

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20070057-CA
v.	)	
	)	F I L E D
Martin E. Hernandez-Camacho,	)	(November 1, 2007)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2007 UT App 358</span>

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Second District, Ogden Department, 051902267  
The Honorable Parley R. Baldwin

Attorneys: Gregory G. Skordas and Rebecca C. Hyde, Salt Lake City, for Appellant  
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake City, for Appellee

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Before Judges Greenwood, Davis, and McHugh.

PER CURIAM:

Martin E. Hernandez-Camacho appeals from his conviction of possession of a controlled substance with intent to distribute, a first degree felony. We affirm.

Hernandez-Camacho asserts that his trial counsel was ineffective for failing to present an entrapment defense at trial. Hernandez-Camacho argues that when the police chose the location of the drug transaction, he was entrapped because the transaction occurred in a public parking lot, a drug free zone, thereby subjecting him to an enhanced penalty. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was objectively deficient and that the deficiency affected the outcome of the trial. See State v. Litherland, 2000 UT 76, ¶ 19, 12 P.3d 92. Hernandez-Camacho cannot establish ineffective assistance, however, because he has not shown that he was entrapped.

An entrapment defense is available when government agents go too far in inducing a defendant to commit a crime, essentially manufacturing the offense.

Entrapment occurs when a peace officer or a person directed by or acting in cooperation with the officer induces the commission of an offense in order to obtain evidence of the commission for prosecution by methods creating a substantial risk that the offense would be committed by one not otherwise ready to commit it.

Utah Code Ann. § 76-2-303(1) (2003).

Utah uses "an objective standard for entrapment cases, which focuses solely on police conduct, rather than on the defendant's predisposition to commit a crime." State v. Torres, 2000 UT 100, ¶ 8, 16 P.3d 1242. "To prove the defense of entrapment, the evidence must be sufficient to raise 'a reasonable doubt that [the defendant] freely and voluntarily committed the offense.'" Id. (quoting State v. Udell, 728 P.2d 131, 132 (Utah 1986)). Entrapment may be found where there is inducement based on improper police conduct, such as persistent pressure to commit a crime, or where the inducement consists of "appeals based primarily on sympathy, pity, or close personal friendship, or offers of inordinate sums of money." Id. ¶ 9.

However, "[c]onduct merely affording a person an opportunity to commit an offense does not constitute entrapment." Utah Code Ann. § 76-2-303(1). "'Where it is known or suspected that a person is engaged in criminal activities, or is desiring to do so, it is not an entrapment to provide an opportunity for such person to carry out his criminal intentions.'" Torres, 2000 UT 100 ¶ 14 (quoting State v. Curtis, 542 P.2d 744, 746 (Utah 1975)).

Hernandez-Camacho asserts that it was improper for the police to choose a Sinclair station as the meeting place for the expected drug transaction. However, he has not shown any improper conduct or emotional pleas that would constitute entrapment. When the police did not accept the informant's initial location for the deal, the informant then selected the Sinclair station. The officer disapproved of the first location due to site control issues and approved the Sinclair station for similar reasons. The selection of a location in which the view of both the informant and Hernandez-Camacho would be unobstructed and the arrest would be tactically easy reflects legitimate police concerns.

Furthermore, the informant chose the Sinclair station because it was the regular meeting place where Hernandez-Camacho had delivered drugs many times before. Hernandez-Camacho did not hesitate to change the location and meet at the Sinclair station.

There was no inappropriate inducement, but rather just the opportunity to conduct a routine transaction at the usual meeting place. Entrapment is an available defense only when police methods create "a substantial risk that the offense would be committed by one not otherwise ready to commit it." Utah Code Ann. § 76-2-303(1). Choosing to meet at a place where Hernandez-Camacho routinely did business with the informant did not create a substantial risk that a crime would be committed by a person not otherwise ready to commit it. Rather, the entire operation, including the location, merely provided an opportunity for Hernandez-Camacho to commit the crime.

Accordingly, Hernandez-Camacho has not established that he was entrapped. Consequently, he has also failed to show that he received ineffective assistance of counsel.

Affirmed.

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Pamela T. Greenwood,  
Associate Presiding Judge

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge