COURT OF APPEALS
DECISION
DATED AND FILED

September 6, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-3069-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHN R. MALONEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: PETER NAZE, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 CANE, C.J. John Maloney appeals from a judgment, entered upon a jury's verdict, convicting him of first-degree intentional homicide, arson of a building without the owner's consent and mutilating a corpse, contrary to WIS.

STAT. §§ 940.01(1), 943.02(1)(a) and 940.11(1).[1] Maloney additionally appeals from an order denying his motion for postconviction relief. Maloney argues that the evidence was insufficient to support the jury's verdict. He further argues that the trial court erred by (1) admitting the deceased's statements to her psychiatrist; (2) denying Maloney's motion for a mistrial after prejudicial video footage was inadvertently shown to the jury; (3) denying Maloney's request to question a witness about the circumstances of her polygraph test; and (4) failing to give the *falsus in uno* jury instruction. Finally, Maloney contends that the government engaged in misconduct. We reject Maloney's arguments and affirm the judgment and order.

BACKGROUND

¶2 John and Sandra Maloney were married in 1978 and had three children. John was employed as a detective with the Green Bay Police Department and also worked as an investigator for the Arson Task Force. In May of 1997, John moved out of the family home and in mid-June, he filed for divorce.

¶3 On the morning of February 11, 1998, Sandra's mother arrived at Sandra's home and discovered Sandra's body on the living room couch. It is undisputed that Sandra's death was caused by the combination of a blunt force blow to the back of the head, manual strangulation and suffocation. The couch, along with Sandra's body, was then set on fire, presumably to destroy evidence of the crime. After a jury trial, Maloney was convicted of first-degree intentional homicide, arson and mutilation of a corpse, in connection with his wife's death. Maloney's motion for postconviction relief was denied and this appeal followed.

[1] All statutory references are to the 1997-98 version unless otherwise noted.

ANALYSIS

A. SUFFICIENCY OF THE EVIDENCE

¶4 Maloney argues that the evidence was insufficient to support the jury's verdict. Specifically, Maloney contends that rather than supporting his conviction, the evidence shows that his former girlfriend, Tracy Hellenbrand, committed the crimes.[2] We are not persuaded.

¶5 In reviewing a challenge to the sufficiency of the evidence, we will not substitute our judgment for that of the trier of fact "unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). Further, "if any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn a verdict even if it believes that the trier of fact should not have found guilt based on the evidence before it." ***Id.*** Under this standard of review, we conclude that the record is sufficient to uphold the convictions.

¶6 Although the jury did not need to find proof of motive, it was instructed that "motive may be shown as a circumstance to aid in establishing the guilt of a defendant." The jury was also instructed, in relevant part:

---

[2] In his brief, Maloney argues the evidence supported a reasonable hypothesis of innocence. This argument, however, is more for the jury rather than the appellate court. Under our standard of review, we must review the evidence most favorably to the jury's verdict and determine whether there is credible evidence to support that verdict. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990).

> Before the defendant may be found guilty of first degree intentional homicide, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.
>
> First, that the defendant caused the death of Sandra Maloney.
>
> Second, that the defendant intended to kill Sandra Maloney.

See WIS. STAT. § 940.01.

¶7 We are satisfied that the evidence was sufficient for the jury to reasonably conclude that John had the motive and opportunity to kill his wife. Trial testimony established that the Maloneys were going through a difficult divorce, as the parties were unable to agree on custody and maintenance issues. John was anxious to finalize the divorce and, in January 1998, told a colleague that he was upset that Sandra was delaying the proceedings. John further told his colleague that he did not know how much more he could take and that he was at the "breaking point."

¶8 The final pretrial hearing was set for the morning after Sandra's murder, February 11, 1998, and the final divorce hearing was scheduled for February 20. Before the pretrial, however, Sandra's attorney filed a motion to withdraw, a development that would have likely delayed the proceedings further.[3] Additionally, John's divorce lawyer testified that the couple had substantial debt, including $23,000 owed to Sandra's mother and $12,000 owed to Tracy Hellenbrand, John's former girlfriend. John's divorce lawyer testified that he met with John on the morning of February 10 to discuss the pretrial hearing scheduled for the next day. At that meeting, John's attorney informed him that he may be

[3] Counsel's motion to withdraw was ultimately denied at the February 11 pretrial hearing.

required to pay up to $700 per month in maintenance. He testified that John was upset that he had to pay his wife maintenance when she was not working.

¶9 The jury also heard testimony from Dr. John Stamm, Sandra's psychiatrist.[4] Stamm testified that in June of 1996, Sandra complained that John had physically and emotionally abused her for many years. He also testified that in July, Sandra again complained that John emotionally abused her and attributed bruises on her face and one of her arms to his physical abuse. Finally, Stamm testified that in June of 1997, Sandra informed him that John had threatened to kill her.

¶10 Trial testimony indicated that the murder occurred sometime between 6:00 p.m. and 8:00 p.m. on February 10, 1998. Sandra's mother, Lola Cator, testified that on that day, she exchanged several telephone calls with her daughter. Sandra told her that John planned to bring the couple's three sons to her house at 6:00 p.m. Cator spoke to her daughter for the last time at 6:03 p.m., at which time Sandra was still waiting for John and the boys to arrive. Cator attempted to call her daughter again at 8:26 p.m.; however, she got Sandra's answering machine. Lynn Stillman, a friend of Sandra's, also attempted to call Sandra on the evening of February 10. After receiving several busy signals, Stillman finally left a message on Sandra's answering machine at 7:35 p.m.

[4] Maloney's challenge to the admission of Stamm's testimony will be discussed in a subsequent portion of this opinion. *See* infra ¶¶19-23. We note that although the State has consistently argued before the trial court and this court that this evidence was admissible under the other acts evidence rule, the evidence was also arguably admissible as direct evidence. Because the State did not seek to admit Stamm's testimony as direct evidence, we address its admissibility only under the other acts evidence rule.

¶11 When police arrived at the crime scene on the morning of February 11, they found the telephone receiver was off the hook. They testified, however, that although the receiver was off the hook, the telephone rang two or three times. A representative of the telephone manufacturer testified that when the telephone receiver is off the hook, a caller will receive a busy signal. The representative further testified, however, that when the telephone is exposed to extreme heat, the mechanism inside melts, thus allowing the telephone to ring.

¶12 Police observed that a living room wall clock had stopped at 7:53 p.m. and a kitchen clock had stopped at 7:30 p.m. After further investigation, they determined that the perpetrator likely exited out the side door of the house and locked the dead-bolt on the storm door from the outside with a key. One of the keys recovered at the scene fit that door.

¶13 Following the discovery of Sandra's body, police officers informed John of his wife's death and questioned him. John stated that he had last spoken to his wife by telephone on February 4. Two officers testified that John became noticeably impatient and upset when questioned about his whereabouts. An officer testified that during these interviews, John changed his story several times regarding what he was doing between 6:00 and 8:30 p.m. on February 10. Additionally, although John stated that he had a key to the dead-bolt lock, his key was never located.

¶14 John's former girlfriend, Tracy Hellenbrand, testified that on the evening of February 10, she returned home from work at about 6:15 p.m. At that time, John and Hellenbrand went to smoke in the garage, during which time Hellenbrand expressed a desire to end their relationship. Hellenbrand then went inside the house, cooked dinner for John's children and announced she was going

to nap upstairs. She testified that she received a five-minute phone call at 6:49 p.m. and fell asleep around 7:00 p.m. She next saw John at 7:45 p.m. He left at 7:52 p.m. to pick up his son from baseball practice and returned home at 8:45 p.m. She and John then went shopping for several hours. Hellenbrand claimed that after returning home, John was pacing back and forth and acting strangely. She also noticed that John smelled as if he had been inside a musty basement or cellar.

¶15 Following Sandra's death, Hellenbrand ultimately agreed to assist the police by becoming an informant and meeting with John while subject to electronic surveillance. During their first two meetings, John repeatedly denied any involvement in the murder. In July of 1998, Hellenbrand agreed to allow the police to monitor another encounter with John, during which time, John made inculpatory statements regarding Sandra's murder. Given this record, we conclude that a jury, acting reasonably could have found beyond a reasonable doubt that John was guilty of first-degree intentional homicide.

¶16 Regarding the arson charge, the trial court instructed the jury that before it could find Maloney guilty of that offense, the State had to prove beyond a reasonable doubt:

> First, that the defendant damaged the building by means of fire.
>
> Second, that the defendant did so intentionally.
>
> Third, that the building belonged to another person.
>
> Fourth, that the defendant damaged such building without the owner's consent. …
>
> Fifth, that the defendant knew that the building belonged to another person and knew that the other person did not consent to the damage of the building.

See WIS. STAT. § 943.02(1)(a). Although the parties stipulated that the damage was done without the owner's consent, Maloney argued that he did not cause the damage.

¶17 Maloney also challenges his conviction for mutilation of a corpse. With respect to that charge, the jury was instructed that to find Maloney guilty of that crime, the State had to prove beyond a reasonable doubt that: (1) the defendant mutilated and disfigured a corpse; and (2) that the defendant mutilated and disfigured the corpse with the intent to conceal a crime. *See* WIS. STAT. § 940.11(1).

¶18 We conclude that there was sufficient evidence, as outlined above, to allow a jury, acting reasonably, to convict John of both the arson and mutilation of a corpse charges. Based on the record, the jury could have believed that Maloney went to Sandra's home between 6:00 and 8:00 p.m., killed her and started the fire that formed the basis of the arson and mutilation charges.

B. OTHER ACTS EVIDENCE

¶19 Maloney contends the trial court erred by admitting Stamm's testimony. Specifically, he argues that Stamm's testimony effectively introduced impermissible other acts evidence to the jury. We are not persuaded. Whether to admit evidence is within the trial court's discretion. *See* ***State v. Sullivan***, 216 Wis. 2d 768, 780, 576 N.W.2d 30 (1998). We will sustain the trial court's discretionary decision if that court examined the relevant facts, applied the proper legal standard and used a rational process to reach a conclusion that a reasonable judge could reach. *See* ***id.*** at 780-81. The record must reflect, however, "that discretion was exercised, including evidence that the trial judge undertook a reasonable inquiry and examination of the facts as the basis for his [or her]

decision." ***State v. Speer***, 176 Wis. 2d 1101, 1116, 501 N.W.2d 429 (1993). Nevertheless, when a trial court "fails to set forth its reasoning, appellate courts independently review the record to determine whether it provides a basis for the … court's exercise of discretion." ***State v. Gray***, 225 Wis. 2d 39, 51, 590 N.W.2d 918 (1999).

¶20 In general, "evidence of other acts is not admissible because of the 'fear that an invitation to focus on an accused's character magnifies the risk that jurors will punish the accused for being a bad person regardless of his or her guilt of the crime charged.'" ***Id.*** at 49 (quoting ***Sullivan***, 216 Wis. 2d at 783). Consistent with this apprehension, the courts of this state have held that "[o]ther acts evidence may not be introduced to show that the defendant has a certain character trait and, in the present charge, acted in conformity with that trait." ***Gray***, 225 Wis. 2d at 49; *see also* ***Sullivan***, 216 Wis. 2d at 781-82.

¶21 WISCONSIN STAT. §§ 904.04(2)[5] and 904.03[6] govern the admissibility of other acts evidence. Exceptions to the general rule against admitting other acts evidence are found in § 904.04(2); however, "[e]ven if the other acts evidence is being offered for one of these acceptable purposes, it must be relevant, and its probative value must outweigh its unfair prejudicial effect."

[5] Under WIS. STAT. § 904.04(2), "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that the person acted in conformity therewith. This subsection does not exclude the evidence when offered for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

[6] WISCONSIN STAT. § 904.03, states: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Gray, 225 Wis. 2d at 49 (citations omitted). The ***Sullivan*** court propounded a three-step analysis for determining the admissibility of other acts evidence:

> (1) Is the other acts evidence offered for an acceptable purpose under Wis. Stat. § (Rule) 904.04(2), such as establishing motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident?
>
> (2) Is the other acts evidence relevant, considering the two facets of relevance set forth in Wis. Stat. § (Rule) 904.01? The first consideration in assessing relevance is whether the other acts evidence relates to a fact or proposition that is of consequence to the determination of the action. The second consideration in assessing relevance is whether the evidence has probative value, that is, whether the other acts evidence has a tendency to make the consequential fact or proposition more probable or less probable than it would be without the evidence.
>
> (3) Is the probative value of the other acts evidence substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury, or by considerations of undue delay, waste of time or needless presentation of cumulative evidence?

Sullivan, 216 Wis. 2d at 772-73.

¶22 Here, John concedes that the evidence is probative of his motive and intent. He argues, however, that the evidence was not relevant and that it was unfairly prejudicial. John also claims, without citation to authority, that his inability to defend against Stamm's testimony made the evidence both irrelevant and unfairly prejudicial. In addition, he contends he was unfairly prejudiced by Stamm's testimony because the time frame of Sandra's statements to Stamm are too far removed from the date of the crime. We disagree.

¶23 The standard for relevancy is whether the evidence has a tendency to make a consequential fact or proposition more or less probable than it would be without the evidence. *See* ***id.*** The trial court recognized that prior threats and abuse have been found relevant and probative in homicide cases. Citing ***State v. Simpson***, 83 Wis. 2d 494, 511, 266 N.W.2d 270 (1978), the court recognized:

> In fact, it is generally recognized that threats by an accused against the victim are competent admissible evidence in homicide prosecutions.
>
> Such previous threats by the accused to kill the deceased tend to show the state of the accused's mind, his intent to kill, and his malice against the deceased at the time of the homicide. Former threats made by the accused against the deceased are also admissible as evidence upon the question whether the accused in fact committed the homicide, because they show an intention on his part to do it and, therefore, a probability that he is the person who did it. …
>
> Mere remoteness, from the time of the killing, of threats made by the defendant which were directed at the deceased [do] not affect their admissibility as evidence against the accused; remoteness in point of time prior to the homicide goes merely to the weight and not to the competency of the threats as evidence. (Citations omitted.)

Because the trial court undertook a reasonable inquiry and examination of the facts and set forth its reasoning in compliance with the ***Sullivan*** court's three-step analysis, we hold that the trial court reasonably exercised its discretion by admitting Stamm's testimony.

C. VIDEO FOOTAGE

¶24 Maloney argues that the trial court erred by denying his motion for mistrial after prejudicial video footage of the crime scene was inadvertently shown to the jury. Whether to grant a motion for mistrial is a decision left to the sound discretion of the trial court. *See* ***State v. Hampton***, 217 Wis. 2d 614, 621, 579

N.W.2d 260 (Ct. App. 1998). A trial court must review the entire proceeding to determine "whether the claimed error is sufficiently prejudicial as to warrant a mistrial." ***Id.*** We will not reverse the trial court's decision unless it has erroneously exercised its discretion. *See* ***id.*** "A trial court properly exercises its discretion when it has examined the relevant facts, applied the proper standard of law, and engaged in a rational decision-making process." ***State v. Bunch***, 191 Wis. 2d 501, 506-07, 529 N.W.2d 923 (Ct. App. 1995).

¶25 Here, the State sought to admit video footage of the crime scene aftermath, including two scans of Sandra's remains as they were found on the couch. The trial court recognized that although the video was disturbing, the evidence was nevertheless admissible to establish elements of the crimes charged. *See* ***State v. Lindvig***, 205 Wis. 2d 100, 108, 555 N.W.2d 197 (Ct. App. 1996).[7] The court, agreeing to allow the State to show only the first video scan of the couch, stated "I'm satisfied there's sufficient showing under the first scan to meet the needs of the State in terms of being allowed to offer evidence to meet its burden of proof. I think the second scan then becomes [duplicitous] because it doesn't show anything any differently."

¶26 During the video's presentation, the jury was shown the first scan and was inadvertently shown a portion of the second scan of the couch. The video was stopped as soon as Sandra's head came into view. Maloney moved for a mistrial. The trial court, denying the motion, noted that the second scan was merely duplicitous of the first. It further observed that the jury showed no adverse reaction upon viewing the first scan. The court determined that Maloney would

[7] Maloney does not argue that the trial court erroneously exercised its discretion by allowing in the first video scan of Sandra's body on the couch.

receive a fair trial because the brief viewing of the second scan was not so upsetting to the jury that it would prevent them from engaging in a rational decision-making process. We thus conclude the trial court properly exercised its discretion by denying Maloney's motion for a mistrial.

D. CIRCUMSTANCES OF POLYGRAPH TEST

¶27 Maloney argues that the trial court erred by denying his request to question Hellenbrand regarding the circumstances of her polygraph test. Specifically, Maloney sought to introduce evidence that Hellenbrand used deceptive measures to deceive the polygraph and, when confronted with the results, said that she was a "compulsive liar." Although Maloney concedes that polygraph test results are not admissible in Wisconsin, *see* ***State v. Dean***, 103 Wis. 2d 228, 278-79, 307 N.W.2d 628 (1981), he nevertheless contends that under ***State v. Hoffman***, 106 Wis. 2d 185, 217, 316 N.W.2d 143 (Ct. App. 1982), the proffered evidence was admissible as relevant to Hellenbrand's credibility. We are not persuaded.

¶28 In ***Hoffman***, this court recognized:

> Although a polygraph test result might itself be inadmissible, an offer to take a polygraph examination is relevant to an assessment of the offeror's credibility and may be admissible for that purpose. By the same reasoning, a withdrawal of such an offer may also be probative of credibility for the reasons suggested by defendant.

Id. at 217 (internal citation omitted). ***Hoffman***, however, is distinguishable from the present case. ***Hoffman*** discussed credibility as it related to either the offer or withdrawal of an offer to take a polygraph test. Here, because Hellenbrand actually submitted to a polygraph test, ***Hoffman*** is inapplicable. We therefore

conclude the trial court properly exercised its discretion by refusing to admit evidence regarding the circumstances surrounding Hellenbrand's polygraph test.

E. *FALSUS IN UNO* JURY INSTRUCTION

¶29 Maloney contends that the trial court erred by failing to give the *falsus in uno* jury instruction, which provides: "If you become satisfied from the evidence that any witness has willfully testified falsely as to any material fact, you may, in your discretion, disregard all the testimony of such witness which is not supported by other credible evidence in the case." WIS JI—CRIMINAL 305. Maloney requested that the instruction be given in regard to Hellenbrand's testimony.

¶30 The decision whether to give the instruction is within the trial court's wide discretion. *See* ***State v. Lagar***, 190 Wis. 2d 423, 433, 526 N.W.2d 836 (Ct. App. 1994). Further, "the *falsus in uno* instruction is not favored." ***Id.*** Maloney emphasizes that at the postconviction hearing, the trial court recognized that Hellenbrand admitted lying to law enforcement officers during the course of their investigation. This court has determined that "[t]he impeachment of a witness with prior statements does not necessarily mean that a *falsus in uno* instruction is appropriate. The testimony must be shown to be willful and intentional." ***Id.*** at 434. Further, the trial court is in the best position to make this determination. *See* ***id.***

¶31 Here, the court noted that Hellenbrand's admissions about lying during the course of the investigation were available to the jury in assessing her credibility. It determined, however, that the admissions showed only that Hellenbrand lied prior to the trial, not that she committed perjury during the trial.

Accordingly, we conclude the trial court did not err by refusing to give the *falsus in uno* jury instruction.

F. GOVERNMENTAL MISCONDUCT

¶32 Maloney contends that by using Hellenbrand to elicit incriminating statements from him, the police engaged in conduct so outrageous that "due process principles would absolutely bar [it] from invoking judicial processes to obtain a conviction." ***United States v. Russell***, 411 U.S. 423, 431-32 (1973). We are not persuaded. This court has recognized that "[t]o successfully assert this defense, the defendant must show that 'the prosecution … violate[s] fundamental fairness [and shocks] the universal sense of justice mandated by the Due Process Clause of the Fifth Amendment.'" ***State v. Albrecht***, 184 Wis. 2d 287, 297, 516 N.W.2d 776 (Ct. App. 1994) (quoting ***State v. Hyndman***, 170 Wis. 2d 198, 208-09, 488 N.W.2d 111 (Ct. App. 1992)).

¶33 Here, Maloney initially argues that Hellenbrand, a former IRS enforcement agent, was acting as a law enforcement officer, as opposed to an ordinary citizen, during her encounters with him. Based on the record before us, however, this distinction is unnecessary. Even were we to determine that Hellenbrand acted as a law enforcement officer, we would not conclude that the police engaged in outrageous conduct.[8]

[8] In the order denying Maloney's various pretrial motions, the trial court determined, based on the totality of the circumstances, that Hellenbrand was not acting in the capacity of a law enforcement officer. However, at trial on cross-examination of Kim Skorlinski, a special agent with the Wisconsin Department of Justice Division of Criminal Investigation, the following exchange occurred with respect to Hellenbrand:

> [Defense counsel]: All right. Did you consider her working in an undercover capacity on behalf of you and your investigation?

(continued)

¶34 Maloney contends that the police engaged in outrageous conduct by "allowing" Hellenbrand to engage in sexual activity with Maloney while she was working as an informant. Hellenbrand initially contacted the police and ultimately agreed to be wired in an effort to exculpate Maloney. It is undisputed that the police discouraged Hellenbrand from engaging in sexual relations with Maloney. Despite these repeated requests, Hellenbrand continued sexual relations with Maloney, testifying that she did so because sexual activity was a normal part of her relationship with Maloney.

¶35 This court has held that police conduct may be deceitful without being outrageous. *See* ***Albrecht***, 184 Wis. 2d at 300. In ***Albrecht***, as here, the undercover officer did not threaten the defendant into making inculpatory statements; rather, the officer "merely provided [the defendant] with opportunities and appealing reasons to do so." ***Id.*** The police did not encourage Hellenbrand to capitalize on her sexual relationship with Maloney. In fact, as stated, they

---

> [Skorlinski]: Well, she didn't disclose her identity or she didn't hide her identity. I don't know what you're – she was a cooperating individual.
>
> [Defense counsel]: Who was working in a capacity like law enforcement officer might act in order to get evidence against somebody in an investigation; right?
>
> [Skorlinski]: Correct.

In any event, we conclude that even if Hellenbrand was acting in the capacity of a law enforcement officer, the police did not engage in outrageous conduct. We additionally note that Maloney conceded that he did not invoke his right to counsel during the encounters with Hellenbrand.

repeatedly requested that she refrain from doing so.[9] Further, as the trial court recognized:

> This is not a situation where a naïve citizen is being manipulated by a law enforcement officer. The defendant had far more experience as a law enforcement officer, in general, and, in particular, as an investigator. Furthermore, this was not a situation where a law enforcement officer lured an unsuspecting citizen into an isolated setting. The defendant traveled to Las Vegas at his own volition to meet Hellenbrand. He was aware of her former employment as an IRS agent. The videotape shows that the conversation was, to a great extent, dominated by the defendant, not by Hellenbrand.

¶36 This court has held: "[I]n the battle against crime, the police, within reasonable bounds, may use misrepresentations, tricks and other methods of deception to obtain evidence." ***Id.*** Because the police did not threaten Maloney into making inculpatory statements, but rather, provided opportunities for him to do so, we conclude that their conduct in this case was not outrageous and was within the bounds of acceptable police practice.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.

[9] Our holding does not suggest that it is permissible for the police to allow an informant to engage in a sexual relationship with a suspect. Here, Hellenbrand already had a sexual relationship with Maloney before she became an informant and continued that relationship, despite police directions to the contrary, in order to set aside any suspicions by the defendant. Under these facts, the police did not engage in outrageous conduct.