VULNERABLE FRAUDSTERS: REVERSE AFFINITY FRAUD IN CASES OF PUBLIC HOAXES

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ABSTRACT

This Article examines reverse affinity fraud, which is affinity fraud in the context of public hoaxes. In traditional affinity fraud the fraudster targets a vulnerable group, whereas in cases of public hoaxes the fraudster portrays herself as part of a vulnerable group and targets the well-meaning and sympathetic general public. This Article explores the mindset and characteristics of vulnerable fraudsters in reverse affinity frauds by analyzing the cases of Sherri Papini and Lacey Spears. Both Papini and Spears utilized social media and online giving sites to defraud the public, and their cases highlight the unique challenges prosecutors have in proving wire fraud in certain types of online giving scenarios. This Article concludes that while Papini and Spears can properly be characterized as vulnerable fraudsters, actually charging them with reverse affinity fraud is difficult due to the current lack of guidelines under federal law.

* Saint Louis University School of Law class of 2023, *cum laude*. Thank you to my grandparents, parents, brother, and sisters for all the love and support they provided over the years. Thank you also to Professors Hal Goldsmith and James Crowe, who taught my White Collar Crime seminar, answered countless questions, and helped with the creation and editing this Article. Thank you to the staff of *The Criminal Law Practitioner* for their excellent work in preparing this article for publication.

INTRODUCTION

In November 2016, Sherri Papini was kidnapped while jogging around her neighborhood.[1] In September 2022, Eliza Fletcher was kidnapped during her routine jog.[2] Both women were thirty four years old, blonde, and married mothers of two.[3] Fletcher's broken cellphone was found near the alleged spot of Fletcher's abduction,[4] while Papini's cellphone and earbuds—entangled with blonde hair—were placed two feet from the road of Papini's alleged abduction site.[5] Both families and communities begged for the safe return of the two mothers and conducted nationwide manhunts.[6] In Papini's case, their efforts included a GoFundMe page that raised $49,070 for Papini.[7]

One of these women was ambushed, attacked, and forced into a dark sport utility vehicle (SUV) by a man.[8] Three days later, her body was found behind an abandoned duplex with blunt force trauma wounds to her face, jaw, and legs, as well as a single gunshot wound to the back of her head.[9] Her children lost their mother, her husband lost his wife, and her students lost their kindergarten teacher.[10] The other woman was shoved into a dark-colored SUV by two Hispanic women.[11] Twenty-two days later, she waved down a truck on a local highway with a chain around her waist and several bindings.[12] Suffering significant weight loss, facial and nose bruises, various arm and leg rashes, and a horrific brand on her right shoulder, she remarkably made it home alive.[13] One of these women never made it home; the other made the entire thing up.[14]

Based on the similarities in the horrific facts of Fletcher and Papini's kidnappings, it is hard to believe that Papini feigned her abduction. When one hears that a young mother has been kidnapped, branded, and abused, and narrowly escaped after three weeks of captivity, an average member of the public would feel sympathy for the woman and her family, not

1 *See* Information at 4, United States v. Papini, No. 2:22-cr-00070-WBS (E.D. Cal. Apr. 12, 2012).

2 Natalie Finn, *Inside the Disturbing Aftermath of the Eliza Fletcher Murder Case*, ENEWS (Oct. 2, 2022, 7:00 AM CST), https://www.eonline.com/news/1348533/inside-the-disturbing-aftermath-of-the-eliza-fletcher-murder-case.

3 *Id.*; Affidavit in Support of Crim. Compl. & Arrest Warrant at ¶ 7, United States v. Papini, No. 2:22-cr-00070-WBS (E.D. Cal. Mar. 3, 2022) (No. 3:22-mj-00001-DMC *SEALED*) [hereinafter Papini Affidavit].

4 Finn, *supra* note 2.

5 Papini Affidavit, *supra* note 3, at ¶ 9.

6 Michele Chandler, "*The Lies Are Out:" Sherri Papini Sentencing Takes Place Monday in Sacramento Courtroom*, REDDING REC. SEARCHLIGHT (Sept. 15, 2022, 11:58 AM), https://www.redding.com/story/news/2022/09/15/sherri-papini-kidnapping-hoax-case-nears-end-monday sentencing/10367516002/; Jordan James et al., *Search for Missing Jogger Eliza Fletcher Continues*, WVNS (2022), https://www.wvnstv.com/news/national-news/search-for-missing-teacher-eliza-fletcher-continues/amp/.

7 Papini Affidavit *supra* note 3, at ¶ 53.

8 Shweta Sharma, *Eliza Fletcher Autopsy Reveals Brutal Cause of Death in Memphis Kidnapping*, INDEPENDENT (Sept. 30, 2022, 2:05 PM BST), https://www.independent.co.uk/news/world/americas/crime/eliza-fletcher-autopsy-results-fentanyl-b2181394.html [https://perma.cc/ZX5A-S67Q].

9 *Id.*

10 Finn, *supra* note 2.

11 Papini Affidavit, *supra* note 3, at ¶ 17(c).

12 *Id.* at ¶ 15.

13 *Id.*

14 Dakin Andone, *California Woman's Alleged Fake Abduction Cost the Public Hundreds of Thousands of Dollars, Authorities Say*, CNN (Mar. 8, 2022, 7:36 PM EST), https://edition.cnn.com/2022/03/08/us/sherri-papini-detention-hearing/index.html.

suspicion that she faked the ordeal.[15] As in Papini's case, some generous people may want to show their sympathy through financial support on fundraising sites such as GoFundMe. Instead, their kindness supported Papini in defrauding the public through the GoFundMe proceeds, wasting the resources of the local police and the Federal Bureau of Investigation ("FBI"), and fraudulently obtaining funds from the California Victim Compensation Board ("CalVCB").[16]

Papini's kidnapping hoax is also similar in motivation to individuals with Factitious Disease Disorder Imposed on Another ("FDIA") (formerly termed "Munchausen by proxy"), where a parent fakes that their child has serious medical problems for attention and money.[17] One such FDIA case was that of Lacey Spears, a young mother that murdered her five-year-old son Garnett when Spears tried to extend his hospital stay by putting sixty-nine packets of salt into his feeding bags.[18] The cases of Papini and Spears both involve perpetrators who utilized social media to spread false information to garner sympathy for their issues.[19] Both women were more than happy to accept financial donations from sympathizers.[20]

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15 *See* Michelle Del Rey, *Why Carlee Russell's False Kidnapping Claims Won't Harm the Search for Missing Black Women*, AL.COM (Oct. 17, 2023, 9:20 AM), https://www.al.com/reckon/2023/10/why-carlee-russells-false-kid napping-claims-wont-harm-the-search-for-missing-black-women.html (demonstrating that since "[c]ases of people faking their kidnappings are rare[,]" people are not automatically suspicious of kidnapping cases). See generally *Why Are We More Likely to Offer Help to a Specific Individual than a Vague Group?: The Identifiable Victim Effect Explained*, THE DECISION LAB [hereinafter *The Identifiable Victim Effect Explained*], https://thedecisionlab.com/ biases/ identifiable-victim-effect, for a discussion of the identifiable victim effect, which can explain why an average member of the public would feel sympathy for a kidnap survivor.

16 United States' Amended Sent'g Memorandum at 5, United States v. Papini, No. 2:22-cr-00070-WBS (E.D. Cal. Sept. 14, 2022) [hereinafter Papini Sent'g Memo].

17 *See Factitious Disorder Imposed on Another (FDIA)*, CLEVELAND CLINIC (Oct. 18, 2021), https://my.cleveland clinic. org/health/diseases/9834-factitious-disorder-imposed-on-another-fdia.

18 The Associated Press, *Lacey Spears Convicted of Murder in Son's Salt Poisoning Death*, AL.COM (Mar. 2, 2015, 3:57 PM), https://www.al.com/news/2015/03/lacey_spears_convicted_of_murd.html.

19 *See* Traci Schrader, *Love, Lacey (The Garnett Spears Story)*, MEDIUM (Aug. 26, 2018), https://medium.com/ @tracina. schrader/love-lacey-the-garnett-spears-story-78be8d382708 (Spears' use of social media); Bevan Hurley, *'I Didn't Believe it for a Moment:' Inside the Case of 'Supermom' Sherri Papini Charged With Fake Kidnapping,* Independent (Apr. 12, 2022), https://www.independent.co.uk/news/world/americas/crime/sherri-papini-kidnapping-charged-california-b2034558.html (Papini's use of social media).

20 *See Devil in Suburbia: Failure to Thrive* (ID Discovery broadcast Sept. 13, 2022) (detailing donations made to Spears); Papini Sent'g Memo, *supra* note 16, at 7 (arguing that "Papini took her hoax even farther when she applied for disability benefits from the Social Security Administration and victims benefits from CalVCB. Papini continued to receive these benefits until she was arrested.").

Both cases suggest affinity fraud, which targets vulnerable people by playing on their inherent trust of the fraudster.[21] In the cases of Papini and Spears, the fraudsters themselves are members of the traditionally sympathetic and vulnerable groups. A young mother escaping three weeks of torture and captivity and a widowed mother trying to support a seriously ill toddler tend to automatically pull on the public's heartstrings. These fraudsters prey on the public's sympathy, use their positions as members of these vulnerable classes, and then exploit the relatively unvetted GoFundMe and other social media sites to deprive kindhearted people of their money.[22]

Using the cases of Papini and Spears, this Article will demonstrate that public hoaxes committed by so-called vulnerable fraudsters are a type of inverted affinity fraud, or as I will call it, "reverse affinity fraud." Part I will define affinity fraud and reverse affinity fraud and will show monetary donations as the primary source of the financial frauds. Part II will delve into the Papini case, starting with a description of her scheme and the investigation leading up to her arrest. Part III will examine Papini's plea agreement, proposed versus actual sentences, and potential additional adjustments and charges. Part IV will compare Spears' social media usage to that of Papini's and explore the unique challenges prosecutors have in proving wire fraud in certain types of online giving scenarios. This Article concludes with the premise that while Papini and Spears can properly be characterized as vulnerable fraudsters, actually charging them with reverse affinity fraud is difficult due to the current lack of federal guidelines.

I. AFFINITY FRAUD & 18 U.S.C. §§ 1341 & 1343

The U.S. Securities and Exchange Commission ("SEC") defines affinity fraud as a type of fraud where perpetrators "target members of identifiable groups, such as the elderly, or religious or ethnic communities."[23] Fraudsters either infiltrate the group and become a trusted member of the community or already hold a trustworthy position, such as a group leader or a religious title, that do not raise the victims' suspicions.[24] The most common frauds target churches, particularly the Church of Jesus Christ of Latter-day Saints and various Christian mega-churches.[25]

For example, Pastor Kirbyjon Caldwell defrauded his congregation out of around $900,000 by using his status as a respected figure in the church to convince his many victims that "they were making a legitimate investment, but instead . . . took their hard-

[21] *Affinity Fraud*, FBI.GOV (Dec. 18, 2017) [hereinafter FBI Affinity Fraud], https://www.fbi.gov/news/stories/beware-of-affinity-fraud [https://perma.cc/D8KF-M677].

[22] *See generally GoFundMe is Working Overtime to Moderate Scam Campaigns for Manchester Bombing Victims*, GOFRAUDME (May 26, 2017), https://gofraudme.com/gofundme-working-overtime-moderate-scam-campaigns-manchester-bombing-victims/; *Nevada Mom Who "Killed Off" Her Kid for GoFundMe Scam Sentenced to Prison. A Lot of Prison*, GOFRAUDME (May 23, 2018), https://gofraudme.com/nevada-mom-fake-leukemia-gofundme-scam/; Ange McCormack, *'Go Fraud Me': The Woman who Hunts Down Fake GoFundMe Campaigns*, AUSTL. BROAD. CORP. (Nov. 9, 2017), https://www.abc.net.au/triplej/programs/hack/go-fraud-me/9135226.

[23] U.S. SEC. & EXCH. COMM'N OFF. OF INV. EDUC. & ADVOC., *Affinity Fraud*, INVESTOR.GOV [hereinafter OIEA Affinity Fraud], https://www.investor.gov/protect-your-investments/fraud/types-fraud/affinity-fraud [https://perma .cc/93FJ-6CPT].

[24] *Affinity Fraud*, U.S. SEC. & EXCH. COMM'N (July 7, 2023), https://www.sec.gov/securities-topics/affinity-fraud.

[25] *Id.*; FBI Affinity Fraud, *supra* note 21.

earned money . . . and used it for his own personal gain."[26] As their pastor (and former spiritual advisor to two U.S. presidents), Caldwell's congregation respected him and trusted that their brother-in-Christ had their best interests in mind, and would not abuse that trust for his personal financial benefit.[27]

While the SEC definition of affinity fraud captures the most frequent identifiable groups,[28] the FBI's broader definition encompasses the core feature in any affinity fraud. The FBI defines affinity fraud as "[f]inancial crimes based on bonds of trust."[29] Financial investments or donations motivated and based on the implicit trust the victim has in the fraudster's representations and character remains true in all affinity frauds.[30]

Papini and Spears' victims—the sympathetic and empathetic general public—were not members of an identifiable group or even the same groups as Papini and Spears. Instead, Papini and Spears used their positions as vulnerable and highly sympathetic figures to gain attention and public favor, and to defraud well-wishers and supporters of their donations.[31] Papini and Spears manipulated and exploited the general public's trust, because the events that happened to them were so horrific and tragic that a reasonable person would never imagine that they would be lying and perpetrating a hoax.[32]

In Papini's case, when a woman appears bound, bruised, and branded after going missing for three weeks, the general public's initial reaction is typically not to disbelieve the woman's account of her experience, nor to speculate that she made it all up.[33] Instead, the typical reaction from the general public is to seek to protect, comfort, and support the victim.[34] In fact, the general public and media's fascination with young, attractive white women who have been kidnapped is so prevalent that social scientists have designated the phenomenon as "missing white woman syndrome."[35] One commentator suggests that "missing white woman syndrome" is the modern day equivalent of a damsel-in-distress: "[i]t's the meta-narrative of something seen as precious and delicate being snatched

[26] Juan A. Lozano, *Texas Megachurch Pastor Sent to Prison for Fraud Scheme*, AP NEWS (Jan. 14, 2021), https:// apnews.com/article/houston-shreveport-george-w-bush-louisiana-texas-aa8301cb79723d27a630e997c6aaa436 [https://perma.cc/XDN7-YKCC].

[27] *Id.*

[28] *See* OIEA Affinity Fraud, *supra* note 23.

[29] FBI Affinity Fraud, *supra* note 21.

[30] *Investor Protection Guide: Affinity Fraud*, LEGAL INFO. INST. (Mar. 2023), https://www.law.cornell.edu/wex/ investor_protection_guide_affinity_fraud.

[31] *See infra* Parts II, IV.

[32] *Id.*

[33] *See* Sam Stanton, *Redding Celebrates Sherri Papini's Return, Dismisses Her Doubters at Welcome-Home Party*, THE SACRAMENTO BEE (July 26, 2022, 10:47 AM), https://www.sacbee.com/news/local/crime/article118697593.html (talking about how many Redding residents dismissed with disgust suggestions that have appeared online that Papini committed some sort of hoax calling it "sick" and "they're just trolls").

[34] *The Identifiable Victim Effect Explained*, *supra* note 15.

[35] CORY L. ARMSTRONG, MEDIA DISPARITY: A GENDER BATTLEGROUND 21 (2013). This fascination may not be all the public's fault as news media skews what they are presented. News media gives undue focus on young white women who disappear while ignoring kidnap victims who are women of color. *Id.* According to Armstrong, "[d]escriptions of missing white women emphasized their attractiveness, family ties, and social economic status, portraying them as important and privileged members of society," whereas missing women of color are either ignored or victim blamed. *Id.* Thus, stories of kidnapped white women are presented by media as stories meant to elicit sympathy and a paternalistic instinct to protect. *Id. See also* M. Alex Johnson, *Damsels in Distress*, NBC NEWS (July 21, 2004, 11:08 AM), https://www.nbcnews.com/id/wbna5325808.

away, defiled, destroyed by evil forces that lurk in the shadows, just outside the bedroom window."[36] The public's natural instincts to protect and care for white female kidnapping victims make that group the perfect target for the fraudster to exploit, as most people will be too relieved and overjoyed that the missing woman has returned safely to scrutinize whether her experience was too fantastical and must be a hoax.[37] Thus, a reverse affinity fraud is born.

The affinity and reverse affinity fraudster's primary methods of facilitating the fraud is via donations, which usually invoke the mail and wire fraud statutes located in 18 U.S.C. §§ 1341 and 1343, respectively.[38] Online giving, particularly through crowdsourcing platforms such as GoFundMe, is a relatively simple and popular tool because of its accessibility and ability to reach a wide audience.[39] A GoFundMe campaign beneficiary can electronically withdraw funds from the GoFundMe campaign through a bank account set up through WePay, which is owned and operated by JP Morgan Chase.[40] For example, in April 2022, a man convicted of conspiracy to commit wire fraud under 18 U.S.C. § 371 received a twenty-seven-month federal prison sentence for defrauding $400,000 from public donors via GoFundMe.[41] His donors thought their money was going to support a friendly unhoused man, but instead the money funded the fraudster's lifestyle of drug abuse and gambling.[42]

Because of its wide reach, reverse affinity fraud has the potential to deceive more victims than traditional affinity fraud. In traditional affinity fraud, the fraudster mainly targets a finite, identifiable group, such as a religious or ethnic group.[43] Whereas in reverse affinity fraud, the fraudster casts as wide a net as possible in order to defraud anyone they can. As such, there is nearly an unlimited number of victims; anyone with a sympathetic heart and internet access is vulnerable to the scheme.[44]

II. PAPINI KIDNAPPING HOAX: THE SCHEME

When Keith Papini reported his wife Sherri missing on November 2, 2016, the general public sprang into action.[45] Extensive searches were conducted by the Shasta County Sheriff's Office ("SCSO") and the FBI, and as the manhunt expanded, Papini's

[36] Eugene Robinson, *(White) Women We Love*, WASH. POST (June 10, 2005), https://www.washingtonpost.com/wp-dyn/content/article/2005/06/09/AR2005060901729.html [https://perma.cc/5XJ2-LF96].

[37] See for example the case of Sherri Papini, as discussed in Part II of this Article.

[38] *See* 18 U.S.C. §§ 1341, 1343 (2022).

[39] *GoFundMe Now Allows Donations via Venmo, so Helping Others is Even Easier*, MEDIUM (Aug. 24, 2023), https://medium.com/@gofundme/gofundme-now-allows-donations-via-venmo-so-helping-others-is-even-easier-201cad2e2b6c.

[40] Papini Affidavit, *supra* note 3, at ¶ 54.

[41] *Man in GoFundMe Scam Gets 27-Month Federal Prison Sentence*, AP NEWS (Apr. 1, 2022), https://apnews.com/article/new-jersey-camden-philanthropy-conspiracy-veterans-8f5d2a7171e78cf808b4564a5c22f955.

[42] *Id.*

[43] Jim Marasco, *The Allure and Danger of Affinity Fraud*, STONEBRIDGE BUS. PARTNERS (Aug. 2014), https://stonebridgebp.com/library/uncategorized/the-allure-and-danger-of-affinity-fraud/.

[44] *See* Stu Sjouwerman, *5 Reasons Why Scams Survive, Thrive, and Succeed,* SECURITY (Dec. 29, 2020), https:// www.securitymagazine.com/articles/94245-reasons-why-scams-survive-thrive-and-succeed (discussing how the internet allows for a nearly unlimited number of potential scam victims).

[45] Papini Affidavit, *supra* note 3, at ¶¶ 8–9.

case garnered worldwide attention.[46] The public flooded the FBI with hundreds of tips.[47] The "Help Find Sherri Papini" GoFundMe page was created on November 4, 2016, and raised almost $50,000.[48]

When Papini was found early on Thanksgiving morning of 2016, in Shasta County, California, the nation rejoiced at her return.[49] She was treated for non-life threatening injuries at the hospital, and unknown male DNA recovered from Papini's underwear and sweatpants was discovered and entered into the Combined DNA Index System ("CODIS") in hopes of identifying the perpetrator.[50] In addition to her physical injuries, Papini suffered from severe anxiety and post-traumatic stress disorder ("PTSD").[51]

Four days after her return, Papini applied to the California Victim Compensation Board ("CalVCB"), which is a state-run program that reimburses California violent-crime victims for crime-related expenses.[52] In her application, Papini detailed her kidnapping, including how two suspects with handguns ordered her into a vehicle and held her captive for twenty-two days before releasing her, how Papini had attempted to escape several times, and that she had fully cooperated with the subsequent investigation.[53] She signed the application under penalty of perjury; the application also included a clause stating "that action may be taken to recover benefits I receive if I provide information that is false, intentionally incomplete, or misleading."[54] On December 9, 2016, the CalVCB approved Papini's application, and she received reimbursements for therapist appointments, window blinds, and ambulance services over a period of six years, extending at least through March 2021.[55] In that time, Papini received a total of $30,694.15 in CalVCB reimbursements.[56]

While Papini was busy going to therapy for her falsified anxiety and PTSD and with helping the FBI create wanted posters for her fictional Hispanic kidnappers, the SCSO and FBI were diligently looking for her abductors.[57] In September 2019, the SCSO submitted the unknown male DNA found in Papini's underwear back in 2016 for a familial DNA search.[58] In March 2020, the results showed a match with a relative of Papini's "Ex-

46 *Id.* at ¶ 8.
47 *Id.*
48 *Id.* at ¶ 53.
49 *See* Stanton, *supra* note 33.
50 Papini Affidavit, *supra* note 3, at ¶¶ 5–16.
51 *Id.* at ¶ 65.
52 *How the CalVCB Helps Victims*, VICTIMS.CA.GOV, https://victims.ca.gov/board/.
53 Information, *supra* note 1, at 3.
54 Papini Affidavit, *supra* note 3, at ¶ 61(d).
55 Information, *supra* note 1, at 2.
56 *Id.*
57 *See* George Stark & Karen Mizoguchi, *Missing Mom Reunited with Husband on Thanksgiving After Being Freed by Captor—3 Weeks After Abduction*, PEOPLE (Nov. 25, 2016, 11:22 AM), https://people.com/crime/missing-california-mom-of-two-found-safe-as-shes-reunited-with-husband-police-say/.
58 Papini Affidavit, *supra* note 3, at ¶ 31. *See generally* GLOB. JUST. INFO. SHARING INITIATIVE, *An Introduction to Familial DNA Searching for State, Local, and Tribal Justice Agencies*, BUREAU OF JUST. ASSISTANCE (Apr. 2016), https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/an_introduction_to_familial_dna_searching1.pdf. ("When a routine search of a DNA database reveals that no qualifying person's profile matches that of the unknown perpetrator, it is possible to conduct an independent search to identify potential relatives of the alleged perpetrator. This search is based on the number of shared genetic characteristics (i.e., alleles) and the rarity of those shared alleles in human populations. Unlike a search for a direct match, a familial search will allow for matching subsets of alleles at any given genetic marker as a basis for comparison. Because alleles in humans are inherited in a one-for-one relationship

Boyfriend," the pseudonym used by the FBI.[59] An online investigation revealed that Papini and Ex-Boyfriend were joint subscribers to an email account, that they had conducted historical financial transactions together, and that Ex-Boyfriend's social media showed furniture that looked suspiciously like the ones Papini described at her abductors' house.[60] Armed with this information, investigators interviewed Ex-Boyfriend on August 10, 2020.[61]

In his interview, Ex-Boyfriend explained that Papini had never been kidnapped and that her voluntary stay at Ex-Boyfriend's house was to escape the physical and sexual abuse of her husband.[62] In December 2015, approximately eleven months before her abduction, Papini reached out to Ex-Boyfriend and told him of her plan to run away and later asked him to get a prepaid phone to communicate with her.[63] From December 2015 through March 2016, Papini and Ex-Boyfriend communicated with the prepaid phones, and in the summer of 2016, Papini sent Ex-Boyfriend a care package for his recent hospital stay that included details of the location from where Papini would eventually be abducted.[64] Two days before the abduction, Ex-Boyfriend had a friend rent him the Dodge Challenger that he would use to make the seven hour drive to pick up Papini.[65] On November 2, 2016, Papini texted Ex-Boyfriend where to pick her up, willingly got into the sportscar, and laid down in the backseat.[66] This story was a far cry from her claims of being forced into a dark SUV at gunpoint.

Likewise, her twenty-two days of torture were highly misleading. Papini walked into Ex-Boyfriend's house of her own free will, chose her own room, had free rein of the house, sent Ex-Boyfriend to run errands for her, and voluntarily stayed in the house for the entire twenty-two-day period.[67] Most, if not all, of Papini's alleged abuse was self-inflicted.[68] Ex-Boyfriend explained that Papini purposely picked the room with "less exposure" and had asked him to hang boards over the window "so she couldn't see [and] no light [could] com[e] in."[69] Her extreme weight loss was due to Papini's "dieting" where she intentionally "minimize[d] what she was eating."[70] The bruises, cuts, rashes, and burns were caused by her own fists, as Ex-Boyfriend refused to directly help her create injuries.[71] Her "beatings" did not occur until close to the time when Papini planned on returning home, and Ex-Boyfriend was confused why Papini would intentionally injure herself.[72]

from the father or mother, close relatives of a targeted perpetrator can be expected to share more alleles, especially rare alleles, than would unrelated individuals. A familial search relies on mathematical modeling specific to the DNA database being utilized. This modeling determines whether an observed similarity between two DNA profiles is more likely the result of kinship or mere chance.").

59 Papini Affidavit, *supra* note 3, at ¶ 32.
60 *Id.* at ¶ 34.
61 *Id.* at ¶ 36.
62 *Id.* at ¶ 36(a).
63 *Id.* at ¶¶ 36(a)–36(b).
64 *Id.* at ¶ 36(c).
65 *Id.* at ¶¶ 36(d), 36(o).
66 *Id.* at ¶ 36(d).
67 *Id.* at ¶¶ 36(e)–36(g).
68 *Id.* at ¶ 36(k).
69 *Id.* at ¶ 36(h).
70 *Id.* at ¶ 36(i).
71 *Id.* at ¶ 36(k).
72 *Id.*

The horrific brand on Papini's right shoulder was her own idea.[73] She sent Ex-Boyfriend out to buy the wood burning tool from Hobby Lobby, picked out the phrase for the brand, and instructed him where the brand would go.[74]

Papini's kidnapping ended, not on of one of her abductor's whims, but on her own word: she told Ex-Boyfriend she wished to leave because "she missed her children" and wanted to go home.[75] At her chosen drop off location, Ex-Boyfriend watched as Papini bound her wrists and ankles and wrapped a chain around her waist.[76] Papini never spoke to Ex-Boyfriend again after he dropped her off.[77]

Even four years later, Ex-Boyfriend was "rattled" by the experience, as he genuinely believed at the time that he was helping a friend escape from an abusive situation.[78] Since he did not have a television when Papini stayed with him, and both his mother and cousin knew Papini was staying with him, Ex-Boyfriend did not know Papini had been claiming that her stay at his house was a kidnapping until he saw the news discussing her abduction.[79] This would make Ex-Boyfriend the first victim of Papini's reverse affinity fraud. By portraying herself as a domestic violence victim to Ex-Boyfriend—a person she had known since they were thirteen[80] and with whom she was once romantically involved—she exploited his trust and sympathy into financially supporting her scheme by paying for her transportation, meals, and kidnapping accessories (i.e., the chains, ropes, wooden boards, etc.).

Three days after Ex-Boyfriend's interview, an FBI agent and SCSO detective interviewed Papini and told her, "[a]ll we want is truthful statements because it is a crime to lie to federal officers. Understood?"[81] Although Papini nodded her head in agreement, she continued to make false statements to support her kidnapping hoax.[82] Papini reaffirmed that her two abductors were Hispanic women and agreed that the photos of the closet with the pole and table that the investigators showed her looked just like the ones in her abductors' home.[83] Her façade cracked slightly when the investigators revealed the photos were pictures from Ex-Boyfriend's house and that they had spoken to Ex-Boyfriend.[84] However, at no point during the interview did Papini ever "disavow her repeated statements that two Hispanic women kidnapped her, nor did she ever admit that Ex-Boyfriend had picked her up and that she had resided at Ex-Boyfriend's home during the period she was reported missing."[85]

73 *Id.* at ¶ 36(l).
74 *Id.*
75 *Id.* at ¶ 36(o).
76 *Id.* at ¶ 36(p).
77 *Id.* at ¶ 36(r).
78 *Id.*
79 *Id.* at ¶¶ 36(k), 36(q), 36(r).
80 *Id.* at ¶ 36(a).
81 *Id.* at ¶ 49.
82 *Id.*
83 *Id.* at ¶¶ 49(a)–(b).
84 *Id.* at ¶ 49(c).
85 *Id.* at ¶ 49(f).

On March 3, 2022, Papini was arrested and charged with thirty-four counts of mail fraud under 18 U.S.C. § 1341 and one count of making false statements under 18 U.S.C. § 1001(a)(2).[86] The U.S. Attorney Phillip Talbert stated that:

> When a young mother went missing in broad daylight, a community was filled with fear and concern [and] countless hours were spent following leads, all in an effort to bring this woman back to her family. Ultimately, the investigation revealed that there was no kidnapping and that time and resources that could have been used to investigate actual crime, protect the community, and provide resources to victims were wasted based on the defendant's conduct.[87]

SCSO Sheriff Johnson remarked that "the twenty-two-day search for Sherri Papini and subsequent five-year search into who reportedly abducted her were not only taxing on public resources but caused the general public to be fearful of their own safety, a fear that they should not have had to endure."[88] If convicted, Papini would face a maximum of twenty years in prison and a fine of up to $250,000 for mail fraud, and a maximum of five years in prison and a fine up to $250,000 for making false statements.[89]

In April 2022, Papini followed in the footsteps of many white collar criminals and pled guilty to one count of mail fraud and one count of making false statements, and for the first time, she admitted her kidnapping was a hoax that she had orchestrated.[90] She released a statement claiming to be "deeply ashamed" and apologetic to her family, friends, "all the good people who needlessly suffered because of my story[,] and those who worked so hard to try to help me."[91] However, Papini's lukewarm apology rang a bit hollow; she had seven years to come clean about her actions, and had the investigators not diligently found Ex-Boyfriend, then Papini most likely would have continued her scheme.[92]

This hoax was not a one-time lapse in judgement, either. Her friends recounted how Papini used to run away, and how, even in her youth, she frequently told lies about

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86 *Id.* at ¶ 69; *Shasta County Woman Arrested for Lying to Federal Agents Regarding Kidnapping and Defrauding the Victim Compensation Board*, JUSTICE.GOV (Mar. 3, 2022) [hereinafter *Shasta County Woman Arrested*], https://www.justice.gov/usao-edca/pr/shasta-county-woman-arrested-lying-federal-agents-regarding-kidnapping-and-defrauding [https://perma.cc/X8WL-PE5E].

87 *Shasta County Woman Arrested*, *supra* note 86.

88 *Id.*

89 *Id.*

90 Sam Stanton, *California 'Super Mom' Will Admit her 'Kidnap' was All a Hoax, Accept Plea Deal*, MIAMI HERALD (Apr. 12, 2022), https://news.yahoo.com/california-super-mom-admit-her-194112631.html?guccounter=1 [https://perma.cc/2YA6-U98E].

91 *Id.*

92 *Sherri Papini Sentenced to 18 Months in Prison for Lying to Federal Agents About Being Kidnapped and Defrauding the California Victim Compensation Board*, JUSTICE.GOV (Sept. 19, 2022) [hereinafter *Sherri Papini Sentenced to 18 Months*], https://www.justice.gov/usao-edca/pr/sherri-papini-sentenced-18-months-prison-lying-federal-agents-about-being-kidnapped-and [https://perma.cc/23CL-VCZX]; Michele Chandler, *Sherri Papini, California Mom Who Faked Her 2016 Kidnapping, Gets 18-Month Prison Sentence*, REDDING RECORD SEARCHLIGHT (Sept. 19, 2022, 6:26 PM), https://www.redding.com/story/news/2022/09/19/sherri-papini-fake-kidnapping-hoax-california-mom-prison-sentencing-2022/10401973002/.

being the victim of abuse.[93] This habit of lying about abuse continued into her adulthood. She told two ex-boyfriends that she had been physically abused, and with each telling, she shifted the identity of the abuser: from her father, to a former boyfriend, and then finally to her husband Keith.[94] She told the public her abductors were Hispanic, the same ethnicity she expressed racist sentiments about in a blog post written under her maiden name Sherri Graeff, where she told a fictitious story claiming Hispanic classmates bullied her for being white.[95]

III. PAPINI KIDNAPPING HOAX: SENTENCING ADJUSTMENTS

In September 2022, Senior U.S. District Judge William Shubb sentenced Papini to eighteen months in prison and ordered her to pay $309,902 in restitution for losses incurred by the CalVCB, SCSO, FBI, and Social Security Administration ("SSA").[96] But should her sentence have been more severe? From a purely numerical standpoint, pleading guilty to only two out of the thirty-five counts brought against her, then getting eighteen months of imprisonment instead of twenty-five years, and paying $300,000 instead of $500,000 in restitution seems like a disappointment.[97]

In actuality, Papini's sentence was ten months longer than what U.S. Attorney Talbert requested in his sentencing memorandum.[98] Talbert had recommended eight months imprisonment, a low-end sentence under the U.S. Sentencing Commission's Guidelines Manual ("Guidelines") in accordance with Papini's April 2022 plea agreement.[99] In the plea agreement, the parties stipulated (1) a loss amount of $30,694.15 caused by her scheme to defraud the CalVCB; (2) the applicability of Guidelines provisions, including an upward adjustment for obstruction of justice that results in a sentencing range of eight to fourteen months after credit for acceptance of responsibility (assuming a Criminal History Category of I);[100] and (3) restitution totaling $309,686.33, consisting of $30,694.15 to the CalVCB, $127,783.50 to the SSA, $148,866.23 to the SCSO, and $2,558.35 to the FBI.[101]

Two aspects of her sentencing calculations are particularly interesting: her sentencing adjustments and the inclusion of the GoFundMe account as relevant conduct.[102]

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93 Papini Affidavit, *supra* note 3, at ¶ 14.

94 *Id.* at ¶¶ 11, 13.

95 *Id.* at ¶ 18(t).

96 *Sherri Papini Sentenced to 18 Months*, *supra* note 92.

97 *See id.*; *Shasta County Woman Arrested*, *supra* note 86 (For her conviction of making false statements to a federal law enforcement officer, Papini faced a maximum statutory penalty of five years in prison and a fine up to $250,000. For her conviction of mail fraud, Papini faced a maximum statutory penalty of twenty years in prison and a fine up to $250,000.).

98 Papini Sent'g Memo, *supra* note 16, at 1.

99 *Id.*

100 Papini would have an offense level of Eleven (base of Seven for mail fraud [§ 2B.1.1(a)(1)], plus four for more than $15,000 in loss [§ 2B.1.1(2)(C)], plus two for obstructing or impeding the administration of justice [§ 3C1.1 Application Notes 4(G)], and minus two for acceptance of responsibility [§ 3E.1.1(a)]. *See* U.S. SENT'G GUIDELINES MANUAL §§ 2B.1.1, 3C1.1 app. n.4(G), 3E1.1(a) (U.S. SENT'G COMM'N 2021).

101 Papini Sent'g Memo, *supra* note 16, at 2.

102 Witte v. United States, 515 U.S. 389, 403 (1995) (stating that relevant conduct is a "sentencing enhancement regime[] evincing the judgment that a particular offense should receive a more serious sentence within the authorized range if it was either accompanied by or preceded by additional criminal activity.").

First, regarding her sentencing adjustments, the vulnerable victim/fraudster adjustment should have been applied. Under § 3A1.1(b) of the Guidelines, the offense level should increase by two levels if the defendant knew or should have known that the victim was a vulnerable victim.[103] The Application Notes define a vulnerable victim as someone "who is unusually vulnerable due to age, physical or mental condition, or otherwise particularly susceptible to the criminal conduct."[104]

In cases of reverse affinity fraud, there should be a similar adjustment that applies to vulnerable fraudsters. A reverse affinity fraudster's modus operandi is to assume the guise of a vulnerable victim and to target sympathetic people.[105] In Papini's case, she meticulously portrayed herself as an abused kidnapping victim to the general public, who is particularly susceptible to missing white women.[106]

Papini and other reverse affinity fraudsters should not be precluded from the adjustment solely because they take on the role of the vulnerable victim. Thus, with the addition of the vulnerable fraudster adjustment, Papini's offense level should have been increased by two levels. As it stands, she both benefited and was partially shielded in sentencing by her own fraud.

Judge Shubb may have done the equivalent of adding a two-level increase when he sentenced her to eighteen months in prison.[107] Papini's government-recommended offense level was most likely an Eleven, which suggests eight to fourteen months in prison, whereas with the vulnerable victim adjustment, Papini's offense level raises to a Thirteen, which suggests twelve to eighteen months in prison.[108] In Judge Shubb's sentencing remarks, he called Papini a "manipulator"[109] and expressed that "people don't like being conned" and that they would likely find an eight month sentence inadequate.[110] He further emphasized the seriousness of her case based on "the sheer number of people" impacted, "including the officers who took time away from other victims to investigate, and the real victims who had their cases ignored or put on the backburner."[111] Judge Shubb appears to have recognized Papini as a vulnerable fraudster and ensured her sentence was adjusted accordingly.

Second, Papini could have been charged with her misuse of her GoFundMe donations. United States Attorney Talbert himself referenced the relevance of Papini's conduct in connection with the GoFundMe account in his sentencing memorandum.[112] In advocating for an eight-month sentence, Talbert explained:

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103 U.S. SENT'G GUIDELINES MANUAL § 3A1.1(b) (U.S. SENT'G COMM'N 2021).

104 *Id.* at app. n.2.

105 *See infra* Part I (discussing the methodology of reverse affinity fraudsters).

106 M. Alex Johnson, *supra* note 35.

107 *Sherri Papini Sentenced to 18 Months*, *supra* note 92 (discussing Papini's sentence increase).

108 U.S. SENT'G GUIDELINES MANUAL SENTENCING TABLE (U.S. SENT'G COMM'N 2021).

109 Julian Mark, *Woman who Staged her Own Kidnapping Sentenced to 18 Months in Prison*, WASH. POST (Sept. 20, 2022, 8:31 AM), https://www.washingtonpost.com/nation/2022/09/20/sherri-papini-kidnapping-prison-sentence/ [https://perma.cc/L4BW-2TA7].

110 CBS SACRAMENTO, *Judge to Sherri Papini during Sentencing: "People Don't Like being Conned*," YOUTUBE (Sept. 19, 2022) https://www.youtube.com/watch?v=HAK0G-t3s0g [https://perma.cc/8W-PY-2ZYH].

111 *Id.*

112 Papini Sent'g Memo, *supra* note 16, at 5.

> [T]he Guidelines do not fully capture the financial harm alone from Papini's conduct, as they do not account for investigative costs incurred by local and federal officers, the $127,783.50 Papini obtained in disability benefits from the Social Security Administration, or the $49,070 that community members donated to a GoFundMe account to help with the search. While appropriately not considered as part of the Guidelines calculation, these costs must still be weighed as part of the determination of the seriousness of Papini's crimes.[113]

Prior to her acceptance of a plea agreement, the United States District Court for the Eastern District of California ordered GoFundMe to "disclose certain records and other information" associated with the "Help Find Sherri Papini" campaign, which raised $49,070.[114] Created two days after Papini's disappearance by a friend of Papini's husband, the campaign's stated purpose read:

> Please help us in raising money to BRING SHERRI HOME SAFE. All funds will go directly to the Papini family and will be used for search efforts to find Sherri and to help bring her home safely. Every dollar counts as time is critical. Thanks![115]

A campaign update was later added in response to a donor's question as to how the funds would be used, which stated: "[t]hank you to everyone who has donated so far today . . . the funds will be used in any means necessary for the family to find and bring Sherri home."[116]

However, the nearly $50,000 raised was not used "to find and bring Sherri home."[117] Records revealed that on December 6, 2016— approximately thirteen days after Papini's return— Keith wrote a $31,818.13 check from the GoFundMe campaign's bank account at JP Morgan Chase to himself and deposited it into his personal bank account.[118] That same day, Keith wrote a second check from the GoFundMe campaign for $1,160.06, and Papini deposited the check into her own personal account.[119] Instead of using the donations to finance Papini's safe return, approximately $11,265 was used to paid off the Papinis' personal credit cards and the remaining amount was spent on personal expenses.[120]

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113 *Id.*

114 Request to Unseal a Redacted Copy of Application & 2703(D) Order at 4, United States v. Papini, No. 2:17-sw-00196-CKD (E.D. Cal. Mar. 11, 2022); Papini Affidavit, *supra* note 3, at ¶¶ 50, 53.

115 Papini Affidavit, *supra* note 3, at ¶ 50.

116 *Id.*

117 *Id.*

118 *Id.* at ¶ 55.

119 *Id.* at ¶ 56.

120 *Id.* at ¶¶ 57–58.

Neither Keith nor Sherri Papini were ever charged with wire fraud relating to their use of the GoFundMe funds.[121] The lack of charges were likely because the government could not meet the first and third elements of wire fraud under 18 U.S.C. § 1343.[122] Under the Ninth Circuit Manual of Model Criminal Jury Instructions, the first and third elements that the government must prove are: (1) "the defendant knowingly participated in or devised a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises" and (3) "the defendant acted with the intent to defraud; that is, the intent to deceive and cheat."[123] Both elements require an intent to defraud.

As previously mentioned, the GoFundMe campaign was created by Keith's family friend, and Keith later took control of the campaign page.[124] At the time, both Keith and the friend were unaware and had no participation in the kidnapping hoax, meaning that the first element was not met.[125] Similarly, the third element could not have been met, as Keith and the friend could not have intended to defraud anyone, as they had no idea there even was a fraud in the first place. Had Papini created the campaign, then the intent elements would clearly have been met because, as the perpetrator of the hoax, she would have had the intent to defraud, as she knowingly sought to obtain money by falsely representing herself as a kidnapping victim.

Since the two elements of § 1343 are unmet, the Papinis could not be charged with wire fraud for the initial set-up of the campaign.[126] But could they be charged with misusing the GoFundMe funds by transferring the funds into different personal bank accounts and using the money to pay off personal expenses and credit cards? The last stated purpose of the GoFundMe campaign was to be "used in any means necessary for the family to find and bring Sherri home."[127] There was no update added once Papini was found and returned safely, and now the almost $50,000 could no longer be used to allegedly "find and bring Sherri home."[128] So how were the Papinis supposed to spend the funds, and did paying off personal expenses and credit cards really violate the donors' expectations in online giving?

Perhaps the money should have been donated to a national or local charity supporting missing persons or abuse victims, or perhaps Papini should have used it to pay for her therapy sessions instead of encumbering the CalVCB for reimbursements. One could analogize Papini's choices to a politician using political donations to pay off his personal credit card. However, the better analogy would be this: what should be done with residual funds after the campaign is over, all campaign-related expenses have been paid,

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121 *See generally* Information, *supra* note 1 (listing Sherri Papini as the only defendant and excluding any wire fraud charges).

122 18 U.S.C. § 1343; MANUAL OF MODEL CRIM. JURY INSTRUCTIONS, 15.35 WIRE FRAUD (9th Cir. 2021), https://www.ce9.uscourts.gov/jury-instructions/node/1048.

123 MANUAL OF MODEL CRIM. JURY INSTRUCTIONS, 15.35 WIRE FRAUD (9th Cir. 2021), https://www.ce9.uscourts.gov/ jury-instructions/node/1048.

124 Papini Affidavit, *supra* note 3, at ¶ 50.

125 Christine Pelisek, *Keith Papini Told Cops He Was Blindsided by Wife Sherri's Kidnapping Hoax: 'I'm the Idiot Husband*,' PEOPLE (Oct. 3, 2022), https://people.com/crime/sherri-papini-husband-blindsided-kidnapping-hoax/.

126 MANUAL OF MODEL CRIM. JURY INSTRUCTIONS, 15.35 WIRE FRAUD (9th Cir. 2021), https://www.ce9.uscourts.gov/ jury-instructions/node/1048.

127 Papini Affidavit, *supra* note 3, at ¶ 50.

128 *Id.*

and the politician has lost? Is the politician allowed to keep the excess funds for personal use? Not according to 11 C.F.R. § 113.2(e), as excess funds "may be used for any other lawful purpose, unless such use is personal use."[129]

While GoFundMe does have fraud prevention policies such as the GoFundMe Giving Guarantee,[130] unlike election campaigns, there are no equivalent policies or regulations detailing how campaign owners must utilize excess funds, or what actions constitute misuse. This tricky, ambiguous issue of misuse is most likely the reason the Papinis were never charged with fraud or any other crimes relating to the usage of the GoFundMe account.

IV. SOCIAL MEDIA'S ROLE IN REVERSE AFFINITY FRAUD: COMPARING SPEARS & PAPINI

Online media (including news, online giving platforms, and social media sites) plays a crucial role in advancing a reverse affinity fraudster's scheme. It was Lacey Spears' biggest asset when perpetuating her factitious disease disorder imposed on another ("FDIA") scheme from 2008 to 2014.[131] In other words, her scheme lasted the lifetime of her son Garnett. Spears was a twenty-one-year-old single widowed mother to her sickly son Garnett.[132] Designated as a "failure to thrive" child, Garnett had a feeding tube inserted into his abdomen indefinitely, and he suffered frequent seizure-like symptoms.[133] To cope with the stress, Spears made extremely detailed posts on Myspace, four different Facebook accounts, Twitter, and her personal blog—titled "Garnett's Journey"—that told "her gripping story of a young mother struggling with her beloved child's many afflictions."[134] One friend described Spears as "flirting with oversharing" and wondered "why I had to see Garnett basically dying on Facebook."[135]

Her oversharing was effective, as in addition to her friends, Spears gained a worldwide, loyal following of sympathetic strangers eager to offer encouraging words and donations.[136] Another friend explained that "a lot of people donated money [because] there's a way on Facebook . . . to just directly deposit into someone's account."[137] Along with monetary donations, sympathetic followers also "ended up giving her diapers, food,

[129] Permissible Non-Campaign Use of Funds, 11 C.F.R. § 113.2(e) (2016).

[130] *GoFundMe Giving Guarantee*, GOFUNDME, https://www.gofundme.com/c/safety/gofundme-guarantee [https:// perma.cc/GX8L-QJEY].

[131] Srishti Marwah, *Why Did Lacey Spears Kill Garnett Spears? Everything About the Case as 5-year Old's Death Resurfaces on TikTok*, SK POP (Sept. 15, 2022, 10:25 GMT), https://www.sportskeeda.com/pop-culture/garnett-spears-death-resurfaces-tiktok-lacey-spears-everything-case.

[132] Sherryl Connelly, *'My Sweet Angel' Chronicles True Story of Lacey Spears, Who Fatally Abused her Child for Attention*, DAILY NEWS (Oct. 1, 2016, 7:39 PM), https://www.nydailynews.com/life-style/sweet-angel-chronicles-mother-fatal-cry-attention-article-1.2814113 [https://perma.cc/MG49-A7WY] (discussing Garnett's medical crises); Troy Roberts, *A Mother Accused*, CBS NEWS (Sept. 17, 2016, 10:16 PM), https://www.cbsnews.com/news/48-hours-lacey-spears-a-mother-accused/ (supporting the assertion that Spears had alleged she was a widow).

[133] Indictment at 6, People v. Spears, No. 14-00450-01 (N.Y. Sup. Ct., June 17, 2014) [hereinafter Spears Indictment].

[134] Connelly, *supra* note 132.

[135] *Devil in Suburbia: Failure to Thrive* (ID Discovery broadcast Sept. 13, 2022).

[136] *Id.*

[137] *Id.*

toys, clothing, and all kinds of [other] things."[138] Money from the various donations seemed to be funding her entirely, as her former co-worker and friend "didn't know how she got her money" and marveled at how this single-income mother "wasn't living paycheck to paycheck like normal people."[139]

With the constant bombardment of posts—ranging from heart-wrenching stories about Garnett asking where his deceased daddy is, to an energetic toddler Garnett playing in his toy truck, to photos of that same toddler now covered in medical tubes and gauze—social media created the perfect platform for Spears' scheme.[140] Whose heartstrings would not be tugged looking at all the suffering this sweet little boy was going through, and who would not empathize with the strength and bravery of the young, widowed mother doing her best to care for her sick beloved son?

As in Papini's case, all the tragic events in Spears' posts were lies. First, Spears was no widow; "Daddy Blake" was based on a man with whom she went on two dates, and the image of him on her blog was a repurposed stock photo.[141] Garnett's real father, Chris Hill, was very much alive and wanted to be in Garnett's life early on.[142] Hill was present on the day of Garnett's birth, but Spears threatened to call the police if he did not leave and stay away.[143] Second, and perhaps most horrifically, Spears fabricated all of Garnett's medical conditions.[144] She had reportedly taken Garnett to twenty different medical facilities over the course of his short life without relaying information between each doctor,[145] and every time Spears was told the feeding tube was no longer medically necessary, she would either move cities or change doctors.[146] In essence, Spears tortured Garnett for five years by subjecting him to unnecessary and harmful medical treatments for infections or phantom symptoms that she either created or conned physicians into diagnosing and treating.[147]

Both the victims and purpose of the frauds were similar in the cases of Spears and Papini. Each sought to cast the widest net possible and seek the greatest amount of attention by appealing to the general public's sympathies. Their methods involved them portraying themselves as the most pitiful members of society: Papini played the part of an abused female victim of violent crime, and Spears took on the role of a courageous, struggling, and widowed mother of a critically ill toddler.[148]

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138 *Id.*

139 *Id.*; *see also* Connelly, *supra* note 132.

140 Sam Webb & Dan Bloom, *Lacey Spears' Chilling Blog: How Mum who Killed Son with Salt Wrote Online about his "Mystery Illness*," IRISH MIRROR (Apr. 9, 2015, 11:35 PM), https://www.irishmirror.ie/news/world-news/lacey-spears-chilling-blog-how-5483300 [https://perma.cc/ND4C-XSFH]; Lacey Spears, *Life as We Know It*, GARNETT'S JOURNEY (Sept. 12, 2012), http://garnettsjourney.blogspot.com/ [https://perma.cc/L9KE-85AW].

141 *Devil in Suburbia: Failure to Thrive* (ID Discovery broadcast Sept. 13, 2022).

142 *Id.*

143 *Id.*

144 Connelly, *supra* note 132.

145 Jessica Chia, *Mommy Blogger who Killed her Son with a Lethal Dose of Salt Caused Three of her Friends' Kids to Become Seriously Ill Before She Became a Mom, New Book Claims*, DAILY MAIL (Oct. 2, 2016, 1:22 PM), https://www.dailymail.co.uk/news/article-3817915/Woman-poisoned-son-largeFdoses-sodium-caused-three-children-fall-ill-mom-new-book-claims.html [https://perma.cc/V9N8-2K7B].

146 *Devil in Suburbia: Failure to Thrive* (ID Discovery broadcast Sept. 13, 2022).

147 Connelly, *supra* note 132 (detailing Garnett's medical treatments).

148 *See* Kimberly Seals Adders, *There's a Single-Mother Hierarchy, and it Needs to Stop*, WASH. POST (June 10, 2016), https://www.washingtonpost.com/news/parenting/wp/2016/06/10/the-single-mother-hierarchy/ [https://perma.cc/

The use of the media amplified Spears' and Papini's reverse affinity frauds by sharing their sob stories to the general public, and they each chose the media platform most suited to their schemes. For a missing kidnap victim with no internet access, Papini took a backseat role and allowed the local and national news networks to spread her plight and galvanize the public to support her in any possible way, including the GoFundMe page. Spears took a more direct and personal approach by turning her social media accounts into her own newsroom dedicated to telling inspiring stories of her own bravery, uplifting tales of Garnett's quest for a normal childhood, bittersweet memories of Garnett's fictional police officer father who died in an automobile accident, and minute-by-minute updates on Garnett's various hospital stays.[149]

If Spears' actions perfectly match the characteristics of a reverse affinity fraudster and share several similarities to Papini's crimes, then why was she not charged with any white-collar crimes? Faking a kidnapping and a child's ill health for attention have similar motivations and methodologies. However, the two cases are distinguished by their differences in victim severity, intent (because of Spears' mental illness), and the government's ability to prove a primary objective of financial fraud beyond a reasonable doubt. These factors also explain why Spears was not charged with reverse affinity fraud. But unlike Papini, besides the general sympathetic public, Spears had one victim that trumped them all: Garnett. In January 2014, her desire for attention turned deadly when she poisoned Garnett to death by pouring an equivalent of sixty-nine salt packets worth of sodium into Garnett's feeding bags.[150] At the hospital, doctors stabilized him and proclaimed the good news that Garnett could be discharged soon.[151] With medical personnel out of the room, Spears took Garnett to the bathroom, refilled his bag with more sodium, and returned to blogging and posting updates of Garnett's condition while Garnett writhed in pain from the fatal swelling in his brain.[152]

While Spears did defraud a multitude of supporters out of money and other donations, she also killed her five-year-old son. Whereas Papini's scheme only physically harmed herself and primarily caused financial harm to the public, Spears' scheme not only financially harmed many people, but also primarily caused torture and death to an innocent child. Charging Spears with second-degree murder clearly took precedence over any reverse affinity fraud charges such as wire or medical fraud.[153] In "[f]inancial crimes based on the bonds of trust," the primary crime and description of the scheme must be financial—not child murder.[154] Spears was ultimately convicted and sentenced to twenty years in prison, five years below the minimum, because the judge considered her mental illness during sentencing.[155]

LS4X-HQ58] ("Society secretly categorizes single mothers in gradients of respectability depending on income, race and, most important, how you became a single mother. First are widows, who receive sympathy, compassion and understanding for the tragic situation they are in beyond their control.").

149 Webb & Bloom, *supra* note 140.

150 *Id.*

151 *Devil in Suburbia: Failure to Thrive* (ID Discovery broadcast Sept. 13, 2022).

152 *Id.*; *see also* Connelly, *supra* note 132.

153 Spears Indictment, *supra* note 133, at 1.

154 FBI Affinity Fraud, *supra* note 21.

155 *Mother who Killed Son with Salt for Web Attention Jailed*, BBC (Apr. 9, 2015), https://www.bbc.com/news/world-us-canada-32226616 [https://perma.cc/CK6V-QR9C?type=image].

Additionally, while someone who has FDIA is the quintessential example of a vulnerable fraudster, the disorder is still a mental illness.[156] It is a rare condition where a parent intentionally "sickens a child to gain attention from the child's plight."[157] While still a form of medical and child abuse, the mental state of the abuser is murkier. Her overwhelming social media posts are most likely a symptom of her illness, as they catered to "her bizarre need for attention," as stated by Assistant District Attorney Doreen Lloyd, the prosecutor in Spears' case.[158] Proving beyond a reasonable doubt that Spears intended to financially profit off her son's illnesses, as opposed to financial assistance as a by-product of her incessant and highly sympathetic posts, is a daunting standard to meet.

Most of the donations were unprompted by Spears. By their own initiatives, supporters would directly deposit funds or other supplies to Spears through Facebook.[159] More structured fundraising campaigns were organized by friends, such as the PayPal account made for Garnett's medical expenses during his final hospital stay and the "Garnett the Great's Memorial" created on YouCaring.com shortly after his death.[160] While the donations were largely unsolicited and were the direct result of the innocent and sympathetic public believing her fraudulent posts, Spears never hesitated to use them.[161] Nevertheless, the same intent problem (the third element) that hindered the government from charging Papini with wire fraud relating to her GoFundMe donations were present in Spears' case, because like Papini, Spears did not create the donation campaigns and thus could not have had the intent to defraud. Intent was even less clear in Spears' case since the government would also of had the additional hurdle of overcoming Spears' mental illness.[162]

CONCLUSION

As seen through the cases of Sherri Papini and Lacey Spears, reverse affinity fraudsters are a formidable and repugnant subset of affinity fraud. Benefitting financially and receiving much-sought notoriety by fabricating stories of horrific abuse and extreme tragedy, reverse affinity fraudsters exploit the sympathetic general public, divert resources and manpower from state and national agencies, and syphon funds meant for actual victims of the crimes they so meticulously imitate. Because their schemes are directly tied to the appropriation of vulnerable and sympathetic victims' plights, the Guidelines should expand the definition of a vulnerable victim under § 3A1.1(b) to include vulnerable fraudsters, or they should create a separate section with a similar adjustment for vulnerable fraudsters.[163]

Until § 3A1.1(b) is expanded, or a similar adjustment is added for vulnerable fraudsters, however, the government in reverse affinity fraud cases should analogize

156 *Factitious Disease Imposed on Another (FDIA)*, *supra* note 17.
157 *Id.*
158 Webb & Bloom, *supra* note 140.
159 *Devil in Suburbia: Failure to Thrive* (ID Discovery broadcast Sept. 13, 2022).
160 Connelly, *supra* note 132; Kelly Kazek, *Decatur Native Investigated for Killing 5-Year-Old Son by Intentionally Keeping Him Ill, Reports Say*, AL.COM (Mar. 24, 2014, 12:49 PM), https://www.al.com/breaking/2014/03/decatur_native_being_investiga.html [https://perma.cc/ZA4J-AA8A].
161 Spears tried in vain to access the PayPal funds shortly after his death. Connelly, *supra* note 132.
162 *See infra* Part IV.
163 U.S. SENT'G GUIDELINES MANUAL § 3A1.1(b) (U.S. SENT'G COMM'N 2021).

vulnerable fraudsters to § 3A1.1(b) and argue that although the Guidelines do not explicitly include vulnerable fraudsters, the judge should add that adjustment, as the fraudster is able to facilitate the fraud largely due to their vulnerable victim pretense. In other words, exploitation of vulnerable victims is inherent in both affinity and reverse affinity frauds. As such, for sentencing purposes, the judge and Guidelines should treat affinity and reverse affinity fraud the same.

At the heart of both affinity and reverse affinity fraud is trust. As veteran FBI financial fraud investigator Special Agent Michael Pickett says, "trust is fine, but it does not replace due diligence."[164] Special Agent Pickett's advice applies not just to members of the public but also to state and federal criminal law practitioners. Unless the scheme has already been discovered, vulnerable fraudsters are hard to detect. For example, it took investigators approximately four years to definitively believe that Papini was the perpetrator rather than the victim.[165] This is not to say that law enforcement and practitioners should be wary of every person presenting themselves as a vulnerable victim, as the vast majority will be true victims. But if a vulnerable victim's story starts sounding too fantastical or inconsistent, and the victim's plight has garnered widespread social media attention that led to significant online donations, then law enforcement or state and federal prosecutors should remember to do their due diligence and take a closer look at the entire situation.

Reverse affinity fraud is particularly troubling for the government not only because of the enormous scope of victims, but also because of the challenges presented by online donations. Papini's case shows the difficulty in proving wire fraud since the "intent to defraud" is nearly impossible to show in fundraisers benefitting the fraudster, but not those organized by the fraudster.[166] Her case also shows the difficulty of defining misuse of funds since there is a lack of clear guidelines at the federal level. Spears' case highlighted the issue of how to classify pure donations—those not asked for or organized by the fraudster—that would not have been made but for the fraudster's fraudulent stories and posts.

The Guidelines and both the Papini and Spears' cases fail to adequately account for frauds involving online giving, and with the lack of safeguards on online giving platforms and unclear criminal consequences, social media-tied donations are the perfect platform for reverse affinity fraudsters. More scholarship is needed to define proper punishments and to fill any gaps caused by variations in online giving. Whether the answer lies in platforms creating clearer policies that explain wire fraud's relationship with online giving, or address specific circumstances in the Guidelines is immaterial, if the measure can provide clear guidance and avenues for the government to prosecute these vulnerable fraudsters and protect the public.

While impersonating an abused kidnap victim, or a struggling widow and mother of a critically ill child properly qualified both Papini and Spears as vulnerable fraudsters, these actions were not enough to charge them with reverse affinity fraud related to their fraudulent financial gains from online giving. This lack of guidance for frauds involving online giving must be remedied before copycat vulnerable fraudsters get a chance to

[164] FBI Affinity Fraud, *supra* note 21.

[165] Papini Affidavit, *supra* note 3, at ¶ 32.

[166] MANUAL OF MODEL CRIM. JURY INSTRUCTIONS, 15.35 WIRE FRAUD (9th Cir. 2021), https://www.ce9.uscourts.gov/ jury-instructions/node/1048.

perfect their schemes. Until more clear guidance is provided, the government can do its due diligence by being aware of the legal gray area regarding online giving platforms and being prepared to account for the funds in different ways, since wire fraud will clearly not always be readily provable.