

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 20-0455

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

RONALD JOSEPH VALLIE, JR.,

Defendant and Appellant.

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**BRIEF OF APPELLEE**

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On Appeal from the Montana Seventh Judicial District Court,  
Dawson County, The Honorable Olivia Rieger Presiding

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## **STATEMENT OF THE ISSUE**

Whether the district court erred in denying Appellant’s motion to dismiss for entrapment as a matter of law.

## **STATEMENT OF THE CASE**

On October 18, 2019, the State filed a Motion for Leave to File an Information and Affidavit in Support Thereof in the Montana Seventh Judicial District Court, Dawson County, the Honorable Olivia Rieger presiding. (D.C. Doc. 1.) The Information charged Appellant Ronald Joseph Vallie, Jr. (Vallie) with Count I: Criminal Distribution of Dangerous Drugs—Methamphetamine, a felony; and Count II: Use or Possession of Property Subject to Criminal Forfeiture, a felony. (D.C. Doc. 2.) On October 29, 2019, Vallie entered not guilty pleas to both charges. (D.C. Doc. 11.)

On November 13, 2019, the parties filed an Omnibus Memorandum in which Vallie provided notice that he intended to rely on the affirmative defense of “entrapment” at trial. (D.C. Doc. 14.) On December 13, 2019, Vallie filed a Motion and Brief to Suppress and Dismiss, which asked the court to suppress the evidence of messages between himself and a fictitious person created by law enforcement and of the drugs seized from his vehicle. (D.C. Doc. 16.) Vallie also filed a Motion to Dismiss and Brief in Support—Entrapment. (D.C. Doc. 17.) The

State filed responses opposing Vallie's motions on December 26, 2019. (D.C. Docs. 19 and 20.) Vallie filed his reply on January 13, 2020. (D.C. Doc. 23.)

The court held a hearing on the motions to suppress and dismiss on March 6, 2020. (3/6/20 Hr'g Tr.) The court received into evidence State's exhibits 1-16 and Defendant's Exhibit A. (D.C. Docs. 32-37).<sup>1</sup> On May 4, 2020, the court issued its order denying Vallie's motions. (D.C. Doc. 41, Attached as Appellant's App. A (Appellant's App. A at 13).

On May 22, 2020, the parties filed a Plea and Sentence Recommendation Agreement. (D.C. Doc. 44.) On June 9, 2020, the court held a change of plea hearing. (6/9/20 Hr'g Tr.) At the change of plea hearing, Vallie pled guilty to Criminal Distribution of Dangerous Drugs, and the State moved to dismiss Count II, Possession of Property Subject to Forfeiture. (*Id.* at 6.) The court entered its Order Granting Motion to Dismiss Count II with Prejudice on July 23, 2020. (D.C. Doc. 51.)

The district court held Vallie's sentencing hearing on July 21, 2020. (7/21/20 Hr'g Tr.). Neither the State nor Vallie called any witnesses at the sentencing hearing. (*Id.* at 6.) The court sentenced Vallie in accordance with the Plea

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<sup>1</sup> At the hearing, the district court accepted into evidence State's Exhibits 1-16 and Defendant's Exhibit A. Those exhibits were memorialized in the district court file under seal and can be found under document numbers 32-37. For clarity, the State will refer to those exhibits by their designated exhibit number and not include document numbers.

Agreement recommendation to the Department of Corrections for four years, all suspended, with four days of credit for time served. (*Id.* at 12; Appellant’s App. A at 2.)

### **STATEMENT OF THE FACTS**

Montana Division of Criminal Investigation (DCI) Agent Cameron Pavlicek (Agent Pavlicek) testified at Vallie’s motions hearing. (3/6/20 Hr’g Tr. at 7-81.)

Agent Pavlicek is a regional agent in charge for DCI and a supervisor for the Eastern Montana Drug Task Force. (*Id.* at 7.) Agent Pavlicek testified that DCI

predominantly investigates drug-related crimes, but sometimes assists with undercover operations. (*Id.*) To identify criminal activity on the

www.MeetMe.com (MeetMe) social media platform, Agent Pavlicek created an undercover account with a female persona, “Jordan Jacobs” (Jordan). (*Id.* at 9;

Exs. 1-12.) MeetMe is a social media platform “similar to many others like Facebook” where a user sets up a profile, shares publicly viewable comments,

posts pictures, and connects with other people from the area. (*Id.* at 41.)

Jordan’s MeetMe profile indicated she was looking for chat and friendship and reflected a strong interest in obtaining and using illegal drugs. (3/6/20 Hr’g Tr. at 10.; Exs. 1-4, 7A, 8, 9, 11.) Jordan’s publicly viewable profile page displayed a marijuana icon with the term “stoner” below it in the “About Me” section. (*Id.*; Ex.

1.) In her comments she wrote “Let’s get some go fast” and “Vroom, vroom,” which is drug terminology for methamphetamine. (Hr’g Tr. at 14; Ex. 4.) Jordan’s next comment states, “[l]ooking for something special that can fit in a bowl[.]” (Ex. 13.) In addition to photographs of a female depicting Jordan, Jordan’s profile had a picture with an electronic digital scale and a glass pipe, items commonly associated with methamphetamine use. (3/6/20 Hr’g Tr. at 14; Ex. 7A.) Jordan’s profile displayed a blurry photograph taken at night, which Agent Pavlicek called a “tweaker photo”—characteristic of “abnormal and weird” photos taken by people who are high on methamphetamine. (*Id.* at 15; Ex. 9.)

On June 22, 2019, Vallie sent his first message to Jordan on MeetMe: “May I say you are amazingly beautiful,” then “Gotta ask, do you mind a guy kneeling to you[?]” (3/6/20 Hr’g Tr. at 23; Ex. 13.) On June 23, 2019, Vallie wrote that he wanted to worship her, be her “sub,” and do anything she said. (*Id.*) Vallie wrote on July 2, 2019, “Your so omg beautiful.” (*Id.*) When Jordan did not respond, Vallie wrote on July 3, 2019, “May I say hi” and “I know I was too forward.” (*Id.*) Jordan replied, “I’m into getting high not playing dungeons and dragons.” (*Id.* at 24) Agent Pavlicek explained Jordan’s first response was “as blunt as possible that I, I didn’t want anything to do with . . . him being a slave or whatever he’s referring to.” (*Id.*) Vallie wrote back, “Lol oh k. Get high and be your slave all night long” and “Sorry I get horny when I’m high.” (*Id.*)

Jordan asked Vallie what he liked to smoke, telling him that she liked “mostly everything just no brown.” (*Id.*) Vallie told Jordan that he “Can’t answer that here” but “I prefer to ‘speed up.’” (*Id.*) Agent Pavlicek explained that “brown” is heroin and “speed up” means use methamphetamine. (*Id.*) Vallie then asked Jordan what she liked to do, and she responded “clear.” (*Id.*) Vallie clarified that he meant what she liked to do when she was high, and Jordan responded, “I guess it depends on the company I’m with.” (*Id.*)

On July 4, 2019, at 3:15 a.m., Vallie messaged Jordan on MeetMe: “Hope your [sic] having a good night hun. I think you would be fun.” (*Id.*) Vallie then wrote: “If you want to continue our conversation you can text me at 4062250562.” (*Id.* at 25) Later that day, at 5:12 p.m., Vallie again used MeetMe to write to Jordan: “Damn I want to get high and be your sub. You tell me I have to worship you” and then at 7:27 p.m., “Or would that be a bad thing [?]” (Ex. 13.) Jordan responded, “I want to get to know you not make agreements like that.” (*Id.*)

Agent Pavlicek, posing as Jordan, then texted Vallie at the cell phone number. (3/6/20 Hr’g Tr. at 26; Ex. 14.) Via text message, Jordan told Vallie he “must be one of those guys watching out about the government lol . . . [because] you didn’t want to say what you liked to smoke[.]” (Ex. 14.) Vallie responded, “I’m a veteran. Just like to get to know someone before I risk it. Lol[.]” (*Id.*) Vallie

then sent Jordan more MeetMe messages, making small talk, to which Jordan responded with one or two words. (*Id.*)

On July 6, 2019, shortly after midnight, Vallie messaged Jordan on MeetMe. (*Id.*) Vallie asked if Jordan wanted to “smoke a little,” meaning smoke methamphetamine. (3/6/20 Hr’g Tr. at 25) Vallie confirmed he liked to smoke methamphetamine “once in a while.” (Ex. 13.) Jordan asked Vallie whether he could get some methamphetamine if she met up with him, and Vallie said “If we meet and your [sic] cool I might have some.” (*Id.*) Vallie also texted Jordan from a new cell phone number a few hours later around 3:00 a.m. (Ex. 15.) Vallie sent Jordan messages from that number over the next few days, and on July 11, they discussed using drugs again. (*Id.*)

On July 11, 2019, Vallie texted Jordan, “What do you want. [sic] Me to just get you high[?]” (Ex. 15 at 3.) Jordan responded, “Having someone new to hang out with who also smokes would be nice. I don’t know many people here that are straight up about things[.]” (*Id.* at 4.) Vallie responded, “Let’s meet. Where do you want to[?]” (*Id.*) Agent Pavlicek then had a female DCI agent place a call to Vallie, during which the agent suggested they meet at a McDonald’s restaurant. (3/6/20 Hr’g Tr. at 30.) Agent Pavlicek explained that Vallie “was kinda freaked out” because there was no McDonald’s in the area, so “he basically realized that he wasn’t talking to somebody who was from the area obviously.” (*Id.*) Vallie texted

Jordan over the next several days, but Agent Pavlicek did not respond because he thought Vallie had realized it was either a fake account or law enforcement.

(3/6/20 Hr’g Tr. at 32; Ex. 15.)

On August 16, 2019, Vallie messaged Jordan from a new MeetMe account. (3/6/20 Hr’g Tr. at 33; Ex. 16.) Jordan did not respond until September 4, 2019, at 12:28 a.m., when Jordan asked Vallie, “U have any clear?” (*Id.* at 34) Vallie said, “If I got some. Can I worship you while you smoke[?]” (*Id.*) Jordan replied that she would not exchange sex for drugs, told Vallie that she was interested in meeting with him and getting high, and asked if he even knew what methamphetamine was. (*Id.*) Vallie responded “Dope. Yes and i get horny on it[sic].” Vallie told Jordan that he would see if he could get more methamphetamine because he had “Already smoked.” (3/6/20 Hr’g Tr. at 35; Ex. 16)

Just after midnight on September 5, 2019, Vallie texted Jordan, “I got,” which Agent Pavlicek explained was terminology meaning that Vallie possessed dangerous drugs. (3/6/20 Hr’g Tr. at 36; Ex 15.) On September 5 and 6, 2019, Vallie texted Jordan multiple times with little to no response from Jordan. (3/6/20 Hr’g Tr. at 37-38; Ex. 15 at 8.) On September 8, 2019, Vallie texted Jordan, “If you want to smoke i got a little and a little free time[sic].” (Ex. 15.) On September 10, 2019, Vallie texted Jordan, “Want to”, “Only got a little left,” and “A couple puffs but it’s yours if you want[.]” (3/6/20 Hr’g Tr. at 39; Ex. 15.) Jordan did not

immediately respond and Vallie sent a message a few minutes later, “All gone.”

*(Id.)*

On September 13, 2019, Vallie sent Jordan text messages saying, “Want to” and “You say where. I got.” *(Id.)* Vallie and Jordan agreed to meet at the La Quinta hotel in approximately ten minutes. (/6/20 Hr’g Tr. at 40; D.C. Doc. 1 at 6; Ex. 15.)

In the meantime, Agent Pavlicek provided the Glendive Police Department with the details of his investigation of Vallie and asked for officers to go to the hotel

and conduct a controlled traffic stop if they saw Vallie or his truck. (D.C. Doc. 1

at 6.) Vallie drove his truck to the La Quinta and sent Jordan a text message that

he was at the side of the motel and asked her to come get him. (3/6/20 Hr’g Tr. at

39; Ex. 15 at 10.) Agent Pavlicek alerted the Glendive Police Department officers

who were waiting in their patrol vehicles near the hotel. (D.C. Doc. 1 at 6-7.)

The officers found and arrested Vallie. (D.C. Doc. 1 at 7.) Before the officers conducted a pat down search, Vallie told them he had a clear pipe with

some residue in his sock, which the officers found and placed into evidence. *(Id.)*

The officers applied for and were granted a search warrant to search Vallie’s truck.

*(Id.)* The officers searched the vehicle and found a “clear cellophane baggie

containing suspected methamphetamine in the center console with a total package

weight of 1.89 grams[]” and a clear cellophane baggie/package containing

suspected methamphetamine residue. *(Id. at 7-8.)*

## **SUMMARY OF THE ARGUMENT**

For Vallie to prevail on appeal, he must show the record contains no conflicting facts regarding entrapment. He must also establish all three elements necessary to show entrapment as a matter of law. Vallie cannot prove the criminal intent originated with Agent Pavlicek or that he was induced to commit a crime, so the burden never shifted to the State to show predisposition. However, Vallie was certainly predisposed to sell or give away drugs. The State merely offered Vallie an opportunity to commit a crime, which he readily chose to do because he was anxious to use drugs with “Jordan” because he was a drug user and wanted a chance to fulfill his sexual interests. Vallie responded to “Jordan’s” profile, persisted in communicating with her after she made it clear he needed to provide her drugs if he wanted to meet up, and ultimately arrived with methamphetamine to give her.

When Vallie pled guilty to criminal distribution of dangerous drugs, he waived all opportunity to argue entrapment to the jury. Not only are there many conflicting issues of material fact that preclude this Court from finding entrapment as a matter of law, the record refutes such a finding.

## ARGUMENT

### **I. Standard of Review**

The denial of a pretrial motion to dismiss in a criminal case is a question of law, this Court reviews for correctness. *State v. Lindquist*, 2018 MT 38, ¶ 7, 390 Mont. 329, 413 P.3d 455 (citing *State v. Reynolds*, 2004 MT 364, ¶ 8, 324 Mont. 495, 104 P.3d 1056). When reviewing the denial of a motion to dismiss based on entrapment, this Court reviews the evidence and inferences in a light most favorable to the State. *Lindquist*, ¶ 7. A court may determine that entrapment exists as a matter of law; however, if a genuine issue of material fact exists, the issue is properly submitted to a jury. *Id.* (citing *Reynolds*, ¶ 9).

### **II. The district court correctly determined it was proper to submit Vallie’s entrapment defense to a jury because the record that reflected conflicting facts that precluded a finding of entrapment as a matter of law.**

#### **A. Applicable law**

Entrapment is an affirmative defense granted to defendants by statute:

A person is not guilty of an offense if the person’s conduct is incited or induced by a public servant or public servant’s agent for the purpose of obtaining evidence for the prosecution of a person. However, this section is inapplicable if a public servant or a public servant’s agent merely affords to the person the opportunity or facility for committing an offense in furtherance of criminal purpose that the person has originated.

Mont. Code Ann. § 45-2-213. The defendant bears the burden of proof when asserting entrapment and must show:

- (1) criminal design originating in the mind of the police officer or informer;
- (2) absence of criminal intent or design originating in the mind of the accused; and
- (3) luring or inducing the accused into committing a crime he had no intention of committing.

*Lindquist*, ¶ 9 (citing *Reynolds*, ¶¶ 9, 12).

**B. Viewing the evidence and inferences in a light most favorable to the State, the record refutes that Vallie was entrapped as a matter of law.**

Agent Pavlicek conducted a lawful undercover operation to catch people like Vallie who were engaging in or intending to engage in criminal activity on MeetMe. Courts sanction the use of sting operations “if the officers do not by persuasion, deceitful representations or inducement, lure a person who otherwise would not be likely to break the law, into a criminal act.” *State v. Harney*, 160 Mont. 55, 60-61, 499 P.2d 802 (1972) (internal citations omitted). There is a distinction “between inducing a person to commit an unlawful act and setting a trap to catch him in the execution of a criminal design of his own conception.” *Lindquist*, ¶ 10 (citing *Reynolds*, ¶ 12). This Court has “repeatedly held that affording the defendant an opportunity to commit a crime is not inducement or entrapment.” *Lindquist*, ¶ 14. “Inducement may be found when an agent pleads,

begs, or coerces a person into committing a crime.” *Id.* ¶ 10 (citing *Harney*, 160 Mont. at 60.)

Like in *Lindquist*, there were conflicting facts in this case that required proper submission to a jury. The defendant in *Lindquist* argued that the State’s drug task force entrapped him into prostitution with a minor because the criminal intent to engage in prostitution originated in the mind of the task force when it placed an advertisement on Backpage.com. *Lindquist*, ¶ 11. Lindquist also argued that the Task Force entrapped him into attempted prostitution with a minor by inducing him into replying to the Ad on Backpage.com with a seductive photo, luring him to a motel room, and cajoling him into retrieving money from an ATM to pay for sex.” *Id.* Lindquist asserted that he only went into the motel room out of curiosity, which he argued was supported by the fact he arrived with no money. *Id.*

This Court disagreed, though it recognized that Lindquist exhibited some reluctance to engage with the undercover officer by not showing up for their first scheduled meeting and repeatedly asked the undercover officer if he was a cop. *Id.*, ¶¶ 3-5. This Court found no inducement, explaining that Lindquist made “several additional affirmative decisions from which a reasonable jury could conclude that the idea to engage in the criminal behavior originated in his mind.” *Id.* ¶ 14.

Lindquist dialed the ad’s contact information, arranged a meeting at a motel, and retrieved cash after negotiating a price for a set time of “regular sex.” *Id.* Further,

when the undercover officer texted Lindquist to tell him that his appointment was canceled by his failure to show up, Lindquist responded the next day and arranged a second meeting. *Id.* ¶ 5.

Like the defendant in *Lindquist*, the only hesitancy Vallie exhibited derived from his fear of getting caught, indicating Vallie's cognizance of the criminality of his conduct. Vallie was reluctant to discuss drugs on MeetMe and told Jordan he was a veteran and had to get to know someone before he could risk discussing drugs with them. (Exs. 13, 14.) Like Lindquist, Vallie asked the undercover officer (here, "Jordan") whether she was a cop. (3/6/20 Hr'g Tr. at 34; Ex. 16.) Even his fear of getting caught did not deter Vallie, who persisted in communicating with Jordan up to the point that he would have met her and, presumably, given her methamphetamine. Jordan made it clear she was exclusively interested in smoking methamphetamine with Vallie and was not interested in the sexual activities he repeatedly proposed. Jordan often belatedly responded or failed to respond to Vallie's texts and messages. (*See* Exs. 13-16.) Vallie had multiple opportunities to walk away if he was only looking for consensual sexual activity that did not involve drugs. The record does not support Vallie's contention that Agent Pavlicek induced him into giving away methamphetamine.

Vallie claims that Agent Pavlicek (as Jordan) cultivated a "friendship" that induced Vallie to break the law. Vallie first relies on *State v. Grenfell*, 172 Mont.

345, 564 P.2d 171 (1977). In *Grenfell*, this Court found that the defendant had proved entrapment as a matter of law, in part because “the record shows Grenfell was not predisposed to commit this offense,” and the “entire scheme [to buy drugs] originated in Verrall’s [the government agent’s] mind.” *Id.* at 349. Over the span of six months, “Verrall and his wife cultivated a close friendship with Grenfell and his wife.” *Id.* at 346. At the end of that time, Verrall spent “four consecutive days of persistent efforts to involve Grenfell in drugs, solely for the purpose of gathering evidence against him.” *Id.* at 349. “Verrall promised Grenfell he could get him a job in Utah [if they made money from drug sales].” *Id.* at 347.

“Whenever Grenfell showed reluctance, Verrall coaxed him with visions of Verrall’s personal need and Grenfell’s need to have money to travel to Utah to find a job.” *Id.* at 349. In *Grenfell*, the combination of the underlying friendship and trust, along with persistent and unrelenting efforts to purchase drugs, led this Court to conclude that Grenfell was induced. *Id.*

Vallie also relies on the dissimilar facts of *State v. Kamrud*, 188 Mont. 100, 611 P.2d 188 (1980), to argue he was entrapped. In *Kamrud*, officers “assumed fictitious names, displayed and used marijuana, and also held parties to ingratiate themselves with persons suspected of selling or using illegal drugs.” *Kamrud*, 188 Mont. at 101. The undercover officers moved in next door to Kamrud, befriended him, and asked Kamrud if he could get them some drugs. *Id.* Kamrud

got a small amount for the officers later that day after the officers had stopped at his house. *Id.* at 102. This Court found entrapment as a matter of law, finding that the “officers did far more than merely afford Kamrud with the opportunity to commit the offense—they came up with the whole idea.” *Id.* at 107. These facts do not reflect the present case.

This Court found entrapment in *Grenfell* and *Kamrud* because government agents built in-person friendships with the respective defendants and then directly asked the defendants to provide them with dangerous drugs. In stark contrast, from the moment Vallie initiated contact with Jordan, her communications reflected a person solely focused on obtaining and using methamphetamine. Vallie pled guilty to criminal distribution of dangerous drugs by offering to give away methamphetamine to Jordan in the hope she would participate in his sexual fantasy. (6/9/20 Hr’g Tr. at 6.) Vallie was an experienced methamphetamine user—he knew the terminology and apparently had a reliable source from which to obtain methamphetamine, as evidenced by his messages telling Jordan he had smoked some. Vallie volunteered to Jordan, after exchanging a handful of messages, that he liked to use drugs while engaging in sexual behavior. The instant case is more akin to *Lindquist* than *Grenfell* and *Kamrud* as this record shows Vallie was not unduly pressured or induced to commit distribution of dangerous drugs.

Nothing in this record shows that Agent Pavlicek's use of MeetMe was an extended operation occasioned by government overreach or persistence. Jordan's interactions with Vallie were similar to "a casual offer to buy drugs," which this Court has found does not constitute inducement. *Grenfell*, 172 Mont. at 349. Agent Pavlicek created a profile on MeetMe to identify criminal drug activity on the platform. (3/6/20 Hr'g Tr. at 9.) The United States Supreme Court has held that "[c]riminal activity is such that stealth and strategy are necessary weapons in the arsenal of the police officer." *Sherman v. United States*, 356 U.S. 369, 372 (1958). Agent Pavlicek's work as "Jordan" achieved "the function of law enforcement, [which] is the prevention of crime and the apprehension of criminals." *Id.*

**C. Vallie's assertions that he lacked criminal intent to sell or give away drugs are amply refuted by the record.**

Vallie asserts that the record "affirmatively shows he did not want to engage in the criminal behavior[]" of selling or giving away drugs to Jordan. (Appellant's Br. at 23.) The record precludes such a conclusion. Inducement and the lack of criminal intent are necessarily related: if a person is induced into "committing a crime he had no intention of committing," then the person lacked criminal intent. *Reynolds*, ¶ 12. In *Grenfell* and *Kamrud*, the lack of criminal intent was demonstrated by law enforcement's use of persuasion and persistence to induce the defendants to commit a crime. *Kamrud*, 188 Mont. at 107; *Grenfell*, 172 Mont. at

349. In both cases, there was evidence of inducement and no evidence or prior investigation showing a predisposition to commit a crime. *Id.*

Here, posting a fictitious social media profile designed to identify those predisposed and planning to find someone with whom to use drugs does not mean that the criminal intent originated with Agent Pavlicek. Agent Pavlicek intended to provide an opportunity to commit a crime, but the *criminal intent* originated with Vallie. No law enforcement officer persuaded or induced Vallie to respond to Jordan's profile on MeetMe.com. It was Vallie's idea to survey the profiles on MeetMe.com and choose to contact and proposition a drug user. This record shows no evidence of inducement but, rather, confirms Vallie's plan to obtain methamphetamine to use alongside Jordan and to hopefully convince her to participate in his sexual fantasy.

Vallie also asserts his criminal intent should not be presumed by his communications with Jordan because he was "hesitant, unprepared, and demonstrated a lack of experience." (Appellant's Br. at 29.) Vallie contacted a seemingly prolific drug user on MeetMe.com and, even after she immediately informed him that she was into drugs and not sexual activity, continued to pursue her. Vallie quickly wove drugs and sex together, telling Jordan, "I want to get high and be your sub." (Ex. 13.) Instead of disengaging or exhibiting hesitancy when Jordan bluntly told him her focus was on drugs, Vallie continued to contact Jordan.

**D. The burden never shifted to the State to prove predisposition.**

Vallie attempts to prematurely shift the burden onto the State to prove predisposition. Predisposition, the principal element in the defense of entrapment, “focuses on whether the defendant was an ‘unwary innocent’ or instead, an ‘unwary criminal’ who readily availed himself of the opportunity to perpetuate the crime.” *Mathews v. United States*, 485 U.S. 58, 63 (1987). Vallie was certainly not an innocent. This Court’s precedent instructs that *if* a defendant can produce evidence of inducement, *then* the burden shifts to the government to prove that the defendant was predisposed to commit the crime. *State v. Brandon*, 264 Mont. 231, 242, 870 P.2d 734, 740 (1994). Since Vallie failed up front to produce evidence of inducement, the burden never shifted to the State to prove predisposition.

Even so, the record reflects Vallie possessed the requisite predisposition. The Supreme Court has explained that “the ready commission of the criminal act amply demonstrates the defendant’s predisposition.” *Jacobson v. United States*, 503 U.S. 540, 550 (1992). For example, an accepted offer to buy or sell drugs, or to purchase child pornography generally demonstrates a defendant’s predisposition to commit a crime. *Id.* at 549-50. Vallie was a methamphetamine user who saw the opportunity to sexually engage with an individual through the vehicle of drug use.

Agent Pavlicek’s Jordan profile passively created an opportunity for those predisposed to commit drug crimes to be detected, investigated, and potentially

arrested. Jordan's communications were a simple offer to engage in criminal conduct, and Vallie's acceptance and pursuit demonstrates his predisposition. Jordan was not an undercover officer who fostered a relationship with Vallie in person, who generated trust by using drugs with him, or who promised him anything in exchange for methamphetamine. The pivotal distinction between Vallie merely being interested in what he calls a "romantic relationship" and him being predisposed to committing a crime was Vallie's *action*.

### **CONCLUSION**

This Court should affirm the district court's order denying Vallie's motion to dismiss based on entrapment as a matter of law.

Respectfully submitted this 25th day of February, 2022.

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this principal brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 4,535 words, excluding cover page, table of contents, table of authorities, certificate of service, certificate of compliance, signature and any appendices.

/s/ Bree Gee  
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## CERTIFICATE OF SERVICE

I, Bree Williamson Gee, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 02-25-2022:

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