CH. 18
ENTRAPMENT

§18-1
Generally

United States Supreme Court

Hampton v. U.S., 425 U.S. 484, 96 S.Ct. 1646, 48 L.Ed.2d 113 (1976) The fact that a government informant supplied the narcotics that defendant later sold to an agent does not necessarily constitute entrapment; the test is whether the government action implanted in the mind of an innocent person the disposition to commit the offense and induced its commission. Since defendant conceded predisposition, the defense of entrapment was not available. See also, People v. Cross, 77 Ill.2d 396, 396 N.E.2d 812 (1979) (if defendant was predisposed to commit the offense, entrapment defense is inapplicable even if State officers furnished the controlled substance). Compare, State v. Williams, 621 S.2d 413 (Fla. 1993) (law enforcement officers' manufacture of controlled substance violates due process under State constitution; although law authorizes police to possess and sell controlled substances in undercover activities, there is no such authorization for manufacturing).

U.S. v. Russell, 411 U.S. 423, 93 S.Ct. 1637, 36 L.Ed.2d 366 (1973) The entrapment defense comes into play when government's deception actually implants the criminal design in the mind of defendant.

Illinois Supreme Court

People v. Hall, 25 Ill.2d 297, 185 N.E.2d 143 (1962) Entrapment is not available to one who has the intent to commit the crime and does so merely because an officer or his agent, for the purpose of securing evidence, affords an opportunity to commit the criminal act or purposely aids and encourages its perpetration.

Illinois Appellate Court

People v. Lewis, 2020 IL App (2d) 170900 Defendant was convicted of involuntary sexual servitude of a minor and traveling to meet a minor after responding to an ad on Backpage.com and traveling to a hotel to meet up with two underage girls to engage in sexual activity. It turned out that no minors were involved; defendant was actually communicating with an undercover officer in response to the internet advertisement, and he was arrested after he arrived at the hotel and produced cash in exchange for the anticipated sexual activity. Defendant presented an entrapment defense at trial.

Defense counsel rendered deficient performance by failing to submit a definition of "predisposed" in response to a jury question as to the meaning of the term. The jury received instructions on the defense of entrapment, but those instructions did not include such a definition, and there is no pattern instruction defining the term. The generally understood definition of "predisposed" is broader than how that term is defined for purposes of entrapment, where the focus is on whether defendant was ready and willing to commit the charged offense "before his or her initial exposure to government agents." **People v. Bonner**, 385 Ill. App. 3d 141 (2008). Given the difference between the common understanding and the narrower meaning relating to the entrapment defense, and the jury's express confusion over the meaning of the term, counsel erred in agreeing to the court's response declining to provide a definition of "predisposed."

Counsel also provided deficient representation by failing to present evidence that defendant had no prior criminal history. The absence of any criminal history was strong evidence of defendant's lack of predisposition. Counsel failed to function as guaranteed by the sixth amendment by not presenting that evidence.

And, counsel erred by not objecting to the State's closing argument which suggested to the jury that it had to first find that defendant was induced by government agents to commit the offense before considering whether he was predisposed to do so. Once the court decides there is sufficient evidence to instruct the jury on entrapment, it is the State's burden to either disprove inducement or prove predisposition, beyond a reasonable doubt. The State's argument misrepresented its burden.

These errors were prejudicial. The failure to offer a definition of "predisposed" created a serious danger that the jury convicted defendant without considering whether he was inclined to commit the offense *before* his contact with the officer. And, the State's closing argument "muddied the waters" with regard to the entrapment defense. The cumulative effect of counsel's errors rendered defendant's trial unreliable under **Strickland.** The Appellate Court reversed and remanded for a new trial.

People v. Trice, 2017 IL App (4th) 150429 Admitting commission of each element of an offense is a precondition to asserting an entrapment defense. Only after such admission will the court consider whether there has been slight evidence of inducement by the State sufficient to warrant the giving of an entrapment instruction.

Here, the State arranged a controlled purchase of drugs using a paid informant. Defendant and another man met up with the informant at a pre-arranged location. The informant testified that she entered defendant's car, gave defendant $400, and received a bag of cocaine from defendant. In a statement to police, defendant said that he facilitated the meeting between the informant and his passenger, the passenger sold drugs to the informant, and defendant received $200 as gas money. At trial, however, defendant denied arranging the drug sale and said that all he did was give his passenger a ride. Defendant claimed he did not see or participate in any drug transaction.

Because defendant's trial testimony was not an admission, an entrapment instruction was properly refused. Even if defendant's previous statement to the police was considered an admission, his trial testimony overrode that admission for purposes of determining whether an entrapment instruction was warranted.

People v. Ming, 316 Ill.App.3d 1274, 738 N.E.2d 628 (5th Dist. 2000) The "outrageous conduct" defense applies where, under the totality of the circumstances, the conduct of government agents is so extreme as to violate fundamental fairness and shock "our universal sense of justice." The "outrageous conduct" defense comes into play where the government is "overly involved in the creation of a crime" or coerces a defendant into participating.

Even if an undercover agent paid defendant for setting up drug transactions by giving him part of the cocaine purchased in the controlled buys, the actions were not so outrageous as to justify dismissal of the charges. Tape recordings made during the transactions showed that the officer did not initiate the payments, defendant was not reluctant to commit the crime, the officer was not overly involved in creating the crime, and defendant was not coerced into participating.

However, the court criticized the agent's "lack of forthrightness" about providing cocaine to defendant, and said that if the charge can be proven the officer should be prosecuted for perjury or disciplined by the police department.

People v. Criss, 307 Ill.App.3d 888, 719 N.E.2d 776 (1st Dist. 1999) Where an entrapment defense was raised, the trial judge erred by excluding evidence that defendant had no prior criminal record. Predisposition to commit an offense is an important consideration in proving entrapment, and a prior criminal record (or lack thereof) is relevant to predisposition. Because defendant raised an entrapment defense, she was entitled to argue that her lack of a prior criminal record showed a lack of predisposition.
In addition, the trial judge erred by refusing to instruct the jury on the entrapment defense as it existed at the time of the offense, although the legislature amended the statute before trial to reduce the State's burden of proof.

People v. Boalbey, 143 Ill.App.3d 362, 493 N.E.2d 369 (3d Dist. 1986) The question of entrapment involves two issues: inducement and predisposition. Defendant has the burden of proving that the State induced him to commit the criminal act; if this burden is met, the State has the burden to prove that defendant was predisposed to commit the crime.

People v. Gorski, 144 Ill.App.3d 284, 494 N.E.2d 246 (2d Dist. 1986) An entrapment defense may not be based on the conduct of a private party who is not a government agent.

People ex rel. Difanis v. Boston, 92 Ill.App.3d 962, 416 N.E.2d 333 (4th Dist. 1981) The State's recruitment of men to patronize prostitutes, to aid in prosecution thereof, did not reach the "demonstrable level of outrageousness" necessary to constitute a violation of due process.

People v. Washington, 81 Ill.App.2d 162, 225 N.E.2d 673 (1st Dist. 1967) Appeals to friendship or sympathy do not establish entrapment.

§18-2
Predisposition

United States Supreme Court

Jacobson v. United States, 503 U.S. 540, 112 S.Ct. 1535, 118 L.Ed.2d 174 (1992) Postal inspectors targeted defendant in a child pornography "sting" operation after they discovered his name on a mailing list for an adult bookstore. The inspectors sent defendant mailings from fictitious organizations purportedly interested in surveying sexual attitudes and in lobbying to modify laws restricting sexual activity, then created a "pen pal" who had been matched with him because of their similar responses to the surveys. After several such mailings over 26 months, the government sent a brochure advertising photographs of young boys and a letter from a fictitious foreign company claiming that its mail could not be opened without a court order. Defendant eventually ordered a magazine depicting young boys, and was arrested after he took delivery.

Defendant testified that he placed the order because he wanted to see for himself the materials described in the mailings. There was no evidence that he had ever possessed any pornographic materials other than two magazines that he had ordered when receipt of such materials was legal, and he testified that he ordered those magazines without realizing they would depict minors.

No rational juror could have concluded that defendant was predisposed to commit the crime independently of being targeted by the sting operation.

The only evidence that defendant was disposed to possess child pornography before

the sting operation was his act of ordering two magazines when receipt of such material was legal. Although this act showed a predisposition to view sexually oriented photographs, a mere generic inclination to act within a broad range of behavior, some of which is legal, does not establish predisposition to commit a criminal act. Furthermore, performance of a lawful act does not suggest a willingness to commit the same act after the law is changed, because most people obey the law whether or not they agree with it.

Defendant's actions after being targeted by the sting operation also failed to prove predisposition. Defendant's response to the surveys showed a predisposition to enjoy sexual materials involving boys and a willingness to support lobbying efforts to change laws restricting such activities, but did not show that he was willing to commit a crime by receiving such materials through the mail. The record supports a strong inference that by "waving the banner of individual rights and disparaging the legitimacy and constitutionality of efforts" to restrict child pornography, the government not only excited defendant's interest in the banned material but also exerted substantial pressure to order such materials "as part of a fight against censorship and the infringement of individual rights."

Illinois Supreme Court

People v. Placek, 184 Ill.2d 370, 704 N.E.2d 393 (1998) Among the factors to be considered in assessing a defendant's predisposition to commit a drug offense are his initial reluctance or willingness to commit the crime, familiarity with drugs and willingness to accommodate the needs of drug users, willingness to profit from the crime, prior or current use of illegal drugs, participation in testing or cutting the drug, and ready access to a supply of drugs. There was some evidence to support defendant's claim of entrapment, including that: (1) a two-year-surveillance of defendant as part of a stolen auto parts ring revealed no evidence that he was buying or selling cocaine, (2) the drug investigation occurred only because the officers had difficulty finding stolen auto parts to sell to defendant and decided to "see what other criminal activity [defendant] was involved in," and (3) defendant declined to participate in drug transactions on at least three occasions before agreeing to do so.

However, the remaining evidence established predisposition. Defendant first raised the issue of selling drugs, was familiar with drug use, offered to supply the officer with cocaine as a way of paying back defendant's cocaine supplier, and indicated that he was willing to profit from the exchange. In addition, defendant set the price and quantity of the cocaine to be sold and arranged the time and place for the exchange. Laboratory tests showed that the cocaine delivered by defendant was of high purity, indicating that defendant was "close" to a source. Finally, the delivery took place in defendant's storage facility, from which he retrieved his own scale to weigh the cocaine.

Defendant was entitled to a new trial, however, because the State improperly introduced other crimes evidence to rebut the entrapment defense. To be admissible to disprove entrapment, other crimes evidence must involve offenses that are "specifically relevant to the defendant's claim of entrapment." Specific relevance may be demonstrated by showing that the other crime is similar to the crime with which defendant is charged or is "proximate in time" to the charged offense.

Here, the trial judge abused his discretion by admitting evidence that defendant dealt in stolen auto parts, because the auto theft crimes were not sufficiently similar to the drug charges to supply the necessary relevance.

People v. Pates, 84 Ill.2d 82, 417 N.E.2d 618 (1981) At a trial for possession of cannabis with intent to deliver, the trial court refused to give the pattern entrapment instruction (IPI

24.04) tendered by the defense. Instead, the judge gave the State's modified version of IPI 24.04, which deleted the phrase "in furtherance of a criminal purpose which the defendant originated." The instruction was improper because it might lead the jury to conclude that the State could rebut the entrapment claim without showing predisposition.

People v. Tipton, 78 Ill.2d 477, 401 N.E.2d 528 (1980) Evidence of drug-related acts occurring after the alleged offense are admissible where relevant to the issue of predisposition. See also, **People v. Chanath**, 184 Ill.App.3d 521, 540 N.E.2d 468 (1st Dist. 1989).

Illinois Appellate Court

People v. Lewis, 2020 IL App (2d) 170900 Defendant was convicted of involuntary sexual servitude of a minor and traveling to meet a minor after responding to an ad on Backpage.com and traveling to a hotel to meet up with two underage girls to engage in sexual activity. It turned out that no minors were involved; defendant was actually communicating with an undercover officer in response to the internet advertisement, and he was arrested after he arrived at the hotel and produced cash in exchange for the anticipated sexual activity. Defendant presented an entrapment defense at trial.

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These errors were prejudicial. The failure to offer a definition of "predisposed" created a serious danger that the jury convicted defendant without considering whether he was inclined to commit the offense *before* his contact with the officer. And, the State's closing argument "muddied the waters" with regard to the entrapment defense. The cumulative effect of counsel's errors rendered defendant's trial unreliable under **Strickland.** The Appellate Court reversed and remanded for a new trial.

People v. Bonner, 385 Ill.App.3d 141, 895 N.E.2d 99 (2d Dist. 2008) The entrapment defense applies when law enforcement agents induce a person to commit a crime which he or

she was not predisposed to commit. To raise an entrapment defense, defendant must show both an inducement by a State agent and a lack of predisposition. Once defendant presents some evidence, however slight, to support an entrapment defense, the State bears the burden to rebut the defense beyond a reasonable doubt.

Here, defendant was entrapped as a matter of law. First, the informant induced the offense by repeatedly soliciting defendant to sell drugs and, when defendant refused, by offering sexual favors.

Furthermore, defendant was not predisposed to commit the offense. Predisposition is established by proof that defendant was prepared to commit the crime without persuasion and before exposure to the government's inducement. Factors to be considered in assessing predisposition include defendant's: (1) initial reluctance or willingness to commit the crime; (2) familiarity with drugs; (3) willingness to accommodate the needs of drug users; (4) willingness to profit from the offense; (5) current or prior drug use; (6) participation in cutting or testing the drugs; (7) ready access to a supply of drugs; (8) engagement in a course of conduct involving similar offenses; and (9) subsequent activities.

Defendant was initially unwilling to engage in drug transactions, and agreed to do so only after the informant initiated a sexual relationship. Even after agreeing to sell drugs, defendant played only a limited role in which he was little more than a courier. Furthermore, while defendant was obviously familiar with drug usage, he was "indifferent" to the undercover agent's business in that he did not deliver what the agent requested, pilfered some of the drugs for himself, and said that if the agent complained about the drugs he was free not to take them.

There was no evidence that defendant profited from the transactions except by stealing some of the substance intended for the agent and by receiving a small amount of drugs from the supplier in return for acting as a courier. Finally, there was no evidence that defendant had engaged in any similar offenses. Under these circumstances, predisposition was not shown.

Defendant was entrapped even concerning offenses which occurred after the informant no longer accompanied him to the sales and after the sexual relationship between the informant and defendant apparently ended. Where a transaction is part of a course of conduct which began as the product of the State's inducement, the entrapment defense applies to all of the transactions.

People v. Perez, 209 Ill.App.3d 457, 568 N.E.2d 250 (1st Dist. 1991) The trial court erred by refusing to allow defendant to call character witnesses to testify about his good reputation in the community as a law-abiding citizen. Defendant's conduct and pre-disposition are relevant when an entrapment defense is raised; thus, defendant's character is directly in issue. By not allowing defendant to call his character witnesses, the trial court "hampered his ability to present a defense of lack of predisposition."

People v. Lindo, 169 Ill.App.3d 877, 523 N.E.2d 1341 (2d Dist. 1988) Defendant claimed that he agreed to help a friend sell drugs by pretending to be a drug dealer in what he believed was a sham sale meant to impress the friend's potential customers. Defendant testified that he did not know what was in the package he gave to the potential customer (an undercover agent), but he believed it was illegal and valuable.

Defendant sufficiently admitted the elements of the offense to justify an entrapment instruction. In addition, predisposition was not shown by the fact that one year earlier, defendant had participated in an attempted sham transaction with the same informant. The prior transaction "does not appear to have been a separate and independent transaction

establishing defendant's predisposition," since defendant testified that in both transactions he was contacted by the informant, who supplied the drugs and merely asked defendant "to pose as the drug dealer to bolster the sale with his Jamaican ethnicity." It "would be absurd indeed to hold that a defendant's predisposition to commit a crime can be shown through a prior uncompleted transaction which may itself have been improperly induced without predisposition."

People v. Boalbey, 143 Ill.App.3d 362, 493 N.E.2d 369 (3d Dist. 1986) Negotiating over price, in response to officer's offer to illegally sell food stamps, did not establish predisposition where there was no evidence defendant had a criminal record or had previously engaged in illegal food stamp transactions.

People v. Fisher, 74 Ill.App.3d 330, 392 N.E.2d 975 (3d Dist. 1979) Defendant's conviction for delivery of a controlled substance was reversed because the State failed to rebut defendant's entrapment evidence beyond a reasonable doubt.

The idea to commit the offense originated with the undercover police officer, who made several unsuccessful attempts to purchase drugs from defendant. Although defendant eventually agreed to sell drugs, she did so out of "an overwhelming desire to 'get rid' of [the undercover officer] and to have him stop bothering her...." Consequently, the evidence shows a lack of predisposition on the part of defendant and active encouragement by the police to commit the offense. See also, **People v. Day**, 279 Ill.App.3d 606, 665 N.E.2d 867 (3d Dist. 1996) (evidence established lack of predisposition; defendant had no criminal history, did not profit from sale, and lacked a ready source of drugs); **People v. Salazar**, 284 Ill.App.3d 794, 672 N.E.2d 803 (1st Dist. 1996) (lack of predisposition shown where defendants backed out of first transaction and testified they acted out of fear of agent).

People v. Cooper, 17 Ill.App.3d 934, 308 N.E.2d 815 (2d Dist. 1974) The State's failure to show that defendant had ever previously sold drugs, while tending to negate predisposition, is not determinative of the issue.

§18-3
Sufficiency of Evidence

§18-3(a)
Generally

Other Federal Court

U.S. v. Sandoval, 20 F.3d 134 (5th Cir. 1994) During meetings concerning defendant's income tax liability for money his wife had embezzled from her employer, defendant said that he would like to "make a deal." After talking to her supervisor, the agent decided that defendant was offering a bribe. The agent wore a concealed recording device for subsequent meetings with defendant; however, it soon became clear that defendant merely wanted to provide information about tax evaders under an IRS program that rewarded such information.

Despite defendant's references to the reward program, the agent repeatedly asked, "What's in it for me?" She also said that any "deal" was "strictly between you and I." Although defendant hesitated when he finally understood that the agent was referring to a bribe, he eventually offered to pay $3,000 cash to have his tax obligation reduced. When he delivered

the first payment, however, he remarked to the agent that he "had never done anything like this before."

No reasonable jury could have concluded that defendant's participation in the crime was independent of the government's enticement. Given defendant's offers only to provide information and the agent's attempts to solicit a bribe, it was clear that the government initiated the bribery scheme. Repeated and persistent encouragement by the agent was required before the bribe was offered, and defendant was clearly hesitant when he realized that a bribe was being solicited.

Illinois Appellate Court

People v. Karraker, 261 Ill.App.3d 942, 633 N.E.2d 1250 (3d Dist. 1994) As a matter of law defendant had been entrapped into committing the offense of unlawful use of a weapon. The unlawful use of a weapon charge involved conversion of a semi-automatic weapon so it would fire automatically. Defendant explained to a government informant that a weapon could be modified to make it fire automatically, but resisted the informant's requests to make the conversion. After several months the informant brought defendant a weapon that had been provided by the State Police. At the informant's insistence, defendant eventually altered the weapon.

The State failed to rebut the entrapment defense beyond a reasonable doubt. Defendant never agreed to any of the informant's requests that he do the conversion when an appropriate gun was found; instead, defendant repeatedly said that he would tell the informant how to make the conversion. Even when the State Police finally provided a weapon, defendant converted it only after "some coaxing" by the informant. In addition, though the conversations between defendant and the informant suggested that at some unspecified time in the past defendant had converted weapons, the State failed to show that at the time of the first meeting with the informant he was predisposed to perform such conversions again.

Furthermore, the informant had a clear incentive to induce defendant into committing a crime, because he had been told that he could "make amends" for his own legal problems by reporting any illegal activities he observed. Finally, defendant owed $2,600 to the informant and therefore may have been especially susceptible to the latter's suggestions to commit crimes.

People v. Kulwin, 229 Ill.App.3d 36, 593 N.E.2d 717 (1st Dist. 1992) At his trial for delivery of cocaine and possession with intent to deliver, the evidence showed that defendant incurred debts of $20,000 and was unable to obtain loans from banks or family members. Defendant asked a friend for a loan; unbeknownst to defendant, the friend was a government informant. The informant responded that he was not in the lending business but that defendant could obtain the money he needed by selling cocaine. Defendant eventually agreed to participate in a drug deal.

The State failed to disprove entrapment beyond a reasonable doubt. Defendant was particularly susceptible to inducement because of his financial situation, he did not initiate the reference to dealing drugs, and the cocaine which defendant delivered and possessed belonged to the government. In addition, defendant was initially unwilling to engage in criminal activity and acquiesced only after persistent inducement from the informant and an undercover officer.

§18-3(b)
For Entrapment Instruction

United States Supreme Court

Mathews v. U.S., 485 U.S. 58, 108 S.Ct. 883, 99 L.Ed.2d 54 (1988) A defendant need not admit all of the elements of the offense in order to obtain a jury instruction on entrapment.

Illinois Supreme Court

People v. Landwer, 166 Ill.2d 475, 655 N.E.2d 848 (1995) Defendant who raised entrapment defense to charges of solicitation of murder for hire could not obtain jury instruction on a lesser included offense. To raise entrapment, defendant is required to admit all of the elements of the charged offense, including intent, such that there is no longer a rational basis to acquit defendant of the greater offense while convicting of the lesser.

People v. Gillespie, 136 Ill.2d 496, 557 N.E.2d 894 (1990) The decision in Mathews is not of constitutional magnitude. Under Illinois law, entrapment is available only where defendant admits that a crime was committed and that he or she committed it. Thus, a defendant who denies committing the offense is not entitled to have the jury instructed on entrapment.

Illinois Appellate Court

People v. Trice, 2017 IL App (4th) 150429 Admitting commission of each element of an offense is a precondition to asserting an entrapment defense. Only after such admission will the court consider whether there has been slight evidence of inducement by the State sufficient to warrant the giving of an entrapment instruction.

Here, the State arranged a controlled purchase of drugs using a paid informant. Defendant and another man met up with the informant at a pre-arranged location. The informant testified that she entered defendant's car, gave defendant $400, and received a bag of cocaine from defendant. In a statement to police, defendant said that he facilitated the meeting between the informant and his passenger, the passenger sold drugs to the informant, and defendant received $200 as gas money. At trial, however, defendant denied arranging the drug sale and said that all he did was give his passenger a ride. Defendant claimed he did not see or participate in any drug transaction.

Because defendant's trial testimony was not an admission, an entrapment instruction was properly refused. Even if defendant's previous statement to the police was considered an admission, his trial testimony overrode that admission for purposes of determining whether an entrapment instruction was warranted.

People v. Walker, 267 Ill.App.3d 454, 641 N.E.2d 965 (1st Dist. 1994) The trial court erred by refusing an entrapment instruction. In deciding whether to give an instruction, the trial court must view the evidence most favorably to defendant. Although a defendant who claims entrapment must admit to committing the elements of the charged offense, an entrapment instruction is justified if there is even "slight" evidence which, if believed, establishes an entrapment defense.

People v. Alexander, 250 Ill.App.3d 68, 619 N.E.2d 863 (2d Dist. 1993) A defendant is entitled to an instruction on an affirmative defense if there is at least slight evidence to support that defense. Among the factors relevant to the question of predisposition are

defendant's initial willingness to commit the crime, degree of familiarity with drugs, willingness to accommodate the needs of drug users, and willingness to make a profit. Also to be considered are defendant's prior or present drug use, ready access to a supply of drugs, and prior criminal record. However, commission of a similar offense involving the same agents shortly before the charged offense does not establish predisposition, as the second transaction could merely be the continued product of the initial inducement.

Although defendant was a long-time drug user, he had no prior convictions for drug-related offenses, and there was little evidence that he had ever engaged in dealing. His knowledge of the drug culture appeared to be that of a user rather than a dealer, as his quotations for the prices of cocaine were "considerably low." Defendant sold no drugs from his house and made no profit from the sales, and when his original source was unavailable he had trouble finding an alternate source for the second sale. In addition, the undercover agent testified that defendant did not initiate either transaction, but merely responded to requests by the agent and the informant. Finally, there was substantial evidence that defendant was coerced by a threat to reveal a past affair to his wife.

Illinois Supreme Court

People v. Wielgos, 142 Ill.2d 133, 568 N.E.2d 861 (1991) The trial judge properly refused to instruct the jury on entrapment by a police agent. The evidence showed that an undercover drug officer attempted to purchase cocaine from a man named Ruschinski. Ruschinski contacted defendant and requested his help in getting cocaine. After many pleas from Ruschinski, defendant eventually assisted him in selling cocaine to the officer. At trial, defendant claimed that he had been entrapped by Ruschinski.

At defendant's request, the trial judge instructed the jury on entrapment (IPI 24-25.04), but without the words "and/or agent of a public officer." The trial court properly refused to give the omitted phrase. The inducement must be made "for the purpose of obtaining evidence for the prosecution of [defendant]." In this case, there was no evidence that Ruschinski acted to obtain evidence against defendant; much of the evidence used to prosecute defendant was also used against Ruschinski, and it is illogical to believe that an informant would intentionally help collect evidence to be used in his own prosecution.

Illinois Appellate Court

People v. Lindo, 169 Ill.App.3d 877, 523 N.E.2d 1341 (2d Dist. 1988) Following a jury trial, defendant was convicted of unlawful delivery of cannabis. The trial judge erred by refusing to give an entrapment instruction.

The evidence showed that an undercover agent and an informant met defendant at a restaurant. The agent gave defendant money, and defendant gave the agent a brown paper package that was in the trunk of defendant's car. The package contained cannabis.

Defendant testified that about one year earlier, the informant suggested that since defendant was Jamaican he might help with a drug transaction. Defendant claimed that the informant wanted him to pose as a drug dealer to bolster the quality of the drugs the informant was trying to sell. The informant arranged a meeting with a third party (a federal agent) and defendant, as instructed by the informant, told the agent that the package contained hash oil made from marijuana. This transaction was never completed, apparently because the agent feared that other investigations would be jeopardized.

According to defendant, he met the informant again shortly before the transaction in the instant case. The informant reminded defendant how he had helped previously, and asked defendant to help again. On the day of the incident, the informant brought a brown

paper package to defendant, who placed it in his car. The informant told defendant to tell the buyer the same things he had said the year before. The informant left and later telephoned defendant with instructions where to meet him.

Defendant testified that he did not know what the package contained, though he knew it was illegal and valuable. The informant denied defendant's version of events.

The trial judge denied defendant's entrapment instruction on the ground that defendant did not admit knowing that the package contained cannabis.

Generally, a defendant's failure to admit commission of the crime precludes him from having the jury instructed on entrapment. Here, however, "a fair reading of defendant's testimony reveals that he was aware of the nature of the substance [in the package]." On the first occasion defendant assisted the informant, the latter said that the package contained hash oil. On the second occasion the informant told defendant he was doing the same things as before.

Furthermore, although defendant did not look in the package, he testified that he knew it contained an illegal substance. Because defendant's testimony "indicates that [he] knew to a substantial probability that the package he was in possession of and delivering . . . contained hash oil," an entrapment instruction was justified.

People v. Carpentier, 20 Ill.App.3d 1024, 314 N.E.2d 647 (3d Dist. 1974) Failure to allow entrapment instruction was reversible error where informer tried unsuccessfully to get defendant to obtain narcotics on four occasions, and defendant finally did so.

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