No. _____

IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES OF AMERICA,
Respondent,

-v-

BRYAN JAMES COLLINS

On petition for writ of certiorari to the
United States Court of Appeals for the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

1. Whether the Fifth Circuit wrongly affirmed Collins's conviction where it determined that the evidence was sufficient to establish that Collins violated 18 U.S.C. § 1470 and 18 U.S.C. § 2422(b) in contravention of other Circuit's treatment of the same issue?

PARTIES TO THE PROCEEDINGS BELOW

This petition stems from a direct appeal to the Fifth Circuit Court of Appeals from a criminal prosecution in the Northern District of Texas. Bryan James Collins was the defendant/appellant. The United States of America was the plaintiff/prosecutor in the district court, and the plaintiff/appellee in the Fifth Circuit.

RULE 29.6 STATEMENT

Petitioner is not a corporate entity.

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TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

Petitioner Bryan James Collins asks this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The February 17, 2021 opinion of the U.S. Court of Appeals for the Fifth Circuit appears in Appendix A. *United States v. Collins*, 2021 U.S. App. LEXIS 4533 (5th Cir. 2021). The Opinion is attached below at Appendix ("App.") at 1-A.

JURISDICTION

The Fifth Circuit Court of Appeals rendered its decision February 17, 2021. This petition was timely filed. The Supreme Court has certiorari jurisdiction under 28 U.S.C. § 1254(1). The Court of Appeals possessed jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3771(d)(3).

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 2422(b) states:

> Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

18 U.S.C. § 1470 states:

> Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.

STATEMENT OF THE CASE

I. Procedural History

A. Indictment

On October 9, 2019, a federal grand jury sitting in Lubbock, Texas returned a one-count indictment charging Bryan James Collins with Attempted Enticement of a Minor, in violation of Title 18 U.S.C. §2422(b). App. ROA 3. A superseding indictment was returned against Collins on December 11, 2019, with count one the same as the October indictment and adding an additional count two for Attempted Transfer of Obscene Material to a Minor in violation of 18 U.S.C. §1470. ROA 144.

B. Jury Trial

Collins' two-day jury trial began on February 3, 2020. ROA 447. After an additional trial day on February 4, 2020 (ROA 713), the jury returned a verdict of guilty against Collins on both counts. ROA 849.

C. Sentence and Appeal

On May 14, 2020, Collins was sentenced to 120 months on Count 1 and 120 months on Count 2. *ROA 864.* Collins timely filed his notice of appeal on May 18, 2020. ROA 381. On February 17, 2021, the Fifth Circuit Court of Appeals issued its memorandum opinion affirming the District Court's decision.

II. Statement of Facts

On or about June 25, 2019, Appellant Bryan James Collins ("Collins"), texted with an individual on "Grindr," a software application meant as a forum for homosexual men to chat, exchange pictures, and potentially schedule in-person meetings, or "hook-ups." ROA 504. The individual, unbeknownst to Collins, was Abilene Police Officer, Jason Haak, operating undercover as online persona, "Ty," a 15-year-old boy on the Grindr application. ROA 511. Collins and "Ty" carried on an extensive chat conversation on Grindr on June 25, 2019. ROA 490. During that conversation, the two agreed to meet the following day for a sexual encounter at Collins's residence in Winters, Texas. ROA 526.

On June 26, 2019, Officer Haak, accompanied by other law enforcement officers, including the Winters Chief of Police; DPS Officers; and a U.S. Marshal, arrived as Collins's home in Winters, Texas, where Collins was standing outside his house, on a public street, at 3p.m., waiting for "Ty." ROA 539-40, ROA 582. Officer Haak arrested Collins and took him to the Winters Police Department where he was interviewed by Special Agent Garza of the Criminal Investigation Division of DPS. ROA 543, ROA 611. Officers executed a search warrant of Collins's house and recovered numerous electronic and storage devices. ROA 542. Nothing of evidentiary value was found on any of those devices. *Id.*

ARGUMENTS & AUTHORITIES ON COLLINS'S QUESTION FOR REVIEW

REASONS FOR GRANTING REVIEW

I. To Address Whether The Fifth Circuit Wrongly Determined That There Was Sufficient Evidence To Establish That Collins Violated 18 U.S.C. §§ 1470 And 2422(b).

Collins was found guilty of attempted enticement of a minor and attempted transfer of obscene material to a minor. There was insufficient evidence to prove Collins guilty beyond a reasonable doubt of the aforementioned offenses.

"A claim that evidence is insufficient to support a conviction as a matter of due process depends on 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Wright v. West,* 505 U.S. 277, 283-284 (1992) (citing *Jackson v. Virginia,* 443 U.S. 307 (1979)). Whether or not Collins knew "Ty" was a minor is an essential element of the case.

In *United States v. Cote,* Cote challenged his conviction under 18 U.S.C. § 2422(b) arguing that the statute was unconstitutional because it does not contain a scienter requirement with respect to the age of the victim. 504 F.3d 682 (7th Cir. 2007). *Id.* at 684. He also challenged his conviction on the basis that he did not have actual knowledge of the minor's age. *Id.* at 688.

Cote was convicted under 18 U.S.C. §§ 2423(b) and 2422(b) after meeting Mary in an online chat room. *Id.* at 683. Mary was an undercover Cook County Sheriff's Deputy. On January 27, 2003, Cote entered a chat room called "#O!!!!!!!!!younggirlsex." and began talking to "lil'mary." *Id.* During their chat,

"lil'mary" described herself as "14 f chgo" which means she is a 14-year-old female from Chicago. *Id.* Cote continued to chat on the internet and call each other until Cote's arrest on March 12, 2003. Cote and Mary had multiple conversations which included discussing her age and virginity, her schoolwork, and needing to hide their relationship from Mary's mother. *Id.* Cote and Mary ultimately decided to meet up in Chicago where he was arrested upon arriving at the meeting place. *Id.* at 684.

Addressing Cote's arguments, the Court said "in order to ensure the requisite criminal intent, the statute should instead be interpreted to require proof of the defendant's knowledge of the age of the victim." *Id.* at 686. The Court further said, "[i]n a criminal attempt, a defendant who believes certain requisite facts to be true has the necessary intent for a crime requiring the *mens rea* of 'knowledge.'" *Id.* at 688.

In *United States v. Lopez*, Lopez was convicted for violating 18 U.S.C. §§ 1470 and 2422(b), the same two statutes Collins has been convicted of violating. 2021 U.S. App. LEXIS 19971, 5 (9th Cir. July 6, 2021). Lopez was in the United States Army and stationed at Anderson Airforce Base in Guam. *Id.* at 6. Lopez responded to an ad posted by "Brit," an Airforce Office of Special Investigations Unit agent, seeking friends among other military brats living on base. *Id.* Lopez responded to the ad using the alias name Chris Bain inviting Brit to "chill be the lookout on base" and do "whatever if you know what I mean." *Id.* Brit responded to Lopez's invite stating she was 13 years old to which Lopez responded, "I'm 29, I can get in trouble for this." *Id.* Nevertheless, Lopez continued to chat with Brit. He asked Brit to do "naughty things" and wanted to "teach her how to kiss, have sex, suck a dick." *Id.* at 7. Lopez went even

further and sent pictures to Brit of his erect penis. *Id.* Brit sent pictures of a female law enforcement agent that depicted a teenage girl wearing a sweater and a dress. *Id.* Lopez asked Brit to meet at different locations on base on four separate occasions. The first two meetings never materialized. Lopez showed up for the third meeting but left after Brit did not show up. *Id.* Lopez was arrested during the fourth meeting when Lopez had arranged to meet Brit at her residence on base. *Id.*

After Lopez was arrested, he claimed to know Brit was an undercover agent because of the suspicious timing and content of her messages. *Id.* at 8. Lopez stated that Brit primarily emailed Lopez in the middle of the day when Brit should have been in school and unable to access her email. *Id.* Lopez said he continued to chat with Brit after finding out she was 13 because he was hoping to get discharged from the army to avoid having child support and alimony deducted from his military wages. *Id.* On appeal, Lopez made several arguments that he did have the requisite mens rea to be convicted because he did not believe brit was a minor. Ultimately, the Court held that the Government produced sufficient evidence to allow the jury to conclude that Lopez believed Brit was underage. The Court said, "every piece of evidence capable of supporting the jury's verdict in this regard indicated 'Brit' was thirteen, including her statements in the chat transcripts, Lopez's reactions to those statements, and photographs sent from "Brit" to Lopez." *Id.* at 53.

The 9th Circuit has been consistent in their interpretation that Section 2242(b) requires knowledge or belief that the individual is a minor. In 2004, the 9th Circuit analyzed Section 2422(b) and stated:

> From the text of the statute, the elements of criminal liability are manifest: a person must "knowingly" (1) actually or attempt to (2) persuade, induce, entice, or coerce (3) a person under 18 years of age (4) to engage in sexual activity that would constitute a criminal offense. Following our canons of statutory interpretation, it is apparent that the term "knowingly" refers both to the verbs--"persuades, induces, entices, or coerces"--as well as to the object--"a person who has not achieved the age of 18 years."

United States v. Meek, 366 F.3d 705, 718 (9th Cir. 2004).

In addition to the previous cases, pattern jury instructions from multiple circuits require that the defendant believe the individual to be less than 18 years of age. The 11th Circuit Pattern Criminal Jury Instruction for Section 2422(b) states:

> the government must prove that (1) the defendant knowingly used a computer to attempt to persuade, induce or entice an individual under the age of eighteen to engage in sexual activity; (2) the defendant believed that such individual was less than eighteen years of age; (3) if the sexual activity had occurred, the defendant could have been charged with a criminal offense; and (4) the defendant acted knowingly and willfully.

United States v. Doyle, 2007 U.S. Dist. LEXIS 11429, (E.D. of Wis. 2007). The 5th Circuit Pattern Criminal Jury Instructions contains a nearly identical instruction that requires the defendant to believe the person to be under 18 years of age.

> First: That the defendant knowingly persuaded [induced] [enticed] [coerced] [attempted to persuade, induce, entice or coerce] an individual to engage in any sexual activity, or prostitution, as charged; Second: That the defendant used the Internet [the mail] [a telephone] [a cell phone] [any facility or means of interstate [foreign] commerce] to do so; Third: That the defendant believed that such individual was less than 18 years of age; and Fourth: That, had the sexual activity actually occurred, the defendant could be charged with the criminal offense of _____ under the laws of _____ (insert state) [the United States].

United States Court of Appeals Library for the Fifth Circuit, Pattern Jury Instructions (Criminal Cases) (2019). App. 2-A.

Thus, as recognized by multiple Circuits, under Section 2422(b) and Section 1470, when the indictment alleges an attempt, the government must prove that the defendant believed the other person was less than eighteen years of age. Therefore, for Collins to be convicted under Sections 2422(b) and 1470, Collins had to have knowledge of or believe that "Ty" was a minor. While the 5th Circuit determined there was sufficient evidence to prove Collins believed "Ty" to be a minor, they did so incorrectly. The facts clearly show that Collins did not believe he was conversing with a minor.

Like the cases above, Collins was talking to a law enforcement agent portraying himself as a minor. Collins met "Ty" on Grindr, an adult only social networking application for gay, bi, trans, and queer people. The Terms of Service for Grindr require that all users be at least 18 years of age. The Terms of Service state:

> 1. **AGE RESTRICTIONS AND SAFETY.**
>
>   1. NO USE BY UNDERAGE PERSONS. NO PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS (OR TWENTY-ONE (21) YEARS IN PLACES WHERE EIGHTEEN (18) YEARS IS NOT THE AGE OF MAJORITY) MAY DIRECTLY OR INDIRECTLY VIEW, POSSESS OR OTHERWISE USE THE GRINDR SERVICES.
>   2. YOU MUST BE A LEGAL ADULT. YOU HEREBY REPRESENT AND WARRANT THAT YOU ARE CURRENTLY EIGHTEEN (18) YEARS OF AGE OR OVER (OR TWENTY-ONE (21) YEARS IN PLACES WHERE EIGHTEEN (18) YEARS IS NOT THE AGE OF MAJORITY) AND YOU ARE CAPABLE OF LAWFULLY ENTERING INTO AND PERFORMING ALL THE OBLIGATIONS SET FORTH IN THIS AGREEMENT.

App. 3-A. Technically, Officer Haak did not violate the Terms of Service because he was over 18 years of age, but he attempted to portray himself as a 15-year-old boy. Under the terms of service, a 15-year-old cannot use the social media application because the application is restricted to users that have reached the age of majority.

Additionally, nothing on "Ty's" account portrayed him as a 15-year-old boy. His account did not contain a profile picture nor was his age displayed on the account. Further, during the conversation between "Ty" and Collins, "Ty" did not send any pictures to Collins that depicted a teenage boy. "Ty" only told Collins one time that he was 15 years old which Collins immediately refuted. During their conversation "Ty" said to Collins, "I'm fifteen and can't drive, but if you come get me, I can go back with you." Collins responded to "Ty's" statement about his age saying "And fifteen? Yeah, sure, you're fifteen," to which "Ty" responded, "yeah, some care, some don't." The exchange between Collins and "Ty" was completely different than the exchanges depicted in the above cases. Collins never made any references to "Ty's" age other than a single comment of disbelief to "Ty's" statement that he was fifteen. Collins did not discuss teaching "Ty" about sex as Lopez and Cote did. Collins did not tell "Ty" that they needed to hide their relationship or that Collins could get in trouble for talking to "Ty." Collins was not in a chat room dedicated to young children. There is no evidence that Collins was looking for a minor or believed "Ty" was minor. Collins was using an application that requires users to be at least 18 years of age.

Collins also told Ty about his fantasy to role play a teacher/student relationship with Ty. Had Collins believed Ty to be fifteen, Ty would not have to role-

play as a student. Role-play is the act of imitating the character and behavior of someone who is different from yourself. Collins English Dictionary, https://www.collinsdictionary.com/us/dictionary/english/role-play (last visited July 14, 2021). See App. 4-A. A 15-year-old would not have to imitate the behavior of another or pretend to be someone other than themself to act as a student. 15-year-olds are students. Therefore, there would be no role-playing or imitating the behavior of a student because "Ty" would be a student if he was 15-years-old.

Further, not only did Collins not try to hide his meeting with "Ty," he met him in the middle of the day at the home he lived in with his family. Collins also stood in the front yard of his home waiting for "Ty" to arrive. Collins never tried to be discrete about meeting "Ty" because he clearly did not believe he was talking to a 15-year-old.

There was insufficient evidence to find Collins guilty of violating 18 U.S.C. § 1470 and 18 U.S.C. § 2422(b) because the Government failed to prove Collins had the requisite mens rea. Specifically, the Government failed to prove that Collins believed "Ty" was underage. As repeatedly interpreted by other United States Circuit courts knowledge or belief that the individual is a minor is required to be convicted under Sections 1470 and 2422(b). No reasonable trier of fact could have found that Collins believed "Ty" to be a minor. Collins believing "Ty" to be a minor is an essential element of both offenses, and without sufficient evidence to prove Collins believed "Ty" was a minor, no reasonable jury could have found him guilty. As shown above, the evidence is clear that Collins did not believe "Ty" was a minor. The 5th Circuit Court of Appeals wrongly affirmed his conviction.

CONCLUSION

For the foregoing reasons, Collins requests this Court grant certiorari review to determine whether the 5th Circuit correctly decided the present case where it failed to consider the "knowingly" mens rea requirement as specifically applied to the "minor's" age in §§ 1470 and 2422(b) of the United States Code.

Respectfully submitted,

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CERTIFICATE OF MAILING

I certify that the Petition for Certiorari Review was filed with the Court by mailing the petition via United States Mail - first class mail, postage pre-paid and depositing the same into a United States mail receptacle on July 19, 2021.

/s/ Matt Zimmerman
Matt Zimmerman

CERTIFICATE OF SERVICE

I hereby certify that, on or before July 19, 2021, a true and correct copy of this petition was mailed by first-class U.S. mail to:

Solicitor General of the United States
Department of Justice
950 Pennsylvania Ave., N.W.; Room 5616
Washington, DC 20530-0001

Bryan James Collins #59603-177
C/O FCI Seagoville
U.S. Penitentiary
2113 North Hwy 175
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/s/ Matt Zimmerman
Matt Zimmerman

APPENDIX

1-A

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
February 17, 2021
Lyle W. Cayce
Clerk

No. 20-10489
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BRYAN JAMES COLLINS,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 1:19-CR-109-1

Before HAYNES, WILLETT, and HO, *Circuit Judges*.

PER CURIAM:*

Bryan James Collins was convicted by a jury of attempted enticement of a minor (count one) and attempted transfer of obscene material to a minor (count two). The district court sentenced him within the advisory guidelines range to 120 months of imprisonment on each count, to be served

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

concurrently, five years of supervised release on count one, two years of supervised release on count two, to be served concurrently for a total of five years, and a $200 special assessment.

On appeal, Collins argues the district court showed partiality to the prosecution in two instances: (1) the questioning of Dr. Jason Dunham, and (2) a comment made on the second day of the trial. As Collins concedes, he did not object to either instance of alleged partiality in the district court. Therefore, review is limited to plain error. *See United States v. Napper*, 978 F.3d 118, 122 (5th Cir. 2020). To prevail on plain error review, Collins must identify (1) a forfeited error (2) that is clear or obvious, and (3) that affects his substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If he satisfies the first three requirements, this court may, in its discretion, remedy the error if the error "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Id.* (internal quotation marks and citation omitted).

If viewed in the context of the entire record, the district court's questioning of Dr. Dunham does not constitute error, plain or otherwise. *See United States v. Perez-Melis*, 882 F.3d 161, 165 (5th Cir. 2018). The court had expressly advised defense counsel that Dr. Dunham could not testify concerning Collins's state of mind. When Dr. Dunham testified concerning Collins's state of mind twice, the court sustained the Government's objections and instructed the jury to disregard the testimony. After the second instance, the court asked whether Dr. Dunham, in his expert opinion, believed Collins was interested in Ty because he was a minor. The court then allowed defense counsel to ask Dr. Dunham to explain grooming, the other issue the court allowed him to address. The cumulative effect of the district court's questioning was not substantial and did not prejudice Collins's case. *See United States v. Saenz*, 134 F.3d 697, 701-02 (5th Cir. 1998). Collins has

not shown that the court's questioning was so prejudicial that it denied him a fair trial. *See Perez-Melis*, 882 F.3d at 165.

Although the district court's comment on the second day of the trial may have shown its impatience with defense counsel, Collins has not shown the comment reflected a partiality to the Government. *See Liteky v. United States*, 510 U.S. 540, 555-56 (1994). Further, in view of the curative instructions given by the district court, Collins has not shown that the district court's comment constituted plain error that affected his substantial rights. *See United States v. Hefferon*, 314 F.3d 211, 222 (5th Cir. 2002); *United States v. Reyes*, 227 F.3d 263, 267 (5th Cir. 2000).

Next, Collins argues the prosecutor made a reference to Collins's testimony during closing argument and the jury would have interpreted it as a comment on his decision not to testify. Because he did not expressly object that the prosecutor had made a comment on the defendant's decision not to testify, his objection was not sufficiently specific to give the district court an opportunity to correct the error. *See United States v. Nesmith*, 866 F.3d 677, 679 (5th Cir. 2017). Therefore, the plain error standard of review is applicable. *See United States v. Juarez*, 626 F.3d 246, 253-54 (5th Cir. 2010). The record demonstrates that the prosecutor's manifest intent was not to comment on Collins's decision not to testify, but rather the defendant's statement during his post-arrest interview; the record also indicates the jury would have understood that the prosecutor was talking about Collins's post-arrest interview. *See United States v. Bohuchot*, 625 F.3d 892, 901 (5th Cir. 2010).

Finally, Collins contends that the evidence was insufficient to support his convictions because it does not establish beyond a reasonable doubt that he believed he was talking to a minor. Although the Government contends that the plain error standard of review is applicable, we need not resolve this

issue because the evidence was sufficient to support Collins's conviction even under the de novo standard of review.

To prove both offenses, the Government was required to show that Collins knew that he was talking to a minor. *See United States v. Rounds*, 749 F.3d 326, 333 (5th Cir. 2014) (concerning enticement of a minor under 18 U.S.C. § 2422(b)); *see United States v Salcedo*, 924 F.3d 172, 177 (5th Cir.) (concerning transfer of obscene material to a minor under 18 U.S.C. § 1470), *cert. denied*, 140 S. Ct. 289 (2019). The Government presented evidence that the undercover agent posed as Ty and told Collins he was 15 years old and could not drive. After Collins expressed doubt about Ty's age, the agent said, "Yeah, some care and some don't." Collins then shared his sexual fantasy in which he would be a teacher and Ty would be his student. Collins also admitted in his post-arrest interview that he had talked to four possible minors online in the past, including one person who was 16 years old. Thus, the evidence established that Collins knew there were minors using the online application. If the evidence is viewed in the light most favorable to the verdict, a rational trier of fact could have found beyond a reasonable doubt that Collins knew he was talking to a minor in the online chat and that he continued to make plans to meet Ty even after he learned Ty was a minor. *See United States v. Umawa Oke Imo*, 739 F.3d 226, 235 (5th Cir. 2014).

AFFIRMED.

2.93
ENTICEMENT OF A MINOR
18 U.S.C. § 2422(b)

Title 18, United States Code, Section 2422(b), makes it a crime for anyone to knowingly persuade [induce] [entice] [coerce] [attempt to persuade, induce, entice or coerce] a person under 18 years old to engage in any sexual activity for which any person can be charged with a criminal offense by use of any facility or means of interstate [foreign] commerce [the mail].

For you to find the defendant guilty of this crime, you must be convinced that the government has proved each of the following beyond a reasonable doubt:

First: That the defendant knowingly persuaded [induced] [enticed] [coerced] [attempted to persuade, induce, entice or coerce] an individual to engage in any sexual activity, or prostitution, as charged;

Second: That the defendant used the Internet [the mail] [a telephone] [a cell phone] [any facility or means of interstate [foreign] commerce] to do so;

Third: That the defendant believed that such individual was less than 18 years of age; and

Fourth: That, had the sexual activity actually occurred, the defendant could be charged with the criminal offense of _____ under the laws of _____ (*insert state*) [the United States].

It is not necessary for the government to prove the individual was in fact less than 18 years of age; but it is necessary for the government to prove the defendant believed such individual to be under that age.

It is not necessary for the government to prove that the individual was actually persuaded [induced] [enticed] [coerced] into engaging in the described sexual activity [prostitution], as long as it proves the defendant intended to persuade [induce] [entice] [coerce] the individual to engage in some form of unlawful sexual activity with the defendant and knowingly took some action that was a substantial step toward bringing it about. A substantial step is conduct that strongly corroborates the firmness of the defendant's criminal attempt. Mere preparation is not enough.

["Prostitution" means engaging in or agreeing to or offering to engage in any sexual act with or for another person in exchange for money or other consideration.]

As a matter of law, the following is a crime [are crimes] under state law [federal law]: _____ (*describe elements of the crime as alleged in the indictment*).

Note

In *United States v. Lundy*, 676 F.3d 444, 450–51 (5th Cir. 2012), the Fifth Circuit approved instructional language similar to the two paragraphs above beginning with the phrase "[i]t is not necessary." *See also United States v. Wolford*, 386 F. App'x 479, 483 (5th Cir. 2010) (a proper jury instruction that states a defendant must believe the person is under 18 years of age "ensures that conviction will not lie where speech is within the bounds of the First Amendment's protections").

For the elements of the offense, *see United States v. Rounds*, 749 F.3d 326, 333 (5th Cir. 2014). For a discussion of "substantial step," *see United States v. Howard*, 766 F.3d 414 (5th Cir. 2014).

For a discussion of an attempted violation of § 2422, *see United States v. Broussard*, 669 F.3d 537, 547 (5th Cir. 2012). *See also United States v. Caudill*, 709 F.3d 444, 446 (5th Cir.), *cert. denied*, 133 S. Ct. 2871 (2013) (holding that defendant commits a violation of § 2422(b) when the defendant believes he or she is communicating with a minor child, even if the "minor" is an adult law-enforcement officer posing as a minor); *United States v. Olvera*, 687 F.3d 645, 647–48 (5th Cir. 2012) (defendant need not communicate directly with the minor victim); *United States v. Barlow*, 568 F.3d 215, 219 (5th Cir. 2009) (this statute does not require that sexual contact occur); *United States v. Farner*, 251 F.3d 510, 513 (5th Cir. 2001).

This section does not require "proof of travel across state lines" – instead, it only requires the use of "any facility or means of interstate or foreign commerce" and "it is beyond debate that the Internet and email are facilities or means of interstate commerce." *Barlow*, 568 F.3d at 220; *see also United States v. D'Andrea*, 440 F. App'x 273, 274 (5th Cir. 2011) ("The facility or means of interstate commerce provision is an element of the offense but interstate communication is not required by the statute.").

Grindr

TERMS OF SERVICE

3-A

English

GRINDR TERMS AND CONDITIONS OF SERVICE

Welcome to Grindr LLC's ("Grindr", "We", "Us", "Our") mobile device software application (the "Grindr Software"), website, and any other mobile or web services or applications owned, controlled, or offered by Grindr now or in the future (collectively, the "Grindr Services"). For clarity, any reference herein to "Grindr Services" includes the "Grindr Software." Users who access, download, use, purchase and/or subscribe to the Grindr Services (collectively or individually "You" or "Your" or "User" or "Users") must do so under the following Terms and Conditions of Service (this "Agreement").

THIS AGREEMENT CONSTITUTES A LEGALLY BINDING AGREEMENT BETWEEN YOU AND GRINDR. BEFORE USING ANY GRINDR SERVICES, PLEASE READ IT CAREFULLY. BY ACCESSING, DOWNLOADING, USING, PURCHASING AND/OR SUBSCRIBING TO THE GRINDR SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, THEN PLEASE CEASE USING THE GRINDR SERVICES IMMEDIATELY.

SECTION 21 OF THIS AGREEMENT CONTAINS PROVISIONS THAT GOVERN HOW DISPUTES BETWEEN YOU AND US ARE RESOLVED. IN PARTICULAR, THE ARBITRATION AGREEMENT IN THAT SECTION WILL, WITH LIMITED EXCEPTIONS, REQUIRE DISPUTES BETWEEN YOU AND US TO BE SUBMITTED TO BINDING AND FINAL ARBITRATION, UNLESS YOU OPT OUT. IN ADDITION: (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST US ON AN INDIVIDUAL BASIS, AND NOT IN ANY CLASS OR REPRESENTATIVE PROCEEDING; AND (2) YOU ARE WAIVING YOUR RIGHT TO SEEK RELIEF IN A COURT OF LAW AND TO HAVE A JURY TRIAL ON YOUR CLAIMS. PLEASE SEE SECTION 21 FOR MORE INFORMATION REGARDING THIS ARBITRATION AGREEMENT, THE POSSIBLE EFFECTS OF THIS ARBITRATION AGREEMENT, AND HOW TO OPT OUT OF THE ARBITRATION AGREEMENT.

OTHER COUNTRIES OUTSIDE THE UNITED STATES, PLEASE REFER TO THE SPECIAL TERMS FOR INTERNATIONAL USERS ("SPECIAL TERMS"). IF YOU ARE A RESIDENT OF ANY OF THE COUNTRIES NOTED IN THE SPECIAL TERMS, YOU MAY HAVE ADDITIONAL RIGHTS OR CERTAIN PARTS OF THIS AGREEMENT, SUCH AS THE ARBITRATION AGREEMENT, MAY NOT APPLY TO YOU.

We recommend that you save a copy of this Agreement for your records. You may receive a copy of this Agreement by emailing Us at: help@grindr.com, Subject: Terms of Service Agreement.

1. **AGE RESTRICTIONS AND SAFETY.**

    1. NO USE BY UNDERAGE PERSONS. NO PERSONS UNDER THE AGE OF EIGHTEEN (18) YEARS (OR TWENTY-ONE (21) YEARS IN PLACES WHERE EIGHTEEN (18) YEARS IS NOT THE AGE OF MAJORITY) MAY DIRECTLY OR INDIRECTLY VIEW, POSSESS OR OTHERWISE USE THE GRINDR SERVICES.

    2. YOU MUST BE A LEGAL ADULT. YOU HEREBY REPRESENT AND WARRANT THAT YOU ARE CURRENTLY EIGHTEEN (18) YEARS OF AGE OR OVER (OR TWENTY-ONE (21) YEARS IN PLACES WHERE EIGHTEEN (18) YEARS IS NOT THE AGE OF MAJORITY) AND YOU ARE CAPABLE OF LAWFULLY ENTERING INTO AND PERFORMING ALL THE OBLIGATIONS SET FORTH IN THIS AGREEMENT.

    3. SAFETY. GRINDR IS NOT RESPONSIBLE FOR YOUR USE OF THE GRINDR SERVICES OR FOR THE ACTIONS OF OTHER USERS WITH WHOM YOU MAY EXCHANGE INFORMATION OR HAVE CONTACT. **GRINDR DOES NOT CONDUCT CRIMINAL OR OTHER BACKGROUND SCREENINGS OF ITS USERS. GRINDR DOES NOT VERIFY THE INFORMATION PROVIDED BY USERS WITH RESPECT TO USERS' IDENTITY, HEALTH, PHYSICAL CONDITION, OR OTHERWISE.** GRINDR ALSO IS NOT RESPONSIBLE FOR ACTIVITIES OR LEGAL CONSEQUENCES OF YOUR USE IN LOCATIONS WHICH MAY ATTEMPT TO CRIMINALIZE OR LIMIT YOUR PERSONAL INTERACTIONS. YOU MUST MAKE YOUR OWN INFORMED DECISIONS ABOUT USE OF THE APPLICATION IN YOUR LOCATION AND ASSESS ANY POTENTIAL ADVERSE CONSEQUENCES.

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3. **INTERNATIONAL USERS.**

1. Use Outside the United States of America. The Grindr Services are controlled and offered by Grindr from the United States of America and, regardless of Your place of residence, Your use of them is governed by the law of the State of California, USA. Grindr makes no representations that the Grindr Services are appropriate for use in other locations or are legal in all jurisdictions. Those who access or use the Grindr Services from other locations do so at their own risk and are responsible for compliance with local law. **You consent to the transfer and processing of Your data in the United States of America and any other jurisdiction throughout the world. Please see our Privacy Policy for more information on how we collect, use and transfer your data.**

2. Special Terms. If You are a resident of certain countries, including those in the European Union and United Kingdom, You may have additional rights or certain parts of this Agreement may not apply to You if required by the law of Your jurisdiction. *Please refer to the Special Terms for International Users* for further detail.

3. English Language. Grindr may provide translations of this Agreement and local-language versions of the Grindr Services for the convenience and enjoyment of its international users. This Agreement was written in English and to the extent the translated version of this Agreement is inconsistent

role play

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4-A

Learner: role-play English: role-play Example se

Definition of 'role play'

role-play

also **role play**

Word forms: role-plays, role-playing, role-played

1. **VARIABLE NOUN**

Role-play is the act of imitating the character and behavior of someone who is different from yourself, for example as a training exercise.

We have to communicate with each other through role-play.

2. **TRANSITIVE VERB/INTRANSITIVE VERB**

If people role-play, they do a role-play.

Role-play the interview with a friend beforehand.

role-playing UNCOUNTABLE NOUN

We did a lot of role-playing.

Quick Word Challenge

Question: 1 - Score: 0 / 5

face the danger or spell danger?

Drag the correct answer into the box.

spell danger face the danger

This could for the global economy.

NEXT

New collocations added to dictionary

Collocations are words that are often used together and are brilliant at providing natural sounding language for your speech and writing.

FEBRUARY 13, 2020