

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR MANATEE COUNTY, FLORIDA**

STATE OF FLORIDA,

Plaintiff,

v.

CASE NO. 2013-CF-001204

JORGE CAMACHO MARTINEZ,

Defendant.

_____ /

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

This matter came before the Court on Defendant's Motion to Dismiss, filed on April 10, 2014, and the State's Response, filed on April 30, 2014. A hearing was held on the matter on May 1, 2014. The Court has reviewed the motion, response, the evidence, the oral arguments, and the applicable law, and is otherwise duly advised in the premises.

Factual Background

The undisputed facts of this case are as follows:

A nineteen-year-old female, named "Becca" was invented by law enforcement as part of an undercover, reverse sting operation called Green Shepherd 2. Detective William Erwin, of the Sanford Police Department, created Becca's profile page on a dating website called datehookup.com. Detective Erwin acted as the "chatter" (person pretending to be Becca) from the initial contact on March 21, 2013, until he left the investigation on March 23, 2013. Thereafter, Detective Vinnie Bosco of the Seminole County Sheriff's Office oversaw the operation. The next chatter was Detective McClure of the St. Petersburg Police Department. In addition, Agent Shea Llabre, of the Department of Homeland Security, impersonated Becca during a series of recorded telephone calls. Finally, Detective Jaime Rivera, of the Manatee

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County Sheriff's Office, acted as the chatter until the case was closed with Defendant's arrest on April 1, 2013.

All contacts between Defendant and Becca were preserved. Detective Erwin saved all of the contacts that occurred on datehookup.com. Also, all text messages were saved by law enforcement and all phone calls were recorded.

On March 21, 2013, Defendant responded to Becca's profile page datehookup.com. The profile page is a request for contacts from other members of the site who fit specified parameters of age, sex, race, and interests. The profile page also includes a color picture. Becca's profile page proclaimed: "I am new to the area and looking to meet a nice guy to get up with." Becca said she was seeking "a man ages 19 to 26," and her interests included "hanging with friends, reading and swimming." Defendant also posted a profile page on datchookup.com. His profile requested contacts from females eighteen to thirty years of age. He listed his true age of twenty-three along with numerous personal interests, and the following quote in the about me section: "Love the life you live. Live the Life you love."

The first contact between Defendant and Becca occurred on March 21, 2013 at 2:53 p.m., when Defendant asked via datchookup.com, "How are you"? The following exchange occurred that day between 2:53 pm to 7:20 pm:

Becca: Fine and you?¹

Jorge: I'm good, what is your name by the way

Becca: Becca, yours?

Jorge: I'm Jorge, nice to meet you. . . So you are new to Florida right?

Becca: Hi, Jorge. I am Becca. No, I have been in Florida all my life, we just move around A LOT! My mom's work takes us all over the place. Kinda hard to keep friends.

Jorge: Oh I see, but hey now you just found a new friend ☺

Becca: Thats nice. So what do you do?

¹ To avoid redundancy and promote ease of reading, the Court will not "sic" all of the errors in the parties' communications. All quotes are taken verbatim from the communications that were introduced to the Court.

Jorge: I go to school during the day, I work out after that and then work at night. What about you?

Becca: I just go to school. other than that, not much. we just moved to bradenton about three weeks ago.

Jorge: I see, do you like it?

Thereafter, the conversation between Defendant and Becca switched over to text messaging and continued for several more hours into the night. The first phone call occurred on March 23, 2013 at 1:10 a.m., without a mention of age or sex. Defendant and Becca continued speaking over the next two days mostly via text and there was still no mention by law enforcement of Becca's alleged age. There was also no discussion of sex; Defendant merely asked Becca to hang out "and watch a movie or play video games."

On March 23, 2013, at 8:35 p.m., the third day of contact, was the first time that law enforcement told Defendant that "Becca" was a 14-year-old girl, during the following text message exchange:

Becca: I had made comment to about me being young, you never asked me how old I am. do you care.

Jorge: How old are you?

Becca: i am 14, 15 next month.

Becca: you still want to see me. i hope so.

Jorge: But do you look older like at least 18

Becca: no, sorry to disapoint you thanks for talking to me

Jorge: I have no problem as long your mom is cool with it

Jorge: You know I just don't want to get in trouble lol

Becca: i know, thats why I wanted to tell you before we get any further. mom is ok withme seein older guys.

Jorge: Ok then we are good, by the way are you the girl from the picture?

Becca: my profile pic? I have more if you want them. but i cant send them from my phone so i could email them if you want.

Becca: i dont like my profile pie. i need to change it.

Becca then e-mails Defendant six pictures of a girl in various stages of undress inside a hotel room. Three of the six photos show Becca provocatively wrapped in a towel and posing

for the photographs. In one picture, she is partially undressed and sitting in a hotel bed. Detective Vinnie Bosco sent these pictures and, in his sworn deposition, identified the adult woman in the photographs as Tracy Ditori who works for the Seminole County Sheriff's Office and is a supervisor with Child Protective Services. Detective Bosco was the person who actually took the photographs for the sole purpose of using them in undercover operations. Although Detective Bosco did not know the exact age of Ms. Ditori at the time he took the pictures, he did state that "I know she's in her twenties."

Once Defendant received the additional photographs of Becca, the first mention of sex occurred during the following exchange:

Becca: please sent send me some too.

Jorge: You look good, older than 14 too

Becca: I have been told that before, but nope young and innocent he he

Jorge: lol Are you a virgin?

Becca: no, does that bother you or entice you?

Jorge: No at all lol

Jorge: So how the deal?

Jorge: Do you want to come to my place with me?

Jorge: What time should I take you back if yes

Becca: yes, i do. i would have to be back before 10 tomorrow. Mom will be back and we are going to do out girl thing again.

The conversation continues and the chatter begins to attempt to push Defendant into speaking specifically about sex and what he wants to do with her:

Becca: what do you wanna do tonight?

Jorge: Watch a movie, play some video games, talk

Jorge: Send me your address

Becca: is that all . . .

Becca: sounds like you want me to stay over

Jorge: what else would you like to do?

Jorge: **Yeah stay over with me**

Becca: i am open for anything, if we like each other. what would you like.

Becca: did you ever send me any pics

Jorge: yes I did

Jorge: We will do anything you like

Becca: to my email? not there.

Jorge: send me more pics obj true

Becca: I like a lot, but i wanna know what i will be getting into.

Becca: whats obj true, never heard of that.

Jorge: idk babe we will see and don't worry I'm not a pervert

Jorge: I meant to say ohh

Jorge: Lets just have some fun, do you drink?

Becca: no. please tell me what you want to do.

Becca: more pics on the way.

Jorge: We could cuddle and make out lol

Becca: nice abs. i sent more. will it stop at making out?

Jorge: Probably not lol

Jorge: What do you want?

Becca: then how far will you go.

Becca: hey, what? I want to do what you want

Jorge: Ok when I'll pick you up you will see

Jorge: You look cute by the way

Becca: but, i wanna know now. i forgot to tell you i am spoiled and usually get what i want. i hope you don't mind.

The texts continue with trying to make arrangements to meet. Then, on March 23, 2013 at 11:24:48 p.m., Defendant asks for a picture of Becca wearing a bikini. She denies having a bikini picture, but reminds him of the towel pictures.

That evening and the early morning hours of March 24, 2013 at 12:12 a.m., the two speak on the phone. Agent Shea Llabre, posing as Becca, continues to press for specifics and repeatedly asks Defendant "what are we gonna do?" Defendant again states that, "We just gonna chill. Watch a movie. Maybe play some video games." Only after repeated questioning and Becca's openness to discussing sex, Defendant does talk about sex with Becca. During this phone call Defendant asks about Becca's age again and how she looks much older in the pictures she sent him: "You don't look 14 in the picture. You look older, like not old, but like 17, 18." Defendant also states, during the phone call: "But like, like I wouldn't, **I wouldn't have like**

talk to you if I knew you were 14. Like, cause you know, that's like me being a pervert. So, not, I don't know, like I would have looked bad, you know, if I tried to hit on you if you were younger. Now, if you're younger and like you tried to hit on me, and like you look, I don't know, that would be different, you know? And if your mom is okay with it, so that would be cool. You know what I mean?" He also reiterates that he just wants to "chill and hang out with you and stuff" and **that if she doesn't "feel comfortable, we can just hang out and chill, so, you know?"** He repeatedly states that he wants her to be comfortable and he is not only interested in sex. Defendant then asks her to text her address so they can meet in person and he can pick her up. During a subsequent text message exchange, Becca suggests "hey if you want just come here and pick me up and then **we can got to your place and shower. to save time.**" No meeting occurred in the early hours of March 24, as temporarily planned, as Defendant fell asleep.

Continuing on March 24, 2013 at 4:43 p.m., law enforcement reinitiates contact via text message. Again the two try to arrange a meeting time and discuss meeting after Defendant is through working for the day. There are some discussions about having sex: Defendant texts "Can we do it at your place?" Becca replies "yep :-}."

On March 24, 2013 around 9:00 in the evening, Becca initiates contact with Defendant, then acts upset when he does not respond timely.

Becca: hey... u there?

Jorge: Yes babe

Becca: whats up

Jorge: Still at work

Jorge: What ru doing?

Becca: when u get off

Becca: where u still comin over

Becca: r u there y dont text me

Becca: im going to bed then if u don't wanna text me back

Jorge: I'm sport, still at work

Becca: r u still comin over can u plse answer my text im not gonna stay up all not waiting

Becca: for nothing

Becca: ok never mind im goin to bed mayb we can hook up some other time if im available but douht it if this is the way u treat girls

Jorge: I was busy that's why I couldn't text

Becca: just answer my questions thats all i want

Jorge: I think is too late

Jorge: What about tomorrow?

Jorge: I'm off

Becca: whatever

Jorge: Yes?

Becca: i dont care anymore

Jorge: I'll make it up to you

Becca: dont text me anymore u said tonight then change it ur so imature

Jorge: Don't get mad is just that I have to wake up really early tomorrow, I do want to see you, I can pick you up after school tomorrow

Jorge: What do you say? You won't regret it, I promise you.

Becca: k

Becca: what time tomorrow

Later that night, the conversation turns sexual and the two continue to try to make plans to meet that night:

Becca: it would be better tonight u could spend the night if u want

Becca: y u playing games with me

Jorge: I'm not

Becca: u r

Jorge: Are you horny?

Becca: mayb

Jorge: Show me

Becca: how

Jorge: Picture

Jorge: And I'll do the same

Ultimately, Defendant does not meet Becca indicating that it was too late and he was tired. Becca pretends to be upset with him for cancelling.

The next day, March 25, 2013, law enforcement again reinitiates contact via text message with Defendant and attempts to get him to come and meet in person. Becca apologizes for being angry the night before. After more text conversations back and forth about when they can meet, the chatter continues to play the upset girlfriend to coax Defendant into meeting:

Becca: it's not lik ur comin u lie all the time.

Becca: Y u keep textin me.

Jorge: Hey Becca, let me know if you are free Saturday, I can pick you up right after work.

Jorge: Or Friday night, let me know and I'm sorry about before. I'll make it up to you.

As soon as Defendant apologizes, law enforcement immediately begins to press for details asking, "What we do." After Defendant says we can go to his place, the following exchange takes place:

Becca: What would we do at ur place lol

Jorge: Chill, relax

Jorge: Watch a movie, listen to music, etc

Becca: u talked about sex before

Jorge: Would you like to?

Jorge: Did I?

Becca: Ya

Jorge: Haha I know duh

Jorge: So

Becca: I thought that's y u wanted to meet

Jorge: Not really, I want to meet you not just for that

Jorge: Or that's what you want? Sex?

Becca: k

Jorge: You haven't answer my question babe

Becca: if ur calling me babe that must be what u want lol

Jorge: Haha

Jorge: But what do you want?

Jorge: Is not up to me only

Becca: If u want to I'm up for just a virgin

Jorge: What do you mean by just a virgin? Lol

Becca: jus lik I said

Jorge: I that a yes for sex?

Becca: U I would have sex with u

Jorge: Only if you want to ok

Becca: I'm ok with it

Jorge: You only been with one guy?

Becca: No this would b first time

Jorge: Really?

Becca: Ya

Jorge: So why me? Lol

Becca: I thought u wanna hook up

Jorge: Yes I do

Becca: so what wil u do to me lol

Jorge: You ask to many questions lol . . . let's keep the misery

Jorge: Mistery*

Becca: I jus wanna knw what do

Becca: what u lik

Jorge: Doggy style is good lol, I like anal but you probably won't let me do it lol

Becca: does it hurt

Jorge: Idk, in not a girl haha, do you want to try?

Jorge: If it hurts just tell me to stop

Becca: I would if u tak it slow

Jorge: Yeah no pressure about that

Then, for a few days, they continue to try to make arrangements to meet. Becca continues to pressure Defendant to not cancel the date. On March 27 at 2:39 p.m.: "if ur still coming uve stood me up before." And, at 3:42 p.m.: "u better be there n not stand me up lik last week." They make plans for Defendant to pick Becca up and take her to his residence where he says they can watch a movie. And, law enforcement brings up sex: "can u make sure u hav condoms i dont wanna get pregnant." Defendant inquires: "Can we try anal?" Becca responds: "lik u lick my ass or fuck me n my ass." Becca agrees to try this sex act as long as he is gentle with her.

They text a few times over the next few days without significant conversations. On March 29, 2013, Defendant inquires about why Becca wants to be with him and Becca reassures him that she is a willing sexual partner:

Jorge: So why me?

Becca: bc we been chatting all this tim thats a stupid question

Jorge: What makes you want to do it with me?

Becca: u mean sex?

Jorge: I know, and yes sex

Becca: u seem mature and i lik ur profile pic

Becca: y u ask

Jorge: Because you are a virgin

Becca: u dont wanna com out mon

Jorge: Yeeah I do

Becca: then whats matter

Becca: u dont seem excited to see me

Jorge: Yes I am, why do you say that?

Becca: jus cuz

Becca: i think i found a place we could go to were no one will be at

Then, they discuss sending pictures back and forth, over time Defendant realizes the last picture law enforcement sent him of the fictitious Becca did not look the same as a previous picture.

Becca: I sent it

Jorge: I got it

Jorge: Are you blonde?

Becca: more lik light brown lol

Jorge: Is that your cat?

Becca: Ya isn't she cutie

Jorge: Yeah like the owner

Jorge: Lol but you look older than 14

Becca: haha thanks

Becca: I knw people say that all the tim

Jorge: But I'm confused

Becca: what

Jorge: The first pictures that you sent me are from a different girl

Jorge: Like you were in a hotel wearing a white towel, is that you?

Becca: u talking about my profile pic

Jorge: Nope, not that one

Jorge: You sent me some pictures to my email

Jorge: Before

Jorge: Remember?

Becca: No

Becca: Jus my profile pic

Jorge: You send me one that you were on a tree, wearing a pink shirt and blue shorts with sandals, is that you?

Jorge: Because I remember you send it

Jorge: To dh

Becca: I don't remember it could b my gf

Becca: I don't want someone to see my pic unless I can trust them

Jorge: So you sent me the wrong ones?

Jorge: But this last picture is you right?

Becca: Ya n the one befor

Becca: I can't remember the other pies

Jorge: That's not cool

Jorge: I'm really confused now

Becca: the one I sent u is me

Jorge: Just because of the fact that you didn't tell me, idk if I should trust you

Jorge: I know

Jorge: What color are your eyes?

Becca: if u don't trust me the forget it I sent u my pic

Becca: I've been trying to prove myself to u since day one

Becca: Never mind bye

Becca: I can't let my mom knw I posted on date hook up or else I will get n trouble

Becca: If I was older I wouldn't hav that problem I could jus com n meet u

Jorge: I understand

Jorge: I just got mad

Jorge: Don't worry about it

Becca: But I'm not I'm 14 I can't help that I wish u could understand that

Becca: but I guess not

Jorge: I understand hun, it's fine

Jorge: I'm just trying to make sure that was you

On the day of the planned meeting, Defendant asks to delay their meeting and again Becca acts upset and tells him to forget about it playing on his feelings of trust and the relationship they have built thus far. Also, law enforcement continues to raise the topic of sex by telling Defendant that she bought a skirt specially for their date and by teasing him. At one

point, he accidentally types “eating” instead of “looking”, and law enforcement teases with a sexual response: “ur gonna eat me lol.” This sparks another sexual conversation.

Finally the parties agree on a meeting time and place, and as Defendant is on his way to meet Becca, she convinces him to go and buy marijuana and alcohol before he arrives. As a result, on April 1, 2013, Defendant drives to meet the fictitious Becca and was arrested at a Bradenton convenient store.

Following his arrest, Defendant spoke to law enforcement and confirmed that he participated in all of the communications collected by law enforcement. Defendant was ultimately charged by Information with the following counts: (1) Traveling to Seduce/Solicit/Entice a Child to Commit a Sex Act; (2) Use of a Computer to Seduce/Solicit/Entice a Child to Commit a Sex Act; (3) Attempted Selling, Giving, Serving Alcoholic Beverage to a Person under 21 years of age; (4) Attempted Delivery of Drug Paraphernalia to a Person under 21 years of age; (5) Possession of Marijuana (not more than 20 grams); and (6) Possession of Drug Paraphernalia.

Legal Analysis

In the present motion, Defendant moves for a dismissal of his charges on the grounds that he was entrapped by the government. An entrapment defense is meant to prevent a government agent from “originat[ing] a criminal design, implant[ing] in an innocent person’s mind the disposition to commit a criminal act, and then induc[ing] commission of the crime so that the government may prosecute.” *Jacobson v. United States*, 503 U.S. 540, 548 (1992).

I. Due Process Entrapment

Florida law recognizes both a due process entrapment defense and a subjective entrapment defense. *Cabrera v. State*, 766 So. 2d 1131, 1133 (Fla. 2d DCA 2000). The due process entrapment theory, which is often referred to as the objective theory of entrapment,

“operates as a bar to prosecution in those instances where the government’s conduct ‘so offends decency or a sense of justice’ that it amounts to a denial of due process.” *Davis v. State*, 937 So. 2d 300, 302 (Fla. 4th DCA 2006) (quoting *State v. Blanco*, 896 So. 2d 900, 901 (Fla. 4th DCA 2005); see also *Munoz v. State*, 629 So. 2d 90, 98-99 (Fla. 1993). In the absence of egregious law enforcement conduct, a subjective entrapment analysis, as codified in Fla. Stat. § 777.201, is to be applied. *Munoz*, 629 So. 2d at 99. In the present case, the Court concludes that the government conduct was not so egregious as to constitute a due process violation. Therefore, the Court will focus solely on the defense of subjective entrapment.

II. Subjective Entrapment

The subjective entrapment analysis focuses on three issues. First, Defendant must prove by a preponderance of the evidence that a law enforcement officer, a person engaged in cooperation with a law enforcement officer, or a person acting as an agent of a law enforcement officer induced Defendant to commit the offense charged. Fla. Stat. § 777.201; and *Munoz*, 629 So. 2d at 99. Second, Defendant must prove that he or she was not predisposed to commit the offense. *Id.* Once Defendant has satisfied this initial burden, the prosecution has the burden to rebut Defendant’s evidence and prove predisposition beyond a reasonable doubt. *Id.* Third, the court must decide “whether the entrapment evaluation should be submitted to a jury” because factual issues are in dispute or because reasonable persons could draw different conclusions from the facts. *Id.* at 100.

A. Inducement Analysis

Inducement is “[a]ny government act creating substantial risk that an otherwise law-abiding citizen would commit an offense, including persuasion, fraudulent misrepresentations, threats, coercive tactics, harassment, promises of reward, or pleas based on need, sympathy or

friendship.” *Farley v. State*, 848 So. 2d 393, 395 (Fla. 4th DCA 2001) (quoting *United States v. Davis*, 36 F. 3d 1424, 1430 (9th Cir. 1994)). Accordingly, “[a]n ‘inducement’ consists of an ‘opportunity’ plus something else—typically excessive pressure by the government upon Defendant or the government’s taking advantage of an alternative, non-criminal type of motive.” *United States v. Gendron*, 18 F. 3d 955 (1st Cir. 1994). Thus, “the government may not play on the weaknesses of an innocent party and beguile him into committing crimes which he otherwise would not have attempted.” *Jacobson v. United States*, 503 U.S. 540, 553 (1992).

In the present case, the Court finds that from the onset law enforcement induced Defendant, and this inducement continued through repeated coercion, the development of a friendship, and excessive pressure by law enforcement acting as Becca. The first example of coercive tactics employed was by law enforcement’s posting a profile on www.datehookup.com, which is a website specifically for adult sexual relationships. While, this alone does not meet the legal definition of inducement, it meets the first prong of the test in which the government created the opportunity.

Next, in meeting the second prong, the Court finds the following acts to be the “something else” required – the excessive pressure by the government in taking advantage of Defendant’s non-criminal motive. *See Gendron, supra*.

First, the Court is greatly concerned with law enforcement’s approach of sending pictures of the fictitious Becca partially undressed and in a hotel room, which plants an idea of sex in the mind of an otherwise innocent person. The Court finds the action by law enforcement in this case egregious, odious, and superfluous, which may well meet due process entrapment. However, at the very least, the conduct was most certainly excessive. The use of pictures alone meets the excessive pressure of the inducement prong.

However, the tactics did not stop there. In fact, law enforcement repeatedly tested Defendant by luring him into discussing sex, then feigning anger when plans fell through or Defendant hesitated in meeting Becca. Over the span of twelve days, law enforcement worked on developing a relationship with Defendant and planted ideas of trust.

Also, the officers were often times the initiator of communications and frequently steered the conversation towards a sex. This occurred even to the extent that at one point Defendant made an innocuous statement and the chatter turned the comment into a sexual innuendo, of "eating" Becca. This type of conduct is audacious and has no place in modern day law enforcement. Also, when pressed on what Becca and Defendant would do together, more often Defendant indicated that they could just hang out, watch a movie, and relax. Only when pushed or directly questioned, did Defendant discuss sexual acts and these discussions did not happened until several days into their contact.

The Court finds the present case is distinguishable from *Mareel v. State*, 841 So. 2d 600 (Fla. 4th DCA 2003), in which the Fourth District Court of Appeal concluded that Defendant had not been entrapped. In *Mareel*, a special agent entered a chatroom entitled "Married Wants Affair" and posed as a fifteen-year-old girl named Kelly. Defendant entered the same chatroom and engaged "Kelly" in conversation. When Defendant asked "Kelly" if she was married, "Kelly" told Defendant that she was only 15. Upon learning that "Kelly" was a minor, Defendant asked her for a picture, asked if she was looking for "older guys," and asked if she was "looking for just a sexual relationship." When "Kelly" responded that she was "maybe" looking for something sexual, the two discussed the possibility of meeting and the sexual "touching" that would occur if they met. Throughout the next several weeks, Defendant and

“Kelly” engaged in many emails, online chats, and telephone calls. Eventually, they arranged to meet at a local McDonalds, and Defendant was arrested.

In a pre-trial motion to dismiss, Defendant argued that he had been entrapped. The trial court disagreed. Significantly, the court noted that “Kelly” had immediately identified herself as a minor; yet, Defendant was undeterred and asked her if she was interested in a sexual relationship within the first 14 minutes of talking to her. On appeal, the Fourth District Court agreed, stating that “‘Kelly’ merely created an opportunity for appellant to attempt to lure or entice a minor to participate in sexual activities. There were no coercive tactics or ‘arm-twisting’ on the part of law enforcement; [Defendant] was already on the ‘iniquitous path.’” *Id.* at 603.

Here, Defendant was not already on the “iniquitous path”; the State had to lead him there. Law enforcement did not immediately advise of Becca’s age, instead law enforcement tantalized and titillated Defendant with pictures of “Becca” partially undressed and in a hotel room. Pursuant to Det. Vinnie Bosco’s deposition, the first chatter informed he “had somebody on the hook.” The Court is at a loss as to how the officer could express this when, at this point, there was no evidence that a crime had been committed because law enforcement had failed to advise of Becca’s supposed age. Moreover, the Court finds the woman depicting Becca in the photographs does not appear to be young; rather, she looks to be a grown woman in her mid-20’s or older, but certainly not fourteen. As such, after three days of communicating, Defendant began to develop a friendly relationship with Becca, whom he had no reason to believe was not an adult. And, even though he later accepted her age, he was not seeking a relationship with a young girl. In fact, Defendant confesses to Becca that if he had initially known that she was only 14 years old, he would have never responded to her profile. Therefore, this Court concludes that the present case is clearly distinguishable from *Mareel*.

On the other hand, the Court concludes that the conduct of the government in this case is comparable to that in *Farley v. State*, 848 So. 2d 393 (Fla. 4th DCA 2001). In *Farley*, the Broward County Sheriff's Office was alerted that Defendant's name was found on a list uncovered in a child pornography investigation in Texas. As a result, the Sheriff's Office sent Defendant a spam email inviting those looking for "hard to find" sexual materials to visit a fictitious company website. The email also contained assurances that any communication with the company would be protected from government interference. Upon receiving the email, Defendant visited the website and input a request for specific pictures of teenage boys. In response, a detective sent Defendant an email requesting more specific details regarding Defendant's preferences. After an exchange of emails in which the detective sought, and Defendant provided, more and more specific details, the detective provided Defendant with an order form and Defendant placed his order. Thereafter, the two arranged to meet for the delivery of the videos, and Defendant was subsequently arrested.

Defendant raised the defense of entrapment, and the Fourth District Court of Appeal concluded that he had been entrapped as a matter of law. In reaching this conclusion, the Court found that the conduct of the government had progressed from "innocent lure" to "frank offer," as required for inducement. Specifically, the Court noted that "[w]hat began as a plan to possibly uncover an offender from the Texas list, became a concerted effort to lure Farley into committing a crime." *Id.* at 396.

Just as in *Farley*, Defendant in this case was targeted arbitrarily, without any evidence that he was already engaged in criminal activity. Thereafter, the government made a concerted effort to lure him into committing a crime. Like in *Farley*, the parties in this case engaged in an exchange of correspondence that consisted of the government seeking more and more detailed

information. Here, “Becca” repeatedly asked Defendant for details asking what they would do if they hung out and asking if he wanted to do more than kiss or watch a movie. Also, Becca was open to sexually explicit discussions. Accordingly, the exchange of text messages in this case was similar to the emails in *Farley*. More importantly, in this case, unlike Defendant in *Farley*, Defendant did not respond to the advertisement by immediately seeking an encounter with a minor. Instead, Defendant sought only to meet a 19-year-old woman. When he learned, three days later, that this girl was 14, his immediate response was not sexually explicit.

Accordingly, upon extensive review of the case law as applied to the instant facts, the Court concludes that Defendant has met his burden of demonstrating that he was induced to commit the crime of which he is now charged.

B. Predisposition Analysis

Having concluded that Defendant was induced to commit the present crimes, the Court must now turn to the issue of predisposition. Predisposition turns on “whether the accused was awaiting any propitious opportunity or was ready and willing, without persuasion, to commit the offense.” *Munoz*, 629 So. 2d at 99. “Predisposition is . . . not present when [a defendant] has no prior criminal history related to the offense at issue.” *Farley*, 848 So. 2d at 396. A defendant has also been found not to be predisposed where Defendant was not targeted by law enforcement and “was not known for deviant behavior” prior to the incident at issue. *Id.* “Evidence of predisposition is limited to the extent it demonstrates predisposition on the part of the accused both prior to and independent of the government acts. Further, care must be taken in establishing the predisposition of a defendant based on conduct that results from the inducement.” *Munoz*, 629 So. 2d at 99.

The Court finds it significant that twelve days passed before Defendant finally acted on the opportunity presented by law enforcement to meet Becca. This supports that Defendant was not ready and willing to have sex with a minor. Additionally, throughout their conversations, Defendant sought reassurances from Becca that she was the one seeking a sexual relationship and he repeatedly told her that he wanted her to be comfortable before anything sexual happened and assured her it was fine if they only hung out and watched a movie. Also, it was only after speaking for several days that law enforcement informed Becca was 14-years-old, and then it was several days later in which the conversation became sexually explicit.

In the present case, Defendant has demonstrated that he was not under investigation by law enforcement prior to committing this crime. Moreover, Defendant has no criminal history, let alone criminal history related to the instant offense. Accordingly, the facts of this case, with respect to Defendant's predisposition, are similar to those in *Farley*, 848 So. 2d at 396, in which the court found it significant that defendant had never been arrested for anything in his life, let alone for the offense for which he was currently charged. The court also noted that defendant had not been "involved in an existing criminal undertaking in need of detection by law enforcement; rather, [the government] sought to manufacture crime based on a list of names and addresses of unknown origin." *Id.* at 397.

Therefore, the Court finds that Defendant here has satisfied his burden of proving that he was not predisposed to commit the offenses at issue. *See Farley, supra.* Thus, the burden shifts to the prosecution to rebut this evidence beyond a reasonable doubt. *Munoz*, 629 So. 2d at 99.

"In rebutting Defendant's lack of predisposition, the prosecution may make 'an appropriate and searching inquiry' into the conduct of the accused and present evidence of the accused's prior criminal history." *Id.* Here, the only evidence presented by the State to support a

finding of predisposition is the exchange of emails. Although the “ready commission of the criminal act amply demonstrates Defendant’s predisposition,”² those are not the facts of this case. Defendant was not interested in a sexual relationship with a minor and only considered it after repeated conversations with law enforcement over a span of twelve days. Therefore, the Court concludes that this conduct does not constitute the “ready commission of the criminal act.” As such, when the only evidence of predisposition is not independent but rather is a product of the government’s inducement to commit the offense, the state’s burden has not been met. *See Jacobson v. U.S.*, 503 U.S. 540, 550 (1992). Therefore, the Court concludes that the State has failed to demonstrate beyond a reasonable doubt that Defendant was predisposed to commit this crime. *See Munoz*, 629 So. 2d at 99.

C. Analysis of Submission to a Jury

Finally, “[t]he third question under the subjective test is whether the entrapment evaluation should be submitted to a jury.” *Id.* at 100. Fla. Stat. § 777.201 provides that the issue of entrapment shall be submitted to the trier of fact; “[h]owever, when the factual issues . . . are not in dispute, ‘then the trial judge has the authority to rule on the issue of predisposition as a matter of law.’” *State v. Ramos*, 632 So. 2d 1078, 1079 (Fla. 3d DCA 1994) (*citing Munoz*, 629 So. 2d at 100). In the present case, the issues of fact are not in dispute.

Therefore, upon diligent consideration, the Court finds that Defendant was entrapped as a matter of law. Further, given the Court’s scrutiny of this case and the conduct of law enforcement, the Court finds it imperative for all law enforcement officials in this matter to receive copies of this Court’s order and will direct service accordingly.

²*Jacobson v. United States*, 503 U.S. 540, 549 (1992).

Therefore, it is hereby,

ORDERED AND ADJUDGED that Defendant's Motion to Dismiss is **GRANTED**.

It is further **ORDERED** that Ms. Michelle Hall, Esq., Attorney for the Manatee County Sheriff's Office, serve copies of this Order on all law enforcement officials involved in this case.

DONE AND ORDERED in Chambers, at Bradenton, Manatee County, Florida, this 7th day of May 2014.



JOHN F. LAKIN, Circuit Judge

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing order was furnished by U.S. mail to: **Anthony G. Ryan, Esq.**, 100 Wallace Ave., #130, Sarasota, FL 34237; and **Joanna Piscitello, ASA**, Office of the State Attorney, PO Box 1000, Bradenton, FL 34206; and **Michelle Hall, Esq., Manatee County Sheriff's Office**, 600 U.S. Highway 301 Blvd. W., Ste. 202, Bradenton, FL 34205, on this 8 day of May 2014.

By: _____


Judicial Assistant