IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

U N I T E D S T A T E S, Appellee	BRIEF ON BEHALF OF APPELLEE
v.	USCA Dkt. No. 13-0565/AR
Specialist (E-4) **CHRISTOPHER R. KEARNS,** United States Army, Appellant	Crim.App. Dkt. No. 20110348

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Issue Presented:

WHETHER THE EVIDENCE WAS LEGALLY SUFFICIENT TO PROVE THAT APPELLANT HAD THE INTENT TO ENGAGE IN CRIMINAL SEXUAL CONDUCT WITH KO, A MINOR, WHEN HE FACILITATED KO'S TRAVEL IN INTERSTATE COMMERCE AND WAS FOUND GUILTY IN SPECIFICATION 1 OF CHARGE III OF VIOLATING 18 U.S.C § 2423(a).

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TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES:

Granted Issue

WHETHER THE EVIDENCE WAS LEGALLY SUFFICIENT TO PROVE THAT APPELLANT HAD THE INTENT TO ENGAGE IN CRIMINAL SEXUAL CONDUCT WITH KO, A MINOR, WHEN HE FACILITATED KO'S TRAVEL IN INTERSTATE COMMERCE AND WAS FOUND GUILTY IN SPECIFICATION 1 OF CHARGE III OF VIOLATING 18 U.S.C § 2423(a).

Statement of Statutory Jurisdiction

The United States Army Court of Criminal Appeals (Army Court) reviewed this case pursuant to Article 66(b), Uniform Code of Military Justice (UCMJ).[1] The statutory basis for this Honorable Court's jurisdiction is Article 67(a)(3), UCMJ, which permits review in "all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause

[1] UCMJ, Art. 66(b), 10 U.S.C. § 866(b).

shown, the Court of Appeals for the Armed Forces (C.A.A.F.) has granted a review."[2]

Statement of the Case

A panel of officers sitting as a general court-martial convicted appellant in absentia, contrary to the pleas that were properly entered by the military judge on his behalf, of (1) one specification of making a false official statement, (1) one specification of aggravated sexual assault of a child, (1) one specification of wrongful transportation of a minor through interstate commerce, and (1) one specification of a general disorder in violation of Articles 107, 120, and 134, Uniform Code of Military Justice, 10 U.S.C. §§ 907, 920 and 934 (2008) [hereinafter UCMJ].[3] The officer panel sentenced appellant to be confined for four (4) years, to be reduced to the grade of E-1, to forfeit all pay and allowances, and to be discharged from the service with a bad-conduct discharge.[4] The convening authority approved the sentence as adjudged.[5]

On April 17, 2013, the Army Court set aside and dismissed the finding of guilty to Specification 2 of Charge III

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[2] UCMJ, Art. 67(a)(3), 10 U.S.C. § 867(a)(3).
[3] JA 8-10; JA 12. The Specification of Charge I was dismissed and the subsequent charges were reorganized as reflected in the promulgating order; however, those changes are not reflected on the charge sheet. (JA 16). In addition, appellant was found not guilty of Specification 3 of Charge III (adultery). (JA 12).
[4] JA 13.
[5] JA 14.

(disorderly conduct) but otherwise affirmed the remaining specifications and sentence.[6] This Court granted appellant's petition for grant of review of the Army Court's decision on September 24, 2013.

Statement of Facts

Appellant was a 22-year-old soldier stationed at Fort Bliss, Texas.[7] The victim, KO, is the younger sister of appellant's sister-in-law.[8] KO has known appellant since she was five years old.[9]

Although KO was only 15 years old, appellant had sexual intercourse with her on divers occasions.[10] The first incident occurred in November 2009 and at least one other took place in December 2009.[11] Prior to the first incident, appellant's brother suspected an inappropriate relationship developing between him and KO. Appellant's brother warned him not to pursue a sexual relationship with his 15 year old sister-in-law.[12] Despite his brother's warning, appellant engaged in sexual intercourse with KO.[13]

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[6] JA 1; *United States v. Kearns*, 72 M.J. 586, 589 (Army Ct. Crim. App. 2013).
[7] JA 84.
[8] JA 17.
[9] JA 18.
[10] JA 19; JA 22-25.
[11] JA 22; JA 24.
[12] JA 84.
[13] JA 22-23.

On the first occasion, appellant had been out at a bar and returned to his mother's house around 0400 in the morning.[14] Although appellant had consumed alcohol, he was coherent enough to retrieve a condom from his pocket and place it on his penis prior to having sexual intercourse with KO.[15] The next day he told his best friend that he believed that he had sex with KO.[16]

Soon after the first sexual incident, appellant returned to Fort Bliss, where he and the victim continued communicating on a daily basis.[17] KO used a phone that appellant purchased for her to stay in touch with him.[18] KO ended each conversation with, "I love you," to which appellant would reciprocate.[19] At some point during this period, KO tells appellant a fabricated story that appellant's brother had sexually assaulted her.[20] However, appellant does not immediately alert authorities or otherwise attempt to remove KO from her current situation. After the revelation from KO, appellant returned to Pennsylvania for a second leave period in December 2009.

Although he was aware of KO's alleged abuse, appellant nevertheless again engaged in sexual intercourse with KO during

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[14] JA 23.
[15] JA 23-24.
[16] Pros. Ex. 1 at 1:31:47.
[17] JA 26-27; Pros. Ex. 4.
[18] Pros. Ex. 4.
[19] JA 27.
[20] Pros. Ex. 4.

this leave period.[21] On that occasion, appellant and KO were texting each other while he was at a local bar.[22] She invited appellant to come over to her house.[23] Appellant arrived at her house between 0300 and 0400 in the morning.[24] Although appellant had been drinking, he was able to drive to KO's home, climb up to the second story and enter her bedroom through the window.[25] Soon after he entered the room, appellant and KO engaged in sexual intercourse again.[26]

At the end of his leave period, appellant left Pennsylvania to return to Fort Bliss in January 2010, he and KO continued to communicate on a daily basis.[27] In addition, KO sent appellant at least one nude photograph of herself while he was at Fort Bliss.[28] During this period, KO maintained her fabricated story that she was sexually assaulted by appellant's brother.[29] A few weeks after his return to Fort Bliss, appellant began making arrangements to bring KO to El Paso, Texas from her home in Pennsylvania.

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[21] JA 24.
[22] JA 24.
[23] JA 24.
[24] JA 44.
[25] JA 25; JA 43-44.
[26] JA 24. Appellant also admitted to CID agents that on another occasion during his second leave period, he had sexual intercourse with the victim in a car: "it happened in the car...me and [the victim] had intercourse." (Pros. Ex. 1 at 1:31:39).
[27] JA 26.
[28] JA 26.
[29] JA 27-28.

In furtherance of his scheme, appellant contacted NA to assist him in transporting KO from her home to Texas. NA was a female stripper who had a casual sexual relationship with appellant.[30] Appellant told NA that KO was his cousin and that she had been sexually assaulted.[31] Appellant arranged for NA to pick up KO from Pennsylvania and drive her back to El Paso, Texas.[32] He provided NA with KO's address and approximately $700 for the trip.[33] Appellant never requested assistance from law enforcement or child protective services.

On 22 January 2010, NA picked up KO near her home in Pennsylvania.[34] NA drove KO through Maryland, Virginia, West Virginia, and Tennessee as they drove back to Texas.[35] On 23 January 2010, while in Texas but before reaching El Paso, NA was pulled over by law enforcement for a traffic violation.[36] The police took KO into custody and arrested NA.[37]

After KO was taken into custody, appellant was interviewed by CID. Appellant initially denied having any sexual

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[30] JA 49; JA 61-62.
[31] JA 52-53; JA 56; JA 60.
[32] JA 28-29; JA 51-52.
[33] JA 30; JA 52.
[34] JA 29; JA 52. NA was accompanied by two other female companions. In addition, KO's friend KS, another minor, decided to accompany KO to El Paso when she discovered the plan.
[35] JA 29-30.
[36] JA 54-55.
[37] JA 34.

relationship with KO.[38] When describing his relationship to KO, appellant initially told CID that he was like a "guidance counselor" to KO.[39] Appellant also alleged that NA acted on her own and that he was unaware of her plans to get KO from Pennsylvania.[40]

GRANTED ISSUES AND ARGUMENT

WHETHER THE EVIDENCE WAS LEGALLY SUFFICIENT TO PROVE THAT APPELLANT HAD THE INTENT TO ENGAGE IN CRIMINAL SEXUAL CONDUCT WITH KO, A MINOR, WHEN HE FACILITATED KO'S TRAVEL IN INTERSTATE COMMERCE AND WAS FOUND GUILTY IN SPECIFICATION 1 OF CHARGE III OF VIOLATING 18 U.S.C § 2423(A).

Summary of Argument

The statute is unambiguous and its plain text only requires an accused to transport a minor in interstate commerce with the intent that the minor engage in illegal sexual activity to meet the *mens rea* element. The intent element of the statute is satisfied if the trier of fact finds, beyond a reasonable doubt, that "a" purpose of transporting a minor in interstate commerce was for an illegal sexual activity. Moreover, appellant's conduct and statements before and after KO's trip provides overwhelming evidence that he transported KO through interstate

[38] Pros. Ex. 1 at 36:32.
[39] Pros. Ex. 1 at 36:32.
[40] Pros. Ex. 4.

commerce with the requisite intent that she engage in illegal sexual activity with him.

Standard of Review

This court reviews questions of legal sufficiency de novo as a matter of law.[41]

Law and Analysis

The test for legal sufficiency is "'whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'"[42] In cases of legal sufficiency, appellate courts are "'not limited to appellant's narrow view of the record.'"[43] Instead, "this Court is bound to draw every reasonable inference from the evidence of record in favor of the prosecution."[44] Further, "[p]roof beyond a reasonable doubt does not require that the evidence be free from all conflict."[45]

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[41] *United States v. Wilcox*, 66 M.J. 442, 446 (C.A.A.F. 2008).
[42] *United States v. Mack*, 65 M.J. 108, 114 (C.A.A.F. 2007) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).
[43] *United States v. Trigueros*, 69 M.J. 604, 612 n.6 (Army Ct. Crim. App. 2010)(quoting *United States v. Cauley*, 45 M.J. 353, 356 (C.A.A.F. 1996)).
[44] *Id.* (citing *United States v. McGinty*, 38 M.J. 131, 132 (C.M.A. 1993) (quoting *United States v. Blocker*, 32 M.J. 281, 284 (C.M.A. 1991) (internal punctuation omitted)).
[45] *Id.* (quoting *United States v. Rankin*, 63 M.J. 552, 557 (N-M. Ct. Crim. App. 2006), aff'd, 64 M.J. 348 (C.A.A.F. 2007)).

A. The Army Court of Criminal Appeals applied the Mann Act correctly.

Our analysis must start with the federal statute which is commonly referred to as the Mann Act. The statute states:

> (a) A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.[46]

In interpreting the statute, we must first give all terms used their ordinary meaning; second, if an ambiguity exists, we must examine the legislative history to resolve the ambiguity; and, finally, if after applying the first two steps a reasonable doubt still exists as to the provision's intent, we must apply the rule of lenity and resolve the ambiguity in favor of the appellant.[47] The doctrine of lenity applies only to those situations in which reasonable doubt persists about the statute's intended scope after examining its language and structure.[48] In this case, it is clear that the text of the statute is unambiguous and susceptible to direct application.

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[46] 18 U.S.C. § 2423(a) [hereinafter section 2423(a)].
[47] *Moskal v. United States*, 498 U.S. 103, 111 (1990); *see also United States v. Thomas*, 65 M.J. 132, 135 (C.A.A.F. 2007) (recognizing rule of statutory strict construction and resolving any ambiguity in favor of accused).
[48] Moskal, 498 U.S. at 109.

Nevertheless, a number of federal circuits address the "intent" or "purpose" element through the use of modifiers.[49] Accordingly, in these circuits, the illicit sexual act must be a "dominant", "motivating", or "significant" reason why a minor is transported in interstate commerce. Conversely, other federal circuits hold that so long "a" purpose of transporting the minor in interstate commerce was to engage in illicit sexual activity, the *mens rea* element is satisfied.[50] This approach directly applies the unambiguous text of the Mann Act without any superfluous modifiers.

The Army court's decision embodies the latter approach by dispensing with unnecessary modifiers:

> We need not contort language to properly apply the law; if you transport a minor, with the intent that the minor engage in illegal sexual activity, whether that activity be the sole purpose of the transport or one of many, you are guilty of the offense.[51]

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[49] *United States v. Meacham*, 115 F.3d 1488 (10th Cir. 1997)(maintaining that it is sufficient that illicit sexual activity was one of defendant's efficient and compelling purposes); *United States v. Campbell*, 49 F.3d 1079 (5th Cir. 1995)(holding the sole or primary reason for interstate travel need not be illicit sexual activity as long as it is one of the motivating purposes); *see also United States v. Hayward*, 359 F.3d 631 (3rd Cir. 2004).

[50] *United States v. Cole*, 262 F.3d 704, 709 (8th Cir. 2001) (holding that illicit sexual activity must be one of the purposes motivating the interstate transportation of the minor); *United States v. Ellis*, 935 F.2d 385 (1st Cir. 1991), *cert. denied*, 502 U.S. 869 (1991).

[51] *United States v. Kearns*, 72 M.J. 586, 589 (Army Ct. Crim. App. 2013).

The Army Court recognized that Congress has not used the word "dominant" or any other modifier in writing the current statute.[52] However, it is clear that Congress's intent in passing the statute was to "protect minors from sexual predation" not make it more difficult to prosecute such offenses.[53] The addition of modifiers like "dominant" or "sole" when describing the illegal sexual purpose of the interstate transport of a minor impedes Congressional intent because it makes it more difficult to prosecute despite the plain language of the text. Consequently, the Army court's refusal to attach superfluous language to an otherwise unambiguous statute was proper.

This court should interpret the statute by applying the common and ordinary understanding of the words in the statute.[54] It is clear, that the "judicial preoccupation with the word 'dominant'" relies on dicta that does apply to the current

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[52] The First Circuit and the Eight Circuit, recognized that when Congress amended the Mann Act in 1986 to "remove[] the 'purpose' language" and "replac[e] it with the 'intent that such individual engage...in any [illegal] sexual activity,' Pub. L. No. 99-628, Congress [thereby] lessened the prosecution's burden..." *Cole*, 262 F.3d at 709 (citing *Ellis*, 935 F.2d at 391-92). However, because the evidence in both the First Circuit and the Eighth Circuit cases met the "more stringent [purpose] standard," both courts "declined to decide the impact" of the change in the language to "intent." *Id; Ellis*, 935 F.2d at 391-92.

[53] *United States v. McGuire*, 627 F.23d 622, 624 (7th Circuit 2010).

[54] *See United States v. Alston*, 69 M.J. 214, 216 (C.A.A.F. 2010).

statute.[55] The statute by its text only requires the government to prove that an accused intended to engage in illicit sexual conduct at the time he transported a minor in interstate commerce.[56] It does not require that it be the "sole", "dominant", "significant", or even "compelling" purpose. In addition, it is irrelevant that an accused may have other purposes, some perhaps legitimate, for transporting a minor in interstate commerce. It suffices that the trier of fact concludes, beyond a reasonable doubt, that illicit sexual acivity was "a" purpose of the travel.

B. There was overwhelming evidence of appellant's intent to engage in illegal sexual activity with KO.

Appellant was charged with one specification of wrongfully transporting a minor with intent to engage in criminal sexual activity under clause 3 of Article 134, UCMJ.[57] In order to affirm appellant's conviction under the Mann Act, this court must find:

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[55] *United States v. McGuire*, 627 F.23d at 625 (acknowledging that the language of the statute does not require a "dominant purpose") citing *Mortensen v. United States*, 322 U.S. 369, 374 (1944); *see United States v. Vang*, 128 F.3d 1065 (7th Cir. 1997); Additionally, appellant partially agrees: "Specialist Kearns agrees with the Army Court that the Supreme Court's usage of the term 'dominant' in Mortenson [sic] does not require the government to prove that the intent to have sex was the sole purpose for interstate travel." Appellant's Br. 13.

[56] 18 U.S.C. § 2423(a).

[57] JA 9.

(1) That appellant knowingly transported KO in interstate commerce when KO was under 18 years of age;

(2) That the transportation was done with the intent that KO engage in illegal sexual activity with appellant;

(3) That KO engaging in sexual intercourse with appellant is criminal conduct, specifically, Aggravated Sexual Assault of a Child and Aggravated Sexual Contact with a Child in violation of Article 120, UCMJ; and

(4) That 18 U.S.C. § 2423(a) was in effect between 1 November 2009 and 5 February 2010.

Appellant only contests the element that he transported KO with the intent that she engage in illegal sexual activity with him.[58]

i. The circumstantial evidence is overwhelming.

When determining appellant's purpose, this court should examine whether the illicit behavior is a "purpose for interstate travel".[59] The intent, purpose and motive of appellant in transporting KO may be established by circumstantial evidence.[60] Accordingly, appellant's and KO's conduct "within a reasonable time before and after the trip are

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[58] Appellant's Br. 14.

[59] *United States v. Meacham*, 115 F.3d 1488, 1495 (10th Cir. 1997); *see also United States v. Hoffman*, 626 F.3d 993, 996 (8th Cir. 2010) (internal quotation omitted)) ("The illicit behavior must be one of the purposes motivating... the interstate transportation of the minor, but need not be the dominant purpose").

[60] *United States v. Brooks*, 309 F.2d 580, 583 (10th Cir. 1962) (citation omitted); *see also Cole*, 262 F.3d at 709 (quoting *United States v. Reamer*, 318 F.2d 43, 49 (8th Cir. 1963)) ("[I]ntent [under the Mann Act] may be inferred from all the circumstances").

circumstances which a jury may consider in determining such intent, motive or purpose."[61]

In a similar section 2423(a) offense, the Sixth Circuit Court of Appeals also considered appellant's previous sexual conduct with a minor victim as evidence that he transported her with the intent to have sexual intercourse.[62] The court in *Wise* found that the appellant and the minor victim had, in fact, engaged in sexual activity on prior occasions, including during his prior visit to Arkansas to see her; that they exchanged sexually explicit pictures of each other; and that they had discussed her coming to live with appellant and future matrimony.[63] Although *Wise* also contained evidence that the appellant and the victim actually engaged in sexual intercourse during or at the completion of her journey, section 2423(a) is a crime of intent, and a conviction is entirely sustainable even if no underlying criminal sexual act ever occurs.[64]

This court may review the conduct of the parties within the three months prior to KO's trip to infer appellant's intent, which clearly supports a finding that a purpose for appellant

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[61] *Id.*
[62] *United States v. Wise*, 278 Fed. Appx. 552, 560 (6th Cir. 2008).
[63] *United States v. Wise*, 278 Fed. Appx. 552, 560 (6th Cir. 2008).
[64] *United States v. Broxmeyer*, 616 F.3d 120, 129-30, n.8 (2d Cir. 2010) (citing *United States v. Griffith*, 284 F.3d 338, 351 (2d Cir. 2002)).

transporting KO in interstate commerce was for her to engage in sexual intercourse with him. Appellant's intent may be established by circumstantial evidence, which includes "the conduct of the parties within a reasonable time before and after the trip."[65]

Similar to the Sixth Circuit Court of Appeals, this court should weigh appellant's previous sexual relationship with the victim as evidence that the appellant transported KO with the intent that she engage in sexual intercourse with him.[66] This court should also evaluate the circumstances of their intimate relationship where the evidence shows that they communicated on a daily basis and continued an intimate relationship. It is important that shortly before her travel to Texas, KO sent appellant a nude picture of herself without any protest from appellant. Additionally, this court should consider the fact that appellant and KO also discussed her coming to be with appellant and eventually getting married shortly before she left her home in Pennsylvania.[67]

Appellant argues that his "compelling or significant motivation to transport KO from Pennsylvania to Texas was to remove KO from a situation where KO reported to [appellant] that

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[65] *Brooks*, 309 F.2d at 583.
[66] *Wise*, 278 Fed. Appx. at 560.
[67] *Id.*

she was subjected to sexual assault from [his] brother."[68] However, in appellant's written statement and in his videotaped statement to CID, appellant admits that he first heard the allegation that KO was raped by his brother sometime between his first leave period and second leave period.[69] However, appellant did not seek immediate help to remove KO from the situation. Appellant did not contact any authorities to report the rape or the victim's suicidal state.[70] Instead of helping KO, appellant returned for a second leave period where he admitted to gratifying his sexual urges by having sexual intercourse with KO in a car.[71]

Moreover, KO also testified that she and appellant had sexual intercourse during his second leave period, in her bedroom.[72] The fact that appellant had sexual intercourse with the victim after she reported the alleged rapes to him, coupled with appellant's inaction once the rapes were reported to him between his two leave periods, belies appellant's argument that his "compelling" purpose for transporting the victim was to put her in a safer environment—specifically, in an environment where a 15-year-old would be living with a stripper, who was also one of appellant's sexual partners.

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[68] Appellant's Br. 14-15.
[69] Pros. Ex. 1 at 27:20; Pros. Ex. 4.
[70] Pros. Ex. 1 at 28:45; Pros. Ex. 4.
[71] Pros. Ex. 1 at 1:31:40, 1:35:52.
[72] JA 24-25; JA 43-44.

ii. Appellant's constant lies and deceit are consciousness of guilt that weighed against him.

In addition, "the factfinder is entitled to consider a party's dishonesty about a material fact as 'affirmative evidence of guilt.'"[73] Appellant made deceitful statements throughout his interview with law enforcement in an attempt to hide his relationship with KO.

First, while appellant was at home during his initial leave period, he purchased and gave a phone to KO.[74] Appellant admitted this fact in his written statement, but later denied giving KO a phone in his videotaped statement to CID.[75] This was an apparent attempt to minimize his relationship with KO and hide the fact that he talked to and texted with her on a daily basis.[76] The victim also testified that they ended each conversation with, "I love you," which appellant reciprocated.[77]

Second, appellant had sexual intercourse with the victim on more than one occasion.[78] However, when he was questioned by CID he was steadfast that he only had a plutonic relationship with KO.[79] Appellant maintained that there was not "any type of

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[73] *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 147 (2000) (citing *Wright v. West*, 505 U.S. 277, 296 (1992).
[74] JA 26; Pros. Ex. 4.
[75] Pros. Ex. 4; Pros. Ex. 1 at 1:50:30.
[76] JA 26-27; Pros. Ex. 4.
[77] JA 27.
[78] JA 23-25; JA 43-44.
[79] Pros. Ex. 1 at 1:22:26; 1:37:49.

passionate relationship with [KO]."[80] Appellant also tried to minimize his relationship with KO stating that he was like a "guidance counselor" to her.[81] He even suggested that KO may have run away to come to El Paso because she wants him to raise her.[82] Appellant then insisted that KO did try to seduce him on one occasion but that he rejected her advance.[83] Yet, despite his adamant denials that he had an intimate sexual relationship with KO, appellant eventually admitted that he and KO had sexual intercourse in a car one night after a party he attended.[84]

Next, appellant told law enforcement that the purpose of appellant giving NA $740 was for NA to "take a vacation".[85] Appellant feigned ignorance about NA's trip to pick up KO from Pennsylvania.[86] In furtherance of his subterfuge, and despite having devised the scheme himself, appellant states that he heard rumors that NA kidnapped KO to sell her in Mexico.[87]

Appellant's actions and his lies both before and after the transportation of KO are evidence that support the conclusion that appellant intended to bring KO to Texas so that he could continue his sexual relationship with her. Given that appellant

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[80] Pros. Ex. 1 at 1:19:15.
[81] Pros. Ex. 1 at 36:38.
[82] Pros. Ex. 1 at 1:22:10
[83] Pros. Ex. 1 at 1:06:10.
[84] Pros. Ex. 1 at 1:30:41.
[85] Pros. Ex. 4.
[86] Pros. Ex. 4.
[87] Pros. Ex. 1 at 20:15.

promised his brother he would not have sexual intercourse with the 15-year-old victim, but ultimately broke that promise; given that appellant and KO had sexual intercourse on at least two (and possibly three) occasions in the three months immediately prior to the victim's transportation; given that appellant lied to the investigators about both his relationship with KO and his involvement in the interstate transportation of KO; given appellant's action of buying KO a phone, talking and texting with her on a daily basis, ending their phone calls with "I love you"; and given that he received at least one nude picture from her prior to her departure to Texas without any protest from him; such overwhelming evidence supports the conclusion that a rational fact finder could find, beyond a reasonable doubt, that appellant transported KO through interstate commerce with the requisite intent that she engage in sexual activity with him.

Conclusion

WHEREFORE, the Government respectfully requests that this Honorable Court affirm the decision of the Army Court and grant appellant no relief.

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CERTIFICATE OF FILING AND SERVICE

I certify that the original and seven copies of the foregoing were delivered to the Court on the 21 day of November 2013, and that a copy of the foregoing was delivered to appellate military defense counsel on the 21 day of November, 2013.

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