

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20050977-CA
v.	)	
	)	F I L E D
Alden Ray Smith,	)	(December 7, 2006)
	)	
Defendant and Appellant.	)	2006 UT App 485

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Fifth District, Cedar City Department, 041500265  
The Honorable G. Michael Westfall

Attorneys: J. Bryan Jackson, Cedar City, for Appellant  
Mark L. Shurtleff and Jeffrey S. Gray, Salt Lake  
City, for Appellee

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Before Judges Bench, Greenwood, and Thorne.

THORNE, Judge:

Defendant Alden Ray Smith appeals his conviction for distribution of a controlled substance, a first 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 Defendant's Fourth Amendment right against unreasonable searches and seizures by a confidential informant who entered Defendant's home without disclosing his identity as a confidential informant and without a search warrant. "[T]he 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,<sup>1</sup> to enter another's home if he or

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<sup>1</sup>We do not consider Defendant's assertions 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  
(continued...)

she does so with the owner's permission." State v. Koury, 824 P.2d 474, 478 (Utah Ct. App. 1991).

Here, the confidential informant approached Defendant at a gas station and asked Defendant if he knew where the confidential informant could buy drugs. Defendant told the confidential informant that he could provide the drugs, and arrangements were made to accomplish the transaction at Defendant's home. The confidential informant arrived at Defendant's home at the prearranged time and Defendant invited the confidential informant into his home.<sup>2</sup> 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 in failing to suppress evidence on grounds of entrapment as a matter of law. "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 v. Edwards, 2006 UT App 148, 2006 Utah App LEXIS 152, at \*5 (April 13, 2006), cert. denied, 2006 Utah LEXIS 165 (Utah 2006) (quoting State v. Haltom, 2005 UT App 348, ¶7, 121 P.3d 42, cert. granted, 125 P.3d 102 (Utah 2005)).

Defendant claims that the State entrapped him by exploiting his long-term friendship with the confidential informant. There is no dispute that a friendship existed. However, "the mere existence of a personal relationship does not establish entrapment." State v. Martinez, 848 P.2d 702, 707 (Utah Ct. App. 1993). Rather, to establish entrapment, Defendant must show that

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<sup>1</sup>(...continued)  
court's denial of Defendant's motion to suppress is based on other grounds.

<sup>2</sup>Defendant does not deny that he invited the confidential informant into his home. However, Defendant asserts that the confidential informant's entry was illegal because the invitation was made without Defendant's knowledge of the confidential informant's role with police. This argument fails because the confidential informant had no duty to disclose his identity. See State v. McArthur, 2000 UT App 23, ¶20, 996 P.2d 555 ("The Constitution tolerates undercover investigations by informants who conceal their status as police agents."). Therefore, the confidential informant's hidden identity does not render his presence in Defendant's home illegal.

the confidential informant exploited his 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.

In this case, the confidential informant merely asked Defendant whether he knew where the confidential informant could obtain some methamphetamine. Defendant has not proffered any evidence to demonstrate that the confidential informant's inquiry exploited their friendship by appealing to sympathy, pity, or their friendship as a basis for selling drugs to the confidential informant. Instead, Defendant maintains only that his long-term friendship with the confidential informant created a foundation of trust and that the confidential informant's inquiry exploited that trust and therefore constituted entrapment. Nevertheless, "[t]he Fourth Amendment offers no protection from the consequences of defendant's misplaced trust." McArthur, 2000 UT App 23 at ¶21. As a result, Defendant's entrapment claim fails.<sup>3</sup>

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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Russell W. Bench,  
Presiding Judge

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Pamela T. Greenwood,  
Associate Presiding Judge

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<sup>3</sup>Defendant also claims that the trial court erred by failing to instruct the jury on entrapment. Because we conclude, as a matter of law, that Defendant was not entrapped, we do not consider Defendant's jury instruction issue.