

22-7620

NO.

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

TIMOTHY SEAN COOGLE,

Petitioner.

v.

UNITED STATES OF AMERICA,

Respondent.

FILED  
APR 27 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Fourth Circuit

**PETITION FOR WRIT OF CERTIORARI**

Timothy Sean Coogle

Pro Se Defendant

#34068-057

FCI FORT DIX

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QUESTIONS PRESENTED

- Why was a Sixth Amendment violation not addressed in the lower courts where defendant's lawyer failed under the Strickland standards?
- How is the defendant charged with an attempt crime when no substantial step was taken?
- Why is insufficient and fabricated evidence not fully addressed in the lower courts?
- Why was entrapment ignored in the arguments when caselaw and the government's actions clearly show defendant was entrapped?

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**Petition For Writ Of Certiorari**

Pro Se defendant Timothy Sean Coogler, an inmate incarcerated at FCI Fort Dix, in New Jersey, respectfully petitions this court for a writ of certiorari to review the judgment of the Fourth Circuit Court of Appeals.

**Decision Below**

The decision of the United States Court of Appeals for the Fourth Circuit has not been published.

**Jurisdiction**

The Fourth Circuit entered judgement on April 18, 2023. See Appendix A. This Court's jurisdiction is invoked under 28 U.S.C. 1254.

**Constitutional Provisions Involved**

Amendment V-No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public, use without just compensation.

Amendment VI-In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

A.M. was a minor who lived in West Virginia. Her extended family lived in Lexington, North Carolina, just two houses down from Mr. Google and his family. Google's family would hang out with A.M.'s extended family very often for several years. They would go back and forth between the houses playing games and hanging out. A.M. and her family would often visit their extended family in North Carolina and many times A.M. and her three cousins, Google's neighbors, would get together and come to Google's house to hang out with Google's four kids. Google's family had a full court basketball setup in their backyard. A number of times, the kids would end up wanting to play full court basketball in Google's backyard. The kids would call Google out to even up the teams and play a few games with them as Google did with his kids often. After several games of basketball, the kids would run off and do other things between the two houses and Google would go back inside with his wife or do chores around the house. This was Mr. Google's involvement with A.M. each time she was around. This was the case for two or more years over twenty or more times. Google was never alone with A.M., never spoke to her alone or acted inappropriately at all. Anytime Mr. Google was around A.M., it was in group settings on a basketball court in Google's backyard.

Instagram is a social media application where users post images on their profile and others comment or give the image a like. A like is a double tap on the image and users add up their likes to show off to other users. The more likes you have, the more proud you are of the image. Mr. Google and his family had Instagram accounts. They posted and shared photos and videos amongst each other and to family and friends. Google's account was sean\_google, his name. A.M. had an Instagram account and in August of 2017, she posted a photo of herself, her three cousins (Google's neighbors) and A.M.'s sisters. They were all at the beach holding hands. Google tapped the photo to give it a like so that everyone could see the like. Google later sent A.M. a message to let her know he liked the photo. Google did not get a response and felt A.M. may have taken the message the wrong way being it was sent as a private message. After several hours, Google sent another message apologizing to A.M., again, thinking she may have taken the message the wrong way. There was never a response from A.M. and after apologizing, Google no longer sent any other messages to her or showed any activity on her account.

A.M.'s parents saw the message and felt it was strange and decided to contact law enforcement. At that point, an undercover agent aggressively took over the A.M. account and watched Google's Instagram activity for nearly a month. After seeing Google not sending any messages nor having any Instagram activity at all, the agent began her quest of creating criminal activity. The agent started by sending Google a flirtatious message with a heart emoji. Google did not respond, but after a few more messages from the undercover agent, Google responded with comments surrounding Duke Blue Devil's basketball and Lebron James trade rumors, since basketball was the only conversations Google had with A.M. on the basketball court. The agent worked to steer the conversation down another path, continuously focusing on the bikini A.M. wore in the photo. Google worked to keep the conversation appropriate, trying to stay on the subjects of basketball and family. Several times Google refrained from saying anything and at some point posted a profile that stated his account had been hacked. This was done to try and cease communication altogether with the A.M. account as Google knew it was out of line. The agent would act mad and make statements regarding her anger. Not wanting A.M. to get mad, Google began replying to the undercover agent again, but kept the conversation appropriate. After many days, the agent began asking sexual questions. Google began responding to the agents questions after persistent inducement and persuasion along with trickery from the agent. The agent attempted to try and get Mr. Google to come and meet her in West Virginia. Google refused to meet the agent and worked to steer away from that discussion. Once the agent saw Google would not meet, the agent started to ask for photos or videos asking questions about showing her what Google would give her. Towards the end of these conversations, Google acted out of character and got lost in these conversations. Human nature is weak and Google did act in a disgusting way by posting a video on his phone with his pants down and the agent logged in to view and record the video. None of this was Google's intent and he never described any

sexual act he wanted to perform, never planned a meeting location or any rendezvous at all. After the video, Google no longer responded to any other messages and several weeks later was arrested by the local sheriff and FBI. The time stamped screenshots of the complete Instagram messages clearly show who steered the conversation. It shows significant reluctance and shows Mr. Google repeatedly trying to steer the conversation back to an appropriate path. These messages show Mr. Google's innocence when looking at a conviction under 18 U.S.C. 2422(b).

### The Arrest

Mr. Google had gotten off work on October 4, 2017 and just picked up his younger son from school and was on his way to pick up his daughter from high school. Google's other two sons had a soccer game that evening and remained at school. While on the way to get his daughter, with his young son in the back seat, a sheriff's deputy and FBI agent pulled Google over and arrested him. Another agent jumped in Google's car and drove off with Google's, then, nine-year-old son. Google's daughter was brought home by a school resource officer and interrogated on the way home. Mr. Google was taken to his house where numerous government agents were in and out and a forensic examination van was examining all of Google's family devices and media. Google informed the agents that there was another laptop in his backpack in his car and they removed that also. Google was taken to his back yard where three FBI agents began an interview. Google was told that he did not have to answer any questions without a lawyer. One of the agents, a female agent, had a yellow envelope and let Google know that she had all of the communication with the undercover agent and pulled a portion of the documents out showing screenshots of the Instagram messages. Google let the agent know he had no problems answering questions. Google was asked if he was going to have sex with A.M. and Google said "never". Google stated he got lost in the messages steered by the agent and that he had been around A.M. over twenty times for more than two years and had never acted wrong in any way. Google

let the agents know that nothing shows he has an interest in sex with minors and that besides his job as a Senior Wireless Engineer at Wake Forest Baptist Health, he was a North Carolina and U.S. Youth Soccer certified coach and had coached boys and girls teams for ten years. Google also said he and his wife, with other adults, volunteered in their church's childrens ministry and had done this for over six years. Google told the agents to interview these places and they would see his involvement around minors. After the interview, Google was taken to jail in Winston Salem, North Carolina.

Google was given a federal public defender and spoke with him before his pre-trial detention hearing. The public defender saw entrapment in Google's case, just in the short time while speaking with Google. At the detention hearing, the public defender brought up entrapment in court, but the government detective on the bench stated the government never entraps people. Google was denied pre-trial detention and sent back to jail. While waiting in county jail, Google's family tried their best to get a lawyer for Google and having no experience with lawyers or the justice system, they found a state lawyer named James Darren Byers and he came up to the jail to speak with Google bringing a contract showing \$25,000 if the case stayed in North Carolina and \$35,000 if it was moved to West Virginia. The contract showed that investigations and preparation would be conducted in Google's case. Google knew money would be an issue as he would not be working during the process and his wife would find it difficult supporting herself and the four kids on just her income. Google threw the contract in the trash and remained with a public defender. Google let the public defender know he wanted the case to remain in North Carolina so he could be closer to family. When the public defender let the government in West Virginia know that Google would remain in North Carolina, an Assistant United States Attorney told the public defender that Google would have a better outcome in West Virginia and said if Google was found guilty, he could get under the mandatory

minimum. After hearing this, Google decided to go to West Virginia. After several weeks, Google was moved from Winston Salem, North Carolina to several other jails within the state. Google may be at these locations for a few hours or a few days. This made it nearly impossible for Google to speak to family and work with a lawyer. Google was moved to Piedmont County in Virginia and remained there a few weeks. Google was then moved to Raleigh, N.C. for several hours about to board a plane. After six hours of sitting on a van, Google was sent back to Virginia never boarding a plane. At this point, Google was severely depressed being away from family and not having any opportunity to work on his case. During all these movements, Mr. Byers phoned Mr. Google's mother and wife on a daily basis, promising them continuous work on Google's case and a complete and thorough investigation and interviews with everyone. Mr. Byers also said he would hire another lawyer in W.V. to work with Google anytime he wasn't in the state. Byers made Google's family feel confident in his representation for Google, so Google decided to deduct money from his kid's college savings and his retirement to pay Mr. Byers for his services. Google then got moved back to Raleigh, N.C. and boarded a plane to Atlanta, Georgia. Google was then flown to Oklahoma City. All these movements were done after Google decided to go to West Virginia, but these movements were done before Google ever stepped into a Courtroom in W.V.. There was no reason to be moved to all these locations and the mental effects of these movements took a serious toll on Google's mental health. Google never got to work with his lawyer nor do any research on his own regarding his case.

After several weeks of being incarcerated in Oklahoma City, Google was flown to Kentucky, then sent to two other jails in W.V. before going to an arraignment hearing. Google met with Mr. Byers before the arraignment hearing and was just told that the arraignment was only setup to plead not guilty at first and things would go from there. After the arraignment, Google was sent back to another jail in W.V.. Mr.

Byers was never available to speak with Google and Google's family had a difficult time trying to locate him. Once Google's wife finally got ahold of him, Byers mentioned taking on a state murder case and stated he was very busy. Google tried to call Mr. Byers from the jail, but Byers' secretary told Google's family they did not take calls from the jail because they were recorded. Google e-mailed Byers' office and asked if he could work with local counsel that Byers had hired, but was told that local counsel did not know anything about the case and was only hired by Byers pro hac vice, allowing Byers to work in the state of W.V.. Google then wrote the prosecutor to let them know that he was not receiving help from his lawyer, but this was ignored and not brought up until after all the proceedings were over and Google received a letter from Byers' office.

Eventually Mr. Byers came to W.V. to go over discovery. None of the screenshots showing the communication between Google and the agent were added to discovery. Byers brought up the video of Google and Google's responses to the agents questions as all it took to show Google guilty. There was not much communication during the discovery interview. Some time later, Mr. Byers worked behind the scenes with the government to schedule a guilty plea. This was done before a guilty plea was brought up with Mr. Google. When Byers traveled to W.V., he mentioned pleading guilty to the charges or the government would bring up a superseding indictment. Google asked Mr. Byers what else the government could charge him with and Mr. Byers stated the government could come up with something and that they always do and that this would give Google even more time in prison. Google was confused and eventually decided to plead guilty. There was never any interview or investigation done nor any work whatsoever on Google's case.

During the FBI's investigation, A.M. was interviewed by the FBI and asked about her experiences around Google. A.M. spoke highly of Google and stated that she never felt uncomfortable around him. A.M. stated the same thing Google mentioned, that

their involvement was always on the basketball court and always in group settings.

#### Guilty Plea

At the guilty plea hearing Google was asked many questions and replied yes to everyone of them. Google could have been asked to be shot in the head and would have said yes. The diesel therapy, fights and attacks in county jail and separation from family drained Mr. Google and he pled guilty. During the plea colloquy, Google was asked what he did to commit the crime and he stated he basically sent explicit messages to a minor.(Document 53-1, Page ID 114). Google never knew what it took to be guilty of 18 U.S.C. 2422(b) and didn't know anything about elements of the crime. The Honorable John T. Copenhaver, Jr. was difficult to understand in court and Google had to repeatedly ask him to repeat his questions. Judge Copenhaver thought Google lived in West Virginia and found it odd when he found out Google did not live in West Virginia. Google informed him he had never been to West Virginia.(see document 53-1, ID 114-115). Judge Copenhaver assumed Mr. Google's case started as a state case, but it was never a state case. During the guilty plea, Judge Copenhaver let Google know he would get at least ten years in prison. Google informed the Court that he was told by an AUSA while in N.C. that he could get under the mandatory minimum if he came from N.C. to W.V.. Judge Copenhaver said that he could not do that and allowed a recess to discuss this with counsel.(see Doc 53-1, page ID 76-77). Byers was irritated that Google brought this up and showed frustration in the recess. Google was given only a few minutes to accept the guilty plea after finding out he could not get under the mandatory minimum. Not wanting to upset Judge Copenhaver and making counsel even more angry, Google proceeded to accept the guilty plea with only a few minutes to decide on such a harsh punishment.

#### Sentencing

Before sentencing, Google was interviewed by a probation officer with Byers' present. There was a pre sentence report prepared and Google was told he would

receive a copy of this and would be allowed to make objections once it was completed by the officer. Google received his copy of the pre sentence report a few days before sentencing, but objections were already made by Mr. Byers regarding enhancements. Google never got to make corrections or objections before sentencing. Google brought a list of corrections to sentencing and when Judge Copenhaver asked Google if the pre sentence report was correct, Google said it was for the most part. Judge Copenhaver was furious when he heard this and stated that it wasn't going to cut it. He demanded a recess and asked Google to go over objections with Byers and local counsel. Google showed Byers the list to make objections, but this upset Byers and he stated that Google would get the twenty-three years recommended by the probation officer if Google was to make too many changes. Google gave up on correcting the full pre-sentence report(PSR) and not wanting to irritate Judge Copenhaver any further, he stated the report was accurate with only a few changes being made. This was the biggest mistake Google made as he now knows that the PSR is the most important document in this whole process. Like every other appearance in Court, Google held back the truth and spoke very little because it upset either the judge or counsel. Google had twenty minutes to attempt to make numerous objections in Court and this process should have taken place with counsel in a private setting without pressure from the judge, counsel, and the time limits. (see Document 53-1, Page ID 130).

Google's church elders and children's ministry adults were at sentencing and had been at other proceedings during the process. They never got interviewed and were never able to speak in court. Character letters were added, but Byers did not bring all the letters he received from Google's wife. A.M.'s father spoke during the hearing and spoke eloquently about Google. They did not want this to happen and let Google's wife know the agent aggressively took over the account. They never got to hear the truth regarding Google's case. With ineffective counsel and this guilty

plea, the truth was held back.

#### REASONS FOR GRANTING THE WRIT

##### I. The Court Should Grant Certiorari to Address the Ineffective Assistance of Counsel Sixth Amendment Violation Not Fully Addressed in the Lower Courts.

To prove ineffective assistance of counsel, Defendant must show that counsel's performance was constitutionally deficient" and "that the deficient performance prejudiced the defense." Stated in United States v. Long, 2022 U.S. App. LEXIS 9887 No. 19-4192 (April 1, 2022 4th Cir.) In Strickland v. Washington, 466 US 668, 687, 104 S. Ct. 2053 80L. 8d 2d 674(1984) under performance, it says defendant must demonstrate "that counsel's representation fell below an objective standard of reasonableness" as evaluated "under prevailing professional norms." @688 Under prejudice, Strickland says defendant must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." @694. As soon as Google arrived to prison, he entered a fee dispute with the state bar of North Carolina in an effort to receive his \$35,000 back from his deficient lawyer. Mr. Byers sent his list of work in to the state bar during the dispute. His list of work and other documents were sent in during Google's 2255 and Petition for Rehearing En Banc. His list shows he did no investigation, no interviews and no real preparation for defendant's case. It shows that he worked to schedule a guilty plea before going over a plea with Google. Mr. Byers had little to no real experience in the federal system and had never worked a sex offense case, although he did not tell Google's family this before Google signed the contract. "Counsel is quintessentially deficient when he does not know the law that is fundamental to his case and fails to conduct research on highly relevant points of law." Hinton v. Alabama, 571, US 263, 274, 134 S. Ct. 1081 188 L. Ed 2d1(2014). With an investigation, interviews and preparation, Mr. Byers could have put in a rule 29 motion for insufficient evidence as the government never showed the true text

communication to the Court nor did they add them to discovery. By obtaining the full time stamped screen shots the government had in their possession, Google's innocence would have been shown. Interviews with the church elders and with A.M.'s parents would have brought to light many things as well. The church would have cleared up the story from the FBI agent and it would have shown that investigation was noted as an unintentional touching of a knee. Google worked in the children's ministry for over six years and worked with many adults in class. Google was the one who told the FBI to go interview the church. Mr. Byers could have interviewed A.M.'s parents and they would have said how the government aggressively took over the A.M. account and began creating criminal activity. This would have also allowed A.M.'s parents receive the true facts in the case. "Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland @691. There was no reason not to investigate and interview in defendant's case. Byers' contract clearly states that he will. During Google's 2255 with his ineffective assistance of counsel claim, Mr. Byers was not instructed to follow West Virginia Rule 1.6(b)(5). Magistrate Judge Cheryl A. Eifert sees these claims often and in the majority of her cases where she prepares a Proposed Findings and Recommendations, she makes the lawyers follow this rule. This rule instructs the lawyer to file affidavits and prepare documentation proving their work for the client. If Mr. Byers would have been ordered to follow this rule, he would have clearly failed and Google would have proven Mr. Byers deficiency. That is injustice. Effective representation of a person accused of crime is built upon investigation and preparation especially when a defendant faces life in prison and loss of everyone and everything around him. There honestly can't be a more deficient and ineffective lawyer than Mr. Byers. He has to be the poster child for ineffectiveness. Mr. Google was severely prejudiced by Byers' lack of work and back room deals with the government in this case.

II. The Court Should Grant Certiorari to Identify How the Lower Courts Missed the Entrapment in This Case.

In the United States V. Tran, 589 Fed. Appx. 139(4th Cir. 2015) it states "The affirmative defense of entrapment recognizes that while the government may provide the opportunity to commit a crime for those predisposed to do so, it may not implant in an innocent persons mind the disposition to commit a criminal act, and then induce commission of the crime so that the government may prosecute." quoting Jacobson V. United States, 503 U.S. 540, 548, 112 S. Ct. 1535, 118 L. Ed 2d 174(1992). The Fourth Circuit is aware of what entrapment is. It is overlooked in Google's case. In the United States V. Hsu, 364 F. 3d 192(4th Cir. 2004), it says inducement is "defined as solicitation plus some overreaching or improper conduct on the part of the government." Justice Roberts wrote an opinion in Sorrells V. United States, 287, 435, 53 S. Ct. 210, 77 L. Ed 413, 38 Ohio Rep. 326(1932) saying "Inducement 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 the trickery, persuasion, or fraud of the officer." Jury instructions on entrapment state "a defendant may not be convicted of a crime if it was the government who gave the defendant the idea to commit the crime, if it was the government who also persuaded him to commit the crime, and if he was not ready and willing to commit the crime before the government official or agents first spoke to him." Google was using his Instagram account, sean\_google. This is Google's name. Google has been around A.M. many times over several years and there has been absolutely no wrong actions or inappropriate behavior at any time. The agent aggressively took over the A.M. account when A.M.'s parents called to let them know Mr. Google sent a direct message saying he liked a family photo. They thought it was strange coming as a direct message. With no response, Google apologized and no longer sent any messages. The agent took over the account and watched Google's activity. Google was not saying

anything at all. The agent watched the activity for nearly a month. The agent noticed Coogle had no intent on acting criminal or inappropriate in any way. The agent decided to initiate a conversation by sending a flirtatious message with a heart emoji. In the government's response on Coogle's 2255, they stated the parents accidentally initiated this message with the heart emoji. (see document 53-1 Page ID 392). This is not true. Numerous flirtatious messages followed the initial message. Coogle did not respond right away, but once Coogle did respond, he kept the conversation normal, discussing basketball. Every 18 U.S.C. 2422(b) case is not an episode of Chris Hanson's To Catch A Predator, an NBC television show. Coogle had no thought of attempting to entice, persuade, induce or to coercing this minor into engaging in sexual activity. This is not what is seen by Coogle using his sean\_coogle Instagram account to compliment a family photo. This isn't a case where an undercover agent initiated a conversation by flirting and a defendant quickly responds ready to act criminal, as seen in the majority of these cases. Coogle sent his message on Instagram to A.M. on August 12, 2017. That was the end of his messages. The agent began flirting with Coogle on August 29, 2017. The government stated sexual dialogue began on September 8, 2017. Reviewing this gap in messages, you can see who steered the whole conversation. Coogle showed significant reluctance when responding to this undercover agent's sexual questions. This undercover agent had a goal and a plan. The undercover agent was overly persistent in trying to steer the conversation from appropriate to inappropriate. When Coogle noticed the agent was headed down that path, he refrained from talking at all. Coogle posted a story on his profile saying his account had been hacked, to try and get out of the conversation altogether. The undercover agent acted mad and sent messages showing frustration. Coogle did not want to make A.M. mad, so he eventually started responding to the undercover agent's messages once again. By acting mad, this undercover agent used trickery

and overreached. See United States v. Sligh, 142 F.3d 761, 762(4th Cir. 1998), finding evidence of inducement where the defendant repeatedly ignored the agent's invitations to wrongdoing, but the agent nevertheless persisted in her baiting of the defendant. @763. The agent was overly persistent in her efforts to get Google to act criminal. The agent worked to overcome Google's refusal to act out of line. She worked to get by Google's evasiveness and tried hard to get past his hesitancy. This undercover agent acted well past the point to induce Google into acting inappropriate. Google was able to explain these tactics to his first lawyer, a public defender in Winston Salem, North Carolina. His public defender noticed entrapment and brought this up in Google's detention hearing, but the undercover agent stated that the government doesn't entrap people. This agent overreached with her tactics using trickery and persuasion and fraudulent representation that qualifies as more than enough to push a law abiding citizen to act in a way he would not have if left alone.

Google did not respond to the sexual questions until the last few days of communication. The full Instagram screenshots show this. Even with the fabricated and altered messages the government typed and entered into discovery, you can see the agent's tactics. Document 53-1, Page ID 62 the agent says "So you wanna be my first? (heart emoji)". Page ID 65 she says "You want a pic of me nskyyy?(kiss emoji)." Page ID 61 the agent asks "You like that I'm a virgin?" "What will going down on me get me ready for?" "This is making me feel good." The undercover agent then asked Google if he wanted to come to West Virginia to meet her and Google refused, ignoring that topic. The agent was pushing to get Google to take some sort of substantial step. Once she saw this not work, she pushed to get a photo or video of Google stating "Show me what you will give me." Eventually, Google posted a video on his phone with his pants down and the agent logged in to view this and recorded it. This was the last communication Google had with the agent. Google

acted out of line towards the end of these messages, but it wasn't his intent. Viewing Google's actions around A.M. the twenty plus times he was around her in a span of two years is how Google's character is. Any communication Google had online was appropriate and never wrongful in any way. Why was the communication with this agent different? Because the undercover agent steered it. Why would A.M. state Google never acted wrongful in any way around her during her FBI interview? Because that is Google's true character. Google was not predisposed to act criminal. Google liked a family photo of A.M. and her family on Instagram. He never got a reply and apologized thinking it may had been taken the wrong way. A.M. had on a bathing suit holding hands with her three cousins (Google's neighbors) and her two sisters. He apologized and no longer sent any messages.

The government said Google had inappropriate messages with A.M. before the agent took over the account. This is not true. A.M. would have brought that up in her interview if that was the case. The government said Google had inappropriate messages with other minors before contacted by the undercover agent. They saw two short messages Google had on Instagram. One message was where Google asked about a photo of a cross country event. Another message was a reply from Google when asked about an inspirational quote. Google did not initiate each of these messages and they were short and simply used like expected on Instagram. These messages show nothing odd or inappropriate. The government also said Google was predisposed by touching a 2nd graders knee as a volunteer in church. Google worked with many adults, including his wife, in his church's children's ministry. He did this as a volunteer for over six years. One of the students was given a speech by her parents about adults touching them or saying things inappropriate to her and to always let them know. This is a speech most parents give to their young kids. Shortly after her speech, this young girl told her parents Google touched her knee. Google was asked about the incident by the church elders. Google never

remembered a specific time this happened, but never denied it. There are multiple adults in these classrooms full of children. The volunteers lead games, help with crafts, do bible studies and use many ways to help educate these kids on Scripture. The incident was cleared up by the parents and the elders that day and said to be unintentional. The parents thought the child was being over sensitive due to her recent speech. Coogle was sent back to class that day volunteering. Coogle was the one to tell the government to interview his soccer club and church to see his involvement around minors. A forensic examination was done on all of Coogle's and his family's media devices and nothing shows Coogle has an interest in sex with minors. In these cases, the government has to paint a bad picture of the defendant and this church incident, even though it was closed as unintentional, was put in Coogle's pre sentence report and told to the news outlets. Coogle could have touched a minors knee to praise them, to have them stop leaning in their chair, or tagged them in some of the games played in class. What didn't happen was Coogle touching a knee to act inappropriate.

String operations are needed to stop certain serious criminal activity, particularly crimes involving drugs and crimes against minors. The government overreached in Coogle's case using methods of trickery, inducement and persuasion to steer Coogle down a path he didn't intend on taking and would have never taken without this undercover agent's involvement.

The 2nd Circuit gave its definition of entrapment in United States v. Sherman, 200 F.2d 880, 882-883 (2d Cir. 1952) stating:

"Therefore, in such cases two questions of fact arise; (1) did the agent induce the accused to commit the offense charged in the indictment; (2) if so, was the accused ready and willing without persuasion and was he awaiting any propitious opportunity to commit the offense. On the first question the accused has the burden; on the second the prosecution has it." The Supreme Court approved that

definition when the Sherman case ultimately reached it after a new trial. Sherman v. United States, 356 U.S. 369, 78 S. Ct. 819, 2L Ed. 2d 848(1958); Sorrells v. United States, 287 U.S. 435, 53 S. Ct. 210, 77 L. Ed. 413(1932)

III. The Court Should Grant Certiorari To See Where The Lower Courts Failed To Address Google Never Taking A Substantial Step In This Attempt Indictment.

In the United States v. Neal, 78 F. 3d 901(4th Cir. 1996) it states "a defendant can be convicted of an attempt charge only if the government proves beyond a reasonable doubt 1). Culpable intent to commit the crime charged and 2). a substantial step towards the completion of the crime that strongly corroborates that intent." The government in Google's case has failed showing he committed this element of the crime. In 18 U.S.C. 2422(b) cases courts look at United States v. Goetzke, 494 F.3d 1231(9th Cir. 2007) when addressing a substantial step. It states "When a defendant initiates conversation with a minor, describes the sexual acts that he would like to perform on the minor, and proposes a rendezvous to perform those acts, he has crossed the line toward enticing a minor to engage in unlawful sexual activity." This was not done in Google's case. In Google's discovery, when the government typed up some of these messages, you can see on document 53-1, page ID 61 where the government put (in October) at the end of a message. Like a lot of other messages, this was not something Google put in these communications. This was placed there to make it look like Google had a set time to meet this minor. To prove attempt "a court must assess how probable it would have been that the crime would have been committed-at least as perceived by the defendant-had intervening circumstances not occurred." United States v. Pratt, 351 F.3d 131, 135, 136(4th Cir. 2003). Pratt is used repeatedly in the fourt circuit under attempt crimes. In each conviction where this element is reviewed, the defendants have prior criminal activity and/or act in a course of conduct to prove beyond a reasonable doubt that without intervening circumstances, the crime would

have occurred." Appellate courts look at totality of defendant's conduct, both online and offline, when reviewing substantial steps. Also, in Pratt, it says 1). The defendant had the requisite intent to commit a crime. 2). The defendant took a direct act in a course of conduct planned to culminate in his commission of the crime. Viewing the totality of Google's conduct and course of conduct, there is no substantial step taken in Google's case and the lower courts have failed to address this. Google simply asks this Court to look at Google's course of conduct. He did not initiate these conversations. He did not steer these conversations to inappropriate paths. He backed out of the communication, on his own, many times. Google also repeatedly tried to steer the conversation back to an appropriate path when the agent pushed to go down a wrongful path. When the undercover agent tried to get Google to meet her in West Virginia, he declined and refrained from that topic altogether. Please look at Google's previous actions before this agent got involved and see the kind words A.M. said about Google during her FBI interview. Again, the lower courts have not addressed the substantial step. Defendant Google got caught up in these messages towards the end of these conversations. This agent was well trained to get Google to get on the path she wanted. Other than Google's actions with this agent, nothing shows, and never will show, that he has an interest in sex with minors or anything even close to that.

IV. The Court Should Grant Certiorari To Address Where Google Accepted A Guilty Plea Based Off Insufficient and Fabricated Evidence.

The Rule 11 Plea Colloquy took place and Google said yes to every question. Google was mentally drained at his plea. He had been driven and flown to numerous holding facilities in six different states before ever stepping into a court in West Virginia. Being away from family, being attacked and not being able to work on his case took its toll. Google was told by his counsel that the government would charge him with a superseding indictment if he did not plead guilty, not

explaining more. Google's counsel worked to schedule a guilty plea with the government before going over a plea with him. Google let the Court know that the prosecution told him in North Carolina that he could get under the mandatory minimum if he came to West Virginia. (see document 53-1, Page ID 76 and page ID 77). Google was only given thirty minutes during a recess to continue his guilty plea after finding out he could not get under a mandatory minimum. Google did not understand what it took to be guilty of 18 U.S.C. 2422(b) and was scared and confused in court. When the Honorable John T. Copenhaver, Jr asked Google what he did to be guilty, Google said "Basically, I sent explicit messages to a minor, basically." (See document 53-1, page ID 114). This does not make Google guilty of 18 U.S.C. 2422(b).

In the United States v. Engle, 676 F.3d 405(4th Cir. 2012) it states "the very nature of the underlying offense-persuading, inducing, or enticing engagement in unlawful sexual activity-necessarily contemplates oral or written communications as the principal if not the exclusive means of committing the offense..." quoting United States v. Rothenberg, 610 F.3d 621, 627(11th Cir. 2010). Therefore, "an individual evaluation by the fact finder of the defendant's intent as disclosed by his words or speech is necessary in [almost] every prosecution under 2422(b)" Engle @423. In Rothenberg, the government produced hundreds of printed computer chats, including his chats with the undercover agent. Engle's case had recorded telephone calls, letters and text messages presented. A question of exceptional importance was presented in Google's petition for rehearing in banc. It was asked if the fourth circuit makes these arguments and cites these cases when reviewing evidence, why does this not apply to Google's case? There has been no review of the communication with the undercover agent. The government has suppressed that communication. The FBI has the whole communication shown in screenshots with time stamps and showed a portion of this to Google in his interview the day he was

arrested. None of this was entered into discovery or shown to the Court. The district court continuously brought up the messages in the judgment order, but never saw the messages. The prosecution in Google's case focuses on true communication in other 2422(b) cases and uses this as their leading argument. This is simply ten to twelve pages of communication between Google and the undercover agent. In Court, Google thought by him just replying to this undercover agent's request, he was guilty, but Google knows now that isn't the case. If the lower Court is to follow Engle and Rothenberg and the fact finder did an individual review of the true text communication, the truth would come out.

Google worked diligently early on to get these messages. He wrote Instagram headquarters, but the mail was returned. He wrote the U.S. Attorney overseeing his case. He filed for FOIA requests and got the runaround, never once receiving the messages. How does a 2422(b) case not show the communication between defendant and the undercover agent? After learning and understanding his case, Google went above and beyond to get the screenshots of this communication sending copies of his work with numerous agencies and individuals, including phone logs where he called a number given to him by the FOIA/EOUSA office where no one ever answered the call.

The government in Google's case wrote up waivers to hide the evidence in Google's case. They added a Freedom of Information and Privacy Act waiver, holding Google back from ever getting the communication. The government also added an abandonment of property waiver stating they would keep Google's iPhone and destroy it. There is only one reason to add these waivers and that is to hide the truth. What is the rationale behind adding these waivers? This communication is short and would not be a burden on the government to produce it. The lower courts have not addressed these waivers. Even though it was never written in a response that Google could not get this critical evidence due to his FOIA/Privacy Act waiver, only ignoring requests, it has to be noticed the waivers were added for no reason

other than to hide the true story around Google's case. This is best explained in Price v. U.S. Department of Justice Attorney Office, 865 F.3d 676, 431 U.S. App. D.C. 329(D.C. Cir. 2017):

"Such waivers must serve a legitimate criminal-justice interest to be enforceable."

"In what way do FOIA waivers actually support efficient and effective prosecution?"

"FOIA plays a significant role in uncovering undisclosed Brady material and evidence of ineffective assistance of counsel."

"FOIA thus provides an important vehicle for vindicating significant rights and keeping prosecutors honest."

The fourth circuit states "reversal for insufficient evidence is reserved for the rare case when the prosecution's failure is clear." United States v. Ashley, 606, F.3d 135, 138(4th Cir. 2010). Adding these waivers and not adding the complete, time stamped screenshots to discovery proves that the prosecution's failure is clear. When the prosecution suppresses favorable evidence material to a defendant's guilt or punishment, it violates the constitutional guarantee of due process. See Brady v. Maryland, 373 U.S. 83, 87, 83 S. Ct. 1194, 10 L. Ed. 2d 215(1963). It's an injustice to suppress these messages in full then fabricate other information in discovery.

It appears the PSR and rule 11 plea colloquy are Google's biggest pitfalls in this whole process. All Google requested was the full true time stamped communication between himself and this undercover agent. Google sent mounds of work in early on to show he tried to get this evidence from many people. These messages tell the story of the case and without them, Google's lost everyone and everything around him.

It has to be looked at that Google was using his Instagram account, sean\_google, when communicating. This is the same account Google uses with his wife, kids, friends and community. In no way did Google have it set in his mind to speak to a minor, he and his family are friends with, on social media and have a goal of attempting to entice, induce, persuade or coerce her into engaging in sexual activity. This is not what is seen in 18 U.S.C. 2422(b) cases. Google has been around this minor for several years and nothing shows he acted inappropriately in any way. While these agents may be trained to catch child predators, they can also be trained to steer conversations and get someone to act in a way they never thought of acting. This agent steered the conversation and drove the conversation. A forensic examination was completed on all of Google's media and electronic devices. There is nothing the government has or will ever have that shows Google has an interest in sex with minors. Evidence in this case never presented will tell the true story of this case. There is no 18 U.S.C. 2422(b) case presented that does not show the full communication between the defendant and the minor/undercover agent. Towards the end of the communication, Google acted in a disgusting way and once that happened, that ended the communication.

In court, like many people, Google held back on many things because he felt pressured by his counsel and when he did speak up, the judge or counsel acted mad or frustrated. It's hard as a defendant sitting in court in front of a powerful judge to state his lawyer was ineffective or that you don't truly understand the elements of a crime. With an effective and good lawyer, Google would have had a much better outcome. The guilty plea and sentencing hearing should have went in a more truthful and fair way. Please see the total course of conduct and complete truth in this case.

CONCLUSION

Mr. Google respectfully requests that this Court issue a writ of certiorari.

Respectfully Submitted,  
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Certificate of Compliance

Timothy Sean Coogle

v.

United States of America

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari is under the maximum word count, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare that the foregoing is true and correct.

Executed on April 27, 2023.

Timothy Sean Coogle