

No.

IN THE
SUPREME COURT OF THE UNITED STATES

JUSTIN TESTANI
Petitioner,

v.

UNITED STATES
Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

DARLENE CALZON BARROR, ESQUIRE
CJA Court Appointed Counsel of Record
Attorney For Petitioner
506 N. Armenia Ave.
Tampa, Florida 33609
(813) 877 - 6970
Email: Darlene@barrorlaw.com
Florida Bar No.: 0860379

QUESTION PRESENTED FOR REVIEW

1. Whether a 720-month sentence violates the Eighth Amendment prohibition on cruel and unusual sentences when Mr. Testani never had physical contact with any of his victims, has extremely reduced mental capacity, and no felony criminal history?
2. Whether a 720-month sentence violates the Eighth Amendment prohibition on cruel and unusual sentences given the vast disparity in sentences given to defendants convicted of child pornography crimes?

CORPORATE DISCLOSURE STATEMENT

There are no corporations or publicly traded companies with a stake in the outcome of this matter.

LIST OF PROCEEDINGS

1. United States v. Richard R. Testani – United States District Court for the Middle District of Florida – 6:19-cr-00211-CEM-EJK-1 – Judgment
Entered 08/06/2020
2. United States v. Justin R. Testani – 11th Circuit Court of Appeals – 20-13207 – affirmed 06/15/2022.

LIST OF PARTIES

Petitioner Justice Testani

Respondent United States

TABLE OF CONTENTS

	Page
Question Presented for Review	2
Corporate Disclosure Statement	3
List of Proceedings	3
List of Parties	3
Table of Contents	4
Index to Appendices	5
Table of Authorities	6
Petition For Writ of Certiorari	8
Opinion Below	8
Jurisdiction	8
Constitutional Provisions and Statutes Involved	8
Statement of the Case	9
Argument in Favor of Granting Certiorari	10
Conclusion	15
Appendices Table of Contents	16

INDEX TO APPENDICES

APPENDIX A 11th Circuit Opinion

APPENDIX B Middle District of Florida Judgment and Sentence

APPENDIX C Plea Agreement

TABLE OF AUTHORITIES

Cases Cited

<i>Graham v. Florida</i> , 130 S. Ct. 2011, 2021 (2010)	13
<i>Miller v. Alabama</i> , 132 S. Ct. 2485, 2463 (2012)	12, 13
<i>Roper v. Simmons</i> , 543 U.S. 551, 560, 125 S. Ct. 1183 (2005)	12
<i>United States v. Curtis</i> , 513 Fed. Appx. 823 (11th Cir. 2013)	14
<i>United States v. Fye</i> , 796 Fed. Appx. 639 (11th Cir. 2019).....	13
<i>United States v. Kapordelis</i> , 569 F.3d 1291 (11th Cir. 2009)	13
<i>United States v. Lebowitz</i> , 676 F.3d 1000 (11th Cir. 2012)	14
<i>United States v. Lee</i> , 603 F.3d 904 (11th Cir. 2010)	13
<i>United States v. Macaluso</i> , 460 Fed. Appx. 862 (11th Cir. 2012).....	14
<i>United States v. Ruggiero</i> , 6:13-cr-00032-RBD-T	13
<i>United States v. Vaughn</i> , 677 Fed. Appx. 666 (11th Cir. 2017).....	14
<i>Weems v. United States</i> , 217 U.S. 349, 367, 30 S. Ct. 544 (1910).....	13

Statutes and Rules

18 U.S.C. § 2251	9
18 U.S.C. § 3553(a)	11
28 U.S.C. § 1254(1).....	9

Other Sources

United States Sentencing Commission, 2012 Sourcebook of Fed. Sentencing

Statistics, Table 28 (2012), available at
<http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2012/Table28.pdf> (last accessed August 5, 2022)15

United States Sentencing Commission, Findings, Conclusions, and
Recommendations to Congress, Findings and Recommendations Concerning
§2G2.1 cases available at
https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Chapter_12.pdf (last accessed August 4, 2022)15

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below where the Eleventh Circuit Court of Appeals upheld the lower court's sentence of 720 months. The Eleventh Circuit determined that Mr. Testani's 720-month sentence for two counts of production of child pornography was not a violation of the Eighth Amendment or unreasonable.

OPINION BELOW

The Judgment of the Middle District of Florida appears at Appendix A to the petition. The Opinion from the Eleventh Circuit affirming the Middle District of Florida appears at Appendix B to the petition and is unpublished. No petition for rehearing was filed. These opinions are unpublished.

JURISDICTION

The date on which the United States Court of Appeals for the Eleventh Circuit entered judgment was June 15, 2021. Appendix A. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This petition involves application of the cruel and unusual punishment provision of the Eighth Amendment to the United States Constitution which states

as follows: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

This petition also involves application of 18 U.S.C. § 2251 which provides, in pertinent part, as follows:

"(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed."

STATEMENT OF THE CASE

In summary, Mr. Testani engaged in a course of conduct that involved using social media to pose as a young girl to entice other young girls to produce child pornography through photos and live video streaming while hiding his identity and using intimidation and blackmail against the victims. See Appendix C pp. 22-39.

Mr. Testani entered into a plea agreement with the Government that allowed him to plea to Counts Four and Eight, each with a minimum mandatory penalty of

15 years and a maximum penalty of 30 years. Appendix C p.1. This agreement called for the dismissal of all the other counts. *Id.* at p.3. The agreement also called for an appeal waiver that only authorized sentence appeal on the basis that the sentence exceeded the statutory maximum penalty or violates the eighth amendment. *Id.* At p.17. While Mr. Testani only pled to two counts of production of child pornography for victims two and four, the end result was a guideline sentence of 720 months, thanks to pseudo counts from the other victims. Appendix B.

Mr. Testani then took direct appeal to the United States Court of Appeals for the Eleventh Circuit, who had jurisdiction under 28 U.S.C. §1291, which issued an opinion on June 15, 2022. Appendix A. Mr. Testani argued to the Eleventh Circuit that: (i) the district court abused its discretion, (ii) the total sentence imposed by the district court was unreasonable, and (iii) his total sentence violated the Eighth Amendment of the United States Constitution. The Eleventh Circuit upheld the lower court ruling. *Id.* In its opinion, the appellate court found that the district court did not abuse its discretion, Mr. Testani had not demonstrated that his 720-month sentence was improper under the 18 U.S.C. § 3553(a) factors and thus not unreasonable, and Mr. Testani's 720-month sentence for two counts of production of child pornography did not violate the Eighth Amendment. *Id.* at p. 7.

ARGUMENT IN FAVOR OF GRANTING CERTIORARI

Mr. Testani was sentenced to 720 months' imprisonment. The Eighth Amendment prohibits cruel and unusual punishments, including disproportionate

sentences given the facts and circumstances of individual cases. Given Mr. Testani's mental state, the fact that Mr. Testani did not physically harm his victims, and the average sentences given to child pornography production offenders, 720 months' imprisonment—essentially life imprisonment—for this non-homicide offense constitutes cruel and unusual punishment under an Eighth Amendment analysis.

The Eighth Amendment prohibits the imposition of cruel and unusual punishment. U.S. Const. amend. VIII. Further, “[t]he Eighth Amendment's prohibition of cruel and unusual punishment 'guarantees individuals the right not to be subjected to excessive sanctions.'” *Miller v. Alabama*, 132 S. Ct. 2485, 2463 (2012) (quoting *Roper v. Simmons*, 543 U.S. 551, 560, 125 S. Ct. 1183 (2005)). “That right [] flows from the basic ‘precept of justice that punishment for crime should be graduated and proportioned’ to both the offender and the offense.” *Id.* (quoting *Weems v. United States*, 217 U.S. 349, 367, 30 S. Ct. 544 (1910)). “The concept of proportionality is central to the Eighth Amendment.” *Graham v. Florida*, 130 S. Ct. 2011, 2021 (2010).

The Eighth Amendment bars disproportionate penalties. A punishment can only be determined as proportionate given the context of the facts surrounding the crime. Mr. Testani has no significant criminal history, and he did not distribute the images he received. He also did not have a collection of child pornography outside of that produced by his victims. He never touched any of his victims, nor was he ever geographically close to them or in the same state as them. Yet he received a sentence that is almost double that of offenders with similar charges. *See United*

States v. Kapordelis, 569 F.3d 1291 (11th Cir. 2009) (defendant received 35-year sentence for possessing more than 500 videos and 2000 images of child pornography, repeatedly drugged and molested minors over a 20 year span, and traveled abroad to have sex with minor boys.); *United States v. Fye*, 796 Fed. Appx. 639 (11th Cir. 2019) (unpublished) (defendant posed as a minor online to extort other minors to produce pornography and possessed over 200 child pornography videos and photos, received 300 month sentence); *United States v. Lee*, 603 F.3d 904 (11th Cir. 2010) (enticement and coercion of minor, receipt of child pornography, attempted enticement and coercion, criminal history category V, offense level 41, 300 month sentence); *United States v. Ruggiero*, 6:13-cr-00032-RBD-T (M.D.FL. October 3, 2013) (enticement of a minor, production of child pornography with actual sexual contact with the minor victim, 240 month sentence concurrent on each count); *United States v. Lebowitz*, 676 F.3d 1000 (11th Cir. 2012) (enticement of minor and production of child pornography, offense level 40, criminal history category I, 320 months' imprisonment); *United States v. Macaluso*, 460 Fed. Appx. 862 (11th Cir. 2012) (defendant convicted at trial of inducing a minor to produce pornography, attempted inducement of a minor, distributing child pornography, and receiving child pornography including 3200 folders of pornographic images of boys sentenced to 360 months); *United States v. Curtis*, 513 Fed. Appx. 823 (11th Cir. 2013) (defendant convicted of sex trafficking a minor and production of child pornography after trial, sentenced to 360 months); *United States v. Vaughn*, 677 Fed. Appx. 666 (11th Cir. 2017) (defendant convicted of enticement of a minor to

engage in production of child pornography, production of child pornography, receipt and possession of child pornography, who had previously engaged in similar behavior as early as 1999 sentenced to 324 months).

Mr. Testani posed as a minor female online with other girls to extort them into producing child pornography for his viewing pleasure. At no point did he meet with the girls in person, nor did he ever physically touch or molest them. Despite these facts, the guidelines never allowed for anything other than the absolute maximum sentence. However, Mr. Testani's sentence, as explained above, is almost double the sentence of similar offenders who not only produced or enticed child pornography, but in some instances physically molested the victim or trafficked the victim. The disparity in sentencing for production offenders can be further illustrated by nationwide data that illustrates a significant portion of defendants convicted of §2G2.1 production offenses, approximately 25%, received a sentence below the guideline in 2012 based on variances or departures alone without government motions. United States Sentencing Commission, 2012 Sourcebook of Fed. Sentencing Statistics, Table 28 (2012), available at <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2012/Table28.pdf> (last accessed August 5, 2022).

Furthermore, the United States Sentencing Commission has found that the typical production offender has sexual contact with a prepubescent minor. *See* United States Sentencing Commission, Findings, Conclusions, and Recommendations to Congress, Findings and Recommendations Concerning §2G2.1

cases available at https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Chapter_12.pdf (last accessed August 4, 2022). A minority of offenders did not engage in any physical contact, and an even smaller number of offenders were never physically present with their victims because they remotely produced the pornography. *Id.* By the Commission's own reports, Mr. Testani represents a distinct minority of production offenders. Most production offenders engage in sexual molestation of their victim. *Id.* Despite this, the average production sentence is 274 months. *Id.* Thus, the average production sentence is less than half of the sentence Mr. Testani received, despite the fact that he remotely produced the pornography and never had physical contact with any minor. This is a disproportionate sentence compared to the offense conduct and average sentence for production nationwide, and the sentence is a violation of the Eighth Amendment. This Court should remand this case back to the District Court for resentencing before a different judge.

CONCLUSION

Accordingly, Mr. Testani requests that this Court grant his petition for certiorari review.

Respectfully submitted,



Darlene Calzon Barror, Esquire
CJA Appointed Attorney for the Petitioner
506 North Armenia Avenue
Tampa, Florida 33609
Tel: (813) 877 - 6970
Darlene@barrorlaw.com
Florida Bar No.: 0860379

APPENDICES TABLE OF CONTENTS

APPENDIX A

17

APPENDIX B

28

APPENDIX C

36

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v

JUSTIN RICHARD TESTANI

Case Number: 6:19-cr-211-Orl-41EJK

USM Number: 72502-018

Joshua Roy Lukman, FPD
201 S Orange Ave., Ste 300
Orlando, FL 32801-3417

CORRECTED* JUDGMENT IN A CRIMINAL CASE

The defendant pleaded guilty to Counts Four and Eight of the Indictment. The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. §§ 2251(a) and 2251(e)	Production of Child Pornography	March 16, 2018	Four
18 U.S.C. §§ 2251(a) and 2251(e)	Production of Child Pornography	January 22, 2019	Eight

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

Counts One, Two, Three, Five, Six, and Seven are dismissed in accordance with the plea agreement.

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 shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:
August 6, 2020
CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE
August 12, 2020

*Corrected to reflect additional victims in No Contact Order.

Justin Richard Testani
6:19-cr-211-Orl-41EJK

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **SEVEN HUNDRED TWENTY (720) MONTHS**. This term consists of a **THREE HUNDRED SIXTY (360) MONTH** term as to each of Counts Four and Eight of the Indictment, all such terms to run consecutively.

The Court recommends to the Bureau of Prisons:

1. Designated at FMC due to both physical and mental health concerns.

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

Neither the defendant nor anyone acting in concert with, or at the behest of, the defendant shall have contact with Child Victim-1, Child Victim-2, Child Victim-3, Child Victim-4, O.O., O.M., or J.Z. (collectively, the "Child Victims"), or any of the Child Victims' family, friends, or employers (past, present, or prospective) by any means, including but not limited to, verbal, telephonic, or electronic means. It will be the defendant's duty and the duty of anyone acting at his behest and in concert with him to affirmatively absent himself from the Child Victims' presence and from contact with the Child Victims, and the Child Victims' family, friends, or employers (past, present, or prospective).

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 U.S. Marshal

Justin Richard Testani
6:19-cr-211-Orl-41EJK

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **TEN (10) YEARS**. This term consists of a **TEN (10) YEAR** term as to Counts Four and Eight of the Indictment, all such terms to run 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 controlled substance. You must submit to one drug test within 15 days of placement on supervision and at least two periodic drug tests thereafter as directed by the probation officer. You must submit to random drug testing not to exceed 104 tests per year.
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution.
5. You must cooperate in the collection of DNA as directed by the probation officer.
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.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions as follows.

Justin Richard Testani
6:19-cr-211-Orl-41EJK

STANDARD 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. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
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.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature: _____

Date: _____

Justin Richard Testani
6:19-cr-211-Orl-41EJK

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. The defendant shall participate in a substance abuse program (outpatient and/or inpatient) and follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of these services not to exceed an amount determined reasonable by the Probation Office's Sliding Scale for Substance Abuse Treatment Services. During and upon completion of this program, the defendant is directed to submit to random drug testing.
2. The defendant shall be prohibited from incurring new credit charges, opening additional lines of credit, or making an obligation for any major purchases without approval of the probation officer. The defendant shall provide the probation officer access to any requested financial information.
3. The defendant shall participate in a mental health program specializing in sex offender treatment and submit to polygraph testing for treatment and monitoring purposes. The defendant shall follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of such treatment and/or polygraphs not to exceed an amount determined reasonable by the probation officer based on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Treatment Services.
4. The defendant shall register with the state sexual offender registration agency(s) in any state where he or she resides, visits, is employed, carries on a vocation, or is a student, as directed by the probation officer. The probation officer will provide state officials with all information required under Florida sexual predator and sexual offender notification and registration statutes (F.S.943.0435) and/or the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248), and may direct the defendant to report to these agencies personally for required additional processing, such as photographing, fingerprinting, and DNA collection.
5. The defendant shall have no direct contact with minors (under the age of 18) without the written approval of the probation officer and shall refrain from entering into any area where children frequently congregate, including: schools, daycare centers, theme parks, playgrounds, etc.
6. The defendant is prohibited from possessing, subscribing to, or viewing, any video, magazine, or literature depicting children in the nude and/or in sexually explicit positions.
7. Without prior written approval of the probation officer, you are prohibited from either possessing or using a computer (including a smart phone, a hand-held computer device, a gaming console, or an electronic device) capable of connecting to an online service or an internet service provider. This prohibition includes a computer at a public library, an internet cafe, your place of employment, or an educational facility. Also, you are prohibited from possessing an electronic data storage medium (including a flash drive, a compact disk, and a floppy disk) or using any data encryption technique or program. If approved to possess or use a device, you must permit routine inspection of the device, including the hard drive and any other electronic data storage medium, to confirm adherence to this condition. The United States Probation Office must conduct the inspection in a manner no more intrusive than necessary to ensure compliance with this condition. If this condition might affect a third party, including your employer, you must inform the third party of this restriction, including the computer inspection provision.
8. The defendant shall submit to a search of his or her person, residence, place of business, any storage units under the defendant's control, computer, or vehicle, conducted by the United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.
9. Neither the defendant nor anyone acting in concert with, or at the behest of, the defendant shall have contact with Child Victim-1, Child Victim-2, Child Victim-3, Child Victim-4, O.O., O.M., or J.Z. (collectively, the "Child Victims"), or any of the Child Victims' family, friends, or employers (past, present, or prospective) by any means, including but not limited to, verbal, telephonic, or electronic means. It will be the defendant's duty and the duty of anyone acting at his behest and in concert with him to affirmatively absent himself from the Child Victims' presence and

Justin Richard Testani
6:19-cr-211-Orl-41EJK

from contact with the Child Victims, and the Child Victims' family, friends, or employers (past, present, or prospective).

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment¹</u>	<u>JVTA Assessment²</u>
TOTALS	\$200.00	\$19,670.00	Waived	N/A Not Imposed

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 in full prior to the United States receiving payment.

<u>Name of Payee</u>	<u>Restitution Ordered</u>
M.C.	\$19,670.00

SCHEDULE OF PAYMENTS

While in the custody of the Bureau of Prisons, the defendant shall either (1) pay at least \$25.00 quarterly if working non- Unicor or (2) pay at least 50 percent of his or her monthly earnings if working in a Unicor position. Upon release from custody, the defendant is ordered to begin making payments of \$150.00 per month and this payment schedule shall continue until such time as the Court is notified by the defendant, the victim or the government that there has been a material change in the ability to pay. **The Court finds that the defendant does not have the ability to pay interest and the Court waives the interest requirement for the restitution.**

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be 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, U.S. District Court, unless otherwise directed by the court, the probation officer, or the United States attorney.

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

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.

¹ Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

² Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

Justin Richard Testani
6:19-cr-211-Orl-41EJK

FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Plea Agreement, and Order of Forfeiture (Doc. 48) that are subject to Forfeiture.

The defendant shall pay interest on any fine or restitution of more than \$2,500, unless the fine or restitution 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 the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-13207

Non-Argument Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUSTIN RICHARD TESTANI,

Defendant- Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:19-cr-00211-CEM-EJK-1

Before WILSON, BRASHER, and ANDERSON, Circuit Judges.

PER CURIAM:

Justin Testani appeals his total sentence of 720 months' imprisonment following his conviction on 2 counts of production of child pornography. Testani argues that (i) the district court abused its discretion when it denied his motion to continue sentencing to allow him to undergo a competency evaluation and hearing, (ii) it imposed a substantively unreasonable total sentence, and (iii) his total sentence violated the Eighth Amendment. As to his first point, he argues that the district court had a *bona fide* doubt of his competence. As to the second, he argues that the court did not consider mitigating factors, and his total sentence was disparate to sentences given to similar offenders. Finally, as to the third, he argues that his total sentence was disproportionately long.

We will address each point in turn.

I.

We review a district court's failure to order a hearing on a defendant's competency for an abuse of discretion. *See United States v. Wingo*, 789 F.3d 1226, 1236 (11th Cir. 2015).

A defendant is incompetent if he is presently "suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense." 18 U.S.C. § 4241(a).

The Due Process Clause of the Fifth Amendment requires that a defendant be mentally competent to proceed. *United States v. Rodriguez*, 751 F.3d 1244, 1252 (11th Cir. 2014). It guarantees a right to a competency hearing when “the court learns of information that raises a *bona fide* doubt regarding the defendant’s competence.” *Wingo*, 789 F.3d at 1235 (alteration adopted) (internal quotation marks omitted). This right is also guaranteed by a statute, 18 U.S.C. § 4241(a), which provides that, “[a]t any time after the commencement of a prosecution for an offense *and prior to the sentencing of the defendant* either party . . . may [move] for a “hearing to determine the mental competency of the defendant.” 18 U.S.C. § 4241(a) (emphasis added).”

We consider three factors in determining whether information presented to the district court establishes a *bona fide* doubt regarding the defendant’s competence: (1) evidence of the defendant’s irrational behavior; (2) the defendant’s demeanor at trial; and (3) whether there is any prior medical opinion regarding the defendant’s competence. *Wingo*, 789 F.3d at 1236.

Here, considering the totality of the factors, the district court did not abuse its discretion in refusing to delay sentencing to allow for a competency evaluation and hearing. As to the first two factors, nothing in the record suggested that Testani exhibited irrational behavior or that his demeanor at trial indicated a lack of competence to proceed. *Wingo*, 789 F.3d at 1236. That his counsel noted that he had trouble remembering all the consultation points in rehearsal for trial did not rise to the level of irrational behavior

that would create a bona fide doubt about his competence. *Pardo*, 587 F.3d at 1101.

Further, the district court spoke directly with Testani during the change of plea hearing as well as at sentencing. Regarding the change of plea hearing, the court noted that it had observed Testani during the proceedings, and nothing that happened during those interactions cast doubt on his competence. Instead, the court noted that he had interacted appropriately. And at sentencing, Testani gave an in-depth allocution that demonstrated he understood the nature of the proceedings and the charges against him: he recognized that what he did was wrong, took full responsibility for his actions, noted the lasting consequences experienced by his victims, expressed that he wanted to seek treatment, and asked for leniency in sentencing. *Wright*, 278 F.3d at 1258 59. Therefore, nothing about his behavior or his interactions with the district court during the proceedings cast a bona fide doubt on his competency. *Wingo*, 789 F.3d at 1236.

As to the third factor, the record does not reflect any definitive medical opinions on Testani's competency. Indeed, Dr. Machlus performed a forensic psychological evaluation of Testani that revealed many issues, such as a very low IQ, reduced cognitive abilities, anxiety, depression, and PTSD, but he later admitted that he made no findings as to Testani's competency. Rather, he found that Testani was sufficiently competent to at least take the battery of tests included in his forensic evaluation. *Pardo*, 587 F.3d at 1101. Moreover, while Testani's counsel alluded to Dr. McClain's

preliminary opinion as to incompetence, no definitive statement from her, nor results of any tests she had performed, appear in the record. Specifically, Testani’s counsel qualified Dr. McClain’s purported preliminary findings by noting, first, only that Testani “may” be incompetent, and second, that she needed more information before giving a decision as to his competence. Thus, Dr. Machlus’s finding of low IQ, in tandem with Dr. McClain’s preliminary opinion, were insufficient to create a bona fide doubt as to Testani’s competence. *Wingo*, 789 F.3d at 1236; *Pardo*, 587 F.3d at 1101.

Finally, the district court’s observation when it denied Testani’s second, pre-sentence motion—that his offense conduct reflected a pattern of manipulating others—was supported by the undisputed findings in the PSI, and consistent with the government’s representation as to his admission, in a recorded jail call, to feigning suicidal ideology to be moved within the jail.

Accordingly, the district court did abuse its discretion in declining to continue the sentence hearing, to allow for a competency evaluation, or to hold a competency hearing, and this Court should affirm in this respect.

II.

We review the reasonableness of a sentence under a deferential abuse-of-discretion standard. *Gall v. United States*, 552 U.S. 38, 51 (2007). “The party challenging a sentence has the burden of showing that the sentence is unreasonable in light of the entire

record, the § 3553(a) factors, and the substantial deference afforded sentencing courts.” *United States v. Rosales-Bruno*, 789 F.3d 1249, 1256 (11th Cir. 2015).

We measure substantive reasonableness by considering the totality of the circumstances and whether the sentence achieves the sentencing purposes stated in 18 U.S.C. § 3553(a). *United States v. Sarras*, 575 F.3d 1191, 1219 (11th Cir. 2009). The district court must issue a sentence “sufficient, but not greater than necessary,” to comply with the § 3553(a) factors, which include the need to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, deter criminal conduct, protect the public from the defendant’s future criminal conduct, and provide medical care in the most effective manner. 18 U.S.C. § 3553(a)(2). In imposing a particular sentence, the district court must also consider the nature and circumstances of the offense, the history and characteristics of the defendant, the kinds of sentences available, the applicable guideline range, the pertinent policy statements of the Sentencing Commission, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims. *Id.* § 3553(a)(1), (3)-(7).

The weight given to any specific 18 U.S.C. § 3553(a) factor is committed to the sound discretion of the district court. *United States v. Clay*, 483 F.3d 739, 743 (11th Cir. 2007). The district court is permitted to attach great weight to one § 3553(a) factor over others. *United States v. Overstreet*, 713 F.3d 627, 638 (11th Cir. 2013). We will not second guess the weight that the district court gave to

a § 3553(a) factor so long as the sentence is reasonable in light of all the circumstances. *United States v. Pugh*, 515 F.3d 1179, 1191 (11th Cir. 2008). However, “a district court abuses its discretion when it (1) fails to afford consideration to relevant factors that were due significant weight, (2) gives significant weight to an improper or irrelevant factor, or (3) commits a clear error of judgment in considering the proper factors.” *United States v. Irey*, 612 F.3d 1160, 1189 (11th Cir. 2010) (*en banc*) (quotation marks omitted).

Moreover, although we do not automatically presume a sentence falling within the advisory guideline range is reasonable, we ordinarily expect such a sentence to be reasonable. *United States v. Hunt*, 526 F.3d 739, 746 (11th Cir. 2008).

We have stated that the threat of recidivism posed by pedophiles who sexually abuse children is “appalling.” *Irey*, 612 F.3d at 1214 (quotation marks omitted). Thus, child sex crimes are among the worst offenses and should result in severe sentences. *Id.* at 1206-07.

Accordingly, we have upheld long sentences for child sex crimes as substantively reasonable in numerous cases. *See, e.g.*, *United States v. Johnson*, 451 F.3d 1239, 1240, 1244 (11th Cir. 2006) (holding that a 1,680-month sentence was reasonable to reflect the need to protect children from the defendant, who was convicted of producing and distributing child pornography); *United States v. Kirby*, 938 F.3d 1254, 1258-59 (11th Cir. 2019) (holding a 1,440-month guideline sentence for participation in the creation of child pornography was not substantively unreasonable given

defendant's direct participation in the "heinous" crime); *Sarras*, 575 F.3d at 1221 (affirming that a 1,200-month sentence of imprisonment for child sex crimes was reasonable because these crimes are "among the most egregious and despicable of societal and criminal offenses").

Here, Testani has not met his burden of demonstrating that his 720-month total sentence is one of those "rare" substantive unreasonableness cases. *See Kirby*, 938 F.3d at 1259. Specifically, Testani has not shown that the district court abused its discretion by failing to afford consideration to relevant factors that were due significant weight. *See* 18 U.S.C. § 3553(a). Indeed, the court adopted the PSI, which contained information about mitigating factors, as well as Dr. Machlus's forensic psychological evaluation, which detailed the sexual abuse Testani sustained as a minor, the adverse disorders he suffered with because of it, as well as his low intellectual ability and achievement. And the court addressed these mitigating factors at sentencing. The court also explicitly stated that it had considered both the advisory sentencing guidelines and the 3553(a) factors and noted that its sentence was sufficient but not greater than necessary to accord with the statutory purposes of sentencing. *See* 18 U.S.C. § 3553(a)(2). Thus, any contention that the court did not afford consideration to relevant factors that were due significant weight is belied by the record.

The court considered the totality of the circumstances, which included both mitigating and aggravating factors, and found that deterrence was salient because Testani's penchant for

manipulation meant that not only was he dangerous, but that he would remain so. With the record before it, it found that Testani's claims of lower intelligence were belied by the manner in which he carried out his crimes. In sum, it found that the nature of the offense and deterrence of similar future offenses weighed heavily in favor of and substantiated the need for a guideline-term sentence. And it did not do so lightly, but acknowledged that the government's proposed sentence was heavy, and "desperately look[ed] for any reason" to give a lower sentence. It did not find one, and it was within the court's discretion to give greater weight to these aggravating factors and was supported by the documented crimes in the record. *Overstreet*, 713 F.3d at 638; *Pugh*, 515 F.3d at 1191. Thus, that the court gave greater weight to deterrence, the seriousness of the offense conduct, and protecting the public—namely children—in light of the record showing that Testani was manipulative and dangerous, was not an abuse of discretion, but instead, well within its purview. *Clay*, 483 F.3d at 743.

Moreover, this Court has found similar and more severe sentences for child sex crimes to be substantively reasonable in numerous cases. *See Johnson*, 451 F.3d at 1240, 1244; *Kirby*, 938 F.3d at 1258-59; *Sarras*, 575 F.3d at 1221. And this Court also would ordinarily expect Testani's within-guideline total sentence to be reasonable. *Hunt*, 526 F.3d at 746. Thus, Testani has not shown that such sufficient disparity exists to render his total sentence substantively unreasonable. Therefore, it was substantively reasonable, and this Court should affirm.

III.

When a defendant fails to object to the legality of a sentence under the Eighth Amendment at the district court level, we will review it for plain error. *United States v. Mozie*, 752 F.3d 1271, 1290 (11th Cir. 2014). Plain error requires a challenger to show: (1) error; (2) that is plain; (3) that affects substantial rights; and (4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings. *United States v. Hoffman*, 710 F.3d 1228, 1281 (11th Cir. 2013). “An error is not plain unless it is contrary to explicit statutory provisions or to on-point precedent in this Court or the Supreme Court.” *Id.* (quoting *United States v. Schultz*, 565 F.3d 1353, 1357 (11th Cir. 2009)).

The Eighth Amendment states, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. In cases in which a term-of-years sentence, as opposed to a death sentence, is being challenged, the Eighth Amendment contains a narrow proportionality principle that does not require strict proportionality between the crime and sentence but instead forbids “extreme sentences that are grossly disproportionate to the crime.” *See United States v. Farley*, 607 F.3d 1294, 1336–37, 1341 (11th Cir. 2010) (quotation marks omitted).

Generally, sentences within the statutory limits are neither excessive, nor cruel and unusual under the Eighth Amendment, as we afford “substantial deference” to Congress’s “broad authority to determine the types and limits of punishments for crimes.”

20-13207

Opinion of the Court

11

United States v. Bowers, 811 F.3d 412, 432 (11th Cir. 2016) (quotation marks omitted).

Accordingly, we have repeatedly rejected gross disproportionality claims. *See, e.g., Johnson*, 451 F.3d at 1243 (11th Cir. 2006) (140-year sentence for production of child pornography).

Testani did not make an Eighth Amendment objection below in the district court, so we review for plain error. His total sentence does not violate the Eighth Amendment, because he has not pointed to any binding precedent holding that (1) a 720-month total sentence for two counts of production of child pornography violates the Eighth Amendment, or that (2) the district court was required by the Eighth Amendment to impose a lower total sentence. Moreover, his total sentence was on par with the guideline range, and not above the statutory maximum, so there is no indication that it was disproportionate, extreme, rare, or extraordinary. Therefore, we affirm his total sentence.

AFFIRMED.

AF Approval BLW

Chief Approval AC

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:19-cr-211-Orl-41EJK

JUSTIN RICHARD TESTANI

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by Maria Chapa Lopez, United States Attorney for the Middle District of Florida, and the defendant, JUSTIN RICHARD TESTANI, and the attorney for the defendant, Joshua Lukman, Esq., mutually agree as follows:

A. Particularized Terms

1. Counts Pleading To

The defendant shall enter a plea of guilty to Counts Four and Eight of the Indictment. Counts Four and Eight each charge the defendant with production of child pornography, in violation of 18 U.S.C. § 2251(a).

2. Minimum and Maximum Penalties

Counts Four and Eight are each punishable by a mandatory minimum term of imprisonment of 15 years, up to 30 years; a fine of no more than \$250,000; a term of supervised release of at least 5 years, up to life; and a

Defendant's Initials JT

special assessment of \$100. The Court may order the terms of imprisonment to run consecutively, rather than concurrently.

With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offenses, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offenses, or to the community, as set forth below.

Additionally, pursuant to 18 U.S.C. § 3014, the Court shall impose a \$5,000 special assessment on any non-indigent defendant convicted of an offense in violation of certain enumerated statutes involving: (1) peonage, slavery, and trafficking in persons; (2) sexual abuse; (3) sexual exploitation and other abuse of children; (4) transportation for illegal sexual activity; or (5) human smuggling in violation of the Immigration and Nationality Act (exempting any individual involved in the smuggling of an alien who is the alien's spouse, parent, son or daughter).

In addition, the Court may impose an additional special assessment, pursuant to 18 U.S.C. § 2259A, of no more than \$50,000 for an offense involving production of child pornography, in violation of 18 U.S.C. § 2251(a).

Defendant's Initials J T

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offenses with which defendant has been charged and to which defendant is pleading guilty.

The elements of Counts Four and Eight are:

First: An actual minor, that is, a real person who was less than 18 years old, was depicted;

Second: The defendant employed, used, persuaded, induced, enticed, or coerced the minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of the conduct or for the purpose of transmitting a live visual depiction of such conduct; and

Third: Either (a) the defendant knew or had reason to know that the visual depiction would be transported or transmitted using any means or facility of interstate or foreign commerce; (b) the visual depiction was produced or transmitted using materials that had been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer; or (c) the visual depiction was actually transported or transmitted using any means or facility of interstate or foreign commerce.

4. Counts Dismissed

At the time of sentencing, the remaining counts against the defendant, Counts One, Two, Three, Five, Six, and Seven, will be dismissed pursuant to Fed. R. Crim. P. 11(c)(1)(A).

Defendant's Initials JT

5. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

6. Mandatory Restitution to Victims of Offense of Conviction

Pursuant to 18 U.S.C. § 2259, defendant agrees to make restitution to known victims of the offense for the full amount of the victims' losses as determined by the Court. Further, pursuant to 18 U.S.C. § 3664(d)(5), the defendant agrees not to oppose bifurcation of the sentencing hearing if the victims' losses are not ascertainable prior to sentencing.

7. Restitution to Persons Other Than the Victim of the Offense of Conviction - Agreed Upon Amount

Pursuant to 18 U.S.C. §§ 3663(a)(3) and/or 3663A(a)(3), defendant agrees to make restitution to M.K. (Child Victim-1), L.G. (Child Victim-3), and all other victims identified at the time of sentencing, for the full amount of the victims' losses as determined by the Court. Further, pursuant to 18 U.S.C. § 3664(d)(5), the defendant agrees not to oppose bifurcation of the sentencing hearing if the victims' losses are not ascertainable prior to sentencing.

Defendant's Initials JT

8. Guidelines Sentence

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States will recommend to the Court that the defendant be sentenced within the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

9. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Defendant's Initials JT

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG §3E1.1(b) and all terms of this plea agreement, including, but not limited to, the timely submission of the financial affidavit referenced in Paragraph B.5., the United States agrees to file a motion pursuant to USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

10. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 18 U.S.C. § 2253, whether in the possession or control of the United States, the defendant or defendant's nominees.

The assets to be forfeited specifically include, but are not limited to, the following: Samsung Galaxy S9+ (IMEI: 355418090519690) and

Defendant's Initials JT

Samsung Galaxy S8 (device ID 089505844001198371), which assets were used to commit the offenses of conviction.

The defendant additionally agrees that since the criminal proceeds have been transferred to third parties and cannot be located by the United States upon the exercise of due diligence, the preliminary and final orders of forfeiture should authorize the United States Attorney's Office to conduct discovery (including depositions, interrogatories, requests for production of documents, and the issuance of subpoenas), pursuant to Rule 32.2 (b) (3) of the Fed. R. Crim. P., to help identify, locate, and forfeit substitute assets.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil judicial or administrative forfeiture action. The defendant also agrees to waive all constitutional, statutory and procedural challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture described herein constitutes an excessive fine, was not properly noticed in the charging instrument, addressed by the Court at the time of the guilty plea, announced at sentencing, or incorporated into the judgment.

Defendant's Initials J

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to Rule 32.2(b)(4), the defendant agrees that the preliminary order of forfeiture will satisfy the notice requirement and will be final as to the defendant at the time it is entered. In the event the forfeiture is omitted from the judgment, the defendant agrees that the forfeiture order may be incorporated into the written judgment at any time pursuant to Rule 36.

The defendant agrees to take all steps necessary to identify and locate all property subject to forfeiture and to transfer custody of such property to the United States before the defendant's sentencing. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States. The defendant agrees that Fed. R. Crim. P. 11 and USSG §1B1.8 will not protect from forfeiture assets disclosed by the defendant as part of the defendant's cooperation.

The defendant agrees to take all steps necessary to assist the government in obtaining clear title to the forfeitable assets before the defendant's sentencing. In addition to providing full and complete

Defendant's Initials Jr

information about forfeitable assets, these steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers. To that end, the defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control directly or indirectly, including all assets held by nominees, to execute any documents requested by the United States to obtain from any other parties by lawful means any records of assets owned by the defendant, and to consent to the release of the defendant's tax returns for the previous five years. The defendant agrees to be interviewed by the government, prior to and after sentencing, regarding such assets and their connection to criminal conduct.

The defendant agrees that the United States is not limited to forfeiture of the property specifically identified for forfeiture in this plea agreement. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant

up to the value of any property described above. The defendant expressly consents to the forfeiture of any substitute assets sought by the government. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to forfeiture.

The defendant agrees that, in the event the Court determines that the defendant has breached this section of the plea agreement, the defendant may be found ineligible for a reduction in the Guidelines calculation for acceptance of responsibility and substantial assistance, and may be eligible for an obstruction of justice enhancement.

The defendant agrees that the forfeiture provisions of this plea agreement are intended to, and will, survive the defendant, notwithstanding the abatement of any underlying criminal conviction after the execution of this agreement. The forfeitability of any particular property pursuant to this agreement shall be determined as if the defendant had survived, and that determination shall be binding upon defendant's heirs, successors and assigns until the agreed forfeiture, including satisfaction of any preliminary order of forfeiture for proceeds, is collected in full.

Defendant's Initials JF

11. Abandonment of Property - Computer Equipment

The United States of America and defendant hereby agree that any computer equipment as defined in 18 U.S.C. § 2256, seized from the defendant and currently in the custody and/or control of the Federal Bureau of Investigation or other appropriate agency, were properly seized and are subject to forfeiture to the government according to 18 U.S.C. §§ 2253 or 2254, and/or that the computer equipment and peripherals constitute evidence, contraband, or fruits of the crime for which he has pled guilty. As such, defendant hereby relinquishes all claim, title and interest he has in the computer equipment and peripherals to the United States of America with the understanding and consent that the Court, upon approval of this agreement, hereby directs the Federal Bureau of Investigation, or other appropriate agency, to cause the computer equipment described above to be destroyed forthwith without further obligation or duty whatsoever owing to defendant or any other person.

As part of the plea agreement in this case, defendant hereby states under penalty of perjury that he is the sole and rightful owner of the property, and that defendant hereby voluntarily abandons all right and claim

Defendant's Initials JT

to and consents to the destruction of: Samsung Tab E 32 GB tablet (IMEI: 352087095234358).

12. Sex Offender Registration and Notification

The defendant has been advised and understands, that under the Sex Offender Registration and Notification Act, a federal law, the defendant must register and keep the registration current in each of the following jurisdictions: the location of the defendant's residence, the location of the defendant's employment; and, if the defendant is a student, the location of the defendant's school. Registration will require that the defendant provide information that includes name, residence address, and the names and addresses of any places at which the defendant is or will be an employee or a student. The defendant understands that he must update his registrations not later than three business days after any change of name, residence, employment, or student status. The defendant understands that failure to comply with these obligations subjects the defendant to prosecution for failure to register under federal law, 18 U.S.C. § 2250, which is punishable by a fine or imprisonment, or both.

Defendant's Initials JT

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offenses, pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1); and the Court may order the defendant to make restitution to any victim of the offenses, pursuant to 18 U.S.C. § 3663, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. The defendant further understands that compliance with any restitution payment plan imposed by the Court in no way precludes the United States from simultaneously pursuing other statutory remedies for collecting restitution (28 U.S.C. § 3003(b)(2)), including, but not limited to, garnishment and execution, pursuant to the Mandatory Victims Restitution Act, in order to ensure that the defendant's restitution obligation is satisfied.

On each count to which a plea of guilty is entered, the Court shall impose a special assessment pursuant to 18 U.S.C. § 3013. The special assessment is due on the date of sentencing.

Defendant's Initials JT

The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offenses to which the defendant is pleading provide for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Immigration Consequences of Pleading Guilty

The defendant has been advised and understands that, upon conviction, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

4. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the counts to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any

misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

5. Financial Disclosures

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit to the United States Attorney's Office within 30 days of execution of this agreement an affidavit reflecting the defendant's financial condition. The defendant promises that his financial statement and disclosures will be complete, accurate and truthful and will include all assets in which he has any interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, dependent, nominee or other third party. The defendant further agrees to execute any documents requested by the United States needed to obtain from any third parties any records of assets owned by the defendant, directly or through a nominee, and, by the execution of this plea agreement, consents to the release of the defendant's tax returns for the previous five years. The defendant similarly agrees and authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information

Defendant's Initials JT

concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court. The defendant expressly authorizes the United States Attorney's Office to obtain current credit reports in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

6. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make

Defendant's Initials JT

with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

7. Defendant's Waiver of Right to Appeal the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

8. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this

office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

9. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

10. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront

Defendant's Initials JT

and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

11. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth in the attached "Factual Basis," which is incorporated herein by reference, are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt.

Defendant's Initials JT

12. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

13. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 4 day of February, 2020.

MARIA CHAPA LOPEZ
United States Attorney


Emily C. L. Chang
Assistant United States Attorney


JUSTIN RICHARD TESTANI
Defendant


Joshua Lukman, Esq.
Attorney for Defendant


Sara C. Sweeney
Assistant United States Attorney
Deputy Chief, Orlando Division

Defendant's Initials JT

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:19-cr-211-Orl-41EJK

JUSTIN RICHARD TESTANI

PERSONALIZATION OF ELEMENTS

With respect to Counts Four and Eight:

First: Was an actual minor, that is, a real person who was less than 18 years old, depicted?

Second: Did you employ, use, persuade, induce, entice, or coerce the minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of the conduct or for the purpose of transmitting a live visual depiction of such conduct?

Third: Was at least one of the following true: (a) you knew or had reason to know that the visual depiction would be transported or transmitted using any means or facility of interstate or foreign commerce; (b) the visual depiction was produced or transmitted using materials that had been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer; or (c) the visual depiction was actually transported or transmitted using any means or facility of interstate or foreign commerce?

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:19-cr-211-Orl-41EJK

JUSTIN RICHARD TESTANI

FACTUAL BASIS

TESTANI's Victimization of Child Victim-1

On or about December 18, 2017, in the Middle District of Florida, and elsewhere, the defendant, JUSTIN RICHARD TESTANI, using a facility and means of interstate commerce; that is, the Internet, did knowingly persuade, induce, entice, and coerce, and attempt to persuade, induce, entice, and coerce, Child Victim-1 (CV-1), an individual who had not attained the age of 18 years, to engage in the production of child pornography, in violation of 18 U.S.C. § 2251(a).

On or about December 18, 2017, in the Middle District of Florida, and elsewhere, the defendant, JUSTIN RICHARD TESTANI, did employ, use, persuade, induce, entice, and coerce, and attempt to employ, use, persuade, induce, entice, and coerce, a minor, that is, Child Victim-1, to engage in any sexually explicit conduct for the purpose of producing a visual depiction of such conduct and for the purpose of transmitting a live visual depiction of

Defendant's Initials JT

such conduct, knowing and having reason to know that such visual depiction would be transported and transmitted using any means and facility of interstate and foreign commerce, and the visual depiction was produced and transmitted using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, and the visual depiction was actually transported and transmitted using any means and facility of interstate and foreign commerce.

On or about December 15, 2017, TESTANI contacted CV-1 through Snapchat, an online social media application. At the time, CV-1 was 13 years old and resided in Alabama. TESTANI portrayed himself as a young female who was approximately the same age, and commented on CV-1's photographs, saying she was cute and pretty. Over the next several days, TESTANI and CV-1 continued to communicate through Snapchat.

On or about December 18, 2017, TESTANI sent CV-1 an image of a young female dressed only in her underwear to perpetuate the façade of himself as a young girl. In return, TESTANI requested that CV-1 produce and send an image of herself in only her underwear. CV-1 refused at first. After TESTANI threatened to tell everyone at CV-1's school that she was gay and to expose her by sending pictures that CV-1 had previously sent to TESTANI, however, CV-1 complied.

TESTANI later demanded that CV-1 take a completely nude image of herself "or else." TESTANI told CV-1 that TESTANI knew where CV-1 lived and that TESTANI would kidnap CV-1 and CV-1's best friend if CV-1 told anyone what TESTANI had done (and was doing). TESTANI also claimed that he would rape them at gunpoint, then kill them along with CV-1's family. TESTANI also told CV-1 that when the last person he had victimized tried to tell someone in order to get help, TESTANI had exposed her, found her, and raped her.

Out of fear that TESTANI would carry out his threats, CV-1 complied with TESTANI's requests and sent several nude images of herself. On multiple occasions, TESTANI saved nude images that CV-1 sent TESTANI. TESTANI specifically focused on saving images that included CV-1's face.

At one point, instead of continuing with the exchange of images, TESTANI demanded that CV-1 switch to Snapchat's video-chat function. TESTANI did not reveal himself during the video-chat. The screen on his end was blank so CV-1 could not see him; she could only hear him.

While on video-chat, TESTANI ordered CV-1 to perform a series of sexual acts, unclothed, so he could view her doing so in real time. His demands included orders to touch her genitals, to have the family dog lick whipped cream off her vagina, and to insert objects into her vagina, including

a hairbrush. TESTANI also demanded that CV-1 mouth the hairbrush until she gagged.

Throughout, TESTANI threatened to disseminate CV-1's images and videos unless she obeyed his commands. For example:

TESTANI: I guess I'll post

CV-1: Noooooo
Hold on

TESTANI: Nooo u won't listen

CV-1: Moo plzzz
Nooo
Plzzz

TESTANI: Then do what I say bitch

[CV-1 takes a screenshot of exchange]

TESTANI: Oh screen shot
Oksy
Gaine over
I guess you want to be exposed
Bye
I warned you
Wanma try and tell
I guess ima post everywhere
I was just about to del it too

CV-1 cried throughout her interactions with TESTANI, and TESTANI commanded her to stop crying because it was going to mess up her makeup. In addition, whenever CV-1 moved her face from view of the camera, TESTANI yelled at her to put her face back in view of the camera and to stop

crying. He told her that if she kept crying, he would hang up, ruin her life, and send images that he had taken of her to her family and friends. He sent some of these images back to CV-1, demonstrating his ability to carry out the threat.

At one point, TESTANI demanded that CV-1 provide him with the password to her Snapchat account, and CV-1 did so. He directed CV-1 to turn off her geolocation feature (so he could avoid future detection), and expressed anger when he found out that she had not done so.

TESTANI accessed CV-1's account, used it to contact several of CV-1's Snapchat friends, and attempted to solicit those friends for images of themselves (while posing as CV-1).

TESTANI used a Samsung Galaxy S8 cell phone (device ID 089505844001198371) to commit this offense. TESTANI was in the Middle District of Florida when he committed this offense.

In the days and weeks after TESTANI victimized CV-1, he searched the internet for her by name and by her Snapchat account names.

TESTANI's Victimization of Child Victim-2

From a date unknown, but at least from on or about January 30, 2018, through on or about March 16, 2018, in the Middle District of Florida, and elsewhere, the defendant, JUSTIN RICHARD TESTANI, using a facility and

Defendant's Initials JT

means of interstate commerce, that is, the Internet, did knowingly persuade, induce, entice, and coerce, and attempt to persuade, induce, entice, and coerce, Child Victim-2 (CV-2), an individual who had not attained the age of 18 years, to engage in the production of child pornography, in violation of 18 U.S.C. § 2251(a).

From a date unknown, but at least from on or about January 30, 2018, through on or about March 16, 2018, in the Middle District of Florida, and elsewhere, the defendant, JUSTIN RICHARD TESTANI, did employ, use, persuade, induce, entice, and coerce, and attempt to employ, use, persuade, induce, entice, and coerce, a minor, that is, Child Victim-2, to engage in any sexually explicit conduct for the purpose of producing a visual depiction of such conduct and for the purpose of transmitting a live visual depiction of such conduct, knowing and having reason to know that such visual depiction would be transported and transmitted using any means and facility of interstate and foreign commerce, and the visual depiction was produced and transmitted using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, and the visual depiction was actually transported and transmitted using any means and facility of interstate and foreign commerce.

On a date unknown, but no later than on or about January 30, 2018, TESTANI contacted CV-2 through Snapchat. At the time, CV-2 was 11 years old and resided in New York. TESTANI portrayed himself as a female who was approximately 14 years old.

CV-2 told TESTANI that she had never had a sister, and TESTANI started referring to himself as a sister figure to CV-2. Then, at TESTANI's request, CV-2 sent a picture of herself in a bra. After CV-2 sent that picture, TESTANI started threatening her, telling her that if she didn't comply with his demands, he would post her pictures around her social media. TESTANI also threatened to commit acts of violence against her and her family.

On or about January 30, 2018, TESTANI communicated with CV-2 through Snapchat and instructed her to send a video of herself in her underwear. He also instructed her to send a video of herself masturbating. CV-2 was very scared, and she wanted to protect herself and her family, so she did as he said. Below are excerpts of their conversation:

CV-2: Why do you want me to send you a video of it so bad tho
There just underwear
Just remember I'm only 11
Please

TESTANI: I wanna see how they fit on you

CV-2: The ones I have on are to small

TESTANI: Just send

Better no place hand on middle of them like that
Omg they are cuteee
Lay on side in undies I wanna see how they fit on the back
too
Like I said this is between us only
Hard to see lay face down arch but up I csnt see thrn like
that

...
Pull undies a tad lower same pic I want to see if your
shaving correctly

...
And pull undies lower

...
To close up pull lower don't be shy
I told you can trust me
No one knows unless u tell

...
Rub the top of it in vid listen do u shave up on down?
And what kind do you use
Trust me i will never tell anyone nothing

CV-2: idk [I don't know]

TESTANI: Just send sis

CV-2: Can I see your face not off of camera roll?

TESTANI: Yes in a sec if u think I'm fake ima get upset now
Open legs and rub it faster with sound

CV-2: I don't think your fake I was jw [just wondering]

TESTANI: you can soon babe send

CV-2: Why did you me babe lol

TESTANI: Not so close up rub your clit only

CV-2: What's that?

TESTANI: The top of pussy

CV-2: Ok

CV-2 eventually blocked TESTANI under his original username, but he contacted her again weeks later, using a different Snapchat username.

TESTANI reminded CV-2 of the images she had produced at his behest before, and told CV-2 never to block him again. TESTANI ordered CV-2 to show herself moving a hairbrush (and at other times, a thick pen) in and out of her vagina as they live-chatted (which they did multiple times). At one point, TESTANI told CV-2, "It's like your technically losing your virginity with that."

TESTANI also instructed CV-2 to either livestream, or take and send to him videos and photos, as she masturbated. CV-2 complied with numerous of these demands out of fear for her own safety and that of her family.

At one point, TESTANI instructed CV-2 to go into her brother's bedroom and sexually molest him. CV-2 adamantly refused to do so, despite TESTANI's continued threats. TESTANI also threatened to expose CV-2 and hurt her and her family if she ever told anyone about him. She became even more afraid when he demonstrated knowledge about where she lived and requested to meet her nearby.

TESTANI used a Samsung Galaxy S8 cell phone (device ID 089505844001198371) to commit this offense. TESTANI was in the Middle District of Florida when he committed this offense.

At one point, TESTANI instructed CV-2 to provide him with a code that Snapchat had sent to her through text message. She did so, and TESTANI used that code to take over CV-2's Snapchat account. Thereafter, CV-2 lost access to her Snapchat account because TESTANI changed the password and recovery email address for it. Thereafter, beginning on or about March 16, 2018, TESTANI controlled and used CV-2's Snapchat account to contact and victimize other children.

TESTANI's Use of CV-2's Snapchat Account to Contact Other Children

On or about March 3, 2018, TESTANI created and began using the email address Sarahlynn737@gmail.com. His username for that email address was "Sarah Tracie." As noted above, TESTANI took over CV-2's Snapchat account on or about March 16, 2018. Approximately one week later, he used Sarahlynn737@gmail.com to create an Instagram account in the name of "chole."

To create the impression that he (as "chole") was a young girl, TESTANI uploaded to his Instagram profile several photos of a young girl in various poses (including selfies in only her bra and underwear, or in a bikini).

TESTANI then established contact with more than 330 other Instagram users, many of whom were young girls. TESTANI exchanged messages with scores of these young girls.

TESTANI frequently initiated conversations with the young girls through Instagram, sending introductory messages such as, "Hi" or "Random add is that ok?" When girls replied to TESTANI, he would often start flattering them, telling them how pretty they were.

In many Instagram communications, TESTANI (still as "chole") claimed that he was a model for Victoria's Secret PINK (a lingerie and apparel line that targets female youth). He offered to help the girls get their start in modeling, claiming that the work paid well. Often when girls expressed interest, TESTANI requested a body shot (full-length photograph) of the girl wearing only a bra and underwear, explaining that Victoria's Secret modeling involved posing in lingerie.

To learn facts that would help him make his persona (as a young girl who models for Victoria's Secret PINK) more realistic, TESTANI searched the internet for:

- "behind scenes vs pink";
- "VS pink photoshoot document paper";
- "agency's for VS pink";

- “what is Victoria secret pink modeling agency”;
- “fake employment verification for pink”;
- “fake VS pink gift card”;
- “Victoria’s Secret proof of employment”; and
- “Victoria’s Secret recruiter badge.”

TESTANI also searched the internet for “kids modeling underwear,” “girls being violated at model agency,” “model agency gone wrong,” and “model agency gone wrong porn.”

In numerous chats, TESTANI (as “chole”) tried to convince the girls to switch to Snapchat to continue their conversation. In doing so, TESTANI referred the girls to CV-2’s Snapchat account (which he had taken over approximately one week earlier).

In the meantime, TESTANI actively used CV-2’s Snapchat account to communicate with many young girls. There, too, he claimed to be a Victoria’s Secret PINK model and urged the other girls to send him pictures of themselves, often advising them that they could make a lot of money in the modeling industry. TESTANI used CV-2’s Snapchat account to communicate with young girls (while posing as a young girl himself) for months, until at least August 2018.

TESTANI's Victimization of Child Victim-3

On or about August 28, 2018, in the Middle District of Florida, and elsewhere, the defendant, JUSTIN RICHARD TESTANI, using a facility and means of interstate commerce, that is, the Internet, did knowingly persuade, induce, entice, and coerce, and attempt to persuade, induce, entice, and coerce, Child Victim-3 (CV-3), an individual who had not attained the age of 18 years, to engage in the production of child pornography, in violation of 18 U.S.C. § 2251(a).

On or about August 28, 2018, in the Middle District of Florida, and elsewhere, the defendant, JUSTIN RICHARD TESTANI, did employ, use, persuade, induce, entice, and coerce, and attempt to employ, use, persuade, induce, entice, and coerce, a minor, that is, Child Victim-3, to engage in any sexually explicit conduct for the purpose of producing a visual depiction of such conduct and for the purpose of transmitting a live visual depiction of such conduct, knowing and having reason to know that such visual depiction would be transported and transmitted using any means and facility of interstate and foreign commerce, and the visual depiction was produced and transmitted using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by

computer, and the visual depiction was actually transported and transmitted using any means and facility of interstate and foreign commerce.

On or about August 28, 2018, TESTANI contacted CV-3 through Instagram. At the time, CV-3 had just turned 12 years old and lived in Michigan. TESTANI posed as a female and asked if CV-3 wanted to make money through modeling. When CV-3 expressed interest, TESTANI convinced CV-3 to send pictures of herself in a sports bra and leggings. TESTANI then persuaded CV-3 to send pictures that included her face, and convinced her to continue their conversation on Snapchat. TESTANI used CV-2's account to communicate with CV-3 on Snapchat.

During their conversation on Snapchat, TESTANI asked CV-3 to take and send him nude images of herself. After CV-3 refused, TESTANI told CV-3 he would post her pictures on the internet, track her down, and kill her and her family. CV-3 then complied and sent several images showing herself posing in provocative positions with her breast or genitals exposed.

TESTANI then said CV-3 had to talk to "her" (i.e. TESTANI's) friend on videochat in order to "complete" the modeling "deal." Again, TESTANI threatened to post CV-3's photos and harm her if she did not comply. At that point, TESTANI (posing as someone else) contacted CV-3 with a different

Snapchat username. TESTANI's screen was black, so CV-3 could not see who was on the other end.

TESTANI commanded CV-3 to take numerous videos of her whole body naked. CV-3 complied because of the threats she had previously received. Eventually, CV-3 hung up on TESTANI. The last thing TESTANI said to her was, "I'm going to post everything on social media. Have fun."

TESTANI used a Samsung Galaxy S9+ (IMEI: 355418090519690) to commit this offense. TESTANI was in the Middle District of Florida when he committed this offense.

TESTANI's Victimization of Child Victim-4

On or about January 22, 2019, in the Middle District of Florida, and elsewhere, the defendant, JUSTIN RICHARD TESTANI, using a facility and means of interstate commerce, that is, the Internet, did knowingly persuade, induce, entice, and coerce, and attempt to persuade, induce, entice, and coerce, Child Victim-4, an individual who had not attained the age of 18 years, to engage in the production of child pornography, in violation of 18 U.S.C. § 2251(a).

On or about January 22, 2019, in the Middle District of Florida, and elsewhere, the defendant, JUSTIN RICHARD TESTANI, did employ, use, persuade, induce, entice, and coerce, and attempt to employ, use, persuade,

induce, entice, and coerce, a minor, that is, Child Victim-4 (CV-4), to engage in any sexually explicit conduct for the purpose of producing a visual depiction of such conduct and for the purpose of transmitting a live visual depiction of such conduct, knowing and having reason to know that such visual depiction would be transported and transmitted using any means and facility of interstate and foreign commerce, and the visual depiction was produced and transmitted using materials that had been mailed, shipped, and transported in and affecting interstate and foreign commerce by any means, including by computer, and the visual depiction was actually transported and transmitted using any means and facility of interstate and foreign commerce.

In or about January 2019, one of CV-4's Snapchat friends, Olivia, asked CV-4 to "friend" someone named "Sarah" through Snapchat. Olivia told CV-4 that "Sarah" was a young model for Victoria's Secret. "Sarah" was actually TESTANI. CV-4 was 11 years old and lived in California.

TESTANI (as "Sarah") communicated with CV-4 through Snapchat, and talked with CV-4 about becoming a model for Victoria's Secret PINK. TESTANI told CV-4 that he ("Sarah") was 14 years old, and CV-4 told him that she was 11 years old. TESTANI asked CV-4 to send clothed images of herself. CV-4 complied.

As the conversation continued, TESTANI requested that CV-4 send more risqué pictures of herself. CV-4 again complied. TESTANI ordered CV-4 to send pictures of herself naked, and told her, "You have to send me more, if not, I'm gonna post it everywhere." CV-4 did as he said because she was scared.

TESTANI started telling CV-4 to produce and send to him videos and images of herself masturbating. CV-4 told TESTANI that she would not produce any nude images or images of herself engaging in sexual acts.

TESTANI responded by threatening CV-4, and telling CV-4 that he would send out the pictures he had of CV-4 to all the friends that CV-4 had previously provided to him (as "Sarah").

CV-4 then complied with TESTANI's demands and produced and sent him numerous images of herself in the nude and performing sexual acts such as masturbation. TESTANI also instructed CV-4 to put a hairbrush in her mouth and in her vagina, and threatened to disseminate CV-4's photos if she did not comply. CV-4 complied because she was nervous and scared. At one point, CV-4 asked TESTANI when this was going to end, and TESTANI told her not to ask that, or he would post CV-4's pictures.

Defendant's Initials JT

TESTANI used a Samsung Galaxy S9+ (IMEI: 355418090519690) to commit this offense. TESTANI was in the Middle District of Florida when he committed this offense.