

APPENDIX

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10809
Non-Argument Calendar

D.C. Docket No. 8:17-cr-00037-VMC-AEP-1

DAVID PAUL LYNCH,

Defendant-Appellant,

versus

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(August 14, 2019)

Before NEWSOM, GRANT, and FAY, Circuit Judges.

PER CURIAM:

David Lynch appeals his convictions for eight counts of production of child pornography, one count of receipt of child pornography, one count of possession of child pornography, one count of traveling in foreign commerce to engage in illicit sexual conduct with a minor, and one count of attempting to travel in foreign commerce to engage in illicit sexual conduct with a minor. On appeal, Lynch argues that (1) the government did not introduce sufficient evidence to prove that his victims were under 18 years old or that he traveled with the intent to commit illicit sex acts and (2) the district court abused its discretion by denying his request for a jury instruction relating to hearsay statements. After careful review, we affirm.

I.

A.

In June 2005, Lynch traveled to the Philippines and engaged in sexual acts with a girl he called Liza. He filmed their sex acts with video cameras from two different angles, and also took still photos of her genitals. In an electronic spreadsheet that he used to keep track of female contacts in the Philippines, Lynch described Liza as “young” and “15.” And one year later, Lynch said in online chats that he was Liza’s “ex bf,” that he took “naked pics” of her, and that “she is only 16 he he.”

Lynch returned to the Philippines in December 2006. Prior to the visit, he asked a contact named Fhey to “find 4 girls” for him to engage in sexual acts with. Fhey sent him pictures of the girls, and Lynch expressed particular interest in one girl. Fhey informed him that the girl’s name was Erica, and that she was 13 years old. Lynch replied, “nice . . . is she virgin?” On his trip, he made a video of himself engaging in sex acts with four people, including Erica. He also took still photographs of Erica, focusing on her genitals.

When he returned home in late December 2006, Lynch chatted online with “Thomas”—another one of Fhey’s clients—to compare notes on their most recent trips to the Philippines. Thomas showed Lynch a picture of a girl named Rica and said, “she is 13.” Lynch commented that Rica had “a gorgeous body.” Thomas asked Lynch if he liked to “roleplay” or “ageplay” with the girls. Lynch replied, “no need to role play when the ages are real.” Half a year later, on yet another trip to the Philippines, Lynch met Rica and took a close-up picture of her genitals.

By 2015, Lynch had developed an online relationship with a Filipino woman named Rose who sent Lynch erotic and pornographic photos of herself and her 11-year-old daughter, Denise, in exchange for a laptop and money. In 2016, he asked Rose, “how old is she now?” And Rose replied, “this December she is 13 yrs old.” That December, Lynch made plans to meet up with Rose and Denise “in real” in

the Philippines. He and Rose discussed at length what sex acts Denise was “ready” to perform.

Meanwhile, based on a tip sent to the National Center for Missing and Exploited Children, the FBI obtained a search warrant for various email and online messaging accounts that turned out to belong to Lynch. On December 29, 2016, the FBI arrested Lynch as he was boarding a plane to the Philippines. The FBI found sex toys, male performance drugs, cameras, data storage devices, and a large amount of candy in his luggage. When FBI agents searched his home, they found thousands of pornographic videos and photos featuring what appeared to be underage girls.

B.

On September 6, 2017, a federal grand jury returned a twelve-count, third superseding indictment against Lynch. Counts 1-5 and 7-9 charged Lynch with production and attempted production of child pornography—specifically, for taking sexually graphic photos and videos of Liza, Erica, and Rica. Each count alleged that Lynch “did use and persuade and attempt to use and persuade a minor” to engage in sexually explicit conduct for the purpose of producing child pornography. *See* 8 U.S.C. § 2251(a) and (e). In other words, the indictment charged Lynch both with *actual* production, if the jury found that the girls were

actually under 18, and—in the alternative—with *attempted* production, if the jury found that Lynch believed the girls to be minors. Under the statute, the jury could convict Lynch on either theory, so long as the jurors unanimously agreed which one.

Count 6 charged Lynch with traveling in foreign commerce with intent to engage in illicit sexual conduct with a minor—specifically, for the December 2006 trip where he was caught on video engaging in sex acts with Erica—in violation of 18 U.S.C. § 2423(b). Count 10 charged Lynch with knowing receipt of child pornography—specifically, for receiving photos of Denise over email—in violation of 18 U.S.C. § 2252(a)(2) and (b)(1). Count 11 charged Lynch with *attempting* to travel in foreign commerce with intent to engage in illicit sexual conduct with a minor—specifically, for the December 2016 trip where the FBI caught him on his way to meet Denise—in violation of 18 U.S.C. § 2423(b) and (e). Count 12 charged Lynch with knowing possession of child pornography—a catch-all charge covering thousands of child pornography videos and photographs found in the FBI raid of his home—in violation of 18 U.S.C. § 2252(a)(4)(B) and (b)(2).

At trial, the government presented testimony and evidence that included photos, videos, and Lynch's own texts and online chat messages. Lynch did not dispute that he produced, starred in, received, and possessed all of the

pornographic photos and videos. He admitted that he had sent and received all of the messages attributed to him. He acknowledged that he had traveled to the Philippines many times to pay for sex. His defense was that the chats were “all a fantasy,” that he genuinely believed Erica, Liza, Rica, and Denise were adult women, and that they were in fact adult “prostitutes.” The crux of his argument was that adult “women in the Philippines look different than women throughout the rest of the world” and physically resemble underage girls.

In addition, Lynch requested a limiting instruction regarding statements about the victims’ ages made by various unavailable declarants—including Thomas, pimps, and the girls themselves—contained in the videos and online chat messages shown to the jury. Lynch did not contest that the statements were admissible to prove what he himself *believed* about the girls’ ages. He argued, however, that the statements were inadmissible hearsay if offered to prove the truth of the matter asserted—that is, as substantive evidence of the ages of the victims. After consideration, the district court declined to give a limiting instruction.

During deliberations, the jury requested clarification on the *mens rea* required for the various charges. The jury submitted a written question: “If the defendant believed Liza, Erica, Rica and Denise were under the age of 18 (whether or not they were) is that sufficient to satisfy the condition that they be a minor?” Lynch and the government agreed on a written response: “Yes as to counts 1, 2, 3,

4, 5, 7, 8, 9, & 11,” and “No as to counts 6, 10 & 12.”¹ *Id.* In other words, the parties stipulated that the government only had to prove that the girls were *actually minors* to obtain a guilty verdict on the travel, receipt, and possession charges—not the production of child pornography charges, or the attempted travel charge.

The jury convicted Lynch on all counts. Lynch now appeals.

II.

A.

Lynch first contends that the government failed to introduce sufficient evidence that Liza, Erica, Rica, and Denise were under 18 years old or that he traveled with the intent to commit illicit sex acts. We review a challenge to the sufficiency of the evidence *de novo*, viewing “the evidence in the light most favorable to the government.” *United States v. Mercer*, 541 F.3d 1070, 1074 (11th Cir. 2008). All “reasonable inferences and credibility choices are made in the government’s favor.” *Id.* Evidence is sufficient if “a reasonable jury could have found the defendant guilty beyond a reasonable doubt.” *Id.*

A person commits the crime of production of child pornography when he “employs, uses, persuades, induces, entices, or coerces any minor to engage in . . .

¹ The government may have conceded too much on Count 6, which charged Lynch with traveling in foreign commerce with the intent to engage in a sexual act with a minor. We have said that convictions “for travel in interstate commerce with intent to engage in a sexual act with a minor in violation of 18 U.S.C. § 2423(b) do not require the existence of an actual minor victim.” *United States v. Farley*, 607 F.3d 1294, 1325 (11th Cir. 2010).

any sexually explicit conduct for the purpose of producing any visual depiction of such conduct.” 18 U.S.C. § 2251(a). Importantly, § 2251 criminalizes both actual and attempted production of child pornography. The crime of “attempted production of child pornography” under § 2251(a) and (e) “does not require an actual minor victim,” so long as the defendant “believed [the victim] to be” underage. *United States v. Lee*, 603 F.3d 904, 912–13 (11th Cir. 2010) (upholding a conviction under § 2251 where the defendant attempted to use and persuade a fictitious minor, invented as part of a sting operation, to engage in sexually explicit conduct for the purpose of producing child pornography).

At trial, Lynch conceded that Counts 1-5 and 7-9 did not require an actual minor victim, and that the jury could find him guilty if he believed the girls to be underage. On appeal, Lynch does not even contest that the evidence was sufficient to conclude that he *believed* his victims to be minors—and that is just as well, because the evidence for that proposition is overwhelming. Instead, for the first time on appeal, he argues that deficiencies in the indictment and jury instructions required the government to prove *actual* production of child pornography, not *attempted* production. These new arguments are meritless and likely waived—the indictment alleged that Lynch “did use and persuade *and attempt to use and persuade* a minor” to engage in sex acts for child pornography, and Lynch explicitly agreed in response to the jury’s written question that the government did

not need to prove actual age in order to prevail on those counts. But we need not dwell on these new arguments, because in any event, a reasonable juror could have concluded from the evidence that Liza, Erica, Rica, and Denise were minors.

In addition to introducing Lynch's own statements about the girls' ages, the government called a pediatrician, Dr. Lambert, as an expert witness. He testified that Liza was "early-ish in puberty," Erica was "nowhere close to being to the end of puberty," Rica was "not done with puberty yet," and Denise was "[e]arly in puberty"—and that 99% of human females still in puberty are under the age of 18. Even Lynch's own expert, who testified only for the proposition that doctors can make mistakes in assessing the ages of women depicted in pornography, refused to testify that Liza, Erica, Rica, or Denise were over the age of 18. When shown a photo of Denise, he said, "Looks like a child."

Most importantly, the jury also saw dozens of photographs and videos—both pornographic and nonpornographic—of all four girls. The jury could reasonably have concluded, based on its own judgment and perception, that Lynch's victims were minors. *Cf. United States v. Smith*, 459 F.3d 1276, 1287 (11th Cir. 2006) (stating that "reasonable inferences that could be drawn" from "actual photographs" supported a jury finding that "the victim was so obviously a minor that the defendant must have known as much"). Lynch has given this Court no reason to think otherwise.

There was also sufficient evidence to support a finding that Lynch traveled to the Philippines with the intent to engage in illicit sexual conduct with a minor in 2006, and that he was attempting to travel to the Philippines with the intent to engage in illicit sexual conduct with a minor when he was stopped at the airport by the FBI in December 2016. As to the 2006 offense, there was evidence that Lynch made arrangements with Erica's pimp in advance of his visit. And as to the 2016 offense, Lynch and Rose communicated in detail about what sex acts he and Denise would perform. Lynch also kept a calendar, in which he had January 7-10, 2017 blocked off for "Rose Denise." Finally, he was apprehended while boarding a flight with a bag full of male performance drugs, candy, and sex toys. There was sufficient evidence for the jury to conclude that Lynch was traveling to the Philippines in order to engage in sexual conduct with Denise, who he believed had just turned 13.

B.

Second, Lynch argues that the trial court abused its discretion by failing to give a limiting instruction with regard to hearsay statements contained in Lynch's videos and online chat messages. We review the district court's refusal to give a limiting instruction for abuse of discretion. *United States v. Gonzalez*, 975 F.2d 1514, 1516 (11th Cir. 1992). Even if the ruling was an abuse of discretion, "it will not result in a reversal of the conviction if the error was harmless." *United States*

v. Docampo, 573 F.3d 1091, 1096 (11th Cir. 2009). An error is harmless and “does not warrant reversal if the purported error had no substantial influence on the outcome” of the trial and “sufficient evidence uninfected by error supports the verdict.” *United States v. Fortenberry*, 971 F.2d 717, 722 (11th Cir. 1992).

If a court admits evidence that is admissible for one purpose but inadmissible for another, and the defendant makes a “timely request” for a limiting instruction, the court “must restrict the evidence to its proper scope and instruct the jury accordingly.” Fed. R. Evid. 105. Here, the court allowed in statements about the alleged victims’ ages that were admissible to prove Lynch’s state of mind, but inadmissible to prove that his victims were minors. The government argues that some of the statements at issue may have been admissible under well-established hearsay exceptions; in some cases, for instance, Lynch “manifested that [he] adopted or believed [them] to be true.” Fed. R. Evid. 801(d)(2)(B). But hearsay exceptions at best account for some, not all, of the statements about age submitted to the jury. Accordingly, the district court likely erred when it denied Lynch’s request for a limiting instruction.

Nevertheless, any error here was harmless. As we explained at length in addressing Lynch’s first claim, there was sufficient admissible evidence that Lynch’s victims were minors—including expert testimony, the admissible chat messages, and the many photos and videos of the victims. We cannot say that

hearsay within the chat transcripts had a substantial influence on the outcome of the trial, so the error does not warrant reversal.

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

August 14, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 18-10809-CC
Case Style: USA v. David Lynch
District Court Docket No: 8:17-cr-00037-VMC-AEP-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Carol R. Lewis, CC at (404) 335-6179.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Djuanna H. Clark
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit
www.ca11.uscourts.gov

October 25, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 18-10809-CC
Case Style: USA v. David Lynch
District Court Docket No: 8:17-cr-00037-VMC-AEP-1

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Carol R. Lewis, CC/lt
Phone #: (404) 335-6179

REHG-1 Ltr Order Petition Rehearing

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10809-CC

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

DAVID PAUL LYNCH,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Florida

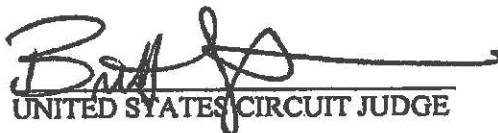
ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: NEWSOM, GRANT and FAY, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ENTERED FOR THE COURT:



UNITED STATES CIRCUIT JUDGE

ORD-46

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

DAVID PAUL LYNCH

**Case Number: 8:17-cr-37-T-33AEP
USM Number: 23969-111**

Mark J. O'Brien, Retained

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty of Counts One, Two, Three, Four, Five, Six, Seven, Eight, Nine, Ten, Eleven, and Twelve of the Third Superseding Indictment. The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Numbers</u>
18 U.S.C. §§ 2251(a)	Production of Child Pornography	June, 2005	One
18 U.S.C. §§ 2251(a)	Production of Child Pornography	June, 2005	Two
18 U.S.C. §§ 2251(a)	Production of Child Pornography	June, 2005	Three
18 U.S.C. §§ 2251(a)	Production of Child Pornography	June, 2005	Four
18 U.S.C. §§ 2251(a)	Production of Child Pornography	June, 2005	Five
18 U.S.C. § 2423(b)	Traveling in Foreign Commerce to Engage in Illicit Sexual Conduct	December 2006	Six
18 U.S.C. §§ 2251(a)	Production of Child Pornography	December 2006	Seven
18 U.S.C. §§ 2251(a)	Production of Child Pornography	December 2006	Eight
18 U.S.C. §§ 2251(a)	Production of Child Pornography	August 2007	Nine
18 U.S.C. §§ 2252 (a)(2)	Receipt of Child Pornography	December 6, 2016	Ten
18 U.S.C. §§ 2423 (b)	Attempting to Travel in Foreign Commerce to Engage in Illicit Sexual Conduct	December 2016	Eleven
18 U.S.C. §§ 2252 (a)(4)(B)	Possession of Child Pornography	December 30, 2016	Twelve

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The original, First Superseding, and Second Superseding Indictments are dismissed on motion by the Government.

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 shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

David Paul Lynch
8:17-cr-37-T-33AEP

Date of Imposition of Judgment: February 22, 2018



VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

march
February 1, 2018

David Paul Lynch
8:17-cr-37-T-33AEP

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **THREE THOUSAND, NINE HUNDRED SIXTY (3,960) MONTHS**. This consists of terms of 360 months on each of Counts One through Nine, and Eleven; 240 months on Count Ten, and 120 months on Count Twelve. Counts Two through Twelve are to run consecutively to each other and to Count One.

The Court recommends to the Bureau of Prisons:

1. That the defendant be confined at a facility in Washington, D.C. or the mid-Atlantic area; and
2. That defendant not be housed in a penitentiary.

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

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 U.S. Marshal

David Paul Lynch
8:17-cr-37-T-33AEP

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of **FIFTEEN (15) YEARS**. This term consists of a 15-year term as to Counts One through Twelve, all such terms to run concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. The mandatory drug testing requirements of the Violent Crime Control Act are imposed. The Court orders the defendant to submit to random drug testing not to exceed 104 tests per year.
4. You must cooperate in the collection of DNA as directed by the probation officer.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

David Paul Lynch
8:17-cr-37-T-33AEP

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. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
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. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature: _____

Date: _____

David Paul Lynch
8:17-cr-37-T-33AEP

ADDITIONAL CONDITIONS OF SUPERVISED RELEASE

1. You shall participate in a mental health program specializing in sexual offender treatment and submit to polygraph testing for treatment and monitoring purposes. You shall follow the probation officer's instructions regarding the implementation of this court directive. Further, you shall contribute to the costs of such treatment and/or polygraphs not to exceed an amount determined reasonable by the probation officer based on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Treatment Services.
2. You shall register with the state sexual offender registration agency(s) in any state where you reside, visit, are employed, carry on a vocation, or are a student, as directed by the probation officer.
3. The probation officer shall provide state officials with all information required under Florida sexual predator and sexual offender notification and registration statutes (F.S. 943.0435) and/or the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248), and may direct the defendant to report to these agencies personally for required additional processing, such as photographing, fingerprinting, and DNA collection.
4. You shall have no direct contact with minors (under the age of 18) without the written approval of the probation officer and shall refrain from entering into any area where children frequently congregate including: schools, daycare centers, theme parks, playgrounds, etc.
5. You are prohibited from possessing, subscribing to, or viewing, any images, video, magazines, literature, or other materials depicting children in the nude and/or in sexually explicit positions.
6. Without prior written approval of the probation officer, you are prohibited from either possessing or using a computer (including a smart phone, a hand-held computer device, a gaming console, or an electronic device) capable of connecting to an online service or an internet service provider. This prohibition includes a computer at a public library, an internet cafe, your place of employment, or an educational facility. Also, you are prohibited from possessing an electronic data storage medium (including a flash drive, a compact disk, and a floppy disk) or using any data encryption technique or program. If approved to possess or use a device, you must permit routine inspection of the device, including the hard drive and any other electronic data storage medium, to confirm adherence to this condition. The United States Probation Office must conduct the inspection in a manner no more intrusive than necessary to ensure compliance with this condition. If this condition might affect a third party, including your employer, you must inform the third party of this restriction, including the computer inspection provision.
7. You shall submit to a search of your person, residence, place of business, any storage units under your control, computer, or vehicle, conducted by the United States 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. You shall inform any other residents that the premises may be subject to a search pursuant to this condition. Failure to submit to a search may be grounds for revocation.

David Paul Lynch
8:17-cr-37-T-33AEP

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments set forth in the Schedule of Payments.

<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$1,200.00	Waived

SCHEDULE OF PAYMENTS

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be 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, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

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.

FORFEITURE

Defendant shall forfeit to the United States those assets previously identified in the Preliminary Order of Forfeiture, that are subject to forfeiture. [SEE PRELIMINARY ORDER OF FORFEITURE ATTACHED.]

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:17-cr-37-T-33AEP

DAVID PAUL LYNCH

PRELIMINARY ORDER OF FORFEITURE

THIS CAUSE comes before the Court upon the United States of America's Motion for a Preliminary Order of Forfeiture for the following:

- a. Lenovo laptop, Model B50-45, serial number CB34499179;
- b. Western Digital hard drive, serial number WXU1E83SUFX7;
- c. Western Digital hard drive, serial number WCAMA3068467;
- d. Dell laptop, WM3A2915ABG;
- e. Samsung hard drive, S2R9JXOF701445;
- f. Dell Optiplex 320 desktop, service tag 8ZNP8C1;
- g. Three InfoDisc CDs;
- h. Three TDK CDs;
- i. Memorex CD;
- j. CompUSA CD;
- k. Phillips DVD;

1. cassette tape; and
- m. The real property located at 705 El Dorado Drive, Venice, Florida 34285, which is legally described as follows:

Lot 13, Laguna Park, as per plat thereof recorded in Plat Book 8, Page 63, Public Records of Sarasota County, Florida, together with the following described parcel: Begin at the Southeast corner of Lot 13, Laguna Park; thence North 113 feet; thence East 10 feet; thence South 113 feet; to the Point of Beginning.

Being fully advised of the relevant facts, the Court finds that based on the facts proven at trial and the jury's finding the defendant guilty on all counts, the property identified above was (1) used or intended to be used to commit or to promote the commission of the child pornography offenses or is property traceable to such property, as charged in Counts One through Five, Seven through Ten, and Twelve, or (2) used or intended to be used to commit or to facilitate the commission of travelling in foreign commerce for the purpose of engaging in illicit sexual conduct with another person, as charged in Counts Six and Eleven.

Accordingly, it is hereby:

ORDERED, ADJUDGED, and DECREED that for good cause shown, the United States' motion is GRANTED.

It is FURTHER ORDERED that, pursuant to 18 U.S.C. §§ 2253 and 2428, and Rule 32.2(b)(2) of the Federal Rules of Criminal Procedure, the

assets identified above are hereby forfeited to the United States for disposition according to law.

It is FURTHER ORDERED that, this order shall become a final order of forfeiture as to the defendant at sentencing.

The Court retains jurisdiction to address any third party claim that may be asserted in these proceedings, and to enter any further order necessary for the forfeiture and disposition of such property.

DONE and ORDERED in Tampa, Florida, this 26th day of October, 2017.

Virginia M. Hernandez Covington
VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Copies to:
James A. Muench, AUSA
Counsel of Record