No. 25-4121

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

MARTIQUE CABRAL VANDERPOOL,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRIEF FOR THE UNITED STATES AS APPELLEE

KELLY O. HAYES
United States Attorney
for the District of Maryland

HARMEET K. DHILLON
Assistant Attorney General

JESUS A. OSETE
Principal Deputy Assistant
Attorney General

DAVID N. GOLDMAN
Attorney
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-9405

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS (continued): **PAGE**

TABLE OF CONTENTS (continued): **PAGE**

TABLE OF CONTENTS (continued): **PAGE**

TABLE OF AUTHORITIES

CASES: **PAGE**

CASES (continued): **PAGE**

CASES (continued): **PAGE**

STATUTES: **PAGE**

RULES:

STATEMENT OF JURISDICTION

This appeal is from a final judgment in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. It entered final judgment against defendant-appellant Martique Cabral Vanderpool on February 21, 2025. JA1619.[1] Vanderpool filed a timely notice of appeal. JA1624. This Court has jurisdiction under 28 U.S.C. 1291.

STATEMENT OF THE ISSUES

A jury convicted defendant-appellant Vanderpool of violating 18 U.S.C. 1519 by falsifying a document with the intent to impede, obstruct, or influence an investigation into his sexual misconduct with an arrestee in his custody. Vanderpool raises the following issues on appeal:

1. Whether the government's evidence was sufficient to prove beyond a reasonable doubt that an investigation of Vanderpool's sexual misconduct with a person in his custody was within the jurisdiction of an agency of the United States.

---

[1] "JA__" refers to the page number of the Joint Appendix filed with Vanderpool's principal brief. "Br.__" refers to Vanderpool's principal brief.

2. Whether the district court properly denied Vanderpool's motion to suppress evidence obtained from state and federal warrants and for a *Franks* hearing to test the validity of each warrant.

3. Whether the district court properly denied Vanderpool's motion to dismiss for preindictment delay when he suffered no actual prejudice from any delay, and the government's delay was nonexistent or insignificant and attributable to the ongoing investigation and the COVID-19 pandemic.

STATEMENT OF THE CASE

A. The September 2019 incident

1. Vanderpool penetrates arrestee R.S. while she is in his custody.

On September 6, 2019, former Fairmount Heights Police Department officers Vanderpool and Philip Dupree were on patrol when they stopped R.S., a 19-year-old woman, who was speeding and driving without a license. JA516-517, JA523-529. Dupree ordered R.S. out of the car, which belonged to her then-boyfriend, and informed her that they were having the car towed from the scene. JA521, JA525, JA527-531. In response, R.S., who explained that she was driving to her injured son, seemed to have a panic attack. JA943-944. Dupree slammed R.S. to the

ground, scraping her knee, and handcuffed her. JA521, JA524-526, JA528, JA539-540, JA944. R.S., still in an apparent state of mental distress, repeatedly banged her head on the car, saying "I'm so stupid, I'm so stupid," and ran into the street. JA944. Vanderpool then searched the car and found R.S.'s learner's permit, which reflected that she was 19 years old. JA944. He also noticed a box of condoms in the center console. JA529, JA944. The discovery of the condoms made Vanderpool feel "horny." JA529-530. From this point on, and contrary to their training, the officers stopped communicating with dispatch regarding R.S. and the traffic stop. JA574, JA663, JA668-671.

After the search of the car, Vanderpool decided that he and Dupree should "do a full arrest." JA944. One of the officers called a towing company, which responded and towed R.S.'s vehicle. JA944-945. Vanderpool and Dupree drove away from the scene with R.S. handcuffed in their police car. JA531.

Although the standard protocol would have been to transport an arrestee to a nearby correctional facility for booking, Vanderpool and Dupree instead transported R.S. to the Fairmount Heights police station,

which was empty and locked, and which had no holding cell or equipment for processing arrestees. JA518, JA531-532, JA945.

Instead of booking R.S., Vanderpool and Dupree escorted her into the main common area of the small, deserted police station. JA532-535, JA969-976. One of the officers removed R.S.'s handcuffs. JA946. Vanderpool told R.S. they needed to "make this right." JA946. Vanderpool gave Dupree a condom and kept one for himself. JA535. After uncuffing R.S., Vanderpool sexually penetrated R.S. on a couch in the common area with Dupree standing nearby. JA516-517, JA520-521, JA533-536, JA540, JA973.

After Vanderpool penetrated R.S., Vanderpool then drove R.S. to the impound lot, and Vanderpool called to arrange the release of the car to R.S. with the towing company. JA536-539, JA830-833, JA880-991. Without waiting to see whether R.S. was able to retrieve her car, Vanderpool left R.S. in the dark tow lot yard at 2:00 in the morning. JA538-539, JA947, JA1200-1204.

Contrary to policy and training, Vanderpool and Dupree did not report the arrest or provide any other information to dispatch about their status while R.S. was in their custody. JA672. They did not have her

booked or fingerprinted on her disorderly-conduct charge. JA540, JA673. They did not take R.S. to a booking facility. JA518, JA540. Instead, after penetrating R.S., Vanderpool issued traffic tickets and a criminal citation for disorderly conduct to R.S. JA540-542, JA966-968.

2. Vanderpool drafts a false incident report about his encounter with R.S.

Less than half an hour after dropping R.S. to retrieve the car, Vanderpool returned to the Fairmount Heights police station and wrote his official report purporting to document his encounter with R.S. JA947. The report he drafted falsely depicted the incident with R.S. as a routine traffic stop: it stated that R.S. was stopped; that she became erratic and was placed in handcuffs; that she was issued appropriate traffic citations and cited for disorderly conduct; that the registered owner picked up the vehicle; and that R.S. was "released and sent on her way." JA578-581, JA960-963.

Vanderpool's report did not reflect the reality of his and Dupree's interactions with R.S. resulting from the traffic stop. *See* JA581, JA963. The report omitted information about Vanderpool engaging in sexual intercourse with R.S. JA963. The report also omitted that Vanderpool and Dupree impounded the car R.S. was driving and that it was towed

away from the scene. JA581, JA963. The report also omitted any information about Vanderpool and Dupree transporting R.S. from the scene to the Fairmount Heights police station to the tow lot. JA581, JA963. The report stated that the vehicle's owner retrieved the vehicle, even though R.S., and not the vehicle's owner, retrieved the vehicle, and it omitted that Vanderpool procured the vehicle's release to R.S. JA963. On its face, the report made it appear as though the incident was a routine traffic stop and that R.S. and the officers never left the scene during the incident.

3. Vanderpool knew, based on his prior training, that officers could be federally investigated for official sexual misconduct, and after the incident he immediately engaged in efforts to cover up that he had sex with an arrestee in his custody.

Vanderpool had received training about the civil rights of individuals in custody and about police sexual misconduct. JA950. Specifically, Vanderpool was trained that having sex with someone in custody could subject him to state and federal criminal investigation and prosecution, even if he believed the encounter was "consensual." JA950.

The evidence at trial demonstrated that Vanderpool knew that he could be accused of sexual misconduct and that in the immediate

aftermath of the incident, he wrote the traffic citations with the intent to cover up this misconduct. Specifically, three days after the incident, Vanderpool began exchanging audio voice messages with a friend, who was formerly in law enforcement, in which Vanderpool discussed the encounter with R.S. JA1638-1651 (Gov't Exs. 34-40). The recordings reflect that Vanderpool admitted to, *inter alia*, "fucking her while she was in custody" and writing citations so "it don't look like she's an exception" and because it would "look[] worse" if he had not charged her. JA1639-1640, JA1646-1647 (Gov't Exs. 34A-35, 38-38A). As Vanderpool explained to his friend, "At least if you charge her with some stuff, then, you know, it looks like okay, she could just be mad or she could just be making an allegation." JA1646-1647 (Gov't Exs. 38-38A). Vanderpool also said that R.S. was "kind of crazy" and "suffered from depression" and that he "figured, hey, it's my word against hers. And, you know, I went through the normal procedure." JA1650-1651 (Gov't Exs. 40-40A).

4. Vanderpool ensures Dupree is aware of the false report.

On September 17, 2019, the Fairmount Heights Chief of Police requested that the Prince Georges' County Police Department (PGCPD) investigate Vanderpool's conduct. JA569, JA1037. That same day,

Vanderpool messaged Dupree asking, "why [the fuck] is the sheriff[] at my house?" JA559, JA999-1000. Dupree denied knowing why the sheriff was at Vanderpool's residence. JA560, JA1002-1003. Around two hours later, Vanderpool texted Dupree a photograph of a computer screen displaying the case folder for the R.S. traffic stop and another one displaying the false narrative Vanderpool had drafted for the incident report. JA561-567, JA1004-1007, JA1024-1027. Dupree quickly responded, "[c]opy," suggesting he understood the message Vanderpool meant to convey by sending both photographs. JA568, JA1007-1008.

Approximately one month later, on October 6, 2019, Vanderpool once more sent the photographs to Dupree with a message that said, "The report for that chick, the traffic stop and detention only lasted an hour, and she was sent on her way." JA569-572. He followed this message by telling Dupree, "[t]raffic stop was at 11:22 p.m. It was coded at 12:31 a.m." JA572-573.

B. The search warrants

The PGCPD obtained two search warrants to investigate Vanderpool. During the subsequent federal investigation, the FBI also obtained a search warrant.

1. The December 2019 state warrant to search Vanderpool's residence

On December 2, 2019, the PGCPD obtained (1) a warrant for Vanderpool's arrest for rape under Maryland law and (2) a warrant for Vanderpool's residence authorizing the seizure and search of evidence of the charged offense, including electronic devices. JA342. Vanderpool refers (*e.g.*, Br. 35) to the residence search warrant as the "[f]irst [s]tate warrant."

The first state warrant application was supported by an affidavit sworn out by Lieutenant M. Ebaugh of the PGCPD. JA38-42. Ebaugh's affidavit recounted the facts surrounding R.S.'s arrest, transport to the police station, and encounter with Vanderpool. JA39-40. He stated, based on the facts developed during the investigation and his training and experience, that he believed that evidence of rape was located at Vanderpool's residence. JA40. Ebaugh knew from his "training, knowledge, and experience" that "persons who commit crimes from which they derive personal satisfaction often keep mementos, trophies, or detailed accounts of their experiences." JA40. And "[b]ased on facts provided by the witnesses" to the crime, it was Ebaugh's "belief that the Defendant took photographs of the victim," which could likely "be stored"

digitally on multiple devices. JA40-41.[2] Ebaugh also knew that "persons involved in the crimes of violence [sic] often utilize cellular telephones to communicate with witnesses and co-conspirators . . . and maintain records of these contacts within their cellular phones." JA41.

Finally, "[b]ased on the facts provided by the witnesses," Ebaugh knew that Vanderpool "wore specific clothing that was not his police-issued uniform during the time that he committed these crimes" and "stole gold wrapped Magnum condoms from [R.S.]'s car and that all were not used that day and may be contained in the residence." JA41.

The following day, the PGCPD executed the search warrant, "seized multiple devices" from Vanderpool's residence—not including his personal cell phone—and arrested him near his residence. JA342. Police seized his personal cell phone incident to arrest. JA342.

2. The January 2020 state warrant to search electronic devices

On January 17, 2020, the PGCPD obtained warrants to search each of the electronic devices state police had seized in the December search

[2] The victim had reported that Vanderpool had taken photos of her during the incident. These photos were later discovered on Vanderpool's phone but were not introduced as evidence in the federal trial. JA25, JA101.

and arrest, including one for Vanderpool's cell phone. JA43-47. Vanderpool refers (*e.g.*, Br. 19) to this warrant as the "second state warrant."

The second state warrant application was supported by an affidavit sworn out by Detective C. Savoy of the PGCPD. JA44-47. Savoy explained that "[d]uring the course of the [State's rape] investigation it ha[d] been determined that the Defendant was in constant communication with the witness officer as well as the employees from the tow company from the time of the incident until the time he was arrested." JA45. Further, "[d]uring the course of the investigation it ha[d] been determined that the Defendant photographed the Victim with his cell phone." JA45.

Savoy further explained that

> [w]hen cellular telephones are used, certain information is generated and stored by the cellular carrier, including . . . call detail records, text and call history, and cellular tower information. This information can then be used . . . to place a particular phone at a general location at a particular time. Furthermore, the call records can create connections between co-conspirators by showing the contact and communication they have . . . after the crime.

JA46. Savoy sought authority to "capture all stored data to include but not limited to: photographs, . . . text messages, . . . and call details." JA46.

In describing the investigation, Savoy also stated that the cell phone had been "recovered from the upstairs bedroom in [Vanderpool]'s residence" during the search of his home. JA45. This was an error. As the United States later explained to the district court, Savoy had "mistakenly copied and pasted information into the search warrant" for this device "from the search warrants she had prepared for the numerous other devices recovered from the defendant's residence that same day." JA89. Rather, the personal cell phone was recovered from Vanderpool's person during a search incident to his arrest. JA89.

3. The June 2020 federal warrant to search and seize electronic devices

In February 2020, the PGCPD referred Vanderpool's case to the FBI for investigation. JA513. On June 23, 2020, the FBI obtained a warrant to take possession of, and search, the electronic devices held by the PGCPD. JA50, JA342-343. Vanderpool refers (*e.g.*, Br. 19) to this as the "federal warrant."

The federal warrant application was supported by an affidavit sworn out by FBI Special Agent Jaclyn Bloomingdale. JA51-64. Bloomingdale attested that there was probable cause to believe that several electronic devices contained evidence of violations of federal law. JA116. The warrant authorized the FBI to search eleven "target devices." JA129.

C. Vanderpool's state charges and conviction

The State of Maryland charged Vanderpool with various offenses in December 2019, including rape, sex with a person in custody, assault, and misconduct in office. JA73, JA405. In January 2023, he went to trial in front of a jury. JA73. At trial, Vanderpool admitted that he arrested R.S., had the car she was driving towed, took her to the police station, had sex with her, and then drove her to the tow lot where Vanderpool had the tow company release the car to R.S. JA524-526, JA530-540. The federal government received a transcript of Vanderpool's testimony in late March 2023. JA192.

The state jury convicted Vanderpool of engaging in sexual contact with a person in custody but acquitted him of all other charges. JA73-74, JA405. Vanderpool was sentenced to time served. JA74.

D. The federal indictment and subsequent proceedings

In September 2021 (prior to Vanderpool's trial in state court), a federal grand jury indicted Vanderpool for deprivation of civil rights under color of law in violation of 18 U.S.C. 242. Indictment, *United States v. Vanderpool*, No. 8:21-cr-354 (D. Md. Sept. 8, 2021) (*Vanderpool I*). The United States subsequently filed (and the district court granted) a motion to dismiss that indictment without prejudice in July 2023. *Ibid.*

Around the same time as the Section 242 indictment was dismissed, another federal grand jury returned the instant indictment against Vanderpool for writing a false and misleading incident report to obstruct an investigation within the jurisdiction of a federal agency, in violation of 18 U.S.C. 1519. JA16-18. Specifically, the indictment alleged that Vanderpool (1) omitted that he and another officer took the handcuffed victim to an abandoned police station; (2) omitted that he had sex with R.S.; (3) omitted that he and another officer had R.S.'s vehicle towed and falsely stated that the registered owner picked up the vehicle; and (4) omitted that he procured the release of R.S.'s vehicle without R.S. having to pay the release fee. JA17. The indictment alleged that these statements were false and misleading because, as Vanderpool knew, he

and another officer took R.S. to the abandoned police station; he had sex with R.S.; he and another officer had R.S.'s vehicle towed and R.S., not the vehicle's owner, retrieved the vehicle; and he procured the release of R.S.'s vehicle without the release fee. JA17-18.

Vanderpool filed several unsuccessful motions relevant to this appeal.

1. Denial of motion to dismiss for preindictment delay

Vanderpool moved to dismiss the indictment for preindictment delay based on the almost four years between falsifying his report and the United States obtaining a Section 1519 indictment. JA72-80. The district court denied that motion. JA273.

First, the court determined that the operative period of delay was "longer than five months" (the United States' position) "but less than three years, nine months, and 29 days" (Vanderpool's position). JA264.

Second, the court determined that Vanderpool could not establish actual prejudice based on the unavailability of Dupree and another potential witness, Lieutenant Ivey. JA265-270.

Third, the court determined, considering the "slight, possibly nonexistent, prejudice" to Vanderpool, that the United States had an

appropriate justification for any delay. JA271. Two reasons supported the court's conclusion: (1) the federal investigation continued after, and was based on, the receipt of the state court transcripts; and (2) the "COVID-19 pandemic precluded more efficient pretrial investigation." JA270-271. Neither of these justifications betrayed fundamental conceptions of justice or the community's sense of fair play and decency. JA272-273.

2. Denial of request for *Franks* hearing and to suppress evidence

a. Vanderpool also requested a *Franks* hearing, *see Franks v. Delaware*, 438 U.S. 154 (1978), and moved to suppress evidence gathered as a result of the two state warrants and the federal warrant. JA19-36.

As to the first state warrant, Vanderpool argued that the warrant was facially deficient because it was "overbroad [and] allowed for the seizure of broad categories of items without any limitation or connection to the facts offered in support of probable cause." JA23 (capitals omitted). He added that the warrant "fail[ed] to establish that the items sought . . . [we]re likely to be present in the home[] three months after the alleged [incident]." JA22.

Moreover, Vanderpool contended that Ebaugh omitted material information from his affidavit in support of the first state warrant and did so deliberately or with reckless disregard for the truth. JA24; *see Franks*, 438 U.S. at 155-156. Those alleged omissions were: (1) "that law enforcement was in possession of the photograph taken during the traffic stop" that Ebaugh relied on to search the residence; (2) that R.S. had not "indicat[ed]" in interviews with Ebaugh that "any additional photographs [were] taken"; and (3) "that the officers stopped R.S. for speeding." JA24-25.

As to the second state warrant, Vanderpool argued that the affidavit did not provide probable cause to search for "all stored data" in his personal cell phone (JA28-31), and that the search was overbroad (JA31-33).

As to the federal warrant, Vanderpool repeated his state-warrant arguments as "equally applicable." JA33. He also contended that the federal warrant was misleading because it stated that his personal cell phone was seized from his residence when, in reality, it was "taken from Mr. Vanderpool at his arrest." JA33; *see* p. 12, *supra*. Further, he contended that there was an "unreasonable period of delay between the

phone's seizure" and the FBI's application for a warrant to search it. JA34-35.

b. The district court denied Vanderpool's request for a *Franks* hearing and denied his motion to suppress. JA344, JA376.

Regarding the first state warrant, the district court found that there was probable cause to search Vanderpool's residence for evidence of the crime because Ebaugh's affidavit "included factual assertions linking the items to be seized to [Vanderpool's] home." JA355. And the information supporting the affidavit was not stale because "perpetrators of sexual assault often retain the sort of mementos and records the warrants sought." JA356. Nor was the warrant's scope "[]either overbroad []or inadequately specific." JA357. The court also determined that none of the alleged omissions from Ebaugh's affidavit were material (JA344-346), and that, in any event, Vanderpool "put[] forth no proof" that any omissions were deliberate or made with reckless disregard for the truth (JA346).

Regarding the second state warrant and federal warrant, the district court noted that this Court had "twice rejected [Vanderpool's] proposition" that "police must establish probable cause as to each specific

category of files or information they hope to search on an electronic device." JA359 (citing *United States v. Cobb*, 970 F.3d 319, 328 (4th Cir. 2020), *as amended* (Aug. 17, 2020), and *United States v. Williams*, 592 F.3d 511, 521-522 (4th Cir. 2010)); *see* JA360. The court also found that there was probable cause for the warrant and that it was not unconstitutionally overbroad. JA359-360.

As for the misstatement in Savoy's and Bloomingdale's affidavits about where Vanderpool's cell phone was seized, the district court credited the United States' representation that the error was inadvertent as Vanderpool submitted no evidence to the contrary. JA347-348. Moreover, the error was immaterial, because the location from which the cell phone was lawfully seized had nothing to do with whether there was probable cause to believe it would contain evidence of a crime. JA348. As for his arguments that the affidavit in support of the federal warrant omitted information that would have undermined Dupree's and R.S.'s credibility, the court found these omissions were also immaterial because they did not so undermine the witnesses' credibility as to render their statements demonstrably unreliable. JA348-350. And again,

Vanderpool had not shown that any omission was deliberate or made with reckless disregard for the truth. JA350.

The district court lastly rejected Vanderpool's argument that there was inordinate delay between the seizure of his personal cell phone and the warrant to search it, reasoning that any delay was insignificant and excusable: "the Federal Government proceeded as quickly as it reasonably could under the unique constraints and devastation of the opening weeks of the COVID-19 pandemic." JA360-376.

The case proceeded to a bench trial.

3. Denial of Vanderpool's Rule 29 motion

After the United States presented its case-in-chief, Vanderpool moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29. JA897. Among other sufficiency challenges, Vanderpool contested the evidence supporting the third element of a Section 1519 claim, which requires showing that the matter involving the false statements was "within the jurisdiction of . . . the United States." 18 U.S.C. 1519.

The district court determined that the United States had satisfied its burden to show that Vanderpool's misconduct on the September 6,

2019, incident was within jurisdiction of the United States. JA904-905. "The government ha[d] introduced indicia of the fact that Mr. Vanderpool was acting under color of law and that the sexual intercourse with [R.S.] was indicative of nonconsensual sex." JA904. And an FBI agent had testified "that she would investigate an officer who was suspected to have sex with someone in their custody while . . . on duty" and that "[h]aving nonconsensual sex with a suspect in their custody would violate a person's civil rights" under 18 U.S.C. 242. JA904.

4. Conviction and post-trial motions

Following the denial of Vanderpool's Rule 29 motion, the defense declined to put on any evidence. JA905. The district court read into the record findings of fact (JA942-952) and found Vanderpool guilty (JA952; *see* JA1340). Vanderpool filed an omnibus post-trial motion renewing arguments from his earlier motions to suppress and renewing his Rule 29 motion. JA1341-1374; *see* JA1422 (summarizing arguments). The district court denied the motion. JA1419-1434.

Vanderpool was sentenced to three years of probation (JA1619-1623) and appealed his conviction (JA1624).

SUMMARY OF ARGUMENT

1. The government proved beyond a reasonable doubt that Vanderpool "knowingly . . . ma[de] a false entry in [a] record, document, or tangible object with the intent to impede, obstruct, or influence the investigation . . . of [a] matter within the jurisdiction of [a] department or agency of the United States." 18 U.S.C. 1519.

a. This Court reviews de novo the district court's determination that evidence was sufficient for proof beyond a reasonable doubt. In conducting this review, the evidence is taken in the light most favorable to the prosecution.

b. i. The requirement in 18 U.S.C. 1519 that a matter be "within the jurisdiction" of a federal department or agency is a "jurisdictional" requirement. *United States v. Hassler*, 992 F.3d 243, 247 (4th Cir. 2021). The government need not prove that the defendant knew (or even should have known) that the investigation he was impeding was within federal jurisdiction—only that the matter *was* within federal jurisdiction.

Ample evidence showed that an investigation into Vanderpool's encounter with R.S. fell within federal jurisdiction. Section 242 makes it a federal crime for an individual acting "under color of state law" to

"willfully" deprive another person of constitutional rights. 18 U.S.C. 242. Vanderpool does not contest that a police officer's nonconsensual sexual interaction with an arrestee violates that statute. Nor does he contest that the FBI investigates, and the Department of Justice prosecutes, violations thereof. Because there was ample evidence that Vanderpool made a false entry in the incident report in order to impede a potential investigation into his encounter with R.S.—and that encounter fell within the jurisdiction of the FBI and Department of Justice (DOJ) as a potential violation of 18 U.S.C. 242—the United States met its burden to prove a violation of 18 U.S.C. 1519.

ii. Vanderpool tries to layer on an atextual requirement to the statute, specifically that a federal investigation must be "reasonably foreseeable." Such a requirement is inconsistent with this Court's decision in *Hassler* that the jurisdiction-of-a-federal-agency requirement of 18 U.S.C. 1519 is jurisdictional only and has no mens rea component.

Vanderpool derives his "reasonably foreseeable" standard from caselaw originating under a different obstruction-of-justice statute, 18 U.S.C. 1512(a)(1)(C). However, there are material textual differences between Sections 1519 and 1512(a)(1)(C). *Hassler* controls and precludes

Vanderpool's argument. Further, and even if there were a "reasonable foreseeability" requirement, ample evidence established that a federal investigation was reasonably foreseeable.

2. Vanderpool moved to suppress the evidence discovered as a result of three warrants and requested a *Franks* hearing to test the legal validity of each warrant. The district court properly rejected all of Vanderpool's Fourth Amendment arguments because Vanderpool has failed to identify any false and material statement or omission, let alone one made with reckless disregard for the truth.

a. *Franks v. Delaware*, 438 U.S. 154 (1978), allows defendants to challenge the veracity of an affidavit in support of a warrant by showing that the affiant made a false and material statement knowingly and intentionally or with reckless disregard for the truth. The defendant may be entitled to a hearing on a *Franks* claim only if he can make a substantial preliminary showing that he will be able to satisfy this test.

i. When reviewing the denial of a request for a *Franks* hearing, the Court reviews legal conclusions de novo and factual findings for clear error.

ii. Vanderpool argues that the first state warrant affidavit was deficient because the affiant omitted to mention that Vanderpool and Dupree pulled R.S. over for speeding. That omission is not material because the basis for stopping R.S. has no bearing at all on whether the affidavit otherwise provided probable cause to suspect Vanderpool of committing rape under Maryland law and having evidence of the crime at his residence. Nor has Vanderpool provided any evidence that the omission was made deliberately or with reckless disregard for the truth.

For the second state warrant and federal warrant, Vanderpool focuses on the omission of various inconsistencies between statements by Dupree and R.S. regarding what happened on the night of her arrest. He argues that these inconsistencies undermine the witnesses' credibility. But as the district court found, Dupree and R.S. were consistent on the facts that gave rise to probable cause: most significantly that Vanderpool had sex with R.S. while she was distressed and in police custody. Moreover, their statements did not so undermine their credibility that the affiant could not rely on any of their statements. And as with the affidavit for the first state warrant, Vanderpool has provided no evidence

of intent or recklessness, and the federal warrant reasonably relied on the state affidavit.

b. i. When reviewing the denial of a motion to suppress, this Court reviews the district court's legal conclusions de novo and factual findings for clear error.

ii. Vanderpool argues that all three warrants issued during the investigation lacked probable cause, were overbroad, and lacked specificity. He additionally argues that there was an unreasonable delay between when the State seized his personal cell phone and the FBI secured a warrant to search the device.

The first state warrant was supported by an affidavit with ample information to establish probable cause for a search of Vanderpool's residence. The affidavit contained statements from an officer that the investigation revealed that Vanderpool had taken photographs of R.S. with his cell phone and had taken condoms from her car, and that, based on the officer's experience, those who commit sexual assault often retain these and other mementos of their offenses. That information was sufficient.

The warrants were also not overbroad. They listed particular items and made clear that these items were to be seized in order to investigate enumerated crimes. The Fourth Amendment is satisfied when a warrant delineates what items may and may not be seized or limits the officer's discretion to seizing only evidence of a particular crime. The warrants met that standard.

There was no delay, much less an unreasonable delay, prior to the issuance of the warrant to search Vanderpool's personal cell phone. When law enforcement seizes an item, it must act diligently in securing a warrant to search that item. But the federal government did not take possession of Vanderpool's personal cell phone until after it got a warrant to search the device. Rather, the State had previously seized and held Vanderpool's cell phone pursuant to a lawful search incident to arrest.

Even if the Court were to assess the reasonableness of the time lag between the State's lawful seizure of Vanderpool's personal cell phone and the issuance of the federal warrant, that period of time was not unreasonably long. The federal government was working diligently in an ongoing investigation in the middle of a debilitating pandemic; the government had a strong interest in the cell phone; and Vanderpool had

minimal possessory interest in the device because he was in state custody.

iii. Even if any of the warrants were legally defective, the evidence obtained as a result therefrom should not be suppressed. The good-faith exception to the exclusionary rule applies when an officer's reliance on a warrant could have been deemed reasonable. Vanderpool has identified no facts that would suggest reliance on the three warrants issued during this investigation could not have been deemed reasonable.

3. The district court correctly held that any preindictment delay did not violate Vanderpool's due-process rights under the Fifth Amendment. To show a due-process violation due to a preindictment delay, the defendant must show that the delay caused substantial actual prejudice. If he does, then the Court determines whether, considering the government's reasons for delay, there has been a violation of fundamental conceptions of justice or the community's sense of fair play and decency.

a. When reviewing a district court's denial of a motion to dismiss an indictment for preindictment delay, this Court reviews the court's legal conclusions de novo and factual findings for clear error.

b. Vanderpool cannot meet the heavy burden of establishing substantial actual prejudice.

i. The source of Vanderpool's alleged prejudice is the unavailability of two witnesses: Dupree and Ivey. To establish that their unavailability caused substantial actual prejudice, Vanderpool must (1) identify the witnesses; (2) demonstrate, with specificity, the expected content of the witnesses' testimony; (3) establish that he made serious attempts to locate them; (4) show that the information they would have provided was not available from other sources; and (5) show that the absence of their testimony prejudiced his case.

ii. Vanderpool did not demonstrate with specificity the anticipated content of either Dupree's or Ivey's testimony, how that testimony would tend to exculpate him, or whether that information could have come from another source. He argues that their testimony would have impeached R.S.'s testimony about having sex with Vanderpool and provided a basis for the fact-finder to infer that "poor training, vague instructions, and hostility" pervaded the police department.

Assuming that he would have elicited such testimony, it would not have benefitted Vanderpool's case. R.S. did not testify, so he could not

impeach her. Moreover, Vanderpool admitted to having sex with her while she was in custody in the police station. And there were other ways to impeach R.S.'s credibility if that were necessary and permissible.

Vanderpool did not describe with specificity what testimony Ivey would have provided regarding the police department's allegedly poor training, vague instructions, and hostility. Nor has Vanderpool shown or even alleged that he could not have elicited testimony on that topic from another witness. Finally, none of this information would have undermined the government's case: the evidence established that Vanderpool was trained that officers must write complete and accurate reports and that he could be criminally investigated and prosecuted for having sex with an arrestee in his custody. Neither poor training nor vague instructions nor "hostility" would negate his liability.

c. Even if there were actual prejudice from the preindictment delay, continuing an investigation is a valid basis for delay. The district court correctly found that the delay in indicting Vanderpool for violating 18 U.S.C. 1519 was the result of the United States' "good faith" investigation, which the COVID-19 pandemic had impeded. Moreover, the United States received new powerful evidence in early 2023 as a

result of Vanderpool's state-trial testimony. Vanderpool's vague and conclusory suggestion that the United States sought delay (which ordinarily benefits defendants, not the prosecution) is baseless.

ARGUMENT

I. Sufficient evidence supported Vanderpool's conviction under 18 U.S.C. 1519.

The district court correctly found that the United States proved beyond a reasonable doubt the jurisdictional element of the sole count of conviction. Section 1519 proscribes "knowingly . . . mak[ing] a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation . . . of any matter within the jurisdiction of any department or agency of the United States." *See United States v. Hassler*, 992 F.3d 243, 246 (4th Cir. 2021) (laying out the elements).

On appeal, Vanderpool does not contest the sufficiency of the evidence supporting the district court's factual findings about the defendant's misconduct, including that he sexually penetrated R.S.; that the circumstances indicated that the defendant coerced R.S. into having sex; that, even if he believed the sex was purely consensual, he was trained as an officer that he could be federally investigated for having sex

with R.S.; that his incident report was false and misleading; and that he engaged in other misleading conduct, such as issuing a traffic citation and contacting Dupree, with the intent to impede an investigation. Instead, the defendant challenges only whether the government proved that he intended to impede, obstruct, or influence an investigation within the jurisdiction of a federal agency—here, the FBI and DOJ. *See* Br. 20-26.

A. Standard of review

This Court "reviews de novo a district court's denial of a motion for acquittal, made pursuant to Rule 29." *United States v. Davis*, 75 F.4th 428, 437 (4th Cir. 2023). In conducting this review, the Court must "view[] the evidence in the light most favorable to the prosecution," and "sustain in a guilty verdict" if it is "supported by substantial evidence." *Ibid.* (citations omitted). Evidence is substantial when "a reasonable [fact]finder could accept [the evidence] as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt." *Ibid.* (citation omitted). Ultimately, a defendant challenging the sufficiency of the evidence faces a "heavy burden" because "reversal for

insufficient evidence is reserved for the rare case where the prosecution's failure is clear." *Ibid.* (alteration and citations omitted).

B. Sufficient evidence supported the finding that an investigation into Vanderpool's conduct was within the jurisdiction of a federal agency.

As "[e]very circuit to address the issue" has agreed, "knowledge of a federal investigation under [Section] 1519 is a jurisdictional element and not a separate mens rea requirement." *Hassler*, 992 F.3d at 247. In other words, the government bears the burden of proving that the defendant "intended to obstruct the investigation of *any* matter that happens to be within the federal government's jurisdiction" regardless whether the defendant knew of that jurisdiction or not. *Ibid.* (quoting approvingly *United States v. Gray*, 692 F.3d 514, 519 (6th Cir. 2012)); *accord United States v. Sheffler*, 125 F.4th 814, 826 (7th Cir.) ("It is enough for the defendant to intend to obstruct an investigation, and on an unrelated note, for the investigation to be within federal jurisdiction."), *cert. denied*, 145 S. Ct. 2785 (2025). The United States satisfied that burden.

1. Special Agent Hung's testimony and evidence of facts suggesting a nonconsensual sexual encounter between R.S. and Vanderpool were sufficient evidence to prove federal jurisdiction.

Section 242—the statute underlying Vanderpool's original federal indictment—makes it a federal crime for an individual acting "under color of state law" to "willfully subject[] any person . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States." 18 U.S.C. 242. The Department of Justice prosecutes violations of 18 U.S.C. 242, *see* Indictment, *Vanderpool I*, *supra* (No. 8:21-cr-354), and, as Agent Hung testified, the FBI investigates alleged violations thereof (JA904-905).

Vanderpool does not contest that a police officer's nonconsensual sexual interaction with an arrestee constitutes a violation of 18 U.S.C. 242. Br. 20-26; *see, e.g.*, *United States v. Legins*, 34 F.4th 304, 311 & n.5 (4th Cir. 2022) (noting similar charge); *United States v. Volpe*, 224 F.3d 72, 74 (2d Cir. 2000) (noting similar charge and guilty plea). And Agent Hung confirmed in her testimony that the FBI would and does investigate such incidents. JA904; *see also* JA818-820. Because it is unnecessary that Vanderpool knew (or even suspected) that his sexual encounter with R.S. came within the jurisdiction of the federal

government, *see Hassler*, 992 F.3d at 247, all that matters is whether there was sufficient evidence to prove he "intended to obstruct *[an]* investigation" into the matter. *Ibid.* (citation omitted).

Vanderpool does not contest that there was. *See* Br. 20-26. He wrote an incident report that characterized an arrest in which he took an apparently distressed 19-year-old arrestee to a deserted police station, told her she had to "make this right," penetrated her on the police station couch, and then coordinated the release of a car that he had towed from the scene, as a run-of-the-mill encounter in which a disorderly individual was "released and sent on her way" after the registered owner of the vehicle came to the scene and picked up the vehicle. JA946, JA948-949, JA963. Vanderpool had "received training about the civil rights of people in custody" and "about police sexual misconduct," in which he learned that nonconsensual sex is a violation of the law; that a person's in-custody status complicates her ability to consent to sex; and that in-custody sexual conduct could subject him to investigation "even if he believed the sex was purely consensual." JA950. Vanderpool's subsequent communications with Dupree, in which he attempted to ensure that Dupree would back his story by parroting the narrative Vanderpool

fabricated in his incident report, and with his former-law-enforcement friend, in which Vanderpool explained his strategy that, by making it look like he followed "normal procedure" to ensure that any complaint R.S. might later file would not appear credible, demonstrate that he believed that the report should exculpate him from further investigation.[3] *See* pp. 6-7, *supra*.

In short, there was more than substantial evidence to find that Vanderpool "intended to obstruct the investigation" into his sexual encounter with R.S. *Hassler*, 992 F.3d at 247 (citation omitted). Given Vanderpool's role as a police officer in this incident vis-à-vis an arrestee, any such investigation fell within the ambit of 18 U.S.C. 242 (as he does not contest). And because investigations of 18 U.S.C. 242 "happen[] to be within the federal government's jurisdiction" (as he also does not contest), *Hassler*, 992 F.3d at 247, there was ample evidence to satisfy this element

[3] That Vanderpool issued traffic tickets and the criminal citation in order to cover up this crime demonstrates that he knew, well before he wrote the false incident report, that he could be investigated for violating the law and that he consciously sought to create a paper trail that he could later use to mislead investigators about his guilt. JA540-542, JA966-968.

of his 18 U.S.C. 1519 conviction—the only element he contends was not met.

2. Vanderpool's argument to the contrary is meritless.

Vanderpool contends that the evidence of federal jurisdiction is insufficient because Special Agent Hung's testimony "only permitted speculation, not permissible inference, that an FBI investigation was *reasonably foreseeable*." Br. 26 (emphasis added). Even if this characterization of Agent Hung's testimony was accurate, which it is not, Vanderpool's assertion is beside the point in light of binding Fourth Circuit precedent.

As explained above (p. 33), Section 1519's requirement that an investigation fall "within the jurisdiction of any department or agency of the United States" is jurisdictional only. *Hassler*, 992 F.3d at 247 (citation omitted). It is a fact that the United States must prove to prosecute the crime—like proving that a firearm traveled in interstate commerce, *see Rehaif v. United States*, 588 U.S. 225, 230 (2019)—not one bearing on intent. *Sheffler*, 125 F.4th at 826. It is therefore irrelevant whether it was "reasonably foreseeable" (Br. 26), that the FBI would act on its jurisdiction to carry out the investigation that Vanderpool sought

to impede. *Sheffler*, 125 F.4th at 827; *United States v. Gonzalez*, 906 F.3d 784, 795 (9th Cir. 2018). As long as the FBI had the authority (or "jurisdiction") to do so—and Vanderpool does not contest that it did—the jurisdictional element of 18 U.S.C. 1519 is satisfied.

Vanderpool's "reasonably foreseeable" standard originates from caselaw interpreting a *different* obstruction-of-justice statute, 18 U.S.C. 1512(a)(1)(C). Br. 22-23 (citing *Fowler v. United States*, 563 U.S. 668 (2011) (interpreting 18 U.S.C. 1512(a)(1)(C))). Section 1512(a)(1)(C) criminalizes killing or attempting to kill someone with "intent to . . . prevent the communication by any person to a law enforcement officer or judge of the United States" related to certain federal crimes. Unlike in Section 1519, the "intent" language in Section 1512(a)(1) modifies the entirety of the clause set forth in Section 1512(a)(1)(C): to "prevent the communication by any person to a law enforcement officer . . . of the United States of information relating to the commission . . . of a Federal offense." In such cases, the government must show that a defendant intended not only to prevent the communication to law enforcement generally, but also a "reasonable likelihood that a relevant

communication would have been made to a federal officer." *Fowler*, 563 U.S. at 670 (emphasis omitted).

By contrast, as this Court has already held, Section 1519's intent requirement does not modify the federal jurisdictional language of the statute. *Hassler*, 992 F.3d at 247. The "term 'knowingly' . . . modifies only the surrounding verbs: 'alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry.'" *United States v. Yielding*, 657 F.3d 688, 714 (8th Cir. 2011). The reasoning in *Fowler*, based on grammatically different statutory language, is inapplicable here.[4]

Further, even if the statute under which Vanderpool was convicted contained a "reasonably foreseeable" requirement, ample evidence established that a reasonable police officer would have foreseen a federal investigation: Vanderpool was trained that official sexual misconduct could form the basis of a state or federal investigation and that the FBI investigates alleged willful deprivations of constitutional rights under

[4] Vanderpool also argues (Br. 23-26) that *United States v. Smith*, 723 F.3d 510 (4th Cir. 2013), *Marinello v. United States*, 584 U.S. 1 (2018), and *Fischer v. United States*, 603 U.S. 480 (2024), support his argument for applying the reasonably foreseeable standard to Section 1519. None of these cases involved 18 U.S.C. 1519, and none can overcome *Hassler*.

color of law. Indeed, the evidence—which included Vanderpool's own words and reasoning—showed that Vanderpool wrote a false report precisely because he wanted to cover up misconduct that he was trained could be federally investigated.

II. The district court properly denied Vanderpool's motions to suppress and request for a *Franks* hearing.

Vanderpool contends (Br. 27-44) that evidence gathered as a result of three separate warrants must be suppressed and that he was entitled to a *Franks* hearing to test the legal validity of these warrants. The district court rejected all of Vanderpool's Fourth Amendment arguments (JA376) and was right to do so.

A. Request for a *Franks* Hearing

The district court properly denied Vanderpool's request for a *Franks* hearing. Vanderpool failed to satisfy either of the two prongs required to obtain a *Franks* hearing: he could not and cannot point to facts suggesting that any affiant acted with reckless disregard for the truth or that the affidavit would fail without the objected-to content.

Under *Franks v. Delaware*, 438 U.S. 154 (1978), defendants challenging the veracity of an affidavit in support of a warrant must satisfy two prongs: (1) "the 'intentionality' prong" under which "the

defendant must show that 'a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit"; and (2) "the 'materiality' prong" under which "the defendant must show that 'with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause.'" *United States v. Lull*, 824 F.3d 109, 114 (4th Cir. 2016) (quoting *Franks*, 438 U.S. at 155-156); *see United States v. Tate*, 524 F.3d 449, 454 (4th Cir. 2008) (observing that *Franks* applies to material omissions as well but that the defendant's "burden increases yet more" in that context).

In order to merit a hearing on a *Franks* claim, the defendant must make a "substantial preliminary showing" as to both prongs. *United States v. Seigler*, 990 F.3d 331, 344 (4th Cir. 2021) (citation omitted).

1. Standard of review

When assessing the district court's denial of a request for a *Franks* hearing, this Court reviews the district court's legal conclusions de novo and factual findings for clear error. *Seigler*, 990 F.3d at 344.

2. The district court properly denied Vanderpool's request for a *Franks* hearing.

a. Below, Vanderpool asserted that "three significant omissions" rendered the first state warrant affidavit legally defective. Br. 29; JA24-25. On appeal, however, he renews only his argument as to "the third" of these alleged omissions: the fact that "Vanderpool and Dupree initially pulled over R.S. for speeding." Br. 29.

The district court correctly rejected this argument. JA345. The crime of rape—for which Vanderpool was being investigated when the affidavit was made—depends not at all on the legality of the stop of R.S.'s vehicle. *See* Md. Criminal Law Code Ann. § 3-304 (West 2025); JA345. Assuming that the initial stop of R.S.'s vehicle was lawful, that fact in no way undermines the fair probability established by Ebaugh's affidavit that Vanderpool raped R.S. later that evening. *See United States v. Colkley*, 899 F.2d 297, 301 (4th Cir. 1990) ("For an omission to serve as the basis for a hearing under *Franks*, it must be such that its inclusion in the affidavit would defeat probable cause for arrest."). Nor would the lawfulness of the stop have any bearing on whether evidence of a later rape would be found in Vanderpool's residence. Vanderpool also provided no evidence that Ebaugh omitted this fact deliberately or with reckless

disregard for the truth. JA346. To the contrary, the affidavit was silent as to the legality of the stop: it did not assert or suggest that the stop was lawful or unlawful, and that fact was irrelevant.

In his brief (at 30), Vanderpool surmises that "[t]he entire narrative" of the affidavit "was intended to persuade the issuing judicial officer that Vanderpool lacked a basis for the stop and was engaged in an unlawful shakedown scheme from the moment he first encountered R.S." But, as the district court correctly found, Ebaugh "did not insinuate, much less seek to establish, that Vanderpool unlawfully stopped the victim." JA345. Indeed, Ebaugh stated that R.S. was asked to step out of her vehicle because she was driving without a license. JA39. Vanderpool's speculation rests on no proof and, as already stated, the lawfulness of the stop has no bearing on whether there was probable cause to believe he raped R.S. after making the stop. JA345-346.[5]

---

[5] Vanderpool's reliance (Br. 31-32) on this Court's decision in *Tate*, 524 F.3d 449, is misguided. The affiant in that case omitted to mention that his affidavit relied on information he learned from an allegedly unlawful police search of the defendant's property. *Tate*, 524 F.3d at 456-457. Vanderpool's stop of R.S.—lawful or not—was not the basis for Ebaugh's knowledge about the probable cause to search for evidence related to rape, and the lawfulness of the stop is irrelevant to his *Franks* claim.

b. For the second state warrant and federal warrant, Vanderpool argues (Br. 32-35) that the omission of information that would impeach Dupree's and R.S.'s credibility from the affidavits undermined probable cause. He asserts that the two witnesses were inconsistent regarding whether Dupree was present during the sexual encounter. Br. 32-33 (citing JA233-234).

Again, however, whether Dupree was present during the sexual encounter is irrelevant to whether there was a sexual encounter. As the district court found, the two witnesses "were consistent that Vanderpool and [R.S.] had sex" while she was in custody, which was the relevant fact giving rise to probable cause. JA350; *see Colkley*, 899 F.2d at 301 ("Omitted information that is potentially relevant but not dispositive is not enough to warrant a *Franks* hearing."). The inconsistencies between the two witnesses' statements did not so undermine their credibility that their accounts that Vanderpool had sex with R.S. at the police station could not be relied upon in establishing probable cause of rape. JA349-350; *cf. Lull*, 824 F.3d at 118 (reaching the opposite conclusion when the sole source of the affiant's information was a confidential informant deemed so untrustworthy that he was promptly "discharged").

Moreover, Vanderpool has provided "no direct evidence of intent or recklessness" by the affiants, Savoy and Bloomingdale. JA350; *see* Br. 34-35. Rather, he argues that both affiants "*must have been* subjectively aware" that these omissions would render the affidavits misleading because the omissions were (in his view) material. Br. 35 (emphasis added) (quoting *United States v. Pulley*, 987 F.3d 370, 377 (4th Cir. 2021)). However, this Court has warned against "inferr[ing] intent or recklessness from the fact of omission itself." *Colkley*, 899 F.2d at 301. This type of bootstrapping "collapses" *Franks*' two-pronged inquiry into a single prong. *Ibid.*[6] There is no indication that any affiant deliberately or even recklessly omitted this immaterial information, and Vanderpool's argument fails on this prong, too.

B. Motion to Suppress

1. Standard of review

When assessing the denial of a motion to suppress, this Court "review[s] the district court's legal conclusions de novo and factual

[6] Nor is the language that Vanderpool quotes (Br. 35) from *Pulley* to the contrary. This Court in *Pulley* used the phrase "must have been subjectively aware" to describe the defendant's burden, *see* 987 F.3d at 377, not to describe a logical inference, *see* Br. 35.

findings for clear error." *Pulley*, 987 F.3d at 376 (citation omitted). Evidence must be considered "in the light most favorable to the government." *United States v. Ordonez-Zometa*, 141 F.4th 531, 548 (4th Cir. 2025) (citation omitted), *petition for cert. pending*, No. 25-5651 (filed Sept. 11, 2025).

2. The district court properly denied Vanderpool's motion to suppress.

Vanderpool argues on appeal (Br. 35-41) that evidence obtained through all three warrants should have been suppressed because the warrants lacked probable cause, were overbroad, and lacked specificity. He further argues (Br. 41-44) that evidence that the FBI gathered from his personal cell phone should have been suppressed because there was an unreasonable delay in securing that information. He is incorrect on all counts. As the district court correctly concluded, each of the warrants was valid, and any delay in obtaining and executing the federal warrant was insignificant and excusable.

a. Regarding the first state warrant, Ebaugh's affidavit provided ample information to support probable cause that evidence of the crime of rape was located at Vanderpool's residence. As the district court explained:

> Not only did [the affiant] attest that Vanderpool had taken at least one photograph of the victim on his cell phone and had taken condoms from her car, he also attested that those who commit sexual assault often retain these and other mementos of their offenses and specified that unused condoms may be contained in the residence."

JA355. Ebaugh further attested that Vanderpool had been wearing khakis and military fatigues during the encounter rather than his police uniform, and "[i]t was reasonable to think that [his] clothing would be at his home." JA355.

That was enough. A warrant affidavit need not contain "factual assertions *directly* linking the items sought to the defendant's residence" to justify a search warrant of the home. *United States v. Grossman*, 400 F.3d 212, 217 (4th Cir. 2005) (citation omitted; emphasis added). Where there is probable cause that a defendant committed a crime and "it is reasonable to suspect" a perpetrator of that crime would keep evidence in his home, there is probable cause to search the defendant's home. *Id.* at 218; JA355.

On appeal, Vanderpool takes issue with the wording of the affidavit, which (he contends) "fundamentally failed to describe how Ebaugh possessed the information he presented to the state court." Br. 36-37. Rather than "state that he personally witnessed the events on September

6, 2019" or "who provided him with information about those events," Ebaugh "made unsourced statements using the passive voice." Br. 37. Vanderpool did not raise this objection in his motion below (JA19-35), and this objection is subject to plain error review. *See, e.g.*, *United States v. Lynn*, 592 F.3d 572, 577 (4th Cir. 2010). Defendant cites no error, and certainly no plain error, in the district court's finding of sufficient probable cause. Defendant cites no authority, and the government is aware of none, requiring an officer to "source" every statement in an affidavit when stating what facts an officer learned during the course of an investigation, Br. 37-39.[7]

To the contrary, even if Vanderpool had not waived this argument, the argument fails. Probable cause "exists where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found in a particular place." *United States v. Perez*, 393 F.3d 457, 461 (4th Cir.

[7] Vanderpool does not provide any meaningful argument as to why the second state warrant and federal warrant lacked probable cause and has thus waived this argument. *See* Br. 41 (incorporating his argument as to the first state warrant, which involved a different affidavit); *Grayson O Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017).

2004) (alterations, citation and internal quotation marks omitted). "It is well settled that probable cause may be founded upon hearsay and information received from informants," *United States v. DeQuasie*, 373 F.3d 509, 518 (4th Cir. 2004), and "[t]here is no set requirement that officers corroborate all information underlying a search warrant," *United States v. Robinson*, 221 F. App'x 236, 243 (4th Cir. 2007) (citing *Perez*, 393 F.3d at 462). Here, the affidavit indicated that a "witness officer" and R.S. were present during the traffic stop and at the police station (JA39-40) and contained a detailed description of Vanderpool's criminal activity, including his clothing, his theft and use of a specific brand of condoms, details of his sexual misconduct, and his taking a photograph with his cell phone, making clear that Ebaugh's knowledge was based on "something more substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation." *United States v. Wylie*, 705 F.2d 1388, 1390 (4th Cir. 1983) (citation omitted). The district court correctly concluded that Ebaugh's affidavit provided sufficient probable cause that evidence was located at Vanderpool's residence.

b. The warrants were not overbroad. The Fourth Amendment does not articulate a specific "particularity" requirement for warrants. *United States v. Cobb*, 970 F.3d 319, 326-327 (4th Cir. 2020), *as amended* (Aug. 17, 2020) (citations omitted). Rather, once probable cause is established to believe evidence of a crime will be found in a particular place, only two things need to be described in the warrant: "the place to be searched and the persons or things to be seized." *Id.* at 327 (citation modified). If the warrant is specific enough that the executing officer can distinguish between the items to be seized and those that are not, or if the warrant limits the officer's discretion to seizing only evidence of a particular crime, then "the particularity standard is met." *United States v. Blakeney*, 949 F.3d 851, 862 (4th Cir. 2020); *Cobb*, 970 F.3d at 327; *see United States v. Sueiro*, 59 F.4th 132, 139 (4th Cir. 2023).

The first state warrant authorized police to search Vanderpool's residence for particular clothing ("tan Khaki pants" and "Army fatigue shirts"); "gold wrapper Magnum condoms"; a variety of electronic media (still and digital) as well as devices capable of recording and transmitting that media; and journals or mail of the defendant. JA41-42. All this was

in support of an investigation into an alleged violation of rape under Maryland law. JA40-41.

The second state warrant authorized the search of Vanderpool's personal cell phone in support of an investigation into an alleged violation of rape under Maryland law. JA43-48; *see also* JA46 ("Your affiant will use the data recovered from this search warrant to either validate or exclude Martique Vanderpool['s] involvement in relation to the rape of R.S."). And the federal warrant authorized a search of various specific devices in relation to alleged violations of a variety of enumerated federal crimes. JA52-53.

"[W]hen a warrant states a charged offense, such reference to the crime effectively narrows the description of the items to be seized." *Sueiro*, 59 F.4th at 139. The items described in the warrants were particular and must be read in light of the crimes referenced in the warrants and accompanying affidavits. *Ibid.* These "description[s] of the items le[ft] nothing to the discretion of the officer[s]." *United States v. Williams*, 592 F.3d 511, 519 (4th Cir. 2010); JA358. Here, where the warrant specifically set forth probable cause that the subject used or was wearing specific items during the assault and electronic means to

communicate with multiple people about the assault, the warrant appropriately sought to seize those items that could have been used by the subject and then search those items for evidence relevant to the crime. The warrants were accordingly not overbroad.

c. Vanderpool next argues (Br. 41-44) that the district court should have suppressed the evidence that the FBI found on his personal cell phone because there was an unreasonable delay between when his personal cell phone was seized by the PGCPD and when the federal warrant to search it was issued. This argument fails, and suppression is not appropriate.

Where law enforcement seizes an item, they must act diligently in securing a warrant to search that item. *See United States v. Jacobsen*, 466 U.S. 109, 124 (1984). To determine whether a delay following the seizure of property violates the Fourth Amendment, a court must "balance the government's interest in the seizure against the individual's possessory interest in the object seized." *United States v. Pratt*, 915 F.3d 266, 271 (4th Cir. 2019). The inquiry focuses on two factors: (1) the justification for the delay, and (2) the defendant's possessory interest in the item. *Id.* at 271-272.

Here, there was no delay at all, much less an unreasonable one. The *State* seized Vanderpool's cell phone incident to arrest with a valid warrant. The federal government did not take possession of the cell phone until it obtained a warrant to both seize and search the device, and it promptly did both. *See* JA53, JA65. There was thus *no* delay between the federal government's seizure of the device and its effort to search it.[8]

Even applying the *Pratt* balancing test, any delay was reasonable. The government was working diligently in an ongoing investigation in the middle of a debilitating global pandemic. *See Pratt*, 915 F.3d at 272. And the government's interest in the cell phone was strong: it "was seized with probable cause to believe it would contain evidence of a crime, incident to Vanderpool's arrest pursuant to arrest warrant, mere feet from the home where the premises warrant authorized the Government to seize the device." JA364. At the same time, Vanderpool had minimal possessory interest in the device because he had already been arrested

[8] Vanderpool's argument on appeal seems to be limited to the search of his personal cell phone. However, there was also no delay with regard to the other devices. They were seized by the State pursuant to a lawful warrant and not taken by the federal government until the federal government secured its own warrant to seize and search. *See* JA53, JA57-58, JA65.

and placed in state custody. *See United States v. Sullivan*, 797 F.3d 623, 633 (9th Cir. 2015); JA365; *cf. United States v. Nkongho*, 107 F.4th 373, 384 (4th Cir.) (emphasizing that the defendant maintained a "high" "possessory interest" because she was *not* detained during the seizure of her devices), *cert. denied*, 145 S. Ct. 776 (2024).

3. Even if evidence were unlawfully obtained, the good-faith exception should apply.

Even assuming that any of the supporting affidavits failed to establish probable cause, or that a warrant was otherwise defective, or that a search pursuant to a warrant was unreasonable, suppression would not be proper in this case. When officers seize evidence in good-faith reliance on a facially valid warrant issued by a neutral magistrate, and the affidavit is later found to lack probable cause, the evidence is not subject to the Fourth Amendment's exclusionary rule. *See United States v. Leon*, 468 U.S. 897, 908 (1984); *Herring v. United States*, 555 U.S. 135, 140 (2009). When considering whether to apply the good-faith exception, courts "should examine the totality of the information presented to the magistrate in deciding whether an officer's reliance on the warrant could have been reasonable." *United States v. Legg*, 18 F.3d 240, 243 n.1 (4th Cir. 1994). Even so, "searches conducted pursuant to a warrant will

rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to establish that a law officer has acted in good faith in conducting the search." *United States v. Burton*, 756 F. App'x 295, 301 (4th Cir. 2018) (citation omitted). Under this standard, the officers' and agents' reliance on the warrants was certainly reasonable.

The facts set forth in each affidavit established the affiants' bases for believing that Vanderpool had engaged in both state and federal offenses and why evidence of those offenses would be found in the places identified. Vanderpool has not identified a basis for holding that any officer involved in this investigation engaged in conduct so egregious that exclusion is necessary in order to create "appreciable deterrence." *Herring*, 555 U.S. at 141 (quoting *Leon*, 468 U.S. at 909). The district court properly denied his motion to suppress.

III. The district court properly denied Vanderpool's motion to dismiss for preindictment delay.

The district court correctly held that any preindictment delay did not violate Vanderpool's due-process rights under the Fifth Amendment. JA273.

To analyze whether a preindictment delay violates the Fifth Amendment, this Court uses a two-step inquiry. *Jones v. Angelone*, 94 F.3d 900, 904 (4th Cir. 1996). First, the defendant bears the burden of showing that the delay caused "substantial actual prejudice." *United States v. Villa*, 70 F.4th 704, 715 (4th Cir. 2023). If he satisfies this burden, then the Court asks "whether, considering 'the government's reasons for the delay,' there has been a violation of 'fundamental conceptions of justice or the community's sense of fair play and decency.'" *Id.* at 715 (quoting *United States v. Uribe-Rios*, 558 F.3d 347, 358 (4th Cir. 2009)).

Based on these considerations, the district court did not err by denying Vanderpool's motion to dismiss for preindictment delay. Vanderpool cannot show that any preindictment delay caused "substantial actual prejudice" to his defense, and even if he could, the government can sufficiently justify any delay.

A. Standard of review

When this Court reviews a district court's denial of a motion to dismiss the indictment for preindictment delay, it "review[s] the court's

factual findings for clear error and legal conclusions de novo." *Villa*, 70 F.4th at 715.

B. The district court correctly ruled that Vanderpool could not establish substantial actual prejudice.

To demonstrate that delay causes substantial actual prejudice, a defendant must "show not only that the prejudice was actual, as opposed to speculative, but also 'that he was meaningfully impaired in his ability to defend against the [government's] charges'" such that it "likely affected" the outcome. *Villa*, 70 F.4th at 716 (alteration in original) (quoting *Jones*, 94 F.3d at 907).

These requirements impose a "heavy burden" on defendants. *Jones*, 94 F.3d at 907. "*[P]otential* prejudice and [the] passage of time" do not satisfy this burden. *Ibid.* (emphasis added) (quoting *United States v. Marion*, 404 U.S. 307, 323 (1971)). For the reasons below, the district court correctly concluded that Vanderpool could not establish substantial, actual prejudice to his defense due to preindictment delay. JA268-269.

1. Vanderpool must satisfy five requirements to demonstrate the unavailability of a witness causes substantial actual prejudice.

Vanderpool argues (Br. 47-48) that the unavailability of two potential witnesses caused him substantial actual prejudice. Before Vanderpool was indicted for violating 18 U.S.C. 1519, Ivey passed away. Dupree was charged with multiple criminal offenses, awaited trial, and "likely would invoke his Fifth Amendment right against self-incrimination if called to testify." JA266.[9]

To establish that the unavailability of a witness caused substantial actual prejudice, Vanderpool must (1) "identify the witness," (2) "demonstrate, with specificity, the expected content of the witness'[s] testimony," (3) "establish" that he "made serious attempts to locate the witness," and (4) "show that the information the witness would have provided was not available from other sources." *Jones*, 94 F.3d at 908. And, of course, he must demonstrate that (5) the absence of the witness's testimony prejudiced his case—*i.e.*, would have "tend[ed] to exculpate" him. *Id.* at 909.

[9] For purposes of this appeal, the United States does not challenge the district court's finding that Dupree was unavailable.

2. Potential testimony from Ivey and Dupree does not satisfy the requirements to establish actual, let alone substantial, prejudice.

The district court found that Vanderpool had met two of the four requirements above: "he ha[d] identified the unavailable witnesses, and he ha[d] established that their testimony cannot be secured." JA266; *see also* note 9, *supra*. However, he did not demonstrate "with specificity" the anticipated content of either man's testimony, how that testimony would "tend to exculpate [him]," or whether the "information the witness[es] would have provided was not available from other sources." *Jones*, 94 F.3d at 908-909.

Vanderpool asserts (Br. 47-48) that Dupree's and Ivey's testimony would have aided his defense (1) by impeaching R.S.'s testimony "about having sex with Vanderpool"; and (2) with regard to Ivey, by creating an inference that there was "poor training, vague instructions, and hostility" within the police department "sufficient to undermine the government's entire case, regardless of whether the finder of fact agreed that Vanderpool engaged in certain conduct with R.S. that was not included

in his report."[10] *See* Br. 45-46 (describing various facts he sought to prove). But, as discussed below, Vanderpool has not described "how th[is] testimony would have helped him" or explained "why he could not secure comparable testimony from other sources." JA266-267. He has thus failed to meet his "heavy burden." *Jones*, 94 F.3d at 907.

a. The potential testimony impeaching R.S. lacks specificity, is not exculpatory, and is available from other sources.

Vanderpool cannot demonstrate actual—let alone substantial—prejudice based on the unavailability of Ivey and Dupree to impeach R.S.'s credibility at trial for two reasons. First, their testimony would not have been exculpatory because R.S. never testified. Second, even if Vanderpool could have impeached R.S. and even if doing so would have benefitted his case in some way, Vanderpool could have impeached R.S.'s credibility using other sources.

---

[10] In his motion in the district court, Vanderpool also argued that "Ivey and Dupree would have been important witnesses" regarding R.S.'s "motive to fabricate or skew her account." JA77. The court rejected this purpose, finding it "speculative and vague." JA268. He did not renew this argument in his opening brief and therefore waived it on appeal. *United States v. Sutherland*, 103 F.4th 200, 211 (4th Cir. 2024), *cert. denied*, 145 S. Ct. 1059 (2025). Regardless, for the reasons discussed in Section III.B.2.a, the absence of testimony on her alleged "motive to fabricate" did not cause substantial actual prejudice.

i. As the district court correctly concluded, Vanderpool has not shown that "impeaching [R.S.'s] testimony would undermine, much less defeat," the government's case that he falsified a record. JA268. Vanderpool challenges this conclusion without explaining how the anticipated testimony impeaching R.S. would be helpful to his defense against the Section 1519 charge. *See* Br. 47. Nor could he do so—the United States did not call R.S. to testify at trial. *See* JA481. As a result, Vanderpool had no need for testimony from Dupree or Ivey to impeach her.

The reason the United States did not call R.S. as a witness—and yet a further reason why impeaching her would not have helped Vanderpool—is that her testimony was unnecessary to prove the government's case. Vanderpool had already *admitted* in the state-court trial that he penetrated R.S. on the night in question. JA533-536, JA538; *see also* JA520-521. Vanderpool also admitted that he had the car R.S. was driving towed (which he omitted from his report) and that he had returned it to R.S. (and not its owner, as he had falsely written in his report). JA17, JA268. These admissions were sufficient for the fact-finder to conclude that Vanderpool made false entries in his report and

that he was attempting to obstruct a potential investigation into his conduct on the night he arrested R.S. *See* Fed. R. Evid. 801(d)(2).

Finally, even if R.S. had testified, Vanderpool has not described "with specificity" the anticipated content of the impeachment testimony he would have elicited. *Jones*, 94 F.3d at 908; *see* JA268; Br. 47.

ii. Even if impeaching R.S. was permissible under the Federal Rules of Evidence, which generally provide for impeachment only of testifying witnesses, and necessary to Vanderpool's case, despite his own admissions, Vanderpool cannot establish that impeachment evidence was unavailable through sources other than Ivey and Dupree. JA267. As the district court found, Vanderpool could have impeached R.S. with the "inconsistencies in some of her . . . statements to police officers" and "her own admission that she initially lied about whether Dupree was present for the assault." JA267. The outcome of the state-court trial confirms as much: Vanderpool was acquitted of raping R.S. without their testimony. JA267.

b. Vanderpool has not described with specificity what testimony Ivey would have given regarding the police department, explained how it is unavailable from other sources, or how it is exculpatory.

The district court correctly determined that Vanderpool did not identify what testimony Ivey would have offered regarding the police department, including its training and policies, or how that testimony would have been helpful to his case. JA268-269.

Even more fundamentally, he has not shown (or even alleged) that Ivey was the only witness who could have discussed, for example, "the misconduct in" the police department "that led to the resignation of the police chief" or "Dupree's allegations against the department" or "Dupree's animosity towards Vanderpool." Br. 46; *see* JA270. These are fatal errors to his argument. *See Jones*, 94 F.3d at 908.

On top of these defects, Vanderpool has yet to explain how any of these bits of information would undermine the government's case or aid his own. *See* JA269 ("[I]t is far from obvious how he would have connected those dots."). He admitted to having sex with R.S.; he admitted to knowing that this was against the law; and his report about his interactions with R.S. is false and misleading. He has not suggested, for

example, that poor training or hostility amongst police officers could explain away his conscious decision to falsify information in an incident report, including by omitting that he had sex with the arrestee while she was in custody.

C. Even if there were actual prejudice, any delay did not violate fundamental conceptions of justice or the community's sense of fair play and decency.

The Supreme Court has recognized that continuing an investigation is a valid basis for delay, even where some prejudice may result to the defendant. *United States v. Lovasco*, 431 U.S. 783, 795-796 (1977). The Due Process Clause "does not require" a prosecutor to "subordinate the goal of orderly expedition to that of mere speed." *Ibid.* (citation omitted). "If delay results from a protracted investigation that was nevertheless conducted in good faith," there is no due-process violation. *Uribe-Rios*, 558 F.3d at 358.

a. As the district court found, that is precisely what happened here: a "good faith" investigation by the United States. JA271. The initial delay in getting to trial on both the state rape charge and 18 U.S.C. 242 charge was the result of the COVID-19 pandemic. *See* JA271. Any additional delay regarding the 18 U.S.C. 1519 charge occurred because it

was not until 2023 that the United States discovered new, powerful evidence—namely, Vanderpool's admissions in the state trial—supporting an obstruction charge. JA271.

This Court's decision in *United States v. Automated Medical Laboratories, Inc.* is instructive. 770 F.2d 399 (4th Cir. 1985). There, the defendant claimed a due process violation based upon a 45-month preindictment delay following the completion of an FDA investigation. *Id.* at 402. The Court rejected the defendant's claim, noting that a portion of the delay "was attributable to additional investigative activities required when the case actually reached Government prosecutors at the Department of Justice." *Id.* at 404. It is indeed "wise policy" for the government to engage in "careful investigation and consideration prior to the bringing of criminal charges," and this type of delay does not constitute a due process violation—particularly where the defendant experienced "slight, possibly nonexistent, prejudice" from the delay. *Ibid.*

The same is true here. Even assuming *any* prejudice from purported delay, it was "slight" at best. And any purported delay was the result of "careful investigation and consideration" by the government

before seeking an indictment on the 18 U.S.C. 1519 charge. *Automated Med. Laboratories*, 770 F.2d at 404.

b. Both below and on appeal, Vanderpool alleges that the real reasons for the delay are: "failure to secure internal approval for [the United States'] previous, successive charge," "mere convenience at best," or "petty vindictiveness at worst." Br. 48, 50; JA79. As the United States noted below, Vanderpool's statements about the Department of Justice's "internal approval" process are "not based in fact" but mere "baseless speculations," as he has no access to "information about the government's deliberations in making charging decisions." JA201 & n.4. And he has provided no basis for refuting the United States' explanations for the delay. JA272.

Neither of the cases on which Vanderpool relies (Br. 49-50) as examples of unconstitutional preindictment delays are apposite. In *United States v. Minkkinen*, the district court found "little explanation for the length" of the government's investigation—nearly five and a half years between opening the investigation and securing the original indictment. 678 F. Supp. 3d 778, 793-794 (S.D. W. Va. 2023), *appeal pending*, No. 23-4443 (oral argument held May 10, 2024). Additionally,

the court "balanced" the unexplained delay "against actual, substantial prejudice" it had found to the defendant. *Id.* at 794. In *Howell v. Barker*, the State "unequivocally and candidly stated that [its] justification for the preindictment delay was mere convenience, and that [the State] was 'negligent' in not prosecuting the defendant earlier." 904 F.2d 889, 895 (4th Cir. 1990). The State "ma[d]e[] no assertion that [it] . . . was engaged in preindictment investigation." *Ibid.*

In Vanderpool's case, less than two years separated the referral of the case to the FBI and the original indictment. *See* Indictment, *Vanderpool I*, *supra* (No. 8:21-cr-354); JA513. The instant 18 U.S.C. 1519 indictment was brought promptly after dismissal of the original indictment and mere months after the United States obtained inculpatory admissions from Vanderpool's state-court trial. *See* p. 64, *supra*. And the United States has offered reasonable explanations for any additional delay in the investigatory process. JA202-203. This case is nothing like either *Minkkinen* or *Howell*. The district court correctly denied Vanderpool's motion to dismiss for preindictment delay.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment.

Respectfully submitted,

KELLY O. HAYES
United States Attorney
for the District of Maryland

HARMEET K. DHILLON
Assistant Attorney General

JESUS A. OSETE
Principal Deputy Assistant
Attorney General

s/ David N. Goldman
DAVID N. GOLDMAN
Attorney
Department of Justice
Civil Rights Division
Appellate Section
Ben Franklin Station
P.O. Box 14403
Washington, D.C. 20044-4403
(202) 616-9405

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B)(i) because it contains 12,885 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (6) because it was prepared in Century Schoolbook 14-point font using Microsoft Word for Microsoft 365.

s/ David N. Goldman
DAVID N. GOLDMAN
Attorney

Date: October 8, 2025