

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KOLA DEDVUKAJ,

Defendant-Appellee.

UNPUBLISHED

June 7, 1996

No. 169723

LC No. 90-009570

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARTIN BERISHAJ,

Defendant-Appellee.

No. 169759

LC No. 90-010184

Before: Jansen, P.J., and Hoekstra and D. Langford-Morris,* JJ.

PER CURIAM.

The prosecutor appeals as of right from an October 1, 1993, order of Detroit Recorder's Court Judge Leonard Townsend dismissing the charges against these defendants on the basis of entrapment. Defendants were charged with conspiracy to possess 650 grams or more of cocaine, MCL 750.157a; MSA 28.354(1); MCL 333.7403(2)(a)(i); MSA 14.15(7403)(2)(a)(i). We reverse the finding that defendants were entrapped, reinstate the charges, and remand this case for trial before a different trial judge.

* Circuit judge, sitting on the Court of Appeals by assignment.

This case arises out of the defendants' agreement to purchase one kilogram of cocaine from Joseph Secrete, a federal undercover agent working under the alias of Joey Sorrento. In August 1990, a police informant ("Tony") took his car to a collision shop owned by defendant Dedvukaj. Dedvukaj asked Tony if he knew where he could buy a couple of kilograms of cocaine. Tony gave Dedvukaj Secrete's pager number and told him that the price was \$16,000 per kilo. On August 16, 1990, Dedvukaj called Secrete's pager, and Secrete returned the call. They agreed to meet at a McDonald's restaurant in Highland Park to discuss the terms of the sale. At the meeting, Dedvukaj brought defendant Berishaj with him. Berishaj did most of the talking for both defendants. Berishaj indicated that they were interested in buying a kilo or two of cocaine, and Secrete quoted a price of \$22,000 per kilo. Secrete later agreed to allow the defendants to buy the cocaine for \$16,000 per kilo. Berishaj expressed some reluctance to deal with Secrete, and ultimately told him that they would contact him if and when they decided to buy.

Berishaj contacted Secrete on August 22, 1990, and asked to meet to discuss a purchase. Berishaj ultimately agreed to buy one kilo of cocaine for \$16,000 and agreed to meet at a Wendy's restaurant in Highland Park. When Secrete met the defendants at Wendy's, Dedvukaj showed Secrete \$14,000 and assured him that the remaining \$2,000 would be supplied once they had examined the cocaine. Secrete left the meeting, and his surveillance team then arrested the defendants, who were charged with conspiracy to possess 650 grams or more of cocaine. There was additional evidence at the entrapment hearing that Tony, the police informant, was allowed to set up drug buys for undercover officers and was paid for each buy he set up. Further, neither defendant had been the focus of any drug investigations before Dedvukaj's contact with Tony.

Defendants were charged with conspiracy to possess 650 grams or more of cocaine. Judge Townsend initially quashed the information against defendants based on legal impossibility and lack of probable cause. The prosecutor appealed the decision, and this Court reversed the dismissal and remanded for further proceedings against the defendants. *People v Dedvukaj*, unpublished memorandum opinion of the Court of Appeals, issued June 17, 1993 (Docket Nos. 136224, 136225). On remand, defendants renewed their motion to dismiss on the basis of entrapment. In his written opinion, Judge Townsend found that the police conduct was not reprehensible, but that the police had effectively instigated the commission of defendants' crimes because Secrete offered the cocaine at below-market price, because defendants had not been the focus of any prior investigations, and because the informant was not closely supervised and was not authorized to set prices for undercover buys. Judge Townsend found that the police had engaged in conduct which would cause similarly situated law-abiding persons to engage in criminal conduct, noting that "law abiding persons similarly situated are also committing this sort of crime."

The prosecutor argues that the trial court erred in dismissing the charges against these defendants on the basis of entrapment. Entrapment is a question of law for the trial court to decide. *People v Jones*, 203 Mich App 384, 386; 513 NW2d 175 (1994). Questions of law are reviewed for error. *People v Thomas*, 438 Mich 448, 452; 475 NW2d 288 (1991). The trial court's factual findings are reviewed under the clearly erroneous standard of review. MCR 2.613(C). We find that

the trial court erred in finding that defendants were entrapped. The evidence presented at the entrapment hearing does not rise to a level of entrapment.

There is a two-prong test for determining entrapment, with entrapment occurring if either prong is met. First, entrapment exists if the police engaged in conduct that would induce a person, not ready and willing to commit an offense, to commit the offense. *People v Fabiano*, 192 Mich App 523, 531; 482 NW2d 467 (1992), relying on opinion of Brickley, J., in *People v Juillet*, 439 Mich 34; 475 NW2d 786 (1991). Second, entrapment exists if the police conduct is so reprehensible that it cannot be tolerated by the Court. *Fabiano, supra*, pp 531-532, relying on opinions of Cavanagh, C.J., and Boyle, J., in *Juillet, supra*.

The trial court in this case found that there was no evidence of police conduct so reprehensible that it cannot be tolerated. We agree. *People v Kent*, 194 Mich App 206, 211-212; 486 NW2d 110 (1992). However, the trial court erred in finding entrapment under the first prong. None of the actions taken by Secrete or Tony would cause an otherwise law-abiding person similarly situated to defendants to purchase one kilo of cocaine. Dedvukaj initiated matters in this case by inquiring from Tony where he could purchase a couple kilos of cocaine. Dedvukaj followed up on matters by contacting and meeting with Secrete once given the information from Tony. A normally law-abiding would not buy a kilo of cocaine merely because it was offered at below-market price. The fact that defendants had never been investigated or targeted by the police does not make Secrete's conduct rise to the level of entrapment. Further, whether Tony could set prices for the drug buys is irrelevant in this case, especially since Tony's level of involvement here was very minimal. As we have stated, Dedvukaj initiated matters in this case. The police did nothing more than present these defendants with the opportunity to commit the crimes of which they were charged. *People v Butler*, 444 Mich 965 (1994), rev'g 199 Mich App 474; 502 NW2d 333 (1993).

Accordingly, the trial court erred in dismissing the charges against these defendants on the basis of entrapment. There is no entrapment in this case. Because of Judge Townsend's two dismissals in this case, and his apparent dislike of the methods used by the police in this case, we remand this case to be heard by a different Recorder's Court Judge in order to preserve the appearance of justice. *People v Evans*, 156 Mich App 68, 71-72; 401 NW2d 312 (1986).

We reverse the order dismissing the charges against these defendants, reinstate the charges, and remand for further proceedings before a different judge. Jurisdiction is not retained.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Denise Langford-Morris