
IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FAIZAL BHIMANI,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AS APPELLEE

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IN THE UNITED STATES COURT OF APPEALS
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No. 22-1436

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

FAIZAL BHIMANI,

Defendant-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AS APPELLEE

STATEMENT OF JURISDICTION

This appeal is from a district court’s final judgment in a criminal case. The district court had jurisdiction under 18 U.S.C. 3231. The court entered final judgment against defendant Faizal Bhimani on February 23, 2022. App. 56-64.¹

¹ “App. __” refers to page numbers in the Corrected Appendix filed by defendant-appellant Faizal Bhimani. “Br. __” refers to page numbers of Bhimani’s corrected opening brief. “PSR __” refers to page numbers of Bhimani’s Presentence Investigation Report. “Supp. App. __” refers to page numbers in the Supplemental Appendix filed by the United States in conjunction with this brief.

Bhimani filed a timely notice of appeal on March 9, 2022. App. 1. This Court has jurisdiction under 28 U.S.C. 1291.

STATEMENT OF THE ISSUE

Whether Bhimani failed to establish that the district court plainly erred under the law-of-the-case doctrine in admitting a redacted version of his video-recorded, post-arrest interview, and that he was prejudiced by such admission.

STATEMENT OF RELATED CASES OR PROCEEDINGS

This case has not previously been before this Court. Bhimani's co-defendants, Nazim Hassam, Omi Sri Sai, Inc. and Pocono Plaza Inn, were each convicted of all the counts with which they were charged. These parties filed a motion for judgment of acquittal or, in the alternative, for a new trial, which the district court denied. Hassam appealed both his conviction and sentence (No. 22-2024), then subsequently withdrew his appeal.

STATEMENT OF THE CASE

1. Procedural History

In July 2020, a federal grand jury in the Middle District of Pennsylvania returned a second superseding indictment charging defendants Faizal Bhimani, Om Sri Sai, Inc., Nazim Hassam, and the Pocono Plaza Inn with 5 counts relating to sex and drug trafficking. PSR 5-6. Count 1 charged Bhimani with sex trafficking by force and coercion under 18 U.S.C. 1591(a)(1), (a)(2), and (b)(1). PSR 5.

Count 2 charged Bhimani with sex trafficking conspiracy under 18 U.S.C. 1594(c). PSR 5. Count 3 charged Bhimani with drug trafficking conspiracy under 21 U.S.C. 846. PSR 6. Counts 4 and 5 charged Bhimani with managing a drug premises under 21 U.S.C. 856(a)(2). PSR 6.

Bhimani pleaded not guilty to the charges and the case proceeded to trial in October 2020. PSR 6. The jury convicted him on all counts. App. 3-9. The district court sentenced Bhimani to 180 months' imprisonment on each count, to run concurrently, followed by five years of supervised release. App. 56-60. Bhimani timely appealed. App. 1. On appeal, Bhimani challenges only the district court's decision to allow the government to introduce at trial a redacted video of his post-arrest interview with law enforcement officers.

2. *Factual Background*

a. Bhimani's Participation In Sex And Drug Trafficking

Between 2011 and October 2017, defendant Faizal Bhimani was the general manager of a Howard Johnson's hotel in Bartonsville, Pennsylvania, where he also resided. PSR 5-6, 8, 16, 25. The Howard Johnson's was owned and operated by Om Sri Sai, Inc., a Pennsylvania corporation, which in turn was owned in part by Nazim Hassam, Bhimani's uncle. PSR 8. Hassam also owned and operated the nearby Quality Inn (now called the Pocono Plaza Inn), in Stroudsburg, Pennsylvania. PSR 8.

During his time as the Howard Johnson's general manager, Bhimani actively participated in sex and drug trafficking that occurred at the hotel. PSR 8. Bhimani rented hotel rooms to traffickers, sometimes allowing them to pay after sex trafficking victims earned money. PSR 8-9, 11-12. Bhimani also had an arrangement with some of the sex traffickers, through which he was permitted to engage in sex with trafficking victims in exchange for money or free or discounted rooms. PSR 8-9, 11. Bhimani participated in this arrangement, despite knowing that traffickers had subjected the victims to force, threats, and coercion. PSR 8. Witnesses also testified that Bhimani sold heroin and cocaine and threw parties at which he provided drugs and commercial sex workers to his friends. PSR 9.

Bhimani not only allowed the criminal activity occurring at the Howard Johnson's to continue—he facilitated it. Several witnesses testified that drug and sex trafficking was out in the open at the Howard Johnson's and that traffickers were able to conduct their business without hotel interference. PSR 10-12. Bhimani warned traffickers when police were present at the hotel and encouraged them to move to the Quality Inn. PSR 8, 11-12. At Bhimani's direction, hotel employees placed sex traffickers and their victims, drug traffickers, and drug users in rooms in the rear hallway of the hotel's ground floor to separate them from non-criminal guests and give them easy access to rear entrances to facilitate crimes and avoid detection. PSR 9, 16. To further hide their criminal activity, Bhimani

allowed sex and drug traffickers to check into the hotel under assumed names, street names, or the names of customers or girlfriends. PSR 9, 16.

Bhimani further abetted sex trafficking at the Howard Johnson's by refusing to assist victims who he observed being assaulted or who he knew wanted to escape their traffickers. On one occasion, Bhimani witnessed a trafficker assault a trafficking victim in the hotel back hallway while she was in her underwear. PSR 10. Bhimani did not call the police to report the incident or tell the trafficker to leave the hotel. PSR 10. On another occasion, Bhimani alerted another sex trafficker that one of his victims was attempting to leave the hotel, and prevented her from entering her hotel room to gather her belongings before he returned. PSR 8, 10. On a third occasion, Bhimani refused a victim's plea for assistance to escape yet another trafficker. PSR 10.

b. Bhimani's Post-Arrest Interview And Pre-Trial Litigation Concerning Its Admission

Following his arrest in October 2017, Bhimani was interviewed by two law enforcement officers. App. 16 (Feb. 13, 2020, Mem. Order); App. 22 (Oct. 2, 2020, Mem.). During the interview, Bhimani admitted many of the allegations against him. PSR 10. Bhimani acknowledged that he knew that drug traffickers stayed at the hotel and that he had sex with some of the trafficked women. PSR 10. He further acknowledged that on at least one occasion he warned some people to stay away from the hotel to avoid detection by state troopers who were staying at the

Howard Johnson's in relation to an unrelated manhunt. PSR 10. Bhimani also admitted that he lied to the mother of a 15-year-old trafficking victim who inquired about her daughter's presence at the hotel, telling the mother that he did not know where her daughter had been staying. PSR 10.

In July 2019, co-defendant Om Sri Sai, Inc. filed a motion in limine to exclude the videotape of Bhimani's interview. App. 14 (Feb. 13, 2020, Mem. Order); App. 24-25 (Oct. 2, 2020, Mem.). The motion argued, among other things, that the interview was so interspersed with inadmissible hearsay that the entire video was inadmissible, and that its probative value was substantially outweighed by the danger of prejudice under Federal Rule of Evidence 403. App. 15 (Feb. 13, 2020, Mem. Order); App. 25 (Oct. 2, 2020, Mem.). The district court subsequently granted a motion filed by Bhimani and the other defendants to join Om Sri Sai's motion in limine. App. 14 (Feb. 13, 2020, Mem. Order); App. 25 (Oct. 2, 2020, Mem.).

In February 2020, District Court Judge A. Richard Caputo issued a memorandum order granting the defendants' motion without prejudice and excluding Bhimani's video interview in its entirety. App. 14-20. Judge Caputo found that the officers' reading of certain witness and victim statements to Bhimani, and other assertions by the officers to which Bhimani was not permitted to respond, constituted inadmissible hearsay or were unduly prejudicial. App. 16-

19. Judge Caputo ordered that “[t]he Government may present a redacted version of the video which excludes all prejudicial and hearsay portions as described in this Order subject to any other bars to admissibility.” App. 19.

After Judge Caputo passed away in March 2020, the case was reassigned to District Court Judge Malachy E. Mannion. App. 25 n.2 (Oct. 2, 2020, Mem.). In September 2020, the government moved in limine to admit a redacted version of Bhimani’s videotaped interview, attaching a redacted transcript of the interview reflecting the proposed video redactions as an exhibit. App. 26 (Oct. 2, 2020, Mem.). Bhimani’s co-defendants opposed the government’s motion arguing, in relevant part, that the entire video should be excluded as failing to comply with Judge Caputo’s order because the redacted transcript still contained some statements by the officers to which Bhimani was not permitted to respond, along with statements of the officers’ personal opinions. App. 26 (Oct. 2, 2020, Mem.); Supp. App. 4-14. The defendants did not argue that the law-of-the-case doctrine precluded the court from reconsidering its position that the interview was inadmissible. Supp. App. 1-20.

Bhimani filed a motion to join his co-defendants’ response brief to the government’s motion in limine. App. 26 (Oct. 2, 2020, Mem.); Supp. App. 21-24. His motion argued that Judge Caputo’s order “was clear regarding its decision and [its] reasoning” that the videotaped interview “should be ruled inadmissible because

it violated Federal Rules of Evidence 403 and 801.” Supp. App. 22. Bhimani’s motion further argued that, in any event, the government should not be permitted to present a redacted transcript in lieu of a videotape. Supp. App. 22-23. Bhimani’s motion also did not argue that Judge Caputo’s order was the law of the case. Supp. App. 21-24.

After briefing on the government’s motion in limine was complete, the district court ordered the parties to confer about making further redactions to the interview. App. 27 (Oct. 2, 2020, Mem.). After the parties engaged in those discussions, the government filed a supplement to its motion in limine proposing further redactions, and attaching the further redacted transcript as an exhibit. App. 27 (Oct. 2, 2020, Mem.). The government stated that the parties “agreed upon substantial redactions to the interview, as reflected in the yellow highlighted portions of the attached transcript” and contended that “the un-highlighted portions of the [attached] transcript are admissible.” App. 27 (Oct. 2, 2020, Mem.) (internal quotation marks and citations omitted). The following day, the district court issued an order directing defendants’ counsel to identify any continuing objections “with specific reference[s] to page numbers and line numbers on the proposed amended transcript” and to include with each objected to line/sentence “the specific argument made to the contents of that specific line and/or sentence as well as the caselaw supporting the objection.” App. 28 (Oct. 2, 2020, Mem.) (citation omitted). Both

Bhimani and his co-defendants filed responses listing sections they alleged contained inadmissible hearsay. App. 28 (Oct. 2, 2020, Mem.). Again, neither pleading objected on law-of-the-case grounds. Supp. App. 25-35 (Co-Defs.’ Resp.); Supp. App. 36-45 (Bhimani’s Resp.).

In October 2020, the district court issued an order and accompanying memorandum granting the government’s motion in limine in part and admitting the redacted video against Bhimani. App. 21-55. The court first observed that Judge Caputo’s October 2019 memorandum order finding that portions of Bhimani’s videotaped interview contained inadmissible hearsay “granted defendant’s motion *without* prejudice” and invited the government to “present a redacted version of the video which excludes all prejudicial and hearsay portions as described in th[at] Order subject to any other bars to admissibility.” App. 25 (alteration in original; citation omitted). The district court addressed the defendants’ continuing objections to the government’s redacted transcript line-by-line, and overruled the vast majority of them. App. 30-33. The court then concluded that Bhimani’s post-arrest statements to the law enforcement officers were testimonial in nature and admissible against him as party admissions under Federal Rule of Evidence 801(d)(2)(A). App. 37-38.

SUMMARY OF THE ARGUMENT

Bhimani's sole contention on appeal is that Judge Caputo's order granting the defendants' motion in limine to exclude his *unredacted* video interview with law enforcement officers was the law of the case, and, therefore, the district court was precluded from later admitting a *redacted* version of that interview. This argument, which Bhimani failed to make below, is without merit and should be rejected. The law-of-the-case doctrine does not apply here because Judge Caputo's pre-trial evidentiary ruling was a preliminary interlocutory order in which he granted the defendants' motion *without* prejudice and expressly invited the government to present a redacted version of the video that excluded the portions of the video he identified as problematic. Moreover, even if the law-of-the-case doctrine applies, the district court acted properly in reconsidering Judge Caputo's order because it explained on the record the reasons for reconsideration, and because Bhimani was not prejudiced by his reliance on Judge Caputo's order. Finally, even if the district court plainly erred, that error did not affect Bhimani's substantial rights given the overwhelming evidence that he participated in sex and drug trafficking at the Howard Johnson's hotel as its general manager.

STANDARD OF REVIEW

This Court generally reviews a district court's admission of evidence for abuse of discretion, but reviews for plain error any decision to which a party failed

to specifically object before the district court. See *United States v. Christie*, 624 F.3d 558, 567 (3d Cir. 2010), cert. denied, 562 U.S. 1236 (2011). To properly preserve a claim of evidentiary error under Federal Rule of Evidence 103(a)(1), a party must make “a timely and specific objection to evidence erroneously admitted.” *United States v. Iglesias*, 535 F.3d 150, 158 (3d Cir. 2008) (citation omitted), cert. denied, 557 U.S. 913 (2009). “[A] party fails to preserve an evidentiary issue for appeal not only by failing to make a specific objection, but also by making the *wrong* specific objection.” *Ibid.* (alteration and citation omitted).

Under the plain-error standard of review for unpreserved evidentiary objections, “a defendant must establish that there was an error that was plain or obvious, that it affected his substantial rights, and that, if not rectified, it would seriously affect the fairness, integrity or public reputation of judicial proceedings.” *Christie*, 624 F.3d at 567 (internal quotation marks and citation omitted). To constitute plain error, an error must be “clear or, equivalently, obvious under current law,” such as when the error deviates from “precedent [that] speaks directly to the issue.” *United States v. Morton*, 993 F.3d 198, 205 (3d Cir. 2021) (internal quotation marks and citation omitted). Plain error “affects substantial rights when it is prejudicial, *i.e.*, it affected the outcome of the district court proceedings.” *Iglesias*, 535 F.3d at 158 (internal quotation marks and citation omitted).

ARGUMENT

BHIMANI CANNOT SHOW THAT THE DISTRICT COURT PLAINLY ERRED IN ADMITTING A REDACTED VERSION OF HIS VIDEO-RECORDED, POST-ARREST INTERVIEW AND THAT HE WAS PREJUDICED BY SUCH ADMISSION

Bhimani's sole contention on appeal is that Judge Caputo's order excluding an unredacted version of his videotaped, post-arrest interview constituted the law of the case, and thus precluded the district court from later admitting a redacted version of the interview that excluded the prejudicial and hearsay portions Judge Caputo's order identified. This argument is meritless and should be rejected.

1. Bhimani failed to argue below that the law-of-the-case doctrine precluded the district court from admitting a redacted version of his interview with law enforcement officers. In their brief in opposition to the government's motion in limine seeking admission of the redacted interview, Bhimani's co-defendants argued only that the entire video should be excluded because the government's redacted transcript failed to exclude some parts of the interview that Judge Caputo previously had identified as problematic. Supp. App. 4-14. Bhimani filed a motion requesting to join his co-defendants' response brief and arguing that Judge Caputo was "clear regarding [his] decision and [his] reasoning that the video interrogation of Mr. Bhimani should be ruled inadmissible because it violated Federal Rules of Evidence 403 and 801," and that the government should not be permitted to present a redacted transcript rather than a video. Supp. App. 21-24. Neither these

pleadings, nor Bhimani's and his co-defendants' responses to the government's supplement to its motion in limine submitting a further redacted transcript produced by the parties' discussion, mentioned the law-of-the-case doctrine. Accordingly, Bhimani's arguments were insufficiently specific to preserve his evidentiary objection. See *United States v. Iglesias*, 535 F.3d 150, 158 (3d Cir. 2008) (holding that a trial objection on grounds of the best evidence rule did not preserve a hearsay objection on appeal), cert. denied, 557 U.S. 913 (2009); *United States v. Sandini*, 803 F.2d 123, 126-127 (3d Cir. 1986) (holding that a trial objection on relevance grounds did not preserve an "other acts" evidence challenge for appeal), cert. denied, 479 U.S. 1093 (1987).

To be sure, a party need not specify the basis for its objection by name in order to preserve it for appeal, but must argue with enough specificity that the district court understands the grounds for the challenge and can rule on it. See *United States v. Fluker*, 698 F.3d 988, 997 (7th Cir. 2012) ("To preserve an issue for appellate review, a party must make a proper objection at trial that alerts the court and opposing party to the specific grounds for the objection.") (internal quotation marks and citation omitted). Bhimani's bare-bones contention that Judge Caputo's initial ruling was "clear" was insufficient to alert the court and the government that he was objecting on law-of-the-case grounds. Because Bhimani

failed to preserve his evidentiary objection, this Court reviews his evidentiary challenge for plain error.

2. The district court did not err, plainly or otherwise, in admitting a redacted version of Bhimani's videotaped interview. The law-of-the-case doctrine, upon which Bhimani grounds his appeal, "generally provides that when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Musacchio v. United States*, 577 U.S. 237, 244-245 (2016) (internal quotation marks and citation omitted). "The doctrine expresses the practice of courts generally to refuse to reopen what has been decided." *Id.* at 245 (internal quotation marks and citation omitted). The doctrine requires a final judgment "to sustain [its] application," *United States v. United States Smelting Refin. & Mining Co.*, 339 U.S. 186, 199 (1950), and does not apply to interlocutory orders, which "remain open to trial court reconsideration, and do not constitute the law of the case," *United States ex rel. Petratos v. Genentech Inc.*, 855 F.3d 481, 493 (3d Cir. 2017) (citation omitted). The law-of-the-case doctrine also "does not prohibit courts from revisiting matters that are avowedly preliminary or tentative." *Council of Alt. Pol. Parties v. Hooks*, 179 F.3d 64, 69 (3d Cir. 1999) (internal quotation marks and citation omitted); cf. *Hayman Cash Reg. Co. v. Sarokin*, 669 F.2d 162, 168-170 (3d Cir. 1982) (holding that final decision of transferor court that suit could have been brought in transferee court

was the law of the case and should not be reconsidered absent unusual circumstances).

This Court's precedent makes clear that the law-of-the-case doctrine does not apply here. Judge Caputo's pre-trial order excluding Bhimani's interview was an interlocutory order open to subsequent reconsideration. See *Tang v. Rhode Island, Dep't of Elderly Affs.*, 163 F.3d 7, 11 (1st Cir. 1998) (holding that pre-trial ruling that evidence was admissible was an interlocutory order, and later ruling by successor judge that the same evidence was inadmissible did not implicate the law of the case); 18B Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4478.1 (3d ed. 2022) ("Pretrial rulings may be reconsidered not only during continuing pretrial proceedings but also at or after trial."). By its plain terms, Judge Caputo's order also was "avowedly preliminary or tentative," *Hooks*, 179 F.3d at 69 (citation omitted), as he granted the defendants' motion in limine to exclude Bhimani's interview in its *unredacted* form *without* prejudice and expressly invited the government to "present a redacted version of the video which excludes all prejudicial and hearsay portions as described" in the order. App. 19. Accordingly, the court did not plainly err in admitting a redacted version of the interview, as Judge Caputo's order specifically

contemplated that the United States would seek reconsideration with a redacted version.² See *United States v. Morton*, 993 F.3d 198, 205 (3d Cir. 2021).

On appeal, Bhimani concedes (Br. 21-22) that a district court’s order must be final for the law-of-the-case doctrine to apply. He also concedes (Br. 22) that Judge Caputo’s order granted the defendants’ motion in limine without prejudice and expressly invited the government to present a redacted version of the video. He nevertheless contends (Br. 22-23) that “under the circumstances in this particular case, Judge Caputo’s original Order should be considered final.” Bhimani cites no legal authority to support this statement. Instead, he asserts (Br. 23-24) that he “relied heavily” on Judge Caputo’s order excluding his interview in developing his case for trial and that the district court’s subsequent order admitting portions of the interview the day before trial “prejudiced” him and adversely affected his “due process right to have adequate time to prepare his defense.” This allegation of prejudicial reliance—which is meritless, as discussed below—does not call into question the well-settled precedent holding that a pre-trial evidentiary ruling is an interlocutory order that is not subject to the law-of-the-case doctrine.

² For these reasons, the district court also did not abuse its discretion in admitting a redacted version of Bhimani’s videotaped interview. See *United States v. Green*, 617 F.3d 233, 239 (3d Cir.) (holding that a district court’s evidentiary ruling is an abuse of discretion only where “no reasonable person would adopt the district court’s view”) (citation omitted), cert. denied, 562 U.S. 942 (2010).

See *Petratos*, 855 F.3d at 493; *Tang*, 163 F.3d at 11; Wright, Miller & Cooper, *supra* § 4478.1.

3a. Even assuming *arguendo* that the law-of-the-case doctrine applies here, the district court acted properly in reconsidering Judge Caputo’s initial evidentiary ruling. The law-of-the-case doctrine “does not limit the power of trial judges to reconsider their prior decisions,” *Roberts v. Ferman*, 826 F.3d 117, 126 (3d Cir. 2016) (citation omitted), cert. denied, 137 S. Ct. 1330 (2017), or “from reconsidering issues previously decided by a predecessor judge from the same court,” *Petratos*, 855 F.3d at 493 (citation omitted). Instead, the doctrine “governs [a court’s] exercise of discretion.” *In re City of Phila. Litig.*, 158 F.3d 711, 718 (3d Cir. 1998). This Court has identified two “prudential considerations” that guide this exercise of discretion: (1) the district court “must explain on the record the reasoning behind its decision to reconsider the prior ruling,” and (2) the district court “must take appropriate steps so that the parties are not prejudiced by reliance on the prior ruling.” *Williams v. Runyon*, 130 F.3d 568, 573 (3d Cir. 1997).

The district court did both here. First, the court correctly observed that Judge Caputo’s order granted the defendants’ motion in limine to exclude Bhimani’s videotaped interview *without* prejudice and expressly invited the government to present a video without the prejudicial and hearsay portions the order identified. App. 25. The district court then noted that the government had

accepted this invitation and had submitted a redacted version of the interview, and that the parties had engaged in negotiations and litigation regarding additional redactions. App. 26-27. This discussion was sufficient to satisfy the requirement that the district court explain on the record the reasoning behind its decision to reconsider Judge Caputo's prior ruling. Bhimani does not claim otherwise.

Nor was Bhimani prejudiced by relying on Judge Caputo's order. Judge Caputo's grant of the defendants' motion in limine *without prejudice* and invitation to the government to present a redacted version of the video put Bhimani on notice that the court might later reconsider its order and admit portions of the video. After the government submitted a redacted transcript of the interview, the district court directed the government and the defendants to confer about additional redactions to the interview, then gave the defendants the opportunity to make continuing objections to the resulting transcript on the record. App. 26-28. Only after giving the defendants notice and the opportunity to be heard did the district court consider and admit prior to trial a redacted video of Bhimani's interview.

This course of action is far removed from those this Court has found to be prejudicial. For example, in *Williams*, 130 F.3d at 570, a district court denied a defendant's motion to dismiss for failure to exhaust administrative remedies, stating that the court would decide the case on the merits. After a jury returned a verdict in favor of the plaintiff on her employment discrimination claim, the

district court granted the defendant's motion for judgment as a matter of law, holding that the plaintiff had failed to exhaust her administrative remedies. *Ibid.* The plaintiff appealed and this Court held that the law-of-the-case doctrine barred the district court from reconsidering *post-trial* its *pre-trial* ruling in favor of the plaintiff on failure to exhaust administrative remedies. *Id.* at 573. The Court explained that the plaintiff was clearly prejudiced by her lack of opportunity to present evidence at trial regarding exhaustion. *Ibid.* Bhimani does not argue, and cannot argue, any similar prejudice here.

Bhimani does not cite, much less discuss, these prudential considerations. To the extent Bhimani is arguing that he was prejudiced by his reliance on Judge Caputo's initial decision, the argument fails. Bhimani knew when Judge Caputo issued his order that the court would consider admitting a redacted version of the interview, and he knew at least as early as September 17, 2020, when the district court ordered the parties to confer about additional redactions, that the court was considering admitting a redacted version of the video. App. 27. Indeed, under Bhimani's view, it is difficult to conceive how a district court judge could reconsider *any* decision he or a predecessor judge made before trial without a party claiming prejudicial reliance on that decision. That position is not the law; rather, a district court may reconsider any and all pre-trial rulings before trial begins and

even during trial. See *Martin v. Port Auth. Transit of Allegheny Cnty.*, 115 F. App'x 556, 560 (3d Cir. 2004) (citing Wright, Miller & Cooper, *supra* § 4478.1).

3b. Bhimani argues that the facts here do not satisfy any of the exceptions this Court has recognized as allowing a district court judge to reconsider a predecessor judge's ruling: (1) a party filed a timely motion for reconsideration of the conclusions of an unavailable predecessor where reconsideration would otherwise be effectively denied; (2) new evidence is available to the second judge; (3) a new legal rule is applicable to the case; and (4) the first judge's decision was clearly erroneous and would work a manifest injustice. Br. 20-21, 24-26. This argument fails because the law-of-the-case doctrine does not apply to interlocutory evidentiary orders like the one here. See pp. 15-17, *supra*.

In any event, the facts satisfy the first of these recognized exceptions.³ The government's motion in limine to admit a redacted version of Bhimani's post-arrest interview constituted a timely motion to reconsider Judge Caputo's order.

³ Moreover, these exceptions are not the exclusive situations in which a district court may exercise its discretion to reconsider a prior decision. In *In re Pharmacy Benefit Managers Antitrust Litigation*, 582 F.3d 432 (3d Cir. 2009), this Court concluded that the law-of-the-case doctrine barred a judge from vacating his predecessor's order where he "did not rely on any of the recognized exceptions to the law of the case doctrine" and "also failed to find any extraordinary circumstance that would have justified" vacating the order. *Id.* at 439. In contrast, here, Judge Caputo's express invitation to the government to present to the court a redacted interview without the impermissible portions his order identified constituted an "extraordinary circumstance" that justified the district court's reconsideration of the order.

“If the judge who made the [original] decision dies[,] * * * he obviously is no longer available to reconsider it and such reconsideration must perforce be by another judge if it is to be had at all.” *TCF Film Corp. v. Gourley*, 240 F.2d 711, 714 (3d Cir. 1957). That happened here. Judge Caputo passed away shortly after issuing his order excluding Bhimani’s post-arrest interview, and the case was transferred to Judge Mannion. App. 25 n.2. The only way that the government could present a redacted interview to the district court—as Judge Caputo’s order expressly invited it to do—was to seek reconsideration of the order with Judge Mannion. Bhimani’s argument (Br. 25) that this exception does not apply because Judge Mannion issued his order seven months after Judge Caputo’s order and the day before trial merely rehashes his meritless prejudice argument and does not call into question the timeliness or underlying merit of the government’s motion.

4. In any event, even if the district court plainly erred in admitting a redacted version of Bhimani’s videotaped, post-arrest interview, such error did not affect Bhimani’s substantial rights in light of the overwhelming evidence that he participated in sex and drug trafficking at the Howard Johnson’s hotel as its general manager. Several witnesses testified that drug and sex trafficking was out in the open at the Howard Johnson’s, that traffickers were able to conduct their business without hotel interference, and that Bhimani sold drugs and threw drug parties on his own. PSR 9-12. Bhimani allowed traffickers to check into the hotel

under names other than their own and earn money to pay for the room through criminal activity, and, in exchange for money or free or discounted rooms, engaged in sex with trafficked women who he knew traffickers had subjected to force, threats, and coercion. PSR 8-9, 11-12. He directed hotel employees to place traffickers, their victims, and drug users in the hotel's ground-floor, back hallway to give them easy access to rear entrances to facilitate crimes and avoid detection, and gave traffickers unsolicited warnings when police were at the Howard Johnson's. PSR 8-9, 11-12, 16. Bhimani refused to assist sex trafficking victims he observed being assaulted or who he knew wanted to escape their traffickers. PSR 8, 10, 12. Given this evidence, any error by the district court in admitting the redacted version of Bhimani's post-arrest interview was not prejudicial and did not "affect[] the outcome of the district court proceedings." *Iglesias*, 535 F.3d at 158 (citation omitted).

CONCLUSION

This Court should affirm Bhimani's conviction.

Respectfully submitted,

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CERTIFICATE OF BAR MEMBERSHIP

Pursuant to Local Rules 28.3(d) and 46.1(a), I hereby certify that I am exempt from the Third Circuit's bar admission requirement as counsel representing the United States.

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Date: March 9, 2023

CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(g):

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 5018 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5), and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2019 in Times New Roman, 14-point font.

I also certify, pursuant to Local Rule 31.1(c), the text of the electronic brief is identical to the text in the paper copies of this brief. I further certify that the electronic version of this brief, prepared for submission via ECF, has been scanned with the most recent version of Windows Defender (Version 1.2.3412.0) and is virus-free according to that program.

s/ Christopher C. Wang
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Attorney

Date: March 9, 2023

CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2023, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS APPELLEE with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the CM/ECF system. I also certify that on March 9, 2023, seven (7) paper copies, identical to the brief filed electronically, were sent to the Clerk of the Court by Federal Express.

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