based on *alienage*. It can only be discrimination based on national origin," and such discrimination is not prohibited "under [Section] 1981." *Id.* (emphasis in original). The majority unnecessarily creates a circuit split where one should not exist.

* * *

This is not an easy interpretive case, and I personally like the majority's conclusion better than mine. It's only natural to think that this sort of discrimination protection should be reciprocal—if noncitizens can't be discriminated against in favor of citizens, then surely citizens shouldn't be disadvantaged in favor of noncitizens. This reading is particularly appealing today, when conditions create more incentives to discriminate *against* citizens. Illegal border crossings have increased year over year since 2021, with almost two million encounters reported during the first half of this fiscal year alone. *See Nationwide Encounters*, U.S. Customs and Border Protection, https://www.cbp.gov/newsroom/stats/nationwide-encounters. Given that it is easier to pay such noncitizens lower wages, it's easy enough to see how this creates growing economic pressure to favor noncitizens over citizens. A statute that protects against this sort of discrimination may be what this country needs, but it isn't what Congress gave us in Section 1981. And it's not my role to transform this statute into what I wish it was. I therefore reluctantly dissent.

UNITED STATES of America, Plaintiff-Appellee,

v.

Angelo Corey STACKHOUSE, Defendant-Appellant.

No. 22-30177

United States Court of Appeals, Ninth Circuit.

Argued and Submitted December 4, 2023 Portland, Oregon

Filed June 27, 2024

Background: Defendant was convicted following bench trial in the United States District Court for the District of Montana, Susan P. Watters, J., of several counts related to the sexual abuse and mistreatment of minor and adult women, including kidnapping a minor and transporting a person across state lines with the intent to engage in illegal sexual activity. Defendant appealed.

Holdings: The Court of Appeals, Berzon, Circuit Judge, held that:

(1) kidnapping statute was valid exercise of Congress's power to regulate instrumentalities of interstate commerce as applied to defendant who used cellphone in furtherance of an intrastate offense;

(2) evidence was sufficient to support district court's finding defendant intended to commit sexual assault when he transported 19-year-old victim across state lines; and

(3) that defendant may not have had unconditional intent to commit sexual assault when he drove victim across state lines was sufficient to meet intent element of charge of transporting a person across state lines with intent to engage in illegal sexual activity.

Affirmed.

1. Criminal Law ⚿1139

An as-applied constitutional challenge to a statute is reviewed de novo.

2. Criminal Law ⚿1139

Court of Appeals reviews the sufficiency of the evidence supporting a conviction de novo.

3. Criminal Law ⚿260.11(2, 4)

For a challenge to the sufficiency of the evidence following a bench trial, the Court of Appeals reviews whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

4. Criminal Law ⚿260.4

No motion for acquittal is necessary in a bench trial in order to preserve for appeal a challenge to the sufficiency of the evidence.

5. Commerce ⚿82.6
Kidnapping ⚿13

Federal kidnapping statute was a valid exercise of Congress's power to regulate the instrumentalities of interstate commerce as applied to defendant convicted of a kidnapping that occurred entirely intrastate, in which he drove a ten-year-old girl to a hotel to photograph and sexually assault her, but during which defendant used a cellphone, which was an instrumentality of interstate commerce, in furtherance of the offense; kidnapping statute proscribed the use of an instrumentality of commerce in carrying out the kidnapping. U.S. Const. art. 1, § 8, cl. 3; 18 U.S.C.A. § 1201(a)(1).

6. Commerce ⚿5, 7(2)

There are three broad categories of activity that Congress may regulate under its commerce power: (1) channels of interstate commerce; (2) instrumentalities of interstate commerce; and (3) activities that substantially affect interstate commerce. U.S. Const. art. 1, § 8, cl. 3.

7. Commerce ⚿59

Telephones are instrumentalities of interstate commerce that fall within Congress's power to regulate commerce. U.S. Const. art. 1, § 8, cl. 3.

8. Commerce ⚿5

Congress's power under the Commerce Clause extends to instrumentalities of commerce because they are the ingredients of interstate commerce itself. U.S. Const. art. 1, § 8, cl. 3.

9. Commerce ⚿55

Congressional power to regulate the channels and instrumentalities of commerce includes the power to prohibit their use for harmful purposes, even if the targeted harm itself occurs outside the flow of commerce and is purely local in nature. U.S. Const. art. 1, § 8, cl. 3.

10. Commerce ⚿5

Congress's power under the Commerce Clause to regulate instrumentalities of commerce is not limited to statutes directly regulating instrumentalities of commerce. U.S. Const. art. 1, § 8, cl. 3.

11. Commerce ⚿82.6

The Commerce Clause permits Congress to regulate intrastate kidnappings in particular where an instrumentality of commerce is used intrastate. U.S. Const. art. 1, § 8, cl. 3; 18 U.S.C.A. § 1201(a)(1).

12. Commerce ⚿7(2)

Whether an activity is economic in nature is relevant to determining whether an activity has a substantial effect on interstate commerce, which is one category of activity that Congress may regulate under its commerce power, not to the separate category of instrumentalities of commerce. U.S. Const. art. 1, § 8, cl. 3.

13. Human Trafficking and Slavery ⚿22

The Mann Act, which in part prohibits the transportation of a person across state lines with intent to engage in illegal sexual activity, was adopted to address the conscription of women into prostitution. 18 U.S.C.A. §§ 2421, 2422, 2423, 2424.

14. Human Trafficking and Slavery ⚿33

To satisfy the intent element of the offense of the transportation of a person across state lines with intent to engage in illegal sexual activity, the government must prove beyond a reasonable doubt that a dominant, significant, or motivating purpose of the transportation of the individual was to engage in criminal sexual activity. 18 U.S.C.A. § 2421(a).

15. Human Trafficking and Slavery ⚿24

A conviction for the transportation of a person across state lines with intent to engage in illegal sexual activity does not require that criminal sexual activity in fact occurred. 18 U.S.C.A. § 2421.

16. Human Trafficking and Slavery ⚿33

Guilt under the Mann Act, which in part prohibits the transportation of a person across state lines with intent to engage in illegal sexual activity, turns on the purpose which motivates the transportation, not on its accomplishment. 18 U.S.C.A. §§ 2421, 2422, 2423, 2424.

17. Human Trafficking and Slavery ⚿107(9)

Evidence was sufficient to support district court's finding, after bench trial, that defendant intended to commit sexual assault when he transported 19-year-old victim from Montana to Colorado, where he sexually assaulted her, as required to convict defendant of transporting a person across state lines with intent to engage in illegal sexual activity; prior acts evidence was introduced of defendant's interactions with other women in similar circumstances, in which he forced women under the influence of drugs into sexual encounters using violence and coercion, during prior trip defendant plied victim with cocaine and alcohol and told her that she owed him sexual favors as repayment, and during charged trip he instructed her to perform sex acts with others against her wishes and engaged in non-consensual sex to punish her for disobeying his instructions. 18 U.S.C.A. § 2421(a); Colo. Rev. Stat. Ann. § 18-3-402(1)(a) (2020); Fed. R. Evid. 404(b).

18. Human Trafficking and Slavery ⚿105

A pattern of sexually assaultive conduct can support an inference of intent to commit sexual assault while traveling interstate before the assault, as would support a conviction for the transportation of a person across state lines with intent to engage in illegal sexual activity. 18 U.S.C.A. § 2421.

19. Criminal Law ⚿371.27

Evidence of prior acts may be introduced for the limited purpose of proving intent. Fed. R. Evid. 404(b).

20. Human Trafficking and Slavery ⚿33

That defendant may not have had an unconditional intent to commit sexual assault when he drove victim from Montana to Colorado, and instead may have intended to assault victim contingently if she did not fully comply with his demands in Colorado to have sex with another man and his wife in the way defendant directed, was sufficient to meet the intent element of charge of transporting a person across state lines with intent to engage in illegal sexual activity; the condition that victim have sex with defendant regardless of her consent was the kind of harm sought to be

prevented by the Mann Act. 18 U.S.C.A. § 2421(a).

21. Human Trafficking and Slavery ⚷33

The intent element of the offense of transporting a person across state lines with intent to engage in illegal sexual activity is not negated by requiring the victim to comply with a condition the defendant has no right to impose. 18 U.S.C.A. § 2421.

Appeal from the United States District Court for the District of Montana, Susan P. Watters, District Judge, Presiding, D.C. No. 1:21-cr-00035-SPW-1

Zeno B. Baucus (argued), Bryan T. Dake, and Tim Tatarka, Assistant United States Attorneys; Jesse A. Laslovich, United States Attorney; Office of the United States Attorney, District of Montana, Billings, Montana; for Plaintiff-Appellee.

Constance Van Kley (argued), Upper Seven Law, Helena, Montana, for Defendant-Appellant.

Before: Marsha S. Berzon, Jacqueline H. Nguyen, and Eric D. Miller, Circuit Judges.

OPINION

BERZON, Circuit Judge:

Angelo Corey Stackhouse was convicted after a bench trial on several counts related to the sexual abuse and mistreatment of minor and adult women, including kidnapping a minor and transporting a person across state lines with the intent to engage in illegal sexual activity. The kidnapping charge involved driving a ten-year-old girl to a hotel to photograph and sexually assault her, using a cellphone during the commission of the offense. The interstate transportation charge stemmed from travel with a nineteen-year-old woman from Montana to Denver, where Stackhouse sexually assaulted her. This opinion covers the kidnapping and transporting convictions, specifically: (1) whether Stackhouse's kidnapping conviction violates the Commerce Clause; and (2) whether there is sufficient evidence that Stackhouse intended to commit sexual assault when he travelled across state lines.[1]

We conclude that the application of the federal kidnapping statute to an intrastate kidnapping is constitutional where the defendant uses a cellphone—an instrumentality of interstate commerce—in furtherance of the offense. We further determine that Stackhouse's actions leading up to and during the trip to Denver established that he had the intent to commit illegal sexual activity when he transported the victim interstate, even if the intent was purportedly conditioned upon the victim's noncompliance with his demands.

We affirm the convictions.

I. Background

A. Factual Background

Stackhouse's convictions stem from the kidnapping and sexual assault of multiple women and young children between 2019 and 2020.

1. V.G.

In September 2020, Stackhouse picked up V.G., his girlfriend's 10-year-old sister, from her home in Billings, Montana, under the pretense of taking her to get her computer repaired. Rather than drive to the repair shop, he drove V.G. to a Dollar Store, where he purchased massage oil, and then to a local motel. After arriving at

1. Stackhouse appeals his conviction for kidnapping an Indian person within the boundaries of a reservation on evidentiary grounds. 18 U.S.C. §§ 1152, 1201(a)(1)–(2), 1201(g), and 3559(f)(2) (Count VI). We resolve that appeal in a memorandum disposition filed concurrently with this opinion.

the motel, Stackhouse called someone and said, "I got her in the room." Stackhouse then proceeded to set up a camera on the bedside table. He instructed V.G. to get undressed and rubbed oil over her, and then took photographs of her body. Stackhouse had a knife and Taser with him and told V.G., "If you scream no one's gonna hear you." He made V.G. perform oral sex, and then made her lie on top of him. As they were leaving the motel room, Stackhouse once again spoke with someone over the phone, telling them: "Okay. I'm finished. I got the footage." Cellphone data corroborated V.G.'s testimony about the timing and location of the incident.

2. Hannah

In May 2020, Stackhouse drove from Billings, Montana to Denver, Colorado with two women, Hannah and Breezy. Breezy asked Hannah, who was nineteen, to accompany her on the trip, and Hannah reluctantly agreed. The three consumed cocaine, supplied by Stackhouse, as they drove.

Once in Denver, the three met William O'Neill, Stackhouse's cocaine dealer, at a hotel. Stackhouse and O'Neill provided alcohol and more cocaine, which Stackhouse encouraged Hannah to consume even when she expressed a desire to stop. After Breezy and O'Neill left the room, Stackhouse suggested to Hannah that he expected her to have sex with him as payment for the trip and the drugs. Hannah reluctantly agreed because she was "scared" and "just wanted to go home," and because she felt that if she "didn't do what he wanted," she "didn't know . . . what was going to happen." Stackhouse refused to use a condom when asked. Stackhouse took a picture of Hannah's ID during the trip, which she suspected was "for leverage."

Several days after they returned to Billings, Stackhouse asked Hannah to meet him at a hotel, where they consumed cocaine and had sex. Hannah agreed to go "[b]ecause he had a picture of [her] ID." Stackhouse then invited Hannah to go with him on a second trip to Denver. She again agreed because he "had a picture of [her] ID, and he knew where [her] parents lived and that [she] lived with [her] parents . . . [and she] was scared."

Stackhouse again provided Hannah with cocaine on the drive to Denver. This time, they drove directly to O'Neill's house. There, Stackhouse instructed Hannah to have sex with O'Neill while Stackhouse watched. Hannah testified that "I obviously didn't want to, but what was I going to say?" A while later, after Hannah consumed more cocaine, Stackhouse instructed Hannah to "please [O'Neill] and his wife." Hannah had the "[s]ame reaction [she] had the last time," implying that she reluctantly complied. Afterwards, Hannah informed Stackhouse that she had allowed O'Neill to penetrate her against Stackhouse's instructions. Over her objections, Stackhouse anally penetrated her with an object, telling her "this is what happens when [she doesn't] listen to him." Stackhouse also took pictures, and possibly a video, of Hannah's naked body, "in case [she] was to turn on him, for his attorney."

The day after she returned from Denver, Hannah met Stackhouse at a hotel in Billings, because she "was still scared." They had sex and consumed more cocaine, and Stackhouse instructed her to stay the night at the hotel alone. Hannah complied, because she "didn't know if he was going to check on me and drive by."

Hannah testified that she was afraid of Stackhouse, that he forced her to go to Denver the second time, and that they had nonconsensual sex in Denver. She also testified that Stackhouse told her he always carried a gun with him, although she never saw him with it.

3. Other Sexual Acts

The government introduced evidence that Stackhouse sexually assaulted or threatened three other women. One woman testified that in September 2019, Stackhouse approached her at a bar and brought her to a hotel room while she was high on methamphetamine. Stackhouse punched her in the head, threatened to further harm her if she did not take off her clothes, sexually assaulted her, and told her that he was going to take her to North Dakota to sell her services as a prostitute. A second woman testified that she met Stackhouse at a hotel where he was distributing drugs. While she was high on methamphetamine and semi-conscious, Stackhouse raped her. A third woman testified that she received methamphetamine from Stackhouse at a hotel in the summer of 2020, after which Stackhouse told her that she "need[ed] to pay for the[ ] drugs somehow." After Stackhouse threatened her at gunpoint, she took off her clothes and got into the bed. Stackhouse then informed her that he was not going to rape her, but that he needed to "make sure [she wasn't] a snitch."

B. Procedural Background

Stackhouse was indicted on seven charges, including as relevant here the kidnapping of a person under the age of 18 (V.G.) using a means or instrumentality of interstate commerce, in violation of 18 U.S.C. §§ 1201(a)(1), 1201(g), and 3559(f)(2) (Count VII) and the transportation of a person (Hannah) across state lines with intent to engage in illegal sexual activity, in violation of 18 U.S.C. § 2421(a) (Count I).

Stackhouse waived his right to a jury trial. After a bench trial, the district court convicted Stackhouse on all seven charges. He now appeals his convictions on Counts I and VII.

II. Discussion

Stackhouse brings an as-applied challenge to his conviction under the federal kidnapping statute, arguing that the application of the statute to an intrastate kidnapping violates the Commerce Clause. With respect to his conviction for transportation across state lines with intent to engage in illegal sexual activity, he argues that there is insufficient evidence of the intent element of the crime.

[1–4] An as-applied constitutional challenge to a statute is reviewed de novo. *United States v. Mahon*, 804 F.3d 946, 950 (9th Cir. 2015). Although Stackhouse did not raise his constitutional challenge below, the government recognizes that he may raise the issue for the first time on appeal. *See United States v. Parker*, 761 F.3d 986, 991 (9th Cir. 2014).[2] We review the sufficiency of the evidence supporting a conviction de novo. *United States v. Johnson*, 874 F.3d 1078, 1080 (9th Cir. 2017). "For a challenge to the sufficiency of the evidence following a bench trial, we review 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *United States v. Laney*, 881 F.3d 1100, 1106 (9th Cir. 2018) (quoting *United States v. Atkinson*, 990 F.2d 501, 502–03 (9th Cir. 1993) (en banc)).[3]

2. *Parker* did not address what standard of review applies when a constitutional challenge is raised for the first time on appeal. Because the government does not argue that plain-error review applies, and because we would uphold Stackhouse's convictions under the less deferential de novo standard, we review his constitutional challenge de novo.

3. Stackhouse moved for acquittal at the close of the government's evidence, albeit on different grounds than those raised here. Although

A. The Kidnapping Statute and the Commerce Clause

1. As-Applied Challenge

[5] Stackhouse challenges his conviction for the kidnapping of V.G. on the ground that Congress lacks the power to criminalize a kidnapping occurring entirely intrastate, where the statute of conviction proscribes the use of an instrumentality of commerce in carrying out the kidnapping, but the kidnapping is not economic in nature and no effect upon interstate commerce is shown. The government maintains Stackhouse's conviction was a valid exercise of Congress's power to regulate the instrumentalities of interstate commerce.

[6] Article I, section 8 of the Constitution grants Congress the power "[t]o regulate commerce ... among the several states." *United States v. Lopez* identified "three broad categories of activity that Congress may regulate under its commerce power": (1) "channels of interstate commerce"; (2) "instrumentalities of interstate commerce"; and (3) "activities that substantially affect interstate commerce." 514 U.S. 549, 558–59, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995).

Stackhouse was convicted under the federal kidnapping statute, which imposes criminal penalties upon:

> Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away ... any person, ... when—
> the person is willfully transported in interstate or foreign commerce, ... or the offender travels in interstate or foreign commerce or uses the mail or any means, facility, or instrumentality of interstate or foreign commerce in committing or in furtherance of the commission of the offense.

18 U.S.C. § 1201(a)(1). The statute thus identifies three bases for federal jurisdiction: the transport of the victim across state lines, the movement of the offender interstate, or the use of instrumentalities of interstate commerce in committing or in furtherance of the offense.

The parties agree Stackhouse did not transport V.G. across state lines, nor did he otherwise travel in interstate commerce during the commission of the offense. The government contends that Stackhouse's conviction falls within the second *Lopez* category: use of instrumentalities of commerce—asserted to be the cellphone, car, and hotel—in furtherance of the kidnapping. We conclude that the application of § 1201(a) was constitutional with respect to Stackhouse's use of a cellphone, and so do not consider the other asserted instrumentalities of commerce.

[7] Stackhouse agrees that a cellphone is an instrumentality of interstate commerce, with good reason. "Telephones are instrumentalities of interstate commerce that fall within the second *Lopez* category." *United States v. Nader*, 542 F.3d 713, 717 (9th Cir. 2008). We have applied this principle equally to landlines and cellphones. *See United States v. Clayton*, 108 F.3d 1114, 1117 (9th Cir. 1997).[4]

the defense did not renew the motion after introducing its only witness, "no motion for acquittal is necessary in a bench trial in order to preserve for appeal a challenge to the sufficiency of the evidence." *Atkinson*, 990 F.2d at 503.

4. Courts have found that the transmission of a cellular signal engages interstate communications equipment. *See United States v. Weathers*, 169 F.3d 336, 342 (6th Cir. 1999) (upholding a conviction under the murder-for-hire statute where the use of a cellphone to conduct an intrastate call involved the transmission of interstate signals). Furthermore, under the federal wiretapping statute, 18 U.S.C. § 2518, cellular telephone service is considered to be a "wire communication," *see id.* § 2510(1), because "cellular telephone service, despite its apparent wireless nature, ... uses wire and cable connections to connect calls." *In re Application of the United States for an Ord. Authorizing Roving Interception of Oral Commc'ns*, 349 F.3d 1132, 1139 (9th Cir.

While recognizing that cellphones are instrumentalities of interstate commerce, Stackhouse contends, first, that Congress's commerce power under the second *Lopez* category does not reach statutes forbidding "the use of an instrumentality" to commit a separate offense. According to Stackhouse, § 1201(a) does not fall within the second *Lopez* category because what the statute regulates is kidnapping, not the instrumentality used to carry out the kidnapping. That proposition is contrary to the Supreme Court's modern Commerce Clause cases, this court's precedents, and the holdings of numerous cases from other federal courts of appeals, as well as the language of § 1201(a).

[8, 9] As to whether the use of a cellphone in furtherance of an intrastate crime is a sufficient basis under the Commerce Clause for a federal offense, *Lopez* emphasized that "Congress is empowered to regulate and protect the instrumentalities of interstate commerce ... even though the threat may come only from intrastate activities." 514 U.S. at 559, 115 S.Ct. 1624. Congress's power extends to instrumentalities of commerce because they "are the ingredients of interstate commerce itself." *Gonzales v. Raich*, 545 U.S. 1, 34, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005) (Scalia, J., concurring in the judgment). Forbidding the use of instrumentalities of commerce, including cellphones, to further intrastate crime, including kidnapping, is "regulat[ing]" one aspect of the device—its use in certain circumstances. U.S. const., art. I, sec. 8. As the Eleventh Circuit has explained:

> Plainly, congressional power to regulate the channels and instrumentalities of commerce includes the power to prohibit their use for harmful purposes, even if the targeted harm itself occurs outside the flow of commerce and is purely local in nature. Congress has repeatedly used this power to reach criminal conduct in which the illegal acts ultimately occur intrastate, when the perpetrator uses the channels or instrumentalities of interstate commerce to facilitate their commission.

United States v. Ballinger, 395 F.3d 1218, 1226 (11th Cir. 2005) (citations omitted).

[10] Our caselaw confirms that the second *Lopez* category is not limited to statutes directly regulating instrumentalities of commerce. In *United States v. Dela Cruz*, we upheld 18 U.S.C. § 844(e) as applied to a bomb threat conveyed via a phone call within a U.S. territory. 358 F.3d 623, 625 (9th Cir. 2004). That statute prohibits bomb threats made "*through the use* of the mail, telephone, telegraph, or other instrument of interstate or foreign commerce." 18 U.S.C. § 844(e) (emphasis added). What is regulated by § 844(e) is the use of a telephone or "other instrument" to make the threat. *Dela Cruz* upheld the statute as a valid exercise of Congress's power to regulate instrumentalities of commerce under *Lopez*. 358 F.3d at 625; *accord United States v. Corum*, 362 F.3d 489, 494–95 (8th Cir. 2004); *United States v. Gilbert*, 181 F.3d 152, 158–59 (1st Cir. 1999).

United States v. Nader is in accord. 542 F.3d at 717. *Nader* upheld convictions under the Travel Act, which prohibits the "use[of] the mail or any facility in interstate commerce, with intent to—(1) dis-

2003). Calls made via cellphone are transmitted via radio to a cell site, from which the signals travel over fixed links to a telephone switching station. S. REP. No. 99-541, at 9, 11 (1986). We need not decide whether the radio transmission alone would be a sufficient use of interstate communication facilities, but we note that radio communication has been subject to federal regulation almost from its inception. *See* Radio Act of 1927, ch. 169, 44 Stat. 1162.

tribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote ... any unlawful activity." 18 U.S.C. § 1952(a).[5] Like the bomb threat statute, the Travel Act regulates the *use of* instrumentalities of commerce to commit a distinct offense, not the instrumentality itself without regard to its use. The defendants in *Nader*, for example, were convicted based upon their use of phone calls to run a prostitution business. 542 F.3d at 715–16. The appellants, *Nader* said, "correctly d[id] not contest that Congress has the power to regulate intrastate telephone calls" used to further unlawful intrastate activity because "[t]elephones are instrumentalities of interstate commerce that fall within the second *Lopez* category." *Id.* at 717 (emphasis omitted). Both *Dela Cruz* and *Nader*, then, recognize that proscribing the use of telephones and other instrumentalities of commerce to commit or further intrastate crime is regulation of instrumentalities of commerce valid under *Lopez*'s second category.

The kidnapping statute provides that "[w]hoever ... *uses* the mail or any means, facility, or instrumentality of interstate or foreign commerce *in committing or in furtherance of the commission* of the offense" is subject to criminal penalties, 18 U.S.C. § 1201(a) (emphasis added), paralleling the language of the bomb threat statute and the Travel Act. The parallel language to that in *Dela Cruz* and *Nader* compels parallel results, leading us to conclude the kidnapping statute is valid under the Commerce Clause where a cellphone is used in committing or in furtherance of the kidnapping.[6]

Other circuits have similarly recognized that "as long as the instrumentality itself is an integral part of an interstate system, Congress has power, when necessary for the protection of interstate commerce, to include intrastate activities within its regulatory control." *Kerbs v. Fall River Indus., Inc.*, 502 F.2d 731, 738 (10th Cir. 1974), *abrogated on other grounds by Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 114 S.Ct. 1439, 128 L.Ed.2d 119 (1994). The Fifth Circuit in *United States v. Marek*, for example, reasoned that "[w]hen Congress regulates and protects under the second *Lopez* category, ... federal jurisdiction is supplied by the nature of the instrumentality or facility used, not by separate proof of interstate movement." 238 F.3d at 317. And in reviewing a conviction under 18 U.S.C. § 2422(b), prohibiting the use of "any facility or means" of interstate commerce to entice minors into sexual activity, the Eleventh Circuit noted that the Commerce Clause power "includes prohibiting the use of commercial instrumentalities for harmful purposes even if the targeted harm 'occurs outside the flow of commerce' and 'is purely local.' " *United States v. Faris*, 583 F.3d 756, 758–59 (11th Cir. 2009) (per curiam) (quoting *Ballinger*, 395 F.3d at 1226).

[11] Our conclusion that the Commerce Clause permits Congress to regulate intrastate kidnappings in particular where an instrumentality of commerce is

5. "Unlawful activity" under the Travel Act includes gambling, distribution of controlled substances, and prostitution, among other activities. 18 U.S.C. § 1952(b).

6. We note that neither *Nader* nor *Dela Cruz* required a showing that the transmission of the particular telephone call at issue was interstate rather than intrastate. No issue about the nature of the cellphone transmission or origin has been raised here. *See Nader*, 542 F.3d at 716; *Dela Cruz*, 358 F.3d at 625; *see also United States v. Giordano*, 442 F.3d 30, 38–41 (2d Cir. 2006); *United States v. Richeson*, 338 F.3d 653, 660–61 (7th Cir. 2003); *United States v. Marek*, 238 F.3d 310, 320 (5th Cir. 2001).

used intrastate also aligns with decisions of other courts of appeal. The Sixth Circuit has concluded that the commerce power extends to the intrastate use of a cellphone in committing an intrastate kidnapping. *United States v. Windham*, 53 F.4th 1006, 1011–13 (6th Cir. 2022). Similarly, the Tenth Circuit has upheld convictions under § 1201(a)(1) where the defendants used a cellphone, the Internet, and a GPS device to carry out a kidnapping intrastate. *United States v. Morgan*, 748 F.3d 1024, 1032 & n.8 (10th Cir. 2014).

[12] We conclude that the application of the kidnapping statute here falls within the second *Lopez* category. We therefore need not address Stackhouse's argument that the government was required to show that the kidnapping was economic in nature or had a substantial effect on interstate commerce. Whether an activity is "economic in nature" is relevant to determining whether an activity has a substantial effect on interstate commerce under *Lopez*'s third category, *see Taylor v. United States*, 579 U.S. 301, 306, 136 S.Ct. 2074, 195 L.Ed.2d 456 (2016); *United States v. Morrison*, 529 U.S. 598, 610–13, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000); *Lopez*, 514 U.S. at 559–60, 115 S.Ct. 1624, not to the "instrumentality of commerce" category. Where Congress regulates an instrumentality of commerce under the second *Lopez* category, "no further inquiry is necessary to determine that their regulation ... is within the Commerce Clause authority." *Clayton*, 108 F.3d at 1117. More specifically, "[b]ecause a telephone is an instrumentality of interstate commerce, no substantial effects inquiry is needed." *Dela Cruz*, 358 F.3d at 625; *see also Corum*, 362 F.3d at 494.

2. Sufficiency of the Evidence

Stackhouse contends that there is insufficient evidence that the kidnapping was economic in nature or had a substantial relation to interstate commerce. As we concluded above, because Stackhouse's conviction falls within the second *Lopez* category as a regulation of the instrumentalities of interstate commerce, the government was not required to prove that the kidnapping was economic in nature or had a substantial relation to interstate commerce.

Stackhouse does not argue that the government presented insufficient evidence that he used a cellphone, or any other instrumentality of commerce, "in committing or in furtherance of the kidnapping." 18 U.S.C. § 1201(a). We therefore do not consider that issue.

B. Transportation Across State Lines

Stackhouse next challenges his conviction under 18 U.S.C. § 2421(a), contending that there was insufficient evidence that he travelled interstate with the intent to commit sexual assault.

1. Intent Element

[13] Section 2421(a) applies to anyone who "knowingly transports any individual in interstate or foreign commerce ... with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so." 18 U.S.C. § 2421(a).[7]

7. The Mann Act, Pub. L. No. 61-277, ch. 395, 36 Stat. 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–24), was adopted to address the conscription of women into prostitution. *See Mortensen v. United States*, 322 U.S. 369, 377, 64 S.Ct. 1037, 88 L.Ed. 1331 (1944). Before it was amended in 1986, § 2421 prohibited the "knowing[] transport[ation] in interstate ... commerce ... [of] any woman or girl for the purpose of prostitution or debauchery ... or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute." *United States v. Sabatino*, 943 F.2d 94, 99 (1st Cir. 1991) (quoting ch. 395, 36 Stat. at 825). The 1986 amendments altered the statutory lan-

[14] To satisfy the intent element under § 2421(a), "the government must prove beyond a reasonable doubt that a dominant, significant, or motivating purpose of the transportation of the individuals was to engage in criminal sexual activity." *United States v. Flucas*, 22 F.4th 1149, 1164 (9th Cir. 2022). The criminal purpose need not be the "sole purpose" of the interstate travel, *id.* at 1155, nor a but-for cause of the transportation, *United States v. Lindsay*, 931 F.3d 852, 864 (9th Cir. 2019) (analyzing 18 U.S.C. § 2423(b)).

[15, 16] Contrary to the parties' assertions, a conviction under § 2421 does not require that criminal sexual activity in fact occurred. "[G]uilt under the Mann Act turns on the purpose which motivates the transportation, not on its accomplishment." *Cleveland v. United States*, 329 U.S. 14, 20, 67 S.Ct. 13, 91 L.Ed. 12 (1946). Because the act regulated is the "transport[ation of] any individual in interstate or foreign commerce," the offense is complete once the transportation occurs. *See Wilson v. United States*, 232 U.S. 563, 570–71, 34 S.Ct. 347, 58 L.Ed. 728 (1914); *United States v. Beach*, 324 U.S. 193, 195, 65 S.Ct. 602, 89 L.Ed. 865 (1945); *Reamer v. United States*, 318 F.2d 43, 49 (8th Cir. 1963); *United States v. Marks*, 274 F.2d 15, 18–19 (7th Cir. 1959).

[17] In any event, Stackhouse agrees that the government offered evidence that would support a conviction for illegal sexual activity under Colorado law with respect to the nonconsensual anal penetration he committed against Hannah.[8] His argument is that he did not form the intent to commit the assault, or any other illegal sexual act, before the interstate travel.[9] Instead, he asserts that he formed the intent to commit the assault immediately before it occurred—and after the interstate transportation was complete—when Hannah informed him that she had had penetrative sex with O'Neill against Stackhouse's instructions.

In appropriate circumstances, the fact that an assault later occurred could perhaps be sufficient by itself to permit an inference that a defendant intended to commit the offense before crossing a state line. We need not consider whether such a

guage to apply to "any individual," rather than "any woman or girl," and to alter the objects of the defendant's intent; rather than debauchery, the intended activity must be "prostitution, or ... any sexual activity for which any person can be charged with a criminal offense." *Id.* (quoting Pub. L. 99-628, § 5(b)(1), 100 Stat. 3511, 3511–12 (1986)). Both versions of the statute require intent to engage in illicit or criminal activity. Cases interpreting the intent element under the pre-1986 statute apply equally to the amended § 2421, as well as to the parallel provision under § 2423, which regulates the interstate transportation of minors with intent to engage in criminal sexual activity, among other offenses.

8. According to the government, Stackhouse could have been charged with criminal sexual assault under Colorado Revised Statute § 18-3-402(1)(a) (2013). At the time of the offense, § 18-3-402(1)(a) read: "Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if: The actor causes submission of the victim by means of sufficient consequence reasonably calculated to cause submission against the victim's will."

9. Although *Mortensen* stated that the intent must "exist before the conclusion of the interstate journey," 322 U.S. at 374, 64 S.Ct. 1037, we later "disapprove[d] of the use of [*Mortensen*'s] language relative to the time an unlawful intent must be formed," instead concluding that "[t]he preferable practice is to instruct that the unlawful intent must be formed before crossing a state line." *United States v. Fox*, 425 F.2d 996, 1000 (9th Cir. 1970). This timing distinction makes no difference here. Nothing in the record suggests that Stackhouse had a different state of mind when crossing into Colorado than he did at the conclusion of his journey at O'Neill's home.

bare inference is appropriate here, as the defendant's conduct both in the past and immediately before and after the interstate journey provides sufficient insight into his state of mind at the time of transportation to allow a finding beyond a reasonable doubt that Stackhouse intended Hannah's sexual assault when he drove into Colorado.

[18] For one thing, caselaw establishes that a pattern of sexually assaultive conduct can support an inference of intent to commit sexual assault while travelling interstate before the assault. In analyzing a conviction for transportation for the purpose of prostitution under § 2421, this court in *Baker v. United States* stated: "Among the circumstances which may be considered in determining whether such an intent existed ... are that there were other similar activities by the accused, showing a pattern of conduct, [and] that, at the end of the journey the female was taken by the accused to a house of prostitution." 310 F.2d 924, 931 (9th Cir. 1962) (internal citation omitted). In *United States v. Wesson*, we similarly concluded that the purpose element under § 2421 was met where the defendant repeatedly raped and beat the victim and offered her services as a prostitute over the radio while travelling by truck across state lines. 779 F.2d 1443, 1444 (9th Cir. 1986) (per curiam). And in *United States v. Kinslow*, we found sufficient evidence of the defendant's intent when transporting a minor across state lines to commit sexual misconduct upon arrival, in violation of § 2423, where the defendant sexually assaulted the minor victim's mother shortly before the act of transport. 860 F.2d 963, 967–68 (9th Cir. 1988), *overruled on other grounds by United States v. Brackeen*, 969 F.2d 827, 829 (9th Cir. 1992); *see also Tedesco v. United States*, 118 F.2d 737, 741–42 (9th Cir. 1941); *United States v. Snow*, 507 F.2d 22, 25 (7th Cir. 1974); *Marks*, 274 F.2d at 18; *Dunn v. United States*, 190 F.2d 496, 498 (10th Cir. 1951).

[19] Evidence of Stackhouse's interactions with other women similarly supports inferring his intent before arriving in Colorado to sexually assault Hannah. The government introduced testimony by three women whom Stackhouse sexually assaulted or threatened to assault in 2019 and 2020, under circumstances similar to those surrounding his interaction with Hannah.[10] All three encounters took place in hotel rooms and involved women under the influence of drugs, some provided by Stackhouse. Stackhouse suggested to one of the victims that she owed him sexual favors as repayment for the drugs. He threatened one woman at gunpoint, and indicated to another that he had a gun. Stackhouse raped one of the victims while she was unconscious, and another after threatening to beat her and to sell her into prostitution. The testimony provides ample evidence that Stackhouse repeatedly forced women into sexual encounters using violence and coercion. A factfinder could rely in part on such evidence to infer that Stackhouse had the intent of similarly engaging in nonconsensual sex with Hannah when he brought her to Denver.

Considered in the light most favorable to the prosecution, Stackhouse's actions

10. The government provided notice of its intent to introduce evidence of prior acts under Federal Rules of Evidence 404(b) and 413. Evidence of prior acts may be introduced under Rule 404(b) for the limited purpose of proving intent. *United States v. Ayers,* 924 F.2d 1468, 1473 (9th Cir. 1991). Under Rule 413, "a party may admit evidence of a sexual assault in order to prove that the defendant has the propensity to commit another sexual assault." *United States v. Redlightning,* 624 F.3d 1090, 1119–20 (9th Cir. 2010). The defense does not argue on appeal that such evidence was improperly admitted or challenge the constitutionality of Rule 413.

leading up to and during the second trip to Denver further support an inference of an intent to sexually manipulate, coerce, and control Hannah upon arrival. During the initial trip, Stackhouse plied the victim with cocaine and alcohol and told her that she owed him sexual favors as repayment. Hannah accompanied Stackhouse on the second trip to Denver because she felt "scared" of him, in part because he had taken a photo of her ID and knew where she lived. During the second trip, Stackhouse drove Hannah directly to O'Neill's house, where he instructed her to perform sex acts against her wishes. He then engaged in non-consensual sex as a form of punishment for disobeying his instructions related to Hannah's sexual interactions with others. Taken as a whole, a factfinder could conclude that Stackhouse's actions were calculated to coerce Hannah into sexual encounters against her will. That is, considering the context of the trip, it is "apparent that [Stackhouse] contemplated that the sex might not be consensual and that force would be necessary." *United States v. Bonty*, 383 F.3d 575, 578 (7th Cir. 2004) (upholding a conviction under § 2423).

2. Contingent Intent

[20] Even if Stackhouse intended when crossing into Colorado to sexually assault Hannah under some circumstances, Hannah's account of what happened—including that Stackhouse told her "this is what happens when [she doesn't] listen to him" before anally penetrating her—suggests that Stackhouse may have intended to sexually assault her only *if* she did not comply with his directions and demands. So the question arises whether to be convicted under § 2421, Stackhouse must have had an unconditional intent to commit a sexual crime when crossing the state line.

In *Holloway v. United States*, the Supreme Court recognized contingent intent as sufficient for a criminal conviction under the federal carjacking statute, 18 U.S.C. § 2119. *See* 526 U.S. 1, 6–8, 12, 119 S.Ct. 966, 143 L.Ed.2d 1 (1999). That statute criminalizes the forceful taking of a motor vehicle "with the intent to cause death or serious bodily harm." 18 U.S.C. § 2119. *Holloway* concluded that "a person who points a gun at a driver, having decided to pull the trigger *if the driver does not comply* with a demand for the car keys, possesses the intent, at that moment, to seriously harm the driver." 526 U.S. at 6, 119 S.Ct. 966 (emphasis added). To require the defendant to possess an *un*conditional intent to kill or harm "would improperly transform the *mens rea* element . . . into an additional *actus reus* component of the carjacking statute." *Id.* at 8, 119 S.Ct. 966.

The Court based its conclusion on the reasoning that "intent" is most naturally read to encompass conditional as well as unconditional intent, as well as on the overall purpose of the statute—to deter criminal activity—and the assumption that Congress would be familiar with the established principle that intent may be conditional. *Id.* at 7–9, 119 S.Ct. 966. Those justifications apply equally to the federal kidnapping statute.

The *Holloway* Court noted, in particular, that state courts have long upheld convictions based upon contingent intent. *Id.* at 10, 119 S.Ct. 966 & n.9. In *People v. Vandelinder*, a Michigan appellate court, for instance, upheld a conviction for solicitation to murder where the defendant instructed a hired kidnapper to kill his wife *if* she declined the terms of his demands. 192 Mich. App. 447, 450–51, 481 N.W.2d 787 (1992). In *Commonwealth v. Richards*, the Massachusetts Supreme Judicial Court similarly determined that an intent to murder "*should it become necessary* to effectuate the robbery or make good an escape" was sufficient for assault with intent to murder. 363 Mass. 299, 308, 293 N.E.2d

854 (1973) (emphasis added). In *People v. Miley*, a California appellate court upheld a conviction for solicitation to murder where the defendant gave an instruction to kill the witnesses *if they were home*, 158 Cal. App. 3d 25, 33–34, 204 Cal.Rptr. 347 (1984); and in *People v. Connors*, the Illinois Supreme Court approved of a conviction for assault with intent to murder of a union organizer who threatened to kill a worker *if* he did not walk off the job, 253 Ill. 266, 273, 280, 97 N.E. 643 (1912). The same principle has been adopted by the Model Penal Code (MPC), which specifies "[w]hen a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense." General Requirements of Culpability, Model Penal Code § 2.02(6). *See also* Del. Code Ann. tit. 11, § 254 (adopting similar language to the MPC); Haw. Rev. Stat. § 702-209 (same); 18 Pa. Stat. and Cons. Stat. Ann. § 302(f) (same).

[21] That principle applies here. On the evidence before us, Stackhouse's intent can arguably be characterized as an intent to have sex with Hannah without her consent if she did not comply with his demands and directions. The condition imposed was not one that "negatives the harm or evil sought to be prevented," Model Penal Code § 2.02, as the condition that the victim have sex with Stackhouse regardless of her consent is the kind of harm sought to be prevented by the Mann Act. The intent element is not negated "by requiring the victim to comply with a condition the defendant has no right to impose," *Holloway*, 526 U.S. at 11, 119 S.Ct. 966, here, the condition that she have sex with another man (and his wife) in the way Stackhouse directed. So the fact Stackhouse may not have had an unconditional intent to commit sexual assault when he drove Hannah to Colorado does not undermine a finding of intent under § 2421. *Accord Bonty*, 383 F.3d at 578.

The Seventh Circuit specifically so held in a closely parallel case. In *Bonty*, the defendant argued that he "only intended to have consensual sex with [the victim]" when crossing state lines, and that "it wasn't until *after* the [victim] unexpectedly declined his sexual advances" after he had arrived at his destination "that it occurred to him to use force." *Id.* Based on the circumstances of the encounter, the court, as noted earlier, concluded that the defendant had "contemplated that the sex might not be consensual and that force would be necessary." *Id.* Thus, the intent element of § 2421 was satisfied because the defendant "intended to have sex with [the victim] . . . either (1) with her consent, or (2) by force." *Id.*

In sum, that Stackhouse may have intended to assault Hannah contingently—if the victim did not fully comply with his demands—is sufficient to meet the intent element of § 2421. Combining the adequacy of contingent intent with the evidence the government introduced—establishing Stackhouse's pattern of assaultive behavior and prior interactions with other women, as well as his behavior leading up to and during his second trip to Denver with Hannah—there was sufficient evidence to convict Stackhouse of the § 2421 violation. We affirm that conviction.

III. Conclusion

We hold that the application of § 1201(a) to an intrastate kidnapping where the defendant uses a cellphone in furtherance of the offense is a valid exercise of Congress's authority to regulate the instrumentalities of interstate commerce. We further hold that the government presented sufficient evidence of the defendant's intent to commit sexual assault when he

transported the victim of his assault across state lines in violation of § 2421.

AFFIRMED.

UNITED STATES of America, Plaintiff-Appellee,

v.

Marietta TERABELIAN, aka Marietta Abelian, aka Viktoria Kauichko, Defendant-Appellant.

No. 21-50291

United States Court of Appeals, Ninth Circuit.

Argued and Submitted May 13, 2024 Pasadena, California

Filed June 27, 2024

Background: Defendant was convicted in the United States District Court for the Central District of California, Stephen V. Wilson, J., of conspiracy to commit bank and wire fraud, conspiracy to commit money laundering, and numerous counts of bank and wire fraud, and, after defendant removed her location-monitoring device and fled to Montenegro, was sentenced in abstenia to 72 months of imprisonment and held jointly and severally liable for $17.7 million in restitution. Defendant's attorneys filed appeal on her behalf. Government moved to dismiss appeal under the fugitive-disentitlement doctrine.

Holdings: The Court of Appeals, Gilman, Circuit Judge, sitting by designation, held that:

(1) justifications of deterrence, dignity of courts, and efficiency all supported dismissal of defendant's appeal pursuant to fugitive-disentitlement doctrine;

(2) trial court did not abuse its discretion in applying sophisticated-means sentencing enhancement; and

(3) trial court did not abuse its discretion in including fraudulently obtained $146,800 loan in restitution order.

Appeal dismissed.

1. Criminal Law ⚿42.7(3)

If a defendant's statements were compelled in violation of the Fifth Amendment, he is entitled to a *Kastigar* hearing, in which the government must demonstrate that the evidence it intends to introduce in a subsequent criminal proceeding is not tainted by exposure to the compelled statements. U.S. Const. Amend. 5.

2. Criminal Law ⚿1139, 1156.3, 1158.34

An appellate court reviews the district court's factual findings under the clear-error standard, its construction of the United States Sentencing Guidelines de novo, and its application of the Guidelines to the facts under the abuse-of-discretion standard.

3. Criminal Law ⚿1139

A restitution order's legality is reviewed de novo, as is the district court's valuation methodology.

4. Criminal Law ⚿1156.9, 1158.34

If a restitution order is within statutory bounds, then the restitution calculation is reviewed under the abuse-of-discretion standard, with any factual findings reviewed under the clear-error standard.

5. Criminal Law ⚿1158.34

A sentencing court's factual finding is "clearly erroneous" if it is illogical, implausible, or without support in the record.

See publication Words and Phrases for other judicial constructions and definitions.

6. Criminal Law ⚿1156.2

A sentencing court abuses its discretion when it fails to employ the appropriate legal standards, misapprehends the

NOT FOR PUBLICATION

FILED

JUN 27 2024

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. ANGELO COREY STACKHOUSE, Defendant-Appellant.	No. 22-30177 D.C. No. 1:21-cr-00035-SPW-1 MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Susan P. Watters, District Judge, Presiding

Argued and Submitted December 4, 2023
Portland, Oregon

Before: BERZON, NGUYEN, and MILLER, Circuit Judges.

Angelo Corey Stackhouse appeals his conviction for kidnapping an Indian person within the boundaries of a reservation, in violation of 18 U.S.C. §§ 1152, 1201(a)(1)–(2), 1201(g), and 3559(f)(2).[1] He contends that the district court erred

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[1] We address in a contemporaneously filed opinion Stackhouse's issues concerning convictions for kidnapping a minor using a means or instrumentality of interstate commerce, 18 U.S.C. §§ 1201(a)(1), 1201(g), and 3559(f)(2), and

in admitting the victim's text messages into evidence under the excited utterance exception to the hearsay rule. *See* Fed. R. Evid. 803(2). "We review the district court's decision to admit or exclude evidence for an abuse of discretion." *United States v. Edwards*, 235 F.3d 1173, 1178 (9th Cir. 2000).

A statement qualifies as an excited utterance if three conditions are met. *United States v. Alarcon-Simi*, 300 F.3d 1172, 1175 (9th Cir. 2002). First, "[t]here must be some occurrence, startling enough to produce this nervous excitement and render the utterance spontaneous and unreflecting." *Id.* (alteration in original) (emphasis and quotation marks omitted). Second, "[t]he utterance must have been before there had been time to contrive and misrepresent," that is, while still under the influence of the exciting event. *Id.* (alteration in original) (emphasis and quotation marks omitted). Third, "[t]he utterance must relate to the circumstances of the occurrence preceding it." *Id.* (alteration in original) (emphasis and quotation marks omitted). Stackhouse challenges only the second condition.

The district court did not abuse its discretion in admitting text messages sent by the victim to her cousin minutes after Stackhouse assaulted her. In assessing whether the excited utterance exception applies, we consider factors including "the age of the declarant, the characteristics of the event and the subject matter of the

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transporting a person interstate with intent to engage in illegal sexual activity, 18 U.S.C. § 2421(a).

statement," in addition to the statement's timing. *United States v. Rivera*, 43 F.3d 1291, 1296 (9th Cir. 1995). Here, the victim was 11 years old at the time of the incident, while Stackhouse was several decades older. Stackhouse lured the victim to a hotel room under false pretenses, where he forcefully kissed her, attempted to take off her pants, choked her, and threatened her with death. The victim sent the relevant messages, which concerned the assault and the victim's fear that Stackhouse would see her if she left the hotel room, within four minutes of Stackhouse leaving the hotel room. Finally, the cousin testified that the victim was visibly upset and crying when she appeared minutes after sending the messages. The record thus supports the conclusion that the victim was still "under the stress of excitement" caused by the assault when she sent the messages. *Alarcon-Simi*, 300 F.3d at 1175. The challenged evidence was properly admitted. For that reason, the defendant's conviction under Count VI is **AFFIRMED**.

UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA BILLINGS DIVISION

UNITED STATES OF AMERICA

v.

ANGELO COREY STACKHOUSE

JUDGMENT IN A CRIMINAL CASE

Case Number: CR 21-35-BLG-SPW-1
USM Number: **47021-048**
Timothy M. Bechtold
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) after a plea of not guilty	**1 through 7 of the Second Superseding Indictment**

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense	**Offense Ended**	**Count**
18:2421.F Transportation Of A Person With Intent To Engage In Illegal Sexual Activity	04/11/2021	1ss
21:841A=Nd.F and 859. Distribution Of Cocaine To Person Under The Age Of 21	04/11/2021	2ss
21:841A=Nd.F Distribution Of Cocaine and Methamphetamine	04/11/2021	3ss
21:841A=Nd.F Possession With Intent To Distribute Cocaine	04/11/2021	4ss
18:924C.F Possession Of A Firearm In Furtherance Of A Drug Trafficking Offense	04/11/2021	5ss
18:1201.F 1152, 1201(A)(2), 1201(G) and 3559(F)(2). Kidnapping	04/11/2021	6ss
18:1201.F 1152, 1201(A)(2), 1201(G) and 3559(F)(2). Kidnapping	04/11/2021	7ss

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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.

October 27, 2022
Date of Imposition of Judgment

Susan P. Watters
Signature of Judge

Susan P. Watters
United States District Judge
Name and Title of Judge

October 27, 2022
Date

DEFENDANT: ANGELO COREY STACKHOUSE
CASE NUMBER: CR 21-35-BLG-SPW-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: One-hundred and twenty (120) months on Count 1, twelve (12) months on Count 2, one-hundred and twenty (120) months on Count 3, one-hundred and twenty (120) months on Count 4, eighty-four (84) months on Count 5, lifetime imprisonment on Count 6, and lifetime imprisonment on Count 7, with all counts to run concurrent, with the exception of Count 5, which shall run consecutive, for a total term of lifetime imprisonment plus eighty-four (84) months.

☒ The court makes the following recommendations to the Bureau of Prisons:
(1) Defendant shall participate in the Bureau of Prisons' 500-hour Residential Drug Treatment Program (RDAP) if eligible.
(2) Defendant shall be placed at the Bureau of Prisons' facility at FCI Sheridan in Oregon for proximity to family.
(3) Defendant shall participate in residential sex offender treatment at the facility designated by the Bureau of Prisons.

☒ 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

DEFENDANT: ANGELO COREY STACKHOUSE
CASE NUMBER: CR 21-35-BLG-SPW-1

By: _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: three (3) years on Count 1, lifetime supervision on Counts 2, 3, 4, 6, and 7, and five (5) years on Count 5, all terms to run concurrent, for a total imposition of lifetime supervision.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. (*check if applicable*)
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. (*check if applicable*)
6. ☒ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. (*check if applicable*)
7. ☐ You must participate in an approved program for domestic violence. (*check if applicable*)

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

DEFENDANT: ANGELO COREY STACKHOUSE
CASE NUMBER: CR 21-35-BLG-SPW-1

STANDARD CONDITIONS OF SUPERVISION

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

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. 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 https://www.mtp.uscourts.gov/post-conviction-supervision.

Defendant's Signature _____ Date _____

DEFENDANT: ANGELO COREY STACKHOUSE
CASE NUMBER: CR 21-35-BLG-SPW-1

SPECIAL CONDITIONS OF SUPERVISION

1. Unless you receive prior written approval from the probation officer, you must not: knowingly reside in the home, residence, or be in the company of any child under the age of 18, go to or loiter within 100 yards of school yards, parks, playgrounds, arcades, or other places primarily used by children under the age of 18.

2. You must have no contact with victim(s) in the instant offense.

3. You may own or possess only one device that has access to online services as approved by the probation officer. If that device is not a phone, you may also possess one mobile phone that has no online capability or camera. You must obtain the approval of the probation officer prior to using any device. You must not own, possess, or use any additional devices, whether or not the device has access to online services, without the prior written approval of the probation officer. You shall not own, possess, or use more than one data storage device or media, without the prior written approval of the probation officer. Your approved devices must be capable of being monitored and compatible with monitoring hardware, software, or other technology approved by the probation officer. You must allow the probation officer to make unannounced examinations of all devices, hardware, software, which may include the retrieval and copying of all data from your computer, phone, tablet, or data storage device or media.

4. You must allow the probation officer to install software to restrict or monitor your devices access. You must pay part or all of the cost of monitoring, as directed by the probation officer.

5. You must not use any computer, phone, tablet, data storage device or media, to access sexually explicit materials as defined in these conditions nor to contact minors or gather information about a minor. You must not possess encryption or steganography software. You must provide records of all passwords, Internet service, and user identifications (both past and present) to the probation officer and immediately report changes. Immediately means within 6 hours. You must sign releases to allow the probation officer to access phone, wireless, Internet, and utility records.

6. You must participate in a program for mental health treatment as approved by the probation officer. You must remain in the program until you are released by the probation officer in consultation with the treatment provider. You must pay part or all of the costs of this treatment as directed by the probation officer.

7. You must comply with the sexual offender registration requirements for convicted offenders in any state in which you reside.

8. You must comply with violent offender registration requirements for convicted offenders in any state in which you reside.

9. You must submit to not more than six polygraph examinations per year as directed by the probation officer to assist in treatment, planning, and case monitoring. You maintain your Fifth Amendment rights during polygraph examinations and may refuse to answer any incriminating questions. You must pay part or all of the costs of these examinations as directed by the probation officer.

10. You must not knowingly acquire, possess, or view any materials depicting sexually explicit conduct as defined in 18 U.S.C. § 2256(2)(A), if the materials, taken as a whole, are primarily designed to arouse

sexual desire, unless otherwise approved by the probation officer in conjunction with your sex offender treatment provider. This condition applies to written stories, visual, auditory, telephonic, or electronic media, computer programs or services, and any visual depiction as defined in 18 U.S.C. § 2256(5). You must not knowingly patronize any place where sexually explicit material or entertainment is the primary item of sale, such as adult bookstores, clubs, or Internet sites, unless otherwise approved by the probation officer in conjunction with your sex offender treatment provider. You must not utilize 900 or adult telephone numbers or any other sex-related numbers, or on-line chat rooms that are devoted to the discussion or exchange of sexually explicit materials as defined above.

11. You must submit your person, residence, place of employment, vehicles, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, to which you have access, to a search at a reasonable time and a reasonable manner, with or without a warrant, by the United States Probation Office, or by any law enforcement officers upon the express direction of the United States Probation Office, with reasonable suspicion concerning a violation of a condition of supervision or unlawful conduct. Failure to submit to search may be grounds for revocation. You must warn any other occupants, adults, and minors that the premises may be subject to searches pursuant to this condition. You must allow seizure of suspected contraband for further examination.

12. You must enter and successfully complete a sex offender treatment program as approved by the probation officer. You are to remain in that program until released by the probation officer in consultation with the treatment provider. You must pay part or all of the costs of this treatment as directed by the probation officer.

13. You must abstain from the consumption of alcohol and are prohibited from entering establishments where alcohol is the primary item of sale.

14. You must participate in substance abuse testing to include not more than 365 urinalysis tests, not more than 365 breathalyzer tests, and not more than 36 sweat patch applications annually during the period of supervision. You must pay part or all of the costs of testing as directed by the probation officer.

15. You must participate in and successfully complete a program of substance abuse treatment as approved by the probation officer. You must remain in the program until you are released by the probation officer in consultation with the treatment provider. You must pay part or all of the costs of this treatment as directed by the probation officer.

16. You must not purchase, possess, use, distribute or administer marijuana, including marijuana that is used for recreational or medicinal purposes under state law.

17. You must not possess, ingest or inhale any psychoactive substances that are not manufactured for human consumption for the purpose of altering your mental or physical state. Psychoactive substances include, but are not limited to, synthetic marijuana, kratom and/or synthetic stimulants such as bath salts and spice.

18. You must not possess camera phones or electronic devices that could be used for covert photography without the prior written approval of the probation officer.

19. All employment must be approved in advance in writing by the probation officer. You must consent to third-party disclosure to any employer or potential employer.

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20. You must participate and successfully complete a psychosexual evaluation, which may include the use of visual response testing, as approved by the probation officer in consultation with the evaluator. You must pay part or all of the costs of the evaluation as directed by the probation officer. You must submit to not more than two polygraph examinations, as part of your required participation in a sex offense specific evaluation, to assist in determining risk, treatment needs, planning, and case monitoring. You maintain your Fifth Amendment rights during polygraph examinations and may refuse to answer any incriminating questions. You must pay part or all of the costs of each polygraph examination as directed by the probation officer.

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CRIMINAL MONETARY PENALTIES

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

	Assessment	JVTA Assessment**	AVAA Assessment*	Fine	Restitution
TOTALS	$700.00	$ 0.00	$ 0.00	$.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 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 the ☐ fine ☐ restitution
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

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

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SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payments of $ 700 due immediately, balance due

☐ not later than , or

☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or

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

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

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

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

F ☒ Special instructions regarding the payment of criminal monetary penalties:
Criminal monetary penalty payments are due during imprisonment at the rate of not less than $25.00 per quarter, and payment shall be through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk, United States District Court, James F. Battin Federal Courthouse, 2601 2nd Ave North, Ste 1200, Billings, MT 59101 or online at https://www.pay.gov/public/form/start/790999918. Please see www.mtd.uscourts.gov/criminal-debt for more information.

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.

o Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.

☐ The defendant shall pay the cost of prosecution.

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

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

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) 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.