IN THE SUPREME COURT OF THE UNITED STATES

JASON STRUBBERG, Petitioner

v.

UNITED STATES OF AMERICA, Respondent

On Petition for Writ of Certiorari
to the United States Court of Appeals for the Eighth Circuit

INDEX TO APPENDIX

929 F.3d 969
United States Court of Appeals, Eighth Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Jason Michael STRUBBERG, Defendant-Appellant.

No. 17-2087
|
Submitted: November 15, 2018
|
Filed: July 12, 2019
|
Rehearing and Rehearing En Banc Denied August 28, 2019

Synopsis
Background: Defendant was convicted, in the United States District Court for the Western District of Missouri, attempting to entice minor to engage in sexual activity, and he appealed based on alleged insufficiency of evidence, district court's alleged instructional errors, and allegedly impermissible conditions of supervised release.

Holdings: The Court of Appeals, Grasz, Circuit Judge, held that:

[1] evidence was sufficient to convict defendant of attempting to entice minor to engage in sexual activity;

[2] defendant was not entitled to instruction on affirmative defense of entrapment;

[3] any error by district court in giving instruction on deceptive law enforcement investigative techniques was harmless beyond reasonable doubt; and

[4] district court did not plainly err in its imposition of conditions of supervised release.

Affirmed.

West Headnotes (29)

[1] **Criminal Law** Review De Novo

110Criminal Law
110XXIVReview
110XXIV(L)Scope of Review in General
110XXIV(L)13Review De Novo
110k1139In general

On appeal, the Court of Appeals reviews de novo the sufficiency of the evidence to support a conviction.

[2] **Criminal Law** Reasonable doubt

110Criminal Law
110XXIVReview
110XXIV(P)Verdicts
110k1159Conclusiveness of Verdict
110k1159.2Weight of Evidence in General
110k1159.2(7)Reasonable doubt

On sufficiency of the evidence challenge, jury's verdict will be upheld if there is any interpretation of the evidence that could lead a reasonable jury to find the defendant guilty beyond a reasonable doubt.

[3] **Criminal Law** In prosecutions for particular offenses
Infants Enticement, luring, and inducement in general
Infants Communication or solicitation for immoral purposes
Telecommunications Soliciting minor for sex or illegal act; child pornography

110Criminal Law
110XVIIEvidence
110XVII(V)Weight and Sufficiency
110k561Reasonable Doubt

110k561(2)In prosecutions for particular offenses
211Infants
211XIICriminal Acts Against Children
211XII(C)Sex Offenses
211k1584Enticement, luring, and inducement in general
211Infants
211XIICriminal Acts Against Children
211XII(C)Sex Offenses
211k1591Communication or solicitation for immoral purposes
372Telecommunications
372VIIIComputer Communications
372k1347Offenses and Prosecutions
372k1350Soliciting minor for sex or illegal act; child pornography

Conviction for enticement of minor to engage in sexual activities requires the government to prove beyond a reasonable doubt that defendant: (1) used a facility of interstate commerce, such as the internet or telephone system; (2) knowingly used the facility of interstate commerce with the intent to persuade or entice a person to engage in illegal sexual activity; and (3) believed that the person he sought to persuade or entice was under the age of eighteen. 18 U.S.C.A. § 2422(b).

[4] **Criminal Law** Attempts

110Criminal Law
110IIIAttempts
110k44In general

To prove attempt to commit crime, government must establish (1) intent to commit the predicate offense, and (2) conduct that is a substantial step toward its commission.

[5] **Infants** Intent, state of mind, and motive

211Infants
211XIICriminal Acts Against Children
211XII(F)Evidence Issues Particular to Offenses Against Children
211XII(F)2Sex Offenses
211k1744Weight and Sufficiency
211k1751Intent, state of mind, and motive

Evidence was sufficient to convict defendant of attempting to entice minor to engage in sexual activity, given that he had sent text messages to person whom he believed was mother of 14-year-old girl expressing his desire to “train” girl by engaging in sexual acts with her as mother watched and that he had traveled to agreed upon meeting place with condoms that he had recently purchased, and wearing red shirt that he had recently purchased because text messages informed him that red was the girl’s favorite color; while defendant claimed that he had traveled to meeting place only because he had recently discovered that it was illegal to have sex with 14-year-old girl even with her mother’s consent and wanted to persuade mother to have sex with him herself, jury was free to reject his testimony. 18 U.S.C.A. § 2422(b).

[6] **Criminal Law** Attempts

110Criminal Law
110IIIAttempts
110k44In general

“Substantial step” to commit crime, such as defendant must take to be convicted of attempt offense, generally exists when defendant takes actions necessary to consummation of crime that were of such a nature that reasonable observer, viewing the actions in context, could conclude that the actions were undertaken in accordance with design to commit the actual offense.

[7] **Criminal Law** Review De Novo

110Criminal Law
110XXIVReview
110XXIV(L)Scope of Review in General
110XXIV(L)13Review De Novo
110k1139In general

Refusal of a proffered entrapment instruction is a denial of legal defense, which the Court of Appeals reviews de novo.

[8] **Criminal Law**—Defenses in general

110Criminal Law
110XXTrial
110XX(G)Instructions: Necessity, Requisites, and Sufficiency
110k772Elements and Incidents of Offense, and Defenses in General
110k772(6)Defenses in general

Defendant is entitled to have jury instructed on the affirmative defense of entrapment if sufficient evidence exists from which a reasonable jury could find that government entrapped him.

[9] **Criminal Law**—What Constitutes Entrapment

110Criminal Law
110IIDefenses in General
110k36.5Official Action, Inaction, Representation, Misconduct, or Bad Faith
110k37Entrapment
110k37(2)What Constitutes Entrapment
110k37(2.1)In general

Valid entrapment defense has two related elements: government inducement of the crime, and lack of predisposition on part of defendant to engage in criminal conduct.

[10] **Criminal Law**—Defenses in general

110Criminal Law
110XXTrial
110XX(G)Instructions: Necessity, Requisites, and Sufficiency
110k772Elements and Incidents of Offense, and Defenses in General
110k772(6)Defenses in general

To warrant an instruction on entrapment, a defendant alleging that he was entrapped must show that government agents implanted the criminal design in his mind and induced him to commit offense.

[11] **Criminal Law** Defenses in general

110Criminal Law
110XXTrial
110XX(G)Instructions: Necessity, Requisites, and Sufficiency
110k772Elements and Incidents of Offense, and Defenses in General
110k772(6)Defenses in general

Evidence that government agents merely afforded an opportunity or facilities for commission of crime is insufficient to warrant an entrapment instruction.

[12] **Criminal Law** What Constitutes Entrapment

110Criminal Law
110IIDefenses in General
110k36.5Official Action, Inaction, Representation, Misconduct, or Bad Faith
110k37Entrapment
110k37(2)What Constitutes Entrapment
110k37(2.1)In general

Entrapment occurs only when defendant's criminal conduct was the product of the creative activity of law enforcement officials.

[13] **Criminal Law** Particular Cases and Offenses

110Criminal Law
110IIDefenses in General
110k36.5Official Action, Inaction, Representation, Misconduct, or Bad Faith
110k37Entrapment
110k37(6)Particular Cases and Offenses
110k37(6.1)In general

Factors relevant to whether defendant was entrapped into enticing a minor to engage in sexual activity include the following: (1) whether government officials initiated the contact; (2) who introduced the topics of meeting and sex; and (3) the degree to which government officials influenced behavior of defendant by portraying minor as sexually precocious. 18 U.S.C.A. § 2422(b).

[14] **Criminal Law** Defenses in general

110Criminal Law
110XXTrial
110XX(G)Instructions: Necessity, Requisites, and Sufficiency
110k772Elements and Incidents of Offense, and Defenses in General
110k772(6)Defenses in general

Defendant charged with attempting to entice minor to engage in sexual activity based, inter alia, on his text messaging with undercover officer posing as mother of 14-year-old girl, when defendant initiated contact with officer and asked what officer wanted him to teach her daughter, and when officer made a sexually suggestive statement by texting about desire to teach daughter about “birds and bees stuff,” almost immediately offering to have sex with girl despite being told she was only 14-years-old, was not entitled to instruction on affirmative defense of entrapment; defendant’s conduct in repeatedly initiating sexually explicit discussions and, despite being given numerous opportunities to back out, persisting in encouraging officer to proceed to rendezvous that he had arranged, foreclosed entrapment instruction.

[15] **Criminal Law** Particular Instructions

110Criminal Law
110XXIVReview
110XXIV(Q)Harmless and Reversible Error
110k1172Instructions
110k1172.1In General
110k1172.1(2)Particular Instructions
110k1172.1(2.1)In general

In prosecution of defendant for attempting to entice minor to engage in sexual activity based, inter alia, on his text messaging with undercover officer posing as mother of 14-year-old girl, any error by district court in giving instruction on deceptive law enforcement investigative techniques, that officers were free to engage in deception and to pretend to be people that they were not for the purpose of ferreting out criminal activity, and that any disapproval by jurors of the investigative techniques employed was not to enter into their deliberations, was harmless beyond reasonable doubt, given the overwhelming evidence of defendant's guilt; while the Court of Appeals did not endorse or encourage giving such instructions, instruction did not provide basis for vacating defendant's conviction. 18 U.S.C.A. § 2422(b).

[16] **Criminal Law**Review De Novo
Criminal Law Instructions

110Criminal Law
110XXIVReview
110XXIV(L)Scope of Review in General
110XXIV(L)13Review De Novo
110k1139In general
110Criminal Law
110XXIVReview
110XXIV(N)Discretion of Lower Court
110k1152Conduct of Trial in General
110k1152.21Instructions
110k1152.21(1)In general

Court of Appeals reviews district court's formulation of jury instructions for abuse of discretion and its interpretation of the law de novo.

[17] **Criminal Law**Instructions in general

110Criminal Law
110XXIVReview
110XXIV(Q)Harmless and Reversible Error
110k1172Instructions
110k1172.1In General
110k1172.1(1)Instructions in general

Instructional error does not warrant reversal of conviction if error was harmless.

[18] **Criminal Law**Instructions in general

110Criminal Law
110XXIVReview
110XXIV(Q)Harmless and Reversible Error
110k1172Instructions
110k1172.1In General
110k1172.1(1)Instructions in general

Court of Appeals may disregard an instructional error where it is clear beyond a reasonable doubt that rational jury would have found the defendant guilty without the error.

[19] **Criminal Law**Probation and related dispositions

110Criminal Law
110XXIVReview
110XXIV(E)Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1In General
110k1042.3Sentencing and Punishment
110k1042.3(4)Probation and related dispositions

District court's imposition of special conditions of supervised release to which defendant did not object at his sentencing hearing would be reviewed only for plain error.

[20] **Criminal Law**Necessity of Objections in General

110Criminal Law
110XXIVReview
110XXIV(E)Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1In General
110k1030Necessity of Objections in General
110k1030(1)In general

To prevail on "plain error" review, defendant must show that: (1) district court committed an error, (2) the error is clear or obvious, and (3) the error affected his substantial rights;

moreover, even when these elements are satisfied, court will exercise its discretion to reverse only if (4) the error seriously affects the fairness, integrity or public reputation of judicial proceedings.

[21] **Sentencing and Punishment**Necessity and purpose
Sentencing and Punishment Validity or reasonableness of conditions in general

350HSentencing and Punishment
350HIXProbation and Related Dispositions
350HIX(E)Proceedings for Imposition
350Hk1908Findings
350Hk1910Necessity and purpose
350HSentencing and Punishment
350HIXProbation and Related Dispositions
350HIX(G)Conditions of Probation
350Hk1963Validity or reasonableness of conditions in general

When crafting a special condition of supervised release, district court is generally required to make an individualized inquiry into the facts and circumstances underlying a case and make sufficient findings on the record so as to ensure that the special condition satisfies statutory requirements.

[22] **Criminal Law**Probation and related dispositions
Sentencing and Punishment Necessity and purpose

110Criminal Law
110XXIVReview
110XXIV(Q)Harmless and Reversible Error
110k1177.3Sentencing and Punishment
110k1177.3(4)Probation and related dispositions
350HSentencing and Punishment
350HIXProbation and Related Dispositions
350HIX(E)Proceedings for Imposition
350Hk1908Findings
350Hk1910Necessity and purpose

Even if district court, prior to imposing a special condition of supervised release, does not make individualized findings into the facts and circumstances underlying the case, reversal is not required if the basis for the imposed condition can be discerned from the record.

[23] **Criminal Law** Probation and related dispositions

110Criminal Law
110XXIVReview
110XXIV(E)Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1In General
110k1042.3Sentencing and Punishment
110k1042.3(4)Probation and related dispositions

Special conditions of supervised release imposed on a defendant convicted of attempting to entice minor to engage in sexual activity could not be vacated for lack of adequate explanation by district court judge who imposed them, where defendant had not objected to these conditions, and the Court of Appeals could not say that district court's failure-to-explain was an obvious error that caused prejudice and a miscarriage of justice.

[24] **Sentencing and Punishment** Discretion of court

350HSentencing and Punishment
350HIXProbation and Related Dispositions
350HIX(G)Conditions of Probation
350Hk1962Discretion of court

District courts have wide discretion when fashioning conditions of supervised release.

[25] **Criminal Law** Probation and related dispositions

110Criminal Law
110XXIVReview
110XXIV(E)Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1In General
110k1042.3Sentencing and Punishment

110k1042.3(4)Probation and related dispositions

In order to prevail on “plain error” review of special conditions of supervised release imposed by district court, defendant had to establish that condition was obviously impermissible; it was not enough that the permissibility of the condition was reasonably debatable.

[26] **Criminal Law**Probation and related dispositions

110Criminal Law
110XXIVReview
110XXIV(E)Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1In General
110k1042.3Sentencing and Punishment
110k1042.3(4)Probation and related dispositions

District court did not plainly err when, as condition of supervised release of defendant convicted of attempting to entice minor to engage in sexual activity by perusing websites in effort to arrange casual sexual encounters, by texting undercover officer posing as mother of 14-year-old girl, and by using text messages to arrange what he thought was rendezvous with girl, it prohibited defendant from possessing or using any computer or electronic device with access to any on-line computer service, without prior approval of the Probation Office, it required defendant to consent to the Probation Office conducting periodic, unannounced examination of his cell phone contents and hardware, and it required defendant to consent to having hardware or software installed on his compute to monitor its use. 18 U.S.C.A. § 2422(b).

[27] **Criminal Law**Probation and related dispositions

110Criminal Law
110XXIVReview
110XXIV(E)Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1In General
110k1042.3Sentencing and Punishment
110k1042.3(4)Probation and related dispositions

District court did not plainly err when, as condition of supervised release of defendant convicted of attempting to entice minor to engage in sexual activity, it prohibited defendant from going to places where minors congregated, such as residences, parks, pools, daycare centers, playgrounds and schools, without prior written consent from the Probation Office. 18 U.S.C.A. § 2422(b).

[28] **Criminal Law**Probation and related dispositions

110Criminal Law
110XXIVReview
110XXIV(E)Presentation and Reservation in Lower Court of Grounds of Review
110XXIV(E)1In General
110k1042.3Sentencing and Punishment
110k1042.3(4)Probation and related dispositions

District court did not plainly err when, as condition of supervised release of defendant convicted of attempting to entice minor to engage in sexual activity, it prohibited defendant from having a residence within 1,000 feet of school, park, playground, public pool, or any other location frequented by children, and prohibited defendant from associating or having any contact with persons under the age of 18, except in the presence of responsible adult who was aware of nature of his background; while these conditions did not permit defendant to request the Probation Office's consent to any deviation, the Court of Appeals would trust that the Probation Office and, if necessary, the district court would interpret these conditions in manner that would not unreasonably interfere with defendant's liberty.

[29] **Sentencing and Punishment**Grounds and considerations

350HSentencing and Punishment
350HIXProbation and Related Dispositions
350HIX(G)Conditions of Probation
350Hk1984Modification of Terms and Conditions
350Hk1986Grounds and considerations

Should the special conditions of supervised release imposed on defendant convicted of attempting to entice minor to engage in sexual activity prove to be unworkable because of their vagueness or breadth, defendant could apply to the district court for an appropriate modification. 18 U.S.C.A. §§ 2422(b), 3583(e).

***973** Appeal from United States District Court for the Western District of Missouri–Central Division

Attorneys and Law Firms

Elizabeth Unger Carlyle, Kansas City, MO, argued, for appellant.

Lawrence E. Miller, Asst. U.S. Atty., Jefferson City, MO, argued (Timothy A. Garrison, U.S. Atty., Kansas City, MO), for appellee.

Before GRUENDER, KELLY, and GRASZ, Circuit Judges.

Opinion

GRASZ, Circuit Judge.

A jury convicted Jason Michael Strubberg of one count of attempting to entice a minor to engage in sexual activity in violation of 18 U.S.C. § 2422(b). On appeal, Strubberg argues there was insufficient evidence to support his conviction, challenges the district court's[1] instructions to the jury, and contends certain supervised release special conditions were improper. We affirm.

I. Background

In January 2016, law enforcement officials arrested Strubberg in a motel parking lot when he tried to meet up with a woman whom he believed to be "Kathy," and her fourteen-year old daughter, "Abby." Strubberg had, through text messages with Kathy, planned a rendezvous at the motel with the mother and daughter, during which he would "train" Abby by engaging in sexual acts with her as Kathy watched. Unbeknownst to Strubberg, neither Kathy nor Abby were real people; ***974** instead, they were fictional characters created as part of a sting operation.

After the arrest, Detective Andrew Evans led Strubberg to believe police had been tipped off by Kathy, who had gotten cold feet and called the police. Strubberg admitted to Detective Evans he had sent the texts to Kathy indicating he intended to engage in sexual conduct with both Abby and Kathy.

Strubberg was then charged with attempting to entice a minor to engage in sexual activity in violation of 18 U.S.C. § 2422(b). The case went to trial. The government called five witnesses, with most of the testimony coming from Detective Evans. Strubberg called three witnesses to testify, including himself.

During Strubberg's testimony, he admitted he initially intended to have sex with Abby. Strubberg claimed, however, this was only because he thought it would be legal if the mother signed a contract giving him permission. He explained to the jury that he later researched the law and determined it would be illegal to have sex with a fourteen-year-old even with such parental permission.

With this information in mind, Strubberg claimed to the jury that he decided against having sex with Abby. Strubberg explained he nonetheless proceeded to the meeting location. He testified he did this because he wanted to meet with Kathy, in part, so he could tell her in person that he could not have sex with Abby unless she convinced him it was legal. He also testified that he hoped Kathy would agree to have sex with him.

The jury found Strubberg guilty. The district court sentenced him to 120 months of imprisonment and five years of supervised release with special conditions. Strubberg filed a timely notice of appeal, challenging both his conviction and sentence.

II. Analysis

A. Sufficiency of the Evidence

[1] [2]We first consider Strubberg's attack on his conviction based on his belief there was insufficient evidence to support the jury's guilty finding. This court reviews de novo an appeal based on insufficiency of the evidence. *United States v. Young*, 613 F.3d 735, 742 (8th Cir. 2010).

"The jury's verdict will be upheld if there is any interpretation of the evidence that could lead a reasonable jury to find the defendant guilty beyond a reasonable doubt." *Id.*

[3]A conviction for enticement of a minor to engage in sexual activities requires the government to prove beyond a reasonable doubt the defendant:

> (1) used a facility of interstate commerce, such as the internet or the telephone system; (2) knowingly used the facility of interstate commerce with the intent to persuade or entice a person to engage in illegal sexual activity; and (3) believed that the person he sought to persuade or entice was under the age of eighteen.

Id. (quoting *United States v. Pierson*, 544 F.3d 933, 939 (8th Cir. 2008) (cleaned up)).

[4]To prove attempt, the government must establish "(1) intent to commit the predicate offense; and (2) conduct that is a substantial step toward its commission." *United States v. Spurlock*, 495 F.3d 1011, 1014 (8th Cir. 2007). Conversations to arrange to have sex with a minor may constitute attempt when those conversations go "beyond mere preparation," are "necessary to the consummation of the crime," and "strongly corroborate ... criminal intent to entice [a minor]." *Id.*

***975** **[5]**On appeal, Strubberg argues there is not sufficient evidence he intended to engage in illegal activity because, once he learned the activity was illegal, he abandoned his intent to engage in sexual contact with the girl. Strubberg claimed to the jury he went to the meeting spot only because he wanted to tell Kathy he thought it was probably illegal to have sex with Abby, and also in the hope he could still have sex with Kathy. Strubberg also argues there was not sufficient evidence to show that he took a substantial step toward engaging in the illegal activity because he refused to stop his car in the parking lot at the motel and instead sought to drive away.

We find no merit in Strubberg's arguments. There were numerous instances where Strubberg explicitly announced his intent to engage in sexual activity with someone he was told was a minor. This happened repeatedly during his text message conversations with Kathy. Strubberg also conducted an internet search the morning he was to meet Abby that used crass search terms indicating he had a desire to learn about having sex with a minor. Furthermore, he bought condoms at the convenience store immediately before proceeding to the motel.[2] He also wore a red shirt to make Abby and Kathy "feel comfortable," after Kathy told him red was Abby's favorite color. While Strubberg certainly has offered excuses for much of this behavior and a story that he had abandoned wrongful intent when he went to the motel, the jury was not required to believe him.

[6]As to the substantial step element, "[a] substantial step generally exists when a defendant takes actions ‘necessary to the consummation of the crime’ that were of ‘such a nature that a reasonable observer, viewing the actions in context, could conclude that the actions were undertaken in accordance with a design to’ commit the actual offense.” *Young*, 613 F.3d at 743 (quoting *United States v. Mims*, 812 F.2d 1068, 1077 (8th Cir. 1987) (cleaned up)).

We have repeatedly held the substantial step element was satisfied by acts similar to those taken by Strubberg. *See id.* (holding the defendant took a substantial step by attempting to check into a hotel even though he cancelled the room after his credit card declined); *United States v. Myers*, 575 F.3d 801, 809 (8th Cir. 2009) (holding the defendant took a substantial step toward committing a crime when the evidence showed he drove two hours to meet the minor and police found condoms and a digital camera in his car); *United States v. Patten*, 397 F.3d 1100, 1104 (8th Cir. 2005) (“There is clear authority for the government’s position that [the defendant’s] act of driving to the arranged meeting place ... was relevant evidence of a substantial step.”). Specifically, Strubberg planned a sexual encounter with a minor and then took a substantial step by traveling to the meeting place, buying condoms, and then driving to the motel. The evidence is sufficient to uphold Strubberg’s conviction.

B. Jury Instructions

Strubberg challenges the district court’s jury instructions in two ways. First, he argues he was entitled to an entrapment defense instruction. He also argues the district court abused its discretion by instructing the jury it could not allow the fact the government used deceptive means during the sting operation to affect its ***976** verdict. Neither argument warrants reversal.

1. Entrapment Instruction

[7]“The refusal of a proffered entrapment instruction is a denial of a legal defense.” *United States v. Cooke*, 675 F.3d 1153, 1155–56 (8th Cir. 2012). Consequently, this court reviews a denial of an entrapment instruction de novo. *Id.* at 1156.

[8] [9]“A defendant is entitled to an instruction on the affirmative entrapment defense if sufficient evidence exists from which a reasonable jury could find that [the] government entrapped him.” *United States v. Wynn*, 827 F.3d 778, 786 (8th Cir. 2016). “A valid entrapment defense has two related elements: government inducement of the crime, and a lack of predisposition on the part of the defendant to engage in criminal conduct." *Id.* (quoting *Mathews v. United States*, 485 U.S. 58, 63, 108 S.Ct. 883, 99 L.Ed.2d 54 (1988) (cleaned up)).

[10] [11]"To warrant an instruction, a defendant alleging entrapment must 'show that the government agents implanted the criminal design in his mind and induced him to commit the offense.' " *Id.* (quoting *United States v. Kendrick*, 423 F.3d 803, 807 (8th Cir. 2005)). "Evidence that Government agents merely afforded an opportunity or facilities for the commission of the crime would be insufficient to warrant an entrapment instruction." *Id.* (quoting *Mathews*, 485 U.S. at 66, 108 S.Ct. 883 (cleaned up)).

[12] [13]"Entrapment occurs only when the criminal conduct was the product of the *creative* activity of law-enforcement officials." *Id.* (quoting *Sherman v. United States*, 356 U.S. 369, 372, 78 S.Ct. 819, 2 L.Ed.2d 848 (1958)). Factors relevant to determining whether a defendant was induced to entice a minor in sexual activity include the following: (1) whether the government officials initiated the contact; (2) who introduced the topics of meeting and sex; and (3) the degree to which the government officials influenced the behavior of the defendant by portraying minors as sexually precocious. *Young*, 613 F.3d at 747.

[14]The district court concluded the instruction was not warranted, in part, because the government did not induce the crime. We agree.

Strubberg initiated contact with law enforcement officials, who were posing as Kathy. Strubberg asked Kathy what she wanted him to teach her daughter. After Kathy made a sexually suggestive statement — that she wanted him to teach her daughter "discipline, respect, and birds and bees stuff :)" — Strubberg almost immediately brought up having sex with the girl despite being told she was only fourteen years old. Over the next several days, Strubberg repeatedly initiated explicit discussions of the sexual acts he would engage in with the child. And despite being given numerous opportunities to back out of the arrangement, Strubberg persisted in encouraging Kathy to proceed and continued to arrange the details of the rendezvous. Considering these facts, Strubberg did not meet his burden of establishing there was sufficient evidence the government induced him. *See Young*, 613 F.3d at 747 (holding the defendant did not establish the government induced him to commit the crime of enticing a minor even though the government initiated some of the sexual conversations and arguably portrayed the purported minor as a "sexually precocious teenager").

Strubberg relies on cases from outside this circuit to contend he was entitled to the jury instruction. *See* ***977** *United States v. Gamache*, 156 F.3d 1, 10–11 (1st Cir. 1998); *United States v. McGill*, 754 F.3d 452, 454 (7th Cir. 2014). We do not believe the facts in *Gamache* or *McGill* are analogous to the facts of this case. In *Gamache*, the government first initiated the idea of the defendant having sex with the underage children and the defendant initially only expressed a desire to have a sexual relationship with the children's mother. 156 F.3d at 10–11. Here, Strubberg was the first to directly reference sex with a minor and only later tried to convince the mother to have sex with him. And in *McGill* the court stressed the fact the defendant's friend (who was working undercover in cooperation with the government) kept pushing the crime on the defendant, despite the defendant's repeated attempts to change the topic and cancel meetings with his friend. 754 F.3d at 455, 459. Our review of the record convinces us Strubberg did not receive the pressure or manipulation placed on the defendants in *Gamache* or *McGill*. These cases, therefore, do not convince us Strubberg was entitled to his requested entrapment instruction.

2. Deceptive Investigation Instruction

[15]Over Strubberg's objection, the district court included a jury instruction describing deceptive investigative techniques employed by the government officials and directing the jurors not to allow their opinion of such practices to influence their deliberations. The instruction stated:

> During this trial you heard the testimony from undercover agents who were involved in the government's investigation in this case. Undercover agents may properly make use of false names, false appearances, and may properly assume the roles of members in criminal organizations. The government may utilize a broad range of schemes and ploys to ferret out criminal activity. Law enforcement officers are not precluded from engaging in stealth and deception, such as the use of undercover agents, in order to apprehend persons engaged in criminal activities.
>
> Whether or not you approve of the use of such investigative techniques to detect unlawful activities is not to enter into your deliberations in any way. If you are satisfied beyond a reasonable doubt that the defendant committed the offense as charged in the indictment, the fact that the government made use of investigative techniques that deceive is not relevant to your determination.

On appeal, Strubberg argues this instruction interfered with the jury's consideration of the evidence. Strubberg contends the jury could have interpreted this instruction as forbidding it from considering for purposes of credibility the fact Detective Evans deceived Strubberg in order to obtain his confession. Strubberg contends this shifted or limited the government's burden of proof and requires reversal here because there is no way to know whether the jurors ignored concerns over Evans's credibility due to the instruction.

[16] [17] [18]This court "review[s] a district court's formulation of jury instructions for an abuse of discretion and its interpretation of law *de novo*." *United States v. Farah*, 899 F.3d 608, 614 (8th Cir. 2018). An error in the instructions "does not warrant reversal of a conviction if it is harmless."

Id. We may disregard such an error where it is clear beyond a reasonable doubt that a rational jury would have found the defendant guilty without the error. *Id.*

Strubberg is correct that we have never endorsed such a jury instruction. Nor have the parties cited to any other circuit court permitting this exact instruction. We do note the Seventh Circuit has analyzed a similar jury instruction by a district court ***978** and refused to find its use an abuse of discretion. *See United States. v. McKnight*, 665 F.3d 786, 789–90 (7th Cir. 2011). The instruction at issue in *McKnight* stated:

> Sometimes the government uses undercover agents and undercover informants who may conceal their true identities in order to investigate suspected violations of law. In the effort to detect violations of the law, it is sometimes necessary for the government to use ruses, subterfuges and employ investigative techniques that deceive. It is not improper or illegal for the government to use these techniques, which are a permissible and recognized means of criminal investigation. Whether or not you approve of such techniques[ ] should not enter into your deliberations in any way.

Id. (alteration in the original).

The Seventh Circuit refused to reverse the guilty verdict based on the instruction. *Id.* at 795. The court explained the instruction could be a useful tool to remind the jury of its task at hand and not to serve as a "roving commission to express disapproval of law enforcement techniques that are acceptable under established legal principles." *Id.* at 794. And the court discounted the concern that the jury would take this instruction to mean it must take the informant's testimony at face value in light of other instructions suggesting they could question the informant's credibility. *Id.* at 794–95. The court did, however, express some concerns about the use of the instruction, recognizing such an instruction may clutter the instructions as a whole, deflect the jury's attention from its most important task, and give a signal of indirect approval by the judge of the government's management of the investigation. *Id.* at 794.

We share the Seventh Circuit's concern that the instruction could signal indirect judicial approval of the government's management of the investigation. However, the evidence supporting Strubberg's conviction is so overwhelming that any possible error would be harmless. Although we do not endorse or encourage giving this instruction, we will not vacate Strubberg's conviction based on its inclusion.

C. Special Conditions

[19]Finally, we consider Strubberg's challenges to seven special conditions of supervised release the district court imposed on him as part of his sentence. Strubberg admits he did not object to any of these conditions at his sentencing hearing and thus plain error review applies.[3] *See United States v. Bordman*, 895 F.3d 1048, 1054 (8th Cir. 2018).

[20]"To prevail under plain-error review, [Strubberg] 'must show (1) the district court committed an error, (2) the error is clear or obvious, and (3) the error affected his substantial rights.' " *Id.* (quoting *United States v. White Bull*, 646 F.3d 1082, 1091 (8th Cir. 2011)). Even where those elements are satisfied, the court "will exercise [its] discretion to reverse 'only if the error seriously affects the fairness, integrity or public reputation of judicial proceedings.' " *Id.* (quoting *White Bull*, 646 F.3d at 1091 (cleaned up)).

[21] [22] [23]Part of Strubberg's argument on appeal is that the district court imposed these special conditions without providing ***979** an adequate explanation as to how the conditions satisfied the requirements of 18 U.S.C. § 3583(d). It is true that when crafting a special condition, the district court is generally required to "make an individualized inquiry into the facts and circumstances underlying a case and make sufficient findings on the record so as to ensure that the special condition satisfies the statutory requirements." *United States v. Glover*, 893 F.3d 536, 539 (8th Cir. 2018) (quoting *United States v. Wiedower*, 634 F.3d 490, 493 (8th Cir. 2011)). However, even if the district court does not make individualized findings, "reversal is not required ... if the basis for the imposed condition can be discerned from the record." *United States v. Thompson*, 653 F.3d 688, 694 (8th Cir. 2011). On the record before us, and as will be evident from our discussion of Strubberg's substantive complaints, we cannot say the district court's failure-to-explain was "an obvious error that caused prejudice and a miscarriage of justice." *United States v. Thompson*, 888 F.3d 347, 351 (8th Cir. 2018). For this reason, we decline to vacate the special conditions for a lack of adequate explanation.

[24] [25]As for Strubberg's complaints about the substance of the special conditions, we begin by noting that district courts have wide discretion when fashioning conditions of supervised release. *See id.* at 351. The conditions must, however, be "reasonably related to the sentencing factors set forth in 18 U.S.C. § 3553(a), involve[ ] no greater deprivation of liberty than is reasonably necessary, and [be] consistent with any pertinent policy statements issued by the Sentencing Commission." *Id.* (citing 18 U.S.C. § 3583(d)). Because Strubberg did not object to any of the special conditions, in order to prevail on plain error review he must "establish that the condition is obviously impermissible" to reverse — it is not enough that the permissibility of the condition is "reasonably debatable." *Id.* at 355. For the reasons discussed below, Strubberg cannot meet his high burden.

1. Computer-Related Conditions

[26]We first consider Strubberg's challenges to three conditions related to his use of computers. Conditions "c" and "k," which are identical, state: "The defendant shall not possess or use any computer or electronic device with access to any 'on-line computer service,' without the prior approval of the Probation Office. This includes any public or private computer network." Condition "m" requires Strubberg to consent to the Probation Office conducting periodic, unannounced examination of his cell phone contents and hardware. Condition "n" requires that Strubberg consent to having hardware or software installed on his computer (at Strubberg's cost) so as to monitor its use.

We have upheld conditions that limit or restrict the use of computers and the internet where they are related to the circumstances of the defendant's offense. *See United States v. Perrin*, 926 F.3d 1044, 1049–50 (8th Cir. 2019) (concluding a computer-related condition did not involve a greater deprivation of liberty than is reasonably necessary because it was not a complete ban on internet access and there was ample evidence the defendant used his devices for illegal activities); *United States v. Bender*, 566 F.3d 748, 751 (8th Cir. 2009) (citing cases where we have "affirmed computer and internet restrictions where the defendant sold, transferred, produced, or attempted to arrange sexual relations with minors"). We have reasoned that when such a connection between the crime and the condition exists, the condition "is reasonably calculated to deter [the defendant] from repeating his illegal activity, ***980** protect the public from similar conduct, and serve his correctional needs." *Id.*

The district court did not err in imposing these conditions. The trial record shows Strubberg perused websites in an effort to arrange casual sexual encounters, which was the genesis of his attempt to have sex with a minor here. He exchanged emails and photographs with Kathy, including purported photographs of Abby. And he used search terms indicating he was looking up information about having sex with a minor immediately before leaving to meet with Abby. Also, the conditions do not amount to a total ban on computers or internet use as they allow Strubberg to possess and use computers authorized by the Probation Office and subject to reasonable conditions.

2. Conditions Related to Contact and Residence

We next consider Strubberg's challenges to three special conditions related to his contact with minors and his residence. Condition "e" provides that Strubberg not "associate or have any contact with persons under the age of 18, except in the presence of a responsible adult who is aware of the nature of the defendant's background and current offense and who has been approved by the Probation Office." Condition "h" provides that Strubberg's "place of residence may not be within 1,000 feet of schools, parks, playgrounds, public pools, or other locations frequented by children." Condition "i" states Strubberg is "barred from places where minors (under the age of 18) congregate; such as residences, parks, pools, daycare centers, playgrounds and school[s], unless prior written consent is granted by the Probation Office."

Strubberg claims these conditions are "wildly overbroad for a defendant who was the victim of a sting, and has never been shown to have had contact with any child for sexual purposes." He also complains they lack clarity to the point he will have difficulty complying with them. Although we are troubled by the breadth of the conditions, we conclude it was not plain error for the district court to impose them.

[27]First, our precedent supports the imposition of condition "i," which forbids Strubberg from going places where minors congregate without prior written consent from the Probation Office. *See United States v. Crume*, 422 F.3d 728, 733–34 (8th Cir. 2005) (concluding a similar restriction was sensible and not overly broad after applying a reasonableness requirement that it would apply only at such places where children under the age of 18 actually congregate); *United States v. Ristine*, 335 F.3d 692, 696–97 (8th Cir. 2003) (upholding a similar condition under plain error review). Therefore, we conclude it was not plain error to impose the condition on Strubberg.

[28]As for condition "h," which forbids his residence from being within 1,000 feet of "schools, parks, playgrounds, public pools, or other locations frequented by children," we have affirmed similar conditions in the past. *See Thompson*, 888 F.3d at 353–54 (holding the district court did not commit plain error by including a condition that did not permit him to reside within 500 feet of places frequented by children under the age of 18, without prior written approval from the probation office). We recognize Strubberg's condition differs from *Thompson* in that it does not permit Strubberg to ask the Probation Office to approve an exception. And this inability to seek approval is troublesome considering the vagueness of the inclusion of "other locations frequented by children."

We are also concerned with condition "e," which provides that Strubberg "will not associate or have any contact with ***981** persons under the age of 18, except in the presence of a responsible adult who is aware of the nature of the defendant's background and current offense and who has been approved by the Probation Office." It is true we have affirmed somewhat similar conditions before. *See id.* at 353 (affirming a condition on plain error review forbidding contact with minors without prior written permission of the probation office); *Bender*, 566 F.3d at 753–54 (explaining this court has affirmed similar special conditions where the defendant can seek permission from the probation office to contact minors in specific situations). But the condition here gives us pause because it does not permit Strubberg to seek approval for appropriate un-chaperoned contact with a minor. And the government has failed to point to any case where we have affirmed such a condition without the ability to ask for permission.

[29]Despite our concerns, we decline to vacate these conditions on plain error review because we cannot say they were obviously impermissible. We trust the probation office and, if necessary, the district court will interpret these conditions in a manner where they will not unreasonably interfere with Strubberg's liberty. And should the special conditions prove unworkable because of their vagueness or breadth, Strubberg "may apply to the district court for an appropriate modification," pursuant to 18 U.S.C. § 3583(e). *United States v. Forde*, 664 F.3d 1219, 1225 (8th Cir. 2012) (quoting *United States v. Henkel*, 358 F.3d 1013, 1015 (8th Cir. 2004)).

III. Conclusion

For the above reasons, we affirm the district court's judgment.

All Citations

929 F.3d 969

Footnotes

1 The Honorable Brian C. Wimes, United States District Judge for the Western District of Missouri.

2 Strubberg and Kathy had originally planned to meet at the convenience store. Strubberg received a text message telling him Kathy and Abby would meet him at a nearby motel because there were too many cars at the convenience store.

3 The Presentence Investigation Report included the challenged special conditions and noted the statute required a term of supervised release of at least five years and United States Sentencing Guidelines § 5D1.2(b)(2) required a term of supervised release of between five years and life. In his briefing and during the sentencing hearing, Strubberg only challenged the length of his supervised release, arguing it should be for no more than five years. The district court agreed, concluding any longer supervision was unnecessary.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 17-2087

United States of America

Appellee

v.

Jason Michael Strubberg

Appellant

Appeal from U.S. District Court for the Western District of Missouri - Jefferson City
(2:16-cr-04008-BCW-1)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

August 28, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

UNITED STATES OF AMERICA	§	**JUDGMENT IN A CRIMINAL CASE**
	§	
v.	§	
	§	Case Number: **2:16-CR-04008-BCW(1)**
JASON MICHAEL STRUBBERG	§	USM Number: **30900-045**
	§	**Daniel J. Dodson**
	§	Defendant's Attorney

THE DEFENDANT:

☒	was found guilty by a jury of the one-count Indictment on September 21, 2016 after a plea of not guilty

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	Offense Ended	Count
18:2422(b) Use of Interstate Facility to Attempt to Entice a Minor to Engage in Sexual Activity	01/08/2016	1

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

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

May 2, 2017
Date of Imposition of Judgment

/s/Brian C. Wimes
Signature of Judge

JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT
Name and Title of Judge

May 2, 2017
Date

DEFENDANT: JASON MICHAEL STRUBBERG
CASE NUMBER: 2:16-CR-04008-BCW(1)

IMPRISONMENT

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

120 months as to count 1.

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

That the defendant be designated at a suitable SOMP facility where he can receive such treatment.

That the defendant be placed in or near the Tuscon, AZ facility.

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

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

☐ at ☐ a.m. ☐ p.m. on

☐ as notified by the United States Marshal.

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

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on ____________________________ to

at _________________________________, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JASON MICHAEL STRUBBERG
CASE NUMBER: 2:16-CR-04008-BCW(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of : five **(5) years.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
6. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

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

DEFENDANT: JASON MICHAEL STRUBBERG
CASE NUMBER: 2:16-CR-04008-BCW(1)

STANDARD CONDITIONS OF SUPERVISION

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

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

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand additional information regarding these conditions is available at the www.uscourts.gov.

Defendant's Signature ______________________________ Date ____________________

DEFENDANT: JASON MICHAEL STRUBBERG
CASE NUMBER: 2:16-CR-04008-BCW(1)

SPECIAL CONDITIONS OF SUPERVISION

The defendant shall also comply with the following special conditions of supervised release:

a) The defendant shall submit his person and any property, house, residence, office, vehicle, papers, computer, other electronic communication or data storage devices or media and effects to a search, conducted by a U.S. Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

b) The defendant shall not consume or possess alcoholic beverages or beer, including 3.2 percent beer, at any time, and shall not be present in any establishment where alcoholic beverages are the primary items for sale.

c) The defendant shall not possess or use any computer or electronic device with access to any on-line computer service,' without the prior approval of the Probation Office. This includes any public or private computer network.

d) The defendant shall not maintain or create a user account on any social networking site (i.e. Myspace, Facebook, Adultfriendfinder, etc.) that allows access to persons under the age of 18, or allows for the exchange of sexually explicit material, chat conservations, or instant messaging. The defendant shall not view and/or access any web profile users under the age of 18.

e) The defendant will not associate or have any contact with persons under the age of 18, except in the presence of a responsible adult who is aware of the nature of the defendant's background and current offense and who has been approved by the Probation Office.

f) The defendant shall successfully participate in a program of sex offender counseling, as directed by the Probation Office. The defendant shall also pay any associated costs as directed by the Probation Office.

g) The defendant shall successfully participate in a program of polygraph testing to assist in treatment and/or monitoring, as directed by the Probation Office. The defendant shall also pay any associated costs as directed by the Probation Office.

h) The defendant's place of residence may not be within 1,000 feet of schools, parks, playgrounds, public pools, or other locations frequented by children.

i) The defendant is barred from places where minors (under the age of 18) congregate; such as residences, parks, pools, daycare centers, playgrounds and school, unless prior written consent is granted by the Probation Office.

j) The defendant shall comply with all state and federal sex offender registration requirements.

DEFENDANT: JASON MICHAEL STRUBBERG
CASE NUMBER: 2:16-CR-04008-BCW(1)

k) The defendant shall not possess or use any computer or electronic device with access to any 'on-line computer service' without the prior approval of the Probation Office. This includes any public or private computer network.

l) The defendant shall consent to third-party disclosure to any employer, or potential employer, concerning the history, characteristics, criminal background or any computer-related restrictions that have been imposed.

m) The defendant shall consent to the United States Probation Office conducting periodic unannounced examinations of your cellular telephone(s) contents and hardware which may include retrieval and copying of all data from your phone. This also includes the removal of any equipment, if necessary, for the purpose of conducting a more thorough inspection.

n) The defendant shall consent to having installed any hardware or software systems on his/her computer(s), to monitor computer use. The defendant shall pay any associated costs as directed by the Probation Office.

o) The defendant will neither possess nor have under his/her control any matter that is pornographic/erotic; or that describes sexually explicit conduct, violence toward children or child pornography [as described in 18 U.S.C. 2256(2) and (8)], including photographs, images, books, writings, drawings, videos, and electronic material.

p) Successfully participate in any substance abuse testing program, which may include urinalysis, sweat patch, or Breathalyzer testing, as approved by the Probation Office, and pay any associated costs as directed by the Probation Office.

DEFENDANT: JASON MICHAEL STRUBBERG
CASE NUMBER: 2:16-CR-04008-BCW(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties as set forth below:

	Assessment	JVTA Assesment*	Fine	Restitution
TOTALS	$100.00		$.00	$.00

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

☒ Since the Court finds that the defendant does not have the ability to pay a fine, the fine is waived.

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payment the full amount is ordered due immediately. If unable to pay the full amount immediately, the defendant shall make monthly payments of at least 10 percent of earnings while incarcerated and monthly payments of $100 or 10 percent of gross income, whichever is greater, while on supervision.

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

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

D ☐ Payment in equal 20 *(e.g., weekly, monthly, quarterly)* installments of $ _____________ over a period of _______________ *(e.g., months or years)*, to commence _________ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

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

F ☒ Special instructions regarding the payment of criminal monetary penalties:
It is ordered that the Defendant shall pay to the United States a special assessment of $100.00 for Count 1 which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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

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