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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1292**

State of Minnesota,
Respondent,

vs.

Lance Martin Odegard,
Appellant.

**Filed July 16, 2012
Affirmed
Ross, Judge**

Yellow Medicine County District Court
File No. 87-CR-10-113

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Keith Helgeson, Yellow Medicine County Attorney, Granite Falls, Minnesota (for
respondent)

David W. Merchant, Chief Appellate Public Defender, Steven P. Russett, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Muehlberg,
Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

ROSS, Judge

Lance Odegard sold methamphetamine to a police informant and an undercover drug enforcement officer. Odegard claimed that the informant had entrapped him into participating in the sale by compelling him to deliver the informant's drugs to a third person and to receive cash from the third person to bring back to the informant. The district court rejected Odegard's entrapment defense and, after a one-day bench trial, found him guilty of third-degree sale and fifth-degree possession of methamphetamine. Because the district court did not err by concluding that Odegard failed to establish by a preponderance of the evidence that the informant induced him to sell methamphetamine, we affirm the conviction.

FACTS

Lance Odegard lived in the same Granite Falls apartment building as a confidential police informant. The informant was working with multijurisdictional drug task force agent Travis Peterson, who asked the informant in February 2010 to arrange an undercover drug purchase. The informant thought of Odegard, with whom he had used drugs, and he asked Odegard to provide him with methamphetamine. Odegard agreed, and they arranged to meet at a convenience store later that day.

Agent Peterson helped the informant prepare for the drug exchange with Odegard. He wired the informant with an audio transmitting device, which turned out to be ineffective, and he had undercover agent Mike Jahnke search the informant and his car to assure that any evidence found on the informant after the meeting had been received

during the meeting. Due to a late change in plans, Agent Jahnke accompanied the informant to the meeting.

The informant and Agent Jahnke met Odegard in the convenience store parking lot, and Odegard got into their car. Agent Jahnke handed Odegard \$75 as Odegard handed Agent Jahnke a small baggie of methamphetamine. The state charged Odegard with third-degree controlled-substance crime for the sale of narcotics and fifth-degree controlled-substance crime for possession.

Odegard called Agent Peterson from jail and arranged a meeting where Odegard set out his entrapment defense. He told the agent that the informant had given him the methamphetamine earlier in the day and that he was to go to Odegard's apartment to collect \$75. Later, Agent Peterson received a corroborating letter from Deven Current, who had known Odegard for about two years and who claimed to have been with Odegard and the informant in Odegard's apartment when they discussed the exchange. Current's letter asserted that he had witnessed the informant give the methamphetamine to Odegard with instructions to go to the convenience store to sell the drugs for him and to return to Odegard's apartment with the sale proceeds.

But Agent Peterson testified at trial that he had watched recorded video footage of the jail dayroom capturing Odegard and Current, who were both inmates at that time, collaborating on the letter that Current sent to Peterson. The video footage showed that, after spending ten days as Odegard's cellmate, Current prepared the letter on the last night he spent in jail before being transferred to prison.

At Odegard's request, the district court ordered the BCA to conduct a DNA test of the methamphetamine baggie from the drug exchange based on his contention that the test would prove that the informant had handled the baggie, verifying Odegard's assertion that the informant had previously given him the methamphetamine to sell. But the test instead excluded the informant as a contributor to the DNA mixture comprising the baggie's DNA profile, undermining Odegard's entrapment defense.

Odegard testified that he was set up by the informant. According to Odegard, the informant pulled him aside and asked him to take the drugs to the convenience store later that afternoon, deliver them to an individual with whom the informant had arranged a drug deal, collect \$75 from the individual, and return that money to the informant. Odegard testified that he agreed to deliver the drugs for four reasons: he wanted to help the informant prevent drug customers from frequenting the informant's home where the informant's son might learn about the dealing; he was responding to the informant's threat to have him evicted from the apartment building, which was managed by the informant's girlfriend's relative; he was responding to the informant's promise to smoke more methamphetamine with him; and he was acting on his friendship with the informant. Odegard also testified that the informant came to his apartment after the exchange and collected the \$75. But Odegard acknowledged that it was not until after he and Current had been cellmates that he first said anything about the informant being in his apartment or about his asking Odegard to sell drugs on his behalf.

Stephanie Labatte, who is Odegard's cousin and lived in the same apartment building, testified that she was at Odegard's apartment that afternoon and that she heard the informant ask Odegard to sell the methamphetamine to another person.

The informant testified that the plan was for him to buy methamphetamine from Odegard at Casey's General Store and Odegard needed no coercing to sell the drugs. The original plan was for the informant to meet Odegard alone, but after it became obvious that his car was unreliable, Agent Jahnke decided to accompany him.

The district court credited the informant's and the officers' testimony that the informant was originally to meet Odegard alone, observing that the fact that no one knew beforehand that Agent Jahnke would be present to make the purchase (instead of the informant alone) defeated Odegard's inducement defense, which was based on the informant's allegedly telling him to take the drugs to sell to a third party.

The district court found Odegard guilty of both the third-degree and the fifth-degree controlled-substance counts, and it sentenced him to 49 months in prison. This appeal follows.

DECISION

Odegard argues that his convictions must be reversed because the evidence of guilt is undermined by the evidence supporting his entrapment defense. When reviewing the sufficiency of the evidence, we consider the record to determine whether, based on the inferences that can be drawn from those facts, the fact finder could reasonably find the defendant guilty. *State v. Chambers*, 589 N.W.2d 466, 477 (Minn. 1999). We do so viewing the evidence in the light most favorable to the verdict and assuming that the fact

finder believed the inculpatory evidence and disbelieved any contrary evidence. *Id.* The factfinder at trial, rather than this court on appeal, determines the weight and credibility of witness testimony. *See State v. Folkers*, 581 N.W.2d 321, 327 (Minn. 1998).

Odegard's claims of entrapment do not lead us to reverse. The state may not induce a person to commit a crime and then convict him for it. Entrapment occurs when law enforcement officers "lure[] the accused into committing an offense which he otherwise would not have committed and had no intention of committing." *State v. Grilli*, 304 Minn. 80, 88, 230 N.W.2d 445, 451 (1975) (quotation omitted). But it is not entrapment "to provide a person with the opportunity to voluntarily and deliberately do what there was reason to believe he would do if afforded the opportunity." *Id.*, 230 N.W.2d at 452 (quotation omitted).

To prevail on an entrapment theory, a defendant must first make a showing by a preponderance of the evidence that the state induced him to commit the crime. *State v. Vaughn*, 361 N.W.2d 54, 57 (Minn. 1985). He may do this with evidence of state persuasion, badgering, or pressure. *Id.* If the defendant makes this showing, the state then has the burden to prove beyond a reasonable doubt that the defendant was predisposed to commit the crime anyway. *Id.* It does so if it proves that the defendant "readily responded to the solicitation" to commit the crime. *Id.* (quotation omitted).

Odegard's theory of inducement depends largely (if not entirely) on his claim that the informant gave him the methamphetamine baggie and instructed him to sell the drugs to a third person and return the drug proceeds to Odegard. The theory faces three insurmountable obstacles. The first is that the district court was not satisfied that, as a

matter of fact, the informant had a relationship with Odegard or did anything in front of Odegard that could compel Odegard to sell the drugs, so Odegard is criminally liable for participating in the drug transaction even if he was following the informant's criminal roadmap. The second is that the DNA test requested by Odegard did not support his contention that the informant had handled the baggie beforehand. And the third is that, at the time the informant allegedly directed Odegard to sell the drugs to some third person on the informant's behalf, no third person was supposed to be present during the transaction; it was not until after this alleged direction occurred that the drug-enforcement officers decided that Agent Jahnke would join the informant. And although we would defer to the district court's credibility assessment even under less impeaching circumstances, Odegard's jailhouse collusion with Current in drafting Current's supposedly exculpatory letter while the two shared a cell makes the district court's credibility determination especially leakproof.

The facts that Odegard points to attempting to show inducement were reasonably rejected by the district court. And the facts accepted by the district court were amply supported by evidence and render Odegard's inducement theory wholly implausible and the guilty verdict well founded.

Affirmed.