

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

NICHOLAS BUENO,

Defendant.

No. 5:22-CR-106-H-01

MEMORANDUM OPINION AND ORDER

The Court conducted a bench trial on this matter on June 2, 2023. Dkt. No. 67.

Pursuant to Federal Rule of Criminal Procedure 23(c), the Court sets out its Findings of Fact and Conclusions of Law. The Court has reviewed the record in its entirety and observed the witnesses presented at trial to assess their credibility and weigh their testimony. Having carefully considered the testimony and evidence admitted at trial, as well as the applicable law, the Court finds the defendant, Nicholas Bueno, guilty of Count One—Enticement and Attempted Enticement of a Minor in violation of 18 U.S.C. § 2422(b).

1. Indictment, Plea, and Waiver of Jury Trial

In November 2022, Bueno was indicted by a federal grand jury for one count of Enticement and Attempted Enticement of a Minor, in violation of 18 U.S.C. § 2422(b) and three counts of Transfer of Obscene Material to a Minor in violation of 18 U.S.C. § 1470. Dkt. No. 17 at 1–3. Bueno pled guilty to Counts Two through Four (Dkt. No. 60), and Magistrate Judge Parker recommended that the Court accept Bueno’s guilty plea (Dkt. No. 61). Bueno waived the 14-day period to object to the findings of the magistrate judge (Dkt. No. 63), and the Court accepted Bueno’s guilty plea (Dkt. No. 66).

Bueno requested a bench trial for Count One. Dkt. No. 40 at 1–2; *see* Dkt. No. 64. He signed a jury-trial waiver, which was also signed by the government and defense counsel, and submitted it to the Court for its approval. Dkt. No. 64. The Court, finding that Bueno had knowingly and intelligently waived his right to a jury trial, approved Bueno’s waiver (Dkt. No. 66) and conducted a bench trial (Dkt. No. 67).

2. Findings of Fact

The government admitted the following exhibits: (1) two Cellebrite extraction reports of the text messages between Bueno and Jane Doe, one with explicit content and one with the explicit content and victim’s identifying information redacted; (2) the explicit Snapchat video Bueno sent to Doe; (3) the Cellebrite phone call report showing the calls between Bueno and Doe; (4) Doe’s cell phone; (5) the recorded interview of Bueno with Special Agent Roy Basham on October 19, 2022; and (6) the apology letter that Bueno wrote to Doe’s parent’s. GXs 1–7. The government also called Doe, Sergeant Flores, and Special Agent Basham to testify. Tr. at 24, 55, 124. The Court finds the testimony of Doe, Sergeant Flores, and Special Agent Basham to be credible. The defendant did not offer any exhibits and did not call any witnesses. *See* Dkt. No. 51; Tr. at 2.

In October 2022, a school administrator for O’Donnell High School in O’Donnell, Texas, notified the Lynn County Sheriff’s Office (LCSO) of allegations of an inappropriate relationship between a teacher and a student. Tr. at 58. LCSO Sergeant Jason Flores had duties covering the high school and began investigating the allegations. *Id.* at 57–58. As part of the investigation, Sergeant Flores contacted Bueno and questioned him about the alleged conduct. *Id.* at 62. Bueno denied having an inappropriate relationship with Doe. *Id.* at 63. He provided Sergeant Flores with his cell phone and consented to law

enforcement searching it. *Id.* at 63. Law enforcement found nothing of evidentiary value on that cell phone. *Id.* Nevertheless, Sergeant Flores suspected that Bueno may have been using a different phone to communicate with the child. *Id.*

Sergeant Flores also met with Doe's mother to question her about the alleged conduct. *Id.* at 58. Doe's mother provided Sergeant Flores with Doe's cell phone—an Apple iPhone 13 Pro Max. *Id.* at 59; GX 5. Sergeant Flores's research of Apple iPhones revealed that the phone had not been manufactured in Texas. *Id.* at 60. When Sergeant Flores initially reviewed the contents of Doe's cell phone, he could not locate any communications between her and Bueno. *Id.* However, using a recovery feature of the iPhone operating system, Sergeant Flores was able to retrieve all of the deleted messages between Bueno and Doe from September 23, 2022, to October 18, 2022. *Id.* at 60–61. Reviewing the messages, Sergeant Flores was able to identify Bueno as the person sending Doe text messages because Bueno had sent selfies of himself along with text messages telling Doe to meet him in his classroom. *Id.* at 61.

Doe testified that coaches and students were returning on a bus to O'Donnell after a football game when Bueno asked for her cell phone number (Tr. at 28–29), which Bueno corroborated in his recorded interview (GX 6 at 51:12–51:44; 51:45–53:23). Bueno was a football coach, and Doe was a student manager. Tr. at 29–30. Bueno sat near Doe and, at one point during the trip, passed her a note asking Doe for her number. GX 6 at 51:12–51:44; 51:45–53:23; Tr. at 29. Doe put her number in Bueno's cell phone. Tr. at 29. On September 23, 2022, Bueno began sending text messages to Doe. GX 1 at 1.

From approximately September 23, 2022, to approximately October 18, 2022, Bueno and Doe exchanged thousands of messages. Tr. at 19; *see* GX 1. During that time, Bueno

repeatedly asked Doe to keep their conversations private and delete the messages between them, and he even demanded that she send proof of her deleting the messages or allow him to delete them off of her phone. *See, e.g.*, GX 1 at 5–6, 27, 581, 676, 682, 698, 833–35. And as evidenced by some of the messages below, on numerous occasions, Bueno’s text messages to Doe became sexually oriented. The Court includes many of them here to demonstrate their progressively controlling, grooming, sexual, and enticing nature.

On September 23, 2022, Bueno sent Doe the following messages: “Even when you catch me staring at you”; “I catch you staring at me”; “I want you to” (referring to Doe staring at him); “Promise me you ain’t gonna say anything”; “Delete all your messages everyday with me ok. Are you going to bed?”; “What do you think of me.” GX 1 at 3–6, 8.

On September 24, 2022, Bueno sent Doe the following messages: “Lol put me under a fake name”; “Were you thinking of me this morning or what”; “We will talk in person Monday ok. Stay after class Monday”; “Let me see a pic of you”; “I’m freaking myself out cause I’ve never done this”; “Believe me I’d never get you into any problems like that. If you really got to know me you’d know the real situation with me and her. It’s really up to you on how well you can keep a secret from all your friends about me”; “What do you mean weird? So you couldn’t keep a secret that you’d been texting me?”; “And come on now I know you flirt with me and that’s ok with me”; “Ok well I guess I thought you maybe had a little crush on me”; “Delete our messages and don’t ever say anything. And what is it that your friends say about me huh”; “I won’t make anything weird I promise. Lol that’s funny I guess I’m too nice to you. I still wanna talk to you on Monday after class. I want you to show me you deleted our messages and didn’t take any screenshots”; “Send me a

picture of you”; “I need to know I can really trust you if I’m gonna be doing this with you”; “Do you find me attractive or is that weird for you.” *Id.* at 12, 16, 19, 21–22, 25–27, 33–34.

On September 25, 2022, Bueno sent Doe the following messages: “Obviously you are you can say you’re just nice but believe me I know it’s more than that. Maybe because I wanna get to know you personally”; “Lmao okay. I wanna go through your phone I’ll be able to tell you” (referring to seeing whether Doe’s parents monitored her texts using apps or a phone plan); “You better not be telling your friend anything.”; “I’m gonna go through your phone Monday ok”; “So if I were to give you a hug when you were alone you wouldn[‘t be weirded out”; “Omfg [Doe] why am I thinking about you so much”; “I miss you that’s why too. Be honest have you been thinking of me??” *Id.* at 35, 37, 39, 41–42, 45–46, 48.

On September 26, 2022, Bueno sent Doe the following messages: “Be sure to leave it with me” (referring to Doe leaving her phone with Bueno for him to check it); “If you’re gonna talk to me I don’t want you flirting with anyone else. If you can’t then we can stop and keep it casual”; “You really honestly think you could not be tempted to tell ANYONE you’re talking to me??”; “You’re so tempting”; “Am I not tempting to you??”; “I can’t stop looking at you [Doe]”; “You’re gonna come to find out I’m very controlling”; “We need to have some rules if you wanna do this”; “Quit being so flirty with all the boys”; “I want you to look at me more”; “This is so bad I know but I can’t help it you’re just so damn tempting [Doe]”; “Just let it happen it does for me too but like I said can’t help it”; “Is it bad that I’m tempted to do so many things with you [Doe]”; “So you want me then??”; “I don’t want you talking any other but me ok”; “See I can’t stop thinking about you smh”; “Send me a pic of you”; “You’re a hottie I’m not gonna lie very beautiful.” *Id.* at 50, 53–55, 59–65, 68–70.

On September 27, 2022, Bueno sent Doe the following messages, which included asking Doe the color of her panties: “I find you so attractive”; “Ohhh cocky much!? I like that. What are you wearing?”; “I wanna see you alone today”; “You’re not scared to be alone with me?”; “I can’t stop looking at you”; “You never tell me how good I look”; “Ask me anything. I’ll go first. How many guys have you made out with?”; “If I tried that would you be weirded out” (referring to kissing Doe); “I’m gonna try it then” (again, referring to kissing Doe); “You look amazing today btw”; “I want you to be the one that thinks that” (referring to Bueno wanting Doe to think he was attractive); “Yet here I am wanting you”; “I’m just thinking about you and that [redacted] hair right now”; “My temptation for you is so high [Doe]”; “Like through the roof I just wanna pull you close to me”; “I know....I’m too much for you I should stop”; “Come by my room when the bell rings”; “I just wanna stare at you that’s all”; “I’m trying to be patient with you but I’m controlling and it’s bothering me”; “I’m just gonna ask. What color panties are you wearing?”; “Then tell me what color”; “Just enjoy me ok”; “Stop getting so nervous around me now”; “You make it hard to focus”; “I already miss you”; “Message me in the morning when you wake up I’ll be up around 4:30 and leave your phone with me after class”; “I just want a reason to look you in your eyes that’s all”; “I wanna make sure your messages ain’t going anywhere else”; “Just know it’s ok to like me [Doe] I’ll protect you I promise.” *Id.* at 76–81, 84, 86–87, 92, 95–96, 98–100, 102, 104, 109, 111, 114–19, 121.

On September 28, 2022, Bueno sent Doe the following messages, including telling her he was going to make her have feelings she had never experienced: “I just want your full attention and I know it’s bad but oh well I know you won’t say anything to anyone”; “Will you give me your full attention [Doe]”; “I want you so bad”; “Tell me you want me”; “Not

like how I want you though. You're all I e [sic] been thinking about"; "You wouldn't ever tell on me right"; "I wanna see you and hold you lol"; "I wanna see you alone though.""; "You need me"; "Do you get distracted by me in class"; "I try not to look at you but it's so hard"; "I'm gonna sit real close to you and help you with you work to make you really distracted"; "I'm being serious I wanna make you turn red and be flustered"; "Be mine? Or is that too much"; "I wanna see you"; "Well then just admit to me that you want me already and quit trying to hide it"; "Imma wait here just to watch you like a creep"; "Why do I have to be so attracted to you [Doe]"; "I better be the only one like fr"; "I'm just saying though. I'm gonna make you have goosebumps [every time] you see and talk to me I promise"; "I'm telling you I'm gonna make you have feelings you ain't ever had [Doe] I hope you're ready for that"; "You're about to have no control of your feelings"; "Like I said you're mine k?"; "And I want you to text me every night something sweet before you go to bed ok." *Id.* at 122–23, 133–34, 136, 138, 141, 143, 145, 148–50, 155, 157, 161, 172, 174–77.

On September 29, 2022, Bueno sent Doe the following messages, which continued Doe's grooming and commented on her panties: "Good morning I can t [sic] wait to see that beautiful face and smile :)""; "Wear tights today"; "You haven't had the urge to tell anyone anything right?"; "Well I can't wait to see you [Doe] You will with this [person] I promise you that"; "Females always get jealous over me I'm just that [person]" (referring to Bueno wanting Doe to get jealous); "In requesting that you need to come finish s quiz for me tomorrow at 715"; "Keep curving me like you do and I might have to go let her know you have hard time with not staying quiet in class"; "Come to my class right now"; "Shoot with me after school"; "You're so damn sexy"; "I want you so fucking bad"; "I swear to

God I can't stop looking at you. You're so fucking sexy while you work.”; “I got distracted cause I could see right down your pants I saw your panties omfg”; “Fuck [Doe] I don't think you are wanting me the way I want you like for real”; “I promise you that's how hard I was staring. Because I'm about to lose all my self control on you.”; “I just get around you and my mind says fuck it”; “I know I want you. I wish you felt the same”; “I'll be yours if you want me”; “Because you're mine”; “I can't believe I saw your panties”; “When are you gonna give me a big hug huh”; “I need you alone”; “Come take one with me” (referring to Bueno taking a nap); “Do you own a thong”; “Omfg I'm too mature for you I need to slow down”; “You don't wanna come make up your quiz during lunch?” followed by, “make up”; “Come please” followed by, “Like at 1:05”; “Well then you better be here”; “Thanks boo. Just words of encouragement. You're so hot.”; “Come stand by me”; “I can't stop staring at you in the shorts fuck”; “Omfg I can't handle it”; “Tell me that you're mine [Doe]”; “You haven't said shit to anyone right!?” *Id.* at 178–79, 184, 187–93, 195–201, 204, 207, 211, 213–15, 217.

On September 30, 2022, Bueno sent Doe the following messages: “Leave your phone”; “Why can't you want me the way I want you. I[']m giving you all my attention”; “Like please just tell me if I'm what you want cause you don't know how to show it”; “Well I can't get enough of you [Doe].”; “It's okay it takes time cause you ain't ever had anyone like me ever”; “I'm trying not to make it obvious that I check you out constantly”; “I really really like you can you tell?”; “I can stare at you all day so you know”; “Come workout with me”; “Hell yeah that's hard but still you should be trying to see me”; “Why don't you want me”; “Everything about you is just uhhh you're so attractive to me”; “I want you

[Doe]”; “You make my mind race lol that’s pathetic of my ass.” *Id.* at 226–27, 229, 231–32, 234, 237, 240–43, 248.

During trial, Doe also testified that during a bus ride after a football game, Bueno sat in the seat across the aisle from her and placed his feet on her lap. Tr. at 33–35. She explained that he rubbed her thigh with his foot in a sexual manner. *Id.* During that encounter on September 30, Bueno messaged her, “Your thighs are so soft [Doe] gah damn. Are you gonna be at the games tomorrow?” GX 1 at 249; Tr. at 34.

On October 3, 2022, Bueno sent Doe the following messages, which continued to try to control Doe, encouraged her to engage in physical contact with him, and tried to normalize sexual relations between teachers and students: “Well fuck it I’m not gonna stop myself from trying with you because all I thought was about you this weekend”; “You’re so fucking hot...”; “I want you to sit in front of my desk”; “Baby just want me the way I want you!!!”; “I thought about you way too much this weekend. You look so damn good.”; “It’s so bad but like I said fuck it I don’t care nobody will know about me and you so that’s why I’m just throwing myself at you”; “You’re not talking or texting anyone else are you”; “I love when you wear tights”; “Come and give me a hug”; “Let me grab your thighs this time”; “Just know I’m watching you and if I see some shit I don’t like you can expect me to have some attitude with you”; “Come see me then”; “Come...” followed by, “Baby can you?”; “Like I plan on staying here in O’Donnell at least 5 years so I can’t imagine how me and you will end up...”; “I know of someone who did this for years and ummmmm yeah...”; “One of the coaches that coached me in HS was doing it to a girl in my class all the way up until her senior year of college. Started her freshman year.”; “Are you wearing a thong today?”; “I’d be a good first for you”; “Why do I wanna do so much to you”; “I want you

that's what I want can I get that?"; "I want you so bad [Doe]." GX 1 at 257–59, 261–62, 269–70, 275, 281, 283, 287, 289–91, 293, 297, 299, 302, 304.

On October 4, 2022, Bueno sent Doe the following messages, which included telling her that he would give her straight As: "Bring me your phone right now"; "Something so simple like tex[t]ing me you won't do? Whatever you're still fucking hot"; "Did you at least miss me last night [Doe]?"; "Come to my room before you go to lunch"; "I wanna hold you close to me.."; "Imma give you straight As this year to boost your gpa"; "You're a good girl with a bright future [Doe] don't let a no life having ass [person] get in the way. Everything about you is so tempting. I'd literally do anything to have you as mine. But my life is complicated. You're in your ways with the things you've had to overcome." *Id.* at 317, 324, 330–32, 343, 369.

On October 5, 2022, Bueno sent Doe the following messages, which promised to bring her food and continued his manipulations: "You're so hot"; "I'm gonna bring you snacks tomorrow what do you want"; "Do you want something for lunch?"; "Come by after that class?"; "Everything about you is so fucking sexy"; "Try saying something sweet to me were gonna work on you"; "I'm getting hit on boo.."; "Imma make you miss me more and more everyday"; "You gone end up falling for Me [Doe] I swear to God." *Id.* at 376, 382, 385, 394, 401, 406, 417, 421–22.

On October 6, 2022, Bueno sent Doe the following messages, telling her, among other things, that he wanted to touch her and that he was not pursuing her just to be friends: "I already got you a red Gatorade and gummies"; "You look so fuckin hot today too your tight little shirt ugh"; "Be mine [Doe]?"; "Honestly what's holding you back I've never been rejected lmao"; "Ill get to you eventually I promise"; "Ok well we're still practicing with

you so now tell me something sweet”; “I told the office you need to be let in the school to finish a test so get your ass over here” followed by, “You do know so get the fuck over here at 1”; “Where’s your fine ass at”; “I need to stare at it”; “I can see all down your shirt..”; “I can’t help but think bad stuff when I’m around you”; “Would you be mad or jealous if I went home with a female last night when I was fucked up”; “I can’t focus I can’t sleep I can’t fucking not look at you. I’m getting frustrated and pissed off because I e [sic] never had to work for someone to want me the way I want you. By now you should know whether or not you want me or want me to have you. You should know.” followed by, “Just give me something”; “Like my mind goes all over the ace [sic] because I’m doing everything I can to try and have you but then it’s like I feel that you don’t want that at all.”; “I wanna just squeeze your ass so bad”; “Alright then well I am and I didn[’t] pursue you to be in the fucking friend zone. Like I told you I’m going hrough [sic] shit and my mind is all over the gah damn place. I can’t go back to my fuckin house. I literally don’t have anyone to vent to about anything it’s just fucking me and me only.” *Id.* at 423, 428–29, 431, 434, 437–38, 449–50, 454, 457–58, 472.

On October 7, 2022, Bueno sent Doe the following messages: “Do you want a burrito?”; “What are you wearing today”; “Do you think you could stop by my room before you go to your first class?” followed by, “I need a hug”; “My mind is racing [Doe] give me something let me feel like you want me at least”; “So then cut me off if that’s your mindset. I’m not here just to be a friend [Doe]. If you[’re] not open to new things and wanna be stuck in your ways then cut me off”; “Let me buy you lunch”; “You can be there for me by giving me a hug, telling me how great I am, how happy I make you, how my presence brightens your day.” *Id.* at 485, 487–88, 498, 504–06.

On October 8, 2022, Bueno sent Doe the following messages, promising gifts and asking her about sending nude photographs: “Oh and you looked so beautiful last night I couldn’t stop staring from up there. Anyways be safe ok and have fun.”; “Omfg I bet you look so hot Imma get you some fire kicks what size shoe are you?”; “I don’t think so babe just that I have a giant crush on your fine ass”; “I know I make it obvious to you. I want you to know how bad I want you. I mean yeah I wanna know more about you babe. But I’d rather wait to have those conversations later once I know I’m what you want.”; “Has anyone asked you for nudes”; “Have you ever sent any?” *Id.* at 517, 539, 552–53, 558–59.

On October 9, 2022, Bueno sent Doe the following messages, asking her whether she was a virgin and encouraging her to be intimate with him: “I need you [Doe] that’s what I need”; “Hold up are you still a v??”; “I’m missing you so fuckin much rn”; “Let me be your first kiss..”; “All my feelings for you are sincere and genuine Id never hurt you [Doe]. Imma give you homework tonight. Your job is to try and explain exactly how your feelings are towards me. Think about it hard ok. I wanna have that to wake up to ok.”; “Be mine this week and if you ain’t feeling it we can stop.” *Id.* at 568, 579, 585, 589–90.

On October 10, 2022, Bueno messaged Doe, escalating his sexual discussions and telling her he wants to be her first: “What do you normally sleep in? Shorts and a shirt or?” and “Panties and a shirt?” *Id.* at 593–94. He later sent Doe a photo of himself shirtless. *Id.* at 598. Bueno also sent the following messages: “When was the last time you wore a thong?”; “Has anyone ever tried to take your v”; “Has a guy sent you nudes”; “I wanna be alit [sic] of firsts for you [Doe]”; “I bet your p is so tight you’re so thin too omfg”; “I’m just thinking some bad stuff about you. I can only imagine”; “Show me what panties you have

on then..”; “Show me what panties you got on then I’m almost home and I can show you something”; “I’m ready when you are.” *Id.* at 606–07, 610, 612, 614–15, 618, 625–26.

On October 11, 2022, Bueno sent Doe the following messages, referencing his genitalia, asking about her genitalia, promising to teach her things, and saying that a picture he would send would “make her p wett [sic]”: “No hard feelings but the feelings I got for you is harder. How mature you are is so attractive and how you carry yourself is too. Believe me when I say I’ve never looked at another female the way I do you. Anything you ever need I got you.”; “You’re so fucking hot I couldn’t stand up cause well you know”; “Like it’s super hard right now that is so bad..”; “I wanna show it to you”; “[Doe] you’re so fucking hot”; “I wanted to give you a hug before you left”; “Do you shave your p? I’m curious I’m sorry I just want you so damn bad”; “I’m glad you want me I am! Imma teach you alot [sic] of things [Doe] and show you a lot of things”; “You’re with me [Doe] and that’s how it’s gonna be”; “[Doe] is there anyway I could see you today I really need a hug”; “I wanna be with you bad [Doe] I have to admit that to you. I’m way deep in my feelings with you.”; “I’m just letting you know it’s gonna make that p wett [sic]” (referring to a photo he said he was going to send her). *Id.* at 633–36, 639–40, 645, 647, 655, 671, 676.

Shortly after, Bueno sent Doe two photographs of his erect penis. *Id.* at 677. He also sent her the following text messages: “What do you think”; “Yes baby I want you.”; “I bet your wett [sic]”; “Did you delete those pictures?”; “What’d you think of em?” *Id.* at 678–79, 682.

On October 12, 2022, Bueno sent Doe the following messages, again attempting to stimulate her sexually: “Imma be your first for a lot of things especially first real love”; “Tell

me what color panties your wearing”; “I’m a perv like that I love knowing that shit. Imma see you in bra and panties soon.”; “I want you to bring me a pair of your panties”; “I know this one will make you wett [sic] down there” (referring to a video he was about to send).

Id. at 694, 696–98.

Bueno then sent Doe a video of himself masturbating. *Id.* at 698; GX 3. He told Doe to “Delete it after.” GX 1 at 698.

He then tried to arrange a private lunch meeting between them, told her that he would have her shaking, and asked for a picture of her right out of the shower: “You come in here looking all fine and shit and get me going then you leave and don’t text me for 3 hours”; “Leave for lunch and I’ll pick you up we can go somewhere”; “Jk you ain’t about it”; “I would literally have you shaking”; “No stop hurry I’m being serious”; “Stop playing and let’s go fr”; “I will literally do anything to let me see you in your bra and panties...”; “Did it make you a little bit wet down there?” (referring to his masturbation video); “Tell her your coming to see me then”; “Gah damn you’re so fine come over here real quick”; “Nobody’s ever felt you up down there?”, “Imma be number 1 that’s for sure. I’ve got so many bad thoughts with you I just had to take care of myself”; “Cause once you taste my lips and how I kiss you’re gonna wanna do whatever you want with me I swear that’s on Everything”; “I’m not kidding [Doe] you’ll lose your self control with me”; “You make me so fucking horny I cannot stop”; “You just don’t understand how embarrassing this is for me. I’ve had grown ass women, mom’s, and women my age throw themselves at me. Like literally wanting some dick or just a good fuck. now I’m the [person] begging”; “Literally have grown as women here looking to get in contact with me but I ain’t interested because I’m focused on you. Like I said I don’t know anymore”; “Your classmates mom’s asking for

my snap and requesting me on social media”; “Maybe I’ll just give one of these bitches attention to make you realize that you do wanna make me a priority”; “So the balls in your court [Doe] LMK”; “Bless me with a picture when you get straight out the shower babe”; “Take a pic for me and show me tomorrow please!!!!” *Id.* at 700–04, 706, 708–12, 715–17, 722, 726.

On October 13, 2022, Bueno sent Doe the following messages, again asking for a photo so he could see her before tasting her: “That’s the thing I could be fucking and talking to other bitches from here specifically but I don’t want that. I want you and I want you to want me all the time. I don’t want these I don’t know from you.”; “Can you try and see me today?” followed by, “Like me and you”; “Go to my room real fast” followed by, “If anyone were to ask you needed a study sheet for a quiz so please”; “Just please give me a chance be my girl”; “You’re always gonna be my baby no matter what [Doe] just fyi”; “I’m not dumb baby believe me. Send me a pic babe.[]”; “I wanna see what you look like before I get a taste of you.” *Id.* at 739, 741, 749, 758, 760, 762–63.

On October 14, 2023, Bueno sent Doe the following messages, trying to make her feel guilty for not giving him what he wanted: “What color panties do you have on?”; “Come get ‘tutoring’ during lunch? Or you have lunch detention with me?”; “Imma be just as distant as possible and make you regret not taking advantage of what you had right in front of you.”; “You’ll regret it though I promise you that boo but no hard feelings”; “Honest to God I’m scared to show my face now. You told her a lot [sic] more cause literally she said I was mad cause a 14 year old didn’t wanna be with me like!? Just be honest for once.”; “Yup sure is essy [sic] to forget about a pathetic ass [person] who can’t get a 14 yo to be with him right.” *Id.* at 772, 775, 779–80, 787, 790.

On October 15, 2022, Bueno sent Doe the following messages: “I’m gonna have to quit being so pathetic and stop letting this 14 yo manipulate my feelings”; “Just tell me what you wanna do you either want this with me or not and that’s that [Doe] if you don’t need time to think then tell me”; “I’m still trying with you even after you went behind my back like that.” *Id.* at 791, 796.

On October 16, 2022, Bueno sent Doe the following messages: “I don’t think you understand how hard it is to not text you. All I did yesterday was think about you and this situation. I pressured you into talking to me and pressured you into trying to get serious with me” and “That’s the thing [Doe] like I know I can trust you but you need to get it straight with [friend] about me and you. I do miss you and I do want you. I don’t think you’d ruin it for me you’d only do that by telling people. With that being said are you sure you wanna keep it casual with me?” *Id.* at 798–99.

On October 17, 2022, Bueno messaged Doe, “Send me a screen record of you deleting EVERYTHING” and “Send me a screen recording of you deleting everything and show me your private photos with screen record cause I’m not gonna let you fuck me over again.” *Id.* at 833, 835.

Bueno also called or attempted to call Doe several times on October 14, 16, and 17, 2023. GX 4.

On October 19, 2022, Sergeant Flores introduced Bueno to DPS Special Agent Roy Basham, and Bueno participated in a voluntary recorded interview. Tr. at 64, 130. Special Agent Basham explained to Bueno that he was free to leave at any time and was not under arrest. GX 6 at 9:47–10:09. Bueno indicated that he understood, so Basham proceeded to question Bueno. *See id.*

Bueno initially denied any communication with Doe outside of school. GX 6 at 37:43–37:48. When Special Agent Basham showed Bueno copies of the text messages between Bueno and Doe, Bueno claimed that he did not send them and that maybe someone else had accessed his phone and sent the messages. *Id.* at 37:53–38:03.

However, as the interview progressed, Bueno admitted to using a second phone to communicate with Doe and sending the text messages recovered on Doe's phone. *Id.* at 51:44–52:45. Bueno explained that after the school administration discovered that he and Doe were communicating, Bueno destroyed the phone. *Id.* at 1:15:22–1:16:05. Bueno admitted to sending the two photographs of his penis and the video of him masturbating to Doe. *Id.* at 57:00–57:45. Bueno also admitted that the messages between him and Doe became sexually oriented (*id.* at 55:27–56:54) and were inappropriate because she was a freshman (*id.* at 58:23–58:54). Bueno confirmed that he did rub Doe's leg with his foot on the bus. *Id.* at 59:20–59:58. And Bueno explained that he had asked Doe for photographs, and it was implied that the photographs should be nude photographs. *Id.* at 1:00:28–1:00:57; 1:03:30–1:04:13. Bueno also asked Doe to delete all of their messages. *See, e.g.*, GX 1 at 6, 27, 676.

Doe was fourteen years old at the time that Bueno sent the text messages and videos. Tr. at 26–27. When he pled guilty to Counts Two through Four, Bueno admitted to knowing that Doe had not attained the age of sixteen years. Dkt. No. 58 at 2–3. Bueno was Doe's teacher and a coach at the school where Doe attended ninth grade. Tr. at 27–28. Bueno and Doe had also discussed her age while messaging. *See* GX 1 at 787, 790–91, 795.

3. Conclusions of Law

Count One of the Indictment charges Bueno with Enticement and Attempted Enticement of a Minor in violation of 18 U.S.C. § 2422(b). Dkt. No. 17 at 1. Section 2422(b) states that:

Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States knowingly persuades, induces, entices, or coerces any individual who has not attained the age of 18 years, to engage in prostitution or any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title and imprisoned not less than 10 years or for life.

To establish a Section 2422(b) violation, the government must prove beyond a reasonable doubt that the defendant (1) used the Internet, a cell phone, or any facility or means of interstate or foreign commerce to commit the offense; (2) knowingly persuaded, induced, enticed or coerced—or attempted to persuade, induce, entice, or coerce—an individual to engage in criminal sexual activity; (3) the defendant believed that the individual was less than 18 years of age; and (4) had the sexual activity actually occurred, the defendant could have been charged with a violation of Texas Penal Code Section 21.11. Fifth Circuit Pattern Jury Instructions 2.93 (2019); *United States v. Rounds*, 749 F.3d 326, 333 (5th Cir. 2014); *United States v. Venegas*, 594 F. App'x 822, 829 (5th Cir. 2014).

Section 2422(b) does not require “proof of travel across state lines”; instead, it only requires the use of “any facility or means of interstate or foreign commerce.” *United States v. Barlow*, 568 F.3d 215, 220 (5th Cir. 2009). In addition, the government is not required to prove that the individual was in fact less than 18 years of age, but it must prove that the defendant believed such individual to be under that age. *United States v. Rudzavice*, 586 F.3d 310, 313–14 (2009).

Section 2422(b) “does not require that the sexual contact occur, but that the defendant sought to persuade the minor to engage in that contact.” *United States v. Broussard*, 669 F.3d 537, 548 (5th Cir. 2012). The government is also not required to prove that the individual was actually persuaded, induced, enticed, or coerced into engaging in the described sexual activity so long as it proves that (1) the defendant intended to persuade induce, entice, or coerce the individual to engage in some form of unlawful sexual activity with the defendant, and (2) “the defendant had engaged in conduct which constitutes a substantial step toward commission of the crime.” *United States v. Farmer*, 251 F.3d 510, 512–13 (5th Cir. 2001); Fifth Circuit Pattern Jury Instructions 2.60 (2019). “The substantial step must be conduct [that] strongly corroborates the firmness of [the] defendant’s criminal attempt.” *Farmer*, 251 F.3d at 513. Mere preparation is not enough. Fifth Circuit Pattern Jury Instructions 2.60 (2019).

Texas Penal Code Section 21.11, which criminalizes Indecency with a Child, provides that:

- (a) A person commits an offense if, with a child younger than 17 years of age, whether the child is of the same or opposite sex and regardless of whether the person knows the age of the child at the time of the offense, the person:
 - (1) engages in sexual contact with the child or causes the child to engage in sexual contact; or
 - (2) with intent to arouse or gratify the sexual desire of any person:
 - (A) exposes the person’s anus or any part of the person’s genitals, knowing the child is present; or
 - (B) causes the child to expose the child’s anus or any part of the child’s genitals.

“Sexual contact” under the statute is defined as the following acts, “if committed with the intent to arouse or gratify the sexual desire of any person: (1) any touching by a person,

including touching through clothing, of the anus, breast, or any part of the genitals of a child; or (2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.” Tex. Penal Code. § 21.11(c).

A defendant’s “intent to arouse or gratify his sexual desire can be inferred from his conduct, his remarks, and all surrounding circumstances.” *Tienda v. State*, 479 S.W.3d 863, 873 (Tex. App.—Eastland 2015, no pet. h.). Intent can even be inferred from conduct alone without oral expression or visible evidence of sexual arousal. *Id.*

A. Bueno used a facility or means of interstate or foreign commerce.

First, the Court finds beyond a reasonable doubt that Bueno used the Internet, a cell phone, or any facility or means of interstate or foreign commerce to attempt to persuade, induce, entice, or coerce Doe to engage in sexual activity. Specifically, Bueno used a cellular telephone to communicate with Doe through text messages. *See* GX 1.

B. Bueno knowingly attempted to persuade, induce, entice, or coerce Doe to engage in sexual activity.

Second, the Court finds beyond a reasonable doubt that Bueno knowingly attempted to persuade, induce, entice, or coerce Doe to engage in any sexual activity. As Bueno’s messages and other acts make clear, he intended to entice Doe to engage in sexual activity with him, and he also took several substantial steps toward commission of the crime. In addition, Bueno utilized grooming behavior, which the Fifth Circuit has defined as “deliberate actions taken by a defendant to expose a child to sexual material; the ultimate goal of grooming is the formation of an emotional connection with the child and a reduction of the child’s inhibitions in order to prepare the child for sexual activity.” *Howard*, 766 F.3d at 424–45.

Bueno used a variety of strategies in an attempt to persuade, induce, or entice Doe to engage in sexual activity with him. For example, Bueno often flattered her, commenting on her appearance and sexuality. *See, e.g.*, GX 1 at 378, 477, 515. He reiterated the genuineness and sincerity of his feelings towards Doe and stated that he would make her fall in love with him. *See, e.g.*, *id.* at 369, 390, 589. Bueno also tried to appeal to her sexuality and stimulate her by sending numerous sexually oriented messages. *See, e.g.*, *id.* at 618, 625, 645, 763. He even sent her two photos of his penis (*id.* at 677) and a video of him masturbating (GX 3) and subsequently asked her if she was “wet,” seeking confirmation of a biological indication that Doe had been enticed. GX 1 at 679, 706. Bueno requested photographs of Doe, too (*see, e.g.*, *id.* at 763), which Bueno admitted in his recorded interview implied that he wanted nude photographs of her (GX 6 at 1:00:28–1:00:57). When Doe did not reciprocate his sexual desires, Bueno would shame her by responding with messages like: “Then tell me to fuck off then [Doe] damn I mean I don’t get anything from you anyway. If anything it’s like the friend zone. I didn’t willingly give you my attention to be put in the fuck frie[n]d zone.” GX 1 at 472. And Bueno attempted to normalize his behavior and the relationship between him and Doe by telling her, “I know of someone who did this for years and ummmm yeah . . .” and “One of the coaches that coached me in HS was doing it to a girl in my class all the way up until her senior year of college. Started her freshman year.” *Id.* at 291.

Bueno also began grooming Doe by building a relationship of trust and repeatedly reminding her that she needed to keep their communications secret. *See, e.g.*, *id.* at 6, 14, 25, 27, 34. The two photographs and video Bueno sent, coupled with his sexually oriented messages, served to desensitize Doe to pornography and lower her inhibitions about

engaging in sexual contact with Bueno. *See, e.g., id.* at 677; GX 3. And as part of his continued efforts, Bueno engaged in various forms of manipulation. For instance, Bueno offered to buy Doe food and other gifts, such as shoes. *See, e.g., id.* at 382, 436, 506, 539. Bueno chastised Doe on multiple occasions for flirting with other people. *See, e.g., id.* at 105, 112, 315, 459, 461. On one occasion, he even said “[Y]ou don’t even [get] close to me but everyone else is all up in your shit.” *Id.* at 468–70. He also sent messages like, “You just don’t understand how embarrassing this is for me. I’ve had grown ass women, mom’s, and women my age throw themselves at me. Like literally wanting some dick or just a good fuck. now I’m the [person] begging” (*id.* at 715), and “Literally have grown ass women here looking to get in contact with me but I ain’t interested because I’m focused on you. Like I said I don’t know anymore,” in an attempt to coerce her into engaging in sexual activity with him. And he attempted to exercise control over Doe, sending numerous messages that discussed his desire for control (*see, e.g., id.* at 59, 104), texting her orders like, “Quit being so flirty with all the boys it comes off as flirting is the first,” and “Second I want you to look at me more” (*id.* at 60–61).

Bueno’s messages and various strategies show beyond a reasonable doubt that Bueno was attempting to persuade, induce, entice, or coerce Doe to engage in sexual activity. The Court also finds that the above messages are consistent with “grooming behavior.” *See Howard*, 766 F.3d at 425 (“The presence of grooming behavior is probative evidence that supports the inference that the defendant intends to entice the minor to assent to illegal sex.”). In any event, the defense conceded at trial that Bueno had engaged in grooming behavior. Tr. at 193.

Additionally, Bueno took numerous substantial steps towards enticing Doe to engage in sexual activity with Bueno, and his actions strongly corroborate the firmness of his criminal attempt. *See Howard*, 766 F.3d at 419. Bueno used a second phone to message Doe privately. GX 6 at 51:44–52:45. During a football trip, Bueno asked for Doe’s phone number. Tr. at 28–29; GX 6 at 51:12–51:44; 51:45–53:23. As he and Doe began texting, Bueno sent numerous sexually oriented text messages. *See, e.g.*, GX 1 at 618, 625, 645, 763. As the Fifth Circuit has explained, “[e]vidence can establish that a defendant intended to induce, persuade, entice, or coerce a minor by sending the minor sexually explicit messages.” *See Rounds*, 749 F.3d at 333. Bueno also sent two photos of his erect penis and a video of him masturbating to Doe. GX 1 at 677, 698; GX 3. “[S]ending sexually explicit images and video is probative evidence of intent to entice a minor to engage in illegal sex.” *Howard*, 766 F.3d at 425. Additionally, Bueno’s messages asking Doe if she was “wet” after he had sent her the photos and videos indicate that he wanted confirmation that she was enticed. GX 1 at 679, 706. And during a school trip, Bueno went beyond messages and rubbed Doe’s thigh with his foot in a sexually suggestive manner. Tr. at 33–35.

Bueno and Doe’s prior teacher-student relationship presents another significant factor, distinguishing this case from most enticement cases that “ordinarily are the result of sting operations.” *See Howard*, 766 F.3d at 414, 420; *Gladish*, 536 F.3d at 650. Another court has previously held that grooming behavior, a proposed summer meeting, and a prior relationship collectively demonstrated a “substantial step.” *United States v. Goetze*, 494 F.3d 1231, 1235–37 (9th Cir. 2007); *see also Gladish*, 536 F.3d at 650 (“Because Goetze and his intended victim had a prior relationship, his effort to lure the victim back to Montana for sex could not be thought idle chatter.”). Similarly, here, Bueno groomed Doe, proposed

meeting her on several occasions, and had a prior relationship with her. In fact, Bueno utilized this student/teacher relationship to engage in grooming behavior and manipulate Doe, offering to “give [her] straight As this year to boost [her] gpa” (GX 1 at 343), asking her to see him alone in his classroom to ““make up” a quiz (*id.* at 200–01) or get ““tutoring” during lunch” (*id.* at 775), and even threatening her with school-related discipline if she did not listen to his wishes (*id.* at 184–87). *See also United States v. Kokayi*, No. 1:18-CR-410 (LMB), 2019 WL 2028517, at *5 (E.D. Va. May 8, 2019) (“Furthermore, the teacher/student relationship is a classic example of a relationship in which sexual grooming can occur.”).

Collectively, these acts establish that Bueno took a substantial step and attempted to persuade, induce, entice, or coerce Doe to engage in sexual activity. Fifth Circuit precedent makes clear that “grooming behavior plus other acts strongly corroborative of intent to entice illegal sex—such as detailed discussions to arrange a meeting with the minor victim—can suffice to establish a substantial step under [Section] 2422(b).” *See Howard*, 766 F.3d at 425. Thus, while Bueno’s explicit sex talk or his sending of sexually explicit images or videos do not independently constitute a substantial step, *see Howard*, 766 F.3d at 421–23, 425, his grooming behavior towards Doe plus his many other acts do establish a substantial step.

Other cases discussing the role of travel and travel plans in finding a substantial step do not require the Court to reach a different conclusion here. *See, e.g., Howard*, 766 F.3d at 425–28. As the Fifth Circuit has previously noted, “[it] ha[s] never ruled that physical proximity or travel or plans to travel is necessary to constitute a substantial step under § 2422(b).” *Broussard*, 669 F.3d at 550. In any event, unlike those situations, Bueno saw

Doe several times each week during the school year because Bueno was Doe's teacher and was a coach for the football team while Doe was a team manager. Tr. at 27–28.

Additionally, Bueno repeatedly requested to see Doe during school. *See, e.g.*, GX 1 at 19, 100, 204, 281, 287–89, 331, 488, 708. In fact, on October 12, 2022, just a few hours after Bueno had sent the video of himself masturbating to Doe (GX 3), he messaged her, “Leave for lunch and I’ll pick you up we can go somewhere” followed by, “Jk you ain’t about it” and “I would literally have you shaking” (GX 1 at 701–02). Moreover, during a school trip, Bueno went beyond messages and physically rubbed Doe’s thigh with his foot in a sexually suggestive manner. Tr. at 33–35. In sum, based upon the evidence here, the Court finds beyond a reasonable doubt that Bueno took a substantial step.

C. Bueno knew that Doe had not attained the age of 18 years.

Third, Bueno knew Doe was less than 18 years of age beyond a reasonable doubt. Doe was fourteen years old at the time that Bueno sent the text messages and videos. Tr. at 26–27. Bueno knew Doe’s age because he was a teacher and coach at the school where Doe attended ninth grade, and he was actually one of her teachers. Tr. at 27–28. In addition, Bueno and Doe had discussed her age in text messages. *See* GX 1 at 787, 790–91, 795.

D. Bueno attempted to entice Doe to engage in sexual activity for which he could have been charged with violating Texas Penal Code § 21.11.

Fourth, the Court finds beyond a reasonable doubt that had the sexual activity actually occurred, Bueno could be charged with the criminal offense of Indecency with a Child under the laws of Texas. *See* Tex. Penal Code § 21.11. In previous filings, Bueno contended that the Court should follow the jury instructions for Unanimity of Theory. Dkt. No. 54 at 8. But the instruction requires that all jurors agree on the same theory to return a guilty verdict. Fifth Circuit Pattern Jury Instructions 1.27 (2019). Here, the Court

conducted a bench trial pursuant to Bueno's request and waiver. Therefore, it does not logically follow that this instruction is applicable here. In any event, the Court finds that Bueno could have been charged with violating either Texas Penal Code § 21.11(a)(1) or Texas Penal Code § 21.11(a)(2).

Bueno's messages and conduct indicate that he intended to "intentionally or knowingly engage in sexual contact with Doe." *See, e.g.*, GX 1 at 612, 645, 763. He asked Doe about whether she was still a virgin (*id.* at 607) or whether anyone had "felt [her] up down there" (*id.* at 709) along with repeatedly asserting that he should be a lot of "firsts" for Doe (*id.* at 612, 694). Bueno also sent Doe messages such as, "Do you shave your p?" (*id.* at 645), and "I need to have you alone today for like a few seconds" followed by, "To grab that nice ass of your in the tights" and "You make me so fucking horny I cannot stop" (*id.* at 711–12). Bueno asked Doe if he could grab her (*id.* 261) and even rubbed her thighs with his feet in a sexual manner during a school-related bus ride (Tr. at 33–35). The evidence indicates that had the sexual activity that Bueno was attempting to entice Doe to engage in actually occurred, Bueno would have violated Texas Penal Code § 21.11(a)(1).

Bueno's messages and conduct also indicate that "with the intent to arouse or gratify the sexual desire of any person," Bueno intended to "expose [his] anus or any part of [his] genitals, knowing that [Doe] would be present" and "cause [Doe] to expose [her] anus or any part of [her] genitals." Tex. Penal Code § 21.11(a)(2)(A)–(B). When Bueno sent the photos and video of his erect penis, Bueno asked whether Doe was "wet"—or aroused—and stated that he could make her feel that way. GX 1 at 676, 679, 698, 706. Bueno also asked for nude photographs of Doe with the intent to arouse or gratify his own desire. *See, e.g.*, GX 1 at 726. This evidence indicates that had the sexual activity that Bueno was attempting

to entice Doe to engage in actually occurred, Bueno would have violated both Texas Penal Code § 21.11(a)(2)(A) and (B).

4. Conclusion

Because the government has carried its burden of showing the elements for Attempted Enticement of a Minor, the Court finds the defendant, Nicholas Bueno, guilty of Count One of the Indictment.

So ordered on July 10, 2023.



JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE