

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARNOLD LEE MOORE,

Defendant-Appellant.

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UNPUBLISHED

September 11, 2007

No. 270835

Monroe Circuit Court

LC No. 06-034964-FH

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of delivery of a controlled substance, MCL 333.7401(2)(b)(ii). Defendant appeals as of right, and we affirm.

Defendant was charged and convicted following a sale of Vicodin and Xanax pills to Jason Vandine on June 7, 2005. Vandine, working as an informant for the Office of Monroe Narcotics Investigations (OMNI), contacted defendant about purchasing Vicodin and Xanax pills. On June 7, 2005, the men met at a gas station and defendant sold 25 Vicodin and 29 Xanax pills to Vandine for \$120.

Defendant claims on appeal that the trial court erred in finding that he was not entrapped. We review a trial court's findings on entrapment for clear error. *People v Johnson*, 466 Mich 491, 497; 647 NW2d 480 (2002). A trial court's findings are clearly erroneous if we are left with a definite and firm conviction that a mistake was made. *Id.* at 497-498.

Michigan has adopted the objective test of entrapment. *People v Juillet*, 439 Mich 34, 53; 475 NW2d 786 (1991). "Under this test, the focus is on the nature of the police conduct." *People v Mulkey*, 153 Mich App 737, 738; 396 NW2d 514 (1986). A defendant is entrapped if "(1) the police engaged in impermissible conduct that would induce a law-abiding citizen to commit a crime in similar circumstances or (2) the police engaged in conduct so reprehensible that it cannot be tolerated." *Johnson, supra* at 498. Our Supreme Court has articulated the following factors that are relevant in determining whether police engaged in impermissible conduct:

- (1) whether there existed appeals to the defendant's sympathy as a friend,
- (2) whether the defendant had been known to commit the crime with which he was charged,
- (3) whether there were any long time lapses between the

investigation and the arrest, (4) whether there existed any inducements that would make the commission of a crime unusually attractive to a hypothetical law-abiding citizen, (5) whether there were offers of excessive consideration or other enticement, (6) whether there was a guarantee that the acts alleged as crimes were not illegal, (7) whether, and to what extent, any government pressure existed, (8) whether there existed sexual favors, (9) whether there were any threats of arrest, (10) whether there existed any government procedures that tended to escalate the criminal culpability of the defendant, (11) whether there was police control over any informant, and (12) whether the investigation was targeted. [*Id.* at 498-99.]

When law enforcement officials do no more than present the opportunity to commit the crime, there is no entrapment. *People v Butler*, 444 Mich 965, 966; 512 NW2d 583 (1994). Whether a defendant was entrapped is decided on a case-by-case basis, based on the totality of the circumstances. *People v Brown*, 163 Mich App 273, 293; 413 NW2d 766 (1987) (Beasley, J., concurring). The trial court did not clearly err by finding that the defendant was not entrapped. Defendant and Vandine were not friends, but only acquaintances. They were regularly together every other week over a two-year period. Defendant sold Vandine drugs on occasion over that time period. At most, Vandine contacted defendant two times a week for four weeks about purchasing Vicodin and Xanax. Given their prior relationship, it cannot be concluded that Vandine exerted excessive pressure. Moreover, the price of the pills paid to defendant was not exorbitant. The pills were sold for the same value received on the street. And, defendant knew that Vandine would use the Vicodin and Xanax for recreational purposes. The record does not reveal improper appeals to defendant's sympathy, inducements that would make the crime unusually attractive to a law-abiding citizen, government pressure, sexual favors, or threats of arrest. Based on these factors, the trial court's finding that defendant was not entrapped was not clearly erroneous. *Id.* at 497 (a trial court's findings are clearly erroneous only if this Court is left with a definite and firm conviction that a mistake was made).

Defendant sets forth three arguments to explain his position that the trial court erred in finding that he was not entrapped. Defendant first argues that the trial court failed to recognize that Vandine exploited his friendship with defendant. An individual may be entrapped if the police or the police informant appeal to the defendant's sympathy and friendship to induce him to commit a crime. *Johnson, supra* at 498. In *People v Soper*, 57 Mich App 677; 226 NW2d 691 (1975), the officer, a childhood friend of the defendant, renewed his friendship with the defendant after the defendant was released from prison and then claimed to be a heroin addict in order to get the defendant to purchase heroin for him. We held that the police officer exploited his friendship with the defendant and, thus, entrapped the defendant. *Id.* at 679. However, in the present case, defendant and Vandine were not childhood friends. They were mere acquaintances, who knew each other for two years and who, according to Vandine, spent time together approximately twice a month. *Compare Mulkey, supra* at 740-42 (holding that two officers exploited their friendship with the defendant when they frequented restaurants with defendant, visited the defendant at his home, sold the defendant a motorcycle on credit and sold the defendant two parcels of land while using him as an informant). Moreover, when Vandine approached defendant about purchasing the Vicodin and Xanax pills, he did not beg for them. Although Vandine told defendant that he needed the pills for pain purposes, the record revealed that defendant knew that Vandine would also use the pills for recreational purposes. Based on these facts, the trial court's failure to specifically address the issue whether Vandine exploited

his friendship with defendant does not make the trial court's finding that defendant was not entrapped clearly erroneous. *Johnson, supra* at 497.

Second, defendant argues that the trial court failed to consider the pressure Vandine exerted on defendant. An individual may be entrapped if police continually pressure the defendant into committing a crime. *Johnson, supra* at 499. In *People v Duis*, 81 Mich App 698; 265 NW2d 794 (1978), we held that the defendant was entrapped when the informant, a friend of the defendant, visited defendant's house three times and called him two times in one day about purchasing LSD. We concluded that this was of the type of pressure that would induce an innocent person to commit a crime. *Id.* at 703-704. Likewise, in *People v Rowell*, 153 Mich App 99; 395 NW2d 253 (1986), we held that the defendant was entrapped when the informants frequented a park two to three times a week to find the defendant and asked him to sell them drugs up to three times a day. In the present case, defendant testified that Vandine only called him two times a week for a month before June 7, 2005, about purchasing Vicodin and Xanax pills. The contact was not excessive given the previous interactions between defendant and Vandine. Further, Vandine never went over to defendant's house to ask about purchasing the pills. Based on these facts, the trial court's failure to specifically address the issue whether the pressure exerted by Vandine on defendant was of the type that would induce an innocent man to commit a crime does not make the trial court's finding that defendant was not entrapped clearly erroneous. *Johnson, supra* at 497.

Third, defendant argues that the trial court failed to consider the lack of police supervision over Vandine's activities. An individual may be entrapped if police fail to exert control over an informant. *Id.* at 499; *Rowell, supra* at 104-05. There is no evidence in the record that OMNI supervised Vandine's contact with defendant before the June 7, 2005 telephone call. However, in deciding whether defendant was entrapped, we must look at the totality of the circumstances. *Brown, supra* at 293. Looking at the totality of the circumstances, we are not left with a definite and firm conviction that the trial court erred in concluding that defendant was not entrapped. *Johnson, supra* at 497.

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder