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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of General Sessions
Hon. Debra R. McCaslin, Circuit Court Judge

Appellate Case No. 2025-000611

THE STATE,

Respondent,

v.

MARK THOMAS FRICK,

Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL 1

STATEMENT OF THE CASE 2

STATEMENT OF FACTS 3

STANDARD OF REVIEW 10

ARGUMENT 11

 The trial court correctly refused to instruct the jury on the
 affirmative defense of entrapment because the evidence did not
 support the charge. 11

CONCLUSION 30

TABLE OF AUTHORITIES

Cases

<u>Bolton v. State</u> , 714 S.E.2d 377 (Ga. 2011).....	28
<u>Clark v. State</u> , 209 N.E.3d 444 (Ind. Ct. App. 2023).....	28
<u>Jacobson v. United States</u> , 503 U.S. 540 (1992).....	14
<u>Sorrells v. United States</u> , 287 U.S. 435 (1932).....	12
<u>State v. Brown</u> , 362 S.C. 258, 607 S.E.2d 93 (Ct. App. 2004).....	10, 11, 13, 23, 26
<u>State v. Bullock</u> , 153 S.W.3d 882 (Mo. Ct. App. 2005).....	27
<u>State v. Carver</u> , 195 N.E.3d 598 (Ohio Ct. App. 8th Dist. 2022).....	24, 27
<u>State v. Cooper</u> , 302 S.C. 184, 394 S.E.2d 717 (Ct. App. 1990).....	13, 17
<u>State v. Gaines</u> , 380 S.C. 23, 667 S.E.2d 728 (2008).....	9, 12, 13, 17
<u>State v. Hill</u> , 315 S.C. 260, 433 S.E.2d 848 (1993).....	11
<u>State v. Jacobs</u> , 238 S.C. 234, 119 S.E.2d 735 (1961).....	23, 25
<u>State v. Johnson</u> , 295 S.C. 215, 367 S.E.2d 700 (1988).....	11, 12, 14, 22, 23
<u>State v. Smith</u> , 548 P.3d 874 (Utah 2024).....	19
<u>U.S. v. Rutgeron</u> , 822 F.3d 1223 (11th Cir. 2016).....	19
<u>U.S. v. Shinn</u> , 681 F.3d 924 (8th Cir. 2012).....	24
<u>United States v. Anderson</u> , 55 F.4th 545 (7th Cir. 2022).....	27
<u>United States v. Dávila-Nieves</u> , 670 F.3d 1 (1st Cir. 2012).....	21
<u>United States v. Hackley</u> , 662 F.3d 671, 682 (4th Cir. 2011).....	26
<u>United States v. Medina-Ortiz</u> , 633 F. Supp. 3d 531 (D.P.R. 2022), <u>affd.</u> 160 F.4th 11 (1st Cir. 2025).....	27
<u>United States v. Osborne</u> , 935 F.2d 32, 38 (4th Cir. 1991).....	12, 26

U.S. v. Ramos, 462 F.3d 329 (4th Cir. 2006)	26
<u>United States v. Sligh</u> , 142 F.3d 761 (4th Cir. 1998)	12

Statutes

S.C. Code Ann § 16-15-395	15
S.C. Code Ann. § 16-15-342	15

Secondary Sources

WILLIAMS, ELLIOTT, & BEECH, <u>Identifying Sexual Grooming Themes Used by Internet Sex Offenders</u> , 34 DEVIANT BEHAVIOR, 135, 146-47 (2013), for discussion of techniques used by solicitation offenders and compliance-testing behavior intended to de-sensitize victims and gauge their openness to more overt sexual overtures.	16
NURIA LORENZO-DUS, CRISTINA IZURA, ROCIO PEREZ-TATTAM, <u>Understanding Grooming Discourse in Computer-mediated Environments</u> , 12 JOURNAL OF DISCOURSE, CONTEXT & MEDIA 40, 44 (2016)	27

STATEMENT OF ISSUE ON APPEAL

Whether the trial court properly refused to instruct the jury on the affirmative defense of entrapment.

STATEMENT OF THE CASE

A Lexington County grand jury indicted Appellant for criminal solicitation of a minor and attempted sexual exploitation of a minor in the first degree. Appellant proceeded to jury trial on March 24–26, 2025, before the Honorable Debra R. McCaslin. The jury found Appellant guilty of both charges, and Judge McCaslin sentenced him to ten years' imprisonment for attempted sexual exploitation of a minor and four years' imprisonment for criminal solicitation of a minor, to be served consecutively. This direct appeal follows.

STATEMENT OF FACTS

On August 11, 2021 Appellant Mark Frick, using the username Ambient_Poppins, contacted an account “AllieM14” on the messaging platform Whisper. [Tr. I 94:1-8]. The AllieM14 account (hereafter “Allie”) was a decoy account run by the Lexington County Internet Crimes Against Children Task Force and piloted by Investigator Kenneth Clark. [Tr. I 83:4-16]. Allie’s profile showed an image of a young girl’s bedroom, including a floral bedspread and a white vanity decorated with fairy lights, alongside the caption “Boreddddd, Columbia sc.” [State’s Exhibit 3]. Appellant, who was fifty-three at the time, initiated first contact with Allie’s profile at 3:12 P.M. on August 11, 2021, sending “Hi.” Id. Allie responded and immediately identified the decoy profile as underage, stating that she was fourteen:

APPELLANT: Hi

ALLIE: Heyy

APPELLANT: Wyd. Asl

ALLIE: Nothin. 14 an Columbia an uu

APPELLANT: Old. Gaston

ALLIE: U ain’t old lol. Not sure where that is lol. I’m frum Charleston but at my aunts while momm is out of town

APPELLANT: Ok I am old 53. You young.

ALLIE: That ain’t that old lol. An I do t care about age

APPELLANT: Ok. But that law does lol

ALLIE: Welll I ain’t the law or tellin so

APPELLANT: Ok

ALLIE: I understand if ya don’t want 2 talk 2 me

APPELLANT: I talk with you

ALLIE: Okkk then

[sic] [State’s Exhibit 3].¹

¹ The entirety of Appellant’s chat log with Allie was admitted at trial as State’s Exhibit 3. [Tr. 84:15-25].

Appellant and Allie then made small talk throughout the day until Allie disengaged. Id. Appellant attempted to restart the conversation once at 11:09 P.M. on August 11, sending “Hi,” and then again at 8:44 A.M. on August 12, sending “Good morning.” Id. That morning Appellant also sent a photograph of his face, to which Allie replied with a decoy photo of a young girl. Id. Appellant responded to this photo stating:

APPELLANT: You pretty. Don't look 14

ALLIE: Thanxxxx I thinkk

APPELLANT: Yes. U look older

ALLIE: Welll I'm def 14 lol wish I was older

APPELLANT: I know. I wish you was 18. Lol. When your birthday

ALLIE: Well u don't look like u in no 50's boo. March lol an urs

APPELLANT: Nov. Why boo

ALLIE: Cooll. What u mean yyy boo lol. It's just a sayin lol

APPELLANT: Ok

ALLIE: Sorryyy. I want say it no more

APPELLANT: It is ok

[sic] Id.

Appellant and Allie went on to discuss a truck Appellant was going to buy and how Appellant's favorite color is purple, when, entirely without prompting, Appellant sent:

APPELLANT: Wish I hang out with

ALLIE: What u mean. I like hangin outttt

APPELLANT: Like take you to the movies. Nothing sexaul

ALLIE: Lol. Yyyy U said thattt

APPELLANT: I don't know sorry

ALLIE: Lol. It's okkk. I'm down 4 anything so it don't matter lol

APPELLANT: Ok. I was best friends with a girl when she was 12 until 20 and we never had sex just hung out than she wasn't

ALLIE: Wowww lol

APPELLANT: Yep. Am big sucker

ALLIE: Okkk. If that's all u want then that's all u want lol

APPELLANT: Don't know

ALLIE: What u mean

APPELLANT: yes friends. I don't want go to jail

ALLIE: Okkk. Ain't no1 goin 2 jail bc I ain't tellin. My momm wudd killlll me. She don't even no I'm on here lol

APPELLANT: Ok

[sic] Id.

After this Appellant asked whether Allie was in school, eventually stating "Ok. So yiu don't get meet people your age cause you don't go to public school." Id. Appellant went on to ask about where Allie was right then, whether her aunt was home, what her aunt did for work, and when Allie was going back to Charleston. Id. Eventually, Appellant asked Allie what she was doing and the following exchange occurred:

ALLIE: Jus bein bored an hungry lol. Tryin 2 decide what 2 eattt

APPELLANT: Ok. I bring you pizza

ALLIE: Reallyyy lol

APPELLANT: I would

ALLIE: U soo nice

APPELLANT: Sucker

ALLIE: Haha haha

APPELLANT: Bring you pizza

ALLIE: Yyy u call me a sucker

APPELLANT: No me. Am big sucker

ALLIE: Ohhh. I was likeeee he called me a sucker

APPELLANT: No me. I am

ALLIE: Lolol. It's okk.

APPELLANT: Ok. I come see you

ALLIE: What we gone doooo

APPELLANT: Nothing. Give yiu hug. Apizza

ALLIE: That's all. I'm down 4 anything
APPELLANT: Ok. If yiu was 18 i do anything yiu want lol

[sic] Id.

After this exchange Appellant asked, entirely unprompted, where Allie's dad was, and once he learned her father was absent he continued messaging about wanting to meet with Allie in-person, sending "Wish yiu was hete to [sic]." Id. When Allie pushed for details, asking what Appellant would want to do if she was there, Appellant initially responded vaguely, stating "Don't know... Hold your hand. Kiss your hand... Don't know." Id. Despite this Appellant continued to insist on coming over, insisting "I bring yiu something [sic]." Id. Allie continued to ask for details, and the following exchange occurred:

ALLIE: Whattt else we gone do tho. Just want 2 no how to prepare

APPELLANT: Just bring you food. Hold your hand and hug you than go home

ALLIE: Ugh. I want 2 have funn

APPELLANT: Ok. Am leaving the movies. Going home I guess

ALLIE: Okk. If that's what u want 2 do

APPELLANT: No I want to come meet you

ALLIE: Welll. It depends on what ya want 2 dooo boo. I'm fixin 2 get n shower

APPELLANT: Ok. You gonna wear purple. I bring you food

ALLIE: Depends lol. Whatt we gone doo after we eattt

APPELLANT: You trying to get me in trouble lol. Am scare

ALLIE: No I'm nottt. I'm nott tellin an no1 here lol

APPELLANT: Ok. Wacth you. Wyd

ALLIE: Watch me what lol. Jus sittin here boredd

APPELLANT: Oh. Watch you play with your self

ALLIE: Likee yea. How

APPELLANT: At your housr. House

ALLIE: Yea. Like what wud I be doin

APPELLANT: Rubbing your pussy while wearing your
panties

ALLIE: Okk. I will do that

APPELLANT: Ok

ALLIE: What will u be doin

APPELLANT: Jerking. Doing that now

[sic] Id.

Allie sent Appellant her address, which was actually the address to the undercover operation's sting house. Appellant was arrested upon arrival. [Tr. I 100:19-101:24]. Appellant's arrival was caught on security camera and admitted at trial as State's Exhibit 4.² [Tr. I 102:6].

Following his arrest Appellant was interviewed by Jason Hughes, a special investigator with the SC Attorney General Internet Crimes Against Children division. [Tr. I 108:3-112:2]. The interview was recorded and played for the jury as State's Exhibit 5. [Tr. I 114:22]. During the interview Appellant acknowledged that he'd chatted with Allie and admitted that the chats discussed his plan for her to "play with her thing while I sat over there and played with mine." [Tr. I 112:2-113:23] [State's Exhibit 5]. However, when Investigator Hughes asked him if he thought it was okay to do that with a 15-year-old girl, Appellant argued: "No, and I wasn't going to do that. I was just doing that because she kept bugging, kept bugging me to say that." [State's Ex. 5 at 06:18-23].

After the Defendant exercised his Fifth Amendment right not to testify, the Defense called a series of character witnesses, beginning with Appellant's cousin, Christine Belk. [Tr. I 125:10-127:16]. Belk testified that Appellant had a reputation

² At trial Investigator Anthony Creech of the Lexington Major Crimes Unit testified as a chain of custody witness for State's Ex. 4. [Tr. 97:21-102:14].

for honesty, but that he was also naïve, simple-minded, and had a hard time telling people no. [Tr. I 128:1-17]. However, she also admitted on cross examination that Appellant was not impaired in any way, and was able to work, drive, and live independently. [Tr. I 130:1-11]. The Defense then called Heather Kirkland, a long-time friend of Appellant, who testified that Appellant was a very honest but gullible person. [Tr. I 132:21-133:5]. Following Kirkland's testimony the Defense rested. [Tr. I 135:23-24].

After the jury was excused the Defense requested a jury instruction on entrapment, offering a sample charge and arguing that there "was government inducement trying to get- kept on re-engaging the conversation, trying to get him to go to the arrest location, Your Honor. And second, there was no predisposition on the part of the Defendant to commit the crime." [Tr. I 137:1-7].

The State opposed this instruction and argued that Appellant was not induced, but was instead merely afforded the opportunity to solicit a minor for sex. [Tr. I 137:16-18]. The State pointed out that Appellant acknowledged that the decoy profile was underage, that Appellant acknowledged their conversation put him at risk of criminal liability, and that when Appellant was given the chance to disengage from the conversation by law enforcement, he refused to take it. [Tr. I 137:18-24].

The State also emphasized that Appellant was the one who suggested meeting in-person, and that Appellant was the one to bring up sexual activity. [Tr. I 137:24-138:2]. Finally, the State pointed to the fact that Appellant was not induced

or pressured, that he went to bed, woke up, and re-engaged with the decoy profile, and that there was no indication at trial that Appellant was particularly vulnerable to being unduly pressured by the conversation. [Tr. I 138:2-14]. The State cited State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008).

After consideration, the trial court declined to give an entrapment charge and agreed with the State that Appellant was only given the opportunity to commit a crime. [Tr. I 139:1-4]. The trial court pointed out that Appellant reached out to Allie first and repeatedly re-engaged Allie in conversation, and that the decoy did not make any demands of Appellant. [Tr. I 139:1-140:5]. Accordingly, the trial court ruled that, consistent with the holding in Gaines, Appellant was not entitled to an entrapment instruction. [Tr. I 139:2-140:13].

STANDARD OF REVIEW

The appellate court reviews the trial court's decision not to give an entrapment instruction de novo. State v. Brown, 362 S.C. 258, 264, 607 S.E.2d 93, 96 (Ct. App. 2004).

ARGUMENT

The trial court correctly refused to instruct the jury on the affirmative defense of entrapment because the evidence did not support the charge.

Appellant contends he was tricked into committing these attempted sex crimes and that the trial court erred by refusing to instruct the jury on the affirmative defense of entrapment. The trial court correctly refused the charge because the evidence did not support it. Because the criminal design originated with Appellant, not law enforcement, and because Appellant demonstrated a predisposition to engage in sex crimes, the trial court correctly refused the instruction. This Court should affirm.

“Generally, the trial judge is required to charge only the current and correct law of South Carolina.” State v. Brown, 362 S.C. 258, 261-62, 607 S.E.2d 93, 95 (Ct. App. 2004). “The law to be charged to the jury is determined by the evidence presented at trial.” State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). If there is any evidence to support a jury charge, the trial judge should grant the request. Brown, 362 S.C. at 262, 607 S.E.2d at 95. “To warrant reversal, a trial judge’s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant.” Id. (citation omitted).

“The affirmative defense of entrapment is available where there is the conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for trickery, persuasion, or fraud of the officer.” State v. Johnson, 295 S.C. 215, 216, 367 S.E.2d

700, 701 (1988) (quotation omitted). “[T]he fact that government agents ‘merely afford opportunities or facilities for the commission of the offense does not’ constitute entrapment. Entrapment occurs only when the criminal conduct was ‘the product of the creative activity’ of law-enforcement officials.” Sorrells v. United States, 287 U.S. 435, 441, 451 (1932). The defense of entrapment “is not available to a defendant who is predisposed to commit a crime independent of governmental inducement and influence.” State v. Gaines, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008).

“One pleading entrapment has the burden of showing that he was induced, tricked or incited to commit a crime, which he would not otherwise have committed.” Johnson, 295 S.C. at 217, 367 S.E.2d at 701. “[T]he defendant has the initial burden to produce more than a scintilla of evidence that the government induced him to commit the charged offense, before the burden shifts to the government to prove beyond a reasonable doubt that the defendant was predisposed to commit the crime.” United States v. Sligh, 142 F.3d 761, 762 (4th Cir. 1998) (citations omitted). “The court may find as a matter of law that no entrapment existed when there is no evidence in the record that, if believed by the jury, would show that the government’s conduct created a substantial risk that the offense would be committed by a person other than one ready and willing to commit it.” United States v. Osborne, 935 F.2d 32, 38 (4th Cir.1991).

Appellant was not induced, tricked, incited, or persuaded to commit solicitation of a minor or attempted sexual exploitation of a minor.

Appellant contends that the chat logs between Appellant and the undercover officer behind the “Allie” account is per se evidence that Appellant was induced, tricked, incited, or persuaded to solicit a minor, and to attempt to sexually exploit a minor. (IBOA 12-13). On the contrary, Appellant’s chat logs demonstrate that the idea to solicit a minor originated with Appellant, as it was Appellant who initiated the conversation, Appellant who first proposed an in-person meet up, and Appellant who, despite the Allie decoy giving him multiple opportunities to withdraw, insisted upon making the conversation sexual. Moreover, Appellant’s inappropriate compliments and persistent requests to meet in person demonstrate Appellant was ready to engage in sexual conduct with a minor. There is no evidence that law enforcement’s messages reached the level of improper inducement. Accordingly, Appellant was not entitled to a jury charge on entrapment.

South Carolina courts have routinely held that state inducement requires more than simple receptivity to a defendant’s criminal advances. See State v. Gaines, 380 S.C. 23, 31, 667 S.E.2d 728, 732 (2008) (holding defendant was not entrapped when law enforcement reached out to him with a decoy profile portraying an underage girl); State v. Cooper, 302 S.C. 184, 186, 394 S.E.2d 717, 718 (Ct. App. 1990) (holding defendant was not entitled to jury instruction on entrapment where defendant engaged in the illegal activity “because of her own preexisting readiness to do so and not because of incessant demands made upon her by the undercover agent” or a close personal relationship). Cf. State v. Brown, 362 S.C. 258, 264-66, 607 S.E.2d 93, 96-7 (Ct. App. 2004) (holding there was evidence of entrapment when

informant was defendant's friend who repeatedly called defendant throughout the day to secure the transaction, and capitalized on non-criminal motives to convince the defendant to buy him drugs); State v. Johnson, 295 S.C. 215, 216-17, 367 S.E.2d 700, 701 (1988) (holding there was evidence of entrapment when the State used defendant's close personal relationship with informant to convince defendant to purchase drugs for informant).

It was not enough for Appellant to show that "Allie" was receptive to his attention. To be entitled to an entrapment instruction, Appellant had to show his explicit messages were procured by improper state inducement and not the result of his own propensity. Appellant fails to meet either of those elements, as his behavior throughout the conversation—including his constant allusions to sex and meeting in person—demonstrate that he had a criminal design to solicit and exploit Allie from the outset of the conversation. His act of coming to meet Allie in person is conclusive evidence that he intended to follow through. See Jacobson v. United States, 503 U.S. 540, 550 (1992) (holding the entrapment defense is "of little use [when] the ready commission of the criminal act amply demonstrates the defendant's predisposition.").

a. The criminal design to commit the crimes originated with Appellant.

For Appellant's criminal solicitation of a minor charge, the State had to prove Appellant knowingly contacted or communicated with a person he believed to be a minor for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity. S.C. Code Ann. §

16-15-342.³ To meet its burden for attempted sexual exploitation of a minor (SEM), the State had to show Appellant attempted to induce, encourage, or facilitate a minor to engage in sexual activity for a live performance. S.C. Code Ann § 16-15-395.⁴

The evidence demonstrated that from the start of the conversation Appellant had bad intentions and a readiness to act upon them, and that as a matter of law the undercover officer's responses as "Allie" merely provided Appellant with the opportunity to act on his criminal intent. The idea to solicit Allie, whom he believed to be fourteen-year-old girl, originated with Appellant. Appellant messaged "Allie" first and injected the idea of sex into the conversation when, having exchanged less than twenty messages, he made an unprompted reference to the age of consent.

While exchanging personal information with Allie, and having just learned that Allie was purportedly fourteen, Appellant told Allie he was fifty-three, to which

³ Section 16-15-342(A) reads in full: "(A) A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen."

⁴ Section 16-15-395(A)(1) reads in full: "(A) An individual commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he: (1) uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity or appear in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation for a live performance or for the purpose of producing material that contains a visual representation depicting this activity or a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation."

Allie wrote, “That ain’t that old lol. An I do t [sic] care about age.” Appellant replied to this message with, “But the law does lol.” The only reasonable inference that can be drawn from Appellant’s statement “[b]ut the law does,” is that from the very outset of the conversation Appellant was thinking about having sex with Allie. This interpretation is further supported by later messages Appellant sent, including “You look pretty. Don’t look 14,” and “I wish yiu [sic] was 18.”

Appellant was the first person to explicitly bring up the idea of sex when he messaged Allie, “Like take you to the movies. Nothing sexaul [sic].” This is the first mention of sex in the conversation, and it came completely unprompted. Then, despite having just promised he wanted “nothing sexual,” when Allie later tried to reassure Appellant that she was fine with a non-sexual relationship, sending “if that’s all u want then that’s all u want lol,” Appellant immediately softened his stance, replying “don’t know.”

This back-and-forth is a prime example of Appellant’s use of vague references to sex throughout the chat log, which he strategically employed to lure a minor into complacency without alerting her to his overtly predatory intentions.⁵ However, while the naïve eyes of a child could mistake Appellant’s initial intentions, Appellant’s true goal became clear when he shifted from subtly referencing sex to explicitly stating he wanted to come over to and watch Allie “rubbing [her] pussy” while he was “jerking.”

⁵ See WILLIAMS, ELLIOTT, & BEECH, Identifying Sexual Grooming Themes Used by Internet Sex Offenders, 34 DEVIANT BEHAVIOR, 135, 146-47 (2013), for discussion of techniques used by solicitation offenders and compliance-testing behavior intended to de-sensitize victims and gauge their openness to more overt sexual overtures.

The trial court correctly ruled that settled South Carolina case law, including the supreme court's decision in State v. Gaines, precluded a jury charge on entrapment in this case. In Gaines, the court held that the defendant was not entitled to a jury charge on entrapment when he engaged in sexual conversations with a decoy despite knowing she was underage, inquired about meeting up in person, proposed renting a hotel room for them to have sex in, and described the details of what he wanted from their first sexual encounter. Gaines, 380 S.C. at 31, 667 S.E.2d at 732. The court was unpersuaded by Gaines's arguments that he was entrapped by law enforcement because the decoy reached out to Gaines first, instead holding that law enforcement's actions "merely afforded Gaines the opportunity to solicit sex." Id. Accord State v. Cooper, 302 S.C. 184, 186, 394 S.E.2d 717, 718 (Ct. App. 1990) (holding defendant was not entitled to a jury instruction on entrapment where she engaged in the illegal activity because of her own preexisting readiness to do so and not because of demands of an undercover agent).

Appellant contends that his case is distinguishable because unlike in Gaines, where the defendant suggested meeting up to have sex, proposed renting a hotel room, and theorized about the details of the sexual encounter, Appellant "made no similar suggestion." [IBOA, 13]. The record refutes this assertion. Appellant engaged in nearly all the same behaviors as the defendant in Gaines. Appellant repeatedly alluded to sex throughout the conversation, explicitly described what he'd planned for their sexual encounter, and repeatedly pushed for an in-person meeting. The main difference between the defendant in Gaines and Appellant is

that, unlike Gaines, Appellant was the one to reach out to Allie. Moreover, while Appellant was initially less sexually aggressive than the defendant in Gaines, his reliance on inuendo and suggestion remains evidence of his intent, particularly in light of his later explicit messages that he wanted to engage in mutual masturbation. The chat logs are undisputed evidence that the idea to solicit Allie and commit SEM originated with Appellant, as Appellant was both the first person to suggest they engage in sexual behavior and the first person to suggest meeting in person.

b. Appellant's behavior demonstrated a willingness to engage in the crimes charged.

Appellant did not need to be convinced to engage in these sex crimes. Instead, Appellant repeatedly declined opportunities to withdraw, persistently pushed for Allie to meet him in-person, and re-engaged in explicitly sexual conversation when Allie failed to reply quickly enough.

i. Failure to Withdraw.

In the course of Appellant's conversation with Allie, law enforcement gave him multiple opportunities to withdraw, starting after Appellant acknowledged both Allie's age and the inappropriate nature of the conversation. Allie responded to his messages stating, "I understand if ya don't want 2 talk 2 me." Appellant did not take that opportunity, and instead reassured Allie, "I talk with you." In total, Appellant was given five opportunities to move the conversation away from romance and sex, ("Sorrriyy. I want say it no more," "Yyyy U said thattt," "What u mean," "If that's all u want then that's all u want lol," "Reallyyy lol"), and four

opportunities to withdraw entirely (“I understand if ya don’t want 2 talk 2 me,” “You want me 2 leave u alone so u can watch ittt,” “Okk. If that’s what u want 2 do,” “R u lyin about comin here.”), none of which he took.

Instead of withdrawing, Appellant repeatedly re-initiated the chat when conversation lulled, sending “Hi” to Allie at 11:09pm, and then “Good morning” at 8:44am the next day. During another lull later that day, Appellant sent “At the movies now,” to re-initiate contact with Allie before he transitioned to requesting to meet her in-person. Appellant’s persistent side-stepping of every one of these opportunities to withdraw in favor of sexually pursuing Ally with the end-goal of an in-person meet up shows Appellant was not “tricked” into his attempted sex crimes. See U.S. v. Rutgeron, 822 F.3d 1223 (11th Cir. 2016) (holding there was no evidence of entrapment when defendant made initial contact with decoy and pursued her despite her repeated references to being underage, and did not back out meeting with girl despite numerous opportunities to do so); State v. Smith, 548 P.3d 874 (Utah 2024) (holding defendant failed to demonstrate entrapment as a matter of law when defendant initiated the chat, re-initiated conversation during lulls, ignored multiple opportunities to exit or de-escalate the conversation and repeatedly suggested illegal acts he wanted to perform).

ii. Insistence on in-person meet up.

Appellant’s repeated attempts to get Allie to meet him in person are strong evidence of his readiness to solicit and exploit Allie. It was Appellant, not the undercover officer writing as Allie, who first suggested in-person contact, writing

“[w]ish I hand [sic] out with... Like take you to the movies. Nothing sexual.” After this, Appellant mentioned visiting Allie in person **nine more times**⁶ before they eventually made plans for him to come to Allie’s house.

Even when given the opportunity to withdraw from the in-person meet-up, Appellant was insistent that he and Allie meet, as demonstrated by this exchange directly before Appellant attempted to meet Allie at her home:

APPELLANT: Just bring you food. Hold your hand and hug you than go home

ALLIE: Ugh. I want 2 have funn

APPELLANT: Ok. Am leaving the movies. Going home I guess

ALLIE: Okk. If that’s what u want 2 do

APPELLANT: No I want to come meet you

[State’s Ex. 3] [emphasis added]. Appellant was under no pressure from law enforcement to continue the encounter.

There is no credible argument that Appellant had non-criminal motivations for meeting with Allie. First, Appellant offered an explicit description of the sex act he wanted to engage in with Allie when he arrived. Second, even the non-explicit parts of the conversation are demonstrative of Appellant’s sexual intent. For example, after Appellant suggested an in-person meet up he also asked a number of questions about where Allie’s aunt worked and whether her aunt was home in an apparent effort to determine whether and for how long Allie would be alone that day. Moreover, despite Allie telling Appellant she lived in Charleston but was

⁶ “I bring you pizza,” “I would,” “Bring you pizza,” “I come see you,” “Wish yiu was hete to” [sic], “I bring yiu something” [sic], “No I want to come meet you,” “I bring you food,” “No I come see you.”

staying with her aunt for the next few days, Appellant asked, completely unprompted, “Where your dad.” Appellant wanted to make sure that she was completely alone, without any adult supervision. There is no reason a well-meaning adult stranger would need to establish that a minor’s parents were absent before going to see that minor in person.

Appellant’s intentions were made all the more clear when, after discussing the explicit sex acts he wished to participate in with Allie, he actually showed up at the provided location. See United States v. Dávila-Nieves, 670 F.3d 1, 10 (1st Cir. 2012) (affirming the denial of an entrapment defense when defendant “not only broached the topic of engaging in sexual relations but also followed through by attempting to meet for that purpose”) (citation and quotation omitted).

iii. Re-engaging in sexual conversation.

Finally, Appellant’s assertion that he was “bugged” into making explicit sexual comments to Allie is fatally undercut by the fact that he actively re-engaged an explicitly sexual line of conversation with Allie when the conversation lulled. Directly before Appellant proposed mutual self-stimulation, the following exchange occurred:

APPELLANT: No I want to come meet you
ALLIE: Welll. It depends on what ya want 2 dooo boo. I’m
fixin 2 get n shower
APPELLANT: Ok. You gonna wear purple. I bring you
food
ALLIE: Depends lol. Whatt we gone doo after we eattt
APPELLANT: You trying to get me in trouble lol. Am scare
ALLIE: No I’m nottt. I’m nott tellin an no1 here lol
APPELLANT: Ok. Wacth you.

At this point, the timestamp feature on Whisper shows that there was a lull in the conversation. Because Allie did not immediately respond back, Whisper's automatic timestamp feature was triggered when Appellant sent his next message, indicating there was a time gap between the two messages.⁷ The next set of messages read:

TIMESTAMP: Today, 7:33 PM
APPELLANT: Wyd
ALLIE: Watch me what lol. Jus sittin here boredd
APPELLANT: Oh. Watch you play with your self
ALLIE: Likee yea. How
APPELLANT: At your housr. House
ALLIE: Yaaa. Like what wud I be doin
APPELLANT: Rubbing your pussy while wearing your
panties

Appellant messaged Allie he wanted to "watch" her, then had time to sit and reflect on that message. When he did not get a quick response he sent another message to re-engage Allie. This timestamp is objective evidence that Appellant intentionally re-engaged an explicitly sexual conversation of his own free will, without encouragement, after having had time to reflect.

c. Law enforcement did not cross the threshold into improper inducement while messaging Appellant as Allie.

Law enforcement did not engage in "trickery, persuasion, or fraud" to induce Appellant to undertake criminal action. Johnson, 295 S.C. at 216, 367 S.E.2d at 701. The State's actions in this case fell well below the bar for entrapment. In Gaines, the supreme court specifically found that law enforcement reaching out to

⁷ A review of Appellant's chat log with Allie shows that a message sent at 3pm that did not receive a response until 3:50pm was headed by a timestamp, indicating that Whisper creates timestamps for gaps in conversations that are, at minimum, 50 minutes long. [State's Exhibit 3, Pg. 17].

the defendant with a decoy account portraying a child receptive to the defendant's advances merely provided the defendant with opportunity and was not inducement. Moreover, South Carolina courts have consistently held that "inducement" requires more than just a suggestion of willingness from the State, and instead requires some level of improper means like capitalizing on non-criminal motivations or by manipulating sentimental relationships. See State v. Brown, 362 S.C. 258, 264, 607 S.E.2d 93, 96 (Ct. App. 2004) (holding law enforcement instigated drug transaction when informant was defendant's friend and was prompted by the police to contact defendant, and informant repeatedly called defendant throughout the day to secure the transaction); Johnson, 295 S.C. at 216, 367 S.E.2d at 701 (holding there was evidence of entrapment when the State used defendant's close personal relationship with informant to convince defendant to purchase the drugs).

Even the most suggestive of Allie's messages—"I wuddd likeee that 2. What else [sic], "I'm down 4 anything," "What else we gone do tho. Just want 2 no how to prepare [sic], "I want 2 have fun"—were statements of receptivity and requests for details, both of which law enforcement were allowed to make to "secure the evidence necessary to prosecute" Appellant. See State v. Jacobs, 238 S.C. 234, 244, 119 S.E.2d 735, 740 (1961) ("It may therefore be stated as a general rule that where... the courts are agreed that if the criminal intent originates in the mind of the accused and the criminal offense is completed, the fact that an opportunity is furnished or that the accused is aided in the commission of the crime in order to secure the evidence necessary to prosecute him therefor constitutes no defense.")

(quotation omitted); see also U.S. v. Shinn, 681 F.3d 924, 930-31 (8th Cir. 2012) (holding that law enforcement’s portrayal of the decoy as sexually precocious and interested in the defendant’s advances was not evidence sufficient to warrant an entrapment instruction); State v. Carver, 195 N.E.3d 598 (Ohio Ct. App. 8th Dist. 2022) (holding defendant’s reluctance to give direct answers about his intentions with victim was objectively motivated by self-preservation, not a reluctance to engage in criminal activity, and officer offered nothing more than an opportunity to commit the offense). Allie’s messages were solely focused on getting Appellant to provide more details about what he wanted to do.

Appellant failed to identify any non-criminal motivation or improper pressure that could explain why he texted Allie explicit sexual suggestions absent his own criminal designs to solicit a minor. At the time these messages were sent, Appellant was a fifty-three-year-old man communicating asynchronously online with someone he believed to be a fourteen-year-old girl. He was under no pressure to continue the conversation, or to make sexual statements. He had every opportunity to end or redirect the conversation, and absent his own criminal intentions to have sex with a minor there was absolutely no reason for Appellant to tell Allie he wanted to “jerk” while she was “rubbing [her] pussy while wearing [her] panties.” Appellant was not induced to contact Allie, he required absolutely no persuasion to meet her in person—in fact he made repeated and persistent unprompted requests to meet Allie alone at her house— and he was not incited to start “[j]erking. . . [d]oing that now,”

as he fantasized about the sexual abuse he planned to engage in with Allie when he came over.

South Carolina entrapment jurisprudence draws “a line... between the trap for the unwary innocent and the trap for the unwary criminal.” Jacobs, 238 S.C. at 245, 119 S.E.2d at 741. Accordingly, because Appellant’s criminal design plainly originated with Appellant and there is no innocent explanation for why Appellant would make the above explicit statements absent his own desire to have criminal sexual contact with a child, law enforcement’s repeated requests for more details were not inducement, incitement, or trickery, but were instead merely “a trap for the unwary criminal.” Id.

The precedent set by Gaines is dispositive in Appellant’s case. Because the undisputed evidence showed Appellant originated the criminal design, had a plan to solicit and exploit Allie, and was not influenced by improper inducement on the part of the State, the trial court correctly refused to charge the jury on the affirmative defense of entrapment.

Appellant was predisposed to commit solicitation and attempted sexual exploitation of a minor.

Because Appellant failed to meet his burden to show inducement on the part of the State, the State did not need to rebut his assertion that he had a lack of predisposition to commit the crimes charged. However, even if Appellant had succeeded in showing inducement he would still not have been entitled to an entrapment instruction, as the evidence conclusively showed that Appellant was predisposed to solicit and exploit Allie.

Appellant's behavior in the chat demonstrates his predisposition.

Predisposition exists where "the defendant is of a frame of mind such that, once his attention is called to the criminal opportunity, his decision to commit the crime is the product of his own preference and not the product of government persuasion."

United States v. Osborne, 935 F.2d 32, 38 (4th Cir. 1991); see also United States v. Hackley, 662 F.3d 671, 682 (4th Cir. 2011); U.S. v. Ramos, 462 F.3d 329, 334–35 (4th Cir. 2006).

Appellant relies on State v. Brown to support his contention that the character testimony given at trial established Appellant's lack of predisposition to engage in the charged crimes. State v. Brown, 362 S.C. 258, 607 S.E.2d 93 (Ct. App. 2004). But unlike in Brown, where the defendant was approached by a government informant, Appellant was the one who initiated contact with Allie. And unlike in Brown, where the defendant's conduct was inconsistent with the expected behavior of a drug dealer, Appellant's conduct demonstrated all of the expected characteristics of an online predator. Specifically, in Brown the vast majority of the predisposition characteristics considered— like the lack of cash, the lack of other drugs, and Brown's gainful employment— were offered to demonstrate that Brown possessed none of the expected characteristics of a drug dealer.⁸ Appellant's

⁸ Specifically, the court in Brown concluded the evidence presented at trial demonstrated a lack of predisposition by Brown to commit distribution, namely evidence that Brown sold the drugs to a friend at the friend's request, Brown was a retired veteran who was gainfully employed, that Brown had to go seek out the narcotics, that no other narcotics were found on Brown upon his arrest, that he had no significant amount of cash on him, no previous drug-related interactions with

conversation with “Allie” displayed all of the hallmarks of grooming and solicitation, including his inappropriate compliments, questions about where her guardians were, and attempts to paint himself as a harmless “sucker.”⁹

Appellant contends that his statements of hesitation demonstrated a lack of predisposition, but an examination of those statements shows he had, at best, a lack of desire to be arrested. Appellant’s hedging statements— “the law does,” “I don’t want go to jail [sic],” “you trying to get me in trouble lol. Am scare”— were all centered around a fear of punishment, and none expressed a lack of inclination to have sex with a minor. A defendant’s expressions of reluctance to face punishment are not synonymous with reluctance to have sex with a minor. See United States v. Medina-Ortiz, 633 F. Supp. 3d 531 (D.P.R. 2022), aff’d, 160 F.4th 11 (1st Cir. 2025) (holding that defendant’s messages expressing fear of detection by authorities was not evidence of reluctance to have sex with a minor); State v. Carver, 195 N.E.3d 598 (Ohio Ct. App. 2022) (holding defendant’s expressions of fear of criminal ramifications while soliciting 15-year-old was motivated by self-preservation, not a reluctance to engage in the criminal activity); State v. Bullock, 153 S.W.3d 882, 877 (Mo. Ct. App. 2005) (holding that defendant’s hesitation was centered not in committing the crime of sex with a minor but in being caught); cf. United States v. Anderson, 55 F.4th 545, 550 (7th Cir. 2022) (holding that there was evidence of

law enforcement, and there was no evidence of any prior narcotics sales between Brown and the friend.

⁹ NURIA LORENZO-DUS, CRISTINA IZURA, ROCIO PEREZ-TATTAM, Understanding Grooming Discourse in Computer-mediated Environments, 12 JOURNAL OF DISCOURSE, CONTEXT & MEDIA 40, 44 (2016)

entrapment when decoy account originally claimed to be eighteen, used a photo of a thirty-year-old woman for the profile, and persistently proposed the idea of sex with an underage partner to defendant who expressed repeated reluctance and hesitation about the idea).

Some courts have even gone so far as to hold that a defendant expressing fear of criminal penalties while simultaneously pursuing a minor is itself evidence of a predisposition towards solicitation. See Bolton v. State, 714 S.E.2d 377, 379 (Ga. 2011) (holding defendant was “predisposed to commit the crime because he pursued the illicit activity he sought while contemporaneously expressing fear of the potential criminal sanctions he faced”); Clark v. State, 209 N.E.3d 444 (Ind. Ct. App. 2023) (holding defendant’s repeated expressions of awareness that his communications with minor were illegal was evidence towards his predisposition to solicit minors).

Appellant also asserts that his lack of prior criminal convictions or instances of sexual conduct with a minor demonstrates a lack of predisposition. However, despite Appellant’s denials of any prior illegal conduct with minors, his message to Allie that he “was best friends with a girl when she was 12 until 20 and we never had sex just hung out than she wasn’t” implies Appellant had previously engaged in grooming behavior. Moreover, the rest of the evidence Appellant cites to support his lack of predisposition—his reputation for honesty, his loneliness, his gainful employment—are largely irrelevant to his predisposition towards sexually pursuing

minors and are significantly outweighed by Appellant's clear readiness to engage in sexual activity with a minor when given the opportunity.

It was Appellant who initiated contact with what he believed to be a 14-year-old girl, Appellant who refused multiple opportunities to disengage, Appellant who persistently pushed for an in-person meeting, and Appellant who introduced the idea of sex into the conversation. There was strong evidence that Appellant was predisposed to solicit and sexually exploit minors. Appellant employed well-documented grooming techniques to determine the attempted victim's level of vulnerability, her likelihood of compliance, and her likeliness to report. The trial court correctly refused to charge the jury on entrapment.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

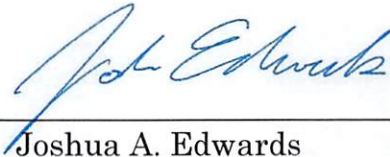
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