

STATE OF MICHIGAN
IN THE 13TH JUDICIAL CIRCUIT
FOR THE COUNTY OF ANTRIM

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

No. 22-5165-FH
(Consolidated Case)

ERIC MOLITOR,
WILLIAM GRANT NULL, and
MICHAEL JOHN NULL,

HON. CHARLES M. HAMLYN

Defendants.

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THE PEOPLE'S MEMORANDUM OF LAW IN SUPPORT OF REQUEST TO
PRECLUDE THE DEFENSE FROM PRESENTING EVIDENCE OF ENTRAPMENT AT
TRIAL AND, ALTERNATIVELY, FOR A SPECIAL JURY INSTRUCTION ON THE
DEFENSE OF ENTRAPMENT

The purpose of the entrapment defense is to deter the corruptive use of government authority to instigate or manufacture crime, and as such, a finding of entrapment justifies acquittal for the accused irrespective of his guilt or innocence. People v Juillet, 439 Mich 34, 52-53 (1991) (Brickley, J.). Only when the defendant can prove that government agents engaged in activities that would impermissibly

manufacture or instigate a crime will the defense of entrapment prevail. *Id.* at 61, citing *People v Jones*, 165 Mich App 670, 676–677 (1988).

But, whether entrapment has occurred is a question of law for the trial court to decide. *People v Fyda*, 288 Mich App 446, 456 (2010). Whether entrapment exists is “not a question of fact for the jury resolve.” *People v Woods*, 241 Mich App 545, 554 (2000), citing *People v Jones*, 203 Mich App 384, 386 (1994), and *People v Sammons*, 191 Mich App 351, 360 (1991).

Here, none of the defendants in this case have formally asserted that they were entrapped as a matter of law or – more importantly – asked this Court to conduct an entrapment hearing to determine whether they were entrapped as a matter of law. This is likely because they realize there was no entrapment in this case and thus no legal or factual basis to ask for an entrapment hearing. *This pre-trial failure to raise the defense before this Court should preclude defendants from attempting to raise the defense before the jury*, whether they use the word “entrapment” or otherwise argue to the jury that the government and/or its agents manufactured or instigated the crimes committed by defendants. Again, this is because entrapment is a question of law to be resolved by the court, not by the jury.

The presentation of any purported evidence of entrapment and any arguments that flow from it would be particularly confusing to the jury as it begins its deliberations. This is because, even if counsel have not used the word “entrapment” in eliciting this evidence or making these points, they would have raised the issue of whether the government instigated or manufactured the defendants’ crimes, an issue that does not have anything to do with the guilt or innocence of the three defendants. See *People v*

White, 411 Mich 366, 387 (1981) (“A claim of entrapment does not involve an assessment of guilt or innocence, but rather expresses a policy that there should be no prosecution at all.”). As our Supreme Court has noted, there is a legitimate concern that allowing such evidence to go to a jury will “infect” the jury’s ability to properly decide this case or – in other words – to determine defendants’ guilt or innocence. See *People v D’Angelo*, 401 Mich 167, 175 (1977). This is particularly so because a “defendant is not entitled to a jury instruction on entrapment.” *Id.* at 178.

Again, defendants’ pre-trial failure to raise an entrapment defense before this Court should preclude defendants from attempting to raise the defense before the jury. But, in the event that the defense does argue entrapment or entrapment-like theories to the jury in violation of the principle that entrapment is a question of law for the court to decide, the People would ask this Court for a special jury instruction on the defense of entrapment.

When deciding what instructions to provide, this Court’s role is to “clearly present the case to the jury and to instruct it on the applicable law.” *People v Dobek*, 274 Mich App 58, 82 (2007). Not only must the instructions include the elements of the crimes charged, but they must also include “any material issues, defenses, and theories that are supported by the evidence.” *Id.* That broad command means that this Court is not limited to drawing from the model jury instructions; it may also provide “additional instructions on applicable law not covered by the model instructions.” MCR 2.512(D)(4); see also, *Bouverette v Westinghouse Electric Corp*, 245 Mich App 391, 401–02 (2001) (“When the standard jury instructions do not adequately cover an area, the trial court is obligated to give additional instructions when requested, if the supplemental instructions

properly inform the jury of the applicable law and are supported by the evidence.”). Any additional instruction “must be concise, understandable, conversational, unslanted, and nonargumentative.” MCR 2.512(D)(4).

If a special jury instruction on entrapment becomes necessary in this case, the People would suggest the following:

At various times during this trial, the defense has advanced a theory of entrapment by the government and its agents. Put another way, the defense has attempted to elicit evidence that the government and its agents engaged in activities that impermissibly manufactured or instigated the crimes in this case. However, entrapment is a legal theory that is a matter of law for the Court to decide. In other words, it is for a judge, not a jury, to decide whether entrapment is present in a case. As such, whether defendants were entrapped by the government and its agents is not a question for you to decide.

In so instructing you, the Court is not trying to keep anything relevant from you. This is because entrapment is not an issue relevant to whether defendants are guilty of the charged crimes, a determination which you as the jury – and you alone – must decide. In so instructing you, the Court is not commenting on the truthfulness or veracity of a given witness, the quantity or quality of the evidence against each defendant, or whether each defendant is guilty of the charged crimes beyond a reasonable doubt. Again, those determinations are for you – and you alone – to make.¹

If needed, this instruction will help the jury focus on the issues that it must decide and not be distracted by any claims – explicit or otherwise – that defendants were entrapped. The proposed instruction is “concise, understandable, conversational, unslanted, and nonargumentative.” MCR 2.512(D)(4). This Court should provide the

¹ This non-standard jury instruction is like that used by the trial court in *People v Patrick*, 178 Mich App 152, 159–161 (1989), but is reworded for clarity and adds the language concerning guilt or innocence that the appellate court suggested should have been included with that instruction.

special jury instruction as requested *if* any of the defendants raise entrapment or entrapment like defenses during the course of the forthcoming trial.

CONCLUSION AND RELIEF REQUESTED

WHEREFORE, the People of the State of Michigan ask this Honorable Court to preclude defendants in this case from raising entrapment as a defense before the jury at the forthcoming trial in this case. In the event such arguments are made, the People would request that this Court grant their request for a special jury instruction on entrapment.

Respectfully submitted,

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