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**IN THE FOURTH JUDICIAL DISTRICT COURT,
IN AND FOR UTAH COUNTY, STATE OF UTAH, PROVO**

STATE OF UTAH,

Plaintiff,

vs.

GOOD CLIENT,

Defendant.

**MOTION FOR FINDING OF
ENTRAPMENT**

Case Number: 123456789

Judge: Derek Pullan

The above-captioned defendant, Good Client (hereinafter referred to as “**Defendant**”), by and through his counsel of record, Saul Goodman, and pursuant to Rule 12(a) of the Utah Rules of Criminal Procedure and Utah Code § 76-2-303, hereby files this “Motion for Finding of Entrapment” (hereinafter referred to as this “**Motion**”) to reasonably persuade and compel the Court to find that Defendant was entrapped into committing the offenses that Defendant is presently charged with in this matter. In support of this Motion, Defendant states and alleges as follows:

RELIEF REQUESTED

1. Defendant asserts that he was entrapped into committing the offenses for which he has been charged, which are (i) attempted sodomy on a child in violation of Utah Code § 76-5-403.1 and §76-4-102(1)(d); (ii) solicitation to commit sodomy on a child in violation of Utah Code

§ 76-4-203 and § 76-5-403.1; and (iii) solicitation to commit sexual abuse of a child in violation of Utah Code § 76-4-203 and § 76-5-404.1.

2. In this Motion, and for the legal and factual bases outlined below, Defendant is requesting that the Court find that Defendant was entrapped by law enforcement into committing the aforementioned offenses in this above-referenced matter.

STATEMENT OF RELEVANT FACTS AND ARGUMENTS

Arguments and Legal and Factual Grounds Supporting the Relief Requested

3. Utah Code § 76-2-303 provides that,

Entrapment occurs when a peace officer or a person directed by or acting in cooperation with the officer induces the commission of an offense in order to obtain evidence of the commission for prosecution by methods creating a substantial risk that the offense would be committed by one not otherwise ready to commit it.¹

4. In the case of *State v. McCornish*,² the court stated that “[p]olicemen are conservators of the peace. It is their duty to prevent crime, not to instigate and encourage its commission. Nothing can be more reprehensible than to induce the commission of crime for the purpose of apprehending and convicting the perpetrator.”³

5. The courts have adopted an objective standard for entrapment cases, which focuses solely on police conduct rather than on the defendant’s predisposition to commit the crime.⁴

6. The court in the case of *State v. Hansen*⁵ stated that,

¹ Utah Code § 76-2-303.

² 59 Utah 58, 201 P. 637 (1921).

³ *Id.*

⁴ See *State v. Taylor*, 599 P.2d 496, 500 (Utah 1979).

⁵ 588 P.2d 164 (Utah 1978).

Whenever there is a genuine issue as to entrapment, the critical question to be determined remains: whether the crime is mainly the product of the defendant's own intent and desire and is thus his voluntary act, or whether it is mainly the product of some incitement or inducement by the police officer.⁶

7. In this matter, Mr. Good Special Agent (hereinafter referred to as “UC,” which is an alias used by Mr. Good Special Agent to initiate communications with Defendant) with Homeland Security Investigations (HIS) working with the Utah Internet Crimes Against Children Task Force (ICAC), was conducting a sting operation utilizing the social media dating application known as Grindr.

8. As demonstrated in the recitation of the entirety of the communications between UC and Defendant that is included below, UC initiated contact with Defendant on or about May 12, 2022.

9. In his communications with Defendant, UC presented himself as an adult male seeking an *adult consensual* sexual encounter.

10. At the outset, UC entertained an adult consensual sexual encounter before introducing a fictional 13-year-old male cousin who UC claimed to have sexual contact with and offered himself and the boy to Defendant.

11. Defendant, having been a victim of child sex abuse in the past, was immediately concerned with UC’s offer and the welfare of the child.

12. As a result, Defendant essentially assumed the role as an investigator and set out to learn information from UC to verify his claims, and earn his trust, so that he could check on the boy’s wellbeing and gather information to report to the authorities.

⁶ *Id.*

13. Therefore, Defendant agreed to meet UC, but *NOT* the boy, at a public park, so that Defendant could establish contact with UC, who continued to hold himself out as an adult male, and elicit more information; however, Defendant was arrested upon arrival.

Recitation of Text Conversation Between UC and Defendant, and Arguments Supporting Defendant's Innocence

14. The recitation of the text conversation between UC and Defendant, which entrapped Defendant and resulted in the charges placed against Defendant, is provided below **unredacted and verbatim**.

15. On Tuesday, May 10, 2022, UC, posing as an adult male, initiated contact with Defendant by sending him unsolicited direct messages through the Grindr app, which were:

- a. **UC, at 11:01 PM:** Hey.
- b. **Defendant, at 11:04 PM:** Hows it going?
- c. **UC, at 11:05 PM:** Good u?
- d. **Defendant, at 11:05 PM:** Good just relaxing in bed.
- e. **UC, at 11:06 PM:** Haha that's nice.
- f. **UC, at 11:06 PM:** Kinks?
- g. **Defendant, at 11:07 PM:** Not really I like going with the flow. I can role-play. Down for cruising and carplay and public play.⁷

16. On Thursday May 12, 2022, UC again initiated contact with Defendant through the Grindr app:

⁷ See "Exhibit A" attached hereto (Confidential Investigative Report).

a. **UC, at 07:12 PM:** Text me 1234567890.⁸

17. From this point onward, communication was through text messaging between Defendant's cell phone number, which is (123) 456-7890, and UC's phone number, which is (098) 765-4321; the messages were as follows:

a. **Defendant, at 07:12 PM:** Hey man. You told me to text you from grindr.

b. **UC:** What was ur name on there[?]

c. **Defendant:** Profile just says hi. You just gave me your number.

d. **Defendant:** Pic of a guy at the beach. Black shirt.

e. **UC:** Oh hell ya.

f. **UC:** ;)

g. **UC, at 00:03:** What you looking for?

h. **Defendant, at 00:04:** Fun bro you[?]

i. **Defendant, at 00:04:** You married?

j. **UC, at 00:05:** Ya but she's out of town.

k. **Defendant, at 00:07:** Fuck yeah man. Im down to meet.⁹

18. At this point in the communications, Defendant is a consenting adult looking for intimacy from another consenting adult that initiated unsolicited communications.

19. UC's answer to Defendant's question about him being married confirmed to Defendant that UC was an adult.

20. Defendant's and UC's conversation continued as follows:

⁸ *Id.*

⁹ *Id.*

- a. **Defendant, at 00:08:** So you are alone?
 - b. **UC, at 00:09:** Well I have some kinks that some people might think are weird lol.
 - c. **Defendant, at 00:10:** What are they?
 - d. **UC, at 00:13:** I'm super into incest and age play lol.
 - e. **Defendant, at 00:13:** I'm down to try.
 - f. **Defendant, at 00:14:** Ok.
 - g. **Defendant, at 00:16:** I'm game.
 - h. **UC, at 00:18:** I actually have a cousin that lives with me and we do stuff when my wife is gone lol.¹⁰
21. UC refers to "doing stuff" with his cousin when his wife is not around.
 22. There is no indication from UC that his cousin is anything other than an adult, and gender is not mentioned.
 23. Defendant's and UC's conversation continued as follows:
 - a. **Defendant, at 00:19:** You guys got a pick?
 - b. **UC, at 00:20:** I have pics of us separate.
 - c. **Defendant, at 00:20:** Is he a top or bottom?
 - d. **Defendant, at 00:21:** Okay show me.
 - e. **UC, at 00:22:** He can do either he's done both with me.
 - f. **Defendant, at 00:23:** He straight or gay?
 - g. **UC, at 00:24:** I think he might like both but he's really good when gay lol.

¹⁰ *Id.*

- h. **UC, at 00:29:** [UC sent an image of a bearded man wearing a black trucker cap, and a purple hooded shirt. He is standing in front of a bathroom stall.]
- i. **UC, at 00:30:** Here's me.
- j. **Defendant, at 00:30:** Ok
- k. **UC, at 00:31:** Like what you see?:)
- l. **Defendant, at 00:31:** Yeah.
- m. **Defendant, at 00:31:** Your cousin.
- n. **UC, at 00:31:** Hell ya.
- o. **UC, at 00:34:** [UC sent an image of a young male wearing a black t-shirt. He has his right hand closed in a fist with his thumb and pinky extended.]
- p. **UC, at 00:35:** He's 13 but he loves when we get to do 3 somes.
- q. **Defendant, at 00:36:** Age?¹¹

24. Defendant was appalled at the revelation that the cousin was 13 years old, and Defendant was immediately concerned for the welfare of the boy.

25. Defendant then sent the following message to UC:

- a. **Defendant, at 00:36:** What's your address?¹²

26. Immediately after learning of the boy's age, Defendant asks for the address of the UC so he can gather intelligence and contact the police.

27. UC mistakenly thinks that Defendant is excited about the possibility of sex with a 13-year-old.

¹¹ *Id.*

¹² *Id.*

28. UC does not provide an address.
29. The conversation continued as follows:
- a. **UC, at 00:36:** We're good at secrets don't worry lol.
 - b. **UC, at 00:38:** We live right next to a park that I can meet u at. Like our townhome literally backs up to the park.
 - c. **Defendant, at 00:38:** Which park?¹³
30. Defendant again tries to gain more information about the whereabouts of UC because he is concerned for the 13-year-old cousin; UC responded as follows:
- a. **UC, at 00:40:** I usually don't give that out until I know this is gonna go down. I don't even know what u wanna do with us yet lol.¹⁴
31. UC avoids providing an address and prods Defendant for specifics, in an attempt to entrap Defendant into describing and agreeing to specific unlawful acts.
32. Defendant responded:
- a. **Defendant, at 00:41:** I go with the flow.¹⁵
33. Defendant's interest at this point is in protecting the minor from an adult male that initiated contact with Defendant and is now presenting himself as a predator victimizing a minor.
34. As a result, Defendant attempted to deflect UC's question and while also trying to keep the conversation going so he could obtain an address.
35. UC continued as follows:

¹³ Exhibit A.

¹⁴ *Id.*

¹⁵ *Id.*

a. **UC, at 00:43:** Ahh cmon I wanna hear ;) like I love watching other guys do stuff to him.

b. **UC, at 00:44:** What would u do to him while I watch?¹⁶

36. Rather than wait for Defendant to provide specifics, UC tells Defendant exactly what he wants to hear from him.

37. UC had already told Defendant that UC will not provide an address without first hearing what Defendant will do with UC and the fictitious child.

38. Fearing that his failure to respond the way UC expects him to would lead Defendant to lose contact with UC and jeopardize the boy's welfare, UC effectively entrapped Defendant, leaving him no choice but to play along.

a. **Defendant, at 00:45:** I would kiss you as he sucked me up.

b. **UC, at 00:46:** Damn I love that. Do u want him to be a bottom or top?

c. **Defendant, at 00:47:** Both.

d. **Defendant, at 00:48:** I want him to fuck you.

e. **UC, at 00:49:** Hell ya he loves that.

f. **UC, at 00:50:** Do u wanna watch?

g. **Defendant, at 00:50:** Yeah.

h. **Defendant, at 00:51:** Then join in.

i. **Defendant, at 00:52:** How do I know you are real.¹⁷

¹⁶ *Id.*

¹⁷ *id.*

39. Defendant tried once again to gauge UC's willingness to provide more information, having played along with UC's fetish by asking UC how he could verify he was real.

40. The conversation continued as follows:

a. **UC, at 00:54:** I just sent a pic of my face lol.

b. **UC, at 00:55:** But hell ya.

c. **Defendant, at 00:56:** Wanna meet today then?¹⁸

41. Defendant attempted to get UC to commit to a meeting so he could obtain more information.

42. The conversation continued as follows:

a. **UC, at 00:58:** Yes for sure.

b. **Defendant, at 00:58:** When?

c. **UC, at 01:00:** Do u want to tell us what to do to each other while you're watching us?¹⁹

43. Having secured a time commitment to meet UC, *NOT* the boy, Defendant must keep UC engaged, so he continues to answer the questions posed by UC, nothing more.

44. The conversation continued as follows:

a. **Defendant, at 01:01:** Fuck yeah.

b. **Defendant, at 01:01:** Now.²⁰

¹⁸ *Id.*

¹⁹ Exhibit A.

²⁰ *Id.*

45. Concerned for the boy and still playing along, Defendant attempts to get UC to commit to an immediate meeting.

46. UC keeps pushing forward with his entrapping questions:

a. **UC, at 01:02:** What would u tell us to do[?]²¹

47. While Defendant believes he is keeping UC engaged by playing along with what he believes is UC's predatory sexual desires, UC's intent seems to be locking up as many criminal charges as possible.

48. These competing interests should be viewed from the perspective of the person sending the message.

49. Defendant continued as follows:

a. **Defendant, at 01:04:** Kiss and stroke each other off. While I jerk off. Then tell him to suck you up.

b. **Defendant, at 01:07:** Then have you play with his hole while he is sucking you up.

c. **Defendant, at 01:08:** When can you get free?²²

50. Still seeking a firm commitment to meet with UC, Defendant tries again by asking when UC will be free to meet:

a. **UC, at 01:09:** I am just grabbing us food real quick then I'll be back home is that ok?

b. **Defendant, at 01:10:** Yeah.

²¹ *Id.*

²² *Id.*

- c. **UC, at 01:11:** Ok cool.
- d. **Defendant, at 01:15:** Where you guys live?
- e. **Defendant, 01:17:** Like city.²³

51. Defendant considers UC's evasiveness in answering direct questions like what UC's address is, so he cautiously continues making small incremental inquiries.

- a. **Defendant, at 00:19:** Can I see your dick?²⁴

52. With an extended period of time elapsing since UC last responded, Defendant wanted to ensure UC was still engaged, so he asked for an explicit photo from UC—an adult.

53. It is crucially important to note that Defendant specifically did *NOT* ask for a photo of the fictitious child's penis.

54. The conversation continued as follows:

- a. **UC, at 01:19:** Over by sams club in south Provo.
- b. **Defendant, at 01:21:** Is he your kid or nephew?²⁵

55. Defendant tries to verify information and details so he can provide them to the police.

- a. **UC, at 01:22:** He is my cousin but he loves with me.
- b. **Defendant, at 01:22:** Ok.
- c. **UC, at 01:24:** I'll text you as soon as I get home.
- d. **Defendant, at 01:24:** Ok.

²³ *Id.*

²⁴ *Id.*

²⁵ Exhibit A.

e. **Defendant, at 01:25:** Your dick pic not his.²⁶

56. Defendant makes it perfectly clear that he does not want a photo of the boy's penis.

57. This fact is highly corroborative of Defendant's assertion that his only intent is to collect enough verifiable information that he can turn over to police, and expressly *NOT* for nefarious purposes.

58. The conversation continued:

a. **UC, at 01:26:** Ur gonna see it when u come over I haven't even seen ur face.

b. **UC, at 01:27:** Trust me you'll like it ;)

c. **UC, at 01:28:** How long will it take u to get to Provo[?]

d. **Defendant, at 01:28:** I live in provo.²⁷

59. Defendant now knows the meeting place will be in Provo, Utah.

60. This is helpful information but also discouraging to Defendant; being that Defendant is a gay male living in one of the most conservative cities and counties in the country, he does not believe he will get actual help from the local police because he is part of the LGBTQ+ community.

61. Defendant did not believe the police would help without specific information to locate or identify UC or the boy.

62. The conversation continued as follows:

a. **UC, at 01:30:** Oh hell ya.

b. **Defendant, at 01:31:** When does the wife get back?

²⁶ *Id.*

²⁷ *Id.*

- c. **UC, at 01:32:** Not till Monday lol.
- d. **UC, at 01:33:** Can I know ur first name I'm Noah btw.
- e. **Defendant, at 01:35:** Juan.²⁸
63. UC asked for Defendant's name and introduced himself as "Noah."
64. Wanting to continue gaining the confidence of UC but knowing that he will be turning UC into police and fearing repercussions, Defendant tells UC his name is "Juan."
65. Defendant then asked:
- a. **Defendant, at 01:36:** your wife doesn't know anything?²⁹
66. Defendant next tried to find out if anyone else was involved in the sexual abuse of the minor; the conversation continued as follows:
- a. **UC, at 01:36:** Not at all hehe.
- b. **Defendant, at 01:37:** Okay.
- c. **UC, at 01:38:** Can u bring some condoms when u come I think I'm out.
- d. **Defendant, at 01:40:** Do you like to get fucked?³⁰
67. Defendant asks specifically about UC and not the 13-year-old.
- a. **UC, at 01:40:** I like everything.
- b. **Defendant, at 01:41:** Yeah.³¹

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Exhibit A.

68. Defendant said he would bring condoms, but he did not bring any because he had no intention of having sex with UC, only to meet and hopefully finally identify UC's residence that he said was adjacent to the park.

- a. **UC, at 01:44:** Ok I just got home. Just come park at bicentennial park in Provo and I'll walk out to u.³²

69. All the messages exchanged regarding the arrangement to meet UC at a park corroborates Defendant's assertion that from the moment UC disclosed his sexual abuse of his fictitious 13-year-old cousin, Defendant's sole mission was to collect enough information to notify police.

70. The face-to-face meeting with UC was all that Defendant needed to convince himself he would not be wasting police resources when he reported UC.

71. UC's messages during this meeting arrangement all refer to himself only, the adult UC, not the fictitious child.

72. UC says "I" just got home; "I'll" walk out to u; can "I" know what u drive; "my" car is parked; and so on—there is not a single mention or reference to the fictitious 13-year-old boy.

73. The conversation continued as follows:

- a. **UC, at 01:45:** How long do u think until ur here[?]
- b. **Defendant, at 01:46:** A few minutes.
- c. **UC, at 01:47:** Ok cool can I know what u drive so I don't walk up to the wrong car lol there's a few cars in the parking lot.

³² *Id.*

- d. **Defendant, at 01:48:** Blue kia you?
- e. **UC, at 01:52:** Well my car is parked over in a stall for the townhomes but my townhomes back yard is literally the park so I'll just walk out to u.
- f. **UC, 01:54:** Just park in the parks parking lot so u don't steal someone's spot in the townhomes.
- g. **Defendant, at 01:55:** Ok.
- h. **UC, at 01:55:** And shoot me a text when ur here.
- i. **Defendant, at 01:56:** This better not be fake.
- j. **Defendant, at 01:56:** I'm here.
- k. **UC, at 01:57:** Ok cool one sec where did u park[?]
- l. **Defendant, at 01:58:** By the dog park.
- m. **Defendant, at 01:58:** But closer to the street.
- n. **UC, at 01:58:** Is it a Kia Soul?
- o. **UC, at 01:59:** Check text.³³

Application of Text Conversation Supporting a Finding of Entrapment

74. The foregoing messages between UC and Defendant unequivocally demonstrate that Defendant was entrapped by UC because the “peace officer [i.e., UC] . . . induce[d] the commission of an offense in order to obtain evidence of the commission for prosecution by methods creating a substantial risk that the offense would be committed by one not otherwise ready to commit it.”³⁴

³³ *Id.*

³⁴ Utah Code § 76-2-303.

75. First of all, Defendant did not initiate the communications; he received an unsolicited communication from UC; UC initiated communications with Defendant on two separate occasions: on May 10, 2022, and again on May 12, 2022.

76. In those unsolicited communications, UC held himself out as an *adult* seeking a *consensual adult* sexual encounter.

77. While Defendant was initially eager to meet with UC before the mention of the minor, he immediately became concerned when the minor was brought up—again, without any prompting by Defendant—by UC.

78. As soon as UC offered up the minor, Defendant’s next two questions are informative: (i) Defendant asked to verify the age—a question that UC evaded—and (ii) he immediately asked for UC’s address.

79. These questions and change in tone by Defendant indicate that he was taken aback by the sudden introduction of a minor, and that Defendant was interested in obtaining information that he could use to protect the endangered minor.

80. It is clear by the text conversations between Defendant and UC that Defendant was “not otherwise ready to commit”³⁵ the crime, and that he was “induce[d] [to] the commission of [the] offense in order [for law enforcement] to obtain evidence of the commission for prosecution.”³⁶

81. Defendant merely responded to UC’s pointed questions.

³⁵ *Id.*

³⁶ *Id.*

82. In fact, UC pressured Defendant with leading questions designed to meet the elements of the charges Defendant is presently charged with, despite Defendant's reluctance.

83. Defendant played along to gain UC's trust to gather information to protect a potentially vulnerable minor.

84. It is clear, therefore, that Defendant was entrapped into committing the crimes he was charged with, especially when the Court properly focuses on the conduct of UC, rather than on Defendant's non-existent predisposition to commit the crime.³⁷

85. Finally, Defendant never intended to meet any person under the age of 18 years old.

86. As is clear from the messages presented above, Defendant was under the impression that he was meeting UC—an *adult*—at the park, and *not* a minor.

87. Therefore, as is evident by the facts and arguments presented herein, Defendant was entrapped by law enforcement into committing the offenses Defendant is presently charged with.

Application of State v. Dickerson

88. In the year 2022 case of *State v. Dickerson*,³⁸ the Utah Court of Appeals reversed and remanded the Utah County Fourth Judicial District Court's granting of the defendant's (hereinafter referred to as "**Dickerson**") motion for a finding of entrapment, because (i) reasonable minds could differ as to whether Dickerson acted on his own inclination, and because (ii) the factors identified by the trial court did not compel the conclusion that Dickerson was entrapped.

³⁷ *State v. Taylor*, 599 P.2d 496, 500 (Utah 1979).

³⁸ 2022 UT App 56, 511 P.3d 1191.

89. The following factors from *Dickerson* illustrate what *did not* happen in the case at hand against Defendant, and how the lack of these factors compel the conclusion that Defendant was, indeed, entrapped and, therefore, has good cause showing for the granting of this Motion.

90. In *Dickerson*, the court identified that “excessive pressure or goading by an undercover officer might constitute entrapment”;³⁹ however, in applying this, the Court of Appeals found that “*Dickerson was not* subjected to persistent requests to engage in criminal conduct.”⁴⁰

91. Furthermore, in *Dickerson*, “the undercover agent did not harass *Dickerson* into committing the crime”⁴¹ and “[i]t was *Dickerson* who asked for [the fictitious child’s] phone number ‘so I can text u’ after learning she was only thirteen years old.”⁴²

92. To further illustrate,

It was *Dickerson* who sent the first text saying, “Hey baby its me.” And whenever [the fictitious child] did not immediately respond to a text, *Dickerson* sent multiple follow-up messages, asking for reassurance that [the fictitious child] was “forreal” and not “playing” him. It was *Dickerson* who proposed that they meet in person—“to smoke and what else can we do baby”—and asked [the fictitious child] to send him her address. In fact, *Dickerson* asked [the fictitious child] for her address no less than ten times beginning at 11:51 p.m., until he finally received the address at 12:47 a.m.⁴³

³⁹ *Id.* at ¶ 38, 1202 (quoting *State v. J.D.W.*, 910 P.2d 1242, 1244 (Utah Ct. App. 1995)).

⁴⁰ *Id.*

⁴¹ *Id.* at ¶ 39.

⁴² *Id.*

⁴³ *Id.*

93. The court in *Dickerson* further provided that “[a] defendant is not entitled to acquittal as a matter of law under an entrapment theory where he has actively pursued the commission of the crime despite opportunities to withdraw.”⁴⁴

94. In addition, “Over the course of the three-and-a-half-hour conversation, the agent gave Dickerson multiple opportunities to back out”⁴⁵ and “[w]hen [the fictitious child] expressed reluctance, Dickerson assured her that he would be gentle, that she would like it, and that she would not get pregnant.”⁴⁶

95. Moreover,

[Dickerson] expressed frustration that “ur asking all these questions like u couldn't also [ask] me this face to face.” When she continued to hesitate, he begged her to stop “playin” and “wasting time” and to send him her address. [The fictitious child] even suggested that they meet up the next day, but Dickerson pleaded, “Awwwww baby y . . . I wanted to Tonite please.” Numerous times, the agent “offered [Dickerson] an opportunity to desist,” yet Dickerson persisted in soliciting sex from a thirteen-year-old girl “when provided with the mere opportunity to do so.” See *Hernandez*, 2020 UT App 58, 11-12.

96. Upon the foregoing, the court in *Dickerson* concluded that,

a. “[t]herefore, the facts do not present a case of ‘excessive pressure or goading’ that would compel the conclusion that Dickerson was entrapped as a matter of law”;⁴⁷

⁴⁴ 2022 UT App 56, ¶ 40, 511 P.3d 1191, 1202.

⁴⁵ *Id.* at ¶ 41.

⁴⁶ *Id.*

⁴⁷ *Id.* at ¶ 44.

- b. “[i]ndeed, the agent did nothing to ‘induce’ Dickerson’s participation beyond posing as a thirteen-year-old girl who was willing to meet him”;⁴⁸
- c. “[t]he agent in this case did not ‘employ inducements that would have been, as a matter of law, sufficient to induce an ordinary person,’ not otherwise inclined, to solicit sex from a thirteen-year-old”;⁴⁹
- d. “[t]hese facts are not ‘sure to leave *all* reasonable minds reasonably doubting whether the commission of the offense was the product of [Dickerson’s] inclination”;⁵⁰ and
- e. “[b]ecause the facts of this case are ‘not sure to leave all reasonable minds with a reasonable doubt as to whether [Dickerson] acted on his own inclination,’ the motion to dismiss should have been denied and the entrapment defense presented to the jury.”⁵¹

97. In applying the foregoing considerable factors from *Dickerson* contained in paragraphs 90 – 96 and its subparagraphs hereinabove to the case at hand against Defendant, the following is true:

- a. In applying the contents of paragraph 90, it is clear that, unlike what happened in *Dickerson*, Defendant was subjected to *persistent* requests to engage in criminal conduct by UC; UC introduced and discussed the fictitious child repeatedly, and reintroduced the fictitious child many several times into the

⁴⁸ *Id.* at ¶ 46.

⁴⁹ *Id.* at ¶ 47.

⁵⁰ 2022 UT App 56, ¶ 51, 511 P.3d 1191.

⁵¹ *Id.* at ¶ 47.

conversation, each time sexually enticing Defendant by offering the fictitious child sexually to him in increasingly explicit fashions.

- b. In applying the contents of paragraph 91, it is clear that, unlike what happened in *Dickerson*, UC *did* harass and pester Defendant into committing a crime (which has yet to be proven); furthermore, Defendant *never* asked for the fictitious child's phone number or otherwise made any effort to have *direct* communications with the fictitious child.
- c. In applying the contents of paragraph 92, it is clear that, unlike what happened in *Dickerson*, (i) Defendant *did not* even have *direct* contact with the fictitious child—unlike in *Dickerson* where Dickerson *did* have *direct* contact with the fictitious child—and (ii) Defendant did not engage in behavior such as sending multiple follow-up messages to the fictitious child, (iii) asking for reassurances from the fictitious child, (iv) proposing to meet in person with the fictitious child, or (v) asking the fictitious child to provide an address “no less than ten times”—or any number of times, for that matter.
- d. In applying the contents of paragraph 93, it is clear that, unlike what happened in *Dickerson*, Defendant *did not* actively pursue the commission of the crime despite opportunities to withdraw—considering that Defendant's goal behind chatting with UC was to protect the fictitious child in question, so there was no crime whose commission to pursue—and because Defendant *did not* actively

pursue the commission of the crime charged with, Defendant is “entitled to acquittal as a matter of law under an entrapment theory”⁵²

- e. In applying the contents of paragraph 94, it is clear that, unlike what happened in *Dickerson*, Defendant was *not* given “multiple opportunities to back out”—he was, instead, pestered relentlessly by UC with respect to the fictitious child—and Defendant had *no direct* contact with the fictitious child.
- f. In applying the contents of paragraph 95, it is clear that, unlike what happened in *Dickerson*, Defendant *did not* pester or plead with the fictitious child to allow him to see the fictitious child that same night; Defendant *did not* insist on meeting with the fictitious child upon the fictitious child’s hesitations (considering that Defendant never had *direct* contact with the fictitious child, so no such hesitations existed); Defendant *did not* repeatedly ask for an address with the purpose of meeting the fictitious child; and Defendant *neither* attempt to solicit, *nor* persisted with soliciting, sex from the fictitious child, *nor* did Defendant sexually pursue the fictitious child in any conceivable way.
- g. In applying the contents of paragraph 96(a), it is clear that, unlike what happened in *Dickerson*, the facts of the case against Defendant *do* “present a case of ‘excessive pressure or goading’”⁵³ by UC, which strongly “compel[s] the conclusion that [Defendant] was entrapped as a matter of law.”⁵⁴

⁵² *Id.* at ¶ 40.

⁵³ *Id.* at ¶ 44.

⁵⁴ *Id.*

- h. In applying the contents of paragraph 96(b), it is clear that, unlike what happened in *Dickerson*, UC took several courses of action to induce Defendant's participation in the crime; UC's schemes were significantly more nuanced and sophisticated than simply propositioning a fictitious child to Defendant or merely making the fictitious child sexually available.
- i. In applying the contents of paragraph 96(c), it is clear that, unlike what happened in *Dickerson*, UC *did* "employ inducements that would have been, as a matter of law, sufficient to induce an ordinary person,' not otherwise inclined, to solicit sex from . . ." ⁵⁵ the fictitious child.
- j. In applying the contents of paragraph 96(d), it is clear that, unlike what happened in *Dickerson*, the facts of this matter against Defendant *are*, indeed, "sure to leave *all* reasonable minds reasonably doubting whether the commission of the offense was the product of [Defendant's] inclination" ⁵⁶ (emphasis added), considering that (i) Defendant did not possess the necessary element of *mens rea* to perpetrate the crime charged with, that (ii) Defendant was prodded and goaded to have sex with the fictitious child, and that (iii) Defendant had *no* inclination to actually have sex with the fictitious child.
- k. Finally, in applying the contents of paragraph 96(e), it is clear that, unlike what happened in *Dickerson*, "[b]ecause the facts of this case *are* ' . . . *sure* to leave *all* reasonable minds with a reasonable doubt as to whether [Defendant] acted

⁵⁵ *Id.* at ¶ 47.

⁵⁶ 2022 UT App 56, ¶ 51, 511 P.3d 1191.

on his own inclination”” (emphasis added), considering that Defendant did *nothing* to actually pursue sex with the fictitious child propositioned by UC—and so, all reasonable minds *would* have more than a reasonable doubt as to whether Defendant actually intended to have sex with the fictitious child because no pursuit of the fictitious child was ever effectuated by Defendant, unlike in *Dickerson* where Dickerson *actively* and *adamantly* pursued the fictitious child—this Motion should be granted.

98. WHEREFORE, because Defendant was unequivocally entrapped by UC in this matter, this Motion should be granted upon the foregoing facts and arguments presented and for good cause showing.

CONCLUSION

Because Defendant was indubitably entrapped by UC—as is evident by the arguments presented herein in consideration of the content of the conversation between UC and Defendant referenced above and all throughout this Motion—Defendant hereby moves this Court to make a finding of entrapment and to dismiss the charges regarding solicitation placed against Defendant.

Indeed, based upon the foregoing, it is unequivocal that Defendant was entrapped in this matter, as the questions asked to Defendant by UC were all designed to obtain information that would satisfy the elements of the crimes presently charged against Defendant, and UC was the unmistakable instigator of the conduct that resulted in the crimes that Defendant is presently charged with—which (the instigation by UC) is the essence of entrapment. Therefore, the fact that Defendant was entrapped by law enforcement and induced into committing the offenses Defendant is charged with should reasonably compel this Court to dismiss the pertinent charges placed against

Defendant. Indeed, as provided in the case of *State v. McCornish*, as referenced above, “Nothing can be more reprehensible than to induce the commission of crime for the purpose of apprehending and convicting the perpetrator.”⁵⁷ Thusly, “nothing can be more reprehensible” than UC having induced Defendant to commit the crimes that Defendant was otherwise not ready to commit.

Furthermore, considering the factors of *State v. Dickerson* as described hereinabove, it is clear that (i) Defendant was goaded, prodded, and induced by UC repeatedly to meet and have sex with the fictitious child; that, (ii) because of this goading, prodding, inducement, and repeated pestering by UC, the alleged crime Defendant is charged with was not the product of Defendant’s own inclination but instead of UC’s instigation and inducement; and that, (iii) because the alleged crime was not a product of Defendant’s own inclination but instead of the instigation and inducement by UC, there exists ample reasonable doubt, which would leave *all* reasonable minds who review this matter doubting, as to whether the alleged crime Defendant is charged with was a product of Defendant’s inclinations. With this reasonable doubt, which, again, would be present in *all* reasonable minds who review this matter in consideration of the facts presented, there exist ample grounds and good cause showing to grant this Motion, especially considering the portentous factors contained in *Dickerson* as contemplated hereinabove and applying them to the case at hand against Defendant to demonstrate that the requisite factors which could justify the denial of this Motion are not present herein.

WHEREFORE, upon the foregoing facts and arguments presented, Defendant respectfully moves the Court to (i) make a finding of entrapment in favor of Defendant and against the prosecution, to (ii) dismiss the charges regarding solicitation of a minor as described in paragraph

⁵⁷ 59 Utah 58, 201 P. 637 (1921).

I hereinabove, and to (iii) award to Defendant any such other, further, and different relief as the Court deems appropriate, just, and equitable under the circumstances of this matter.

DATED December 26, 2022.

Altioirem Legal Services

/s/ Saul Goodman
Saul Goodman

CERTIFICATE OF SERVICE

I hereby certify that on December 26, 2022, I caused to be served, via electronic filing, a true and correct copy of the foregoing upon the following person(s):

Utah County Prosecutor

/s/ Saul Goodman