ROP v. Liu Man Chuen, 10 ROP 192 (Tr. Div. 2002)

REPUBLIC OF PALAU,
Plaintiff,

v.

LIU MAN CHUEN,
Defendant.

CRIMINAL CASE NO. 00-188

Supreme Court, Trial Division
Republic of Palau

Decided: July 1, 2002

ARTHUR NGIRAKLSONG, Chief Justice:

The defendant argued, after the government's case in chief, that this case should be dismissed on the grounds of entrapment, outrageous conduct and compulsion. The Court orally denied defendant's motion for judgment of acquittal.

The defense of entrapment has two elements: (1) improper governmental inducement of the crime, and (2) lack of predisposition on the part of the defendant to commit the criminal act. *United States v. Gamache*, 156 F.3d 1, 9 (1st Cir. 1998). Once the defendant has met his initial burden of producing some evidence concerning both the government's improper inducement and the defendant's lack of predisposition to commit the crime, the government must then carry its burden of proving defendant's predisposition to engage in the criminal act beyond a reasonable doubt.

The defendant argued that the death threat made to him by the informant was the improper inducement that led him to import and sell ICE to the informant. Assuming *arguendo* that this assertion is sufficient to clear the defendant's preliminary hurdle, the Court finds that the government successfully rebutted this initial showing and proved beyond a reasonable doubt the existence of predisposition on the part of the defendant to import and traffic ICE.

First, the record demonstrates that the defendant offered to sell ICE to the informant in October of 1999, one month before the informant even became an informant. The initial taped conversation between the ⊥193 informant and the defendant clearly shows that on November 11, 1999, there was a pre-existing offer by the defendant to sell ICE to the now-informant. The government did not create the criminal design or implant the intent to commit the crime in the defendant's mind. The time to determine predisposition starts when government agent first suggested the crime and not when government agent first becomes involved. "Normally, predisposition refers to the state of mind of a defendant before government informant makes any suggestion that he should commit a crime." *United States v. William,* 705 F.2d 603, 618 n.9 (2d Cir. 1983).

A review of the conversation between the defendant and the informant on November 11, 1999, shows that the defendant was excited about this opportunity to sell ICE. He showed no reluctance, hesitation, or a change of heart or mind in devising the criminal scheme, and certainly none was evidenced in the defendant's subsequent demands for and acceptance of two separate deposits of $3,000 and $12,000 from the informant for the sale of ICE. Indeed, far from being a reluctant or hesitant participant, the defendant stated that he only wished the informant had called earlier, as he just talked with his overseas connection at the time of the November 11, 1999 phone call. The defendant also stressed that he wanted his relationship with the informant to be long-term and to be "good" for both of them. Contrary to the defendant's arguments, the taped conversation between the defendant and the informant on April 7, 2000, supports this conclusion. It is true that the informant made a death threat. But prior to that point of the conversation, defendant had already indicated that he was so sure that the ICE was on its way by ship that he promised to double the informant's deposit money if the defendant could not deliver the "stuff" within a month. The defendant even offered to show the informant the bill of lading for the cargo containing the ICE. And, indeed, the ship that carried the ICE must have arrived in Palau in late May 2000, because almost a week later, as promised by the defendant, he delivered about 300 grams of ICE to the informant. In light of this sequence of events, the Courts holds that the defendant was indeed predisposed to commit the crime with which he was charged and that the evidence demonstrates beyond a reasonable doubt that he never wavered in that intent.

The defendant's claim that he was induced to traffic in ICE by the informant's death threats is fatally undercut by the defendant's own trial testimony. When his counsel asked defendant if he was scared when the informant threatened to kill him, defendant first said "No, I am not afraid because if I pay him the money, he will not kill me." The defendant later tried to explain away this statement by asserting that the informant's threats took on greater force the day after the April 7, 2000 conversation, when he and the informant met again at the parking lot of the Bank of Hawaii. The defendant contended that at that meeting, the informant stuck a "gun" in his side and again threatened his life. Defendant claimed he was so scared, that he decided at that moment, for the first time, actually to import the ICE (an act which he now also claims he did not know was illegal). But the Court, as detailed in its Findings of Fact in this case, does not believe that this April 8 meeting in fact occurred. As such, this figment of the defendant's imagination cannot possibly support the defendant's arguments.

The Court finds that the government proved beyond reasonable doubt that the defendant was predisposed to import and traffic in ICE, even before the informant ⊥194 became an informant, and that the defendant's intent to commit the crime did not waver from the beginning to the end. The record also reflects that the defendant was not induced to commit the charged crime. He thus cannot prevail on his defense of entrapment. *See, e.g.*, *United States v. Fadel*, 844 F.2d 1425, 1433 (10th Cir. 1988).

The facts as found by the Court also do not support defendant's defenses of "outrageous conduct" and "compulsion." Claims of outrageous conduct are reviewed on a case-by-case basis, with the court looking at the totality of the circumstances to determine whether the government conduct at issue was so egregious as to have violated a defendant's due process

rights. *United States v. Mosely,* 965 F.2d 906, 910 (10th Cir. 1992). At the core, governmental conduct must be "shocking, outrageous, and clearly intolerable." *Id.* The facts of this case plainly do not support such a finding.

Accordingly, the defendant's motion for judgment of acquittal is DENIED.