

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

---

No. 06-2108

---

United States of America,

Appellee,

v.

Joseph R. Gabourel, also known as  
jowee6869,

Appellant.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Appeal from the United States  
District Court for the  
Western District of Missouri.

[UNPUBLISHED]

---

Submitted: November 14, 2006  
Filed: November 22, 2006

---

Before BYE, JOHN R. GIBSON, and GRUENDER, Circuit Judges.

---

PER CURIAM.

Joseph R. Gabourel entered a conditional plea of guilty to using the Internet to attempt to entice a minor to engage in illegal sexual activity in violation of 18 U.S.C. § 2422(b), preserving the right to appeal the district court's<sup>1</sup> denial of his motion to dismiss the indictment based on the defense of legal impossibility. The "minor" Gabourel solicited was an undercover police officer posing as a minor. Gabourel contends § 2422(b) requires the victim to be an actual minor.

---

<sup>1</sup>The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

This same contention has since been squarely addressed and rejected in United States v. Helder, 452 F.3d 751, 756 (8th Cir. 2006) ("[W]e hold that an actual minor victim is not required for an attempt conviction under § 2422(b)"); see also United States v. Hicks, 457 F.3d 838, 841 (8th Cir. 2006) (following Helder). Following Helder, we affirm the district court.

---