Team 16

No. 23 – 695

In the

Supreme Court of United States

FRANNY FENTY,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF FOR THE RESPONDENT

Team 16
Attorneys for Respondent

QUESTIONS PRESENTED

I. Whether Ms. Fenty possesses a reasonable expectation of privacy through the alias Jocelyn Meyer under the Fourth Amendment when Ms. Fenty was not commonly known by this alias, nor did she sufficiently render it for public use?

II. Whether recorded voicemail statements left by Fenty satisfy the implicit spontaneity requirement of the hearsay exception under Rule 803(3) of the Federal Rule of Evidence when Ms. Fenty had ample time to misrepresent her thoughts and had personal knowledge of ongoing local investigations regarding the deadly mixture of xylazine and fentanyl?

III. Whether Ms. Fenty's impeachment by evidence of her prior conviction for petit larceny was proper under Rule 609(a)(2) of the Federal Rules of Evidence when the rule mandates that crimes of deceit are automatically admissible and the underlying facts of Ms. Fenty's prior conviction contains elements of deceit?

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CONSTITUIONAL PROVISIONS

The text of the following constitutional provision is provided below:

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV.

STATEMENT OF THE CASE

I. Statement of Facts

In the small town of Joralemon, a new deadly combination of addictive drugs began sweeping the streets. R. at 7. The drug, xylazine, is typically used by veterinarians as a horse tranquilizer. R. at 7. However, in the wrong hands, that drug has been combined with fentanyl to form a new street drug. R. at 7. The quiet town, which was already battling a drug addiction epidemic, now faced its biggest war yet as deadly overdoses increased by 35% in 2022. R. at 7

Franny Fenty, an aspiring writer and longtime resident of Joralemon, was in search of new job prospects throughout late 2021. R. at 34. In aids of furthering her search, Fenty posted on LinkedIn. R. at 6. She expressed that she has experience in writing as she previously published two short stories in college and had several unpublished works. R. at 42. To her apparent luck, an old companion, Angela Millwood, reached out in response to the post. R. at 6.

The two women had not been in touch since high school. R. at 55. As they commiserated over the struggles of the job market, Ms. Millwood expressed her difficulty as a horse handler. R. at 44. Specifically, Ms. Millwood described to Ms. Fenty her desire to help older horses struggling in pain. R. at 44. Ms. Millwood intended to administer muscle relaxers to the horses, specifically, xylazine. R. at 45. Ms. Fenty agreed to help Ms. Millwood purchase the xylazine. R. at 45. Ms. Fenty placed a $1,200 order with Holistic Horse care for a shipment of the drug and Ms. Fenty would get reimbursed when the 'muscle relaxer' was later sold. R. at 58. In furtherance of the plan, Ms. Fenty opened a P.O. Box under the name Jocelyn Meyer on January 31, 2022. Ms. Fenty had previously used the name Jocelyn Meyer to publish short stories in her college magazines and to write five unpublished novels. R. at 42.

Within the next few weeks, the deaths surrounding the increase of xylazine popularity continued to rise. Specifically, one victim of the deadly drug was found next to an opened package addressed from Holistic Horse Care. R. at 29. His autopsy revealed a mixture of fentanyl and xylazine. R. at 29. This death and the general increase of overdoses in Joralemon prompted the U.S. Drug Enforcement Administration to pay extra attention to any connections to the Holistic Horse Care Company. R. at 29. Specifically, Special Agent Robert Raghavan alerted the employees at the local Postal Service to keep an eye-out for packages coming from that company. R. at 29.

On February 14, Agent Raghavan received a call from the post office that there were two flagged packages sent from Holistic Horse Care. R. at 30. The name on the package was Jocelyn Meyer and the address was registered under Jocelyn Meyer. R. at 31. The P.O. box also had two amazon packages that were addressed to Franny Fenty. R. at 31. On the same day, Agent Raghavan obtained a search warrant for the Holistic Horse Care packages. R. at 31. Inside each

package was a bottle with the label "Xylazine: For the Horses" and lab testing revealed that in total there was 800 grams of xylazine lacked with 400 grams of fentanyl. R. at 32.

On the same day, February 14, Ms. Fenty went to the Post Office to retrieve her packages. After she realized her packages had been intercepted, Ms. Fenty called Ms. Millwood and left a voicemail explaining her confusion about the whereabouts. R. at 46. Ms. Fenty called again forty-five minutes later further explaining that she was increasingly worried after seeing the articles regarding the mixtures of xylazine and fentanyl. R. at 68. Specifically, Ms. Fenty was worried Ms. Millwood had "dragged [her] into something [she] would never want to be part of." R. at 68. Ms. Millwood did not answer nor return either call. Unbeknownst to Ms. Fenty, Ms. Millwood had taken a one-way flight to Jakarta on this day. R. at 35.

On February 15, Agent Raghavan resealed the package to perform a controlled delivery at the post office. R. at 32. The postal employee left a slip for Jocelyn Meyer in her P.O. box explaining the packages were to be received at the counter. R. at 32. Ms. Fenty soon arrived and approached the counter to retrieve the packages addressed to Jocelyn Meyer. R. at 32. While waiting for her packages, Ms. Fenty had a brief conversation with a man. R. at 33. After Ms. Fenty exited with her packages, the DEA agents approached the man, who explained that he knew the woman as Franny Fenty. R. at 33. With the new information of the connection between Franny Fenty and Jocelyn Meyer, Agent Raghavan confirmed online that Ms. Fenty published stories under the pseudonym Jocelyn Meyer. R. at 33. Additionally, Agent Raghavan saw the online interaction between Ms. Fenty and Ms. Millwood, whom the agent knew from previous drug investigations. R. at 34. On the same day, Agent Raghavan took the information to the Assistant U.S. Attorney. R. at 34. A grand jury returned an indictment and Ms. Fenty was arrested on February 15. R. at 34.

II. Procedural History.

Franny Fenty was charged with one count of possession with intent to distribute a Schedule II controlled substance, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(vi). In the District Court of Boerum, Ms. Fenty filed a motion to suppress the contents in the sealed packages seized by the DEA. R. at 11. Additionally, Ms. Fenty filed a motion in limine to exclude evidence of her prior conviction of petit larceny. R. at 18. The District Court denied both motions. R. at 17, 26. At trial, Ms. Fenty sought an application of Federal Rule of Evidence 803(3) to admit two voicemails sent my Ms. Fenty to Ms. Millwood. R. at 47. This application was denied. R. at 52. On September 21, 2022, Ms. Fenty was found guilty. R. at 8.

The United States Court of Appeals for the Fourteenth Circuit affirmed the district court's ruling on all issues, with Circuit Judge Hoag-Fordjour dissenting. R at 69; 70-73. This Court granted writ of Certiorari on December 14, 2023.

SUMMARY OF THE ARGUMENT

This Court should affirm the Fourteenth Circuit's decision because (1) Ms. Fenty has no reasonable expectation of privacy in the name "Jocelyn Meyer," and has no standing to raise a fourth amendment claim; (2) the voicemails sent by Ms. Fenty are inadmissible under Federal Rule of Evidence 803(3) as they lack spontaneity; and (3) Ms. Fenty's prior conviction for petit larceny is admissible for impeachment under Rule 609(a)(2) as the offense was committed through deceit.

First, the Fourth Amendment guarantees individuals the "right… to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" U.S. Const. Amend. IV. In addition, a defendant does not have standing to bring a Fourth Amendment claim where they do not have a reasonable expectation of privacy. A defendant cannot claim a

reasonable expectation of privacy over packages using an alias unless the defendant can substantially prove that the alias and defendant are so closely related and commonly known to the public that they are one in the same. Ms. Fenty was not known to the public by this name and the very act of using this alias to remain anonymous when transporting narcotics further proves that this alias falls far below the threshold for satisfying public use. The use of this alias does not create an expectation of privacy and is far too attenuated to stretch the Fourth Amendment for a circumstance which society is not prepared to recognize as reasonable.

Second, this Court should affirm the Fourteenth Circuit's holding that the two voicemails sent by Ms. Fenty are inadmissible for lacking the spontaneity requirement of Federal Rule of Evidence 803(3). Rule 803(3) allows for the admission of evidence that speak to the declarant's then-existing mental state. Thus, to protect the purpose of this hearsay exception, the statement must be made without time for the declarant to misrepresent her thoughts. Allowing statements to be admitted after significant time has passed lowers the high bar set by this rule of evidence. Ms. Fenty's statements made forty-five minutes after the event sought to be proven falls outside the limited scope of Rule 803(3). Ms. Fenty had both time and reason to fabricate her thoughts and emotions. Accordingly, this Court should affirm the lower court's decision denying the admission of the evidence.

Third, the Court should affirm the Fourteenth Circuit's holding that Ms. Fenty's prior conviction of petit larceny is admissible under Rule 609(a)(2). Although some courts have held that petit larceny is not always admissible under Rule 609(a)(2), this Court should continue to uphold the approach of examining the specific facts of the prior conviction to determine an involvement of deceit. An examination of the underlying facts and circumstances of Ms. Fenty's

prior offense reveal that she performed the offense primarily through deceit. Therefore, this Court should affirm the Fourteenth Circuit's decision.

ARGUMENT

I. The Court should affirm the judgment of the Fourteenth Circuit because Ms. Fenty has no standing to raise a Fourth Amendment issue as she did not have a reasonable expectation of privacy in the sealed mail.

The Fourteenth Circuit denied the motion to suppress the evidence found in the packages because Ms. Fenty does not possess a reasonable expectation of privacy in the searched property. The Fourth Amendment guarantees individuals the "right… to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" U.S. Const. Amend. IV. A search occurs within the meaning of the Fourth Amendment when the Government obtains any information by either (1) intruding upon a sphere where an individual has a reasonable expectation of privacy or (2) physically trespassing upon the property. *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (2018). In addition, *Katz* introduced the reasonable expectation of an individual's privacy and the idea that the Fourth Amendment is to protect people and not places. *Katz v. United States*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967). In determining whether a defendant has a valid basis for standing to challenge, the court must determine whether the individual had an expectation of privacy. *Id*. The expectation of privacy, however, must be one that society is prepared to recognize as reasonable. *Id*. Absent this reasonable expectation of privacy in the property searched, an individual cannot claim protection under the Fourth Amendment. *United States v. Bullard*, 645 F.3d 237, 242 (4th Cir. 2011). Furthermore, the defendant bears the burden of showing a reasonable expectation of privacy in the property searched, and the standard of review the court will apply to a district court's denial of a motion to suppress is de novo. *United States v. Fall*, 955 F.3d 363, 369-70 (4th Cir. 2020).

To determine a reasonable expectation of privacy, a defendant must identify evidence objectively establishing their ownership, possession, or control of the property. *United States v. Stokes*, 829 F.3d 47, 53 (1st Cir. 2016). In the instant case, Ms. Fenty is attempting to claim an expectation of privacy in the searched packages where one does not exist. There is a long-standing precedent that sealed packages and envelopes enjoy a high degree of privacy; however, when a sealed package addresses a party other than the intended recipient, that recipient does not have a legitimate expectation of privacy. *United States v. Givens*, 733 F.2d 339, 341 (4th Cir. 1984). A package addressed to a party other than the intended recipient indicates the absence of ownership, possession, or control of the property. Further, it proves that a defendant does not have an expectation of privacy safeguarded by the protections of the Fourth Amendment. *Id*. Ms. Fenty's goal of stretching the expectation of privacy beyond what case law deems reasonable is unsupported by precedent that persuasively communicates that absent evidence that the fictitious name is an established alias, the expectation of privacy ceases to exist. In the case before us, Ms. Fenty lacks adequate evidence to prove that the fictitious name of Jocelyn Meyer is an established alter ego, and her connection is far too tenuous to establish any privacy interest in the property searched.

A. Ms. Fenty cannot have a reasonable expectation of privacy in the name Jocelyn Meyer.

The lower courts did not err in denying the motion to suppress because Ms. Fenty cannot have a reasonable expectation of privacy in the fictitious name of Jocelyn Meyer. Case law highlights that a defendant who is neither the sender nor the addressee of a package has no privacy interest and, accordingly, no standing to assert the Fourth Amendment objection to its search. United *States v. Pierce*, 959 F.2d 1297, 1303 (5th Cir. 1992). In the *Pierce* case, a defendant failed in his motion to suppress a finding of narcotics within a package because he was

neither the listed sender nor the recipient of such package. *Id*. The court in *Pierce* held that even if the defendant was the intended recipient of the packages, that still failed to confer a legitimate expectation of privacy because it was addressed to and received by another under a different name. *Id.* The facts of *Pierce* are analogous to the case at hand. Regardless of an alias, Ms. Fenty was not the package's listed sender or recipient.

Ms. Fenty's simple placement of the order through Holistic Horse Care under the alias Jocelyn Meyer is too remote to establish a sufficient connection to this alias through public use. R. at 55. Ms. Fenty was not the listed sender or recipient and, therefore, cannot establish a reasonable expectation of privacy. In addition, Ms. Fenty did not continually demonstrate that she had a privacy interest in the package. Ms. Fenty picked up the packages once under the alias Jocelyn Meyer, which is not a name she regularly went by, nor is it one she continually acted under to prove her privacy interest. R. at 43. The active steps that the dissent states Ms. Fenty took to constitute the public are far too attenuated to demonstrate actual public use. R. at 71. In addition, persuasive authority in the dissent from the *Walter* case argues that a defendant abandons any reasonable expectation of privacy when they use a fictitious name as the sender and receiver of a package. *Walter v. United States*, 447 U.S. 649 (1980).

Few circuit courts have held that a defendant may have a reasonable expectation of privacy in an alias if that defendant can establish public use of the alias and demonstrate that the defendant was commonly known by that name. *United States v. Daniel*, 982 F.2d 146, 149 (5th Cir. 1993). However, Ms. Fenty's use of the alias Jocelyn Meyer fails to establish that she was commonly known by this name. Thus, the Fourth Amendment does not permit her to establish a reasonable expectation of privacy over the property searched. It is a long-determined societal standard that one's name is how an individual exerts a privacy interest. The record reveals that

the alias Jocelyn Meyer was first created as a fictitious name to publish short stories in college and novels after that. R. at 14. Ms. Fenty published two simple short stories five to six years ago in a college creative writing magazine, demonstrating that the alias Jocelyn Meyer is not represented to the public often, nor is it one that Ms. Fenty is commonly known by. R. at 65. In addition, Ms. Fenty's novels under the alias Jocelyn Meyer were never published to the public, further confirming that this use of an alias fails to meet the public use threshold. Respondent submits that these novels do not constitute public use. R. at 42.

In addition, this is a contested issue among circuit courts. While few courts have held that there may be a privacy interest in a defendant's use of an alias, it is only so when the defendant's use of said alias constitutes public use. In other words, the defendant must be known by this name through public use to create a privacy interest. Furthermore, Ms. Fenty clearly uses the alias Jocelyn Meyer because she wished to remain anonymous in her connection to narcotics. However, this is the perpetual opposite of a defendant using an alias for public use.

1. Ms. Fenty does not possess a legitimate expectation of privacy in the seized packages to satisfy the standing requirements to bring forward a Fourth Amendment claim.

The Court of Appeals correctly denied Ms. Fenty's motion to suppress because she did not have a reasonable expectation of privacy in the seized packages. Ms. Fenty sought to suppress the evidence the Drug Enforcement Administration seized from the sealed packages under the valid search warrant. Ms. Fenty cannot sufficiently establish that she is the sender or receiver nor that Jocelyn Meyer is an alias commonly known to the public and rendered for public use. The record reveals that the packages were registered under the name Jocelyn Meyer. R. at 65. Regardless of the one occasion Ms. Fenty personally picked up the packages, these items were addressed to Jocelyn Meyer, leaving Ms. Fenty with no constitutional connection to the packages.

Furthermore, the record reveals that upon picking up the packages, Ms. Fenty talked with a college classmate who alerted authorities that the defendant's name was Ms. Fenty. R at 66. This classmate knew Ms. Fenty from college, and it is likely that their relationship began during the same time frame that Ms. Fenty published two short stories under the name Jocelyn Meyer. R at 66. This classmate's ability to identify the defendant as Ms. Fenty and not as the alias of Jocelyn Meyer further proves that this alias was not commonly known to the public, nor is it one that constitutes public use.

In addition, the rule outlined in *Givens* mirrors the case of Ms. Fenty: a defendant does not have a legitimate expectation of privacy in the contents of a package addressed to someone other than the defendant. *Givens*, 733 F.2d at 341. Furthermore, *Givens* held that the defendants did not have a reasonable expectation of privacy over a package that was not addressed to either defendant by name but rather by an intermediary. In *Givens*, the defendants had a package sent and delivered to a different individual under a different name. The court in *Givens* held that had the defendants listed their names on the package; they would have possessed an expectation of privacy and standing to issue a motion to suppress. However, the defendant in the *Givens* case did not use their name. Similarly, in the facts before us, the packages were addressed to Jocelyn Meyer, not Ms. Fenty. Applying the guidelines in Givens, Ms. Fenty cannot exert a reasonable expectation of privacy in packages addressed to an alias and not herself.

While a narrow exception applies where a defendant may establish a reasonable expectation of privacy in a fictitious name, that defendant must prove that the fictitious name is the defendant’s alter ego and is commonly known to the public, communicating that the defendant and the alias are essentially the same. *United States v. Villarreal,* 963 F.2d 770 (5th Cir. 1992). In *Villarreal*, the court held that a defendant had a reasonable expectation of privacy

in drums containing narcotics even though the consignee was technically a fictitious person and not the defendant. *Id*. However, this narrow rule only applied in the case of *Villarreal* because there was ample evidence demonstrating that the defendant not only possessed the receipt for the drums under the alias, but on different occasions, the defendant had represented himself by the alias name immediately preceding the transaction. Furthermore, the court in *Villarreal* also considered the reasonable expectation of privacy regarding a search and seizure done without a warrant.

In contrast, the case at hand has drastically different facts. Not only was the package seized under a valid search warrant, but Ms. Fenty did not consistently represent to the public that her name was Jocelyn Meyer. R. at 37. Ms. Fenty was not in direct possession of anything that would tie her to the alias Jocelyn Meyer. She picked up packages one time under the alias Jocelyn Meyer. As the record states, there is a circuit split regarding whether a defendant might have a privacy interest if that defendant's use of an alias is public or if that defendant is commonly known by that alias. R. at13. In addition, the packages were in transit when the postal service employee seized them. R. at 37. Case law has held that private carriers and government agents may conduct a limited search of packages to detect and prevent the flow of illegal drugs without violating the Fourth Amendment. *United States v. Jacobsen*, 466 U.S. 109, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984).

In addition, Ms. Fenty was aware that she was transporting drugs through the mail. While a subjective state of mind may be immaterial, the purpose behind Ms. Fenty registering Jocelyn Meyer as the name listed on the packages and in the P.O. Box is to conceal her identity and connection to the transportation of narcotics. It is entirely unsupported that these actions would constitute a defendant who is using an alias publicly when the sole purpose is to remain

anonymous through her transactions. Thus, it is evident that the facts at hand fall outside of the narrow application listed in *Villarreal*, and Ms. Fenty does not possess a legitimate expectation of privacy over the packages addressed to the fictitious name of Jocelyn Meyer.

2. Ms. Fenty does not possess an expectation of privacy with respect to her P.O. box.

The Fourteenth Circuit correctly held that Ms. Fenty does not have a privacy interest in the P.O. Box registered under the fictitious name of Jocelyn Meyer. Case law provides that an address alone will not create an expectation of privacy in a parcel. *United States v. Stokes*, 829 F.3d 47, 53 (1st Cir. 2016). Similarly, a defendant lacks a legitimate expectation of privacy in a mailbox and its contents if no one by that name resides at the address. *United States v. Lewis,* 738 F.2d 916 (8th Cir. 1984). In the *Williams* case, the court held that a defendant lacked standing to bring forward a Fourth Amendment claim for a motion to suppress where the defendant was not the sender or recipient of the property seized. *United States v. Williams*, 774 Fed. Appx. 871 (5th Cir. 2019). In this case, the DEA neither searched for nor seized the P.O. Box. Furthermore, Ms. Fenty does not possess a legitimate expectation of privacy in the P.O. Box, primarily because it was neither searched nor seized, but additionally because it was registered in an alias that fails to act as Ms. Fenty's commonly known alter ego. It is immaterial that other personal items were sent to this P.O. Box and does not alter the analysis that Ms. Fenty does not have an expectation of privacy in this P.O. Box as Ms. Fenty is not the named individual on the P.O. Box registration, nor is she the one listed on the packages sent.

Precedent states that a defendant has no standing to bring a Fourth Amendment claim over a package listed under a separate alias intentionally applied to conceal identity in a criminal scheme. *Daniel*, 982 F.2d at 149. In the *Daniel* case, the defendant had a package addressed to a fictitious name that was not his. Upon receiving the package that contained narcotics, he sought

to suppress the evidence under the Fourth Amendment, claiming a privacy interest in the package. *Id.* The court denied this motion. *Id.* at 150. Similarly, in the case before us, the P.O. Box registered under the fictitious name of Jocelyn Meyer is not the name of the defendant, Ms. Fenty. Following the case precedent, Ms. Fenty does not have a reasonable expectation of privacy in a P.O. Box addressed to a fictitious name.

B. Even if a privacy interest exists in the alias Jocelyn Meyers, Ms. Fenty does not have an expectation of privacy over the name because it fails to constitute public use.

To determine whether an expectation of privacy is one society is prepared to recognize as reasonable, the Court considers (1) historical understandings of privacy protections and (2) the information's level of intrusiveness into the privacy of life. *United States v. Carpenter*, 776 F.2d 1291 (5th Cir. 1985). Few circuit courts have held that a defendant can have a reasonable expectation of privacy through an alias if the defendant can establish public use of the alias and the defendant is commonly known by the alias, such that they are the same person. *Daniel*, 982 F.2d at 149. Ms. Fenty registered her P.O. Box and her packages in the alias Jocelyn Meyer to order and receive narcotics. R. at 65. As the majority correctly denied, using this alias does not merit an expectation of privacy that society is prepared to recognize as reasonable. In addition to the purpose behind Ms. Fenty applying the alias, it is also evident that the application of this alias fails to constitute public use.

The applicable rule stated in *Daniel* is that a defendant cannot claim a privacy interest in property listed under a separate alias without evidence of public use so substantial that the defendant and this alias are essentially the same person. While few circuit courts recognize a privacy interest in a desire to remain anonymous, the Fourth Amendment in the case at hand cannot stretch that far. Ms. Fenty's use of her alias destroys any expectation of privacy that she had in the packages or the P.O. Box.

1. Ms. Fenty failed to establish the alias Jocelyn Meyer as one commonly known by the public.

In order to sufficiently establish a connection between the intended recipient and the alias used, the alias must be so sufficiently established that it appears to have public use and is such an alias that the defendant is commonly known by this title. *Daniel*, 982 F.2d at 150**.** In the case before us, Ms. Fenty created the alias Jocelyn Meyer and has not used it to be published in five to six years. R. at 13. Ms. Fenty published two short stories in college with this alias. R. at 42.

Furthermore, Ms. Fenty registered the P.O. Box under the alias Jocelyn Meyer. Ms. Fenty picking up these packages from the post office on one singular occasion is insufficient to establish that Ms. Fenty was commonly known as Jocelyn Meyer. Even so, while Ms. Fenty was at the post office, she ran into a college friend who knew her at the one time she published an article under the alias Jocelyn Meyer. R. at 33. Even then, this friend identified the defendant as Ms. Fenty and not the alias Jocelyn Meyer. R. at 33.

In addition, the record reveals that Ms. Fenty had her LinkedIn profile registered under the name Franny Fenty. R. at 6. LinkedIn is the leading networking website for individuals to make connections and land job leads. It is where an individual presents themself and puts their professional brand forward with hopes of being hired. The fact that Ms. Fenty chose to outsource work on LinkedIn and used the name Franny Fenty and not the alleged alias of Jocelyn Meyer further demonstrates that this alias was not commonly known to the public, nor did this alias sufficiently establish a connection to Ms. Fenty. An individual uses a networking platform to establish the brand they desire to identify with. This exemplifies that Ms. Fenty's connection with Jocelyn Meyer is far too attenuated to establish that Jocelyn Meyer was a public-use alias.

Furthermore, following the precedent outlined in *Rose*, there is no reasonable expectation of privacy in packages addressed to an individual other than the defendant "absent other indicia

of ownership, possession, or control of the package." *Rose v. United States*, 142 S. Ct. 1676, 212 L. Ed. 2d 582 (2022). Not only do the facts of this case reveal that Ms. Fenty lacks relevant evidence showing her ownership, possession, or control of the items, but in addition, the alias of Jocelyn Meyer is one that does not satisfy the public use threshold. The connection between Jocelyn Meyer and Franny Fenty is far too tenuous to create a currently existing public use alias.

2. Ms. Fenty's intentional concealment of identity and of a connection to narcotics further eliminates any expectation of privacy in the property searched.

While privacy rights are not limited to those who engage in only innocent conduct, Ms. Fenty's purpose in using the name Jocelyn Meyer to order packages was to conceal her identity and her connection to the narcotics, thus proving that this was not a public use of the alias. The rule outlined in *DiMaggio* is that where a defendant has "opted to conceal [her] identity, [she] cannot assert a cognizable Fourth Amendment interest in the package... because [she] has chosen not to announce to society that [she] has a legitimate claim to the sealed contents of the package." *United States v. DiMaggio*, 744 F. Supp. 43 (N.D.N.Y. 1990). In *DiMaggio*, the court charged defendants with conspiracy to knowingly and willfully distribute and possess cocaine. Where a defendant has opted to conceal his identity, he cannot assert a Fourth Amendment interest in the package in transit. The court held that while there is an expectation of privacy in sealed mail, that expectation of privacy vanishes when the sender and intended recipient's identity is separate from the one listed. *Id*. Furthermore, the alleged expectation of privacy claimed by Ms. Fenty in packages addressed to an alias to receive narcotics is not one that society would be prepared to recognize as reasonable.

Ms. Fenty was using her alias through the mail system to remain anonymous and thus concealed her connection to transmitting narcotics. While searching and seizing the packages, law enforcement discovered narcotics. R. at 31. This concealment further reveals that not only

was the alias Jocelyn Meyer used to remain anonymous in receiving narcotics but also that there is far more evidence demonstrating that any use of this alias was not public. Moreover, in *Lewis* the court determined that a mailbox registered under a false name intending to receive mailings fraudulently does not establish an expectation of privacy deemed reasonable by society under the Fourth Amendment. *Lewis*, 738 F.2d at 919. Similarly, Ms. Fenty's infrequent use of the alias Jocelyn Meyer creates a significant disconnect, preventing the establishment of any substantial connection with the public's common knowledge of this alias. This, this Court ought to uphold the decision of the Fourteenth Circuit, denying the motion to suppress evidence discovered in the packages. The restricted and private use of an alias for transmitting narcotics does not qualify as public use and is not one that society currently deems reasonable.

II. The Fourteenth Circuit was correct in its refusal to admit certain statements of Fenty as inadmissible hearsay because the statements do not qualify within the state-of-mind exception of Federal Rules of Evidence 803(3).

The Fourteenth Circuit correctly found that the two voicemails left by Ms. Fenty to Ms. Millwood do not qualify within the hearsay exception presented in Federal Rule of Evidence 803(3) and thus are inadmissible. Rule 803(3) excludes evidence that would otherwise be considered hearsay statements which speak to the declarant's then-existing state of mind, emotion, or physical condition, "but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will." Fed. R. Evid. 803(3). To utilize the narrow hearsay exception created by Rule 803(3), three requirements must be satisfied: (1) the statements must be contemporaneous with the event sought to be proven, (2) it must be shown that the declarant had no change to reflect or fabricate their thoughts, and (3) the statements must be shown to be relevant to the instant case. *United States v. Layton*, 549 F. Supp. 903, 909 (N.D. Cal. 1982). The ultimate purpose of Rule 803(3) is

to highlight the declarant's true state of mind at a specific time, such that the declarant had no opportunity to misrepresent or craft self-serving statements. *United States v. Jackson*, 780 F.2d 1305, 1315 (7th Cir. 1986).

Rule 803(3) recognizes that some otherwise inadmissible hearsay evidence may carry probative value regarding the declarant's emotional state during the time at issue. *Id.* Specifically, Rule 803 recognizes that certain statements may offer "circumstantial guarantees of trustworthiness sufficient to justify nonproduction of the declarant in person at the trial even though he may be available." Fed. R. Evid 803 advisory committee's note. Therefore, to protect the integrity and purpose of this limited rule, the three requirements previously highlighted must be met strictly and clearly "as to avoid the virtual destruction of the hearsay rule." *Id*.

Although Ms. Fenty's voicemails satisfies the first and third requirements of Rule 803(3), the offered evidence fails to meet the standard of requirement two. The voicemails meet the first requirement of Rule 803(3) as the first was left directly after Ms. Fenty learned that the expected packages were missing from the Post Office. R. at 68. Forty-five minutes later, Ms. Fenty sent the second voicemail, expressing a similar confusion about the package's whereabouts. R. at 68. Thus, both voicemails were contemporaneous with the event sought to be proven that Ms. Fenty did not know why the Post Office intercepted the package. R. at 68. Similarly, regarding the third requirement, both voicemails are relevant to the instant case of her existing state of mind when the packages were intercepted. R. at 68. However, the voicemails both lack the second requirement: spontaneity.

Several courts have determined that, through prong two, Rule 803(3) carries an implicit spontaneity requirement to truly reflect the declarant's then-existing mental state. *See United States v. Carter*, 910 F.2d 1524, 1531 (7th Cir. 1990) (holding that a statement made by the

defendant within an hour from the event sought to be proven provided the defendant with ample time to reflect and misrepresent his thoughts). Thus, when enough time has elapsed for a defendant to construe their statements to reflect a carefully crafted and self-serving state of mind, then the statement no longer qualifies under Rule 803(3). *United States v. Neely*, 980 F.2d 1074, 1083 (7th Cir. 1992) (holding that a letter written two weeks consequent to the event at issue had no probative value under Rule 803(3)).

Here, Ms. Fenty's did not leave the voicemails spontaneously or immediately; rather they were left after Fenty increasingly grew panicked and worried about the whereabouts of her package containing illegal drugs. R. at 46. The length of time that elapsed negates the spontaneity requirement of Rule 803(3), as the voicemails were more likely to be prepared and self-serving statements, thus, failing the second requirement of the hearsay exception. *United States v. Reyes*, 239 F.3d 722, 743 (5th Cir. 2001). Therefore, this Court should affirm the decision of the Court of Appeals for the Fourteenth Circuit as the voicemails do not satisfy the narrow application that Rule 803(3) was originally designed for.

A. The two voicemails left by Ms. Fenty lack the implicit spontaneity requirement under Rule 803(3) and, therefore, are not admissible.

This Court should affirm the decision below, excluding the voicemails under Rule 803(3, because both statements lack the spontaneity requirement of the rule. To satisfy this requirement, the offered statements must have been made within a period that did not provide the declarant time to consider or plan the declaration. *Jackson*, 780 F.2d at 1315. As the overarching purpose of the rule is to allow statements that express then-existing mental state, the spontaneity rule functions as the mechanism to ensure that the evidence genuinely captures the declarant's emotional state during a specified event. Fed. R. Evid 803 advisory committee's notes. Since Ms. Fenty's voicemails lacked spontaneity due to the ample lapse of time, the Fourteenth Circuit

correctly ruled them as inadmissible, as they failed to meet an essential criterion for ensuring authenticity and reliability.

Although courts have not yet established a definite timeframe for when the "spontaneity" period expires, statements made after one hour up to two weeks have been deemed inadmissible under Rule 803(3). *See, e.g., Carter*, 910 F.2d at 1531; *Neely*, 980 F.2d at 1083. Thus, for a statement to be truly spontaneous in nature to speak to the declarant's then-existing mental state, the statement must be almost immediate with the event sought to be proven. *See United States v. Ponticelli*, 622 F.2d 985, 991 (9th Cir. 1980) (holding that the more time that elapses between the declaration and the period about what the declarant is commenting, the greater chance that the statement was fabricated).

In *Carter,* the Seventh Circuit found that statements made an hour after the event sought to be proven still permitted sufficient time for the statements to be misrepresented, thus lacking spontaneity. *Carter*, 910 F.2d at 1531. Steven Carter was charged with robbery. *Id*. at 1525. During questioning at the police station, Carter denied any involvement. *Id*. at 1526. However, nine hours later the defendant ultimately confessed. *Id*. At trial, Carter sought to offer testimony from his mother explaining that, while she was also at the station, she heard Carter say he only confessed to the robberies to protect his wife. *Id.* at 1530. Carter offered this evidence pursuant to the state-of-mind exception under Rule 803(3). *Id*. The trial court sustained the government's objection that the offered statements did not qualify under the hearsay exception. *Id.*

On appeal, the Seventh Circuit affirmed that the defendant's statement made an hour after he confessed exceeded the scope of Rule 803(3). *Id*. The court explained its decision by reasoning that at least sixty minutes provided Carter with sufficient time to reflect upon the consequences of his prior confession. *Id*. Therefore, this realization of his impending criminal

consequences could have developed a motivation for Carter to misrepresent his thoughts. *Id*. The trial court correctly found that Rule 803(3)'s requirement that Carter show he made the statement without time to reflect was not satisfied. *Id*.

Similarly, Ms. Fenty sent her voicemails after ample time had passed from the event sought to be proven that she was unaware why her packages were missing. R. at 68. Specifically, Ms. Fenty left the second voicemail forty-five minutes after the postal workers told Ms. Fenty that her packages were missing. R. at 46. Like *Carter,* Ms. Fenty had cause to portray a feeling of cluelessness as to the reason for the interception of her packages to protect her image of innocence. R. at 57. Ms. Fenty had read local news articles concerning ongoing investigations about the deadly mixture of xylazine and fentanyl, giving her cause for suspicion about the package's interception. R. at 57. She specifically testified that the news story "concerned her," though she chose to find comfort in her belief that the xylazine was only to be used for horses. R. at 58. Therefore, forty-five minutes provided Ms. Fenty with significant opportunity to consider her prior concerns about the drug as well as the implications of her involvement through its purchase. R. at 57. Such sizable time negates any aspect of spontaneity, as required under Rule 803(3), as the voicemails speak more to Ms. Fenty's "eye toward pending investigation[s]" than they do her true mental state. *Neely*, 980 F.2d at 1083.

Additionally, the nature of a voicemail message itself provided Ms. Fenty with a private opportunity to carefully craft a purposeful message. Although Ms. Fenty sent the first voicemail within a time frame shorter than the forty-five minutes, a voicemail still offers the sender the chance to craft a deliberate and scripted recorded message. R. at 65. Many courts have found that the act of letter writing is generally inadmissible under Rule 803(3) as the writer has "as much time as [they] want to fabricate or misrepresent [their] thoughts" *Neely*, 980 F.2d at 1074. In a

Rule 803(3) spontaneity analysis, a voicemail implicates the same fabrication concerns of as a letter. Both can be constructed in privacy with the knowledge and intention to convey a predetermined state of mind. In contrast, a conversation made with a witness immediately after the event at issue lacks such a window to craft the illusion of an emotion the declarant is seeking to prove; thus, it is more likely to preserve spontaneity. *See, United States v. Peak*, 856 F.2d 825, 832 (7th Cir. 1988) (holding that the defendant's statements made in a live telephone conversation sufficiently reflected his present state of mind under Rule 803(3)). Like a letter, a voicemail can be created to purposefully demonstrate the state of mind the sender wishes to portray, rather than what they were truly experiencing.

The combination of the passage of significant time and the inherent suspicious nature of a voicemail effectively undermines the spontaneity element necessary to utilize Rule 803(3). This Court should affirm the correct analysis of the Fourteenth Circuit that such evidence falls outside the narrow and limited scope of Rule 803(3). Ms. Fenty's voicemails were not spontaneous in nature; they were well-considered, reflected, and intentional. R. at 46.

B. Even if Rule 803(3) does not explicitly state a spontaneity requirement, the voicemails left by Ms. Fenty have low probative value and pose a substantial risk of misleading the jury.

Although Rule 803(3)'s plain language does not contain a spontaneity requirement, this Court should affirm the Fourteenth Circuit protect the hearsay exception's original purpose. Rule 803(3) is a specialized application of 803(1), which permits the admission of a statement describing a condition immediately after the declarant experienced it. Fed. R. Evid 803 advisory committee's notes. Thus, although 803(3) does not explicitly include "spontaneity," the requirement becomes implicit and necessary to carry out the narrow function. Such a limited application is required because the more time passes, the less probative the statements become. *United States v. Naiden*, 424 F.3d 718, 722 (8th Cir. 2005). Specifically, the state of mind

exception carries probative value only when "the declarant has no chance for reflection and therefore misrepresentation." *Ponticelli*, 622 F.2d at 991. Thus, as the amount of time increases, the probative value of the evidence decreases. *Id*.

Additionally, such statements that lack sufficient probative value but are nevertheless offered can mislead the jury as to the actual knowledge and intentions of the defendant. *Id*. To utilize Rule 803(3) implies a chain reaction of necessary assumptions: the statements were made spontaneously with the event sought to be proven, thus giving the evidence probative value, which is, in turn, crucial for the factfinders to form a comprehensive understanding of the case. When the chain is broken at the second link, the third link naturally becomes impaired: the evidence can do more misleading harm than good. Such a view of Rule 803(3) does not require a murky blend of Federal Rules of Evidence 403 and 803(3). R. at 72. Instead, it acknowledges the original purpose of Rule 803(3): "under appropriate circumstances a hearsay statement may possess circumstantial guarantees of trustworthiness" when specific criteria of the declarations are met. Fed. R. Evid 803 advisory committee notes. When the requirements, such as spontaneity are not met, the purpose for the exception becomes lost, as does any probative value.

A comprehensive reading of Rule 803(3) practically requires a spontaneity criterion because with such a high threshold, the permitted evidence may truly reveal the exact state of mind of the declarant during the specific event. In the instant case, the probative value of Ms. Fenty's voicemails decreased with each minute that Ms. Fenty waited to call Ms. Millwood. R. at 48. Allowing such voicemails to be admitted, nevertheless, would confuse and mislead the jury as to what Ms. Fenty's then-existing mental state actually. R. at 46. There is no probative value in informing the jury of what Ms. Fenty wanted to feel almost an hour after the event at issue, and to permit otherwise completely contradicts the purpose of Rule 803(3). Therefore, as both

the implicit criteria for Rule 803(3) and the lack of probative value demand that the voicemail evidence not be admissible, this Court should affirm the Fourteenth Circuit.

III. The lower court properly admitted Ms. Fenty's prior conviction for petit larceny for Fenty's impeachment under Rule 609(a)(2).

This Court should affirm the Fourteenth Circuit's holding that Ms. Fenty's prior conviction was properly admitted under Federal Rule of Evidence 609(a)(2) because the lower court correctly found that the petit larceny rested on facts involving deceit. *United States v. Hayes*, 553 F.2d 824, 827 (2d Cir. 1977); Fed. R. Evid. 609(a)(2). Rule 609(a)(2) permits impeachment regarding a witness' tendency for truthfulness if the prior conviction involved dishonest acts or a false statement. Fed. R. Evid. 609 (a)(2). Crimes in the nature of crimen falsi, which contain an element of deceit, such as perjury and criminal fraud, must be admitted. *United States v. Ortega*, 561 F.2d 803, 806 (9th Cir. 1977) (quoting Conference Report, H.R. No. 93-1597, reprinted 3 Weinstein's Evidence, 609-39 (1976)). However, the rule does not provide an exclusive list of acceptable convictions. Therefore, the prosecution can sufficiently demonstrate that deceit was present in the prior conviction and admissible under Rule 609(a)(2). *Id*. If the prosecution meets this burden, the admissibility of the prior conviction is not within the court's discretion, as the court must admit these types of offenses. *Id.*

Although some courts have held that to utilize Rule 609(a)(2) dishonesty must be an element of the crime, other courts have taken a more comprehensive approach in which the court looks to the crime's underlying conduct and factual circumstances. *Hayes*, 553 F.2d at 827. This approach is best as to further the purpose of Rule 609(a)(2): to help the jury assess the witness' tendency to tell the truth. *Altobello v. Borden Confectionary Prods., Inc.*, 872 F.2d 215, 216 (7th Cir. 1989). A crime's lack of explicit mention of dishonesty in its elements does not preclude

dishonesty from being within the foundation of the conviction, and Rule 609(a)(2) was written with that logic in mind.

Ms. Fenty's prior conviction of petit larceny may not be a crime that must be committed through deceit, but it easily can be, as reflected through the Ms. Fenty's testimony. R. at 59. The lower court rightfully admitted the prior conviction as it illustrates Ms. Fenty's consistent pattern of deceptive and dishonest behavior, directly impacting her credibility and propensity to tell the truth. *Hayes*, 553 F.2d at 827. Thus, her petit larceny falls squarely within the scope and the purpose of Rule 609(a)(2). *United States v. Carden*, 529 F.2d 443, 446 (5th Cir. 1976). Ms. Fenty did not commit crime through violence; she conceived it as a sneaky, purposeful, and deliberate plan to deceive and steal from her unwitting victim. R. at 59. Therefore, the Court should affirm the Fourteenth Circuit's holding that Ms. Fenty's prior conviction of petit larceny was properly admitted under Rule 609(a)(2).

A. <u>To determine if a prior conviction is admissible under 609(a)(2), the Court should examine the crime's underlying conduct and facts, not merely the crime's elements.</u>

As Rule 609(a)(2) does not provide an exclusive list of crimes admissible for impeachment purposes, courts should examine each situation on a case-by-case basis. When deceit is not an element of the crime, "but the manner in which the witness committed the offense may have involved deceit...the conviction is admissible under Rule 609(a)(2). *Altobello*, 872 F.2d at 216. Therefore, a holistic view of Rule 609(a)(2), considering its past application and advisory committee notes, highlight that the rule must not be a one-size-fits-all approach to prior convictions. To ensure that classifying a crime as involving deceit does not virtually include all crimes, courts should examine the underlying facts of the prior convictions to determine if it fits within Rule 609(a)(2)'s distinguishment between crimes committed by violence and crimen falsi. *Id*.

A crime may come within Rule 609(a)(2)'s scope when the offense "leaves room for doubt" as to whether it was convicted through deceit. *Hayes,* 553 F.2d at 827. Thus, the prosecution bears the burden of demonstrating to the court that the conviction is not a crime of violence, which courts have found to be inadmissible under 609(a)(2), but is one in the nature of crimen falsi. *Altobello*, 872 F.2d at 216. The advisory committee's notes emphasize that "where the deceitful nature of the crime is not apparent from the statute and the face of the judgment," the prosecution may provide relevant information to show that the act was in fact committed through deceit. Fed. R. Evid 609(a)(2) advisory committee's notes to 2006 amendment. Such relevant information can include admitted facts, an indictment, or information that the defendant had to admit. *Id*.

In *Altobello,* the district court permitted the defendant, Guy Altobello, to be impeached with his prior conviction of tampering with electric meters. *Altobello*, 872 F.2d at 215. The Seventh Circuit acknowledges that this type of conviction is the type that calls the court to examine the facts and circumstances to determine if it falls within the scope of Rule 609(a)(2). *Id*. at 216. Some types of convictions that do not fit perfectly into a black and white reading of Rule 609(a)(2): those crimes "that may or mot not involve deceit, depending on the circumstances." *Id*. Specifically, crimes such as theft may be performed by stealing property through deception or by obtaining property through force or threats. *Id*. After a review of Altobello's record, the Court of Appeals ultimately found that his conviction was one of the former categories and, therefore, was admissible under Rule 609(a)(2). *Id*. at 217. Thus, *Altobello* highlights the importance and necessity in reviewing the foundational details of witness' prior conviction when applying Rule 609(a)(2). The manner in which the offense was

committed is just as vital as the elements of the offense when deciding an ability to use this tool for impeachment.

While some courts have held that petit larceny is not always admissible under Rule 609(a)(2), this Court should continue to adopt the approach of examining the facts of the prior conviction to determine involvement of deceit. *Ortega*, 561 F.2d at 806. Courts should measure a witness's propensity to testify truthfully more thoughtfully than a mere glance at the elements of the prior offense. This approach does not ask the trial court to delve more than necessary into the details of the prior conviction. Rather, this careful consideration if an offense falls under Rule 609(a)(2) can be easily satisfied when the face of the offense, and not just simply the elements, are painted with deceit. *Altobello*, 872 F.2d at 217.

B. As Ms. Fenty's crime was in the nature of crimen falsi, the District Court properly admitted her prior conviction under Rule 609(a)(2) for impeachment purposes.

Ms. Fenty's prior conviction of petit larceny under Boerum Penal Code § 155.25 was a crime of deceit, and therefore, Rule 609(a)(2) mandates its admission for impeachment purposes. The facts revealed from the Ms. Fenty's testimony emphasize that she intended to commit the offense without ever being detected or noticed by her victim or those around her. R. at 58. Although petit larceny is not necessarily a crime of dishonesty or false statement as described by Rule 609(a)(2), the way that it is committed can allow the crime to fall within the scope (i.e., when it was committed by fraudulent or deceitful means). *United States v. Yeo*, 739 F.2d 385, 388 (8th Cir. 1984). Therefore, this Court should affirm the Fourteenth Circuit holding that Ms. Fenty's prior conviction was properly admitted because the way in which Ms. Fenty planned, executed, and testified to her offense emphasized that this was an offense in the nature of crime falsi.

A mere violent crime does not fall within the scope of Rule 609(a)(2), as the witness' tendency to behave violently and "lawless" does not speak to their likelihood of testifying truthfully. *Altobello*, 872 F.2d at 216. In contrast, a crime like that of Ms. Fenty's is admissible under the rule when the deceptive and dishonest way the offense was committed mirrors the witness' credibility or lack thereof. *Id.* Ms. Fenty's testimony and the facts surrounding her prior conviction reveal that Ms. Fenty committed the through deceit, rather than violence. R. at 59.

During the trial, Ms. Fenty explained that she chose her victim specifically because the woman was distracted watching a street performance. R. at 59. After selecting her victim, Ms. Fenty approached quietly and sneakily as to avoid detection. R. at 59. She revealed that the purpose of her discrete approach was to dodge attention from her unwitting victim and the nearby crowd. R. at 59. It was only after the victim noticed Ms. Fenty attempt to steal her bag that Ms. Fenty began to raise her voice and pull the bag from the victim. R. at 59. Although the victim's attempt to defend herself and her property ultimately drew attention, Ms. Fenty admitted that the original plan of her offense was to conduct it quietly. R. at 60. Therefore, although the conviction of petit larceny does not contain an element of deceit, the manner in which Ms. Fenty conducted it was driven by a clear intention to deceive her victim.

Unlike prior cases in which the facts of an offense did not include deception, thus rendering Rule 609(a)(2) inapplicable, Ms. Fenty's conviction involved dishonesty within the meaning of the rule. *Ortega,* 561 F.2d at 805. In *Ortega,* the Ninth Circuit found that Ortega's prior conviction of shoplifting did not involve elements dishonesty or deceit. *Id*. The court reached this conclusion because the facts of the offense simply included taking two vodka bottles without paying for them: a distasteful act, but not deceptive within Rule 609(a)(2). *Id*. The details of Ortega's prior conviction differ significantly than Ms. Fenty's. Ms. Fenty acted

deliberately and covertly to deceive her victim, while Ortega's more simple crime involved no purposeful effort to deceive. *Id.* Affirming that Ms. Fenty's conviction was property admitted under Rule 609(a)(2) does not discount the holding in *Ortega,* rather it recognizes that the rule requires a careful analysis of the prior offense. Therefore, this Court should affirm the holding of the Fourteenth Circuit that Ms. Fenty's prior misdemeanor was properly admitted under Rule 609(a)(2).

CONCLUSION

For the forgoing reasons, Respondent respectfully requests that this Court affirm the judgment of the Fourteenth Circuit Court of Appeals.

Respectfully Submitted,
/s/ Team 16
Attorneys for Respondent