STATE OF MINNESOTA
IN COURT OF APPEALS
A17-2083

State of Minnesota,
Respondent,

vs.

Jose Acaceo Inamagua,
Appellant.

Filed September 4, 2018
Affirmed
Larkin, Judge

Ramsey County District Court
File No. 62-CR-16-8841

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Eva Rodelius Buer, Wilson Law Group, Minneapolis, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Stauber, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant challenges his conviction of engaging in, hiring, or agreeing to hire a minor between the ages of 13 and 16 to engage in prostitution, arguing that the district court erred by rejecting his entrapment defense. We affirm.

FACTS

Respondent State of Minnesota charged appellant Jose Acaceo Inamagua with engaging in, hiring, or agreeing to hire a minor between the ages of 13 and 16 to engage in prostitution. Inamagua moved to dismiss, asserting an entrapment defense, and he elected to have his defense heard and decided by the district court, instead of a jury. The parties agreed that the district court would decide the entrapment issue based on written submissions. The relevant facts are as follows.

On September 27, 2016, law enforcement posted the following advertisement in the "escort" section of Backpage.com:

> Bella wants to Ride!!! Golfer specials! -18 I'm only here for the big golf game and then gone soon. I love guys who know [how] to use a big stick;) I love generous men who know how to love a lady. come for some latina fun with a young, wild girl from south of the [border].

The advertisement included a video and photograph of a woman, as well as a contact phone number.

At approximately 3:10 p.m. on September 27, Inamagua responded to the advertisement via text message and asked, "Hey are available now." A law-enforcement officer responded to the message, quoting rates for an hour and a half hour. Inamagua

responded that he wanted a "Qv" and asked the price for 15 minutes.[1] The officer answered that it would cost "$60 cash" and asked Inamagua, "u like young?" Inamagua replied, "Ok can I get your address." The officer answered, "as long as u r ok w/ 15 yr old I will giv it….the last guy was pist when i didn't say my age. dont want truble." Inamagua responded, "Tha you mean how old are you." The officer replied, "yes. A hot tight f—k. 15 going on an experienced 25 y/o. just being real. Some r ok w/it." Inamagua responded, "Ok send me your address." Inamagua and the officer agreed to meet at an address in St. Paul at 4:00 p.m. Inamagua asked whether the person with whom he was exchanging text messages was the person "in the pictures." The officer replied, "yes." Law enforcement arrested Inamagua at the designated location. Inamagua had a cell phone and $60 in cash in his possession at the time of arrest.

Law enforcement interviewed Inamagua and he admitted that the phone number in the text-message exchange with law enforcement was his number and that he was looking for a quick 15-minute visit for paid sexual activity. Inamagua also admitted that he had been informed that the person with whom he exchanged text messages was 15, but he claimed that he thought there would be another person at the designated meeting spot who was 18.

The district court rejected Inamagua's entrapment defense, reasoning that Inamagua had "not shown that the undercover officer improperly induced him to commit the crime by improper persuasion, badgering, or pressure." The district court reasoned that the state

[1] "QV" is an abbreviation used in the commercial sex industry meaning "quick visit."

"was simply providing the opportunity for . . . Inamagua to commit the crime of prostitution" and that Inamagua "quickly agreed without any delay or equivocation to set up the sexual encounter with a person that he knew was 15 years old." The district court also found that the text-message exchange, "proves beyond a reasonable doubt that [Inamagua] was predisposed to commit the crime." After a bench trial, the district court found Inamagua guilty of engaging in, hiring, or agreeing to hire a minor between the ages of 13 and 16 to engage in prostitution. The district court stayed imposition of a sentence and placed Inamagua on probation for three years. This appeal follows.

D E C I S I O N

Inamagua contends that the district court erred by rejecting his entrapment defense. The process for determining the merits of an entrapment defense was set forth by the Minnesota Supreme Court in *State v. Grilli* as follows:

> [A]t a time prior to the commencement of trial, a defendant shall elect whether to have his claim of entrapment presented in the traditional manner as a defense to the jury, or to have it heard and decided by the court as a matter of law. He shall give notice of such election to the court and prosecution . . . . Such a matter can be heard at a pretrial evidentiary hearing similar to that held for suppression of evidence . . . . The [district] court shall make findings of fact and conclusions of law on the record. If the court decides that [the] defendant was entrapped into the commission of the crime charged, this will be a bar to further prosecution for that charge. . . . If the court holds that there was no entrapment, the issue is closed and defendant may not present the defense to the jury.
>
> . . . .

> In the alternative, defendant may elect to have his claim presented as a defense to be decided by the jury.[2]

304 Minn. 80, 95-96, 230 N.W.2d 445, 455 (1975). "Whether the decision is to be made by the court or jury, the evidence presented should focus on two questions: (1) Did the criminal conduct initiate with the police rather than with the defendant? (2) Did the defendant have a predisposition to commit the crime?" *Id.* at 96, 230 N.W.2d at 455-56 (footnote omitted).

The defendant has the burden to establish by a fair preponderance of the evidence that law enforcement induced his actions. *State v. Johnson*, 511 N.W.2d 753, 755 (Minn. App. 1994), *review denied* (Minn. Apr. 19, 1994). To establish inducement, a defendant must show that "the state did something more than merely solicit the commission of a crime." *State v. Olkon*, 299 N.W.2d 89, 107 (Minn. 1980). "[S]omething in the nature of persuasion, badgering, or pressure by the state must occur before the inducement element is satisfied." *Id.* Only if the defendant establishes inducement does the burden shift to the state to "prove beyond a reasonable doubt that the accused was predisposed to commit the crime charged." *Grilli*, 304 Minn. at 96, 230 N.W.2d at 456.

Inamagua argues that he "demonstrated by a preponderance of the evidence" that he was "induced to commit the crime by the bait and switch conducted by the government." Inamagua notes that he "respond[ed] to an advertisement which he believed to have been posted by someone at least 18 years of age," that "[o]nly after communicating with someone he reasonably believed to be 18 or older was [he] informed that the person with

[2] The *Grilli* procedure is incorporated in Minn. R. Crim. P. 9.02, subd. 1(6).

whom he was texting was 15," and that he "responded by questioning the significance of the information." Inamagua maintains that he "did not seek out an individual between the ages of 13-16 and had no intention of committing the crime with which he was charged."

The record refutes Inamagua's argument that he was induced to commit the crime. The text-message exchange between the officer and Inamagua established that the officer twice told Inamagua that the person with whom he was exchanging text messages regarding a paid sexual encounter was 15 years old. And the officer's mention of another person being upset because the purported 15 year old did not previously reveal her age, as well as the statement that she did not want trouble, suggested that in the context of solicitation to engage in prostitution, solicitation of a 15-year-old child is worse than solicitation of an adult. After the officer confirmed that the person with whom Inamagua was exchanging text messages was 15, Inamagua responded, "Ok send me your address" and discussed the details of the visit, including what type of condoms would be used. Although Inamagua may not have sought out an individual between the ages of 13 and 16 for a sexual encounter, he did not retreat from his sexual solicitation once he was told that the object of his solicitation was only 15 years old.

In sum, the text-message exchange establishes that the officer twice told Inamagua that the person with whom he was exchanging text messages was 15 years old and that Inamagua nonetheless made arrangements to pay the purported 15 year old to engage in sexual activity. There is no evidence of "something in the nature of persuasion, badgering, or pressure by the state," which is required to establish inducement. *See Olkon*, 299 N.W.2d at 107. Instead, the record suggests law enforcement attempted to dissuade

Inamagua from going forward with the encounter by emphasizing that the object of his solicitation was only 15 years old. Thus, the district court did not err by determining that Inamagua failed to establish by a fair preponderance of the evidence that law enforcement induced him to commit the offense in this case.

Because Inamagua failed to establish that law enforcement induced him to commit the offense of engaging in, hiring, or agreeing to hire a minor between the ages of 13 and 16 to engage in prostitution, his entrapment defense fails as a matter of law.

Affirmed.