

[CAPTION]

NOTICE OF DEFENSE OF ENTRAPMENT

The Defendant, by counsel, notifies the prosecutor and the Court that the Defendant will offer at the trial of this cause the defense of entrapment. More specifically, the defense will establish that the Defendant had been approached by [officers/detectives] of the [law enforcement agency] for the purpose of engaging the Defendant in the delivery of a controlled substance.

The Defendant states that he was not predisposed to commit the crime alleged and that the State of Indiana is unable to demonstrate any predisposition.

(Signature)

REFERENCES

CASEBANK L.5

I.C. 35-41-3-9 (defense of entrapment)

CASE LAW

Jacobson v. United States, 503 U.S. 540, 112 S.Ct. 1535, 111 L.Ed.2d 174 (1992) (predisposition must exist before government agents first approach and begin to work on target).

Allen v. State, 518 N.E.2d 800 (Ind. 1988) (the State may introduce evidence of predisposition if the defendant indicates in pretrial discovery an intention to rely on entrapment). See also Gaston v. State, 451 N.E.2d 360, 363 (Ind.Ct.App. 1983).

Strong v. State, 591 N.E.2d 1048 (Ind.Ct.App. 1992), *tr. denied* (prostitution Defendant could claim innocence and entrapment simultaneously).

Gray v. State, 579 N.E.2d 605 (Ind. 1991) (defense of entrapment is raised by showing police involvement in inducing the Defendant to commit the crime that he is not predisposed to commit).

Strong v. State, 591 N.E.2d 1048, (Ind.Ct.App. 1992) (entrapment defense is raised once evidence includes showing of police involvement in criminal activity; no formal pleading of defense is required; Defendant can reveal intention to rely on entrapment defense during cross-examination of State's witnesses).

Taylor v. State, 629 N.E.2d 852 (Ind.Ct.App. 1994) (where Defendant sufficiently showed police involvement in controlled drug buy and offered some evidence to rebut State's showing of predisposition, trial court abused discretion in denying instruction on entrapment).

Dockery v. State, 644 N.E.2d 573 (Ind. 1994) (if the Defendant shows police inducement and the State fails to show predisposition on part of the Defendant to commit the crime charged, entrapment is established as a matter of law).

Albaugh v. State, 721 N.E.2d 1233 (Ind. 1999) (the State failed to prove beyond reasonable doubt that the officer did not cause the Defendant to drive his truck while intoxicated).

McGowan v. State, 674 N.E.2d 174 (Ind. 1996) (in order to rebut the Defendant's entrapment defense, State may prove either that the Defendant's prohibited conduct was not a product of police efforts or that the Defendant was predisposed to engage in such conduct).

Turner v. State, 993 N.E.2d 640 (Ind.Ct.App. 2013) (Defendant's familiarity with drug jargon and prices and his offer to sell more cocaine in the future was sufficient to establish Defendant's predisposition to sell cocaine).

Chupp v. State, 830 N.E.2d 119 (Ind.Ct.App. 2005) (police conduct did not reach levels of over-involvement referred to by concurring opinion in Hampton v. United States, 425 U.S. 484 (1976), or "outrageous" conduct involved in Rochin v. California, 342 U.S. 165 (1952)).

Ferge v. State, 764 N.E.2d 268 (Ind.Ct.App. 2002) (State did not present sufficient evidence to rebut the Defendant's entrapment defense; the Defendant was convicted of patronizing a prostitute; after being propositioned, the Defendant's action in driving away from alley is evidence that he did not intend to make

deal with officer for sexual activity, as well as evidence that he was not predisposed to commit crime of patronizing prostitute).

Griesemer v. State, 26 N.E.3d 606 (Ind. 2015) (in prosecution for patronizing a prostitute, State rebutted Defendant's entrapment defense by showing he was not induced by police to commit the offense).

Nichols v. State, 31 N.E.3d 1038 (Ind.Ct.App. 2015) (officer's policing efforts did not induce Defendant to commit prostitution; officer merely asked him questions about getting more than a private dance outside of the strip club; she readily responded "yeah" when detective asked if "fondl[ing]" and sex were a possibility and readily proposed a price for that activity).

Shelton v. State, 679 N.E.2d 499 (Ind.Ct.App. 1997) (trial court's pretrial orders did not erroneously deprive the Defendant of the opportunity to raise the defense of entrapment; the Order merely placed burden of going forward with some evidence of lack of predisposition upon the Defendants in order to satisfy their obligation to raise entrapment defense).

NOTE

Although the statute does not require self-defense, defense of property or defense of others to be pled prior to trial, many counties have local rules that do.