STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 21, 2000
v	No. 220064 Kalamazoo Circuit Court
NIRANJAN LAL, M.D., Defendant-Appellant.	LC No. 97-000374-FH

Before: Neff, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Defendant was convicted by a jury of three counts of delivery of a prescription form, MCL 333.7401(2)(g); MSA 14.15(7401)(2)(g). The convictions arose from a series of doctor's visits during which defendant, a doctor specializing in hypertension and kidney disease, prescribed Vicodin to an undercover police officer. Defendant was sentenced to eighteen months' probation. He appeals of right. We affirm.

Defendant first argues that the trial court erred when it concluded that the applicable statute did not exempt defendant from criminal liability. We disagree.

We review this issue de novo. *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997). MCL 333.7401(1); MSA 14.15(7401)(1) provides, in part:

> A practitioner licensed by the administrator under this article shall not dispense, prescribe, or administer a controlled substance for other than legitimate and professionally recognized therapeutic or scientific purposes or outside the scope of practice of the practitioner, licensee, or applicant.

In determining if a practitioner failed to act for a legitimate and professional purpose or acted outside the scope of his practice, the question of fact turns on whether the physician made an "honest" or "good faith effort" to treat and prescribe in compliance with an accepted standard of medical practice. See *People v Alford*, 405 Mich 570, 588-589; 275 NW2d 484 (1979); *Orzame, supra* at 565-566; *People v Downes*, 168 Mich App 484, 488-489; 425 NW2d 102 (1987).

The trial court's decision that a rational trier of fact could find that defendant did not act in good faith was not erroneous. Defendant's statements to the officer during one visit provide

strong evidence of defendant's intent to prescribe the Vicodin for non-medical purposes. First, defendant himself acknowledged that the officer was experiencing neither elbow nor back pain. Second, after being pressured by defendant to reveal how he was using the Vicodin, the officer told defendant he was giving it to a girl. Defendant asked the officer whether Vicodin can be sold for a profit. The officer said yes. After discussing the street value of a pill, defendant stated "I admit it, at least you're honest, you know." Defendant told the officer, "make sure that the person you're selling it to doesn't get hooked on it." The officer assured defendant that would not happen, indicating that he gave the pills to different people. Defendant then told the officer that the officer was going to get him in trouble. Finally, defendant said "I don't know why I do it for you but . . . ah since you're so honest I think, I feel guilty not to."

These statements indicate that defendant believed the officer was using the Vicodin for a purpose other than to eliminate his own pain. In particular, defendant's statement "I don't know why I do it," and his assertions that he was going to get in trouble indicate that his act of prescribing Vicodin was not for any particular medical purpose. Furthermore, because defendant apparently believed the officer was being honest when he told defendant he was giving away the Vicodin, defendant clearly intended to prescribe Vicodin for a reason other than treatment. Thus, the trial court did not err when it concluded that defendant was not exempt from criminal liability. The evidence presented at trial shows defendant did not act in good faith.

Defendant next argues that the trial court erred in concluding there was no entrapment. We disagree. During the visits, the officer posed as a landscaper and complained of work-related pain in his back and elbow during many of the doctor's visits. In addition, the officer displayed actual physical symptoms of kidney problems and hypertension on several of the visits, including high blood pressure and blood in his urine. The officer also claimed that he was uninsured and initially refused to submit to any diagnostic testing because of the expense. The trial court held an evidentiary hearing on the issue, and concluded that defendant had not satisfied his burden of proving entrapment by a preponderance of the evidence. See *Alford*, *supra* at 591.

We review a trial court's finding that the defendant is not entrapped for clear error. *People v Fabiano*, 192 Mich App 523, 525; 482 NW2d 467 (1992). A finding is clearly erroneous when although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *Tuttle v Dep't of State Hwys*, 397 Mich 44, 46; 243 NW2d 244 (1976).

We first note that innocence is not a predicate for a finding of entrapment. Nor is entrapment a defense to the crime charged, rather it presents facts that are collateral to that crime and that justify barring defendant's prosecution. *People v Jones*, 203 Mich App 384, 386; 513 NW2d 175 (1994). Entrapment exists where either 1) police engage in impermissible conduct that would induce a person similarly situated to defendant and otherwise law-abiding to commit crime, or 2) if police engaged in conduct so reprehensible that it cannot be tolerated by the court. *Fabiano*, *supra* at 526.

The evidence introduced at trial shows that time after time, defendant continued to prescribe Vicodin merely on the officer's request. It also shows that when the officer insisted on greater amounts of Vicodin than defendant initially would have prescribed, defendant acquiesced. However, there was no evidence that the officer ever used force to pressure

defendant. All defendant had to do was to say "no." At best, the evidence shows that defendant was a rather passive individual who was easily swayed. Accordingly, the record does not support defendant's claim that a law-abiding citizen similarly situated to defendant would have persisted in prescribing the Vicodin in the absence of medical tests verifying some medical condition.

With regard to the second prong of the test, reprehensible conduct is government conduct that a civilized society will not tolerate because basic fairness arising from due process precludes the defendant's prosecution. *Fabiano, supra* at 532. At trial, the officer admitted discussing with defendant the presence of traces of blood in his urine. However, the defense never asked the officer whether he put blood in his urine samples. Nor did the defense question the officer about what, if any, steps he took to raise his blood pressure before office visits. Rather, the only symptoms that the officer testified he fabricated were his initial complaints of pain and frequent urination. Although it is not clear why traces of blood were found in the officer's urine throughout the course of the investigation, or why the agent's blood pressure was high on some occasions and low on others, the record does not establish that the undercover officer manufactured actual physical symptoms of illness throughout the seven month investigation.

Nor does the record establish a significant effect on defendant's conduct attributable to the officer's representation that he was uninsured. The evidence presented does not suggest that defendant would have stopped prescribing Vicodin had diagnostic test results shown no medical condition. To the contrary, even after one of the officer's last visits, at which defendant secured x-ray results showing that the officer was healthy, he continued to prescribe Vicodin. Finally, the government did not pressure defendant into committing this crime. This was not a case where the police established a lengthy friendship with a defendant and used that friendship to persuade the defendant to commit crime. See *Alford*, *supra* at 591; cf. *People v Turner*, 390 Mich 7; 210 NW2d 336 (1973). Defendant did not know the officer before the investigation began. Nor did he see the officer for more than a few minutes during each office visit. On this record, we agree that the police did not engage in reprehensible conduct.

Because we are not left with a definite and firm conviction that the trial court made a mistake, *Tuttle*, *supra*, we hold that the trial court's finding that there was no entrapment was not clearly erroneous. *Fabiano, supra* at 525.

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Richard Allen Griffin