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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re J.R., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.R.,

Defendant and Appellant.

E055468

(Super.Ct.No. INJ021750)

OPINION

APPEAL from the Superior Court of Riverside County. Lawrence P. Best,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Barry Carlton and James H.  
Flaherty III, Deputy Attorneys General, for Plaintiff and Respondent.

A juvenile wardship petition was filed alleging that defendant and appellant J.R. (minor) willfully and unlawfully sold marijuana on two separate occasions. (Health & Saf. Code, § 11360, subd. (a).) Minor filed a motion to dismiss the petition, arguing that the allegations “stem[med] from outrageous government conduct, in violation of [his] fundamental due process rights.” The juvenile court held a hearing and denied the motion. Then, following a contested jurisdictional hearing, the court found the allegations in the petition true and declared minor a ward. The court released him to his mother’s custody on probation, under the terms recommended by the probation department.

On appeal, minor contends that: (1) the juvenile court erred in denying his motion to dismiss the petition; and (2) the court erred in excluding relevant evidence in support of his entrapment defense. We find no error and affirm.

#### FACTUAL BACKGROUND

In 2010, Officer Deborah Cruz was assigned to work undercover as a student at Palm Desert High School (the school). One day, she had a conversation with minor in their ceramics class. When the teacher asked for a \$40 lab fee, Cruz would not pay the fee and commented to minor, who sat next to her, that she “was keeping the \$40.” In response, minor said that “\$40 was worth two Gs.” From her training and experience, Cruz knew that minor was referring to two grams of marijuana. Minor asked Cruz if she “had any hookups.” She knew that he was asking her if she had someone who sold her marijuana or a place where she could get marijuana. When Cruz responded that she did not have any hookups, minor offered to get marijuana for her. She gave him her cell

phone number, and he texted her from his phone so that she would have his number as well. He texted the word “weed” so that she would know the text was from him.

The next day in class, Cruz asked minor if he could get marijuana for her and bring it the following day. He told her he could get it, and she gave him \$40. The next day minor arrived at class and gave Cruz the marijuana.

Approximately one week later, Cruz started talking with minor, and he said he was going to the clinic after school and could get more marijuana if she gave him more money. She agreed, and he asked how much she wanted. She said she wanted \$10 worth because that was all the money she had, and she gave him the \$10. Several days later, minor approached Cruz on campus and gave her a baggie of marijuana.

In December 2010, a police officer went to the school to interview minor regarding his sale of marijuana to Cruz. The officer read minor his *Miranda*<sup>1</sup> rights, and minor agreed to speak with him. The officer asked minor if he ever sold drugs, and minor said no. The officer then brought Cruz into the interview, dressed in her police uniform. The officer asked if minor knew her, and minor said he did. The officer asked if he sold drugs to Cruz, and minor admitted that he did.

## ANALYSIS

### I. There Was No Outrageous Government Conduct

Minor argues that the juvenile court erred in denying his motion to dismiss the petition. Specifically, he contends the undercover operation that led to his arrest

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<sup>1</sup> *Miranda v. Arizona* (1966) 384 U.S. 436.

constituted outrageous government conduct, since it involved the intentional deception of a child in an effort to elicit criminal conduct. He claims that the government “took advantage of [him] with deception, charm, and money,” and that such outrageous conduct violated his due process rights. Minor asserts that, as a result, this court should reverse the lower court’s true finding on the allegations. Minor’s claims are meritless.

*A. Background*

Minor filed a motion to dismiss the petition, based on the government’s alleged outrageous conduct. The motion essentially alleged that the police posed as students at the school, “solicited drugs from the youngsters and induced many of them, including [minor], into selling them the drugs.” The motion portrayed minor as “a perfect victim, an easy target for someone with greater peer power who was willing to abuse that power at [his] expense.”

A hearing on the motion was held. The superintendent of the school district testified that she gave the police permission to do the undercover operation. The police had chosen that particular school based on data indicating high drug sales and usage. The police wanted to see if they could intervene in apprehending people who were selling drugs. Two undercover officers were enrolled as students. After hearing several witnesses testify, the court denied the motion, stating, “I don’t find any outrageous conduct at all.”

*B. The Court Properly Denied the Motion to Dismiss*

Minor asserts that Cruz deceived him by posing as a friend and offering “a 14 year old child money to get her marijuana.” He contends that “[t]his conduct was outrageous

because it subjected [him], a freshman boy at a new high school who lacked maturity and was especially vulnerable, to dramatic peer pressure from an older, charming female student.” In other words, he claims that her “deceptive behavior likely manufactured the crime in this case.” We disagree.

“Outrageous government conduct is not a defense, but rather a claim that government conduct in securing an indictment was so shocking to due process values that the indictment must be dismissed. [Citations.] Under the ‘extremely high standard’ of this doctrine, an indictment should be dismissed ‘only when the government’s conduct is so grossly shocking and so outrageous as to violate the universal sense of justice.’ [Citation.]” (*U.S. v. Montoya* (9th Cir. 1995) 45 F.3d 1286, 1300.) In determining whether due process principles have been violated by outrageous police conduct, a court should consider the following factors: “(1) whether the police manufactured a crime that otherwise would not likely have occurred, or merely involved themselves in an ongoing criminal activity; (2) whether the police themselves engaged in criminal or improper conduct repugnant to a sense of justice; (3) whether the defendant’s reluctance to commit the crime is overcome by appeals to humanitarian instincts such as sympathy or past friendship, by temptation of exorbitant gain, or by persistent solicitation in the face of unwillingness; and (4) whether the record reveals simply a desire to obtain a conviction with no reading that the police motive is to prevent further crime or protect the populace. [Citation.]” (*People v. Smith* (2003) 31 Cal.4th 1207, 1226 (*Smith*).)

The evidence in this case does not demonstrate any outrageous police conduct. It does not show that the police “manufactured a crime that otherwise would not likely have

occurred,” that minor was “reluctan[t] to commit the crime,” or that Cruz persistently solicited the crime. (See *Smith, supra*, 31 Cal.4th at p. 1226.) Rather, the evidence shows that minor brought up the topic of marijuana and asked Cruz if she currently had a “hookup,” or drug supplier. When Cruz said she did not, he offered to get marijuana for her. They exchanged cell phone numbers. The next day, Cruz gave him \$40, and minor brought her marijuana. Approximately one week later, minor told Cruz he could get her more marijuana if she gave him more money. She gave him \$10, and minor brought her more marijuana. Contrary to minor’s claims that he was a vulnerable victim who was subjected to “dramatic peer pressure from an older, charming female student,” the evidence shows that minor initiated the conversations and transactions involving marijuana with Cruz. As the court found, there was “[no] outrageous conduct at all.”

We conclude that the court properly denied the motion to dismiss the petition. Moreover, minor admitted to the police that he sold marijuana to Cruz. Thus, we see no reason to reverse the true findings on the petition.

## II. The Court Properly Sustained Objections to Questions Regarding Cruz’s Clothing and Makeup

Minor next argues that the court erroneously sustained the prosecution’s objections to his counsel’s line of questioning regarding Cruz’s clothing and makeup. He claims that Cruz’s appearance and demeanor toward him were relevant to a defense of entrapment. Thus, he claims he was denied a meaningful opportunity to present an entrapment defense and that the true findings on the petition should be reversed. We disagree.

### A. *Background*

Minor's counsel called Cruz as a witness to establish an entrapment defense. Counsel asked Cruz about typical outfits she would wear to school, and specifically asked if she wore perfume, makeup, jeans, and "clothes that were uglier tha[n] the other girls wore." The prosecutor objected to each of these questions on the ground of relevance, and the court sustained the objections.

### B. *The Court Properly Sustained the Objections*

"The trial court has broad discretion both in determining the relevance of evidence and in assessing whether its prejudicial effect outweighs its probative value.' [Citation.]" (*People v. Jones* (2011) 51 Cal.4th 346, 373.) "We review the trial court's rulings on the admissibility of evidence for abuse of discretion. [Citations.]" (*People v. Scott* (2011) 52 Cal.4th 452, 491.)

"In California, the test for entrapment focuses on the police conduct and is objective. Entrapment is established if the law enforcement conduct is likely to induce a *normally law-abiding person* to commit the offense. [Citation.] '[S]uch a person would normally resist the temptation to commit a crime presented by the simple opportunity to act unlawfully. Official conduct that does no more than offer that opportunity to the suspect—for example, a decoy program—is therefore permissible; but it is impermissible for the police or their agents to pressure the suspect by overbearing conduct such as badgering, cajoling, importuning, or other affirmative acts likely to induce a normally law-abiding person to commit the crime.' [Citation.]" (*People v. Watson* (2000) 22 Cal.4th 220, 223 (*Watson*)). In other words, entrapment will be established "if the

actions of the law enforcement agent would generate in a normally law-abiding person a motive for the crime other than ordinary criminal intent . . . .” (*Ibid.*) In addition, “affirmative police conduct that would make commission of the crime unusually attractive to a normally law-abiding person will likewise constitute entrapment. Such conduct would include, for example, a guarantee that the act is not illegal or the offense will go undetected, an offer of exorbitant consideration, or any similar enticement.’ [Citation.]” (*Ibid.*)

To establish entrapment, minor had to show actions on the part of Cruz that would “induce a normally law-abiding” citizen to sell marijuana, or affirmative police conduct that would make selling marijuana “unusually attractive to a normally law-abiding person,” such as a guarantee that the act was not illegal or the offense would go undetected. (See *Watson, supra*, 22 Cal.4th at p. 223.) Evidence of Cruz’s clothing and makeup was not relevant, since a female officer’s appearance, even if provocative, would not induce a normal law-abiding person to sell marijuana.

Thus, the court did not abuse its discretion in sustaining the objections to the questions regarding Cruz’s clothing and makeup, since such information was irrelevant to the defense of entrapment.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST  
Acting P. J.

We concur:

McKINSTER  
J.

CODRINGTON  
J.