during his examination and confirmed they portrayed sexual activity. Id. at Page ID # 599-601.

On cross-examination, Detective Littrell agreed there were "72 pornography folders" on E.Y.'s iPhone, none of which were examined. Id. at Page ID # 603-04. Littrell also said all of the photographs and videos were taken with E.Y.'s iPhone. Id. at Page ID # 605, Lines 5-8. Littrell did not attempt to determine when the videos and photographs had been transferred from the iPhone. Id. at Page ID # 606, Lines 11-21.

On the second day of trial, the government called CPD Detective Justin Jett. [R. 98: Transcript, Jury Trial, Day 2, Page ID # 624]. Detective Jett said he was asked to investigate an allegation that underage drinking occurred following a Police Explorers event. Id. at Page ID # 624-25. During interviews, Jett became aware of a potential sexual relationship between E.Y. and Mr. Fields. Id. at Page ID # 625. Jett interviewed E.Y. and obtained her cell phone. Id. at Page ID # 626. CPD personnel performed a Cellbrite extraction and discovered a photograph depicting "a penis with a condom going into a vagina". Id. at Page ID # 626-27. The photograph included a GPS tag confirming it

was taken in Paris, Kentucky. Id. at Page ID # 626. Jett took photographs of the inside and outside of the EMT training facility in Paris for comparison. Id. at Page ID # 629-30. These photographs matched the location where the explicit image was taken. Id. at Page ID # 630.

Detective Jett then interviewed E.Y. again and submitted her cell phone to the Detective Littrell at Kentucky Attorney General's Office for further inspection. Id. at Page ID # 632. Analysis revealed "five small videos and two pictures" of "another sexual occurrence that had happened in Bourbon County". Id. at Page ID # 633, Lines 12-14. GPS data from these files indicated they were created at the EMT training facility. Id. at Page ID # 633-36. Jett compared his photographs of the interior of the EMT training facility to the additional videos and images and concluded they were created within that building. Id. at Page ID # 637-38.

Detective Jett also obtained a search warrant for Mr. Fields's phone. Id. at Page ID # 639. CPD and Kentucky State Police personnel attempted to conduct a Cellbrite extraction but were unsuccessful because it was password-protected. Id. at Lines 5-7. Jett then sent the phone to Secret Service investigators who were able to "use their software to get into the phone". Id. at Lines 20-21. Subsequent analysis revealed images that appeared to be the same as those located on E.Y.'s phone. Id. at Page ID # 640-41.

The government rested following Detective Jett's testimony. Id. at Page ID # 653, Lines 1-6. Defense counsel moved for a judgment of acquittal, arguing insufficient evidence had been presented to sustain a conviction on either count. [R. 103: Transcript, Closings, Page ID # 775]. The district court overruled the motion. Id. at Lines 17-18. In doing so, the court discussed each element that must be proven beyond a reasonable doubt for Mr. Fields to be convicted. Id. at Page ID # 775-77. Counsel then informed the Court Mr. Fields would not be presenting evidence or testifying on his own behalf and renewed his motion for a judgment of acquittal, which was denied. Id. at Page ID # 777-78.

Prior to closing, defense counsel objected to instructing the jury

at all based on his prior representation that the defendant was not ready to proceed to trial. Id. at Page ID # 783, Lines 16-21. The court overruled the objection. Id. at Page ID # 785-86.

In its closing, the government argued Mr. Fields abused his background in law enforcement and as a first responder to develop a relationship with E.Y. and to coerce her to do as he pleased. Id. at Page ID # 812; Id. at Page ID # 813-14. Regarding intent, the government said:

> [T]hat does not mean that they had to initiate sex with the sole intent of creating those visual depictions. As long as the defendant acted with the intent to create the visual depiction, that's enough. I'm sure he probably separately got sexual gratification from this act. You know, the gratification doesn't have to be the video alone or the production of the video alone.

Id. at Page ID # 824, Lines 15-21.

The jury returned a guilty verdict as to both counts. [R. 62: Jury Verdict, Page ID # 304]. The district court denied Mr. Fields's subsequent written motion for a judgment of acquittal or a new trial. See [R. 64-1: Memorandum in Support of Motion for Judgment NOV or New Trial, Page ID # 312-16]; [R. 68: Order, Page ID # 333-344].

Reasons for Granting the Writ

1. The decision of the district court to deny defense counsels motion to withdraw and motion for continuence is in direct conflict with Sixth Circuit presidence. This decision being Benitez v. United States, 521f.3d 625 (6th Cir. 2008).

"Aviclation of a defendant's right to counsel at a critical stage is a structural error, and is therefore not subject to an analysis of whether the error was harmless or prejudicial". Benitez, 521 F. 3d at 630 (citing United States v. Gonzales-Lopez, 548 U.S. 140(2006)). A defendant facing the possibility of incarceration has a Sith Amendment right to counsel at all critical stages of the criminal trial process. Id. The Sixth Amendment is implicated when a defendant seeks to change the status of his representation. Id. at 631 (citing United States v. McBride, 362 F. 3d 360, 366 (6th Cir. 2004) (requesting self-representation); United States v. Green, 388 F.3d 918, 922 (6th Cir. 2004) (requesting substitution of counsel)).

Once a defendant's dissatisfaction with counsel has been brought to the attention of the district court, the "court is obligated to inquire into the defendant's complaint and determine whether there is good cause for the substitution". Id. at 633-34 (citing United States v. Iles, 906 F. 2d 1122, 1131 (6th Cir. 1990)). "[T]he court has an affirmative duty to inquire as to the source and nature of that dissatisfaction-regardless of whether the attorney is court-appointed or privately retained". Id. (citing Cottenham v. Jamrog, 248 Fed.Appx. 625, 636 (6th Cir.2007)). Likewise, "[W]hen affecting a defendant's choice of counsel, 'an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay violates the right to assistance of counsel'". United States v. Warner, 843 Fed.Appx. 740, 744 (6th Cir.2021)(citing Abby v. Howe, 742 F.3d 221, 227 (6th Cir.2014)(quoting Morris v. Slappy, 461 U.S. 1, 11-12 (1983)).

In this case, the district court was made aware of Mr. Field's desire

to replace his attorney by way of a motion to withdraw filed by defense counsel on May 19, 2020, nearly two weeks before the scheduled trial date. See [R. 46: Motion to Withdraw, Page ID # 236-37]. Counsel also filed a supplement with the court indicating that recorded jail calls confirmed Mr. Fields had "fired" counsel. [R. 47: Supplement to Motion to Withdraw, Page ID # 239]. Counsel noted "the attorney-client relationship" had "deteriorated" to the point that an "obvious conflict" had arisen. Id.

The district court did not conduct a hearing on defense counsel's motion to withdraw until the final business day before trial was scheduled to begin. [R. 50: Order, Page ID# 248-49]. At the hearing, counsel discussed the breakdown in the attorney-client relationship and referenced jail calls indicating he had been fired. Counsel told the court he "would not be able" to announce that he was ready for trial if the case proceeded as scheduled the following Monday. [R. 96: Transcript, Motion Hearing, Page ID # 464-65].

Under the 6th Cir.'s prior precedents, the district court at this stage was "obligated to inquire into" Mr. Fields's complaints "and determine whether there is good cause for the substitution". Benitez, 521 F.3d at 633-34 (citing Iles, 906 F.2d at 1131). The court had "an affirmative duty to inquire as to the source and nature of that dissatisfaction[.]" Id. at 634 (citing Cottenham, 248 Fed.Appx. at 636).

Instead, the district court never addressed Mr. Fields or asked him to articulate his concerns. The court only considered defense counsel's representations about the disagreement and determined they were insufficient proof that a "real conflict" existed. [R. 96: Transcript, Motion Hearing, Page ID # 466-68]. The court then speculated that Mr. Fields was deliberately delaying to "attempt to prevent the case from moving forward". Id. When counsel reiterated that recorded calls indicated Mr. Fields had fired him and was considering filing a bar complaint, the court suggested that Mr. Fields was attempting to delay until "the victim is no longer

present in the state and therefore may not have to go to trial". Id. at Page ID # 469. Again, the court failed to ask Mr. Fields anything about "the source and nature of his dissatisfaction", yet it insisted trial would proceed as scheduled either with current counsel or with Mr. Fields representing himself. Id.; Benitez, 521 F.3d at 634.

The Panel analyzed this issue under the four-factor test outlined in United States v. Mack, 258 F.3d 548, 556 (6th Cir. 2001), and concluded that the district court's denial of defense counsel's motions to withdraw and continue did not "rise to [the] level" of an abuse of discretion. See Panel Decision, Pages 3-5. The Panel determined defense counsel's motion to withdraw was untimely; the record contained no "specific evidence or reason for the conflict"; and the public's interest in proceeding outweighed Mr. Fields's Sixth Amendment right to counsel. Id. The Panel's ruling is in direct conflict with the 6th Cir's prior decisions in Benitez and related cases.

In Benitez, the defendant notified defense counsel he was fired the night before his sentencing hearing. Benitez, 521 F.3d at 627-28. When counsel brought it to the district court's attention at the outset of the hearing, the court asked the defendant "how he wished to proceed". Id. at 628. After conferring with an interpreter, the defendant said he did not want counsel "to represent him". Id. The court then asked whether the defendant wanted counsel "to speak on [his] behalf at this time". Id. The defendant replied "no" before the interpreter indicated the defendant said he "can speak, but I don't want him to represent me any longer". Id. The court explained that by speaking, counsel "would be representing you and telling what's good about you and your position here." Id. The defendant then reiterated that he did not want counsel "to represent me". Id.

Rather than inquiring further, the district court asked defense counsel "to remain where he was" before confirming counsel was prepared to speak on the defendant's behalf. Id. The court then continued with the hearing and sentenced the defendant. Id.

The 6th Cir concluded the district court's inquiry "failed to ensure [defendant's] Sith Amendment right to counsel of his choice was adequately protected". Id. at 635. The Court noted that the defendant: (1) "was represented by privately retai-

ned as opposed to court-appointed counsel"; (2) "did not affirmatively request new counsel or to represent himself, but did clearly state at the beginning of the hearing that he did not want [counsel] to represent him"; and (3) "at a later point in the hearing" authorized counsel to speak on his behalf. Id. The Court held that the defendant's failure "to explicitly request a new attorney does not negate the conclusion that his statements were sufficient to trigger the district court's obligation to inquire into his dissatisfaction with [counsel]". Id. at 634. Rather, the defendant's indication to counsel that he had been "fired" was "sufficient" to "bring any serious dissatisfaction with counsel to the attention of the district court." Id.

The 6th Cir also held that the defendant's decision at a later point to permit counsel to speak on his behalf "does not undermine the conclusion that the district court failed to appropriately respond to [defendant's] initial indication that he did not wish [for counsel] to represent him". Id. at 634-35. Of note, the Court said the procedure employed "demonstated that the district court was not inclined to delay the proceedings to inquire into [defendant's] dissatisfaction", despite the fact that the defendant's statements "triggered the court's obligation to inquire further". Id.

The circumstances in the present case closely parallel Benitez. Mr. Fields notified defense counsel that he no longer wanted his representation, which triggered counsel's motion to withdraw. Unlike the defendant in Benitez who made his decision the night before his court appearance, counsel for Mr. Fields informed the district court of Mr. Fields's desire for new counsel approximately two weeks prior. Rather than address the issue, the court declined to conduct a hearing until the last business day before trial was set to begin. At the hearing, the court never addressed Mr. Fields or asked the nature of his dissatisfaction. Despite the fac tthat he never requested to represent himself, the court gave Mr. Fields only two choices: (1) proceed with the attorney he already indicated he did not wish to represent him, or (2) defend himself at trial. Like the defendant in Benitez, it was obvious the court "was not inclined to delay the proceedings to inquire into [defendant's] dissatisfaction", despite the fact that the defendant's statements "triggered the court's obligation to inquire further". Benitez, 521 F.3d at 635. As a result, "the court...failed to ensure that [Mr. Fields's] Sith Amendment right to counsel of his choice was adequately

protected". Id.

Moreover, the district court's procedure in this case was even less adequate than the inquiry in Benitez. Greater notice was provided to the court than in Benitez. Also, the court in Benitez actually addressed the defendant directly to ask how he wished to proceed. The court in this case never asked Mr. Fields anything at all. The Panel empasized that Mr. Fields "never expressed a desire to speak to the district court" and "stood mute" during the colloquy between defense counsel and the court. Panel Decision, Pages 3-4. The Panel's misplaced emphasis on this point ignores the fact that criminal defendants who are represented by attorneys have no right to "plead and conduct their own cases personally". United States v. Cromer, 389 F.3d 662, 680 (6th Cir. 2004); 28 U.S.C. § 1654. As in Benitez, the court had been made aware of Mr. Fields's desire that counsel no longer represented him. It was then the court's duty "to inquire into [Mr. Fields's] complaint and determine whether there is good cause for the substitution", not Mr. Fields's responsibility to interrupt and to speak in open court without the court's permission. Id. at 633-34 (citing Illes, 906 F.2d at 1131).

The Panel also concluded that the "extent of the conflict" was unclear because the record did not contain "more specific evidence" about the nature Mr. Fields's concerns. Id. at Page 4. As a result, the Panel held that factor "weighs against Fields". Id. at Page 4. In reality, the district court was responsible for the record containing no additional evidence because it never "allow[ed]" Mr. Fields "the opportunity to explain the attorney-client conflict as he perceived it". United States v. DeBruler, 788 Fed.Appx. 1010, 1012 (6th Cir.2019)(citing United States v. Marrero, 651 F.3d 453, 465 (6th Cir.2011). The court's failure in this regard made it impossible for the government, the district court, or the Panel to assess its significance. The Panel's circular resoning on this point must be rejected. Otherwise, one of the four factors the 6th Cr relies upon to determine if a defendant's right to counsel of choice has been protected will always tilt in favor of a district cour tthat denies a motion to withdraw after failing to conduct the required inquiry with the defendant. No inquiry, no record.

Mr. Fields had a constitutional right to counsel at all critical stages of the criminal process, and this right was implicated when he sought to change the

status of his representation. Benitez, 521 F.3d at 630. This right was also implicated when defense counsel requested a continuance based on Mr. Fields's desire for new counsel. See United States v. Sellers, 645 F.3d 830, 843 (6th Cir.2011). The procedure employed by the district court and its denial of counsel's motions violated Mr. Fields's Sixth Amendment rights.

The Sixth Circuit Panel's decision to the contrary directly conflicts with the Sixth Circuit Court of Appeals prior precedents and must be reconsidered "to secure and maintain uniformity of the Court's decisions". Fed.R.App.P.35(b)(1)(A). This error was structural, thus Mr. Fields's convictions must be vacated and his case remanded. Warner, 843 Fed.Appx. at 744 (citing Gonzalez-Lopez, 548 U.S. at 140; United States v. Barnett, 398 F.3d 516, 526 (6th Cir.2005)). See also Sellers, 645 F.3d at 843; Morris, 461 U.S. At 11-12.

2. The decision of the Sixth Circuit Court of Appeals on upholding the verdict of the District Court, finding that the "purpose" element was met is in direct conflict with the Fourth Circuit in United States v. McCauley, 983 F.3d 690 (4th Cir. 2020).

18 U.S.C. § 2251(a) criminalizes "employ[ing], us[ing], persuad[ing], induc[ing], entic[ing], or coerc[ing] any minor to engage in...any sexually explicit conduct 'for the purpose of producing any' visual depiction of such conduct." United States v. McCauley, 983 F.3d 690, 695 (4th Cir. 2020)(citing 18 U.S.C. § 2251(a)) (emphasis in original). § 2251(a) is a "specific-intent crime, which requires that the defendant must purposefully or intentionally commit the act that violates the law and do so intending to violate the law." United States v. Frei, 995 F.3d 561, 566 (6th Cir. 2021). See also United States v. Smith, 662 Fed.Appx. 132, 135-36 (3d Cir.2016)(§2251(a) conviction must be supported by sufficient proof of specific intent). "Put most simply, the statute requires the government to prove that creating a visual depiction was 'the purpose' of an accused for engaging in sexual conduct, not merely 'a purpose' that may happen to arise at the same instant as the conduct." McCauley, 983 F.3d 695.

The minimum penalty under 18 U.S.C. § 2251 underscores the "requisite seriousness of intent". Id. at 696. "Historically, the penalty imposed under a statute has been a significant consideration in determining whether the statute should be construed as dispensing with mens rea". Staples v. United States, 511 U.S. 600, 616 (1994). Violations of § 2251(a) carry a mandatory minimum of fifteen years of imprisonment. See 18 U.S.C. § 2251(e). The "stiffness of this minimum penalty...demonstrates that Congress meant what it said when it wrote that creating a visual depiction must be 'the purpose' in engaging in the sexual conduct". McCauley, 983 F.3d at 696. As such, the statute does not permit "courts to improperly greenlight a fifteen-year minimum sentence for someone who engages in sexual conduct and takes a picture". Id. (citing United States v. Palomino-Coronado, 805 F.3d 127, 132 (4th Cir.2015)).

18 U.S.C. § 2251(a) "does not criminalize a spontaneous decision to create a visual depiction in the middle of sexual activity without some sufficient pause or other evidence to demonstrate that the production of child pornography was at least a significant purpose". Id. "Adducing 'a purpose' arising only at the moment the depiction is created erroneously allows the fact of taking an explicit video of a minor to stand in for the motivation that animated the decision to do so". Id. As a result, an "image itself can be probative of intent if the prosecution makes a sufficient connection, [but] it cannot be the only evidence". Id. Such a construction would "impermissibly reduce the statute to a strict liability offense". Id. (citing Palomino-Coronado, 805 F.3d at 132). See also United States v. Torres, 894 F.3d 305, 312 (D.C.Cir.2018)("We do not believe-so do not hold-that the 'purpose' element of § 2251 is proven by the mere fact that the Defendant personally took a photo of...a minor engaging [in] sexually explicit conduct").

Here, the jury convicted Mr. Fields of two violations of 18 U.S.C. § 2251(a). For these convictions to stand, the plain language of the statute requires that the record contain sufficient evidence of Mr. Fields's "specific intent" to engage in sexual activity with E.Y.

"for the purpose of" producing visual depictions of that conduct. Frei, 995 F.3d at 566; McCauley, 983 F.3d at 697. No such evidence was presented to the jury at Mr. Fields's trial. Instead, the government relied solely on the photos and videos themselves to establish Mr. Fields's specific intent. Because the depictions themselves "cannot be the only evidence" of specific intent, the record contains insufficient proof to sustain Mr. Fields's convictions. 18 U.S.C. § 2251(a). Mr. Fields's convictions must be reversed.

To summarize, E.Y. testified at trial that she met Mr. Fields after she was invited to the Bourbon County fire station by her friend Jacob. [R. 97: Transcript, Jury Trial, Day 1, Page ID # 490]. E.Y. and Mr. Fields then began communicating through Snapchat "a couple of times a week" and met in person on many occasions over the course of several months. Id. at Page ID # 493, Lines 14-16; Id. at Page ID # 495-96. E.Y. and Mr. Fields were photographed together and with E.Y.'s friends during this time, and their relationship eventually became sexual. Id. at Page ID # 497-98; Id. at Page ID # 499, Lines 10-11.

E.Y. met Mr. Fields on March 17, 2019 and traveled with him to Paris, Kentucky where they had vaginal intercourse. Id. at Page ID # 500-01. E.Y. testified that Mr. Fields spontaneously recorded a portion of this encounter using E.Y.'s cell phone. Id. at Page ID # 502-03. This recording was the basis for Count 1 of the Indictment. See [R. 1: Indictment, Page ID # 1].

On March 23, 2019, E.Y. and a friend went to the Bourbon County EMT training facility where they interacted with Mr. Fields. Id. at Page ID # 506. E.Y. left but eventually returned to the facility to engage in sex with Mr. Fields. Id. at Page ID # 508, Lines 5-11. Again, E.Y. testified that Mr. Fields spontaneously took videos during the encounter using her phone. Id. at Page ID # 508-09. This conduct was the basis for Count 2 of the Indictment. See [R. 1:

CONCLUSION

The Petition for a Writ of Certiorari should be granted as this Court is needed in order to instruct lower courts on the correct interpretation of the law re-guarding both a defendants right to counsel of choice as well as the proper procedure to determine if there is specific purpose in a case such as the one presented before you.

Dated this 8th day of July, 2022.

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