Presenting an Entrapment Defense in Internet Sting Cases

Internet sting operations are conducted by the police in an effort to lure people on the internet who may be seeking to have sex with children. In these operations, a police officer will pretend to be a child and will interact with adults on dating websites or through online personal ads. Once the conversation turns to sex, the officer will try to convince the person to send sexually explicit photos or agree to meet the "child" for the purpose of having sex.

In Georgia, these sting operations are primarily conducted by the Internet Crimes Against Children (ICAC) Task Force. This is a federally-funded task force made up of law enforcement officers from throughout the State. One of the major issues with the ICAC task force is that the amount of its federal funding is, in part, determined by the number of arrests they make. Thus, the police have an incentive to make as many arrests as possible. This often results in aggressive police tactics which, in turn, leads to the entrapment of innocent people.

Under Georgia law, a person is not guilty of a crime if, by entrapment, his conduct is induced or solicited by the police. To constitute entrapment, it must be shown that (1) the idea and intention of committing the crime originated with the police; (2) the police used undue persuasion, incitement, or deceitful means to induce the person to commit the act, and (3) the person would not have committed the act except for the conduct of the police. At trial, the State has the burden of proving beyond a reasonable doubt that the defendant was not entrapped.

The most critical element of the entrapment defense is establishing that the person would not have otherwise committed the offense but for the conduct of the police. In other words, it must be shown that the defendant was not "predisposed" to engaging in sexual conduct with children.

To prove this, we will first gather evidence of our client's background and the fact that he had never engaged in this type of conduct in the past. We will then speak with as many people as possible who have a close personal relationship with our client and who can attest to his character traits and lack of any sexually deviant behavior. We will often conduct forensic examinations of our client's computers

and cell phones to show that he has never communicated with children online nor downloaded child pornography. We will also have our client undergo a psychosexual evaluation that will show that he does not have any signs of pedophilia or a sexual interest in children.

We must also address the conduct of the police officers and show that they engaged in techniques that were specifically designed to induce our client to commit the offense. We will want to focus on the circumstances of the initial contact by the officer, the tone of the conversation and the language used, whether role-playing was evident, when in the conversation the client was made aware of the "child's" age, the fact that our client may have initially been reluctant to continue the conversation, any attempts by the officer to use undue persuasion, and whether any photos of the "child" made it evident that he or she was underage.

In order for the jury to be able to consider the defense, a written request for a jury instruction on the elements of entrapment must be submitted at the time of trial.