

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 10, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RONNIE ALLEN BARTON,

Defendant - Appellant.

No. 25-6176
(D.C. No. 5:25-CR-00049-R-1)
(W.D. Okla.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **MORITZ**, and **FEDERICO**, Circuit Judges.

A jury convicted Ronnie Allen Barton of two counts of attempted coercion and enticement of a minor, commission of a sex offense by a registered sex offender, and attempted receipt of child pornography. The district court sentenced him to concurrent terms of 180 months' imprisonment on the attempted coercion and enticement and child pornography charges, followed by a consecutive term of 120 months on the commission of a sex offense charge. Barton appealed.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Counsel filed an *Anders* brief and moved to withdraw as counsel. *See Anders v. California*, 386 U.S. 738, 744 (1967) (stating that if after “conscientious examination” of the record, counsel finds the appeal “wholly frivolous,” counsel may move to withdraw and contemporaneously file a “brief referring to anything in the record that might arguably support the appeal”). Barton filed a pro se response, and the government declined to file a brief. Based on our review of the *Anders* brief, the record, and Barton’s response, we conclude that Barton’s appeal is wholly frivolous. *See id.* We therefore dismiss the appeal and grant counsels’ motions to withdraw. *See United States v. Calderon*, 428 F.3d 928, 933 (10th Cir. 2005).

BACKGROUND

Barton was charged in a four-count indictment. The first two counts charged him with attempted coercion and enticement of a minor, in violation of 18 U.S.C. §§ 2422(b) and 2426(a). Count One involved a minor, Jane Doe 1, and Count Two involved a different minor, Jane Doe 2. But neither Jane Doe was a real person. Instead, the purported minors were invented as a part of an undercover online investigation.

Federal Bureau of Investigation Special Agent David Garrison pretended to be a man with access to an 11-year-old niece and nine-year-old stepdaughter, who he referred to as his “littles.” R., vol. III at 93. Calling himself “Alex,” Agent Garrison created a post on an online site known as DoubleList that offered online classified or personal ads. *Id.* Alex’s DoubleList post indicated he was interested in “watching others spend time with me and enjoy my littles.” *Id.*

Barton responded to the post and, using the screen name “Morelka,” began a chat with the agent that lasted several months. *Id.* at 94. Over the course of the chat, he described sexual acts he was interested in performing with the minor girls while Alex watched. Barton also requested photos of the girls. When Alex sent him fully clothed photos purporting to be the girls, Barton expressed his dissatisfaction with the lack of explicit content. Barton’s requests for lascivious photos of the minor girls led to Count Four of the indictment, which charged him with knowingly attempting to receive child pornography over the Internet, in violation of 18 U.S.C. § 2252A(a)(2) and (b)(1).

Barton’s chats with Agent Garrison culminated in a proposed meeting at a hotel in Oklahoma City for Barton to engage in sexual acts with the minor children. When Barton arrived at the hotel, he was arrested. He was taken to the FBI Oklahoma City field office, where FBI agents including Agent Garrison interviewed him.

At the outset of the interview, the agents read Barton his *Miranda* rights. He signed a written waiver of those rights. He also gave the agents permission to search his cellphone, which he had used to engage in the chats. During the interview, which lasted approximately three and one-half hours, Barton was not handcuffed, drinking water was available, and the agents, who were dressed in plainclothes, did not raise their voices, yell, curse, or display weapons. Although Barton initially denied that he had engaged in the chats with the agent on DoubleList, he eventually changed his story and told the agents that his intention in going to the hotel that day was not to

have sex with the children, but rather to either kill the man soliciting them, or to at least report him to the hotel's desk clerk.

The evidence at trial showed Barton had been previously convicted in Oklahoma state court of a sexual offense involving a minor, which required him to register as a sex offender. Count Three charged him with commission of a sex offense by a registered sex offender, in violation of 18 U.S.C. § 2260A. The government provided testimony at trial from the investigating police officer in the prior state case, who described the circumstances that led to Barton's prior conviction and his obligation to register as a sex offender. Like the current offense, the prior offense resulted from Barton's attempt to meet with a fictitious minor. In that case, a police officer had pretended to be a 14-year-old girl and Barton agreed to meet her for sex. Barton pled guilty to lewd acts in the state case and was sentenced to 10 years in prison, with all but the first two years suspended.

The jury convicted Barton of all four counts. The presentence investigation report (PSR) set his offense level at 40 and his criminal history category at V, resulting in an advisory Guideline range of 360 months to life on Counts One, Two, and Four. For Count Three, the advisory Guideline sentence was a term of imprisonment required by statute, 10 years. Barton asked the court to impose a total sentence of no more than 25 years. The government asked for a sentence of 30 years. The district court imposed a sentence of imprisonment totaling 25 years (300 months), consisting of a concurrent sentence of 180 months on Counts One,

Two and Four, and a consecutive sentence of 120 months on Count Three. That term of imprisonment was to be followed by a lifetime term of supervised release.

DISCUSSION

The *Anders* brief asserts there is no nonfrivolous basis on which to appeal Barton’s convictions or sentence. After a careful review of the record, we agree.

I. Convictions

A. Jury Selection

We discern no nonfrivolous issues involving the jury selection or seating.¹

B. Sufficiency of the Evidence

The *Anders* brief concedes that the evidence presented sufficiently established every element of each offense on which Barton was charged and convicted. We review the sufficiency of the evidence to support a jury verdict de novo, “view[ing] the evidence in the light most favorable to the government to determine whether a rational trier of fact could have found the elements of the offense beyond a reasonable doubt.” *United States v. Alexander*, 817 F.3d 1205, 1209 (10th Cir. 2016). Although we agree that a challenge to the sufficiency of the evidence would be frivolous, we find it useful to discuss two specific issues concerning evidentiary sufficiency.

¹ After being selected, a juror informed the district court that he attended the same gym as the government’s attorney. Although he recognized the attorney, he stated they had never talked, and he didn’t know her name. The juror stated the fact that he knew the government attorney from the gym would not affect his impartiality as a juror. The district court did not strike the juror.

1. Child Pornography Count

The evidence showed Barton requested nude photos of the children from Agent Garrison. His trial counsel argued to the jury that this request did not constitute attempted receipt of child pornography because the requested photos did not involve “sexually explicit conduct.” One form of such conduct is “lascivious exhibition of the anus, genitals, or pubic area of any person.” *See R.*, vol. I at 338 (jury instruction defining “sexually explicit conduct” for purposes of the child pornography count); *see also* 18 U.S.C. § 2256(2)(A)(v).

Counsel did not raise a sufficiency issue in her motion for a directed verdict, so we would only review the issue for plain error. *See United States v. Schene*, 543 F.3d 627, 636 (10th Cir. 2008) (discussing plain error in sufficiency-of-evidence context). To establish plain error, there must be 1) an error, 2) that is plain, 3) that affects the defendant’s substantial rights, and 4) that “substantially affects the fairness, integrity, or public reputation of judicial proceedings.” *United States v. Poterbin*, 162 F.4th 1254, 1266 (10th Cir. 2025) (internal quotation marks omitted). An appellate argument on this point would not satisfy the plain error standard.

Although mere nudity may not be lascivious, *see United States v. Isabella*, 918 F.3d 816, 831 (10th Cir. 2019), the jury could reasonably infer from Barton’s statements to Agent Garrison that he attempted to obtain lascivious photos that met the definition of child pornography. During the chats, Barton told Agent Garrison that (1) he found the clothed photos Agent Garrison sent insufficiently “provocative” for masturbatory purposes, *R.*, vol. III at 137; (2) he preferred “to be able to see what

I’m going to do before I do it,” *id.* at 96; and (3) he wanted the kind of photos that “cops can’t send,” *id.* at 117. Agent Garrison testified that during the FBI interview, Barton confirmed that he had “wanted inappropriate or suggestive pictures that would indicate that the person he was chatting with wasn’t, in fact, a cop.” *Id.* at 136.

2. Interstate Nexus

After the state rested, Barton moved for a directed verdict based on the government’s failure to establish the required connection to interstate or foreign commerce. The district court denied the motion based on the evidence of Barton’s use of the Internet (accessing DoubleList) to commit the alleged crimes. We discern no nonfrivolous issue here.

An element of receiving child pornography under § 2252A(a)(2) is that the defendant knowingly received the pornography by “any means or facility of interstate or foreign commerce *or* that has been mailed, *or* has been shipped or transported in or affecting interstate or foreign commerce by any means, including by computer.” 18 U.S.C. § 2252A(a)(2) (emphasis added). Where a statute specifically requires that the images *were shipped or transported* in interstate or foreign commerce, we have not assumed “that Internet use automatically equates with a movement across state lines.” *United States v. Schaefer*, 501 F.3d 1197, 1205 (10th Cir. 2007), *overruled in part on other grounds by United States v. Sturm*, 672 F.3d 891 (10th Cir. 2012) (en banc). But here, the statute is worded disjunctively, making it sufficient that Barton knowingly received the child pornography by a “means or facility of interstate or foreign commerce.” The indictment narrowed the government’s theory to this first

method of proof by charging that Barton “knowingly attempted to receive child pornography using a means and facility of interstate and foreign commerce, namely, the Internet.” R., vol. 1 at 28. The district court instructed the jury that use of the Internet satisfied the interstate commerce nexus and that transmission of communications by means of the Internet constitutes the use of a facility of interstate commerce, regardless of whether the communication actually crossed a state line. We discern no error on this point. *See, e.g., Utah Lighthouse Ministry v. Found. for Apologetic Info. & Rsch.*, 527 F.3d 1045, 1054 (10th Cir. 2008) (“[T]he Internet is generally an instrumentality of interstate commerce.”). No further specific evidence that the images Barton sought would have been mailed, shipped or transported in interstate or foreign commerce was required.

Similarly, an element of the coercion and enticement charge under § 2422(b) is that the defendant used “the mail or any facility or means of interstate or foreign commerce.” 18 U.S.C. § 2422(b). Proof of Barton’s use of the Internet for this purpose was sufficient.

C. Evidentiary Issues

We have detected no nonfrivolous issues to be raised on appeal concerning the district court’s evidentiary determinations. Notably, prior to trial, the district court conducted a hearing to determine whether Barton’s confession should be admitted. *See Jackson v. Denno*, 378 U.S. 368 (1964). After hearing testimony from Agent Garrison and watching the video of Barton’s interrogation, the district court determined that Barton knowingly and voluntarily waived his *Miranda* rights and

voluntarily made a statement to the agents. Recordings of Barton's confession to the FBI agents were then played to the jury. We see no error in these procedures or determinations.²

In order to minimize the prejudice from admitting evidence of his prior Oklahoma conviction for a relatively similar crime, Barton attempted to bifurcate his trial. The district court denied the motion because it found the government was entitled to offer evidence of Barton's prior conviction under Fed. R. Evid. 404(b), and bifurcation would therefore not help him at trial. Both the admission of evidence under Rule 404(b), *see United States v. Commanche*, 577 F.3d 1261, 1266 (10th Cir. 2009), and the decision whether to sever or bifurcate a trial, *see United States v. Garcia*, 74 F.4th 1073, 1109 (10th Cir. 2023), are committed to the district court's discretion. We discern no abuse of discretion that could form the basis for a nonfrivolous issue here.

D. Jury Instructions and Closing Argument

We have detected no nonfrivolous objections to the jury instructions that could form the basis for an appeal. Nor can we discern anything objectionable about the government's closing argument. The government's attorney analyzed the elements of

² Before and after signing the *Miranda* waiver, Barton repeatedly asked what was going on and why the agents had arrested him. He professed that he was ignorant of why he had been arrested. Although "courts may consider whether a defendant knew the nature of the offense under investigation when determining the voluntariness of a confession," *United States v. Nguyen*, 155 F.3d 1219, 1222 (10th Cir. 1998), under the totality of the circumstances Barton's purported lack of knowledge does not give rise to a nonfrivolous issue.

the offenses in light of the evidence and argued to the jury that Barton's innocent explanations for his conduct (that he and Agent Garrison were both engaging in fiction and that Barton was hoping to kill or report "Andy" for his crimes) were not credible.³

II. Sentence

"[A]ppellate review for reasonableness includes both a procedural component, encompassing the method by which a sentence was calculated, as well as a substantive component, which relates to the length of the resulting sentence." *United States v. Smart*, 518 F.3d 800, 803 (10th Cir. 2008).

A. Procedural Reasonableness

Although the *Anders* brief asserts that defense counsel raised no procedural objection at sentencing, our review of the sentencing transcript reveals that counsel in fact advanced several procedural objections. *See R.*, vol. III at 287-93. That said, only one of them is worth discussing as a potentially nonfrivolous issue.

The presentence report, which the district court adopted without change, added two points to Barton's offense level because the offense involved the use of a computer to persuade, induce, entice, coerce, or facilitate the travel of the minor to engage in prohibited sexual conduct. *See U.S. Sent'g Guidelines Manual*

³ The government's attorney also discussed Agent Garrison's testimony that images were found on a tablet device in the defendant's car that may have been child pornography. Barton's attorney opened the door to that evidence by asking Agent Garrison on cross-examination whether any child pornography had been found in the car, and again through her closing argument that no child pornography was found on any of Barton's devices or in his car.

§ 2G1.3(b)(3)(A) (U.S. Sent’g Comm’n 2024). The Guideline Commentary explains that this enhancement is only appropriate when the defendant has used a computer or an interactive computer service to communicate with either the minor herself or a person with custody, care or supervisory control over the minor. U.S.S.G. 2G1.3 cmt. n.4. The two fictitious girls Agent Garrison described to Barton were “minors” under the Guideline definition, which includes “an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct,” *id.* cmt. n.1. But Barton did not communicate directly with these fictitious minors. Instead, Agent Garrison pretended to be an adult relative with access to them. And inclusion of fictitious minors within the Guideline definition of a “minor” does not tell us how it would be possible for Agent Garrison to exercise “custody, care, or supervisory control” over such fictitious persons.

Counsel raised this issue at sentencing. *See R.*, vol. III at 289. In rejecting his argument, the district court relied on its general conclusion, supported by the applicable definition of a “minor,” that the enhancement applies to a “fictitious person . . . as well as an actual victim.” *Id.* That may be a reasonable application of the Guideline Commentary to the issue of “custody, care, or supervisory control,” but we have not found applicable case law that explicitly resolves this issue.

But here any such contention, if raised on appeal, would fail because the alleged error would be harmless. Even if the § 2G1.3(b)(3)(A) enhancement were not applied and the offense level were therefore two points lower, Barton’s adjusted

offense level would be 38, not 40, and his advisory Guideline range with Criminal History Category V would still be 360 months to life. *See* Sentencing Table, U.S.S.G. Ch. 5 Pt. A, Zone D (2024).

We have also identified a further potential issue involving procedural reasonableness that was not preserved at sentencing and would therefore be reviewed only for plain error. Barton’s offense level on Count Four was increased by five levels because he engaged in a “pattern of activity” involving the sexual abuse or exploitation of a minor. *See* U.S.S.G. § 2G2.2(b)(5). He also received a “multiple count” adjustment under U.S.S.G. § 3D1.4. Finally, both his offense level and criminal history computation were enhanced under U.S.S.G. § 4B1.5(a) for being a “repeat and dangerous sex offender against minors.” Although application of these multiple enhancements could perhaps prompt counsel to inquire whether any impermissible “double counting” occurred for Guideline purposes, we do not detect a nonfrivolous plain error on that point. *Cf. United States v. Cifuentes-Lopez*, 40 F.4th 1215, 1220-21 (10th Cir. 2022) (concluding application of both five-level pattern of activity enhancement under § 4B1.5(b)(1) and multiple count enhancement under § 3D1.4 did not constitute impermissible counting because “the Guidelines expressly intend cumulative application, and . . . the enhancements serve different sentencing goals”).

B. Substantive Reasonableness

Counsel argues there is no nonfrivolous argument that Barton’s sentence was substantively unreasonable. We agree.

III. Barton's Pro Se Response

Barton raises three contentions in his pro se response. None of them warrants denial of the motion to withdraw.

First, he complains he did not have an impartial jury because the prosecutor and a jury member attended the same gym (and, he claims, their personal trainers engaged in unspecified conversations). For the reasons we previously discussed, *see supra* fn.1, we discern no non-frivolous issue concerning whether Barton was tried by an impartial jury.

Second, Barton claims the district court judge was not impartial because he stated at sentencing that he had never doubted Barton was guilty. Having reviewed the sentencing transcript, we have not located that alleged statement or any statement by the district court that indicates it was unfairly prejudiced against Barton during the proceedings.

Finally, Barton takes issue with his trial counsel's performance. "We generally do not review an ineffective assistance of counsel argument on direct appeal." *Poterbin*, 162 F.4th at 1265 (internal quotation marks omitted). "The reason is that the defendant, in a later collateral 28 U.S.C. § 2255 proceeding, will be able to develop the factual record often necessary to support his ineffective assistance claim." *Id.* at 1266.

CONCLUSION

Because we have identified no nonfrivolous grounds for appealing Barton's convictions or sentence, we dismiss the appeal and grant defense counsels' motions to withdraw.

Entered for the Court

Nancy L. Moritz
Circuit Judge