

Entrapment and ineffective assistance of counsel win the day – Illinois Supreme Court vacates conviction

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By Larry . . . [*The People of the State of Illinois v. Shane Lewis*](#) (Docket No. 126705) decided June 24, 2022, deals with an egregious abuse by law enforcement and was clearly entrapment by any objective standard.

Shane Lewis was charged with involuntary sexual servitude of a minor, traveling to meet a minor, and grooming. At trial, he asserted the defense of entrapment. A Kane County jury found him guilty of the offenses, and the circuit judge sentenced him to six years' imprisonment. On appeal, Lewis argued that his defense counsel was ineffective in presenting his entrapment defense where he failed to (1) object to the circuit court's responses to two jury notes regarding the legal definition of "predisposed," (2) object to the prosecutor's closing argument mischaracterizing the entrapment

defense and the parties' relevant burdens of proof, and (3) present defendant's lack of a criminal record to the jury. The appellate court agreed with Lewis and reversed his conviction, holding his defense counsel's cumulative errors rendered the proceeding unreliable under *Strickland v. Washington*, 466 U.S. 668 (1984). As usual when an accused wins an appeal, Illinois sought review by the state's highest court. It is clear that Illinois prosecutors did not want Lewis to have a new trial. The reason is an appellate court's favorable decision, if allowed to stand, could open the proverbial floodgates because others have asserted an entrapment defense.

According to the opinion, the following evidence was presented to the jury. Geoffrey Howard, a special agent with the Department of Homeland Security (DHS), testified that he coordinated a sting operation with the Aurora Police Department and that the goal of the undercover operation was to arrest multiple people on the demand side of human trafficking. The operation involved posting an advertisement for an escort on Backpage.com. He described Backpage.com (Backpage) as a website that had advertisements for various goods and services and had an adult services section. The phone number in the ad did not link to an actual phone but rather went into a software system that allowed multiple officers to read and respond to text messages. The program created a record of all the messages. According to Howard, as a matter of protocol, the officers were to stop talking or texting with a suspect if the suspect wanted to have sex with an adult. Before posting the ad, agents reserved adjoining rooms at a hotel in Aurora, and in the "target room" an undercover agent posed as a mother who was offering her 14 and 15-year-old daughters for sex.

Agent Melissa Siffermann of DHS was the undercover agent waiting in the "target room" to meet Lewis. She posed as the mother of the two minor girls. She told Lewis that she likes to meet the guys first just to make sure that they're not

crazy. In addition, she told Lewis he looked like a nice guy and seemed like a good guy. Siffermann also told Lewis that, as their mother, she was ok with this, that she would tell them it's fine. Eventually, Lewis put \$200 on a nightstand. At that point, around 11:25 p.m., Siffermann proceeded to the bathroom. Seconds later Lewis was arrested.

A key issue for an entrapment defense to be successful is whether or not a person was predisposed to commit a crime. Lewis testified that he had never had any desire as an adult to have sex with a minor and that he agreed to do so only because the agents put an idea in his head that was never there before. He also explained that, whenever he expressed reluctance or doubt, the agents diverted the conversation and complimented him. Over the State's objection, the circuit court granted Lewis' motion to instruct the jury on the defense of entrapment. The court instructed the jury as follows with Illinois Pattern Jury Instruction. "It is a defense to the charge made against the defendant that he was entrapped, that is, that for the purpose of obtaining evidence against the defendant, he was incited or induced by a public officer to commit an offense. However, the defendant was not entrapped if he was predisposed to commit the offense and a public officer merely afforded to the defendant the opportunity or facility for committing an offense."

The State argued that the appellate court erred in granting relief on Lewis' ineffective assistance of counsel claim. Lewis argued that defense counsel's cumulative errors support his claim of ineffective assistance of counsel. Lewis pointed out that the appellate court properly found that he was prejudiced by defense counsel's errors in presenting his entrapment defense. Lewis requested cross-relief, arguing (1) that the State failed to prove beyond a reasonable doubt that he was not entrapped into committing the offenses, (2) that he was not guilty of involuntary sexual servitude of a minor where that statute applies to sex traffickers, not to patrons,

and (3) his conviction and sentence for involuntary sexual servitude of a minor should be vacated because the statute violated the proportionate penalties clause of the Illinois Constitution.

The Illinois Supreme Court affirmed the appellate court which had held that: "Defendant was prejudiced by defense counsel's three errors, which constituted deficient performance. Strickland prejudice is defined as "a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different" (relying on *Strickland v. Washington*, 466 U.S. at 694). See *Opinion* at 25. The appellate court succinctly stated, "The effect of the State's burden-shifting inducement argument and the jury's confusion over predisposition was further compounded by defense counsel's failure to inform the jury that defendant had no criminal history—a fact that would have bolstered the argument that defendant was not predisposed to commit the offenses before his exposure to government agents." *Opinion* at 25-26.

Based on the court's recitation of the relevant facts, NARSOL finds this type of operation to be repugnant and a waste of resources. NARSOL is excited that the Illinois Supreme Court appears to have recognized the overreach on these sting operations. This decision may lead to the entrapment defense being raised more frequently going forward in the state of Illinois.