No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ANTHONY L. INGRAM,

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Are the due process rights of a defendant in a criminal case violated when the government fails to present evidence at trial as to each element of the crime of federal kidnapping under Title 18 United States Code Section 1201(a)(1) and the district court fails to grant the defendant's motion for acquittal?

2. Are the due process rights of a defendant in a criminal case violated where the government was permitted to introduce improper and prejudicial character evidence related to his penchant for searching hard-core pornography sites, in violation of the Federal Rules of Evidence?

3. Are the due process rights of a defendant in a criminal case violated where the district court gave erroneous jury instructions which were contrary to law and effectively changed the proof required for the offense charged?

STATEMENT REQUIRED BY RULE 14.1

Pursuant to Supreme Court Rule 14.1, Petitioner states that all parties to the proceedings in the court whose Judgment is sought to be reviewed are listed in the caption above.

STATEMENT OF RELATED PROCEEDINGS

- USA v. Anthony Ingram, No.:5:19-CR-00228 (N.D. Ohio) (Judgment of Conviction issued February 27, 2020).

- USA v. Anthony Ingram, No.: 20-3267 (6th Cir.) (Opinion and Judgment filed March 12, 2021; mandate issued April 5, 2021).

- There are no additional proceedings in any court that are directly related to this case.

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ANTHONY L. INGRAM,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

PETITION FOR CERTIORARI

Petitioner Anthony L. Ingram respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Sixth Circuit, issued on March 12, 2021.

DECISIONS BELOW

The Decision of the United States Court of Appeals for the Sixth Circuit is attached hereto as Appendix A to this Petition. Pet.App.1a-16a. The February 27, 2020 Judgment of the United States District Court for the Northern District of Ohio is attached hereto as Appendix B to this Petition. Pet.App.17a-24a

JURISDICTION

Jurisdiction of this Honorable Court over this matter is invoked *inter alia*. under the provisions of 28 U.S.C. §1254 and Rules 10-14 of the Rules of the Supreme Court of the United States. The Sixth Circuit Court of Appeals entered its judgment on March 12, 2021. This petition is being filed within 90 days of March 12, 2021.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Involved herein is the Fifth Amendment to the United States Constitution and Title 18 U.S.C. Section 1201(a)(1):

Amendment V

"No person shall . . . be deprived of life, liberty, or property, without due process of law . . ."

Title 18 United States Code Section 1201(a)(1)

(a)Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when—

(1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense;

INTRODUCTION

This case presents important questions about a criminal defendant's rights to due process under the Fifth Amendment. Petitioner contends that he was denied due process because the district court denied his Motions for Acquittal under Criminal Rule 29 even though the government failed to establish federal jurisdiction and further failed to present evidence as to each element of the crime of federal kidnapping. Petitioner was further denied due process when the district court allowed the government to introduce improper and highly prejudicial character evidence consisting of logs and reports regarding hundreds of hard-core pornographic internet searches, many of which contained vile search terms, in violation of Evidence Rule 404(b). Finally, Petitioner was denied due process when the district court gave erroneous jury instructions which changed the proof required for conviction.

STATEMENT OF THE CASE

On April 9, 2019, Petitioner Anthony L. Ingram was indicted (R.1) in the United States District Court for the Northern District of Ohio, Eastern Division, on one count of Kidnapping in violation of Title 18 United States Code Section 1201(a)(1), and one count of Obstruction of Justice in violation of Title 18 United States Code Section 1512(c)(1).

On September 26, 2019, the government filed a Notice of Intent to Use Evidence (R.20) and a Motion in *Limine* (R.21) in connection with its

intention to introduce certain 404(b) character evidence against Petitioner, which consisted of documents (and related testimony) related to Petitioner's penchant for searching hard-core pornography sites and which graphically portrayed hundreds of internet searches and website visits made from Petitioner's cell phone. (See, e.g. R. 57, Page ID# 1024-1074)

In its Notice of Intent to Use Evidence (R.20) and Motion in *Limine* (R.21), the government argued that the pornography-related evidence was somehow relevant and admissible at trial. The government claimed that the detailed logs and listings of Petitioner's pornographic internet searches and website visits (which included extremely prejudicial search terms such as "rape", "forced gangrape" "violent", "Young Brunette Kidnapped & Forced" "Innocent Teen Forced at Gunpoint", "chloroform videos", etc.) were "probative of [Petitioner's] specific intent to hold the alleged victim for the purposes of committing a sexual assault against her." (R. 20, Page ID#62 (emphasis added); R.21, Page ID#69)

The government further argued that the logs of the pornographic internet searches and website visits – many with vile sounding search terms – were offered to prove "[Petitioner's] intent in committing the kidnapping offense" (R.20, Page ID# 63) and properly "admissible as circumstantial evidence" of the kidnapping charge. (R. 21, Page ID#67). Finally, the government alternately argued that evidence of the internet searches and website visits was admissible "as res gestae, as it is inextricably intertwined

with the kidnapping offense with which Defendant is charged." (R.21, Page ID#68)

On October 1, 2019, Petitioner's counsel filed omnibus responses (R.24) to the government's Notice (R.20) and Motion (R.21) and therein also filed a Motion to Suppress the admission of the afore-said 404(b) evidence. During the final pretrial on October 3, 2019, the district court entertained further argument regarding the parties' respective positions as to the admissibility of the subject evidence.

On October 18, 2019, before the start of Voir Dire, the government dismissed the Obstruction of Justice charge (Count 2) (R.52, Page ID #306). Thereafter, Voir Dire began, a jury was empaneled, and the jury trial commenced on October 21, 2019.

During Petitioner's trial, the government did not establish federal jurisdiction over the alleged offense conduct and failed to produce any evidence that Petitioner did, in any way, *seize*, *confine*, *inveigle*, *decoy*, *kidnap*, *abduct*, or *carry away and hold for ransom or reward or otherwise* the alleged victim as required to establish a violation of the federal kidnapping statute.

The district court allowed the government to introduce extensive testimony and evidence at trial regarding the above-referenced pornography-related internet searches and website visits made by Petitioner and also

allowed the admission of government's Exhibits 308 and 309 which were logs and reports listing many of the graphic details of such searches.

By the end of the trial, the jury and the district court had been unavoidably saturated by the improper 404(b) evidence. At the close of the government's case, and thereafter when the defense rested its case, Petitioner's counsel moved the district court for judgment of acquittal pursuant to Crim. R. 29. It is apparent that the district court either misunderstood or misinterpreted the analysis required under Federal Criminal Rule 29 as the court denied both Motions. (R.58, Page ID#s 1258-1265; R. 58, Page IDs 1269-1270)

On October 24, 2019, trial concluded, and the district gave its charge to the jury. When instructing the jury, the district court modified the language of the elements of the offense charged diluting the proof required to obtain a conviction. The court effectively or reduced the government's burden to prove each element of federal kidnapping by proof beyond a reasonable doubt in violation of Petitioner's due process rights.

After brief deliberations the Jury returned a guilty verdict. (R. 35)

On February 27, 2020, the district court sentenced Petitioner to a term of 360 months imprisonment. (R. 47, R. 48)

Petitioner filed his Notice of Appeal to the Sixth Circuit Court of Appeals (R. 49) on March 4, 2020 and on March 12, 2021, the Sixth Circuit

Court of Appeals issued its decision affirming the Judgment of Conviction and Sentence of the United States District Court's.

REASONS FOR GRANTING THE PETITION

Protecting the rights afforded all persons under the Due Process Clause of the Fifth Amendment to the United States Constitution weigh in favor of this Honorable Court granting this petition for certiorari.

1. Offense Elements Lacking / Federal Jurisdiction Not Established

The government did not present any evidence that Petitioner had *seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away and held for ransom or reward or otherwise* the alleged victim. As detailed *infra.,* the government did not establish federal jurisdiction over the alleged offense conduct under Title 18 U.S.C. §1201(a)(1). The alleged victim's testimony firmly established that she voluntarily entered Petitioner's truck without ever having first met or spoken a single word to him, and without asking where he was going. The evidence further established that Petitioner, a commercial truck driver, was already *en route* across state lines to Maryland to drop off a shipment of juice to a Walmart when the alleged victim entered his vehicle.

H.K. testified that in early August of 2018, after having first become acquainted with Austin Redmon, another interstate truck driver, through the "Plenty of Fish" website (Transcript, R.54, Page ID #54), H.K. traveled from Colorado (Transcript, R.54, Page ID #586) to the northwest part of the state

of Indiana (Transcript, R.54, Page ID #587) to meet Redmon, who worked for the same company as Petitioner. Although they had never met, Redmon invited H.K. to meet him along his route and ride along with him for an indefinite period of time. H.K. left Colorado, drove to Indiana, and left her car in the parking lot of a Flying J truck stop (located somewhere off Interstate 65). H.K. accompanied Mr. Redmon 24 hours a day, 7 days a week, for the next week or so as he made various deliveries and pick-ups around the country. Redmon and H.K. immediately commenced a sexual relationship. After the couple had an altercation over sexual boundaries (Transcript, R.54, Page ID #591), H.K. decided she wanted to "try[ ]to go home." (Transcript, R. 54 Page ID #592). Redmon reportedly told H.K. he could not take her back to her car until he had completed his scheduled pick-ups and deliveries. H.K. was insistent she did not want to wait that long and Redmon came up with a plan to ask his friend, Petitioner, if he could take H.K. back to her vehicle sooner than Redmon could. (Transcript, R.54, Page ID #594)

When Redmon called Petitioner, who was also on the road making pick-ups and deliveries around the country, Petitioner told Redmon he could take H.K. back to her car, but not until he dropped off the load of juice he was currently hauling to Maryland. Redmon and Petitioner agreed they would meet in Michigan so H.K. could accompany Petitioner to first finish his trip to Maryland and then take H.K. to Indiana. Petitioner also agreed, as a favor to Redmon, that when he got H.K. back to her car, he would give H.K. $200 for

gas money (for which Redmon agreed to pay him back). Even though he had to drop off his load in Maryland first, Petitioner would still be able to get H.K. back to her car sooner than Redmon could. (See, Redacted Copy of Recorded Interview of Petitioner, Gov. Ex. 111, played for the jury in four separate segments during the government's case.)

H.K. testified that on Friday, August 10, 2018, Redmon and H.K. arrived at the Pilot Gas Station in Michigan where Redmon had asked Petitioner to meet them. While they waited there for Petitioner to arrive, Redmon and H.K. went to get something to eat at a local Mexican Restaurant and hung out in the back of Redmon's truck until Petitioner arrived. When Petitioner arrived, instead of having H.K. get out of the truck with him so the two of them could meet Petitioner together, Redmon alone got out of the truck while H.K. stayed in the truck until she got a phone call from Redmon telling her to bring her stuff to Petitioner's truck. Thereafter, before the two had even met, and absent any express invitation to do so, H.K. voluntarily got into Petitioner's truck which was headed to a Walmart in Maryland to deliver 40,000 pounds of juice.

During an interview with law enforcement (Gov. Ex. 111) Petitioner admitted that he and H.K. had never seen one another, never met one another, and never spoken a word to one another, until after she got into his truck in Michigan. (Transcript, R.54, Page ID #595) This fact is notable to emphasize that it would have been legally impossible for Petitioner to have

said or done anything unlawfully or willfully to *seize, confine, inveigle, decoy, kidnap, abduct, carry away H.K. for any purpose.* **There is no evidence to the contrary and no evidence that the first actus reus element (seizure) required under the federal kidnapping statute, Title 18 U.S.C. § 1201(a)(1) took place.**

H.K. told law enforcement that about 20 minutes into the ride to Maryland, and while looking at her phone, she realized that Redmon had blocked her from social media. H.K. was admittedly upset by this development. H.K. reported that she also did a Google search on her phone to determine the location of her car. After doing so, H.K. said she realized Petitioner was driving in a direction opposite to where her car was located. When H.K. asked Petitioner about this, he told they were first going to Maryland so he could deliver his load of juice, and that after doing so, he would take her back to her vehicle.

H.K. told Petitioner that Redmon told her Petitioner would take her directly to her vehicle. H.K. testified that she made several phone calls to her sister and at least one phone call to a friend during the course of the next couple of hours of riding with Petitioner toward Maryland. H.K. did not make any 911 calls, and aside from the fact that H.K. made it clear she would have preferred to have been taken directly to her car, the ride was uneventful.

At one point during the trip, Petitioner stopped to go the bathroom along the side of the road, exiting the truck through the passenger side to do

so. H.K. was not locked or otherwise held in the cab of the truck when Petitioner exited the truck, or at any other time. H.K. did not get out of the vehicle and did not protest when Petitioner got back into the truck through the unlocked passenger door. **There is no evidence that the second actus reus element (holding) required to be proven under the federal kidnapping statute, Title 18 U.S.C. § 1201(a)(1), took place.**

During a recorded interview with Ohio Highway State Patrol Troopers, Petitioner (who thought he was in trouble for "leaving" H.K. at the Pilot Gas Station) voluntarily told officers about the time he spent with H.K. in his truck. Petitioner told officers that after stopping on the side of the highway, when he got back into the truck through the passenger door (which was the side away from traffic) he was very surprised that H.K. started to make out with him and thereafter initiated sex with him. Petitioner told officers that H.K. made the first move and the two moved into the rear part of the cab where Petitioner's bed was located. Petitioner told the officers that he and H.K. had consensual sex and detailed their sexual conduct. (See, Redacted Copy of Recorded Interview of Petitioner, Gov. Ex. 111, played for the jury in four separate segments during the government's case.)

After having sex, H.K. and Petitioner cleaned themselves up and Petitioner resumed driving east toward his Maryland destination. Shortly thereafter, H.K. told Petitioner she had to use the bathroom, so he stopped at the next Pilot Gas Station. When Petitioner and H.K. arrived at the Pilot,

Petitioner first pulled over to the gas pumps and refueled his truck. (See, Redacted Copy of Recorded Interview of Petitioner, Gov. Ex. 111, played for the jury in four separate segments during the government's case.)

H.K. testified that when they arrived at the Pilot, she exited the vehicle and went inside while Petitioner stayed by the truck. H.K. testified she first went to use the bathroom (located on the convenience store side of the building) and then walked over to the McDonalds restaurant located on the other side of the building where she asked if she could use a phone to call 911. Upon calling 911, H.K. reported that she had been **sold into human trafficking.** Although her initial complaint was that she had been the victim of human trafficking, she later added during her interview with police that Petitioner had raped her at gunpoint along the side of the road.

While H.K. was inside the Pilot, Petitioner finished refueling his truck and washed the truck's windows. When he was done, as is customary, Petitioner moved his truck forward to a different part of the parking lot so as not to block the pumps, and then entered the station to use the restroom, obtain his receipts, and look for H.K. (See, Redacted Copy of Recorded Interview of Petitioner, Gov. Ex. 111, played for the jury in four separate segments during the government's case.)

Photographs and video camera footage confirmed Petitioner's statements to the Ohio State Highway Patrol officers and showed Petitioner pulling up to the pump; refueling the truck; H.K. getting out of the truck,

H.K. hugging Petitioner (see, Def. Exhibit B)(see, also, Transcript, R. 58, testimony of Trooper Gurlea, at Page ID # 1181); H.K. walking into the Pilot; Police arriving at the Pilot; Petitioner pulling his truck forward and parking it away from the pump (as a courtesy to other drivers needing to refuel); Petitioner walking into the Pilot; Petitioner walking out of the Pilot; and Petitioner driving away from the Pilot. (See, Gov. Exhibits 218, 219, 220, 221, 222, 223, 224, 225, 226) Additional video footage from the Pilot shows H.K. walking with police officers inside the Pilot and thereafter exiting the Pilot together. (See, Gov. Exhibits 227 and 228 and Def. Exhibit B)

During trial, the government presented almost a dozen witnesses, most of whom gave testimony primarily related to the alleged rape. Despite the fact that there was no dispute as to Petitioner's identity or the location of the sexual conduct, the government focused its presentation on H.K.'s allegations of rape, the investigation of the SANE nurse, the analysis of the rape kit, DNA evidence, GPS location data, travel logs, and cell phone extractions all geared toward highlighting the allegations of rape which allegations did not seem to develop until after Petitioner and H.K. had been on the road for an extended period.

H.K. admitted she was not happy it was going to take her longer to get back to her car and that she made several phone calls to her sister and a friend trying to figure out if there was anything else she could do to avoid having to make the trip to Maryland. H.K. testified that during one call with

her sister, H.K.'s sister basically told her that . . . sometimes you have to do what you have to do to get yourself out of a situation. (Transcript, R. 54, Page ID #670-671). Special Agent Michelle Stone testified regarding that particular conversation and the advice H.K.'s sister gave her which essentially was, "Hey, sometimes you are in a situation and you just got to do what you got to do to get out of the situation[.]" (Transcript, R. 58, Page ID #1220.) Notably, it was after that particular conversation that H.K. initiated sex between her and Petitioner, sex that she would later claim was rape.

The following elements are required to establish a violation of Title 18 U.S.C Section 1201(a)(1) (Kidnapping):

> (a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when--
>
> (1) the person is willfully transported in interstate or foreign commerce, regardless of whether the person was alive when transported across a State boundary, or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense
>
> * * *

Id. (emphasis added.)

As noted *supra.,* the evidence at trial established that Petitioner could not have violated Title 18, Section 1201(a)(1) since he did not seize, confine, inveigle, decoy, kidnap, abduct or carry H.K. away. H.K. voluntarily got into Petitioner's truck. Whether or not it can be believed that H.K. "expected" or

"understood" Petitioner would take her directly to her car in Indiana, such "expectation" or "understanding" did not arise based upon anything that Petitioner did, said, inferred, suggested, promised, or stated to H.K. Petitioner did not invite or trick H.K. into getting his truck. She got in on her own volition and then stayed in the truck as Petitioner made his way to the Walmart in Maryland.

The fact that Petitioner and H.K. were traveling together in his moving truck, does not establish that H.K. was being "held" against her will. No evidence of either of these necessary *actus reus* elements under Title 18 U.S.C. Section 1201(a)(1) was presented. In the district court below, the government seems to have comingled the circumstances surrounding its allegations of "rape", which, if proven would entail the victim's forced participation in sex, with its claims of kidnapping in violation of the federal kidnapping statute.

Petitioner was traveling interstate travel for the purpose of delivering commercial goods when H.K. voluntarily got into his truck. He was not traveling interstate for purposes of "committing or in furtherance of the commission of [any] offense" and it was not his purpose or design to "willfully transport H.K." in interstate commerce from Michigan to Ohio, and use a semi-trailer truck, a means, facility, and instrumentality of interstate commerce" in relation to any possible "seizure" or "holding" of H.K.

Here, Petitioner was, quite plainly, an interstate truck driver headed to his destination across state lines for the purpose of making a legal, commercial delivery.

If the allegations of H.K. were to be believed by law enforcement, rape or kidnapping charges should have been brought by the state of Ohio. Instead, the government brought federal kidnapping charges without proving either of the actus reus elements required under Title 18 U.S.C. §1201(a)(1). The prosecution illegally federalized conduct which would otherwise qualify, if such conduct occurred, as a state criminal case. The government presented as federal kidnapping what should have properly been either a state kidnapping case or a state rape case, if the alleged conduct even took place.

2. **Admission of Improper Character Evidence Poisoned the Jury**

At trial, the government presented extensive improper 404(b) evidence to allegedly show "proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident". Instead, the listing of hundreds of internet searches, which included vile terms such as "rape", "forced gangrape" "violent", "Young Brunette Kidnapped & Forced", "Innocent Teen Forced at Gunpoint", and "chloroform videos" unavoidably poisoned the jury forcing them to loathe and detest Petitioner. Clearly, the jury could not remain impartial after being inundated with such extremely prejudicial evidence. This evidence is the exact kind of evidence prohibited by Evidence Rule 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of

Time, or Other Reasons). After the close of the case, the government utilized such "evidence" as a bootstrap, to convince the district court that it had met its burden to present evidence of the "seizure" and "holding" by virtue of showing that Petitioner had used search terms such as "force", "rape", and had searched whether it was illegal to leave someone at a gas station against her will. This evidence was not probative of anything, had nothing to do with any alleged "intent" to commit a kidnapping offense and was not admissible as *res gestae*.

Without doubt, the admission of these graphic, pornography-related logs of some 118 internet searches and 160 website visits by Petitioner was improper and more prejudicial than probative and should not have been admitted. Clearly, the jury could not recover any impartiality after being exposed to such evidence. The district court's analysis in allowing the prejudicial evidence was flawed. The government's efforts to present such evidence was purposeful, unfair, and calculated to convey a repulsive image of Petitioner to the jury. The government succeeded.[1]

---

[1] By purposely limiting the time frame of the internet analysis conducted, the government sought to convey that Petitioner's internet searches happened just in the month prior to the offense, rather than, perhaps, during a period of months or years which might depict him as an individual – with no improper ulterior motivations – who often looked at legal, albeit distasteful pornography. Obviously, the government's intention was to present Petitioner's limited one-month internet history as evidence of his purported plan or "intention" to commit a kidnapping.

It is likely that with the internet, these types of internet searches may be commonplace. Searching Petitioner's phone for a limited period and then presenting a list of his searches for the month prior to the offense purposely suggests some special connection to the charged offense; an offense against a woman who Petitioner did not even know he would meet. The admission of such evidence is analogous to presenting evidence that an avid deer hunter who had been accused of murder, purchased ammunition the week before his neighbor was shot.

In the instant case, the "bad acts" of conducting pornographic internet searches are completely unrelated to the commission of the crime of kidnapping. Here, the government tried to prove "specific intent" to commit kidnapping through admission of 404(b) evidence relating to the "bad acts" of viewing lewd, but otherwise legal pornography. Viewing pornography, however, can hardly be considered part of the same scheme as an alleged kidnapping, even if the stated purpose of the alleged kidnapping was to commit a sexual assault. The admission of Petitioner's lawful, unrelated, internet activities was too remote and too unrelated to be probative of the charged kidnapping conduct. And, although Petitioner's apparent pornographic interests were purposely tracked and reported for a single month prior to the charged conduct, such staged (in terms of the timeframe that was captured in the government's exhibits) temporal proximity does not establish any probative value of such information under the facts of the case.

Even if some probative value existed, it could not outweigh the unavoidable prejudice. Additionally, since the pornography-related internet searches were unrelated and certainly not "inextricably intertwined" with the federal kidnapping offense, they could not be considered res gestae. The prejudice caused by the admission of this improper evidence was extraordinary.

3. **Jury Instructions Improper, Contrary to Law**

The district court gave improper instructions to the jury regarding the proof required by the government and the elements of the offense for which Petitioner was charged. On the whole, the instructions given diluted the proof required to have been presented by the Government to establishing its case.

The Indictment filed against Petitioner stated as follows:

COUNT 1

(Kidnapping, 18 U.S.C. § 1201(a)(1))

The Grand Jury charges:

> 1. On or about August 10, 2018, in the Northern District of Ohio, Eastern Division, Defendant ANTHONY L. INGRAM did unlawfully and willfully seize, confine, inveigle, decoy, kidnap, abduct, carry away, and hold H.K. for the purpose of committing a sexual assault against H.K., and in committing or in furtherance of the commission of the offense, did willfully transport H.K. in interstate commerce from Michigan to Ohio, and used a semi-trailer truck, a means, facility, and instrumentality of interstate commerce, in violation of Title 18, United States Code, Section 1201(a)(1). (emphasis added.)

(Indictment, R. 1)

The bulk of evidence presented at trial focused on the alleged rape of H.K. The government bombarded the jury with witness after witness who testified predominately about the alleged rape. Even though Petitioner admitted having consensual sex with H.K. at a location along the side of the road in Ohio, the government presented detailed scientific evidence including DNA analysis, location monitoring analysis, telephone logs and extraction reports and testimony which fixated on the alleged rape. Thus, the government was able to supplant its allegations of non-consensual sex in a fashion which misled the jury into understanding that an alleged "non-consensual sexual encounter" could equate to "holding" someone against their will. The government's focus on the alleged rape necessarily distorted the jury's perception of the offense conduct being charged. Even though the government charged through the trial with witness inquiry, exhibits, testimony, and inferences which emphasized the alleged rape, it failed to present substantive evidence of the crime of federal kidnapping.

The instructions which were given to the jury did not adequately inform the jury of the relevant considerations necessary to review the evidence presented by the government. Taking into consideration the government's presentation of evidence during trial, the district court's instructions did not provide a sound basis in law to aid the jury in reaching a decision.

The district court's instructions regarding the elements required to prove a violation of Title 18 U.S.C. § 1201(a)(1) were particularly confusing as they modified the elements of the offense charged. As a whole, the jury instructions were prejudicial to his defense case.

Regarding the charge of federal kidnapping, the district court instructed the jury as follows:

* * *

> Count 1 of the indictment charges Anthony L. Ingram with kidnapping, in violation of Title 18, United States Code, Section 1201(a)(1). Specifically, the indictment states:
>
> On or about August 10, 2018, in the Northern District of Ohio, Eastern Division, Defendant Anthony L. Ingram did unlawfully and willfully seize, confine, inveigle, decoy, kidnap, abduct, carry away and hold H.K. for the purpose of committing a sexual assault against H.K., and in committing or in furtherance of commission of the offense, did willfully transport H.K. in interstate commerce from Michigan to Ohio, and used a semi-trailer truck, a means, facility and instrumentality of interstate commerce, in violation of Title 18, United States Code, Section 1201(a)(1).
>
> For you to find the defendant guilty of this crime, you must find that the government has proved each and every one of the elements beyond a reasonable doubt:
>
> First, that Defendant Anthony L. Ingram unlawfully and willfully seized, confined, inveigled, decoyed, or kidnapped H.K.;
>
> Second, that the Defendant Anthony L. Ingram held H.K. for some purpose of his own or benefit to him, for example, for the purpose of forcing H.K. to have sex with him; and

Third, that the Defendant Anthony L. Ingram willfully transported H.K. without H.K.'s consent in interstate commerce by transporting H.K. from Michigan to Ohio, and/or Defendant Anthony L. Ingram used a semitrailer truck, a means, facility or instrumentality of interstate or foreign commerce.

* * *

To "kidnap" a person means to unlawfully hold, keep, detain, or confine the person against that person's will. Involuntariness or coercion in connection with the victim's detention is an essential part of the offense. To "inveigle" a person means to lure, entice, or lead the person astray by false representations or promises, or other deceitful means. To "hold" means to detain, seize, or confine a person in some manner against that person's will. The holding need only be for an appreciable period of time. It is not necessary that the government prove that the holding occurred prior to the transportation in interstate commerce. However, the holding must be separate from the transportation. A person is "transported in interstate commerce" whenever that person moves or travels across state lines or travels from one state to another. The government need not prove that the defendant knew that he was transporting the victim in interstate commerce, only that he did. You need not unanimously agree on why the defendant kidnapped the person in question, so long as you each find that he had some purpose or derived some benefit from the kidnapping.

If you are convinced that the government has proved all of these elements, say so by returning a guilty verdict. If you have a reasonable doubt about any one of these elements, then you must find the defendant not guilty of kidnapping.

* * *

(Transcript, R. 59, Page ID# 1494-1496)(emphasis added.)

The instructions above are erroneous and effectively watered down the government's duty to prove its case.

By reducing the second element of the criminal conduct charged in the Indictment from:

> **"for the purpose of committing a sexual assault against H.K."**

down to:

> **"for some purpose of his own or benefit to him, for example, for the purpose of forcing H.K. to have sex with him"**

. . . the district court's instructions allowed the jury to understand that less was required for conviction than what was charged in the Indictment.

In modifying the language of the elements of the offense, and the proof required to obtain a conviction, the district court effectively lifted and/or reduced the government's burden to prove each element of the offense charged, to wit: federal kidnapping, by proof beyond a reasonable doubt.

The error caused by the issuance of improper jury instructions was fatal to the defense and denied Petitioner due process.

CONCLUSION

For all of the foregoing reasons, Petitioner herein requests this Honorable Court to review and decide whether Petitioner's due process rights as afforded under the Fifth Amendment to the United States Constitution have been violated and further prays that this Honorable Court issue a Writ of Certiorari to the Sixth Circuit Court of Appeals.

Respectfully submitted,

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ANTHONY L. INGRAM,

PETITIONER,

v.

UNITED STATES OF AMERICA,

RESPONDENT.

PROOF OF SERVICE

I, Gretchen A. Holderman, swear that on the 8th day of June 2021, as required by Supreme Court Rule 29, I have served copies of Petitioner's Motion to Proceed in Forma Pauperis and Petition for a Writ of Certiorari upon Bridget M. Brennan, Acting U.S. Attorney and Mr. James Anderson Ewing, Assistant U.S. Attorney, Office of the U.S. Attorney, 801 W. Superior Avenue, Suite 400, Cleveland, Ohio 44113 and Elizabeth Prelogar, Acting Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001, by depositing them in the United States Mail.

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APPENDIX

Appendix A - March 12, 2021 Decision of the United States Court of Appeals, United States v. Ingram, Case No.: 20-3267

Appendix B - February 27, 2020 Judgment of the United States District Court for the Northern District of Ohio, United States v. Ingram, Case No.: 5:19-CR-00228

NOT RECOMMENDED FOR PUBLICATION
File Name: 21a0130n.06

No. 20-3267

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

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ANTHONY L. INGRAM, Defendant-Appellant.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

BEFORE: WHITE, LARSEN, and NALBANDIAN, Circuit Judges.

HELENE N. WHITE, Circuit Judge. Defendant Anthony Ingram appeals his kidnapping conviction, arguing that the district court erred in admitting other-acts evidence under Federal Rule of Evidence 404(b), the jury instructions were erroneous, and the evidence was insufficient to support his conviction. We **AFFIRM.**

I.

A grand jury indictment charged Ingram with kidnapping in violation of 18 U.S.C. § 1201(a)(1).[1] The indictment alleged that Ingram kidnapped the victim, H.K., for the purpose of sexually assaulting her. Before trial, the government filed a motion in limine and a notice of intent to use Rule 404(b) evidence, seeking to introduce evidence that Ingram's phone was used to conduct numerous internet searches related to pornography involving rape, kidnapping, or forcible sexual conduct. The government argued that the evidence is admissible to show Ingram's intent

[1] Ingram was also charged with obstruction of justice, but that count was dismissed and is not at issue in this appeal.

and his state of mind, or that it constituted background, or res gestae, evidence. At the final pretrial hearing, the government clarified that it did not intend to introduce any pornographic images or videos from the websites Ingram visited, but sought only to admit the search terms Ingram used and the titles and URLs of the websites he visited. The district court rejected the government's res gestae argument but explained that it would likely admit the evidence as relevant to establishing Ingram's specific intent, so long as some of the more prejudicial and irrelevant terms, such as "teen," were redacted. The district court directed the parties to review the search terms and stated that it would revisit the issue later. Before trial, the district court ordered the government to redact other terms, including "roofies" and "chloroform." With those redactions, the evidence, consisting of a list of 118 internet searches and up to 160 website visits over the five weeks preceding the alleged rape, was admitted at trial over Ingram's objection.

The following additional evidence was presented at trial. The victim, H.K., testified that she met Austin Redmon—a long-haul truck driver who worked for the same company as Ingram—on an online dating website. Redmon sent H.K. $200, and H.K. used that money to travel by car from Colorado to a truck stop in Indiana, where Redmon picked her up in his truck. Redmon and H.K. spent several days together in Redmon's truck delivering and picking up various loads, traveling to Michigan, Georgia, Maryland, and then back to Michigan. Redmon and H.K. had a consensual sexual relationship during the trip. While in Georgia, however, Redmon and H.K. had an altercation because Redmon had been drinking and wanted to engage in sexual acts with which H.K. was not comfortable. Around that time, H.K. decided she wanted to go home. Redmon told H.K. that he could not take her to her car in Indiana, but Ingram would meet them with his truck in Michigan and drive her to her car in Indiana, which Redmon told H.K. was on Ingram's route.

GPS records and Ingram's internet search history show that while Ingram was en route to Michigan to pick up H.K., his phone was used to search whether it is "against the law to abandon someone in the middle of the road trip," and whether "[i]f someone is riding with you if you leave them at a gas station against their will and drive off is that against the law." Ex. 308; Ex. 309.

H.K. testified that when Ingram arrived at the designated truck stop in Michigan, around 6:50 pm on August 10, 2018, Redmon exited his truck and went to Ingram's truck to talk to Ingram without H.K. A few minutes later, Redmon called H.K. on her cell phone and told her to bring her belongings to Ingram's truck. H.K. did not know Ingram and did not speak to him until she entered his truck.

Before entering Ingram's truck, H.K. discovered that Redmon had deleted his contact information from her phone, and she later realized that he had also blocked her on social-media sites. Soon after Ingram and H.K. departed the truck stop in Michigan, H.K. realized that Ingram was not driving in the direction of her car in Indiana. When she asked him why, Ingram explained that he needed to go to Maryland first and would take H.K. back to her car within a week. Although H.K. told Ingram that she needed to get back to her car right away, Ingram declined, saying "Sorry." R. 54, PID 611. H.K. called her sister and a friend and spoke to them about finding another way home, to no avail. H.K. was scared and planned to get out of the truck at the next stop.

Around 10:00 pm, near Hudson, Ohio, Ingram pulled the truck over on the side of the interstate and got out to urinate. When he reentered the truck, Ingram told H.K. that he had "bought" her from Redmon for $500, "so we are going to do what I say." *Id.* at PID 616. After a struggle, Ingram took H.K.'s phone and raped her, slapping her on the left cheek and threatening her with what appeared to be a gun.

About an hour later, Ingram pulled his truck into a Pilot truck stop in Austintown, Ohio. H.K. testified that Ingram had told her to stay near him, but H.K. got out of the truck while Ingram was pumping gas, gave him a hug, and went into the Pilot without any of her belongings. After using the Pilot restroom, H.K. asked a female employee at the McDonald's connected to the Pilot if she could use a phone to call 911. The McDonald's employees hid H.K. behind the counter, where she would be out of sight if Ingram came in looking for her. H.K. told the 911 dispatcher that she had been "sold in sex trafficking" and asked for help. *Id.* at PID 638.

The police arrived minutes later. H.K. then went through multiple interviews with officers, consented to a sexual-assault evaluation, and stayed in a nearby safe house. Ingram's sperm DNA was found on H.K.'s inner thigh, vaginal swab, and underwear, and Ingram's non-sperm DNA was found on H.K.'s left cheek, consistent with H.K.'s account of an open-handed slap. There was no evidence of acute trauma in H.K.'s genitals; however, the nurse who examined H.K. testified that an oft-cited study found that approximately ninety-five percent of sexual-assault victims do not have genitalia injury.

Surveillance video showed Ingram walking into the Pilot around the time the police arrived, staying inside for two-and-a-half minutes, and then exiting the Pilot and driving away. Phone records showed that Redmon and Ingram called each other several times that night and the next morning, and GPS records showed that Ingram made a brief stop on the side of the road shortly before midnight. Several months later, law enforcement found H.K.'s phone and other personal belongings where the GPS records indicated Ingram had stopped.

Ingram was arrested the morning after the Pilot stop. Officers located a BB gun that looked like a real firearm in an outside compartment of Ingram's truck. Officers also tracked Redmon's truck to a parking lot in Columbus, Ohio, where they found the truck abandoned.

The government introduced audio of Ingram's August 11 interview with officers. The government highlighted several of Ingram's statements that were inconsistent with other evidence introduced at trial, including Ingram's statements that H.K. likely still had her cell phone with her; that he waited almost forty minutes for H.K. to come out of the Pilot before he left; and that he had placed H.K.'s belongings near one of the fuel pumps. Ingram also did not initially volunteer that he and H.K. engaged in sexual activity, but later said it was consensual.

The jury found Ingram guilty of kidnapping, and the district court imposed a bottom-of-the-Guidelines sentence of 360 months' imprisonment.

II.

Ingram raises three challenges to his conviction: (1) that the district court improperly admitted evidence that he had searched for and visited websites with pornography involving rape, kidnapping, or forcible sexual conduct; (2) that the jury instructions were erroneous; and (3) that the evidence was insufficient. We address each challenge in turn.

A.

We review most evidentiary challenges for abuse of discretion, but we have been inconsistent in our review of rulings made under Federal Rule of Evidence 404(b). *United States v. LaVictor*, 848 F.3d 428, 444 (6th Cir. 2017).

> Sometimes, this Court will: (1) review for clear error the district court's determination that prior bad acts took place; (2) apply *de novo* review to a district court's determination that the evidence was offered for a permissible purpose; (3) and review for abuse of discretion the determination that the probative value of 404(b) evidence is not substantially outweighed by unfair prejudice. Other times, this Court has applied a single-tier abuse of discretion standard.

Id. at 444-45 (citations omitted). We need not wade into this debate, as Ingram's challenge fails under either standard of review. We will therefore apply the three-tiered standard as it is arguably more favorable to Ingram.

Rule 404(b), entitled "Other Crimes, Wrongs, or Acts," provides in part that "[e]vidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character," but the "evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." Fed. R. Evid. 404(b)(1)-(2). At issue in this case is the search history and website visits made from Ingram's phone showing repeated searches for rape-related pornography in the five weeks preceding Ingram's encounter with H.K. There is no dispute as to the first step in our analysis, i.e., Ingram does not argue that the district court clearly erred in finding that Ingram in fact used his phone to conduct these searches.[2]

Ingram argues that his internet history is irrelevant to whether he kidnapped H.K. He relies only on our decision in *United States v. Clay*, 667 F.3d 689 (6th Cir. 2012). In *Clay*, the defendant stole a woman's car at gunpoint and was convicted of carjacking and brandishing a firearm. *Id.* at 691. Over the defendant's objection, the district court admitted evidence of an incident from more than a year before where the defendant allegedly asked a teenager if she wanted a ride and, when she resisted, grabbed her and hit her in the face with a gun. *Id.* at 692, 694. The district court admitted the evidence as relevant to establishing the defendant's specific intent to commit carjacking. *Id.* at 692. A divided panel of this court held that the district court erred in concluding that the evidence was admissible for a proper purpose. *Id.* at 696. We explained that admitting

[2] After conceding there was sufficient evidence to find that the acts occurred, Ingram argues that the government cherry-picked the evidence by introducing his search history for only the five weeks preceding the alleged rape, even though he may have routinely searched for similar pornography for much longer. However, this argument was never pursued below. Once the Rule 404(b) ruling was made, Ingram did not seek to introduce his search history for the period preceding the five weeks. We therefore do not consider this argument in our Rule 404(b) analysis. *See United States v. Harris*, 9 F.3d 493, 499 (6th Cir. 1993) ("As a general rule, we will not consider issues not presented to and considered by the district court.")

the evidence "perches perilously close to proving specific intent by showing propensity, as it suggests that a person who engages in bad behavior toward another is likely to do so again." *Id.* Further, "[t]he two offenses at issue—assault and carjacking—are too unrelated and too far apart in time to be probative of whether [the defendant] had the specific intent to do harm to [the carjacking victim]; they merely show the criminal character of [the defendant]." *Id.*

Clay is distinguishable. The two primary reasons the court in *Clay* held that the evidence was not introduced for a proper purpose—remoteness in time and lack of similarity to the instant offense—do not aid Ingram here. First, the district court admitted searches and website visits for only the five weeks preceding the offense, which is sufficiently close in time. Second, the government's theory of the case, as charged in the indictment, was that Ingram inveigled H.K. into entering his truck for the purpose of sexually assaulting her. *See United States v. Van Metre*, 150 F.3d 339, 350-51 (4th Cir. 1998) ("One way for the government to satisfy this specific intent requirement [of kidnapping] was to prove that [the defendant]'s purpose in abducting [the victim] was, from the very start, for his own sexual gratification."); *see also* R. 24, PID 85 (Ingram agreeing that the government must prove that "[t]he kidnapping must be for the specific purpose of the sexual assault"). Ingram's defense was that the sexual contact was consensual and that H.K. fabricated the rape story to get herself out of the situation, placing his intent at issue. "[W]e have approved of the admission of other acts evidence to show specific intent in certain circumstances." *Clay*, 667 F.3d at 695 (citing *United States v. Johnson*, 27 F.3d 1186, 1192 (6th Cir. 1994)).

Although not directly on point, this and other courts have recognized the permissible use of pornography when it is similar to the charged sexual offenses. *See, e.g.*, *United States v. Libbey-Tipton*, 948 F.3d 694, 702 (6th Cir. 2020) ("It is logical to infer that Libbey-Tipton's preference for pornography depicting prepubescent girls would translate from his actions in the molestation

of his four-year-old cousin and serve as relevant evidence of whether it was Libbey-Tipton that downloaded the [child pornography] images. This connection aligns with the court's reasoning in admitting prior-act evidence to show intent and knowledge in [another case]."); *United States v. Torrez*, 869 F.3d 291, 301 (4th Cir. 2017) ("The Government produced evidence of pornographic videos showing violence against women who were sleeping, unconscious, or restrained. This evidence was admitted to show intent and motive, as well as modus operandi since Snell was murdered in the early morning in her bed, and officials discovered Appellant's semen on her bed sheets."); *United States v. Long*, 328 F.3d 655, 663 (D.C. Cir. 2003) (affirming admission of evidence of the defendant's uncharged child pornography activities in the defendant's trial for child pornography and related sex offenses, finding the evidence was relevant to intent); *State v. Russo*, 336 P.3d 232, 241 (Idaho 2014) (affirming rape and kidnapping convictions and the admission of Rule 404(b) evidence because "the evidence of Defendant's fantasies and his collecting pornography that was consistent with those fantasies was relevant to his motive in this case"); *Womack v. State*, 731 S.E.2d 387, 391 (Ga. Ct. App. 2012) ("And here, the relevant pornography depicted scenes of rape and/or bondage, and Womack was indicted for committing the offense of forcible rape, which at points involved binding the victims' hands. Thus, this evidence did not merely show Womack's lustful disposition in general but instead depicted a lustful disposition toward a particular sexual activity and his bent of mind to engage in that activity." (internal quotation marks and footnote omitted)). *But see State v. Clark*, 452 S.W.3d 268, 284-93 (Tenn. 2014) (concluding that evidence showing that the defendant viewed adult pornography in a case alleging sexual abuse of a child was erroneously admitted).

Still, this is a close case. We generally find that "[e]vidence of intent is probative when the evidence relates to conduct that is substantially similar and reasonably near in time to the

specific intent offense at issue," *LaVictor*, 848 F.3d at 447 (internal quotation marks omitted) (quoting *United States v. Carter*, 779 F.3d 623, 625 (6th Cir. 2015)), and *watching* rape-related pornography, on the one hand, and *kidnapping* for the purpose of sexually assaulting, on the other, are not factually similar acts. However, caselaw recognizes the relevance of pornography that is similar to the charged sexual offenses, and the rape-related pornography Ingram was searching for or viewing was similar to the allegations against him. Some of the webpages he visited included the phrases "kidnapped and forced" or "forced at gunpoint" in their titles. R. 57, PID 1061. Further, the searches were numerous and conducted close in time to the alleged kidnapping for the purpose of rape. Under the facts of this case, we conclude that the evidence showing that Ingram had a sexual interest in rape pornography is probative of Ingram's intent in inveigling and holding H.K. Therefore, the evidence was admitted for a proper purpose.

Finally, we consider whether the district court abused its discretion in concluding that the probative value of the search history was not substantially outweighed by the danger of unfair prejudice. *LaVictor*, 848 F.3d at 444-45. "[W]e grant the district court 'very broad' discretion in making [these] determinations." *Libbey-Tipton*, 948 F.3d at 701 (quoting *United States v. Newsom*, 452 F.3d 593, 603 (6th Cir. 2006)). "In reviewing the district court's balancing of the evidence, this Court 'look[s] at the evidence in the light most favorable to its proponent, maximizing its probative value and minimizing its prejudicial effect.'" *LaVictor*, 848 F.3d at 447 (alteration in original) (quoting *United States v. Chambers*, 441 F.3d 438, 455 (6th Cir. 2006)). Here, although the evidence was potentially prejudicial, the district court reduced the risk of unfair prejudice by requiring certain terms to be redacted, ensuring that only relevant search terms, website titles, and URLs—rather than any images or videos—were admitted, and providing an appropriate limiting instruction. *See id.* at 448 ("Furthermore, a limiting instruction was given

informing the jury on the proper use of the evidence, which ameliorated the risk of unfair prejudice.").

Ingram did not request, and the district court did not provide, a limiting instruction at the time the Rule 404(b) evidence was presented. However, in the final charge to the jury, the district court included the following instruction:

> You have heard testimony and saw documents that the defendant's cell phone contained Internet searches. If you find the defendant performed those searches, you can consider the evidence only as it relates to the government's claim on the defendant's intent. You must not consider it for any other pur[po]se. Remember that the defendant is on trial here only for kidnapping, not for the other acts. Do not return a guilty verdict unless the government proves the crime charged in the indictment beyond a reasonable doubt.

R. 59, PID 1298. We presume that juries follow their instructions. *United States v. Steele*, 919 F.3d 965, 973 (6th Cir. 2019).

Because the evidence was probative of Ingram's intent and the district court took steps that limited the potential for unfair prejudice, the district court appropriately exercised its broad discretion in concluding that the probative value was not substantially outweighed by the danger of unfair prejudice.

B.

Ingram next challenges the district court's jury instructions. "Ordinarily, we 'review de novo a claim that a jury instruction improperly or inaccurately stated the law.'" *United States v. Hamm*, 952 F.3d 728, 741 (6th Cir. 2020) (quoting *United States v. Lawrence*, 735 F.3d 385, 427 (6th Cir. 2013)). Here, however, the government argues we should review for plain error because Ingram did not make the same objections before the district court as he does on appeal. *See United States v. Maddux*, 917 F.3d 437, 448 (6th Cir. 2019) (citing Fed. R. Crim. P. 30(d)). Because Ingram does not contest the government's argument and it does not appear that he preserved his challenges, we review for plain error. *Id.* "Under that standard, this court may reverse for

To the extent Ingram challenges whether holding H.K. "for the purpose of forcing H.K. to have sex with him" qualifies as "for ransom or reward *or otherwise*" under 18 U.S.C. § 1201(a)—and it is unclear whether he does—this challenge fails as well. Courts routinely construe the "or otherwise" language broadly, and holding the victim for the purpose of forcing her to have sex satisfies that element. *See, e.g.*, *United States v. Brown*, 330 F.3d 1073, 1076, 1078 (8th Cir. 2003) (upholding a kidnapping conviction where the defendant sexually assaulted the victim, reasoning that "it is well-settled that he violated § 1201(a) by kidnaping and holding Jane Doe for a non-pecuniary purpose, whether or not he also held her for ransom or reward"); *Sensmeier*, 2 F. App'x at 477 (upholding conviction based on the theory that the defendant held the victim to assault her); *United States v. Williams*, 998 F.2d 258, 262 (5th Cir. 1993) (affirming kidnapping conviction because the jury could have found the defendant intended to rape or assault the victim); *United States v. Eagle Thunder*, 893 F.2d 950, 951-53 (8th Cir. 1990) (affirming kidnapping conviction where the defendant inveigled victim into his car, lied to the police, knocked her to the ground, and was present when she was sexually assaulted).

Ingram also appears to argue that the instruction on what constitutes "holding" the victim was erroneous. He complains that the government presented too many witnesses to testify about the alleged rape and "that the government was able to supplant its allegations of non-consensual sex in a fashion which misled the jury into understanding that an alleged 'non-consensual sexual encounter' could equate to holding someone against their will." Appellant's Br. at 36. The district court's instruction on this element was not plainly erroneous. The district court instructed the jury as follows:

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occurred, that argument would fail. The government's proof at trial was consistent with the theory of kidnapping as charged in the indictment, so there was no constructive amendment or prejudicial variance. *See United States v. Kuehne*, 547 F.3d 667, 685 (6th Cir. 2008).

> To "hold" means to detain, seize, or confine a person in some manner against that person's will. The holding need only be for an appreciable period of time. It is not necessary that the government prove that the holding occurred prior to the transportation in interstate commerce. However, the holding must be separate from the transportation.

R. 59, PID 1295. Although Ingram appears to take issue with the first two sentences of the instruction, that instruction is consistent with the Supreme Court's interpretation of § 1201. *See Chatwin v. United States*, 326 U.S. 455, 460 (1946) ("The act of holding a kidnapped person for a proscribed purpose necessarily implies an unlawful physical or mental restraint for an appreciable period against the person's will and with a willful intent so to confine the victim."); *see also United States v. Wills*, 346 F.3d 476, 493 (4th Cir. 2003) (approving a similar instruction). Because Ingram points to no contrary authority, we cannot find that the district court plainly erred in giving this instruction.

C.

Finally, Ingram challenges the sufficiency of the evidence. A jury verdict is supported by sufficient evidence if "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *United States v. Gooch*, 850 F.3d 285, 288 (6th Cir. 2017) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). After a guilty verdict, we review sufficiency challenges viewing all evidence and drawing all reasonable inferences in the government's favor. *United States v. Cecil*, 615 F. 3d 678, 691 (6th Cir. 2010). Thus, "[a] defendant challenging the sufficiency of evidence 'bears a very heavy burden.'" *United States v. Collins*, 799 F.3d 554, 589 (6th Cir. 2015) (quoting *United States v. Davis*, 397 F.3d 340, 344 (6th Cir. 2005)).

Ingram first argues that there was no evidence that he "unlawfully seize[d], confine[d], inveigle[d], decoy[ed], kidnap[ped], abduct[ed], or carrie[d] away" H.K., 18 U.S.C. § 1201(a), because H.K. testified that she never even spoke with Ingram before getting into his truck. The government's theory at trial, and the theory it presses on appeal, is that Ingram inveigled H.K.,

i.e., he "lure[d] or entice[d] [H.K.] through deceit or insincerity," or "persuaded [H.K.] dishonestly," INVEIGLE, Black's Law Dictionary (11th ed. 2019), by deceptively letting H.K. believe that he would take her to her vehicle in Indiana. Sufficient evidence supports this theory. H.K. testified that Redmon told her that Ingram would take her directly from Michigan to her car in Indiana. She also testified that Redmon spoke privately to Ingram immediately before she got into Ingram's truck, and phone records showed that Ingram and Redmon communicated numerous times both before and after Ingram met H.K. H.K. further testified that Ingram told her that he had bought her from Redmon for $500. Additionally, Ingram searched the internet a few hours before he met H.K. about whether it was legal to abandon someone at a gas station during a road trip. A reasonable juror could infer from this evidence that Ingram never had any intention of taking H.K. to her car in Indiana, despite assurances from both Redmon and Ingram that Ingram would.[4] Accordingly, the government presented sufficient evidence that Ingram inveigled H.K.

Next, Ingram argues that there was no evidence that Ingram held H.K. within the meaning of the statute, which requires that the defendant "hold[] [the victim] for ransom or reward or otherwise." 18 U.S.C. § 1201(a). Ingram first stresses that H.K. could not have been held because she supposedly could have run away when Ingram pulled his truck on the side of the interstate to urinate shortly before he raped her. Ingram's argument is unpersuasive. In *Chatwin*, the Supreme Court explained that "[t]he act of holding a kidnapped person for a proscribed purpose necessarily implies an unlawful physical or mental restraint for an appreciable period against the person's will and with a willful intent so to confine the victim." 326 U.S. at 460. The Supreme Court reversed the kidnapping conviction in that case, reasoning that there was "no proof that [the defendant] or

[4] H.K. testified that when she realized they were heading away from Indiana, she asked Ingram why. He replied that he thought Redmon had told her that Ingram was taking her to Maryland first, and said that he would have her back at her car in Indiana within a week.

any of the other petitioners willfully intended through force, fear or deception to confine the girl against her desires" because there was no evidence that the alleged victim "was deprived of her liberty, compelled to remain where she did not wish to remain, or compelled to go where she did not wish to go," and "she was perfectly free to leave the petitioners when and if she so desired." *Id.* In contrast, here, a reasonable juror could find that H.K. was held against her will where Ingram took her phone, slapped her in the face, threatened her with what she thought was a gun, forcibly raped her, and continued to drive her away from her car for about an hour after the rape, while she was scared and plotting a way to escape. *See, e.g.*, *United States v. Wesson*, 779 F.2d 1443, 1444 (9th Cir. 1986) (per curiam) ("[A]lthough she may have agreed initially, she testified she later wanted to go home and told the defendant of her desires. She testified she continued on the journey despite being raped and beaten because she was terrified of the consequences if caught trying to escape.").

Ingram also argues at length his theory of the case that H.K. fabricated the rape and that the evidence showed that Ingram and H.K. engaged in consensual sexual activity. He highlights that H.K. did not claim she was raped in her 911 call, that H.K. hugged him before she went inside the Pilot station, and that H.K.'s sister told her to do what she had to do to get out of the situation. And he argues that his own actions at the Pilot and afterwards were not indicative of criminal activity. These arguments largely depend on credibility determinations, in particular on whether H.K.'s testimony was credible, and how much weight to give to the evidence. Ingram made these same arguments to the jury, and they were rejected. Because "[i]t is not this Court's role to reweigh the evidence or to reevaluate the credibility of witnesses," *United States v. Eaton*, 784 F.3d 298, 305 (6th Cir. 2015), this argument is unavailing.[5]

[5] Ingram's brief is unclear as to whether he is challenging the sufficiency of the evidence that H.K. was "willfully transported in interstate or foreign commerce, . . . or the offender travel[ed] in interstate or foreign commerce

Because the government presented sufficient evidence that Ingram inveigled H.K. and held her for the purpose of sexually assaulting her, Ingram's sufficiency challenge fails.

III.

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

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or use[d] the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense." 18 U.S.C. § 1201(a). The jury found this element was met because Ingram "willfully transported H.K. without H.K.'s consent in interstate commerce by transporting H.K. from Michigan to Ohio," and because Ingram "used a semi-trailer truck, a means, facility or instrumentality of interstate or foreign commerce." R. 59, PID 1357. Because the government presented evidence that Ingram inveigled H.K. and drove her across state lines in a semi-trailer truck used to haul goods in interstate commerce, and Ingram presents no developed argument explaining why this evidence was not sufficient, we decline to disturb the jury's findings. *See Small*, 988 F.3d at 251-52.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

v.

ANTHONY L. INGRAM

JUDGMENT IN A CRIMINAL CASE

Case Number: **5:19-CR-00228-SL(1)**
USM Number: **19726-033**
Lawrence J. Whitney
Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☒	was found guilty on count(s) after a plea of not guilty	**1 of the Indictment**

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
18:1201(a)(1) Kidnapping	08/10/2018	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.

☐ The defendant has been found not guilty on count(s)

☒ Count(s) 2 ☒ was ☐ dismissed on the motion of the United States prior to trial

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

February 27, 2020
Date of Imposition of Judgment

Signature of Judge

HONORABLE SARA LIOI U. S. DISTRICT JUDGE
Name and Title of Judge

February 27, 2020
Date

DEFENDANT: ANTHONY L. INGRAM
CASE NUMBER: 5:19-CR-00228-SL(1)

IMPRISONMENT

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

360 months as to count 1 with credit for time served to date.

☒ The court makes the following recommendations to the Bureau of Prisons:
That the defendant be placed at FCI Edgefield, so that he may be as close to his father as possible, or alternatively at FCC Tucson.

☒ 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

DEFENDANT: ANTHONY L. INGRAM
CASE NUMBER: 5:19-CR-00228-SL(1)

SUPERVISED RELEASE

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

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence 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.

DEFENDANT: ANTHONY L. INGRAM
CASE NUMBER: 5:19-CR-00228-SL(1)

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change. If not in compliance with the condition of supervision requiring full-time occupation, you may be directed to perform up to 20 hours of community service per week until employed, as approved or directed by the pretrial services and probation officer.
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. As directed by the probation officer, you shall notify third parties who may be impacted by the nature of the conduct underlying your current or prior offense(s) of conviction and/or shall permit the probation officer to make such notifications, and/or confirm your compliance with this requirement.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

DEFENDANT: ANTHONY L. INGRAM
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SPECIAL CONDITIONS OF SUPERVISION

Substance Abuse Treatment and Testing
The defendant shall participate in an approved program of substance abuse testing and/or outpatient or inpatient substance abuse treatment as directed by their supervising officer; and abide by the rules of the treatment program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.). The defendant shall not obstruct or attempt to obstruct or tamper, in any fashion, with the efficiency and accuracy of any prohibited substance testing.

Mental Health Treatment
You must undergo a mental health evaluation and/or participate in a mental health treatment program and follow the rules and regulations of that program. The probation officer, in consultation with the treatment provider, will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

Search / Seizure
You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 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. 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.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of 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.

Sex Offender Assessment
You must participate in a sex offense-specific assessment.

No Contact with Victim
You must not communicate or otherwise interact with any victim, either directly or through someone else, without first obtaining the permission of the probation officer.

Sex Offender Registration and Notification Act (Adam Walsh Act)
Pursuant to 18 U.S.C. § 3583 you are required to register under the Sex Offender Registration and Notification Act, and you must comply with the requirements of that Act as directed by the U.S. Pretrial Services & Probation Officer.

Pursuant to the Adam Walsh Child Protection Act of 2006, you will keep the registration current in each jurisdiction in which you reside, are employed, or are a student. You must, no later than three business days after each change in name, residence, employment or student status, appear in person in at least one jurisdiction in which you are registered and inform that jurisdiction of all changes in reporting information. Failure to do so may be a violation of your conditions of supervised release and may be a new federal offense punishable by up to ten years.

DEFENDANT: ANTHONY L. INGRAM
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Polygraph Examination
You must submit to periodic polygraph testing at the discretion of the probation officer as a means to ensure that you are in compliance with the requirements of your supervision or treatment program.

Sex Offender Treatment
You must participate in a sex offense-specific treatment program and follow the rules and regulations of that program. The probation officer will supervise your participation in the program (provider, location, modality, duration, intensity, etc.).

DEFENDANT: ANTHONY L. INGRAM
CASE NUMBER: 5:19-CR-00228-SL(1)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments page.

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

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

☐ 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. 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 on the schedule of payments page 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:

☐ the interest requirement is waived for the ☐ fine ☐ restitution

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
** 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.

DEFENDANT: ANTHONY L. INGRAM
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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 $ _____ due immediately, balance due

☐ not later than , or

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

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

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

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during 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.

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.