

APPENDIX A

847 Fed.Appx. 387

This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3. United States Court of Appeals, Ninth Circuit.

UNITED STATES of America, Plaintiff-Appellee
v.

Conoly FRANKLIN III and Andre Anthony Franklin,
aka Tommy Martin, Defendants- Appellants.

Nos. 19-50297, 19-50303

|
Argued and Submitted February
12, 2021 Pasadena, California

|
FILED February 17, 2021

Synopsis

Background: Defendants, a father and son pair, were convicted in the United States District Court for the Southern District of California, William Q. Hayes, J., with defendant attempting to entice an adult to travel in interstate and foreign commerce to engage in prostitution or a sexual activity for which a person can be charged with a criminal offense and using interstate commerce to entice a minor to engage in prostitution, and son being convicted of using interstate commerce to entice a minor to engage in prostitution.

Holdings: The Court of Appeals held that:

[1] evidence was sufficient to support convictions for using interstate or foreign commerce to entice a minor to engage in prostitution;

[2] police officers had probable cause to arrest defendant; and

[3] trial court error, if any, in failing to sever the charge of using interstate or foreign commerce to entice a minor to engage in prostitution from charge of sex-trafficking conspiracy was harmless.

Affirmed.

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

West Headnotes (7)

[1] **Criminal Law** 🔑 Requisites and sufficiency of accusation

Defendants waived their appellate argument alleging that the information failed to properly inform them of the offenses for which they were charged, during prosecution for using interstate commerce to entice a minor to engage in prostitution, and therefore denied them the opportunity to adequately prepare their defense, because the charging document failed to specify the underlying offense, where defendants failed to file an objection to the information before trial, and they failed to show good cause for their failure to object. 18 U.S.C.A. §§ 2422(a), 2422(b); Fed. R. Crim. P. 12(b)(3).

[2] **Criminal Law** 🔑 Requisites and sufficiency of accusation

The failure of the information charging defendants with enticing an adult or minor to travel in interstate and foreign commerce to engage in prostitution or a sexual activity to specify the sexual activity involved was not plain error; the statute referred to causing a person to engage in prostitution or any sexual activity, and the only evidence brought before the jury related solely to prostitution. 18 U.S.C.A. §§ 2422(a), 2422(b).

[3] **Human Trafficking and Slavery** 🔑 Instructions

Jury instructions on attempting to entice an adult to travel in interstate and foreign commerce to engage in prostitution or a sexual activity were not required to identify the alleged sexual activity, where the evidence presented at trial only addressed prostitution as the underlying conduct. 18 U.S.C.A. §§ 2422(a), 2422(b).

[4] Infants 🗝️ Promoting, pimping, and pandering

Evidence was sufficient to support convictions for using interstate or foreign commerce to entice a minor to engage in prostitution; defendants drove from Nevada to California to pick up three females whom they had recruited to work as prostitutes, defendants had used social media, text messages, and phone calls to recruits the females, and when defendants arrived in California they were arrested as the females they recruited were all personas created by undercover detectives. 18 U.S.C.A. § 2422(b).

[5] Arrest 🗝️ Personal knowledge or observation in general

Arrest 🗝️ Appearance, acts, and statements of persons arrested

Police officers had probable cause to arrest defendant for using interstate commerce to entice a minor to engage in prostitution; defendant and his father were in contact with three women through social media, text message and phone calls, defendants recruited the women to engage in prostitution and traveled to California to pick up the women, the women defendants went to pick up were actually undercover police officers, and defendants were arrested after traveling from Nevada to California. 18 U.S.C.A. § 2422(b).

[6] Criminal Law 🗝️ Joinder or severance of counts or codefendants

Trial court error, if any, in failing to sever the charge of using interstate or foreign commerce to entice a minor to engage in prostitution from charge of sex-trafficking conspiracy, on the basis that the evidence of enticing a minor to engage in prostitution was stronger, thereby tainting the jury as to the sex-trafficking conspiracy, was harmless, where defendant was convicted of the stronger case, using interstate or foreign commerce to entice a minor to engage in prostitution, and not the weaker case, conspiracy to engage in sex-trafficking. 🗝️ 18 U.S.C.A. §§ 1591, 2422(b).

[7] Criminal Law 🗝️ Failure to instruct in general

District Court's failure to instruct the jury on entrapment was not plain error, in prosecution for using interstate or foreign commerce to entice a minor to engage in prostitution; even though the online profile defendant responded to was created by an undercover police officer, defendant made the initial suggestion that officer and her younger sister engage in prostitution, defendant admitted that he had previously pimped out women, and co-defendant introduced the idea of prostitution to third woman, who was also an undercover officer, and proceeded to try and meet her despite learning that she was allegedly 16 years old.

Attorneys and Law Firms

***388** David Chu, ASUSAT, W. Mark Conover, I, Esquire, Assistant U.S. Attorney, Katherine McGrath, Assistant U.S. Attorney, Daniel Earl Zipp, Assistant U.S. Attorney, Office of the US Attorney, San Diego, CA, for Plaintiff - Appellee

Anthony E. Colombo, Jr., Esquire, Attorney, Law Offices of Anthony E. Colombo Jr., San Diego, CA, for Defendant - Appellant Andre Anthony Franklin

David James Zugman, Attorney, Burcham & Zugman, San Diego, CA, for Defendant - Appellant Conoly Freddie Franklin III

Appeal from the United States District Court for the Southern District of California, William Hayes, District Judge, Presiding, D.C. Nos. 3:18-cr-04187-WQH-2, 3:18-cr-04187-WQH-1

Before: BOGGS, * M. SMITH, and MURGUIA, Circuit Judges

***389 MEMORANDUM** **


Appellants Conoly Franklin and Andre Franklin, father and son, appeal from their conviction for attempted enticement

for prostitution, in violation of 18 U.S.C. § 2422. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm the district court.


The Franklins lived in Reno, Nevada. On August 30, 2018, they drove together from Reno to San Diego, California to pick up three females (one adult, two minors) whom they had recruited over the previous week to work as prostitutes. Conoly used Facebook, texts, and phone calls to recruit Ash Lee, a 26-year-old in San Diego, as well as her 16-year-old sister. Andre used texts and phone calls to recruit Jamie, a 16-year-old in Napa, California. It turned out that all three women were not real, but were personas created by undercover detectives from two different task forces. When the Franklins arrived in San Diego, they were arrested and placed in a police car where a recording device had been placed in the back seat prior to the stop. Andre consented to search of his phone, which revealed that they were planning to go from San Diego to Napa to pick up “Jamie.”

The Franklins, after waiving indictment, were charged in a four-count information. Count I charged the Franklins with a sex-trafficking conspiracy, in violation of 18 USC § 1591, 1594.¹ Count II charged Conoly with attempting to entice an adult to travel in interstate and foreign commerce to engage in “prostitution or a sexual activity for which a person can be charged with a criminal offense” in violation of 18 U.S.C. § 2422(a). Counts III and IV charged Conoly and Andre respectively with using interstate or foreign commerce to entice a minor (under the age of 18) to engage in prostitution, in violation of 18 U.S.C. § 2422(b). Conoly was found guilty on Counts II and III, and Andre was found guilty on Count IV.

[1] On appeal, the Franklins argue that the information failed to properly inform them of the offenses for which they were charged and therefore denied them the opportunity to adequately prepare their defense. Section 2422(a) and (b) prohibit coercion and enticement of (a) an adult or (b) a minor to engage in “prostitution or any sexual activity for which any person can be charged with a criminal offense.” The Franklins argue that the language “to engage in ... any sexual activity for which any person can be charged with *390 a criminal offense” requires that the charging document specify the underlying offense.

The Franklins raise this claim for the first time on appeal. A claim brought for the first time on appeal is reviewed for plain error.  *United States v. Guerrero*, 921 F.3d 895, 897 (9th




Cir. 2019) (per curiam). However, Federal Rule of Criminal Procedure 12(b)(3) requires that an objection to a defective information be made before trial. Fed. R. Crim. P. 12(b)(3). No such objection was made, so the claim is waived.²

 *Guerrero*, 921 F.3d at 898.


[2] Even if it were not waived, the Franklins’ claim ignores the language of 18 U.S.C. § 2422, which refers in both of its subsections to causing a person (adult or minor) “to engage in prostitution *or* any sexual activity for which any person can be charged with a criminal offense.” § 2422(a) and (b) (emphasis added). The only evidence brought before the jury related solely to “prostitution.” Under the plain language of the statute, neither subsection requires that “prostitution” be in violation of a specific criminal statute. See *United States v. LeCoe*, 936 F.2d 398, 402–03 (9th Cir. 1991). The evidence in the record is overwhelming that the Franklins enticed three women to engage in prostitution. The attack on the alleged deficiency or ambiguity relating to the remainder of the statute is irrelevant.

[3] The Franklins argue that the jury instructions also failed to identify the sexual activity for which they could be charged with a criminal offense. This argument fails for the reasons set forth above. Further, the jury instructions for Count II and IV list only “prostitution” as the underlying conduct. This language follows this circuit’s model jury instructions for both § 2422(a) and (b), which simply list “prostitution” without any need to specify a criminal statute. Ninth Circuit Manual of Model Criminal Jury Instructions § 8.192 and § 8.192A.


[4] The Franklins’ alternative arguments also fail. They make two evidentiary claims, insufficient evidence to support the conviction under Counts III and IV, and exclusion of evidence obtained after Andre’s arrest. We review de novo whether sufficient evidence existed to support the conviction.

 *United States v. Rashkovski*, 301 F.3d 1133, 1136 (9th Cir. 2002). Evidence is sufficient “if, 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.”  *Ibid*. To convict a defendant for attempt under § 2422 (b), the government must prove that he knowingly (1) attempted (2) to persuade, induce, entice, or coerce (3) a minor (4) to engage in prostitution.  *United States v. Goetzke*, 494 F.3d 1231, 1234–35 (9th Cir. 2007). The record taken as a whole and viewed in the light most



favorable to the government is more than sufficient for a rational juror to find the Franklins guilty of Counts III and IV.

[5] Andre argues that he was arrested without probable cause and therefore statements made after his arrest should be suppressed. In determining whether probable cause for the underlying arrest existed, the question is “whether, under the totality of the circumstances, a prudent officer would have believed that there was a fair probability that [the defendant] committed a crime.”  *United States v. Collins*, 427 F.3d 688, 691 (9th Cir. 2005). The totality of the circumstances, including evidence from social media, texts, phone calls, *391 conversations, and the trip to California with his father, supports the district court's holding that probable cause existed to arrest Andre.

[6] Andre also argues that Count I and Count IV should have been severed because the evidence of enticing prostitution under Count IV was stronger than evidence of conspiracy under Count I, thereby tainting the jury as to Count I. The jury found Andre guilty of the stronger case (Count IV) and not the weaker case (Count I), so any alleged prejudice was harmless error.

[7] Finally, the Franklins argue that the district court should have given an entrapment instruction to the jury. This claim is reviewed for plain error since the Franklins failed to make such a request to the district court.  *United States v. Freeman*, 6 F.3d 586, 600 (9th Cir. 1993). To establish entrapment, a defendant must show “(1) that he was induced to commit the crime by a government agent; and (2) that

he was not otherwise predisposed to commit the crime.”

 *Ibid.* An inducement consists of an opportunity and, for example, “persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward, or pleas based on need, sympathy or friendship.”  *United States v. Cortes*, 757 F.3d 850, 858 (9th Cir. 2014).

Conoly claims entrapment because the government unfairly created an online profile of Ash Lee “an impossible person: a beautiful blonde in her mid-twenties new to the game” and ready to prostitute herself for him. [Reply brief at 1-2.] Conoly argues that “[f]alling for the inducement of having a beautiful young woman come devote herself to him preys too much on human weakness to be considered fair play.” [Id. at 29-30] But Conoly made the initial suggestion of prostitution to both “Ash Lee” and “her minor sister.” Conoly also admitted that he had previously pimped other women.


Likewise, the record shows that Andre introduced the idea of prostitution to “Jamie” to entice her and proceeded despite learning that she was only 16 years old. The Franklins were not entrapped. And evidence of the Franklins’ predisposition is manifest. The district court did not commit plain error in denying an entrapment jury instruction.

The district court is AFFIRMED.

All Citations

847 Fed.Appx. 387

Footnotes

- * The Honorable Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.
- ** This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.
- 1 The jury found both men not guilty of conspiracy.
- 2 The Franklins do not show good cause for their failure to object to the information in the district court. See Fed. R. Crim. P. 12(b)(3);  *Guerrero*, 921 F.3d at 898.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
V.
CONOLY FREDDIE FRANKLIN III (1)

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 3:18-CR-04187-WQH

Ryan T. Mardock, CJA
Defendant's Attorney

USM Number 72022-298

☐ -

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☒ was found guilty on count(s) Two (2) and Three (3) of the Information
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

Title and Section / Nature of Offense

18:2422(a); 18:2428(b),1594(d) - Attempted Enticement of an Adult; Criminal Forfeiture
18:2422(b); 18:2428(b),1594(d) - Attempted Enticement of a Minor; Criminal Forfeiture

Count

2
3

The defendant is sentenced as provided in pages 2 through 6 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) One (1) of the Information

☐ Count(s) _____ is dismissed on the motion of the United States.

☒ Assessment : \$200.00 imposed (\$100 as to each count).

☒ JVT Assessment*: \$5,000 waived.
The Court finds the defendant indigent

*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

☒ No fine ☒ Forfeiture pursuant to order filed 9/10/2019, included herein.

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 any material change in the defendant's economic circumstances.

September 12, 2019

Date of Imposition of Sentence


HON. WILLIAM Q. HAYES
UNITED STATES DISTRICT JUDGE

AO 245B (CASD Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: CONOLY FREDDIE FRANKLIN III (1)
CASE NUMBER: 3:18-CR-04187-WQH

Judgment - Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: One Hundred Twenty (120) months as to each count 2 and 3. Terms to run concurrently.

- ☐ Sentence imposed pursuant to Title 8 USC Section 1326(b).
☒ The court makes the following recommendations to the Bureau of Prisons:
1. Designated to a facility in the Western Region, as close to Arizona as possible.

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

☐ The defendant must surrender to the United States Marshal for this district:

- ☐ at _____ A.M. on _____
☐ as notified by the United States Marshal.

☐ The defendant must surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ on or before
☐ 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

3:18-CR-04187-WQH

AO 245B (CASD Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: CONOLY FREDDIE FRANKLIN III (1)
CASE NUMBER: 3:18-CR-04187-WQH

Judgment - Page 3 of 6

SUPERVISED RELEASE

Upon release from imprisonment, the defendant will be on supervised release for a term of:
Ten (10) years as to each count 2 and 3. Terms to run concurrently.

MANDATORY CONDITIONS

1. The defendant must not commit another federal, state or local crime.
2. The defendant must not unlawfully possess a controlled substance.
3. The defendant must not illegally possess a controlled substance. The defendant must refrain from any unlawful use of a controlled substance. The defendant 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. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by the court.
☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (check if applicable)
4. ☐ The defendant 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. ☒ The defendant must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. ☒ The defendant 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 the location where the defendant resides, works, is a student, or was convicted of a qualifying offense. (check if applicable)
7. ☐ The defendant must participate in an approved program for domestic violence. (check if applicable)

The defendant 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: CONOLY FREDDIE FRANKLIN III (1)
CASE NUMBER: 3:18-CR-04187-WQH

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STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervised release, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's 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 the defendant's conduct and condition.

1. The defendant must report to the probation office in the federal judicial district where they are authorized to reside within 72 hours of their release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
3. The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant must answer truthfully the questions asked by their probation officer.
5. The defendant must live at a place approved by the probation officer. If the defendant plans to change where they live or anything about their living arrangements (such as the people living with the defendant), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant must allow the probation officer to visit them at any time at their home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of their supervision that he or she observes in plain view.
7. The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about their work (such as their position or their job responsibilities), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant must not communicate or interact with someone they know is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, they must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
10. The defendant 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. The defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant must comply with that instruction. The probation officer may contact the person and confirm that the defendant notified the person about the risk.
13. The defendant must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: CONOLY FREDDIE FRANKLIN III (1)
CASE NUMBER: 3:18-CR-04187-WQH

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SPECIAL CONDITIONS OF SUPERVISION

1. Submit your person, property, residence, abode, vehicle, papers, computer, social media accounts, any other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation/supervised release or unlawful conduct, and otherwise in the lawful discharge of the officer's duties. 18 U.S.C. §§ 3563 (b)(23); 3583 (d)(3). Failure to submit to a search may be grounds for revocation; you must warn any other residents that the premises may be subject to searches pursuant to this condition.
2. Not use or possess any computer, computer-related devices (pursuant to 18 U.S.C. § 1030(e)(1)), which can communicate data via modem, dedicated connections or cellular networks, and their peripheral equipment, without prior approval by the court or probation officer, all of which are subject to search and seizure. The offender must consent to installation of monitoring software and/or hardware on any computer or computer-related devices owned or controlled by the offender that will enable the probation officer to monitor all computer use and cellular data. The offender must pay for the cost of installation of the computer software. This condition only covers computers, or computer-related devices which could be used to facilitate communication with minors.
3. Consent to third party disclosure to any employer, potential employer, concerning any restrictions that are imposed by the court.
4. Not knowingly associate with, or have any contact with any known sex offenders unless in an approved treatment and/or counseling setting.
5. Not initiate any contact (personal, electronic or otherwise) or associate with anyone under the age of 18, unless in the presence of a supervising adult who is aware of the offender's deviant sexual behavior and nature of offense and conviction, with the exception of the offender's biological children, unless approved in advance by the probation officer.
6. Not accept or commence employment or volunteer activity without prior approval of the probation officer, and employment should be subject to continuous review and assessment by the probation officer.
7. Not loiter within 200 yards of a school, schoolyard, playground, park, amusement center/park, public swimming pool, arcade, daycare center, carnival, recreation venue, library and other places primarily frequented by persons under the age of 18, without prior approval of the probation officer.

DEFENDANT: CONOLY FREDDIE FRANKLIN III (1)
CASE NUMBER: 3:18-CR-04187-WQH

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8. Complete a sex offender evaluation, which may include periodic psychological, physiological testing (limited to polygraph), and completion of a visual reaction time (VRT) assessment, at the direction of the court or probation officer. If deemed necessary by the treatment provider, the offender must participate and successfully complete an approved state-certified sex offender treatment program, including compliance with treatment requirements of the program. The Court authorizes the release of the presentence report, and available psychological evaluations to the treatment provider, as approved by the probation officer. The offender will allow reciprocal release of information between the probation officer and the treatment provider. The offender may also be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on ability to pay. Polygraph examinations may be used following completion of the formal treatment program as directed by the probation officer in order to monitor adherence to the goals and objectives of treatment and as a part of the containment model.
9. Not knowingly associate with prostitutes or pimps and/or loiter in areas frequented by those engaged in prostitution. Must not associate with any person who you know, or who a probation officer or other law enforcement officer informs you is a prostitute or pimp and/or loiter in areas frequented by those engaged in prostitution, unless given permission by the probation officer.
10. Reside in a residence approved in advance by the probation officer, and any changes in residence must be pre-approved by the probation officer.
11. Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
12. Provide complete disclosure of personal and business financial records to the probation officer as requested.
13. Participate in a cognitive behavioral treatment program as directed by the probation officer, and if deemed necessary by the probation officer. Such program may include group sessions led by a counselor, or participation in a program administered by the probation office. May be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on ability to pay.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
V.
ANDRE ANTHONY FRANKLIN (2)
aka Tommy Martin

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 3:18-CR-04187-WQH

Anthony Edward Colombo, Jr, CJA
Defendant's Attorney

USM Number 72023-298

☐ -

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☒ was found guilty on count(s) Four (4) of the Information
after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

Title and Section / Nature of Offense

18:2422(b); 18:2428(b), 1594(d) - Attempted Enticement of a Minor; Criminal Forfeiture

Count
4

The defendant is sentenced as provided in pages 2 through 6 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) One (1) of the Information

☐ Count(s) _____ is dismissed on the motion of the United States.

☒ Assessment : \$100.00 imposed.

☒ JVT A Assessment*: \$5,000 waived.
The Court finds the defendant indigent

*Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

☒ No fine ☒ Forfeiture pursuant to order filed 9/12/2019, included herein.

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 any material change in the defendant's economic circumstances.

September 12, 2019

Date of Imposition of Sentence

HON. WILLIAM Q. HAYES
UNITED STATES DISTRICT JUDGE

AO 245B (CASD Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: ANDRE ANTHONY FRANKLIN (2)
CASE NUMBER: 3:18-CR-04187-WQH

Judgment - Page 2 of 6

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of: One Hundred Twenty (120) months as to count 4.

- ☐ Sentence imposed pursuant to Title 8 USC Section 1326(b).
☒ The court makes the following recommendations to the Bureau of Prisons:
1. Designated to a facility in the Western Region.

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

☐ The defendant must surrender to the United States Marshal for this district:

- ☐ at _____ A.M. on _____
☐ as notified by the United States Marshal.

☐ The defendant must surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ on or before
☐ 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

3:18-CR-04187-WQH

AO 245B (CASD Rev. 1/19) Judgment in a Criminal Case

DEFENDANT: ANDRE ANTHONY FRANKLIN (2)
CASE NUMBER: 3:18-CR-04187-WQH

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SUPERVISED RELEASE

Upon release from imprisonment, the defendant will be on supervised release for a term of:
Ten (10) years.

MANDATORY CONDITIONS

1. The defendant must not commit another federal, state or local crime.
2. The defendant must not unlawfully possess a controlled substance.
3. The defendant must not illegally possess a controlled substance. The defendant must refrain from any unlawful use of a controlled substance. The defendant 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. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by the court.
☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (check if applicable)
4. ☐ The defendant 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. ☒ The defendant must cooperate in the collection of DNA as directed by the probation officer. (check if applicable)
6. ☒ The defendant 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 the location where the defendant resides, works, is a student, or was convicted of a qualifying offense. (check if applicable)
7. ☐ The defendant must participate in an approved program for domestic violence. (check if applicable)

The defendant must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

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STANDARD CONDITIONS OF SUPERVISION

As part of the defendant's supervised release, the defendant must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for the defendant's 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 the defendant's conduct and condition.

1. The defendant must report to the probation office in the federal judicial district where they are authorized to reside within 72 hours of their release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, the defendant will receive instructions from the court or the probation officer about how and when the defendant must report to the probation officer, and the defendant must report to the probation officer as instructed.
3. The defendant must not knowingly leave the federal judicial district where the defendant is authorized to reside without first getting permission from the court or the probation officer.
4. The defendant must answer truthfully the questions asked by their probation officer.
5. The defendant must live at a place approved by the probation officer. If the defendant plans to change where they live or anything about their living arrangements (such as the people living with the defendant), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. The defendant must allow the probation officer to visit them at any time at their home or elsewhere, and the defendant must permit the probation officer to take any items prohibited by the conditions of their supervision that he or she observes in plain view.
7. The defendant must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment the defendant must try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about their work (such as their position or their job responsibilities), the defendant 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, the defendant must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. The defendant must not communicate or interact with someone they know is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, they must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If the defendant is arrested or questioned by a law enforcement officer, the defendant must notify the probation officer within 72 hours.
10. The defendant 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. The defendant must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant must comply with that instruction. The probation officer may contact the person and confirm that the defendant notified the person about the risk.
13. The defendant must follow the instructions of the probation officer related to the conditions of supervision.

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SPECIAL CONDITIONS OF SUPERVISION

1. Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
2. Resolve all outstanding warrants within 60 days.
3. Submit your person, property, residence, abode, vehicle, papers, computer, social media accounts, any other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation/supervised release or unlawful conduct, and otherwise in the lawful discharge of the officer's duties. 18 U.S.C. §§ 3563 (b)(23); 3583 (d)(3). Failure to submit to a search may be grounds for revocation; you must warn any other residents that the premises may be subject to searches pursuant to this condition.
4. Not use or possess any computer, computer-related devices (pursuant to 18 U.S.C. § 1030(e)(1)), which can communicate data via modem, dedicated connections or cellular networks, and their peripheral equipment, without prior approval by the court or probation officer, all of which are subject to search and seizure. The offender must consent to installation of monitoring software and/or hardware on any computer or computer-related devices owned or controlled by the offender that will enable the probation officer to monitor all computer use and cellular data. The offender must pay for the cost of installation of the computer software. This condition only covers computers, or computer-related devices which could be used to facilitate communication with minors.
5. Consent to third party disclosure to any employer, potential employer, concerning any restrictions that are imposed by the court.
6. Not knowingly associate with, or have any contact with any known sex offenders unless in an approved treatment and/or counseling setting.
7. Not initiate any contact (personal, electronic or otherwise) or associate with anyone under the age of 18, unless in the presence of a supervising adult who is aware of the offender's deviant sexual behavior and nature of offense and conviction, with the exception of the offender's biological children, unless approved in advance by the probation officer.

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8. Complete a sex offender evaluation, which may include periodic psychological, physiological testing (limited to polygraph), and completion of a visual reaction time (VRT) assessment, at the direction of the court or probation officer. If deemed necessary by the treatment provider, the offender must participate and successfully complete an approved state-certified sex offender treatment program, including compliance with treatment requirements of the program. The Court authorizes the release of the presentence report, and available psychological evaluations to the treatment provider, as approved by the probation officer. The offender will allow reciprocal release of information between the probation officer and the treatment provider. The offender may also be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on ability to pay. Polygraph examinations may be used following completion of the formal treatment program as directed by the probation officer in order to monitor adherence to the goals and objectives of treatment and as a part of the containment model.
9. Not accept or commence employment or volunteer activity without prior approval of the probation officer, and employment should be subject to continuous review and assessment by the probation officer.
10. Not loiter within 200 yards of a school, schoolyard, playground, park, amusement center/park, public swimming pool, arcade, daycare center, carnival, recreation venue, library and other places primarily frequented by persons under the age of 18, without prior approval of the probation officer.
11. Reside in a residence approved in advance by the probation officer, and any changes in residence must be pre-approved by the probation officer.
12. Provide complete disclosure of personal and business financial records to the probation officer as requested.
13. Not knowingly associate with prostitutes or pimps and/or loiter in areas frequented by those engaged in prostitution. Must not associate with any person who you know, or who a probation officer or other law enforcement officer informs you is a prostitute or pimp and/or loiter in areas frequented by those engaged in prostitution, unless given permission by the probation officer.

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APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 4 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ANDRE ANTHONY FRANKLIN, AKA
Tommy Martin, and CONOLY FREDDIE
FRANKLIN III

Defendants-Appellants.

Nos. 19-50297, 19-50303

D.C. Nos.

3:18-cr-04187-WQH-2

3:18-cr-04187-WQH-1

Southern District of California,
San Diego

ORDER

Before: BOGGS,* M. SMITH, and MURGUIA, Circuit Judges.

The panel votes to deny the petition for panel rehearing. Judges M. Smith and Murguia vote to deny the petition for rehearing en banc, and Judge Boggs so recommends. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote. Fed. R. App. P. 35. Accordingly, the petition for panel rehearing and rehearing en banc is DENIED.

* The Honorable Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.