
No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LEPRINCETON BURKS, PETITIONER,

vs.

UNITED STATES, RESPONDENT.

**MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS**

Petitioner, through counsel, asks leave to file the attached Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit without prepayment of costs and to proceed in forma pauperis. Counsel was appointed in the court of appeals under the Criminal Justice Act, 18 U.S.C. § 3006A(b). This motion is brought pursuant to Rule 39.1 of the Rules of the Supreme Court of the United States.

Respectfully submitted,

December 6, 2024

s/ Carlton F. Gunn

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LEPRINCETON BURKS, PETITIONER,
vs.
UNITED STATES, RESPONDENT.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A. Whether a Federal Rule of Criminal Procedure Rule 12(d) requirement that a district court deciding a motion must state its essential findings is mandatory and cannot be waived by a defendant's failure to affirmatively request findings, so a court of appeals must remand when a district court fails to comply with the requirement.

B. Assuming *arguendo* that remand is not always required, whether it is required when the government argues two legal theories that depend on different facts and the district court did not indicate which legal theory it relied on.

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

Leprinceton Burks petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit.

**I.
OPINIONS BELOW**

The memorandum disposition of the court of appeals, which is unpublished, is included in the appendix as Appendix 1. The district court's oral ruling denying the motion to suppress evidence is included as Appendix 2.

**II.
JURISDICTION**

The judgment of the court of appeals was entered on October 21, 2024. *See* App. A001. The jurisdiction of this Court is invoked pursuant to 62 Stat. 928, 28 U.S.C. § 1254(1).

III.

STATUTORY PROVISION INVOLVED

Rule 12(d) of the Federal Rules of Criminal Procedure provides:

(d) Ruling on a Motion. The court must decide every pretrial motion before trial unless it finds good cause to defer a ruling. The court must not defer ruling on a pretrial motion if the deferral will adversely affect a party's right to appeal. When factual issues are involved in deciding a motion, the court must state its essential findings on the record.

IV.

STATEMENT OF THE CASE

A. JURISDICTION IN THE COURTS BELOW.

The district court had jurisdiction under 18 U.S.C. § 3231. The court of appeals had jurisdiction under 28 U.S.C. § 1291.

B. FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED.

1. Arrest and Investigation.

On August 28, 2011, Los Angeles Police Department ("LAPD") officers received a call about a young woman who had texted that she was being held against her will in the area of Ventura Boulevard and Coldwater Canyon. App.

A045. The officers drove to the area and then contacted a Moreno Valley Police Department investigator who had made the report. App. A045. The investigator said S.A.'s mother had told him S.A. had texted a friend that she was being held against her will in the area. App. A045. The investigator added that S.A. might be with two black men named Darius Sutton and Chad Miller, as well as an underage girl. App. A045. The investigator also provided a partial license plate of a car they might be driving. *See* App. A045.

The officers drove to a hotel in the area, where they saw a car with a license plate matching the partial plate the investigator had provided. App. A045-46. The desk clerk told them Sutton was registered in Room 622. App. A046. The clerk also identified a picture of S.A. as being in the room with Sutton, another black man, and a black woman, and said he had seen S.A. just before the officers arrived. App. A046.

Additional officers were summoned, and officers went to the room. *See* App. A046. They knocked on the door, but no one answered. App. A046. A detective in the parking lot claimed he saw two men exit onto the balcony and "start[] running and hopping across adjoining balconies," but "return[] to the balcony for room 622" when the detective ordered them to stop. App. A046. Petitioner subsequently stated in a declaration that this was not true. *See infra* p. 4.

The officers then used a key to enter the room. App. A047. They saw three men and three females in the room and took all of them and two more men on the balcony into custody. App. A047. The men included Petitioner, who was one of the men on the balcony, and Sutton and Miller. *See* App. A047-48. The females were S.A.; a 15-year-old with the initials A.T., who had

an outstanding warrant; and a 17-year-old with the initials H.P., who was a reported runaway. *See* App. A047. S.A. and A.T. claimed Sutton had been prostituting them, and H.P. claimed Petitioner had been prostituting her. *See* App. A048-49. Petitioner was eventually charged in federal court with child pornography offenses, based on videos and photos on laptop computers and cellphones that were found in the room. *See* Dist. Ct. Dkt. No. 1.¹

2. Suppression Motion.

Petitioner filed a motion to suppress evidence. *See* App. A010-12. It challenged the warrantless search of the hotel room and sought to suppress all evidence derived from the search. *See* App. A010-12. The motion was supported by a declaration from Petitioner stating he had contributed approximately \$40 toward the room rent, had a key, and had resided and slept in the room every day and night the week before the arrest. *See* App. A063. Petitioner also described the officers' entry into the hotel room and being arrested. *See* App. A063-64. He admitted he had gone out onto the balcony, but denied jumping onto a neighboring balcony. *See* App. A063. He stated the girl who claimed she was kidnapped had access to the car and had driven it alone several times. *See* App. A064-65.

The government argued the warrantless entry was justified by exigent circumstances. *See* App. A036-39, A078. It also argued Petitioner did not have

¹ "Dist. Ct. Dkt." refers to the docket in *United States v. Burks* (C.D. Cal. No. 2:15-cr-00407-TJH). "Dkt." refers to the docket in *United States v. Burks* (9th Cir. No. 22-50292).

a sufficient privacy interest in the room to give him standing to challenge the entry. First, it argued Petitioner did not have a privacy interest because Sutton had rented the room and Petitioner did not qualify as a guest. *See App. A0029-32*. Second, it argued any privacy interest was erased by the use of the room for commercial criminal activity in the form of prostitution. *See App. A030, A079-80*.

The court held an evidentiary hearing, at which the government cross-examined Petitioner and defense counsel cross-examined an LAPD officer who had provided a declaration for the government. *See App. A081-153*. After the cross-examination, the prosecutor reiterated the government arguments that there were exigent circumstances justifying the entry and Petitioner lacked standing. *See App. A141-48*. The prosecutor also argued Petitioner's claim that he had been an overnight guest was not credible because of inconsistent statements in a post-arrest interview. *See App. A141-43*. Defense counsel defended Petitioner's credibility and argued there were not exigent circumstances, in part because the alleged victim had been seen freely walking around the hotel. *See App. A058-59, A150-53*.

After hearing these arguments, the district court ruled. It seemed to agree the entry was unlawful, but ruled Petitioner did not have Fourth Amendment standing:

It is fairly clear that this defendant did not have a Fourth Amendment interest. That's all I can say to the motion. None of the other nonsense the sergeant talked about. The sergeant knew pretty well what he had, but this man can't claim that. The motion to suppress is denied.

App. A009. The court made no factual findings about why "this defendant did not have a Fourth Amendment interest."

3. Appeal.

Petitioner was convicted and appealed. One of the claims he raised was that the district court had failed to comply with the requirement in Federal Rule of Criminal Procedure 12(d) that, “[w]hen factual issues are involved in deciding a motion, the court must state its essential findings on the record.” Petitioner pointed to Ninth Circuit case law holding the essential findings requirement is mandatory. *See* Dkt. No. 25, at 20-21 (citing and discussing *United States v. Prieto-Villa*, 910 F.2d 601 (9th Cir. 1990)). He also explained why he had standing if the facts as asserted in his declaration were true. First, he explained he had standing as an overnight guest under *Minnesota v. Olson*, 495 U.S. 91 (1990), and its Ninth Circuit progeny. *See* Dkt. No. 25, at 17-18. Second, he explained he would have standing even if the room were being used only to prostitute women – if he were a coequal participant in the criminal activity. *See* Dkt. No. 25, at 18-19.

The government argued in its opposing brief that there did not need to be a remand for factual findings. But it did not argue the facts did not matter. Instead, it argued its position on the facts. First, it argued that “[d]efendant presented no objective evidence that he was an overnight guest” in the hotel room, Dkt. No. 43, at 26, “was impeached with statements from his 2011 interview and contradicted his declaration on the stand,” Dkt. No. 43, at 27, and “[a]t best was ‘legitimately on the premises,’” Dkt. No. 43, at 27 (quoting *United States v. Armenta*, 69 F.3d 304, 308 (9th Cir. 1995)).

Second, the government argued that there were exigent circumstances even if Petitioner had standing. This argument also was based on the

government's factual claims.

Here, the officers reasonably believed that S.A., who was reported to have been kidnapped and held by pimps, was in danger. They knew S.A. was with Sutton, spotted a gold Lexus matching the tip's description, and confirmed Sutton had rented Room 622 and was with S.A. When Sergeant Schumacher knocked on the door of Room 622 and announced himself, he heard people inside but received no response. Another officer saw two men attempting to flee. The totality of these circumstances amply justified a warrantless entry to protect S.A. and thwart the potential destruction of evidence. (Citations omitted.)

Dkt. No. 43, at 30.

Petitioner responded in his reply brief that these arguments did not eliminate the need for remand. As to the district court's ruling on standing, Petitioner reiterated the arguments he had made previously. First, Petitioner had standing as an overnight guest if the claims he made in his declaration were true. Second, if the room was being used solely for trafficking women, he had standing if he was a coequal participant in that activity. *See* Dkt. No. 50, at 2-3. He argued there needed to be a remand for factual findings because the court of appeals "must know whether the district court did not believe Mr. Burks paid part of the rent, slept in the room, had a key to the room, was free to come and go, had belongings in the room, and was a coequal participant in the trafficking activity, or whether the district court simply believed those facts did not matter." Dkt. No. 50, at 4. He argued that the only thing the district court did state – that Petitioner did "not have a Fourth Amendment interest" – was not a factual finding, but a legal conclusion. *See* Dkt. No. 50, at 4.

Petitioner also explained factual findings were necessary for the government's alternative exigent circumstances argument.

The government's alternative argument that the

district court ruling can be affirmed based on exigent circumstances fails because that also would require factual findings the district court did not make. Missing findings include findings about what the officer heard inside when he knocked; whether Mr. Burks attempted to flee, which he expressly disputed; and whether the alleged victim appeared to be able to freely move about, as defense counsel argued. This Court cannot rule on exigent circumstances without findings on these disputed factual questions.

Dkt. No. 50, at 4-5 (footnote and citations omitted). He added that the district court's general description of the officer's claims as "nonsense" suggested it may not have believed the officers' claims on at least some points. *See* Dkt. No. 50, at 5 n.1.

The court of appeals rejected Petitioner's arguments and affirmed Petitioner's convictions without remanding for factual findings.² It opined that "[i]n finding that 'it is fairly clear that' Burks 'did not have a Fourth Amendment interest,' the district court implicitly rejected Burks's testimony and declaration – the only evidence he provided to establish a reasonable expectation of privacy – as either not credible or mere 'bald assertions.'" App. A002 (quoting *United States v. Armenta*, 69 F.3d at 308). It then added that "even assuming otherwise, exigent circumstances justified the officers' warrantless entry." App. A002. It did not directly address Petitioner's argument that factual findings were necessary to support this alternative rationale, but did cite a Ninth Circuit case stating: "Where the district court does not make a finding on a precise factual issue relevant to the Fourth

² The court did vacate Petitioner's sentence and remand for resentencing based on a district court guidelines calculation error, *see* App. A006-07, but Petitioner's sentence cannot be less than 15 years because of a mandatory minimum sentence requirement in 18 U.S.C. § 2251(e).

Amendment analysis, we uphold a trial court’s denial of a motion to suppress if there was a reasonable view to support it.” App. A002 (quoting *United States v. Magdirila*, 962 F.3d 1152, 1156 (9th Cir. 2020)).³

V.

REASONS FOR GRANTING THE PETITION

Federal Rule of Criminal Procedure 12(d) commands that a district court ruling on a motion that involves factual issues “*must* state its essential findings on the record.” (Emphasis added.) There is no caveat of “if requested by a party,” “unless waived by the parties,” or anything else suggesting the rule’s command depends on a party’s request.

And it makes sense that the command does not turn on a party’s request. The rule is needed not to protect the parties’ rights, but to allow appellate courts to do their job. That job is not to find the facts – which appellate courts are ill-equipped to do – but to interpret and apply the law – which appellate courts are well equipped to do. But appellate courts need facts to which to apply the law. And that is where Rule 12(d)’s command comes into play. It assures appellate courts have the facts they need to apply the law.

³ This statement in *Magdirila* was dictum, because the district court there, which ruled the search of a car was a valid inventory search, had made multiple factual findings. Those included that the car searched was illegally parked and lacked license plates; that the officers impounded the car because the owner was not present and the defendant was unlicensed; that the defendant did not have evidence he was authorized to drive the car; that the car was parked in and blocking an alley; and that the officer impounded the car pursuant to police department policy. *See id.* at 1155.

Despite this purpose and the rule's plain command, there is a split in the circuits about whether to enforce the rule. At least three circuits have stated the rule is – consistent with how it is written – mandatory, and there should be a remand if the district court failed to make factual findings. But at least three other circuits – though one sitting en banc with almost half its judges dissenting – treat the rule as qualified and/or waivable despite its plain language. Those courts do not require remand when there are no factual findings, but conduct their own independent review of the record and affirm if the district court's decision is supported by “any reasonable view of the evidence.” Still, even those courts will sometimes remand – where there is uncertainty about the district court's legal rationale that creates uncertainty about the facts the district court had to resolve. This suggests a middle ground of requiring remand where the court of appeals cannot tell what legal theory the district court relied on and, relatedly, what facts the district court had to determine.

The Court should grant this petition for multiple reasons. First, regardless of which set of circuits is correct, there is a split which should be resolved, so all defendants are governed by the same rules. Second, the issue is important because most motions to suppress evidence – which are the most common type of motion – turn on both the law and the facts – as the motion to suppress here did. Third, the view that appellate courts can and should conduct their own independent review of the record and affirm if the district court's decision is supported by “any reasonable view of the evidence” (1) ignores the plain command of Rule 12(d) that *the district court* determine the facts and (2) requires appellate courts to take on a factfinding role for which they are

entirely unsuited.

Finally, this case is an excellent vehicle for resolving the split and deciding the questions presented. First, there were multiple factual disputes in the district court and the district court stated factual findings on none of them. Second, Petitioner concededly did not request factual findings, so the question of whether the essential findings requirement is a right of the parties that can be waived, or a duty the district court has to the court of appeals, is squarely presented. Third, this is a case where there were two legal theories argued by the government which depended on different factual questions – one being that Petitioner did not have enough connection to the room to qualify as an overnight guest and the other that a defendant cannot have standing in premises used solely for criminal activity – and the district court did not indicate which legal theory it relied on. This case thus presents the middle ground of a case where the appellate court cannot tell which of two different sets of facts the district court might have determined.

A. THE PETITION SHOULD BE GRANTED BECAUSE THERE IS A SPLIT IN THE CIRCUITS ON THE QUESTION OF WHETHER THE ESSENTIAL FINDINGS REQUIREMENT IN RULE 12(d) IS MANDATORY AND/OR IS WAIVED BY A FAILURE TO AFFIRMATIVELY REQUEST FINDINGS.

There is a clear split in the circuits on the question of whether the requirement in Rule 12(d) that a district court “must state its essential findings on the record” is mandatory and/or is waived by a failure to affirmatively

request findings. At least three circuits have held the essential findings requirement is not mandatory and/or is waived by a failure to affirmatively request findings. The D.C. Circuit's view is that a failure to make findings is excused when the defendant did not request them, because there is a waiver. That circuit's rationale was set forth in *United States v. Harley*, 990 F.2d 1340 (D.C. Cir. 1993):

Although the district court failed to state on the record its essential findings of fact as required under Rule 12(e) [now Rule 12(d)] of the Federal Rules of Criminal Procedure, Harley has waived his right to challenge that omission by failing to object below. Thus, any factual disputes must be resolved in favor of admissibility and we must uphold the denial of Harley's motion if any reasonable view of the evidence supports it.

Id. at 1341 (citations omitted).

The Fifth Circuit and Eighth Circuit have followed the D.C. Circuit and done so without relying on a waiver theory. The Fifth Circuit recognized the Rule 12 essential findings requirement in *United States v. Schinnell*, 80 F.3d 1064 (5th Cir. 1996), but followed a prior decision in *United States v. Yeagin*, 927 F.2d 798 (5th Cir. 1991), which held district court non-compliance does not require remand. Instead, the Fifth Circuit engages in "an independent review of the record to determine whether the district court's decision was supported by 'any reasonable view of the evidence.'" *Schinnell*, 80 F.3d at 1067 (quoting *Yeagin*, 927 F.2d at 800).

The Eighth Circuit, in an en banc opinion from which five of the eleven judges dissented, followed the Fifth Circuit and D.C. Circuit and held as follows:

Rule 12(e) of the Federal Rules of Criminal Procedure requires that "[w]here factual issues are involved in

determining a motion, the [trial] court shall state its essential findings on the record.” Three circuit courts have held, however, that the failure of a district court to state the factual findings underlying its decision on a motion to suppress does not necessitate a remand. *See, e.g., United States v. Yeagin*, 927 F.2d 798, 800 (5th Cir. 1991); *United States v. Griffin*, 7 F.3d 1512, 1516 (10th Cir. 1993); *United States v. Harley*, 990 F.2d 1340, 1341 (D.C. Cir.), *cert. denied*, 510 U.S. 885, 114 S. Ct. 236, 126 L. Ed. 2d 190 (1993). These circuits will uphold a district court’s decision on a motion to suppress despite lack of factual findings if, on review of the record, they find that “any reasonable view of the evidence supports [the district court’s decision].” *Harley*, 990 F.2d at 1340; *see also Yeagin*, 927 F.2d at 800; *Griffin*, 7 F.3d at 1516.

United States v. Bloomfield, 40 F.3d 910, 913 (8th Cir. 1994) (en banc).⁴ The *Bloomfield* majority acknowledged this view was not unanimous, however. It recognized that “[t]wo circuits have held that if the district court’s findings of fact are not in strict compliance with Rule 12(e), remand for further findings is required” and simply “decline[d] to join these circuits.” *Id.* at 914. *Contra id.* at 920 (McMillian, J., dissenting) (“I would join the Sixth and Ninth Circuits in demanding strict compliance with Rule 12(e).”).

The two circuits which the *Bloomfield* majority declined to follow were the Ninth Circuit and the Sixth Circuit. Though the panel memorandum in Petitioner’s case and the dicta it quotes, *see supra* pp. 8-9 & n.3, illustrate some inconsistency, the Ninth Circuit stated in its one significant discussion of the essential findings requirement:

⁴ The Tenth Circuit case *Bloomfield* cited – *Griffin* – was not a case with no factual findings at all, because the district court in that case stated the government’s evidence was credible and the defendant’s was not. *See Griffin*, 7 F.3d at 1516. It was based on this factual finding that the court of appeals “decide[d] this case on the assumption the testimony of the police officers was true and . . . g[a]ve to this testimony the benefit of every reasonable inference.” *Id.*

[I]n order to “affirm on any basis disclosed by the record,” we would need to resolve disputed factual questions within the testimony of each police officer and differences between the testimony of the different police officers, as well as make inferences which would help fill in the gaps. A review of the authorities and the questions posed by this case persuades us that such an undertaking would be inappropriate, that factual findings by the district court are mandatory, and that remand is therefore required.

United States v. Prieto-Villa, 910 F.2d 601, 607 (9th Cir. 1990). *Prieto-Villa* noted the essential findings requirement had been expressly added to Rule 12 in congressionally approved amendments in 1974 and characterized it as “one of the ‘more significant’ amendments to the rule.” *Id.* at 608. *Prieto-Villa* also noted recognition of the requirement’s importance in the two leading treatises on the Federal Rules of Criminal Procedure. *See id.* (citing 1 C. Wright, *Federal Practice and Procedure*, § 191, at 683 (2d ed. 1982), and 8 J. Moore, *Moore’s Federal Practice* ¶ 12.04[1] at 12-40 (rev. 1990)). Finally, *Prieto-Villa* noted that “factual findings were envisioned by the Supreme Court, which drafted the amendments, and Congress, which enacted them, as a mandatory requirement on the district court.” *Id.*

The Sixth Circuit agreed with the Ninth Circuit in *United States v. Moore*, 936 F.2d 287 (6th Cir. 1991). It stated:

Essential findings on the record are necessary to facilitate appellate review. *Prieto-Villa*, 910 F.2d at 610; *see, cf. United States v. Woods*, 885 F.2d 352, 353-54 (6th Cir. 1989) (compliance with Federal Rules of Civil Procedure 58 necessary for appellate review). Moreover, as noted by the Ninth Circuit Court of Appeals in *Prieto-Villa*, a suppression motion is of utmost importance. Likewise, we conclude that compliance with Rule 12(e) is a mandatory obligation.

Moore, 936 F.2d at 289.

Finally, the Seventh Circuit agreed with the Ninth Circuit and Sixth

Circuit in *United States v. Fields*, 371 F.3d 910 (7th Cir. 2004). It noted the circuit split in a footnote, *see id.* at 916 n.4, and rejected the view that a court of appeals could simply rely on “any reasonable view of the evidence.”

The government submits that because Mr. Fields entered his conditional plea without asking for a factual finding with respect to the officers’ entry into the apartment, we should affirm the denial of his motion to suppress using the “any reasonable view of the evidence” standard. We do not agree. Although we have stated that the district court need not make specific factual findings in the suppression hearing, *United States v. Talkington*, 843 F.2d 1041, 1048 (7th Cir. 1988), we also made clear that a district court must make enough findings to enable us to review the record in “a reasoned and meaningful manner.” *Id.*; *see also* Fed. R. Crim. P. 12(e) (requiring a district court, when ruling on a motion to suppress, “to state its essential findings on the record”); [*United States v.*] *Brown*, 79 F.3d 1499 [(7th Cir. 1996)] (acknowledging this Court could affirm the denial of motion to suppress on any basis in the record but remanding for further factual findings). In *Talkington*, we reviewed a district court’s denial of a motion to suppress and specifically recognized decisions utilizing the “any reasonable view of the evidence” standard. 843 F.2d at 1048 (citing [*United States v.*] *Bethea*, 598 F.2d [331,] 333-34 [(4th Cir. 1979)]; [*United States v.*] *Smith*, 543 F.2d [1141,] 1145 [(5th Cir. 1976)]; *United States v. Lee*, 699 F.2d 466, 468 (9th Cir. 1982)). However, we remanded for further factfinding, recognizing that the district court was in a “far better position to address ambiguities . . . as well as questions of credibility and character assessment.” *Id.* at 1049. As we discussed, we believe that here, too, the district court is in the best position to resolve the dispute as to the initial method of entry into Mr. Fields’s apartment, a dispute that was briefed and argued to the district court. As in *Talkington*, the lack of factual findings here means we are unable to review the record in a meaningful manner. (Footnote omitted.)

Fields, 371 F.3d at 916-17.⁵

⁵ The Ninth Circuit case cited in *Fields – Lee* – is one of several cases *Prieto-Villa* recognized as evidencing an inconsistent application of the Rule 12 essential findings requirement. *See Prieto-Villa*, 910 F.2d at 607. Further, there were “[f]actual findings of some sort” in *Lee*, *Prieto-Villa*, 910 F.2d at

The split in the circuits has been expressly recognized in some of the opinions. The Eighth Circuit *Bloomfield* opinion, the Fifth Circuit *Schinnell* opinion, and the Seventh Circuit *Fields* opinion acknowledged the competing views before deciding which view to take. *See Fields*, 371 F.3d at 916 & n.4; *Schinnell*, 80 F.3d at 1067 n.4; *Bloomfield*, 40 F.3d at 914-15. And the Third Circuit, which has not yet taken a side, has expressly stated that “the courts of appeals are divided.” *United States v. Voigt*, 89 F.3d 1050, 1064 n.4 (3d Cir. 1996).

There is also a middle ground suggested by some opinions, which means there is arguably a three-way split rather than just a two-way split – or at least a middle ground to take. The middle ground is illustrated by a D.C. Circuit opinion in *United States v. Williams*, 951 F.2d 1287 (D.C. Cir. 1991), which was discussed at some length in the dissent in *Bloomfield*. *Williams* began by explaining how and why essential findings are important:

When a district court’s ruling on a pretrial motion involves factual issues, Rule 12(e) of the Federal Rules of Criminal Procedure commands the court to “state its essential findings on the record.” The rule serves several functions. Findings on the record inform the parties and other interested persons of the grounds of the ruling, add discipline to the process of judicial decision-making and enable appellate courts properly to perform their reviewing function. If the district court not only fails to make “essential findings on the record,” but also expresses nothing in the way of legal reasoning, if it simply announces a result, it may frustrate these objectives. We say “may” because there are cases in which the facts are so certain and the legal consequences so apparent, that little guesswork is needed to determine the grounds for the ruling.

607 n.4, for the district court had based its ruling on “reasons stated . . . in defendants’ memorandum,” *Lee*, 699 F.2d at 468, *quoted in Prieto-Villa*, 910 F.2d at 607 n.4.

Williams, 951 F.2d at 1288, *quoted in Bloomfield*, 40 F.3d at 920 (McMillian, J., dissenting). *Williams* then went on to remand because “[w]e do not know which facts the district court considered ‘essential’ to its ruling and we do not know what principle of Fourth Amendment law the court believed supported its ruling.” *Id.*, 951 F.2d at 1289.

This suggests the middle ground of requiring remand when there are alternative legal grounds which require different factual findings. In that circumstance, it is important for a court of appeals to know which facts the district court found – in exercising its role of deciding the facts – so the court of appeals knows which legal ground it needs to consider – to exercise its role of deciding the law.

B. THE PETITION SHOULD BE GRANTED BECAUSE THE PRESENT CASE IS AN EXCELLENT VEHICLE FOR RESOLVING THE SPLIT AND THE POTENTIAL MIDDLE GROUND.

The present case is an excellent vehicle for resolving all of the various questions raised by the split discussed above. Initially, this is a case in which there were multiple disputed factual questions and the district court stated findings on none of them. On the question of standing, there were the multiple claims made in Petitioner’s declaration that the government disputed. Those included whether Petitioner paid part of the rent, whether he slept in the room, whether he had a key to the room, whether he was free to come and go, whether he had belongings in the room, and whether he was a coequal participant in the trafficking activity. *See supra* p. 4. On the question of

exigent circumstances, which was the government's alternative argument and the court of appeals' alternative rationale, there were the disputed factual questions of what the officer heard inside when he knocked; whether Mr. Burks attempted to flee, which he expressly disputed; and whether the alleged victim appeared to be able to freely move about, as defense counsel argued, *see supra* pp. 4, 5.

Secondly, the present case is an excellent vehicle for resolving the question of whether a defendant's failure to affirmatively request findings is a waiver that excuses district court compliance with the essential findings requirement. There was concededly no affirmative request for findings in this case, so it squarely presents the question of whether that excuses district court compliance with the rule. Petitioner believes it does not excuse compliance for the reasons discussed *infra* pp. 21-22, but this case is an excellent vehicle for deciding the question.

Finally, this case is an excellent vehicle for considering the middle ground of excusing compliance when there is only one legal theory and so district court findings could be inferred, but not excusing compliance when there are two legal theories and the findings the district court would have needed to make depend on the legal theory the district court relied on. The government challenged Petitioner's standing on two legal theories here. *See supra* p. 5. One argument was that Petitioner did not have standing because he was simply legitimately on the premises and his connection to the room did not rise to that of a guest who would have standing like his host. *Compare Minnesota v. Olson*, 495 U.S. 91 (1990), with *Minnesota v. Carter*, 525 U.S. 83 (1998). An alternative argument was that a defendant cannot have standing

in premises used solely for criminal activity and Petitioner was not a coequal participant in that criminal activity. The first of these theories required the district court to consider all or some of Petitioner's factual claims that he paid part of the rent, slept in the room, had a key to the room, was free to come and go, and had belongings in the room. The second theory required the court to consider only whether the room was used solely for criminal activity and Petitioner's role in that criminal activity. This is thus a case like the *Williams* case discussed *supra* pp. 16-17, in which the court of appeals could not simply assume the district court found a particular set of facts, because the facts the district court found and the legal theory the court of appeals needed to consider depended on which legal theory the district court relied on.

C. THE PETITION SHOULD BE GRANTED BECAUSE IT IS IMPORTANT TO RESOLVE WHETHER AND WHEN THERE MUST BE A REMAND FOR FACTUAL FINDINGS.

It is important to resolve the questions presented here because they go to the fundamental division of authority between district courts and courts of appeals. *See Bloomfield*, 40 F.3d at 920 (McMillian, J., dissenting) (recognizing “the important question of how we are to understand the division of tasks between district and appellate courts within our judicial hierarchy”); *Williams*, 951 F.2d at 1288 (recognizing that findings “add discipline to the process of judicial decision-making and enable appellate courts properly to perform the reviewing function”).

The role of district courts is to consider and find facts, and their factual

findings are given great deference because of that, especially where they turn on witness credibility, *see Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-75 (1985), as is true of many of the factual disputes here. As this Court stated in *DeMarco v. United States*, 415 U.S. 449 (1974):

[F]actfinding is the basic responsibility of district courts rather than appellate courts and . . . the Court of Appeals should not have resolved in the first instance this factual dispute which had not been considered by the District Court.

Id. at 450 n., *quoted in Pullman-Standard v. Swint*, 456 U.S. 273, 291-92 (1982).

The role of courts of appeals is to review and, where necessary, correct the legal rules and standards applied by district courts. The “primary function” of a court of appeals is “as an expositor of the law.” *Miller v. Fenton*, 474 U.S. 104, 114 (1985), *quoted in United States v. Ornelas*, 517 U.S. 690, 697 (1986). This both draws on the strength of courts of appeals and their three-judge panels and serves to assure “a unitary system of law,” *Ornelas*, 517 U.S. at 697.

Both roles are critical to the fair and just disposition of motions. This is because the law must be applied to the facts. The court of appeals can determine what the law is, but the disposition to which that law leads depends on the facts. And it is the district court that can best determine the facts. If the court of appeals must infer or guess the facts the district court determined, it creates risk of an erroneous decision because the court of appeals’ inference or guess about the facts the district court determined may be wrong.

And this is especially so in a case like the present one where the district court could have relied on either of two alternative legal grounds advanced by

the government. Where there are alternative legal grounds and no indication of which the district court relied on, the court of appeals has no idea what law to determine and no way to guess which facts the district court found. In those circumstances, it is especially important to enforce the Rule 12 essential findings requirement.

D. THE PETITION SHOULD BE GRANTED BECAUSE THE VIEW THAT THE ESSENTIAL FINDINGS REQUIREMENT IN RULE 12(d) IS NOT MANDATORY AND/OR CAN BE WAIVED BY A FAILURE TO AFFIRMATIVELY REQUEST FINDINGS IS WRONG.

The view that the essential findings requirement in Rule 12(d) is not mandatory and/or is waived by a failure to affirmatively request findings is also wrong. One may begin with the plain language of the rule. It states: “When factual issues are involved in deciding a motion, the court *must* state its essential findings on the record.” Fed. R. Crim. Pro. 12(d) (emphasis added). It does not qualify this mandate with “if requested by the parties,” “unless waived by the parties,” or anything else suggesting the requirement depends on a party’s request. As the Ninth Circuit and Sixth Circuit recognized, the requirement is “mandatory,” *Moore*, 936 F.2d at 289; *Prieto-Villa*, 910 F.2d at 607, 608, and, as the dissent in the Eighth Circuit *Bloomfield* case recognized, findings “are clearly mandated” by “[t]he plain language of the Rule,” *id.*, 40 F.3d at 919 (McMillian, J., dissenting).

The requirement was not adopted simply to create some “right” in the parties that parties can waive, moreover. It was adopted to provide courts of

appeals with what those courts need to do their job. While a party may be indirectly harmed by non-compliance with the rule, the court of appeals is directly harmed. Without knowing the facts to which it must apply the law, the court of appeals cannot perform its function.

A suggestion some courts have made that non-compliance should be excused where the defendant has not made a request for findings, so as to “deny[] defendants (and the government if it should appeal the granting of a suppression motion) a windfall,” *Williams*, 951 F.2d at 1291, finds a risk where there is none. All a party gains through enforcement of Rule 12’s essential findings requirement is a remand for the findings to be made. There will then be a return to the court of appeals, and there will be a reversal only if a correct application of the law to the findings requires reversal. That is not a “windfall,” but a correction that transforms an unjust disposition of the motion based on a district court legal error to a just disposition based on the court of appeals’ correction of the legal error.

Related to this point, there is relatively little downside to remand for findings. As with the remand for resentencing the Court considered in *Molina-Martinez v. United States*, 578 U.S. 189 (2016), “the ‘cost of correction is . . . small’ because ‘[a] remand for [re]sentencing . . . doesn’t require that a defendant be released or retried,” *id.* at 204 (quoting *United States v. Sabillon-Umana*, 772 F.3d 1328, 1334 (10th Cir. 2014)) – unless the motion was erroneously denied and should have been granted. And reversal if the motion should have been granted is not a downside, but an upside, because the effects of erroneous denial of a motion should be corrected.

VI.
CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

DATED: December 6, 2024

s/ Carlton F. Gunn

CARLTON F. GUNN
Attorney at Law

A P P E N D I X 1

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 21 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 22-50292

Plaintiff-Appellee,

D.C. No.

2:15-cr-00407-TJH-3

v.

LEPRINCETON DEWON BURKS, AKA P,
AKA Dapper P, AKA Pete Williams,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Terry J. Hatter, Jr., District Judge, Presiding

Argued and Submitted October 7, 2024
Pasadena, California

Before: PAEZ, NGUYEN, and HURWITZ, Circuit Judges.

LePrinceton Burks appeals his convictions and sentence for conspiring to produce, producing, and possessing child pornography in violation of 18 U.S.C. §§ 2251(a), 2251(e), and 2252A(a)(5)(B). We have jurisdiction under 8 U.S.C. § 3742 and 28 U.S.C. § 1291. We affirm Burks's convictions, reverse the district court's application of the obstruction of justice enhancement, vacate the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

sentence, and remand for resentencing.

1. The district court did not err in denying Burks’s motion to suppress evidence found in the hotel room. In finding that “it is fairly clear that” Burks “did not have a Fourth Amendment interest,” the district court implicitly rejected Burks’s testimony and declaration—the only evidence he provided to establish a reasonable expectation of privacy—as either not credible or mere “bald assertions.” *United States v. Armenta*, 69 F.3d 304, 308 (9th Cir. 1995). We agree that, on this record, Burks failed to demonstrate a reasonable expectation of privacy in the hotel room. But even assuming otherwise, exigent circumstances justified the officers’ warrantless entry. *See United States v. Reyes-Bosque*, 596 F.3d 1017, 1029–1030 (9th Cir. 2010). The officers reasonably believed that a young woman, reported kidnapped and held by pimps, was potentially in danger. *See, e.g., United States v. Brooks*, 367 F.3d 1128, 1135 (9th Cir. 2004). Their ensuing search was also reasonable in its scope and manner. *See Reyes-Bosque*, 596 F.3d at 1029–1030. As such, no constitutional violation occurred, and a remand to conduct further factual findings is unnecessary. *See United States v. Magdirila*, 962 F.3d 1152, 1156 (9th Cir. 2020) (“Where the district court does not make a finding on a precise factual issue relevant to the Fourth Amendment analysis, we uphold a trial court’s denial of a motion to suppress if there was a reasonable view to support it.” (cleaned up)).

2. The district court did not violate Burks’s Sixth Amendment right to self-representation. “To invoke the right,” a defendant “must make a timely unequivocal, voluntary and intelligent request.” *United States v. Telles*, 18 F.4th 290, 302 (9th Cir. 2021) (cleaned up); *see also Faretta v. California*, 422 U.S. 806, 834 (1975). “[V]iolation of a defendant’s Sixth Amendment right to choose his or her defense is a structural error, and the proper remedy is a new trial.” *United States v. Read*, 918 F.3d 712, 715 (9th Cir. 2019). “Because a defendant normally gives up more than he gains when he elects self-representation, we must be reasonably certain that he in fact wishes to represent himself.” *Adams v. Carroll*, 875 F.2d 1441, 1444 (9th Cir. 1989); *see also Brewer v. Williams*, 430 U.S. 387, 404 (1977) (“[C]ourts indulge in every reasonable presumption against waiver.”).

On this record and viewed in context, Burks’s remark on the first day of trial that “I might as well represent myself” was neither clear nor unequivocal. *See Clark v. Broomfield*, 83 F.4th 1141, 1150 (9th Cir. 2023) (“Emotional or impulsive requests for self-representation are . . . considered to be equivocal.”); *Jackson v. Ylst*, 921 F.2d 882, 888–89 (9th Cir. 1990) (“[T]he trial court properly may deny a request for self-representation that is ‘a momentary caprice or the result of thinking out loud.’” (quoting *Adams*, 875 F.2d at 1445)). Burks made the statement after a lengthy, animated exchange with the court, during which he expressed frustrations about an unavailable witness and the court’s denial of his request to continue trial

so he could try and locate the witness. *See Jackson*, 921 F.2d at 888–89; *Clark*, 83 F.4th at 1151 (finding defendant’s request was “part of an emotional outburst . . . in response to a” denial of a motion and therefore equivocal).

3. The district court did not plainly err in conducting the first day of trial in Burks’s absence. *See United States v. Yijun Zhou*, 838 F.3d 1007, 1010–11 (9th Cir. 2016) (“Because Defendant did not raise the issue before the district court, we review for plain error.”); Fed. R. Crim. P. 52(b). While a “defendant has the right to be present at every stage of the trial,” *United States v. Rosales-Rodriguez*, 289 F.3d 1106, 1109 (9th Cir. 2002), the right may be waived, “provided such waiver is voluntary, knowing, and intelligent,” *Campbell v. Wood*, 18 F.3d 662, 671 (9th Cir. 1994). *See also Taylor v. United States*, 414 U.S. 17, 20 (1973) (finding valid waiver where defendant voluntarily absented himself from trial).

Consistent with his stated intent to do so, Burks willfully refused to participate in the proceedings. Both counsel and the district court advised Burks of his right to be present and the risks of waiver. The district court also made a “robust inquiry” and set forth detailed factual findings that Burks voluntarily, knowingly, and intelligently absented himself from the proceedings. *See* Fed. R. Crim. P. 43(c)(1)-(2); *Taylor*, 414 U.S. at 18–19. Moreover, the district court provided defense counsel the opportunity to periodically consult with Burks during jury selection and the trial proceedings. It also provided Burks with a live audio

feed of the proceedings. And, the district court admonished the jury from considering or drawing any adverse inferences about Burks's absence—which was only on one day of the four-day trial. His presence thus would not “conceivably have changed the result” of the proceedings, especially in light of overwhelming evidence of guilt. *See Hovey v. Ayers*, 458 F.3d 892, 902–03 (9th Cir. 2006); *United States v. Reyes*, 764 F.3d 1184, 1193 (9th Cir. 2014) (finding defendant's absence from voir dire harmless in light of overwhelming evidence of guilt).

4. Any purported vouching did not render Burks's trial unfair. “[V]ouching may occur” when the prosecution “place[s] the prestige of the government behind the witness or . . . indicate[s] that information not presented to the jury supports the witness's testimony.” *United States v. Roberts*, 618 F.2d 530, 533 (9th Cir. 1980). “Because” Burks “failed to object to the vouching, we review for plain error.” *United States v. Brooks*, 508 F.3d 1205, 1209 (9th Cir. 2007). Even assuming the prosecution vouched for two witnesses by asking whether they won an award for their investigation of Burks's case and whether the awards would affect their testimony, no plain error occurred. *See United States v. Harrison*, 585 F.3d 1155, 1158–59 (9th Cir. 2009). The brief, isolated exchanges, “in the context of the entire record,” neither materially affected the jury's ability to weigh the evidence impartially nor otherwise amounted to a miscarriage of justice. *United States v. Williams*, 989 F.2d 1061, 1072 (9th Cir. 1993).

5. The district court did not abuse its discretion by admitting select clips of the child pornography at issue, as opposed to the entirety of the videos. *See United States v. Preston*, 873 F.3d 829, 835 (9th Cir. 2017) (“This Court reviews challenged evidentiary rulings for abuse of discretion.”). The district court reasonably excluded the entire videos to prevent undue prejudice, confusion, or wasted time. *See* Fed. R. Evid. 403; *cf. Preston*, 873 F.3d at 842 (finding undue prejudice in trial court’s admission of a similar, sexually explicit video given that “the visceral impact” of the evidence “far exceed[ed] its probative value.” (cleaned up)); *United States v. Ono*, 918 F.2d 1462, 1466 (9th Cir. 1990) (“We do not think it necessary to require a mechanical recitation of Rule 403 to conclude that the district court performed the required balancing where the issue has been clearly put before the court.”). Furthermore, any error was harmless beyond a reasonable doubt. *United States v. Haischer*, 780 F.3d 1277, 1281 (9th Cir. 2015). Beyond the videos, the evidence against Burks was overwhelming.

6. The district court erred when it applied the obstruction of justice enhancement to Burks’s sentence. *See United States v. Gasca-Ruiz*, 852 F.3d 1167 1170 (en banc) (explaining standard of review). The two-level obstruction of justice enhancement applies when a “defendant willfully obstructed or impeded . . . the administration of justice,” and his “obstructive conduct related to the . . . offense of conviction.” *See* U.S.S.G. § 3C1.1. “[F]light by itself” or

“disappear[ing] from the jurisdiction and not disclos[ing] one’s whereabouts to the government does not warrant [this] enhanced punishment.” *United States v. Stites*, 56 F.3d 1020, 1026 (9th Cir. 1995); U.S.S.G. § 3C1.1, application note 5 (noting same). Although Burks relocated to another local jurisdiction, nothing in the record suggests that he willfully obstructed or impeded the administration of justice beyond avoiding initial arrest. *See United States v. Madera-Gallegos*, 945 F.2d 264, 266 (9th Cir. 1991) (holding nine-month escape to Mexico as insufficient ground for obstruction of justice enhancement); *Stites*, 56 F.3d at 1026 (holding flight from jurisdiction and use of aliases while hiding insufficient ground for enhancement); *cf. United States v. Mondello*, 927 F.2d 1463, 1466-67 (9th Cir. 1991) (finding enhancement proper where defendant, post-arrest, “played a cat-and-mouse game of avoiding the authorities”). We therefore reverse the application of the enhancement, vacate Burks’s sentence, and remand for resentencing. *See, e.g., United States v. Herrera-Rivera*, 832 F.3d 1166, 1175 (9th Cir. 2016) (requiring resentencing “[w]hen a defendant is sentenced under an incorrect Guidelines range—whether or not the defendant’s ultimate sentence falls within the correct range” (quoting *Molina-Martinez v. United States*, 578 U.S. 189, 198 (2016))).

AFFIRMED in part, VACATED and REMANDED in part for proceedings consistent with this memorandum.

A P P E N D I X 2

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
3 HONORABLE TERRY J. HATTER, U.S. DISTRICT JUDGE
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5 UNITED STATES OF AMERICA,) NO. CR 15-407-TJH
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12 REPORTER'S TRANSCRIPT OF PROCEEDINGS
13 PRETRIAL CONFERENCE AND MOTION TO SUPPRESS
14 TUESDAY, JUNE 22, 2021
15 10:12 A.M.
16 LOS ANGELES, CALIFORNIA
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GAYE L. LIMON, CSR NO. 7416
FEDERAL OFFICIAL PRO TEMPORE COURT REPORTER
LIMONCSR@GMAIL.COM

1 FORGET ABOUT EXIGENCY. THEY HAD TO HAVE PROBABLE CAUSE TO
2 BEGIN WITH. HE DIDN'T HAVE PROBABLE CAUSE, AND HE DIDN'T
3 HAVE EXIGENCY. THERE WAS A PROPER WAY TO DO THE
4 INVESTIGATION, AND THEY DIDN'T DO IT. AND WE SUBMIT, YOUR
5 HONOR, ON THAT MOTION SHOULD BE GRANTED. THANK YOU, YOUR
6 HONOR.

7 THE COURT: ALL RIGHT. IT IS FAIRLY CLEAR THAT THIS
8 DEFENDANT DID NOT HAVE A FOURTH AMENDMENT INTEREST. THAT'S
9 ALL I CAN SAY TO THE MOTION. NONE OF THE OTHER NONSENSE THE
10 SERGEANT TALKED ABOUT. THE SERGEANT KNEW PRETTY WELL WHAT HE
11 HAD, BUT THIS MAN CAN'T CLAIM THAT. THE MOTION TO SUPPRESS
12 IS DENIED.

13 THE DEFENDANT: YOUR HONOR, MAY I SPEAK?

14 THE COURT: YOU HAVE A LAWYER.

15
16 (DEFENDANT AND HIS COUNSEL CONFER
17 SOTTO VOCE.)
18

19 THE COURT: IF YOU HAVE SOMETHING, TAKE IT UP WITH YOUR
20 LAWYER.

21
22 (BRIEF PAUSE.)
23

24 THE COURT: THE OTHER MATTER, THE PRE-TRIAL CONFERENCE.
25 I THINK WE SHOULD, FOR THE SAKE OF THE REPORTER, TAKE ABOUT

UNITED STATES DISTRICT COURT

A009

A P P E N D I X 3

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LEPRINCETON BURKS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	CR 15-407-TJH-3
Plaintiff,)	
	)	MOTION OF DEFENDANT
v.	)	LEPRINCETON BURKS TO
	)	SUPPRESS EVIDENCE OBTAINED
LEPRINCETON BURKS,	)	IN VIOLATION OF THE FOURTH
Defendant.	)	AMENDMENT
	)	Hearing Date: To be determined
)	
	)	Current trial date:
	)	October 6, 2020

Defendant LePrinceton Burks files the motion to suppress evidence set forth below. If the government opposes this motion, Defendant and the Government will propose a mutually agreeable date for hearing of the motion and of such evidence as the Government may proffer in opposition to the motion.

Defendant will file a declaration in compliance with Local Criminal Rule 12-1 in advance of the hearing of the motion.

MOTION

On August 28, 2011, Defendant LePrinceton Burks was a guest residing in Room 622 of the Sportsman's Lodge at 12825 Ventura Boulevard, Studio City, California, with a number of other persons. In the early afternoon, uniformed officers of the Los Angeles Police Department, with guns drawn, and without a warrant or permission or notice, entered the room with a pass key obtained from the hotel. The officers barked commands and placed all of the occupants of the hotel room, including Burks, under arrest. Burks was handcuffed and forced to sit handcuffed in the hallway outside the room for a lengthy period, as were the other occupants. The police seized the cell phones and computers of Burks and other persons in Room 622. In the evening, after sitting on the floor for hours, Burks and others were transported to the police station.

When police conduct a search and seizure without a warrant, they have presumptively violated the Fourth Amendment. As the Supreme Court recently stated, "Our analysis begins, as it should in every case addressing the reasonableness of a warrantless search, with the basic rule that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions.'" *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). "The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption ... that the exigencies of the situation made that course imperative.' '(T)he burden is on those seeking the exemption to show the need for it.'" *Coolidge v. New Hampshire*, 43 U.S. 442, 445 (1971).

Mr. Burks moves the Court for an order suppressing all evidence, tangible or intangible, including any statements of Burks or other persons, any and all observations of law enforcement officers, any and all evidence obtained from cell phones or computers, and any other evidence obtained during, or directly or indirectly derived from the

1 unlawful search and seizure of Room 622 and its occupants.

2 Respectfully submitted,

3
4 April 29, 2020

s/ George W. Buehler
GEORGE W. BUEHLER
Counsel for Defendant
LEPRINCETON BURKS

A P P E N D I X 4

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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 DARIUS SUTTON, et al.,

16 Defendant.

No. CR 15-407-TJH-3

GOVERNMENT'S OPPOSITION TO
DEFENDANT LEPRINCETON BURKS'S
MOTION TO SUPPRESS

Hearing Date: July 6, 2020

Hearing Time: 10:00 a.m.

Location: Courtroom of the
Hon. Terry J.
Hatter, Jr.

18
19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorney Devon Myers, hereby
22 files its Opposition to Defendant LePrinceton Burks's Motion to
23 Suppress.

24 //

25 //

This Opposition is based upon the attached memorandum of points and authorities, declaration of Los Angeles Police Department Sergeant Bradley Schumacher and attached exhibits 1-2, the recording of defendant's interview separately lodged with the Court, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: June 1, 2020

Respectfully submitted,

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 In 2011, defendant LePrinceton Burks ("Burks") and others went
4 to a hotel room that co-defendant Darius Sutton ("co-defendant
5 Sutton") rented so they could sex traffic three young women, two of
6 whom were underage. Los Angeles Police Department ("LAPD") officers
7 went to the hotel room to locate one of the sex trafficking victims,
8 who had managed to message a friend that pimps were holding her
9 against her will. When the officers knocked, no one answered. When
10 they announced they were from LAPD, defendant and another man ran out
11 of the back of the hotel room and started leaping from balcony to
12 balcony. At that point, law enforcement entered the room.

13 Defendant now moves to suppress every piece of evidence,
14 observation, and statement that occurred after the LAPD officers
15 entered the room. As explained below, however, defendant has not met
16 his burden to show that he had privacy interest sufficient in the
17 hotel room to allow him to challenge the search. Even if he did, he
18 cannot suppress the use of evidence that did not belong to him.

19 Most importantly, the LAPD officers lawfully entered the room
20 because there were exigent circumstances present: they were trying to
21 rescue a sex trafficking victim and stop suspects from fleeing.
22 Consequently, there is no basis for suppression, even if defendant
23 had a privacy interest in the room. Beyond that, defendant later
24 consented to the search of his digital devices and, when interviewed,
25 law enforcement gave defendant a Miranda warning, thus lawfully
26 obtaining access to his devices and his statements. The Court should
27 deny defendant's motion without an evidentiary hearing.

1 **II. STATEMENT OF FACTS**

2 **A. Officers Try To Find S.A., A Kidnapping Victim**

3 On August 28, 2011, around 2:50 in the afternoon, Los Angeles
4 Police Department ("LAPD") Sergeant Bradley Schumacher ("Sergeant
5 Schumacher") was assigned with his partner, Officer Brinkman, to the
6 Van Nuys Area Patrol Unit 9X14. (Declaration of Sergeant Schumacher
7 ("Schumacher Decl.") ¶ 2.) They received a radio call of a kidnap
8 investigation at Ventura Boulevard and Coldwater Canyon. (Id.) The
9 report provided that a victim, S.A., had sent a text message that she
10 was being held against her will by pimps. (Id.)

11 They went to the area of Ventura Boulevard and Coldwater Canyon
12 but they were unable to locate victim S.A. (Id. ¶ 3.) Sergeant
13 Schumacher then contacted Investigator Tinker from the Moreno Valley
14 Police Department, who was the "Person Reporting," for more
15 information. (Id.)

16 Investigator Tinker told Sergeant Schumacher that he was
17 conducting a missing persons investigation into victim S.A. and that
18 her mother told Investigator Tinker that victim S.A. had sent a text
19 message to her friend Dionna Spirlin that victim S.A. was being held
20 against her will by pimps and was in the area of Coldwater Canyon and
21 Ventura Boulevard. (Id. ¶ 4.) Investigator Tinker also told
22 Sergeant Schumacher that victim S.A. may be with co-defendant Sutton
23 and Chad Miller ("Miller"), as well as an underage girl. (Id.)
24 Investigator Tinker told Sergeant Schumacher that he believed that
25 they were driving a gold Lexus with a partial license plate of ---
26 SDOE. (Id.)

27 Sergeant Schumacher knew that there was a hotel called the
28 Sportsmen's Lodge at 12825 Ventura Boulevard, which is in the area of

1 Coldwater Canyon and Ventura Boulevard. (Id. ¶ 5.) Sergeant
2 Schumacher drove through the parking lot of the Sportsmen's Lodge
3 Hotel and saw a gold Lexus with a license plate that matched the
4 partial description that he had. (Id.) Officer Brinkman and
5 Sergeant Schumacher then met with the on-duty front desk clerk.
6 (Id.) Based on what Investigator Tinker had told Sergeant
7 Schumacher, he asked the clerk if Miller or co-defendant Sutton were
8 registered at the hotel. (Id.) The clerk told Sergeant Schumacher
9 that co-defendant Sutton was registered there in room 622. (Id.)
10 Sergeant Schumacher showed the clerk and another hotel employee a
11 picture of victim S.A. and they both told him that she was in the
12 same room with co-defendant Sutton, another black man, and a black
13 woman. (Id.) The desk clerk also told Sergeant Schumacher that she
14 had seen S.A. that day, just before he arrived. (Id.)

15 **B. The Officers Go To The Hotel Room Where The Kidnappers**
16 **Might Be Holding Victim S.A.**

17 Sergeant Schumacher called for two additional police units for
18 back-up as well as a supervisor. (Id. ¶ 6.) After they arrived,
19 Sergeant Schumacher and the other officers went to room 622 to see if
20 there was anyone inside and, if so, whether they were persons of
21 interest in their investigation. (Id.; see also Ex. 1.)

22 Sergeant Schumacher knocked on the door and did not receive an
23 answer. (Id. ¶ 7.) Sergeant Schumacher saw what appeared to be
24 someone looking out of the peephole and he could hear that the
25 television was on. (Id.) Sergeant Schumacher knocked again and
26 announced that he was from the LAPD and that the occupants needed to
27 open the door. (Id.)
28

1 Detective Pinner, who was in the parking lot below room 622,
2 then reported that he saw two black men exit the balcony and that
3 they had started running and hopping across adjoining balconies.
4 (Id. ¶ 8.) Detective Pinner identified himself and ordered the two
5 men to stop, which they did. (Id.) They returned to the balcony for
6 room 622. (Id.)

7 **C. After Two Men Fled Out The Back, Officers Entered The Room**
8 **To Check On Victim S.A. And Stop Those Who Were Fleeing**

9 Once Sergeant Schumacher learned that two people had run out of
10 the back of the hotel room, it became important for law enforcement
11 to enter the hotel room because fleeing out a back door is not
12 "normal behavior." (Id. ¶ 9.) More importantly, knowing that it was
13 a kidnapping investigation, the officers needed to ensure that, if
14 the victim was inside, that she was not injured or would not be hurt.
15 (Id.) Given these facts, Sergeant Schumacher did not have time to
16 obtain a warrant. (Id.)

17 Sergeant Schumacher opened the door to the room with a key that
18 the front desk had provided to him. (Id. ¶ 10.) When he opened the
19 door, he saw three females and three men in the room. (Id.)

20 At this point, the officers took all eight persons (the six
21 people in the room plus the two that had fled onto the balcony) into
22 custody pending the kidnapping investigation. (Id. ¶ 11.) Sergeant
23 Schumacher does not remember whether he and the other officers drew
24 their firearms when they entered the hotel room. (Id.) But if they
25 had, they would have holstered our firearms after they placed
26 everyone in custody. (Id.)

27 Officer Acevedo conducted a search of the room and collected two
28 laptop computers and eight cellular telephones. (Id. ¶ 14.) Officer

1 Acevedo seized the digital devices because he believed that their
2 seizure would aid in the apprehension or conviction of the persons in
3 the room in connection with the exploitation of the girls. (Id.)

4 **D. Officers Recover Victim S.A. And Rescue Two Other Underage**
5 **Girls Who Defendant And Others Were Sex Trafficking**

6 One of the women in the room was victim S.A. (Id. ¶ 12.)
7 Officer Brinkman spoke with victim S.A. inside room 622. (Id.)
8 Victim S.A. told Officer Brinkman that a friend had convinced her to
9 hang out with Miller and co-defendant Sutton. (Id.) When victim
10 S.A. wanted to return home, Miller and co-defendant Sutton refused to
11 drive to where victim S.A. lived and said she had to pay a
12 "registration fee," which victim S.A. understood to mean that she had
13 to have sex with Miller and co-defendant Sutton as part of their
14 prostitution ring. (Id.)

15 A records check revealed that victim A.T. had a no bail warrant
16 outstanding and that she was fifteen years old. (Id. ¶ 13.) Victim
17 H.P. was a reported runaway and was seventeen years old. (Id.)
18 Defendant was one of the men who had been in the hotel room and had
19 fled onto the balcony. (Id.) Co-defendant Sutton and Miller were
20 also in the hotel room. (Id.)

21 The officers took everyone that had been in the room to the
22 Van Nuys station pending further investigation. (Id. ¶ 14.) Given
23 the complexity of the investigation and the high degree of expertise
24 needed, Detective Pinner contacted the North Hollywood Area Vice
25 Supervisor, Sergeant Evans. (Id. ¶ 15.) Sergeant Evans and Officers
26 Parsekian and Haro responded to the Van Nuys Station to assist with
27 the investigation. (Id.)

1 Sergeant Evans and Officer Parsekian spoke with victim S.A. that
2 evening at the Van Nuys Station around 7:20 p.m. (Id. ¶ 15.) She
3 told them that Sutton had booked a room at the Sportsmen's Lodge
4 Hotel and she had been told that she could not go home until she had
5 "worked," which she understood to mean that she would have to be a
6 prostitute. (Id.) Men would come to the hotel room to have sex with
7 her, at which point Miller and co-defendant Sutton would leave the
8 room and wait in their car that was parked in the parking lot. (Id.)
9 After having sex with the client, victim S.A. would text Miller and
10 then Miller, co-defendant Sutton, and others would return to the room
11 and she would give the money from the transaction to Miller and co-
12 defendant Sutton. (Id.) Victim S.A. said that she had had sex with
13 at least ten men since being at the Sportsman's Lodge. (Id.)

14 Also that evening, Officers Haro and Parsekian interviewed
15 victim H.P. (Id. ¶ 17.) Victim H.P. told them that a few days
16 before, on August 24, 2011, she and a friend had been stranded in
17 Inglewood. (Id.) H.P., who had met defendant online a few weeks
18 before, contacted him and asked if he could pick them up. (Id.) At
19 about 11 p.m. that night, defendant and his friend "Dukes" arrived to
20 pick them up. (Id.) While driving, defendant told the girls that he
21 had an "escort business" and Dukes explained that they had several
22 girls at the Sportsman's Lodge Hotel that pulled tricks to bring them
23 money. (Id.) H.P. told the officers that the next day, defendant
24 took photographs of her and posted them on a webpage soliciting her
25 for prostitution. (Id.) Two days before the arrests in the hotel
26 room, on August 26, 2011, defendant told H.P. that he had a "trick"
27 set up for her and asked her to get ready to perform sexual
28 intercourse. (Id.) Later in the day, at the Sportsman's Lodge

1 Hotel, she met a man she did not know and performed sexual
2 intercourse with him for \$190.00. (Id.) At the end, defendant and
3 co-defendant Sutton entered the hotel room and defendant collected
4 the money from H.P. (Id.) Based in part on victim H.P.'s
5 statements, defendant was booked for a violation of California Penal
6 Code § 266H(b)PC - Pimping a Minor. (Id. ¶ 18.)

7 On August 29, 2011, Officers Haro, Parsekian, and Evans
8 interviewed victim A.T., who confirmed that co-defendant Sutton was
9 sex trafficking her. (Id. ¶ 20.) She confirmed that she had engaged
10 in prostitution for four days and gave all of the proceeds,
11 approximately \$1,000 to co-defendant Sutton in exchange for food,
12 clothing, protection, and shelter. (Id.)

13 **E. Defendant Consents To The Search Of His Devices And Is**
14 **Interviewed The Next Day In A Mirandized Interview**

15 Sergeant Evans obtained a signed consent form for defendant's
16 cellular telephone and Mac Book Laptop. (Id. ¶ 19; Ex. 2.) The
17 consent form provides:

18 (1) I have been asked by the below listed Los Angeles
19 Police officers to permit a complete search of the above
20 [items];

21 (2) I have been advised of my right to refuse consent to
22 the search described above and to refuse to sign this form
23 if I so choose. I further declare that the officers have
24 made no promises, threats, force or physical or mental
25 coercion of any kind against me to obtain my consent to the
26 search described above or for me to sign this form;

1 (3) I am giving permission to search freely, voluntarily,
2 and without any threat or promise having been made against
3 me, my family or other person; and

4 (4) I authorize these officers to take any items which they
5 determine may be related to their investigation.

6 (Ex. 2.) Defendant signed the form and dated it August 28, 2011.

7 (Id.)

8 On defendant's computer, the officers observed a video of an
9 unknown female performing oral sex on one of the underage girls from
10 the hotel room. (Schumacher Decl. ¶ 19.) They observed text
11 messages on defendant's cellular telephone such as "Don't talk
12 personal around the hoes" and an inquiry by defendant to co-defendant
13 Sutton about his "cut" for getting the girls dates. (Id.)

14 On August 29, 2011, LAPD Detective Vincent Chan ("Detective
15 Chan") interviewed defendant. (A true and correct copy of the
16 recorded interview will be lodged separately with the Court as
17 Exhibit 3.)¹ At the beginning of the interview, Detective Chan
18 provided defendant with a Miranda warning. (Id.) Defendant then
19 spoke to Detective Chan.

20
21
22
23
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25
26 ¹ There may be a slight delay in providing this to the Court
27 because of the ongoing closures related to the COVID-19 pandemic and
28 protests. Defense counsel already has a copy of the interview
although the government will serve him with another copy when it
lodges with the Court. Defense counsel has two weeks to file a
reply, so he will have the copy in advance of his filing deadline.

1 **III. THE COURT SHOULD DENY DEFENDANT'S MOTION TO SUPPRESS**

2 **A. Defendant Is Not Entitled To An Evidentiary Hearing Because**
 3 **He Failed To Submit A Declaration And There Are No**
 4 **Contested Facts**

5 Defendant did not file a declaration with his motion to suppress
 6 and, even based on the facts in his motion, defendant places no facts
 7 in dispute; accordingly, he is not entitled to an evidentiary
 8 hearing. To warrant an evidentiary hearing, a defendant's motion
 9 must "allege facts with sufficient definiteness, clarity, and
 10 specificity to enable the trial court to conclude that contested
 11 issues of fact exist." United States v. Howell, 231 F.3d 615, 620
 12 (9th Cir. 2000) (finding that it was not an abuse of discretion for
 13 district court to deny motion to suppress without evidentiary hearing
 14 where facts were not in dispute); accord United States v. Wardlow,
 15 951 F.2d 1115, 1116 (9th Cir. 1991) (holding that when a defendant
 16 fails to support a suppression motion with the required declaration,
 17 he has forfeited his right to an evidentiary hearing). As the Ninth
 18 Circuit has explained, "[a] hearing will not be held on a defendant's
 19 pre-trial motion to suppress merely because a defendant wants one."
 20 Howell, 231 F.3d at 621. "Rather, the defendant must demonstrate
 21 that a significant disputed factual issue exists such that a hearing
 22 is required." Id.

23 Defendant has not demonstrated the presence of any factual
 24 dispute – let alone a significant one. Here, defendant indicates
 25 that he "will file a declaration in compliance with Local Criminal
 26 Rule 12-1 in advance of the hearing." (Mot. at 1, DE 436.) But the
 27 Local Rules require the declaration to be filed at the time of the
 28 motion to identify "all facts then known upon which it is contended

1 the motion should be granted." (Local Criminal Rule 12-1.1.) Filing
2 the declaration prior to a hearing date is insufficient, violates the
3 local rules, and the Court should not indulge this failure.
4 Moreover, the facts raised in the motion, absent a declaration, still
5 establish no disputed fact. Accordingly, the Court should not grant
6 an evidentiary hearing because the motion does not demonstrate that a
7 significant disputed fact exists.

8 **B. Defendant Burks Cannot Challenge The Warrantless Search Of**
9 **The Hotel Room Because He Has Not Established That He Had A**
10 **Reasonable Expectation Of Privacy There**

11 Defendant moves to suppress the search of the hotel room, which
12 resulted in the seizure of his digital devices as well as the digital
13 devices of others in the room. But defendant has not met his burden
14 to show that he had a privacy interest in the hotel room sufficient
15 to allow him to challenge the search. To the contrary, the facts
16 show that co-defendant Sutton rented the room, which undercuts a
17 possible privacy interest. Moreover, co-defendant Sutton, defendant,
18 and others used the room for the illegal and commercial purpose of
19 sex trafficking – an activity that diminishes anyone's privacy
20 interest. That law enforcement recovered defendant's digital devices
21 from the room does not provide him with a privacy interest in the
22 room itself. Moreover, it is longstanding law that a defendant
23 cannot assert a Fourth Amendment violation for the use of someone
24 else's property against him. Without a recognizable privacy interest
25 to assert, no Fourth Amendment violation can flow from it and,
26 therefore, suppression cannot be the result.

1 1. Defendant Was In A Room That Co-Defendant Sutton
 2 Rented To Sex Traffic Girls

3 At the time of his arrest, defendant was in a hotel room that
 4 was registered to co-defendant Sutton for the purpose of sex
 5 trafficking girls. Defendant has not met his burden to establish a
 6 recognizable privacy right and, indeed, the undisputed facts show
 7 that he did not have one.

8 For defendant to challenge the warrantless search of the hotel
 9 room, it is his burden to establish that he had "an actual subjective
 10 expectation of privacy there and that society is prepared to
 11 recognize that expectation." United States v. Armenta, 69 F.3d 304,
 12 308 (9th Cir. 1995); Rawlings v. Kentucky, 448 U.S. 98, 104
 13 (1980)(same). Defendant did not and cannot meet this burden.

14 Defendant's expectation of privacy must be greater than just
 15 being "legitimately on the premises." Rakas v. Illinois, 439 U.S.
 16 128, 143 (1978). In Rakas, two defendants were riding in a car with
 17 permission of the car's owner. Id. at 148. Even though the
 18 defendants were "legitimately" in the car, they "asserted neither a
 19 property nor a possessory interest in the automobile" where law
 20 enforcement recovered ammunition from a glove compartment and a
 21 firearm from beneath a seat. Id. Accordingly, Rakas held that they
 22 could not challenge the admission of the evidence against them. Id.
 23 at 150.

24 Here, defendant may have been, as he claims without support, a
 25 "guest" in the hotel room. The undisputed facts show that co-
 26 defendant Sutton rented the room (Schumacher Decl. ¶ 5), so co-
 27 defendant Sutton may have had a privacy interest in the hotel room.
 28

1 But on the record here, defendant's "guest" status is the equivalent
2 of being legitimately on the premises, which is not enough.

3 Indeed, defendant appears to be in the hotel room solely to
4 prostitute women, a commercial and criminal activity that does not
5 confer Fourth Amendment privacy rights on guests. Minnesota v.
6 Carter, 525 U.S. 83, 90 (1998), Armenta, 69 F.3d at 308; United
7 States v. Reyes-Bosque, 596 F.3d 1017 (9th Cir. 2010). In Carter,
8 defendants Carter and Johns were in another defendant's apartment for
9 a short period to bag cocaine. Carter, 525 U.S. at 86, 90. Carter
10 explained that lower privacy protections applied because "property
11 used for commercial purposes is treated differently for Fourth
12 Amendment purposes from residential property." Id. at 90. Carter
13 held that given the "purely commercial nature of the transaction
14 engaged in here, the relatively short period of time on the premises,
15 and the lack of any previous connection between [the defendants],"
16 defendants Carter and Johns did not have a legitimate expectation of
17 privacy in the apartment. Id. at 91; see also United States v.
18 Flores, 172 F.3d 695, 698-99 (9th Cir. 1999)(defendant lacked
19 standing to challenge search of apartment owned by another when he
20 was there for a short period to conduct a drug transaction).

21 Even when a defendant spends the night in a location and places
22 some of his belongings there, if his purpose is to facilitate
23 criminal activity, he will not have a privacy interest. Armenta, 69
24 F.3d at 305. In Armenta, the defendant occupied a home owned by
25 someone else overnight to transport his cocaine. Id. As evidence of
26 his expectation of privacy, the defendant: (1) provided a sworn
27 declaration that he was an overnight guest in the house; (2)
28 established that law enforcement found his wallet, baptismal

1 certificate, and social security card application in the house; and
2 (3) provided a declaration from his attorney that a co-defendant
3 would testify that the defendant was an overnight guest at the house.
4 Id. at 308. Armenta, however, found that the defendant had no
5 privacy interest in the house because there was no identifiable
6 "host" who gave the defendant permission to be there, his belongs
7 that were there were scant (no clothing or "other indicia that he was
8 temporarily living or staying there") and defendant took no
9 precautions to ensure his own privacy in the house. Id. at 308-09.
10 Armenta observed that the defendant's situation did not resemble an
11 overnight guest who would have a privacy interest: "one who is in the
12 owner's home 'with the permission of the host' and one who is
13 engaging in a 'longstanding social custom that serves functions
14 recognized as valuable by society.'" Id. at 309 (quoting Minnesota
15 v. Olson, 495 U.S. 91, 98-99 (1995)); see also United States v. Carr,
16 939 F.2d 1442, 1446 (10th Cir. 1991)(holding defendant had not
17 established a privacy interest in a hotel room in which he had stayed
18 for three weeks but that was rented by a third party).

19 Moreover, when a defendant is an overnight guest to hold someone
20 captive or exploit her, he cannot claim a privacy interest in the
21 location. Reyes-Bosque, 596 F.3d at 1027-28. In Reyes-Bosque, the
22 defendant was in an apartment because he was working for another
23 defendant to hold illegal aliens captive. Id. When law enforcement
24 found him he was fully dressed and hiding on the covers under a bed.
25 Id. at 1027. The Court held that "[t]hese facts suggest that [the
26 defendant] was not an overnight guest" and that he did not have a
27 sufficient privacy interest to challenge the search of that
28 apartment. Id. at 1027-28.

1 Here, defendant provides no declaration, and his claim of being
2 a "guest" falls well short of the evidence used to claim privacy
3 rights in Carter, Armenta, and Reyes-Bosque – which were all cases
4 where no privacy right existed. Indeed, the undisputed facts show
5 that defendant was in the room to sex traffic young women – a
6 commercial and criminal activity that undermines claims of a privacy
7 interest as in Carter, Armenta, and Reyes-Bosque. (See Schumacher
8 Decl. ¶¶ 12, 16-17, 20.) Victim H.P. told police officers how
9 defendant had trafficked her in that room, and victims S.A. and A.T.
10 also told officers about being trafficked out of the Sportsmen's
11 Lodge Hotel. (Id.) While defendant's digital devices were in the
12 room, there is no evidence that his clothes or overnight bag was
13 there, similar to the scant belongings in Armenta. Indeed, there
14 were eight people in a standard hotel room – it is unlikely defendant
15 even had claim to a bed in which to sleep, which undercuts the idea
16 that defendant was engaging in a "longstanding social custom that
17 serves functions recognized as valuable by society." As in Reyes-
18 Bosque, defendant fled from police, presumably because he was not
19 just a "guest" in the room. And, most importantly, as in Reyes-
20 Bosque, defendant was there with victim S.A., who defendant and
21 others were holding against her will and forcing into prostitution.
22 (See Schumacher Decl. ¶ 16.) Defendant's presence in the room does
23 not automatically confer a privacy interest and, indeed, the law does
24 not protect a privacy interest when the sole purpose of defendant's
25 presence was to engage in criminal activity.

26 Consequently, the undisputed facts show that defendant has not
27 met his burden to claim a privacy interest. To the contrary,
28

1 defendant did not have one. The Court can and should deny his motion
2 on this ground alone.

3 *a. Defendant's Ability To Challenge The Seizure Of*
4 *His Digital Devices*

5 Defendant cannot claim that because law enforcement seized his
6 digital devices in the hotel room that it confers on him a privacy
7 interest in the hotel room sufficient to claim a Fourth Amendment
8 violation.²

9 Defendant must still show that he had a reasonable expectation
10 of privacy in the place where the items were seized, not just a
11 possessory interest in the items. Rawlings, 448 U.S. at 104-06;
12 United States v. Lisk, 522 F.2d 228, 230-31 (7th Cir. 1975). In
13 Rawlings, the defendant placed his illegal narcotics in a co-
14 defendant's purse. 448 U.S. at 104. The defendant argued that he
15 had a privacy interest in the purse such that he could assert a
16 Fourth Amendment violation connected to the search of the purse. Id.
17 at 105. Rawlings held that the defendant failed to establish a
18 privacy interest in the purse. Id. Then, the defendant asserted
19 that "because he claimed ownership of the drugs in [co-defendant's]
20 purse, he should be entitled to challenge the search regardless of
21 his expectation of privacy." Id. The Supreme Court disagreed and
22 held that the inquiry was "whether governmental officials violated
23 any legitimate expectation of privacy held by petitioner." Id. at
24

25
26 ² It is not problematic for the government to "simultaneously
27 maintain that a defendant criminally possessed the seized good, but
28 was not subject to a Fourth Amendment deprivation." United States v.
Salvucci, 448 U.S. 83, 90 (1980)(holding that the record had not
established that the petitioner had a privacy interest in his co-
defendant's mother's apartment sufficient to challenge the admission
of the stolen mail against him).

1 106. And because defendant had no privacy interest in the purse, he
2 could not challenge the admission of the drugs found therein.

3 Even if the search itself is illegal, a defendant cannot
4 suppress the seizure of evidence that belongs to him unless he can
5 show an interest in the location of the search. Lisk, 522 F.2d at
6 229. In Lisk, the defendant placed his bomb in the trunk of a
7 friend's car. Id. The defendant argued that he had a property
8 interest in the bomb "and therefore [was] entitled to Fourth
9 Amendment protection against its seizure." Id. Lisk clarified that,
10 "[t]here is a difference between a search and a seizure. A search
11 involves an invasion of privacy; a seizure is a taking of property."
12 Id. And, as such, while the owner of an item seized could seek its
13 return, "[i]t does not necessarily follow that he may also object to
14 its use as evidence." Id. There, the parties stipulated that the
15 search of the trunk was unlawful. Id. As such, the prosecution
16 could not use the bomb as evidence against the car owner because law
17 enforcement violated the owner's privacy right by the unlawful
18 search. Id. at 231. But the prosecution could still use the bomb as
19 evidence against the defendant unless he could show that the seizure
20 itself was illegal. Id. Lisk held that the law enforcement's
21 seizure of the bomb was legal because the bomb was either clearly
22 illegal (as a bomb) or "mere evidence" which law enforcement could
23 seize based on "a reasonable belief that it would aid in a particular
24 apprehension or conviction." Id. (citing Warden v. Hayden, 387 U.S.
25 294, 307 (1967)). Because the defendant only had "standing" to
26 challenge the seizure, which was legal, and not the search, which was
27 illegal, the evidence could be used against him. Id.

1 The situation here is as in Rawlings and Lisk because defendant
2 has not met his burden to show that he had a privacy interest in the
3 hotel room from where law enforcement seized his digital devices.
4 Additionally, because law enforcement had a "reasonable belief" that
5 seizure of defendant's digital devices would aid in a particular
6 apprehension or conviction, as in Lisk, the seizure was legal. (See
7 Schumacher Decl. ¶ 14.) Accordingly, it remains unchanged that
8 defendant lacks a privacy interest sufficient to move to suppress the
9 use of his digital devices against him.

10 2. Even If Defendant A Privacy Interest Sufficient To
11 Challenge The Search Of The Hotel Room, Which He Does
12 Not, He Cannot Suppress Evidence That Belonged To His
13 Co-Conspirators

14 Defendant wants the Court to suppress "all evidence, tangible or
15 intangible, including any statements of Burks or other persons, any
16 and all observations of law enforcement officers, any and all
17 evidence obtained from cell phones or computers, and any other
18 evidence obtained during, or directly or indirectly derived from the
19 unlawful search and seizure of Room 622 and its occupants." (Mot. at
20 2-3, DE 436.)

21 Defendant cannot suppress the use of evidence in which he does
22 not have a personal, Fourth Amendment interest. "A person who is
23 aggrieved by an illegal search and seizure only through the
24 introduction of damaging evidence secured by a search of a third
25 person's premises or property has not had any of his Fourth Amendment
26 rights infringed." Rakas, 439 U.S. at 134. "And since the
27 exclusionary rule is an attempt to effectuate the guarantees of the
28 Fourth Amendment, it is proper to permit only defendants whose Fourth

1 Amendment rights have been violated to benefit from the rule's
2 protection." Id. (internal citation omitted).

3 Defendant has no reasonable privacy interest in the digital
4 devices of the other defendants seized in the room because, as in
5 Rakas, they are third parties. To the extent there is some other
6 basis for defendant's request to have statements of other persons and
7 observations from law enforcement officers suppressed, he fails to
8 assert what that might be.

9 **C. The Warrantless Search Of The Hotel Room Was Legal Because**
10 **There Were Exigent Circumstances Present**

11 Here, even if defendant had a privacy interest in the room, he
12 cannot prevail in his motion because the officers' warrantless search
13 was legal due to exigent circumstances. The Fourth Amendment
14 protects hotel rooms. Hoffa v. United States, 385 U.S. 293 (1966).
15 Thus, law enforcement ordinarily must have a warrant to search a
16 motel room, unless a warrant exception applies, such as consent or
17 exigent circumstances. United States v. Brooks, 367 F.3d 1128 (9th
18 Cir. 2004). Here, there were exigent circumstances present: there
19 was the possible harm to victim S.A. and there was flight by subjects
20 out the back door of the hotel room.

21 "[T]o prove that the exigent circumstances doctrine justified a
22 warrantless search, the government must show that: (1) considering
23 the totality of the circumstances, law enforcement had an objectively
24 reasonable basis for concluding that there was an immediate need to
25 protect others or themselves from serious harm; and (2) the search's
26 scope and manner were reasonable to meet the need." Reyes-Bosque,
27 596 F.3d at 1029 (citing United States v. Snipe, 515 F.3d 947, 952
28 (9th Cir. 2008)); Kentucky v. King, 563 U.S. 452, 460 (2011)(exigent

1 circumstances also exist when law officers need to enter a premises
2 "to prevent the imminent destruction of evidence."). "[I]f law
3 enforcement, while 'respond[ing] to an emergency, discovers evidence
4 of illegal activity, that evidence is admissible even if there was
5 not probable cause to believe that such evidence would be found.'" Snipe, 515 F.3d at 952 (quoting United States v. Cervantes, 219 F.3d
6 882, 888 (9th Cir. 2000)). The undisputed facts here establish that
7 law enforcement officers had an objectively reasonable basis to enter
8 room 622 without a warrant.
9

10 Exigent circumstances are generally present when law enforcement
11 officers need to locate a crime victim who may be in danger. Brooks,
12 367 F.3d at 1135-36; United States v. Bell, 500 F.3d 609, 614 (7th
13 Cir. 2007). In Brooks, officer responded to a 911 call of possible
14 domestic abuse in a hotel room. 367 F.3d at 1128. At the hotel, the
15 officers spoke to the person who had called 911 and when they knocked
16 on the door of the hotel room, the defendant confirmed there was a
17 woman in the room and that there had been, at least, a loud argument.
18 Id. at 1134. Brooks held that the officers warrantless search of the
19 hotel room was justified based on the "legitimate concern for the
20 safety of a woman reported to be in danger." Id. at 1135. Similarly,
21 Bell held there were exigent circumstances to search a hotel room
22 safe where law enforcement officers were trying to locate a
23 kidnapping victim and believed there might be information about the
24 victim's whereabouts in the safe. 500 F.3d at 614-15.

25 Here, as in Brooks and Bell, law enforcement went to room 622
26 because they reasonably believed they might find victim S.A., who was
27 reported to be a sex trafficking victim. Specifically, the officers
28 had preliminary information that victim S.A. might be with co-

1 defendant Sutton and/or Miller. Sergeant Schumacher found a car that
2 matched the description and partial license plate from his
3 investigation in the parking lot, which indicated that the suspects
4 and the victim might be there at that time. Sergeant Schumacher then
5 confirmed that co-defendant Sutton had rented room 622 in the hotel
6 and that he had been seen with victim S.A. Moreover, someone on the
7 hotel staff had seen victim S.A. not long before law enforcement
8 arrived. As in Brooks, the law enforcement officers had several key
9 pieces of information that gave them good reason to knock on the door
10 of room 622.

11 More importantly, as in Reyes-Bosque, the likelihood of the
12 presence of a kidnapping victim coupled with flight that resulted
13 from law enforcement's presence necessitated the need for the
14 officers to enter the premises. In Reyes-Bosque, law enforcement had
15 information that the defendants were holding illegal immigrants at a
16 residence. Id. at 1029. When they arrived, they saw someone
17 "popping his head out a back window, then quickly pulling it back
18 into the unit," which added to their suspicion that there was an
19 emergency afoot. Id. at 1022, 1029; Illinois v. Wardlow, 528 U.S.
20 119, 124 (2000) ("Headlong flight - wherever it occurs - is the
21 consummate act of evasion: It is not necessarily indicative of
22 wrongdoing, but is it certainly suggestive of such" and affirming
23 that officers lawfully stopped someone who spontaneously fled from
24 them); District of Columbia v. Wesby, 138 S. Ct. 577, 587
25 (2018) ("deliberately furtive actions and flight at the approach of
26 law officers are strong indicia of mens rea.") (internal citations and
27 quotations omitted); United States v. Smith, 633 F.3d 889, 893-94
28 (9th Cir. 2011) (flight from officer generated reasonable suspicion).

1 Reyes-Bosque held that, based on that information, the officers had
2 an objectively reasonable basis to enter the unit to protect others.
3 Id. at 1029. Accordingly, the court concluded that the evidence
4 seized during the search of the unit was admissible. Id. at 1030.

5 Here, in addition to the facts that indicated that victim S.A.
6 was likely inside room 622, defendant and another man fled after LAPD
7 officers announced their presence, injecting greater urgency into the
8 situation and the need for law enforcement to act. As in Reyes-
9 Bosque, Wardlow, and Smith, the flight here added to the likelihood
10 that some type of illegal activity was occurring inside room 622
11 while the officers stood outside the door. As such, the officers had
12 an objectively reasonable basis to believe that they needed to enter
13 the hotel room immediately to protect victim S.A. and stop those who
14 might have been perpetrating crimes against her. Sergeant Schumacher
15 did not believe he had enough time to obtain a warrant. (Schumacher
16 Decl. ¶ 9.) After entering the room and securing its occupants, law
17 enforcement confirmed that victim S.A. had been held against her will
18 and trafficked in that room (as well as victims H.P. and A.T.).³
19 Officer Acevedo then collected the digital devices that were present,
20 which was a reasonable scope of the search. Accordingly, law
21 enforcement's entry without a warrant into the hotel room was lawful
22 and the Court should not suppress the evidence here.

23
24
25
26
27 ³ Indeed, it is hard to imagine a way to justify the officers
28 NOT acting here. If they walked away or waited several hours to get
a warrant, the victims may have been coerced or beaten into silence
and the suspects may have escaped.

**D. Even If The Warrantless Search Was Invalid (It Was Not),
The Court Should Not Exclude Defendant's Statements Or
Digital Devices**

Even if the Court determines that (1) the defendant has a privacy right to assert here and (2) there were not exigent circumstances sufficient to justify the hotel room search, it should not suppress the evidence because officers lawfully searched defendant's digital devices and interviewed him. Specifically, defendant consented to the search of his digital devices and, when law enforcement interviewed him the next day, he was Mirandized. Moreover, suppression is not warranted where officers were not motivated by an improper purpose.

The exclusionary rule has two purposes: "to deter similar police misconduct in the future and to preserve the integrity of the courts." Frimmel Mgmt. v. United States, 897 F.3d 1045, 1053 (9th Cir. 2018) (internal quotations omitted); see also United States v. Ceccolini, 435 U.S. 268, 279-80 (1978) (giving weight to the government's showing that the officers did not conduct the illegal search with the intent of locating the evidence at issue). "Derivative evidence is therefore more likely to be tainted if there is evidence that the illegal conduct that preceded it involved either purposeful extraction of evidence or flagrant illegality." Frimmel, 897 F.3d at 1053 (internal quotations omitted).

Here, as explained above, law enforcement entered the hotel room because they believed that a woman's life was in danger and there were men fleeing from the room. Accordingly, the searches were not done to obtain evidence against defendant and were sufficiently attenuated.

1 1. Defendant's Consent For His Digital Devices

2 Here, defendant provided his consent for law enforcement
3 officers to search his computer and cell phone. "[A warrantless]
4 search conducted pursuant to a valid consent is constitutionally
5 permissible." Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973).
6 The Court should examine the totality of the circumstances to
7 determine whether defendant's consent was voluntary. United States
8 v. Brown, 563 F.3d 410, 415 (9th Cir. 2009). The factors in
9 considering voluntariness include: (1) whether the consenting person
10 was in custody; (2) whether the arresting officers had their guns
11 drawn; (3) whether Miranda warnings were given; (4) whether the
12 consenting person knew he had a right not to consent; and (5) whether
13 the consenting person had been told a search warrant could be
14 obtained. Id.; United States v. Patayan Soriano, 361 F.3d 494, 504
15 (9th Cir. 2004)("[K]nowledge of the right to refuse consent is
16 highly relevant in determining whether a consent is valid.") Even if
17 the defendant is in custody, understanding and signing a written
18 consent form weighs in favor of finding voluntary consent. United
19 States v. Crasper, 472 F.3d 1141, 1145, 1149 (9th Cir. 2007)(holding
20 consent was valid for in-custody defendant who signed consent form).

21 Here, the totality of the circumstances favor a finding that
22 defendant's consent was voluntary. While he was in custody at the
23 time he consented, he signed a consent form that explaining that he
24 did not have to consent. Specifically, the form provides:

25 (1) I have been asked by the below listed Los Angeles
26 Police officers to permit a complete search of the above
27 [items];
28

1 (2) I have been advised of my right to refuse consent to
2 the search described above and to refuse to sign this form
3 if I so choose. I further declare that the officers have
4 made no promises, threats, force or physical or mental
5 coercion of any kind against me to obtain my consent to the
6 search described above or for me to sign this form;

7 (3) I am giving permission to search freely, voluntarily,
8 and without any threat or promise having been made against
9 me, my family or other person; and

10 (4) I authorize these officers to take any items which they
11 determine may be related to their investigation.

12 See Ex. 2. The form shows that defendant agreed that he was
13 providing voluntary consent, as in Crasper. The record shows that
14 officers had put away their firearms.

15 Moreover, the consent is likely still valid even if the Court
16 determines that the search of the hotel room was illegal because it
17 is sufficiently attenuated. United States v. Crawford, 372 F.3d
18 1048, 1055 (9th Cir. 2004)(en banc)(evidence obtained after a Fourth
19 Amendment violation warrants exclusion if the evidence flows from the
20 exploitation of the illegal search). To determine if a consent is
21 sufficiently attenuated from an illegal search for it to remain
22 valid, the courts examine: (1) how close in time the search and the
23 consent were; (2) whether there were intervening circumstances; and
24 (3) "the purpose and flagrancy of the official misconduct." Utah v.
25 Strieff, 136 S. Ct. 2056, 2061-62 (2016).

26 Here, the driving factor should be that there was no improper
27 purpose or flagrancy of official conduct. While defendant ostensibly
28 signed the consent form at the Van Nuys station, it is unlikely that

1 enough time had passed to count as attenuation. Id. at 2062. And
2 there is no evidence that defendant was released from custody or
3 appeared before a magistrate judge, so there are likely no
4 intervening circumstances. But what is compelling here is that the
5 officers were acting not to pressure defendant into giving them
6 consent to search but rather they entered the room to stop a crime.
7 See United States v. Washington, 387 F.3d 1060, 1072 (9th Cir.
8 2004)(finding improper purpose where officers repeatedly threatened
9 arrest to pressure defendant to gain access to his residence).
10 Additionally, the consent form was clear and defendant signed it.
11 See United States v. Ramos, 42 F.3d 1160, 1164 (8th Cir. 1994)
12 overruled on other grounds by Muehler v. Mena, 544 U.S.
13 93(2005)(holding that explaining consent form to defendants showed
14 that officers who had investigated in good faith were not trying to
15 coerce defendants into signing). Accordingly, because officers did
16 not engage in flagrant misconduct to search the room or to obtain
17 defendant's consent, the Court should find the consent sufficiently
18 attenuated.

19 2. Defendant's Interview

20 A day after his arrest, law enforcement officers interviewed
21 defendant in a Mirandized interview. (See Ex. 3.) As such, law
22 enforcement lawfully obtained the statements defendant provided in
23 that interview. Moreover, because the officers entry of the hotel
24 room was connected to a "bona fide investigation" and not systemic
25 police misconduct (see Strieff, 136 S. Ct. at 2063), the Court should
26 not exclude it.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the government respectfully requests
3 that this Court deny defendant's motion to suppress and decline to
4 hold an evidentiary hearing.

1 DECLARATION OF BRADLEY W. SCHUMACHER

2 I, Bradley W. Schumacher, declare as follows:

3 1. I am a Sergeant with the Los Angeles Police Department. I
4 have knowledge of the facts set forth herein and could and would
5 testify to those facts fully and truthfully if called and sworn as a
6 witness.

7 2. On August 28, 2011, around 2:50 in the afternoon, I was
8 assigned with my partner, Officer Brinkman, to the Van Nuys Area
9 Patrol Unit 9X14. We received a radio call of a kidnap investigation
10 at Ventura Boulevard and Coldwater Canyon. The report provided that
11 a victim, S.A., had sent a text message that she was being held
12 against her will by pimps.

13 3. We went to the area of Ventura Boulevard and Coldwater
14 Canyon but we were unable to locate S.A. I then contacted
15 Investigator Tinker from the Moreno Valley Police Department, who was
16 the "Person Reporting," for more information.

17 4. Investigator Tinker told me that he was conducting a
18 missing persons investigation into S.A. and that her mother told him
19 that S.A. had sent a text message to her friend Dionna Spirlin that
20 S.A. was being held against her will by pimps and was in the area of
21 Coldwater Canyon and Ventura Boulevard. Investigator Tinker also
22 told me that S.A. may be with two black men named Darius Sutton
23 ("Sutton") and Chad Miller ("Miller"), as well as an underage girl.
24 Investigator Tinker told me that he believed that they were driving a
25 gold Lexus with a partial license plate of ---SDOE.

26 5. I knew that there was a hotel called the Sportsmen's Lodge
27 at 12825 Ventura Boulevard, which is in the area of Coldwater Canyon
28 and Ventura Boulevard. I drove through the parking lot of the

1 Sportsmen's Lodge Hotel and saw a gold Lexus with a license plate
2 that matched the partial description that I had. Officer Brinkman
3 and I then met with the on-duty front desk clerk. Based on what
4 Investigator Tinker had told me, I asked if Miller or Sutton were
5 registered at the hotel. The clerk told me that Sutton was
6 registered there in room 622. I showed the clerk and another hotel
7 employee a picture of S.A. and they both told me that she was in the
8 same room with Sutton, another black man, and a black woman. The
9 desk clerk also told me that she had seen S.A. that day, just before
10 I arrived.

11 6. I called for two additional police units for back-up as
12 well as a supervisor. After they arrived, the other officers and I
13 went to room 622 to see if there was anyone inside and, if so,
14 whether they were persons of interest in our investigation. A true
15 and correct copy of a map of the Sportsmen's Lodge Hotel is attached
16 hereto as **Exhibit 1** with a yellow dot approximately where the front
17 door of room 622 was.

18 7. I knocked on the door and did not receive an answer. I saw
19 what appeared to be someone looking out of the peephole and I could
20 hear that the television was on. I knocked again and announced that
21 I was from the Los Angeles Police Department and that the occupants
22 needed to open the door.

23 8. Detective Pinner, who was in the parking lot below room
24 622, then reported that he saw two black men exit the balcony and
25 they started running and hopping across adjoining balconies.
26 Detective Pinner identified himself and ordered the two men to stop,
27 which they did. They returned to the balcony for room 622.

1 9. Once I learned that two people had run out of the back of
2 the hotel room, it became important for us to enter the hotel room
3 because fleeing out a back door is not normal behavior. More
4 importantly, knowing that it was a kidnapping investigation, we
5 needed to ensure that, if the victim was inside, that she was not
6 injured or would not be hurt. Given these facts, I did not have time
7 to obtain a warrant.

8 10. I opened the door to the room with a key that the front
9 desk had provided to me. When I opened the door, I saw three females
10 and three men in the room.

11 11. At this point, the other officers and I took all eight
12 persons (the six people in the room plus the two that had fled onto
13 the balcony) into custody pending the kidnapping investigation. I do
14 not remember whether we drew our firearms when we entered the hotel
15 room. But if we had, we would have holstered our firearms after we
16 placed everyone in custody.

17 12. One of the women in the room was victim S.A. I know that
18 Officer Brinkman spoke with victim S.A. inside room 622. Victim S.A.
19 told Officer Brinkman that a friend had convinced her to hang out
20 with Miller and Sutton. When victim S.A. wanted to return home after
21 hanging out in a hotel room overnight, Miller and Sutton refused to
22 drive to where victim S.A. lived and said she had to pay a
23 "registration fee," which victim S.A. understood to mean that she had
24 to have sex with Miller and Sutton as part of their prostitution
25 ring.

26 13. A records check revealed that victim A.T. had a no bail
27 warrant outstanding and that she was fifteen years old. Victim H.P.
28 was a reported runaway and was seventeen years old. LePrinceton

1 Burks ("Burks") was one of the men who had been in the hotel room and
2 had fled onto the balcony. Sutton and Miller were also in the hotel
3 room.

4 14. Officer Acevedo conducted a search of the room and
5 collected two laptop computers and eight cellular telephones. I
6 understood from Officer Acevedo that he seized the digital devices
7 because he believed that their seizure would aid in the apprehension
8 or conviction of the persons in the room in connection with the
9 exploitation of the girls. All eight persons were transported back
10 to the Van Nuys station pending further investigation.

11 15. Given the complexity of the investigation and the high
12 degree of expertise needed, Detective Pinner contacted the North
13 Hollywood Area Vice Supervisor, Sergeant Evans. Sergeant Evans and
14 Officers Parsekian and Haro responded to the Van Nuys Station to
15 assist with the investigation.

16 16. I know that Sergeant Evans and Officer Parsekian spoke with
17 victim S.A. that evening at the Van Nuys Station around 7:20 p.m.
18 She told them that Sutton had booked a room at the Sportsmen's Lodge
19 Hotel and she had been told that she could not go home until she had
20 "worked," which she understood to mean that she would have to be a
21 prostitute. Men would come to the hotel room to have sex with her,
22 at which point Miller and Sutton would leave the room and wait in
23 their car that was parked in the parking lot. After having sex with
24 the client, victim S.A. would text Miller and then Miller, Sutton,
25 and others would return to the room and she would give the money from
26 the transaction to Miller and Sutton. Victim S.A. said that she had
27 had sex with at least ten men since being at the Sportsman's Lodge.
28

1 17. Also that evening, Officers Haro and Parsekian interviewed
2 victim H.P. Victim H.P. told them that a few days before, on August
3 24, 2011, she and a friend had been stranded in Inglewood. H.P., who
4 had met Burks online a few weeks before, contacted him and asked if
5 he could pick them up. At about 11 p.m. that night, Burks and his
6 friend "Dukes" arrived to pick them up. While driving, Burks told
7 the girls that he had an "escort business" and Dukes explained that
8 they had several girls at the Sportsman's Lodge Hotel that pulled
9 tricks to bring them money. H.P. told the officers that the next
10 day, Burks took photographs of her and posted them on a webpage
11 soliciting her for prostitution. Two days before the arrests in the
12 hotel room, on August 26, 2011, Burks told H.P. that he had a "trick"
13 set up for her and asked her to get ready to perform sexual
14 intercourse. Later in the day, at the Sportsman's Lodge Hotel, she
15 met a man she did not know and performed sexual intercourse with him
16 for \$190.00. At the end, Burks and Sutton entered the hotel room and
17 Burks collected the money from H.P.

18 18. Based in part on H.P.'s statements, Burks was booked for a
19 violation of California Penal Code § 266H(b)PC - Pimping a Minor.

20 19. I know from speaking with him that Sergeant Evans obtained
21 a signed consent form for Burks's cellular telephone and Mac Book
22 Laptop. A true and correct copy of the consent form is attached
23 hereto as **Exhibit 2**. The officers observed a video of an unknown
24 female performing oral sex on one of the underage girls from the
25 hotel room on Burks's computer. They observed text messages on
26 Burks's cellular telephone such as "Don't talk personal around the
27 hoes" and an inquiry by Burks to Sutton about his "cut" for getting
28 the girls dates.

20. On August 29, 2011, Officers Haro, Parsekian, and Evans interviewed victim A.T., who confirmed that Sutton was sex trafficking her. She confirmed that she had engaged in prostitution for four days and gave all of the proceeds, approximately \$1,000 to Darius Sutton in exchange for food, clothing, protection, and shelter.

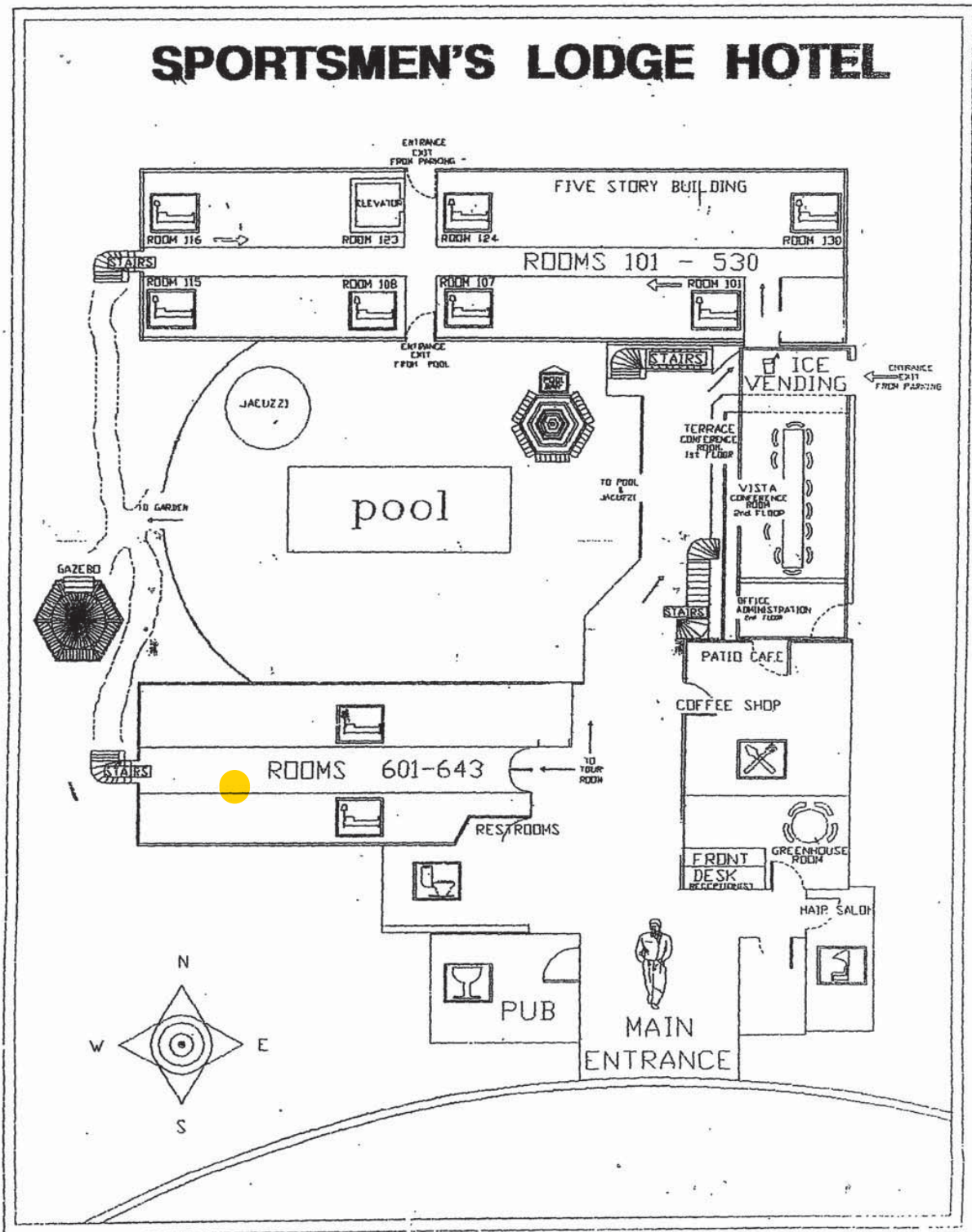
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration is executed at Los Angeles, California, on June 01, 2020.

BRADLEY W. SCHUMACHER

A handwritten signature in black ink, appearing to read 'Br W Schumacher', written over the printed name.

UNITED STATES V. SUTTON, et al.
15-CR-407-TJH-3

Schumacher Decl. Exhibit 1
Map of Sportsmen's Lodge Hotel



UNITED STATES V. SUTTON, et al.
15-CR-407-TJH-3

Schumacher Decl. Exhibit 2
Defendant's Consent Form

LOS ANGELES POLICE DEPARTMENT

CHARLIE BECK
Chief of Police



ANTONIO R. VILLARAIGOSA
Mayor

Post Office Box 30158
Los Angeles, California 90030
Telephone:
TDD: (877) 275-5273
Reference No.

CONSENT TO SEARCH FORM

DIRECTIONS: Officers shall complete the form, indicating the type of search(es) to be performed. The person giving his/her consent shall print and sign his/her name as indicated.

PREMISES _____
Address

PERSON _____
Name, date of birth and description

PERSONAL PROPERTY COMPUTER & CELL PHONE (MACBOOK)
Description of personal property

VEHICLE _____
License, VIN number and description of vehicle

1. I have been asked by the below listed Los Angeles Police Officers to permit a complete search of the above described person(s), place(s) and/or thing(s).
2. I have been advised of my right to refuse consent to the search described above and to refuse to sign this form if I so choose. I further declare that the officers have made no promises, threats, force or physical or mental coercion of any kind against me to obtain my consent to the search described above or for me to sign this form.
3. I am giving permission for the search freely, voluntarily and without any threat or promise having been made against me, my family or other person.
4. I authorize these officers to take any items which they determine may be related to their investigation.

LePrinceton Burks
Print Name (person giving consent)

8/29/11
Date

[Signature]
Signature (person giving consent)

SGT EVANS
Print Name (Officer)

31289
Serial No.

8/29/11
Date

Print Name (Officer)

Serial No.

Date

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A P P E N D I X 5

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LEPRINCETON BURKS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11	UNITED STATES OF	}	CR 15-407-TJH-3
12	AMERICA,		
13	Plaintiff,		
14	v.		
15	LEPRINCETON BURKS,		
16	Defendant.		
17	<hr/>		
			MEMORANDUM OF DEFENDANT BURKS IN SUPPORT OF EVIDENTIARY HEARING ON MOTION TO SUPPRESS
			REQUEST FOR CONTINUANCE OF EVIDENTIARY HEARING
			Motion hearing: July 6, 2020 10:00 a.m.
			Trial date: October 6, 2020

Defendant LePrinceton Burks has filed a motion to suppress evidence seized by officers of the Los Angeles Police Department when — acting without a search warrant — they raided a room occupied by Burks and others on Sunday, August 21, 2011 at the Sportsman’s Lodge. The motion is currently scheduled for hearing on July 6, 2020.

In addition to arguing that an evidentiary hearing is necessary to proper

1 decision of the motion, Burks requests herein a continuance of the hearing to
2 allow more time for investigation, which has become more difficult because of the
3 pandemic.

4 In his motion to suppress Burks relies on the fact that he had a reasonable
5 expectation of privacy in the room in the Sportsman's Lodge, and therefor the
6 police were required to obtain a search warrant. In its opposition, the government
7 argues a warrant was not required because Burks had no reasonable expectation of
8 privacy and because the room was being used to conduct illegal activities.
9 Alternatively, the government argues that exigent circumstances justified the
10 search without warrant. We will address each of these contentions.

11 **I. Timeliness of This Filing.**

12 First, counsel for Mr. Burks acknowledges that this filing is untimely in
13 light of the order entered by the Court on May 7, 2020 (Dkt#438) requiring that
14 defendant's reply to the government's opposition to the motion to suppress be
15 filed by June 15. This is counsel's fault. Counsel neglected to calendar the June 15
16 date and, in the press of business, did not remember that the two-week response
17 deadline had been ordered and indeed agreed to by counsel. Counsel has been very
18 busy, and was especially preoccupied over the last month with pressure to
19 complete and file a petition for writ of habeas corpus in a state criminal case,
20 People v. Emmanuel Ilupeju, LASC GA102897, which was a major undertaking,
21 and which was filed on June 18, 2020. Counsel requests that the Court's sanctions
22 fall on him, and not on Mr. Burks, who wants his case to move forward
23 expeditiously to resolution.

24 **II. The Police Were Required to Obtain A Warrant for the Search of**
25 **the Hotel Room.**

26 The declaration of Burks filed herewith shows that Burks rented the room
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1 with Darrius Sutton and helped pay for it. He had a key to the room at all times, he
2 came and went as he pleased, he slept there and kept personal belongings there,
3 and he relied upon the room for all the reasons — safety, comfort, shelter, hygiene
4 — for which persons usually rent hotel rooms. Indeed, the hotel room was an
5 especially welcome respite for him because he usually lived in his car.

6 There is no question that status as an overnight guest confers the full
7 protection of the Fourth Amendment, including the requirement that the police
8 must obtain a warrant before they forcibly enter. Minnesota v. Olson, 495 U.S. 91,
9 96 (1990) (“Olson’s status as an overnight guest is alone enough to show that he
10 had an expectation of privacy in the home that society is prepared to recognize as
11 reasonable.”) An overnight guest in a hotel or motel is protected in the same way
12 and to the same extent as a guest in a home. United States v. Deemer, 354 F.3d
13 1130, 1132 (9th Cir. 2004); United States v. Albrekston, 151 F.3d 951, 953 (9th
14 Cir. 1998); United States v. Allard, 600 F.2d 1301, 1303 (9th Cir. 1979).

15 The government argues that Burks is not entitled to this protection because
16 he and others were engaged in illegal commercial activity in the room. But the
17 case law plainly shows that it is only when the defendant’s presence on the
18 premises is solely for the conduct of commercial or illegal activity that the Fourth
19 Amendment does not apply. United States v. Gamez-Orduno, 235 F.3d 453, 458-
20 461 (9th Cir. 2000). This makes obvious sense. It could not be the law that if a
21 person sells drugs out of his own home the police can enter at any time without a
22 warrant. This “exception” would swallow the rule.

23 In Gamez-Orduno, the court held that when persons engaged in cross-border
24 drug smuggling slept for a night in a trailer in the desert while en route on their
25 smuggling business, the Fourth Amendment protected them from being disturbed
26 in the trailer unless agents had a warrant, notwithstanding that the trailer itself
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1 contained drugs and weapons. “The record shows that appellants were overnight
2 guests in the trailer, and that they were there for rest and food, not ‘simply...to do
3 business.’ [United States v.] Carter, 525 U.S. 83, at 90.... Carter neither suggests
4 that the Fourth’s regard for overnight guests depends on whether the visit is purely
5 social in nature nor undermines Olson’s explicit holding that ‘status as an
6 overnight guest is alone enough to show that [the guest] had an expectation of
7 privacy in the home that society is prepared to recognize as reasonable.’ Olson,
8 495 U.S. at 96-97.”

9 Burks plainly was an overnight guest in the hotel room, and therefor his
10 privacy was fully protected by the Fourth Amendment, which meant that the police
11 could not enter the room without a warrant absent exigent circumstances.

12 **III. An Evidentiary Hearing Is Required to Determine Whether**
13 **Exigent Circumstances Justified the Warrantless Entry.**

14 To prove that exigent circumstances justified the forcible entry and search
15 without a warrant, the government must show that “(1) considering the totality of
16 the circumstances, law enforcement had an objectively reasonable basis for
17 concluding that there was an immediate need to protect others or themselves from
18 serious harm; and (2) the search’s scope and manner were reasonable to meet the
19 need.” United States v. Reyes-Bosque, 596 F.3d 1017, 1029 (2010)

20 This inquiry requires an examination of all of the facts and circumstances,
21 and therefore requires an evidentiary hearing at which the assertions offered by
22 Officer Schumacher can be tested by cross-examination and perhaps by the
23 testimony of other witnesses. On the face of Officer Schumacher’s declaration, the
24 existence of an emergency is much in doubt. Officer Schumacher relates that when
25 the police showed a picture of the alleged kidnap victim to the persons at the front
26 desk, he was told that the alleged victim had been seen near the front desk alone
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1 just a short time before the police arrived. The front desk was a floor below Room
2 622. How could a kidnap victim be walking freely around the hotel alone?

3 As described by Mr. Burks, the conduct of the police was very heavy-
4 handed. The case calls for an evidentiary hearing.

5 **IV. The Evidentiary Hearing Should Be Continued To Allow For**
6 **Adequate Investigation, Which Has Been Impeded By the Pandemic**
7 **Conditions.**

8 An evidentiary hearing is currently scheduled for July 6. However, an
9 effective hearing requires preparation, which includes locating and interviewing
10 witnesses and sleuthing for records and other evidence. Effective investigation
11 requires travel and contact with other persons. Under the current circumstances,
12 due to the pandemic, many persons avoid interpersonal contact, because they are
13 required or encouraged do so by employers or government rules or just out of their
14 own fear. Moreover, given that many offices are closed or short-staffed, finding
15 records and evidence is more difficult. Offices that would routinely be sources of
16 records in an investigation, such as court clerks and attorney services, are often
17 closed. Also, several witnesses to the events at the Sportsman's Lodge, including
18 Darrius Sutton and Darius Burks, are in custody at federal prisons and not readily
19 available for interview at this time, if at all.

20 Accordingly, Mr. Burks moves for a continuance of the evidentiary hearing
21 to a later date, preferably in September of this year. Both the government and Mr.
22 Burks are anxious to preserve the current trial date of October 6. It seems that an
23 evidentiary hearing in early September would not interfere with the trial date but
24 would allow greater time to interview witnesses and find other evidence.

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Respectfully submitted,

June 23, 2020

s/ George W. Buehler

GEORGE W. BUEHLER
Counsel for Defendant
LEPRINCETON BURKS

A P P E N D I X 6

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LEPRINCETON BURKS

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	CR 15-407-SJO
)	
Plaintiff,	)	REDACTED DECLARATION OF
	)	LEPRINCETON BURKS IN
	)	SUPPORT OF MOTION TO
v.	)	SUPPRESS; EXHIBIT
)	
LEPRINCETON BURKS,	)	Motion hearing:
	)	September 21, 2020
Defendant.	)	10:00 a.m.
)	
	)	Trial date:
	)	October 6, 2020

Defendant LePrinceton Burks submits herewith his redacted declaration in support of his Motion to Suppress. This document replaces Documents 448 and 449, which have been placed under seal.

This declaration is made by Mr. Burks under the compulsion of Local Criminal Rule 12-1 and based on the understanding that under Simmons v. United States, 390 U.S. 377 (1968), nothing he says in the declaration will be used against him or admitted into evidence at trial.

Mr. Burks makes the declaration for the sole purpose of asserting his rights

1 under the Fourth Amendment to the United States Constitution, and he reserves
2 his rights under the Fifth Amendment to the United States Constitution.

3 The attached declaration of Mr. Burks was prepared by hand and signed by
4 Mr. Burks at the Theo Lacy Facility in Orange County, California, where Mr.
5 Burks is in custody. The typed version of the declaration was prepared by counsel.
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7 Respectfully submitted,
8

9 July 9, 2020

s/ George W. Buehler

GEORGE W. BUEHLER
Counsel for Defendant
LEPRINCETON BURKS

DECLARATION OF LEPRINCETON BURKS

I, LePrinceton Burks, declare as follows:

1. In August, 2011, I was not employed, and was receiving General Relief for being homeless of \$221 cash and \$200 food stamps. I was generally living out of my car. I was registered for classes at El Camino College, and scheduled to select my classes on or about August 29, 2011.

2. On August 21 or 22, 2011 I met up with Darrius Sutton and went with him to the Sportsman's Lodge where Darrius rented a room. I contributed approximately \$40 and he paid the remainder to rent Room 622. We were given two keys to the room. He kept one and I kept one, and held the key throughout our stay.

3. I resided in that room every day and night of that week until we were arrested. I slept in the room, I had a key to the room, I was free to come and go as I pleased, I had my belongings in the room, and I used the room for safety, shelter, comfort, company, and hygiene. It was my home for that week.

4. On Sunday, August 28 I was in the room with several other persons, and I heard noise outside, and I went out onto the balcony and saw multiple marked police cars with emergency lights on, and saw several police officers out of their vehicles, and a police helicopter overhead. I did not jump off the balcony or onto a neighboring balcony, and was just curious about what was happening. I believe I was on the balcony as long as five minutes, and then I heard banging on the room door, and I saw an officer outside running towards the balcony with his gun drawn. I turned and looked into the room and saw officers outside the room door with guns drawn. The officer yelled "He has a weapon," which was not true, I was holding my computer and trying to film the police. The police inside were yelling, and made us walk out of the room into the hallway with our hands up. Their guns

1 were drawn the entire time. They searched each one of us in the hallway and then
2 made us sit on the floor. We were sitting with our hands cuffed behind us. We sat
3 there until they transported us to the police station.

4 5. As we sat on the floor, we asked why we were under arrest, and they
5 would not say. They did not give us Miranda warnings, but kept asking us
6 questions. It seemed like hours we were on the floor handcuffed until they took us
7 to the station.

8 6. At the station, we sat for a long period, still handcuffed. The police
9 would ask us questions from time to time. After I had been at the police station a
10 long time, an officer came to me with my computer and asked me if it was my
11 computer. I said yes, and he said "if this is your property, sign here." I signed
12 without reading or hardly looking at the piece of paper. I did not realize I was
13 giving consent to search my computer, and he did not tell me that by signing I was
14 consenting to search of my computer. I did not know that it was necessary for me
15 to consent to search of my computer, and no one so advised me.

16 We were not fed during the many hours first in the hotel hallway and then in
17 the police station. I was very tired and hungry.

18 7. When we were taken out of the hotel and placed in a police vehicle, there
19 was a man who yelled at us that he was the father of S., a girl who alleged she was
20 kidnaped, and that he was going to get us, beat us up, yelling profanities.

21 I expected to be safe staying in the hotel room, and expected to be secure
22 from disturbance. I expected my privacy would be secure.

23 8. Contrary to what Officer Schumacher said, there was no gold Lexus with
24 partial license "SDOE" in the parking lot of the Sportsman's Lodge.

25 9. During the week we were at the Sportsman's Lodge, S., the girl who
26 alleged she was kidnaped, drove a silver Lexus alone away from the hotel at least
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1 2 or 3 times. She had access to the Lexus at all times. I believe S. pretended that
2 she was kidnaped because she did not want her parents to know she was with us
3 voluntarily, and was afraid of what her parents would do if they knew that.

4 10. Officer Schumacher has committed perjury in his Declaration.

5 I declare under penalty of perjury that the foregoing is true and correct to
6 the best of my knowledge, and that I executed this declaration on June 22, 2020 at
7 Orange, CA.

8
9 s/ LePrinceton Burks

10 LePrinceton Burks
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I, LePrinceton Burks, declare as follows:

1. In August, 2011, I was not employed, and was receiving General Relief for being homeless of ~~\$221~~^{\$221} cash and \$220 food stamps. I was generally living out of my car. I was registered for classes at El Camino College, and scheduled to select my classes ^{or about} on August 29, 2011.
2. On August 21 or 22, 2011 I met up with Darrius Sutton and went with him to the Sportsman's Lodge where Darrius rented a room. I contributed approximately \$40 and he paid the remainder to rent Room 622. We were given 2 keys to the room. He kept one and I kept one, & held the key throughout our stay.
3. I resided in that room every day & night of that week until we were arrested. I slept in the room, I had a key to the room, I was free to come & go as I pleased, I had my belongings in the room, and I used the room for safety, shelter, comfort, company, & hygiene. It was my home for that week.

4. On Sunday, August 28 I was in the room with several other persons, and I heard noise outside, and I went out onto the balcony and saw multiple marked police cars with emergency lights on, and saw several police officers out of their vehicles, and a police helicopter overhead. I did not jump off the balcony or onto a neighboring balcony, and was just curious about what was happening. I believe I was on the balcony as long as five minutes, and then I heard banging in the room door, and I saw an officer outside running towards the balcony with his gun drawn. I turned and looked back into the room & saw officers outside the room door with guns drawn. The officer yelled "He has a weapon," which was not true, I was holding my computer & trying to film the police. The police inside were yelling, and made us walk out of the room into the

hallway with our hands up. Their guns were drawn the entire time. They searched each one of us in the hallway & then made us sit on the floor. We were sitting with our hands cuffed behind us. We sat there until they transported us to the police station.

5. As we sat on the floor, we asked why we were under arrest, & they would not say.

They did not give us Miranda warnings, but kept asking us questions. It seemed like hours we were on the floor handcuffed until they took us to the station.

6. At the station, we sat for a long period, still handcuffed. The police would ask us questions from time to time. After I had been at the police station a long time, an officer came to me with my computer and asked me if it was

my computer. I said yes, & he said "if this is your property, sign here." I signed without reading or hardly looking at the piece of paper. I did not realize I was giving consent to search my computer, & he did not tell me that by signing I was consenting to search of my computer. I did not know that it was necessary for me to consent to search of my computer, and nobody so advised me.

6. We were not fed during the many hours first in the hotel hallway and then in the police station. I was very tired & hungry.

7. When we were taken out of the hotel & placed in a police vehicle, there was a man who yelled at us that he was the father of S [REDACTED], the girl who alleged she was kidnapped, & that he was going

- to get us, beat us up, yelling profanities.
7. I expected to be safe staying in the hotel room, & expected to be secure from disturbance. I expected my privacy would be secure.
8. Contrary to what Officer Schumacher said, there was no gold Lexus with partial license "SDOE" in the parking lot of the Sportsman's Lodge.
9. During the week we were at the Sportsman's Lodge, S [REDACTED], the girl who alleged she was kidnapped, drove a silver Lexus alone away from the hotel at least 2 or 3 times. She had access to the Lexus at all times. I believe S [REDACTED] pretended that she was kidnapped because she did not want her parents to know she was with us voluntarily, and was afraid of what her parents would do if they knew that.

10. Officer Schumacher has committed perjury in his Declaration.

I declare under penalty of perjury that the foregoing is true & correct to the best of my knowledge, & that I executed this declaration on June 22, 2020 at Orange, CA.



Le Princeton Burkis

APPENDIX 7

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United States Attorney
2 CHRISTOPHER D. GRIGG
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Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 DARIUS SUTTON, et al.,

16 Defendants.

No. CR 15-407-TJH-3

GOVERNMENT'S SUR-REPLY IN SUPPORT
OF ITS OPPOSITION TO DEFENDANT
LEPRINCETON BURKS'S MOTION TO
SUPPRESS

Hearing Date: July 6, 2020
Hearing Time: 10:00 a.m.
Location: Courtroom of the
Hon. Terry J.
Hatter, Jr.

19
20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorney Devon Myers, hereby
23 files its Sur-Reply In Support of Its Opposition to Defendant
24 LePrinceton Burks's Motion to Suppress.

25 //

26 //

1 This Sur-Reply is based upon the attached memorandum of points
2 and authorities, the Opposition and supporting declaration and
3 exhibits, the files and records in this case, and such further
4 evidence and argument as the Court may permit.

5 Dated: June 29, 2020

Respectfully submitted,

6 NICOLA T. HANNA
7 United States Attorney

8 CHRISTOPHER D. GRIGG
9 Assistant United States Attorney
 Chief, National Security Division

10 /s/
11 _____
 DEVON MYERS
 Assistant United States Attorneys

12 Attorneys for Plaintiff
13 UNITED STATES OF AMERICA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A week after the deadline to file his reply, defendant LePrinceton Burks ("defendant") filed his declaration in support of his Motion to Suppress, along with his reply.¹ Defendant now asks that the hearing on his motion be continued and tries to manufacture a dispute to warrant an evidentiary hearing here. As explained below, the Court should hold the hearing on the motion to suppress as scheduled, deny defendant's manufactured claim for an evidentiary hearing, and deny defendant's motion.

II. THE COURT SHOULD NOT CONTINUE THE HEARING

Defendant's reply asks the Court to continue the hearing on his motion to "a later date, preferably in September of this year." (Def. Reply ISO MTS, Docket Entry ("DE") 447, at 5.) The basis for defendant's request is so he can further investigate facts for his motion to suppress, which has been, according to him, impeded by the Coronavirus pandemic. Importantly, however, defendant proffers no facts that he thinks he would obtain in support of his motion.

The Court should not continue the hearing for several reasons. Notably, the Court had ordered defendant to file his motion to suppress on November 18, 2019. (See Court Order Dated Oct. 7, 2019, DE 415.) Defendant blew past that date without informing the Court

¹ Defendant also refers to one of the victims by her first name in his declaration. The morning after defendant filed it, government counsel requested that defense counsel replace with a redacted version because use of the victim's first name violates the protective order here. Defense counsel indicated he would do so. As of the filing of this sur-reply nearly a week later defendant has not removed this document from the docket, even after government counsel requested its removal a second time. The government will take steps to have it removed tomorrow. This is a problematic disregard of the need to protect the victims and the Court's order to this effect.

1 of why he failed to comply with its order. While no one could have
2 predicted the arrival of the Coronavirus pandemic, defendant elected
3 to file his motion to suppress well after its onset in a case where
4 defendant made his initial appearance in this case on August 15,
5 2016. Defendant waited nearly four years to file this motion, did so
6 in the middle of a pandemic, after disregarding a court-ordered
7 filing date, and now complains that he needs more time to investigate
8 further his claims due to the pandemic.

9 After defendant filed his motion to suppress, he agreed to a
10 hearing date of June 29, 2020, which the Court set for hearing a week
11 later on the currently scheduled date of July 6, 2020. (See Parties'
12 Stipulation For Hearing As To Notice Of Motion To Suppress Evidence
13 Obtained In Violation Of The Fourth Amendment, DE 437; Court Order on
14 Stipulation Regarding Deadlines, DE 438.) Indeed, defendant's motion
15 made no indication that he could not investigate his claims. In sum,
16 to the extent defendant does face some inconvenience, it is a problem
17 of his own making and he should not be allowed to drag this hearing
18 out so he can ruminate on arguments and generate "evidence" that he
19 should have supplied in a motion that was supposed to be filed in
20 November.

21 Moreover, defendant's requested continuance to September serves
22 only to prejudice the government. The government has a large volume
23 of exhibits to introduce at trial, which defense counsel knows
24 because he saw the exhibit binders at a meet and confer on this
25 motion. Requiring the government to possibly have to reshape its
26 case and reburn more than a hundred exhibits shortly before trial is
27 onerous and unnecessary. Additionally, there are no facts suggesting
28 that defendant's purported investigation will be any more possible in

1 the coming months. Indeed, today the California Governor's office
 2 reports a 2.5 percent increase in the number of COVID-19 cases with a
 3 .5 percent increases in death resulting from the virus. (See
 4 <https://covid19.ca.gov/>, last visited June 29, 2020.) Defendant's
 5 reply fails to explain why a delay of the hearing to September will
 6 present improved circumstances.

7 The Court should not allow defendant to ignore the rules, the
 8 Court orders, and his own stipulations so that he can manipulate the
 9 situation to his own advantage. The Court should not continue the
 10 hearing.²

11 **III. THE COURT SHOULD DENY DEFENDANT'S MOTION WITHOUT AN EVIDENTIARY** 12 **HEARING**

13 **A. There Is No Need For An Evidentiary Hearing Here**

14 Defendant failed to file a declaration in support of his motion,
 15 in violation of Local Criminal Rule 12-1.1, which requires defendant
 16 to identify "all facts then known upon which it is contended the
 17 motion should be granted." To gain advantage, defendant waited for
 18 the government to file a fulsome opposition so that defendant could
 19 tailor his declaration to attempt to create disputed facts.

20 Defendant's declaration (filed one month and twenty four days
 21 after filing his motion) accuses Officer Schumacher, the government's
 22 declarant, of perjury to persuade the Court to hold an evidentiary
 23 hearing. This is insufficient. United States v. Howell, 231 F.3d
 24 _____

25 ² If the Court were inclined to continue, the government would
 26 request that it be a very short continuance of no more than a few
 27 weeks. Indeed, the case agent - but not the declarant - is currently
 28 precluded from accessing his workspace or the case files because he
 arrested someone who was positive for COVID-19 on June 22, 2020. He
 should know shortly whether he is positive himself. If he is
 negative, a short continuance would allow him to assist in the
 preparation for the hearing.

1 615, 620-23 (9th Cir. 2000). In Howell, the defendant filed a
2 boilerplate motion without details sufficient to generate the need
3 for an evidentiary hearing. Id. at 620. When the U.S. Magistrate
4 Judge denied the motion, the defendant provided more details to the
5 District Court. Id. The District Judge declined to consider the
6 additional facts and declined to hold an evidentiary hearing. Id. at
7 620-21. The Ninth Circuit affirmed and noted that the defendant's
8 "'excuse' for not including specific factual allegations in his
9 initial motion . . . is wholly unsatisfactory. That other district
10 judges and magistrate judges have previously overlooked defense
11 counsel's boilerplate motion does not excuse the practice of
12 submitting motions devoid of any factual allegations whatsoever."
13 Id. at 623. The Ninth Circuit added, "failing to include information
14 in his initial motion that was readily available and certainly
15 pertinent to his motion to suppress is patently unacceptable" and
16 concluded that the District Court's exercise of discretion was
17 appropriate. Id.; see also United States v. Wardlow, 951 F.2d 1115,
18 1116 (9th Cir. 1991)(holding that when a defendant fails to support a
19 motion to suppress with a declaration, he forfeits his right to an
20 evidentiary hearing).

21 The situation here is like Howell. Defendant's motion included
22 no declaration and was a basic recitation of the facts that placed
23 none in dispute. That defendant later files a declaration to claim
24 he had a privacy right in the hotel room and that he did not flee
25 from police are facts that have been known to him since the incident
26 in August 2011. As noted in Howell, the failure to include these
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1 facts in his motion are "patently unacceptable" and the Court is well
2 within its discretion to deny an evidentiary hearing here.³

3 Moreover, defendant's declaration does little to create a
4 factual dispute. Even if defendant had a privacy interest in the
5 room - which he did not as explained below - it does not alter that
6 Officer Schumacher and the other officers were faced with exigent
7 circumstances. Defendant claims that he thinks the victim was lying
8 about being kidnapped. (Def. Decl., DE 449, ¶ 9.) But defendant's
9 belief has no impact on what Officer Schumacher knew at the time of
10 his investigation, which was that S.A. was missing and had
11 communicated that she was being held against her will by a pimp.
12 (See Schumacher Decl. ¶¶ 2-5, DE 442.) Defendant next claims that he
13 was on the balcony not to flee but to film the police. (Def. Decl. ¶
14 4.) But Schumacher was at the front door and Detective Pinner
15 reported to him that two men were running along the balconies. (See
16 Schumacher Decl. ¶ 8-9.) Even if Detective Pinner's report was
17 inaccurate and defendant's version of events is correct - which the
18 government doubts - Schumacher acted based on the report that there
19 were two men running. As such, nothing in defendant's declaration
20 changes law enforcement's reasonable belief that there were exigent
21 circumstances that necessitated the warrantless entry into the hotel
22 room. Accordingly, the Court should deny defendant's request for an
23 evidentiary hearing.

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27 ³ If the Court does decide to hold an evidentiary hearing, the
28 government is providing notice to defendant that the government will
call him as a witness and cross-examine him on the contents of his
declaration.

B. Defendant Has Failed To Establish That He Had A Privacy Interest In The Hotel Room

Defendant claims that the government argued, "a warrant was not required because Burks had no reasonable expectation of privacy." Reply at 2, DE 447.) That is wrong. The government's argument is that defendant lacked a privacy interest in the room and, therefore, cannot allege a Fourth Amendment violation (which is often referred to as "standing" but is correctly identified as a sufficient privacy interest (Rakas v. Illinois, 439 U.S. 128, 139-40 (1978)).⁴ (See Opp. at 10-17.) The government argued that defendant failed to meet his burden to show that he had a privacy interest in the room and that, any claim to a privacy interest was erased by the criminal activity - sex trafficking of three girls - that was taking place therein. (Id.)

Defendant's reply fails to change the validity of the government's argument. Relying on United States v. Gamez-Orduno, 235 F.3d 453, 458-61 (9th Cir. 2000), defendant claims that because he was a guest in the hotel room, now belatedly asserting that he had a key and gave co-defendant Sutton some money for room, he has a sufficient privacy interest.⁵ But in Gamez-Orduno, the defendants were not committing illegal activity in the space searched. Id. at 459. They were spending the night in a trailer for food and rest, not just to do business. Here, however, the undisputed evidence (because

⁴ A warrant would have been required but-for the exigent circumstances present. That is a different inquiry from whether defendant can assert that the warrantless entry violated his Fourth Amendment rights.

⁵ Notably, while defendant identifies his income from general relief, it is unclear whether his financial contribution to the room money came from that source or from the money earned from the women being trafficked in the room.

1 defendant's declaration is silent on this point) is that multiple
2 women were being trafficked from the room that was searched.
3 Accordingly, the cases cited in the government's brief apply and the
4 Court should hold that defendant had no privacy interest sufficient
5 to allege a Fourth Amendment violation here.

6 **IV. CONCLUSION**

7 The Court should deny defendant's request to continue the
8 hearing on his motion to suppress and deny his request for an
9 evidentiary hearing. For the reasons stated here as well as in the
10 government's opposition, the Court should deny defendant's motion.
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A P P E N D I X 8

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
3 HONORABLE TERRY J. HATTER, U.S. DISTRICT JUDGE
4

5 UNITED STATES OF AMERICA,) NO. CR 15-407-TJH
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REPORTER'S TRANSCRIPT OF PROCEEDINGS
PRETRIAL CONFERENCE AND MOTION TO SUPPRESS
TUESDAY, JUNE 22, 2021
10:12 A.M.
LOS ANGELES, CALIFORNIA

GAYE L. LIMON, CSR NO. 7416
FEDERAL OFFICIAL PRO TEMPORE COURT REPORTER
LIMONCSR@GMAIL.COM

1
2 FOR THE PLAINTIFF: UNITED STATES ATTORNEY
3 BY: DEVON MYERS, AUSA
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5 ASHLEY FILLMORE, AUSA
6 ASHLEY.FILLMORE@USDOJ.GOV
7 312 NO. SPRING STREET
8 LOS ANGELES, CALIFORNIA 90012
9

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FOR THE DEFENDANT: BUEHLER & KASSABIAN, LLP
BY: GEORGE BUEHLER, ESQ.
GBUEHLER@BUEHLERKASSABIAN.COM
350 WEST COLORADO BOULEVARD
SUITE 200
PASADENA, CALIFORNIA 91105

M A S T E R I N D E X

JUNE 22, 2021

CHRONOLOGICAL AND ALPHABETICAL INDEX OF WITNESSES

NONE

EXHIBITS

NONE OFFERED

UNITED STATES DISTRICT COURT

A083

1 TUESDAY, JUNE 22, 2021; 10:16

2 LOS ANGELES, CALIFORNIA

3 -000-

4 THE CLERK: CRIMINAL CASE 15-407 UNITED STATES OF
5 AMERICA VERSUS LEPRINCETON DEWON BURKS. COUNSEL, STATE YOUR
6 APPEARANCE AT THE LECTERN, PLEASE.

7 MS. MYERS: GOOD MORNING. DEVON MYERS ON BEHALF OF THE
8 UNITED STATES. WITH ME AT COUNSEL TABLE ASSISTING UNITED
9 STATES ASHLEY FILLMORE AND FBI AGENT HENG LIV.

10 THE COURT: THANK YOU.

11 MR. BUEHLER: GOOD MORNING. GEORGE BUEHLER FOR
12 MR. BURKS, WHO IS PRESENT, YOUR HONOR.

13 THE COURT: THANK YOU. IS HE WEARING A MASK THAT IS
14 PROVIDED?

15 MR. BUEHLER: HE'S WEARING BOTH ONE. HE CAME IN WITH A
16 CLOTH MASK, AND HE'S WEARING THE ONE THE COURT PROVIDED OVER
17 THAT ONE.

18 THE COURT: OVER IT?

19 MR. BUEHLER: YES. WOULD IT BE BETTER IF HE TOOK THE
20 OTHER ONE OFF?

21 THE COURT: WELL, IF WE MOVED TO FRIDAY AND HAVE A JURY
22 HERE, THEY NEED TO SEE THE DEFENDANT.

23 MR. BUEHLER: I UNDERSTAND, YOUR HONOR.

24 THE COURT: OKAY. I UNDERSTAND THAT HE'S BEEN TESTED.

25 MR. BUEHLER: HE HAS, YOUR HONOR. I'VE BEEN ADVISED BY

UNITED STATES DISTRICT COURT

A084

1 MDC THAT HE HAS BEEN TESTED, AND IT WAS A NEGATIVE TEST.

2 THE COURT: AND I UNDERSTAND THEY ARE NOT LETTING
3 ANYONE OUT OF QUARANTINE THAT HAS NOT BEEN -- WHO IS THOUGHT
4 TO BE NEGATIVE.

5 MR. BUEHLER: RIGHT.

6 THE COURT: ALL RIGHT. DOES ANYONE WISH TO BE HEARD
7 BEFORE WE COMMENCE THIS MOTION TO SUPPRESS?

8
9 (NO RESPONSE.)

10
11 THE COURT: FROM THE GOVERNMENT?

12 MS. MYERS: YOUR HONOR, THE GOVERNMENT DOES INTEND --

13 THE COURT: WILL YOU PLEASE REPEAT YOUR REPRESENTATION
14 WHENEVER YOU SPEAK SO THAT THE REPORTER CAN GET YOU.

15 MS. MYERS: YES, YOUR HONOR. DEVON MYERS ON BEHALF OF
16 THE UNITED STATES.

17 THE GOVERNMENT DOES INTEND TO CALL AND
18 CROSS-EXAMINE DEFENDANT LEPRINCETON BURKS. I CONFERRED WITH
19 COUNSEL ABOUT THIS.

20 THE COURT: YOU INTEND TO CALL?

21 MS. MYERS: THE DEFENDANT.

22 THE COURT: ALL RIGHT.

23 MR. BUEHLER: MAY I BE HEARD FOR A MOMENT, YOUR HONOR?

24 THE COURT: OF COURSE YOU MAY.

25 MR. BUEHLER: GEORGE BUEHLER FOR THE DEFENDANT,

UNITED STATES DISTRICT COURT

1 MR. BURKS.

2 YOUR HONOR, I BELIEVE THE GOVERNMENT WANTS TO
3 EXAMINE MR. BURKS ON THE ISSUE OF HIS STANDING TO BRING THIS
4 MOTION; AND I BELIEVE, YOUR HONOR, THAT THAT'S A VERY NARROW
5 ISSUE, VERY NARROW TESTIMONY. I DON'T BELIEVE -- IN OTHER
6 WORDS, THEY WANT TO EXAMINE HIM ABOUT WHY HE WAS IN THE HOTEL
7 ROOM THAT WAS EVENTUALLY RAIDED OR SEARCHED BY THE POLICE
8 WITHOUT A WARRANT, AND IN HIS DECLARATION IN SUPPORT OF HIS
9 MOTION, HE HAS EXPLAINED THE REASONS AND THAT HE WAS THERE AS
10 A PAYING CUSTOMER STAYING OVERNIGHT, WHICH I BELIEVE UNDER
11 THE LAW TURNS THAT HOTEL ROOM INTO THE EQUIVALENT OF A HOUSE,
12 A RESIDENCE. THE GOVERNMENT, I WILL CONCEDE, IS ENTITLED TO
13 SINCE THAT'S A PRELIMINARY ISSUE, TO EXAMINE HIM REGARDING
14 THAT, BUT WE MAY DISAGREE ON HOW BROADLY THEY CAN EXAMINE
15 HIM.

16 I THINK THE EXAMINATION SHOULD BE LIMITED TO THE
17 PRECISE CIRCUMSTANCES UNDER WHICH HE WAS IN THE HOTEL ROOM
18 AND NOT BE USED TO TRY TO GO INTO OTHER QUESTIONS THAT GO
19 MORE TO THE INNOCENCE OR GUILT OF THE CHARGES IN THIS CASE.
20 I DON'T THINK THE SUPPRESSION MOTION CAN BE TURNED INTO A
21 VEHICLE FOR INVADING HIS FIFTH AMENDMENT RIGHT. SO JUST
22 WANTED TO MAKE SURE YOUR HONOR WAS AWARE OF THAT, AND I'M NOT
23 SURE GOVERNMENT COUNSEL AGREES WITH ME.

24 THE COURT: MS. MYERS, WHAT ABOUT THAT?

25 MS. MYERS: YOUR HONOR, I THINK THAT WE DON'T INTEND TO

UNITED STATES DISTRICT COURT

A086

1 INQUIRE UPON THE DETAILS OF THE ILLEGAL NATURE OF THE
2 DEFENDANT'S ACTIVITY IN THE ROOM. WE DO INTEND TO BRING IT
3 TO HIM AS FAR AS HIS CONVICTION THAT WAS BASED ON THOSE
4 ACTIVITIES FOR IMPEACHMENT PURPOSES AND THEN DO PLAN TO ARGUE
5 THOSE FACTS IN CONNECTION WITH OUR ARGUMENT ABOUT THE
6 VERACITY OF DEFENDANT'S DECLARATION; BUT, OTHERWISE, WE ARE
7 NOT GOING TO INQUIRE AS TO THE SPECIFICS OF WHETHER HE WAS
8 TRAFFICKING THE WOMEN THAT WERE RECOVERED FROM THAT HOTEL
9 ROOM, WHICH I WOULD ALSO SUBMIT, YOUR HONOR, IS NOT NECESSARY
10 TO THE GUILT OR INNOCENCE OF THE CASE CHARGED BECAUSE IT IS A
11 CP PRODUCTION CASE, BUT WE ARE SO LIMITING IT.

12 DOES YOUR HONOR WANT ME TO TAKE OFF MY MASK WHEN
13 I'M AT THE LECTERN?

14 THE COURT: THAT'S UP TO YOU.

15 MS. MYERS: OKAY. I AM VACCINATED, YOUR HONOR. I
16 THINK IT MAY BE EASIER FOR YOU TO HEAR ME WITHOUT MY MASK.

17 THE COURT: YES. DO YOU WISH TO HAVE THE DEFENDANT ON
18 THE STAND INITIALLY?

19 MS. MYERS: YES, YOUR HONOR.

20 THE COURT: ALL RIGHT. GOVERNMENT IS CALLING THE
21 DEFENDANT.

22
23 LEPRINCETON DEWON BURKS,
24 CALLED AS A WITNESS BY THE PLAINTIFF, HAVING BEEN DULY SWORN,
25 TESTIFIES AS FOLLOWS:

UNITED STATES DISTRICT COURT

1 THE CLERK: YOU DO SOLEMNLY SWEAR THAT THE TESTIMONY
2 YOU MAY GIVE IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL
3 BE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO
4 HELP YOU GOD.

5 THE DEFENDANT: YES, MA'AM.

6 THE CLERK: PLEASE BE SEATED.

7 STATE AND SPELL YOUR NAME FOR THE RECORD.

8 THE DEFENDANT: LEPRINCETON DEWON,
9 L-E-P-R-I-N-C-E-T-O-N; DEWON, D-E-W-O-N; BURKS, B-U-R-K-S.

10 MR. BUEHLER: YOUR HONOR, MAY I -- OKAY. I WAS JUST
11 GOING TO SUGGEST TO MR. BURKS THAT HE TAKE ONE OF THE MASKS
12 OFF.

13 THE COURT: DO YOU WANT TO TAKE THE MASK OFF?

14 THE DEFENDANT: I DO. HE SAID THIS ONE, TAKE BOTH OF
15 THEM OFF?

16 THE COURT: YOU CAN.

17 MS. FILLMORE: GOOD MORNING. ASHLEY FILLMORE ON BEHALF
18 OF THE UNITED STATES.

19
20 DIRECT EXAMINATION

21 BY MS. FILLMORE:

22 Q GOOD MORNING, MR. BURKS.

23 A GOOD MORNING.

24 Q YOU SUBMITTED A DECLARATION IN THIS CASE;
25 CORRECT?

UNITED STATES DISTRICT COURT

1 A YES.

2 Q YOUR DECLARATION WAS ABOUT THE EVENTS OF
3 AUGUST 28, 2011?

4 A THE WEEK OF -- THAT WEEK, YES.

5 Q YOU SIGNED THE DECLARATION UNDER PENALTY OF
6 PERJURY; CORRECT?

7 A YES.

8 Q THAT MEANS YOU PROMISE TO TELL THE TRUTH?

9 A YES, MA'AM.

10 Q AND THAT, IF YOU DIDN'T TELL THE TRUTH, YOU COULD
11 GET INTO TROUBLE; CORRECT?

12 A YES.

13 Q WOULD YOU AGREE IT WAS IMPORTANT THAT YOU TELL
14 THE TRUTH IN YOUR DECLARATION?

15 A YES.

16 Q ACCORDING TO YOUR DECLARATION, YOU WERE LIVING
17 OUT OF YOUR CAR AT THE TIME OF YOUR ARREST?

18 A YES. AND HOUSE TO HOUSE.

19 Q YOU SAID IN YOUR DECLARATION THAT YOU WENT TO THE
20 SPORTSMAN LODGE ON AUGUST 21ST OR 22ND?

21 A YES.

22 Q YOU SAID IN YOUR DECLARATION THAT YOU, QUOTE,
23 "RESIDED IN THAT ROOM EVERY DAY AND EVERY NIGHT OF THAT WEEK
24 UNTIL WE WERE ARRESTED"?

25 A YES.

UNITED STATES DISTRICT COURT

A089

1 Q AND YOU WERE ARRESTED ON AUGUST 28; RIGHT?

2 A YES.

3 Q SO THAT WOULD MEAN YOU STAYED IN THE HOTEL SEVEN
4 OR EIGHT NIGHTS?

5 A SEVEN OR SIX NIGHTS.

6 Q SEVEN OR SIX NIGHTS.

7 LAW ENFORCEMENT INTERVIEWED YOU FOLLOWING YOUR
8 ARREST; CORRECT?

9 A VERY TIRED, YES.

10 Q AND IT WAS IMPORTANT THAT YOU TELL LAW
11 ENFORCEMENT THE TRUTH DURING THAT INTERVIEW TOO; CORRECT?

12 A I HONESTLY DON'T REALLY REMEMBER THAT BECAUSE I
13 WAS VERY TIRED AT THE TIME.

14 Q WELL, YOU TOLD LAW ENFORCEMENT THAT YOU HAD NO
15 REASON TO LIE DURING THAT INTERVIEW; CORRECT?

16 A HAVE YOU EVER NOT EATEN FOR 24 HOURS OR SLEPT?
17 THE COURT: ANSWER THE QUESTIONS, SIR.

18 THE WITNESS: HUH?

19 THE COURT: TRY TO ANSWER THE QUESTIONS.

20 THE DEFENDANT: YES.

21 Q BY MS. FILLMORE: MR. BURKS, IF YOU COULD PLEASE
22 TURN TO TAB 4 IN THE BINDER IN FRONT OF YOU WHAT'S BEING
23 MARKED AS GOVERNMENT 4 FOR IDENTIFICATION.

24 A (COMPLIES.)

25 Q I'M SHOWING YOU A TRANSCRIPT OF THAT INTERVIEW

UNITED STATES DISTRICT COURT

A090

1 WITH LAW ENFORCEMENT?

2 A YOU HAVE THE AUDIO OF THE TRANSCRIPT?

3 Q YES.

4 MS. FILLMORE: YOUR HONOR, THE AUDIO OF THE TRANSCRIPT
5 OR THE RECORDING HAS BEEN LODGED WITH THE COURT. FOR
6 EVERYONE'S EASE, WE ALSO HAVE TRANSCRIPTS WHICH I WOULD RELY
7 ON TODAY, BUT CONSIDERING THAT THEY CONTAIN SENSITIVE VICTIM
8 INFORMATION, WE HAVE NO INTEREST IN INPUT. MAY I PROCEED?

9 THE COURT: YOU MAY. THE EXHIBIT NUMBERS AGAIN?

10 MS. FILLMORE: PARDON ME?

11 THE COURT: EXHIBIT NUMBER AGAIN.

12 MS. FILLMORE: YES, YOUR HONOR. EXHIBIT 4.

13 THE COURT: THANK YOU.

14 **Q BY MS. FILLMORE:** I WOULD DIRECT YOU TO PAGE 13
15 OF THE TRANSCRIPT. DURING YOUR AUGUST 2011, INTERVIEW, LAW
16 ENFORCEMENT ASKED, QUOTE, "DURING THE WEEK YOU BASICALLY DID
17 GO THERE AND SPEND THE NIGHT THERE; RIGHT?" AND YOU REPLIED
18 "A COUPLE OF TIMES."

19 A YES.

20 Q IN YOUR DECLARATION YOU SAY YOU CONTRIBUTED \$40
21 TO STAY IN THE HOTEL ROOM?

22 A YES.

23 Q HOW MUCH DID THE ROOM COST PER NIGHT?

24 A DON'T KNOW.

25 Q YOU DON'T RECALL HOW MUCH?

UNITED STATES DISTRICT COURT

A091

1 A NO.

2 Q SO FOR SEVEN OR SIX NIGHTS AT THE HOTEL, YOU PAID
3 ONLY \$40?

4 A NO. I CONTRIBUTED MORE.

5 Q WELL, YOUR DECLARATION REFLECTS THAT YOU PAID
6 \$40; CORRECT?

7 A JUST AT THE BEGINNING. I DIDN'T SPECIFY ANY
8 OTHER DAYS. THAT'S THE PROBLEM.

9 Q OKAY.

10 THE COURT: HOLD THAT MICROPHONE A LITTLE CLOSER TO
11 YOU. SPEAK RIGHT INTO IT.

12 Q BY MS. FILLMORE: YOU ALSO SAY THAT YOU USED THE
13 ROOM FOR SAFETY, SHELTER, COMFORT, COMPANY, AND HYGIENE?

14 A YES.

15 Q IN YOUR DECLARATION YOU SAID THAT YOU, QUOTE,
16 "EXPECTED YOUR PRIVACY WOULD BE SECURE THERE"?

17 A YES.

18 Q YOU SAID THAT IT WAS DARRIUS SUTTON WHO RENTED
19 THE ROOM?

20 A YES.

21 Q NOW, YOU TOLD LAW ENFORCEMENT, DURING YOUR
22 INTERVIEW IN AUGUST 2011, THAT DARRIUS WAS DOING HIS
23 ENGINEERING AT THE HOTEL ROOM?

24 A YES.

25 Q AND THE REASON WHY YOU WENT TO THE HOTEL WAS TO

UNITED STATES DISTRICT COURT

A092

1 RECORD WITH DARRIUS?

2 A AND FOR SOMEWHERE TO SLEEP.

3 Q YOU TOLD LAW ENFORCEMENT THAT GIRLS COME THROUGH
4 THERE ALL THE TIME; IS THAT CORRECT?

5 A MUSICIANS, YES.

6 Q COULD YOU TURN TO PAGE 2 OF THE TRANSCRIPT.

7 A (COMPLIES.)

8 Q LOOKING AT PAGE 2, YOU SAID, "GIRLS COME THROUGH
9 THERE ALL THE TIME"; CORRECT?

10 A IT WAS AN EXAGGERATION. IT ALSO SAYS A MILLION
11 GIRLS, BUT THERE'S NOT A POSSIBLE WAY A MILLION GIRLS COULD
12 COME INTO A ROOM, CAN THERE?

13 Q THAT WAS YOUR STATEMENT TO LAW ENFORCEMENT --
14 RIGHT? -- A MILLION GIRLS?

15 A YES.

16 Q YOU SAID DARRIUS IS A GOOD ENGINEER; RIGHT?

17 A YES.

18 Q SO EVERYONE COMES THERE TO RECORD?

19 A YES. MUSIC, FOR THE RECORD.

20 Q SO THERE WERE A LOT OF PEOPLE THERE?

21 A YES.

22 Q IN YOUR INTERVIEW YOU SAID YOU DIDN'T KNOW
23 EVERYONE THERE; RIGHT?

24 A NO.

25 Q LET'S TURN TO ANOTHER PART OF YOUR DECLARATION.

UNITED STATES DISTRICT COURT

A093

1 YOU SAID THAT ON AUGUST 28, 2011, THERE WAS NO GOLD LEXUS
2 WITH LICENSE SDOE IN THE PARKING LOT OF THE HOTEL?

3 MR. BUEHLER: MAY I HAVE A REFERENCE, YOUR HONOR?

4 MS. FILLMORE: YES. PARAGRAPH 8 OF THE DECLARATION.

5 MR. BUEHLER: THANK YOU.

6 THE WITNESS: MY DECLARATION; RIGHT?

7 **Q BY MS. FILLMORE:** YES.

8 A YES.

9 Q YOU DIDN'T WALK AROUND THE PARKING LOT AND CHECK
10 EVERY CAR, DID YOU?

11 A YOU DIDN'T TAKE PICTURES EITHER, DID YOU? THE
12 KIDNAPPING VICTIM -- YOU WOULD TAKE PICTURES OF THE CAR,
13 WOULDN'T YOU?

14 Q PLEASE ANSWER THE QUESTION. YOU DIDN'T WALK
15 AROUND --

16 A IN THE POLICE REPORT YOU GUYS SAY IT WAS A
17 DIFFERENT CAR. I DID WALK AROUND THE CAR. I DID.

18 Q YOUR TESTIMONY WAS --

19 A WHEN I WAS ARRESTED, I GOT WALKED AROUND --

20 THE COURT: JUST ONE AT A TIME. LISTEN TO THE QUESTION
21 AND ATTEMPT TO ANSWER. IF YOU CAN'T ANSWER, JUST INDICATE
22 THAT YOU CAN'T WITHOUT ANY COMMENTS. GO AHEAD.

23 **Q BY MS. FILLMORE:** IS YOUR TESTIMONY THAT YOU
24 WALKED AROUND THE PARKING LOT AND LOOKED AT EVERY SINGLE CAR
25 WITH THOSE LICENSE PLATE NUMBERS?

UNITED STATES DISTRICT COURT

A094

1 A NO.

2 Q MR. BURKS, YOU THEN GO ON TO SAY IN YOUR
3 DECLARATION THAT YOU BELIEVE -- I'LL CALL HER S.A. --
4 PRETENDED THAT SHE WAS KIDNAPPED?

5 A YES.

6 Q YOU'VE BEEN CONVICTED OF A CRIME PREVIOUSLY;
7 CORRECT?

8 A YES.

9 Q THAT WAS IN 2013?

10 A YES.

11 Q THAT WAS FOR PIMPING, IN VIOLATION OF CALIFORNIA
12 PENAL CODE SECTION 266(H) (A) ?

13 A I DON'T RECALL THAT. I DON'T KNOW THAT PENAL
14 CODES AND SUCH LIKE THAT.

15 Q DO YOU RECALL THAT THE PRIOR CONVICTION WAS FOR
16 PIMPING?

17 A YES.

18 Q YOU PLED GUILTY TO THAT CRIME; CORRECT?

19 A WELL, I HAVE NO MONEY TO GO TO TRIAL; SO I HAD
20 TO.

21 Q BUT YOU ADMITTED YOUR CONDUCT; CORRECT?

22 A NO. I SAID "NO CONTEST." I DIDN'T CONTEST IT.

23 Q FOR THAT CONVICTION THE VICTIM WAS S.A.; CORRECT?

24 A YES.

25 Q AND THE CONDUCT THAT LED TO THAT CONVICTION --

UNITED STATES DISTRICT COURT

A095

1 THAT TOOK PLACE AROUND THE SPORTSMAN LODGE HOTEL; RIGHT?

2 A I DON'T KNOW. I DON'T RECALL.

3 Q YOU DON'T RECALL THAT YOU HAVE A PRIOR CONVICTION
4 RELATED TO --

5 A TO S.A. BUT NOT AROUND THE SPORTSMAN LODGE.

6 THE COURT: JUST A MOMENT. JUST A MINUTE.

7 THE WITNESS: OH.

8 THE COURT: WAIT FOR THE NEXT QUESTION.

9 Q BY MS. FILLMORE: DO YOU RECALL THE PRIOR
10 CONVICTION WAS RELATED TO S.A. AT THE SPORTSMAN LODGE HOTEL?

11 A NO. THE CONVICTION WAS JUST FOR S.A., NOT
12 DIRECTLY AS IN SPORTSMAN LODGE, NOT TO MY RECOLLECTION.

13 Q BUT IT WAS FOR CONDUCT THAT HAD OCCURRED DURING
14 THAT WEEK OF AUGUST; CORRECT?

15 A I NEVER READ THE PLEA AGREEMENT, HONESTLY.

16 Q YOUR TESTIMONY IS THAT YOU NEVER READ THE PLEA
17 AGREEMENT FOR YOUR PRIOR CONVICTION?

18 A NO, I NEVER READ IT. I JUST SIGNED IT.

19 Q OKAY. AND SO YOU WOULDN'T RECALL THAT THAT
20 CONVICTION RELATED TO CONDUCT THE WEEK OF AUGUST 21?

21 A NO. NOT TO MY UNDERSTANDING. I JUST THOUGHT
22 TAKE A DEAL SO YOU CAN GET OUT OF JAIL FASTER.

23 Q YOUR TESTIMONY WAS THAT YOU WERE AT THE SPORTSMAN
24 LODGE AT THE WEEK OF AUGUST 21; CORRECT?

25 A YES.

UNITED STATES DISTRICT COURT

1 Q NOW, IN YOUR DECLARATION YOU SAID ON AUGUST 28,
2 2011, YOU WERE IN THE HOTEL ROOM WITH SEVERAL OTHER PERSONS?

3 A YES.

4 Q AND YOU HEARD A NOISE OUTSIDE; RIGHT?

5 A YES.

6 Q AND YOU SAY YOU WENT OUT ONTO THE BALCONY?

7 A UH-HUH.

8 Q YOU SAW MULTIPLE MARKED POLICE CARS WITH
9 EMERGENCY LIGHTS ON; IS THAT RIGHT?

10 A YES.

11 Q YOUR DECLARATION SAYS YOU DID NOT JUMP OFF THE
12 BALCONY OR ONTO A NEIGHBORING BALCONY?

13 A YES.

14 Q AND YOU SAID YOU WERE JUST CURIOUS ABOUT WHAT WAS
15 HAPPENING?

16 A YES.

17 Q OKAY. AND YOU STAYED OUT ABOUT FIVE MINUTES ON
18 THE BALCONY?

19 MR. BUEHLER: YOUR HONOR, I'LL OBJECT. THESE QUESTIONS
20 AREN'T GOING TO THE ISSUE OF WHETHER OR NOT HE WAS A RESIDENT
21 IN THAT HOTEL ROOM.

22 MS. FILLMORE: YOUR HONOR, THESE QUESTIONS ARE THE
23 ISSUES OF THE DECLARATION. I AM JUST ASKING ABOUT THE FACTS
24 THAT HE LAID OUT.

25 THE COURT: IT'S OVERRULED.

UNITED STATES DISTRICT COURT

A097

1 MS. FILLMORE: THANK YOU, YOUR HONOR.

2 Q MR. BURKS, YOU SAID THEN YOU HEARD BANGING ON THE
3 HOTEL ROOM DOOR?

4 A YEAH.

5 Q AND YOU SAW OFFICERS OUTSIDE THE ROOM WITH GUNS
6 DRAWN?

7 A BUST IN THE CAR AND WITH GUNS DRAWN.

8 Q YOUR DECLARATION SAYS "OUTSIDE THE ROOM DOOR WITH
9 GUNS DRAWN"?

10 A RIGHT.

11 Q OKAY. AT THAT TIME YOU WERE HOLDING YOUR
12 COMPUTER AND TRYING TO FILM THE POLICE, YOU SAID?

13 A NO. I NEVER GOT THE FILM. BUT I WAS TRYING.

14 Q I SEE.

15 A THE POLICE OFFICERS OUTSIDE.

16 Q YOU WERE ALSO INTERVIEWED BY LAW ENFORCEMENT IN
17 DECEMBER 2011; CORRECT?

18 A UH-HUH.

19 THE COURT: IS THAT "YES"?

20 THE DEFENDANT: YES.

21 Q BY MS. FILLMORE: I WANT TO ASK YOU TO PLEASE
22 TURN TO TAB 5 IN THE BINDER IN FRONT YOU WHAT'S PREVIOUSLY
23 BEEN MARKED GOVERNMENT'S EXHIBIT 5. I AM SHOWING YOU A
24 TRANSCRIPT FROM THAT INTERVIEW.

25 YOUR HONOR, I DO HAVE THE RECORDINGS FROM THAT

UNITED STATES DISTRICT COURT

1 TRANSCRIPT TO LODGE WITH THE COURT.

2 THE COURT: THANK YOU.

3 Q BY MS. FILLMORE: MR. BURKS, IF YOU WOULD PLEASE
4 TURN TO PAGE 22 OF THE TRANSCRIPT.

5 A (COMPLIES.)

6 Q IN YOUR DECEMBER 2011 INTERVIEW, LAW ENFORCEMENT
7 ASKED YOU ABOUT THE NIGHT OF ARREST; RIGHT?

8 A YES.

9 Q AND IN THAT INTERVIEW LAW ENFORCEMENT SAID,
10 "NOBODY GRABS THEIR BUDDY'S LAPTOP AND JUMPS OUT THE BACK."
11 DO YOU SEE THAT ON PAGE 22?

12 A YES.

13 Q YOU RESPONDED THAT YOU WOULD OF RAN EVERY TIME;
14 CORRECT?

15 A IT WAS A QUESTION. LIKE, I WOULDN'T RAN EVERY
16 TIME.

17 Q YOUR TESTIMONY IS THAT YOU WERE ASKING THEM IF
18 YOU WOULD OF RAN EVERY TIME?

19 A I NEED TO HEAR IT. IT'S BEEN TEN YEARS.

20 Q WELL, READING FROM THE TRANSCRIPT, LAW
21 ENFORCEMENT SAID, "NOBODY GRABS THEIR BUDDY'S LAPTOP AND
22 JUMPS OUT THE BACK." AND THEN YOU SAID, "FIRST OF ALL,
23 LISTEN, WELL, BECAUSE I WOULD OF RAN EVERY TIME"; IS THAT
24 CORRECT?

25 A I DON'T RECALL THAT.

UNITED STATES DISTRICT COURT

A099

1 Q WHAT ABOUT READING IT IN FRONT OF YOU? IS THAT
2 WHAT THE PAGE SAYS?

3 A YES.

4 Q AND THEN YOU SAID, "WHEN THEY KNOCKED ON THE
5 DOOR, I DIDN'T HEAR POLICE. I JUST THOUGHT SOMEONE WAS
6 COMING IN TO ROB US"?

7 A YES.

8 Q AND THEN YOU SAID, "I WOULD HAVE GRABBED MY CAR
9 KEYS TOO. I GRABBED MY LAPTOP"; IS THAT RIGHT?

10 A THAT'S WHAT IT SAYS.

11 Q OKAY. WELL, REGARDLESS, THE POLICE ENTERED THE
12 HOTEL ROOM; CORRECT?

13 A YES.

14 Q AND THEY ARRESTED YOU?

15 A YES.

16 Q AND AT SOME POINT FOLLOWING YOUR ARREST, YOU WERE
17 MIRANDIZED?

18 A NO.

19 Q IS IT YOUR TESTIMONY YOU WERE NEVER MIRANDIZED?

20 A NOT UNTIL THE NEXT DAY RIGHT IN THE INTERVIEW
21 ROOM.

22 Q SO BEFORE THE INTERVIEW, THEY MIRANDIZED YOU?

23 A AT THE INTERVIEW THEY MIRANDIZED ME.

24 Q YOU ALSO SIGNED A CONSENT FORM FOR YOUR LAPTOP TO
25 BE SEARCHED; CORRECT?

UNITED STATES DISTRICT COURT

A100

1 A NOT CORRECT. I DO NOT REMEMBER SIGNING A FORM.
2 THEY SHOWED ME A FORM.

3 Q PLEASE TURN TO TAB 2.

4 A YES.

5 Q THAT'S BEEN MARKED AS THE GOVERNMENT'S EXHIBIT 2.

6 A (COMPLIES.)

7 Q THIS IS THE CONSENT FORM; CORRECT?

8 A I DON'T RECALL SIGNING THIS THING.

9 Q IS THAT YOUR SIGNATURE ON THE PAGE?

10 A MAYBE. I DON'T WRITE MY SIGNATURE LIKE THAT BUT
11 MOST LIKELY IT PROBABLY IS.

12 Q ON THE CONSENT FORM AT NO. 2, IT SAYS "I HAVE
13 BEEN ADVISED OF MY RIGHT TO REFUSE CONSENT TO THE SEARCH."
14 DO YOU SEE THAT?

15 A IT'S VERY SMALL BUT A LITTLE BIT, YES.

16 Q YOU DO SEE THAT? OKAY.

17 THEY ALSO ASKED YOU, IN YOUR AUGUST 2011
18 INTERVIEW, ABOUT -- OH, STRIKE THAT, YOUR HONOR.

19 IN THE DECEMBER 2011 INTERVIEW, LAW ENFORCEMENT
20 BROUGHT UP YOUR LAPTOP COMPUTER; RIGHT?

21 A YES.

22 Q AND YOU REPLIED TO LAW ENFORCEMENT, "I GAVE YOU
23 THE CONSENT"?

24 A I DIDN'T UNDERSTAND WHAT THEY WERE TALKING ABOUT.

25 Q BUT YOU SAID, "I GAVE YOU THE CONSENT"?

UNITED STATES DISTRICT COURT

1 A I DON'T RECALL BECAUSE I DON'T UNDERSTAND WHAT
2 THEY WERE TALKING ABOUT. I DIDN'T EVEN KNOW YOU NEEDED
3 CONSENT WHEN YOU ALREADY TOOK IT.

4 Q IF YOU COULD JUST TURN TO TAB 5, EXHIBIT 5,
5 PAGE 4.

6 A (COMPLIES.)

7 YEAH, I'VE READ THAT. I'VE SEEN IT.

8 Q AND YOUR INITIALS LB NEXT TO THAT, IT SAYS "I
9 GAVE YOU THE CONSENT"; IS THAT RIGHT?

10 A NOT THE CONSENT TO SEARCH. I JUST -- YOU HAVE IT
11 ALREADY. I DIDN'T UNDERSTAND THAT YOU NEEDED A CONSENT TO
12 SEARCH WHEN YOU ALREADY TOOK IT FROM THE HOTEL ROOM.

13 MS. FILLMORE: YOUR HONOR, MAY I HAVE A MOMENT?

14 THE COURT: YOU MAY.

15
16 (BRIEF PAUSE.)

17
18 MS. FILLMORE: NO FURTHER QUESTIONS, YOUR HONOR.

19 THE COURT: ALL RIGHT. YOU MAY CROSS-EXAMINE.

20 MR. BUEHLER: THANK YOU, YOUR HONOR.

21
22 CROSS-EXAMINATION

23 **BY MR. BUEHLER:**

24 Q SO, MR. BURKS, DIRECTING YOUR ATTENTION BACK NOW
25 TO THE NIGHT OF AUGUST 28.

UNITED STATES DISTRICT COURT

1 A YES.

2 Q AND THAT'S WAY BACK IN WHAT? 2011 OR 2012?

3 A 2011.

4 Q OKAY. AND THAT WAS THE NIGHT YOU WERE ARRESTED?

5 A YES.

6 Q YOU WERE ARRESTED AT THE SPORTSMAN LODGE; IS THAT

7 CORRECT?

8 A YES.

9 Q AND WHAT TIME OF DAY WAS IT WHEN YOU WERE

10 ARRESTED? DO YOU RECALL?

11 A I DON'T, ACTUALLY. IT WAS VERY -- IT WAS EARLY.

12 Q IT WASN'T --

13 A SUN WAS STRAIGHT UP; SO IT MIGHT HAVE BEEN

14 BETWEEN 12:00 AND 2:00.

15 Q OKAY. AND WHEN YOU WERE ARRESTED, BEFORE YOU

16 WERE ARRESTED, YOU WERE INSIDE YOUR HOTEL ROOM?

17 A YES.

18 Q AND THE POLICE CAME INTO THE ROOM WITH GUNS?

19 A YES.

20 Q OUT OF THE HOLSTER?

21 A YES.

22 Q OKAY. AND YOU WERE DIRECTED TO LIE ON THE FLOOR?

23 A YES.

24 Q WITH YOUR ARMS STRETCHED OUT?

25 A YES.

UNITED STATES DISTRICT COURT

1 Q AND HOW LONG WERE YOU IN THAT POSITION?

2 A NOT LONG. THEY PULLED US OUT ONE BY ONE AND
3 SEARCHED US IN THE HALLWAY AND HANDCUFFED US IN THE HALLWAY.

4 Q AND THEN WHAT DID THEY TELL YOU TO DO?

5 MS. FILLMORE: OBJECTION, YOUR HONOR. THIS IS BEYOND
6 THE SCOPE OF WHAT WAS COVERED DURING THE CROSS.

7 THE COURT: IT'S OVERRULED.

8 THE DEFENDANT: THEY JUST ASKED A LOT OF QUESTIONS.
9 "WHAT ARE YOU DOING HERE? DO YOU KNOW WHERE YOU AT?" ASKED
10 FOR EVERYBODY'S AGE. EVERYBODY TOLD THEM THEIR AGE. SAY WHO
11 HAS AN I.D. THE PEOPLE HAVE I.D.'S PULLED OUT THEIR I.D.
12 WELL, THEY DIDN'T PULL THEM OUT. I SAID I HAD MY I.D. IN MY
13 BACK POCKET, AND THEY SAID "OKAY." AND EVERYBODY WITHOUT
14 I.D. -- THEY JUST ASKED A LOT OF RANDOM QUESTIONS.

15 Q BY MR. BUEHLER: HOW LONG DID THEY QUESTION YOU?

16 A IT WAS A LONG TIME HANDCUFFED AGAINST THE WALL.

17 Q OKAY. NOW, HOW LONG WERE YOU THERE IN THE WALL
18 HANDCUFFED?

19 A I WANT TO SAY MAYBE, LIKE -- IT HAD TO BE SOME
20 HOURS. THE SECURITY CAMERA WOULD HAVE SHOWED ALL OF IT, BUT
21 THEY DESTROYED IT ON PURPOSE.

22 Q OKAY. SO HOURS. WAS IT -- WAS THERE A POINT AT
23 WHICH THEY MOVED YOU FROM THE HALLWAY?

24 A LATER, LATER. THE SUN WAS LOWER AND THEN WE
25 WALKED -- AND THEN THEY HAND WALKED US HANDCUFFED TO THE

1 POLICE CAR.

2 Q WHERE DID THEY TAKE YOU?

3 A IN FRONT AND PUT US IN FRONT OF THE SQUAD CAR
4 WHERE I GUESS THIS MAN -- S.A.'S FATHER, WHICH HE WAS YELLING
5 LIKE, "I SEEN YOU NOW. I GOT YOUR ASS. I GOT YOUR ASS."

6 Q OKAY. SO THEY PUT YOU IN THE POLICE CAR. AND
7 THEN DID THEY TAKE YOU TO THE POLICE STATION?

8 A YES.

9 Q AND WAS IT DARK BY THIS TIME? WAS IT NIGHTTIME
10 OR STILL DAYLIGHT?

11 A THE SUN WAS GOING DOWN.

12 Q AND HOW LONG WERE YOU AT THE POLICE STATION?

13 A THAT ONE, I DON'T RECALL. IT WAS -- I DEFINITELY
14 DO NOT RECALL THAT. WE WERE JUST THERE.

15 Q DID THEY EVENTUALLY RELEASE YOU?

16 A I POSTED BAIL.

17 Q OKAY.

18 A THE NEXT DAY, I BELIEVE.

19 Q OKAY. SO WERE YOU AT THE POLICE STATION ALL
20 NIGHT?

21 A YES.

22 Q WAS THERE A BED TO SLEEP IN?

23 A NO. I DON'T RECALL THAT. WE WERE ON A BENCH
24 WAITING ON THEM.

25 Q HANDCUFFED ON THE BENCH?

UNITED STATES DISTRICT COURT

1 A YES.

2 Q SO YOU WERE HANDCUFFED THE ENTIRE TIME?

3 A YES.

4 Q WERE YOU FED?

5 A NO, I DON'T RECALL THAT.

6 Q WAS IT DURING THIS PERIOD THE PEOPLE CAME AND
7 STARTED ASKING QUESTIONS?

8 A YES.

9 MS. FILLMORE: OBJECTION, YOUR HONOR. THESE ARE
10 LEADING QUESTIONS.

11 THE COURT: SUSTAINED.

12 Q BY MR. BUEHLER: AND WHAT WAS YOUR -- WHEN THEY
13 CAME AND ASKED YOU QUESTIONS, CAN YOU TELL US WHETHER YOU
14 WERE TIRED OR NOT?

15 A VERY TIRED. I JUST WANTED TO GO TO SLEEP AND LAY
16 DOWN.

17 Q COULD YOU TELL WHETHER YOU WERE HUNGRY OR NOT?

18 A YES. I KEPT TELLING OFFICERS, "WHAT ARE WE BEING
19 HELD FOR?" AND THEY SAID, "YOU KNOW WHAT YOU'RE HELD FOR,"
20 WITH THEIR LITTLE ANGRY ATTITUDE, LIKE, POLICE TALK, LIKE,
21 "YOU KNOW WHAT YOU DID. YOU'RE GOING TO GO AWAY FOR A LONG
22 TIME."

23 Q WHAT TIME OF DAY WAS THE NEXT DAY WHEN YOU WERE
24 RELEASED?

25 A WHEN I POSTED BAIL, I'M -- I GOT OUT -- I WALKED

UNITED STATES DISTRICT COURT

1 TO MY CAR. IT WAS IN THE MIDDLE OF THE NIGHT.

2 Q NOW, WHEN YOU WERE JUST QUESTIONED A FEW MINUTES
3 AGO ABOUT A STATEMENT WHERE YOU REFERRED TO -- YOU SAID, "I
4 GAVE YOU THE CONSENT."

5 A YES.

6 Q DO YOU REMEMBER THAT TESTIMONY?

7 A YES.

8 Q WHICH -- WHEN WAS THAT STATEMENT -- WHEN WAS THIS
9 STATEMENT MADE "I GAVE YOU THE CONSENT"?

10 A I DON'T ACTUALLY REMEMBER WHICH INTERVIEW BUT --

11 Q IT WAS A LITTLE BIT AFTER THE DAY YOU WERE
12 ARRESTED; CORRECT?

13 A YES.

14 Q AND WHEN YOU SAY, "I GAVE YOU THE CONSENT," YOU
15 WERE REFERRING TO THE PIECE OF PAPER YOU SIGNED?

16 A HONESTLY, I DON'T REMEMBER.

17 Q OKAY.

18 A I THOUGHT -- I HONESTLY DON'T REMEMBER. THE WAY
19 THEY DID IT, THEY DIDN'T LET ME DID IT OR NOTHING. THEY SLID
20 THE PAPER IN FRONT OF ME AND SAID, "HURRY UP AND SIGN THIS.
21 THIS IS YOUR PROPERTY; RIGHT? TAKE THIS AND SIGN IT." WHEN
22 YOU GOT ANGRY GUYS, FOR SOM REASON AROUND YOU AND YELLING,
23 YOU TEND TO DO WHAT THEY SAY. YOU'VE SEEN GEORGE FLOYD?

24 Q DO YOU KNOW WHAT IT WAS WHEN YOU SIGNED IT?

25 A NO.

UNITED STATES DISTRICT COURT

1 Q DID YOU READ IT?

2 A NO.

3 Q THANK YOU, YOUR HONOR. NOTHING FURTHER.

4 THE COURT: ANYTHING FURTHER OF THIS WITNESS AT THIS
5 POINT?

6 MS. FILLMORE: NO FURTHER QUESTIONS. THANK YOU, YOUR
7 HONOR.

8 THE COURT: YOU MAY STEP DOWN.

9
10 (BRIEF PAUSE.)

11
12 THE COURT: WHAT'S NEXT? YOUR MOTION, MR. BUEHLER.

13 MR. BUEHLER: THANK YOU.

14
15 (BRIEF PAUSE.)

16
17 MR. BUEHLER: YOUR HONOR, WE'LL ASK OFFICER SCHUMACHER
18 TO TAKE THE STAND, YOUR HONOR.

19
20 (BRIEF PAUSE.)

21
22 THE COURT: COME RIGHT UP TO THE WITNESS STAND,
23 MR. SCHUMACHER. WATCH YOUR STEP.

24 THE CLERK: WATCH YOUR STEP WHEN YOU GO UP.
25

UNITED STATES DISTRICT COURT

1
2 BRADLEY SCHUMACHER,
3 CALLED AS A WITNESS BY THE DEFENSE, HAVING BEEN DULY SWORN,
4 TESTIFIES AS FOLLOWS:

5 THE CLERK: PLEASE RAISE YOUR RIGHT HAND TO BE SWORN.

6 YOU DO SOLEMNLY STATE THE TESTIMONY YOU MAY GIVE
7 IN THE CAUSE NOW PENDING BEFORE THIS COURT SHALL BE THE
8 TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP
9 YOU GOD.

10 THE WITNESS: I DO.

11 THE CLERK: PLEASE BE SEATED.

12 PLEASE STATE AND SPELL YOUR FIRST AND LAST NAME
13 FOR THE RECORD.

14 THE WITNESS: FIRST NAME IS BRADLEY, B-R-A-D-L-E-Y;
15 LAST NAME SCHUMACHER, S-C-H-U-M-A-C-H-E-R.

16
17 DIRECT EXAMINATION

18 **BY MR. BUEHLER:**

19 Q GOOD MORNING, OFFICER.

20 A GOOD MORNING.

21 Q START OUT BY ASKING YOU: ON AUGUST 28, 2011, DID
22 YOU HAVE REASON TO GO TO THE SPORTSMAN LODGE IN THE VALLEY?

23 THE COURT: WILL YOU TELL US FOR WHOM YOU WORK.

24 MR. BUEHLER: OH, I'M SORRY.

25 THE WITNESS: CURRENTLY I'M A SERGEANT FOR THE LOS

UNITED STATES DISTRICT COURT

1 ANGELES POLICE DEPARTMENT ASSIGNED TO WEST VALLEY DIVISION.

2 THE COURT: DID YOU HAVE ANY WEAPONS THAT YOU LEFT
3 DOWNSTAIRS?

4 THE WITNESS: I DID, SIR.

5 Q BY MR. BUEHLER: ON AUGUST 28, 2011, DID YOU HAVE
6 OCCASION TO GO TO THE SPORTSMAN LODGE?

7 A YES, I DID.

8 Q AND WHAT CAUSED YOU TO GO TO THE SPORTSMAN LODGE?

9 A I WAS ASSIGNED TO VAN NUYS PATROL ON THAT DAY,
10 L.A.P.D., VAN NUYS PATROL. I RECEIVED A RADIO CALL FOR A
11 POSSIBLE KIDNAPPING INVESTIGATION THAT WAS IN THE AREA OF
12 THE -- AN AREA OF THE COLDWATER CANYON AND VENTURA BOULEVARD.

13 Q WERE YOU GIVEN ANY INFORMATION ABOUT THIS
14 POSSIBLE KIDNAPPING?

15 A YES, I WAS. THE CALL WAS VAGUE. SO THE PERSON
16 RECORDING THE CALL WAS A DETECTIVE TINKER FROM THE MORENO
17 VALLEY SHERIFF'S STATION. I MADE A PHONE CALL TO GET MORE
18 INFORMATION ON THIS, AND WHEN I SPOKE TO HIM, HE ADVISED ME
19 THAT THE MOTHER OF THE KIDNAPPING VICTIM CAME TO THE STATION
20 BECAUSE SHE RECEIVED INFORMATION THAT THE VICTIM WAS BEING
21 HELD AGAINST HER WILL BY PIMPS.

22 Q THAT WAS RELATED TO YOU BY?

23 A DETECTIVE TINKER.

24 Q TINKER. IT'S A LITTLE BIT HARD FOR ME TO HEAR
25 YOU.

UNITED STATES DISTRICT COURT

1 A I KNOW. THE MASK IS KIND OF HARD. CAN I -- I
2 CAN PULL IT DOWN?

3 Q SO YOU RECEIVED THIS CALL. APPROXIMATELY WHAT
4 TIME WAS THAT?

5 A IT WAS IN THE AFTERNOON. I DON'T RECALL THE
6 EXACT TIME. IT WAS EARLY AFTERNOON/LATE MORNING.

7 Q OFFICER TINKER TOLD YOU HE RECEIVED SOME
8 INFORMATION FROM THE POSSIBLE VICTIM'S MOTHER?

9 A YES.

10 Q DID HE TELL YOU BY WHAT MEANS HE RECEIVED THAT
11 INFORMATION?

12 A SHE --

13 Q I'M SORRY. BY WHAT MEANS SHE RECEIVED THAT
14 INFORMATION.

15 A SHE HAD RECEIVED IT FROM THE FRIEND OF ONE OF THE
16 VICTIMS.

17 Q BUT --

18 A IT WAS HER DAUGHTER -- FRIEND OF HER DAUGHTER'S.

19 Q AND DID HE GIVE YOU ANY MORE INFORMATION ABOUT
20 WHAT THIS POSSIBLE KIDNAPPING INVOLVED?

21 A HE GAVE ME SOME POSSIBLE SUSPECTS AND SOME NAMES.
22 I RECEIVED DARRIUS SUTTON AND CHAD MILLER. AND THERE WAS
23 ALSO A VEHICLE WITH A PARTIAL LICENSE PLATE NUMBER.

24 Q WHERE WERE YOU LOCATED WHEN YOU RECEIVED THIS
25 CALL?

UNITED STATES DISTRICT COURT

A111

1 A IN THE SAME AREA OF VENTURA BOULEVARD AND
2 COLDWATER CANYON.

3 Q WHAT DID YOU DO THEN AFTER YOU GOT THE CALL?

4 A SO BASED ON THE INFORMATION I RECEIVED, I KNOW
5 THAT THERE'S A HOTEL IN THE AREA CALLED THE SPORTSMAN LODGE;
6 AND, BASICALLY, YOU KNOW, THAT THERE'S PIMPING INVOLVED. I
7 KNOW THIS LOCATION WHERE THERE'S PROSTITUTION THAT GOES ON
8 THERE. SO I CONDUCTED A FOLLOW-UP TO THAT AT THE HOTEL. I
9 DROVE AROUND THE PARKING LOT. I LOOKED TO THE VEHICLE AND
10 THE -- SEE IF I COULD FIND WHAT MATCHED THE DESCRIPTION. I
11 GOT A PARTIAL LICENSE PLATE. I DID FIND A VEHICLE THAT
12 MATCHED THE PARTIAL LICENSE PLATE.

13 AFTER THAT, I WENT TO THE FRONT DESK OF THE
14 HOTEL. I SPOKE TO ONE OF THE CLERKS THERE AND ASKED THEM
15 IF -- IF DARRIUS SUTTON OR CHAD MILLER WAS REGISTERED THERE,
16 AND HE HAD TOLD ME THAT DARRIUS SUTTON HAD A ROOM REGISTERED
17 THERE.

18 Q SO BEFORE YOU DROVE TO THE HOTEL, DID YOU MAKE
19 ANY EFFORT TO LEARN ANYTHING FURTHER ABOUT THE NATURE OF WHAT
20 HAD BEEN COMMUNICATED TO THE MOTHER OF THIS POSSIBLE VICTIM?

21 A THE ONLY INFORMATION I HAD AT THAT TIME IS WHAT I
22 RECEIVED FROM DETECTIVE TINKER.

23 Q SO NOTHING MORE THAN A POSSIBLE KIDNAP?

24 A YES.

25 Q OKAY. AND -- BUT YOU DIDN'T -- YOU DIDN'T MAKE

UNITED STATES DISTRICT COURT

1 ANY EFFORT TO FIND OUT MORE PRECISELY WHAT THE MOTHER HAD
2 SAID OR WHAT THE -- WHAT THE OFFICER REPORTING TO YOU HAD
3 RECEIVED?

4 A WELL, I SPOKE TO HIM PERSONALLY, AND HE'S THE ONE
5 WHO GAVE ME THE INFORMATION.

6 Q ALL HE SAID WAS "POSSIBLE KIDNAP"?

7 A YES.

8 Q SO THEN WHEN YOU GET TO THE HOTEL AND YOU GO
9 DIRECTLY THERE AFTER YOU GET THIS CALL?

10 A YES.

11 Q DID IT TAKE YOU LONG TO DRIVE THERE?

12 A NO. IT'S WITHIN MINUTES.

13 Q OKAY. SO YOU WENT TO THE DESK. THIS WOULD BE
14 WHERE PEOPLE CHECK INTO THE HOTEL?

15 A YES.

16 Q HOW MANY PEOPLE WERE AT THE DESK?

17 A ONE OR TWO.

18 Q AND YOU SPOKE TO THEM? AND YOU ASKED IF DARRIUS
19 SUTTON OR ANOTHER PERSON HAD A ROOM THERE?

20 A I DID.

21 Q OKAY. AND YOU DETERMINED THAT THEY DID; CORRECT?

22 A YES.

23 Q SO THEN DID YOU GO TO THAT ROOM OR --

24 A I ASKED THEM WHAT ROOM. I OBTAINED A CARD KEY
25 FOR THE ROOM, AND THEN BASED ON THE TYPE OF CALL THERE WAS, I

UNITED STATES DISTRICT COURT

A113

1 ASKED FOR ADDITIONAL RESOURCES AND ADDITIONAL PATROL UNITS
2 ARRIVED, AND THE SUPERVISOR AND ALSO A DETECTIVE FROM ANOTHER
3 DIVISION SHOWED UP ALSO.

4 Q SO DID THOSE SHOW UP?

5 A YES.

6 Q AND ONCE THEY WERE THERE, DID THEY MAKE CONTACT
7 WITH YOU?

8 A YES.

9 Q AND WERE THEY WITH YOU THEN IN THE -- ARE YOU --
10 AT THIS POINT, WHEN YOU CALLED THEM, WERE YOU STANDING
11 OUTSIDE THE DOOR OF THE PLACE WHERE YOU THOUGHT THIS POSSIBLE
12 KIDNAPPING VICTIM MIGHT BE?

13 A NO. I THINK WE WERE IN THE HOTEL LOBBY.

14 Q OKAY. HAD YOU BEEN GIVEN A ROOM NUMBER FOR WHERE
15 MR. SUTTON WAS?

16 A YES.

17 Q DO YOU RECALL WHAT IT WAS?

18 A I THINK IT WAS 622.

19 Q AND WHERE WAS THAT ROOM -- WELL, AFTER YOU GOT
20 THE ROOM NUMBER, YOU DIDN'T GO TO THE ROOM AT THAT POINT?
21 YOU WAITED IN THE LOBBY AREA?

22 A YES.

23 Q AND DID YOU LEARN ANYTHING FURTHER ABOUT THE
24 POSSIBLE KIDNAPPING VICTIM WHILE YOU WERE STANDING THERE IN
25 THE LOBBY?

UNITED STATES DISTRICT COURT

1 A I DID NOT.

2 Q DID YOU SHOW A PICTURE TO ANYBODY OF THE -- OF
3 THE POSSIBLE KIDNAPPING VICTIM?

4 A I DID.

5 Q AND HOW DID YOU OBTAIN THAT PICTURE?

6 A IT WAS THROUGH DETECTIVE TINKER.

7 Q AND HE SENT YOU A PHOTO?

8 A YES.

9 Q THAT WAS ONE ADDITIONAL PIECE OF INFORMATION YOU
10 HAD? YOU HAD A PHOTO?

11 A THAT'S CORRECT.

12 Q NOW, YOU'RE IN THE LOBBY OF THE SPORTSMAN LODGE,
13 AND YOU'RE WAITING FOR BACKUP TO COME; IS THAT CORRECT?

14 A THAT'S CORRECT.

15 Q DID YOU SHOW THAT PICTURE TO ANYONE?

16 A I MAY HAVE SHOWN IT TO THE OTHER OFFICERS. I
17 DON'T REMEMBER IF I SHOWED IT TO ANYBODY ELSE OTHER THAN THE
18 CLERK AT THE HOTEL.

19 Q YOU SHOWED IT TO THE CLERK AT THE HOTEL?

20 A YES.

21 Q IS THAT THE FIRST THING YOU DID WHEN YOU GOT
22 THERE WHEN YOU ASKED ABOUT -- ABOUT WHETHER SUTTON HAD A
23 ROOM? DID YOU ALSO SHOW A PICTURE OF THIS GIRL TO SOMEONE?

24 A YES.

25 Q AND YOU WERE ASKING THEM IF THEY HAD SEEN THIS

UNITED STATES DISTRICT COURT

A115

1 GIRL; IS THAT CORRECT?

2 A I DID.

3 Q THIS IS A POSSIBLE KIDNAPPING VICTIM; CORRECT?

4 A THAT'S CORRECT.

5 Q AND DID THE CLERK OR SOMEBODY AT THE DESK THERE
6 SAY ANYTHING WHEN YOU SHOWED THEM THE PICTURE?

7 A THEY SAID THAT THEY HAD OBSERVED THE -- THE
8 PERSON IN THE PHOTO -- OBSERVED THAT PERSON IN THE HOTEL.

9 Q OKAY. THEY WERE OBSERVED THERE? DID THEY SAY ON
10 HOW MANY OCCASIONS?

11 A I DON'T RECALL HOW MANY OCCASIONS.

12 Q DID YOU -- SO YOU'RE TALKING TO A PERSON WHO'S AN
13 EMPLOYEE OF THE HOTEL; CORRECT?

14 A CORRECT.

15 Q IS IT, LIKE, THE PERSON IN CHARGE OF THE DESK
16 THERE OR AN ASSISTANT OR --

17 A IT WAS JUST A CLERK. I DON'T KNOW WHAT THEIR JOB
18 TITLE WAS.

19 Q OKAY. SO -- AND THEY SAY THEY'VE SEEN THIS GIRL?

20 A YES.

21 Q NOW, I ASSUME AT THIS POINT YOU'RE TRYING TO
22 FIGURE OUT WHETHER THERE'S ANY TRUTH OR MERIT TO THE CLAIM
23 THAT SHE'S A POSSIBLE KIDNAPPING VICTIM; CORRECT?

24 A I'M CONDUCTING AN INVESTIGATION, YES.

25 Q AND SO DID YOU ASK ANY FOLLOW-UP QUESTIONS OF

UNITED STATES DISTRICT COURT

1 THIS PERSON WHO WAS -- WHO HAS SEEN THE GIRL?

2 A I DON'T RECALL ASKING ANY FOLLOW-UP QUESTIONS,
3 JUST THE BASIC ONES THAT I ALREADY BROUGHT UP.

4 Q ISN'T IT TRUE THAT THIS PERSON TOLD YOU THAT THEY
5 HAD JUST SEEN HER OUT IN THE LOBBY ALONE?

6 A I DON'T KNOW IF THEY JUST --
7 MS. MYERS: OBJECTION. MISSTATES THE DECLARATION AS
8 TESTIFIED, YOUR HONOR.

9 THE COURT: IT'S OVERRULED. YOU MAY ASK IF THAT'S
10 CORRECT OR NOT?

11 THE WITNESS: I DON'T BELIEVE THEY HAD JUST SEEN HER.
12 THEY SAID THEY'D SEEN HER RECENTLY IN THE LOBBY.

13 Q BY MR. BUEHLER: YOU DON'T HAVE A COPY OF YOUR
14 REPORT ON YOU?

15 A THE REPORT OR THE DECLARATION?

16 Q YOUR REPORT. SO THE POLICE REPORT THAT YOU
17 PREPARED FOR THIS INCIDENT.

18 A I DID NOT PREPARE THE REPORT. MY STATEMENTS ARE
19 IN HERE, BUT I DID NOT PREPARE THE REPORT.

20 Q OKAY.

21 A I DO HAVE A COPY -- YES, I HAVE A COPY PART OF
22 THE NARRATIVE, YES.

23 Q AND DO YOU HAVE THE PAGE THAT'S MARKED DOWN AT
24 THE BOTTOM USA 0197?

25 A YES.

UNITED STATES DISTRICT COURT

A117

1 Q AND THAT'S UP AT THE TOP LEFT-HAND CORNER. IT
2 SAYS 3-32. WOULD THIS BE PAGE 3 OF A 32-PAGE REPORT?

3 A YES.

4 Q AND THIS IS YOUR REPORT?

5 A THIS IS NOT A REPORT THAT I WROTE. THIS IS --
6 THIS IS FROM THE INVESTIGATION THAT I DID, YES.

7 Q OKAY. YOU READ THIS REPORT AND MADE SURE IT WAS
8 ACCURATE WHEN YOU MADE IT; CORRECT?

9 A YES.

10 Q AND IT WAS RIGHT NEAR THE TIME OF THE EVENTS;
11 CORRECT?

12 A YES.

13 Q IF YOU GO INTO THE THIRD PARAGRAPH ON THIS
14 PAGE 0197, IT MAKES REFERENCE TO THE CLERK SAYING THAT SUTTON
15 WAS REGISTERED IN ROOM 622. DO YOU SEE THAT?

16 A YES.

17 Q AND THEN IT SAYS THEY SHOWED THE DESK CLERK AND
18 ANOTHER UNKNOWN WORKER AT THE LOCATION A PICTURE OF -- THEN
19 IT HAS A LETTER A. THE LETTER A WITH THE REST OF THE NAME
20 BLACKED OUT IS THE POSSIBLE KIDNAPPING VICTIM?

21 A YES.

22 Q OKAY. SO IT SAYS "THEY SHOWED THEM AT THE
23 LOCATION A PICTURE OF A, AND THEY BOTH STATED THAT SHE WAS IN
24 THE SAME ROOM AS SUTTON, ANOTHER MALE BLACK, AND FEMALE
25 BLACK." OKAY. SO BOTH OF THEM RECOGNIZED HER; CORRECT?

UNITED STATES DISTRICT COURT

1 A YES.

2 Q TWO PEOPLE -- TWO CLERKS THAT YOU WERE TALKING
3 TO? AND THEN THE DESK CLERK ALSO SAID THAT SHE SAW A THAT
4 DAY JUST BEFORE SCHUMACHER'S ARRIVAL?

5 A YES.

6 Q SO SHE TOLD YOU THAT SHE HAD JUST SEEN THIS
7 POSSIBLE KIDNAPPING VICTIM IN THE LOBBY JUST RIGHT BEFORE YOU
8 CAME; CORRECT?

9 A YES.

10 Q DID YOU?

11 A ACCORDING TO THE REPORT, YES.

12 Q DID YOU ASK THEM ANY QUESTIONS ABOUT THIS
13 POSSIBLE KIDNAPPING VICTIM?

14 A NOT THAT I RECALL, NO.

15 Q DID YOU ASK THEM IF SHE LOOKED SCARED?

16 A I DID NOT.

17 Q DID YOU ASK THEM IF SHE WAS WITH ANYBODY ELSE?

18 A YES. THEY SAID SHE WAS IN A ROOM WITH ANOTHER --
19 FEMALE BLACK AND MALE BLACK.

20 Q BUT, I MEAN, DID YOU ASK THEM IF THEY HAD SEEN
21 HER AROUND THE HOTEL IN THE COMPANY OF OTHER PEOPLE?

22 A I DID NOT.

23 Q DID YOU ASK THEM -- DID YOU TELL THEM THAT YOU
24 WERE INVESTIGATING A POSSIBLE KIDNAP?

25 A YES.

UNITED STATES DISTRICT COURT

1 Q DID THEY HAVE ANY REASON TO BELIEVE THAT THIS
2 YOUNG LADY THAT THEY HAD JUST SEEN IN THE HOTEL WAS THE
3 KIDNAPPING VICTIM?

4 A I DON'T KNOW WHAT THEY BELIEVED. I DIDN'T ASK
5 THEM.

6 Q WAS IT SIGNIFICANT TO YOU THAT THE PERSON THAT
7 YOU WERE LOOKING AT IS AS A POSSIBLE KIDNAPPING VICTIM HAD
8 JUST WALKED FREELY THROUGH A PUBLIC AREA ALONE?

9 A COULD YOU REPEAT THAT FOR ME.

10 Q WAS THAT A SIGNIFICANT FACT TO YOU IN TERMS OF
11 YOUR INVESTIGATION TO A POSSIBLE KIDNAPPING?

12 THE COURT: ASK YOUR QUESTION AGAIN.

13 MR. BUEHLER: OKAY.

14 Q WAS IT A SIGNIFICANT FACT TO YOU THAT THE
15 POSSIBLE VICTIM OF A POSSIBLE KIDNAPPING HAD JUST WALKED
16 THROUGH A PUBLIC AREA ALONE? WAS THAT SIGNIFICANT TO YOU?

17 A NOT NECESSARILY, NO.

18 THE COURT: DO YOU WANT TO ASK HIM WHY NOW?

19 Q BY MR. BUEHLER: WHY NOT?

20 A WELL, SOMETIMES WHEN PROSTITUTES ARE THREATENED
21 WITH VIOLENCE IF THEY TRY TO, YOU KNOW, GET AWAY OR TELL
22 ANYBODY WHAT THEY'RE BEING HELD AGAINST THEIR WILL, THEY
23 THREATEN THEMSELVES, THEIR FAMILIES; SO IT COULD HAPPEN THAT
24 THEY ARE WALKING AROUND LIKE NOTHING'S GOING ON.

25 Q ALONE?

UNITED STATES DISTRICT COURT

1 A I'M SORRY?

2 Q ALONE?

3 A YES.

4 Q AND IS IT COMMON IN YOUR EXPERIENCE FOR
5 KIDNAPPING VICTIMS EVEN IF THEY'RE PROSTITUTES IF THEY'RE
6 ALONE TO NOT MAYBE GO TO THE DESK AND SAY, "COULD YOU CALL
7 THE POLICE FOR ME?"

8 A IN MY TRAINING AND EXPERIENCE, YES.

9 Q OKAY. AND WHY WOULD THAT BE?

10 A BECAUSE, LIKE I SAID, THEY -- SOMETIMES THEY'RE
11 THREATENED WITH VIOLENCE AGAINST THEM OR THEIR FAMILIES IF
12 THEY'RE HURT. YOU'RE DEALING WITH SOMEBODY WHO'S YOUNG, AND
13 THEY DON'T KNOW ANY BETTER. THAT'S WHY THEY MAY NOT SAY
14 SOMETHING. IF SOMEONE THREATENED TO HURT THEIR FAMILY AND
15 THEY SAY SOMETHING AND THEY GOT BACK, THEIR FAMILIES COULD BE
16 HARMED.

17 Q SO SHE CALLED HER FAMILY AND ASKED THEM TO SEND
18 HELP; CORRECT?

19 A SHE TEXTED A FRIEND.

20 Q OKAY. WENT TO HER MOTHER; CORRECT?

21 A YES.

22 Q SO YOU DIDN'T ASK ANYTHING MORE ABOUT WHETHER
23 THEY HAD SEEN HER ON OTHER OCCASIONS? WHETHER THEY HAD SEEN
24 HER LOOKING SCARED OR DISTRAUGHT OR SAD? WHETHER THEY HAD
25 SEEN HER LOOKING HAPPY WITH OTHER PEOPLE? NO OTHER QUESTIONS

UNITED STATES DISTRICT COURT

A121

1 ABOUT THIS POSSIBLE VICTIM?

2 A NO.

3 Q AND SHE'S A POSSIBLE VICTIM; RIGHT?

4 A AT THIS POINT, YES.

5 Q AND IT IS SOMEWHAT SPECULATIVE TO SAY THAT, WELL,
6 MAYBE SHE'S TOO AFRAID BECAUSE PIMPS MAKE THEIR VICTIMS
7 AFRAID; CORRECT?

8 A YES.

9 Q PEOPLE WHEN THEY'RE ARE AFRAID, HELP IS READILY
10 AVAILABLE GET IT? DON'T THEY SAY "HELP ME"?

11 A SOMETIMES. NOT ALWAYS.

12 Q DID YOU SEE ANYTHING IN THAT LODGE WHICH WOULD
13 HAVE PREVENTED HER FROM GOING TO THE POLICE AND CALLING THE
14 POLICE?

15 A NO.

16 Q YOU GOT THERE QUITE QUICKLY AFTER YOU LEARNED
17 THAT THERE WAS MAYBE SOMEBODY IN DISTRESS; CORRECT?

18 A YES.

19 Q SO YOU WAITED OR DID YOU GO TO ROOM 622 AT THAT
20 POINT?

21 A WAITED FOR THE ADDITIONAL RESOURCES.

22 Q DID THEY SHOW UP?

23 A YES.

24 Q AND WHAT DID THEY CONSIST OF?

25 A THERE WAS TWO OTHER -- EXCUSE ME -- TWO OTHER

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1 UNITS THAT WAS -- BECAUSE THEY'RE TWO MAN UNITS, SUPERVISOR
2 THAT'S A SERGEANT AND A DETECTIVE.

3 Q SO THAT'S SIX MORE PEOPLE? SIX MORE OFFICERS?

4 A YES.

5 Q DID THEY ALL COME INTO THE AREA AROUND THE FRONT
6 DESK?

7 A I DON'T RECALL IF THEY ALL CAME IN AT THAT TIME,
8 NO.

9 Q WHAT'S THE NEXT THING YOU CAN REMEMBER HAPPENING?

10 A I BRIEFED THEM ON WHAT WE HAD. YOU KNOW, WHAT
11 OUR PLAN WAS TO, YOU KNOW, GO DOOR KNOCK THE ROOM AND THEN
12 JUST SET UP OUR PLAN AND PUT IT INTO ACTION.

13 Q WHAT WAS THE PLAN? I ASSUME IT CONSISTED OF MORE
14 THAN KNOCKING ON THE DOOR?

15 A YEAH. WE WERE GOING TO KNOCK ON THE ROOM.
16 BASICALLY, IT'S BASED OFF OF THAT OF WHAT HAPPENS? IF
17 SOMETHING CHANGES OR IF THERE'S NOBODY IN THE ROOM, THEN THAT
18 WOULD PROBABLY BE AT THE END OF IT.

19 Q SO HOW LONG DID IT TAKE FOR THESE RESOURCES TO
20 GET THERE?

21 A TO BE HONEST WITH YOU, I DON'T KNOW. WITHIN 15,
22 20 MINUTES MAYBE.

23 Q OKAY. SO HOW MUCH LONG -- HOW LONG AFTER YOU
24 FIRST RECEIVED THE CALL OF THIS POSSIBLE KIDNAPPING VICTIM --
25 HOW LONG HAD GONE BY BEFORE YOUR ADDITIONAL RESOURCES

1 ARRIVED?

2 A TO BE HONEST, I DON'T KNOW HOW MUCH TIME HAD
3 PASSED.

4 Q A COUPLE HOURS?

5 A I DON'T KNOW IF IT WAS A COUPLE HOURS. TO BE
6 HONEST WITH YOU, I DON'T RECALL.

7 Q OKAY. AND IN ANY EVENT WHEN THEY ARRIVED, YOU
8 THEN HAD A PLAN?

9 A YES.

10 Q AND CAN YOU TELL ME SPECIFICALLY WHAT THE PLAN
11 WAS.

12 A WELL, FROM WHAT I REMEMBER, IT WAS JUST BRIEFED
13 EVERYBODY WHAT WE HAD. WE WERE GOING TO GO AND DOOR KNOCK
14 THE ROOM. WE HAD SOMEBODY OUTSIDE THE BACK OF THE ROOM. THE
15 ROOM WAS QUITE HIGH; SO WE HAD SOMEBODY OUT THE BACK JUST IN
16 CASE -- TO SEE IF SOMEBODY RAN OUT THE BACK AND JUST SEE WHAT
17 HAPPENS.

18 Q JUST SEE WHAT HAPPENS? OKAY. DID YOU GO DOOR
19 KNOCK?

20 A YES.

21 Q AND WHO WAS WITH YOU OUTSIDE THE ROOM?

22 A THE SERGEANTS AND THE OTHER FOUR PATROL OFFICERS.

23 Q AND WHAT HAPPENED WHEN YOU KNOCKED ON THE DOOR?

24 A INITIALLY, THERE WAS NO RESPONSE TO THE DOOR.
25 BUT THERE IS PEOPLE IN THE DOOR, AND I DID MOVEMENT. IT

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1 APPEARS SOMEONE WAS LOOKING OUT THE PEEP HOLE, BUT NOBODY
2 RESPONDED WHEN I KNOCKED.

3 Q OKAY. WHAT DID YOU DO THEN?

4 A THEN KNOCKED AGAIN AND ANNOUNCED OURSELVES AS THE
5 LOS ANGELES POLICE DEPARTMENT. RIGHT AFTER THAT, THE
6 DETECTIVE, DETECTIVE PENNER, WAS THE ONE OUTSIDE IN THE
7 PARKING LOT. HE ADVISED US VIA OUR RADIO THAT THERE WAS TWO
8 MALES THAT WERE OUT ON THE BALCONY OF THE ROOM WE WERE AT AND
9 THEY JUMPED OVER TO THE ADJOINING BALCONY.

10 Q OKAY. AND WHAT DID YOU DO NEXT?

11 A SO AT THIS POINT IT'S NOT NORMAL FOR SOMEONE TO
12 DO THAT WHEN YOU KNOCKED ON THE DOOR, AND SOMEBODY RUNS OUT
13 THE BACK OF THE ROOM. WE HAD THE KEY CARD; SO I USED THE KEY
14 CARD, AND WE MADE ENTRY INTO THE ROOM.

15 Q OKAY. WAS YOUR GUN DRAWN?

16 A YES.

17 THE COURT: JUST A MINUTE. DID YOU HAPPEN TO HAVE THE
18 KEY CARD? HOW DID YOU HAPPEN TO HAVE THE KEY CARD?

19 THE WITNESS: WE GOT THAT FROM THE DESK CLERK AT THE
20 LOBBY.

21 THE COURT: OH.

22 THE WITNESS: WE ASKED FOR IT.

23 THE COURT: THEY JUST GIVE YOU CARDS IF YOU ASK?

24 THE WITNESS: YES.

25 THE COURT: IS THAT ALWAYS TRUE?

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1 THE WITNESS: I'VE NEVER HAD AN ISSUE WITH IT, SIR.
2 THAT'S ALWAYS -- NEVER VACILLATING. THEY GIVE US ONE.

3 Q BY MR. BUEHLER: WHY DID YOU TAKE THE KEY CARD?

4 A BECAUSE WE NEEDED TO GET INTO A ROOM IMMEDIATELY,
5 THERE'S SOME SORT OF EXIGENCE. WE HAVE THIS KEY THERE.
6 INSTEAD OF SENDING US BEING BACK DOWN TO GET A KEY, THAT
7 WOULD HAVE TAKEN SOMEBODY TEN MINUTES TO DO THAT.

8 Q IF THERE WAS SOME SORT OF EXIGENCY?

9 A YES.

10 Q BUT YOU DIDN'T RECEIVE ANYTHING AT THAT POINT
11 WHILE YOU WERE AT THE DESK; RIGHT?

12 A NOT AT THE DESK, NO.

13 Q SO YOU USED THE KEY CARD. WHY USE THE KEY CARD
14 TO ENTER WITHOUT HAVING SOMEBODY OPEN THE DOOR?

15 A YES.

16 Q AND SO BECAUSE SOMEONE HAD DONE SOMETHING
17 OUTSIDE, WHICH YOU DIDN'T SEE; IS THAT CORRECT?

18 A NO.

19 Q OKAY. YOU SAID IT WAS UNUSUAL?

20 A YES.

21 Q AND, THEREFORE, YOU USED THE KEY CARD TO ENTER
22 INTO THE ROOM?

23 A YES.

24 Q WITH YOUR GUN OUT?

25 A YES.

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1 Q HOW MANY OFFICERS HAD THEIR GUNS OUT?

2 A I DON'T RECALL.

3 Q OKAY. AND DID YOU ALL IMMEDIATELY ENTER THE
4 ROOM?

5 A I DON'T REMEMBER HOW MANY WENT INTO THE ROOM
6 IMMEDIATELY BECAUSE IT'S NOT A VERY BIG ROOM; SO THERE'S --
7 YOU KNOW, IT'S STEP ALL OVER EACH OTHER. SO PROBABLY AT
8 LEAST FOUR THAT WENT IN, I WOULD SAY.

9 Q YOU TOLD EVERYBODY "GET ON THE GROUND"?

10 A I DON'T REMEMBER WHAT THE VERBIAGE WAS THAT WE
11 TOLD THEM TO DO. EITHER "NOT MOVE" OR "PUT YOUR HANDS UP,"
12 SOMETHING TO THAT EFFECT.

13 Q IN ANY EVENT, THE SCENE WAS -- WHAT? -- FOUR TO
14 SIX POLICE OFFICERS STANDING OUTSIDE THE ROOM? YOU USED THE
15 KEY CARD TO GO IN; THEN YOU GUYS HAVE ALL YOUR GUNS DRAWN,
16 AND EVERYONE ON THE FLOOR. IT'S A QUICK SUCCESSION OF
17 EVENTS; CORRECT?

18 A LIKE I SAID, I DON'T REMEMBER IF EVERYONE WAS ON
19 THE FLOOR. I DON'T REMEMBER THAT PORTION OF IT. BUT AS FAR
20 AS THE ENTRY INTO THE ROOM, YES.

21 Q AND YOU TOOK THEM INTO CUSTODY AT THAT POINT;
22 CORRECT?

23 A YES.

24 Q YOU USED YOUR INTERVIEW ROOM?

25 A YES.

1 Q EVENTUALLY YOU TOOK EVERYBODY IN THE ROOM TO THE
2 POLICE STATION?

3 THE COURT: COUNSEL, WOULD YOU USE THE MICROPHONE.

4 MR. BUEHLER: I'M SORRY. YES.

5 THE WITNESS: YES, WE TOOK EVERYONE TO THE POLICE
6 STATION.

7 Q BY MR. BUEHLER: OKAY. AND YOU HANDCUFFED THEM
8 FIRST. EVERYBODY WAS HANDCUFFED?

9 A YES.

10 Q AFTER THEY WERE HANDCUFFED RIGHT AFTER YOU GOT
11 INTO THE ROOM; CORRECT?

12 A CORRECT.

13 Q AND WHEN THEY WERE HANDCUFFED, THE ENTIRE TIME
14 THEY WERE THERE AND WHEN YOU TOOK THEM TO THE POLICE STATION;
15 CORRECT?

16 A YES.

17 Q WHAT'S THE FIRST THING YOU DID AFTER YOU ENTERED
18 THE ROOM?

19 A WELL, WE DETAINED EVERYBODY. YOU KNOW, WE
20 ORDERED THEM TO, YOU KNOW, HOW WE DID -- I DON'T KNOW -- TO
21 LIE DOWN OR WHATEVER BUT DETAINED ALL OF OUR POSSIBLE
22 SUSPECTS. GET EVERYBODY IN HANDCUFFS. AND THEN ONCE WE DO
23 THAT, THEN WE TRY TO FIGURE OUT WHAT'S GOING ON.

24 Q POSSIBLE SUSPECTS OF WHAT CRIME?

25 A KIDNAPPING.

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1 Q OKAY. DID YOU -- WERE YOU -- SO AFTER YOU HAD
2 THEM ALL NEUTRALIZED OR IMMOBILIZED, WHAT WAS THE NEXT THING
3 YOU DO?

4 A START SEPARATING EVERYBODY, TRYING TO FIGURE OUT
5 WHO THE VICTIMS ARE, SUSPECTS, YOU KNOW, START DOING
6 INTERVIEWS, FIND OUT, YOU KNOW, WHO'S WHO, GET NAMES,
7 INFORMATION.

8 Q UH-HUH. WERE YOU -- WERE YOU GIVING MIRANDA
9 RIGHTS?

10 A I DIDN'T READ ANYBODY MIRANDA RIGHTS, NO.

11 THE COURT: WHO WAS HANDCUFFED AT THAT TIME?

12 THE WITNESS: I BELIEVE THERE WAS FIVE MALES IN THE
13 ROOM, ALL OF THEM WERE HANDCUFFED. I DON'T KNOW ABOUT THE --
14 I DON'T REMEMBER IF THE FEMALES WERE HANDCUFFED.

15 THE COURT: YOU DO NOT REMEMBER?

16 THE WITNESS: I DON'T RECALL.

17 THE COURT: WOULD IT BE ORDINARY FOR YOU TO HANDCUFF
18 THESE YOUNG WOMEN?

19 THE WITNESS: YES.

20 THE COURT: WHY?

21 THE WITNESS: BECAUSE I'M CONDUCTING A KIDNAPPING
22 INVESTIGATION, AND I DON'T KNOW WHO ANY OF THESE PEOPLE ARE.
23 I DON'T KNOW IF THEY'RE SUSPECTS. I DON'T KNOW WHAT THEIR
24 INVOLVEMENT IS. THERE'S MULTIPLE PEOPLE INSIDE THE ROOM.

25 THE COURT: DID YOU RECOGNIZE THE WOMAN THAT WHOSE

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1 PICTURE YOU HAD?

2 THE WITNESS: YES.

3 THE COURT: BUT YET YOU THOUGHT IT WAS NECESSARY TO
4 HANDCUFF HER?

5 THE WITNESS: I DON'T REMEMBER HANDCUFFING HER, SIR.
6 THAT'S WHAT I SAID. I DON'T REMEMBER IF SHE WAS HANDCUFFED
7 OR NOT.

8 THE COURT: ALL RIGHT.

9 Q BY MR. BUEHLER: SHE DID GO TO THE POLICE STATION
10 WITH YOU LATER, DID SHE NOT?

11 A SHE WENT TO THE POLICE STATION. I DON'T KNOW IF
12 IT WAS WITH ME OR WHO TRANSPORTED HER, BUT SHE DID END UP AT
13 THE POLICE STATION, YES.

14 Q BECAUSE SHE WAS ARRESTED; CORRECT?

15 A SHE WAS NOT ARRESTED.

16 Q SHE WAS NOT ARRESTED?

17 A SHE WAS DETAINED. SHE WAS DETAINED. SHE WAS A
18 JUVENILE.

19 Q SHE WAS DETAINED. SHE WAS LATER CHARGED IN THE
20 CASE, WAS SHE NOT?

21 A I DON'T REMEMBER. I DON'T KNOW.

22 Q IN ANY EVENT, YOU DIDN'T -- AFTER YOU HAD
23 EVERYBODY IMMOBILIZED, YOU DIDN'T FIGURE OUT WHO THE
24 KIDNAPPING -- POSSIBLE KIDNAPPING VICTIM WAS? THAT WASN'T
25 YOUR FIRST ORDER OF BUSINESS TO FIND THE POSSIBLE KIDNAPPING

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1 VICTIM AND FIND OUT IF SHE WAS A KIDNAPPING VICTIM, WAS IT?

2 A I DON'T UNDERSTAND THE QUESTION.

3 THE COURT: RESTATE IT.

4 Q BY MR. BUEHLER: DID YOU AT ANY POINT RESOLVE THE
5 QUESTION THAT BROUGHT YOU THERE OF A POSSIBLE KIDNAPPING
6 VICTIM, OR DID YOU FORGET THAT THAT WAS THE REASON YOU WERE
7 THERE?

8 A I DIDN'T INTERVIEW THE VICTIM; SO I DIDN'T -- I
9 DON'T KNOW WHAT TO -- HOW TO ANSWER THAT. I DIDN'T INTERVIEW
10 HER. THAT WAS DONE BY SOMEONE ELSE.

11 Q OKAY. SO YOU WENT IN, AND THE INTENT WAS TO
12 INTERVIEW EVERYBODY, AND SOMEBODY ELSE INTERVIEWED HER AT
13 SOME POINT?

14 A THAT'S CORRECT.

15 MR. BUEHLER: YOUR HONOR, THERE ARE FOUR PAGES THAT I
16 MARKED AS EXHIBITS.

17 THE COURT: HAVE YOU SHOWN IT TO THE GOVERNMENT?

18 MR. BUEHLER: YES. THE GOVERNMENT HAS THESE. MAY I
19 APPROACH THE WITNESS WITH -- OR IF THE CLERK HAS 3 AND 4 --
20 EXHIBITS 3 AND 4?

21 THE COURT: DO YOU HAVE THOSE?

22 THE CLERK: THEY'RE ON THE WITNESS STAND.

23 MR. BUEHLER: OH, THEY'RE ON THE WITNESS STAND. I'M
24 SORRY.

25 Q OFFICER, PLEASE LOOK AT DEFENDANT'S EXHIBIT 3.

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1 A THAT IT IS -- EMAILS I'M THINKING?

2 THE CLERK: YES. IT'S ON THE BOTTOM.

3 **Q BY MR. BUEHLER:** EASIEST WAY IS ON THE BOTTOM
4 RIGHT-HAND CORNER, BATE STAMPS. ONE IS 233; THE OTHER IS
5 244.

6 A OKAY. I HAVE THEM.

7 Q LOOKING AT DEFENDANT'S EXHIBIT 3, WHICH IS 243,
8 IS THAT AN EMAIL?

9 A IT LOOKS LIKE AN EMAIL. I DON'T KNOW EXACTLY --
10 IT LOOKS LIKE IT WAS AN EMAIL, YES.

11 Q OKAY. DO YOU RECALL THAT THIS WAS AMONGST THE
12 DOCUMENTS THAT WERE PART OF THE ARREST OR THE -- THE, I
13 GUESS, REPORT THAT WAS MADE IN THIS CASE?

14 A I DON'T KNOW, SIR. THIS ISN'T -- THIS ISN'T
15 ANYTHING -- I HAD NOTHING TO DO WITH THESE.

16 Q NEVER SAW THAT?

17 A THIS IS THE FIRST TIME I'VE SEEN IT.

18 Q OKAY. OKAY. YOU CAN SET THOSE ASIDE.
19 YOU DON'T THINK YOU'VE EVER SEEN IT; IS THAT
20 CORRECT?

21 A THESE HERE -- THEY DON'T LOOK FAMILIAR TO ME.

22 Q DO YOU KNOW WHO DEONUS SPURLIN IS? DO YOU KNOW A
23 PERSON BY THAT NAME?

24 A I BELIEVE THAT WAS THE -- ACTUALLY, I DON'T
25 REMEMBER IF IT WAS THE VICTIM'S FRIEND OR THE MOTHER. I

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1 DON'T RECALL WHICH ONE IT WAS.

2 MR. BUEHLER: JUST A MOMENT, YOUR HONOR, TO LOOK AT A
3 COUPLE OF NOTES.

4
5 (BRIEF PAUSE.)

6
7 MR. BUEHLER: THANK YOU, OFFICER. THANK YOU, YOUR
8 HONOR.

9 THE COURT: DOES THE GOVERNMENT HAVE ANY QUESTIONS?

10
11 RECROSS-EXAMINATION

12 **BY MS. MYERS:**

13 Q SERGEANT SCHUMACHER, YOU HAVE A BACKGROUND AND --
14 HAD A BACKGROUND IN 2011 IN CONDUCTING HUMAN TRAFFICKING,
15 VICE INVESTIGATIONS; IS THAT CORRECT?

16 A THAT'S CORRECT.

17 Q AND WERE YOU FAMILIAR WITH THE TECHNIQUES THAT
18 PIMPS AND HUMAN TRAFFICKER WOULD USE TO CONTROL THEIR
19 VICTIMS?

20 A I WAS.

21 Q AND HAD YOU ALSO TAUGHT COURSES IN THE ACADEMY
22 ABOUT VICE INVESTIGATIONS AND HUMAN TRAFFICKING
23 INVESTIGATIONS?

24 A I NEVER TAUGHT COURSES, NO. I WENT TO COURSES.
25 I NEVER TAUGHT ANY.

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1 Q AND IN 2011 CAN YOU DESCRIBE WHAT TECHNIQUES YOU
2 ARE FAMILIAR WITH THAT PIMPS OR HUMAN TRAFFICKERS WILL USE TO
3 CONTROL VICTIMS?

4 A WELL, THEY USE THREATS OF VIOLENCE AGAINST THEM
5 OR THEIR FAMILIES. THEY BASICALLY TAKE ALL THEIR MONEY.
6 THEY DON'T ALLOW THEM TO LEAVE. THEY'LL KEEP THEM THERE FOR
7 AS LONG AS THEY CAN.

8 Q AND THE TIP THAT YOU HAD -- DID THAT INCLUDE THAT
9 VICTIM S.A. MAY HAVE BEEN HELD BY PIMPS?

10 A YES.

11 Q DID THAT FACTOR INTO YOUR INVESTIGATION THAT DAY
12 IN THE SPORTSMAN LODGE?

13 A YES.

14 Q HOW SO?

15 A WELL, THE FACT THAT, IF SHE WAS A KIDNAPPING
16 VICTIM, PIMPS OFTEN WILL HOLD THE PROSTITUTES, KEEP THEM FROM
17 LEAVING, THREATEN THEM WITH VIOLENCE; SO THE FACT THAT SHE
18 WAS SEEN IN A HOTEL EARLIER THAT DAY, YOU KNOW, WASN'T
19 UNUSUAL BECAUSE, IF SHE WAS FEARFUL OF RETALIATION FOR TRYING
20 TO LEAVE OR GO TRYING TO CONTACT SOMEBODY, SHE MAY NOT HAVE
21 CONTACTED SOMEBODY.

22 Q EVEN THOUGH THE CLERK HAD SEEN HER BEFORE, THE
23 CLERK DID NOT SAY THAT SHE WAS ALONE; IS THAT CORRECT?

24 A I DON'T RECALL THAT, NO.

25 Q EVEN IF SHE HAD BEEN SEEN ALONE AT THAT POINT IN

1 TIME, WOULD THAT HAVE BEEN A SUFFICIENT CONCLUSION TO YOUR
2 INVESTIGATION?

3 A NO.

4 Q WHY NOT?

5 A BASED ON THE FACT THAT, YOU KNOW, SHE WAS BEING
6 HELD AGAINST HER WILL, SHE WAS BEING HELD BY PIMPS. IT'S
7 COMMONLY USED TACTICS, SUCH AS THREATS OF VIOLENCE TO FAMILY,
8 AGAINST HER IF SHE LEFT. SHE WAS ALONE. LIKE I SAID, SHE
9 MAY NOT HAVE CONTACTED SOMEBODY BECAUSE SHE DID NOT WANT TO
10 HURT HERSELF OR HER FAMILY BE HURT.

11 Q AND IN YOUR DECLARATION, I THINK YOU STATED THAT
12 YOU DIDN'T REMEMBER WHETHER YOU HAD ENTERED THE ROOM WITH
13 GUNS DRAWN; IS THAT CORRECT?

14 A I DON'T RECALL.

15 Q BUT BASED ON PRACTICES, POLICE PRACTICES AND THAT
16 TYPE OF INVESTIGATIONS, IS IT LIKELY YOU WOULD HAVE HAD YOUR
17 GUN DRAWN?

18 A YES.

19 Q HOW LONG AGO WAS THIS INVESTIGATION THAT TOOK
20 PLACE?

21 A ALMOST TEN YEARS AGO.

22 Q IS IT FAIR TO SAY THAT YOU DON'T REMEMBER EVERY
23 DETAIL THAT OCCURRED?

24 THE COURT: WELL, NO, IT ISN'T FAIR TO SAY.

25 Q BY MS. MYERS: LET ME ASK THE QUESTION: HOW WAS

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1 YOUR RECOLLECTION WITH THE DETAILS OF THE EVENTS THAT DAY?

2 A I DON'T RECALL EVERY SINGLE EVENT FROM THAT DAY.

3 Q NOTHING FURTHER, YOUR HONOR.

4 THE COURT: ANYTHING FURTHER OF THIS WITNESS?

5 MR. BUEHLER: NO, YOUR HONOR.

6 THE COURT: THANK YOU, SERGEANT. YOU ARE EXCUSED.

7 DO YOU HAVE ANY OTHER WITNESSES?

8 MR. BUEHLER: NO OTHER WITNESSES, YOUR HONOR.

9 THE COURT: DOES THE GOVERNMENT HAVE ANY OTHER WITNESS?

10 MS. MYERS: IF GOVERNMENT HAS NO ADDITIONAL WITNESSES,
11 YOUR HONOR.

12 THE COURT: OKAY. DO YOU WISH TO BE HEARD?

13 MR. BUEHLER: YES, YOUR HONOR.

14 YOUR HONOR, I THINK IT'S SIGNIFICANT THAT THE
15 WITNESS NEVER REFERRED TO ANYTHING OTHER THAN A POSSIBLE
16 KIDNAPPING VICTIM. THIS OFFICER KNEW, OBVIOUSLY, VERY LITTLE
17 ABOUT WHAT REALLY UNDERLAY -- WAS UNDERNEATH THE TELEPHONE
18 CALL HE RECEIVED, WHICH WAS DOUBLE HEARSAY THROUGH A MOTHER
19 TO A FRIEND TO AN OFFICER IN MORENO VALLEY, RIVERSIDE, AND
20 THEN TO HIM; AND ALL HE REALLY HAD WAS THERE WAS A POSSIBLE
21 KIDNAPPING VICTIM AT THIS HOTEL.

22 AND HE GETS TO THE HOTEL AND IS TALKING TO THE
23 FRONT DESK, AND FRESHEST AND MOST OBVIOUS PIECE OF
24 INFORMATION HE HAS IS THAT THIS VICTIM/SUPPOSED
25 VICTIM/POSSIBLE VICTIM WAS JUST SEEN IN THE LOBBY WALKING

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1 ALONE. AND, ASTONISHINGLY, HE DOESN'T HAVE ANY FOLLOW-UP
2 QUESTIONS LIKE, "WHERE WAS SHE GOING? DID YOU SEE HER GO
3 BACK?" I MEAN, IT RAISES THE QUESTION AS TO WHETHER SHE'S
4 EVEN IN THE ROOM WHEN THEY GET THEIR MEN TOGETHER AND DECIDE
5 TO GO TO THE ROOM.

6 SO THEY COULD HAVE SENT SOMEBODY OUT LOOKING FOR
7 HER. WOULDN'T YOU ASK OTHER QUESTIONS? OH, HAVE YOU SEEN
8 HER OUT HERE VERY OFTEN? DOES SHE SEEM AFRAID? DOES SHE
9 COME OUT WITH OTHERS? WERE THEY LAUGHING AND DOING THE TYPES
10 OF THINGS PEOPLE DO IN HOTELS? NO. HE JUST TAKES THAT ONE
11 LITTLE PIECE OF INFORMATION. SHE WAS JUST OUT HERE; AND,
12 SURE, SHE COULD STILL BE A POSSIBLE KIDNAPPING SUSPECT, I
13 MEAN, VICTIM. IT'S POSSIBLE. BUT SURELY IT'S A LITTLE LESS
14 POSSIBLE AT THAT POINT.

15 AND THIS WHOLE THING ABOUT HOW PIMPS MAY CONTROL,
16 HE DOESN'T KNOW THAT HE HAS A PIMP INVOLVED. THAT'S JUST A
17 POSSIBILITY. SO HE'S NOT HEARING ANYTHING EXCEPT WHAT HE
18 WANTS TO HEAR THAT IS GOING TO GET HIM INTO THAT ROOM. AND
19 WHEN HE GOES TO THE ROOM WITH SIX OFFICERS BEHIND HIM AND
20 THEY'VE GOT THEIR GUNS DRAWN AND HE'S GOT THE CARD, HE'S
21 ANTICIPATING HE'S GOING TO GET IN THAT ROOM ONE WAY OR THE
22 OTHER. AND WHEN HE GETS IN THERE, HE DOESN'T -- HE DOESN'T
23 FIND PEOPLE WITH GUNS. HE DOESN'T FIND PEOPLE THREATENING IN
24 ANY WAY; SO HE'S GOT AN EXCELLENT OPPORTUNITY TO RESOLVE THE
25 QUESTION OF WHETHER THERE IS A POSSIBLE KIDNAPPING SUSPECT

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1 THAT NEEDS TO BE RESCUED. HE DOESN'T DO THAT. HE PUTS
2 EVERYBODY ON THE GROUND INCLUDING THE PERSON HE DOESN'T
3 REALIZE, I GUESS, IS THE POSSIBLE VICTIM. PUTS HIM ON THE
4 GROUND, CUFFS EVERYBODY UP, AND STARTS AN INVESTIGATION. SO
5 HE KNOWS THAT THERE'S PROSTITUTION IN THAT HOTEL. AND THERE
6 MAY HAVE BEEN. I DON'T KNOW. SURPRISED ME WHEN I HEARD
7 THAT. I ALWAYS THOUGHT IT WAS SORT OF A SWANKY PLACE, BUT I
8 DIDN'T GO THERE MUCH. BUT HE'S -- HE'S INTENT ON SEEING IF
9 HE'S GOT PEOPLE THAT ARE RUNNING THE PROSTITUTION RING HERE.

10 NOWHERE IN ALL OF THIS DID IT OCCUR TO HIM THAT
11 MAYBE A MAGISTRATE WOULD HAVE A DIFFERENT IDEA OF WHETHER OR
12 NOT HE HAD SUFFICIENT REASON TO BE BARGING INTO THAT ROOM.
13 BECAUSE WE HAVE A CONSTITUTION THAT SAYS THAT, WHEN YOU ARE
14 GOING INTO SOMEBODY'S HOUSE, THAT INCLUDES A HOTEL ROOM,
15 ACCORDING TO THE U.S. SUPREME COURT, YOU DON'T -- YOU GET A
16 WARRANT UNLESS THERE'S AN EXIGENCE. HOW WE HAVE A POSSIBLE
17 EXIGENCY IN THIS REPORT OF A POSSIBLE KIDNAPPING VICTIM, BUT
18 WHEN HE LEARNS OF A FACT THAT'S NOT INDICATING A POSSIBLE
19 VICTIM BUT SOMEBODY WHO FEELS FREE TO ROAM AROUND THE HOTEL
20 AND WHO MAY NOT EVEN BE IN THE ROOM WHEN HE GOES IN THERE, HE
21 JUST IGNORES ALL THAT.

22 I DON'T THINK A MAGISTRATE WOULD HAVE GIVEN HIM
23 THE TIME OF DAY AND GIVEN HIM A WARRANT. IF HE THOUGHT ABOUT
24 IT, WHICH HE SHOULD HAVE BEEN, I THINK HE CONCLUDED THE SAME
25 WAY. SO HE WAS GOING TO GET IN THAT ROOM. THAT'S WHY HE

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1 TOOK THE KEY, AND HE GOT IN THE ROOM -- AND HE DIDN'T SAY,
2 "WHERE IS SAMANTHA SO-AND-SO? COME OUT. WE NEED TO TALK TO
3 YOU. ARE YOU OKAY?" -- TO DETERMINE THAT SHE'S OKAY. AND
4 THEN LET HER GO BACK. AND THEN THEY COULD TALK ABOUT, YOU
5 KNOW, HOW THEY'RE GOING TO DO A -- AN INVESTIGATION TO A
6 PROSTITUTION RING, I SUPPOSE. BUT IF HE HAD ANY AUTHORITY,
7 IT WAS, UNDER THE CONSTITUTION, LACKING A WARRANT. IT WOULD
8 HAVE BEEN TO GO IN THERE AND FIND OUT IF THERE REALLY WAS A
9 VICTIM. HE DIDN'T THINK ABOUT THAT AT ALL.

10 THE COURT: WHAT ABOUT THE INFORMATION HE RECEIVED FROM
11 OTHER OFFICERS WHO SAW PEOPLE JUMPING OFF THE BALCONY?

12 MR. BUEHLER: I DON'T KNOW. WELL, MAYBE THAT ADDS A
13 LITTLE BIT TO SOMETHING SUSPICIOUS GOING ON ALTHOUGH HE
14 DOESN'T KNOW WHO THEY ARE. I MEAN, THERE'S JUST SOMEBODY
15 JUMPING OFF A BALCONY. SO THAT'S -- IT COULD INDICATE --
16 SOMETHING AMISS IS GOING ON. BUT STILL SO IF THAT GETS HIM
17 IN THE ROOM, THAT GETS HIM IN THE ROOM FOR THE PURPOSE OF
18 RESOLVING THE QUESTION OF WHETHER THERE'S A KIDNAPPING VICTIM
19 THAT NEEDS TO BE RESCUED. HE DOESN'T EVEN ASK THAT QUESTION
20 OF ANYBODY. HE GOES IN THERE AND HE SAID TO DO HIS
21 INVESTIGATION, AND HIS INVESTIGATION CLEARLY IS FOR EVERYBODY
22 IN THAT ROOM. BECAUSE HE THINKS HE'S GOT A BUNCH OF
23 PROSTITUTES AND THE POSSIBILITY OF A KIDNAPPING VICTIM IS NOT
24 A KEY TO JUST OPENING UP AN INVESTIGATION AND PUTTING ALL
25 THESE PEOPLE IN HANDCUFFS. HE DIDN'T PUT THEM IN HANDCUFFS

1 JUST FOR HIS SAFETY FOR THE MOMENT WHILE HE FIGURED OUT IF
2 THERE WAS A KIDNAPPING VICTIM.

3 HE KEPT THEM ALL IN HANDCUFFS FOR HOURS.
4 MR. BURKS WAS IN HANDCUFFS ALL NIGHT. HE DIDN'T EAT. THIS
5 IS ALL THE RESULT OF HIS INVESTIGATION. THIS IS WHY WE HAVE
6 THE REQUIREMENT OF SEARCH WARRANTS. YOU CAN'T TRUST POLICE
7 TO MAKE THESE KINDS OF DECISIONS CONSISTENT WITH WHAT'S
8 REASONABLE. IT'S NOT REASONABLE TO BARGE INTO THAT ROOM
9 BASED ON THE SKIMPY INFORMATION HE HAS AND THE FACT THAT IT'S
10 BEEN CONTRADICTED BY THIS GIRL WALKING AROUND OUTSIDE.

11 I DON'T FOLLOW THIS THING ABOUT, YOU KNOW,
12 THEY'RE SCARED OF PIMPS. OF COURSE, THEY'RE SCARED OF PIMPS.
13 BUT WHEN YOU'RE SCARED, DON'T YOU GET AWAY IF YOU CAN?
14 YOU'RE GOING TO WALK OUT THE FRONT DESK. CAN'T YOU SAY,
15 "PLEASE CALL THE POLICE FOR ME AND STAY WITH ME HERE UNTIL
16 THEY COME"? I MEAN, SHE CALLED THEM TO COME. SHE CALLED HER
17 MOTHER, SUPPOSEDLY, SO THEY COULD SEND THE POLICE; AND THE
18 POLICE COME IN AND ALL THESE PEOPLE GET ARRESTED. WELL, WHY
19 WOULD SHE BE BRAVE ENOUGH TO DO THAT IF PIMPS KNOW HOW TO
20 FIND YOU AND KNOW HOW TO FIND THEIR FAMILIES? WHY DIDN'T SHE
21 MAKE THE CALL IN THE FIRST PLACE, "SEND SOMEBODY TO RESCUE
22 ME"? IF THAT WERE THE CASE. WOULDN'T SHE BE BRAVE ENOUGH IF
23 SHE FINDS HER OUT IN THE LOBBY AREA TO WALK OUT OF THAT HOTEL
24 AND RIGHT -- AS FAR AS AWAY AS SHE COULD GET UNTIL SHE COULD
25 FIND A PAY PHONE AND CALL THE POLICE OR WAIT IN THE POLICE

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1 CAR? SO THIS MAKES NO SENSE. THIS OFFICER WAS NOT
2 CONSTRAINED ONE BIT BY THE FOURTH AMENDMENT. NOT ONE BIT.

3 AND EVERYTHING IN THIS CASE DERIVES FROM THAT
4 DECISION OF THAT OFFICER TO IGNORE THE FACT THAT THIS
5 SUPPOSED VICTIM WAS WALKING AROUND FREE OUTSIDE, MAY NOT BE
6 IN THE ROOM; BUT HE'S GOING TO GET IN THERE, AND THAT'S THIS
7 CASE. THAT WAS AN ILLEGAL ACT, YOUR HONOR, THAT WAS IN
8 VIOLATION OF THE REQUIREMENT TO GET A WARRANT BEFORE YOU GO
9 INTO SOME SOMEBODY'S HOUSE, THE PLACE THAT THEY'RE STAYING.
10 THANK YOU, YOUR HONOR.

11 MS. MYERS: THE COURT SHOULD DENY DEFENDANT'S MOTION IN
12 ITS ENTIRETY. AS INITIAL POINT, WHICH WAS BRIEFED IN THE
13 GOVERNMENT'S OPPOSITION, THE DEFENDANT DID NOT HAVE A
14 REASONABLE EXPECTATION OF PRIVACY IN THE HOTEL ROOM. IT IS
15 HIS BURDEN PURSUANT TO *ARMENTA* TO PROVE THAT HE HAD AN
16 EXPECTATION OF PRIVACY. HE DID NOT HAVE A REASONABLE
17 EXPECTATION OF PRIVACY BECAUSE HIS STATEMENTS ABOUT HAVING A
18 LEGITIMATE PRIVACY INTEREST ARE NOT TO BE BELIEVED, AND
19 DEFENDANT WAS CONVICTED FOR ACTIVITIES FLOWING FROM WHAT
20 HAPPENED IN THAT ROOM WHICH ESTABLISHES THERE WAS CRIMINAL
21 ACTIVITY HAPPENING THERE.

22 DEFENDANT'S DECLARATION SUBMITTED WITH HIS REPLY
23 BRIEF CLAIMS THAT HE HAD A PRIVACY RIGHT IN A HOTEL ROOM
24 BASED ON FACTS THAT ARE CONTRADICTED BY HIS OWN PRIOR
25 STATEMENTS TO POLICE.

UNITED STATES DISTRICT COURT

1 IN BOTH OF HIS POSTARREST INTERVIEWS ON AUGUST 29
2 AND DECEMBER 8, 2011, DEFENDANT TOLD THE POLICE OFFICERS THAT
3 HE WAS TELLING THEM THE TRUTH. SPECIFICALLY ON AUGUST 29,
4 PAGES 6 AND 7, HE SAID, "I DON'T HAVE NO REASON TO LIE AND
5 THAT'S NOT -- THAT'S WHY I'M NOT GOING TO LIE. I'M GOING TO
6 TELL YOU EVERYTHING."

7 IN DECEMBER 8 HE TOLD POLICE OFFICERS, "I DID
8 TELL YOU THE TRUTH." HE ALSO TESTIFIED TODAY THAT HE TOLD
9 THE TRUTH IN HIS DECLARATION; HOWEVER, THERE'S NUMEROUS
10 CONTRADICTORY STATEMENTS THAT UNDERCUT THE VERACITY OF
11 DEFENDANT'S DECLARATION.

12 ON AUGUST 29, 2011, DEFENDANT TOLD OFFICERS, "I
13 WENT TO GO RECORD AT THE HOTEL," BECAUSE THAT'S WHERE HE WAS
14 DOING HIS ENGINEERING. HE WAS DOING A LOT OF WORK OUT OF
15 THERE; AND I DIDN'T TAKE IT AS, LIKE, GIRLS COME THROUGH
16 THERE ALL THE TIME, "A MILLION GIRLS." IT'S LIKE A STUDIO.
17 GIRLS WANT TO BE AROUND AT THE STUDIO.

18 IT'S HARD TO FIGURE HOW ONE HAS A PRIVACY
19 INTEREST WHEN THERE'S A MILLION GIRLS IN THE ROOM. OF COURSE
20 DEFENDANT SAID THAT AT THE TIME BECAUSE HE DID NOT WANT TO
21 GET CHARGED WITH A TRAFFICKING OFFENSE.

22 HE ALSO SAID THERE'S A LOT OF PEOPLE THERE.
23 EVERYBODY COMES TO RECORD. IT'S ON PAGE 4. "CHAD AND DUSHON
24 WERE THERE AND ANOTHER GUY, WHO THE DEFENDANT KNEW A LITTLE
25 BIT." IT'S ON PAGE 5. AND WHEN ASKED, "YOU SAID YOU WERE

1 BACK AND FORTH DURING THE WEEK, BUT YOU BASICALLY DID GO
2 THERE AND SPEND THE NIGHT THERE." THAT'S ON PAGE 13.
3 DEFENDANT RESPONDED A COUPLE OF TIMES.

4 ON DECEMBER 8, 2011, DEFENDANT SAID, "YOU SEEN
5 THAT WHEN YOU GO TO THE ROOM YOU HAVE STUDIO EQUIPMENT. IT
6 WAS RAPPERS AND EVERYTHING COMING IN AND OUT OF THE ROOM."
7 IT'S ON PAGE 31.

8 THIS CONTRADICTS -- ALL OF THESE STATEMENTS
9 CONTRADICT DEFENDANT'S DECLARATION ON -- IN PARAGRAPH 3 WHERE
10 DEFENDANT SWORE THAT, QUOTE, "I RESIDED IN THAT ROOM EVERY
11 NIGHT AND EVERY DAY UNTIL WE WERE ARRESTED." AND, QUOTE, "IT
12 WAS MY HOME FOR THE WEEK."

13 INDEED AS IN *ARMENTA*, THERE'S NO INDICIA THE
14 DEFENDANT WAS STAYING THERE THE NIGHT BEFORE THE ARREST OR
15 WHEN EXACTLY HE WAS STAYING THERE. THERE'S NO INDICIA THAT
16 HE TOOK STEPS TO SECURE HIS BELONGINGS. INDEED, THE ONLY
17 THING HE TOOK STEPS TO SECURE WAS HIS LAPTOP, AND SO THERE'S
18 NO INDICATION THAT HE EXPECTED TO HAVE A PRIVATE SPACE THERE.

19 WE DON'T KNOW WHAT DEFENDANT WAS DOING IN THAT
20 ROOM BECAUSE OF THE SELF-SERVING INCONSISTENCIES IN HIS
21 STATEMENTS TO THE POLICE AND IN HIS DECLARATION; THEREFORE,
22 DEFENDANT HAS FAILED TO MEET HIS BURDEN, AND IT IS IN *RAKAS*
23 [PHONETIC] DEFENDANT HAS ONLY ESTABLISHED THAT HE IS
24 LEGITIMATELY ON THE PROPERTY BUT NOT THAT HE HAD A PRIVACY
25 INTEREST.

1 ADDITIONAL FACTS SUPPORT THE CONCLUSION THAT THE
2 EXPLOITATION OF TRAFFICKING AND MINORS IS WHAT WAS OCCURRING
3 IN THAT ROOM, WHICH WOULD ELIMINATE DEFENDANT'S PRIVACY
4 INTEREST.

5 DEFENDANT WAS CONVICTED IN 2013 FOR PIMPING
6 VICTIM S.A., IN VIOLATION OF PENAL CODE SECTION 266(H)
7 SUBSECTION (A), CONNECTED TO WHAT HAD TRANSPIRED WITH VICTIM
8 S.A.; AND VICTIM S.A. TOLD SERGEANT EVANS AND OFFICER
9 PARSEGHIAN THAT SHE HAD BEEN TRAFFICKED OUT OF THAT HOTEL
10 ROOM. VICTIM H.P. ALSO TOLD OFFICER SCARROW [PHONETIC] AND
11 PARSEGHIAN, SHE COMMITTED A SEX ACT FOR MONEY IN THAT HOTEL
12 ROOM IN THE SPORTSMAN LODGE, AFTER WHICH THE DEFENDANT
13 COLLECTED MONEY FROM HER.

14 ACCORDING TO *ARMENTA* THE COURT SHOULD FIND THE
15 DEFENDANT DID NOT HAVE A REASONABLE EXPECTATION OF PRIVACY AS
16 ALSO HELD IN *CARTER*, WHICH WAS BACKING COCAINE; *FLORES*, SHORT
17 PERIODS OUT OF PLACE TO CONDUCT A DRUG TRANSACTION; AND
18 *REYES-BOSQUE*, WHICH WAS HOLDING IMMIGRANTS CAPTIVE.

19 NOTABLY, IN FOOTNOTE 3 IN *ARMENTA*, IT NOTED THAT
20 ANOTHER DEFENDANT THAT PROVIDED EVIDENCE THAT *ARMENTA* WAS HER
21 GUEST, THERE MAY HAVE BEEN ENOUGH TO FIND THAT DEFENDANT HAD
22 A REASONABLE EXPECTATION OF PRIVACY. IN DEFENDANT'S REPLY,
23 WHICH DOCKET ENTRY 447, IN PAGE 5, THE DEFENDANT REQUESTED
24 FOR TIME OSTENSIBLY TO PROVIDE THIS TYPE OF EVIDENCE WHICH HE
25 HAS NOT SUBMITTED ON THE RECORD.

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1 DEFENDANT'S LACK OF PRIVACY INTEREST PREVENTS HIM
2 FROM CLAIMING THAT THE LAWFUL SEIZURE OF HIS DEVICES WAS
3 SOMEHOW ILLEGAL, WHICH WAS BRIEFED AT THE GOVERNMENT'S
4 OPPOSITION PAGES 15 TO 17.

5 AS AN ADDITIONAL POINT, THE DEFENDANT CANNOT
6 CHALLENGE THE SEIZURE OF EVIDENCE THAT BELONGS TO HIS
7 CO-DEFENDANTS. I THINK THAT'S BRIEFED SUFFICIENTLY IN OUR
8 OPPOSITION AND NOT PARTICULARLY A CONTENTIOUS ISSUE.

9 MOREOVER, EVEN IF DEFENDANT -- EVEN IF THE COURT
10 DOES FIND DEFENDANT HAD A REASONABLE EXPECTATION OF PRIVACY,
11 THE WARRANTLESS SEARCH WAS LAWFUL BECAUSE THERE WERE EXIGENT
12 CIRCUMSTANCES PRESENT.

13 THERE WAS AN OBJECTIVELY REASONABLE BASIS HERE
14 FOR CONCLUDING THERE IS A NEED TO PROTECT OTHERS. DEFENSE
15 COUNSEL REPEATEDLY MAKES THE STATEMENT THAT VICTIM S.A. WAS
16 ALONE, BUT THERE IS NO EVIDENCE THAT SHE WAS ALONE. OFFICERS
17 OR SERGEANT SCHUMACHER'S DECLARATION SAID THAT HE DID NOT --
18 THE CLERK JUST SAID THAT HE HAD SEEN HER. SUBSEQUENT
19 INTERVIEWS, WHICH WERE PROVIDED TO DEFENSE COUNSEL, SERGEANT
20 SCHUMACHER SAID, "I DON'T REMEMBER IF SHE HAD BEEN ALONE OR
21 NOT." SO THAT IS NOT A FACT IN THE RECORD. BUT SERGEANT
22 SCHUMACHER EXPLAINED THAT, EVEN IF SHE WAS ALONE, THERE WAS
23 GOOD REASON TO CONTINUE HIS INVESTIGATION.

24 THE FACT THAT DEFENSE COUNSEL, WHO I WOULD SUBMIT
25 IS NOT A HUMAN TRAFFICKING EXPERT, FEELS THAT THE VICTIM

UNITED STATES DISTRICT COURT

1 SHOULD HAVE SOMEHOW ACTED DIFFERENTLY IS NOT COMPELLING HERE.
2 AND I SUBMIT THAT BECAUSE THE GOVERNMENT -- IF WE HAVE TO PUT
3 ON A REBUTTAL CASE -- AND I RECOGNIZE WE'LL DISCUSS THAT
4 LATER -- WE WILL CALL A HUMAN TRAFFICKING EXPERT WHO WILL
5 TALK ABOUT THE MANY WAYS THE TRAFFICKER CONTROLS VICTIMS AND
6 THE FEAR THAT THAT INSTILLS AND HOW TRAFFICKING IS NOT LIKE
7 THE MOVIE *TAKEN* WHERE VICTIMS ARE CHAINED TO A WALL AND WILL
8 ESCAPE AT EVERY OPPORTUNITY. THERE IS A COERCION AND A FEAR
9 THAT OPERATES IN THESE SITUATIONS THAT CONTROLS WHAT THE
10 VICTIMS DO, AND THAT'S NOT -- THAT'S NOT -- DEFENSE COUNSEL'S
11 ASSESSMENT OF THAT, I WOULD SUBMIT, IS NOT REASONABLE.

12 MOREOVER, THE FACTS BORE OUT THAT THAT IS WHAT
13 HAPPENED TO VICTIM S.A., THAT SHE WAS PIMPED BY THESE
14 DEFENDANTS WHO WERE IN THAT HOTEL ROOM.

15 MOREOVER, THE CASE LAW DOESN'T REQUIRE MORE THAN
16 SHE BE A POTENTIAL VICTIM. IN *BELL* THE COURT HELD THAT THERE
17 WERE EXIGENT CIRCUMSTANCES FOR SEARCH OF A SAFE TO FIND
18 EVIDENCE OF A LOCATION OF A KIDNAPPING VICTIM. IN *BROOKS*
19 THERE WERE EXIGENT CIRCUMSTANCES PRESENT FOR THE COURT -- FOR
20 THE POLICE OFFICERS TO INVESTIGATE WHETHER A WOMAN IN A HOTEL
21 ROOM WAS THE VICTIM OF A DOMESTIC VIOLENCE ASSAULT. THE FACT
22 THAT SERGEANT SCHUMACHER HAD ONE SMALL PIECE OF DATA THAT
23 COULD HAVE POSSIBLY SUGGESTED THAT THE VICTIM WAS NOT A
24 KIDNAPPING VICTIM DOES NOT OBVIATE HIS NEED TO CONTINUE HIS
25 INVESTIGATION.

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1 FLIP IT AROUND, IF SERGEANT SCHUMACHER HAD
2 DECIDED TO WALK AWAY AND PERHAPS WAIT MANY HOURS TO GET A
3 WARRANT AND SOMETHING TERRIBLE HAD HAPPENED TO S.A. IN THOSE
4 INTERVENING HOURS, THAT WOULD BE ON HIM.

5 KIDNAPPING VICTIMS SPARK EXIGENCE, AND EXIGENCE
6 HERE WAS PRESENT; AND THEN, WHEN COMBINED WITH TWO PEOPLE
7 WALKING OUT OF THE BALCONY OF THE HOTEL ROOM, THAT DOES
8 INCREASE, EVEN AS DEFENSE COUNSEL ACKNOWLEDGED, THE PRESENCE
9 OF EXIGENT CIRCUMSTANCES.

10 DEFENDANT'S FLIGHT BOLSTERED THE NEED FOR A
11 WARRANTLESS SEARCH, AND I WOULD REFER THE COURT TO SERGEANT
12 SCHUMACHER'S DECLARATION IN WHICH HE EXPLAINED THAT THE NEED
13 TO LOCATE THE VICTIM COMBINED WITH THE FLIGHT CREATED EXIGENT
14 CIRCUMSTANCES.

15 NOW, DEFENDANT MAKES A POINT IN HIS DECLARATION
16 THAT HE DID NOT FLEE. I GUESS TRYING TO CLAIM WHICH HE
17 EXPLICITLY SAYS THAT SERGEANT SCHUMACHER COMMITTED PERJURY IN
18 HIS DECLARATION. DEFENDANT IN HIS DECLARATION SAID HE,
19 QUOTE, "WENT OUT ONTO THE BALCONY AND FOUND MULTIPLE MARKED
20 POLICE CARS WITH THE EMERGENCIES LIGHTS ON AND SAW SEVERAL
21 POLICE OFFICERS OUT OF THEIR VEHICLES AND A POLICE HELICOPTER
22 OVERHEAD. I DID NOT JUMP OFF THE BALCONY OR A NEIGHBORING
23 BALCONY AND WAS JUST CURIOUS ABOUT WHAT WAS HAPPENING."

24 THIS IS CONTRADICTED BY THE OFFICERS WHO WERE
25 THERE THAT DAY; BUT, MORE IMPORTANTLY, IT'S CONTRADICTED BY

UNITED STATES DISTRICT COURT

1 THE DEFENDANT HIMSELF IN HIS DECEMBER 28 OR DECEMBER 8, 2011,
2 INTERVIEW AND HE SAID, "FIRST OF ALL, LISTEN, LOOK, BECAUSE I
3 WOULD HAVE RAN EVERY TIME. WHEN THEY KNOCKED ON THE DOOR, I
4 DIDN'T HEAR THE POLICE. I JUST THOUGHT SOMEBODY WAS COMING
5 TO ROB US."

6 THERE WAS NO REASON FOR SERGEANT SCHUMACHER NOT
7 TO BELIEVE THAT DETECTIVE PENNER TOLD HIM ABOUT PEOPLE
8 RUNNING. AND THE CASE HOLDS THE KIDNAPPING PLUS FLIGHT
9 DEMONSTRATES EXIGENT CIRCUMSTANCES, WHICH IS RAISED BY
10 *WARDLOW* AND *WESBY* AND *SMITH*, ALL WHICH ARE CITED IN THE
11 OPPOSITION, PAGES 20 TO 21.

12 THE VICTIM'S STATEMENTS CONFIRMED THAT EXIGENCY
13 THAT SERGEANT SCHUMACHER BELIEVED WAS PRESENT. THE SCOPE
14 SEARCH WAS REASONABLE AND APPROPRIATE IN THIS SITUATION.

15 THE DEFENDANT GAVE CONSENT FOR SEARCH OF HIS
16 LAWFULLY SEIZED DIGITAL DEVICES AND WAS MIRANDIZED IN AN
17 INTERVIEW THE NEXT DAY. DEFENDANT HAS CLAIMED THAT HIS
18 CONSENT WAS NOT INFORMED AND VOLUNTARY IN HIS DECLARATION.

19 THIS IS CONTRADICTED BY HIS STATEMENTS IN HIS
20 DECEMBER INTERVIEW, PAGE 4. WHEN DISCUSSING HIS COMPUTER,
21 THE DEFENDANT SAID, "I GAVE YOU THE CONSENT."

22 EVEN IF THE CONSENT WAS NOT VALID, WHICH IT WAS
23 IN 2011, THERE WAS NO REQUIREMENT TO OBTAIN A WARRANT TO
24 SEARCH DIGITAL DEVICES. THIS WAS A POINT NOT REACHED IN THE
25 PARTIES' PAPERS, BUT I WOULD RAISE IT NOW AS AN ADDITIONAL

1 POINT FOR THE COURT, WHICH IS *UNITED STATES V. LUSTIG*, 830
2 F.3D 1075, CITES 1077 AND 1081 THROUGH 1082. THE NINTH
3 CIRCUIT 2016, WHICH HELD THAT PRE-*RILEY* PRECEDENT PROVIDED A
4 REASONABLE BASIS TO BELIEVE *RILEY*'S SEARCHES OF CELL PHONES
5 WERE CONSTITUTIONAL; AND, THEREFORE, ANY WARRANTLESS SEARCH
6 IS SUBJECT TO THE GOOD FAITH EXCEPTION OF THE FOURTH
7 AMENDMENT.

8 IN CONCLUSION, YOUR HONOR, THE COURT SHOULD DENY
9 DEFENDANT'S MOTION. DEFENDANT DID NOT HAVE A REASONABLE
10 EXPECTATION OF PRIVACY; AND THE DECLARATION THAT HE SUBMITTED
11 IN SUPPORT OF IT, I THINK, INDICATES THAT IT IS LACKING OF
12 VERACITY. THERE'S NO REASON FOR SERGEANT SCHUMACHER TO
13 MANUFACTURE WHAT HAPPENED, BUT THERE IS A REASON FOR
14 DEFENDANT TO DO SO.

15 THERE WERE EXIGENT CIRCUMSTANCES PRESENT AS BORN
16 OUT BY SERGEANT SCHUMACHER'S INVESTIGATION AND THE FACTS THAT
17 FLOWED THEREFROM. THERE WERE FIVE MEN IN A SMALL MOTEL ROOM
18 WITH THREE WOMEN, TWO OF WHOM WERE UNDERAGE, ALL OF WHOM WERE
19 BEING TRAFFICKED.

20 IT IS ALSO HARD TO IMAGINE THE DEFENDANT HAD A
21 REASONABLE EXPECTATION OF PRIVACY IN A ROOM WITH THAT MANY
22 PEOPLE, BUT THAT POINT HAS ALREADY BEEN MADE IN OUR
23 OPPOSITION. UNLESS THE COURT HAS ANY QUESTIONS, I'LL SUBMIT
24 AT THIS TIME.

25 THE COURT: MR. BUEHLER.

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1 MR. BUEHLER: YES, YOUR HONOR.

2 COUNSEL'S LAST STATEMENT SHOWS HER LACK OF
3 UNDERSTANDING OF WHAT WE'RE TALKING ABOUT HERE. SHE SAYS
4 THAT THERE'S A LOT OF PEOPLE IN THE ROOM; THEN NOBODY CAN
5 HAVE A REASONABLE EXPECTATION OF PRIVACY. SO I GUESS THE
6 POLICE CAN COME IN AT ANY TIME IF YOU HAVE A LOT OF PEOPLE IN
7 A HOTEL ROOM. THAT OBVIOUSLY ISN'T TRUE. IF THE PEOPLE IN
8 THERE ARE IN THERE FOR THE PURPOSES OF SLEEPING THERE AND
9 RESIDING THERE FOR A WEEK OR JUST ONE NIGHT, THEN THE LAW
10 RECOGNIZES AN EXPECTATION OF PRIVACY THAT THE POLICE ARE
11 REQUIRED TO REGARD.

12 THE COURT: THAT'S TRUE.

13 MR. BUEHLER: AND COUNSEL MAKES ARGUMENTS ABOUT HOW
14 SUBSEQUENT EVENTS MAY LEAD TO THE CONCLUSION THAT SOME OF THE
15 THINGS ACQUIRED EVENTUALLY IN THIS INVESTIGATION ARE FREE OF
16 THE TAINT OF THIS ILLEGAL SEARCH. WELL, THAT MAY BE OR MAY
17 NOT BE. I GUESS THE GOVERNMENT CAN MAKE THAT MOTION IF THEY
18 THINK THAT SOMETHING THAT LATER HAPPENED CURES THE TAINT HERE
19 OR MAKES THAT EVIDENCE ATTRIBUTABLE TO SOME OTHER RESOURCE;
20 AND, THEREFORE, IT'S NOT TO BE SUPPRESSED. BUT WHAT WE ARE
21 TALKING ABOUT HERE TODAY IS WHETHER THIS INITIAL EVENT AND
22 THIS WHOLE THING WAS ILLEGAL OR LEGAL SEARCH.

23 THE PROBLEM I HAVE WITH THIS CASE, YOUR HONOR, IS
24 THAT THE READY ASSUMPTIONS MADE BY THE POLICE -- THOSE KINDS
25 OF ASSUMPTIONS CAN GET THEM IN ANYWHERE IF THEY WANT TO GO.

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1 TO DRAW UPON HIS EXPERTISE OF WHAT HAPPENS IN PIMPING
2 SITUATIONS, WELL, HE'S EXERCISING THAT EXPERTISE TO GET HIM
3 INTO THE ROOM WHEN HE DOESN'T REALLY KNOW IF THAT'S WHAT HE'S
4 GOT. JUST LIKE WE WANT TO NOW SAY FLIGHT -- FLIGHT, HE'S
5 RUNNING AWAY. ALL HE'S GOT IS SOMEONE THAT SAYS THERE'S SOME
6 GUYS OUT IN THE BALCONY. WE DON'T EVEN KNOW WHAT BALCONY IT
7 WAS. AND THE FACT THAT THERE WERE MAYBE A POLICE PRESENCE
8 OUTSIDE, MAYBE THE OFFICER HAD MORE -- MORE SUPPORT THERE
9 THAN HE'S WILLING TO ADMIT OR MAYBE HE DIDN'T KNOW THAT IN
10 THE MEANTIME SOMEONE HAD SENT A HELICOPTER AND SOMEBODY SENT
11 A FEW MORE CARS WITH THEIR RED LIGHTS FLASHING.

12 BUT SOMEBODY JUMPS OF THE BALCONY. WE HAVEN'T
13 ESTABLISHED WHOSE BALCONY, WHO THE PERSON WAS. THAT'S --
14 THAT -- TO REACH TO THAT TO SAY, OKAY, NOW SOMEBODY'S IN THE
15 BACK AND THEY'RE RUNNING AWAY, WE DON'T KNOW WHO THEY ARE;
16 BUT INSTANTLY THAT FLASH IN HIS MIND, "OH, FLIGHT, OKAY, NOW
17 I CAN GO IN." I THINK IT'S OBVIOUSLY HE'S GOING IN ANYWAY
18 REGARDLESS. HE DIDN'T CARE WHAT THE REAL FACTS WERE ABOUT
19 THE GIRL OUT WALKING AROUND IN THE LOBBY. HE DIDN'T EVEN
20 GIVE ANY THOUGHT TO IT. HE DIDN'T ASK ANY MORE QUESTIONS.

21 THIS IS A GUY WHO'S SUPPOSED TO BE INVESTIGATING
22 WHETHER HE'S GOT GROUNDS TO GO IN AND MAKE A SEARCH. HE'S
23 INTENT ON GETTING INTO THAT ROOM, AND THEN WHEN HE'S IN THE
24 ROOM, IT'S OBVIOUS THAT HE'S NOT FOCUSED ON MAKING SURE HE
25 DOESN'T HAVE A KIDNAPPING SUSPECT BECAUSE HE PUTS EVERYBODY

UNITED STATES DISTRICT COURT

1 DOWN, AND HE STARTS QUESTIONING EVERYBODY. HE'S GOT
2 EVERYBODY PREPARED NOW TO -- TO -- TO EVENTUALLY TO GO TO
3 JAIL. IT'S NOT AS IF HE RESOLVED ONE THING AND THEN HE
4 CONCEDES HE'S GOT A BASIS FOR -- FOR CHECKING INTO WHAT OTHER
5 PEOPLE -- THE REASONS THEY MAY BE THERE. HE'S RIGHT ON TOP
6 OF ARRESTING EVERYBODY IN THAT ROOM, DETAINING THEM, AND THEN
7 ARRESTING THEM.

8 SO -- AND THE ARGUMENT THAT MR. BURKS HAS NO
9 REASONABLE EXPECTATION OF PRIVACY BECAUSE THERE WERE ILLEGAL
10 THINGS GOING ON IN THE ROOM -- WELL, YOU REALIZE THAT WE'D
11 RARELY HAVE A CASE -- ALL THESE CASES COME BEFORE THE COURT
12 BECAUSE THE POLICE WENT IN, AND THEY FOUND SOMETHING ILLEGAL
13 GOING ON. I'LL GRANT YOU THERE ARE SOME CASES THAT SAY WHERE
14 THE PEOPLE AREN'T USING IT AS A RESIDENCE. THEY'RE JUST
15 USING IT AS A PLACE OF BUSINESS. IT'S ILLEGAL. PLACES OF
16 BUSINESS AREN'T PROTECTED BY THE FOURTH AMENDMENT THE WAY
17 HOUSES AND PLACES OF RESIDENCE ARE EVEN IF THEY'RE JUST
18 TEMPORARY.

19 AND IN OUR PAPERS WE CITED THE CASE THAT INVOLVED
20 A HOUSE WHERE A -- A -- AN IMMIGRANT SMUGGLING RING USED IT
21 EVERY NIGHT TO PUT -- PUT VICTIMS IN THERE, AND THEY SLEPT
22 THERE TOO; AND THE COURT SAID, NO, YOU DID NEED A WARRANT TO
23 GET IN THERE.

24 THEY NEEDED A WARRANT TO GET INTO THAT ROOM. HE
25 NEVER GOT ANYTHING BEYOND THE LEVEL OF POSSIBILITY. AND THEY

UNITED STATES DISTRICT COURT

1 FORGET ABOUT EXIGENCY. THEY HAD TO HAVE PROBABLE CAUSE TO
2 BEGIN WITH. HE DIDN'T HAVE PROBABLE CAUSE, AND HE DIDN'T
3 HAVE EXIGENCY. THERE WAS A PROPER WAY TO DO THE
4 INVESTIGATION, AND THEY DIDN'T DO IT. AND WE SUBMIT, YOUR
5 HONOR, ON THAT MOTION SHOULD BE GRANTED. THANK YOU, YOUR
6 HONOR.

7 THE COURT: ALL RIGHT. IT IS FAIRLY CLEAR THAT THIS
8 DEFENDANT DID NOT HAVE A FOURTH AMENDMENT INTEREST. THAT'S
9 ALL I CAN SAY TO THE MOTION. NONE OF THE OTHER NONSENSE THE
10 SERGEANT TALKED ABOUT. THE SERGEANT KNEW PRETTY WELL WHAT HE
11 HAD, BUT THIS MAN CAN'T CLAIM THAT. THE MOTION TO SUPPRESS
12 IS DENIED.

13 THE DEFENDANT: YOUR HONOR, MAY I SPEAK?

14 THE COURT: YOU HAVE A LAWYER.

15
16 (DEFENDANT AND HIS COUNSEL CONFER
17 SOTTO VOCE.)

18
19 THE COURT: IF YOU HAVE SOMETHING, TAKE IT UP WITH YOUR
20 LAWYER.

21
22 (BRIEF PAUSE.)

23
24 THE COURT: THE OTHER MATTER, THE PRE-TRIAL CONFERENCE.
25 I THINK WE SHOULD, FOR THE SAKE OF THE REPORTER, TAKE ABOUT

UNITED STATES DISTRICT COURT

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LEPRINCETON BURKS, PETITIONER,

vs.

UNITED STATES, RESPONDENT.

CERTIFICATE OF SERVICE

I, Carlton F. Gunn, hereby certify that on this 6th day of December, 2024, a copy of the Petitioner's Motion for Leave to Proceed in Forma Pauperis and Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit were mailed postage prepaid, to the Solicitor General of the United States, Department of Justice, Room 5614, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001, counsel for the Respondent.

Respectfully submitted,

December 6, 2024

s/ Carlton F. Gunn

CARLTON F. GUNN
Attorney at Law