

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20060323-CA
v.	)	
	)	F I L E D
Gregory L. Prestwich,	)	(June 14, 2007)
	)	
Defendant and Appellant.	)	2007 UT App 206

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Fifth District, Cedar City Department, 041500498  
The Honorable G. Michael Westfall

Attorneys: J. Bryan Jackson, Cedar City, for Appellant  
Mark L. Shurtleff and Kenneth A. Bronston, Salt Lake  
City, for Appellee

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Before Judges Billings, Davis, and Thorne.

THORNE, Judge:

Defendant Gregory L. Prestwich appeals his conviction of distribution of a controlled substance in a drug-free zone, a second degree felony. See Utah Code Ann. § 58-37-8 (Supp. 2006). We affirm.

Defendant first argues that the trial court erred in failing to suppress evidence seized in violation of his Fourth Amendment right against unreasonable searches and seizures when a confidential informant entered Defendant's home without a search warrant. "However, the Fourth Amendment has no application to the actions of invited and authorized persons, even when, unbeknownst to the unwary, they are acting as police agents." State v. McArthur, 2000 UT App 23, ¶20, 996 P.2d 555 (emphasis omitted). "It is not illegal for a private individual, even if acting as a government agent, to enter another's home if he or she does so with the owner's permission." State v. Koury, 824

P.2d 474, 478 (Utah Ct. App. 1991).<sup>1</sup> Here, the confidential informant initiated contact with Defendant, made arrangements to buy marijuana from Defendant, and went to Defendant's residence to conduct the purchase. The confidential informant asked Defendant if she could enter his apartment, and Defendant allowed her in the residence. Based on this evidence, we conclude that the confidential informant's entry was permissive and that the trial court did not err in ruling that the warrantless entry did not implicate the Fourth Amendment.

Defendant next argues that the trial court erred by failing to find entrapment as a matter of law.<sup>2</sup> Prior to trial, Defendant petitioned to have his drug charge dismissed based on a theory of entrapment. To establish entrapment in these circumstances, Defendant must show that the confidential informant exploited her relationship with Defendant in an appeal based primarily on sympathy, pity, or close personal friendship. See State v. Torres, 2000 UT 100, ¶9, 16 P.3d 1242. After hearing evidence, the trial court denied the motion concluding that it could not find entrapment as a matter of law because of the substantial difference in testimony as to the confidential informant's exploitation of the relationship. The trial court informed the parties that based on the conflict in testimony the issue was properly reserved for the jury. "Although we review factual findings for clear error and legal conclusions for correctness, due to the factually sensitive nature of entrapment cases we will affirm the trial court's decision unless reasonable minds could not differ as to whether entrapment occurred." State

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<sup>1</sup>We do not consider Defendant's assertion that the trial court erred in finding that the confidential informant was not acting as an agent of law enforcement. First, it does not appear that the trial court made such a finding. Second, the trial court's denial of Defendant's motion to suppress is based on other grounds.

<sup>2</sup>Defendant also asserts that the trial court erred in failing to give an informative and comprehensive jury instruction on the issue of entrapment. Defendant concedes that he did not object to the jury instruction and raises this claim for the first time on appeal. "[W]e will review issues raised for the first time on appeal only if exceptional circumstances or "plain error" exists.'" Timm v. Dewsnup, 2003 UT 47, ¶39, 86 P.3d 699 (quoting Salt Lake City v. Ohms, 881 P.2d 844, 847 (Utah 1994)). Defendant does not argue that plain error or exceptional circumstances exist. Therefore, we do not address this issue.

v. Edwards, 2006 UT App 148, (quotations and citation omitted), cert. denied, 150 P.3d 58 (Utah 2006); see also State v. Haltom, 2005 UT App 348, ¶7, 121 P.3d 42, aff'd, 2007 UT 22.

A review of the record reveals that the evidence presented at the hearing was conflicting. Defendant testified that the confidential informant had repeatedly asked Defendant to sell her marijuana over a period of two weeks, told him that she was desperate, and begged him to sell her marijuana. In contrast, the confidential informant testified that she had talked to Defendant twice in the two weeks prior to the purchase and did nothing more than ask Defendant to sell her marijuana. Given the conflicting testimony we conclude that reasonable minds could differ on the question of entrapment and conclude that the trial court properly denied Defendant's motion in favor of allowing the jury to decide the question.<sup>3</sup>

Defendant also argues that the broad and divergent use of unsupervised confidential informants necessitates judicial imposition of uniform statewide standards for law enforcement and prosecutorial officials, including standards for the utilization of confidential informants. Defendant fails to provide any legal authority or reasoned analysis on this issue. Because Defendant fails to adequately brief this issue we decline to review this issue on appeal. See Smith v. Four Corners Mental Health Ctr., Inc., 2003 UT 23, ¶46, 70 P.3d 904. Without adequate briefing, we are not persuaded that the use of confidential informants in police actions is so divergent or inherently unreliable as to necessitate judicial imposition of uniform standards.

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<sup>3</sup>Defendant purports to raise an argument that there was insufficient evidence to support the jury's guilty verdict and its failure to find entrapment as a matter of law. Although Defendant lists this issue in his opening brief as one presented for review, Defendant does not argue or analyze the issue. Instead, Defendant focuses on the trial court's ruling denying Defendant's motion to suppress. Because Defendant fails to brief this issue we decline to review it. See Smith v. Four Corners Mental Health Ctr., Inc., 2003 UT 23, ¶46, 70 P.3d 904.

Accordingly, we affirm the trial court's order denying Defendant's motion to suppress.

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William A. Thorne Jr., Judge

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WE CONCUR:

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Judith M. Billings, Judge

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James Z. Davis, Judge