
No. _____

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,
RESPONDANT,

V.

KENT BOOHER,
PETITIONER.

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

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

United States v. Kent Booher, ____ F. 3d ____ (6th Cir. 2024)
(opinion affirming district court judgment)

United States v. Kent Booher, No. 3:19-cr-00161 (E.D. Tennessee January 19, 2023)

Manuel B. Russ
340 21st Avenue North
Nashville, Tennessee 37203
(615) 329-1919

QUESTIONS PRESENTED

A. THE DISTRICT COURT ERRED WHEN IN ITS RESTITUTION ASSESSMENT AGAINST MR. BOOHER

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Paroline v. United States</i> , 572 U.S. 434, (2014).....	5, 7
<i>United States v. Church</i> , 731 F.3d 530, (6th Cir. 2013).....	3
<i>United States v. Flowers</i> , 963 F.3d 492, (6th Cir. 2020).....	3, 7
<i>United States v. Vandeberg</i> , 201 F.3d 805, (6th Cir. 2000).....	4
<i>United States v. White</i> , 492 F.3d 380, (6th Cir. 2007).....	3

STATUTES

United States Code 18 § 1593.....	1, 5
United States Code 18 § 2259.....	1, 5-6
United States Code 18 § 2429.....	1, 5
United States Code 18 § 3231.....	1
United States Code 28 §1291.....	1

APPENDICES

6th Circuit Court of Appeals Opinion.....	Appendix A
District Court Judgment.....	Appendix B

I. OPINIONS BELOW

The reported opinion of the Court of Appeals for the Sixth Circuit and the judgment of conviction in the United States District Court for the Eastern District of Tennessee are attached to this petition as the Appendix.

II. JURISDICTION

The judgment of the Court of Appeals for the Sixth Circuit was entered on May 8th, 2024. The District Court, upon a motion by Mr. Booher, granted additional time to prepare this application based on the disposition date of his companion case in the Sixth Circuit 22-5749. (D.E. 41) The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), the petitioner having asserted below and asserting in this petition the deprivation of rights secured by the United States Constitution.

III. STATUTORY PROVISIONS INVOLVED

This matter involves violations of the United States Code, specifically, 18 U.S.C. § 2259, 18 U.S.C. § 3231, 18 U.S.C. § 2429, and 28 U.S.C. § 1291.

IV. STATEMENT OF THE CASE

A. Procedural Background

The matter was briefed for the Sixth Circuit Court of Appeals and, after considering the matter on the briefs and oral argument, the Court issued an Opinion, with a concurring Opinion from Judge Readler, dated May 7th, 2024, denying all relief, which has been appended to this Petition below. Mr. Hayek now makes this timely application.

B. Statement of Facts

Mr. Booher was charged in the Eastern District of Tennessee in a five count superseding indictment in 3:19-CR-00161 with various offenses relating to his sexual conduct with K.V. as well as other counts that stem from contact on the internet with an undercover officer posing as an underage female. (R. 14, Superseding Indictment, PageID#26-28) Only counts two, three, and four related to conduct involving K.V. which led to the assessment of restitution.

The proof adduced at trial relating to Mr. Booher's conduct with K.V. was that K.V., while still a minor, disclosed being engaged in prostitution and Mr. Booher became a suspect in the subsequent investigation. (R. 112, Trial Transcript Day One, PageID#2068-2070; R. 113, Trial Transcript Day Two, PageID#2158-2159) K.V.'s mother testified that she was aware of Mr. Booher's conduct with K.V. and was present when he had sexual contact with her on multiple occasions. (R. 113, Trial Transcript Day Two, PageID#2212-2213) K.V. also testified that she had sex for money with men, including Mr. Booher, and described several incidents wherein he had sex with her for money over the course of approximately two months. (R. 114, Trial Transcript Day Three, PageID#2302-2321) Text exchanges wherein Mr. Booher was soliciting K.V. for nude photographs over the HeyWire as well as sending lewd messages were introduced and described. (R. 113, Trial Transcript Day Two, PageID#2118-2119; R. 114, Trial Transcript Day Three, PageID#2333-2336) This conduct formed the basis for his convictions in counts two through four.

After a sentencing hearing held on August 24th, 2022, Mr. Booher was sentenced by the Court to a term of Life plus 120 months imprisonment. (R. 99, Judgement) At the sentencing hearing, the Government made arguments relating to Mr. Booher's potentially required restitution and, at the District Court's instruction, the parties further briefed the issue, submitting their briefs in September of 2022. (R. 106&107, Government's Restitution Brief and Defense Restitution Brief) The District Court issued a Memorandum and Opinion as to restitution on January 19th, 2023, assessing Mr. Booher \$262,327.50 in restitution to K.V. (R. 119, Memorandum for Restitution) As Mr. Booher's conviction conduct related to K.V. was restricted to counts two, three and four of the indictment, the District Court could only award restitution based on the convictions for these offenses. Mr. Booher timely, and independently, filed relief to this Court from the District Court's restitution award.

V. STANDARD OF REVIEW

Restitution orders are reviewed *de novo*, but review of the amount of restitution awarded for an abuse of discretion. *United States v. Church*, 731 F.3d 530, 535 (6th Cir. 2013) An abuse of discretion has been defined as occurring when the district court "relies on clearly erroneous findings of fact, uses an erroneous legal standard, or improperly applies the law." *United States v. Flowers*, 963 F.3d 492, 497 (6th Cir. 2020) (quoting *United States v. White*, 492 F.3d 380, 408 (6th Cir. 2007)).

VI. SUMMARY OF ARGUMENT

The District Court erred when it assessed Mr. Booher restitution in the amount of \$262,327.50, and the 6th Circuit was in error when it affirmed this decision. The court had an insufficient basis to establish the need or propriety of that amount of restitution. The evidence presented by the Government was insufficient to demonstrate the current or future need for amount of funds for K.V., a total exceeding one-quarter of one million dollars. Absent sufficient evidence to support this claimed amount and notwithstanding the significant reduction in the amount awarded as compared to the amount requested by the Government, Mr. Booher is entitled to a new restitution hearing to properly evaluate the evidence supporting the request for restitution by K.V.

VII. ARGUMENT

A. THE DISTRICT COURT ERRED WHEN IN ITS RESTITUTION ASSESSMENT AGAINST MR. BOOHER

This Court should accept Mr. Booher's application so it can review and clarify the proof required at a restitution to demonstrate current and future need of the victim as well as the relative role played by the defendant in the total amount of harm caused so as to provide guidance to courts in assessing this required amount.

"The MVRA [Mandatory Victim's Restitution Act] requires a defendant to pay restitution to identifiable victims who have suffered either physical injuries or pecuniary losses as a result of certain criminal offenses." *United States v. Vandeberg*, 201 F.3d 805, 812 (6th Cir. 2000).

“Specifically, restitution is mandatory - regardless of a defendant’s financial situation” when a defendant is convicted of one of the enumerated offenses listed in the United States Code. *Id.*

Specifically in reference to conviction offenses such as Mr. Booher’s, 18 U.S. §2259, 18 U.S. § 2429, and 18 U.S. § 1593, all provides similar rules relating to mandatory restitution and the definition of “victim losses” which is determined by 18 U.S.C § 2559(b)(2)(A)&(B):

(b) Scope and Nature of Order. -

(2) Restitution for trafficking in child pornography. - If the defendant was convicted of trafficking in child pornography, the court shall order restitution under this section in an amount to be determined by the court as follows:

(A) Determining the full amount of a victim’s losses. - The court shall determine the full amount of the victim's losses that were incurred or are reasonably projected to be incurred by the victim as a result of the trafficking in child pornography depicting the victim.

(B) Determining a restitution amount.- After completing the determination required under subparagraph (A), the court shall order restitution in an amount that reflects the defendant's relative role in the causal process that underlies the victim's losses, but which is no less than \$3,000.

8 U.S. § 2259(c)(2) defines “victim’s losses” as:

(2) Full amount of the victim’s losses. - For purposes of this subsection, the term “full amount of the victim’s losses” includes any costs incurred, or that are reasonably projected to be incurred in the future, by the victim, as a proximate result of the offenses involving the victim, and in the case of trafficking in child pornography offenses, as a proximate result of all trafficking in child pornography offenses involving the same victim, including-

- (A) medical services relating to physical, psychiatric, or psychological care;
- (B) physical and occupational therapy or rehabilitation;
- (C) necessary transportation, temporary housing, and child care expenses;
- (D) lost income;
- (E) reasonable attorneys’ fees, as well as other costs incurred; and
- (F) any other relevant losses incurred by the victim.

Even when the District Court determines that restitution is warranted and orders a defendant to pay some restitution amount, the Court must determine the relative amount of harm caused by the individual defendant to properly assess restitution. “[T]he central concern of the causal inquiry must be the conduct of the particular defendant from whom restitution is sought.” *Paroline v.*

United States, 572 U.S. 434, 445 (2014). “[A] court applying §2259 should order restitution in an amount that comports with the defendant’s relative role in the causal process that underlies the victim’s general losses.” *Id.* at 458.

At Mr. Booher’s sentencing hearing, the Government adduced proof from Dr. Christopher Watkins, a licensed a psychologist, relating to the possible costs for therapy that would be necessary for K.V. based on the trauma she had experienced throughout the course of several years wherein she was addicted to opioids and she engaged in prostitution. (R. 108, Sentencing Hearing, PageID#1809-1830) Dr. Watkins opined that Mr. Booher’s conviction conduct was a significant contributor to K.V.’s trauma that necessitated treatment and other medical services which he estimated, in total, would be \$524,655. (R. 108, Sentencing Hearing, PageID#1812-1814&1829)

However, Dr. Watkins testified that, in preparation for the report he submitted, he spoke with K.V. for a total of forty-five minutes and only reviewed portions of the trial transcript. (R. 108, Sentencing Hearing, PageID#1833) He also stated that K.V. had what he termed “complex trauma” stemming from a variety of factors. One of these factors was the fact that people, other than Mr. Booher, had sexually abused her as well as her own disclosure she had engaged in prostitution. (R. 108, Sentencing Hearing, PageID#1835) Dr. Watkins cited the lack of parental support as another negative factor. (R. 108, Sentencing Hearing, PageID#1819) Additionally, Dr. Watkins mentioned, repeatedly, K.V.’s opioid addiction as a major contributing factor to her complex trauma during his testimony. (R. 108, Sentencing Hearing, PageID#1813; 1815-1816; 1822; 1827-1828) These factors led Dr. Watkins to the conclusion that his report was “not designed to sort of say that this person is responsible or that is responsible. [The report] sort of like, this is what we have now; this is what it would cost to fix it” indicating that his assessment of costs was based on the totality of all the trauma K.V. had experienced rather than just that

attributable to Mr. Booher. (R. 108, Sentencing Hearing, PageID#1839:24-25-1840:1-2) He further indicated that he did not believe he had the “authority to say who it is that’s responsible for paying” but rather cited the various factors that contributed to K.V.’s trauma that created the necessity for the Government’s requested restitution. (R. 108, Sentencing Hearing, PageID#1840:22-23)

The District Court, in its order, made an effort to differentiate the quality and quantity of the sexual abuse experienced by K.V., from the multiple sources, in order to attempt to comply with the requirements of *Paroline*. (R. 119, Memorandum for Restitution, PageID#2631-2635) However, nowhere in its Memorandum does the District Court attempt to evaluate K.V.’s need for therapy because of the influence of other traumatic stressors or quantify their impact on the financial costs of the restitution requested by the Government.

Dr. Watkins testified that the lack of parental support was a factor causing her trauma which understates the matter considerably as K.V.’s mother, based on her own testimony, essentially prostituted her in order to supply their joint drug addiction. (R. 114, Trial Transcript Day Three, PageID#2302-2321) Even more important to Dr. Watkins’ report was his repeated references to the impact, both individually and jointly, that K.V.’s opioid addiction had which both led to and exacerbated the trauma that then required treatment.

The District Court’s failure account for these other, multiple and substantial sources of trauma for K.V. constitutes an abuse of discretion as the District Court relied “on clearly erroneous findings of fact” to make its determination. *Flowers*, 963 F.3d at 497. The proof adduced from the Government’s own expert witness was clear that these other factors were major contributors to the trauma experienced by K.V. which formed the basis for the restitution request. The District Court’s election to ignore these other factors, and the influence they had on the course of K.V.’s

life in addition to the sexual abuse, makes its findings of fact clearly erroneous. Mr. Booher is entitled to relief as to the issue of the amount of restitution he will be required to pay.

CONCLUSION

For the aforementioned reasons, Mr. Booher prays that this Honorable Court will grant his request for a writ of certiorari in order to review the question presented relating the factually erroneous rulings by the District Court, affirmed by the Circuit Court, that created reversible error. This issue is one that presents an important question that this Court grant review to clarify the standard of proof required to set appropriate restitution in cases of this nature.

Respectfully submitted,

/s/ Manuel B. Russ
Manuel B. Russ
340 21st Avenue North
Nashville, Tennessee 37203
(615) 329-1919

CERTIFICATE OF SERVICE

I certify that the foregoing petition motion to proceed *in forma pauperis* has been served via first-class mail upon counsel for the Respondent Ms. Debra Breneman, United States Attorney's Office for the Eastern District of Tennessee at Knoxville, 800 Market Street Suite 211, Knoxville, TN 37902, and Ms. Elizabeth Prelogar, Acting Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, this 1st day of November, 2024.

/s/ Manuel B. Russ
Manuel B. Russ