

United States Court of Appeals
For the Eighth Circuit

No. 25-1746

United States of America

Plaintiff - Appellee

v.

James Edward Hall

Defendant - Appellant

Appeal from United States District Court
for the Eastern District of Arkansas - Central

Submitted: April 16, 2026

Filed: August 31, 2026

[Unpublished]

Before LOKEN, SHEPHERD, and STRAS, Circuit Judges.

PER CURIAM.

A jury found James Hall guilty of several child-sex crimes. Although he challenges his convictions and sentence on multiple grounds, we affirm.

I.

Hall responded to an online advertisement that led to an undercover agent posing as the father of an eight-year-old girl. Through text messages, he described the sexual acts he wanted to do with her and asked the agent for child pornography. In response, the agent sent an intentionally corrupted link that Hall repeatedly tried to open without success.

Next came plans to “play” in person. When Hall arrived at the meeting spot, however, there was no girl waiting, just police officers. Following a trial, the jury found him guilty of one count of attempting to create child pornography, *see* 18 U.S.C. § 2251(a); two counts of attempting to receive child pornography, *see id.* § 2252(a)(2); and one count of attempting to entice a minor, *see id.* § 2422(b). The district court¹ gave him a combined sentence of 210 months in prison.

II.

All but one of those convictions, Hall says, lacked sufficient evidence. *See United States v. Mejia*, 172 F.4th 601, 604 (8th Cir. 2026) (reviewing a sufficiency challenge de novo, construing the evidence and drawing all reasonable inferences in favor of the verdict). The record reveals otherwise.

To be guilty of attempting to receive child pornography, Hall must have taken an intentional and substantial step toward “knowingly receiv[ing] . . . a[] visual depiction . . . of a minor engaging in sexually explicit conduct.” 18 U.S.C. § 2252(a)(2); *see United States v. Bauer*, 626 F.3d 1004, 1008 (8th Cir. 2010) (“A substantial step is necessary for an attempt conviction . . .”). The substantial step here was repeatedly trying to open the link. Doing so went “beyond mere preparation,” *Bauer*, 626 F.3d at 1008 (citation omitted), even if there was nothing

¹The Honorable Kristine G. Baker, Chief Judge, United States District Court for the Eastern District of Arkansas.

behind it to download or view. *See United States v. Joiner*, 418 F.3d 863, 869 (8th Cir. 2005) (stating that “[f]actual impossibility is not a defense to an . . . attempt” (citation omitted)).

Also requiring a substantial step was the attempted-enticement count, except it had to be toward intentionally enticing someone believed to be a minor into engaging in sexual activity. *See United States v. Hensley*, 982 F.3d 1147, 1154 (8th Cir. 2020). By the time he shared his desire to have sex with an eight-year-old girl, set up a time and place to meet her, and “travel[ed] to the designated . . . place with evident sexual interest,” Hall was well on his way toward the crime’s completion. *United States v. Harcrow*, 135 F.4th 636, 643 (8th Cir. 2025) (per curiam).

III.

Even if the jury heard enough evidence, Hall believes it found him guilty based on the wrong instructions. He did not object to any of them, so our review is for plain error.² *See United States v. Fast Horse*, 747 F.3d 1040, 1042 (8th Cir. 2014) (reviewing a forfeited instructional challenge).

A.

Two instructions cannot be “clear[ly] or obvious[ly]” erroneous because, though they gave specific case-related examples, we have upheld nearly identical instructions in the past. *United States v. Poitra*, 648 F.3d 884, 887 (8th Cir. 2011); *see Hensley*, 982 F.3d at 1161. Instructions like these may not be a best practice

²He also raises a double-jeopardy challenge to the attempted-enticement and attempted-production-of-child-pornography counts, but it is too late to review “defect[s] in the indictment” for the first time on appeal. Fed. R. Crim. P. 12(b)(3) (requiring them to be raised before trial). Without a showing of “good cause,” we cannot consider it. *Id.* 12(c)(3); *see United States v. Anderson*, 783 F.3d 727, 741 (8th Cir. 2015).

because they can appear “one[]sided,” but they do not rise to the level of *plain* error.³ *Hensley*, 982 F.3d at 1160–61.

B.

Nor do the instructions the district court gave on the attempted-enticement charge. One said that, although “pro[of] that [a minor] was actually persuaded . . . to engage in sexual activity” was unnecessary, the government still had “to prove that [Hall] intended to engage in *some form* of unlawful sexual activity with” one. (Emphasis added). Another explained that he did not need to “intend[] to participate in a physical act” himself if he “intended to persuade or entice a minor to engage in illegal sexual activity.” At first glance, the last part of the first instruction and the first part of the second appear inconsistent.

In context, however, they explain what the crime requires. The first one told the jury that *success* in enticing the minor makes no difference, which is something we have said before. *See United States v. Rajab*, 23 F.4th 793, 796 (8th Cir. 2022). The second one clarified that an intent to take part in the physical act is not a requirement, a feature of the statute we have also previously highlighted. *See United States v. Pierson*, 544 F.3d 933, 939 (8th Cir. 2008).

It is far from clear that “engag[ing] in some form of unlawful sexual activity” required Hall to physically take part in the act. *See, e.g., United States v. Fugit*, 703 F.3d 248, 254 (4th Cir. 2012) (“[W]e hold that interpersonal physical contact is not a requirement of § 2422(b)’s ‘sexual[-]activity’ element.”). For example, someone can “persuade or entice a minor to engage in illegal sexual activity” by directing them. At the very least, it presents a close enough call that there was no plain error in instructing the jury along those lines. *See United States v. Alvarez-Sorto*, 160

³As Hall acknowledges, precedent forecloses his argument that the factors used to identify “sexually explicit conduct” are unconstitutionally vague. *See United States v. McCoy*, 108 F.4th 639, 643 (8th Cir. 2024) (en banc) (holding that using these factors “was not plainly erroneous”).

F.4th 930, 944 (8th Cir. 2025) (concluding that “a close call . . . was no[t] plain error”).

IV.

Hall also criticizes the court for an instruction it did *not* give on entrapment. *See United States v. Strubberg*, 929 F.3d 969, 976 (8th Cir. 2019) (stating that we review the denial de novo). When “sufficient evidence” could show that the “government induce[d] . . . the crime” and the defendant “lack[ed] [the] predisposition . . . to engage in the criminal conduct,” the district court must give one. *Mathews v. United States*, 485 U.S. 58, 62–63 (1988).

The evidence here showed that Hall was *eager*, not induced, to commit the crime. He responded to the advertisement, expressed his interest in having sex with an eight-year-old girl, asked for illicit pictures of her, arranged a time to meet in person, and then showed up. *See Strubberg*, 929 F.3d at 976 (upholding the denial of an entrapment instruction on similar facts). Although he sent a few texts that suggested he might want to back out, they were mixed with others like, “I’ve been thinking about [meeting her] all week,” and, “Bring her. I need to see her.” His interest was not just “the product of the creative activity of law-enforcement officials.” *Sherman v. United States*, 356 U.S. 369, 372 (1958) (emphasis and citation omitted).

V.

Finally, Hall made a “[l]ast-minute request[.]” for new counsel at sentencing. *United States v. Klein*, 13 F.3d 1182, 1185 (8th Cir. 1994). The district court said no because the hearing had already been continued “at least nine times” over the course of three years. *See id.* (explaining that last-minute substitution requests are “not favored”). Faced with delaying it yet again, the court did not “abuse [its] discretion” in denying the request. *United States v. Swinney*, 970 F.2d 494, 500 (8th Cir. 1992) (providing the standard of review).

VI.

We accordingly affirm the judgment of the district court.
