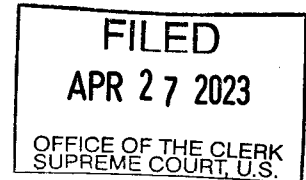


22-7620

NO.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



TIMOTHY SEAN COOGLE,
Petitioner.

v.

UNITED STATES OF AMERICA,
Respondent.

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

P.O. Box 2000

Fort Dix, N.J. 08640

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 Coogle, 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 judgment 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. Coogle and his family. Coogle'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, Coogle's neighbors, would get together and come to Coogle's house to hang out with Coogle's four kids. Coogle'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 Coogle's backyard. The kids would call Coogle out to even up the teams and play a few games with them as Coogle did with his kids often. After several games of basketball, the kids would run off and do other things between the two houses and Coogle would go back inside with his wife or do chores around the house. This was Mr. Coogle's involvement with A.M. each time she was around. This was the case for two or more years over twenty or more times. Coogle was never alone with A.M., never spoke to her alone or acted inappropriately at all. Anytime Mr. Coogle was around A.M., it was in group settings on a basketball court in Coogle'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. Coogle and his family had Instagram accounts. They posted and shared photos and videos amongst each other and to family and friends. Coogle's account was sean_coogle, his name. A.M. had an Instagram account and in August of 2017, she posted a photo of herself, her three cousins (Coogle's neighbors) and A.M.'s sisters. They were all at the beach holding hands. Coogle tapped the photo to give it a like so that everyone could see the like. Coogle later sent A.M. a message to let her know he liked the photo. Coogle 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, Coogle 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, Coogle 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 Coogle's Instagram activity for nearly a month. After seeing Coogle 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 Coogle a flirtatious message with a heart emoji. Coogle did not respond, but after a few more messages from the undercover agent, Coogle responded with comments surrounding Duke Blue Devil's basketball and LeBron James trade rumors, since basketball was the only conversations Coogle 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. Coogle worked to keep the conversation appropriate, trying to stay on the subjects of basketball and family. Several times Coogle 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 Coogle knew it was out of line. The agent would act mad and make statements regarding her anger. Not wanting A.M. to get mad, Coogle began replying to the undercover agent again, but kept the conversation appropriate. After many days, the agent began asking sexual questions. Coogle 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. Coogle to come and meet her in West Virginia. Coogle refused to meet the agent and worked to steer away from that discussion. Once the agent saw Coogle would not meet, the agent started to ask for photos or videos asking questions about showing her what Coogle would give her. Towards the end of these conversations, Coogle acted out of character and got lost in these conversations. Human nature is weak and Coogle 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 Coogle'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, Coogle 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. Coogle repeatedly trying to steer the conversation back to an appropriate path. These messages show Mr. Coogle's innocence when looking at a conviction under 18 U.S.C. 2422(b).

The Arrest

Mr. Coogle 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. Coogle'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 Coogle over and arrested him. Another agent jumped in Coogle's car and drove off with Coogle's, then, nine-year-old son. Coogle's daughter was brought home by a school resource officer and interrogated on the way home. Mr. Coogle was taken to his house where numerous government agents were in and out and a forensic examination van was examining all of Coogle's family devices and media. Coogle informed the agents that there was another laptop in his backpack in his car and they removed that also. Coogle was taken to his back yard where three FBI agents began an interview. Coogle 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 Coogle 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. Coogle let the agent know he had no problems answering questions. Coogle was asked if he was going to have sex with A.M. and Coogle said "never". Coogle 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. Coogle

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. Coogle also said he and his wife, with other adults, volunteered in their church's childrens ministry and had done this for over six years. Coogle told the agents to interview these places and they would see his involvement around minors. After the interview, Coogle was taken to jail in Winston Salem, North Carolina.

Coogle was given a federal public defender and spoke with him before his pre-trial detention hearing. The public defender saw entrapment in Coogle's case, just in the short time while speaking with Coogle. 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. Coogle was denied pre-trial detention and sent back to jail. While waiting in county jail, Coogle's family tried their best to get a lawyer for Coogle 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 Coogle 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 Coogle's case. Coogle 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. Coogle threw the contract in the trash and remained with a public defender. Coogle 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 Coogle would remain in North Carolina, an Assistant United States Attorney told the public defender that Coogle would have a better outcome in West Virginia and said if Coogle was found guilty, he could get under the mandatory

minimum. After hearing this, Coogle decided to go to West Virginia. After several weeks, Coogle was moved from Winston Salem, North Carolina to several other jails within the state. Coogle may be at these locations for a few hours or a few days. This made it nearly impossible for Coogle to speak to family and work with a lawyer. Coogle was moved to Piedmont County in Virginia and remained there a few weeks. Coogle was then moved to Raleigh, N.C. for several hours about to board a plane. After six hours of sitting on a van, Coogle was sent back to Virginia never boarding a plane. At this point, Coogle 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. Coogle's mother and wife on a daily basis, promising them continuous work on Coogle'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 Coogle anytime he wasn't in the state. Byers made Coogle's family feel confident in his representation for Coogle, so Coogle decided to deduct money from his kid's college savings and his retirement to pay Mr. Byers for his services. Coogle then got moved back to Raleigh, N.C. and boarded a plane to Atlanta, Georgia. Coogle was then flown to Oklahoma City. All these movements were done after Coogle decided to go to West Virginia, but these movements were done before Coogle 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 Coogle's mental health. Coogle 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, Coogle was flown to Kentucky, then sent to two other jails in W.V. before going to an arraignment hearing. Coogle 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, Coogle was sent back to another jail in W.V.. Mr.

Byers was never available to speak with Coogle and Coogle's family had a difficult time trying to locate him. Once Coogle's wife finally got ahold of him, Byers mentioned taking on a state murder case and stated he was very busy. Coogle tried to call Mr. Byers from the jail, but Byers' secretary told Coogle's family they did not take calls from the jail because they were recorded. Coogle 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.. Coogle 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 Coogle 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 Coogle and the agent were added to discovery. Byers brought up the video of Coogle and Coogle's responses to the agents questions as all it took to show Coogle 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. Coogle. When Byers traveled to W.V., he mentioned pleading guilty to the charges or the government would bring up a superseding indictment. Coogle 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 Coogle even more time in prison. Coogle was confused and eventually decided to plead guilty. There was never any interview or investigation done nor any work whatsoever on Coogle's case.

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

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

Guilty Plea

At the guilty plea hearing Coogle was asked many questions and replied yes to everyone of them. Coogle 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. Coogle and he pled guilty. During the plea colloquy, Coogle 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). Coogle 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 Coogle had to repeatedly ask him to repeat his questions. Judge Copenhaver thought Coogle lived in West Virginia and found it odd when he found out Coogle did not live in West Virginia. Coogle informed him he had never been to West Virginia. (see document 53-1, ID 114-115). Judge Copenhaver assumed Mr. Coogle's case started as a state case, but it was never a state case. During the guilty plea, Judge Copenhaver let Coogle know he would get at least ten years in prison. Coogle 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 Coogle brought this up and showed frustration in the recess. Coogle was giving 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, Coogle proceeded to accept the guilty plea with only a few minutes to decide on such a harsh punishment.

Sentencing

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

receive a copy of this and would be allowed to make objections once it was completed by the officer. Coogle received his copy of the pre sentence report a few days before sentencing, but objections were already made by Mr. Byers regarding enhancements. Coogle never got to make corrections or objections before sentencing. Coogle brought a list of corrections to sentencing and when Judge Copenhaver asked Coogle if the pre sentence report was correct, Coogle 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 Coogle to go over objections with Byers and local counsel. Coogle showed Byers the list to make objections, but this upset Byers and he stated that Coogle would get the twenty-three years recommended by the probation officer if Coogle was to make too many changes. Coogle 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 Coogle made as he now knows that the PSR is the most important document in this whole process. Like every other appearance in Court, Coogle held back the truth and spoke very little because it upset either the judge or counsel. Coogle 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).

Coogle'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 Coogle's wife. A.M.'s father spoke during the hearing and spoke eloquently about Coogle. They did not want this to happen and let Coogle's wife know the agent aggressively took over the account. They never got to hear the truth regarding Coogle'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 Coogle 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 Coogle'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 Coogle. 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 Coogle's family this before Coogle 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, Coogle'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. Coogle worked in the children's ministry for over six years and worked with many adults in class. Coogle 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 Coogle'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. Elfert 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 Coogle 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. Coogle 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 Coogle'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." Coogle was using his Instagram account, sean_coogle. This is Coogle's name. Coogle 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. Coogle sent a direct message saying he liked a family photo. They thought it was strange coming as a direct message. With no response, Coogle apologized and no longer sent any messages. The agent took over the account and watched Coogle's activity. Coogle 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 Coogle to act criminal. The agent worked to overcome Coogle's refusal to act out of line. She worked to get by Coogle's evasiveness and tried hard to get past his hesitancy. This undercover agent acted well past the point to induce Coogle into acting inappropriate. Coogle 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 Coogle'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.

Coogle 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 Coogle if he wanted to come to West Virginia to meet her and Coogle refused, ignoring that topic. The agent was pushing to get Coogle to take some sort of substantial step. Once she saw this not work, she pushed to get a photo or video of Coogle stating "Show me what you will give me." Eventually, Coogle 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 Coogle had with the agent. Coogle

acted out of line towards the end of these messages, but it wasn't his intent. Viewing Coogle's actions around A.M. the twenty plus times he was around her in a span of two years is how Coogle's character is. Any communication Coogle 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 Coogle never acted wrongful in any way around her during her FBI interview? Because that is Coogle's true character. Coogle was not predisposed to act criminal. Coogle 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 (Coogle's neighbors) and her two sisters. He apologized and no longer sent any messages.

The government said Coogle 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 Coogle had inappropriate messages with other minors before contacted by the undercover agent. They saw two short messages Coogle had on Instagram. One message was where Coogle asked about a photo of a cross country event. Another message was a reply from Coogle when asked about an inspirational quote. Coogle 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 Coogle was predisposed by touching a 2nd graders knee as a volunteer in church. Coogle 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 Coogle touched her knee. Coogle was asked about the incident by the church elders. Coogle 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.

Sting 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 fourth 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 Coogle's conduct and course of conduct, there is no substantial step taken in Coogle's case and the lower courts have failed to address this. Coogle simply asks this Court to look at Coogle'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. Coogle 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 Coogle to meet her in West Virginia, he declined and refrained from that topic altogether. Please look at Coogle's previous actions before this agent got involved and see the kind words A.M. said about Coogle during her FBI interview. Again, the lower courts have not addressed the substantial step. Defendant Coogle got caught up in these messages towards the end of these conversations. This agent was well trained to get Coogle to get on the path she wanted. Other than Coogle'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 Coogle Accepted A Guilty Plea Based Off Insufficient and Fabricated Evidence.

The Rule 11 Plea Colloquy took place and Coogle said yes to every question. Coogle 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. Coogle was told by his counsel that the government would charge him with a superseding indictment if he did not plead guilty, not

explaining more. Coogle's counsel worked to schedule a guilty plea with the government before going over a plea with him. Coogle 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). Coogle was only given thirty minutes during a recess to continue his guilty plea after finding out he could not get under a mandatory minimum. Coogle 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 Coogle what he did to be guilty, Coogle said "Basically, I sent explicit messages to a minor, basically." (See document 53-1, page ID 114). This does not make Coogle 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 Coogle'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 Coogle'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 Coogle 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 Coogle'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 Coogle and the undercover agent. In Court, Coogle thought by him just replying to this undercover agent's request, he was guilty, but Coogle 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.

Coogle 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, Coogle 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 Coogle's case wrote up waivers to hide the evidence in Coogle's case. They added a Freedom of Information and Privacy Act waiver, holding Coogle back from ever getting the communication. The government also added an abandonment of property waiver stating they would keep Coogle'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 Coogle 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 Coogles 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 Coogles biggest pitfalls in this whole process. All Coogles requested was the full true time stamped communication between himself and this undercover agent. Coogles 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, Coogles lost everyone and everything around him.

It has to be looked at that CoogLe was using hi's Instagram account, sean_coogLe, when communicating. This i's the same account CoogLe uses with hi's wife, kids, friends and community. In no way did CoogLe have i't set in hi's mind to speak to a minor, he and hi's 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 i's not what i's seen in 18 U.S.C. 2422(b) cases. CoogLe 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. Thi's agent steered the conversation and drove the conversation. A forensic examination was completed on all of CoogLe's media and electronic devices. There i's nothing the government has or will ever have that shows CoogLe has an interest in sex with minors. Evidence in thi's case never presented will tell the true story of thi's case. There i's 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, CoogLe acted in a disgusting way and once that happened, that ended the communication.

In court, like many people, CoogLe held back on many things because he felt pressured by hi's 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 hi's lawyer was ineffective or that you don't truly understand the elements of a crime. With an effective and good lawyer, CoogLe 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 thi's case.

CONCLUSION

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

Respectfully Submitted,
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Certificate of Compliance

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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 that the foregoing is true and correct.

Executed on April 27, 2023.

Timothy Sean Coogle