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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-14786
Non-Argument Calendar

D.C. Docket No. 6:14-cr-00267-RBD-KRS-1.
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus
DENNIS MICHAEL WILKERSON,
Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

July 13, 2017

Before HULL, WILSON and JILL PRYOR, Circuit
Judges.

PER CURIAM.

After a jury trial, Dennis Michael Wilkerson was convicted of two counts of attempting to induce a minor to engage in sexual activity, in violation of 18 U.S.C. § 2422(b), and sentenced to 210 months' imprisonment. These convictions were based on evidence that

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on two occasions he negotiated with an FBI agent who was pretending to be a father to have sex with the father's fictional daughter. Wilkerson now appeals the sufficiency of the evidence supporting his convictions and the district court's calculation of his sentence using the Sentencing Guidelines.

He raises four challenges: First, he argues there was insufficient evidence to establish his intent or that he took a substantial step toward the offenses. Second, he contends there was insufficient evidence to establish that he attempted to induce a minor to engage in sexual activity prohibited by Florida law. Third, he challenges the district court's application of a two-level enhancement to his guidelines offense level for being convicted of multiple counts because, he alleges, his two putative victims were the same. Fourth, he challenges the court's application of a five-level enhancement to his guidelines offense level for engaging in a pattern of prohibited sexual conduct because, he argues, his statute of conviction cannot be the basis for such an enhancement.¹ After careful review, we reject each of these challenges as unfounded and affirm Wilkerson's convictions and sentence.

I. BACKGROUND

Wilkerson was indicted on two counts of attempting to induce a minor to engage in criminal sexual activity by means of interstate commerce, in violation of

¹ Wilkerson also filed a petition for an initial hearing *en banc*, which we hereby **DENY**.

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18 U.S.C. § 2422(b). These two counts were based on two separate interactions Wilkerson had with the same undercover agent.

First, in July 2015, Wilkerson responded by email to an advertisement by a father and daughter in Altamonte Springs, Florida looking for sexual encounters posted on the classified ad website Craigslist. The advertisement had been posted by FBI task force officer John McElyea, who was working undercover to prevent crimes against children. McElyea, posing as a 50 year old man named Bob Bjorn, replied to Wilkerson's email and explained that he had a 12 year old daughter who was interested in men and "roses," which McElyea later testified meant compensation. After some initial hesitancy, Wilkerson asked for a picture of the fictional minor and, when Bjorn would not provide that, her description. Wilkerson eventually asked how much it would cost to receive oral sex from the fictional minor. He then negotiated with Bjorn and agreed on a price of \$40 for oral sex. Wilkerson sought to meet immediately. Although Bjorn stated he and his daughter had a prior engagement, Wilkerson reached out twice more that day attempting to set up a meeting. Wilkerson offered to pay again the following day as long as they could meet that night. Over the next two days, Wilkerson traded messages with Bjorn attempting to schedule a meeting. Ultimately, the July conversation died without a meeting after Wilkerson and Bjorn exchanged a total of 39 messages.

Several months later, in October 2015, Wilkerson responded to a nearly identical advertisement posted

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by McElyea on Craigslist about a father and daughter in Kissimmee, Florida looking for “roses.” This time McElyea was operating under the alias James, again a 50 year old man. Wilkerson’s initial email requested oral sex, and he persisted in this request after James clarified that his daughter was 12. Wilkerson and James traded a total of 49 messages, eventually settling on a price and arranging a meeting. When Wilkerson arrived at the meeting place, he was arrested carrying the agreed-upon money. After his arrest, Wilkerson admitted to communicating with another father back in July in an attempt to have sexual contact with that man’s 12 year old daughter.

Wilkerson went to trial before a jury. At trial, the district court took judicial notice of Florida Statutes § 800.04(4)(a), which criminalizes lewd and lascivious battery. Based on this statute, the court instructed the jury that engaging in sexual activity, which it defined to include oral sex, with a person between the ages of 12 and 16 was a crime under Florida law. The jury convicted Wilkerson on both counts.

At sentencing, the district court calculated Wilkerson’s advisory guidelines range as 210 to 262 months’ imprisonment based on an offense level of 32 and a criminal history category of I. The court arrived at this offense level by applying a two-level enhancement because Wilkerson was convicted of multiple counts and a five-level enhancement because Wilkerson engaged in a pattern of activity involving prohibited sexual conduct. Ultimately, the court sentenced Wilkerson to 210

months' imprisonment followed by eight years of supervised release. Wilkerson filed this appeal.

II. STANDARDS OF REVIEW

We review the sufficiency of the evidence *de novo*. *United States v. Hunt*, 187 F.3d 1269, 1270 (11th Cir. 1999). The evidence is sufficient to support a conviction if “any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Id.* (internal quotation marks omitted). We view “the evidence in the light most favorable to the government and draw[] all reasonable inferences and credibility choices in favor of the jury’s verdict.” *United States v. Boffil-Rivera*, 607 F.3d 736, 740 (11th Cir. 2010) (internal quotation marks omitted).

With respect to the Sentencing Guidelines, we review “purely legal questions *de novo*, a district court’s factual findings for clear error, and, in most cases, a district court’s application of the guidelines to the facts with ‘due deference.’” *United States v. Rodriguez-Lopez*, 363 F.3d 1134, 1136-37 (11th Cir. 2004). When reviewing a district court’s application of a guidelines provision to the facts, “due deference” is tantamount to clear error review. *See United States v. White*, 335 F.3d 1314, 1318-19 (11th Cir. 2003). For a finding to be clearly erroneous, we “must be left with a definite and firm conviction that a mistake has been committed.” *Rodriguez-Lopez*, 363 F.3d at 1137 (internal quotation marks omitted). Whether charges should have been grouped together for guidelines purposes is “primarily”

a question of law that we review *de novo*, but to the extent it involves the application of the guidelines to the facts of the case, the district court's fact findings should be reviewed with due deference. *United States v. Williams*, 340 F.3d 1231, 1243-44 (11th Cir. 2003).

III. DISCUSSION

A. Sufficiency of the Evidence

1. The evidence established that Wilkerson intended to induce a minor and took a substantial step toward doing so on two occasions.

The government elicited sufficient evidence to uphold both of Wilkerson's convictions. Because Wilkerson was convicted under the attempt clause of the statute, the government needed to prove that he intended to commit the crime and took a substantial step toward that goal. Here it proved both elements for both of the convictions. First, the government proved Wilkerson's intent by showing that he negotiated in each case with an adult intermediary. Wilkerson attempts to distinguish his communications from those of defendants whose § 2422(b) convictions we have upheld previously, but Wilkerson's communications plainly were intended to cause the fictional minors to have sex with him, which is all the statute requires. Second, by eliciting testimony of the extensive negotiations between Wilkerson and the fictional father over the cost and logistics of Wilkerson's desired sexual encounters, the government proved that Wilkerson took

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substantial steps toward the commission of both crimes. Wilkerson challenges much of the government's substantial step evidence as irrelevant, but we disagree and conclude that even without the evidence he challenges, the government elicited sufficient evidence to support Wilkerson's convictions.

Section 2422(b) states:

Whoever, using the mail or any facility or means of interstate or foreign commerce . . . 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). The attempt clause of the statute can be violated when the defendant communicates with a government agent pretending to be an adult intermediary, rather than a minor, so long as the defendant believes he is communicating with an adult intermediary. *United States v. Murrell*, 368 F.3d 1283, 1286-88 (11th Cir. 2004). In order to show a violation of § 2422(b)'s attempt clause, the government must prove two things: specific intent to induce a minor to engage in unlawful sex and a substantial step toward that goal. *Id.* at 1286.

Sufficient evidence supported Wilkerson's two attempt convictions. First, the government proved that Wilkerson "using the internet, acted with a specific

intent to . . . induce . . . a minor to engage in unlawful sex.” *Id.* at 1286. Specific intent is key because “[t]he underlying criminal conduct that Congress expressly proscribed in passing § 2422(b) is the persuasion, inducement, enticement, or coercion of the minor rather than the sex act itself.” *Id.* In *Murrell*, we found sufficient evidence of this specific intent where the defendant negotiated online to pay \$300 to an undercover officer that he believed was a father to have sex with the father’s fictional daughter. 368 F.3d at 1285-86. Likewise, Wilkerson negotiated over email in both July and October with a person he believed to be a father acting as an adult intermediary to set a price for receiving oral sex from a minor. Both times, Wilkerson and the adult intermediary settled on a price for the sex act and attempted to arrange a meeting with the minor. As in *Murrell*, Wilkerson never communicated directly with the fictional minor but did “communicate[] with an adult who he believed to be the father of a” minor “who presumably exercised influence over the girl.” *Id.* at 1287. So here, as in *Murrell*, the defendant’s “agreement with the father, who was acting as an agent or representative, implied procuring the daughter to engage in sexual activity.” *Id.* Accordingly, the evidence was sufficient to prove that Wilkerson acted with the specific intent to induce a minor to engage in unlawful sex.

Wilkerson insists that his case is distinguishable from *Murrell* and other similar cases because here there was no evidence that he intended through his communications to persuade a minor to have illicit sex

with him. Specifically, Wilkerson contends that he never requested that any messages be passed on to the fictional minors, never participated in any grooming behavior, never made any promises to the minors, and offered nothing of value in excess of the required payment. But none of that is necessary to sustain a conviction. As this Court explained in *Murrell*, the statute prohibits both persuading and inducing a minor to engage in criminal sexual activity, and the terms carry different meanings. *See id.* at 1287. We defined “induce” as “to stimulate or cause.” *Id.* Here, Wilkerson negotiated, offered money, and attempted to arrange meetings with the minor, all of which the jury reasonably could have concluded were motivated by the specific intent to cause the fictional minors to have sex with him. This evidence of Wilkerson’s intent was sufficient to support his convictions.

Second, the government proved that Wilkerson took a substantial step toward causing both of the fictional minors to assent. This proof must be in the form of “objective acts [that] mark [Wilkerson’s] conduct as criminal such that his acts as a whole strongly corroborate the required culpability.” *Id.* at 1288. Whether a given act or course of conduct was a substantial step towards the offense “is a question of fact that will vary from case to case.” *United States v. Rothenberg*, 610 F.3d 621, 627 (11th Cir. 2010). We must consider the “totality” of the defendant’s conduct in making this determination. *United States v. Yost*, 479 F.3d 815, 820 (11th Cir. 2007).

Communications soliciting sexual activity can constitute a substantial step toward a violation of § 2422(b) even without further overt action. *Rothenberg*, 610 F.3d at 626-27. In *United States v. Lee*, 603 F.3d 904 (11th Cir. 2010), for example, we affirmed a conviction under § 2422(b)'s attempt clause based on the defendant's chat room and telephone conversations with an undercover agent posing as the mother of two daughters. *Id.* at 917-18. In *Lee*, the defendant initiated contact with the putative mother, asked if he could meet her daughters soon, sent a photograph of his genitalia to be shared with the daughters, gave his telephone number, spoke with the mother on the telephone about when and how he could travel to meet the girls, and promised to send gifts to the girls, among other communications. *Id.* at 916-17. We held that "these acts, taken as a whole, allowed the jury to find that [the defendant's] conduct was criminal." *Id.* at 917 (internal quotation marks omitted). Similarly, in *Yost*, this Court upheld two convictions under § 2422(b)'s attempt clause, one of them based solely on communications. 479 F.3d at 816-17. There, the defendant chatted online with a fictional 13 year-old girl, asked her questions about her appearance, posted a picture of his genitalia, asked if she would perform oral sex on him, spoke with her on the phone, and arranged a meeting that the defendant ultimately did not attend. *Id.* at 817. Assessing these actions as a whole, we concluded that the defendant "crossed the line from mere 'talk' to inducement" such that "a reasonable jury could have found [the defendant] committed a substantial step." *Id.* at 820.

We conclude that a rational jury could have found that Wilkerson took a substantial step toward each of his § 2422(b) violations. In July, Wilkerson exchanged 39 messages with a fictional father negotiating for the father's daughter to perform oral sex on Wilkerson for payment. After learning her age, Wilkerson asked for the girl's picture and her description. Once they settled on a price, Wilkerson tried to arrange a meeting several times in one day and then several times in subsequent days. Wilkerson even offered to pay for a second sex act the following day if they could meet when he wanted. In October, Wilkerson and a fictional father exchanged 49 messages negotiating for the father's daughter to perform oral sex on Wilkerson. Once again, Wilkerson tried multiple times to arrange a meeting, and this time succeeded in setting one up. He showed up to the meeting and was arrested carrying the agreed-upon money. Taken as a whole, we conclude that these acts marked Wilkerson's conduct as criminal and crossed the line from mere talk to inducement. The jury therefore reasonably could have concluded that Wilkerson took the substantial step required for each of his § 2422(b) violations.

Wilkerson contends that the government failed to prove that he took substantial steps toward securing the fictional minors' assent because it focused on conduct that could not have been in furtherance of § 2422(b). He emphasizes that the conduct this statute targets is inducing a minor to engage in illegal sex *through means of interstate commerce*. He argues that any preparations for a physical encounter such as

arranging a meeting or traveling to it cannot be a substantial step toward that goal because the crime must be accomplished through means of interstate commerce. That is, Wilkerson argues that the actual inducement must take place via the internet or telephone, so any substantial step toward an attempted inducement must also be via the internet or telephone. But as the government points out, this Court frequently has listed travel as a substantial step toward attempted inducement. *See, e.g., United States v. Farley*, 607 F.3d 1294, 1334 (11th Cir. 2010) (noting that the defendant’s “trip to Atlanta to meet the mother and child was not the only step he took”); *Yost*, 479 F.3d at 820 (highlighting as substantial steps that defendant “arranged to meet [the minor] and traveled to the meeting spot”); *Murrell*, 368 F.3d at 1288 (listing among substantial steps defendant’s two-hour journey to meet minor girl for sex). Further, our focus in conducting the substantial step inquiry is whether Wilkerson’s acts, taken as a whole, marked his conduct as criminal. *See Murrell*, 368 F.3d at 1288. Even if traveling to a meeting was not itself in furtherance of inducing a minor via means of interstate commerce to engage in criminal sexual activity, that travel certainly corroborates the criminal nature of the earlier communications between Wilkerson and the fictional father. That is, in light of the fact that Wilkerson actually traveled to meet the putative minor, his earlier communications with the fictional father negotiating a price for that minor to perform sexual activity became all the more clearly criminal in nature. And in any event, a jury reasonably could have concluded that the

communications with the fictional fathers alone amounted to substantial steps toward the commission of each crime. The government therefore elicited sufficient evidence to uphold Wilkerson's convictions.

2. The evidence established that the sexual activity Wilkerson attempted to induce a minor to perform was prohibited by Florida law.

A reasonable jury could have found that Wilkerson attempted to induce the fictional minors to engage in criminal sexual activity, as required for a § 2422(b) conviction. First, the evidence discussed above supported a finding that Wilkerson attempted to induce the fictional minors to perform oral sex on him. Second, the district court properly instructed the jury that oral sex with a girl of the fictional girls' age would have violated Florida law.² Wilkerson argues that his conduct did not violate Florida law because there was no child involved. But § 2422(b) requires only that the conduct he attempted to induce must violate the law, which was the case here.

² At trial and on appeal, Wilkerson framed his argument that there was no possible Florida law violation as a challenge to the indictment. But "[t]here is no summary judgment procedure in criminal cases. Nor do the rules provide for a pre-trial determination of sufficiency of the evidence." *United States v. Salman*, 378 F.3d 1266, 1268 (11th Cir. 2004) (citation omitted). We therefore consider his argument a challenge to the sufficiency of the evidence underlying both convictions.

First, there was ample evidence that Wilkerson attempted to induce the fictional minors to perform oral sex on him. In July, Wilkerson raised the prospect of receiving a “BJ,” which McElyea testified stands for “blow job” or oral sex, after learning that the fictional minor was 12 years old. Trial Tr. 55 (Doc. 139).³ After some haggling, the fictional father clarified that it would cost “\$40 for a blow job now.” *Id.* at 59. Several days later, the fictional father asked Wilkerson, “So what would you be down for?” *Id.* at 63. Wilkerson responded, “Probably just BJ.” *Id.* In October, Wilkerson initiated the conversation in response to a different ad with the question “How about a BJ?” *Id.* at 70. After learning that this new fictional minor was 12 years old, Wilkerson responded, “I’m just looking for a BJ.” *Id.* at 72. The fictional father followed up, asking Wilkerson if he “ever had a BJ from a 12-year-old” because he did not want Wilkerson “to get stage fright and not wanna pay up.” *Id.* at 73. Wilkerson responded, “I have not. It all depend on if she looks and acts mature. But I’m sure I’ll be fine.” *Id.* at 74. This evidence was more than sufficient for a jury to conclude that Wilkerson attempted to induce the minors to perform oral sex on him.

Second, the district court properly instructed the jury that oral sex between Wilkerson and a 12 year old would have violated Florida law. At trial, the district court took judicial notice of Florida Statutes § 800.04(4)(a), which criminalizes lewd and lascivious battery, and instructed the jury that engaging in

³ “Doc.” refers to the numbered docket entries in the district court record of the case.

sexual activity (including oral sex) with a person between the ages of 12 and 16 was a crime under Florida law. District courts are entitled to take judicial notice of state law and instruct the jury on it. *See United States v. Clements*, 588 F.2d 1030, 1037 (5th Cir. 1979);⁴ *see also United States v. Davila-Nieves*, 670 F.3d 1, 7-8 (1st Cir. 2012) (calling it “proper for the district court to take judicial notice of the [state] statute” and “explain the relevant state law to the jury” in a § 2422 case). Florida Statutes § 800.04(4)(a) provides that

[a] person commits lewd or lascivious battery by: 1. Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or 2. Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

Fla. Stat. § 800.04(4)(a). “Sexual activity” is defined as “the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object.” *Id.* § 800.04(1)(a). Under its plain language, § 800.04(4)(a) criminalizes engaging in sexual activity (including oral sex) with a person between the ages of 12 and 16. The district court’s instruction was therefore correct as a matter of law.

⁴ Decisions of the former Fifth Circuit rendered prior to close of business on September 30, 1981 are binding on this Court. *See Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

Combining its finding that Wilkerson attempted to induce the fictional minors to perform oral sex on him with the district court's instruction that oral sex between Wilkerson and the fictional minors would have violated Florida law, a rational jury could have found that Wilkerson attempted to induce the fictional minors to engage in "sexual activity for which any person can be charged with a criminal offense." 18 U.S.C. § 2422(b).

Wilkerson contends that this finding was incorrect as a matter of law because soliciting an adult to commit lewd or lascivious conduct is not illegal under Florida Statutes § 800.04(4)(a). He cites Florida case law for the proposition the person actually solicited must be under 16 years old and that it is not enough for a defendant to believe the victim is under 16. But we need not examine this Florida case law because Wilkerson's argument misconstrues § 2422(b).

Section 2422(b) criminalizes the persuasion, inducement, enticement, or coercion of the minor and not the sex act itself. *Murrell*, 368 F.3d at 1286. It also expressly criminalizes attempts to persuade, induce, entice, or coerce the minor. *United States v. Lanzon*, 639 F.3d 1293, 1299 (11th Cir. 2011). Therefore, § 2422(b) may impose criminal liability even if the defendant's conduct does not actually violate the state statute. *See id.* at 1298-99. If the government presents sufficient evidence that the defendant would have violated the state statute if he had completed the sex act he attempted to induce, then the government has proven a violation of § 2422(b). *See id.* at 1299. Here, Wilkerson

attempted to induce two fictional 12 year olds to perform oral sex on him. Had that sexual act been completed, it would have violated § 800.04(4)(a). So there was sufficient evidence to support the jury's verdict.

B. Application of the Sentencing Guidelines

1. The district court correctly applied an enhancement to Wilkerson's guidelines range for being convicted of multiple counts.

The district court applied a two-level enhancement to Wilkerson's offense level because he was convicted of multiple counts. Wilkerson argues that this enhancement was improper because there was only one fictional victim, so the counts should have been grouped together for sentencing purposes. If the counts had been grouped, the multiple count enhancement would not have applied. But the evidence supports the district court's decision not to group the two counts together because there were two fictional victims; we thus affirm.

The Sentencing Guidelines generally require that a defendant convicted of multiple counts of the same or different crimes be assessed a combined offense level calculated based on the individual offense levels of each count. *See generally* U.S.S.G. § 3D1.1. When a defendant is convicted of two equally serious counts – that is, two counts carrying the same offense level – the guidelines provide that the combined offense level

will be the offense level of one of those counts plus two. *See id.* § 3D1.4. Wilkerson, for example, was convicted of two counts of 18 U.S.C. § 2422(b), each of which has an offense level of 30.⁵ Adding two levels for the second equally severe conviction, his combined offense level for these two counts is 32. The district court applied this two-level multiple count enhancement in determining Wilkerson's sentence.

Some counts are so closely related, however, that the guidelines require them to be grouped together before a combined offense level is calculated. *See id.* § 3D1.2. The guidelines direct courts to calculate an offense level for each group of closely related counts before combining those groups under the procedure explained above. *See id.* § 3D1.3. Where multiple counts involve the same victim and either the same act or multiple acts connected by a common objective, the guidelines provide that the offense level for the group of counts is the same as the offense level for the most serious of those counts. *Id.* § 3D1.3(a). If Wilkerson's two § 2422(b) convictions were grouped because they involved the same victim and common objective, for example, the offense level for the grouped counts would be 30. Because those counts would be grouped and

⁵ The base offense level for an 18 U.S.C. § 2422(b) violation is 28. U.S.S.G. § 2G1.3(a)(3). The district court added two levels to the base offense level of each count because each count involved the use of a computer. *See id.* § 2G1.3(b)(3)(B). The district court overruled Wilkerson's objection to the application of this specific offense characteristic at sentencing, and Wilkerson does not appeal that ruling. Each of his § 2422(b) violations therefore has an offense level of 30.

Wilkerson was convicted of no other crimes, the two-level multiple count enhancement would not apply. *See id.* § 3D1.4 cmt. n.1⁶ (“Application of the rules . . . may produce a single Group of Closely Related Counts. In such cases, the combined offense level is the level corresponding to the Group.”).

Wilkerson argues that the district court should have grouped his counts together because they involved the same fictional victim. There is some evidence to that effect. Both the July and October communications took place using Craigslist, spoke of a 50 year-old father and 12 year-old daughter, and used the term “roses” to mean money. But there is also evidence to the contrary. The communications were sent under two different aliases and referenced two different Florida locations. And evidence at trial indicated that Wilkerson himself believed the two fictional 12-year olds to be different: An agent testified that when Wilkerson was arrested as a result of the October communications he admitted having previously talked to another father about having sexual contact with his 12 year-old daughter. Given this evidence, the district court did not clearly err in accepting the probation office’s finding that there were two separate victims; thus, the court did not err refusing to group Wilkerson’s two counts or in applying a two-level multiple-count enhancement to his sentence.

⁶ The commentary to the guidelines is authoritative. *See* U.S.S.G. § 1B1.7; *see also Stinson v. United States*, 508 U.S. 36, 38 (1993).

2. The district court correctly applied an enhancement to Wilkerson's guidelines range for engaging in a pattern of prohibited sexual conduct.

The district court also applied a five-level enhancement to Wilkerson's offense level because he engaged in a pattern of activity involving prohibited sexual conduct. The court based this enhancement on Wilkerson's two convictions for attempted inducement. Wilkerson argues that these convictions cannot serve as predicates for the enhancement, but this argument is foreclosed by statutory language. He also contends that there is insufficient evidence supporting one of his convictions, but we disagree. We therefore affirm the district court's application of the pattern of activity enhancement.

U.S.S.G. § 4B1.5(b)(1) requires a five-level increase in the defendant's offense level

[i]n any case in which the defendant's instant offense of conviction is a covered sex crime, neither [the career-offender enhancement in] § 4B1.1 nor [the repeat-offender enhancement in § 4B1.5(a)] . . . applies, and the defendant engaged in a pattern of activity involving prohibited sexual conduct.

U.S.S.G. § 4B1.5(b)(1). Because the district court applied neither the career-offender nor repeat-offender enhancements, this pattern of activity enhancement applies if Wilkerson's offense of conviction was a covered sex crime and he engaged in a pattern of activity involving prohibited sexual conduct.

First, Wilkerson’s 18 U.S.C. § 2422(b) convictions were “covered sex crime[s].” An application note defines a “covered sex crime” to include “an offense, perpetrated against a minor, under . . . chapter 117 of . . . title [18]. . . .” U.S.S.G. § 4B1.5 cmt. n.2(A)(iii). “[A]n attempt or a conspiracy to commit” such an offense is also a covered sex crime. *Id.* § 4B1.5 cmt. n.2(B). Section 2422, which Wilkerson was convicted of violating, is within chapter 117 of title 18, *see* 18 U.S.C. § 2422, meaning his offenses of conviction were covered sex crimes.

Second, Wilkerson engaged in the requisite pattern of activity. “[T]he defendant engaged in a pattern of activity involving prohibited sexual conduct if on at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor.” *Id.* § 4B1.5 cmt. n.4(B)(i). “Prohibited sexual conduct” includes “any offense described in 18 U.S.C. § 2426(b)(1)(A).” *Id.* § 4B1.5 cmt. n.4(A). As relevant here, that includes offenses under chapter 117 of title 18. 18 U.S.C. § 2426(b)(1)(A). Once again, Wilkerson’s § 2422 convictions fall within chapter 117. *See id.* § 2422. These convictions are therefore “prohibited sexual conduct.” Because Wilkerson has two § 2422 convictions, he engaged in a pattern of activity involving prohibited sexual conduct.⁷ The district court properly applied a

⁷ The fact that the enhancement is based entirely on the offenses of conviction is of no moment. An application note provides that “[a]n occasion of prohibited sexual conduct may be considered for purposes of” the two-level pattern of activity enhancement “without regard to whether” it “occurred during the course of the instant offense.” U.S.S.G. § 4B1.5 cmt. n.4(B)(ii).

five-level pattern of activity enhancement to Wilkerson's offense level.

Wilkerson challenges the application of this enhancement on two grounds. First, he argues that chapter 117 offenses like his are not included within the definition of prohibited sexual conduct. This argument is plainly foreclosed by the text of 18 U.S.C. § 2426(b)(1)(A), which references offenses “under this chapter,” meaning chapter 117.⁸ Second, Wilkerson contends that the lack of evidence supporting his § 2422 convictions renders the district court's conclusion that he engaged in prohibited conduct on two occasions clearly erroneous. We concluded above that sufficient evidence supported both convictions, so we reject this argument. Accordingly, we affirm the district court's application of a five-level pattern of activity enhancement to Wilkerson's offense level.

IV. CONCLUSION

For these reasons, the judgment of the district court is **AFFIRMED**.

⁸ Wilkerson's emphasis on this argument is understandable because neither the government in its arguments below nor the district court in its reasoning mentioned the “under this chapter” language of 18 U.S.C. § 2426(b)(1)(A). We may affirm a sentence for any reason supported by the record, however, so we decline to consider the district court's alternative reason for imposing the pattern of activity enhancement in light of § 2426's clear language. *See United States v. Hall*, 714 F.3d 1270, 1271 (11th Cir. 2013).

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 15-14786-FF

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus
DENNIS MICHAEL WILKERSON,
Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida

(Filed Jul. 7, 2017)

BEFORE: HULL, WILSON and JILL PRYOR, Circuit
Judges.

No Judge in regular service on the Court having
requested that the Court be polled on hearing en banc
(Rule 35, Federal Rules of Appellate Procedure; Elev-
enth Circuit Rule 35-5), the Petition for Hearing En
Banc is DENIED.

ENTERED FOR THE COURT:

/s/ [Illegible]
UNITED STATES CIRCUIT JUDGE

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
KEY WEST DIVISION**

**UNITED STATES
OF AMERICA**

**Case Number:
6:14-cr-267-Orl-37KRS**

vs.

USM Number: 61510-018

**DENNIS MICHAEL
WILKERSON**

**Jaime Torre Halscott, Esq.
33 E Robinson St Ste 210
Orlando, FL 32801**

**Mark Kraus McCulloch
Brownstone, PA
201 N New York Ave Ste.
200 Winter Park, FL 32790**

JUDGMENT IN A CRIMINAL CASE

The defendant was found guilty as to Counts One and Two of the Superseding Indictment. Accordingly, the Court has adjudicated the defendant guilty to the following offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 U.S.C. § 2422(b)	Attempted Sexual Enticement of a Minor	July 16, 2004	One

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18 U.S.C. § 2422(b)	Attempted Sex- ual Enticement of a Minor	October 27, 2014	Two
------------------------	--	---------------------	-----

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

The underlying Indictment is dismissed.

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

Date of Imposition of Sentence:

October 14, 2015

/s/ Roy B. Dalton Jr.

ROY B. DALTON, JR.

UNITED STATES DISTRICT JUDGE

October 15, 2015

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of **210 months**. The term consists of

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terms of 210 months on each of Counts One and Two, all such terms to run concurrently.

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

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 U.S. Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of **8 years**. This term consists of an 8 year term as to each of Counts One and Two, all such terms to run concurrently.

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The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime. The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The mandatory drug testing requirements of the Violent Crime Control Act are **imposed**. The Court orders the defendant to submit to random drug testing not to exceed 104 tests per year.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervision that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervision in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below).

The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1. The defendant shall not leave the judicial district without the permission of the court or probation officer;
2. The defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. The defendant shall support his or her dependents and meet other family responsibilities;
5. The defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. The defendant shall notify the probation officer **at least ten (10) days prior** to any change in residence or employment;
7. The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. The defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony,

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unless granted permission to do so by the probation officer;

10. The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
11. The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;
12. The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
13. As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

**ADDITIONAL CONDITIONS
OF SUPERVISED RELEASE**

1. The defendant is prohibited from incurring new credit charges, opening additional lines of credit, or making an obligation for any major purchases without approval of the probation officer.
2. The defendant shall provide the probation officer access to any requested financial information.

3. The defendant shall participate in a mental health program specializing in sex offender treatment and submit to polygraph testing for treatment and monitoring purposes. The defendant shall follow the probation officer's instructions regarding the implementation of this court directive. Further, the defendant shall contribute to the costs of such treatment and/or polygraphs not to exceed an amount determined reasonable by the probation officer based on ability to pay or availability of third party payment and in conformance with the Probation Office's Sliding Scale for Treatment Services.
4. The defendant shall register with the state sexual offender registration agency(s) in any state where he or she resides, visits, is employed, carries on a vocation, or is a student, as directed by the probation officer. The probation officer will provide state officials with all information required under Florida sexual predator and sexual offender notification and registration statutes (F.S.943.0435) and/or the Sex Offender Registration and Notification Act (Title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248), and may direct the defendant to report to these agencies personally for required additional processing, such as photographing, fingerprinting, and DNA collection.
5. The defendant shall have no direct contact with minors (under the age of 18) without the written approval of the probation officer and shall refrain from entering into any area where children frequently congregate, including: schools, daycare centers, theme parks, playgrounds, etc.

6. The defendant is prohibited from possessing, subscribing to, or viewing, any video, magazine, or literature depicting children in the nude and/or in sexually explicit positions.
7. Without prior written approval of the probation officer, the defendant is prohibited from either possessing or using a computer (including a smart phone, a hand-held computer device, a gaming console, or an electronic device) capable of connecting to an online service or an internet service provider. This prohibition includes a computer at a public library, an internet cafe, the defendant's place of employment, or an educational facility. The defendant is further prohibited from possessing an electronic data storage medium (including a flash drive, a compact disk, and a floppy disk) or using any data encryption technique or program. If approved to possess or use a device, the defendant must permit routine inspection of the device, including the hard drive and any other electronic data storage medium, to confirm adherence to this condition. The United States Probation Office must conduct the inspection in a manner no more intrusive than necessary to ensure compliance with this condition. If this condition might affect a third party, including the defendant's employer, the defendant must inform the third party of this restriction, including the computer inspection provision.
8. The defendant shall submit to a search of his or her person, residence, place of business, any storage units under the defendant's control, computer, or vehicle, conducted by 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. Failure to submit to a search may be grounds for revocation. The defendant shall inform any other residents that the premises may be subject to a search pursuant to this condition.

9. The defendant, having been convicted of a qualifying felony, shall cooperate in the collection of DNA as directed by the probation officer.

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties in accordance with the Schedule of Payments.

<u>Total Assessment</u>	<u>Total Fine</u>	<u>Total Restitution</u>
\$200.00	(waived)	\$0.00

SCHEDULE OF PAYMENTS

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

The Special Assessment in the amount of **\$200.00** is due in full and immediately.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of

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, unless otherwise directed by the court, the probation officer, or the United States attorney.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed. All of the payment options on the Schedule of Payments may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

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

FORFEITURE

The defendant shall forfeit to the United States those assets previously identified in the Final Judgment of Forfeiture (Doc. No. 92), that are subject to forfeiture.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES
OF AMERICA

v.

DENNIS MICHAEL
WILKERSON

CASE NO.

6:14-cr-267-Orl-37KRS

18 U.S.C. § 2422(b)

18 U.S.C. § 2428 –

Forfeiture

INDICTMENT

The Grand Jury charges:

COUNT ONE

Between on or about October 22, 2014, and on or about October 27, 2014, in Osceola County, Orange County, and Seminole County, in the Middle District of Florida, and elsewhere,

DENNIS MICHAEL WILKERSON

the defendant herein, using a facility and means of interstate commerce, that is, the Internet and cell phone, did knowingly and intentionally attempt to persuade, induce and entice a person the defendant believed had not attained the age of 18 years through an adult intermediary, to engage in sexual activity for which a person can be charged with a criminal offense under the laws of the State of Florida, that is, the crime of lewd or lascivious battery upon a person less than 16

years of age, in violation of Section 800.04(4)(a), Florida Statute.

All in violation of Title 18, United States Code, Section 2422(b).

FORFEITURES

1. The allegations contained in Count One of this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 2428.

2. Pursuant to Title 18, United States Code, Section 2428, upon conviction of an offense in violation of Title 18, United States Code, Section 2422, the defendant, **DENNIS MICHAEL WILKERSON**, shall forfeit to the United States of America any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the offense and any property, real or personal, constituting or derived from any proceeds obtained, directly or indirectly, as a result of the offense, namely, \$50.00 and an Apple I-Phone, Model A1349, serial number C8GQG5CKYDDP7. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;

- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL,

/s/ [Illegible]

Foreperson

A. LEE BENTLEY, III
United States Attorney

By: /s/ Ilianys Rivera Miranda
Ilianys Rivera Miranda
Assistant United
States Attorney

By: /s/ Carlos Perez-Irizarry
Carlos A. Perez-Irizarry
Assistant United
States Attorney
Chief, Orlando Division

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No.

UNITED STATES DISTRICT COURT

Middle District of Florida

Orlando Division

THE UNITED STATES OF AMERICA

vs.

DENNIS MICHAEL WILKERSON

INDICTMENT

Violation:

18 U.S.C. § 2422(b)

A true bill,

/s/ [Illegible]

Foreperson

Filed in open court this 25th day
of November, 2014.

/s/ [Illegible]

Clerk

Bail \$ _____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES
OF AMERICA

v.

DENNIS MICHAEL
WILKERSON

CASE NO.

6:14-cr-267-Orl-37KRS

18 U.S.C. § 2422(b)

18 U.S.C. § 2428 –

Forfeiture

SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT ONE

Between on or about July 14, 2014, and on or about July 16, 2014, in Orange County, and Seminole County, in the Middle District of Florida, and elsewhere,

DENNIS MICHAEL WILKERSON

the defendant herein, using a facility and means of interstate commerce, that is, the Internet and cell phone, did knowingly attempt to persuade, induce and entice a person the defendant believed had not attained the age of 18 years through an adult intermediary, to engage in sexual activity for which any person can be charged with a criminal offense under the laws of the State of Florida, that is, the crime of lewd or lascivious battery upon a person less than 16 years of age, in violation of Section 800.04(4)(a), Florida Statute.

All in violation of Title 18, United States Code, Section 2422(b).

COUNT TWO

Between on or about October 22, 2014, and on or about October 27, 2014, in Osceola County, Orange County, and Seminole County, in the Middle District of Florida, and elsewhere,

DENNIS MICHAEL WILKERSON

the defendant herein, using a facility and means of interstate commerce, that is, the Internet and cell phone, did knowingly attempt to persuade, induce and entice a person the defendant believed had not attained the age of 18 years through an adult intermediary, to engage in sexual activity for which any person can be charged with a criminal offense under the laws of the State of Florida, that is, the crime of lewd or lascivious battery upon a person less than 16 years of age, in violation of Section 800.04(4)(a), Florida Statute.

All in violation of Title 18, United States Code, Section 2422(b).

FORFEITURES

1. The allegations contained in Counts One and Two of this Superseding Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures pursuant to Title 18, United States Code, Section 2428.

2. Pursuant to Title 18, United States Code, Section 2428, upon conviction of an offense in violation of Title 18, United States Code, Section 2422, the defendant, **DENNIS MICHAEL WILKERSON**, shall forfeit to the United States of America any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the offense and any property, real or personal, constituting or derived from any proceeds obtained, directly or indirectly, as a result of the offense, namely, \$50.00 and an Apple I-Phone, Model A1349, serial number C8GQG5CKYDDP7. If any of the property described above, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property pursuant to Title 21, United

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States Code, Section 853(p), as incorporated by Title
28, United States Code, Section 2461(c).

A TRUE BILL,

/s/ [Illegible]

Foreperson

A. LEE BENTLEY, III
United States Attorney

By: /s/ Ilianys Rivera Miranda
Ilianys Rivera Miranda
Assistant United
States Attorney

By: /s/ Carlos Perez-Irizarry
Carlos A. Perez-Irizarry
Assistant United
States Attorney
Chief, Orlando Division

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No.

UNITED STATES DISTRICT COURT

Middle District of Florida

Orlando Division

THE UNITED STATES OF AMERICA

vs.

DENNIS MICHAEL WILKERSON

SUPERSEDING INDICTMENT

Violation:

18 U.S.C. § 2422(b)

A true bill,

/s/ [Illegible]

Foreperson

Filed in open court this 28th day
of January, 2015.

/s/ [Illegible]

Clerk

Bail \$ _____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Docket No. 6:14-cr-267

.....
UNITED STATES OF AMERICA :
Plaintiff : Orlando, Florida
v. : April 14, 2015
DENNIS MICHAEL WILKERSON : 8:57 a.m.
Defendant :
.....

TRANSCRIPT OF JURY TRIAL, VOLUME II
BEFORE THE HONORABLE ROY B. DALTON, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Ilianys Rivera Miranda

For the Defendant: Amir A. Ladan
Travis M. Williams

* * *

[51] utilizing an iPhone during this communication.

And underneath that, it also pertains to my original post.

Q Now, let me ask you, then, to look at page 42. Can you please tell the members of the jury, what was your response to that, to this question?

A Dude, jut to let you know, I'm 50. Not into dudes. My daughter, 12, she's into dudes. We're both into roses.

Q And at what time did you respond?

A At 10:54 a.m.

Q Why are you responding this way?

A Well, one, to let him know that if there's an act of prostitution that I'm putting out there, that it's not from me. It's for my daughter. And also to let the other user know that my daughter is a minor. She's 12 years old.

Q And then, also, why is there a statement, We are both into roses?

A To let them know that we plan on getting compensated for the act of prostitution.

Q Now, looking at page number 43, can you please tell the members of the jury, what was the response by the defendant to your statement?

A His response is, Did you say 12? Three question marks. That's way too young.

Q Now, was this the last communication, then, from the [52] defendant?

A No, ma'am.

Q What happened next?

Let's look at page number 44.

A My response is, Dude, that's cool. All is consensual. Nothing is forced.

Q Why do you say this?

A To let him know that here's a way out, that we don't need to do this if you're not interested in doing it.

Q Why in the context of online investigations, undercover online investigations, do you give a way out?

A Because I don't want to arrest somebody who is not interested in engaging in sexual activity with a minor.

Q Now, was that then the last communication with the defendant?

A No, ma'am.

Q Let's look at page 45. What was the defendant's response?

A Picture, question mark.

MR. WILLIAMS: Your Honor, I'm going to object. Lack of foundation, assuming facts not in evidence that the defendant at this point is known to be the person sending the Email.

MS. RIVERA MIRANDA: Your Honor – I'm sorry.

THE COURT: Objection is overruled.

* * *

[61] response to that?

A Okay. I'm free later, too, just in case you get back at a decent time.

Q What do you understand by that?

A That although I was going to meet with another potential client, that he'd still be available if I got back early enough.

Q Available for what?

A To engage in sexual activity with my 12-year-old daughter.

Q Now, looking at page 67, what did you respond to that?

A Okay. We'll see.

Q And then at page 68, what did the defendant state to you?

A A couple hours later, he responds, I'm free to meet soon if you're back in Altamonte.

Q What do you understand by that?

A That he was still willing to meet with me to get the oral sex from my 12-year-old daughter, and he was still available.

Q At this point had you identified the defendant yet?

A I had not.

Q Now, what happened, then, on July 15, 2014?

Let's look at page 69.

A Hey, we're back from Lake Buena Vista. Sorry. We [62] stayed the night at a hotel.

Q Now, why are you reaching out to him on July 15, 2014?

A Because, one, I was unable to respond back to the response from the night before. So I was able to respond back the following day to see if he's still interested.

Q And then what was defendant's response to that on page 70?

A I'm sorry. I was busy at work all day. How about tomorrow around 10:30 a.m.?

Q What do you understand by that?

A Apparently he was busy at work, and he was trying to reschedule to meet with myself and my 12-year-old daughter the following day.

Q And that was at what time on July 15?

A 5:25 p.m.

Q And then what did you respond to that at page 71?

A At 8:40 – I'm sorry.

At 8:54 p.m., that's a good possibility because we to run, we can still make \$40 for a BJ. If you want more, we can also work a better price, too. Just let us know.

Q Okay. What do you mean by that?

A Letting him know that I would still be available and that if he wanted more than just oral sex that we could work that out also.

Q Okay. And let me ask you, what was the defendant's

* * *

[67] admitted into evidence.

MR. WILLIAMS: No objection, Your Honor.

THE COURT: Okay. Government 3 will be received.

(Government's Exhibit 3 was received in evidence.)

MS. RIVERA MIRANDA: May we publish it, Your Honor?

THE COURT: Yes, you may.

BY MS. RIVERA MIRANDA:

Q Can you please explain to the members of the jury what they are looking at here?

A Yes. Once again, along the top, not the very top, but underneath where it says "file," about the third line down where it says "CL," it stands for craigslist.

Once again, it says the Orlando craigslist area, under all personals and within the all personals in the casual encounters area this ad was posted.

The title is, "Dad and daughter, MW4M, Kissimmee area."

Q And you posted this ad while you were in the Osceola County?

A Yes, ma'am.

Q Okay. Now, what is the body of the ad?

A Dad and daughter looking to make some roses. No task is too big. Just ask and we'll let you know if we can [68] comply.

And then down below is a posting I.D. which is 42 – I'm sorry. Correction. 4726711569.

Q Now, did you get any responses to these ads as well?

A Yes, ma'am, approximately 30 to 35.

Q And any one in particular that pertains to this defendant or this case?

A Yes, ma'am.

Q Now, that was on October 22. When did you get a response from the defendant?

A That day, within an hour or so of posting of ad.

Q Okay. Did you then exchange communications with the defendant via Email?

A Yes, ma'am, I did.

Q And let me ask you, did you preserve those Email communications?

A Yes, ma'am. Once again, I made a printout. I put a copy on a CD within the Email, my undercover Email, and also on an encrypted hard drive.

Q Now, let me ask you, then, to take a look at Government Exhibit 4 for identification.

A (Complying.)

Q Do you recognize it?

A Yes, ma'am.

Q How do you recognize it?

* * *

[70] if they think it's in a sexual nature or not.

Q Okay. Why didn't you put the age of the minor in your ad per se?

A Once again, craigslist, they don't condone exploitation of children and automatically that would probably be flagged and deleted.

Q Okay. Now, defendant then responded to your ad. What was his first response to this ad, page 81, Exhibit 4?

A How about a BJ?

Q Okay. Now, can you please explain, other than his response, what are we looking at here, page 81?

A On the upper right, it says, James James, which is my display name. And then to the right of that is a separate or a different undercover Email I utilized.

Q So this is a different undercover Email from the one that you used in July?

A Yes, ma'am.

Q Okay. And then what else are we looking at here?

A Underneath that it says, Dad and daughter, MW4M.

It's the posting title, once again, that he responded to.

Underneath that is 49 messages, which is the total of messages between myself and Mr. Wilkerson.

Underneath, again, it shows the D in bold, which is a part of his Email. And then the numbers to the right of [71] that, they are generated by craigslist.

To the right of that, it shows the date he first responded to me along with the time.

Underneath that it says to. And then after the KTX2S, dash, the 4726711569 is my posting I.D.

Q So that is the same posting I.D. that we see in Exhibit 3.

MS. RIVERA MIRANDA: If you can pull that up, page 80.

BY MS. RIVERA MIRANDA:

Q Where did we see that post I.D. here?

A On the bottom, it says posting I.D. And that is the same post.

Q Okay. So when defendant responded to this ad, page 81, Exhibit 4, at 2:33 p.m., indicating, "How about a BJ?" what do you understand by that?

A That he was looking for oral sex.

Q And then, again, this document states, Sent from my iPhone?

A Correct.

Q And now, going to page 82 of that same exhibit, what was your response?

A FYI, I'm a 50-year-old dad. My daugh, which stands for daughter or short for daughter, is 12. She's into dudes. I'm not. The roses are dependent on what you wanna [72] do.

Q Again, why did you respond in this way?

A That way, that the user on the other end knows that my daughter is 12-years old and a minor, that the act of prostitution would be for her and not for me. And the roses are dependent on what sex act he wanted to engage in.

Q And, again, roses is used as – to imply what?

A A term for money to be paid for prostitution.

Q Okay. Now, what was defendant's response, page 83.

A I'm just looking for a BJ. Where are you staying?

Q Sent from my iPhone?

A Yes, ma'am.

Q And that was at what time?

A At 3:39.

Q Now, what do you understand by BJ again?

A Once again, he was only interested in getting oral sex from my 12-year-old daughter.

Q And what did you respond to that at page 84?

A Dude, that would be 50 roses, the roses upfront. We're in Kissimmee.

Q And what do you mean when you said, Roses upfront?

A That prior to the sex act, that he would have to pay the roses, the money, upfront.

Q Okay. Now, what did the defendant reply to that, page 85?

* * *

[76] investigations.

Q Okay. So that was your last communication, October 22.

And then October 27, 2014, at 9:45 a.m., what happened?

A He responded to me, Are you still in town?

Q And, again, that states, Sent from my iPhone?

A Yes, ma'am.

Q Okay. And what did you respond to that, page 93, 10:46 in the morning?

A What's up?

Q And at page 94, what did he tell you at 10:48 in the morning?

A I couldn't meet last week, but I'm free today.

Q So this time around, October 27, who initiates contact?

A He did.

Q Okay. Now, what was your response at page 95?

A Well, we mentioned 50 roses for a BJ from my daughter.

Q Why do you say that?

A Once again, to establish that we are talking about oral sex for \$50 and that I do have a daughter.

Q Okay. Now, what was his response to that, page 96, 10:51 in the morning?

A Exactly.

* * *

[88] described to him, the red Pontiac G6.

As soon as he pulled by the vehicle, we decided to take him down.

Q Okay. And, again, this red G6, what was that vehicle supposed to be?

A That was the vehicle that I explained that I'd be in, myself and my daughter.

Q Okay. Now, had you used a child or decoy minor in the investigation? Who was sitting in that red G6?

A Special Agent Patrick Walter was driving it. And in the backseat out of view was Special Agent Bryce Essary.

Q Now, at approximately what time of day was defendant stopped?

A 4:05.

Q And who intervened with the defendant and how?

A I'm sorry. What was that?

Q Who stopped the defendant?

A I had blue lights on my vehicle. I took him from the backside or from the rear. There was another vehicle, Healy. I can't tell you where her vehicle was.

But as soon as his vehicle stopped – there was no pursuit. It was moving quite slowly. He stopped when we turned on our emergency lights. Agent Hyre exited the vehicle.

Q Which vehicle?

* * *

[103] Okay. And the first response on July 14 to the age of the fictitious daughter was that 12 is way too young?

A Correct.

Q And on the 14th – there was no meeting occurred on the 14th, correct?

A That is correct.

Q When you refer to, in one of the messages that you received, \$40 today and another \$50 tomorrow, more in your pocket, do you take that to mean more in your pocket, the fictitious father?

A I took that as we were talking about him engaging or receiving oral sex from my 12-year-old daughter and that he was willing to pay me money one day for it and then turn around and pay an additional \$50 the following day for the same sex act. That's the way I took it.

Q Paid to you and not to your fictitious daughter, correct?

A Correct. I'm the one prostituting my daughter, yes.

Q And he didn't ask you to give that – any extra money to your daughter as an enticement to her?

A He didn't ask me to give her anything.

Q So on the 14th nothing occurs as far as a meeting goes, correct?

A Not as far as a meeting goes, no, sir.

Q And you talk continuously during your testimony about

* * *

[111] Q And when you went to the second location, at that location Mr. Wilkerson did not actually stop and park next to the red vehicle, correct?

A No. When we pulled up, he was already backed into a parking spot where his view was like overlooking the parking lot.

Q But he did not park next to the red vehicle?

A I believe he was already there when we got there.

Q Mr. Wilkerson?

A Yes, sir.

Q He never drove over to the red vehicle and got out or made direct contact or verbal contact?

MS. RIVERA MIRANDA: Objection, Your Honor. Compound question.

THE COURT: Well, it is compound.

But if you understand the question, I'll let you answer it, Agent.

THE WITNESS: He drove up by the vehicle, like I said. And it's – I worked a lot of narcotics and other undercover cases where – and actually in the park where individuals try to make contact with each other trying to have sex.

And it's not uncommon for an individual to drive by –

MR. WILLIAMS: Object. Unresponsive.

* * *

[113] up, the vehicle slowly went by.

Q And when Mr. – when the agents came to do the takedown on Mr. Wilkerson's vehicle, his vehicle was still in motion, correct, meaning Mr. Wilkerson's vehicle?

A Yes.

Q So he was not parked getting out of the vehicle when the agents came to do the takedown, correct?

A He was stopped in the vehicle.

Q But it was still in motion when the agents came out to do the takedown, correct?

A From what I recall, he saw my blue lights, I assume. And after I pulled up behind him or at an angle, his vehicle was stopped, I believe.

Q Certainly after he saw the blue lights and the cars coming, he voluntarily stopped at that point?

A Right.

Q With regard to both the July and the October messages and chats, did Mr. Wilkerson ever ask to speak to the fictitious daughter?

A No, sir.

Q Did he ever ask you to say something to the fictitious daughter?

A No, sir.

Q Did he ask what the fictitious daughter was interested in?

* * *

[122] conduct these investigations?

A Yes, ma'am.

Q What training have you received? What is your training experience?

A Received hundreds of hours of specialized training from seminars, symposiums, and the Internet Crimes Against Children conferences geared towards child pornography investigations and child solicitation investigations.

Q Okay. And have you also received training conducting interviews?

A Yes. I've been trained by the F.B.I.'s behavioral analysis unit on understanding the mind of child predators and how to conduct interviews with child predators.

Q And let me ask you as well, prior to your employment with the F.B.I., what did you do?

A After I graduated from Georgia Tech, I joined the Navy. I was a naval officer and naval aviator for 11 years. I left the Navy in the spring of 2001, became a commercial airline pilot. And a couple months after September 11 of 2001, I left the airlines and joined the F.B.I.

Q And now, let me ask you, since your work is enticement and associations, what do they typically entail?

A Typically, we look for people on the Internet. It's almost always the Internet. We look for people on the

* * *

[180] MR. LADAN: Yes, Your Honor.

THE WITNESS: No. I would leave it up to – Agent McElyea has more experience doing this. So, no, he doesn't have to ask me for permission to pull a subpoena, no.

BY MR. LADAN:

Q So if you wanted to, you could have subpoenaed the records in July?

MS. RIVERA MIRANDA: Objection, Your Honor. I think that question was asked and answered.

THE COURT: Again, I think it's been covered, Mr. Ladan.

I'm going to sustain the objection.

Let's move on to a new area of cross.

MR. LADAN: Yes, Your Honor.

BY MR. LADAN:

Q In the course of reviewing all of the evidence that you had obtained, the statements that you obtained post-Miranda, the chats that you obtained, was there anything that you came across wherein Mr. Wilkerson asked to interface directly with the imaginary 12-year-old?

MS. RIVERA MIRANDA: Objection, Your Honor. That's outside the scope.

THE COURT: Overruled.

THE WITNESS: Only for the meeting of having oral [181] sex. But prior to actually having oral sex, he did not want to meet with the little girl.

BY MR. LADAN:

Q Did he ask to speak with her?

A Like I just said, no.

Q Did he ask to relay a message to her?

A No.

Q Did he ask the fictitious father of the imaginary 12-year-old whether she had any special interests?

A Not that I recall, Mr. Ladan.

Q Was there anything in the conversations that you reviewed that would be suggestive of any grooming behavior?

A Yes. Grooming is not always limited to talking to a child. Grooming is convincing somebody to do something.

And I think as we heard this morning, especially with the July chats, that was all about convincing. Let's make this meeting happen.

Q Okay. So let's define grooming a little bit more. Based on your training that you testified to earlier, what is your understanding of what grooming behavior is?

A Well, like I said, commonly we refer to it as grooming of a child, which is to try to develop a trust with them, share secrets with them, things like that, so that they start not talking to their parents and start talking to you. That would be grooming of a child.

[182] If that's what you meant, no. I saw no grooming of the child through those chats.

Q And there was no efforts to groom the child?

A I saw none, no, sir.

Q So taking that to the next step, there was no conversation with the child directly or indirectly?

A Correct.

Q There was no effective – excuse me.

There was no attempt made to effectively communicate indirectly with the child –

A Um –

Q – through the intermediary?

A To communicate –

Q With the child.

A No, no. Only to make a meeting.

Q Right. The ad was posted without Mr. Wilkerson's involvement. So he didn't facilitate the ad being posted?

A Correct.

Q You weren't responding to an ad that he posted?

A That's correct.

Q He didn't solicit a communication in a chatroom or on some other social media site or anywhere on the universe of the Internet?

A Well, he responded to Agent McElyea's ad. So I guess he solicited that response.

* * *

[210] defense motions?

MR. LADAN: Yes, Your Honor. If we could just have a brief moment before we present that.

THE COURT: Sure.

MR. LADAN: Thank you, Your Honor.

Would you like me to argue from the podium?

THE COURT: The podium, please, sir.

Thank you.

MR. LADAN: Thank you, Your Honor.

THE COURT: You're welcome.

MR. LADAN: At this time we would move for a judgment of acquittal predicated upon the Government's failure to put forth the prima facie case of guilt for Mr. Wilkerson's two counts in the indictment, specifically that the evidence does not establish that Mr. Wilkerson did utilize a means or facility of interstate commerce to effectuate this.

Particularly, Judge – and I know I addressed this in my motion to dismiss, and so I'm going to probably be quoting from that a fair bit based on the Court's assessment that my motion was more of a judgment of acquittal argument.

But in order to trigger federal jurisdiction, our legislature has determined that it is appropriate for this type of case to be brought where a mechanism of

interstate [211] commerce is utilized for the purposes of effectuating a crime.

And they do permit cell phones to be part of that process. I understand that. And I'm not going to argue that that's not what the law says, Judge.

But what I do think is noteworthy and I want the Court to consider is that if every time somebody used a cell phone, we could create a federal crime out of it, then the jurisdictional boundaries between federal and state court would be obliterated.

Federal courts have jurisdiction over matters where the legislature has deemed it appropriate to enable the F.B.I. and federal agencies to pursue those laws.

And in this case, if it was akin to a drug case, if the phone calls to buy or sell drugs were made on a cell phone, that would not trigger the Government's authority to prosecute this federally. It would require jurisdictional issues that extend beyond the use of a cell phone.

I understand this is not a drug case. But the analogy remains the same; that is, in the digital era that we live in, using Email, using a cell phone where that use is contained within one state – and in this particular case, it's contained within a tri-county area – does not give rise to it becoming a federal issue.

The only reason that we're before Your Honor is we [212] had federal agents that were engaged in a federal investigation.

We would ask the Court to consider whether or not there has been sufficient evidence presented for the jury's consideration such that this would, therefore, become appropriate or ripe for it to be brought before the Court.

That is part of several issues we feel the Government has failed to establish for the jury's consideration.

I understand that's a legal argument that we made in our motion to dismiss. But it didn't appear to have been the focal point of the Court's ruling on that. I want to make sure that we incorporate that into our judgment of acquittal argument.

Secondarily, but equally significant for the Court's consideration, Your Honor, is the Government's failure to establish that there was a knowing attempt to persuade, induce, or entice someone that Mr. Wilkerson believed to be a minor to engage in sexual activity, which could be charged as a criminal offense in the State of Florida.

The Government has not elicited any testimony about what the crime in Florida would be if, in fact, it had been effectuated. There was no testimony about what it is, what statute it is, what conduct it would have been [213] categorized as.

There's no description of any kind from any witness before the Court that would suggest that we have established for the jury's consideration that had this charade been allowed to continue forward and had a

potential meeting actually occurred, that somehow a violation of Florida Statute would have thereby been perpetuated.

There is zero evidence for the Court's consideration to suggest the Government did that.

Equally significant for the Court's consideration is the lack of evidence regarding the attempt to persuade, entice, or induce.

If an advertisement is placed on craigslist, regardless of what that advertisement is, that advertisement is a solicitation. It is not an invitation to be solicited. It is itself per se a solicitation.

To suggest that someone responding to an advertisement is thereby inducing the salesperson by offering to purchase what is being offered is absurd.

It is contrary to common definitions of what these words mean. You would have to redefine inducement. You would have to redefine enticement or persuasion to suggest that responding to an ad on craigslist, regardless of what that ad is, is somehow one of those three terms. It simply [214] does not exist.

The response, then, from Mr. Wilkerson was replied to with a price. He did not request the price. He did not recommend the price. He did not elevate the price as a means of inducing, enticing, or persuading them to do something more than had already previously been offered to do without his involvement.

There was no gift made, no suggestion, nothing of any sort that would in any way indicate to the recipient that they are going to do something more than they were already indicating a willingness to do but for his inducement, enticement, or persuasion.

There is absolutely zero evidence to suggest that Mr. Wilkerson did any of those three things in any capacity.

He had conversations that are repugnant on their face, that are offensive, that certainly are not things that any of us enjoy reading or hearing about, Judge. But that's not why we're here. They are not sufficient to establish a legal basis for these charges to go before a jury.

At the end of the Court's analysis, I do think that it is important that I have an opportunity to at least review some of the things in my motion to dismiss if the Court would be willing to consider me placing this on the [215] record for the Court's consideration or perhaps ask that you take judicial notice of our motion to dismiss, which the Court, in its order, analogized to a judgment of acquittal argument.

I would request the Court, for the sake of time, to take judicial notice of my motion to dismiss. I would like to reincorporate and restate for the purposes of this judgment of acquittal the arguments that are contained within this motion, if you'd be so inclined.

THE COURT: Sure. And the record will reflect that the defense has raised the issues that were

set forth in its motion to dismiss again in support of its motion for judgment of acquittal and pursuant to Rule 29.

So anything that you raised in your motion to dismiss, the record will indicate that you have reasserted that as a basis for a judgment of acquittal.

MR. LADAN: Thank you, Your Honor. May I have a moment to confer with co-counsel?

THE COURT: You may.

MR. LADAN: Thank you.

Your Honor, because it hasn't yet been addressed and so that I'm making sure that I haven't left anything off of the record, I believe that the jury instruction the Court would read if this was to go beyond judgment of acquittal would allow the Government the interplay of the

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[217] THE COURT: Okay.

MR. LADAN: That's all I have. Thank you, Your Honor.

THE COURT: Thank you, Mr. Ladan.

Miss Miranda?

MS. RIVERA MIRANDA: Yes, Your Honor.

And in response to defendant's motion for acquittal, we also wish to reassert our arguments in our

response, basically document number 49. It's response in opposition to defendant's motion to dismiss.

And we believe that in this case, Your Honor, we have met every element. And, yes, we do charge in the conjunctive. But we are aware that we can prove the case in the disjunctive. And we believe this case falls squarely within the definition of inducement as has been already addressed by the Eleventh Circuit.

When a defendant like in this case uses a father, someone of authority over a child, to procure sex with a child and negotiate a price for a sexual encounter, he's actually inducing, stimulating the occurrence of that meeting. And that's what he did in this case clearly beyond a reasonable doubt.

In the July chats, it goes beyond just him agreeing to a certain amount. You can actually see that he is negotiating because he only had \$30 initially. Then he

* * *

[219] facilitate the commission of the offense. Like in this case it is pretty clear because that was his means of communication with the father, the notional father of this minor.

And I believe there shouldn't be a dispute as to that. And that is clear, binding precedent as well. That the defendant believed he was dealing with a minor is unquestionable.

He never expressed his belief that he was dealing with an actual minor. And when he was interviewed by

the agent in this case, Special Agent Hyre, he readily admitted that he understood that he was dealing with a minor and that what he did was stupid because he also has children. He knew that he was dealing with a child.

And then as to the fourth element, Your Honor, the instructions, the jury instructions address this portion of the case. Had the defendant engaged in obtaining oral sex from the minor, he would have committed an offense under the Florida law. That's part of our jury instructions. And oral sex is definitely defined on the Florida Statute. I believe the statute is 800.04.

THE COURT: What's the evidence of that?

MS. RIVERA MIRANDA: Your Honor, the instructions on the law.

THE COURT: I'm not worried about the

* * *

[224] Court, Judge.

THE COURT: All right. Mr. Wilkerson, could you stand for a minute, please, sir?

Your lawyers have indicated to me that they're not going to present any evidence, which, of course, also includes the fact that you've elected not to testify.

I just want to visit with you about that for a few minutes and make sure you understand that you have a constitutional right, of course, not to testify. You can't be compelled to incriminate yourself. You also have an

option to testify if you wish to waive your right not to incriminate yourself and testify.

And as I'm sure your lawyers have visited with you already, there are advantages and disadvantages to either course that you might pursue.

I'm not interested in inquiring as to what made you decide one way or the other. I just want to make sure that you've had all the time that you need to talk with your lawyers and to take their advice and to consider their advice about the pros and cons of testifying.

Have you?

THE DEFENDANT: Yes, sir. Yes, Your Honor.

THE COURT: Is it your independent decision not to testify?

THE DEFENDANT: Yes, it is.

* * *

[227] front of the jury, Mr. Ladan.

MR. LADAN: Yes, Your Honor. I appreciate that. Thank you, Judge.

(Jury entered the courtroom at 3:48 p.m.)

THE COURT: All right. Welcome back, ladies and gentlemen.

Mr. Ladan, Mr. Williams, does the defense have any evidence you'd like to offer?

MR. LADAN: No, Your Honor.

Defense rests.

THE COURT: All right. Thank you, Mr. Ladan.

Miss Miranda, does the Government have any rebuttal evidence?

MS. RIVERA MIRANDA: No, Your Honor.

THE COURT: All right.

Ladies and gentlemen, the parties have – the Government has rested its case in chief. And the defense has announced that it rests its case.

It's a little bit late in the day. What I've got left to do with the lawyers is I need to review with them the Court's charge to you, the Court's instructions on the law. That takes – sometimes hard to predict how long that's going to take.

So what I'm going to do is excuse you all for the day. We're moving well ahead of schedule. I'll have you

* * *

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES
OF AMERICA

v.

Case No. 6:14-cr-267-Orl-
37KRS

DENNIS MICHAEL
WILKERSON

VERDICT

1. Count One of the Superseding Indictment

With regard to Count One of the Superseding Indictment, which charges that DENNIS MICHAEL WILKERSON used a facility of interstate commerce to attempt to persuade, induce, or entice an individual whom the Defendant believed had not attained the age of 18 years, through an adult intermediary, to engage in sexual activity, in violation of Title 18, United States Code, Section 2422(4) we the Jury find the Defendant, DENNIS MICHAEL WILKERSON,

Guilty ✓ Not Guilty

2. Count Two of the Superseding indictment

With regard to Count Two of the Superseding Indictment, which charges that DENNIS MICHAEL WILKERSON used a facility of interstate commerce to attempt to persuade, induce, or entice an individual whom the Defendant believed had not attained the age

App. 75

of 18 years, through an adult intermediary, to engage in sexual activity, in violation of Title 18, United States Code, Section 2422(b), we the Jury find the Defendant, DENNIS MICHAEL WILKERSON,

Guilty ✓ Not Guilty

SO SAY WE ALL, this 15 day of April, 2015.

/s/ [Illegible]
FOREPERSON

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Docket No. 6:14-cr-267

.....
UNITED STATES OF AMERICA :
Plaintiff : Orlando, Florida
v. : October 14, 2015
DENNIS MICHAEL WILKERSON : 10:00 a.m.
Defendant :
.....

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE ROY B. DALTON, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Ilianys Rivera Miranda

For the Defendant: Jaime T. Halscott
Mark K. McCulloch

* * *

[1883] PROCEEDINGS

THE DEPUTY CLERK: Case Number 6:14-cr-267, United States of America versus Dennis Michael Wilkerson.

Could we have appearances, please?

MS. MIRANDA RIVERA: Good morning, Your Honor. Assistant United States Attorney Ilianys Rivera on behalf of the Government. Here with me is F.B.I. Task Force Officer Steve McElyea.

We're ready to proceed.

THE COURT: Good morning.

MR. HALSCOTT: Jaime Halscott, H-A-L-S-C-O-T-T, appearance for my client, Dennis Wilkerson.

MR. McCULLOCH: Mark McCulloch on behalf of Mr. Wilkerson. Good morning, Your Honor.

THE COURT: Good morning.

Dennis Michael Wilkerson, on April 13 of 2015, a jury found you guilty of counts one and two of a superseding indictment that charged you with the attempted sexual enticement of a minor, in violation of Title 18 of the United States Code, Section 2224(b).

You were adjudicated guilty of those offenses.

We're now at the point in the proceedings where it's my responsibility to impose an appropriate sentence in connection with that offense, those offenses.

[1884] The way we'll proceed this morning is in just a moment I'm going to hear from your lawyers about any unresolved objections to the presentence report or the computation of the guidelines, after which once I've resolved those issues, then I'll hear from the Government and take their view of what an appropriate sentence is.

And then I'll give your lawyers an opportunity to bring to my attention anything that they think I ought to take into account in connection with the imposition of sentence.

And then last but not least, if you want to take advantage of it, I'll give you an opportunity to address the Court directly before I impose sentence.

Understood?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Counsel, are there unresolved objections to the PSR or the computation of the guidelines?

MR. HALSCOTT: Yes, there are, Your Honor.

THE COURT: Okay.

MR. HALSCOTT: There's actually a few problems that we have.

THE COURT: All right. Why don't you come to the podium, and we'll take those up.

MR. HALSCOTT: Thank you.

THE COURT: Let me just note for the record while [1885] you're coming to the podium that I have received and reviewed not only the presentence report but also the defense filings and the Government's response in opposition to the defendant's sentencing memorandum.

MR. HALSCOTT: Certainly, Your Honor. I appreciate it. Thank you very much.

One of our concerns certainly is around the Government's response to the sentencing memorandum. Permeating this case so far and our involvement with Assistant U.S. Attorney Rivera, we've had a tremendous difficulty in communication.

We provided the Government with a copy of our sentencing memorandum a full two weeks prior to this hearing today and, literally, had the Government's response dumped on us business hours before the sentencing today.

There are several issues in it that I would like to address with the Court, not the least of which is the allegation by Assistant USA Rivera that both I personally and prior counsel, Amir Ladan, were somehow involved in creating some form of fraudulent misrepresentation around the objections, the timely objections, otherwise timely objections to the PSR that were originally submitted.

In support of that, AUSA Rivera describes multiple attempts to contact Mr. Ladan but fails to provide any of that in the Government's motion.

[1866] I want to correct that with the Court, because if there was any concern that my office or prior counsel was providing some sort of fraud to this Court, I would have liked to have known about it other than hours before the sentencing memorandum in its official filing with the Court.

THE COURT: Mr. Halscott, for whatever it's worth, I'm going to take up the objections on the merits. So I'm not penalizing you for tardiness in terms of raising the objections. I don't know where the equities lie with respect to the dispute you have with the Government in terms of what was filed or when it was filed.

Quite honestly, I'm not particularly concerned about it. The matter of sentencing of Mr. Wilkerson is of much more significance than a disagreement between the lawyers.

So what I would like for you to do is have you focus on the merits of your objection, and then I'll decide those.

MR. HALSCOTT: Certainly, Your Honor. But I did want to state it's very difficult for us to have formulated a comprehensive set of objections to the Government's response, having had only a few business hours to do so.

I myself went to the jail last night to visit with Mr. Wilkerson about this and confer with him. We did the [1887] best job that we could possibly do in such a short amount of time. But certainly there's going to be problems with that.

As such, we would move ore tenus to strike the Government's response.

THE COURT: I'm not going to strike the Government's response. This case has been continued once sentencing-wise. You've had plenty of time. Your

prior counsel have had plenty of time to evaluate the PSR and to lodge your objections.

The Government's response, there's nothing in the Government's response that is, in my judgment, novel or unanticipated with respect to the appropriate computation of the guidelines under the Sentencing Commission's instructions.

So as I said, I'd really like to focus on the merits. I can appreciate your argument. I'll note for the record that you feel like you've had insufficient time to prepare to the Government's response and that you're doing the best you can. And I'm confident that you're up to the task.

So let's take it on the merits.

MR. HALSCOTT: Okay. There are some substantive issues itself with the Government's response as far as this, not with the guideline computation per se. [1888] Obviously, the Government's conceded a reduction based on the removal of a commercial sex act. Certainly that moves the guidelines downward based on that.

When we look at some of the issues in the Government's response, particularly the Government cites 4B1.5. And they look at comment note 4B1, which specifically if you look at this is a chapter 117 offense. It is not covered under that portion of the sentencing guidelines.

Furthermore, Your Honor, when you look at this, the Government had asked for a five-level

enhancement for engaging in a pattern of prohibited sexual conduct. The clear meaning and reading of USSG 4B1.5(b)(1) specifically discusses prior convictions for this.

These not only are not prior convictions, but they – the Government alleges these came out of separate victims. And there’s no evidence to point to that these were, in fact, separate victims. Or as the Government concedes in the restitution argument, there was also no victim.

THE COURT: It doesn’t have to be prior convictions. It has to be prior occurrences of illegal activity.

And the Government has alleged or at least contended and the PSR reflects that there was an attempted [1889] enticement of a minor in, I think the dates are June and October, on two separate occasions, two separate notional minors.

And that’s the basis for the enhancement.

MR. HALSCOTT: And that’s – I was going to address the July count, the original one, specifically when it comes down to the factual predicate for that.

The Government’s own motion says, Oh, well, I tried. I guess this isn’t going to happen.

Our contention and our feeling is that doesn’t rise to the level of the acts necessary for a conviction in that.

So we would renew kind of the objections that were made during the trial and say that Mr. Wilkerson should not be sentenced according to that. And that should itself remove the multi-counts and the five-level enhancement for a pattern.

I'm not going to relitigate the case. But to put those objections on the record as a matter of sentencing, that it would be improper to sentence Mr. Wilkerson as a multi-count and also with a pattern based on that.

We also believe, too, that the Government, while saying that the use of a computer is an enhancement factor, we believe that's in the base-level offense and should not be counted separately.

[1890] The Government themselves have decided to fight that. But we believe that that is not the case.

Also, too, in support of the Government's memorandum is attached several exhibits, which the Government has attempted to in this memorandum portray Mr. Wilkerson as someone who has engaged in, as they call it, sexually deviant behavior.

Congress has not seen fit to criminalize the types of behavior that are alleged in the attached exhibits, the Craigslist communications as they are.

There is no indication of any kind of wrongdoing. And I would challenge the Government to point out anywhere where there's any kind of allegation of abuse of a child or solicitation of a minor.

It appears – and, again, I had limited time to review it – that all of these are, in fact, communications between consenting adults.

Similarly, the Government seeks to introduce some letters into the record through the exhibits as well that are highly prejudicial, highly –

THE COURT: Why have you had limited time to review it? All these documents, I think the bulk of them, came into existence a long time ago.

I think they were referenced in your June 23 and the June 23 letter from Mr. Ladan, which you have argued to [1891] me this morning was not untimely disclosed.

Didn't Mr. Ladan address that in his letter of June 23?

MR. HALSCOTT: No, I do not believe so, Your Honor.

THE COURT: I'm pretty sure he did. You might want to go back and look at that again.

MR. HALSCOTT: These letters that I've seen, these letters that were provided from what appear to be family and friends –

THE COURT: No, no, no. I'm not talking about that. I'm talking about the craigslist information.

MR. HALSCOTT: Oh –

THE COURT: That's what you were just arguing, was the craigslist information.

MR. HALSCOTT: These particular craigslist posts here, yes, I have to – obviously, I have to renew those here during sentencing. I don't believe it is appropriate they are placed into the sentencing memorandum, again, alleging no conduct related to or relevant to the current offenses for which Mr. Wilkerson is being sentenced.

THE COURT: Right. I just – I'm trying to make sure the record is clear that there's nothing about those that's late disclosed to you; that is, the craigslist information. That craigslist information has been [1892] available to counsel for a long time.

MR. HALSCOTT: I don't believe it's exactly the same list, Your Honor. No. This seems to be a superset of what we were provided with.

THE COURT: Okay.

MR. HALSCOTT: Nonetheless, the bigger focus that I have is on the letters of which we have not seen before, letters only given – to be three of those that were attached as exhibits, only referencing the parties who wrote them by initials that themselves seem to be inflammatory and prejudicial in nature.

Those letters did not come from anyone who is a victim in this case. There is an ongoing family law case related to this. And it seems, unfortunately, like that might be placed there to help gain leverage for both child custody and for some other issues outside of this

court going on in the 18th Judicial Circuit in Seminole County.

I would hate to see this Court used as a way to try to leverage any kind of family law case by backdooring in these types of letters into the record.

So I would object to those being put in here. And I would ask that they be stricken.

THE COURT: You want to strike the exhibits? I'm not going to strike the exhibits. But I'll seal that [1893] portion of it if you think that it's something that's not been previously disclosed.

I'll hear from Miss Rivera.

But I'll interpret your motion to strike as an alternative request to seal the information. And so I'll grant the request to seal the information.

MR. HALSCOTT: Okay. And similarly, Your Honor, we do have one more item that was a late item that we've been made aware of.

The Government alleges that Mr. Wilkerson should be kept out of public because of his likelihood for re-offense, his possibility of recidivism.

The Government themselves references the – again, these Craigslist posts. But we, through prior counsel, which we have just received, is a psychosexual evaluation that undermines the Government's assertion that Mr. Wilkerson is, in fact, a possible harm to society or to children.

And, specifically, that was prepared by prior counsel. Unfortunately, Your Honor, it's something that we have just been able to obtain within the last week. It's not –

THE COURT: Why wouldn't you just – just be able to obtain it?

MR. HALSCOTT: We've had a difficult time, Your [1894] Honor, getting full disclosure from prior counsel. We've asked repeatedly for it. In fact, this actually mirrors what the Government says about asking for things and not getting them from prior counsel.

It could be an inadvertent oversight. I'm uncertain why, Your Honor. I can't speak for Mr. Ladan.

THE COURT: Well, I would just say that if there's been a psychosexual evaluation done on the defendant, that ought to be the first thing that you would inquire about.

I mean, whether or not the defendant is likely to recidivate or whether or not the defendant has a diagnosis of pedophilia or whether or not the defendant has a documented interest or lack of interest in minor children for sexual purposes, which should be at the top of your list of things to be looking for in connection with preparation for sentencing.

So I'm not sympathetic to the argument that you've only just now received – you've had access to your client. Your client certainly knows that he was evaluated.

MR. HALSCOTT: Yes, Your Honor. It's only through my client that I knew about the existence of this and inquiring about whether or not a psychosexual evaluation has been done, and we had put inquiries in to Attorney Ladan about that and had not received.

So certainly, Your Honor, had it been trial [1895] counsel – this evaluation has existed for several months, even prior to trial. But for some unknown reason, Attorney Ladan decided not to introduce it at trial or to in any way, shape, or form bring it up. I think that's a calculated error on behalf of trial counsel.

Unfortunately, today at the sentencing, I can't bring those issues up. All I can do is explain to the Court that I've done my due diligence in getting as much as I could for preparation for this.

And, again, the appropriateness of a recidivism rebuttal only comes up in the context of reply to the Government's motion, which, again, was filed around 1:00 or 2:00 yesterday afternoon.

THE COURT: I'm not persuaded by that, Mr. Halscott. I'm not at all persuaded that you needed something from the Government to make a determination that a psychosexual evaluation of your client, who's facing sentencing for a conviction of child enticement charges, is something that you didn't know was going to be relevant until you received the Government's response.

There may be other arguments that you have that are persuasive. That one is not, so we should move on.

MR. HALSCOTT: Okay. I have no further objections or discussion around the Government's sentencing memo.

THE COURT: Okay. Let me just recap, [1896] Mr. Halscott, so I haven't missed something.

So you have an objection to the enhancement that is reflected in paragraph number 17 for use of a computer.

You have an objection to the two-level enhancement that is in paragraph 18 with respect to the Commercial Sex Act, which the Government apparently concedes.

And then you have – you've asked for the information contained in craigslist to be stricken. I've denied your motion to strike, but I've granted a motion to seal that information.

And you're also objecting to the two-level enhancement for count two that's contained in paragraph 25 related to the Commercial Sex Act as well as to the two-level enhancement that is contained in paragraph 24 for the use of a computer in the second count.

Anything else with respect to the computation of the guidelines that I've overlooked?

MR. HALSCOTT: No, Your Honor. Other than what I stated, I will rely on our sentencing memorandum.

THE COURT: Okay. I just want to make sure that I deal with everything that you've raised, so

I don't – you know, I don't want to have to remember what's in your sentencing memorandum.

MR. HALSCOTT: That's fine.

THE COURT: I understand you're relying on your [1897] arguments there, but I want to make sure I've covered everything that is objectionable in terms of the computation of the guidelines.

MR. HALSCOTT: I believe you have, Your Honor, yes.

THE COURT: So there are four levels that are essentially in dispute, two of which the Government concedes.

MR. HALSCOTT: Well, I'd also disputed the multi-counts and the five-level enhancement for the pattern of behavior.

THE COURT: Right, right. Thank you.

MR. HALSCOTT: Which I think with my calculation, Your Honor, brings it to a base 28, category I, with the sentencing –

THE COURT: That's a chapter four enhancement. That's found in paragraph 34 of the PSR.

All right. Thank you, Mr. Halcott.

Miss Rivera?

MS. MIRANDA RIVERA: Yes, Your Honor.

Your Honor, we just wish to make a brief note for the record that the memo that we have here from the defendant, the defendant's sentencing memorandum was filed under seal, I believe, on October 6. We received it via Email on October 7.

[1898] And then we had to do some research regarding defendant's objections, which were numerous. And we did. And we had to then file a response, which was quite long. We acknowledge that.

However, we're not raising any issues that should not have been foreseen a long time ago. Had defendant's counsel chosen to object to them at an earlier time, we would have addressed them then through a position of the parties meeting in this case.

That was not – that didn't happen for –

THE COURT: I'll tell you the same thing I told Mr. Halscott, Miss Rivera. I'm not interested in the squabble between the lawyers or who did what or did not do what or who said what or did not say what.

Mr. Wilkerson is here facing a significant amount of time in prison for these two offenses. I want to talk about the merits of the objections.

MS. MIRANDA RIVERA: Yes, Your Honor.

THE COURT: Let's talk about the merits of the objection. I understand the Government is conceding the Commercial Sex Act enhancement, the two-level enhancement that is identified in chapter – I

mean paragraph 25 and paragraph 18, that the defense objection is well taken.

Is that the Government's –

MS. MIRANDA RIVERA: It is, Your Honor. We did [1899] research regarding this particular enhancement. We found the only cases where they had applied is when there was actual sexual contact with a minor, not in any attempt cases. And that's why we're not moving forward with that enhancement in particular.

THE COURT: Okay.

MS. MIRANDA RIVERA: And as to the other enhancements, first of all, we understand that the allegation regarding defendant's sexual deviancy and craigslist advertisement, that was actually disclosed. And that's part of the public record in this court. It was filed in document 49 as of March of this year.

It was actually filed in a response in opposition to defendant's motion to supersede an indictment. And I believe those same documents were even filed before when the defendant filed a motion for bond. In opposition, we filed a response, and we actually attached all those documents as well.

So defendant's counsel should be well aware that these advertisements are out there. They actually are pertinent to defendant's background and characteristics. And it shows his compulsive behavior in seeking men, women, transvestites, and minors.

And it shows that defendant is in need of sex offender treatment. And it also shows that he's a high [1900] risk of recidivism because he has not been able to control these sexual urges for a number of years.

In addition to that, Your Honor, regarding the other objections, we intend to address those as well. As to the multiple-count adjustment, Your Honor, in this case, Section 2G1.3, note C, basically indicates that for the purposes of chapter three, multiple counts, each minor that's transported, persuaded, enticed has to count as a separate victim. They cannot be grouped.

So in that sense, we understand that the probation officer's computation adding – counting each count as a unit and adding two levels to the base offense level, that was a proper calculation in this case based on the guidance provided by the Sentencing Commission.

And we understand that the guidelines are advisory. So we have to properly calculate them. But then they're not mandatory. The Court also has to consider 3553 factors in this case.

In addition to that, the computer enhancement, the Eleventh Circuit has upheld the application of this enhancement in these cases on numerous occasions.

In particular in this case, a computer, meaning a cell phone, was used to entice a minor through an adult intermediary, in this case, a father, into engaging in prostitution.

[1901] That makes this enhancement clearly applicable. And that has already been ruled by the

Eleventh Circuit on several occasions. And a cell phone is a computer within the meaning of Title 18, United States Code, Section 1030(e)(1). And that was determined by the Eleventh Circuit in *United States versus Mathis*. That was also cited in our sentencing memorandum.

In addition to that, Your Honor, the pattern of prohibited sexual conduct enhancement applies to this case because the defendant engaged in at least one instance where he enticed a minor into engaging in sexual activity.

And in addition to that, he engaged in separate conduct involving the enticement of a minor to engage in prostitution.

According to the guidelines – and we’re looking at United States Sentencing Guideline Commentary note 4(A)(i) for purposes of subsection B, prohibited sexual conduct, means any of the following: Any offense described in Title 18, United States Code, Section 2426(b)(1)(A) or (B).

Title 18, Section 2426(b)(1), includes any offense under Chapter 109A, 110, or Section 1591.

In this case, his attempt to engage a minor in prostitution is conduct that falls squarely under 1591, commercial sex trafficking of a minor.

[1902] So we understand that with these two instances where he attempted to engage a minor in prostitution, we have sufficient evidence that the defendant engaged in a pattern of prohibited sexual

conduct. And the Eleventh Circuit has recognized that the enhancement applies in these cases.

If the offense of conviction qualifies as prohibited sexual conduct, the pattern of activity enhancement is available if the district court finds only one additional occasion of prohibited sexual conduct. That is *United States versus Castleberry*.

Furthermore, a defendant's conduct need not result in a conviction in order for this report to consider occasions of prohibited sexual conduct.

In addition to that, in *United States versus Carter*, the Court indicated Section 4B1.5 looks at the likelihood the defendant will become a repeat offender and whether lengthy incarceration, therefore, is needed to protect the public.

And basically, Your Honor, that's why we believe that this enhancement should apply, because we have two instances. We have the July incident, and we have the October incident. Both of them, the conduct, the offense conduct involves commercial sex trafficking of a minor.

The instant offense of conviction is a covered [1903] offense as well as the one that the Court was choosing in order to apply that prohibited sexual conduct enhancement, which we would submit, then, that it could be either of, either the July or the October offense conduct, would qualify him for the prohibited sexual conduct enhancement.

In addition to that, we understand that restitution is not applicable in this case because we don't have a real victim. And that would be under Title 18, United States Code, Section 3663A.

The defendant also alleges that the Court should vary downward, but he didn't cite any proper authority for that request.

I noted that he alleged on multiple occasions that this was not a violent offense and it was not a drug offense and that for that reason the defendant is not likely to engage in future crimes as well as he should qualify for a downward departure.

However, the attempted enticement of a minor has been specifically defined as a crime of violence. Title 18, United States Code, Section 3156(4)(C) defines the term crime of violence as any felony offense under chapter 109A, 110, or 117.

And the attempt to entice a minor to engage in illicit sexual conduct is a violation, is a felony offense under chapter 117, thus making this a crime of violence. [1904] Therefore, that is not a proper basis for downward departure in this case.

The defendant's conduct in this case is far more serious than a drug offense. He attempted to entice two 12-year-old girls into engaging in sexual activity. He offered \$50 to obtain oral sex from two minors for the thrill of it, for the thrill of going to jail. That constitutes a crime of violence.

This is not a proper basis to request a downward departure. And the Court should deny that request.

In addition to that, we submitted letters that were provided by some of his friends. And we also have a request, Your Honor, from defendant's mother-in-law. She actually wrote a statement. And she wishes to read it to the Court.

I talked to defendant's counsel about it. I understand they are going to object to that request as well.

But under the 3553 factors, Your Honor, we understand that she's not a perceived victim in the case. But we would like for the Court to hear what she has to say regarding defendant's background and characteristics.

All the other – there were two letters that were submitted, and they're a part of the record already, Your Honor. But we also have defendant's mother-in-law who [1905] would like to provide a statement to the Court.

THE COURT: Okay. Thank you, Miss Rivera.

Mr. Halscott, I'll give you a brief opportunity to respond. And then I'm going to resolve these issues with respect to the computation of the guidelines. And then I'll hear from you on the request for the United States to have the Court entertain the statement from a non-victim.

MR. HALSCOTT: Yes, Your Honor.

And as AUSA Rivera mentioned, we do have a standing objection to the non-victim testifying in this

case or the, again, the admission of any letters provided on their behalf.

Going back, Your Honor, to 4B1.5 that AUSA Rivera has mentioned, it references specifically, again, Sections 109, 110, and 1591. Mr. Wilkerson is charged under 117.

AUSA Rivera has attempted to use the prohibited sexual conduct definition and pattern cited specifically in her memorandum as coming from 4B1.5, comment 4 – comment note 4B1, specifically the definition. As – I won't belabor the point. She's already eloquently said that.

But she attempts to now raise this prostitution issue and this prostitution function as a way of saying that there's a prohibited sexual conduct that's outlined in that. There is not. Nor was Mr. Wilkerson convicted of [1906] such a crime under 1591. So that enhancement is clearly inapplicable to the present case.

Beyond that, Your Honor, I have no further response.

THE COURT: All right. Thank you, Mr. Halscott.

Well, I confess I'm not sure why we got off on the prostitution issue myself, Miss Rivera, in terms of your argument under 4B1.5. I don't see that that's necessarily critical to the application of the guideline enhancement under 4B1.5.

Miss Davis is here. I forgot to note Miss Davis' presence for the record. Thank you for being here.

But as I look at 4B1.5 and the comments, the comment for application of the subsection notes that for purposes of subsection B, the defendant engaged in a pattern of activity involving prohibited sexual conduct, if on at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor.

The offense with which the defendant was charged and for which he was convicted involved prohibited sexual conduct of a minor. The PSR indicates that the attempted sexual enticement of a minor occurred on two separate occasions: one in July and I think the other was in October.

And so I'm not sure why we've gotten off on the [1907] discussion about prostitution. It looks to me like the probation office applied the guideline based on the pattern of activity associated with those two events, not with anything related to prostitution.

So what am I missing, Miss Rivera?

MS. MIRANDA RIVERA: No, Your Honor. We're just basically – we're describing the offense conduct. Yes, it is enticement under 2422(b). But the offense conduct also involves soliciting a minor for prostitution, which squarely falls under 18 U.S.C. Section 2426(b)(1), as prohibited sexual conduct as well.

THE COURT: Well, I guess my question is, why are you going there? Prohibited sexual conduct

also includes using a computer to entice a minor to engage in a sex act, correct?

MS. MIRANDA RIVERA: Yes, Your Honor.

THE COURT: So if that happened on more than one occasion, then the enhancement is appropriate, correct?

MS. MIRANDA RIVERA: I believe so, Your Honor.

THE COURT: I don't think – I guess the question is whether or not we're arguing semantics here over whether or not it would qualify as the offense of prostitution or not. It doesn't seem to me to matter.

Miss Davis, do you have a view on the Court's interpretation?

[1908] PROBATION OFFICER: Your Honor, I actually agree with what you said the first time. We based it on the pattern of the two victims of enticement. Nothing else.

MS. MIRANDA RIVERA: Your Honor, under 4B1.5(b)(1) the offense level, the five-level enhancement, that section has – basically, the commentary for that section is application note 4A.

And then it defines: For purposes of Section B, prohibited sexual conduct means any of the following. And it basically lists what is a covered offense of prohibited sexual conduct.

What I'm saying is that it falls squarely under the definition of 18 U.S.C. Section 2426(b)(1)(A) because it involves a commercial sex trafficking of a minor as well as enticement of a child.

MR. McCULLOCH: Judge, if I may.

THE COURT: You're going to need to come to the podium and use the microphone.

MR. McCULLOCH: I apologize, Your Honor.

THE COURT: That's all right.

MR. McCULLOCH: It is clear, Judge, that under 4B1.5, under the comment notes, the Government alleges that it's a covered offense under 2426. 2426 does not list Title 17 as a covered offense.

THE COURT: Well, what both of you are arguing [1909] around, and I'm trying to figure out why, is if – and I understand that you dispute that this is two separate offenses involving a notional minor.

But if, in fact, it is two separate offenses involving a notional minor in July or June as well as another one later in the year in October, then that qualifies as a pattern of activity under the enhancement if those facts are true.

And I see Mr. Halscott shaking his head. But, first of all, you guys are wrong. And I'm giving you an opportunity to tell me if you think the Court is misreading the guideline. But the probation office has absolutely correctly applied this pattern enhancement.

And this argument that both you and the Government are going off chasing this rabbit down the prostitution rabbit hole has no relevance to the application of this particular enhancement.

So, you know, I'm trying to give you an opportunity to tell me where it is you think I'm going astray.

MR. McCULLOCH: Respectfully, Judge, the United States Government has just alleged that he was convicted of commercial sex trafficking. That's not what he was convicted of. Their argument is based on a conviction of commercial sex trafficking, and it doesn't exist.

[1910] THE COURT: Can we focus on my question?

MR. McCULLOCH: Sure.

THE COURT: Can we focus on whether or not this enhancement would apply if the facts demonstrated that Mr. Wilkerson had on two separate occasions committed the act of attempted enticement of a minor?

You're going to have to give me more than a head shake, Mr. Halscott, because I've sentenced people over and over and over and over and over again –

MR. HALSCOTT: Yes, Your Honor.

THE COURT: – under this statute where there has been a pattern of activity. And this enhancement applies.

This argument that I'm hearing from you that it does not apply today based on some interpretation of the criminal prostitution statute is novel to me.

So I want to give you an opportunity to help me understand it. Because I confess to you, I do not understand what it is you're talking about.

MR. HALSCOTT: Well, we have nothing to do with the prostitution aspect. What's happened is, in order to get, to meet the definition of prohibited sexual conduct – forgetting a pattern of any conduct, the definition of prohibited sexual conduct, specifically as 2426 lays out, is not 2422.

It's the Government's way of applying these, this [1911] particular enhancement and these guidelines to fit a square peg into a round hole.

This is not an appropriate use of this enhancement because by the plain meaning of that definition, this is not prohibited sexual conduct. Whether there's a pattern of it or not, whether there were 5,000 instances of it, it is not by definition prohibited sexual conduct for purposes of this sentencing enhancement.

THE COURT: All right. So it's your interpretation of this enhancement that it does not apply to the attempted – or to the enticement of a minor by the use of a computer for the commission of an unlawful sex act.

MR. HALSCOTT: That is exactly the plain meaning of the statute, yes.

MS. MIRANDA RIVERA: Your Honor, we disagree under 18 U.S.C. 2426(b)(1)(A). We understand that it would fall on also the definition of – a defendant committed a violation as he was charged in count one and count two that would have –

THE COURT: I can't – if you have one or two things to say, but Miss First can't hear you if you don't come to the podium.

MS. MIRANDA RIVERA: Yes, Your Honor.

The enticement of a minor, had the defendant [1912] committed the violation, he would have also violated state law as charged.

2426(b) covers both, I believe, enticement, commercial sex trafficking of a minor under the definitions of what's prohibited sexual conduct.

So we agree with the Court that it would apply in this case just as if it was considered plain enticement of a minor.

THE COURT: All right. I've heard all I need to hear about that. I'm going to make the following rulings.

I'm going to deny the motion to strike the craigslist material. I think it is appropriate for consideration for sentencing purposes.

I'm going to overrule your objection to the two-level enhancement that's found in paragraphs 17 and 24 for the use of a computer.

I'm going to sustain your objection to the two-level enhancement found in paragraphs 25 and 18 related to the commission of a commercial sex act. The Government concedes you're correct on that argument.

I'm going to overrule your objection to the chapter 4 enhancement. I want to make sure that the record is clear, I am applying the chapter 4 enhancement as described in paragraph 34 of the PSR under 4B1.5 based on the Court's interpretation that the pattern of activity [1913] relates to the prohibited sexual conduct of a minor and that that prohibited sexual conduct is the use of a computer to attempt to entice a minor to engage in sexual activity which would have constituted a violation of Florida law.

So I'm not making my determination on the basis of the commercial sex act. So that the record is clear.

All right. Anything else with respect to the computation of the guidelines, Mr. HalScott?

MR. HALSCOTT: No, Your Honor. Thank you.

THE COURT: You're welcome.

How about from the Government's point of view? Miss Rivera, any objection to the guidelines –

MS. MIRANDA RIVERA: No objection.

THE COURT: – or the facts contained in the PSR other than those we've heard about already?

MS. MIRANDA RIVERA: No objections, Your Honor. We would just like for Miss –

THE COURT: I can't hear you.

MS. MIRANDA RIVERA: We would just like for the one witness to be heard if possible, the defendant's mother-in-law.

THE COURT: Okay. I'm going to give Mr. Halscott a chance to argue that briefly.

And then last but not least, Mr. Halscott, I'm [1914] going to grant your motion – I'm going to deny your motion to strike the letters and the other material. But I am going to – I presume you would like to have it sealed. I don't want to be presumptuous. If I'm not going to strike it, would you like to have it sealed?

MR. HALSCOTT: Yes, Your Honor.

THE COURT: Okay. I will seal the information that's contained in the Government's sentencing memorandum attached as exhibits.

And so, Miss Riddle, if you would make a note to seal those portions of the Government's sentencing memorandum.

All right. In light of the Court's rulings on the defense objections to the PSR, I think that would –

Miss Davis, you check my math.

But I think that would now take us down to an offense level of 30, criminal history category of I on both of the two offenses.

And then do we need to go through the grouping analysis again?

PROBATION OFFICER: Yes. That's correct.

THE COURT: All right. So the revision to the PSR, then, in light of the Court's rulings would result in the elimination of the two-level enhancement that's found in paragraph 17 as well as the – I'm sorry – the [1915] two-level enhancement that's found in paragraph 18.

That gives us on a base offense level on group one related to count one of 30. And then I'm going to modify the PSR with respect to the two-level enhancement that is found in paragraph 25 as it relates to group two, count two, and eliminate that two-level enhancement.

That will result in an offense level of 30 and a criminal history category of I for the group two or count two group.

Then the multiple-count adjustment that's found in paragraph 30 would be revised to reflect an offense level of 30 as it relates to group one. An offense level of 30 as it relates to group two. Still have two units. So the greater of the adjusted offense level above would be, then, 30.

PROBATION OFFICER: 30.

THE COURT: And the increase in the offense level for the grouping would be a combined adjusted offense level of 32 as opposed to 34.

Is that correct, Miss Davis?

PROBATION OFFICER: Yes, that's correct.

THE COURT: And then I've overruled your objection, Mr. Halscott, as it relates to the chapter four enhancement that's described in paragraph 34.

So that results, then, in a total offense level of [1916] 37; criminal history category of I; and a resultant, then, guideline term of imprisonment – I'm sorry.

Miss Davis?

PROBATION OFFICER: 210 to 262.

THE COURT: Right. 210 to 262 months.

Does it impact the supervised release term or the fine?

PROBATION OFFICER: Just the fine.

THE COURT: All right. How does it impact the fine?

PROBATION OFFICER: The fine will be \$20,000 to \$200,000.

THE COURT: Okay. Thank you, Miss Davis.

Let me just recap that for the record. Based on the Court's rulings, the Court's finding of fact that

determines the advisory guidelines results in a total offense level of 37; criminal history category of I; the resultant range of imprisonment under the guidelines from 210 to 262 months; term of supervised release ranging from 5 years to life. Restitution is not applicable. Fine ranging from \$20,000 to \$200,000; and a \$200 special assessment.

All right. Now, the Government has indicated that there's an individual who wishes to address the Court with respect to sentencing.

[1917] And, Mr. Halscott, you have an objection to that. So let me give you an opportunity to argue that for me briefly.

MR. HALSCOTT: Sure. Thank you, Your Honor.

THE COURT: Yes, sir.

MR. HALSCOTT: Okay. Your Honor, the Government is attempting to bring forth witnesses to testify to something completely outside the scope of what we're here for today.

Any witness that would come forward that's not a victim, that is not someone who was directly involved with this case, would be completely inappropriate. It would prejudice the administration of justice.

There is a fundamental constitutional issue with confrontation. Because we, until just now, have no idea who wrote these letters that were attached, to which I already have my standing objection.

Certainly them testifying to matters that are outside of their direct knowledge would provide no worth whatsoever to this Court.

It would be no different than me finding anyone who might be able to find in the public someone who says anything else about this offense, either pro or con. It simply doesn't add anything to this matter.

We're dealing here with a notional victim from a [1918] nonexistent commercial sex act. There is nothing that a non-involved party can provide that would be anything but prejudicial to my client in this matter.

THE COURT: Miss Rivera, does the Government want to be heard further?

MS. MIRANDA RIVERA: Yes, Your Honor.

Your Honor, starting, there's no confrontation issue here. Proffer does not apply. We're not talking about any person. We're talking about defendant's mother-in-law, a person that's known him for a number of years, that can provide pertinent information to the Court regarding the defendant's background and characteristics.

She would like to make a statement to the Court, Your Honor. And she has – she has really expressed her desire to express her view on this matter and how it has had an impact on her family and provide some information about defendant's background as well.

We understand that it would not be unfairly prejudicial because it falls under 3553 factors as to the

defendant's background and characteristics and whether there is a risk of recidivism as well.

And in that sense, we believe it is pertinent.

THE COURT: Okay. All right. I'm going to defer judgment on that for a moment. I'm going to do a little looking myself with respect to authorities since neither of [1919] you have given me any. I'll try to do some work on that myself. And we'll postpone that until a little bit later in the proceeding.

But let me hear from the United States, Miss Rivera, on the United States' position as to an appropriate sentence for Mr. Wilkerson.

MS. MIRANDA RIVERA: Well, Your Honor, in this case, we're asking for a sentence at the high end of the guidelines.

This defendant sought to engage two different minors in a commercial sex act because it involved him offering money in exchange for obtaining oral sex from two minors.

The seriousness of the crime cannot be overstated. The Congress has recognized that these are among the most egregious crimes.

Sexually abused children, the Eleventh Circuit has recognized that they are unable to develop healthy, affectionate relationships later in life. They have sexual dysfunctions. And they have a tendency to become sex offenders in the future as well. The seriousness of the offense cannot be overstated.

In this case, the defendant expressed no remorse.

He indicated to the officers during his custodial interview that he was well aware that he could have [1920] obtained sex through men and women on craigslist as he had done for a number of years.

But he did it just because of the thrill of it, the possibility of going to jail. He actually said that. And it shows something as to his character and the fact that he has no remorse.

Similarly, his history and characteristics weigh in favor of a sentence at the high end of the guidelines.

The defendant, there is absolutely nothing in his background that would indicate to the Court, okay, I can see why he did this, other than what he expressed to the agents, because of the thrill of it, because of his sexual urges and his compulsive nature when acting on his sexual desires.

We know that he's had the positive influence of his parents; that according to him, he had a close-knit family; that he has a good relationship with his siblings; that he did not suffer any form of abuse as a child; that there was no alcohol use or drug abuse in his home.

He has a bachelor's degree in political science and prelaw. He should know better than our average offenders that this, what he was doing in this case, was very serious and it was a violation of the law and a serious crime against children.

He has children of his own. He was married. And [1921] he had a wife who was a speech therapist and who would take care of her children. And the children are ten, seven, and four years of age.

He risked all of that to engage in this offense. And he sought to have sex with children, not only once, but twice.

He is a sexual predator. His attempt to induce two different minors into engaging in sex shows that he is sexually interested in children and he lacks the moral conscience to refrain from acting out on his dangerous sexual interests.

A sentence at the high end of the guidelines would provide sufficient time for him to receive treatment, sex offender treatment, and reflect upon the seriousness of the offense.

In addition to that, Your Honor, we submitted letters by three of his friends. We have asked the Court to review those letters. We've asked the Court to protect his children and the community from future crimes of the defendant.

And we ask the Court to consider those letters and to impose a sentence that would reflect the seriousness of the offense and the need to protect the public from future crimes of the defendant.

Congress has explicitly recognized the high rate [1922] of recidivism in convicted sex offenders, especially child sex offenders. The nature of the evidence in

this case indicates that he's a sexual deviant in constant search for his next sex adventure.

The Government's evidence shows that he has been soliciting sex from men and women, transgender individuals, for a number of years and that he has transitioned into more sexually deviant behavior, and now children.

His lack of regard for the welfare of children and his criminal intent to sexually exploit children, Your Honor, deserves a sentence that is serious; that deters others from engaging in this conduct; and that gives him the opportunity for reflection and to receive sex offender treatment away from computers, the Internet and, most importantly, from children.

Thus, we recommend, Your Honor, a sentence at the high end of the guidelines.

Thank you.

THE COURT: Thank you, Miss Rivera.

Mr. Halscott, would you like to be heard in mitigation?

MR. HALSCOTT: Yes, Your Honor. Thank you very much.

The Government talks about the recidivism rates among sex offenders. In this particular case here, we had [1923] a psychosexual evaluation done, one that showed that Mr. Wilkerson had no predilection towards children.

In fact, of the substantial stack of craigslist posts that we've been given by the Government, we can find no evidence of what the Government is alleging.

In fact, everything that's happened in this case has been the result of the Government posting ads, the Government creating notional victims, the Government engaging in and, in fact, multiple times re-engaging

Mr. Wilkerson with posts that he, in fact, flagged as inappropriate or illegal.

Today here the Government is asking us to punish Mr. Wilkerson for his, quote, lack of remorse. It is not lack of remorse to exercise your constitutional rights to trial. If you believe that you're innocent of the charges, it is your right to go to trial. Mr. Wilkerson did that in this case.

Similarly, we look at the calculations of guidelines and we compared them federally versus state. For whatever reason, Congress has always seen fit to, quote, get tough on crime, which has led to this, I guess, undercurrent of mandatory minimum sentences.

If this was a state conviction, this would have been much lower, guidelines around the 24- to 27-month range, based on the calculations that my office has done.

[1924] Now, we hear references to Mr. Wilkerson as a husband and father. And up until the time of his conviction, he was a happily married husband.

He does have three minor children. And there have been no allegations of abuse. There have been no allegations of him hurting his children, any kind of sexual conduct with his children. In fact, he's proven to be the model father in his behavior with his children.

Everything from a father-and-daughter dance that was the highlight every year for him in his time with his children.

Mr. Wilkerson, as reflected in probation's report, has had a history of problems with alcohol, problems which can be resolved through treatment that doesn't involve excessive incarceration.

We certainly understand the Court's position here today and that it has a difficult decision sentencing a man to be away from his children, who for anything other than the mandatory minimum, he will never see them grow up at all.

Now, we also find in sex offender cases usually the pervasive nature of child pornography. There was no such finding in this case. There was no child pornography. Mr. Wilkerson has never possessed any child pornography. The State has never – the Government in this case has [1925] never alleged that.

All these factors that the Government alleges lead to recidivism simply aren't present in Mr. Wilkerson's case. At best, this could be considered a fluke, one which certainly could never happen again.

Even at the mandatory minimum sentence, Mr. Wilkerson's life is changed forever. He's already going

to miss a tremendous amount of time with his children. We don't see any reason here that he should be deprived of that any further.

Again, there was no harm that came to a minor in this case. In fact, anything more than a cautionary tale for Mr. Wilkerson.

And we'd ask the Court certainly to depart from the guidelines for a downward departure. And we would ask that a sentence of no more than the mandatory minimum be imposed.

THE COURT: I'm going to take a short break to look into this witness situation, because I want to make sure that I give Mr. Wilkerson an opportunity to make his allocution after every other presentation has been made. I think that's appropriate under the circumstances.

MS. MIRANDA RIVERA: Your Honor, regarding the psychosexual evaluation, we've never seen a psychosexual evaluation. We really would ask the Court not to consider [1926] that because we've seen no evidence –

THE COURT: I indicated at the outset that I do not have a psychosexual evaluation. It's not been made a part of the record. So it's not part of the record. I can't consider it. And, you know, I've already expressed my views on why that's not here.

And I don't know. If you have one that you want to have the Court rely on, you're going to need to give it

to the Government at the very least. And we'll see where it goes from there.

Okay. I'm going to take a short recess.

COURT SECURITY OFFICER: All rise.

(Recess at 10:59 a.m. to 11:04 a.m.)

THE COURT: All right. We're back on the record in United States versus Wilkerson, Case Number 6:14-cr-267. The Court notes that all counsel are present, and the defendant is in the courtroom.

In an unpublished opinion in United States versus Gianoli found at 537 Fed. App'x. 849, 2013, the Eleventh Circuit noted that the Court has the discretion to conduct a broad inquiry at the time of sentencing, which is, quote, largely unlimited, closed quote, as to either the kind of information that may be considered or the source from which it comes relying upon Supreme Court's opinion in United States versus Tucker, 404 U.S. 443. That's Supreme Court [1972] of the United States, 1972.

The Gianoli case, while not binding authority, is persuasive authority. And I am persuaded that it's within my discretion to entertain in connection with the relevant factors under 3553 the information that's proffered by the United States.

So, Miss Rivera, I'm going to permit your individual to address the Court in connection with Mr. Wilkerson's sentencing.

And I'll note the defendant's objection.

MS. MIRANDA RIVERA: Your Honor, the Government calls Miss Norma Glasgow.

THE COURT: I understand she has a letter that she wants to read; is that right?

MS. MIRANDA RIVERA: That's correct, Your Honor.

THE COURT: Ma'am, if you'll come to the podium and then adjust that microphone so you're speaking directly into it.

If you'll tell me your name and spell your last name for me, and I'm happy to hear from you.

MS. GLASGOW: Norma Glasgow, G-L-A-S-G-O-W.

THE COURT: Thank you.

MS. GLASGOW: Give me a minute.

THE COURT: Yes, ma'am. You can proceed. I think if you need them, there should be some tissues up there.

[1928] I know it's a tough spot for you.

So let me give you a chance to collect your breath, and we'll go from there.

MS. GLASGOW: I can't finish. Can somebody finish for me?

THE COURT: Let's see how we do. Let's see how we do. I'll give you as much time as you need to try to get through it.

MS. GLASGOW: First, thank you.

THE COURT: Yes, ma'am.

MS. GLASGOW: I'm here today to speak on behalf of my husband and myself. We want you to hear about Dennis Wilkerson's victims, our daughter and her three precious children.

To be clear, all the tears we have shed since October of last year when it was discovered that Dennis Wilkerson is a child predator have not been shed out of sympathy towards him. Our tears have been for the terrible loss and broken hearts in our family, our daughter and her three children.

We have stood by the past 12 years of our daughter's marriage to him. And we want to share with you the things that have occurred both before and after his arrest. What I will share is what I have personally witnessed.

[1929] Start with my daughter. Since his arrest, we've had to stand by and watch her in turmoil while her life has been on hold. She's under doctor's care, on medication for both depression and anxiety, and is undergoing counseling to help her work through the betrayal, overwhelming sadness, and humiliation that Dennis Wilkerson has saddled her with.

There are days on end when she hasn't even wanted to leave her home other than to go to work, take the children back and forth to school, or run some necessary errands.

We have to sit back and watch her paralyzed with devastation. She's been knocked down so hard that she's having a difficult time getting up, literally.

She's angry, embarrassed, and now has incredible trust issues. This is not the girl we raised, Judge Dalton. We pray to God she comes back to us. For our broken daughter, Judge, we blame one man, Dennis Wilkerson.

His ultimate victims were his children. Not only did he betray the sacred bond of love between parent and child, but he did not provide adequately for them either.

Of all the things a child should be able to count on, shouldn't the unconditional love of one's father be one of them?

When we thought he was working, when he should [19230] have been putting food on the table, instead he was feeding his sickness with filth. The children long for a family unit that can never be theirs again because he threw it all away. He threw them away.

They each now face a lifetime of humiliation and reckoning. Our oldest grandson, who is named for his father and who is now ten years old, will, in all likelihood, be dating and looking for a job in just a few short years.

The Internet is powerful. And especially he will never be able to rid himself of his father's filth and sins. He will pay the price of his father's sins forever. He's had a huge burden on his shoulders at way too young of an age. You should know that he's been counseling, too.

We'd like to point out how obsessive Dennis Wilkerson was about phone calls with our daughter. When she wasn't home, he telephoned her several times a day, sometimes more than once in an hour. And what she misunderstood as thoughtful concern and loving was, in fact, controlling, overbearing, and deceitful.

He was a horrible role model for his children, not emotionally present. And in the last four years or so, weekends almost always involved a hangover and inappropriate discipline where the children were concerned. His oldest son suffered the worst of that.

[1931] In the 12 years of their marriage, he had 11 jobs. He was a poor provider for his family to the extent that due to his choices, they lost their home in Casselberry in a short sale three years ago.

My husband tried to counsel him in looking for a career, but he wasn't interested in that guidance. He was only interested in jobs that gave him freedom to be on his own, like selling radio advertisement.

After finding out what he did with his time, time that should have been spent working, we now understand that he didn't want to do the right thing for his family.

Three years ago we also loaned him money to buy a car because his credit score was so low he couldn't even qualify for a high-interest-rate loan. Not surprisingly, after only four repayments, he lost his job again.

As parents, how can we begin to express the pure anguish of sitting in a doctor's office with our daughter as she endured the pain and humiliation of being tested for AIDS and other STDs and having to hold her to keep her from collapse?

How can I impress you with the devastation he has inflicted when the truth of his character and actions were revealed?

Our biggest concern is that he will be released from prison before the children are adults and better [1932] equipped to handle a relationship he will undoubtedly pursue with them.

Because of documents we have read, documents we – that required an urban dictionary, we have seen a side of him that has clearly gone from wrong and immoral to dark and disturbed. He's led a double life that crosses the line of decency.

Because of the progression of his sexual deviancy, our fear is summed up in one question, Your Honor: Where will this abhorrent behavior take him next? Are his children next?

His daughter will be 12 years old in just 4 short years from now, the very same age of his 2 children he attempted to have oral sex with.

Will his sickness stop at little girls?

He has two sons. The youngest is only four.

Although we are grateful for the agents that arrested him, we beg of you, Judge, please don't let their work be in vain by putting our grandchildren in danger of sexual abuse from this man ever.

That's all I have to say.

THE COURT: Thank you, Miss Glasgow.

Anything else from the United States, Miss Rivera?

MS. MIRANDA RIVERA: Nothing else from the United States.

[1933] We really have not had an opportunity to review this. But if it benefits the Court in its – the assessment of an appropriate sentence, we wouldn't object that it be part of the record, in all fairness.

THE COURT: Is it something you would like for me to consider, Mr. Halscott?

MR. HALSCOTT: Yes, please, Your Honor.

THE COURT: Okay. Do you have a copy for the Court?

MS. MIRANDA RIVERA: Yes.

THE COURT: All right. Let's do this. I want to be able to review this in its entirety, Mr. Halscott.

I'm going to give Mr. Wilkerson an opportunity to make his allocution. I'll take another short recess. I'll review your psychosexual evaluation. And I'll make my decision with respect to an appropriate sentence, and I'll come back to the bench and proceed with sentencing.

Mr. Wilkerson, anything you'd like to say to me before I proceed with the imposition of sentence?

THE DEFENDANT: No, Your Honor. I'm going to rely on what my attorneys have said.

THE COURT: Okay. Is the Government aware of any legal bar or impediment to proceeding with the imposition of sentence, Miss Rivera?

MS. MIRANDA RIVERA: No, Your Honor.

[1934] THE COURT: Mr. Halscott, are either you or your co-counsel aware of any legal bar with respect to proceeding to impose sentence?

MR. HALSCOTT: No, Your Honor.

MR. McCULLOCH: No, Your Honor.

THE COURT: All right. Let me take another short break. And I'll be back after I've had a chance to review this, and I'll proceed with the imposition of sentence.

COURT SECURITY OFFICER: All rise.

(Recess at 11:14 a.m. to 11:30 a.m.)

THE COURT: All right. I've had an opportunity to review and I'm going to have marked as the Court's Exhibit 1 a report from Jeffrey Danziger, Psychiatric Affiliates, PA, dated January 15, 2015, which is a psychosexual evaluation conducted by Dr. Danziger on Mr. Wilkerson.

(Court's Exhibit 1 was received in evidence.)

THE COURT: To summarize the report, Dr. Danziger is of the opinion that Mr. Wilkerson is at a relatively low risk of recidivism. He does not qualify for a diagnosis of pedophilic disorder. But he does qualify for a diagnosis of unspecified paraphilia in light of reported events and history of sexually aberrant, deviant behavior.

Dr. Danziger noted that Mr. Wilkerson denied any [1935] sexual interest in children, and none of the testing performed by Dr. Danziger indicated that Mr. Wilkerson had an aberrant sexual interest in children.

The report contains other findings, and it will be made a part of the record. But that's a summary of Dr. Danziger's opinions.

And also note that Dr. Danziger mentioned – in terms of his history, he commented on Mr. Wilkerson's reported history of alcohol abuse as well as a report that Mr. Wilkerson reported one prior soliciting charge about 17 or 18 years ago, which, according to Mr. Wilkerson, was dismissed.

All right. The Court has a responsibility to, first of all, take into account the guidelines in connection with arriving at an appropriate sentence.

As we've already reviewed in some detail, the guidelines that are applicable to the facts and circumstances of Mr. Wilkerson's case call for a guideline sentence ranging from 210, I think, to 262 months.

And the next responsibility the Court has is to determine whether or not there are any factors, either aggravating or mitigating, that would warrant a departure or variance from the imposition of a guideline sentence.

The Government is requesting a high-end guideline sentence. And Mr. Wilkerson, through his counsel, is [1936] requesting that the Court sentence him with a variant sentence down to potentially the minimum mandatory term of incarceration of 120 months.

So I've taken a look, as I must, at the 3553 factors, which would include the nature and circumstances of the offense.

This is a very serious offense, as has been already identified by the Congress of the United States. That's the reason that the Congress has imposed a minimum mandatory term of imprisonment of 120 months for the commission of this offense.

It's a crime that is – tests the resources of the law enforcement agencies associated with not only state but federal agencies in terms of trying to identify and interdict sexual predators who will be inclined to

commit sexual offenses with respect to the most vulnerable members of our society.

So it requires the Court's recognition that it is a very serious offense. I note that a couple of times in counsel's presentation, there was a suggestion or at least an implication that this was, in essence, an initiative that was undertaken by the United States or by the law enforcement authorities.

And I just want to point out for the record that Mr. – at least the indication I see in the record is that [1937] Mr. Wilkerson, after the initial contact, also re-engaged with law enforcement of his own volition without any repeat efforts by law enforcement to engage Mr. Wilkerson.

So not that that argument is meritorious, but I think it's important to note that Mr. Wilkerson acted out of his own initiative on at least one occasion in terms of contacting law enforcement for the purpose of having sexual activity with an individual he knew to be the age of 12.

Mr. Wilkerson, in his comments to Dr. Danziger as well at least implicitly through his arguments made by counsel, has raised the issue, for lack of a better descriptive term, that this was mainly a curiosity on his part, that he had no intent to actually carry out the criminal conduct had the individual in question actually turned out to be 12 years of age.

And I'll note that this particular crime of child enticement through the use of a computer involved much

more than Mr. Wilkerson in the confines of his own home or in some other secure, protected environment looking at information or exchanging information or chatting with individuals.

He actually took the initiative to get in his car, make arrangements for a meeting place, travel to the meeting place, change the meeting place from the initial meeting place to a different meeting place, presumably [1938] because of his concern about apprehension through law enforcement.

So there was a lot of independent activity on the part of Mr. Wilkerson, which suggests that he had every intention of carrying out the act, including what the evidence reflected at trial and is included in the PSR, that he had made a stop at an automatic teller machine in order to get the funds necessary to consummate the transaction.

So all of those factors certainly militate in favor of a guideline sentence.

I'm also obliged to take into consideration, of course, the history and circumstances of Mr. Wilkerson. And I don't find anything in the record to suggest that there's mitigating circumstances with respect to Mr. Wilkerson.

I know the argument that he was, prior to this conviction, had operated as a model father, I must note for the record that that stands in stark contrast to the behavior that's reflected in the information that's

contained in the online Internet chats and communications.

I guess it's not fair to call them chats. But Email or craigslist postings seem to conflict fairly significantly with the presentation that Mr. Wilkerson would make to the Court that he was a model father.

[1939] So I didn't find anything in looking through the PSR or in the material that was presented today which would suggest to me that there's any reason to mitigate from the sentencing guidelines, to vary from the guidelines based on any mitigating considerations.

Taking into account, as I must, my obligation to impose a sentence that promotes respect for the law, that provides a deterrent, not only to Mr. Wilkerson but also to others who might be inclined to engage in this activity, the sentence must protect the interests of the public.

I've noted, as I mentioned, Mr. Danziger – Dr. Danziger's opinion that Mr. Wilkerson does not pose a high risk of recidivism.

I'm not confident that I share Dr. Danziger's confidence in that respect. And I take seriously the responsibility of the Court to impose a sentence that provides protection for the public.

I do want to make one comment in response to a suggestion by defense counsel that Mr. Wilkerson was being subjected to more severe or potentially more severe punishment because of his exercise of his constitutional right to go to trial.

I presided over the trial. And really, nothing could be further from the truth. Mr. Wilkerson, as his lawyer correctly pointed out, had every right to put the [1940] facts – put the Government to its proof. And a jury listened to the evidence in the case and returned a verdict of guilty.

And the Court is going to sentence Mr. Wilkerson for the offense, not for – not in any way as retribution for exercising his constitutional right to have a jury determine his guilt or innocence.

But with that said, it's my view that the guidelines do an adequate job of establishing an appropriate sentence range for Mr. Wilkerson. I don't – the sentence requested by the guidelines or recommended by the guidelines is a serious sentence. It's a lengthy term of incarceration at the low end of the guidelines.

And that's what I intend to impose. I intend to impose a term of incarceration of 210 months in the custody of the Bureau of Prisons, to be followed by a term of supervised release.

I'm going to set the term of supervised release at eight years and impose certain special conditions in connection with that supervised release term.

So, Mr. Wilkerson, if you and your lawyer will stand, please, I'll proceed with the imposition of sentence.

The Court having inquired of counsel as to whether there's any legal bar or impediment to proceeding with the [1941] imposition of sentence and

having heard none, having reviewed the presentence report as well as the sentencing memorandum submitted by the defendants and the response submitted by the United States, I've also considered the Court's Exhibit 1, the psychosexual evaluation that was provided at the time of the sentencing proceeding.

I've heard arguments of counsel. I've given Mr. Wilkerson an opportunity to make an allocution, which he has declined.

I've stated my reasons for the imposition of the sentence and the consideration of the 3553 factors.

Therefore, it is the judgment of the Court that the defendant, Dennis Michael Wilkerson, be committed to the custody of the Bureau of Prisons to be imprisoned for a term of 210 months. This term consists of 210 months on each of counts one and two, those terms to run concurrently.

On release from imprisonment, you shall serve an eight-year term of supervised release. This term consists of eight years on each of counts one and two, those terms to run concurrently.

While you're on supervised release, you're ordered to comply with the standard conditions adopted by the Court in the Middle District of Florida, as well as the following special conditions.

[1942] You're ordered to participate in a mental health treatment program that specializes in sexual offender treatment and to submit to polygraph testing for treatment and monitoring purposes. The probation

officer will give you instructions regarding the implementation of this court directive which you are to follow.

You're ordered to contribute to the costs of that treatment or polygraph, not to exceed an amount determined reasonable by the probation office's sliding scale, the availability of third-party payments, or your ability to pay.

You're ordered to register with the state sexual offender registration agencies in any state where you reside, visit, are employed, carry on a vocation, or are engaged as a student, as directed by the probation officer.

The probation office will be directed to provide state officials with any information that might be required under the Florida sexual predator and sexual offender registration and notification statutes and may direct you to report directly to those agencies for required additional processing, such as photographing, fingerprinting, and DNA collection.

You're ordered to have no direct contact with minors under the age of 18 without the written approval of the probation officer. And you're ordered to refrain from [1943] entering into any area where children frequently congregate, including schools, day care centers, theme parks, playgrounds, et cetera.

You are prohibited from possessing, subscribing to, or viewing any images, videos, magazines, literature,

or other materials that depict children in the nude or in sexually explicit positions.

Without the written approval – prior written approval of the probation officer, you are prohibited from either possessing or using a computer, including any smartphone, handheld computer device, gaming console, or other electronic device that is capable of connecting to any online service or Internet service provider.

This prohibition includes any computer that might be located at a public library, Internet cafe, place of employment, or an educational facility.

You're also prohibited from possessing any electronic storage mediums, including flash drives, compact discs, or floppy disks. And you are prohibited from utilizing any data encryption techniques or programs.

If you are approved to possess or use such a device, you must permit routine inspection of the device, including the hard drive or any electronic data storage medium to confirm that you are in compliance with this condition.

[1944] The United States Probation Office may conduct an inspection in a manner that's no more intrusive than necessary to ensure that you're in compliance of this condition.

You're obligated to inform any third parties, including your employer, of this restriction, as well as the computer inspection provision.

You're ordered to submit to a search of your person, residence, place of business, any storage units under your control, computers, or vehicles to be conducted by the United States Probation Office at a reasonable time and in a reasonable manner based on any suspicion of contraband or evidence of a violation of a condition of your release.

You're ordered to inform any residents of any premises that you inhabit that they may be subjected to a search pursuant to this condition, and failure to submit to a search may be grounds for revocation.

You are prohibited from incurring any new credit card charges, opening additional lines of credit, or obligating yourself for any major purchases without the approval of the probation office. You are required to provide the probation office with access to any requested financial information.

Having been convicted of a qualifying felony, [1945] you're ordered to cooperate in the collection of DNA as directed by the probation officer.

The mandatory drug testing requirements of the Violent Crime Control Act are imposed. And you're ordered to submit to drug testing in a random fashion not to exceed 104 tests per year.

I am going to waive the imposition of a fine based on the defendant's financial status.

Is there any forfeiture issue that the Government would like for me to include in the judgment, Miss Rivera?

MS. MIRANDA RIVERA: Yes, Your Honor. A final judgment, a forfeiture was entered at document 92. We ask that it be included in the judgment and conviction order.

THE COURT: Any objection to the forfeiture, Mr. Halscott?

MR. HALSCOTT: No, Your Honor.

THE COURT: All right. The Government's request for inclusion of the forfeiture items that are covered in document number 92, the preliminary order of forfeiture, is granted. And the items referenced in that doc 92 filing will be forfeited to the United States.

It's further ordered that the defendant pay the United States a special assessment in the amount of \$200, which is due immediately.

The Court considered the advisory sentencing [1946] guidelines, as well as all of the factors identified in Title 18 of the United States Code, Section 3553(a)(1) through (7), including but not limited to those that I specifically addressed in my statement with respect to sentencing.

And the Court finds the sentence imposed is sufficient but not greater than necessary to comply with the statutory purposes of sentencing.

The defendant is remanded to the custody of the United States Marshal to await designation by the Bureau of Prisons.

It's my obligation to advise you, Mr. Wilkerson, that you have the right to appeal the sentence of the Court within 14 days from today's date. Failure to appeal within that time period will be a waiver of your right to appeal.

You are entitled to the assistance of a lawyer in connection with taking an appeal. If you cannot afford a lawyer, one will be provided for you. If you cannot afford the filing fee, the clerk of the court will be directed to accept the notice of appeal without the payment of the fee.

The Court having pronounced its sentence, does either counsel for the Government or counsel for the defense have any objection to the Court's factual findings, the sentence, or the manner in which it was imposed?

Miss Rivera?

[1947] MS. MIRANDA RIVERA: No objections from the Government, Your Honor.

THE COURT: Mr. Halscott?

MR. HALSCOTT: Certainly, Your Honor. We would have a blanket objection to the sentence as imposed, certainly as required to preserve the record by the Eleventh Circuit.

We'd also ask for a sentence, to reconsider the sentence as well as to delay surrender to the Bureau of Prisons to allow Mr. Wilkerson to get his affairs in order.

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THE COURT: Okay. Those motions are denied.

We'll be in recess.

MR. HALSCOTT: Thank you, Judge.

(Proceedings adjourned at 11:46 a.m.)

**CONSTITUTIONAL PROVISIONS,
TREATIES, STATUTES, RULES
AND REGULATIONS INVOLVED**

18 U.S. Code § 1114 – Protection of officers and employees of the United States

Whoever kills or attempts to kill any officer or employee of the United States or of any agency in any branch of the United States Government (including any member of the uniformed services) while such officer or employee is engaged in or on account of the performance of official duties, or any person assisting such an officer or employee in the performance of such duties or on account of that assistance, shall be punished –

- (1) in the case of murder, as provided under section 1111;
- (2) in the case of manslaughter, as provided under section 1112; or
- (3) in the case of attempted murder or manslaughter, as provided in section 1113

18 U.S. Code § 2422 – Coercion and enticement

(a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in 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 or imprisoned not more than 20 years, or both.

(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. Code § 3742 – Review of a sentence

(a) Appeal by a Defendant. – A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence –

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines; or
- (3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11)[1] than the maximum established in the guideline range; or

(4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

28 U.S. Code § 1291 – Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

Florida Statutes § 800.04 Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age. –

(1) DEFINITIONS. – As used in this section:

(a) “Sexual activity” means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

(b) “Consent” means intelligent, knowing, and voluntary consent, and does not include submission by coercion.

(c) “Coercion” means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.

(d) “Victim” means a person upon whom an offense described in this section was committed or attempted or a person who has reported a violation of this section to a law enforcement officer.

(2) PROHIBITED DEFENSES. – Neither the victim’s lack of chastity nor the victim’s consent is a defense to the crimes proscribed by this section.

(3) IGNORANCE OR BELIEF OF VICTIM’S AGE. – The perpetrator’s ignorance of the victim’s age, the victim’s misrepresentation of his or her age, or the perpetrator’s bona fide belief of the victim’s age cannot be raised as a defense in a prosecution under this section.

(4) LEWD OR LASCIVIOUS BATTERY. –

(a) A person commits lewd or lascivious battery by:

1. Engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; or

2. Encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity.

(b) Except as provided in paragraph (c), an offender who commits lewd or lascivious battery commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 if the person is an offender 18 years of age or older who commits lewd or lascivious battery and was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under chapter 794 or a lewd act under this section or s. 847.0135(5);
2. Section 787.01(3)(a)2. or 3.;
3. Section 787.02(3)(a)2. or 3.;
4. Chapter 794, excluding s. 794.011(10);
5. Section 825.1025;
6. Section 847.0135(5); or
7. This section.

(5) LEWD OR LASCIVIOUS MOLESTATION. –

(a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.

(b) An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less

than 12 years of age commits a life felony, punishable as provided in s. 775.082(3)(a)4.

(c)1. An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age; or

2. An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age

commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(e) A person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 if the person is 18 years of age or older and commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age and the person was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing the violation, the defendant committed against the minor a sexual battery under chapter 794 or a lewd act under this section or s. 847.0135(5);

2. Section 787.01(3)(a)2. or 3.;
3. Section 787.02(3)(a)2. or 3.;
4. Chapter 794, excluding s. 794.011(10);
5. Section 825.1025;
6. Section 847.0135(5); or
7. This section.

(6) LEWD OR LASCIVIOUS CONDUCT. –

(a) A person who:

1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or
2. Solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct.

(b) An offender 18 years of age or older who commits lewd or lascivious conduct commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) An offender less than 18 years of age who commits lewd or lascivious conduct commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) LEWD OR LASCIVIOUS EXHIBITION. –

(a) A person who:

1. Intentionally masturbates;

2. Intentionally exposes the genitals in a lewd or lascivious manner; or

3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity

in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition.

(b) An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) EXCEPTION. – A mother’s breastfeeding of her baby does not under any circumstance constitute a violation of this section.

Florida Statutes § 847.0135 Computer pornography; prohibited computer usage; traveling to meet minor; penalties. –

(1) SHORT TITLE. – This section shall be known and may be cited as the “Computer Pornography and Child Exploitation Prevention Act.”

(2) **COMPUTER PORNOGRAPHY.** – A person who:

- (a) Knowingly compiles, enters into, or transmits by use of computer;
- (b) Makes, prints, publishes, or reproduces by other computerized means;
- (c) Knowingly causes or allows to be entered into or transmitted by use of computer; or

(d) Buys, sells, receives, exchanges, or disseminates, any notice, statement, or advertisement of any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any minor, or the visual depiction of such conduct, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

(3) **CERTAIN USES OF COMPUTER SERVICES OR DEVICES PROHIBITED.** – Any person who knowingly uses a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

- (a) Seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any

illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any unlawful sexual conduct with a child or with another person believed by the person to be a child; or

(b) Solicit, lure, or entice, or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct,

commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who, in violating this subsection, misrepresents his or her age, commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each separate use of a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission wherein an offense described in this section is committed may be charged as a separate offense.

(4) TRAVELING TO MEET A MINOR. – Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child or with another person

believed by the person to be a child after using a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:

(a) Seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to engage in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child; or

(b) Solicit, lure, or entice or attempt to solicit, lure, or entice a parent, legal guardian, or custodian of a child or a person believed to be a parent, legal guardian, or custodian of a child to consent to the participation of such child in any act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in any sexual conduct,

commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) CERTAIN COMPUTER TRANSMISSIONS PROHIBITED. –

(a) A person who:

1. Intentionally masturbates;
2. Intentionally exposes the genitals in a lewd or lascivious manner; or
3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic

abuse, sexual bestiality, or the simulation of any act involving sexual activity

live over a computer online service, Internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or television monitor by a victim who is less than 16 years of age, commits lewd or lascivious exhibition in violation of this subsection. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this subsection shall not constitute a defense to a prosecution under this subsection.

(b) An offender 18 years of age or older who commits a lewd or lascivious exhibition using a computer commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) An offender less than 18 years of age who commits a lewd or lascivious exhibition using a computer commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this subsection.

(6) OWNERS OR OPERATORS OF COMPUTER SERVICES LIABLE. – It is unlawful for any owner or operator of a computer online service, Internet service, or local bulletin board service knowingly to permit a subscriber to use the service to commit a violation of this section. Any person who violates this section

commits a misdemeanor of the first degree, punishable by a fine not exceeding \$2,000.

(7) STATE CRIMINAL JURISDICTION. – A person is subject to prosecution in this state pursuant to chapter 910 for any conduct proscribed by this section which the person engages in, while either within or outside this state, if by such conduct the person commits a violation of this section involving a child, a child's guardian, or another person believed by the person to be a child or a child's guardian.

(8) EFFECT OF PROSECUTION. – Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state or another jurisdiction for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

U.S.S.G. §4B1.5

Repeat and Dangerous Sex Offender Against Minors

(a) In any case in which the defendant's instant offense of conviction is a covered sex crime, §4B1.1 (Career Offender) does not apply, and the defendant committed the instant offense of conviction subsequent to sustaining at least one sex offense conviction:

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- (1) The offense level shall be the greater of:
 - (A) the offense level determined under Chapters Two and Three; or
 - (B) the offense level from the table below decreased by the number of levels corresponding to any applicable adjustment from §3E1.1 (Acceptance of Responsibility):

OFFENSE STATUTORY MAXIMUM OFFENSE
LEVEL

- (i) Life 37
 - (ii) 25 years or more 34
 - (iii) 20 years or more, but less than 25 years 32
 - (iv) 15 years or more, but less than 20 years 29
 - (v) 10 years or more, but less than 15 years 24
 - (vi) 5 years or more, but less than 10 years 17
 - (vii) More than 1 year, but less than 5 years 12.
- (2) The criminal history category shall be the greater of: (A) the Criminal history category determined under Chapter Four, Part A (Criminal History); or (B) criminal history Category V.
 - (b) In any case in which the defendant's instant offense of conviction is a covered sex crime, neither §4B1.1 nor subsection (a) of this guideline applies, and the defendant engaged in a pattern of activity involving prohibited sexual conduct:

(1) The offense level shall be 5 plus the offense level determined under Chapters Two and Three. However, if the resulting offense level is less than level 22, the offense level shall be §4B1.5 Guidelines Manual (November 1, 2016) || 417 level 22, decreased by the number of levels corresponding to any applicable adjustment from §3E1.1.

(2) The criminal history category shall be the criminal history category determined under Chapter Four, Part A.
