

CASE NO.

IN THE
SUPREME COURT OF THE UNITED STATES

PIERRE BURNS, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI

EVANS, BULLOCH & PARKER, PLLC
HEATHER G. PARKER
Counsel of Record
302 N. Spring Street
PO Box 398
Murfreesboro, TN 37133-0398
615-896-4154
heatherparker@bfhelaw.com
Attorney for Pierre Burns

QUESTIONS PRESENTED

1. Whether the District Court's prohibition against presenting a defense of mistake of age in a case arising under 18 U.S.C. § 2251(a) created a violation of the First Amendment?
2. Whether the District Court's prohibition against presenting a defense of mistake of age violated the Defendant's Sixth Amendment Right to present a defense?

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner, the Defendant/Appellee below, is Pierre Burns.

Respondent is the United States of America.

LIST OF PROCEEDINGS

1. Sixth Circuit Court of Appeals, Case No. 24-5558, *United States of America v. Pierre Burns*, 2025 WL 2954569 (6th Cir. Oct. 20, 2025).
2. United States District Court for the Middle District of Tennessee, Case No. 3:22-CR-00069, *United States of America v. Pierre Burns*, final judgment entered June 7, 2024.
3. United States District Court for the Middle District of Tennessee, Case No. 3:22-CR-00069, *United States of America v. Pierre Burns* (M.D. Tenn. December 21, 2023) (Motion in Limine Hearing on Government's Motion to Exclude Defendant's Knowledge of The Minor Victims' Ages and the Minor Victims' Consent); Order entered January 3, 2024.

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
LIST OF PARTIES TO THE PROCEEDINGS	i
LIST OF PROCEEDINGS	i
TABLE OF CONTENTS	ii
TABLE OF APPENDICES	iii
TABLE OF AUTHORITIES.....	iv
INTRODUCTION.....	1
OPINIONS AND ORDERS BELOW	1
JURISDICTION	1
STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
I THE SIXTH CIRCUIT COURT OF APPEALS DECISION IS IN CONFLICT WITH THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS ON THE ISSUE OF THE RIGHT TO PRESENT A DEFENSE REGARDING MISTAKE OF AGE IN A CASE BROUGHT BY THE UNITED STATES AGAINST A DEFENDANT FOR A VIOLATION OF 18 U.S.C. § 2251.	
CONCLUSION	11

TABLE OF APPENDICES

APPENDIX A:	<i>United States of America v. Pierre Burns</i> , 2025 WL 2954569 (6th Cir. Oct. 20, 2025) A001-007
APPENDIX B:	United States District Court for the Middle District of Tennessee, Case No. 3:22-CR-00069, <i>United States of America v. Pierre Burns</i> (M.D. Tenn. June 7, 2024) (Final Judgment)	... A008-015
APPENDIX C:	United States District Court for the Middle District of Tennessee, Case No. 3:22-CR-00069, <i>United States of America v. Pierre Burns</i> (M.D. Tenn. December 21, 2023) (Motion in Limine Hearing on Government's Motion to Exclude Defendant's Knowledge of The Minor Victims' Ages and the Minor Victims' Consent); Order entered January 3, 2024 A016-020

TABLE OF AUTHORITIES

CASES

<i>Chambers v. Mississippi,</i>	9
410 U.S. 284 (1973)	9
<i>Crane v. Kentucky,</i>	9
476 U.S. 682 (1986)	9
<i>Davis v. Alaska,</i>	10
415 U.S. 308 (1974)	10
<i>Dennis v. United States,</i>	7
341 U.S. 494 (1951)	7
<i>Smith v. California,</i>	7
361 U.S. 147 (1959)	7
<i>Sorrells v. United States,</i>	8
287 U.S. 435 (1932)	8
<i>United States v. Brown,</i>	7
25 F.3d 307 (6th Cir. 1994)	7
<i>United States of America v. Pierre Burns,</i>	6
2025 WL 2954569 (6 th Cir. Oct. 20, 2025)	6
<i>United States v. United States District Court for the Central District of California,</i>	6, 7, 8
858 F.2d 534 (9th Cir. 1988)	6, 7, 8
<i>Washington v. Texas,</i>	9
388 U.S. 14 (1967)	9

CONSTITUTIONAL PROVISIONS AND OTHER STATUTES

<u>U.S. Const. amend. I</u>	2
<u>U.S. Const. amend. VI</u>	2
<u>18 U.S.C. § 1254</u>	1
<u>18 U.S.C. § 3231</u>	4
<u>18 U.S.C. § 2251(a)</u>	<i>Passim</i>
<u>U.S. Sup. Ct. R. 10</u>	6
<u>Sixth Circuit Pattern Jury Inst. 1.07</u>	10

INTRODUCTION

Pierre Burns was indicted, tried and convicted of two counts of violating 18 U.S.C. §2251. Mr. Burns attempted to defend himself before the jury by introducing evidence that the victims of the offenses had intentionally deceived him regarding their minority. This evidence was excluded by the District Court in pretrial motions. Mr. Burns now urges this Court to grant his Petition for Writ of Certiorari to settle a difference among the Circuits regarding a defendant's ability to present a mistake of age defense in the context of a violation of 18 U.S.C. §2251.

OPINIONS AND ORDERS BELOW

The opinion of the Sixth Circuit Court of Appeals is unpublished. App. A001-007, *United States of America v. Pierre Burns*, No. 24-5558, 2025 WL 2954569 (6th Cir. Oct. 20, 2025). The final judgment of the District Court is unpublished. App. A008-015, Case No. 3:22-CR-00069, *United States of America v. Pierre Burns* (M.D. Tenn. June 7, 2024). The Order of the District Court granting the Government's Motion to Exclude Evidence of the Defendant's Knowledge of the Minor Victims' Ages and the Minor Victims' Consent is unpublished. App. A016-020, Case No. 3:22-CR-00069, *United States of America v. Pierre Burns* (M.D. Tenn. Jan. 4, 2024).

JURISDICTION

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254, as the Sixth Circuit Court of Appeals issued an opinion on October 20, 2025, denying Mr. Burns relief.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. U.S. Const. amend. I

The Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence. U.S. Const. amend. VI

18 U.S.C. § 2251(a): Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was

produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed. 18 U.S.C. § 2251(a).

STATEMENT OF THE CASE

I. Procedural History

Pierre Burns was indicted on February 28, 2022, in the District Court for the Middle District of Tennessee for violations of 18 U.S.C. § 2251(a). The Government filed pretrial motions asking the Court to prohibit Mr. Burns from presenting any evidence regarding his knowledge of the victims' ages. The District Court granted that motion, thereby prohibiting Mr. Burns from presenting any evidence supporting a mistake of age defense or any evidence to prove that he was specifically and intentionally misled regarding the ages of the victims. App. A016-020.

The case proceeded to trial on January 9, 2024. At the conclusion of the proof presented before the jury, during a jury out hearing, Mr. Burns made an offer of proof at trial regarding the evidence that existed to support a mistake of age defense, as well as to support his defense that he was specifically and intentionally misled as to the ages of the minor victims. After the conclusion of the proof, the jury found Mr. Burns guilty as charged to the two counts for violations of 18 U.S.C. § 2251. App. A008-015.

Mr. Burns filed a timely appeal to the Sixth Circuit Court of Appeals. The Sixth Circuit Court of Appeals filed its Opinion on October 20, 2025, denying Mr. Burns relief. The Opinion was issued pursuant to their jurisdiction over the case pursuant to 18 U.S.C. § 3231. App. A001-007.

II. Relevant Facts

At trial, it was established that the victims were living at Grace Oasis, a home providing services to minors. Pursuant to the rules at Grace Oasis, neither victim was permitted to have telephones, access to social media, or the Internet. Both victims left Grace Oasis, in violation of the program rules, on February 28, 2020. Victim 2 returned on March 2, 2020, and Victim 1 returned on March 4, 2020.

In his interview with police, Mr. Burns indicated that he had met the victims through Tinder. Mr. Burns' Tinder profile, identifying him as being 27 years old, was entered as an Exhibit at the trial. Victim 2 confirmed that Victim 1 messaged Mr. Burns on Tinder. She also verified that they were not with Mr. Burns the entire period of time they were gone. Before meeting up with Mr. Burns, Victim 1 obtained a tablet and that is how she got on Tinder.

Having excluded evidence related to a mistake of age defense prior to trial, the District Court allowed Mr. Burns to present an offer of proof, which consisted of the following proof:

Mr. Burns asked Victim 1 about her age four or five times. Victim 1 confirmed that she sought out Mr. Burns on Tinder and lied to Mr. Burns about her age. Victim 1 confirmed that all of the people present believed that both victims were 19 years

old. Nykelia McCoy, who was present during the offenses, also confirmed that Victim 1 told her and Mr. Burns that she was 19 years old. The Defendant also submitted the Tinder User Agreement, which requires that users be 18 years old to use the Tinder application. Victim 1 confirmed to police that she was on Tinder looking for someone with his own house and car. She further would testify that she picked Mr. Burns because he was willing to let the two victims stay with him.

Both victims were kicked out of Mr. Burns residence on March 2, 2020, when Nykelia McCoy learned of their true ages. This is the same date that Victim 2 returned to Oasis. Nykelia McCoy was the first to learn of their true ages, and at the time of that admission by Victim 2, Mr. Burns was asleep.

All of the child sexual abuse material produced by the Government included Victim 2, meaning that the content had to have been created prior to Victim 2 leaving on March 2, 2020, and prior to the admission by Victim 2 that they were not adults. In pretrial filings, the Government alleged that all images had been created within the first 24 hours of the victims meeting Mr. Burns.

REASONS FOR GRANTING THE WRIT

I. THE SIXTH CIRCUIT COURT OF APPEALS DECISION IS IN CONFLICT WITH THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS ON THE ISSUE OF THE RIGHT TO PRESENT A DEFENSE REGARDING MISTAKE OF AGE IN A CASE BROUGHT BY THE UNITED STATES AGAINST A DEFENDANT FOR A VIOLATION OF 18 U.S.C. § 2251.

There continues to be disagreement among the Circuit Courts of Appeal as to whether a mistake of age defense is permissible under 18 U.S.C. § 2251(a), which causes persons to be treated differently under section 18 U.S.C. § 2251, merely because of their geographic location. *United States v. United States District Court for the Central District of California*, 858 F.2d. 534, 543-544 (9th Cir. 1988); *United States of America v. Pierre Burns*, 2025 WL 2954569 (6th Cir. Oct. 20, 2025). This calls for an ultimate resolution of this issue. The Rules of the Supreme Court of the United States provide:

A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter ...

U.S. Sup. Ct. R. 10.

Mr. Burns would show that the disagreements among the Circuits should be resolved in favor of allowing for a mistake of age defense. To hold otherwise would violate the First and Sixth Amendments to the United States Constitution.

a. FIRST AMENDMENT

Mr. Burns contends that, as written, 18. U.S.C. § 2251(a) violates the First

Amendment to the United States Constitution. The statute provides,

Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e).

18 U.S.C.A. § 2251(a). In effect, the statute creates strict liability by failing to provide any *mens rea* requirement. "The existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence." *Dennis v. United States*, 341 U.S. 494, 500 (1951). With regard to laws inhibiting the freedom of expression afforded by the First Amendment to the United States Constitution, the Supreme Court has held that strict liability "cannot be applied in settings where they have the collateral effect of inhibiting the freedom of expression, by making the individual more reluctant to exercise it." *Smith v. California*, 361 U.S. 147, 150-52 (1959).

The law at issue here, 18 U.S.C. § 2251(a), regulates speech. *District Court*, 858 F.2d. at 538. Under *United States v. Brown*, the Sixth Circuit Court of Appeals held:

While non-obscene adult pornography is protected speech, child pornography need not be obscene to be regulated. As a result, in certain instances, the only factor separating what would otherwise be protected speech from unprotected child pornography is the minority of the persons depicted. Therefore, "[a]s with [adult] obscenity laws, criminal responsibility [under child pornography laws] may not be imposed without some element of scienter on the part of the defendant," *Ferber*, 458 U.S. at 765, 102 S.Ct. at 3358, and this knowledge must be as to the character of the materials in question. Otherwise, the risk

exists that protected speech will be inadvertently swept into the scope of the statute, producing a chilling effect.

United States v. Brown, 25 F.3d 307, 309 (6th Cir. 1994) (citing *District Court*, 858 F.2d at 538) (emphasis added). While the purview of *Brown* was in relation to 18 U.S.C. § 2252, the holding does not limit itself to the same. Rather, *Brown* clearly sets forth the basis that because the minority of the person depicted is the only difference in protected speech, i.e. adult pornography, and unprotected child pornography, there must be some requirement that there be some *mens rea* for accountability. Under *Smith v. California* and *United States v. Brown*, strict liability under 18 U.S.C. § 2251 is an unconstitutional limitation on the freedom of expression.

As set forth in *District Court*, interpreting the statute to require that a defendant be allowed to make a narrow mistake of age defense does not violate legislative intent in the same manner that making “knowledge of age” an element would. *District Court*, 858 F.2d at 542. This instance would not be the first time an affirmative defense has been created where the statute is silent as to the same. The general rule is that “[a]ll laws should receive a sensible construction ... limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character.” *Sorrells v. United States*, 287 U.S. 435, 446–47 (1932). Here, the absurd result is that Mr. Burns went onto an adult dating application and is now in federal prison for his encounter with a person who intentionally misled him as to the victims’ ages.

Without provision for an affirmative defense for mistake of age, section 2251(a) is an unconstitutional infringement upon the First Amendment to the United States Constitution.

b. SIXTH AMENDMENT

The Sixth Amendment to the Constitution guarantees not only that a defendant be confronted with the witnesses against him, but he also must be able to defend himself against the Government's accusations. *Washington v. Texas*, 388 U.S. 14, 17–19 (1967). The right to have an opportunity “to be heard in his defense” is fundamental in our system of justice. *Id.* The Supreme Court defines this right as “a meaningful opportunity to present a complete defense.” *Crane v. Kentucky*, 476 U.S. 683, 690–91 (1986) (citing *California v. Trombetta*, 467 U.S. 479, 485 (1984)). While the right to present a defense is not absolute, limiting a defendant's ability to present a defense “calls into question the ultimate ‘integrity of the fact-finding process’ and requires that the competing interest be closely examined.” *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973) (citing *Berger v. California*, 393 U.S. 314, 315 (1969)).

Mr. Burns' right to present a defense should include the right to present evidence that he was specifically deceived by one or both of the alleged victims as to their ages. To hold otherwise has deprived Mr. Burns of the right to defend himself and failed to provide the jury with a complete picture of the events the Government alleged as violations of 18 U.S.C. § 2251(a). Here the Government alleged that said evidence would not be relevant because a defendant's knowledge

of the age of the alleged victim is not an element of the offense. However, as set forth above, there is disagreement among the Circuit Courts of Appeal on the issue of whether a defendant has a right to present a mistake of age defense. But here, even more than mistake of age, Mr. Burns was intentionally misled and deceived regarding the age of the alleged victims after repeatedly inquiring about their ages.

Furthermore, this limitation on the ability to present his defense deprived Mr. Burns of the opportunity to call into question the credibility of the Government's witnesses. The Confrontation Clause of the Sixth Amendment to the United States Constitution secures the Accused's right to cross-examine the witnesses against him. *Davis v. Alaska*, 415 U.S. 308, 314 (1974). "Cross-examination is the principal means by which the believability of a witness and the truth of his testimony are tested. . . the cross-examiner is not only permitted to delve into the witness' story to test the witness' perceptions and memory, but the cross-examiner has traditionally been allowed to impeach, i.e., discredit, the witness." *Id.* at 316. The Sixth Circuit Pattern Jury Instruction for Witness Credibility even provides that jurors should consider "if the witness said or did something (or failed to say or do something) at any other time that is inconsistent with what the witness said while testifying." SIXTH CIR. PATTERN JURY INST. 1.07. Prior actions showing deceit on the part of an alleged victim are relevant to the jury's determination of credibility.

Here, it would have been relevant for the jury to hear how Victim 1 deceived Mr. Burns and Victim 2 did not correct the deceit regarding their ages until after

the productions were made. Furthermore, evidence regarding the fact that Victim 1 sought out and found Mr. Burns, whose age was readily apparent from his Tinder profile as being 27 years old, would also have been relevant to demonstrate that he was not a predator out looking for children.

To read section 2251(a) such that it excludes Mr. Burns' ability to present his defense, that he was intentionally misled about the ages of the alleged victims, violates his right to present a defense under the Sixth Amendment to the United States Constitution, and his right to confront and cross-examine the witnesses against him under the Confrontation Clause. It is fundamentally unfair that Mr. Burns was cut off from an entire defense that would have been available to him in another Circuit.

To hold that 18 U.S.C. §2251(a) is a strict liability offense renders the statute unconstitutional under the First Amendment. Furthermore, it impairs Mr. Burns' right to present a defense, which violates the Sixth Amendment to the United States Constitution. Mr. Burns had a right to respond to the Government's accusations against him, as well as to test the credibility of the alleged victims through presentation of their deceit in presenting themselves as adults. Such a limitation was an impermissible restriction of his right to present a defense.

CONCLUSION

The Petition for Writ of Certiorari should be granted to settle the disagreement among the Circuits regarding the issue of mistake of age in relation to cases brought for violations of 18 U.S.C. § 2251.

Respectfully submitted,

EVANS, BULLOCH & PARKER, PLLC



HEATHER G. PARKER, BPR #30293
302 N. Spring Street
PO Box 398
Murfreesboro, TN 37133-0398
615-896-4154
heatherparker@bfhelaw.com
Attorney for *Pierre Burns*

APPENDIX A: *United States of America v. Pierre Burns*, 2025 WL 2954569
(6th Cir. Oct. 20, 2025)

APPENDIX B: United States District Court for the Middle District of Tennessee,
Case No. 3:22-CR-00069, *United States of America v. Pierre
Burns* (MD Dist. TN June 7, 2024) (Final Judgment)

APPENDIX C: United States District Court for the Middle District of Tennessee, Case No. 3:22-CR-00069, *United States of America v. Pierre Burns* (MD Dist. TN December 21, 2023) (Motion in Limine Hearing on Government's Motion to Exclude Defendant's Knowledge of The Minor Victim's Ages and the Minor Victims' Consent); Order entered January 3, 2024

APPENDIX A: *United States of America v. Pierre Burns*, 2025 WL 2954569
(6th Cir. Oct. 20, 2025)

NOT RECOMMENDED FOR PUBLICATION
File Name: 25a0484n.06

No. 24-5558

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 20, 2025
KELLY L. STEPHENS, Clerk

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
v.)
PIERRE RODRICKUS BURNS,)
Defendant-Appellant.)
)
ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF
TENNESSEE
)
OPINION

Before: KETHLEDGE, LARSEN, and BLOOMEKATZ, Circuit Judges.

KETHLEDGE, Circuit Judge. Pierre Burns was convicted of sexually exploiting minors and witness tampering, and the district court sentenced him to 240 months in prison. He now challenges his convictions and sentence. We reject his arguments and affirm.

I.

In February 2020, two young girls—Trinity and Emilie—ran away from a Nashville shelter for minor victims of human trafficking. Trinity arranged for a man she had met on Tinder—Pierre Burns—to pick them up from a nearby Waffle House so they could stay with him. Over the next few days, Burns took dozens of sexually explicit pictures and videos of the girls, including videos in which Burns directed them as they engaged in oral sex. Emilie left first; after brief stays in juvenile detention and a hospital (for drug intoxication), she returned to the shelter. Two days later, Trinity told the shelter where she was, and the shelter told Nashville police. The police stopped Burns's car that same day and returned Trinity to the shelter. The police later searched Burns's phone and found the photos and videos of the girls.

No. 24-5558, *United States v. Burns*

A grand jury indicted Burns under 18 U.S.C. § 2251(a) on two counts of sexual exploitation of a minor. In the leadup to trial, Burns's counsel inadvertently gave him Emilie's phone number, which Burns used to call her from jail. Burns was then indicted on the additional charge of witness tampering under 18 U.S.C. § 1512, and the district court reset his trial for early January 2024.

At trial, Burns was convicted on all counts. At sentencing, the district court calculated Burns's guidelines range to be 360 months to life, but departed downward and sentenced him to 240 months in prison. The district court deferred ordering restitution, though it eventually imposed an award to each victim and incorporated it into an amended judgment. This appeal followed.

II.

A.

Burns argues that the district court violated the Rules of Evidence, the Criminal Rules, and the Constitution in admitting certain evidence and barring other evidence and arguments. We review his challenges under the Federal Rules for an abuse of discretion. *United States v. Davis*, 306 F.3d 398, 420 (6th Cir. 2002). We review his constitutional challenges de novo. *United States v. Underwood*, 129 F.4th 912, 940 (6th Cir. 2025).

1.

Burns argues that the district court erred on three grounds by admitting Trinity's putative birth certificate to prove that she was a minor at the relevant time.

First, he says the birth certificate was irrelevant because it was merely the birth certificate of "a person with the same name" as Trinity. As he concedes, however, a shelter employee testified that the shelter had received a copy of the same document from the agency that referred her there. Thus, the certificate was sufficiently connected to Trinity to make her minority more probable than without it. Fed. R. Evid. 401.

No. 24-5558, *United States v. Burns*

Second, he says that the government violated the Criminal Rules by disclosing the birth certificate to him “just two business days” before trial, and so the district court should have excluded it. Rule 16(a)(1)(E) requires the government to allow a defendant to inspect certain documents within its “possession, custody, or control.” The government must produce documents under the rule, however, only after it acquires them. *See United States v. Llanez-Garcia*, 735 F.3d 483, 493-94 (6th Cir. 2013). Here, the government produced the certificate to Burns within a day of receiving it. He does not assert that the government acted in bad faith. Nor does he dispute that the government only belatedly saw a need for the birth certificate after it lost contact with Trinity and a relative, both of whom could have testified about her age. The government complied with Rule 16.

Third, he says that the birth certificate’s admission violated the Confrontation Clause. That clause, however, forbids the introduction only of “testimonial” records—being those created with the primary purpose of later being introduced in court. *Smith v. Arizona*, 602 U.S. 779, 801-02 (2024). The birth certificate—a vital record created as a matter of course—is not testimonial, and the Confrontation Clause thus does not apply.

2.

Burns argues on three grounds that the district court violated his rights under the Constitution by precluding him from raising a mistake-of-age defense.

First, he says that his convictions under 18 U.S.C. § 2251(a) violated the First Amendment because he could not raise the mistake-of-age defense. This court has held, however, that the First Amendment does not require making such a defense available in prosecutions under § 2251(a). *United States v. Humphrey*, 608 F.3d 955, 962 (6th Cir. 2010). So that contention is meritless.

No. 24-5558, *United States v. Burns*

He next contends that the court violated his Sixth Amendment right to present a complete defense by barring evidence that he was deceived by Emilie and Trinity about their ages. A district court violates a defendant's right to present a complete defense if, among other requirements, the "omitted evidence would have created a reasonable doubt about the defendant's guilt that would not have existed based on the admitted evidence alone." *United States v. Reynolds*, 86 F.4th 332, 351 (6th Cir. 2023) (citation modified). Evidence that Trinity and Emilie deceived Burns about their ages does not go to any element of § 2251(a) and so would have failed to create reasonable doubt as to his guilt.

Burns last contends that the court violated his right to confront the witnesses against him by preventing him from cross-examining Trinity or Emilie about this alleged deception. To make out a Confrontation Clause violation in this context, a defendant must show that the district court limited his ability to cross-examine a witness about the witness's "bias, prejudice, or motive to testify." *United States v. Taylor*, 127 F.4th 1008, 1014 (6th Cir. 2025). But Burns just wanted to impeach Trinity and Emilie's credibility by invoking their earlier (alleged) untruthfulness. Thus, no Confrontation Clause violation occurred.

B.

Burns also challenges the sufficiency of the evidence supporting his convictions. We must uphold them if, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original).

1.

Burns attacks his convictions under § 2251(a) on the ground that the government failed to show that Trinity and Emilie were minors. But Trinity's birth certificate alone—which shows that

No. 24-5558, *United States v. Burns*

she was born in 2005—supports such a finding as to her. Also, a shelter employee testified that Trinity and Emilie lived there when it housed only minors, and that they did not “become adults” in February or March 2020; a Homeland Security Investigations agent testified that the agency had verified that they were minors; and Emilie testified that after she left Burns’s apartment, she was taken to “juvie.” Emilie’s testimony that she was born in 2002—and thus turned 18 sometime in 2020—does not compel the finding that she was an adult when with Burns. Ample evidence supports the jury’s finding that she was then a minor.

2.

Burns also challenges his conviction for witness tampering. The conviction stands if a rational jury could have found that he urged a witness to lie at trial. *United States v. Johnson*, 79 F.4th 684, 711 (6th Cir. 2023).

Here, the jury heard Burns’s jail call to Emilie, during which she initially professed not to remember him—but with his prompting, asked him if he was the person who liked “taking pictures” and admitted that she remembered him and “the situation with Trinity and the Waffle House.” Burns then asked if she had talked to the prosecution and, on hearing that she had, told her that she was the only thing that they could use to send him to prison. Burns encouraged her, if she were called to testify, to say that she remembered nothing. A jury reasonably could have found that Burns was not urging Emilie to testify truthfully, as he contends, but rather pressuring her to testify falsely in his favor. Sufficient evidence therefore supported this conviction as well.

C.

Burns last attacks his sentence and the restitution order. He says the district court abused its discretion by sentencing him to 240 months in prison—well below his guidelines range—because it should have weighed the girls’ deception and his difficult life more heavily, and because

No. 24-5558, *United States v. Burns*

his criminal history score, though properly calculated, overstated his criminality. We disagree. The district court considered each of these things, and none is “so compelling as to necessitate a shorter sentence” than the one the court imposed. *United States v. Nunley*, 29 F.4th 824, 834 (6th Cir. 2022).

The restitution order, finally, is not before us: Burns did not appeal the amended judgment imposing it, and the government has called that failure to our attention. *Manrique v. United States*, 581 U.S. 116, 125 (2017).

* * *

The district court’s judgment is affirmed.

APPENDIX B: United States District Court for the Middle District of Tennessee,
Case No. 3:22-CR-00069, *United States of America v. Pierre
Burns* (MD Dist. TN June 7, 2024) (Final Judgment)

UNITED STATES DISTRICT COURT

Middle District of Tennessee

UNITED STATES OF AMERICA

v.

Pierre Rodricus Burns
a/k/a "Pierre Rodricus Burns, Jr."

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:22CR00069-001

USM Number: 38925-510

Heather G. Parker

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) _____

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) One, Two and Three of the Second Superseding Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 2251(a)	Sexual Exploitation of a Minor	3/1/2020	1,2
18 U.S.C. § 1512(b)(1)	Tampering with a Witness	9/5/2023	3

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

June 5, 2024

Date of Imposition of Judgment

Signature of Judge

WILLIAM L. CAMPBELL, JR.

Chief United States District Judge

June 6, 2024

Date

DEFENDANT: Pierre Rodricus Burns a/k/a "Pierre Rodricus Burns
CASE NUMBER: 3:22CR00069-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Counts 1, 2, and 3: 240 months per count to run concurrent.

The sentence is to run concurrent with any sentence imposed in Davidson County Case #2021-A-360

The court makes the following recommendations to the Bureau of Prisons:

1. Mental health treatment
2. Vocational training

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Pierre Rodricus Burns a/k/a "Pierre Rodricus Burns
CASE NUMBER: 3:22CR00069-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Counts 1 and 2: 10 years to run concurrent.
Count 3: 5 years to run concurrent with Counts 1 and 2.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (check if applicable)
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. (check if applicable)
5. You must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. (check if applicable)
7. You must participate in an approved program for domestic violence. (check if applicable)

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Pierre Rodricus Burns a/k/a "Pierre Rodricus Burns
CASE NUMBER: 3:22CR00069-001

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature

Date

DEFENDANT: Pierre Rodricus Burns a/k/a "Pierre Rodricas Burns
CASE NUMBER: 3:22CR00069-001

SPECIAL CONDITIONS OF SUPERVISION

1. You shall participate in a program of drug testing and substance abuse treatment which may include a 30-day inpatient treatment program followed by up to 90 days in a community correction center at the direction of the United States Probation Office. You shall pay all or part of the cost for substance abuse treatment if the United States Probation Office determines you have the financial ability to do so or appropriate insurance coverage to pay for such treatment.
2. You must not use or possess any controlled substances without a valid prescription. If you do have a valid prescription, you must disclose the prescription information to the probation officer and follow the instructions on the prescription.
3. You shall promptly advise the United States Probation Office of the name and contact information for any physician who prescribes any controlled substance and agrees to execute a release of information form so that medical records may be obtained from such physician.
4. You shall participate in a mental health program as directed by the United States Probation Office. The defendant shall pay all or part of the cost of mental health treatment if the United States Probation Office determines the defendant has the financial ability to do so or have appropriate insurance coverage to pay for such treatment.

Sex Offender Treatment

5. You shall participate in sex offender assessment and treatment, including but not limited to polygraph examinations recommended by the treatment provider and as directed by the U.S. Probation Office. The defendant shall contribute to the cost as determined by the U.S. Probation Office.

Residence Restriction

6. Your residence and employment shall be pre-approved by the U.S. Probation Office.
Restricted Contact with Minors

7. You shall not have any contact, other than incidental contact in a public forum such as in a restaurant, grocery store, etc., with any person under the age of 18 (except his/her children) without prior approval of the probation officer. Any approved contact shall be supervised by an adult at all times. The contact addressed in this condition includes, but is not limited to, direct or indirect, personal, telephonic, written, or through a third party. If you have any contact with any child (person under the age of 18 years old), not otherwise addressed in this condition, you are required to immediately remove yourself from the situation and notify the probation office within 24 hours.

8. You shall have no direct or indirect contact with MV1 or MV2, and the United States Probation Office will verify compliance with this condition.

Restricted Materials

9. You shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adult engaged in sexually explicit conduct, as defined in 18 U.S.C. § 2256(2).

10. You shall not possess or use a device capable of creating pictures or video without the prior permission of the U.S. Probation Office.

Sex Offender Registration

11. You shall register as a sex offender as prescribed by state and federal law.

DEFENDANT: Pierre Rodricus Burns a/k/a "Pierre Rodricus Burns
CASE NUMBER: 3:22CR00069-001

SPECIAL CONDITIONS OF SUPERVISION

Computer/Mobile Device Restrictions

12. You shall not possess or use a computer or any device with access to any "online computer service" at any location (including place of employment) without the prior written approval of the United States Probation Office. This includes any Internet service provider, bulletin board system, or any other public or private network or e-mail system. The defendant's residence shall not contain any electronic devices capable of Internet access without prior approval of the probation officer.
13. You shall consent to the U.S. Probation Office conducting unannounced examinations of the defendant's computer system(s), mobile devices, and internal/external storage devices, which may include retrieval and copying of all memory from hardware/software and/or removal of such system(s) for the purpose of conducting a more thorough inspection. The defendant will consent to having installed on the defendant's computer(s), any hardware/software to monitor computer use or prevent access to particular materials. The defendant will further consent to periodic inspection of any such installed hardware/software to ensure it is functioning properly. The defendant shall pay the cost of the installation of and the continuing use of the monitoring program.
14. You shall provide the U.S. Probation Office with accurate information about the defendant's entire computer system (hardware/software) and internal/external storage devices; all passwords used by the defendant; and will abide by all rules regarding computer use and restrictions as provided by the U.S. Probation Office.

Restitution

15. A hearing to determine amount of restitution will be set by later order of the Court.

Financial Disclosure

16. You shall furnish all financial records, including, without limitation, earnings records and tax returns, to the United States Probation Office upon request.

DEFENDANT: Pierre Rodricus Burns a/k/a "Pierre Rodricus Burns
CASE NUMBER: 3:22CR00069-001**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

TOTALS	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
	\$ 300.00	\$ **	\$	\$	\$

The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	----------------------	----------------------------	-------------------------------

** Restitution to be determined by later hearing.

TOTALS	\$ _____	\$ _____
---------------	----------	----------

Restitution amount ordered pursuant to plea agreement \$ _____

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the fine restitution.

the interest requirement for the fine restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Pierre Rodricus Burns a/k/a "Pierre Rodricus Burns.
CASE NUMBER: 3:22CR00069-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A Lump sum payment of \$ 300.00 due immediately, balance due

not later than _____, or
 in accordance with C, D, E, or F below; or

B Payment to begin immediately (may be combined with C, D, or F below); or

C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Case Number Defendant and Co-Defendant Names (Including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX C:

United States District Court for the Middle District of Tennessee,
Case No. 3:22-CR-00069, *United States of America v. Pierre
Burns* (MD Dist. TN December 21, 2023) (Motion in Limine
Hearing on Government's Motion to Exclude Defendant's
Knowledge of The Minor Victim's Ages and the Minor Victims'
Consent); Order entered January 3, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,)
) NO. 3:22-cr-00069
v.)
) JUDGE CAMPBELL
PIERRE RODRICUS BURNS)

ORDER

For the reasons discussed during the pretrial conference on December 21, 2023, the Court issued the following rulings on the parties' motions in limine:

1. United States' Second Motion in Limine Regarding the Defendant's Knowledge of the Minor Victims' Ages and the Minor Victims' Consent (Doc. No. 94) is **GRANTED**.
2. United States Motion in Limine Regarding Fed. R. Evid. 412 (Sealed Doc. No. 96) is **GRANTED**.
3. United States Motion in Limine Regarding Prosecutorial Decisions and Punishment or Collateral Consequences (Doc. No. 98) is **GRANTED**.
4. United States' Motion in Limine Regarding the Defendant's Statements During his Post-Miranda Interview (Sealed Doc. No. 100) is **GRANTED**. The Government's proposed redactions of Defendant's statements as reflected in the transcript of the recorded interview (Sealed Doc. No. 101) are accepted.
5. United States' Motion in Limine Regarding the Defendant's Statements During his Call to Victim 2 (Doc. No. 108) is **GRANTED IN PART** and **DENIED IN PART**. The United States' proposed redactions are accepted, except for the following statements which shall not be redacted:
 - a. Page 4, lines 11-12 – "So, like she, they can't get her to say anything."

- b. Page 5, lines 19-21 – “You gotta do what you gotta do, you know to be on your best behavior and whatever.” “Wow.” “The justice system don’t give two fucks about anybody.”
- c. Page 6, lines 16-17 – “When it was literally her that hit you up in the first place.”
“Yes, that’s what I’m saying she was trying to.”
- d. Page 7, line 30 – “Well, it’s not like that.”
- e. Page 8, lines 1-2 – “It’s not like that. Like at all. If it were up to me, like I wouldn’t be, I wouldn’t even be thinking it. Like if anything I would be like oh, that’s just the past.”

6. Defendant’s Motion for a Bill of Particulars. (Doc. No. 103) is **DENIED**.

7. Defendant’s Motion in Limine to Exclude Evidence (Doc. No. 104) is **GRANTED IN PART and DENIED IN PART** as follows:

- a. Admissibility of images from Defendant’s cell phone other than the sexually explicit images of Victims 1 and 2 is subject to contemporaneous objection at trial.
- b. The parties shall avoid referring to Rescue 1 by name. The non-profit organization Rescue 1 shall be referred to as “a non-profit organization that worked with minors.”
- c. The parties will not refer to “trafficking” or to the victims being “trafficked.”
- d. Evidence concerning fear of the Defendant or the alleged physical abuse of Victim 1 or others is subject to contemporaneous objection at trial.

8. Defendant’s Motion to Dismiss (Doc. No. 106) is **DENIED**.

The Court reserved ruling on Defendant's Motion to Compel production of full names, addresses, telephone numbers of victims. (Doc. No. 105). In the Motion to Compel, Defendant argues the victims' contact information is subject to disclosure as "data" under Federal Rule of Criminal Procedure 16, which provides:

Upon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control and:

- (i) the item is material to preparing the defense;
- (ii) the government intends to use the item in its case-in-chief at trial; or
- (iii) the item was obtained from or belongs to the defendant.

Fed. R. Crim. P. 16.

Defendant contends that the victims' contact information is material to the defense because the victims "very well could have exculpatory information regarding their participation and Mr. Burns' knowledge of their participation and his lack of knowledge of their ages." (Doc. No. 105 at 2). In addition, Defendant states that the victims' full names and contact information is necessary to obtain their criminal history to prepare for cross-examination and potential impeachment. Finally, Defendant argues that, under the Sixth Amendment, he is entitled to information concerning the whereabouts of material witnesses. (*Id.*).

The United States responds that the victims' full names and contact information are not material to the defense because the sole purpose to obtain this information is to interview the victims to obtain information for a mistake of age defense, which is not an available defense. Nor is the victims' criminal history at issue because the Government has provided criminal history information for both of the victims. The Government argues there is a specific interest in nondisclosure of the victims' contact information in this case because, shortly before the last trial

setting, Defendant contacted one of the victims. This contact is the basis for the witness tampering charge in Count Three. Finally, the victims have informed the United States that they do not want to speak with the defense and the Government argues that the victims' safety and privacy outweigh the Defendant's interest in requested information. Under the circumstances of this case, the Government argues the Court should not compel the production of the victims' names and personal contact information.

Having reviewed the Defendant's Motion to Compel (Doc. No. 105), the Government's Response (Doc. No. 133), and the parties' arguments during the pretrial conference, the Court is not persuaded that the information sought is material to the defense, particularly when the information sought pertains to an unavailable defense. Even if the Defendant has some interest in interviewing the victims, compelling disclosure of the victims' contact information is not reasonable under the circumstances of this case. *See Fed. R. Crim. P. 16(d)* ("At any time the Court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.").

Nor does the nondisclosure of the victims' contact information violate the Defendant's rights under the Sixth Amendment. Defendant claims the failure to disclose the victims' full names and contact information violates his right to compulsory process under the Sixth Amendment. "The Compulsory Process Clause of the Sixth Amendment establishes 'that criminal defendants have the right to the government's assistance in compelling the attendance of favorable witnesses at trial and the right to put before a jury evidence that might influence the determination of guilt.'" *United States v. Culp*, 828 F. App'x 298, 300 (6th Cir. 2020) (quoting *Pennsylvania v. Ritchie*, 480 U.S. 39, 56 (1987)). The defendant must "at least make some plausible showing of how [the witness's] testimony would have been both material and favorable to his defense." *Id.* (quoting *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982)). "The witness's testimony is

material ‘only if there is a reasonable likelihood that the testimony could have affected the judgment of the trier of fact.’” *Id.* (quoting *Valenzuela-Bernal*, 458 U.S. at 874).

The Court is not persuaded that denial of a motion to compel disclosure of the victims’ personal information violates his Sixth Amendment right to compulsory process. Defendant does not claim that he seeks the victims’ contact information to compel their attendance as “favorable witnesses at trial” and the information he seeks to obtain concerning a mistake of age defense is not relevant and cannot influence the jury’s determination of guilt.

Accordingly, the Motion to Compel (Doc. No. 105) is **DENIED**.

It is so **ORDERED**.



WILLIAM L. CAMPBELL, JR.
UNITED STATES DISTRICT JUDGE