

United States Court of Appeals
for the Fifth Circuit

No. 25-40109

United States Court of Appeals
Fifth Circuit

FILED

October 1, 2026

Thomas B. Plunkett, III
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

LUIS ANDRES SERNA,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:22-CR-1194-1

Before SMITH, HAYNES, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:

Luis Andres Serna contends that the Government needed to prove that he knew his victim was a minor to establish his guilt under 18 U.S.C. § 2251(a). He argued that the statute's demands were different for him, a claimed non-commercial producer of child pornography. He asked for, but was denied, a jury instruction on this issue. Finding no error, we affirm.

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I. Background

When Luis Andres Serna was 26 years old, he began a physical relationship with a 14-year-old girl, the minor victim (“MV”).¹ Around two years after their relationship began, Serna was detained pretrial at the GEO Detention Facility for separate federal offenses.² The facility allows and records video calls between inmates and designated individuals.

While at the facility, Serna initiated sexually explicit video calls with MV. She was 16 years old at the time. During one video call, Serna directed MV to undertake particular sexual actions while she was in the shower. MV recorded this conduct and played the video for Serna during later calls. Federal authorities recovered these video calls, and Serna was indicted and charged with sexual exploitation of a child, in violation of 18 U.S.C. § 2251(a), (e).

The parties disputed § 2251(a)’s elements below. The Government filed a motion in limine, asking the district court to prohibit Serna from asserting that the crime required evidence that he knew MV’s age or from arguing a mistake-of-age defense. In response, Serna asked “for a jury instruction on the scienter element.” The district court granted the Government’s motion in limine and denied Serna’s request for a jury instruction.

¹ The Government points out that, although Serna refers to MV as his “wife” throughout his briefing, “Serna was already married to someone else, and they had children” together. “He and his actual wife separated in 2021, but they did not divorce.” However, Serna believes that he is the father of MV’s child.

² Specifically, he was detained for conspiracy to transport illegal aliens and to possess with intent to distribute marijuana. MV was traveling with Serna when he was arrested for these offenses. Serna later pleaded guilty.

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Thereafter, Serna pleaded guilty but reserved his right to appeal the denial of his request for a jury instruction. Serna was sentenced, and this appeal followed.

II. Jurisdiction & Standard of Review

The district court had jurisdiction under 18 U.S.C. § 3231. We have jurisdiction under 28 U.S.C. § 1291.

We “review[] jury instructions for abuse of discretion, and the legal conclusions underlying those instructions de novo.”³ *United States v. Copeland*, 820 F.3d 809, 811 (5th Cir. 2016).

III. Discussion

Serna contends on appeal that the Government needed to prove that he knew MV’s age to establish his guilt under 18 U.S.C. § 2251(a), since he was a non-commercial producer of child pornography. He says that the district court’s conclusion to the contrary was error, and thus, he was entitled to a jury instruction on this issue. Serna is incorrect.

We have previously addressed § 2251(a)’s lack of a knowledge requirement. In *United States v. Crow*, we addressed § 2251(a)’s knowledge requirement on plain error review. 164 F.3d 229, 236 (5th Cir. 1999). We held that the district court did not plainly err by declining to include a jury instruction requiring knowledge of minority. *Id.* Years later, in *United States v. Sanders*, we addressed whether the Government constructively amended a defendant’s indictment by alleging that the defendant knew of the victim’s minority but neglecting to prove that at trial. 966 F.3d 397, 405–08 (5th Cir.

³ Serna provides a muddled discussion of exactly what decision he appeals. Nonetheless, we construe Serna’s appeal as taking issue with the district court’s denial of his request for a jury instruction, as that is what Serna reserved the right to appeal.

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2020). In passing, we explained that § 2251(a) “includes no requirement that a defendant know his victims’ ages.” *Id.* at 405.

We reach the same conclusion in this case. The statute does not require that a defendant know that his victim is a minor, even if the defendant produced child pornography for non-commercial purposes. That is because: (1) its text includes no such requirement; (2) the presumption in favor of scienter is inapplicable; and (3) the statute does not treat non-commercial producers any differently.

First, the text. *United States v. Lauderdale Cnty.*, 914 F.3d 960, 964 (5th Cir. 2019) (“The task of statutory interpretation begins and, if possible, ends with the language of the statute.” (citation omitted)). The statute states:

Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in . . . any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e)[.]

18 U.S.C. § 2251(a). The text is clear. Nowhere does it require that a defendant have knowledge of the victim’s age.

Second, our interpretation is not altered by the presumption in favor of scienter. Although “criminal statutes are generally construed to include *mens rea* requirements,” “this presumption does not apply to sex crimes against minors,” particularly “when the defendant confronts the victim personally.” *United States v. Copeland*, 820 F.3d 809, 813 (5th Cir. 2016) (citation modified); *see also United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 n.2 (1994) (discussing this exception (quoting *Morissette v. United States*, 342 U.S. 246, 248 n.8 (1952))). In Serna’s case, as is ordinarily the case with production offenses, there was much less “opportunity for reasonable mistake as to age.” *See X-Citement Video*, 513 U.S. at 72 n.2. Indeed, he was

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able to “confront[] the underage victim personally” via video call and in-person on numerous occasions beforehand.⁴ *See id.* To be sure, “Congress has enjoyed nearly unfettered discretion to exclude knowledge from the definition of statutory crimes in recognition that young children need special protection against sexual exploitation.” *United States v. Ruggiero*, 791 F.3d 1281, 1287 (11th Cir. 2015) (citation modified). So, the presumption is inapplicable when construing § 2251(a)’s meaning in cases such as this.

Third, contrary to Serna’s contention, the fact that he is a non-commercial producer of child pornography does not alter our interpretation. For one, the statute does not distinguish between commercial and non-commercial producers. *See Ruggiero*, 791 F.3d at 1289 (“[T]he statutory language plainly does not limit § 2251(a) to commercial conduct.”). But for another, the statutory history clarifies that the statute applies just as well to non-commercial producers. *See In re Crocker*, 941 F.3d 206, 213 (5th Cir. 2019) (explaining that statutory history includes the “[e]nacted revisions in the wording of statutes,” and does not encompass “the sort of unenacted legislative history that often is neither truly legislative . . . nor truly historical” (citation omitted)). When originally enacted, § 2251(a) actually

⁴ When discussing § 2251(a), the Court explained why the absence of a knowledge requirement makes sense. *X-Citement Video*, 513 U.S. at 72 n.2 (explaining that personal confrontation allows a perpetrator to ascertain the victim’s age and question the victim); *id.* at 76 n.5 (citing 18 U.S.C. § 2257 and explaining that “Congress has independently required both primary and secondary producers to record the ages of performers with independent penalties for failure to comply”). These justifications apply in Serna’s case. He spoke to MV over video and had ample time to determine (or become suspicious of) her age, and he has failed to explain why he is not required to comply with § 2257’s reporting requirements. To be sure, Serna was no “voyeur[.]” *United States v. Steen*, 634 F.3d 822, 824 n.4 (5th Cir. 2011) (per curiam) (noting that “[t]he scienter requirement of § 2251(a) has not been discussed by courts in the context of voyeurs and child pornography production.”). So, Serna’s reliance on *Steen* is futile, and the concern *Steen* intimated is irrelevant in a case like this.

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“provided that a defendant could be convicted only if he produced child pornography ‘for pecuniary profit.’” *Ruggiero*, 791 F.3d at 1289 (citation omitted). That is because, initially, “producing” was defined as “producing, directing, manufacturing, issuing, publishing, or advertising, for pecuniary profit.” The Protection of Children Against Sexual Exploitation Act of 1977, § 2(a), Pub. L. No. 95–225, 92 Stat. 7 (1978) (enacting 18 U.S.C. § 2253(3), *later redesignated as* 18 U.S.C. § 2255(3)). Congress later amended the statute and deleted the “for pecuniary profit” portion of the definition. Child Protection Act of 1984, § 5(a)(5), Pub. L. No. 98–292, 98 Stat. 204 (1984). This clarifies that Congress intended the statute to apply to commercial and non-commercial producers alike.

* * *

In the end, § 2251(a)’s text is clear—a commercial or non-commercial producer need not have knowledge that the victim is a minor.⁵ The district court did not err by denying Serna’s request for a jury instruction.⁶

⁵ While there need not be that information, it does seem pretty likely that he knew of MV’s minority given that he was having sex with her for two years, starting when she was fourteen years old.

⁶ Serna also gestures at various constitutional concerns. But Serna has forfeited his constitutional arguments because he has not adequately briefed them or cited relevant authorities. *See Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021) (“A party forfeits an argument . . . by failing to adequately brief the argument on appeal.”). Nonetheless, such a construction of § 2251(a) does not pose constitutional concerns. *See, e.g., Crow*, 164 F.3d at 236 (explaining that “the constitutionality of [§] 2251(a) has been challenged, upheld and affirmed”). Additionally, at times during oral argument, Serna’s counsel seems to have asked us to recognize a mistake-of-age defense. Such a request is not found in Serna’s briefing, so that argument is also forfeited. *See Rollins*, 8 F.4th at 397. But nonetheless, we decline the invitation to recognize such a defense as our sister circuits often have. *United States v. Tyson*, 947 F.3d 139, 147 (3d Cir. 2020) (“[The court] decline[s] Tyson’s invitation to join the Ninth Circuit in recognizing an affirmative [mistake-of-age] defense under the First Amendment.”); *accord United States v. Humphrey*, 608 F.3d 955, 960–62 (6th Cir. 2010) (collecting cases and explaining that “the Ninth Circuit stands

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IV. Conclusion

We AFFIRM.

alone in its determination that the First Amendment requires a reasonable mistake-of-age defense”).