

No. 20-\_\_\_\_\_

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IN THE  
SUPREME COURT OF THE UNITED STATES

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**JAMES MICHAEL HOOD,**

Petitioner,

vs.

**UNITED STATES OF AMERICA,**

Respondent.

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the Sixth Circuit**

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**APPENDIX**

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**811 Fed.Appx. 291**

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 6th Cir. Rule 32.1.

United States Court of Appeals, Sixth Circuit.

UNITED STATES of America, Plaintiff-Appellee,

v.

James Michael HOOD , Defendant-Appellant.

No. 19-5361

FILED April 23, 2020

**Synopsis**

**Background:** Defendant was convicted in the United States District Court for the Eastern District of Tennessee, Thomas A. Varlan, J., of using facility or means of interstate and foreign commerce to attempt to persuade, induce, and entice minor to engage in sexual activity for which person could be charged with criminal offense, with underlying offense being Tennessee-law aggravated statutory rape. Defendant appealed denial of his motion for judgment of acquittal based on entrapment defense.

The Court of Appeals, Rogers, Senior Circuit Judge, held that sufficient evidence supported finding that defendant had been predisposed to commit offense.

Affirmed.

**Procedural Posture(s):** Appellate Review; Trial or Guilt Phase Motion or Objection.

**\*293 ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TENNESSEE**

**Attorneys and Law Firms**

Jennifer Kolman, Brian Samuelson, Assistant U.S. Attorney, Office of the U.S. Attorney, Knoxville, TN, for Plaintiff-Appellee

Jennifer Niles Coffin, Federal Defender Services, Knoxville, TN, Erin P. Rust, Assistant Federal Public Defender, Federal Defender Services, Chattanooga, TN, for Defendant-Appellant

BEFORE: CLAY, ROGERS, and GRIFFIN, Circuit Judges.

**Opinion**

ROGERS, Circuit Judge.

James Hood was convicted by a jury of attempting to entice a minor to engage in criminal sexual activity and sentenced to 121 months' imprisonment. Before trial, Hood moved for a judgment of acquittal, arguing that he was entrapped by the law enforcement agent who posed as his 17-year-old victim. The district court denied the motion but agreed to submit the entrapment question to the jury. Hood now appeals the denial of his motion for judgment of acquittal. The motion was properly denied, however, because a rational jury could have found beyond a reasonable doubt that Hood was predisposed to commit the offense.

On June 28, 2017, James Hood sent a "friend request" on Facebook to J.H., a 17-year-old teen pageant contestant in Tennessee. At the time, Hood was a 53-year-old divorced male who lived alone. J.H. accepted the friend request, thinking that Hood might be a judge for the pageant. J.H. had been soliciting votes for her pageant activities on her Facebook page. Hood almost immediately began sending J.H. private messages through Facebook. The first few messages were about the pageant. Hood asked, "did u make it[?]" and promised, "I'll vote for u." J.H. responded appreciatively: "Thank you so very much!!!" Hood then said, "[y]ou are really beautiful and deserve to win," to which J.H. replied, "[y]ou are very sweet!"

Hood then asked a series of introductory questions a judge would normally ask a pageant contestant, such as whether J.H. was a junior or senior, what she did for fun, whether she had a boyfriend, whether she liked to read or watch movies, what her favorite food was, and whether she expected to win the pageant. When J.H. told Hood that she was 17 years of age, he responded, "[s]o young!!" Hood assured J.H. that he was "not trying to flirt" and said, "I promise I'm just interested in talking to u that's

all I swear.” Hood also sent messages that would not ordinarily come from a pageant judge. He asked, “can we really be friends[?] I like chatting with u,” and inquired whether J.H. was a Christian. Hood showered J.H. with compliments, telling her that she was “a really beautiful young woman,” and when J.H. told him \*294 that she was going dress shopping, commented, “I’m sure you look good in everything.” Less than 24 hours after first contacting J.H., Hood asked J.H. if they could move their conversation to text messaging. J.H. declined and stopped messaging Hood. This caused Hood to worry that he had upset J.H., and he sent numerous messages apologizing and trying to assure her that he had good intentions. Hood’s messages continued until 2:41 a.m. the next day. This caused J.H. to block Hood on Facebook and Instagram and report the conversation to her mother.

J.H.’s mother in turn reported the Facebook activity to the Knoxville Police Department. With J.H.’s mother’s permission, Knoxville investigator Thomas Evans impersonated J.H. and renewed the conversation with Hood twelve days later on July 11, 2017. Evans instructed J.H.’s mother to temporarily unblock Hood on Facebook in order to reinitiate contact with him. Evans provided J.H.’s mother with a message to send to Hood, which read as follows:

Sorry my parents r constantly gettin in my biz. I got my fone long enough to FB u. U can text me I guess on a textn app I got if you want. They don’t know about it. [Redacted phone number] just make sure I know its u kk? I am goin to block u again so they won’t know bye.

Hood responded to “J.H.’s” Facebook message almost immediately by texting the number “J.H.” provided him. Right off the bat, Hood expressed a strong interest in becoming friends with “J.H.” Hood quickly asked again if “J.H.” had a boyfriend. Within hours, Hood asked “J.H.” for a “clean” picture of “herself” and inquired if “she” would be able to video chat. Hood asked again when “J.H.” turned 18. When “J.H.” answered that “she” did not turn 18 until the following year, Hood replied, “[o]h geez lol” and two texts later said, “[y]ou are so beautiful.”

As he did previously with the real J.H., Hood showered “J.H.” with compliments and repeatedly told “her” that “she” was beautiful. Hood said to “J.H.”, “I [ ] care about you,” “I wanna make you feel good and happy,” and “I want you to feel [comfortable] with me.” “J.H.” came back with responses such as, “[a]we, thank you soo much. Your sweet,” and “[y]our kinda neat yourself.” About twenty-four hours after first texting “J.H.”, Hood began using terms of endearment such as “sweetie” and started reciting romantic poetry. “J.H.” reciprocated to a certain extent, stating, for example, “I am liking you a lot your very sweet,” and “I love the poetry and words you use.” The text conversations went well into the night and resumed in the mornings, usually with Hood continuing the conversation.

Hood exhibited signs of fear that his relationship with “J.H.” was inappropriate or violated the law. He inquired about “J.H.’s” parents, asking if they were “afraid u will do something or get together with a bad guy.” Hood later asked if “J.H.’s” mom checked “J.H.’s” texts and if “her” mother was “mad at [him].” When “J.H.” asked, “[w]hat do you think of when you think of me,” Hood answered, “I have to be careful. You are 17. I know what I want to say. I think I’ve said a lot of what I think. I think you are a beautiful princess. I think of awesomeness, of a beautiful painting, someone who I really want to get to know[.] I wish I could tell you everything[.] ... I want to tell you what I’m feeling just afraid.” The following morning, on July 13, 2017, Hood texted, “[u] swear u are not setting me up?” and added, “I’m just a little scared ok.” “J.H.” feigned indignation at Hood’s suspicion and threatened to stop communicating. Hood sent a torrent of text messages in response, begging “J.H.” to forgive him and professing his love for “her.” Despite \*295 the agent’s telling Hood multiple times to “[l]eave me alone for a while,” Hood did not relent.

On the third day of texting, Hood invited “J.H.” to his apartment. When asked what they would do at his apartment, Hood responded, “[j]ust talk lol ... get to know each other.” It is at this point that “J.H.” first suggested the possibility of a sexual relationship, responding that “I think if we care about each other intimacy is part of it.” Hood was hesitant at first to admit to wanting an “intimate” relationship, stating, “[c]an we just not see how things go. I mean I want to get to know you.” “J.H.” pretended to be affronted by Hood’s refusal to express his sexual desires: “I see. You want me to be honest and then when I ask you somethin direct you don’t answer. It gets tiring[.]” Hood responded by saying, “I mean I want to see where things go. If it happens it happens.” “J.H.”

continued to pester Hood to be upfront about his feelings. The agent responded, “[t]hat’s just it. I want to know what your thinking and feeling when you say ‘if it happens[.]’ What is ‘it[?]’ ” Hood revealed that his reluctance to be forthright had to do with “J.H.’s” age, exclaiming, “[w]hy are u doing this to me? You are 17. I’m trying to be careful[.]” Hood’s evasiveness lasted for about one hour, after which he asked whether “J.H.” was a virgin, whether “she” had had experience with sex, and if “she” looked “hot naked.” From there, the conversation became progressively more sexual in nature, with Hood graphically describing various sex acts and positions over the course of several hours. Hood continued to send “J.H.” sexually explicit text messages over the next few days.

As Hood and “J.H.” got closer to arranging a meeting, Hood became increasingly afraid that he was the target of a sting operation. He repeatedly asked “J.H.” for pictures of “herself” and phone calls to prove that “she” was real. Hood said, “I need to know you are not someone else doing this,” and “[b]aby I could go to jail. I gotta make sure.... I need to know you ain’t your mother or a cop.” Several times in response, the agent gave Hood the opportunity to end the encounter. For instance, “J.H.” said, “I don’t see the point honestly [if] you don’t believe it’s me. I’m going to go for a while. I [have other] people I have been ignoring.” In another text shortly thereafter, “J.H.” told Hood that “[i]f I decide to continue our relationship so it can move forward [I] will let you know and probably call u or let you call me. My feelings are hurt and I’m exhausted from this[.] ... I learned early that things don’t always work out the way we want them too. This [relationship] may not work.” Hood refused to give up on his relationship with “J.H.” however, telling “J.H.” that “I want this [relationship] to work.... I can make u happy. U gotta trust me,” and sent seven text messages during the next ninety minutes without receiving a response.

The next day, Agent Evans arranged a phone call with Hood using the real J.H. in the hope of allaying Hood’s fears. After the call, Evans and Hood arranged to meet at a coffee shop in Knoxville. When Hood arrived at the coffee shop, he was arrested and taken into custody. After the arrest, police searched Hood’s cell phone and found a “bookmark” that Hood had saved on his Google Chrome browser in 2016 entitled “Jr. Young Miss Nudist Pageant Pics.” Hood had also searched Google for “teen nudist pageant” the day before he was arrested. The search of Hood’s phone also turned up screen shots of two news articles that Hood had accessed in June 2017. The first

related to a sheriff’s deputy in Blount County, Tennessee who had been arrested on a child solicitation charge. Hood’s son-in-law worked for the Blount County Sheriff’s office at the time. The \*296 second article reported on a sheriff’s deputy in Hamilton County, Tennessee, who was indicted for having child pornography on his cell phone. Hood himself used to work at the Hamilton County Sheriff’s office and had sent the article to a friend still employed there.

Hood was indicted in the Eastern District of Tennessee on one count of using “a facility or means of interstate and foreign commerce” to attempt to persuade, induce, and entice a minor to engage in sexual activity “for which any person can be charged with a criminal offense.” See 18 U.S.C. § 2422(b). The underlying criminal offense was aggravated statutory rape under Tennessee law. See Tenn. Code Ann. § 39-13-506(c).

In advance of trial, Hood alerted the Government that he would be invoking an entrapment defense, and the Government tailored its proof accordingly. At the close of the Government’s case, Hood moved for a judgment of acquittal under Federal Rule of Criminal Procedure 29, which the district court denied. Over the Government’s objection, however, the district court agreed to put the entrapment question before the jury.

The jury rejected the entrapment defense and found Hood guilty. The district court imposed a sentence of 121 months’ imprisonment, to be followed by a lifetime of supervised release. On appeal, Hood does not challenge the district court’s entrapment jury instruction and instead appeals only the denial of his Rule 29 motion.

The district court properly denied Hood’s motion for judgment of acquittal because the evidence of Hood’s predisposition to commit the offense was sufficient to create a fact issue for the jury. See *United States v. Nelson*, 847 F.2d 285, 287-88 (6th Cir. 1988) (stating the standard). An entrapment defense requires proof of two interrelated elements: (1) government inducement of the crime, and (2) lack of predisposition on the part of the defendant to engage in the criminal activity. *Mathews v. United States*, 485 U.S. 58, 63, 108 S.Ct. 883, 99 L.Ed.2d 54 (1988); *United States v. Khalil*, 279 F.3d 358, 364 (6th Cir. 2002). “The key question in determining predisposition is whether law enforcement planted a ‘criminal design in the mind of an otherwise law-abiding citizen or whether the government merely provided an opportunity to commit a crime to one who was already predisposed to do so.’ ” *United States v. Demmler*, 655

F.3d 451, 457 (6th Cir. 2011) (quoting *United States v. Al-Cholan*, 610 F.3d 945, 950 (6th Cir. 2010)). In answering this question, courts examine the following factors:

- [1] the character or reputation of the defendant, including any prior criminal record; [2] whether the suggestion of the criminal activity was initially made by the Government; [3] whether the defendant was engaged in criminal activity for profit; [4] whether the defendant evidenced reluctance to commit the offense, overcome only by repeated Government inducements or persuasion; and [5] the nature of the inducement or persuasion supplied by the Government.

*Al-Cholan*, 610 F.3d at 950 (internal brackets omitted) (quoting *United States v. Moore*, 916 F.2d 1131, 1137 (6th Cir. 1990)). Although the first and second factors weigh in Hood’s favor, and the third factor is neutral, the evidence otherwise strongly indicates predisposition.

With respect to the first factor, the Government argues that Hood’s internet search history, in particular a saved bookmark of “Jr. Young Miss Nudist Pageant Pics,” supports the inference that he was predisposed to targeting underage pageant contestants such as J.H. However, the Supreme Court’s decision in \*297 *Jacobson v. United States*, 503 U.S. 540, 112 S.Ct. 1535, 118 L.Ed.2d 174 (1992), compels a different conclusion. The defendant in *Jacobson* was charged with receipt of child pornography through the mails after a twenty-six-month-long campaign by government agents. *Id.* at 550, 112 S.Ct. 1535. Before his contact with the government, the defendant had purchased a book containing child pornography, which at the time was legal. *Id.* at 551, 112 S.Ct. 1535. Although this was an indication of Jacobson’s “certain personal inclinations, including a predisposition to view photographs of preteen sex,” it “hardly support[ed] an inference that he would commit the crime of receiving child pornography through the mails.” *Id.* As the Court explained, “evidence that merely indicates a generic inclination to act within a

broad range, not all of which is criminal, is of little probative value in establishing predisposition.” *Id.* at 550, 112 S.Ct. 1535. Stated differently, “a person who resists his baser urges is not ‘predisposed’ simply because he experiences them.” *United States v. Mayfield*, 771 F.3d 417, 436 (7th Cir. 2014) (en banc) (citing *Jacobson*, 503 U.S. at 551-52, 112 S.Ct. 1535). Although Hood’s internet search history may demonstrate an inclination to view lewd images of teenage girls—pageant contestants no less—it hardly demonstrates a predisposition to violate the law by having sexual relations with minors.<sup>1</sup> This is particularly true given that Hood had no criminal history and it is unclear from the record whether Hood ever violated any laws by having the bookmark on his phone.

The Government argues that *Jacobson* is not controlling because the bookmark on Hood’s phone is more directly relevant to the crime at issue. But *Jacobson* makes clear that what matters is the *severity* of the pre-inducement conduct in relation to the crime attempted. *Jacobson*, 503 U.S. at 551, 112 S.Ct. 1535. *Jacobson*’s lawful purchase of child pornography did not suffice to demonstrate a predisposition to purchase *unlawful* child pornography. *Id.* Contrary to the Government’s contention, *Jacobson* says nothing about the *relatedness* of the pre-inducement conduct to the crime. If anything, the crime in *Jacobson* (receipt of child pornography through the mails) was *more* closely related to the pre-inducement evidence (in-person purchase of child pornography) when compared to the present case. Consistent with this interpretation of *Jacobson*, the Seventh Circuit has rejected the idea that a defendant’s possession of child pornography evidenced a predisposition to distribute it, observing that “[t]he government is not free to induce more-serious crimes simply because the target already committed a lesser crime.” *United States v. McGill*, 754 F.3d 452, 458 (7th Cir. 2014). Accordingly, this first factor weighs in Hood’s favor.

The second factor—whether the Government first suggested the criminal activity—also favors Hood. It was Agent Evans who told Hood that “I would think if we care about each other intimacy is part of it.” Although Hood at that point had already made clear his romantic feelings for “J.H.,” this was the first time that either Hood or the agent had raised the topic of sex. The Government tries to argue that the term “intimacy” is ambiguous. \*298 Although it may be ambiguous in certain contexts, it was not in this one.

However, “the fact a government agent proposed an illicit

transaction ... is insufficient to establish entrapment.” *United States v. Barger*, 931 F.2d 359, 367 (6th Cir. 1991); *accord Jacobson*, 503 U.S. at 549-50, 112 S.Ct. 1535 ; *United States v. Harris*, 9 F.3d 493, 498 (6th Cir. 1993). Rather, the “most important factor” in determining predisposition is “whether the defendant evidenced reluctance to engage in criminal activity which was overcome by repeated Government inducements.” *United States v. McLernon*, 746 F.2d 1098, 1113 (6th Cir. 1984) (quoting *United States v. Kamins k i*, 703 F.2d 1004, 1008 (7th Cir. 1983)). Here, the defendant exhibited little reluctance to engage in a sexual discussion with Agent Evans. It was less than one hour from when Evans first used the word “intimacy” that Hood began sending graphic sexual messages to “J.H.” Moreover, the jury could reasonably infer that Hood’s initial hesitance to mention sex flowed solely from the fear that he might be detected by law enforcement. Hood asked “J.H.” if “she” was “setting [him] up” and told “J.H.” “I have to be careful. You are 17.... I want to tell u what I’m feeling just afraid.” We have previously affirmed the denial of a motion for judgment of acquittal on the basis of entrapment when the defendant’s “only reluctance appear[ed] to stem from a fear of getting caught.” *United States v. Johnson*, 230 F.3d 1360, 2000 WL 1290317, at \*5 (6th Cir. 2000) (unpublished table decision); *see also United States v. Unrein*, 688 F. App’x 602, 609-10 (11th Cir. 2017) (affirming denial of entrapment jury instruction); *United States v. Shinn*, 681 F.3d 924, 930 (8th Cir. 2012) (same).

The demonstrated reluctance to commit the crime in this case is on par with that in *United States v. Hackworth*, 483 F. App’x 972 (6th Cir. 2012). In *Hackworth*, the defendant told the undercover agent multiple times over the course of three days that he would not have sex with her due to her age. *Id.* at 974. During their conversations, the agent repeatedly taunted Hackworth, calling him “boring” for suggesting only that they meet and talk. *Id.* at 975-76. Further, the agent “pressed him to know ‘what [was] on the table.’ ” *Id.* at 976 (alteration in original). We noted that these passages in the chat logs “viewed in isolation” supported the argument that Hackworth did not want to meet the underage girl for sex. *Id.* “Hackworth’s explicit responses to [the agent’s] prompting, however, cast sufficient doubt on his contention that he only wanted to meet this fourteen-year-old girl to talk.” *Id.*

Hood asserts that he exhibited considerable reluctance in light of the Government’s substantial inducement. Any inducement in this case, however, was minimal. “An

‘inducement’ consists of an ‘opportunity’ *plus* something else—typically, excessive pressure by the government upon the defendant or the government’s taking advantage of an alternative, non-criminal type of motive.” *United States v. Dixon*, 396 F. App’x 183, 186 (6th Cir. 2010) (quoting *United States v. Gendron*, 18 F.3d 955, 961 (1st Cir. 1994)). The pressure exerted by Agent Evans was hardly excessive. Hood, after all, was the first to reach out to J.H. Once the government got involved, it took a mere three days for Hood to request sex with “J.H.” and less than a week before he agreed to meet “her” for sex. In contrast, courts have found improper “inducement” where government agents or informants spent months or in some cases years attempting to facilitate the defendant’s commission of \*299 a crime.<sup>2</sup> See, e.g., *Jacobson*, 503 U.S. at 550, 112 S.Ct. 1535 (over two years); *Sherman v. United States*, 356 U.S. 369, 371, 78 S.Ct. 819, 2 L.Ed.2d 848 (1958) (three months); *United States v. Barta*, 776 F.3d 931, 934-37 (7th Cir. 2015) (three months); *United States v. Poehlman*, 217 F.3d 692, 700 (9th Cir. 2000) (six months); *McLernon*, 746 F.2d at 1103, 1113 (eight years). Nor did Agent Evans employ tactics typically found by courts to be excessive, including threats, *United States v. Becerra*, 992 F.2d 960, 963-64 (9th Cir. 1993), “dogged insistence,” *United States v. Rodriguez*, 858 F.2d 809, 815 (1st Cir. 1988), appeals to sympathy, *Sherman*, 356 U.S. at 373, 78 S.Ct. 819 , or “preying upon the love and loyalty of [a] special relationship.” *McLernon*, 746 F.2d at 1114.

The defendant relies upon *United States v. Poehlman*, 217 F.3d 692, 701 (9th Cir. 2000), to argue that “even very subtle governmental pressure, if skillfully applied, can amount to inducement.” He claims that “his reluctance was overcome only by ‘J.H.’s’ sustained campaign of emotional manipulation.” But the jury could have seen things differently. As the Government points out, “[w]hen Hood started sending graphic sexual messages, his ‘relationship’ with J.H. was only a few days old and consisted entirely of Facebook and text messages. They had never met or even talked on the phone.” Further, “[a]lthough Hood showered J.H. with compliments, a reasonable jury could find that they had not engaged in meaningful conversations or shared basic details about their lives.” Thus, this case is hardly like *Poehlman*, where an undercover agent engaged in a protracted six-month correspondence with the defendant that included sending emails, handwritten letters, and photographs, and strategically addressing the defendant by intimate names, in order to convince the defendant to have sex with the agent’s fictitious minor children. 217 F.3d at 704.

The jury was also entitled to find that Agent Evans did not induce the defendant by “taking advantage of an alternative, non-criminal type of motive,” in the words of *Dixon*, 396 F. App’x at 186 (citation omitted). Hood argues that Agent Evans exploited Hood’s desire for friendship and a romantic—yet non-sexual—relationship by “pushing Mr. Hood with ultimatums and demands.” Similarly, he asserts that Agent Evans “cultivated Mr. Hood’s hopes for a romantic relationship by admiring his poetry and pretending to be flattered by his interest.” But any reasonable juror could have come to the commonsense conclusion that Hood’s intention all along was to have sex with J.H. Hood’s relationship with J.H escalated quickly; after contacting her out of nowhere, he immediately asked her if she had a boyfriend and attempted to charm her with compliments. Within hours, he had asked for J.H.’s phone number and began messaging her relentlessly when she failed to respond. By the second day of communication with \*300 Agent Evans, Hood had told “J.H.” that he loved “her” and began reciting romantic poetry. Tellingly, when “J.H.” asked Hood “what caught your eye about me if you don’t mind me asking?” Hood answered, “your beauty.”

Agent Evans testified that in his experience, Hood’s correspondence with J.H. raised red flags. For instance, messages such as “I’m not trying to flirt” and “I’m just interested in talking to u” can be part of a strategy that older adults use to disarm underage children. Courts in the entrapment context have recognized the concept of “grooming” a minor for sex, which involves talking about subjects that the underage person would be interested in for the purpose of building a trusting relationship. *See United States v. Young*, 613 F.3d 735, 739 & n.3 (8th Cir. 2010); *United States v. Brand*, 467 F.3d 179, 203 (2d Cir. 2006). In addition, Hood’s demonstrated concern about being detected by law enforcement supports the reasonable inference that he was not seeking a strictly platonic relationship with J.H. *See United States v. Lee*, 603 F.3d 904, 915 (11th Cir. 2010); *United States v. Hensley*, 574 F.3d 384, 391 (7th Cir. 2009); *cf. United States v. Wyatt*, 713 F. App’x 467, 471 (6th Cir. 2017).

The absence of any appeal to non-criminal motivations distinguishes this case from the ones cited by the defendant. *United States v. Poehlman* dealt with a defendant who reached out to an undercover agent expressly seeking a long-term relationship with an adult who accepted his foot fetish and his interest in cross-dressing. 217 F.3d at 695. The agent leveraged the defendant’s desire for a legal adult relationship by

conditioning any further communication on his agreement to have sex with the agent’s fictitious daughters. *Id.* at 698-700. In *United States v. McLernon*, the defendant became convinced that his close friend, an undercover agent, would be killed if he did not negotiate a cocaine deal on his friend’s behalf. 746 F.2d at 1113. The government informant in *Sherman v. United States* exploited the defendant’s sympathy to persuade the defendant to purchase narcotics. 356 U.S. at 373, 78 S.Ct. 819 . The informant, who (like the defendant) was a recovering drug addict, asked the defendant to supply him with drugs because he was not responding to treatment. *Id.* at 371, 78 S.Ct. 819 . “Not until after a number of repetitions of the request, predicated on [the informant’s] presumed suffering, did petitioner finally acquiesce.” *Id.* The court in *United States v. Brooks*, 215 F.3d 842, 846 (8th Cir. 2000), determined that the defendant, a heroin addict, was entrapped as a matter of law because he began selling heroin only in response to a government informant’s threat to cut off his drug supply. Thus, although the government informant had appealed to the defendant’s criminal motive (heroin possession), that motive was distinct from the crime committed (heroin distribution).

In sum, although the Government encouraged Hood to commit the offense in question, “[g]overnment agents do not entrap by merely presenting the opportunity to engage in criminal activity.” *United States v. Summers*, 238 F. App’x 74, 76 (6th Cir. 2007). Nor is the government prohibited from using “stealth and strategy” to catch unwary criminals. *Sherman*, 356 U.S. at 372, 78 S.Ct. 819 . Hood seized the opportunity to engage in a romantic relationship with “J.H.” and agreed to have sex within one hour of the agent’s suggestion. Even accepting the premise that the Government induced Hood by capitalizing on his need for companionship, Hood’s conduct, including his incessant flattery of “J.H.” and outward display of fear that he would be detected by law enforcement, provided sufficient evidence \*301 from which a reasonable jury could conclude that he was predisposed to commit the instant offense. This is especially so given the defendant’s burden to demonstrate a “‘patently clear’ absence of predisposition,” *Nelson*, 847 F.2d at 287, as well as the “strong presumption in favor of sustaining a jury conviction,” *United States v. Charles*, 138 F.3d 257, 265 (6th Cir. 1998) (quoting *United States v. Peters*, 15 F.3d 540, 544 (6th Cir. 1994)).

The judgment of the district court is affirmed.

**All Citations**

811 Fed.Appx. 291

**Footnotes**

<sup>1</sup> Even less convincing is the Government's argument that the news articles about child pornography and solicitation of a minor found on Hood's phone are indicative of predisposition. As with the bookmark, Hood's viewing of these articles does little to suggest that he is prone to having sex with underage girls. Moreover, as Hood points out, these articles had a direct connection to people and places in Hood's life—making his viewing of them all the more benign.

<sup>2</sup> At oral argument, defendant's attorney pointed to *Sorrells v. United States*, 287 U.S. 435, 440, 53 S.Ct. 210, 77 L.Ed. 413 (1932), as an example of inducement where it took only ninety minutes for the undercover officers to convince the defendant to violate the law. But the Court in *Sorrells* did not actually conclude that the defendant had been entrapped as a matter of law. Rather, the Court ruled "that upon the evidence produced ... the defense of entrapment was available and that the trial court was in error in holding that as a matter of law there was no entrapment and in refusing to submit the issue to the jury." *Id.* at 452, 53 S.Ct. 210. Moreover, the government agent in *Sorrells* succeeded by taking advantage of the defendant's sympathy for a fellow war veteran. *Id.* at 440, 53 S.Ct. 210. As explained below, a reasonable jury could conclude that Hood was not similarly motivated by such a lawful purpose.

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF TENNESSEE KNOXVILLE DIVISION**

UNITED STATES OF AMERICA

**JUDGMENT IN A CRIMINAL CASE**

(For Offenses committed on or after November 1, 1987)

v.

Case Number: **3:17-CR-00083-TAV-HBG(1)**JAMES MICHAEL HOOD  
USM#52486-074**Jonathan A Moffatt**

Defendant's Attorney

## THE DEFENDANT:

- pleaded guilty to count(s):
- pleaded nolo contendere to count(s) which was accepted by the court.
- was found guilty on count(s) 1 of the Indictment after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<b>Title &amp; Section and Nature of Offense</b>	<b>Date Violation Concluded</b>	<b>Count</b>
18 U.S.C. § 2422(b) Enticement of A Minor	07/14/2017	1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. 3553.

- The defendant has been found not guilty on count(s).
- All remaining count(s) as to this defendant are dismissed upon motion of the United States.

IT IS ORDERED that the defendant shall 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 the United States attorney of any material change in the defendant's economic circumstances.

**April 9, 2019**

Date of Imposition of Judgment

s/ Thomas A. Varlan

Signature of Judicial Officer

**Thomas A Varlan , United States District Judge**

Name &amp; Title of Judicial Officer

**April 9, 2019**

Date

DEFENDANT: JAMES MICHAEL HOOD  
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**IMPRISONMENT**

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: **121 months**

- The court makes the following recommendations to the Bureau of Prisons: that the defendant receive 500 hours of substance abuse treatment from the Bureau of Prisons' Institution Residential Drug Abuse Treatment Program and a medical and mental health evaluation and any treatment deemed appropriate. It is further recommended that the defendant be designated to Lexington.
- 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 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

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of **life**.

**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 make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentencing of restitution. *(check if applicable)*
5.  **You must cooperate in the collection of DNA as directed by the probation officer.** *(check if applicable)*
6.  **You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, 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)*
7.  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.

## 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 mandatory, standard, and any special 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](http://www.uscourts.gov).

Defendant's Signature \_\_\_\_\_

Date \_\_\_\_\_

## SPECIAL CONDITIONS OF SUPERVISION

1. You must comply with the sex offender special conditions pursuant to SO-15-06 as follows:

You must participate in a program of sex offender mental health treatment at your own expense, as approved by the probation officer, until such time as you are discharged from treatment by the provider and as approved by the probation officer. You must comply with the policies and procedures of the treatment program. You must waive all rights to confidentiality regarding sex offender mental health treatment in order to allow release of information to the United States Probation Officer, and to authorize open communication between the probation officer and the treatment providers. SO-15-06(1)

You must have no direct or third-party contact, by any means available to you, with any victim(s) of a sex offense committed by the defendant. SO-15-06(2)

Other than incidental contact, which is defined as contact occurring merely by chance or without intention or calculation, you must not associate and/or be alone with children under 18 years of age, nor shall you be at any residence where children under the age of 18 are residing, without the prior written approval of the probation officer. If you have any contact with any such minor not otherwise addressed in this condition, you must immediately leave the situation and notify the probation officer. This provision shall not apply to contact with your own minor children unless the court expressly so finds. SO-15-06(3)

You must not visit, frequent, or linger about any place that is primarily associated with children under the age of 18 or at which children under the age of 18 normally congregate without the prior written approval of the probation officer. SO-15-06(4)

You must not associate with anyone, under any circumstance, that you know to be a sex offender, someone who engages in sexual activity with children under 18 years of age, or someone who condones and/or supports the sexual abuse/exploitation of children under 18 years of age (e.g., NAMBLA, BOYCHAT, Boylover Message Board), except while participating in sex offender mental health treatment or for employment purposes as approved by the probation officer. SO-15-06(5)

You must not possess any printed photographs, paintings, recorded material, or electronically produced material designed to produce arousal of sexual interest in children under 18 years of age. Nor shall you visit, frequent, or linger about any place where material designed to produce arousal of sexual interest in children is available to you. SO-15-06(6)

You must notify the probation officer of any/all location(s) where you receive mail. You must not obtain a new mailing address, post office box, or use the facility of any business for the delivery and receipt of mail or any other correspondence without approval of the probation officer. SO-15-06(7)

You must submit to a psychosexual assessment at your own expense, as directed by the probation officer. SO-15-06(8)

You must submit to polygraph testing at his/her own expense, as directed by the probation officer, in order to determine if you are in compliance with the conditions of supervision, or to facilitate sex offender treatment. You must be truthful during polygraph evaluations. SO-15-06(9)

All residences and employment shall be approved in advance by the probation officer. You must not participate in any volunteer activities requiring unsupervised contact with children under the age of 18, without the approval of the probation officer. You must not engage in an activity that involves being in a position of trust or authority over any child or children under the age of 18. SO-15-06(10)

You must submit your person, residence, vehicle, or any area over which you exercise control to a search conducted by a probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by you, at any time without prior notice or search warrant, in order to determine if you are in compliance with the conditions of supervision. You must warn anyone with whom you reside that the premises may be subject to searches pursuant to this condition. SO-15-06(11)

You must not possess or use a computer or any other electronic device with access to the Internet or any other on-line computer service at any location (including employment), without the approval of the probation officer. SO-15-06(12)

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You must not possess or use any data encryption, data elimination, or access-protection technique, device, or program designed to conceal, eliminate, or corrupt material that is illegal, designed to produce a sexual interest in children under 18 years of age, or prohibited by the probation officer. SO-15-06(13)

2. You must participate in a program of testing and treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as you are released from the program by the probation officer.
3. You must participate in a program of mental health treatment, as directed by the probation officer, until such time as you are released from the program by the probation officer. You must waive all rights to confidentiality regarding mental health treatment in order to allow release of information to the supervising United States Probation Officer and to authorize open communication between the probation officer and the mental health treatment provider.
4. You must take all medication prescribed by the treatment program as directed. If deemed appropriate by the treatment provider or the probation officer, you must submit to quarterly blood tests to determine whether you are taking the medication as prescribed.
5. You must submit your person, property, house, residence, vehicle, papers, [computers (as defined in Title 18 U.S.C. § 1030(e)(1), other electronic communications or data storage devices or media,] or office, to a search conducted by a United States probation officer or designee. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition. An officer may conduct a search pursuant to this condition only when reasonable suspicion exists that you have violated a condition of your supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

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**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the Schedule of Payments sheet of this judgment.

	<b>Assessment</b>	<b>JVTA Assessment*</b>	<b>Fine</b>	<b>Restitution</b>
<b>TOTALS</b>	\$100.00	\$0.00	\$0.00	\$0.00

The determination of restitution is deferred until An *Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution amount ordered pursuant to plea agreement \$

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options under the Schedule of Payments sheet of this judgment may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

<input type="checkbox"/> the interest requirement is waived for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution
<input type="checkbox"/> the interest requirement for the	<input type="checkbox"/> fine	<input type="checkbox"/> restitution is modified as follows:

\* 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 payments of \$ 100.00 due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance with  C,  D,  E, or  F below; or
- 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 *(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:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to **U.S. District Court, 800 Market Street, Suite 130, Howard H. Baker, Jr. United States Courthouse, Knoxville, TN, 37902**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

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

- Joint and Several
 

See above for Defendant and Co-Defendant Names and Case Numbers (*including defendant number*), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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.