
CASE NO. 24-5052

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff/ Appellee,

v.

GARRIN MICHAEL THOMPSON,
Defendant / Appellant.

On Appeal from the United States District Court
for the Northern District of Oklahoma

The Honorable John F. Heil
United States District Judge
Case No. 22-CR-00118-JFH

RESPONSE BRIEF OF THE UNITED STATES

Oral argument is not requested
There are no attachments to this brief

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Statement of Prior or Related Appeals

There are no prior or related appeals.

Statement of Jurisdiction

The district court had jurisdiction under 18 U.S.C. § 3231, because a federal grand jury charged Garrin Michael Thompson with federal sex crimes against minors. After the jury convicted Thompson, he appealed, and this Court has jurisdiction under 28 U.S.C. § 1291.

Introduction

In March 2022, Garrin Thompson drove his ten-year-old daughter A.T. to a hotel room in Texas where he sexually abused her. (R. Vol. 1 at 373, 376, 381–88). When A.T. told her older sisters about it, they shared that Thompson had molested them years before. (*Id.* at 391, 396, 422–24, 471–73). The FBI investigated the allegations, and a federal grand jury charged Thompson with transportation of A.T. with intent to engage in sexual activity, aggravated sexual abuse of another minor in Indian country, and attempted coercion and enticement of a third minor. (*Id.* at 696–97, 152–57). After a trial, a jury convicted him on all three counts. (*Id.* at 302). Thompson appeals his

conviction on Count One, claiming the government produced insufficient evidence that he intended to engage in illegal sexual activity with A.T. when he drove her from Oklahoma to Texas. He also appeals his conviction on Count Two, claiming the government introduced insufficient evidence to prove he was not an Indian for purposes of 18 U.S.C. § 1152.

Issues Presented for Appeal

1. Whether, taking the evidence and reasonable inferences therefrom in the light most favorable to the government, a rational jury could have found that Thompson transported his minor daughter from Oklahoma to Texas with the intent to engage in unlawful sexual activity with her.
2. Whether sufficient evidence supported the jury's finding that Thompson was not an Indian.

Statement of the Case

In 2022, Thompson sexually abused his daughter A.T. while they were alone together in Texas.

When A.T. was 10 years old, her father, Garrin Thompson, drove her from their home in Oklahoma to a hotel in Tyler, Texas. (R. Vol. 1 at 373, 376, 381–88). A.T. had a gymnastics meet in Tyler the following day. (*Id.* at 379–

80). She was an avid gymnast, and she frequently traveled to competitions with her parents. (*Id.* at 571–73). Usually, both her parents accompanied her, but this time her mother was ill. Holly Thompson could not travel because she had an urgent colonoscopy scheduled, so Garrin and A.T. made the trip by themselves. (*Id.* at 573–76).

The day before the competition, Thompson and his daughter arrived and checked into the hotel. (*Id.* at 576–77). Immediately after checking in, they changed into bathing suits and went to the pool, hoping to use the hot tub. (*Id.* at 381). Finding the hot tub closed, they returned to their room, where Thompson asked A.T. if she would like to get into the bathtub with him instead. (*Id.* at 381–82). A.T. did not really want to—she had never taken a bath with her father before—but Thompson pressured her. (*Id.* at 382–83). Thompson stripped naked and got into the tub, then told A.T. to take off her swimsuit as well. (*Id.*). She tried to decline, but Thompson insisted. (*Id.* at 383–84, 412–13). So she took off her swimsuit and joined him in the tub. (*Id.*).

Thompson positioned A.T. on top of him, lying back against his stomach. (*Id.* at 384–85). He placed his bare hand on her vagina. (*Id.* at 385–86). Then he washed A.T.’s vagina with a washcloth and kissed her around the neck. (*Id.* at 407–09, 414). To get out of this awkward position, A.T. suggested she might

wash her father's hair. (*Id.* at 384–85). After she did that, the two of them exited the tub and dried off, but Thompson did not get dressed. (*Id.* at 387). A.T. tried to put on her pajamas but Thompson told her not to. (*Id.*) Thompson took A.T. into bed and again placed her on top of him, lying back against his chest. (*Id.* at 388). Once more, Thompson placed his hand on her vagina and began kissing her body. (*Id.* at 388, 407–09). The touching continued until A.T. asked her father if he was ready to go to bed. (*Id.* at 389). He finally let her go and they went to sleep. (*Id.*)

After A.T. competed at the meet the next morning, they drove back to Catoosa. (*Id.*) Once home, Thompson told A.T. not to tell her mother what had happened. (*Id.* at 389–93, 402, 411). A.T. kept silent for about a month before she confided in a friend, and then her sisters, what her father had done to her in Texas. (*Id.* at 389–93, 577).

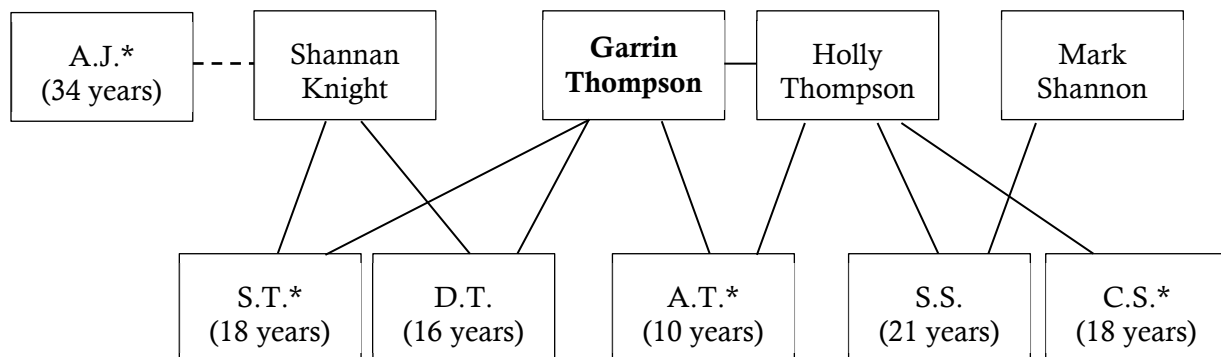
After A.T. came forward, three other children in Thompson's family disclosed that he had sexually abused them.

After A.T. disclosed her father's abuse in April 2022, two of her half-sisters told her that Thompson started abusing them when they were between five and eight years old. (*Id.* at 416–17, 422–24, 458–60, 467–73, 490–91). Also, Thompson's younger brother-in-law revealed that Thompson had tried to engage him in sexual activity when he was twelve. (*Id.* at 437–45). It turned

out that Thompson had been abusing the children in his family for over twenty years. (*Id.* at 416–17, 422–24, 437–45, 458–60, 467–73, 490–91).

Over that time, several children lived under Thompson’s care. Thompson’s ex-wife Shannan Knight had a much younger brother, A.J., who sometimes stayed overnight with her and Thompson when they were married. (*Id.* at 434–35). Thompson and his second wife, Holly, had one daughter together, A.T. (*Id.* at 372). Holly had two other daughters, C.S. and S.S., from a prior marriage. (*Id.*). And Thompson had two daughters of his own, D.T. and S.T., from his previous marriage. (*Id.*). All five girls lived with Thompson and Holly, and Holly homeschooled them. (*Id.* at 392, 567–69).

The following chart reflects the approximate ages of the children in the family as of the trial in September 2022, and their relationships to Thompson. (*Id.* at 369–70, 416–17, 425–26, 434, 564–65, 587).



Thompson sexually abused his minor daughter S.T. when she was approximately five years old in 2008 or 2009.

After A.T. told her family what Thompson did to her, her sister S.T. revealed that Thompson often “tickled” her inappropriately during her early childhood.¹ (*Id.* at 419–20, 423–24). Multiple times a week, Thompson would “tickle” S.T.’s inner thigh, lower stomach, and groin in a way that made her feel uncomfortable. (*Id.* at 419–20, 431). S.T.’s mother was always out of the house when Thompson “tickled” her this way. (*Id.* at 420).

S.T. also recounted one day when she was five or six, and Thompson asked her to follow him into his bedroom. (*Id.* at 420–21). Thompson and S.T.’s mother had recently divorced, and Thompson was the only adult in the house. (*Id.*). S.T. walked into the bedroom, where Thompson told her to pull down her pants and get on the bed. (*Id.*). She did so, and Thompson crouched over

¹ The trial transcript contains erroneous references to one of the minor victims. Because this case involved several minors, the court reporter used an autocorrect feature to substitute initials each time a minor’s name was mentioned. (R. Vol. 1 at 350). As a result, the testimony of S.T. was incorrectly labeled in the transcript as being from “S.S.” (*Id.* at 348, 416). But S.S. did not testify at trial, and the substance of the witness’s testimony, including her age, family members, and tribal enrollment, all pertain to S.T. (*Id.* at 416–17; Supp. R. Vol. 1 at 1). Counsel for Appellant has reviewed the transcript and agrees that this testimony, and the references in his opening brief to the testimony of “S.S.” should be attributed to “S.T.” (R. Vol. 1 at 416–31; Aplt. Br. at 13).

her and put his mouth on her vagina. (*Id.* at 421–22). After a few minutes of this, S.T. told her father that she needed to go to the bathroom, and he let her go. (*Id.*) S.T. did not tell anyone what her father had done to her—either the “tickling” or the oral sex in his bedroom—until after A.T.’s abuse came to light. (*Id.* at 422–23).

Thompson began sexually abusing his minor daughter C.S. when she was approximately seven years old.

Following A.T.’s disclosure, her sister C.S. revealed that Thompson had also touched her inappropriately starting when she was seven or eight years old. (*Id.* at 458–59, 470–72, 490). Thompson frequently “tickled” C.S.’s genital area when her mother was out of the house. (*Id.* at 490). Thompson’s tickling eventually escalated to touching her vagina, both clothed and unclothed. (*Id.* at 458–60). C.S. did not like it and would make excuses to break away, telling Thompson that she needed to go to the bathroom or let the dogs out. (*Id.* at 460–62). She did not always succeed in escaping him. (*Id.* at 483). One day when C.S. was seven or eight, Thompson touched her genitals while the two of them were alone in the car. (*Id.* at 467–68). She allowed him to do it because he had promised to get her a cat in exchange. (*Id.*) On another occasion, when C.S. was hiding from her father in the house, he promised to take her shopping for shoes if she came out. (*Id.* at 469–70). Like S.T., C.S. never told anyone

about Thompson's abuse until after A.T. disclosed that Thompson had abused her in Texas. (*Id.* at 470–72).

Thompson enticed his brother-in-law A.J. to engage in sexual activity when A.J. was twelve years old, in approximately 2000 or 2001.

Not all of Thompson's victims were his daughters. Years earlier, before Thompson had children of his own, he asked his wife's twelve-year-old brother, A.J., to engage in a sexual act. (*Id.* at 437, 441). A.J. lived nearby and sometimes spent the night with his sister Shannan and her then-husband, Thompson. (*Id.* at 435–36). Thompson and A.J. shared interests in video games and Star Trek, and they spent a lot of time together. (*Id.* at 436). Late one night, while his wife Shannan was sleeping, Thompson showed A.J. a pornographic movie. (*Id.* at 437–39). A.J. had never seen a pornographic movie before; while it played, Thompson removed his pants, masturbated in front of A.J., and invited him to do the same. (*Id.* at 437–39, 449).

A few months later, A.J. and Thompson were playing computer games late one night while Shannan was asleep. (*Id.* at 439–40). As the evening wore on, Thompson began showing A.J. pornography on the internet. (*Id.*). Thompson asked A.J. if he would like a blowjob, like the one they were watching online. (*Id.* at 441). A.J. declined. (*Id.*). Thompson asked again, and A.J. again said no. (*Id.*) Thompson then showed A.J. his sex toys and explained how he used

them on Shannan. (*Id.* at 441–42). He also showed A.J. several polaroids he had taken of Shannan while she was naked. (*Id.*). Thompson concluded the evening by masturbating in front of A.J., and then went to bed. (*Id.* at 442–43). A.J. kept silent about Thompson’s actions for years, but he came forward to share his account after he learned that Thompson had abused A.T. (*Id.* at 438–39, 443–45).

At trial, each of Thompson’s victims testified about how he had abused them when other adults were absent or sleeping.

Thompson’s four victims testified against him at trial. (*Id.* at 403, 416, 433, 453). A.T. recalled the events at the hotel in Texas and described how her father pressured her to join him naked in the bathtub. (*Id.* at 376–89). She testified that when she hesitated, Thompson said repeatedly, “No, just do it. Just do it with me,” and “No, it’s fine, just get in with nothing. . . . No, just take it off and get in.” (*Id.* at 382–83). A.T. said that after they exited the tub, she tried to put on her pajamas, but Thompson told her, “No, it’s fine, we don’t need that.” (*Id.* at 387). A.T. told the jury she “didn’t really know what to do,” so she got into bed naked with her father, where he touched her vagina again and kissed her body. (*Id.* at 387–88, 407–09).

A.T. also recounted how, on the drive back to Catoosa, Thompson complimented her performance at the gymnastics competition and claimed his “magic hands” had helped her to do well. (*Id.* at 402–03). Once they were at home, Thompson sat down alone with A.T. and told her, “Let’s not tell mom. This is just between me and you.” (*Id.* at 402, 411).

Later, A.T.’s half-sister, S.T., described how Thompson tickled her genital region when she was small and performed oral sex on her. (*Id.* at 419–22, 431). She confirmed that her mother was not at home during these episodes (*Id.* at 420–21). S.T. testified she did not tell anyone about the oral sex because she “did not understand what was happening.” (*Id.* at 422–23). She also recalled seeing her father tickle her sisters in a similar manner, and she testified that C.S. and Thompson “would get into an argument about it because she did not want it to happen.” (*Id.* at 423–24).

When C.S. took the stand, she testified about how Thompson tickled and touched her genitals when her mother was out of the house, “grocery shopping or taking kids to gymnastics.” (*Id.* at 458–59, 490). According to C.S., the tickling “started off kind of like a game, and then it wasn’t, kind of.” (*Id.* at 460). When C.S. learned that Thompson had abused A.T., she regretted not reporting her own abuse earlier: “I was sad it had happened to her, and I was

mad that it happened, and I felt guilty because I hadn't said anything." (*Id.* at 471–73). C.S. was particularly angry to learn how Thompson had let A.T. wash his hair in the bathtub, "Because that's what he does, pretends like it's a game." (*Id.* at 475).

Thompson's brother-in-law A.J. told the jury that he and Thompson had been very close when he was younger, and that Thompson was "the closest thing I had to a big brother." (*Id.* at 434–36). A.J. recounted how Thompson showed him pornography, offered him a blowjob, and masturbated twice in his presence. (*Id.* at 437–43, 449). A.J. did not tell anyone about these incidents because he felt "somehow complicit," and he didn't want to get Thompson or himself in trouble. (*Id.* at 439, 443).

A child abuse investigator's expert testimony provided the jury with context about the grooming process, and the role isolation often plays in sexual abuse.

After the victims testified, the jury heard from Jerry Sites, an expert witness in the field of child abuse investigations. (*Id.* at 526–559). Based on his 30 years of experience working thousands of child abuse cases, Sites explained that a child abuser will often begin "grooming" a victim by selecting a child they have access to and then isolating the child from other trusted adults. (*Id.* at 527–32). Once the victim is alone, the groomer desensitizes them to sexual

conduct, abuses them, and then maintains access to the child for future abuse by telling them to keep the abuse a secret. (*Id.* at 533–36).

Holly Thompson told the jury how she and Garrin Thompson reacted when A.T. disclosed the abuse.

Holly Thompson,² Thompson’s wife, testified that all five of their daughters had participated in gymnastics, and some of them had travelled to out-of-state competitions. (*Id.* at 562, 571). Holly confirmed that she and Thompson always traveled together to these competitions, with two exceptions: one trip when Thompson took A.T. to a meet and they stayed overnight with Holly’s mother, and the trip to Tyler, when Thompson and A.T. stayed alone at a hotel for the first time. (*Id.* at 572–73). Holly said she normally would have attended the meet in Tyler, but she was very ill with ulcerative colitis and had a colonoscopy scheduled for the day after the competition. (*Id.* at 573–76).

Holly testified that she did not learn about the abuse at the hotel until approximately a month later, when her daughter C.S. told her that Thompson had taken a bath together with A.T. (*Id.* at 577–78). Holly said she was “in shock” when she heard about it, because this was not normal behavior for their household—Thompson had “never” taken a bath with one of his daughters

² To distinguish her from the defendant, Holly Thompson is referred to a “Holly” throughout this brief.

before. (*Id.* at 579–82). Later, when Holly confronted Thompson about what he had done, he told her, “If this comes out, I will go to jail.” (*Id.* at 593).

Thompson asked Holly to tell A.T., “not to talk about it with any friends,” because “[o]ur world will collapse if it happens.” (*Id.* at 625).

Holly and federal agents told the jury about the explicit videos Thompson made of his daughters and the incest-related material recovered from his personal computer.

Holly Thompson also testified that during the FBI’s investigation, she gave them several electronic devices from their home, including a desktop computer that was used only by Thompson. (*Id.* at 603–04). When Holly reviewed the video files the FBI recovered from Thompson’s computer, she learned that Thompson had placed hidden cameras inside their home. (*Id.* at 596–600, 603). One video, from a camera hidden in Holly’s closet, captured one of their daughters undressing to take a shower. (*Id.* at 597, 704–08; Gov’t Exh. 14). The video shows an adult starting the recording, hiding the camera in the closet, and leaving. (Gov’t Exh. 14 at 0:00–0:25). A few minutes later,³ the video shows a teenaged girl entering the closet, removing her clothing, leaving, then returning a few minutes later with wet hair, and getting dressed. Shortly after the child leaves for the final time, the video depicts the same adult

³ The daughter enters approximately 9:38 on the video. This video depicts total nudity.

entering the closet, removing the hidden camera, and turning it off. (*Id.* at 23:15–23:18). A second video shows Thompson hiding a camera in the guest bathroom of their home. (R. Vol. 1 at 601–02, 703–04). A third video depicts footage from the bathroom of a vacation beach house. (*Id.* at 600–01). That camera captured family members using the bathroom, and one of Thompson’s daughters changing her shirt. (*Id.* at 701–02). The jury watched all three videos. (*Id.* at 703–04, 707; Gov’t Exh. 14).

FBI agents described the results of their search of Thompson’s personal computer. (R. Vol. 1 at 674–76, 686–87, 698–701). Special Agent Timothy Doyle confirmed that Thompson’s computer contained the three videos Holly described, as well as over one hundred still-frame captures from the closet video, many depicting “complete nudity.” (*Id.* at 698–708). Agent Doyle also testified that he recovered a number of pornographic website addresses from Thompson’s computer, including the websites, “realincest.biz,” “forced daughter fucked-moralfreetube.com,” and “daddy and daughter xvideos.com.” (*Id.* at 709–13).

The trial court denied Thompson’s motion for acquittal and the jury convicted him on all counts.

At the close of the government’s case, Thompson moved for a judgment of acquittal under Rule 29. (*Id.* at 718). The district court overruled the motion. (*Id.*). The jury convicted Thompson of transporting A.T., a minor, across state lines with the intent to engage in criminal sexual activity; aggravated sexual abuse of S.T., a minor, in Indian country; and coercion and enticement of A.J., a minor. (*Id.* at 648).⁴ Thompson now challenges the sufficiency of the evidence to support his convictions.

Summary of the Argument

The evidence presented at trial, taken in the light most favorable to the government, was sufficient to support the jury’s conclusion that Garrin Thompson drove his daughter to a hotel room in Texas with the intent to sexually abuse her there. Multiple witnesses testified that Thompson had spent the past twenty years abusing the children in his family when he had them alone. In every instance, Thompson was careful to perpetrate his abuse when other “safe” adults were unavailable—either because they were out of the

⁴ Thompson was not charged with abusing C.S., who is not Indian. (R. Vol. 1 at 198).

house, or asleep, or because Thompson had taken a child away from the home. That Thompson may have also transported A.T. to Texas to allow her to participate in a gymnastics meet does not require a different result. The evidence showed Thompson's longstanding practice of abusing isolated children, and the jury was justified in concluding that when he took A.T. to Texas without her mother, he did so intending to sexually abuse her.

The circumstances of the abuse itself also supported the jury's conclusion. At trial, A.T. testified that almost immediately after they arrived at the hotel, her father pressured her to take a bath with him. She hesitated, but Thompson overcame her objections. He abused her in the tub, then insisted she join him naked on the bed. A.T. was reluctant, but Thompson nonetheless abused her again. The following day, when the two of them arrived back home, Thompson sat down alone with his daughter and instructed her not to tell anyone what had happened at the hotel. Thompson's actions on that trip, against the backdrop of his twenty-year pattern of isolating and abusing other children, allowed the jury to infer that one of Thompson's motivating intentions as he drove to Texas was to abuse A.T. when he had her alone at the hotel.

Under this Court's precedent, sufficient evidence from Thompson's

immediate family members supported the jury’s finding that he was not an Indian for purposes of 18 U.S.C. § 1152.

Argument

I. Sufficient trial evidence, and the reasonable inferences therefrom, supported the jury’s guilty verdict on Count One.

A. Record Reference

At the close of the government’s case, Thompson moved for a judgment of acquittal under Rule 29. (R. Vol. 1 at 718). The district court overruled the motion. (*Id.*).

B. Standard of Review

This Court reviews *de novo* the denial of a judgment of acquittal for insufficient evidence. *United States v. Garcia*, 74 F.4th 1073, 1117 (10th Cir. 2023). However, the reviewing court still “owe[s] considerable deference to the jury’s verdict.” *United States v. King*, 632 F.3d 646, 650 (10th Cir. 2011) (internal quotation marks omitted). It neither weighs the evidence nor judges witness credibility, nor does it “question the jury’s resolution of the evidence if it is reasonable.” *Garcia*, 74 F.4th at 1117. This Court “ask[s] only whether, taking the evidence—both direct and circumstantial, together with reasonable inferences to be drawn therefrom—in the light most favorable to the

government, a reasonable jury could find the defendant guilty beyond a reasonable doubt.” *Id.* “A judgment of acquittal is appropriate only if a finding of an element of a crime beyond a reasonable doubt could not have been based on evidence and inferences reasonably drawn from evidence or where the guilty verdict rested only on a series of inferences.” *Id.* “Rather than examining the evidence in bits and pieces, [this Court] evaluate[s] the sufficiency of the evidence by considering the collective inferences to be drawn from the evidence as a whole.” *United States v. Tennison*, 13 F.4th 1049, 1059 (10th Cir. 2021) (internal quotation marks omitted).

C. Based on the evidence and reasonable inferences therefrom, taken in the light most favorable to the government, a reasonable jury could have found that Garrin Thompson took his daughter to Texas with the intent to abuse her there.

Taken as a whole, the evidence and reasonable inferences therefrom supported the jury’s conclusion that “at the time of the transportation, [Thompson] intended that A.T. would engage in unlawful sexual activity for which someone could be charged with a crime.” (R. Vol. 1 at 286.) Thompson did not object to this language from the district court’s jury instruction, and he does not argue the instruction was plainly erroneous on appeal. To the extent he questions whether the jury was focused on the correct standard, this Court’s recent precedent confirms it was. In *United States v. Ortner*, a panel of this Court

found an identical § 2423(a) instruction “provided the jury with an accurate statement of the applicable law.” No. 21-5075, 2023 WL 382932 at *2 (10th Cir. Jan. 25, 2023) (unpublished), *citing United States v. Scisum*, 32 F.3d 1479, 1484 (10th Cir. 1994). The evidence against Thompson amply supported the jury’s conclusion that one of his “motivating” reasons for taking A.T. to Texas was to get her away from her mother and abuse her in private. *United States v. Lacy*, 904 F.3d 889, 901 (10th Cir. 2018); *see also Ortner*, 2023 WL 382932, at *2 (“an aim of the trip” must be to engage in unlawful sexual conduct); *United States v. Scott*, 529 F.3d 1290, 1303 (10th Cir. 2008) (the defendant must transport a minor across state lines “knowingly and with a purpose of illegal sexual activity”).

1. Four of Thompson’s victims, including A.T., testified that he abused them when they were alone and unprotected by other adults.

Sufficient evidence allowed the jury to infer that Thompson’s abuse of A.T. was not a spontaneous decision, but rather a continuation of a twenty-year pattern of abuse, perpetrated when the absence of other adults provided Thompson unfettered access to his victims. Each of the three children Thompson abused before A.T. told the jury how he deliberately preyed upon them when he knew there would be no other adults around to protect them. Thompson’s brother-in-law A.J. testified that when he was 12, Thompson

invited him to engage in sexual activity, late at night after Thompson's wife had gone to bed. Thompson's daughter S.T. testified that he tickled her genital area "multiple times a week," but never when her mother was in the house. Likewise, when Thompson subjected S.T. to oral sex at the age of five or six, he knew he was safe from detection because S.T.'s mother was no longer living with him. Thompson's other daughter C.S. told the jury that Thompson abused her when her mother was out "grocery shopping or taking kids to gymnastics," or when she and Thompson were alone in the car. Based on Thompson's longstanding practice of abusing children when he had them alone, a reasonable jury could infer that when Thompson realized his wife would be unable to accompany him and A.T., he took his daughter away from their home with the intent to abuse her at the hotel in Texas.

Thompson's abuse of A.T. in Texas likewise demonstrated that one of his "motivating" reasons for traveling with her was to sexually abuse her outside her mother's presence. One of Thompson's first actions at the hotel was to abuse A.T. in the bathtub, and then again on the bed—it was essentially all he did with his daughter at the hotel that evening. His persistence and determination to overcome A.T.'s multiple objections confirmed that abuse was one of Thompson's motivating purposes for the trip. And after they

returned home, Thompson sat down alone with A.T. and admonished her, “Let’s not tell mom. This is just between me and you.” Thompson’s behavior was consistent with the expert testimony of Jerry Stites, who explained that abusers often isolate their victim from other adults, then insist on secrecy in order to keep the victim isolated and available for future abuse. Thompson’s actions on that trip, combined with his history of abusing other children when he knew other adults would be absent, allowed a reasonable jury to conclude that Thompson drove A.T. to Texas intending to abuse her while he had her away from her mother. The jury was not required, as defendant argues, to conclude that abuse was an “incidental purpose” for the trip or an “afterthought.” (Aplt. Br. at 8.)

2. Thompson’s hidden-camera videos of his daughters undressing supported the jury’s conclusion that he planned to abuse A.T. when they traveled to Texas.

Thompson’s hidden-camera videos further underscored his criminal intent, showing how he placed multiple cameras to surreptitiously capture footage of his daughters undressing. The video from Holly’s closet is particularly indicative of Thompson’s planning and preparation—the camera was placed at exactly the right time and place to capture Thompson’s daughter undressing to take a shower, and was then removed immediately afterward. (Gov’t Exh. 14).

A reasonable jury could view Thompson’s collection of hidden-camera videos and his history of visiting incest-related websites as evidence that that one of Thompson’s “motivating purposes” for the trip was to abuse A.T. once he got her away from her mother and four older sisters. *See Lacy*, 904 F.3d at 901.

Thompson’s argument that would have taken A.T. to the gymnastics competition “regardless” misses the point. (Aplt. Br. at 11). This Court has repeatedly explained that abuse need not be the sole motivation for interstate travel. *Ortner*, 2023 WL 382932, at *2; *Lacy*, 904 F.3d at 901; *Scisum*, 32 F.3d at 1485. “A person may have several different purposes or motives for such travel and each may prompt, in varying degrees, the act of making the journey.” *Scisum*, 32 F.3d at 1485. The fact that Thompson had a legitimate reason for taking his daughter to Texas—the gymnastics competition—does not exempt him from liability for his criminal intentions. *See United States v. Flucas*, 22 F.4th 1149, 1156 (9th Cir. 2022) (“[A] person can travel to the grocery store ‘for the purpose of’ buying milk and getting gas if both milk and gas are motivating reasons for the excursion.”).

3. Thompson’s legal argument also ignores the plain language of § 2423(a).

Thompson’s narrow focus on only one of his “purposes” for travel is inconsistent with this Court’s precedent, and it ignores the plain language of

§ 2423(a). The version of § 2423(a) that Thompson was charged under is concerned with a defendant’s “intent,” and this Court has recognized that a person may have more than one reason in mind for making a trip. *See Scisum*, 32 F.3d at 1485. This emphasis on intent, as opposed to “purpose,” has only become more pronounced over the history of the statute. As originally enacted in 1910, the Mann Act predecessor to § 2423(a) criminalized transporting a minor across state lines “with **the purpose and intent** to induce or coerce her . . . to engage in prostitution or debauchery, or any other immoral practice.” *See* Mann Act, ch. 395, 36 Stat 825 (1910) (codified as amended at 18 U.S.C. §§ 2421–2424) (emphasis added). In 1948, Congress amended § 2423(a) to eliminate the “purpose” language and focus solely on the defendant’s “intent” during the travel. *See* Act of June 25, 1948, ch. 645, 62 Stat. 812. Since then, Congress has systematically eliminated any references to a defendant’s “purpose” in the Mann Act. *See* Act of Nov. 7, 1986, Pub. L. No. 99-628, § 5(b) (making a similar amendment to § 2421).

The Preventing Child Sex Abuse Act of 2023 eliminated the last remaining use of “purpose,” in a neighboring provision at § 2423(b), and clarified that “intent” for all purposes in § 2423 “shall be construed as any intention to engage in [prohibited sexual conduct] at the time of the interstate travel.” Act

of Dec. 22, 2023, Pub. L. No. 118-31 § 5102(b)(6), (c)(4). In its 2023 legislative preamble, Congress explained that it was amending § 2423(b) and clarifying the “intent” standard to address child sex abuse by persons who used legitimate reasons for travel “as a cover for sexual abuse of children.” *Id.* at § 5102(b)(6), (9) (“Federal law does not require that an abuser’s intention to engage in sexual abuse be a primary, significant, dominant, or motivating purpose of travel.”).

In light of these amendments, many circuit courts have questioned whether the Mann Act requires any inquiry into a defendant’s “purpose” in traveling, as distinct from his intentions during the trip. “Neither the purpose of, nor motive for, the transportation . . . are mentioned in the current law.” *U.S. v. Ellis*, 935 F.2d 385, 391–92 (1st Cir. 1991); *United States v. Cole*, 262 F.3d 704, 709 (8th Cir. 2001) (noting that with the “intent” amendment, Congress arguably “lessened the prosecution’s burden, such that it need not prove that illegal sexual activity was a purpose of the interstate transportation at all”); *United States v. Hoschouer*, 224 F. App’x 923, 927 & n.1 (11th Cir. 2007) (unpublished) (“The Mann Act originally included a ‘purpose’ test; it was amended in 1986 to remove that test and to replace it with the current ‘intent’ test.”).

Most of these courts have found it unnecessary to decide whether Congress changed the government’s burden when it replaced “purpose” with “intent,” because the record was sufficient to support a conviction under either standard. *See Ellis*, 935 F.2d at 392; *Cole*, 262 F.3d at 709; compare *United States v. Cryar*, 232 F.3d 1318 (10th Cir. 2000) (acknowledging that “purpose” may be too high a standard for the “intent” language at 18 U.S.C. § 2241, but finding the evidence sufficient to affirm a conviction in either event). Likewise, this Court need not resolve this issue to affirm, because the evidence against Thompson was sufficient to support his conviction under either a “purpose” or “intent” inquiry.

The jury heard ample evidence to support its conclusion that Thompson drove A.T. to the hotel in Texas with a motive, purpose, and intent to abuse her. The jury heard how Thompson molested three of the five girls who had lived in his house and another boy who considered him a big brother. The evidence showed how Thompson watched for—and arranged—opportunities when those children would be alone and vulnerable. The pornographic photos, videos, and website addresses recovered from Thompson’s computer revealed his predatory nature and his specific interest in father-daughter incest. And when Thompson realized he would have an opportunity to spend time alone

with A.T. in a hotel room, away from her mother and sisters, he took her to Texas and began abusing her almost immediately upon their arrival. The totality of the evidence before it, both direct and circumstantial, combined with inferences based in reason and common sense, allowed a reasonable jury to conclude that Thompson took A.T. to Texas intending to sexually abuse her.

II. Sufficient trial evidence, and the reasonable inferences therefrom, supported the jury’s finding on Count Two that Thompson is not Indian.

A. Record Reference

At the close of the government’s case, Thompson moved for a judgment of acquittal under Rule 29. (R. Vol. 1 at 718). The district court overruled the motion. (*Id.*).

B. Standard of Review

As with Count One, this Court reviews *de novo* the denial of a judgment of acquittal for insufficient evidence, with “considerable deference to the jury’s verdict.” *United States v. Garcia*, 74 F.4th 1073, 1117 (10th Cir. 2023); *United States v. King*, 632 F.3d 646, 650 (10th Cir. 2011).

C. Thompson’s wife and his adult daughter testified that he is not Indian.

The government charged Thompson in Count Two under 18 U.S.C. § 1152, which establishes federal jurisdiction over Indian country crimes “in which the

defendant is an Indian and the victim is a non-Indian, or vice-versa.” *United States v. Prentiss*, 273 F.3d 1277, 1278 (10th Cir. 2001). This Court has held that a defendant’s non-Indian status is an “essential element” of a § 1152 charge that the government bears the burden to prove. *Id.*; *United States v. Langford*, 641 F.3d 1195, 1200 (10th Cir. 2011); *contra United States v. Haggerty*, 997 F.3d 292, 302 (5th Cir. 2021) (defendant’s non-Indian status under § 1152 is an affirmative defense); *United States v. Reza-Ramos*, 816 F.3d 1110, 1120 (9th Cir. 2016) (“[t]he burden of proving the applicability of the statutory exception in § 1152 is on the defendant. . . because it is in the nature of an affirmative defense”). A defendant is not an Indian unless they (1) have “some Indian blood,” and (2) are enrolled in a federally recognized tribe or otherwise recognized as an Indian by a tribe or the federal government. *Prentiss*, 273 F.3d at 1280. To prove a defendant is non-Indian, the government need only prove that one of the two prongs—Indian blood or tribal recognition—is absent. *Ortner*, 2023 WL 382932, at *3. Here, the government introduced sufficient evidence to support the jury’s finding that Garrin Thompson is a non-Indian.

Thompson’s immediate family members testified that he is not an Indian and is not enrolled in any federally recognized tribe. The first person to testify on this subject was Thompson’s eighteen-year-old daughter, S.T., who is

familiar with the concept of tribal status. S.T. testified that she and her mother, Shannan Knight, are enrolled members of the Creek Nation. (R. Vol. 1 at 417–18; Supp. R. Vol. 1 at 1). In contrast, S.T. testified that her father is not an Indian. (R. Vol. 1 at 417). Holly, who was married to Thompson for twelve years, likewise confirmed that Thompson is not an Indian, and is not an enrolled member of any federally recognized tribe. (*Id.* at 567–68, 642). As Thompson’s family members, S.T. and Holly, were competent to testify to his tribal status. *See United States v. Walker*, 85 F.4th 973, 983 (10th Cir. 2023) (holding tribal status was “well within the ambit” of a family member’s personal knowledge).

Thompson did not cross-examine either his wife or his daughter concerning his non-Indian status or even criticize their testimony. The record contains no evidence that Thompson had a quantum of Indian blood or was enrolled in a tribe or recognized by anyone as an Indian. *See Ortner*, 2023 WL 382932, at *3 (“While lack of tribal membership does not foreclose a finding of Indian status, the absence of such evidence here suggests [defendant] did not have Native American ancestry of note.”). Taken as a whole, the evidence was sufficient to support the jury’s finding that Thompson was not Indian.

Conclusion

Ample evidence supported the jury's guilty verdicts on Counts One and Two, and this Court should affirm Thompson's convictions.

Statement Regarding Oral Argument

The United States does not request oral argument.

Respectfully submitted,
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Certificate of Service

I certify that on November 25, 2024, I electronically transmitted the foregoing to the Clerk of the Court using the ECF System for filing, which will send notification of that filing to the following ECF registrant:

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