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Crimes--Entrapment

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The application of the rule is often difficult. Of course, where the homicide is committed solely in defense of personal property it is absolutely unjustifiable, and the state can apply the rule without being forced to weaken the case for the prosecution by giving instructions on self-defense. In such cases the application of the rule is simple, and speedy justice prevails. For example: In *Grigsby* v. *Commonwealth, supra.*, defendant killed a man to prevent him from taking his whiskey. Defendant asked for instructions on self-defense. The court held that as there was no evidence that he was in danger of death or great bodily harm he was not entitled to such instructions. However, in cases where the defense of personal property is connected with other facts, such as a forcible resistance by the wrongdoer of the owner's attempt to protect his property, the case confronting the state is not so simple. This is very well illustrated in *Commonwealth* v. *Beverly, supra.* In that case the defendant stated that the reason he fired after being requested to desist was because of the fact that from the circumstances of the case and that thieves usually go armed he felt in danger and expected a shot. The court instructed that if the defendant had reasonable grounds to believe and in good faith did believe that it was necessary to kill in order to save himself from death or great bodily harm his act was justifiable on the grounds of self-defense or apparent necessity. Under the same or similar circumstances a jury might find that apparent necessity to kill existed, when, in fact, the defendant knew his life was not in danger. For the above reasons it is readily seen that homicide in self-defense, while having no connection whatever with homicide in defense of personal property, often provides loopholes for one to kill solely in defense of personal property and escape punishment on the grounds of necessary or apparently necessary self-defense. WILLIAM HUME

CRIMES—ENTRAPMENT.—The county sheriff had reasonable grounds to believe that the appellant was engaged in the illicit traffic in intoxicating liquors. The sheriff employed X, an experienced undercover man in the federal prohibition service, to investigate the matter. X presented himself to the appellant as a bootlegger and made an agreement to purchase liquor at a stipulated price to be delivered at a designated place. The appellant was arrested by X in the process of delivering the liquor. It was held that the plea of entrapment was not a good defense in this case. *State* v. *Ragan*, 288 Pac. 218 (1930).

In the principal case the investigating party had reasonable grounds for suspecting the accused, the accused had in fact made many previous sales, and X did nothing towards manufacturing the crime. It is practically the universal rule that under such circumstances there is no entrapment. The principal case represents an almost iron-clad case under the general and federal rules on entrapment—"Where a criminal is dectected by means of a trap set for him, entrapment is no defense unless it appears that he was actually persuaded and induced to

commit the crime by the entrapping parties and not merely furnished an opportunity by them." *De Mayo* v. *United States*, 32 F. (2d) 472 (1929); C. C. A. (8th); *Butts* v. *United States* C. C. A. (8th), 273 F. 35; *Cooke* v. *Com.*, 199 Ky. 111, 250 S. W. 802 (1923); *State* v. *Lambert*, 148 Wash. 657, 269 P. 848 (1928). The few dissents are based on a disagreement about the whole policy of allowing the officials any right to trap criminals or use "decoys." *Smith* v. *State*, 61 Tex. Cr. 328, 135 S. W. 154; Brandeis dissent in *Casey* v. *United States*, 48 Sup. Ct. 373 (1928).

Many cases on the point in question state that the evidence for the State must show both that the design originated in the minds of the accused and that the agents had reasonable grounds for suspecting the accused. *United States* v. *Certain Quantities of Intoxicating Liquors*, 290 F. 824 (1923); *Butts* v. *United States* (C. C. A. 8th), 273 F. 35. Although many cases, especially the earlier ones, stress the "reasonable grounds" theory (*St. Clair* v. *United States* (1927; C. C. A. 8th), 17 F. (2d) 886, an investigation of a large number of cases will discolse the fallacy of the contention that the defense of entrapment will always lie unless reasonable grounds for suspicion are shown. *Claxton* v. *People*, 82 Colo. 115, 257 Pac. 347 (1927); *Bauer* v. *Com.*, 135 Va. 463, 115 S. E. 514 (1923); *State* v. *Seidler*, — Mo. App. —, 267 S. W 424 (1924); *United States* v. *Wray* (1925; D. C.) 8 F. (2d) 429. Where the reasonable grounds are present the courts will still stress such point, but where evidence of reasonable suspicions is lacking many courts hold that either such a point is not a matter for consideration, [*United States* v. *Washington*, 20 F. (2d) 160] or that the sale is an inference that reasonable grounds were present [*Napolitano* v. *United States*, 3 F. (2d) 994] or that reasonable grounds that "someone" was violating the law is sufficient. *United States* v. *Wray*, 8 F. (2d) 429 (1925).

The present cases in practical application if not in theory use reasonable grounds primarily as the test in consideration of the questions as to the degree of persuasion that will be permitted—the greater the reasonable grounds for suspicion the greater the latitude in the means and manner of investigation. *Sills* v. *United States* (1927; C. C. A. 8th), 16 F. (2d) 568.

The most difficult point in entrapment cases is the test to apply in consideration as to whether the design originated in the mind of the accused or of the government agent. The majority of cases hold that if the accused can show an absence of previous sales, the presumption is that the design originated with the officers. *Butts* v. *United States* (C. C. A. 8th), 273 F. 35. Several recent cases show a dissent from such view. *United States* v. *Washington* (1927; D. C.), 20 F. (2d) 160. The present tendency is to look at the conduct of the officers as the criterion to determine where the design originated. The courts look at all the circumstances of the case, the presence or absence of reasonable grounds, and then make a decision as to whether the governmental agents used undue persuasion or trickery; if the

answer is in the affirmative, the conclusion is that the design originated with them; if the answer is in the negative, the conclusion is that the design originated with the accused. Some courts declare that it must appear clearly that the officers have "bent the will" of the accused if entrapment is to be a good defense. *United States* v. *Washington* (1927; D. C.), 20 F. (2d) 160.

Only one case has been reported in Kentucky on this phase of the entrapment question. *Cooke v. Com.*, 199 Ky. 111, 250 S. W. 802 (1923). This case presents no difficulty in that it lines up four square with the principal case and thus clearly follows the general rule.

The entrapment question in connection with liquor and narcotics is handled similarly to entrapment in connection with bribery cases, abortion cases, the sending of obscene mail cases, etc. However, the tendency is to allow greater freedom to the officers in connection with liquor and narcotic cases. Several recent cases have held no entrapment where the officers with no information about the accused, without any reasonable grounds for suspicion, and with quite a degree of deception have trapped the accused. *United States* v. *Washington* (1927; D. C.), 20 F. (2d) 160; *State* v. *Seidler*, Mo. App. —, 267 S. W. 424.

Although it appears that the plea that public policy demands that public officers set no traps is faulty and that a better view is expressed in the general rule as set forth in the principal case in that no one would reasonably yield to an ordinary trap unless the intention of violating the law was present, and while it appears that an objective test is the best means to determine what was such pre-existing intent, it does not follow that the slight present tendency to allow liquor and narcotic officers unusual means of enforcement is grounded in sound public policy. It appears to be a better view to hold liquor and narcotic agents to the same recognized rules followed in the investigation and enforcement of other offenses. The law enforcement will not be hampered by such procedure to an extent that it is warrantable to declare that the end justifies questionable means.

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ENTRAPMENT IN NARCOTIC LAW VIOLATIONS.—The plea of entrapment as a bar to criminal prosecution has been made with ever-increasing frequency in recent years. Especially is this true as regards federal and state prosecutions under the illicit liquor laws and in prosecutions for violations of the Harrison Narcotic Act, and state laws of similar nature. These types of cases are the most usual ones, and the attention of this article will be confined to the latter. Although such limitation of the discussion seems illogical, it is planned to do so because of the somewhat apparent difference between the rule in these cases and in other types such as liquor law violations. *Swallum* v. *U. S.*, 39 Fed., 2d, 230 (Feb., 1930).

When the plea of entrapment is made it becomes the duty of the court to apply the law as laid down by precedent to the facts and