PETITION APPENDIX

Appendix

United States Court of Appeals
For the Eighth Circuit

No. 18-2554

United States of America,

Plaintiff - Appellee,

v.

Matthew Rouse,

Defendant - Appellant.

Appeal from United States District Court
for the District of Nebraska - Omaha

Submitted: May 14, 2019
Filed: September 3, 2019

Before COLLOTON, BEAM, and SHEPHERD, Circuit Judges.

COLLOTON, Circuit Judge.

Matthew Rouse entered a conditional guilty plea to one count of distribution of child pornography. *See* 18 U.S.C. § 2252A(a)(2). He reserved his right to appeal the district court's[1] denial of his motion to dismiss the indictment. On appeal, Rouse

[1]The Honorable Laurie Smith Camp, then Chief Judge, United States District Court for the District of Nebraska, adopting the report and recommendation of the

argues that the statute of conviction, as applied to him in this case, violates his rights under the First and Fifth Amendments. We conclude that the conviction is constitutional and affirm the judgment.

I.

Matthew Rouse was 37 years old when he engaged in a sexual relationship with B.A., a 16-year-old girl. On multiple occasions, the two met in Omaha to have sexual intercourse. During the relationship, Rouse suggested that they record their sexual activity. B.A. agreed, and Rouse used his cell phone to film the pair engaged in sexual acts. Rouse sent the videos to B.A. over the internet, but did not distribute them to anyone else. B.A. also sent the videos, along with other explicit photographs that she had taken of herself, back to Rouse.

B.A.'s mother discovered the relationship and found the video recordings on B.A.'s phone. She notified Rouse's employer of the relationship and recordings; the employer notified the State Patrol. Although the sexual activity did not violate Nebraska state law because the age of consent is sixteen, *see* Neb. Rev. Stat. § 28-319.01, the State charged Rouse with violating Nebraska criminal prohibitions on the possession of child pornography. *See id.* §§ 28-813.01, 28-1463.02.

A federal grand jury later charged Rouse with committing two federal offenses arising from the videos: enticement of a minor to engage in sexually explicit conduct for the purposes of creating a visual depiction, *see* 18 U.S.C. § 2251(a), and distribution of child pornography. *See id.* § 2252A(a)(2). Rouse moved to dismiss the indictment on the grounds that prosecuting him for filming his lawful activity violated his First Amendment right to free speech and a Fifth Amendment right to

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Honorable Michael D. Nelson, United States Magistrate Judge for the District of Nebraska.

privacy. The district court denied the motion, concluding that child pornography is categorically excluded from First Amendment protections, and that no right to privacy protects the production of pornographic material involving a minor.

Rouse entered a conditional guilty plea to distribution of child pornography while reserving his right to appeal the denial of his motion. The government agreed to dismiss the enticement charge, and the district court sentenced Rouse to 96 months' imprisonment. We review the district court's ruling *de novo*.

II.

Rouse first contends that the child pornography statute, § 2252A(a)(2), is unconstitutional as applied to him because it violates his First Amendment right to free speech. The district court rejected this contention on the ground that child pornography is categorically excluded from protection under the First Amendment.

"There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942). In *New York v. Ferber*, 458 U.S. 747 (1982), the Supreme Court held that "child pornography" is "without the protection of the First Amendment." *Id.* at 763-64. The Court has reiterated that conclusion several times, most recently in *United States v. Stevens*, 559 U.S. 460, 471 (2010). *See also Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245-46 (2002); *Osborne v. Ohio*, 495 U.S. 103, 110 (1990).

Rouse nonetheless contends that *Stevens* compels the conclusion that the videos that he created of B.A. engaging in sexual activity are protected speech. *Stevens* rejected the use of a balancing test to decide whether depictions of animal cruelty were categorically excluded from First Amendment protection. To reconcile its decisions on child pornography, the Court emphasized that *Ferber* "did not rest

on [a] 'balance of competing interests' alone," but presented a "special case": "The market for child pornography was 'intrinsically related' to the underlying abuse, and was therefore 'an integral part of the production of such materials, an activity illegal throughout the Nation.'" *Stevens*, 559 U.S. at 471 (quoting *Ferber*, 458 U.S. at 759, 761, 764). The Court explained that *Ferber*'s analysis was "grounded . . . in a previously recognized, long-established category of unprotected speech," namely, "speech or writing used as an integral part of conduct in violation of a valid criminal statute." *Id.* (quoting *Ferber*, 458 U.S. at 762). Applying *Stevens*, we have defined the category of unprotected activity as "speech integral to criminal conduct, namely the sexual abuse of minors inherent in the production of child pornography." *United States v. Anderson*, 759 F.3d 891, 894 (8th Cir. 2014).

Relying on this explanation of *Ferber*, Rouse contends that distribution of child pornography is outside the scope of the First Amendment only if it is integral to a violation of a *separate* statute that criminalizes sexual abuse of a minor. Rouse acknowledges, for example, that if a defendant *unlawfully* engages in sexual activity with a minor and records that activity on video, then his production and distribution of the recordings is not protected speech. But because B.A. had reached the age of consent in Nebraska, and consented to engage in sexual activity with Rouse, the government alleges no crime or sexual abuse other than the production and distribution of child pornography. Under those circumstances, Rouse reasons, his recordings are protected speech, because there is no underlying criminal conduct that makes the videos categorically unprotected.

This argument misunderstands *Ferber* and the basis for the categorical exclusion of child pornography from protection under the First Amendment. When the Court spoke of speech used as an integral part of conduct in violation of a "valid criminal statute," it was referring to statutes forbidding the production of child pornography. The distribution of child pornography was "an integral part of *the production of such materials*, an activity illegal throughout the Nation." 458 U.S. at

761 (emphasis added). As the Court explained in *Free Speech Coalition*, "[i]n the case of the material covered by *Ferber*, the creation of the speech is itself the crime of child abuse." 535 U.S. at 254. "[T]he use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child." *Ferber*, 458 U.S. at 758. The "underlying abuse" to which the market for child pornography was "intrinsically related," therefore, was the unlawful production of the images themselves. *Stevens*, 559 U.S. at 471 (quoting *Ferber*, 458 U.S. at 759). It may not be illegal for an adult to place an unclothed child on a bed, but when the adult produces and distributes images of the child that contain a lascivious exhibition of the child's genitals, the activity is illegal and outside the protection of the First Amendment. *See United States v. Lohse*, 797 F.3d 515, 520-21 (8th Cir. 2015). So too with the production and distribution of video recordings of a 16-year-old girl engaged in sexual explicit conduct, even if the sexual activity is legal in the State of Nebraska.

Rouse recorded an identifiable minor engaging in sexually explicit activity and then distributed the video over the internet. His speech in distributing the child pornography was intrinsically related to the unlawful production of the material, and thus categorically unprotected under the First Amendment. The district court correctly denied Rouse's motion to dismiss the charge.

Rouse also contends that § 2252A(a)(2) as applied to him violates a right to privacy or sexual intimacy under the Fifth Amendment. He relies on *Lawrence v. Texas*, 539 U.S. 558 (2003), where the Court held that the "right to liberty under the Due Process Clause" gave two men the right to engage in consensual sexual activity in the home. *Id.* at 578. Rouse contends that the liberty discussed in *Lawrence* and previous cases encompasses a right to engage in lawful sexual conduct with a minor and record it on video for personal use.

The liberty interest recognized in *Lawrence* does not extend so far. *Lawrence* concerned "adults engaging in consensual sexual relations in private." *United States v. Bach*, 400 F.3d 622, 629 (8th Cir. 2005). The decision did not involve minors, and it did not recognize a constitutional right to produce or distribute video recordings of persons engaged in sexually explicit conduct. We held in *Bach* that the Due Process Clause as interpreted in *Lawrence* did not prevent a prosecution for transmitting a visual depiction of a minor engaged in sexually explicit conduct, even though the conduct was not criminal. *Id.* at 628-29. The same result obtains here. Rouse suggests that the defendant in *Bach* pressured or coerced the minor to allow video recording, while his interaction with B.A. was entirely consensual. But the salient point is that the criminal charge in each case involved distribution of visual depictions of sexual activity between an adult and a minor, and the liberty guaranteed by the Due Process Clause does not forbid the government to proscribe that conduct.

* * *

The judgment of the district court is affirmed.

BEAM, Circuit Judge, concurring.

I concur in the court's opinion because I feel compelled to by circuit and Supreme Court precedent and do not disagree with the majority court's analysis of the same. I write separately because the result–the conviction and especially the sentence of 96 months–under the particular facts of this case is unseemly and quite possibly unfair. As the court sets out, there was in reality no victim of this crime, and the two-year gap between the age of majority for consensual sex and the age at which depictions of that consensual and legal sex are *illegal* as child pornography should likely be addressed by a legislative body. Further, the sentence, which I fully realize was a negotiated Rule 11(c)(1)(C) agreement, resulted because the calculated advisory Guidelines range was 135-168 months. This excessive, but correctly

calculated, range is a result[2] of what I believe to be artificially and unnecessarily high child pornography sentencing guidelines. See United States v. Dorvee, 616 F.3d 174, 184-87 (2d Cir. 2010) (criticizing aspects of the child pornography guidelines as irrational and creating little distinction between "the most dangerous offenders" and others). In this unusual and likely aberrant case, a prison sentence of eight years is, to say the least, unfortunate.

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[2]Rouse's criminal history score was zero.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	**CASE NO. 8:17CR56**
	)	
Plaintiff,	)	
	)	**MEMORANDUM**
vs.	)	**AND ORDER**
	)	
MATTHEW J. ROUSE,	)	
	)	
Defendant.	)	

This matter is before the Court on the Defendant's Motion to Dismiss Indictment, ECF No. 34; the Findings and Recommendation of the Magistrate Judge, ECF No. 41, recommending that the Defendant's Motion to Dismiss be denied; and the Defendant's Objections to the Magistrate Judge's Findings and Recommendations, ECF No. 45. For the reasons discussed below, the Defendant's Objections will be overruled; the Magistrate Judge's Findings and Recommendations will be adopted; and the Defendant's Motion to Dismiss will be denied.

BACKGROUND

The facts are not in dispute. Defendant Matthew J. Rouse ("Rouse"), age 37, developed a sexual relationship with a 16-year-old girl ("B.A."), whom he first met when he was recruiting competitors for a CrossFit competition. Rouse and B.A. recorded videos of their sexual activities on their cell phones and transmitted the videos to each other electronically. Rouse is charged in an Indictment with (1) enticing a minor to engage in sexual acts for the purposes of making visual depictions, in violation of 18 U.S.C. § 2251(a); and (2) distribution of child pornography, in violation of 18 U.S.C. § 2252A(a)(2). He contends that the pending charges violate his constitutional rights of free speech and sexual privacy under the First and Fifth Amendments to the United States Constitution.

In the Findings and Recommendation, ECF No. 41, Page ID 76-79, Magistrate Judge Michael D. Nelson presented a thorough analysis of the applicable case law related to Rouse's free speech and privacy arguments, and rejected both. Rouse objects to the Findings and Recommendations, asserting that the sexual conduct at issue was consensual and non-criminal. He argues that his prosecution for recording consensual, non-criminal sexual conduct, and for sharing such images with his consenting sexual partner, violates his constitutionally protected rights of free speech and sexual privacy.

DISCUSSION

This Court will not repeat the Magistrate Judge's thorough constitutional analysis herein. Rouse has pointed to no case, involving similar facts, where any court has accepted the arguments he presents. To the contrary, every court that has addressed such arguments has rejected them unequivocally.

In *United States v. Bach*, a 41-year-old defendant faced similar charges for taking photos of a 16-year-old boy engaged in sexual conduct, and transmitting a photo over the internet. 400 F.3d 622 (8th Cir. 2005). The defendant argued that the prosecution violated his rights of free speech and privacy, because the boy was above the age of consent for sexual activity and posed for the photos willingly. The Eighth Circuit rejected the defendant's arguments, noting that "activities related to child pornography are not protected by a constitutional right of privacy" and "[t]he First Amendment does not prevent prosecution for child pornography." *Id.* at 629. The Eighth Circuit concluded that "the congressional choice to regulate child pornography by defining minor as an individual

under eighteen is rationally related to the government's legitimate interest in enforcing child pornography laws." *Id.*

In *United States v. Ortiz-Graulau*, a 38-year-old defendant faced similar charges for taking explicit photos of a 14-year-old girl with whom he had a consensual sexual relationship. 397 F. Supp. 2d 345 (D. P.R. 2005), *aff'd*, 526 F.3d 16 (1st Cir. 2008). He argued that the prosecution violated his privacy rights, because the girl was over the age of consent for sexual activity in Puerto Rico, and he considered her to be his fiancee. The court rejected the defendant's privacy argument, concluding that "Puerto Rico's definition of a minor is of no consequence" in the application of federal child pornography laws. *Id.* at 348; *United States v. Freeman*, 808 F.2d 1290, 1293 (8th Cir. 1987) (concluding the state's "decision to define minor as one under the age of sixteen in no way requires the federal government to follow suit') (citing *Smith v. United States*, 431 U.S. 291, 307 (1977) ("State's right to abolish all regulation of obscene material does not create a correlative right to force the Federal Government to allow the mails or the channels of interstate or foreign commerce to be used for the purpose of sending obscene material into the permissive State").

In *United States v. Stringer*, a 33-year-old defendant faced similar charges for recording consensual sexual conduct with a 15-year-old girl. 739 F.3d 391 (8th Cir. 2014). The defendant argued that the girl was legally emancipated and not a minor in the eyes of the law. The Eighth Circuit rejected the defendant's argument, noting that the girl's "previous marriage and emancipation are not legal defenses to a charge against Stringer under § 2251(a)." *Id.* at 396.

In *United States v. Laursen*, a 45-year-old defendant faced similar charges for recording his consensual sexual conduct with a 16-year-old girl who was above the age of consent for sexual activity under the law of the state of Washington. 847 F.3d 1026 (9th Cir. 2017). As here, there was no evidence that Laursen distributed, transferred, or otherwise displayed the images to anyone outside the relationship. The Ninth Circuit rejected the defendant's constitutional challenges to the prosecution, noting that while the sexual relationship was legal, "the production of pornography stemming from that relationship was not." *Id.* at 1034. One concurring circuit judge suggested a narrow interpretation of the word "uses" in § 2251(a), which mandates penalties for "[a]ny person who . . . uses . . . any minor to engage in . . . any sexually explicit conduct for the purpose of producing any visual depiction of such conduct . . . ." Quoting dictionary references, the concurring judge would have defined "uses" as "'to take unfair advantage of; exploit.'" *Id.* at 1037 (Hawkins, J., concurring). Nevertheless, the concurring judge agreed that the difference in age, combined with other facts such as the minor's perception of the defendant as a mentor, provided "sufficient indicia of a coercive or exploitative element to satisfy even the more narrow definition of 'uses'" proposed by the concurring judge. *Id.*

Here, even if a more narrow definition of "uses" were applied, the undisputed facts provide sufficient indicia of an exploitative element.

Accordingly,

IT IS ORDERED:

1. The Defendant Marrhew J. Rouse's Objections to the Magistrate Judge's Findings and Recommendations, ECF No. 45, are overruled;

2. The Findings and Recommendation of Magistrate Judge Michael D. Nelson, ECF No. 41, are adopted;

3. The Defendant Matthew J. Rouse's Motion to Dismiss Indictment, ECF No. 34, is denied.

DATED this 2nd day of October, 2017.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, vs. MATTHEW J. ROUSE, Defendant.	8:17CR56 **FINDINGS AND RECOMMENDATION**

This matter is before the Court on the Motion to Dismiss Indictment and Request for Oral Argument (Filing No. 34) filed on June 30, 2017, by Defendant, Matthew J. Rouse. The United States filed a Response (Filing No. 40) opposing the motion on July 17, 2017. For the reasons stated below, the undersigned magistrate judge recommends that Mr. Rouse's motion be denied, without an evidentiary hearing.

BACKGROUND

The facts necessary for disposition of this motion are not disputed. Mr. Rouse, who was thirty-eight years old, and B.A., who was sixteen years old, met in August 2016 and developed a sexual relationship. (Filing No. 35 at pp. 1-2; Filing No. 40 at pp. 1-2). Beginning in December 2016, Mr. Rouse and B.A. made "approximately five video recordings of themselves engaged in sexual acts, sometimes using [B.A.'s] phone and sometimes using [Mr. Rouse's phone.]" (Filing No. 35 at p. 2). Mr. Rouse asserts B.A. agreed to video record their encounters, and they did not distribute the recordings to anyone besides each other. (Filing No. 35 at p. 2). Law enforcement was informed of Mr. Rouse's and B.A.'s relationship, and a subsequent search of B.A.'s cell phone recovered sexually explicit images and/or videos. (Filing No. 35 at p. 2; Filing No. 40 at p. 2).

Subsequently, on February 22, 2017, Mr. Rouse was charged in a two-count Indictment with (1) enticement of a minor to engage in sexually explicit conduct for the purposes of creating a visual depiction, in violation of 18 U.S.C. § 2251(a) (Count I), and (2) distribution of child pornography as defined by 18 U.S.C. § 2256(8)(A), in violation of 18 U.S.C. § 2252A(a)(2) (Count II). (Filing No. 1).

Mr. Rouse has filed the instant motion to dismiss the Indictment, arguing his prosecution violates his First Amendment right to free speech and Fifth Amendment right to privacy and sexual intimacy. (Filing No. 34).

ANALYSIS

Count I charges Mr. Rouse under 18 U.S.C. § 2251(a), which prohibits a person from using "any minor to engage in . . . any sexually explicit conduct for the purpose of producing any visual depiction of such conduct[.]" 18 U.S.C. § 2251(a). "The 'use' component is fully satisfied for the purposes of the child pornography statute if a child is photographed in order to create pornography." *United States v. Vanhorn*, 740 F.3d 1166, 1168 (8th Cir. 2014) (quoting *United States v. Fadl*, 498 F.3d 862, 866 (8th Cir. 2007)).

Count II charges Mr. Rouse with distribution of child pornography under 18 U.S.C. § 2252A(a)(2). "[C]hild pornography" is defined as "any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture . . . of sexually explicit conduct where . . . the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct[.]" 18 U.S.C.A. § 2256(8)(A).

A "minor" for purposes of both statutes is defined as "any person under the age of eighteen years." 18 U.S.C. § 2256(1). There is no dispute that B.A. was a minor as defined by the applicable statute at the time Mr. Rouse and B.A. began documenting their sexual activities. Instead, Mr. Rouse argues that because B.A. was old enough to legally consent to sexual relations under Nebraska law,[1] visually documenting those sexual relations is protected by the First and Fifth Amendments. (Filing No. 35 at p. 5).

I. First Amendment Challenge

The Supreme Court of the United States has repeatedly held that child pornography using real children is a category of speech "fully outside the protection of the First Amendment[.]" *United States v. Stevens*, 559 U.S. 460, 471 (2010) (citing *New York v. Ferber*, 458 U.S. 747 (1982)); *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 245-46 (2002)("[P]ornography produced with real children" is not protected by the First Amendment); see also, *United States v. Williams*,

[1] See *State v. Senters*, 699 N.W.2d 810, 813 (Neb. 2005) ("Nebraska generally does not criminalize sexual relations between individuals who are 16 years old or older.").

553 U.S. 285, 299 (2008)("[O]ffers to provide or requests to obtain child pornography are categorically excluded from the First Amendment.").

Although Mr. Rouse recognizes this well settled law, he attempts to circumvent the above holdings by equating the video and images he produced with B.A. with virtual production of child pornography, which was held to be protected speech by the Supreme Court in *Ashcroft*. (Filing No. 35 at pp. 3-5). *Ashcroft* dealt with a facially overbroad statute that criminalized the possession and distribution of "any visual depiction . . . of sexually explicit conduct," even where the visual depiction only appeared to be a minor engaging in sexually explicit conduct. *Ashcroft*, 535 U.S. at 260 (internal quotations omitted). Because the statute in *Ashcroft* broadly banned "virtual child pornography," which was "produced by means other than using real children, such as through the use of youthful-looking adults or computer-imaging technology," the child-protection rationale for speech restriction did not apply. *Id.* at 234; see also, *Williams*, 553 U.S. at 289 ("[T]he child-protection rationale for speech restriction does not apply to materials produced without children").

Mr. Rouse's reliance on *Ashcroft* is misplaced. Unlike *Ashcroft*, the instant case does not involve virtual, simulated, or "morphed" pictures of B.A. Rather, Mr. Rouse admits B.A. herself was used to create the visual recordings. Because B.A. was undisputedly a minor at the time of the recordings, the recordings involve the type of harm which can constitutionally be prosecuted under *Ferber*. The Supreme Court has "long recognized" that the government has a compelling "'interest in safeguarding the physical and psychological well-being of a minor.'" *United States v. Anderson*, 759 F.3d 891, 895 (8th Cir. 2014)(quoting *Ferber*, 458 U.S. at 756). Legislative judgment and relevant literature have concluded that "the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the child," and therefore regulation of those materials "easily passes muster under the First Amendment." *Ferber*, 458 U.S. at 75 (footnote omitted). As such, the First Amendment does not protect "pornography produced with real children," such as B.A. See *Ashcroft*, 535 U.S. at 246.

Mr. Rouse further argues that because B.A. was the age of consent under Nebraska law, the child protection rationale is inapplicable. A similar argument was advanced by the defendant in *United States v. Bach*, 400 F.3d 622, 629 (8th Cir. 2005). In *Bach*, the defendant argued that his convictions under 18 U.S.C. § 2251 and § 2252 violated the First Amendment because the

sexually explicit images he took of a sixteen year old male portrayed only "noncriminal consensual sexual conduct," as sixteen was the age of consent in Minnesota. *Bach*, 400 F.3d at 628. In rejecting the defendant's argument, the Eighth Circuit concluded that, because "[t]he First Amendment does not prevent prosecution for child pornography . . . Congress may regulate pornography involving all minors under the age of eighteen if it has a rational basis for doing so." *Id.* at 629 (citing *Ferber*, 458 U.S. at 747, and *United States v. Freeman*, 808 F.2d 1290, 1293 (8th Cir. 1987)). The Eighth Circuit affirmed the defendant's convictions because "the congressional choice to regulate child pornography by defining minor as an individual under eighteen is rationally related to the government's legitimate interest in enforcing child pornography laws[.]" *Id.*

In this case, because B.A. was a minor at the time Mr. Rouse visually recorded their sexual activities, the undersigned magistrate judge finds the instant prosecution does not violate Mr. Rouse's First Amendment right to free speech, and therefore recommends that his motion to dismiss be denied on that basis.

II. Fifth Amendment Challenge

Mr. Rouse also argues the Indictment violates the liberty and privacy components of the due process clause of the Fifth Amendment under *Lawrence v. Texas*, 539 U.S. 558 (2003). "The liberty interest the Court recognized in *Lawrence* was for adults engaging in consensual sexual relations in private[.]" *United States v. Bach*, 400 F.3d 622, 629 (8th Cir. 2005); see *Lawrence*, 539 U.S. at 578 (excluding minors from its holding that the due process clause protects private and consensual sexual activities between adults). "The Constitution offers less protection when sexually explicit material depicts minors rather than adults." *United States v. Vincent*, 167 F.3d 428, 431 (8th Cir. 1999) (citing *New York v. Ferber*, 458 U.S. 747, 756-64 (1982)). "[A]ctivities related to child pornography are not protected by a constitutional right of privacy." *Bach*, 400 F.3d at 629 (citing *Vincent*, 167 F.3d at 431).

Mr. Rouse does not dispute that B.A. was a minor or that he recorded their sexual activities. Although consensual sexual activity between adults is constitutionally protected, courts have not extended the same protection to minors. Moreover, the prohibited conduct at issue is Mr. Rouse's alleged production of pornographic material involving B.A., not simply engaging in a sexual relationship with her. In consideration of the above, the undersigned

magistrate judge finds that the instant prosecution does not violate Mr. Rouse's Fifth Amendment constitutional right to privacy, and recommends denial of his motion to dismiss on that basis. Accordingly,

IT IS HEREBY RECOMMENDED to Chief Judge Laurie Smith Camp that Defendant's Motion to Dismiss Indictment and Request for Oral Argument (Filing No. 34) be denied.

Dated this 26th day of July, 2017.

BY THE COURT:

s/ Michael D. Nelson
United States Magistrate Judge

ADMONITION

Pursuant to NECrimR 59.2, any objection to this Findings and Recommendation shall be filed with the Clerk of the Court within fourteen (14) days after being served with a copy of this Findings and Recommendation. Failure to timely object may constitute a waiver of any such objection. The brief in support of any objection shall be filed at the time of filing such objection. Failure to file a brief in support of any objection may be deemed an abandonment of the objection.