

APPENDIX

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APPENDIX A

[DO NOT PUBLISH]

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

**No. 21-13950
Non-Argument Calendar**

[Filed May 11, 2023]

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
)
<i>versus</i>)
)
MAURICIO GONZALEZ,)
Defendant-Appellant.)
)

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:21-cr-80087-DMM-1

Before LAGOA, BRASHER, and ANDERSON, Circuit
Judges.

PER CURIAM:

Mauricio Gonzalez appeals his convictions and concurrent 240-month sentences for receipt of child pornography, in violation of 18 U.S.C. § 2252(a)(2) and (b)(1) (Count 2), and transportation of a minor with

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intent to engage in criminal sexual activity, in violation of 18 U.S.C. § 2423(a) (Count 3). First, with respect to Gonzalez’s conviction on Count 3, he argues that the district court erred in determining that the predicate felony offense underlying Gonzalez’s conviction for transportation of a minor with intent to engage in criminal sexual activity was an offense “for which any person can be charged.” Second, he argues that there was insufficient evidence to support a conviction for transportation of a minor with intent to engage in criminal sexual activity because the government did not prove that sexual activity was the dominant purpose of Gonzalez buying the flight for the minor, A.S., and her return journey fell under the “innocent round trip” exception. Third, he argues that the indictment did not sufficiently allege the elements of transportation of a minor with intent to engage in criminal sexual activity when it did not identify the predicate state offense. Fourth, he argues that there was insufficient evidence to support his Count 2 conviction for receipt of child pornography where the government did not prove knowing receipt and the explicit video did not involve the “use of” a minor. Fifth, he argues that the district court erred in imposing a five-level enhancement under U.S.S.G. § 4B1.5 for a pattern of activity involving prohibited sexual conduct because Gonzalez was convicted of transporting A.S. one time and had a romantic relationship with her. Sixth, he argues that the district court erred when it imposed a two-level enhancement under U.S.S.G. § 3C1.1 for obstruction of justice based on a hearsay statement that Gonzalez attempted to hire his cellmate to murder A.S.

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We address in turn each of Gonzalez's six arguments.

I. DISCUSSION

- A. Was the predicate felony offense underlying Gonzalez's § 2423(a) conviction for transportation of a minor with intent to engage in criminal sexual activity an offense "for which any person can be charged?"

We review issues of statutory interpretation *de novo*. *United States v. Wilson*, 788 F.3d 1298, 1310 (11th Cir. 2015). When a defendant raises a statutory interpretation claim for the first time on appeal, we review for plain error. *Id.* To prevail on plain-error review, the defendant must show that there was (1) an error; (2) that is plain; (3) that affected the defendant's substantial rights; and (4) that seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.* at 1308-09. An error must be plain under controlling precedent or the "unequivocally clear" language of a statute or rule. *United States v. Aguilar-Ibarra*, 740 F.3d 587, 592 (11th Cir. 2014) (quotation marks omitted).

Section 2423(a) provides:

A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce . . . with intent that the individual engage in prostitution, or in any sexual activity for which *any person* can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

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18 U.S.C. § 2423(a) (emphasis added). Under Florida law, “[a] person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree.” Fla. Stat. § 794.05(1). “Section 794.05 was amended in 1996 so that only persons over the age of twenty-four, instead of ‘any person,’ could be guilty of violating the statute.” *Acevedo v. Williams*, 985 So. 2d 669, 670 n.1 (Fla. Dist. Ct. App. 2008).

Gonzalez argues that § 2423(a) requires that the interstate or foreign transportation be “with intent that the individual engage . . . in any sexual activity for which *any person* can be charged with a criminal offense.” He argues that Florida’s § 794.05(1) cannot be such predicate offense because only persons 24 years or older can violate § 794.05(1). Thus, he argues, § 794.05(1) is not an offense with which any person—i.e. any and every person—can be charged. However, Gonzalez raises this argument for the first time on appeal. Therefore, we review only for plain error.

When interpreting a statute, we first look to whether the statutory language has a plain and unambiguous meaning. *Wilson*, 788 F.3d at 1310. If the statute’s meaning is plain and unambiguous, there is no need for further inquiry, unless the reading would lead to an absurd result. *Id.* We do not look at a word in isolation but look to the statutory context. *Id.* We have stated that the word “any” has an expansive meaning. *Id.* at 1311.

Here, the district court did not plainly err because there is no binding precedent or unequivocally clear

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statutory language in § 2423 indicating that the predicate state offense underlying the conviction for transportation of a minor, a violation of Fla. Stat. § 794.05(1), was not an offense for which “any person” can be charged under § 2423. The dictionary definition of “any” is “an unspecified number or quantity of a thing or things, no matter how much or how many; some.” *Any*, Oxford English Dictionary Online, <https://www.oed.com/view/Entry/8973> (last visited Apr. 4, 2023). So the word “any” could mean any one or some or all indiscriminately. In short, it is not unequivocally clear from the statutory language that § 794.05(1) is not an offense for which “any person” can be charged.

B. Sufficiency of the evidence for the Count 3 conviction for transportation of a minor with intent to engage in criminal sexual activity

Gonzalez raises two challenges to the sufficiency of the evidence. First, he argues that sexual activity was not the dominant purpose of the transportation because she also wanted to come to the United States for her brother’s honeymoon. Second, he argues that A.S.’s trip from the Bahamas to Miami (for which Gonzalez paid) was an “innocent return trip” back to the United States for her brother’s honeymoon.

We review *de novo* whether there was sufficient evidence to support a conviction. *United States v. Jiminez*, 564 F.3d 1280, 1284 (11th Cir. 2009). In reviewing the sufficiency of the evidence, we view the record in the light most favorable to the government, resolving all reasonable inferences in favor of the verdict. *Id.* The evidence is sufficient if a reasonable

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factfinder could have found the defendant guilty beyond a reasonable doubt. *Id.* at 1284-85. It is not necessary that the evidence exclude every reasonable hypothesis of innocence or be wholly inconsistent with every conclusion except that of guilt. *United States v. Young*, 906 F.2d 615, 618 (11th Cir. 1990). The same standards apply when the district court acts as the trier of fact as in this case. *See United States v. Farley*, 607 F.3d 1294, 1333 (11th Cir. 2010).

To prove a violation of 18 U.S.C. § 2423(a), the government must show: (1) the defendant knowingly transported the victim in interstate commerce, (2) the victim was under 18, and (3) the defendant intended to engage in criminal sexual activity with the minor. 18 U.S.C. § 2423(a). While the government need not prove that actual sexual activity took place to prove intent to engage in criminal sexual activity, a defendant's intent may be bolstered by evidence that he engaged in sexual activities with the minor after crossing state lines. *United States v. Hersh*, 297 F.3d 1233, 1245-47 (11th Cir. 2002).

Section 2423 is a provision of the Mann Act, a federal statutory scheme aimed at prohibiting transportation for criminal sexual activities. *See* 18 U.S.C. §§ 2421-2429. In *Mortensen v. United States*, the Supreme Court reversed the convictions of two people convicted under the Mann Act for transporting two girls across state lines. 322 U.S. 369, 370, 377 (1944). While the girls had worked as prostitutes before, they crossed state lines to take a vacation during which they did not engage in prostitution. *Id.* at 372, 374-75. The Court noted that the “dominant motive” of the

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transportation must be immoral and held that in that case, the “sole purpose” of the trip was “innocent recreation.” *Id.* at 374-75. It also noted that the return journey to engage in prostitution did not change the innocent purpose of the trip and that the journey must be considered part of an “innocent round trip.” *Id.* at 375. The Supreme Court later appeared to reaffirm the idea of an “innocent round trip” by reversing an Eighth Circuit decision without opinion citing *Mortensen*. See *Becker v. United States*, 348 U.S. 957 (1955), *rev’g*, 217 F.2d 555, 556-57 (8th Cir. 1954) (affirming a conviction where a woman traveled from Wisconsin to Minneapolis to see her family for Thanksgiving, intending to return to Wisconsin, and the defendant begged her to come back and paid the cost of her return trip).

We have “long declined to extend the doctrine of *Mortensen* beyond its facts.” *United States v. Lebowitz*, 676 F.3d 1000, 1014 (11th Cir. 2012) (quotation marks omitted) (analyzing a conviction under § 2251(a)). We have held that “dual purposes are sufficient for a conviction, and [courts] need not concern [them]selves with whether the illegal purpose was dominant over other purposes.” *Id.* (quotation marks omitted).

We have not applied the “innocent round trip” exception. Other courts of appeals have reversed § 2423(a) convictions where criminal sexual activity occurred before transportation and there was no evidence the defendant intended that the minor engage in criminal sexual activity after transportation. See, e.g., *United States v. Broxmeyer*, 616 F.3d 120, 129 (2d Cir. 2010) (persuasive authority).

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Here, there was sufficient evidence to support Gonzalez's conviction on Count Three because sexual activity did not need to be the dominant purpose of A.S.'s trip and the "innocent round trip" exception did not apply because her trip did not have a solely innocent purpose. As to Gonzalez's argument about the dominant purpose, this Court does not require the illegal purpose to be the sole or even dominant purpose. *Lebowitz*, 676 F.3d at 1014. Therefore, it does not matter that A.S. may have also come to the U.S. for innocent reasons, such as her brother's honeymoon. Viewing the record in the light most favorable to the government, there was sufficient evidence to suggest one substantial purpose in transporting A.S. was to engage in sexual activity. *Jiminez*, 564 F.3d at 1284. Gonzalez asked A.S. to visit him in the U.S. and made sexual references. He tried to go to visit her but missed his flight, so she came to see him. Also, within 45 minutes of her arrival they had oral sex, which gives rise to a reasonable inference that Gonzalez intended that she engage in sexual activity after traveling. *Hersh*, 297 F.3d at 1245-47 (intent to engage in sexual activity is bolstered by evidence they engaged in sexual activities after crossing state lines). In light of Gonzalez's communications with A.S. before the trip and the actual sexual activity upon her arrival, there was sufficient evidence that a substantial reason Gonzalez transported A.S. was to engage in sexual activity. His argument about the dominant purpose fails.

Gonzalez's argument that the "innocent round trip" exception applies also fails. This Court has declined to extend *Mortensen* beyond its facts. *Lebowitz*, 676 F.3d

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at 1014. Even assuming *arguendo* that this Court would apply *Mortensen*'s "innocent round trip" doctrine more broadly, this case is distinguishable from *Mortensen*. There, the defendants transported girls across state lines solely for a vacation, and they returned from that trip to engage in prostitution. *Mortensen*, 322 U.S. at 372, 374-75. By contrast, A.S.'s trip to the U.S. was not a round trip, as A.S. testified that she lived in the Bahamas and was only visiting the U.S. when she met Gonzalez. Thus when Gonzalez paid for her flight to the U.S., she was not returning. And, as discussed above, A.S.'s trip did not have a solely innocent purpose like the vacation in *Mortensen* because Gonzalez intended to have sex with her when she arrived. Because A.S. was not returning from a trip and part of the reason she traveled was to engage in sexual activity, Gonzalez's argument that she engaged in an "innocent round trip" fails as well. Therefore, there was sufficient evidence to support a conviction under § 2423(a).

C. Was there plain error because the indictment did not allege Fla. Stat. § 794.05(1) as the predicate crime underlying Gonzalez's conviction in Count 3 for transporting a minor with intent to engage in criminal sexual activity in violation of that predicate crime?

We usually review the sufficiency of an indictment *de novo*. *United States v. Pena*, 684 F.3d 1137, 1147 (11th Cir. 2012). But new challenges to an indictment's sufficiency are reviewed for plain error, which requires a showing that an error affected a defendant's

substantial rights. *United States v. Reed*, 941 F.3d 1018, 1020-21 (11th Cir. 2019). To show an error affected substantial rights, the appellant must demonstrate a reasonable probability that, but for the error, the outcome of the proceeding would have been different. *Id.*

An indictment is sufficient if it (1) presents the essential elements of the charged offense, (2) notifies the accused of the charges to be defended against, and (3) enables the accused to rely on a judgment under the indictment for double jeopardy purposes. *Pena*, 684 F.3d at 1147. A conviction cannot be upheld if the indictment did not set forth the essential elements of the offense. *Id.* If an indictment refers to the charging statute, the reference to the statutory language adequately informs the defendant of the charge. *Id.*

We have held that a state predicate offense was not a required element under a related statute, § 2422(b), so the jury was not required to unanimously agree which state statute the conduct would violate as long as it agreed that the conduct would violate one of the listed statutes. *United States v. Jockish*, 857 F.3d 1122, 1126-27, 1133 (11th Cir. 2017).

Gonzalez did not challenge the indictment on this ground in the district court. Therefore, our review is for plain error.

Even if it were error to not include the predicate state offense, it was not plain because there is no caselaw from the Supreme Court or this Circuit holding that an indictment must include it. *Aguilar-Ibarra*, 740 F.3d at 592. And even if the government needed to

provide the state predicate offense in the indictment, Gonzalez cannot show that the error prejudiced him. The government filed a request for judicial notice of Fla. Stat. § 794.05 and later filed an exhibit list with that statute. Thus, Gonzalez had notice of the predicate offense. Therefore, the district court did not plainly err by finding the indictment was sufficient.

D. Sufficiency of the evidence for the Count 2 conviction for knowing receipt of the sexually explicit video involving the use of a minor

Gonzalez raises two challenges to the sufficiency of the evidence for this conviction. First, he argues that there was insufficient evidence of his *knowing* receipt. Second, he argues that the statutory requirement that the production of the visual depiction must involve the “use of a minor” implies that another person—not just the minor—must be involved in the production.

Section 2252(a)(2) subjects to liability any person who “*knowingly receives* . . . any visual depiction using any means or facility of interstate or foreign commerce” if “the producing of such visual depiction involves *the use of a minor* engaging in sexually explicit conduct.” 18 U.S.C. § 2252(a)(2) (emphasis added). Section 2256 defines “sexually explicit conduct” as including sexual intercourse; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the anus, genitals, or pubic area. *Id.* § 2256(2)(A).

A person knowingly receives child pornography when he “intentionally views, acquires, or accepts child pornography on a computer from an outside source.” *United States v. Pruitt*, 638 F.3d 763, 766 (11th Cir.

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2011). “Inadvertent receipt of child pornography is not a violation of the statute.” *Id.* But the government need not prove that the defendant saved, edited, or otherwise exerted control over the visual depiction. *Id.*

Proof of an element of a crime may be established through circumstantial evidence or from inferences drawn from the conduct of an individual. *United States v. Utter*, 97 F.3d 509, 512 (11th Cir. 1996). When the government relies on circumstantial evidence, reasonable inferences, not mere speculation, must support the conviction. *United States v. Capers*, 708 F.3d 1286, 1297 (11th Cir. 2013). Evidence that a person sought out child pornography over the internet, and has a computer containing child-pornography images, can count as circumstantial evidence that a person has knowingly received child pornography. *Pruitt*, 638 F.3d at 766-67.

Statutory interpretation begins with the plain language of the statute. *Wilson*, 788 F.3d at 1310. The statutory scheme does not define “use.” See 18 U.S.C. § 2256. Without a statutory definition, we look to the common usage of words, including dictionary definitions, for their meaning. *United States v. Silvestri*, 409 F.3d 1311, 1333 (11th Cir. 2005). The plain meaning of a word must be viewed in the context of the entire text. *Wilson*, 788 F.3d at 1310. A statute should be construed so that no provision is superfluous. *Corley v. United States*, 556 U.S. 303, 314 (2009). Where Congress intends a narrow construction, it expresses that intent in the statutory language. *United States v. Smith*, 508 U.S. 223, 229 (1993) (noting the words “as a weapon” did not appear in 18 U.S.C.

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§ 924(c)(1), so the statute punished any use of a firearm, not just when it was used as a weapon).

The noun “use” is defined as “the fact, state, or condition of being put to work, employed, or applied in this way.” *Use*, Oxford English Dictionary Online, <https://www.oed.com/view/Entry/220635> (last visited March 8, 2023); *see also Smith*, 508 U.S. at 229 (“to convert to one’s service or to employ” (quotation marks and brackets omitted)).

There was sufficient evidence to convict Gonzalez on Count Two. First, there was sufficient evidence that Gonzalez knowingly received the video. Inadvertent receipt of child pornography is not sufficient, but a defendant needs only to intentionally accept the images, not exert control over them. *Pruitt*, 638 F.3d at 766.

Here, viewing the evidence in the light most favorable to the government, there was circumstantial evidence that Gonzalez knowingly accepted the video of A.S. masturbating because he sought out images of A.S. and the masturbation video was sent to his phone. *Id.* at 766-67. Gonzalez requested “pussy shots” and images of “that ass” and followed up requesting “to see [A.S.’s] butt” through video or pictures. A.S. eventually sent Gonzalez a video of her masturbating, and he did not say he did not want the video. And he discussed viewing other sexual images of A.S., such as the movies they made together. Thus, this evidence supports a reasonable inference that his receipt of the video was not inadvertent.

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Gonzalez argues that this evidence does not show receipt because his request for “pussy shots” occurred on September 6th, and he did not receive the video of A.S. masturbating until September 30th, weeks after his request. He also argues that he never acknowledged receiving the video because he messaged “I like it” and “[s]o wet” before A.S. sent the video. But he replied “[s]o wet” after the video was delivered, so this response supports a reasonable inference that he acknowledged the video. Whether or not A.S. sent the video based on Gonzalez’s request, the evidence need not exclude every hypothesis of innocence, and it is reasonable to infer, based on Gonzalez’s requests for images of A.S., that he did not inadvertently receive the video of A.S. masturbating. *Young*, 906 F.2d at 618; *Capers*, 708 F.3d at 1297.

Second, there was sufficient evidence that the video involved the “use of” a minor. Because the statute does not define “use,” this Court relies on the plain meaning of the term “use” in this context, which includes the fact, state or condition of being employed. *See* 18 U.S.C. § 2256; *Silvestri*, 409 F.3d at 1333; *Use*, Oxford English Dictionary Online. When read in context, “use of” a minor includes depictions showing only the minor because the definition of sexually explicit conduct includes activities involving only one person, such as masturbation. *See* 18 U.S.C. § 2256(2)(A). Also, contrary to Gonzalez’s argument, the statutory language does not require that another person put the minor to work or employ the minor because if Congress had intended to prohibit only pornography created by another person, it could have added that language. *See* *Smith*, 508 U.S. at 229. Therefore, there was sufficient

evidence that Gonzalez knowingly received the video and that the video involved the “use of” a minor.

- E. Did the district court err in imposing a five-level enhancement under U.S.S.G. § 4B1.5 because Gonzalez engaged in a pattern of activity involving prohibited sexual conduct?

We review factual findings for clear error and the application of the Guidelines to the facts *de novo*. *United States v. Dimitrovski*, 782 F.3d 622, 628 (11th Cir. 2015). The government must prove by a preponderance of the evidence that a sentencing enhancement applies. *Id.* Sentencing courts may consider uncharged and acquitted conduct in determining the appropriate sentence. *United States v. Rushin*, 844 F.3d 933, 942 (11th Cir. 2016). We may affirm a sentencing enhancement for any reason supported by the record, even if not relied upon by the district court. *United States v. Matchett*, 802 F.3d 1185, 1191 (11th Cir. 2015).

A five-level sentence enhancement is required where the underlying offense is a sex crime and the defendant engaged in a pattern of activity involving prohibited sexual conduct. U.S.S.G. § 4B1.5(b)(1). A pattern of activity involving prohibited sexual conduct exists if, on at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor. *Id.*, comment. (n.4(B)(i)). The enhancement applies even when the prohibited sexual conduct involves the same minor victim. *United States v. Fox*, 926 F.3d 1275, 1279 (11th Cir. 2019). The underlying offense of conviction can constitute an occasion of prohibited sexual conduct. *Id.* at 1281. Prior instances

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of uncharged sexual conduct also can constitute an occasion of prohibited sexual conduct. *United States v. Rothenberg*, 610 F.3d 621, 625 n.5 (11th Cir. 2010).

The Guidelines define prohibited sexual conduct as:

(i) any offense described in 18 U.S.C. § 2426(b)(1)(A) or (B); (ii) the production of child pornography; or (iii) trafficking in child pornography only if, prior to the commission of the instant offense of conviction, the defendant sustained a felony conviction for that trafficking in child pornography. It does not include receipt or possession of child pornography.

U.S.S.G. § 4B1.5(b), comment. (n.4(A)). Section 2426(b)(1) defines a prior sex offense as an offense:

(A) under this chapter [§§ 2421-2429], chapter 109A [§§ 2241-2248], chapter 110 [§§ 2251-2260], or section 1591; or

(B) under State law for an offense consisting of conduct that would have been an offense under a chapter referred to in subparagraph (A) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States

18 U.S.C. § 2426(b)(1) (section numbers added).

Section 2251 prohibits a person from using or persuading a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction. 18 U.S.C. § 2251(a). Section 2422(b) prohibits anyone from knowingly persuading or coercing an individual

under 18 to engage in prostitution or criminal sexual activity. *Id.* § 2422(b); *see United States v. Rutgerson*, 822 F.3d 1223, 1233 (11th Cir. 2016) (holding that offering to pay a child a sum of money to engage in sexual activity violates § 2422(b)).

Here, the district court did not err in imposing an enhancement for a pattern of activity involving prohibited sexual conduct because Gonzalez paid A.S. for sex twice and produced child pornography of her.

F. Did the district court commit clear error when it imposed a two-level enhancement under U.S.S.G. § 3C1.1 for obstruction of justice based on a cellmate's hearsay statement that Gonzalez attempted to hire him to murder A.S.?

When reviewing the district court's imposition of an enhancement for obstruction of justice, we review the district court's factual findings for clear error. *United States v. Massey*, 443 F.3d 814, 818 (11th Cir. 2006). Under § 3C1.1, a defendant's offense level is increased by two levels if: (1) he willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to an investigation, prosecution, or sentencing of his instant offense; and (2) his obstructive conduct related to his offense of conviction and any relevant conduct or a closely related offense. U.S.S.G. § 3C1.1. Covered conduct includes "threatening the victim of the offense in an attempt to prevent the victim from reporting the conduct constituting the offense of conviction." *Id.*, comment. (n.4(K)).

At sentencing, the district court may only consider hearsay if “there are sufficient indicia of reliability to support its probable accuracy.” *United States v. Baptiste*, 935 F.3d 1304, 1315 (11th Cir. 2019) (emphasis omitted). A hearsay statement is reliable when it is corroborated by other evidence in the record. *United States v. Ghertler*, 605 F.3d 1256, 1270 (11th Cir. 2010).

Gonzalez’s challenge to this enhancement is that the hearsay evidence on which the district court relied was unreliable. We conclude that the district court did not clearly err in finding that the cellmate’s hearsay testimony was reliable for purposes of applying the obstruction enhancement because it was corroborated by other evidence. *Ghertler*, 605 F.3d at 1270. Agent Trimino testified that the cellmate had been a reliable source in the past. Trimino also testified that the cellmate reported the information about the murder-for-hire plot three hours after Gonzalez was arrested. Trimino further testified that the cellmate did not receive any promises in exchange for his cooperation and only received money for a hotel because he was homeless at the time of the interview.

The audio recording presented by the government at sentencing also showed that the cellmate provided information that could be known only to Gonzalez and law enforcement. He provided correct phone numbers for Gonzalez’s mother and sister and stated Gonzalez’s mother lived near a taco stand. The cellmate also knew that A.S. walked near Gonzalez’s mother’s home, even though he incorrectly stated that A.S. lived in her own house. He also knew details about Gonzalez, such as

his fear of removal to Costa Rica. He identified Gonzalez in a photo lineup even though he could not remember his name. Trimino also testified that the cellmate stated the details of Gonzalez's arrest; however those details did not appear in the recorded interview. And the fact that Gonzalez's mother was confused when the cellmate called is not inconsistent with there being a plan of which his mother was unaware. We conclude that there was sufficient evidence to corroborate the hearsay statement. Accordingly, we reject this challenge.

II.

For the foregoing reasons, the judgment of district court is

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

Case Number: 9:21-CR-80087-DMM(1)

[Filed November 8, 2021]

UNITED STATES OF AMERICA)
)
v.)
)
MAURICIO GONZALEZ)
)

JUDGMENT IN A CRIMINAL CASE

USM Number: **46933-509**

Counsel for Defendant: **David Jonathon Joffe**
Counsel for United States: **Elena Smukler**

THE DEFENDANT:

<input type="checkbox"/>	pleaded guilty to count(s)	
<input type="checkbox"/>	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
<input type="checkbox"/>	pleaded nolo contendere to count(s) which was accepted by the court	

<input checked="" type="checkbox"/>	was found guilty on count(s) after a plea of not guilty	Two and Three
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The defendant is adjudicated guilty of these offenses:

<u>Title & Section / Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:2252(a)(2),(b)(1) Receipt of Child Pornography	09/30/2020	2
18:2423(a) Transportation of a Minor with intent to engage in criminal sexual activity	10/16/2020	3

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) One.
- Count(s) is are dismissed on the motion of the United States

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.

November 4, 2021

Date of Imposition of Judgment

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/s/ Donald M. Middlebrooks
Signature of Judge

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

November 8, 2021
Date

IMPRISONMENT

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

TWO HUNDRED FORTY (240) MONTHS. This term consists of 240 Months as to Count 2 and 240 Months as to Count 3, to be served concurrently.

- The court makes the following recommendations to the Bureau of Prisons:
The Defendant be designated to a facility in or as close to South Florida as possible.
The Defendant participate in mental health treatment while in custody.
The Defendant participate in a substance abuse treatment program while in custody.
- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district:

at a.m. p.m. on
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **TWENTY-FIVE (25) YEARS as to each of Counts 2 and 3 to run concurrently.**

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.

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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 additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least

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10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

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9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

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

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

Adam Walsh Act Search Condition: The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced searches of the defendant's person, property, house, residence, vehicles, papers, computer(s), other electronic communication or data storage devices or media, include retrieval and copying of all data from the computer(s) and any internal or external peripherals and effects at any time, with or without warrant by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of probation or supervised release. The search may include the retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with other supervision conditions and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Data Encryption Restriction: The defendant shall not possess or use any data encryption technique or program.

No Contact with Minors in Employment: The defendant shall not be employed in a job requiring contact with children under the age of 18 or with the victim.

The Defendant shall have no contact with the victim and shall not contact the victim from prison.

No Involvement in Youth Organizations: The defendant shall not be involved in any children's or youth organization.

No Unsupervised Contact with Minors: The defendant shall have no unsupervised, personal, mail, telephone, or computer contact with children/minors under the age of 18 or with the victim.

Restricted from Possession of Sexual Materials: The defendant shall not buy, sell, exchange, possess, trade, or produce visual depictions of minors or adults engaged in sexually explicit conduct. The defendant shall not correspond or communicate in person, by mail, telephone, or computer, with individuals or companies offering to buy, sell, trade, exchange, or produce visual depictions of minors or adults engaged in sexually explicit conduct.

Sex Offender Registration: The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

Sex Offender Treatment: The defendant shall participate in a sex offender treatment program to include psychological testing and polygraph examination. Participation may include inpatient/outpatient treatment, if deemed necessary by the treatment provider. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

Unpaid Restitution, Fines, or Special Assessments: If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$200.00	\$.00	\$.00		

- The determination of restitution is deferred until *An Amended Judgment in a Criminal Case (AO245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment. 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:

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of **\$00**. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change

in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, 18 U.S.C. §2259.

** Justice for Victims of Trafficking Act of 2015, 18 U.S.C. §3014.

*** 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.

SCHEDEULE 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 \$200.00 due immediately, balance due

It is ordered that the Defendant shall pay to the United States a special assessment of \$200.00 for Counts 2 and 3, which shall be due immediately. Said special assessment shall be paid to the Clerk, U.S. District Court. Payment is to be addressed to:

**U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 8N09
MIAMI, FLORIDA 33128-7716**

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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.

The defendant shall forfeit the defendant's interest in the following property to the United States:

FORFEITURE of the defendant's right, title and interest in certain property is hereby ordered consistent with the plea agreement. The United States shall submit a proposed Order of Forfeiture within three days of this proceeding.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX C

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

No. 21-13950

[Filed July 7, 2023]

UNITED STATES OF AMERICA,)
Plaintiff-Appellee,)
)
<i>versus</i>)
)
MAURICIO GONZALEZ,)
Defendant-Appellant.)
)

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 9:21-cr-80087-DMM-1

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

Before LAGOA, BRASHER, and ANDERSON, Circuit
Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no
judge in regular active service on the Court having
requested that the Court be polled on rehearing en

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banc. FRAP 35. The Petition for Panel Rehearing also is DENIED. FRAP 40.