NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued October 28, 2022
Decided December 15, 2022

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 22-1575

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JASON DOMINIK TYLER RODRIGUEZ,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Illinois.

No. 4:20-CR-40049

Staci M. Yandle,
Judge.

O R D E R

A jury convicted Jason D.T. Rodriguez of attempting to entice a minor to engage in sexual activity and attempting to commit aggravated sexual abuse with a child under 12. During trial, the Government presented evidence showing that Rodriguez made arrangements to pay for sex with someone who he believed to be an eight-year-old girl and traveled across state lines to do so. Rodriguez testified that he did not actually

intend to have sex with the girl, but rather, was running his own "sting" operation to uncover child abusers on the internet and turn them in to law enforcement. Rodriguez moved for acquittal at the close of the Government's case and again at the close of evidence, but the judge denied both motions, and the jury found Rodriguez guilty on both counts. On appeal, Rodriguez challenges the sufficiency of the evidence. We find the evidence more than sufficient and affirm his convictions under 18 U.S.C. § 2422(b) and 18 U.S.C. § 2241(c).

In March 2020, FBI Special Agent Brian Wainscott posed online as "Codey Stanley," a father of an eight-year-old girl, who was willing to offer her to others for sex. He posted an advertisement on Craigslist that stated, "Single dad looking to share my ta booh fetish with like minded and if the circumstances are right HMU." Rodriguez responded to the advertisement asking: "What's your fetish? You have me interested!" Wainscott responded: "No limits family fun."

Wainscott asked what Rodriguez was interested in, to which Rodriguez responded, "New experiences but a young girl would be ideal. … The younger the better!" Upon learning that Wainscott had an eight-year-old daughter, Rodriguez responded, "Fuck yes! Got a pic? What are your circumstances?" They then exchanged phone numbers and continued their conversation on Google Chat. Rodriguez confirmed he was seeking to have a "personal experience" with the girl. He agreed to pay Wainscott $150 to have sex with her while Wainscott watched. Rodriguez repeatedly asked for pictures of the girl. In response, Wainscott sent fake pictures of his fictional daughter. Satisfied with the pictures, Rodriguez expressed his hope "to make it a regular thing" in the future but also asked whether it would be alright if nothing illegal happened at the first meeting. Wainscott rejected that suggestion. He faked concern that Rodriguez would go to the police and stated, "First time will be what we all want so we're in it together." Rodriguez agreed but asked if he could talk with her himself. Wainscott declined that request. Instead, Rodriguez agreed that Wainscott should talk to his daughter to prepare her for the next day and asked Wainscott to "[l]et [him] know what she sa[id]" afterwards. Wainscott also stated that "candy is a great starter for her" and suggested that Rodriguez bring her gummy bears. Rodriguez said he would pick some up.

The next day, Rodriguez drove from Missouri to a Menards in Illinois to meet Wainscott and his daughter. When he arrived at the agreed upon location, law

enforcement arrested Rodriguez. He had $152 in cash and a package of gummy bears was sitting in the front passenger seat of his car. Police also found a backpack that contained a phone with hundreds of videos and images of child pornography. One of the videos—downloaded just a few hours before Rodriguez responded to Wainscott's advertisement—depicted the exact same sexual scenario Rodriguez had been planning to carry out with the daughter.

Rodriguez challenges the sufficiency of the evidence for both counts of conviction. In evaluating such arguments, ''[w]e consider the evidence in the light most favorable to the prosecution, making all reasonable inferences in its favor, and affirm the conviction so long as any rational trier of fact could have found the defendant to have committed the essential elements of the crime.'' *United States v. Paneras*, 222 F.3d 406, 410 (7th Cir. 2000).

First, Rodriguez argues that the evidence was insufficient to support his conviction for attempted enticement of a minor because he did not take a substantial step toward persuading, inducing, or enticing a minor. In *United States v. McMillan*, we held that § 2442(b) criminalizes adult-to-adult communications that are designed to persuade a minor to commit the forbidden act and affirmed the defendant's conviction for attempted enticement. 744 F.3d. 1033, 1036–37 (7th Cir. 2014). The defendant had posted an advertisement entitled "sell me your teenage daughter" and an undercover agent responded in the guise of a father willing to solicit his minor daughter. *Id.* at 1034. Their following conversation involved the defendant asking how much the undercover agent would charge, if he could talk to the minor directly, and for nude pictures of her. *Id.* at 1034, 1037. We found that the defendant attempted to use the father as an intermediary to convey his message to the fictitious child, and held that "[a] minor can be the object of the defendant's efforts even if a third person functions as an intermediary." *Id.* at 1036. We applied this standard again in a similar case, where the undercover agent suggested that his daughter would love a princess dress and the defendant purchased one for her. *United States v. Hosler*, 966 F.3d 690, 693 (7th Cir. 2020) (affirming defendant's attempted enticement conviction). Here, Rodriguez made similar inquiries to Wainscott and arrived with a gift he was told the child would like. A

rational trier of fact could have found that the defendant attempted to persuade, induce, or entice the fictional daughter as required by § 2422(b).[*]

Second, Rodriguez argues that the evidence was insufficient to support his conviction for attempted aggravated sexual abuse of a child under 12 because he did not intend to have sex with the minor at the time he drove from Missouri to Illinois. This argument is without merit. The evidence established that Rodriguez drove roughly 120 miles across state lines to have sex with an eight-year-old girl. Although he first asked whether it "would be cool" if "[n]othing illegal" happened at this first meetup, Wainscott very clearly rejected that suggestion, and Rodriguez and Wainscott agreed that the sexual act would take place at this first meeting. Rodriguez's intent was further established by the evidence that he had $152 in cash (enough to pay the $150 fee) and the gummy bears in his car, facts which he could not explain at trial. Sufficient evidence supports his conviction under § 2241(c).

AFFIRMED

[*] Rodriguez's counsel argued for the first time at oral argument that our holding in *McMillan* is inconsistent with the text of § 2422(b) and thus should be overruled. We decline to do so.