**NO. _____**

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

CAMERON L. HICKMAN
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 22-60580

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# PETITION FOR WRIT OF CERTIORARI

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## QUESTION PRESENTED FOR REVIEW

Whether the prosecution presented sufficient evidence at trial to establish the elements of the alleged crime.

## PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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## TABLE OF AUTHORITIES

Provisions of the United States Constitution:

## I. OPINIONS BELOW

On April 16, 2019, the Grand Jury for the Southern District of Mississippi returned an Indictment charging Mr. Hickman with engaging in sex with a minor under 12 years old, in violation of 18 U.S.C. §§ 2241 and 1153. The district court case number is 3:19cr88-DPJ-LGI. The case was tried before a jury beginning on June 22, and ending on June 24, 2022. The jury returned a guilty verdict.

The district court sentenced Mr. Hickman to serve 600 months in prison (50 years), followed by lifelong supervised release. The court entered a Final Judgment on October 24, 2022. The district court's Final Judgment is attached hereto as Appendix 1.

Mr. Hickman filed a timely Notice of Appeal to the United States Court of Appeals for the Fifth Circuit on October 25, 2022. The Fifth Circuit case number is 22-60580. The Fifth Circuit affirmed the district court's rulings via an Opinion filed on June 13, 2023. It filed a Judgment on the same day. The Fifth Circuit's Opinion and Judgment are attached hereto as composite Appendix 2.

## II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on June 13, 2023. This Petition for Writ of Certiorari is filed within 90 days after entry of the Fifth Circuit's Judgment, as required by Rule 13.1 of the Supreme Court Rules. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

## III. CONSTITUTIONAL PROVISION INVOLVED

"No person … shall … be subject for the same offence to be twice put in jeopardy of life or limb[.]" U.S. Const. amend. V, Double Jeopardy Clause.

## IV. STATEMENT OF THE CASE

### A. Basis for federal jurisdiction in the court of first instance.

This case arises out of a criminal conviction entered against Mr. Hickman for engaging in sex with a minor in violation of 18 U.S.C. §§ 2241 and 1153. The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charge levied against Mr. Hickman arose from the laws of the United States of America.

### B. Statement of material facts.

#### 1. Events of March 8, 2019.

On March 8, 2019, Mr. Hickman was living in his mother's home with his partner, Ms. Wilson, and her two children. His mother was in poor health and had recently moved out of the home and into a nursing home. Mr. Hickman's cousin and his two children also lived in the home. At the time, Mr. Hickman and Ms. Wilson believed they were married.

That morning, after Ms. Wilson's two children left for school, she and Mr. Hickman began drinking. According to Ms. Wilson, on average they did this three times a week. Between approximately 10:00 a.m. and 3:30 p.m., the two of them drank an 18-pack of beer and a bottle of vodka.

Ms. Wilson's two children got off the bus after school around 4:30 that afternoon. Ms. Wilson was awake, but she testified that Mr. Hickman was passed out on the sofa. She instructed the children to make themselves a snack while she went to the primary bedroom to take a nap. She testified that she first woke up, Mr. Hickman had moved from the sofa to the primary bedroom.

When Ms. Wilson woke up again several hours later, she testified that Mr. Hickman was not in the room with her. She checked the primary bathroom and the living room, where her son was watching television, before opening the door to the children's room. When she turned on the light, she found Mr. Hickman "on his knees" in the bed with her daughter, K.W.

Ms. Wilson noted that she could only see his back. She did not see his "private area," and she could not tell if he was clothed from the waist down. A blanket was off to the side. She also noted that K.W. was wearing underwear, but her "short pants" were off. Ms. Wilson stated that she shoved Mr. Hickman and began punching him. She then grabbed a nearby phone to call the police, but Mr. Hickman took it from her. She left K.W. in the living room with her son and ran to the neighbor's house to call the police.

**2. The initial investigation.**

Officer Adam Joe, then of the Choctaw Police Department, received the dispatch call at 8:03 p.m. regarding the incident at Mr. Hickman's home on March

8, 2019. It took him almost 30 minutes to arrive at the scene,[1] and another officer was already on scene when he arrived.

Officer Joe and the other officer searched behind the home for Mr. Hickman after learning that he had left via the back door. He conducted an initial interview of Ms. Wilson and K.W., who reported the alleged assault. Pursuant to agency protocol, Officer Joe then contacted Choctaw Police Department criminal investigator, Nicholas Monk.

Prior to Investigator Monk's arrival, Officer Joe collected as evidence the clothes K.W. was wearing – a t-shirt and a pair of shorts – and a blanket from K.W.'s room. He did not collect K.W.'s undergarments. Rather than securing the clothing and blankets in separate bags, Officer Joe placed all the items together in the trunk of his patrol car. The trunk also contained some mechanical equipment. Investigator Monk later placed the clothing and blanket into two bags. He did not have them tested because the items were not properly collected.

Officer Joe spoke with both Ms. Wilson and K.W. at the scene. K.W. told him that Mr. Hickman put his hand over her mouth and held her down. K.W. also said that "he" had done it before but she stated that there was no penetration this time. K.W. told Officer Joe that Mr. Hickman did not touch her anywhere other

[1] The Choctaw territory is comprised of several communities that are not connected to each other geographically. Officer Joe was patrolling in the Pearl River community when he got the call. Mr. Hickman's home was in the Bogue Chitto community.

than her arms and mouth. After speaking with K.W. and Ms. Wilson, Officer Joe transported them to the Choctaw Health Center so that K.W. could undergo examination. He stood by until Investigator Monk arrived.

Ms. Wilson later wrote a statement, which the officers reviewed as part of their investigation. In the report, Ms. Wilson sated that K.W. had on her underwear during the incident.[2] Investigator Monk testified that Ms. Wilson's written statement was consistent with her statement that night.

**3. The physical examination.**

Nurse Katie Fitzhugh examined K.W. on March 8, 2019.[3] She interviewed both Ms. Wilson and K.W. as part of her examination. She spoke with K.W. first, and K.W. reported that Mr. Hickman held her arms and put his hand over her mouth. Ms. Fitzhugh asked her directly if there was penetration, and K.W. said no.[4] K.W. also stated that Mr. Hickman took off her shorts, but she did not state that he removed her underwear. Ms. Fitzhugh noted K.W.'s complaints of teeth and jaw pain, but K.W. did not report any other pain or discomfort.

The physical examination revealed two findings that Ms. Fitzhugh noted. First, she found "some redness" on the fossa navicularis, which Ms. Fitzhugh

[2] The statement was not admitted into evidence, but it was used to refresh Investigator Monk's recollection about what he learned in the investigation.
[3] Ms. Fitzhugh testified as a fact witness only.
[4] K.W. added that Mr. Hickman "was attempting to" achieve penetration, but her mother walked in.

identified as "not inside of the vaginal vault but around the side some." She also noted "a small amount of clear discharge right at the vaginal opening." She collected swabs of K.W.'s neck and vaginal area, as well. The prosecution asked Ms. Fitzhugh about the meaning of those findings, but the defense's objection was sustained because Ms. Fitzhugh was not admitted as an expert witness. Accordingly, the jury was not allowed to consider any of her testimony as to the source of the redness or clear discharge, which Ms. Fitzhugh later acknowledged could be caused by any number of things.

The swabs that Ms. Fitzhugh collected were provided to Investigator Monk, who sent them for testing. Ms. Lindsey Nomichith, a technician with the Mississippi Forensics Laboratory, tested the oral, vulvar, vaginal, and rectal swabs for seminal fluid. She found no seminal fluid, either through serology testing or microscopic examinations.

**4. K.W's testimony.**

K.W., who was fourteen at the time of trial, testified that penetration occurred during the incident on March 8, 2019. Her testimony was the first time the defense learned that her recounting of events had changed. K.W. admitted, on direct examination, that she did not report this information to the investigators. She testified that she did not remember if she told the nurse that there was penetration that night. She stated that her grandmother was the first person she told.

On cross-examination, K.W. stated that she remembered telling the police that Mr. Hickman had only held her down on the night of March 8, 2019.[5] She did not remember any statements she gave to the nurse at the hospital. She also did not remember giving any statements to a forensic interviewer. She said that she had been scared to talk about penetration, but she did recall telling them that it had occurred in a prior incident.

**5. The jury instructions and jury verdict.**

The district court gave the jury the following relevant instructions on the elements of 18 U.S.C. § 2241(c):

> [Y]ou must be convinced that the Government has proven the following beyond a reasonable doubt:
>
> First, that the defendant knowingly engaged in a sexual act with a female Choctaw Indian child as charged in the indictment. . . . In this case, the term "sexual act" as defined – I'm sorry – is defined as contact, meaning penetration, however slight, between the penis and the vulva.

After deliberating, the jury returned a guilty verdict.

[5] Based on the remainder of K.W.'s cross-examination testimony, it is possible that her memory of her statement to the investigators was refreshed by the body cam video.

## V. ARGUMENT

### A. Introduction.

The evidence was insufficient for the jury to find that Mr. Hickman actually committed the crime charged in the Indictment. The only evidence of penetration, an element of the offense, was K.W.'s testimony. This testimony contradicted not only her previous statements, but also all the other physical and testimonial evidence. In short, her testimony was insufficient and incredible as a matter of law. Accordingly, this Court should grant certiorari, then vacate Mr. Hickman's conviction and enter a judgment of acquittal. *See Burks v. United States*, 437 U.S. 1, 18 (1978) (since "the Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient, the only 'just' remedy available for that court is the direction of a judgment of acquittal.").

### B. Review on certiorari should be granted in this case.

Rule 10 of the Supreme Court Rules states, "[r]eview on writ of certiorari is not a matter of right, but of judicial discretion." The Rule goes on to state the following good reason to grant certiorari – when "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter[.]" S. Ct. R. 10(a).

In Mr. Hickman's case, the evidence presented at trial proves that K.W.'s underwear were never removed. Nevertheless, the district court allowed the case to

go to the jury, and it returned a guilty verdict. The Fifth Circuit affirmed the sexual assault conviction. This conflicts with the Eleventh Circuit's ruling that "penetration through clothing contradicts the laws of nature." *Reid v. Secretary, Florida Dept. of Corr.*, 485 F. App'x 848, 851 (11th Cir. 2012). This conflict between the Fifth Circuit and the Eleventh Circuit, as well as other law presented in the following section of this Petition, warrant granting certiorari in Mr. Hickman's case.

### C. The evidence was insufficient for the jury to find beyond a reasonable doubt that Mr. Hickman committed sexual assault.

The jury found that Mr. Hickman actually committed the subject crime. Accordingly, this Court must determine whether the evidence establishes, to a reasonable jury and beyond a reasonable doubt, that Mr. Hickman committed a "sexual act" as defined by 18 U.S.C. § 2246(2)(A). In other words, if a reasonable jury could not have found that Mr. Hickman penetrated K.W.'s vulva with his penis, then his conviction must be vacated.

The only evidence of penetration was the trial testimony of K.W. In sufficiency of the evidence challenges, the reviewing court may only narrowly review the credibility of witnesses because it is the jury's job exclusively "to weigh the evidence and determine a witness's credibility." *See United States v. Lewis*, 442 F. App'x 88, 96 (5th Cir. 2011). The Court may review the credibility of witnesses only to determine if their testimony is "so incredible or insubstantial, that

as a matter of law, we may discredit it" *Id.* (quoting *United States v. Garcia*, 567 F.3d 721, 731 (5th Cir. 2009)). "Testimony is incredible as a matter of law only if it relates to facts that the witness could not possibly observed or to events which could not have occurred under the laws of nature." *United States v. Bermea*, 30 F.3d 1539, 1552 (5th Cir. 1994). K.W.'s testimony is both insubstantial and incredible as a matter of law.

K.W.'s testimony contradicted all her prior statements. This contradiction alone is insufficient to warrant vacating the conviction because it amounts to nothing more than challenging to K.W.'s credibility. However, K.W.'s testimony also contradicted the eyewitness testimony presented to the jury. Ms. Wilson testified that she observed K.W. wearing underwear when she walked into the room. Ms. Wilson's testimony was also consistent with her written statement, which Investigator Monk reviewed.

K.W.'s testimony also contradicted the physical evidence. First, the investigators collected the t-shirt and shorts worn by that K.W., but they did not collect any underwear, even though K.W. testified that she was wearing underwear that night.

Second, the evidence from the physical examination did not tend to establish that penetration occurred. The jury heard evidence of redness outside the "vaginal vault," which Ms. Fitzhugh testified could be due to any number of things. The

jury also heard evidence that the discharge collected from the vaginal opening during the examination was tested and examined under a microscope. It was negative for seminal fluid. The jury did not hear any testimony that addressed whether penetration could have caused the redness or the discharge.[6]

Third, aside from K.W.'s testimony, all the evidence established that K.W. was wearing underwear when Ms. Wilson walked in on Mr. Hickman in K.W.'s room. As such, penetration was impossible. Under Eleventh Circuit law, "penetration through clothing contradicts the laws of nature." *Reid v. Secretary, Florida Dept. of Corr.*, 485 F. App'x 848, 851 (11th Cir. 2012). Therefore, a reasonable jury could not consider the issue of penetration. *See id.*

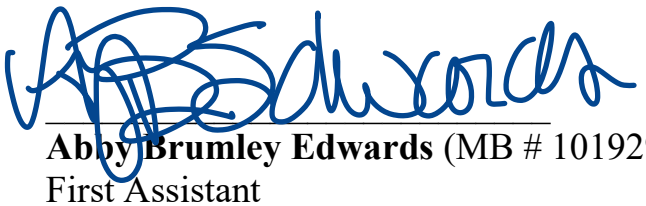
Even when considered in the light most favorable to the Government, K.W.'s testimony alone is insufficient to sustain Mr. Hickman's conviction. Not only is there no corroborating evidence to support K.W.'s testimony, but also the physical evidence contradicts her statements. There simply is no evidence to prove penetration, which is a required element to prove that a "sexual act" occurred. The jury erred by concluding otherwise.

[6] The objection to Ms. Fitzhugh's testimony that redness around the outside of the vagina was "consistent to a sexual assault" (which was not described to include penetration as defined in 18 U.S.C. § 2246(2)(A)) was sustained, and the jury was not permitted to consider that testimony.

## VI. CONCLUSION

Based on the arguments presented above, Mr. Hickman asks the Court to grant his Petition for Writ of Certiorari.

Submitted September 7, 2023, by:



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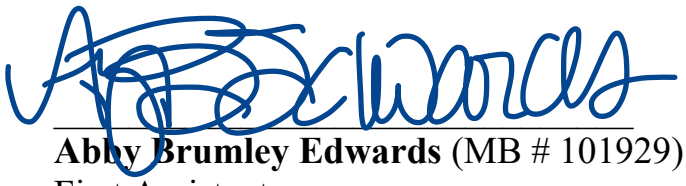
## CERTIFICATE OF SERVICE

I, Abby Brumley Edwards, appointed under the Criminal Justice Act, certify that today, September 7, 2023, pursuant to Rule 29.5 of the Supreme Court Rules, a copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma Pauperis was served on Counsel for the United States by Federal Express, No. 773333156103, addressed to:

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

I further certify that all parties required to be served with this Petition and the Motion have been served.



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