NO. 22-

IN THE
SUPREME COURT OF THE UNITED STATES

DKYLE BRIDGES

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Did the automobile exception to the Fourth Amendment justify the warrantless search of Petitioner's vehicle, which had in plain view only innocuous objects–i.e., cell phones and condoms–that could not have given rise to a reasonable belief that it contained evidence of sex trafficking?

2. By what standard of review should a Court of Appeals consider a District Court's denial of a *Franks* hearing?

3. Did the District Court violate Petitioner's constitutional right to confront witnesses against him by admitting into evidence testimonial hearsay?

4. Did the District Court commit a procedural error of law by failing to adequately consider all of the factors required for sentencing pursuant to 18 U.S.C. § 3553(a)?

PARTIES BELOW

The parties before the Court of Appeals for the Third Circuit were as follows:

1. The Petitioner, Dkyle Bridges, was represented by Luther E. Weaver, III, of the law firm of Weaver & Associates, P.C., 123 S. Broad Street, Suite 2102, Philadelphia PA, 19109. Attorney Weaver was appointed to represent the Petitioner pursuant to the Criminal Justice Act.

2. The United States of America was represented by Jennifer A. Williams, then the United States Attorney for the Eastern District of Pennsylvania,, Robert A. Zauzmer, Assistant United States Attorney and Chief of Appeals, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106. and Jessica A. Urban, Trial Attorney, Child Exploitation and Obscenity Section, U.S. Department of Justice.

RELATED CASES

United States v. Anthony Jones, United States Court of Appeals for the Third Circuit, Docket No. 22-2064 (Appeal of co-defendant, pending)

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CITATIONS OF THE OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS ENTERED IN THE CASE

Order of the United States District Court for the Eastern District of Pennsylvania, Docket No. 2:18-cr-00193-NIQA, filed March 19, 2019, denying Petitioner's Motion to Suppress physical evidence. (A. 39a)

Order of the United States District Court for the Eastern District of Pennsylvania, Docket No. 2:18-cr-00193-NIQA, filed March 20, 2019, denying Petitioner's Motion to Suppress all physical evidence obtained from the July 12, 2017 search of the 2013 Ford Taurus. (A. 43a)

Opinion of the United States Court of Appeals for the Third Circuit, filed September 15, 2022, denying Petitioner's appeal. (A-5a) This Opinion is informally reported at *United States v. Bridges*, No. 21-1679, 2022 U.S. App. LEXIS 25847 (3d Cir. Sep. 15, 2022) (A. 3a)

Judgment of the United States Court of Appeals for the Third Circuit filed September 15, 2022. (A. 1a)

CONCISE STATEMENT OF THE BASIS FOR JURISDICTION

The jurisdiction of the United States Supreme Court in this matter is pursuant to 28 U.S.C. §1254. The judgment of the United States Court of Appeals for the Third Circuit was entered on September 15, 2022. (A. 1a).

Pursuant to Rule 13 of the Rules of the United States Supreme Court, this Petition was required to be filed within ninety (90) days of the filing of the judgment, or by December 14, 2022. Therefore, this Petition has been timely filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime may have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

CONCISE STATEMENT OF THE CASE

On November 1, 2018, the Government filed a six-count Superseding Indictment charging Petitioner and two others with various federal sex offenses, including Conspiracy to engage in sex trafficking via force, fraud, and coercion, and in the sex trafficking of minors, 18 U.S.C. § 1594(c) (Count One); Sex Trafficking via force, fraud, and coercion, 18 U.S.C. §§ 1591(a)(1), (b)(1) (Counts Two and Three); Sex Trafficking of minors and via force, fraud, and coercion, 18 U.S.C. §§ 1591(a)(1), (b)(1), (b)(2), (c) (Counts Four, Five and Six); and with aiding and abetting, 18 U.S.C. § 2. Each of the substantive counts of the Indictment, Counts Two through Six, related to five specific individual victims of the alleged conspiracy. Count Two related to Victim "Z.W.," Count Three related to Victim "J.S.," Count Four related to Victim "B.T.," Count Five related to Victim "N.G.," and Count Six related to Victim "L.C." A Notice of forfeiture was filed. (A. 44a).

The case was assigned to the Honorable Nitza I. Quinones Alejandro, United States District Court judge.

On November 14, 2018, Petitioner was arraigned on the Superseding Indictment. He pled not guilty to all counts.

Relevant Pretrial Proceedings

1. Motion to Suppress Physical Evidence

On October 19, 2018, Petitioner filed a Motion to Suppress Physical Evidence that was seized from a 2013 Ford Taurus on July 12, 2017. On November 2, 2018, the Government filed a Response in Opposition to the Motion.

A hearing on the Motion to Suppress was held on February 15, 2019. On February 28, 2019, post-hearing briefs on the suppression issue were filed by Petitioner and by the Government.

On March 19, 2019 and on March 20, 2019, the District Court issued two separate orders denying Petitioner's Motion to Suppress. (A. 39a-43a), and evidence seized from the car was introduced during Petitioner's trial.

2. Motion For a *Franks* hearing

On January 18, 2019, Petitioner filed a Motion to Conduct a *Franks* hearing. A hearing on pretrial motions was held on January 23, 2019. The *Franks* Motion was argued by Petitioner's trial counsel: "Defense Counsel addressed the Court, re: Defendant Bridges' Motion to Conduct Franks Hearing."

On January 31, 2019, the District Court entered an order appearing to grant the *Franks* hearing request and scheduling it for February 14, 2019.

On February 12, 2019, the Government filed a Response in Opposition to Petitioner's *Franks* Motion.

The *Franks* issue was argued again during a motions hearing on February 15, 2019, where docket entry No. 153, states: "Defense counsel addressed the Court, re: Defendant Bridges' Motion to Conduct *Franks* Hearing (Doc No 121)."

On March 20, 2019, the District Court entered an order denying Petitioner's suppression motion. The Order incorrectly states that Petitioner's suppression motion was made "pursuant to *Franks v. Delaware*." (A. 43a). It is unclear whether

the court intended to deny both the suppression motion and the motion for a *Franks* hearing.

Trial

A jury trial began on March 22, 2019. J.S., Z.W. and N.G. testified at the trial, but B.T. and L.C. did not. However, testimonial statements of the latter two victims, as well as from other witnesses who did not testify, were introduced into evidence during the course of the trial. Petitioner was not provided with the opportunity to cross-examine these witnesses, and no demonstration of their unavailability appears on the record.

On April 10, 2019, the jury found Petitioner guilty on all counts.

Sentencing

On March 29, 2021, the District Court conduced a sentencing hearing, at which Petitioner objected to Paragraph 115 of the Presentence Investigation Report, p. 23, regarding his local theft conviction, being counted as a part of his Criminal History Score pursuant to U.S.S.G. § 4A1.1(c), on the ground that this offense did not constitute a prior sentence for Guideline purposes, as defined by U.S.S.G. § 4A1.2(a)(1).

After considering those objections and argument from counsel, the District Court imposed a sentence of 420 months on each of Counts 1 through 6, to be served concurrently, for a total of 35 years of incarceration. Petitioner was also ordered to be placed on 10 years of supervised release on each count to be served concurrently.

Financial penalties were also imposed: a $600.00 special assessment and restitution in the amount of $53,000 and $30,000. (A. 31a-37a).

Petitioner's counsel objected to the sentence imposed as being substantively unreasonable and placed several procedural error objections to the sentence on the record before the close of the hearing.

Appeal

On April 7, 2021, Petitioner filed a Notice of Appeal to the Third Circuit Court of Appeals. (A. 27a).

On September 15, 2022, the Third Circuit filed an Opinion affirming the judgment and sentence of the District Court. (A. 3a-24a)

REASONS FOR GRANTING THE WRIT

I. The warrantless search of Petitioner's vehicle was not justified by the automobile exception to the Fourth Amendment because when the police detained him, there was in plain view only innocuous objects–i.e., cell phones and condoms–that could not have given rise to a reasonable belief that his car contained evidence of sex trafficking.

This case asks the compelling issue that merits review by this Court whether the warrantless search of Petitioner's vehicle was justified by the automobile exception to the Fourth Amendment. The Third Circuit held that the police were justified in believing that the vehicle contained evidence of sex trafficking because while detaining Petitioner for sex trafficking, they saw in plain view inside his vehicle cellphones and boxes of condoms. "This pre-existing suspicion combined with the objects in plain view in the vehicle gave rise to probable cause to believe that the vehicle contains evidence of sex trafficking." (A. 8a) This decision raises the issue whether unobjectionable and benign objects found in plain view can give rise to probable cause that the vehicle contained evidence of criminal behavior. The panel decision of the Third Circuit decided an important question of federal law that has not been but should be settled by this Court. Therefore, under Sup. Ct. R. 10(c), this issue is of the "character" that this Court considers.

During the suppression hearing, the Government relied upon a Police Directive, based upon a Pennsylvania statute, to justify the impoundment of the car, which as demonstrated below, was inapplicable. Special Agent Jackson testified that while conducting a sting operation at the Motel 6 in Northeast Philadelphia, he saw a black Ford Taurus with Delaware tags parked in the motel parking lot. From

prior investigation, he believed that Petitioner might be inside, so he and the other officers converged on it and ordered the two occupants, Petitioner and a woman, to exit the vehicle. They demanded that both produce identification, but after learning that Petitioner's license was suspended, they impounded the vehicle solely for that reason pursuant to a departmental policy. After being impounded, the vehicle was subjected to an inventory search.

The Philadelphia police department relied upon its "Live Stop" Program, Directive 92, promulgated on June 23, 2010, which states that according to the Pennsylvania Vehicle Code § 6309.2, any vehicle may be impounded when it is determined, during a lawful vehicle investigation that the operator is in violation of several statutes, including "§1543(a) --Driving While Operating Privilege is Suspended or Revoked."

The police Directive purportedly relies upon 75 Pa.C.S. § 6309.2. However, this statute only applies if an individual "operates a motor vehicle or combination on a highway or trafficway of this Commonwealth." 75 Pa.C.S. § 6309.2(a)(2). There was no evidence presented that Petitioner had done so. Therefore, the police were not at liberty to impound the vehicle.

Also, subsection (a)(1) of the statute only permits the police to "immobilize" a vehicle if the license of the "operator" has, *inter alia*, been suspended. The only exception to this rule is if the "interest of public safety" would so demand, i.e., the vehicle poses public safety concerns warranting its towing and storage at an impound lot. *Commonwealth v. Lagenella*, 623 Pa. 434, 446, 83 A.3d 94, 101 (2013).

The record reflects no public safety concerns that would justify the vehicle's towing to and storage in an impound lot. See, e.g., *Commonwealth v. Peak*, 230 A.3d 1220, 1227 (Pa. Super. 2020) (vehicle stopped in front of a gas pump, obstructing the business therein). Therefore, the police were not permitted to impound it, and the vehicle was not properly within their lawful custody while and after being towed away.

In *Lagenella,* the Pennsylvania Supreme Court noted that the statute provides that one who operates a vehicle while his license is suspended—thus rendering towing unnecessary—can appear before the "appropriate judicial authority," to seek release. 75 Pa.C.S. § 6309.2(b). If 24 hours elapses and the operator does not make such an application, then the "judicial authority" will notify the police, who will contact the appropriate towing and storage agent to tow the vehicle. 75 Pa.C.S. § 6309.2(c). The *Lagenella* Court observed: "Thus, upon immobilization, the vehicle's operator may seek release of the vehicle from the judicial authority, not the police; and only upon the vehicle operator's failure to obtain a certification of release within 24 hours will the judicial authority notify law enforcement, who, at that time, shall arrange for the towing and storage of the vehicle. These procedures indicate that a vehicle that is simply immobilized is not within the lawful custody of the police." *Lagenella*, 83 A.3d at 105. Therefore, the police may conduct a warrantless search only of a vehicle that has been **lawfully** impounded. If the impoundment was unlawful, then no search may occur.

The District Court attempted to sidestep these issues by holding that when the police ordered Petitioner and his female companion out of the car, they conducted a valid *Terry* stop[1], which was supported by a reasonable articulable suspicion that criminal activity was afoot. (A. 40a, fn. 1, p. 2). This reasoning is mistaken. In *United States v. Hester*, 910 F.3d 78 (3d Cir. 2018), the Third Circuit held that a traffic stop is a seizure of everyone in the stopped vehicle. Assuming that the police in this case engaged in a "traffic" stop, they would be required to support it by "reasonable, articulable suspicion that criminal activity [wa]s afoot[.]" *Id.* at 87. Even if, for the sake of argument, one were to assume that the police had such reasonable articulable suspicion, the *Terry* stop would justify only the search of the people involved. It would not justify the seizure and search of the vehicle itself. *United States v. Rickus*, 737 F.2d 360 (3d Cir. 1984) (A search of a passenger compartment cannot be justified by the mere reasonable suspicion that validates an investigatory stop).

The search of Petitioner and his female companion did not lead to any evidence demonstrating that they were armed and dangerous or were involved in sex trafficking. Indeed, Petitioner was not arrested or charged with any crime. Rather, he was released. Almost a year passed before formal charges were brought against him.

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[1] *Terry v. Ohio*, 392 U.S. 1 (1968).

The District Court further held–and the Third Circuit agreed–that a warrant would not be necessary because the automobile exception to the Fourth Amendment permits vehicle searches without a warrant if the officer has probable cause to believe that the vehicle contains evidence of a crime. (A. 41a, fn. 1, p. 3, citing *United States v. Donahue*, 764 F.3d 293 (3d Cir. 2014)). Under the automobile exception, a vehicle may be searched without a warrant when evidence or contraband may possibly be removed from the scene due to the mobility of a vehicle, and it is not practical to secure a warrant without jeopardizing the potential loss of evidence. For instance, the automobile exception allows an officer to make a warrantless traffic stop and search a trunk of a vehicle when gun parts were observed in plain view on the front seat of the vehicle. Alternatively, the officer may be able to establish probable cause based upon a tip by a reliable confidential informant. See, e.g., *Maryland v. Dyson,* 517 U.S. 465 (1999) (evidence from confidential informant that defendant had gone to buy drugs and would return in a car with a specific license plate).

Here, however, the police only knew that Petitioner was alleged to be involved in the prostitution trade. They had no reason to believe that the car he was in had any contraband or any specific evidence that might lead to an arrest. Indeed, the District Court did not point to the phones and condoms as justifying the belief that the vehicle contained evidence. The Government did not present any evidence at the suppression hearing demonstrating that any of the officers had probable cause to believe that the vehicle contained evidence of a crime. Indeed, Agent Jackson

testified that as soon as it was learned that Petitioner's license was suspended, his car was impounded. The police then went down that road rather than justify the search by invoking the automobile exception. The District Court mentioned the automobile exception only in passing. The Third Circuit moved that exception out of the shadows and placed it front and center in support of its affirmance of the denial of the suppression motion.

In so doing, it stumbled into an area of the law that requires clarification by this Court. Under the plain view doctrine, "if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant." *Minnesota v. Dickerson*, 508 U.S. 366, 375 (1993). In order for the object's incriminating character to be immediately apparent, the police must have probable cause to believe the object is contraband without conducting a further search. *Id.* Documents may be immediately apparent as incriminating if an officer's brief glance can confirm that they are evidence of criminal activity. See *United States v. Menon*, 24 F.3d 550, 563 (3d Cir. 1994). Further, police officers have a lawful right of access to "that portion of the interior of an automobile which maybe viewed from outside the vehicle by either inquisitive passersby or diligent police officers." *Texas v. Brown*, 460 U.S. 730, 740 (1983). In the case at bar, a brief glance did not show that the objects in plain view–i.e., cellphones and condoms–were evidence of criminal activity.

Absent their view of these objects, the officers in the case at bar had no probable cause to believe that Petitioner's vehicle contained evidence of a crime. The Third Circuit conflated the "automobile" exception with the "plain-view" exception and, in so doing, misapplied both. This case raises the issue of what types of evidence that are in "plain view" might be applicable to invoke the "automobile" exception. This Court has not had the opportunity to flesh out the contours of the evidence. Under the "plain-view" exception, the Government's attempt to justify the search must necessarily fail because the incriminating nature of the objects was not immediately apparent. This Court should grant certiorari to determine whether such evidence might serve to provide a factual basis for the invocation of the "automobile" exception.

II. This Court should grant certiorari to resolve the circuit split concerning the standard of review to be employed by a Court of Appeals when considering a District Court's denial of a hearing pursuant to *Franks v. Delaware.*

This Court should grant certiorari to resolve the circuit split concerning the standard of review to be employed by a Court of Appeals when considering a District Court's denial of a hearing pursuant to *Franks v. Delaware,* 438 U.S. 154 (1978). Instead of addressing the correct standard of review, the Third Circuit cited *United States v. Desu,* 23 F.4th 224, 235 (3d Cir. 2022) for the proposition that it "review[s] for clear error a **district court's determination** regarding whether false statements in a warrant application were made with reckless disregard for the truth." (A. 9a) However, the panel that considered Petitioner's appeal identified the incorrect standard because the District Court judge never ruled on the *Franks* issue. Therefore, she denied the request for a motion *sub silentio.* The issue before the Third Circuit and, in turn, before this Court, is the appropriate standard to be applied in an appeal from a **denial** of a *Franks* motion. The Circuits are split on this issue, so under Sup. Ct. R. 10(a), this issue is of the "character" that this Court considers.

A. The District Court judge never ruled on Petitioner's *Franks* motion and, thereby denied it *sub silentio.*

On January 18, 2019, Defendant made a motion for a *Franks* hearing. [ECF 121] On January 23, 2019, the District Court judge conducted a conference, which has never been transcribed. The minute entry on the docket indicate that the

parties discussed the motion. [ECF 123] On January 31, 2019, the District Court judge entered an order granting the *Franks* hearing and scheduling it for February 14, 2019. [ECF 133] On February 12, 2019, the Government filed a written response to Defendant's motion for a Franks hearing. [ECF 147]

On February 14 and 15, 2019, the District Court conducted a suppression motion hearing. At the end of the February 15, 2019 hearing, counsel for Bridges mentioned the outstanding *Franks* motion. [N.T. 2/15/19, p. 151] The District Court judge stated her belief that the motion has "been addressed to a certain degree" and invited argument. [*Id.*] Defense counsel noted that the Government relied primarily upon *United States v. Brown,* a case he distinguished, arguing that the FBI agent conducted no independent investigation about the reliability of the informant, Karen Allen. Since the FBI had no reason to believe that Ms. Allen was reliable, there was an issue that required a hearing. [N.T. 2/15/19, pp. 152-158]

The District Court judge's rulings are confusing; either she never ruled on the *Franks* issue or she denied the request for a hearing. In either event, the Third Circuit incorrectly invoked the standard of review to be employed when considering a district court's determinations considering the truth or falsity of statements made in a warrant application and its substantial-basis review of a magistrate judge's probable cause determination. The Third Circuit should have considered the standard of review to be employed when considering the **denial** of a *Franks* hearing.

B. The circuits are split on the issue of what standard of review is to be applied by a Court of Appeals when considering a District Court's denial of a *Franks* hearing.

The circuits are split on the issue of the appropriate standard of review to be employed in an appeal from the denial of a *Franks* hearing. According to *United States v. Pavulak*, 700 F.3d 651, 665 (3d Cir. 2012), the Fourth, Fifth, and Ninth Circuits employ a mixed standard, reviewing legal determinations de novo and any supporting factual findings for clear error. See *United States v. Allen*, 631 F.3d 164, 171 (4th Cir. 2011); *United States v. Martin*, 332 F.3d 827, 833 (5th Cir. 2003); *United States v. Chavez-Miranda*, 306 F.3d 973, 979 (9th Cir. 2002). By contrast, the First, Sixth, and Seventh Circuits review a district court's decision for clear error, though it is unclear to what extent that clear-error review maps onto the Fourth, Fifth, and Ninth Circuits' mixed standard. *See United States v. Smith*, 576 F.3d 762, 764 (7th Cir. 2009); *United States v. Reiner*, 500 F.3d 10, 14 (1st Cir. 2007); *United States v. Stewart*, 306 F.3d 295, 304 (6th Cir. 2002). The Second Circuit has apparently sided with mixed review, though then-Judge Sotomayor questioned the validity of that choice. Compare *United States v. Cahill*, 355 F. App'x 563, 565 (2d Cir. 2009) (reviewing factual findings supporting the denial of a *Franks* hearing for clear error), and *United States v. One Parcel of Property Located at 15 Black Ledge*, 897 F.2d 97, 100 (2d Cir. 1990) (same), with *United States v. Falso*, 544 F.3d 110, 126 n.21 (2d Cir. 2008) (Sotomayor, J.) (questioning the propriety of clear-error review and noting that the Second Circuit has not "explain[ed] why that was the appropriate standard"). Meanwhile, the Eighth

Circuit has carved its own path, reviewing the district court's decision for abuse of discretion. See *United States v. Kattaria*, 553 F.3d 1171, 1177 (8th Cir. 2009) (en banc) (per curiam). The Eleventh Circuit and D.C. Circuit have not yet decided what standard to use. See *United States v. Becton*, 601 F.3d 588, 594(D.C. Cir. 2010) (bypassing the need to adopt a standard); *United States v. Sarras*, 575 F.3d 1191, 1219 n.37 (11th Cir. 2009) (same, though noting that a district court's decision to deny an evidentiary hearing on a motion to suppress is normally reviewed for abuse of discretion).

C. The District Court should have conducted a *Franks* hearing because the affidavit submitted in support of the search warrant contains materially false statements.

The District Court should have conducted a *Franks* hearing because the affidavit submitted in support of the search warrant application to search the Ford Taurus contains materially false statements or statements made with reckless disregard for the truth and omits information that should have been made available to U.S. Magistrate Judge before he issued the warrant. The affidavit of FBI Agent Nicholas Grill, avers:

> 5. One or about June 20, 2017, the FBI received information from a confidential source (CS) who wished to remain anonymous that a young woman was being trafficked by BRIDGES. The young woman will be identified herein as Victim #3 (V3), who law enforcement knows to have been involved in prostitution as a minor. CS stated that BRIDGES is very violent towards V3 and that V3. has known BRIDGES since she was 16 years old. BRIDGES has hit her in the face and even dragged her from a moving car which left wounds all over her back and legs. BRIDGES is further alleged to have kicked V3

> out of a moving car while in Philadelphia during the winter months without any pants and left her there. CS has stated that BRIDGES has forced V3 to perform oral sex on him. BRIDGES is also alleged to have threatened the life of V3's mother and threatened to kidnap family members if the mother tried to get her daughter back from him. CS has stated that BRIDGES has multiple girls working for him, and he pimps them out in multiple states. CS provided telephone number (302) 438-1959 for V3.

In his Motion for a *Franks* hearing, Petitioner denied each of these statements. Furthermore, as attached to the Motion, Victim #3 denied them and had sworn in an affidavit stating that she did not work for Petitioner and knew of no other women who did.

In *Franks v. Delaware*, 438 U.S. 154 (1978), this Court held that:

> [w]here the defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment requires that a hearing be held at the defendant's request. In the event that at that hearing the allegation of perjury or reckless disregard is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit.

Id. at 155-156.

Inclusion of material misrepresentations constitutes false statements under *Franks*. *Wilson v. Russo*, 212 F.3d 781, 783 (3d Cir. 2002); *United States v. Wells*,

223 F.3d 835, 839 (8th Cir. 2002) (noting that the affidavit contained a material misstatement, when officer alleged that the defendant's twelve year old dark blue Buick matched the description of the suspect vehicle, when the witness had described the suspect vehicle as new dark green or black Lincoln); *Sherwood v. Mulvill*, 113 F.3d 396, 399 (3d Cir. 1997) (Officers falsified affidavit to conceal the fact that drugs were purchased not by an informant, but by an unwitting participant in the transaction); *United States v. Frost*, 999 F.2d 737, 742, n.2 (3d Cir. 1993); *United States v. Calisto*, 838 F.2d 711 (3d Cir. 1988); *United States v. Stanert*, 762 F.2d 775, 782 (9th Cir. 1985) (Defendant was entitled to an evidentiary hearing based on preliminary showing of inaccuracies and omissions in the search warrant affidavit), amended by, 769 F.2d 1410 (9th Cir. 1985); *United States v. Baxter*, 889 F.2d 731, 733 (6th Cir. 1989).

In *United States v. Yusef*, 461 F.3d 374 (3d Cir. 2006), the Third Circuit held as follows:

> In evaluating a claim that an officer both asserted and omitted facts with reckless disregard for the truth, we hold that: (1) omissions are made with reckless disregard for the truth when an officer recklessly omits facts that any reasonable person would want to know; and (2) assertions are made with reckless disregard for the truth when an officer has obvious reasons to doubt the truth of what he or she is asserting.

Id. at 383; (quoting *Wilson v. Russo*, 212 F.3d 781, 783 (3d Cir. 2000)).

Here, the Government allegedly relied upon an anonymous confidential source, or informant, that provided the foundation of the information to support the

warrant. The Third Circuit has held that "informants are not presumed to be credible, and the Government is generally required to show by the totality of the circumstances either that the informant has provided reliable information in the past or that the information has been corroborated through independent investigation. *United States, v. Ritter*, 416 F.3d 256, 263 (3rd Cir. 2005). There is no information contained within the affidavit that this source is reliable because of previous credible information. According to the affidavit, the source is anonymous and no additional information supports her credibility.

However, in its November 2, 2018-filing, the Government's Omnibus Response to Defense Motions, the Government revealed that the confidential source was not anonymous as the affidavit avers. According to footnote #5 on page 14, "B.T.'s mother was referred to as an anonymous confidential source in the affidavit in order to protect her identity from disclosure as long as possible." The agents deliberately omitted/withheld this information from the judicial magistrate, thus showing a reckless, if not intentional, disregard for the truth. This information was of critical importance, as the judicial magistrate may view information from an interested and closely connected family member quite differently from a confidential informant who may have an ongoing relationship with law enforcement.

The District Court was also informed via the Motion that on July 27, 2018, the CS and Victim # 3 exchanged several audio text messages. In those messages, the CS contradicts that she had any direct knowledge of Petitioner engaging in sex

trafficking, being violent towards Victim # 3, threatening her or pimping out other girls, as the affidavit reflects.[2]

In determining probable cause, courts have consistently recognized the value of corroboration by independent police work. *Illinois v. Gates*, 462 U.S. 213, 240 (1982). The text messages highlight the lack of independent police investigation.

Petitioner made a substantial preliminary showing that a false statement knowingly and intentionally made, or made with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and that the false statement was necessary to the finding of probable cause. The Fourth Amendment required that a hearing be held. *Franks*. at 155-156. The District Court failed to address the issue.

This Court should, therefore, grant a Writ of Certiorari.

[2] She also testified to a lack of direct knowledge at trial.

III. The District Court violated Petitioner's constitutional right to confront the witnesses against him at trial by admitting into evidence testimonial hearsay.

The District Court violated Petitioner's Constitutional Right to Confront the Witnesses Against Him at Trial by admitting into evidence testimonial hearsay. In *Crawford v. Washington*, 541 U.S. 36, 54 (2004), this Court held that the Sixth Amendment's Confrontation Clause "prohibits the introduction of testimonial statements by a nontestifying witness, unless the witness is 'unavailable to testify, and the defendant had had a prior opportunity for cross-examination.'" *Id.* at 54. The Confrontation Clause does not bar the introduction of a statement "unless its primary purpose was testimonial." *Id.* at 245.

Ex parte examinations and interrogations used as a functional equivalent for in-court testimony are the "core class of 'testimonial' statements" that directly implicate the right of confrontation. *Crawford*, 541 U.S. 36 at 68. When a statement does not fall within this "core class," it is still testimonial if it was taken with the primary purpose of creating an out-of-court substitute for trial testimony. *Michigan v. Bryant*, 562 U.S. 344, 358 (2011). The court should analyze the circumstances in which the statement was taken to assess what reasonable participants would perceive the primary purpose to be. *Ohio v. Clark*, 576 U.S. 237 (2016).

Each of the substantive counts of the Indictment name five separate victims of the charged conspiracy: "Z.W." (Count Two), "J.S." (Count Three), "B.T." (Count Four), "N.G." (Count Five) and "L.C." (Count Six). Victims J.S., Z.W. and N.G. testified at trial, Victims B.T. and L.C. did not. However, testimonial statements of

these two victims, as well as from other witnesses who did not testify, were introduced into evidence during the course of the trial. Furthermore, testimonial hearsay statements from a prostitution customer were introduced into evidence through a police officer over the objections of defense counsel.

1. H.N.'s statements to Officer Lis.

Officer Lis, a Tinicum police officer, testified about statements made by H.N., who was stopped and questioned following a commercial sexual encounter. Officer Lis testified that H.N. told him that H.N. had solicited prostitution services by responding to an advertisement from Backpage and that such services were performed at the Motel 6. The Third Circuit incorrectly held that the District Court's allowance of this testimony should be held to a "plain error" standard because trial counsel failed to object, holding that "[a]lthough H.N.'s statements were testimonial, the District Court did not plainly err in admitting Officer Lis's testimony. *See United States v. Dukagjini*, 326 F.3d 45, 59 (2d Cir. 2003) (where a defendant "failed to preserve [his] objection to the Confrontation Clause violation . . . , we evaluate the district court's admission of testimony in violation of the Confrontation Clause for plain error")." (A. 14a-15a)

In fact, the record plainly shows that trial counsel did, in fact, object to this testimony:

> P/O Lis: . . . Once I gathered the marijuana from the vehicle, I proceeded to talk to Mr. Nim about his whereabouts prior at the Motel 6, which at that point in time he did admit to me everything that

happened at the Motel 6.
MR. SKIPPER: Objection as to what Mr. Nim said, Your Honor.
THE COURT: Overruled.
BY MS. URBAN:
Q. Let me break in with a question there. What was it that Mr. Nim said about what he had been doing?
A. He proceeded to --
MR. SKIPPER: Objection, Your Honor.
THE COURT: I overruled it

Defense counsel objected, but the District Court overruled that objection. This Court should agree that Petitioner suffered the loss of his constitutional right to cross-examine H.N.

2. Z.W.'s testimony recounting B.T.'s statements.

At trial, during direct testimony of Z.W., who was named as a victim in Count Two, the Government elicited testimony that B.T., who was named as a victim in Count Four but did not testify, told Z.W. that she was only 16 years old, one of the elements which had to be met by the Government. Defense counsel objected to this testimony, but the District Court overruled that objection.

Although Petitioner's appellate counsel raised this issue in his brief, the Third Circuit did not address it. This Court should agree that Petitioner suffered the loss of his constitutional right to cross-examine Z.W.

3. Statements by B.T., L.C. and N.G. to law enforcement.

On April 3, 2019, the Government called Corporal Joseph Kendrick of the Newark, Delaware Police Department as a witness. Corporal Kendrick testified to

arresting B.T. and another female on November 23, 2016 for prostitution. After her arrest, B.T. was interviewed by police. Corporal Kendrick testified that during the interview, B.T. provided the name of her ex-boyfriend and his telephone number, which the police checked against a police database and discovered that the name of her boyfriend was Petitioner.

On April 5, 2021, during direct examination, the Government elicited from FBI Agent C.J. Jackson that when B.T. was interviewed following her arrest on November 23, 2016, in Newark, Delaware, he testified that "... and it was the name of Dkyle Bridges was mentioned in interview." Trial counsel's objection to this testimony was overruled.

On April 8, 2021, during redirect examination, the Government elicited from FBI agent C.J. Jackson the fact that statements were taken from L.C. and N.G. by the police after they were arrested on November 15, 2016, for prostitution. The following testimony was permitted by the trial court:

> Q. And to be clear than, have you heard on the recorded video that she had said that someone other than the friend of Kris had driven her?
>
> A. I would have to see that portion of the video. I recall she was saying that someone by the name of K to bring her up there.
>
> Defense Counsel: Objection.
>
> The Court: Overruled.

The Government then established that L.C. and N.G. had both given statements to the police identifying the person who brought them to the motel to perform as prostitutes as "K" or "D," both references which during the course of the trial had been made as identifying Petitioner.

The hearsay statements of B.T., L.C. and N.G. were testimonial in nature. No evidence was placed on the record that they were unavailable as witnesses, and the trial court issued no findings regarding their status as witnesses. There was no prior opportunity for the Petitioner to cross-examine these witnesses prior to their hearsay statements being admitted into evidence by the Government, and as permitted by the trial court in overruling numerous objections to the same.

The testimony that was introduced was also critical to the Government's ability to prove the elements of the offenses, and critical for the Petitioner to defend against the same. This hearsay evidence helped to place evidence on the record that B.T. was a minor, a key element that the Government had to prove. Other hearsay evidence was introduced by the Government to prove force, fraud and coercion, essential elements for all six counts of the Indictment. Other hearsay evidence was introduced by the Government to connect Petitioner with certain prostitution transactions.

The Sixth Amendment to the United States Constitution, in relevant part, provides that "In all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him..."

In *Crawford v. Washington*, 541 U.S. 36 (2004), the defendant was convicted

in state court of assault, but asserted that the admission of his wife's statement to police, after the defendant invoked state marital privilege to preclude her testimony at trial, violated his constitutional right to confront witnesses against him. The Supreme Court of Washington upheld the conviction.

In its opinion, this Court noted that the procedural guarantee of confrontation applies to both federal and state prosecutions. *Id.,* 541 U.S. at 42; *Pointer v. Texas*, 380 U.S. 400, 406 (1965). In the appeal, the State of Washington asserted that this Court's precedent allowed the use of the wife's statement, which arguably controverted defendant's assertion of self-defense, since the wife was unavailable as a trial witness due to marital privilege, and her statement to the police had sufficient indicia of reliability. Based on these facts and legal positions, this Court examined the development of the Confrontation Clause to determine what was required to satisfy the confrontation guarantee.

This Court observed that the common law in 1791 conditioned the admissibility of an absent witness's examination ***on (1) unavailability and on (2) a prior opportunity to cross-examine***. It held that the Sixth Amendment therefore, incorporates those limitations, observing that the fact that numerous early state decisions applying the same test confirmed that these principles were received as part of the common law in this country. *Id.*, 541 U.S. at 54. In reaching these conclusions, it stated: "Testimonial statements of witnesses absent from trial have been admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine." 541 U.S. at 59.

This Court acknowledged that, while the Sixth Amendment's confrontation protection is not solely concerned with testimonial hearsay, that testimonial hearsay is its primary object, and interrogations by law enforcement officers fall squarely within that class. 541 U.S. at 53. It then noted the required distinction between testimonial hearsay and non-testimonial hearsay with regard to the Confrontation Clause protections:

> Where nontestimonial hearsay is at issue, it is wholly consistent with the Framers' design to afford the States flexibility in their development of hearsay law--as does Roberts, and as would an approach that exempted such statements from Confrontation Clause scrutiny altogether. Where testimonial evidence is at issue, however, the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination.

541 U.S. at 68.

This Court explained further that the mere test of reliability, sufficient for non-testimonial hearsay, was insufficient to satisfy the constitutional requirements of the Confrontation Clause, a procedural guarantee, when the hearsay was testimonial in nature. 541 U.S. 61-62. While not exhausting the list of testimonial hearsay, this Court definitely identified police interrogations as meeting that definition, as one of the practices with close kinship to the abuses at which the Confrontation Clause was directed. 541 U.S. at 68.

Based on the facts before it in *Crawford*, this Court reversed the defendant's conviction, noting that the State admitted Defendant's wife's testimonial statement against the defendant, despite the fact that he had no opportunity to cross-examine

her, ruling: “That alone is sufficient to make out a violation of the Sixth Amendment.” 541 U.S. at 68. The Court further declined to search the record for indicia of reliability of the statement, holding that "Where testimonial statements are at issue, the only indicium of reliability sufficient to satisfy constitutional demands is the one the Constitution actually prescribes: confrontation.” 541 U.S. at 68-69.

It is clear, based upon the facts and the law outlined above, that Petitioner’s right to confrontation was violated at trial. The testimony cited above was clearly testimonial in nature, and went to the very heart of the elements that the Government was required to prove to convict. The majority of the hearsay testimony introduced into evidence were statements given to law enforcement officers, and therefore, were testimonial in nature. *Crawford*, 541 U.S. at 68. There was no showing, as required, that any of the these absent witnesses were unavailable to be called as witnesses, or that Petitioner was given a prior opportunity to cross-examine them.

This Court should, therefore, grant a Writ of Certiorari.

IV. The District Court committed a procedural error of law in failing to adequately consider all of the factors required for sentencing pursuant to 18 U.S.C. § 3553(a).

When sentencing a defendant, the District Court must follow a three-step sentencing procedure as set forth in *United States v. Gunter*, 462 F.3d 237, 247 (3d Cir. 2006) ("*Gunter I*"), which includes meaningful consideration all of the § 3553(a) factors. Petitioner contends that the District Court did not reasonably or adequately considered all of the § 3553(a) factors as required, including (a) his history and characteristics, § 3553(a)(1); (b) the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense; to afford adequate deterrence to criminal conduct, and to protect the public from further crimes of the defendant, § 3553(a)(2)(A), (B) and (c); and (c) the need to avoid unwarranted sentence disparities, § 3553(a)(6). As a result, Petitioner contends that the sentence of the District Court must be vacated.

CONCLUSION

This Court should, therefore, review the Opinion of the United States Court of Appeals for the Third Circuit and Grant this Petition for a Writ of Certiorari.

Respectfully submitted:

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