NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 2023

SHAWN CHRISTY,

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

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PETITION FOR WRIT OF CERTIORARI WITH APPENDIX

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Shawn Christy

QUESTIONS PRESENTED

1. Did the district court error in not permitting Mr. Christy to represent himself?

   Suggested Answer: Yes.

2. Did the district court error in not granting the defendant's motion for judgement of acquittal and/or motion for a new trial?

   Suggested Answer: Yes.

3. Was the defendant's sentence harsh and excessive?

   Suggested Answer: Yes.

4. Did the Court of Appeals error in not recusing Judge Bibas?

   Suggested Answer: Yes.

PARTIES TO THE PROCEEDING

The petitioner is:

Shawn Christy

The respondent is:

United States of America

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OPINIONS BELOW

The United States Court of Appeals for the Third Circuit affirmed Petitioner Shawn Christy's Judgement of Conviction.

STATEMENT OF JURISDICTION

Shawn Christy seeks review of the February 12, 2024, Order of the United States Court of Appeals for the Third Circuit. Jurisdiction of this Court to review the judgement of the Third Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution, provides that:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATEMENT OF THE CASE

A Federal Grand Jury, on December 11, 2018, returned a twelve-count second superseding indictment charging Shawn Christy as follows. Count 1, Threats Against the President of the United States, in violation of 18 U.S.C. § 871; Count 2, Transmitting Threatening Communications, in violation of 18 U.S.C. § 875(c); Count 3, Transmitting Threatening Communications, in violation of 18 U.S.C. § 875(c); Count 4, Transmitting Threatening Communications, in violation of 18 U.S.C. § 875(c); Count 5, Interstate Transportation of a Stolen Vehicle, in violation of 18 U.S.C. § 2312; Count 6, Interstate Transportation of a Stolen Firearm, in violation of 18 U.S.C. § 2312; Count 7, Interstate Transportation of a Stolen Firearm, in violation of 18 U.S.C. § 922(i); Count 8, Interstate Transportation of a Stolen Firearm, in violation of 18. U.S.C. § 922(n); Count 9, Interstate Transportation of a Firearm While Under an Information for a Felony Offense, in violation of 18 U.S.C. 18 § 922(n); Count 10, Interstate Transportation of a Firearm While Under and Information for a Felony Offense, in violation of 18 U.S.C. § 922(n). App. 1-11; 15-25. Count 11, Fugitive in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(2); Count 12, Felon in Possession of a Firearm, in violation of 18 U.S.C. § 922(g)(1).

Statement of Facts

On May 30, 2018, the Defendant failed to appear for jury selection at the Schuylkill County Court of Common Pleas for assaulting the Mayor of McAdoo, Pennsylvania. On June 3, 2018, the Defendant posted a threat on Facebook: "As far as your threat of bench warrant, know this, I will use full lethal force on any law-enforcement officer that tries to detain me. Fix this, or I will. That's a promise." On June 5, 2018, the Defendant promised to burn down the house of the McAdoo Police Chief.

On June 6, 2018, a bench warrant was issued by Schuylkill County for failure to appear for jury selection, and Northampton County, Pennsylvania, issued an arrest warrant for a probation violation.

On June 12, 2018, the Defendant posted an article from McCall.com, which stated in effect that he is going to put a bullet in the head of Northampton County District Attorney John Morganelli and President Donald J. Trump. On that same day, the Defendant posted on Lehigh Valley Live (lehighvalleylive.com) a picture of Mr. Morganelli and wrote above that article: "You're a dead man Morganelli, $250 Sarah Palin."

On July 17, 2018, the Defendant stole a vehicle from Hazleton Oil and Environmental Inc. On July 8, 2018, the vehicle was located in a ditch off of County Route 20, Trout River, New York.

On July 12, 2018, the Defendant stole a 1993 Ford F-250 truck near Fort Covington, New York, and on July 13, 2018, this truck was recovered in South Abington Township on Interstate 81.

On July 27, 2018, the Defendant's uncle Gerald DeBalko reported that his house was burglarized and that three handguns were missing. The Defendant left two notes, one to his uncle which stated that he was sorry that he had to break into his house, that he had bad guys after him and would rather go out with fire power in his hands. The second note was to his mother in which he stated that he missed her and that he had been in Canada.

On July 29, 2018, the Defendant stole a Dodge Caravan owned by Rohrer Bus Company, Drum, Pennsylvania. The vehicle was found abandoned in West Virginia. Thereafter, on August 4, 2018, the Defendant stole a 2012 Toyota Tundra from Veolin Environmental Services, Poca, West Virginia. On August 9, 2018, this vehicle was recovered in Greensburg, Kentucky.

On August 9, 2018, the Defendant burglarized the residence of Dakota Meyer in Greensburg, Kentucky. The Defendant allegedly stole a semi-automatic rifle and a 2001 Jeep Cherokee owned by Mr. Meyer's brother.

On August 20, 2018, the Defendant stole a 1997 GMC Sierra from Cumberland Pipe and Steel, Cumberland, Maryland. The vehicle was recovered in Tamaqua, Pennsylvania, on August 21, 2018.

Lastly, on September 16, 2018, the Defendant allegedly stole a 2002 GMC utility pickup truck from Skitco Iron Works, Hazle Township, Pennsylvania.

POINT I

THE DISTRICT COURT ERRED IN PERMITTING MR. CHRISTY TO REPRESENT HIMSELF

Prior to conducting a hearing on Mr. Christy's request for self representation, a competency evaluation determined that Mr. Christy does not meet the criteria of mental disease or defect under the law and, in the opinion of the evaluator, possesses a factual and rational understanding of the proceeding against him, has the capacity to assist legal counsel in his defense and can adequately make decisions regarding his legal strategy.

The District Court read a letter written to the Court setting forth Mr. Christy's complaint against trial counsels. The letter states the following.

> THE COURT: Thank you. The reason for this aspect of the hearing is the letters that I received from Mr. Christy beginning with document 137 that was filed May 22, 2019 titled motion for appointing new counsel. I think it's worth reading. So bear with me, please. Defendant, Shawn R. Christy motions this Court to appoint new counsel to represent him. Current counsel for defendant federal public defender Heidi Freese and assistant public defender Elliot Smith have embarked on a series of lies and deception to said defendant involving their actions of the case. On multiple occasions they stated to defendant that they would not seek any extensions and would abide by speedy trial.

However, when defendant stated clearly in a letter to the Court that he objected to a trial extension, his public defender did it anyway. Also counsel for defendant have refused to subpoena certain people to testify in - - it's a tough word - - on behalf - - on behalf of defendant. As well they have refused to pursue items of mandatory discovery for the defendant including status of weapon seized and location and owner of the defendant's vehicle. Last, counsel for defendant has not explained - - has never explained the conflict of interest that former assistant federal defender D. Toni Byrd had during her previous representation of defendant.

Ms. Byrd never explained nor informed defendant of her conflict of interest with an alleged victim of defendant in a prior case Ms. Bird's father, Dr. M. - - M. Byrd was appointed to government office by former Alaska governor Sarah Palin. Ms. Byrd never informed defendant of this when she took defendant's case. Ms. Palin was an alleged victim of defendant. Due to conflict of interest that federal public defender has in this matter as well as the lies and false statements they have made, the defendant not only demands new counsel but releases any motions made by current counsel, signed by Mr. Christy. That was May 22. There are two further pieces of correspondence to me. The next bears a date of June 18, 2019.

While there are a number of items in here which do not relate to this particular matter, which I will, therefore, not read, the letter does ask about, quote, the status of defendant's request for appointment of new counsel. And then the third piece of correspondence is dated July 19, 2019. It's document 143 where Mr. Christy again writes and with respect to this issue says, my counsel from the federal public defender's office has been very poor and I do not trust them as they have lied to me, my family and friends. So I will state here that not only I - - I do still request a speedy trial, but I also wish for a new detention hearing, and there's additional information which again is not relevant to this specific request. So I have these three letters from you, Mr. Christy.

After speaking with Mr. Christy and trial counsels, the District Court concluded that there has been an irretrievable breakdown in communication that has generated an irreconcilable conflict of interest. The District Court advised Mr. Christy that, when he appoints new counsel, a motion to continue trial will be filed by the attorney so that he can learn about the case.

Mr. Christy responded that he is requesting to proceed *pro se* with appointed standby counsel.

Mr. Christy asserts that several officials in government are involved in corruption and he wants to control the decisions and strategy. Mr. Christy wants to subpoena federal agents and United States Marshals at trial.

Mr. Christy requested that the public defenders be appointed as standby counsel since they are familiar with his case. The District Court refused to appoint them since the relationship between client and counsel is irretrievably broken. Mr. Christy agreed but "only proffered that idea for ease for the Court."

Mr. Christy wanted to represent himself based upon, from his vantage point, misrepresentations and untruths by trial counsel. Mr. Christy never studied the law but is familiar with the law since he was first incarcerated in federal prison at the age of 19. Mr. Christy first started to represent himself in 2013 and 2014 on 2255 motions. In 2017, he represented himself in the state system in Carbon, Luzerne, and Schuylkill counties.

The District Court asked the Assistant United States Attorney to state the crimes charged and the maximum penalty for each of the counts.

Mr. Christy acknowledged the crimes charged and the penalties.

The District Court granted Mr. Christy's request for standby counsel but emphasized that he is on his own and the court cannot tell him how to try his case. Mr. Christy expressed confidence that he understands his defenses base on his experience in state court.

The Court explained that Mr. Christy would have to file motions, appear at all hearings, and be familiar with and follow the Federal Rules of Evidence, Federal Rules of Criminal Procedure, and call and question witnesses.

The Court opined that it would be easier for an attorney to contact potential witnesses, question witnesses, and gather evidence. The Court further stated that in its opinion, a trained lawyer would do a better job in defending Mr. Christy and it is unwise to represent himself.

The District Court, based upon his questions, concluded that Mr. Christy knowingly and voluntarily waived his right to counsel.

At sentencing Mr. Christy made reference to his statement during the competency evaluation. Mr. Christy stated, "I've defended myself at the state level... I don't know enough about the federal systems." Competency Evaluation, pg. 26. Mr. Christy elaborated at sentencing that he did not feel capable of representing himself in a federal trial because he does not know federal law. He felt compelled to represent himself due to his problem with the federal defenders.

Mr. Christy contends that it was an error on behalf of the District Court to permit self-representation. The Sixth Amendment guarantees a criminal defendant the right to self-representation if he "knowingly and intelligently" waives his concomitant Sixth Amendment right to counsel. *Faretta v. California*, 422 U.S. 806, 835, 95 S.Ct. 2525 (1975). When a defendant invoked his right to represent

himself, the District Court bore "the weighty responsibility of conducting a sufficiently penetrating inquiry to satisfy itself that the defendant could make such a waiver." *United States v. Peppers,* 302 F.3d 120, 130-131 (3d Cir. 2002).

The standard of review is plenary in determining whether a defendant may exercise his Sixth Amendment right to self representation. *United States v. Peppers*, *supra* at 127.

This court must indulge every reasonable presumption against a waiver of counsel. *United States v. Jones*, 452 F.3d 223, 230 (3d. Cir. 2006) and further the facts found by the District Court for clear error. *Peppers*, 302 F.3d at 127.

The Sixth Amendment personally grants the accused the right of self-representation. *Faretta*, 422 U.S. at 819, 95 S.Ct. 2525. To exercise this right a defendant must knowingly, intelligently, and voluntarily waive his right to counsel before a court may allow him to proceed *pro se*. *Bubl v. Cooksey*, 233 F.3d 783 (3d Cir. 2000). There is a tension between the right to have counsel and the right of self representation and a trial court shoulders a heavy responsibility of conducting a sufficiently penetrating inquiry to satisfy itself that the defendant's waiver of counsel is knowing and understanding as well as voluntary. *Peppers*, 302 F.3d at 130-131.

During this inquiry, the court must ascertain whether the defendant (1) clearly and unequivocally asserted his desire to represent himself; (2) understand

the nature of the charges, the range of possible punishments, potential defenses, technical problems that he may encounter and any other factors important to a general understanding of the risks involved; and (3) is competent to stand trial. *United States v. Jones*, 452 F.3d 233 at 228-229. In questioning defendants, the District Court must engage in a penetrating and comprehensive examination of all the circumstances before accepting or rejecting the defendant's waiver of his right to counsel. *Jones*, 452 F.3d at 228. Without understanding such an inquiry, "a District Court cannot make an informed decision as to the knowing and voluntary nature of a defendant's request to proceed *pro se*." *Peppers*, 302 F.3d at 133.

Here, Mr. Christy expressed in his competency evaluation that he did not know federal law. As the record indicated, the Court reviewed the competency evaluation and made a competency determination prior to addressing *pro se* representation. The Court was aware of Mr. Christy's statement but chose not to explore it.

Instead, the District Court advised Mr. Christy that he will be held to the same standards of an attorney and told him that it is unwise to represent himself. The District Court never questioned Mr. Christy on his statement which directly contradicts his answers to the court. Therefore, the District Court's questioning was inadequate and Mr. Christy's Sixth Amendment right to counsel was violated.

POINT II

THE DISTRICT COURT ERRED IN NOT GRANTING THE DEFENDANT'S MOTION FOR JUDGEMENT OF ACQUITTAL AND/OR MOTION FOR A NEW TRIAL.

Both at the end of the Government's case and the end of the case, the Defendant requested a Judgement of Acquittal due to insufficient evidence. App. 801-811. Further, the Defendant filed a written motion asserting that the evidence was insufficient and a motion for a new trial.

The Defendant moves for a Judgement of Acquittal on the following grounds: (1) the finding of guilt for stolen items such as guns and vehicles has not been decided in state court; (2) the Defendant was blocked from attending state court hearing; and (3) the Defendant was denied access to important legal information by the FBI, United States Marshals Service and the Lackawanna County Prison.

Federal Rule of Criminal Procedure 29 provides, in pertinent parts: after the Government closes its evidence or after the close of all evidence, the court, on the defendant's motion, must enter a judgement of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may, on its own, consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgement of acquittal at the close of the Government's

evidence, the defendant may offer evidence without having reserved the right to do so.

In reviewing a Rule 29 Motion for Judgement of Acquittal, a district court must review the record in the light most favorable to the prosecution to determine whether any rational trier of fact could have found proof of guilt beyond a reasonable doubt based on the available evidence. *United States v. Wolfe*, 245 F.3d 257, 262 (3d. Cir. 2001). The court is required to "draw all reasonable inferences in favor of the jury verdict." *United States v. Anderskow*, 88 F.3d 245, 251 (3d. Cir. 1996). Thus, a finding of insufficiency should "be confined to cases where the prosecution's failure is clear. *United States v. Leon*, 739 F.2d 885, 891 (3d. Cir. 1984).

"This Court will uphold a jury's verdict unless no reasonable juror could accept the evidence as sufficient to support the defendant's guilt beyond a reasonable doubt." *United States v. Fattah*, 914 F.3d 112, 183 (3d. Cir. 2019).

Mr. Christy first argues that a state court finding of guilt for the stolen gun and cars was necessary for a federal prosecution. According to Mr. Christy, the Government's failure to obtain a state court conviction is fatal. Therefore, the evidence is insufficient to prove him guilty of Counts 5, 6, 7, and 8.

Mr. Christy asserts that he should be granted a new trial pursuant to Federal Rules of Criminal Procedure 33. Rule 33 provides, in pertinent parts, that upon

defendant's motion, the court may vacate any judgement and grant a new trial if the interest of justice so requires.

When this court evaluates a Rule 33 motion, it does not view the evidence favorably to the Government, but instead exercises its own judgement in assessing the Government's case. *United States v. Johnson*, 302 F.3d 139, 150 (3d. Cir.). However, a court can only order a new trial if it believes that there is a serious danger that an innocent person has been convicted. *Id.*

The court's discretion in addressing issues of allegations of juror and prosecutorial misconduct extends to whether prejudice has been demonstrated. *United States v. Resko*, 3 F.3d 684, 690 (3d. Cir. 1993). Further, it must be demonstrated that the trial error "so infected the jury deliberation that they had a substantial influence on the outcome of the trial." *United States v. Thornton*, 1 F.3d 149, 156 (3d. Cir. 1993).

Firstly, the defendant asserts that the jury pool was tainted by news reports at the start of the selection process, as admitted by a struck juror, and the defendant was stopped by the United States Marshals Service from news interviews.

Every litigant who is entitled to a trial by jury must have an impartial jury, free from extraneous influences that may subvert the fact-finding process. *Waldorf v. Shuta*, 3 F.3d 705 (3d. Cir. 1993). It has long been recognized that

when jurors are influenced by the media and other publicity, or engage in third party communications, these extra-record influences pose a substantial threat to the fairness of the criminal proceeding because the extraneous information completely evades the safeguards of the judicial process. *United States v. Resko*, 3 F.3d 684 (3d. Cir. 1993).

The voir dire process is designed to assess possible prejudice or bias on the part of prospective jurors. The trial court has discretion to decide how to deal with a situation involving extraneous influence and the discretion extends to the determination of whether prejudice has been demonstrated. *United States v. Clapps*, 732 F.2d 1148, 1152 (3d. Cir. 1984). There must be a meaningful assessment of the nature and extent of the alleged impropriety to ascertain whether there has been any prejudice to the defendant. *United States v. Bertole*, 40 F.3d 1384, 1393 (3d. Cir. 1994).

Here, the degree of pretrial publicity so infected the jury pool that the voir dire conducted was inadequate. The questions asked by the Court were not designed to determine the prejudice that the juror had against the Defendant due to the pretrial publicity. The Defendant clearly demonstrated that his right to an impartial jury was violated.

The Defendant claims that the United States Marshals Service denied his ability to conduct new interviews, directly affected his ability to inform the public

of his side of the case and permitted the Government to control the narative. This factor contributed to a biased jury pool.

Secondly, the Defendant implied that the Government violated its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963) by not giving him notice of certain items of evidence or copies and not providing him with a trial transcript. Under *Brady v. Maryland, supra*, the Government has an obligation to provide favorable evidence that is material to the Defendant's guilt.

In *United States v. Lacerda*, 958 F.3d 196 (3d. Cir. 2020) this court set forth three prerequisites to a *Brady* violation: (1) the government must have failed to disclose evidence; (2) the evidence must have been favorable to the defendant; and (3) that evidence must have been material. Evidence is "material" only if there is a reasonable probability that its disclosure would have led to a different outcome at trial, and so undermines confidence in the verdict. *Turner v. United States*, 137 S.Ct. 1885, 1893 (2017). Accordingly, Mr. Christy meets this standard and a new trial should be ordered.

As to the lack of trial transcripts, the Defendant did not have enough time to review the transcripts prior to filing his motion for a judgement of acquittal and/or a new trial. Therefore, the Defendant was deprived of his due process rights to a fair trial.

POINT III

THE DEFENDANT'S SENTENCE
WAS HARSH AND EXCESSIVE.

During trial, Mr. Christy testified on direct examination and denied making any threats and denied stealing firearms from his uncle. On cross examination, after answering a few questions, Mr. Christy invoked the Fifth Amendment and refused to answer further questions. Mr. Christy contends that he should not be assessed a two-level enhancement since his testimony was stricken from the record.

Further, Mr. Christy contends that his criminal level substantially over represents the seriousness of his criminal history on the likelihood that he will commit other crimes.

Argument

This court reviews factual determinations during sentencing for "clear error" and the sentencing decision for "abuse-of-discretion" assessing both whether the district court committed a "significant procedural error" and "substantive reasonableness of the sentence." *United States v. Larksen*, 629 F.3d 177, 181 (3d. Cir. 2010). If the district court committed no procedural error, the sentence will be affirmed unless no reasonable sentencing court would have imposed the same sentence on the particular defendant for the reasons that the district court provided. *United States v. Tomko*, 562 F.2d 558, 568 (3d. Cir. 2009).

Additionally, absent a "legal error" the district court's discretionary decision to deny sentencing, a departure will not be reviewed. *United States v. Cooper*, 437 F.3d 324, 332 (3d. Cir. 2006).

Secondly, Mr. Christy was assessed two criminal history points on November 28, 2012, for assaulting, resisting or impeding certain officers or employees. Mr. Christy was 21 years old and received a sentence of five years probation.

The district court failed to consider the nature of the convictions and Mr. Christy's age when assessing his criminal history. Mr. Christy contends that the Criminal History Category of V substantially over-represents the seriousness of his history and the likelihood that the Defendant will commit other crimes. This constitutes a procedural error and warrants a new sentencing.

Mr. Christy did not specifically object to his criminal history; consequently, this argument may need to be reviewed under the plain error standard. Under the plain error standard, the defendant bears the burden of persuasion, *United States v. Olano*, 507 U.S. 725, 734-35. He must show that there is: (1) an error, (2) that is plain, and (3) that the plain error affects his substantial rights. *Rosales-Mireles v. United States*, 138 S.Ct. 1847, 1904 (2018). According to Mr. Christy, he satisfies this burden and the District Court decision not to reduce his criminal history is a procedural error requiring a new sentencing hearing.

Additionally, Mr. Christy objected to a two-point enhancement for obstruction of justice. As previously stated, Mr. Christy refused to answer questions on cross examination after testifying that he is innocent of these charges. The Court had stricken his testimony.

U.S.S.G. § 3C1.1 states, in pertinent parts, that a defendant must willfully obstruct or impede the administration of justice with respect to his prosecution and the obstructive conduct relates to the Defendant's conviction. Here, the Defendant was punished by not having the jury hear his testimony. According to Mr. Christy, he did not willfully testify falsely and the two-point enhancement was procedurally unreasonable. *United States v. Ziesman*, 409 F.3d 941 (8th Cir. 2005).

According to Mr. Christy, the sentence imposed is subsequently unreasonable. Mr. Christy contends that no reasonable sentencing court would have imposed the same sentence on him for the reasons the district court stated.

Therefore, Mr. Christy respectfully submits that the sentencing court abused its discretion and committed a significant procedural error in imposing a substantively unreasonable sentence, requiring a remand for re-sentencing.

POINT IV

THE COURT OF APPEALS ERRED IN NOT RECUSING JUDGE BIBAS

MOTION TO RECUSE

Shawn Christy, by his attorney Salvatore C. Adamo, hereby requests that Judge Bibas be recused from deciding this matter.

In this appeal, the alleged victim is Former President Donald J. Trump, who appointed Judge Bibas to the Third Circuit Court of Appeals.

On it's face, there is an appearance of impropriety in that the victim, Former President Donald J. Trump, appointed Judge Bibas to the Third Circuit Court of Appeals.

Consequently, Judge Bibas had an appearance of impropriety and should have recused himself.

CONCLUSION

For the reasons cited, a Writ of Certiorari should be issued.

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Dated: February 29, 2024

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2601

UNITED STATES OF AMERICA

v.

SHAWN CHRISTY,

Appellant

Appeal from the United States District Court
for the Middle District of Pennsylvania
(District Court No.: 3-18-cr-00223-001)
District Judge: Honorable Robert D. Mariani

Submitted Under Third Circuit L.A.R. 34.1(a)
on January 18, 2024

Before: JORDAN, BIBAS and AMBRO, Circuit Judges

JUDGMENT

This cause came on to be heard on the record before the United States District Court for the Middle District of Pennsylvania and was submitted under Third Circuit LAR 34.1(a) on January 18, 2024.

On consideration whereof,

app 1

IT IS ORDERED AND ADJUDGED by this Court that the judgment of the District Court entered August 3, 2020, is hereby affirmed. Costs are not taxed.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: February 12, 2024

App2

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2601

UNITED STATES OF AMERICA

v.

SHAWN CHRISTY,

Appellant

Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Criminal Action No. 3-18-cr-00223-001)
District Judge: Honorable Robert D. Mariani

Submitted Under Third Circuit L.A.R. 34.1(a)
on January 18, 2024

Before: JORDAN, BIBAS and AMBRO, Circuit Judges

(Opinion Filed: February 12, 2024)

OPINION*

AMBRO, Circuit Judge

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

After going on a cross-country crime spree, Shawn Christy was arrested, charged with twelve federal counts, and sentenced to 240 months in prison. He now appeals from his conviction and sentence seeking to have his judgment vacated and a new trial or a new sentencing hearing ordered. For the reasons that follow, we affirm the District Court.

I. BACKGROUND

In the summer of 2018, Christy, a convicted felon and fugitive, committed multiple crimes across the country. He stole vehicles, firearms, and more, and threatened to kill numerous people, including then-President Donald Trump and Sarah Palin. Federal and state law enforcement embarked on a three-month manhunt through multiple states and Canada. Schools were temporarily closed, and a county district attorney required around-the-clock security. Christy was eventually arrested in September 2018 and charged with twelve federal counts.[1]

In January of 2019, Christy had begun filing *pro se* motions, all of which were denied or stricken because he was represented by counsel. In April 2019, his counsel moved for a competency evaluation, and the District Court ordered one, transferring Christy to a facility in New York for that purpose. Around the same time, Christy wrote a

[1] The charges were: 1) Threats against the President of the United States (18 U.S.C. § 871); 2-4) transmitting threatening communications (18 U.S.C. § 875(c); 5-6) interstate transportation of a stolen vehicle (18 U.S.C. § 2312); 7-8) interstate transportation of a stolen firearm (18 U.S.C. § 922(i)); 9-10) interstate transportation of a firearm while under information for a felony offense (18 U.S.C. § 922(n)); 11) fugitive in possession of a firearm (18 U.S.C. § 922(g)(2)); and 12) felon in possession of a firearm (18 U.S.C. § 922(g)(1)). *See* J.A. at 3-4, Judgment of Conviction (ECF 316); J.A. at 15-25, Superseding Indictment (ECF 28).

sealed letter to the Court requesting permission to represent himself. It held a hearing on September 3, 2019 to address both Christy's competency and his desire to represent himself. It concluded that he was competent. It then addressed the letters from Christy requesting to represent himself, repeatedly reminding him of the charges and potential sentences he was facing and repeating that, in the Judge's opinion, "a trained lawyer would defend [him] far better than [he] could defend [him]self." J.A. at 862. The Court found that Christy "knowingly and voluntarily waived [his] right to counsel" and granted his motion to represent himself with standby counsel. J.A. at 864.

Trial began on November 19, 2019. The Government presented nearly three dozen witnesses and the defense only four (including Christy). The jury returned a guilty verdict on all counts.

By the time of the sentencing hearing in July 2020, neither party had objected to the presentence report. Nonetheless, Christy raised numerous objections to it at the hearing; the only one that might have affected his Guidelines range, however, was to his enhancement of two levels for obstruction of justice by false testimony at trial. While he did not contest that he testified falsely, Christy argued that because his testimony was stricken from the record when he refused to answer cross-examination questions, the enhancement should not be applied. Construing this as an oral objection to the presentence report, the Court rejected it.

The following day, Christy's standby counsel filed a notice of appeal.

II. JURISDICTION AND STANDARD OF REVIEW

The District Court had subject-matter jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(a).

Our review of a district court's determination of whether a defendant may exercise his Sixth Amendment right to self-representation is plenary. *United States v. Jones*, 452 F.3d 223, 229 (3d Cir. 2006). So too is our review of its denial of a motion for judgment of acquittal, *United States v. Richardson*, 658 F.3d 333, 337 (3d Cir. 2011), as well as the denial of a motion for a new trial when that denial was based on the application of legal precepts. *Hook v. Ernst & Young*, 28 F.3d 366, 370 (3d Cir. 1994).

We review a district court's factual determination of willful obstruction of justice, as well as factual determinations regarding criminal history calculations, for clear error, but any question regarding the legal interpretation of the Sentencing Guidelines gets *de novo* review. *United States v. Powell*, 113 F.3d 464, 467 (3d Cir. 1997); *United States v. Audinot*, 901 F.2d 1201, 1202 (3d Cir. 1990).

We review the final sentence for reasonableness. *United States v. Booker*, 543 U.S. 220, 261 (2005). In this inquiry, the burden rests on the party challenging the sentence, and we give due deference to the sentencing court's judgment. *United States v. Cooper*, 437 F.3d 324, 331 (3d Cir. 2006).

III. DISCUSSION

Christy raises several arguments for vacating his conviction and sentence. None is persuasive.

A.

Christy argues that, because he "expressed in his competency evaluation that he did not know federal law" and the District Court "chose not to explore" that statement following the colloquy required by *Faretta v. California*, 422 U.S. 806 (1975), it erred in permitting him to represent himself. Christy's Br. at 15. This is not correct. Under *United States v. Peppers*, a defendant has a Sixth Amendment right to *waive* counsel, though this must follow a "penetrating and comprehensive examination of all the circumstances." 302 F.3d 120, 131 (3d Cir. 2002) (quoting *Von Moltke v. Gillies*, 332 U.S. 708, 724 (1948)). But *Peppers* clearly states that a defendant's "technical legal knowledge, as such, [i]s not relevant to an assessment of his knowing exercise of the right to defend himself." *Id.* at 134-35 (quoting *Faretta*, 422 U.S. at 836). Our Court remanded for a new trial in part because the sentencing judge had *denied* the defendant self-representation based on his lack of legal training and expertise, not a valid basis for denying a defendant that Sixth Amendment right. *Id.* Christy, in a misunderstanding of the relevant law, claims the District Court should have done precisely that. We, of course, disagree.

The District Court thus properly permitted Christy to represent himself.

B.

Christy next argues that his motion for judgment of acquittal should have been granted because the evidence to convict him on four counts related to transportation of stolen firearms and vehicles was "clearly inadequate" given that he had never been convicted in state court of the underlying thefts. Christy's Br. at 7, 17. But as the

Government points out, a prior state conviction for theft is not a required element under any of those statutes. The elements that are required for them—including mere *knowledge* that the vehicle/firearm was stolen *by someone*—were set out in jury instructions to which Christy did not object. Gov't's Br. at 37. Moreover, trial evidence proved beyond a reasonable doubt that he did steal the firearms and vehicles in question: the jury watched videotapes, read letters in his own handwriting, and heard a jailhouse confession caught on tape.[2]

The Court was correct to deny Christy's motion for judgment of acquittal.

C.

Christy contends that the District Court wrongly denied his motion for a new trial because 1) the jury pool was "tainted by news reports at the start of the selection process, as admitted by a str[icken] juror, and [he] was stopped by the United States Marshals Service from news interviews"; 2) the Government violated its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963); and 3) he "did not have enough time to review the [trial] transcripts" prior to filing his motions for acquittal and new trial. Christy's Br. at 18-21. There is no evidence in the record the jury was tainted, and as the District Court noted in denying Christy's motion on this ground, all 45 prospective jurors who had indicated during *voir dire* that they had "been told, heard, read, seen or learned anything about this case from any source whatsoever" had been "thoroughly vetted," some were stricken for

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[2] Christy also states he was "blocked from attending [the] state court hearing" and "denied access to important legal information by the FBI, United States Marshals Service[,] and the Lackawanna County Prison." Christy's Br. at 16. However, he provides no further details about these allegations, nor a single citation to the record.

cause, and there was "no indication that a partial individual served on the chosen panel." J.A. at 87. And Christy provides no legal authority to suggest that being prevented from being interviewed compels a new trial. The *Brady* claim fails because, as the District Court noted in denying his new-trial motion, Christy fails to provide a single example of favorable evidence that was not provided to him in violation of *Brady*. Finally, the Court granted Christy's motion for trial transcripts to be produced at the Government's expense, and they were hand delivered to him on June 5, 2020. The Court then gave Christy additional time to file a supplemental brief in support of his motion. ***Id.*** But he declined to do so, stating that he had read the transcript in full and had "no more new information to add." J.A. at 93-94. That refutes any possible claim of prejudice from lack of access to the trial transcript.

The motion for new trial was correctly denied.

D.

Christy's last claims relate to his sentence: that it was harsh and excessive. A basis, he contends, is that because his testimony was stricken from the record, he should not have been assessed a two-level enhancement for obstruction under USSG § 3C1.1. Christy had made numerous false claims on the stand, some of which were obscene, and some of which he later admitted were false. He became combative and violent, screaming at the prosecutor questioning him, cursing at individuals at counsel table, and refusing to answer multiple questions on cross-examination. The Court warned him that his direct testimony would be stricken from the record if he persisted in refusing to answer cross-examination questions and gave him time to consult with standby counsel.

He decided to assert his Fifth Amendment right to refuse to answer questions, and the Court struck his testimony. While at sentencing he objected to the obstruction enhancement on the ground that "I thought if something got stricken from the record, it was a done deal[,]" J.A. at 883, Christy continues to provide no legal authority to support that contention. The Court confirmed that the false testimony was both material and willful, and it found that the presentence report was properly prepared. Given that Christy makes no argument that it was not—other than a novel and unsupported legal argument about stricken testimony—we agree.

Christy's next sentencing claim is that his criminal history category (V) over-represents the seriousness of his prior convictions and the likelihood that he will commit other crimes. As Christy acknowledges, we review this argument for plain error because he did not preserve his objection to his criminal history. He therefore bears the burden of persuasion, *United States v. Olano*, 507 US. 725, 734-35 (1993), and must demonstrate that the Court committed a plain error affecting his substantial rights. *Rosales-Mireles v. United States*, 138 S. Ct. 1897, 1904 (2018). As the Government points out, Christy has two past assault convictions against government officials, has violated probation every time he has been sentenced to it, and has repeatedly threatened violence against others (including law enforcement officers). No reasonable person could conclude that this record fails to reflect a serious criminal history or a risk of recidivism. And, as the Government further points out, the Court placed little weight on Christy's criminal history when determining a fair sentence. Indeed, Judge Mariani explicitly stated, "[T]hese are prior convictions[.] I take note of them, but they are not central to the

decision I'm going to make here." J.A. at 966. Thus, we cannot conclude that the Court committed plain error in calculating and applying Christy's criminal history, much less that it affected his substantial rights.

Finally, Christy argues that his sentence was substantively unreasonable. Because it fell below the Sentencing Guidelines range (262 to 327 months), the sentence is presumptively reasonable. *United States v. Handerhan*, 739 F.3d 114, 124 (3d. Cir. 2014). Christy's conclusory statement that "no reasonable sentencing court would have imposed the same sentence on him for the reasons the district court stated," Christy's Br. at 24, does not overcome that presumption.

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For these reasons, we affirm the District Court's conviction and sentence.

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