Case Briefs

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**Frank Henry MARSHALL, Petitioner, v. STATE of Alaska, Respondent.Case No. S-13401**

**Facts**

Frank Marshall was convicted in May 2006, after a jury found him guilty of selling OxyContin pills to a police officer who was engaged in undercover operations within the period. The defendant was, therefore, convicted on a second-degree misconduct. Two confidential police informants were engaged in the sale that took place on 25th December 2003. The two informants, Robert Clossey and Margaret Purcell, were helping the police in an attempt to get lighter sentences after they were arrested in April, 2002 on a charge of selling OxyContin pills ("Marshall v. State," 2008).

Marshall, who was alleged to be homeless, had an OxyContin prescription, and therefore, he established contact with Clossey informing the latter that he wanted to sell the pills. The two informants, therefore, took him in, clothed him, and fed him. On November 25th, Clossey made plans with the undercover cop regarding the sale and although neither the defendants confirmed it, the defense had argued that the two informants had driven Marshall to the pharmacy to pick up the prescription. Marshall and Clossey drove to the pre-arranged meeting place where Marshall sold the pills to the undercover cop. After the transaction was complete, the two drove away but were pulled over by police officers. A search of the vehicle yielded receipts used to purchase OxyContin bearing Marshall’s name, an OxyContin pill, and $600 dollars that had been hidden on the passenger seat resulting to the arrest of the two individuals ("Marshall v. State," 2008).

**Issues**

Whether the actions of the police informants could be interpreted as an entrapment? Whether the police officers conduct should be the determining factor when considering the issue of entrapment? Whether the superior court decision to deny Marshall his plea was consistent with their requests for additional evidence?

**Decisions**

The Supreme Court came to the conclusion that requiring Marshall to produce additional evidence to support the case on entrapment was contrary to the Criminal Rule 16(c) (5). The court, therefore, remanded the case to the Court of Appeal requiring the latter to hear the defendant’s motion ("Marshall v. State," 2008).

**Reasoning**

The judges pointed out that based on Article I, section 9 of the Alaskan constitution, an individual was only supposed to state that they were going to use “entrapment” as their defense 10 days to the final hearing of the case. Therefore, according to the judges, the decision of the court of appeal to deny Marshall’s plea was a contravention of the Criminal Rule 16(c)(5) as it would have required Marshall to provide a full disclosure of his defense strategy. Thus, the argument of the superior court did not hold water since it would have required Marshall to write an affidavit that would have incriminated him. In addition, based on the Alaska Civil Rule 77, Marshall was only allowed to disclose that he was going to use entrapment as his defense and not provide any more details ("Marshall v. State," 2008). The judges further noted that if the alleged involvement of the informants was true, then the case could be ruled to be an entrapment.

**Dissenting opinions**

There were no dissenting opinions on the case as all the judges came to the same conclusion.

**Sherman v. United States, 356 U.S. 369 (1958)**

**Facts**

The defendant, Sherman, was convicted for selling drugs to a government informant, Kalchinian. The individuals had met in an addiction treatment center were both of them were trying to get clean; however, the latter was working with the police in order to get a lighter sentence on charges of peddling drugs. The latter asked the defendant if he could procure drugs for him as the methadone programs were not working for him. The defendant denied in the first instances but eventually gave in since Kalchinian was relentless. Kalchinian, therefore, tipped off members of the Federal Bureau Narcotics who arrested Sherman after he had made three successful drug sales and charged him for being in violation of 21 U.S.C. § 174 act ("Sherman v. United States, 356 U.S. 369 (1958,)" 2006).

**Issue**

Whether the acts of the informant could be construed as entrapment? Whether the sentence could be nullified on the basis of entrapment.

**Decisions**

The Supreme Court reversed and remanded the judgement. The case was, therefore, won by majority vote with five of the judges concluding that the actions of the police informant were akin to entrapment while the other 4 judges concurred with the judgement delivered. The judges argued that “it was not the purpose of police officers to manufacture crime” and that the defendant had shown restraint in the first few instances before he was induced into the action by the informant. On delivering the ruling, the Supreme Court judgement read “The courts refuse to convict an entrapped defendant, not because his conduct falls outside the proscription of the statute, but because, even if his guilt be admitted, the methods employed on behalf of the Government to bring about conviction cannot be countenanced” ("Sherman v. United States, 356 U.S. 369 (1958)," 2006).

**Dissenting Opinions**

There were no dissenting opinions as the other four judges concurred with the judgement and agreed that the actions of “Kalchinian” could be interpreted as an inducement to commit crime.

**Question and Answer Section**

**Do I have a probable cause to approach the defendant?**

I have probable cause to approach the individual since my intention was not to sell drugs in the first place. Hence, my actions cannot be construed as “impermissible police conduct” as I did not walk to the car to sell him drugs, and I initiated a conversation. Therefore, approaching a defendant and asking him to commit a crime does not fall under entrapment as illustrated in *United States v. Young*. Therefore, according to the law, I am allowed to approach the traffic light to the extent of offering to sell drugs to the individual (Lippke, 2017).

**Is the entrapment argument a valid defense?**

The entrapment argument is not a valid defense since in entrapment. The defendant must prove without reasonable doubt that they were coerced, harassed, persuaded or offered pleas in order to commit the crime as it happened in the case of *Sherman v. United States*. Therefore, in this case, since the individual offered to buy drugs the first instance I approached him, the case cannot be considered as an entrapment (Lippke, 2017).

**Is providing the opportunity for someone to commit a crime akin to entrapment?**

No. As illustrated in the case of *United States v. Young,* providing an opportunity for someone to commit a crime is not considered as an entrapment ("United States v. Young, 94 U.S. 258 (1876)," 2006). An opportunity is, therefore, considered to be a “carrot that has been dangled in front of a criminal” or a temptation to commit a crime and violate the law, which is not the same as entrapment (Johnson, 1996).

**How much would be needed for a misdemeanor charge/felony for marijuana.**

In most states, a half ounce of marijuana is considered a misdemeanor and any amounts bigger than that are considered a felony. However, the laws change from one state to another and the amounts may range from a half ounce in Florida to 960 ounces in Louisiana (Choo & Emery, 2016).

References

Choo, E., & Emery, S. (2016). Clearing the haze: the complexities and challenges of research on state marijuana laws. *Annals ofthe New York Academy of Sciences*, *1394*(1), 55-73. http://dx.doi.org/10.1111/nyas.13093

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Lippke, R. (2017). A limited defense of what some will regard as entrapment. *Legal Theory*, *23*(04), 283-306. <http://dx.doi.org/10.1017/s1352325217000271>

**Cases**

*Marshall v. State*. (2008). *Justia Law*. Retrieved from https://law.justia.com/cases/alaska/supreme-court/2010/s-13401-1.html

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*United States v. Young, 94 U.S. 258 (1876)*. (2006). *Justia Law*. Retrieved from https://supreme.justia.com/cases/federal/us/94/258/