

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

UNITED STATES
Appellee

v.

Sergeant First Class (E-7)
CHRISTOPHER D. BELL
United States Army
Appellant

SUPPLEMENT TO PETITION FOR
GRANT OF REVIEW

Crim. App. Dkt. No. 20240432

USCA Dkt. No. 26-0261/AR

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TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

Issues Presented

**I. WHETHER SPECIFICATION 1 OF CHARGE I IS LEGALLY
SUFFICIENT WHERE APPELLANT’S CONDUCT
AMOUNTED TO MERE PREPARATION.**

**II. WHETHER APPELLANT WAS ENTRAPPED AS A
MATTER OF LAW WHERE THE GOVERNMENT INDUCED
THE OFFENSE THROUGH REPEATED PRESSURE IN
VIOLATION OF LAW ENFORCEMENT GUIDELINES AND
FAILED TO PROVE PREDISPOSITION BEYOND A
REASONABLE DOUBT.**

Statement of Statutory Jurisdiction

The Army Court of Criminal Appeals (Army Court) had jurisdiction over this matter pursuant to Article 66, Uniform Code of Military Justice [hereinafter UCMJ], 10 U.S.C. § 866. This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867 (a)(3).

Statement of the Case

On July 31, 2024, an enlisted panel sitting as a general court-martial convicted Appellant, Sergeant First Class Christopher D. Bell, contrary to his pleas, of one specification of attempted sexual assault of a child and two specifications of attempted sexual abuse of a child in violation of Article 80, Uniform Code of Military Justice, 10 U.S.C. § 880 (2019) [UCMJ]. (R. at 434; Statement of Trial Results (STR)). The next day, the military judge sentenced Appellant to a reduction to the grade of E-1, twenty-four months confinement, and a Dishonorable Discharge. (R. at 509).

On September 4, 2024, the convening authority deferred and further waived automatic forfeitures. (Convening Authority Action). On November 17, 2024, the military judge entered judgment and subsequently entered a modified judgement. (Modified Judgment of the Court). On June 12, 2026, the Army Court affirmed the findings and sentence in Appellant's court-martial. *United States v. Bell*, ARMY 20240432, 2026 CCA LEXIS 285 (Army Ct. Crim. App. June 12, 2026).

Appellant was notified of the Army Court's decision. In accordance with Rule 19 of this Court's Rules of Practice and Procedure, on August 11, 2026, the undersigned appellate defense counsel filed a Petition for Grant of Review, while seeking leave to file the Supplement to the Petition for Grant of Review separately. This court granted appellate defense counsel's motion, granting until September 1,

2026 to file the Supplement. The undersigned counsel hereby file the Supplement to the Petition for Grant of Review under Rule 21.

Reasons to Grant Review

This Court should grant review to preserve a meaningful boundary between mere preparation and criminal attempt in digital undercover operations. That line is especially important when the government originates the criminal design and draws an otherwise un-predisposed person toward its commission.

That is what occurred here. Government agents created “Emma” on an adult dating application using the photograph of an actual twenty-two-year-old woman and initially represented her as thirty-three. The Government later introduced the premise that “Emma” was a minor and controlled the progression of the encounter. When the conversation stalled, the government provided the spur to continue it. Despite its efforts, Appellant never moved from talk to action.

The Army Court nevertheless summarily affirmed the findings and sentence, leaving an improper finding of attempted sexual assault of a child standing. Its decision conflicts with federal circuit authority, and this Court’s reliance on that authority, recognizing that sexually explicit conversations and discussions of a possible encounter without concrete arrangements to carry it out fall short of the conduct needed for an attempt.

Review is warranted to resolve this conflict under internal Rule 21(b)(5) and to distinguish legitimate undercover investigation from government conduct that manufactures the very criminality it purports to uncover.

Statement of Facts

A. The Government’s Decoy, “Emma,” is Thirty-Three and an Adult.

In August 2022, Appellant came across the profile of “Emma” on an adult dating application called “Whisper.” (R. at 215-16). Emma’s profile indicated she was thirty to thirty-five years old. (R. at 218). In reality, “Emma” was Detective John Surina, an agent with the Maui Police Department involved in Operation Keiki Shield. (R. at 213).

“Joint Operation Keiki Shield 13” was an online operation conducted at Joint Base Pearl-Harbor Hickam aimed at uncovering sex crimes against children. (R. at 213-14). As detectives would later discover upon examining Appellant’s phone, Appellant never engaged in chats with minors and did not possess any child sexual abuse material. (R. at 290).

To create Emma’s profile, Detective Surina used images of a twenty-two-year-old Coast Guard Reinforcement Specialist, E.K. (R. at 221, 250). Detective Surina chose to list Emma as an adult female and selected her age as thirty to thirty-five because that range was most popular with Whisper’s users. (R. at 218).

Appellant messaged Emma via Whisper at 6:46 a.m. on August 26, 2022. (Pros. Ex. 5). She responded around 10:30 a.m. (Pros. Ex. 5). That night, “Emma” sent Appellant a picture of an adult woman—E.K. (Pros Ex. 5). She then suggested they move their conversation to text messages. (Pros. Ex. 5).

Appellant and Emma continued their conversation over text. (Pros. Ex. 14). Before Emma revealed her “true” age, Appellant told her he thought she was “beautiful” and correctly surmised she looked “22 [years old].” (Pros. Ex. 14). Around 7 p.m., Emma claimed she was 14 years old. (Pros. Ex. 14). At the time, the relevant Criminal Investigative Division (CID) regulation required undercover internet investigators to immediately disclose the age of investigative personas. (R. at 349).

B. Talk of Meeting Never Becomes a Plan.

Emma told Appellant she was visiting a cousin at Joint Base Pearl Harbor-Hickam. (R. at 410). She and Appellant discussed what they were doing that night, what they enjoyed doing, and potentially seeing each other. (Pros Ex. 14). Despite not having any arrangements to meet, Appellant told Emma he was at Joint Base Pearl Harbor-Hickam Harbor. (Pros Ex. 14). Emma responded, “Whaaaaa??” (Pros. Ex. 14).

Yet, the Defense Biometrics Identification System (DBIDS) had no record of Appellant entering the base, even with a 100% ID check. (R. at 361). Despite

Detective Surina employing a surveillance team to look for Appellant on Joint Base Pearl Harbor-Hickam, Appellant was not apprehended. (R. at 261).

At trial, a panel member asked the Digital Forensic Examiner (DFE) whether there were time stamps for completed travel both to and from Pearl Harbor. (AE XXVIII). The DFE explained, “There was no indication that the travel actually occurred based on those. Those are just the searches for that . . . the data wasn’t there.” (R. at 296). Waze navigation only pulls the latitude and longitude for the search location and does not track an actual location or movement. (R. at 290-91). Similarly, a prosecution exhibit purporting to show a picture Appellant took while on Pearl Harbor did not include a time stamp of when the photo was actually taken. (R. at 296-97).

C. Appellant Pulls Away and “Emma” Re-engages.

Appellant’s conversation with Emma did not turn sexual until Emma expressed a fear of the interaction entering “the friend zone.” (R. at 261; Pros. Ex. 14). She then engaged with Appellant in a sexual way, asking: “what are you planning to do with me.” (R. at 346). When Appellant told Emma he did not send “spicy” photos unless invited to do so, Emma responded “I mean you’re hot AF so whatevs.”

Special Agent Robert Arcand testified that “encouraging” grooming behaviors was not allowed as common practice or industry standard for these types

of operations. (R. at 355). If he was the “chatter,” or the decoy, he would have provided the individual opportunities to either stop or back off, through statements such as, “No, I can’t do that. If you- if you cannot respect that, just-you can leave.” (R. at 344).

In training for Internet Crimes Against Children (ICAC) standards, agents are instructed to give subjects “off-ramps,” or “opportunities to walk away and not continue to communicate.” (R. at 343). Special Agent Arcand acknowledged, “there was significantly less communication back and forth” on the second day of communication between Appellant and Emma. (R. at 341). On the third day, it was “minimal.” (R. at 342). When Appellant did not respond for approximately an hour and a half, Emma asked, “You flaking on me?” with a sad face emoji. (Pros. Ex. 14).

Issues Presented

I. WHETHER SPECIFICATION 1 OF CHARGE I IS LEGALLY SUFFICIENT WHERE APPELLANT’S CONDUCT AMOUNTED TO MERE PREPARATION

Standard of Review

This court reviews legal sufficiency *de novo*. *United States v. Csiti*, 85 M.J. 414, 419 (C.A.A.F. 2025). Evidence is legally sufficient only if, viewing the evidence in the light most favorable to the Government and drawing every

reasonable inference in its favor, any rational factfinder could have found all essential elements beyond a reasonable doubt. *Id.*

Law

An attempt requires more than criminal intent or preparatory conduct. The accused must take an overt act that directly tends to accomplish the offense and goes beyond mere preparation. *See* Article 80, UCMJ. That substantial step must “unequivocally demonstrat[e] that the crime will take place unless interrupted by independent circumstances.” *United States v. Winckelmann*, 70 M.J. 403, 407 (C.A.A.F. 2011) (internal citations omitted) (quoting *United States v. Goetzke*, 494 F.3d 1231, 1237 (9th Cir. 2007)).

Speech directed at a minor is insufficient to prove a substantial step. “Treating speech (even obscene speech) as the ‘substantial step’ . . . would abolish any requirement of a substantial step.” *Id.* at 407-08 (citing *United States v. Gladish*, 536 F.3d 646, 650 (7th Cir. 2008)). The requirement exists precisely to distinguish a person who talks about committing an offense from one who has actually begun to carry it out. *Gladish*, 536 F.3d at 650 (“if X says to Y, ‘I’m planning to rob a bank,’ X [would] commit[] the crime of attempted bank robbery, even though X says such things often and never acts. The requirement of proving a substantial step serves to distinguish people who pose real threats from those who are all hot air.”).

That distinction is particularly important when the alleged attempt rests on an online conversation. Even an unmistakable proposal for sex does not, standing alone, constitute a substantial step. *See id.* at 649. Rather, courts look for conduct translating the conversation into action, such as agreeing on a time and place for a meeting. *Id.* This requirement for “arrangements to meet” at a scheduled time and place even applies when an accused sends lurid photos. *United States v. Yost*, 479 F.3d 815, 918 (11th Cir. 2007).

Argument

To convict Appellant of Attempted Sexual Assault of a Child, the government had to prove beyond a reasonable doubt that Appellant did a certain overt act, that is, *drove to Joint Base Pearl Harbor Hickam*. (emphasis added). (App. Ex. XXXI). It did not.

The government produced no evidence placing Appellant on Pearl Harbor-Hickam. There was no record of him entering or leaving the base, and his navigation application did not track him there. At most, it showed that he searched for directions to the installation. Although Appellant had a picture of the base, the DFE could only trace the picture to the time the message was sent, not to when the picture was taken. The evidence cannot prove beyond a reasonable doubt that the charged overt act occurred.

Even assuming Appellant drove to Pearl Harbor-Hickam, the government still failed to prove an attempt. Travel constitutes a substantial step only when it ‘unequivocally demonstrat[es] that the crime will take place unless interrupted by independent circumstances.’” *Winckelmann*, 70 M.J. at 407. Appellant and Emma talked throughout the day and discussed, in general terms, getting together and what they might do. But they never settled on a time or place to meet. Emma never provided an address. And tellingly, Emma was clearly surprised when Appellant later announced he was at “Pearl.” Had their conversation produced even a loose arrangement to meet, Emma would have expected his arrival and Detective Surina’s investigative team would have been prepared to apprehend Appellant. Instead, no one knew he would purportedly travel there because nothing in the conversation indicated he would.

That distinction matters. *Gladish* recognizes that someone can be “all hot air.” Such is the case here. Appellant’s conversations may demonstrate talk, even sexually explicit talk, but they never crystallized into a concrete plan. Speech alone is not a substantial step, and the conversation lacked the arrangements that could transform words into action. His statement that he had contemplated sexual activity came after he claimed to have already driven to and returned from Pearl Harbor-Hickam. (Pros. Ex. 14). At the time of the alleged overt act, there was no agreed sexual encounter toward which his travel could have been directed.

Appellant instead told Emma they could do, “whatever you want, beach by you sounds good to me.” (Pros. Ex. 14).

The government therefore failed to prove the overt act. Even assuming the act occurred, the government still failed to prove a substantial step toward the charged offense. Appellant’s alleged travel was untethered to any agreed time, place, or sexual activity. It was not an act unequivocally demonstrating that the charged crime would occur. Instead, assuming *arguendo* it happened, it was travel in search of a plan that did not exist.

II. WHETHER APPELLANT WAS ENTRAPPED AS A MATTER OF LAW WHERE THE GOVERNMENT INDUCED THE OFFENSE THROUGH REPEATED PRESSURE IN VIOLATION OF LAW ENFORCEMENT GUIDELINES AND FAILED TO PROVE PREDISPOSITION BEYOND A REASONABLE DOUBT.

Standard of Review

Appellant adopts the legal sufficiency standard of review outlined in Issue I.

Law

Entrapment is an affirmative defense. *See* Rule for Courts-Martial [R.C.M.] 916(g). The defense is raised when the accused presents some evidence that a government agent originated the suggestion to commit an offense. *United States v. Hall*, 56 M.J. 432, 436 (C.A.A.F. 2002); *United States v. Howell*, 36 M.J. 354, 360 (C.M.A. 1993).

Once the defense is raised, the burden shifts to the government to prove beyond a reasonable doubt (1) the criminal design did not originate with the government; or (2) the accused had a predisposition to commit the offense prior to first being approached by government agents. *United States v. Vanzandt*, 14 M.J. 332, 342-43 (C.M.A. 1982).

Agents may employ undercover techniques and afford an accused an opportunity to violate the law, but they may not implant a criminal design in an innocent person's mind and then induce its commission. *Sorrells v. United States*, 287 U.S. 435, 442 (1932). Government induction includes "pressure" or "persuasion" by government agents. *Howell*, 36 M.J. at 359.

Argument

The government failed to prove beyond a reasonable doubt that Appellant was not entrapped. The original suggestion to commit the charged offenses originated with the government and Appellant was not predisposed to commit the offenses.

While the government may use undercover agents to enforce the law, those agents are required to follow certain protocols. In the context of Operation Keiki Shield, the ICAC standards and internal training control how the operation is executed. (R. at 340). The agents' actions in this case deviated from the standards

in two critical ways: they did not immediately disclose their purported age, and they reengaged with Appellant to encourage sexual conversation. (R. at 343, 349).

Appellant did not seek out a conversation with a minor. Appellant discovered Emma on Whisper, an adult dating application. He had no reason to believe he would come across a minor because, as Detective Surina testified, the application didn't allow users under 18 years old. (R. at 218). When Appellant saw Emma's profile, he was drawn to a woman who purported to be thirty-three years old but was in fact twenty-two. (R. at 218). The picture "Emma" sent to Appellant reinforced his understanding that she was an older, developed woman. (Def. Ex. I). Indeed, Detective Surina chose Specialist E.K. as his decoy precisely because an adult woman in the thirty- to thirty-five-year-old age range was most popular with male users. (R. at 318). Put differently, he chose *not* to use pictures of an actual 14-year-old because he knew an underdeveloped female would not interest Appellant.¹

Appellant was not predisposed to engage sexually with minors. Agents did not find any evidence of child sexual abuse material on Appellant's phone, or any other conversations with minors. His sexual interest in Emma arose *before* she

¹ This begs the question: did Appellant believe "Emma" was a child who had attained the age of 12 years but had not attained the age of 16 years, as alleged, when he was in fact interacting with the profile of a twenty-two-year-old and her pictures would have a reasonable person believe she was twenty-two? Appellant raises this issue pursuant to *United States v. Grostefon*. (Appendix B).

claimed to be fourteen, when every indication suggested she was an adult.

Appellant initially told Emma she was “beautiful” and, notably, correctly surmised she “look[ed] 22.” Predisposition must exist before the government first approaches the accused. The government therefore cannot establish preexisting predisposition merely by pointing to Appellant’s conduct after its agent introduced the underage premise.

The Government introduced Appellant to the notion of “Emma” and, when his interest flagged, they drew him back in with additional inducements. (R. at 341-42). And even after all that, Appellant never sought to meet up with “Emma.” Appellant and Emma were initially flirtatious, but not sexual. (R. at 347). Emma changed the nature of their interactions, asking if Appellant was going to “friendzone” her. (R. at 347-48). When Appellant stopped responding, Emma asked if he was “flaking” her. (R. at 342-43). Rather than simply presenting an opportunity and allowing Appellant to pursue it or walk away, the government kept the encounter going.

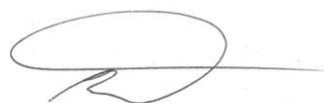
The government originated the criminal design and failed to prove Appellant was predisposed to commit it. It therefore failed to disprove entrapment beyond a reasonable doubt.

Conclusion

This Court should grant Appellant's petition to clarify the limits of permissible government inducement and determine whether Appellant's conduct crossed the line from preparation to attempt.



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CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of United States v. Bell, Crim App. Dkt. No. 20240432, USCA Dkt. 26-0261/AR was electronically with the Court and Government Appellate Division on September 1, 2026.

A handwritten signature in black ink, appearing to read "Michelle L.W. Surratt". The signature is fluid and cursive, with the first name "Michelle" being the most prominent part.

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APPENDIX A

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
MORRIS, JUETTEN, and SCHLACK
Appellate Military Judges

UNITED STATES, Appellee
v.
Sergeant First Class CHRISTOPHER D. BELL
United States Army, Appellant

ARMY 20240432

Headquarters, 8th Theater Sustainment Command
Rebecca L. Farrell, Military Judge
Lieutenant Colonel Christofer T. Franca, Staff Judge Advocate

For Appellant: Robert Feldmeier, Esquire (on brief and reply brief).

For Appellee: Colonel Richard E. Gorini, JA; Major Stephen L. Harmel, JA; Major Captain Andre T. Bobowski, JA; Kathryn M. Moryl, JA (on brief).

12 June 2026

DECISION

Per Curiam:

On consideration of the entire record, including consideration of the issues personally specified by the appellant, we hold the findings of guilty and the sentence, as entered in the Judgment, correct in law and fact. Accordingly, those findings of guilty and the sentence are **AFFIRMED**.*

* The Judgment of the Court, dated 17 September 2024, is corrected to reflect an "ACCA Case Number" of "20240432." Additionally, the Judgment of the Court is corrected to reflect that the convening authority deferred automatic forfeitures from 16 August 2024 until the date of Entry of Judgment and further waived automatic forfeiture of pay and allowances required under Article 58b, UCMJ, beginning on the date of Entry of Judgment for a period of six months, until the appellant's release from confinement, or his expiration of his term of service (ETS) date, whichever is earlier, and directed the disbursement of the waived forfeitures to the legal guardian for appellant's dependent.

BELL – ARMY 20240432

FOR THE COURT:


JAMES W. HERRING, JR.
Clerk of Court

APPENDIX B

Appendix B: Matters Submitted Pursuant to *United States v. Grostefon*

Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), the appellant, through appellate defense counsel, personally requests that this court consider the following matters:

I. WHETHER SPECIFICATION 1 OF CHARGE I IS LEGALLY SUFFICIENT WHERE THE GOVERNMENT FAILED TO PROVE APPELLANT BELIEVED “EMMA” WAS A CHILD WHO HAD ATTAINED THE AGE OF 12 YEARS BUT HAD NOT ATTAINED THE AGE OF 16 YEARS.