IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES Appellee v. Sergeant (E-5) **SHELTON R. KEITH,** United States Army Appellant	SUPPLEMENT TO PETITION FOR GRANT OF REVIEW Crim. App. Dkt. No. 20230621 USCA Dkt. No. 26-0148/AR

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Issue Presented

WHETHER THE GOVERNMENT ENTRAPPED APPELLANT?

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 [UCMJ], 10 U.S.C. § 866 (2022). This Honorable Court has jurisdiction over this matter under Article 67(a)(3), UCMJ, 10 U.S.C. § 867 (a)(3) (2021).[1]

Statement of the Case

On December 6, 2023, an enlisted panel sitting as a general court-martial convicted appellant, Sergeant (SGT) Shelton R. Keith, contrary to his plea, of one charge and specification of attempted sexual abuse of a child involving indecent language. (R. at 680; Charge Sheet). Later that same day, the military judge sentenced appellant to be reduced to the grade of E-1, to be confined for 18 months, and to be discharged from the service with a dishonorable discharge. (R. at 722).

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[1] Pursuant to *United States v. Grostefon*, 12 M.J. 431 (C.M.A. 1982), appellant respectfully requests this Court consider the issues submitted in Appendix B.

On January 13, 2026, the Army Court of Criminal Appeals rendered its decision, affirming the findings and sentence. (Appendix A).

Statement of Facts

1. Special Agent RR targeted and contacted appellant on an online dating application specifically for adults.

In January 2023, Homeland Security Investigations [HSI], Honolulu Police Department [HPD], and Army Criminal Investigations Division [CID] conducted Operation Keiki Shield [OKS] 15. (R. at 321). OKS 15 was a proactive undercover operation where law enforcement created fake profiles on an adult (18 and over) polyamorous dating website, called 3Fun, with the intent of matching with individuals.[2] (R. at 322). Special Agent [SA] RR worked as an undercover "chatter" for this operation. (R. 321). This was SA RR's first time acting as the undercover chatter after she attended the Internet Crimes Against Children [ICAC] Task Force Undercover Concepts and Techniques Course [Chatter's Course] in December 2022. (R. 320-21).

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[2] According to the "About Us" section of the 3Fun website, it is marketed as "The leading online dating app for couples and singles looking to connect with like-minded people with similar desires. 3Fun was founded in 2015…for couples and singles to explore any type of relationship, desire, free from the judgment and often negative reactions of traditionally single-only dating apps." (https://www.go3fun.co/about_us.html).

SA RR created a fake persona on 3Fun named "Nikki," a 22-year-old single, female. (Pros. Ex. 1; R. at 322, 325). SA RR's profile affirmatively indicated she was over "18." (Id.).

Between January 20-22, 2023, SA RR found appellant's 3Fun profile wherein he described himself as "Him, 29, single male," in Pearl City, HI, and "hearted" his profile to match with appellant. (Pros. Ex. 3; R. at 326). The profile did not convey anything to indicate appellant had the intent to sexually abuse children. (Pros. Ex. 3). Nevertheless, SA RR initiated the contact with appellant in order to "match" with him. (R. at 326).

2. Special Agent RR and Officer TE re-initiated the chat after appellant ended the conversation multiple times.

Throughout the course of the chat, appellant attempted to end the conversation multiple times, while continually trying to vet SA RR. (Pros. Ex. 5). Before sending any of the charged messages, appellant explicitly tried to end the conversation, stating "You playing games man…bye." (Pros. Ex. 5, p. 10). He then went a step further and told SA RR, "Lose my number." (Id.). SA RR responded, "it's still not loading, my phone sucks, not my fault the link isn't working." (Id.). Appellant, still unsure who he was speaking with, ended the conversation abruptly by saying "You didn't even send me a video I asked for (*referring to his request for a video to prove SA RR was real*)…don't answer

phone when I call. Yea I'm good." (Id.). Being abundantly clear, appellant then immediately said "You sketchy. So bye." (Id.).

After almost four hours of incessant texting, appellant clearly ended the conversation. (Pros. Ex. 5, p. 1-10). Most of the messages back and forth were almost instantaneous, occasionally with a couple minute response time between messages; however, there was over a ten-minute pause prior to Officer TE (HPD) reaching out to appellant by phone twice. (Pros. Ex. 5, p. 10). The first phone call lasted only 16 seconds, and appellant simply stated hello and then ended the call. (Id.). The second phone call lasted 5 minutes and 14 seconds, wherein Officer TE stated, "I can probably sneak away" and "I don't have a lot of experience with guys," to imply the idea of having sex, as she admitted at trial. (Pros. Ex. 5, p. 10; R. at 440-41).

Appellant called an expert witness, Mr. Littrell, who previously worked in law enforcement, held post-graduate degrees related to criminal justice, and worked with ICAC operations for over seven years. (R. at 551-52). When asked whether he believed SA RR violated the ICAC standards by their communications with appellant, he stated "I do…. The most glaring violation is the phone call we have been talking about…because for the 3 minutes preceding that phone conversation, Sergeant Keith said goodbye in some fashion and even explicitly

bye." (R. at 578). (emphasis added). This violated the ICAC standards by failing to allow the target to control the conversation. (Id. at 575). When followed correctly, this means, when the target ends the conversation, law enforcement should "walk away." (Id.). Appellant had a "clean disengagement from the conversation," "was very clear what he means by that," and "in a 3-minute span, he says bye essentially three times." (R. at 585-86). The conversation was unequivocally over, until law enforcement re-initiated. (Pros. Ex. 5).

Finally, when asked whether SA RR and Officer TE's actions violated the ICAC standards, which are designed to avoid entrapment, Mr. Littrell stated in the affirmative:

> Yes…that phone call which prompted the rest of the charged communications is really what put it over the edge with the suggestion of meeting and then the suggestion of sex. And the forcefulness of the conversation was directed at trying to get Sergeant Keith to say more than what he had said or what he was saying about just asking her questions about sex. (R. at 589-90).

3. Special Agent RR and Officer TE controlled the conversation in order to extract the charged messages.

From the very beginning of the conversation, SA RR led appellant by putting pressure on him, as a target, to determine what was going on with the conversation, by saying "I don't want to waste my time." (Pros. Ex. 5, p. 1; R. at 578). This was before SA RR even disclosed the age of the fake persona to

appellant. (Id.). Again, SA RR pressured appellant by stating "Not going to lie. I feel like you're just wasting my time." (Pros. Ex. 5, p. 8; R. at 583-84). Appellant responded that he was not wasting her time and said, "You never told me what you looking for or want from me?" (Id.). Again, SA RR prompted appellant to start thinking about sex and insinuated sex by saying statements like, "I'm just looking to have some fun." (Id.). Appellant contended he was not wasting her time. (Id.).

Again, SA RR applied more pressure on appellant, saying "seems like it (with an eye roll emoji)." (Id.). Appellant asked what she wanted him to do so he was "not wasting [her] time." (Pros. Ex. 5, p. 8; R. at 584). SA RR again insinuated sex, this time with a smiling devil-face emoji with horns. (Id.). Appellant responded with two question marks and asked her to use her words. (Id.) Yet again, SA RA insinuated sex; "You know what app I was on." (Id.). Appellant, at this point, disengaged and unequivocally ended the conversation. However, rather than "walk away" as called for by ICAC protocols, Officer TE reengaged by phone and insinuated sex, as previously stated. (Pros. Ex. 5, p. 10; R. at 440-41).

Once the phone call ended, the chats with SA RR started back up and she prompted all the charged text messages with encouraging questions or statements. (Pros. Ex. 5, p. 10-15).

All the allegedly indecent messages were provoked or prompted by SA RR. (Id.). As Mr. Littrell stated, "the forcefulness of the conversation was directed at trying to get Sergeant Keith to say more than what he had said or what he was saying about just asking her questions about sex. (R. at 589-90).

4. Special Agent RR connected with appellant again in OKS 20 but ended the conversation upon appellant's request.

SA RR was also part of OKS 20, which occurred at the beginning of November 2023, 11 months after OKS 15. (R. at 707). Once again, her role in OKS 20 was an undercover chatter, but this time she created a profile on the 3Fun application for a persona called "Abby," a 31-year-old female. (Id.). Once again, SA RR ("Abby") connected with appellant on 3Fun and exchanged phone numbers to chat. (R. at 707-08). In this chat, it began similarly to the previous chat but ended very differently – upon being told that "Abby" was 15 years old, appellant stated, "Too old for you, please delete my number." (Def. Ex. H). However, in reply, SA RR stated "Oh..okay sorry! Didn't mean to make u mad." (Id.). The conversation ended, and no further discussion took place. Appellant received no phone calls from "Abby" to re-initiate the conversation. Appellant was not asked anything sexual in nature. Appellant did not receive any insinuating text message with sexual remarks or innuendos. The conversation ceased, in accordance with ICAC standards.

Reason to Grant the Petition

The requisite intent to commit attempted sexual abuse of a child did not exist in appellant and was implanted by the undercover agents. He was entrapped. When reviewing this question of law, the Army Court departed from the accepted and usual course of judicial proceedings for this type of case, and it warrants this Court's review.

The Army Court's silence manifested that its review was flawed. A reasonable review of this case and application of the law would show the judicial proceedings should have resulted in legal insufficiency. As the agents conducted their undercover operation, Sergeant Keith did not discuss sex until prompted by the agents. Not only did Sergeant Keith not discuss sex until prompted, he ended the conversation several times, but each time the undercover agents pulled him back into the conversation. The most egregious error by the government agents was when Sergeant Keith said "lose my number…you sketchy…so bye," unequivocally ended the call; but, in an act of desperation, the government agents reached out to call Sergeant Keith by phone – twice. All the charged language began after these phone calls. All of which the government prompted and implanted any predisposition to commit misconduct by a person who otherwise

ended the conversation. The government drew in Sergeant Keith when he attempted to walk away and entrapped him to commit the charged offense.

WHETHER THE GOVERNMENT ENTRAPPED APPELLANT?

Standard of Review

The test for legal sufficiency is "whether, considering the evidence in the light most favorable to the prosecution, a reasonable factfinder could have found all the essential elements beyond a reasonable doubt." *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987).

Law

While the government may investigate criminal activity through the use of undercover agents who merely provide an offender with an opportunity to commit an offense, it may not originate a criminal design and then induce commission of the crime. *Jacobson v. United States*, 503 U.S. 540, 548 (1992).

"[A] valid entrapment defense has two related elements: government inducement of the crime, and a lack of predisposition on the part of the defendant to engage in criminal conduct." *Mathews v. United States*, 485 U.S. 58, 63 (1988); *See* R.C.M. 916(g).

The defense has the initial burden to show some evidence that a government agent originated the suggestion to commit the crime. *United States v. Whittle*, 34

M.J. 206, 208 (C.M.A. 1992); *United States v. Howell*, 36 M.J. 354, 359 (C.A.A.F 1993); Dep't of the Army Pamphlet 27-9, para. 5-6, note 1. Once met, the burden shifts to the government to prove beyond a reasonable doubt that the criminal design did not originate with the government or that the accused had a predisposition to commit the offense "prior to first being approached by government agents." *Jacobson v. United States*, 503 U.S. 540, 549 (1992); *United States v. Vandzandt*, 14 M.J. 332, 342-43 (C.M.A. 1982).

Predisposition is an accused's inclination or willingness to engage in criminal activity. *United States v. Kemp*, 42 M.J. 839, 845 (N.M. Ct. Crim. App. 1995). Whether an accused is predisposed to commit a crime is determined by the totality of the circumstances, being the accused's character, background, and state of mind. *Id.* at 845-46.

Argument

The government entrapped appellant to attempt to sexually abuse a child. (Pros. Ex. 5; R. at 575, 578, 585-86). On multiple occasions, SA RR and Officer TE introduced the criminal design. (Pros. Ex. 5). First, SA RR consistently insinuated sex and pressured appellant to discuss sex, while appellant was still trying to figure out who exactly she was. (Id.). Second, Officer TE reached out after appellant unequivocally ended the conversation multiple times, when she

called him twice to restart the conversation in violation of ICAC standards. (Pros. Ex. 5; R. at 575, 578, 585-86). Finally, SA RR forcefully and continuously led appellant to discuss sex by prompting and implanting all the charged statements to be made by appellant. (Pros. Ex. 5). The government did not present any valid evidence to show appellant's predisposition to have the intent to sexually arouse the desires of any person, let alone a child. Discussing the nature of the website, attempting to figure out who one is speaking with, and answering questions posed by law enforcement does not amount to meeting the elements of the charged offense – it amounts to entrapment, since the law enforcement agents implanted the criminal design and attempted to create an intent to arouse the sexual desire or any person, when it truly did not exist. All of appellant's responses were generated due to her alluding to certain sexual things, implanted by posing questions from law enforcement. (Id).

1. The government originated the criminal design and induced appellant to commit the crime.

Appellant ended the conversation and attempted to walk away several times, but the government kept trying to implant the criminal design in appellant's mind. (Pros. Ex. 5; R. at 440-41, 589-90). SA RR and Officer TE are the ones who explicitly violated their standards of practice, the same standards which are in place to avoid entrapment. (Pros. Ex. 5; R. at 575, 578, 585-86, 589-90). They

repeatedly reached out to appellant, after he unequivocally ended the conversation. (Id.). They prompted appellant's responses by insinuating sex, questions to lead the appellant to sex, and by constant pressure to engage and asking for advice or instruction on matters of sexually-related activities. (Pros. Ex. 5). Even if appellant was ever alluding to sex, he had not mentioned any statement that showed intent to arouse the sexual desire of any person, prior to SA RR's constant luring. (Id.).

Appellant did not accept SA RR's attempts to get him to discuss sex. In the messages exchanged prior to the phone calls, appellant was primarily focused on figuring out who SA RR was. (Pros. Ex. 5, p. 8; R. at 583-84). He requested a video to confirm she was a real person. (Pros. Ex. 5, p. 2-4). SA RR would not comply and kept insinuating sex and that he "knew what the website was for" and that "she had friends that liked to use it." (Pros. Ex. 5, p. 1-5). Upon SA RR's failure to meet his request, appellant explicitly stated that she was "sketchy," told her to "lose his number," and ended the conversation. (Pros. Ex. 5, p. 10). That did not stop law enforcement, when most egregiously, Officer TE reached out by phone to lure appellant back and reinitiate the conversation. (Id.).

Once Officer TE lured appellant back in, SA RR forcefully took over the conversation and "turned the heat up" to get him to discuss sex. (Pros. Ex. 5, p.

10-14). The conversation was over – done. Law enforcement reached out to implant the criminal design. Prior to this phone call, where the government implanted the criminal design, there was no intent to arouse the sexual desire of any person or text SA RR any of the charged messages. (Pros. Ex. 5; R. at 575, 578, 585-86, 589-90). It all occurred after law enforcement pushed and led appellant to the criminal design. (Id.). As in *Jacobson*, the burden shifts to the government to prove beyond a reasonable doubt that the criminal design did not originate with the government or that the accused had a predisposition to commit the offense "prior to first being approached by government agents." 503 U.S. 540, 549. Here, that predisposition did not exist until after the phone call, all of which was prompted by SA RR and Officer TE. (Id.).

SA RR was inexperienced, on her first OKS operation, and did not know when to stop. (Pros. Ex. 5; R. at 320-21, 575, 578, 585-86, 589-90). She blurred the lines and entrapped appellant when she forcefully lured him to the crime. (Pros. Ex. 5; R. at 575, 578, 585-86, 589-90). There was a stark difference between how SA RR chatted with appellant in OKS 15 and OKS 20. (Pros. Ex. 5; Def. Ex. H). In OKS 15, she and Officer TE continued to push appellant and lure

him to the crime. (Id.). Whereas in OKS 20, it was simple – he said bye (as he did multiple times in OKS 15); but in OKS 20, the conversation ended. (Id.).[3]

2. Appellant was not predisposed to arouse the sexual desire of any person.

Like *Jacobson*, the fact that appellant was looking to meet adults on 3Fun "may indicate a predisposition to [communicate with those of a legal age]; but evidence that merely indicates a generic inclination to act within a broad range, not all of which is criminal, is of little probative value in establishing predisposition." 503 U.S. at 540, 550. Although the prompted statements made after the phone call were inappropriate, they were not criminal.

The government is required to show appellant was *predisposed* to sexually abuse a child *with* the intent to arouse the sexual desire of any person. The evolution of the conversation, the leading, luring, and prompting by SA RR against ICAC and law enforcement policy[4] contradict that proposition, especially where the appellant was not aware who he was speaking with nor intending to arouse the sexual desire of any person.

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[3] The OKS 15 and OKS 20 comparison is not offered as substantive evidence, but merely to show the standard for the operation was to disengage upon the subject ending the conversation vice reaching out via phone call.

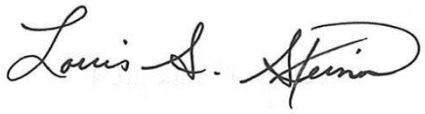
[4] The second error, discussed in Appendix B, notes the breach of regulation, policy, and protocol, and applies equally as strong to this assignment of error.

As in *Jacobson*, the burden shifts to the government to prove beyond a reasonable doubt that the criminal design did not originate with the government or that the accused had a predisposition to commit the offense "prior to first being approached by government agents." 503 U.S. 540, 549. Here, that predisposition did not exist until after the phone call and luring texts, all of which were prompted by SA RR and Officer TE. (Pros. Ex. 5; R. at 575, 578, 585-86, 589-90).

At trial, the government offered the messages as little evidence of his predisposition; but, as in *Kemp*, the court should look at the totality of the circumstances to determine predisposition. 42 M.J. 839, 845-46. In this case, the messages alone cannot show the predisposition. The law enforcement agents reached out after the conversation was over, the law enforcement agents insinuated sex, the law enforcement agents prompted appellant's statements by leading him to a crime he otherwise would not have committed. (Id.). The totality of the circumstances show that appellant was not predisposed to commit attempted sexual abuse of a child and was entrapped by SA RR and Officer TE, working in tandem, to implant the criminal design and predisposition, when it simply did not exist.

Conclusion

Appellant asks this Court grant review and to set aside and dismiss the Specification of the Charge. The government entrapped him by introducing the criminal scheme to commit a lewd act by texting "Nikki" after he repeatedly ended the conversation.



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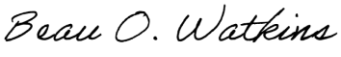

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Appendix A: United States Army Court of Criminal Appeals Opinion of the Court in *United States v. Keith*, Army Case No. 20230621

UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
WILLIAMS, COOPER, and SCHLACK
Appellate Military Judges

UNITED STATES, Appellee
v.
Sergeant SHELTON R. KEITH
United States Army, Appellant

ARMY 20230621

Headquarters, 25th Infantry Division and United States Army Hawaii
Rebecca L. Farrell, Military Judge
Colonel Christopher E. Martin, Staff Judge Advocate

For Appellant: Colonel Philip M. Staten, JA; Lieutenant Colonel Autumn R. Porter, JA; Major Beau O. Watkins, JA; Captain Louis S. Steiner, JA (on brief).

For Appellee: Colonel Richard E. Gorini, JA; Major Stephen L. Harmel, JA; Major Elizabeth F. Vieyra, JA (on brief).

13 January 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.

FOR THE COURT:

James W. Herring, Jr.

JAMES W. HERRING, JR.
Clerk of Court

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 THE EXCESSIVE POST-TRIAL PROCESSING OF THIS CASE WARRANTS RELIEF?

II. WHETHER THE GOVERNMENT'S WILLFUL VIOLATIONS OF CID REGULATIONS AND POLICY VIOLATED THE DUE PROCESS CLAUSE?

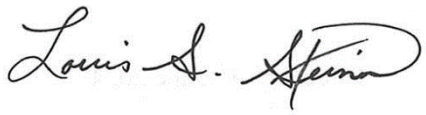
III. WHETHER THE MILITARY JUDGE ERRED BY NOT ABATING THE PROCEEDINGS UNDER R.C.M. 703(e)(2)?

IV. WHETHER THE FACTFINDER ERRED BY PRODUCING UNCLEAR FINDINGS AS TO THE SEXUAL DESIRE "OF ANY PERSON"?

V. WHETHER THE MILITARY JUDGE ERRED BY NOT GRANTING APPELLANT'S REQUEST FOR AN EXPERT WITNESS IN FORENSIC PSYCHOLOGY TO SHOW LACK OF INTENT?

CERTIFICATE OF FILING AND SERVICE

I certify that a copy of the foregoing in the case of United States v. Keith, Crim App. Dkt. No. 20230621, USCA Dkt. 26-0148/AR was electronically filed with the Court and Government Appellate Division on May 7, 2026.



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