NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

_____

JONATHAN ERICKSEN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

_____

On Petition For a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit
Submitted in Behalf of
Petitioner, JONATHAN ERICKSEN

_____

PETITION FOR WRIT OF CERTIORARI

_____

DANIEL G. CRONIN
Assistant Federal Public Defender
650 Missouri Avenue, Rm. G10-A
East St. Louis, Illinois 62201
(618) 482-9050
(618) 482-9057 (fax)
Dan_Cronin@fd.org
Counsel for Petitioner

QUESTION PRESENTED

At the close of the government's evidence at his jury trial for Attempted Enticement of a Minor, in violation of 18 U.S.C. § 2422(b), Petitioner Ericksen made an oral motion for judgment of acquittal, pursuant to Rule 29(a) of the Federal Rules of Criminal Procedure. That motion was denied.

Following the jury's guilty verdict, Petitioner Ericksen submitted a written motion for judgment of acquittal, under Rule 29(c) of the Federal Rules of Criminal Procedure. That motion was also denied, and the denial was affirmed by the United States Court of Appeals for the Seventh Circuit.

Petitioner Ericksen concedes that the lower courts applied the current standard for such motions: Whether there is any evidence, however weighed, which would support a guilty verdict. Consequently, the issue respectfully presented is whether this Court should overrule its decision in *Jackson v. Virginia*, 443 U.S. 307, 325 (1979), which rejected the "reasonable hypothesis" test for motions for a judgment of acquittal.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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PETITION FOR WRIT OF CERTIORARI

Petitioner JONATHAN ERICKSEN, by his court-appointed counsel Daniel G. Cronin, Assistant Federal Public Defender, petitions this Court for a writ of certiorari to review the final judgment of the United States Court of Appeals for the Seventh Circuit, issued on August 3, 2023.

OPINIONS BELOW

The District Court issued a Memorandum and Order on November 18, 2022, which denied the defense's written motion for judgment of acquittal. (A1). The Judgment in a Criminal Case was filed on February 7, 2023. (A6). On August 3, 2023, the United States Court of Appeals for the Seventh Circuit issued a written order which affirmed the denial of the motion

for judgment of acquittal. *United States v. Ericksen*, 2023 WL 4946723 (7th Cir. 2023). (A14). Also on August 3, 2023, the Seventh Circuit filed a final judgment affirming that denial. (A16).

JURISDICTION

On August 3, 2023, the United States Court of Appeals for the Seventh Circuit issued a written order (A14) which affirmed the District Court's denial of the defense's written motion for judgment of acquittal. (A1). The final judgment affirming that denial was also filed on August 3, 2023. (A16).

No petition for rehearing was filed. This petition is timely filed within 90 days of that date. Review by certiorari is sought pursuant to Title 28, United States Code, Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in pertinent part, "No person shall . . . be deprived of life, liberty, or property, without due process of law."

The relevant provisions of Rule 29 of the Federal Rules of Criminal Procedure are:

> (a) BEFORE SUBMISSION TO THE JURY. After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for a judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.
>
> .....
>
> (c) AFTER JURY VERDICT OR DISCHARGE.
>
> (1) *Time for a Motion.* A defendant may move for a judgment of acquittal, or renew such a motion, within 14 days after a guilty verdict or after the court discharges the jury, whichever is later.

Rule 29(a) and (c)(1), Federal Rules of Criminal Procedure.

The statutory provision under which Petitioner Ericksen was convicted provides:

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

18 U.S.C. § 2422(b).

STATEMENT OF THE CASE

I. Procedural History

On March 13, 2021, Petitioner Ericksen was charged in a one-count complaint with Attempted Enticement of a Minor, in violation of 18 U.S.C. § 2422(b). On April 6, 2021, Petitioner was indicted on the same charge.

Trial began on September 27, 2022. At the close of the government's evidence, the defense made an oral motion for judgment of acquittal, under Rule 29 of the Federal Rules of Criminal Procedure. That oral motion was denied, as was a subsequent written motion for a judgment of acquittal. *See* Memorandum and Order of the District Court. (A1).

Judgment was imposed on February 7, 2023, and included a term of 120 months of imprisonment, followed by five years of supervised release. *See* Judgment in a Criminal Case. (A6). Financial penalties were a fine of $200.00, and a special assessment of $100.00. Id.

On February 21, 2023, Petitioner filed a notice of appeal. Both parties waived oral argument, and the Court of Appeals for the Seventh Circuit ruled on the briefing. That ruling came in the form of an Order filed on August 3, 2023, which affirmed the District Court's denial of the written motion for judgment of acquittal. *United States v. Ericksen*, 2023 WL 4946723 (7th Cir. 2023). (A14). Consistent with that Order, the Seventh Circuit issued its Final Judgment (A16) against Petitioner that same day.

II. Factual Statement

In its Memorandum and Order (A1) which denied Petitioner's written motion for judgment of acquittal, the District Court accurately summarized the most salient facts:

> On December 20, 2020, Ericksen began chatting with an individual that he believed was named "Lindsey." However, "Lindsey" was actually an undercover FBI Agent who was using the social media platform, Skout. The conversation later transitioned to a different platform named Kik. Ericksen was chatting with "Lindsey" from March 10, 2021, until March 14, 2021. The conversation between Ericksen and "Lindsey" was sexually charged. For example, Ericksen told "Lindsey" that she can do "what ever you're okay doing with me doing" and promised to bring his "apatite" when referring to oral sex. Later he clarified "you do want to have sex don't you." On March 13, Ericksen made plans to meet "Lindsey," asked for "Lindsey's" address, traveled from Tennessee to Illinois, arriving at the rendezvous point, and let her know when he would arrive.
>
> After Ericksen's arrival, he was stopped and interviewed by FBI Agents. During the interview he admitted it was him communicating with the "Lindsey" profile on both platforms, admitted to knowing she was 15 years old, and admitted to traveling from Tennessee to Illinois to meet the purported minor.

Memorandum and Order (A1) at p. 2.

To this summary, undersigned counsel respectfully adds four facts. The government introduced into evidence that among the "sexually charged" communications was one from Petitioner, telling "Lindsey": "Wow! You are going to be a beautiful woman...Yeah you're going to have all the boys chasing you if they aren't - - if they're not already." And Petitioner responded "...no harm, no foul..." when informed by "Lindsey" that she was 15 years old.

On the other side of the ledger, the defense emphasized below that when Petitioner was arrested by the F.B.I. at the location at which he had agreed to meet for sex with "Lindsey," Petitioner had neither the alcohol nor the condoms which he had promised to bring to her. Also, Petitioner's statements to the F.B.I. included skepticism that anyone who is who they claim to be on the Internet; a skepticism reflected in the F.B.I.'s website on "romance scams."

REASONS FOR GRANTING THE WRIT

1. As a practical matter, the current legal standard for motions for a judgment of acquittal in prosecutions like the one against Petitioner appears insurmountable. Return to the "reasonable hypothesis" standard would make motions under Rule 29 of the Federal Rules of Criminal Procedure viable again in all types of prosecutions.

The legal standards which apply to a motion for judgment of acquittal are quite daunting:

> A district court's ruling on a motion for a judgment of acquittal is reviewed de novo. *United States v. Moses*, 513 F.3d 727, 733 (7th Cir. 2008). Such a motion should be granted only if there is insufficient evidence to support a conviction. *Id*. A defendant's burden in showing the evidence was insufficient to support a conviction is "nearly insurmountable." *Id*. We view the evidence in the light most favorable to the government and will overturn a conviction "only if the record contains no evidence, regardless of how it is weighed," from which the jury could have found the defendant was guilty. Id. (quotation omitted). It is up to the jury to weigh the evidence and determine the credibility of the witnesses; we do not second-guess the jury's assessment of the evidence. *United States v. Graham*, 315 F.3d 777, 781 (7th Cir. 2003).

United States v. Rollins, 544 F.3d 820, 835 (7th Cir. 2008), *reh'g denied*; *cert denied*, 560 U.S. 933 (2010); *see also United States v. Payne*, 102 F.3d 289, 295 (7th Cir. 1996), *reh'g denied*. But a different standard once applied, especially within the Fifth Circuit:

> The defendant's motion for a judgment of acquittal is tested in the Seventh Circuit by the standard of whether substantial evidence, taken in the light most favorable to the government, tends to show that the defendant is guilty beyond a reasonable doubt. In the Fifth Circuit, a slightly more precise, but equivalent, test has been developed. There the test of sufficiency of proof on a motion for judgment of acquittal or denial of such a motion, is whether the jury might reasonably conclude that the evidence is inconsistent with the hypothesis of the defendant's innocence. Another way of expressing the same rule is that the motion for judgment of acquittal must be granted when the evidence, viewed in the light most favorable to the government, is so scant that the jury could only speculate as to the defendant's guilt, and is such that a reasonably-minded jury must have a reasonable doubt as to the defendant's guilt.

United States v. Fearn, 589 F.2d 1316, 1320-21 (7th Cir. 1978) (footnotes and citations omiitted).

But in that same year, this Court rejected the Fifth Circuit's "hypothesis of innocence" test, in

the context of its habeas review of a conviction in state court:

> We hold that in a challenge to a state criminal conviction brought under 28 U.S.C. § 2254 - if the settled procedural prerequisites for such a claim have otherwise been satisfied - the applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt.

Jackson v. Virginia, 443 U.S. 307, 324 (1979) (footnotes omitted). And in the wake of *Jackson v. Virginia*, lower courts declared that its previous decisions which referred to the hypothesis of innocence test did so only as dicta. *See, e.g.*, *United States v. Moya*, 721 F.2d 606, 609 (7th Cir. 1983), *reh'g denied*; *cert. denied*, 465 U.S. 1037 (1984).

At present, the "reasonable hypothesis" standard is very much the outlier. For example, five weeks ago, a federal district court noted that it still applies in Florida's state courts - but only when a conviction rests entirely on circumstantial evidence. *See Griffin v. Secretary, Florida Department of Corrections*, 2023 WL 6214219, *4 (FN 2) (M.D.Fla., September 25, 2023). Petitioner does not lightly ask this Court to consider reversing itself, but he and other defendants like him have no other option if they are going to have meaningful recourse to Rule 29 of the Federal Rules of Criminal Procedure.

2. The issue Petitioner raises is important, because the legal standard which currently applies to motions for judgment of acquittal has the practical impact of making the denial of such motions effectively unreviewable in prosecutions for Enticement of a Minor.

Undersigned counsel has been unable to find any cases within the Seventh Circuit in which a prosecution for Enticement of a Minor or, as in Petitioner's case, Attempted Enticement of a Minor, were the subject of a judgment of acquittal. This is in stark contrast to the types of charges within the same Circuit which have been made the subject of a judgment of acquittal:

Prosecutions Subjected to Judgment of Acquittal		
Crime	**Caption**	**Citation**
Bank Robbery	**U.S. v. Thornton**	**539 F.3d 741 (7th Cir. 2008)**
Criminal Contempt	**U.S. v. Oberhellmann**	**946 F.2d 50 (7th Cir. 1991)**
Exporting Defense Articles Without a License	**U.S. v. Pulungan**	**569 F.3d 326 (7th Cir. 2009), *reh'g denied***
False Statements to (1) Draft Board (2) MODOT	**(1) U.S. v. Butler** **(2) U.S. v. Clark**	**(1) 496 F.2d 142 (7th Cir. 1974)** **(2) 787 F.3d 451 (7th Cir. 2015)**
Felon in Possession of Firearm	**(1) U.S. v. Allen** **(2) U.S. v. Groves** **(3) U.S. v. Katz**	**(1) 383 F.3d 644 (7th Cir. 2004)** **(2) 470 F.3d 311 (7th Cir. 2006)** **(3) 582 F.3d 749 (7th Cir. 2009)**
Money Laundering Conspiracy	**U.S. v. Castro-Aguirre**	**983 F.3d 927 (7th Cir. 2020)**
Perjury	**U.S. v. Tranowski**	**659 F.2d 750 (7th Cir. 1981)**
Possession with Intent to Distribute C/S	**U.S. v. Jones**	**713 F.3d 336 (7th Cir. 2013)**
Possession of an Unregistered Firearm	**U.S. v. Meadows**	**91 F.3d 851 (7th Cir. 1996)**
Sale of Stolen Savings Bonds	**U.S. v. LaBudda, et al.**	**882 F.2d 244 (7th Cir. 1989)**
Sexual Abuse	**U.S. v. Peters**	**277 F.3d 963 (7th Cir. 2002)**
Transport and Possession of Contraband Cigarettes	**U.S. v. Mohamed**	**759 F.3d 758 (7th Cir. 2014)**
Wire Fraud	**U.S. v. Weimert**	**819 F.3d (7th Cir. 2016)**

Whatever the reasons for this discrepancy (and the prejudicial nature of any charge involving illegal sexual activity with a child would seem to be a leading candidate), it is respectfully submitted that Due Process is not well-served by a legal standard which makes a jury's verdict in a particular kind of case effectively immune from the provisions of Rule 29 of the Federal Rules of Criminal Procedure.

3. Petitioner has a meritorious claim that application of the "reasonable hypothesis" standard supported his motion for a judgment of acquittal.

Under the "hypothesis of innocence" standard, a judgment of acquittal is justified on the following evidence from Petitioner's trial:

- There is a general understanding that people are not necessarily who they claim to be on the Internet, as the FBI's website warns regarding "romance scams."
- Petitioner expressed this skepticism to the two FBI agents who conducted his post-Miranda interview, and explained previous interactions on the Internet which led him to conclude that people are not who they claim to be on the Internet.
- Certain of Petitioner's actions - or more accurately, inactions - were consistent with the skepticism which he expressed. Specifically, he brought neither the alcohol or condoms which he agreed to bring when exchanging messages with an undercover FBI employee posing as a 15-year-old girl.

As a matter of law, a defendant cannot have the requisite intent for an Attempted Enticement if he does not believe he is actually communicating with a minor. And as noted *supra*, there is evidence supporting that hypothesis regarding Petitioner.[1]

Petitioner concedes that his guilt is another possible hypothesis (and obviously the conclusion reached by the jury), based on evidence which include his messages about having sex with a purported 15-year-old girl, driving approximately 1 ½ hours to the meeting location, and post-Miranda statements to the FBI that he understood the person with whom he exchanged

[1]It is noted that the District Court concluded that a judgment of acquittal would not be supported by the evidence below, even if the "reasonable hypothesis" standard was applied. *See* Memorandum and Order (A1) at pp. 3 - 4.

messages was a 15-year-old girl. It is on account of these concessions that Petitioner urges a return to the "hypothesis of innocence" standard previously applied by lower federal courts (most notably, within the Fifth Circuit) to motions for judgment of acquittal.

CONCLUSION

For the foregoing reasons, Petitioner suggests that his case warrants this Court's grant of certiorari.

Respectfully Submitted,

/s/ Daniel G. Cronin

DANIEL G. CRONIN
Assistant Federal Public Defender
650 Missouri Avenue
East St. Louis, Illinois 62201
(618) 482-9050
(618) 482-9057 (fax)
Dan_Cronin@fd.org
ATTORNEY FOR PETITIONER

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, Plaintiff, v. JONATHAN ERICKSEN, Defendant.	Case No. 21-cr-40035-JPG

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant Jonathan Ericksen ("Defendant" or "Ericksen") Motion for Judgment of Acquittal (Doc. 47). Plaintiff United States of America ("Government") responded (Doc. 49).

I. Procedural Background

Defendant files this motion for judgment for acquittal under Fed. R. Crim. P. 29(c) following a two-day jury trial. On September 28, 2022, Defendant was found guilty of Attempted Enticement of a Minor in violation of 18 U.S.C. § 2242(b). Defendant was indicted for the above-mentioned offenses on April 6, 2021.

On September 27, trial in this matter began. The Government presented its evidence, including the testimony of FBI Special Agents Kurt Bendoraitis, Bryan Knowles, and Treva Mathews. Following the close of the Government's case-in-chief, Defendant moved for a judgment of acquittal pursuant to Fed. R. Crim. P. 29(a). Upon hearing arguments on both sides, the Court denied Defendant's Rule 29(a) motion. Defendant then rested its case without testifying or presenting evidence. The jury returned a guilty verdict on the count of attempted enticement of a minor. Ericksen now renews his Motion pursuant to Rule 29(c).

II. Factual Background

On December 20, 2020, Ericksen began chatting with an individual that he believed was named "Lindsey." However, "Lindsey" was actually an undercover FBI Agent who was using the social media platform, Skout. The conversation later transitioned to a different platform named Kik. Ericksen was chatting with "Lindsey" from March 10, 2021, until March 14, 2021. The conversation between Ericksen and "Lindsey" was sexually charged. For example, Ericksen told "Lindsey" that she can do "what ever you're okay doing with me doing" and promised to bring his "apatite" when referring to oral sex. Later he clarified "you do want to have sex don't you." On March 13, Ericksen made plans to meet "Lindsey," asked for "Lindsey's" address, traveled from Tennessee to Illinois, arriving at the rendezvous point, and let her know when he would arrive.

After Ericksen's arrival, he was stopped and interviewed by FBI Agents. During the interview he admitted it was him communicating with the "Lindsey" profile on both platforms, admitted to knowing she was 15 years old, and admitted to traveling from Tennessee to Illinois to meet the purported minor.

III. Analysis

The issue on a motion under Rule 29(c) is the same as the issue on appeal: whether the evidence, taken in the light most favorable to the verdict, permits a sensible person to find beyond a reasonable doubt that the defendant committed the crime alleged. *United States v. Genova*, 333 F.3d 750, 757 (7th Cir. 2003). Rule 29(c) does not authorize the judge to play thirteenth juror. *See Charles Alan Wright*, 2A Federal Practice & Procedure § 467 (3d ed. 2000) (collecting authority).

Defendant first argues that this Court resurrect the "hypothesis of innocence" test, which

the Seventh Circuit Court of Appeals and the Supreme Court of the United States has rejected. *United States v. Moya*, 721 F.2d 606, 609 (7th Cir. 1983), *Jackson v. Virginia*, 443 U.S. 307, 325 (1979). The "hypothesis of innocence" test requires the reviewing court to put aside the prosecution's inferences and to determine whether the trier of fact could reasonably conclude that the evidence is inconsistent with the defendant's hypothesis. *Moya*, 721 F.2d at 610 (7th Cir. 1983). Originated in the Fifth Circuit, the test is whether the evidence viewed in the light most favorable to the government, is so scant that the jury could only speculate as to the defendant's guilt, and is such that a reasonable-minded jury must have reasonable doubt as to the defendant's guilty. *United States v. Fearn*, 589 F.2d 1316, 1320-21 (7th Cir. 1979).

The reasonable doubt test is satisfied when a reviewing court finds that, "after reviewing 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." *Jackson*, 443 U.S. at 319, 99 S.Ct. at 2789 (1979) (citation omitted, emphasis in original). In applying this test, the reviewing court must "assume that the jury drew all reasonable inferences in the prosecution's favor...." *United States ex rel. Foster v. DeRobertis*, 741 F.2d 1007, 1012 (7th Cir.1984); *see also United States v. Herrera*, 757 F.2d 144, 149–150 (7th Cir. 1985). However, as Ericksen acknowledges, the Seventh Circuit "never abandoned the reasonable doubt test when reviewing the sufficiency of evidence in criminal cases." *Moya*, 721 F.2d at 609. In short, Ericksen indicates that his intention is only to preserve the issue for later review by the U.S. Supreme Court. (Doc. 48 at 6).

Nonetheless, assuming arguendo the "hypothesis of innocence" test controls, the Government argues that Ericksen's motion fails because the evidence can hardly be described as "so scant that the jury could only speculate as to the defendant's guilt and is such that a

reasonably-minded jury must have a reasonable doubt as to the defendant's guilt." *United States v. Fearn*, 589 F.2d 1316, 1320-21 (7th Cir. 1979).[1] The Court agrees. There was ample evidence, such as Ericksen's more than an hour of interstate travel, the messages read into evidence, and words during the interview with FBI agents. Even putting aside the prosecution's inferences, the Court finds that Ericksen does not pass the "hypothesis of innocence" test if it controlled. Ericksen's conviction was not based solely on circumstantial evidence but various types of evidence that a reasonable juror could find defendant committed the crime charged.

Additionally, under the controlling theory, Ericksen fails. Additionally, Ericksen concedes that there was evidence upon which the jury could and did convict him. (Doc. 48 at 4). The evidence established that Ericksen communicated was the "Lindsey" profile, knew the minor was 15-years of age[2], and attempted to entice the minor into engaging in sexual activity. Ericksen told "Lindsey" that she can do "what ever you're okay doing with me doing" and promised to bring his "apatite" when referring to oral sex. Later he clarified "you do want to have sex don't you." Additionally, Ericksen clearly made a substantial step towards commission of the offense. He made plans to meet, asked for "Lindsey's" address, traveled interstate, and let her know when he would arrive.

Based on this evidence, under a Rule 29(c) motion, Ericksen is not successful in the relief he is requesting. Viewing the evidence in the light most favorable to the government, a reasonable juror would find beyond a reasonable doubt that Ericksen committed the crime of attempted enticement of a minor.

---

[1] This test has also been called the "fingerprint only doctrine," where the originating case was based on a case where ethe only real evidence implicated the defendant was a fingerprint. *United States v. Lonsdale*, 577 F.2d 923, 929 (5th Cir. 1978).

[2] The undercover agent referenced her age multiple times during the chat. Initially, the agent stated "I'm sorry I'm just alittle inexperienced being 15." Later, Ericksen used terms to refer to "Lindsey" as "hun," "bad girl," etc.

IV. Conclusion

The Court hereby **DENIES** Ericksen's Motion for Judgment of Acquittal (Doc. 47).

IT IS SO ORDERED.
DATED: November 18, 2022

/s J. Phil Gilbert
J. PHIL GILBERT
UNITED STATES DISTRICT JUDGE

AO 245B (SDIL Rev. 7/21) Judgment in a Criminal Case

UNITED STATES DISTRICT COURT

Southern District of Illinois

UNITED STATES OF AMERICA

v.

JONATHAN ERICKSEN

JUDGMENT IN A CRIMINAL CASE

Case Number: **4:21-CR-40035-JPG-1**
USM Number: **34722-509**

DANIEL G. CRONIN
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☒ was found guilty on count(s) 1 of the Indictment after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 2422(b)	Attempted Enticement of a Minor	3/12/2021	1

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

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

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

☐ No fine ☐ Forfeiture pursuant to order filed , included herein.

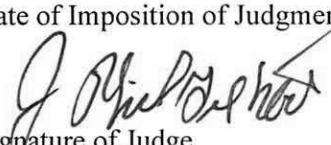
☐ Forfeiture pursuant to Order of the Court. See page for specific property details.

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

Restitution and/or fees may be paid to:
Clerk, U.S. District Court*
750 Missouri Ave.
East St. Louis, IL 62201

*Checks payable to: Clerk, U.S. District Court

February 7, 2023
Date of Imposition of Judgment



Signature of Judge
J. Phil Gilbert, U.S. District Judge
Name and Title of Judge

Date Signed: February 7, 2023

DEFENDANT: Jonathan Ericksen
CASE NUMBER: 4:21-cr-40035-JPG-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **120 months as to Count 1 of the Indictment.**

☒ The court makes the following recommendations to the Bureau of Prisons:
The Court recommends the Bureau of Prisons designate defendant to FMC Lexington, KY.
☒ The defendant is remanded to the custody of the United States Marshal.
☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ ☐a.m. ☐ p.m. on
☐ as notified by the United States Marshal.

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jonathan Ericksen
CASE NUMBER: 4:21-cr-40035-JPG-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **5 years as to Count 1 of the Indictment.**

Other than exceptions noted on the record at sentencing, the Court adopts the presentence report in its current form, including the suggested terms and conditions of supervised release and the explanations and justifications therefor.

MANDATORY CONDITIONS

The following conditions are authorized pursuant to 18 U.S.C. § 3583(d):

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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, not to exceed 52 tests in one year.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

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.

ADMINISTRATIVE CONDITIONS

The following conditions of supervised release are administrative and applicable whenever supervised release is imposed, regardless of the substantive conditions that may also be imposed. These conditions are basic requirements essential to supervised release.

The defendant must report to the probation office in the district to which the defendant is released within seventy-two hours of release from the custody of the Bureau of Prisons.

The defendant shall not knowingly possess a firearm, ammunition, or destructive device. The defendant shall not knowingly possess a dangerous weapon unless approved by the Court.

The defendant shall not knowingly leave the federal judicial district without the permission of the Court or the probation officer.

The defendant shall report to the probation officer in a reasonable manner and frequency directed by the Court or probation officer.

The defendant shall respond to all inquiries of the probation officer and follow all reasonable instructions of the probation officer.

The defendant shall notify the probation officer prior to an expected change, or within seventy-two hours after an unexpected change, in residence or employment.

The defendant shall not knowingly meet, communicate, or otherwise interact with a person whom the defendant knows to be engaged, or planning to be engaged, in criminal activity.

The defendant shall permit a probation officer to visit the defendant at a reasonable time at home or at any other reasonable location and shall permit confiscation of any contraband observed in plain view of the probation officer.

The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.

SPECIAL CONDITIONS

Pursuant to the factors in 18 U.S.C. § 3553(a) and 18 U.S.C. § 3583(d), the following special conditions are ordered. While the Court imposes special conditions, pursuant to 18 U.S.C. § 3603(10), the probation officer shall perform any other duty that the Court may designate. The Court directs the probation officer to administer, monitor, and use all suitable methods consistent with the conditions specified by the Court and 18 U.S.C. § 3603 to aid persons on probation/supervised release. Although the probation officer administers the special conditions, final authority over all conditions rests with the Court.

The defendant shall participate in mental health services, which may include a mental health assessment and/or psychiatric evaluation, and shall comply with any treatment recommended by the treatment provider. This may require participation in a medication regimen prescribed by a licensed practitioner. The defendant shall pay for the costs associated with services rendered, based on a Court approved sliding fee scale and the defendant's ability to pay. The defendant's financial obligation shall never exceed the total cost of services rendered. The Court directs the probation officer to approve the treatment provider and, in consultation with a licensed practitioner, the frequency and duration of counseling sessions, and duration of treatment, as well as monitor the defendant's participation, and assist in the collection of the defendant's copayment.

While any financial penalties are outstanding, the defendant shall provide the probation officer and the Financial Litigation Unit of the United States Attorney's Office any requested financial information. The defendant is advised that the probation office may share financial information with the Financial Litigation Unit.

While any financial penalties are outstanding, the defendant shall apply some or all monies received, to be determined by the Court, from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligation. The defendant shall notify the probation officer within 72 hours of the receipt of any indicated monies.

The defendant shall pay any financial penalties imposed which are due and payable immediately. If the defendant is unable to pay them immediately, any amount remaining unpaid when supervised release

commences will become a condition of supervised release and be paid in accordance with the Schedule of Payments sheet of the judgment based on the defendant's ability to pay.

The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.

The defendant's person, residence, real property, place of business, vehicle, and any other property under the defendant's control is subject to search, by any United States Probation Officer and other such law enforcement personnel as the probation officer may deem advisable and at the direction of the United States Probation Officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release, without a warrant. Failure to submit to such a search may be grounds for revocation. The defendant shall inform any other residents that the premises and other property under the defendant's control may be subject to a search pursuant to this condition.

The defendant shall cooperate with the U.S. Probation/Pretrial Services Office Computer and Internet Monitoring Program. Cooperation shall include, but is not limited to, identifying computer systems, internet capable devices, networks (routers/modems), and/or similar electronic devices (external hard drives, flash drives, etc.) to which the Defendant has access. All devices are subject to random inspection/search, configuration, and the installation of monitoring software and/or hardware. The defendant's financial obligation shall never exceed the total cost of services rendered. The defendant shall pay all or a portion of the costs of participation in the Computer and Internet Monitoring Program based on the defendant's ability to pay.

The defendant shall inform all parties who access approved computer(s) or similar electronic device(s) that the device(s) is subject to search and monitoring. The defendant may be limited to possessing only one personal computer and/or internet capable device to facilitate the ability to effectively monitor internet-related activities.

The defendant shall report any and all electronic communication service accounts utilized for user communications, dissemination, and/or storage of digital media files (i.e., audio, video, images, documents, device backups) to the U.S. Probation/Pretrial Services Office. This includes, but is not limited to, email accounts, social media accounts, and cloud storage accounts. The defendant shall provide each account identifier and password, and shall report the creation of new accounts. Changes in identifiers and/or passwords, transfer, suspension and/or deletion of any account shall be reported within five days of such action. The defendant shall permit the U.S. Probation/Pretrial Services Office to access and search any account(s).

The defendant shall participate in an approved sexual offender treatment program. The defendant shall abide by all rules, requirements, and conditions of the treatment program, including submission to polygraph examination to determine compliance with the conditions of supervision. The defendant shall remain in the program until successfully completed, or until such time as the defendant is released from the program by the Court and/or probation officer. The defendant shall pay for the costs associated with services rendered, based on a Court-approved sliding fee scale and the defendant's ability to pay. The defendant's financial obligation shall never exceed the total cost of services rendered. The Court directs the probation officer to approve the treatment provider and, in consultation with a licensed practitioner, the frequency and duration of counseling sessions, and the duration of treatment, as well as monitor the

defendant's participation, and assist in the collection of the defendant's copayment.

The defendant shall not have any contact with persons under the age of 18 of the same gender as the victim(s) of the offense or prior offense(s), unless in the presence of a responsible adult who is aware of the nature of the defendant's background and instant offense and who has been approved by the Court or probation officer. Exceptions include unintentional contact while at place of employment, traveling, or during family gatherings.

U.S. Probation Office Use Only

A U.S. Probation Officer has read and explained the conditions ordered by the Court and has provided me with a complete copy of this Judgment. Further information regarding the conditions imposed by the Court can be obtained from the probation officer upon request.

Upon a finding of a violation of a condition(s) of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

Defendant's Signature _____ Date _____

U.S. Probation Officer _____ Date _____

DEFENDANT: Jonathan Ericksen
CASE NUMBER: 4:21-cr-40035-JPG-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Restitution	Fine	AVAA Assessment*	JVTA Assessment**
TOTALS	$100.00	$-0-	$200.00	WAIVED	$-0-

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

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

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

Name of Payee	Total Loss***	Restitution Ordered	Priority or Percentage

☐ 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 judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 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 ☒ fine ☐ restitution.

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

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299
** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jonathan Ericksen
CASE NUMBER: 4:21-cr-40035-JPG-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A. ☐ Lump sum payment of $_____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B. ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D or ☒ F below; or

C. ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $_____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

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

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

F. ☒ Special instructions regarding the payment of criminal monetary penalties:
All criminal monetary penalties are due immediately and payable through the Clerk, U.S. District Court. Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be paid in equal monthly installments of $20 or ten percent of his net monthly income, whichever is greater. The defendant shall pay any financial penalty that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.

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
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 pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

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

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

2023 WL 4946723
Only the Westlaw citation is currently available.
United States Court of Appeals, Seventh Circuit.

UNITED STATES of America, Plaintiff-Appellee,
v.
Jonathan **ERICKSEN**, Defendant-Appellant.

No. 23-1342
|
Decided August 3, 2023
|
Submitted August 3, 2023 *

Appeal from the United States District Court for the Southern District of Illinois. No. 21-cr-40035-JPG, J. Phil Gilbert, *Judge.*

Attorneys and Law Firms

Casey Bloodworth, James M. Cutchin, Attorneys, Office of the United States Attorney, Benton, IL, for Plaintiff-Appellee.

Daniel G. Cronin, Attorney, Office of the Federal Public Defender, East St. Louis, IL, for Defendant-Appellant.

Before AMY J. ST. EVE, Circuit Judge, THOMAS L. KIRSCH II, Circuit Judge, DORIS L. PRYOR, Circuit Judge

ORDER

***1** Jonathan Ericksen was found guilty, after a jury trial, for attempted enticement of a minor. Ericksen sought acquittal on the basis that his "hypothesis of innocence" was consistent with the government's evidence—a standard that he recognizes is foreclosed by *Jackson v. Virginia*, 443 U.S. 307 (1979). Applying controlling precedent, the district court rightly concluded that a reasonable trier of fact could find beyond a reasonable doubt that Ericksen was guilty. We affirm.

At trial, the government introduced evidence that Ericksen exchanged sexually charged messages with an individual who he believed to be named "Lindsey." "Lindsey" turned out to be an undercover FBI agent. In their communications, "Lindsey" revealed that she was 15 years old. Undeterred, Ericksen made plans to meet her at her home and have sex with her while her mother was away. Ericksen drove from his home in Tennessee to the meeting point in Illinois. After arriving, Ericksen was stopped by FBI agents. He then agreed to a post-*Miranda* interview. During the interview, he admitted to agents that he had messaged "Lindsey" online and knew that she was 15 years old.

Ericksen was charged with attempted enticement of a minor, 18 U.S.C. § 2422(b), and a two-day trial was held. The government called three of the participating FBI agents to testify about the chats, the meeting plans, and the interview. After the close of the government's case, Ericksen moved for acquittal under Rule 29(a) of the Federal Rules of Criminal Procedure. He argued that, because he believed at times that "Lindsey" was only a fictitious 15-year old, he could not have attempted to knowingly induce a minor to engage in sexual activity—an element of the offense. The district court denied the motion. Ericksen did not present evidence and rested his case. The jury found him guilty.

Ericksen then renewed his Rule 29 motion for acquittal. This time, he argued that the evidence presented was insufficient under the "hypothesis of innocence" test, which requires the district court to enter an acquittal if the trier of fact could not reasonably conclude that the evidence is inconsistent with the hypothesis of the defendant's innocence. *See, e.g., United States v. Moya*, 721 F.2d 606, 609 (7th Cir. 1983). Ericksen conceded that this test had been rejected by the Supreme Court and this court, *Jackson*, 443 U.S. at 325; *Moya*, 721 F.2d at 610, but he argued that he wished to preserve the appeal for Supreme Court review.

The district court denied Ericksen's motion. The court explained that the hypothesis of innocence test was foreclosed by the Supreme Court's decision in *Jackson* and Seventh Circuit precedent. And in any event, there was ample evidence—Ericksen's interstate travel, his messages, and his admissions at his interview with agents—upon which the jury could convict him.

Ericksen states that the main purpose of this appeal is to preserve this issue for Supreme Court review. This he has done. *Jackson* rejected the hypothesis-of-innocence test; we remain bound by that decision. Until the Supreme Court revises its position, his arguments in this court are foreclosed. *See Grayson v. Schuler*, 666 F.3d 450, 453 (7th Cir. 2012).

***2** The judgment of the district court is AFFIRMED.

All Citations

Not Reported in Fed. Rptr., 2023 WL 4946723

Footnotes

* We granted the parties' joint motion to waive oral argument and have agreed to decide the case on the briefs and the record. FED. R. APP. P. 34(f).

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen
United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

FINAL JUDGMENT

August 3, 2023

Before

AMY J. ST. EVE, *Circuit Judge*
THOMAS L. KIRSCH II, *Circuit Judge*
DORIS L. PRYOR, *Circuit Judge*

No. 23-1342	UNITED STATES OF AMERICA, Plaintiff - Appellee v. JONATHAN ERICKSEN, Defendant - Appellant
Originating Case Information:	
District Court No: 4:21-cr-40035-JPG-1 Southern District of Illinois District Judge J. Phil Gilbert	

The judgment of the District Court is **AFFIRMED** in accordance with the decision of this court entered on this date.

Clerk of Court