

No. 22-7010

ORIGINAL

Supreme Court, U.S.
FILED

MAR 09 2023

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

JEFFREY JAY YORK — PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JEFFREY JAY YORK

(Your Name)

ASHLAND FCI
P.O. BOX 6001

(Address)

ASHLAND, KENTUCKY 41105

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

- I. WHETHER THE GOVERMENT PRESENTED SUFFICIENT EVIDENCE TO CONVICT YORK OF ENTICEMENT OF A MINOR**
 - A. WHETHER THE GOVERMENT PRESENTED SUFFICIENT EVIDENCE FOR THE JURY TO FIND THAT YORK BELIEVED HE WAS SPEAKING TO A MINOR.**
 - B. WHETHER THE GOVERMENT PRESENTED SUFFICIENT EVIDENCE FOR THE JURY TO FIND THAT YORK HAD INDUCED AN INDIVIDUAL HE BELIEVED TO BE A MINOR TO AGREE TO HAVE SEX WITH HIM.**
- II. WHETHER THE GOVERMENT PRESENTED SUFFICIENT EVIDENCE TO CONVICT YORK OF USE OF INTERSTATE FACILITIES TO TRANSMIT INFORMATION ABOUT A MINOR.**
- III. WHETHER THE GOVERMENT PRESENTED SUFFICIENT EVIDENCE FOR THE JURY TO FIND THAT GOVERMENT AGENTS HAD NOT ENTRAPPED YORK.**

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

UNITED STATES OF AMERICA V. JEFFREY JAY YORK 4:20-CR-40050-DWD-1, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS.

UNITED STATES OF AMERICA V. JEFFREY JAY YORK CASE NO. 21-2901, UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ATTACHMENT: Table of Authorities Cited

CASES:

United States v. Akinsanya, 53 F.3d 852, 858 (7th Cir. 1995)
Mathews v. United States, 485 US 58, 63 (1988)
United States v. Bailey, 228 F.3d 637, 639 (6th Cir. 2000)
United States v. Berg, 640 F.3d 239, 251 (7th Cir. 2011)
United States v. Chambers, 642 F.3d 588, 592 (7th Cir. 2011)
United States v. Cochran, 534 F.3d 631, 633 (7th Cir. 2008)
United States v. Cote, 504 F.3d 682, 687 (7th Cir. 2007)
United States v. Goines, 988 F.2d 750, 758 (7th Cir. 1993)
United States v. Hite, 769 F.3d 1154, 1161 (D.C. Cir. 2014)
United States v. Hollingsworth, 27 F.3d 1196, 1200 (7th Cir. 1994)(en banc)
United States v. Marren, 890 F.2d 924, 931 (7th Cir. 1989)
United States v. Orr, 622 F.3d 864, 870 (7th Cir. 2010)
United States v. Ramos-Garcia, 184 F.3d 463, 465 (5th Cir. 1999)
United States v. Sanchez, 615 F.3d 836, 843 (7th Cir. 2010)
United States v. Santiago-Godinez, 12 F.3d 722, 727 (7th Cir. 1993)
United States v. Shorter, 54 F.3d 1248, 1254 (7th Cir. 1995)
United States v. Starks, 309 F.3d 1017, 1021 (7th Cir. 2002)

STATUTES AND RULES

18 USC § 2422(b)

18 USC § 2425

18 USC § 3231

28 USC § 1291

Fed. R. Crim. P. 29(a)

Fed. R. Crim. P. Rule 29

US Const. Art. III

ATTACHMENTS Table of Authorities Cited

STATUTES AND RULES Continued

Fed. R. App. P. 32(a)(5)

Fed. R. App. P. 32(a)(6)

Fed. R. App. P. 32(a)(7)(B)(i)

Fed. R. App. P. 32(f)

USSG 1B1.13(a)(2)

USSG § 1B1.1

Fed. R. Crim. P. 29(a)

Fed. R. Crim. P. 52(b)

Rule 29

TABLE OF CONTENTS

| | |
|--|----|
| JURISDICTION..... | 1 |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | |
| STATEMENT OF THE CASE | 2 |
| REASONS FOR GRANTING THE WRIT | 6 |
| CONCLUSION..... | 13 |

INDEX TO APPENDICES

APPENDIX A DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

APPENDIX B DECISION OF THE UNITED STATES DISTRICT TRIAL COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS.

APPENDIX C

APPENDIX D

APPENDIX E

APPENDIX F

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[x] is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ court appears at Appendix to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was SEPTEMBER 14, 2022.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: NOVEMBER 15, 2022, and a copy of the order denying rehearing appears at Appendix C.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[] For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

JURISDICTIONAL STATEMENT

Defendant-Appellant Jeffrey Jay York's ("York") jurisdictional statement is incomplete and incorrect.

This is a direct appeal from the District Court of the United States for the Southern District of Illinois' final judgement and sentencing in case number: 4:20-CR40050-DWD-1, entered on October 13, 2021. R. 93¹. The jury found York guilty of attempted enticement of a minor to engage in sexual activity under 18 USC § 2422(b) and attempted use of interstate facilities to transmit information about a minor under 18 USC § 2425. The district court had subject matter jurisdiction over the case because York was charged with violation of federal law within the boundaries of the Southern District of Illinois. 18 USC § 3231. Defendant timely filed his Notice of Appeal in this case on October 15, 2021. This Court had jurisdiction of this appeal because it was a direct appeal from a final judgment of the United States District Court of the Southern District of Illinois that disposed of all issues in the case. 28 USC § 1291; US Const. Art. III.

Currently, the Supreme Court of the United States of America has jurisdiction over this case.

¹References to documents in the Record on Appeal are designated herein as "R." followed by the appropriate number for the document (i.e. R.1); references to transcripts are designated by the proceeding to which they relate to followed by the relevant page number(s) (i.e. "Trial Tr. at ____" or "Sent. Tr. at ____"); references to defendant-appellant's brief or appendix are, respectively to "Def. Br. ____" or "Def. App. ____"; references to the appendix of this brief are to "Gov. App. ____"; references to documents filed in this court are designated as "7th Cir. Doc. ____"; references to the Presentence Investigation Report are designated "PSR" followed by the relevant paragraph or page number.

STATEMENT OF THE ISSUES

Whether the evidence was sufficient to convict Defendant of attempted enticement of a minor.

Whether the evidence was sufficient to convict Defendant of attempted use of interstate facilities to transmit information about a minor.

Whether the evidence was sufficient to support the jury's rejection of Defendant's entrapment defense.

STATEMENT OF THE CASE

On June 9, 2020, Defendant was indicted on one count of attempted enticement of a minor to engage in sexual activity under 18 USC § 2422(b) and one count of attempted use of interstate facilities to transmit information about a minor under 18 USC § 2425, arising out of his online conversations with an undercover FBI agent pretending to be a 15-year-old girl.

On March 24, 2020, special agent Brian Wainscott posted an advertisement on Craigslist, stating: "bored, no school, looking to make dollars for favors." Tr. 25-27, 31, 39-40; Government Exhibit 10. Agent Wainscott was attempting to identify people who were looking to have sexual contact with minors. Tr. 27-28. He assumed the identity of a minor named Brionica James in replying to people who responded to his ad. Tr. 32; Government Exhibit 1 at 10; Government Exhibit 8 at 4.

Defendant responded to the ad and asked for a picture. Tr. 33, 40; Government Exhibit 1 at 1; Government Exhibit 8 at 1. Agent Wainscott sent Defendant a picture of a person who is actually approximately 30 years old. Tr. 108; Government Exhibit 1 at 2; Government Exhibit 8 at 2. After a couple of messages back and forth, Defendant asked "Brionica" how old she was and Agent Wainscott stated "15." Tr. 40; Government Exhibit 1 at 3; Government Exhibit 8 at 2. Defendant replied, "[o]h, I thought you was 26. You are underage so I can't do anything but look at you [sic] sexy pics with clothes on." Tr. 40; Government Exhibit 1 at 3;

Government Exhibit 8 at 3. After Agent Wainscott failed to respond, Defendant asked if "Brionica" is still there and Agent Wainscott replies, "I prefer the real thing, your lose[sic]..." Tr. 41; Governemtn Exhibit 1 at 4-5; Government Exhibit 1 at 4-5; Government Exhibit 8 at 3. Defendant then asked for another picture and Agent Wainscott replied, "[i]t's better in person." Tr. 41; Government Exhibit 1 at 6; Government Exhibit 8 at 3. On the fourth day of their communications, Agent Wainscott states, "[y]ou ask a lot of questions," and Defendant responded, "[w]ell, that's how I know how real you are and if you are safe." Tr. 43; Governemnt Exhibit 2 at 1: Government Exhibit 8 at 5. He further responded, "I want to know that you are real. Lay a quarter on your book and take a pic. You could send me a fake picture of you, you could even be a guy or a cop." Tr. 43-44; Government Exhibit 2 at 2; Government Exhibit 8 at 5. Agent Wainscott responded, "[d]on't have a quarter. This is all I feel comfortable sending, sorry." Tr. 44; Government Exhibit 2 at 2; Government Exhibit 8 at 5-6. Defendant replied by describing sex acts, to which Agent Wainscott stated, "[u]hh, yes please... [w]hen?" Tr. 44; Government Exhibit 8 at 7. Agent Wainscott stated that "Brionica" is looking to "hook up, not chat" and asked if Defendant is bringing condoms. Tr. 45; Government Exhibit 5 at 2; Government Exhibit 8 at 7. He also repeatedly stated that Defendant is "wasting my time" and accuses Defendant of "playing games." Tr. 45, 46; Goverment Exhibit 5 at 2; Governemnt Exhibit 6 at 1; Government Exhibit 8 at 8.

On March 29, 2020. Defendant told Agent Wainscott that he will be in Marion Illinois, where "Brionica" claimed to live. Tr. 44-46; Government Exhibit 1 at 9; Government Exhibit 5 at 1; Government Exhibit 8 at 4, 7. Defendant indicated that he would drive past so they could see each other. Tr. 45-46; Government Exhibit 5 at 3; Government Exhibit 6 at 1; Government Exhibit 8 at 8-9. Agents followed Defendant as he was driving around Marion. Tr. 48; Government Exhibit 11; Government Exhibit 11; Government Exhibit 12. "Brionica" suggested that they meet at a

Honda Dealership and agents stopped Defendant on the road after he had driven past the Dealership. Tr. 49, 81; Government Exhibit 8 at 9. After stopping Defendant, Agent Wainscott took him to his vehicle for an interview. Government Exhibit at 9.

During the interview, Defendant stated that he did not think it was a "legit deal" and that he did not think he was "talking to a legit person." Tr. 91, 92; Government Exhibit at 9. Defendant also told Agent Wainscott that he "though it was going to be a dude when all was said and done" and he "really figured it would be a guy." Tr. 92, 93; Government Exhibit at 9. Throughout the interview, Defendant repeatedly stated that he thought a guy was going to show up and that he was being "scammed." Tr. 94-96; Government Exhibit at 9.

A two-day jury trial was held on May 24 and 25, 2021. At the close of the Government's evidence, the Defendant moved for judgment of acquittal under Fed. R. Crim. P.29(a). The court denied Defendant's motion. Tr. 118-119.

Defendant testified as the only witness in the defense's case. He testified he thought "this is a fake deal," so he continued the conversations and "tried to maybe figure out who [he was] talking to." Tr. 122. Defendant asked for specific pictures because they provided clues as to whether the person was who they were claiming to be. Tr. 123; Government Exhibit 1 at 1, 6, 9; Government Exhibit 2 at 2; Government Exhibit 6 at 1-2; Government Exhibit at 3, 4, 5, 7. When the person he was talking to failed to send the pictures he requested, Defendant thought "they didn't send them because they're not who they claim to be." Tr. 123-24. Defendant testified that he did not believe the person he was communicating with was 15 because they were on Craigslist, who users are supposed to be over 18, and "there's a reputation of... people not being truthful on Craigslist." The person in the picture he was sent looked like an adult; the person could not provide the specific pictures requested by Defendant; and the person

and the person never asked him any personal questions. Tr. 126; Government Exhibit 1 at 2; Government Exhibit 2 at 2; Government Exhibit 8 at 2; 6. The other person also never asked about money even though the first pose was about trading money for favors. Tr. 126-27; Government Exhibit 8 at 1; Government Exhibit 10.

Defendant made another motion for judgment of acquittal at the close of evidence, which was denied. Tr. 143-44. The case was submitted to the jury, and the jury convicted Defendant of both counts on May 25, 2021. Defendant was sentenced to a term of 120 months as to Count 1 of the Indictment and 60 months as to Count 2 of the Indictment in the Bureau of Prisons on September 22, 2021, with the sentences on all counts to run concurrently. A2.

REASON TO GRANT PETITION FOR WRIT OF CERTIORARI

SUMMARY OF ARGUMENT

The evidence presented by the Government in this case was not sufficient to convict Defendant of the charged crimes beyond a reasonable doubt, nor was it sufficient to disprove Defendant's defense beyond a reasonable doubt. To obtain a conviction on Count 1, the Government was required to show that Defendant attempted to use interstate commerce to knowingly entice a minor to engage in a sexual activity that would constitute a criminal offense. The Government failed to produce sufficient evidence for at least two elements of enticement. In particular, the Government did not adduce sufficient evidence to prove that Defendant believed he was communicating with a minor, or that Defendant acted to persuade or entice a minor. Similarly the Government failed to produce sufficient evidence that Defendant knew he was communicating with someone under 16 years old, as required for a conviction on Count 2, attempted use of interstate facilities to transmit information about a minor. Additionally, the Government failed to overcome Defendant's entrapment defense because it did not produce sufficient evidence that would enable any reasonable jury to find that Defendant was not induced, or that he was predisposed to commit the charged crimes. Because the Government did not present sufficient evidence that would enable a reasonable jury to find guilt beyond a reasonable doubt, this Court should reverse Defendant's conviction.

ARGUMENT

A. Standard of Review for All Points for Appeal

The standard of review on a sufficiency of the evidence challenge is whether any rational jury could have found the "defendant guilty beyond a reasonable doubt." *United States v. Shorter*, 54 F.3d 1254 (7th Cir. 1995). "[A]ll the reasonable inferences that can be drawn from the evidence" are viewed in a light most favorable to the government. *United States v. Goines*, 988 F.2d 750, 758 (7th Cir. 1993). Reversal of the conviction is appropriate only when the record contains no evidence, regardless of how it is weighed, upon which a rational trier of fact

could find guilt beyond a reasonable doubt." *United States v. Starks*, 309 F.3d 1017, 1021 (7th Cir. 2002). "[R]everse is required whenever evidence 'gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence,' and as such 'a reasonable jury must necessarily entertain a reasonable doubt.'" *United States v. Sanchez*, 615 F.3d 836, 843 (7th Cir. 2012)(quoting *United States v. Ramos-Garcia*, 184 F.3d 463, 465 (5th Cir. 1999)).

Because Defendant filed a motion for a judgment of acquittal under Fed. R. Crim. P. Rule 29, the denial of that motion is review de novo. See *United States v. Chambers*, 642 F.3d 588, 592 (7th Cir. 2011).

B. The Evidence was Insufficient to convict Defendant of attempted enticement of a minor

To obtain a conviction for entice of a minor under 18 USC § 2422(b), the Government was required to prove, beyond a reasonable doubt, that Defendant "(1) use[d] interstate commerce; (2) to knowingly persuade, induce, entice or coerce; (3) any person under 18; (4) to engage in any sexual activity for which persons can be charged with a criminal offense[.]" *United States v. Cochran*, 534 F.3d 631 (7th Cir. 2008)(quotation omitted.) "For an attempted conviction, the Government was required to prove that [the defendant] acted with the specific intent to commit the underlying crime and that he took a substantial step towards completion of the offense." *United States v. Cote*, 504 F.3d 682, 687 (7th Cir. 2007).

The evidence presented by the Government in this case is deficient in multiple respects. First, the Government failed to present sufficient evidence that would permit any juror to find, beyond a reasonable doubt, that Defendant attempted to entice any person under the age of 18. Second, the Government failed to present sufficient evidence that Defendant attempted to knowingly persuade, induce, entice or coerce a minor to engage in sexual activity.

1. There is insufficient evidence that Defendant believed he was speaking with a person under 18.

The Government's burden in this case was to "demonstrate, beyond a reasonable

doubt, that the defendant intended to undertake one of the proscribed acts with respect to a minor." Cote, 504 F.3d at 687 (emphasis in original). "[T]he attempt provision...requires that the defendant specifically intended to induce, entice or coerce a minor." Id. Although a conviction under 18 USC § 2422(b) may be sustained even where the defendant was mistaken in their belief that person they intended to entice was a minor, see id. at 683-84, the crime of attempted enticement still unquestionably requires that the defendant hold a subjective belief the person they intend to entice is a minor. See United States v. Berg, 640 F.3d 239, 251 (7th Cir. 2011)("[T]he government's burden was to prove beyond a reasonable doubt that he intended to persuade, induce, or entice someone whom he believed was a minor to engage in sexual activity")(emphasis added)); Cote, 504 F.3d at 688 ("[I]t was the subjective belief of [defendant] that he was dealing with an underage girl that had to be proved to the jury.").

In this case, the Government did not present sufficient evidence that would enable any rational jury to find beyond a reasonable doubt that Defendant subjectively believed the person he communicated with online was a minor. Throughout the interview with law enforcement, Defendant/repeatedly states that he thought a guy was going to show up and that he was being "scammed." Tr. 91-96.

A review of the communications between Defendant and Agent Wainscott shows that it is unreasonable for someone to believe that "Brionica" was actually 15 years old. The photograph Agent Wainscott sent Defendant was a person who was approximately 30-years-old. Government Exhibit 1 at 2; Government Exhibit 2 at 2; Government Exhibit 8 at 2, 6. After receiving the photograph, Defendant tells "Brionica" that Defendant thought she was 26, and Defendant testified he thought the photograph looked like an adult. Defendant testified that he did not believe the person he was communicating with was 15 because they were on Craigslist, whose users are supposed to be over 18, and "there's a reputation of...people not being truthful on Craigslist," the person could not provide the specific picture requests Defendant asked for; they never asked him any personal questions; and the other per-

son also never asked about money even though the first post was about trading money for favors. Tr. 126-27, Government Exhibit 8 at 1, Government Exhibit 10.

2. The evidence was insufficient to show that Defendant attempted to knowingly persuade, induce, entice, or coerce the target of his communications.

To commit the crime of attempted enticement of a minor, the necessary specific intent "is the intent to persuade a minor to engage in illegal sexual activity." United States v. Patten, 397 F.3d 1100, 1103 (8th Cir. 2005), cited with approval in Berg, 640 F.3d at 252; see also United States v. Bailey, 228 F.3d 637, 639 (6th Cir. 2000)(noting that 18 USC § 2422(b) "only requires a finding that the defendant had an intent to persuade or attempt to persuade."). "The ordinary meanings of the verbs persuade, induce, entice, and coerce demonstrate that § 2422(b) is intended to prohibit acts that seek to transform or overcome the will of a minor." United States v. Hite, 769 F.3d 1154, 1161 (D.C. Cir. 2014). The jury in this case was instructed that the Government must prove that Defendant used a facility or means of interest commerce to "entice" an individual to engage in sexual activity. "[E]ntice' means 'to lure, induce, tempt, incite or persuade a person to do a thing." Id. (quoting Black's Law DIctionary (6th ed. 1990)).

In this case, there was insufficient evidence that Defendant acted to overcome the will of "Brionica" to engage in sexual activity. The agreement to engage in sexual activity was proffered by Agent Wainscott before Defendant even contacted "Brionica." The initial posting included an offer to engage in sexual activity, stating, "bored, no school, looking to make dollars for favors." Tr. 25-27, 31, 39-40; Government Exhibit 8 at 1; Government Exhibit 10. "Brionica" consistently expressed interest in engaging in sexual relations with Defendant, even when he resisted her demands to meet in person. Government Exhibit 8 at 3, 7. When Defendant expressed an interest in talking with "Brionica" instead of seeing her in person for sex, she responded, "I'm looking to hook up, not chat." Tr.45; Government Exhibit 5 at 2; Government Exhibit 8 at 7. These communications

indicate that "Brionica" always represented herself as willing and interested in engaging in sexual activity with Defendant. Therefore, there was no evidence that could enable the jury to conclude that Defendant attempted to persuade or entice "Brionica" because he could not have attempted to transform or overcome her will, when it was repeatedly stated that she wanted to have sex, not talk.

C. The evidence was insufficient to convict Defendant or attempted use of interstate facilities to transmit information about a minor.

Similarly, under 18 USC § 2425, the Government had to prove that Defendant knew the person at issue was under 16 years old.

Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime or territorial jurisdiction of the United States, knowingly initiates the transmission of the name, address, telephone number, social security number, or electronic mail address of another individual, knowing that such other individual has not attained the age of 16 years, with the intent to entice, encourage, offer, or solicit any person to engage in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than five years, or both.

18 USC § 2425 (emphasis added).

Here, the Government failed to present evidence that Defendant knew the person he was communicating with was under 16 years old. Although Agent Wainscott asserted, two days into the conversation, that "Brionica" was 15, Defendant consistently and repeatedly questioned "Brionica's" identity and stated that he thought he might be talking to a guy and that he was being "scammed." Tr. 91-96; Government Exhibit 8 at 5. At the beginning of the communications with Agent Wainscott, Defendant was sent a photo of a person who is approximately 30 years old. Government Exhibit 1 at 2; Government Exhibit 8 at 3. After receiving the photograph, Defendant tell "Brionica" that Defendant thought she was 26. Government Exhibit 1 at 3; Government Exhibit 8 at 2. Defendant did not believe the person he was communicating with was 15 because they were on Craigslist, whose users are supposed to be over 18, and "there's a reputation of...people not being truthful on Craigslist;" the person could not provide any specific picture re-

quests Defendant asked for; the person never asked him any personal questions; and the other person also never asked about money even though the first post was about trading money for favors. Tr. 126-27; Government Exhibit 8 at 1; Government Exhibit 10. In light of this evidence as a whole the evidence at trial was insufficient to prove beyond a reasonable doubt that Defendant knew "Brionica" was under 16.

D. The Government did not present sufficient evidence to support the jury's rejection of Defendant's entrapment defense.

"[A] valid entrapment defense has two related elements: the government inducement of the crime, and a lack of predisposition on the part of the defendant to engage in the criminal conduct." *Mathews v. United States*, 48 US 58, 63 (1988). "The two elements are inversely related." *United States v. Akinsanya*, 53 F.3d 852, 858 (7th Cir. 1995). "[T]he greater the inducement, the weaker the inference that in yielding to it the defendant demonstrated that he was predisposed to commit the crime in question." *United States v. Hollingsworth*, 27 F.3d 1196, 1200 (7th Cir. 1994)(en banc). For a defendant to be permitted to present an entrapment defense, "the defense must produce sufficient evidence upon which a rational jury could have inferred that he was entrapped into committing the crime charged." *United States v. Santiago*, 12 F.3d 722. 727 (7th Cir. 1993). Once the defendant establishes sufficient evidence to support an instruction on entrapment, "the burden shifts to the government, which can defeat the entrapment defense by providing beyond a reasonable doubt either that the defendant was predisposed to commit the offense or the absence of government inducement." *Id.* at 722.

"Predisposition, the 'principal element' of the entrapment defense, centers on 'whether the defendant was an ''unwary innocent'' or, instead, an ''unwary criminal'' who readily availed himself of the opportunity to perpetrate the crime.'" *United States v. Orr*, 622 F.3d 864, 870 (7th Cir. 2010)(quoting *Mathews*, 485 US at 63.). In assessing the defendant's predisposition, the relevant factors are:

- (1) the defendant's character or reputation; (2) whether the gov-

ernment initially suggested the criminal activity; (2) whether the government initially suggested the criminal activity; (3) whether the defendant engaged in criminal activity for profit; (4) whether the defendant evidenced a reluctance to commit the offense that was overcome by government persuasion; and (5) the nature of the inducement or persuasion by the government.

Id.

"Although none of these factors are determinative, the most important factor for the court to consider is whether the defendant exhibited a reluctance to commit the offense that was overcome by government inducement." *Santiago-Godinez*, 12 F.3d at 728. To prove inducement, the defendant must put forth evidence showing that he or she would not have committed the crime had the particular attraction or lure that the government held out not existed. *United States v. Marren*, 809 F.2d 924, 931 (7th Cir. 1989).

In this case, the Government failed to present sufficient evidence that would enable any reasonable jury to conclude beyond a reasonable doubt that Defendant was not entrapped. First, the Government failed to show that Defendant was predisposed to commit the charged crimes. Although Defendant was the first to suggest an in-person meeting with "Brionica," Defendant made these statements prior to being informed that she was allegedly 15 years old. Indeed, once "Brionica" stated that she was 15 years old, Defendant responded, "You are underage so I can't do anything but look at you..." Government Exhibit 1 at 3; Government Exhibit 8 at 3. The Government agent, playing as "Brionica," then replied, "I prefer the real thing, your lose[sic]..." Government Exhibit 1 at 4-5; Government Exhibit 8 at 3. Defendant showed great reluctance towards committing the crime, which was only overcome, if at all, by the Government's insistent inducement and persuasion.

Additionally the Government failed to show an absence of inducement in this case. Instead, any reasonable view of the evidence showed that the Government agent induced Defendant into continuing the conversation and ultimately traveling

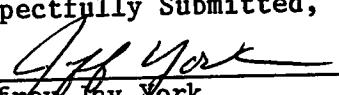
to Marion, Illinois. Immediately after "Brionica" told Defendant that she was 15 years old, Defendant responded that he could not meet her in person but that he would like to continue chatting online. Tr. 40-41; Government Exhibit 1 at 4; Government Exhibit 8 at 3. The Government agent, posing as Brionica, then attempted to induce Defendant to meet in person by stating, "I prefer the real thing, your lose[sic]..." Tr. 41; Government Exhibit 1 at 4-5; Government Exhibit 8 at 3. Several messages later, "Brionica" again encouraged Defendant to meet in person by assuring him, "[i]t's better in person." Tr. 41; Government Exhibit 1 at 6; Government Exhibit 8 at 3. The following day, when Defendant expressed an interest in simply meeting with "Brionica," Agent Wainscott replied. "I'm looking to hook up, not chat" and asked, "Y u[sic] waste me[sic] time..." Tr. 45; Government Exhibit 5 at 2; Government Exhibit 8 at 7-8.

The evidence that the Government presented at trial was insufficient to enable any reasonable jury to reject the affirmative defense of entrapment beyond a reasonable doubt. The unrefuted evidence clearly showed that Defendant was not predisposed to committing the charged crime in this case, and that his actions were due to repeat Government inducement. Therefore, the evidence presented was insufficient to overcome Defendant's defense of entrapment.

CONCLUSION

For the reasons stated herein, there was insufficient evidence to convict Defendant of enticement. Therefore, Defendant-Appellant Jeffery York respectfully requests this Court reverse his conviction and sentence.

Respectfully Submitted,



Jeffrey Jay York,
ASHLAND Federal Correctional Institution
PO Box 6001
Ashland, KY 41105

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JEFFREY YORK

(Your Name)

— PETITIONER

VS.

UNITED STATES OF AMERICA

— RESPONDENT(S)

PROOF OF SERVICE

I, JEFFREY YORK, do swear or declare that on this date, FEBRUARY 2, 20 23, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

UNITED STATES ATTORNEY OFFICE FOR THE SOUTHERN DISTRICT OF ILLINOIS

I declare under penalty of perjury that the foregoing is true and correct.

Executed on FEBRUARY 2, 2023


(Signature)