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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY RUIZ AGUIRRE,

Defendant and Appellant.

G045009

(Super. Ct. No. 10WF1220)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Lance Jensen, Judge. Reversed.

David Andreasen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Gil Gonzalez and Garrett Beaumont, Deputy Attorneys General, for Plaintiff and Respondent.

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When defendant Gregory Ruiz Aguirre arrived at a fast food establishment on May 26, 2010, he expected to meet a female (“Jess”) who wanted to have sex with him. Defendant’s understanding was based on a series of electronic communications with Jess. Jess had informed defendant in her electronic communications that she was 13 years old. Instead of meeting Jess, defendant was arrested by police officers, one of whom had been posing as Jess first on a Craigslist forum and later in a series of e-mail and text message communications.

At trial, defendant testified he did not believe Jess was really 13 years old. But a jury found defendant guilty of all three counts with which he was charged: (1) going to a meeting with a minor to engage in lewd or lascivious behavior (Pen. Code, § 288.4, subd. (b));<sup>1</sup> (2) attempted lewd conduct with a child under age 14 (§§ 288, subd. (a), 664); and (3) contacting or communicating with a minor with intent to commit lewd conduct (§ 288.3, subd. (a)). The court imposed a prison sentence but ultimately suspended execution of sentence, placing defendant on probation for five years.

Defendant neither requested nor received an entrapment jury instruction as set forth in CALCRIM No. 3408. On appeal, however, defendant contends the court, sua sponte, should have instructed the jury with regard to the affirmative defense of entrapment. We agree. Unlike *People v. Federico* (2011) 191 Cal.App.4th 1418 (*Federico*), in this case there is substantial evidence of entrapment. The initial internet post by Jess, made in a forum reserved for adults, did not indicate Jess was 13 but instead stated the individual making the post was a woman seeking a man. In response to defendant’s demand to see a photograph of Jess at the beginning of the communications between defendant and Jess, the police selected and transmitted a provocative photograph to defendant, which appears to depict a sexually developed young woman rather than a 13-year-old girl. Jess initiated contact with defendant on numerous occasions over the

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<sup>1</sup> All statutory references are to the Penal Code.

course of the week following defendant's initial inquiry. Jess transmitted communications that arguably goaded defendant into meeting her. Because we reverse for a new trial on this ground, we need not reach defendant's other contentions of error.

## FACTS

Craigslist is a popular Web site where individuals discuss topics of interest, post personal ads, and buy and sell property. In order to post an ad on the Craigslist "Casual Encounters" message board, Craigslist users must represent that they are 18 or older and indicate they would not be offended by adult content. A posted ad lists a title on the message board; if a user clicks on the title of the ad, he or she is directed to the posted message. A user replies to an ad by sending an e-mail to the poster through the Craigslist Web site.

On May 18, 2010, Officer Alan Caouette of the Huntington Beach Police Department posted a message in the "Casual Encounters" section of the Craigslist Web site. The title/heading read, "Hi wanta play with me 2nite — w4m (hb)." The body of the message stated, "I want to have fun and mke new friends." The use of the term "w4m (hb)" was intended by Caouette to convey that the poster was a woman looking for a man in Huntington Beach, California. Caoutte received in excess of 100 responses to his post. One e-mail response was from defendant.

Caoutte replied to the 100 e-mails (including defendant's e-mail) with the following response: "Hi im Jess, Im 13 yrs old and looking to make some \$ in exchange for stuff." In response, "in excess of 5 to 10" individuals inquired further, including defendant.

We set forth below in relevant detail the electronic communications between defendant and Jess that followed these initial messages. All grammatical and spelling atrocities are those of defendant and Caoutte.

*May 18, 2010 Communications Between Defendant and Jess*

From 7:55 p.m. to 10:16 p.m., defendant and Jess exchanged e-mails. We reproduce most of these e-mails to provide the full flavor of the initial exchanges.

Defendant: "I'm ready if you are!" Caoutte: "Hi im Jess, Im 13 yrs old and looking to make some \$ in exchange for stuff." Defendant: "did you say your 13yrs old? What kind of stuff you talking about?" Caoutte: "yes 13,, i can offer sex for some \$." Defendant: "send pic then we'll talk."

Caoutte then transmitted to defendant, via e-mail, a photograph of a female wearing a red bra and skimpy yellow underwear. The photograph ranges from the lower face to the hips/upper thighs. The subject of the photograph has long brown hair, plump lips, prominent breasts, and an hourglass figure. Caoutte obtained the photograph from the internet by way of a search on the Google search engine. His inquiry for an image of a 13-year-old female returned "thousands of young girls . . . . I went to a random page and randomly selected a girl who I believe was a 13 year[s] old." After the transmission of the photograph, the e-mail communications continued.

Defendant: "Wow, You sure your 13? what city you live in? Where do you plan on doing this? Wheres your parents? I need to be careful with you." Defendant: "what happened to you?" Caoutte: "shower." Defendant: "So how we going to do this? What city you in?" Caoutte: "hb." Defendant: "So how we going to do this? What are you willing to do? Don't worry I'm not into pain. I'm not trying to hurt you." Caoutte: "well my mom is gone tommroow night so we can do it at my place,, ill do anything but no anal.. it hurts (so i ve heard) ,, i have no hair and i like older men." Defendant: "Your mom leaves you alone at night? I was kinda hoping for tonight. Tomorrow might be ok though how much money are you expecting?" Caoutte: "well depends what u want but I only need a 100 so im open to anything."

Defendant: "have you done this before? Why don't you tell me what you like?" Caoutte: "i like doggy style,, and yes ive done it before.. i like a older man who

takes control,, ya know... treats me like my dad,, holds me kisses me,, shows me the love ive never had and being 13 i need that.” Defendant: “do you give oral? Do you like getting it?” Caoutte: “oh yeahs i do,, that’s fun,, my friend says try 69 or something.” Defendant: “I love to 69 But I really enjoy liking a woman down there. Have you had an orgasm yet? Do you live in a house or an apartment?” Caoutte: “i ilve in a house,, I would liek to make u fell good,, hey i hafta leave my moms is yelling at me,, if u wantra give me ur number ikll text u tomorrow at scholl.. if ok,, xoxox we can talk more,,” Defendant: “Ok 626-258-[XXXX].” Caoutte: “thnaks ur so sweet,, xoxoxoxo talk to u tommroow.” Defendant: “TY can’t wait sweet dreams!”

*May 19, 2010 Communications Between Defendant and Jess*

Defendant emailed Jess the next day asking her to “text me please.” A short exchange of text messages followed, which we reproduce in full.

Caoutte: “hi.” Defendant: “Got it. Whats up.” Caoutte: “nodda u.” Defendant: “Just kicking. Wondering if Im doing the right thing. I know its wrong but I don’t know.” Caoutte: “hmm,, interesting how old r u im sure its ok.” Caoutte: “hellllllllo.” Defendant: “Sweetheart your13 thatr not ok. You know how much trouble I could get in.” Caoutte: “I won’t tell if u don’t tell I cant get in trouble.” Caoutte: “xoxoxo I understand tho up to u.” Defendant: “You can’t I can.” Caoutte: “I can do anything i want.” Defendant: “I really want to. You don’t look 13. Id really like to have you.” Caoutte: “haha.” Defendant: “What if the nieghbors see me.” Defendant: “What time does ur mom get home.” Caoutte: “hey mom just came home will get back w u in 20.” Defendant [three hours later]: Long 20 min.”

*May 20 and May 21 Communications Between Defendant and Jess*

On May 20, Caoutte transmitted a text message to defendant stating, “hi.” Defendant did not respond.

On May 21, Caoutte again transmitted a message and the following exchange occurred. Caoutte: “hiiiiiiii.” Defendant: “hello.” Defendant: “why do you say hi if your not going to respond?” Caoutte: “sorry.” Caoutte: “I have a weak computer it freezes alot.” Caoutte: “wow just got ur message from 4 hrs ago,, ugh.” Defendant: “That’s what h do.” Caoutte: “hahaha.” Caoutte: “how r u.” Defendant: “Im a computer technician.” Caoutte: “awesome so u can fix this thing for me YES.” Defendant: “Fine n u.” Defendant: “Yes.” Caoutte: “im doing with.” Caoutte: “fine duh.” Caoutte: “u working.” Defendant: “No having a beer.” Caoutte: “beer is good . . im better tho.” Defendant: “What do mean ur better.” Caoutte: “tasting.” Defendant: “Oh.” Caoutte: “ur no fun.” Defendant: “Why u say that.” Caoutte: “be silli.” Caoutte: “thats all.” Caoutte: “what u doing tonight.” Defendant: “Dont know yet. Why u ask.” Caoutte: “im bored and lonely just curious of whats going on out there tonight.” Defendant: “Aww poor baby. U want me to play with u.” Caoutte: “yum.” Caoutte: “sure what dou have in mind.” Defendant: “Sit u on my lap and tell u secrets.” Caoutte: “im getting excited now.” Defendant: “Ya. A little wet.” Defendant [hours later]: “hey!”

*May 25, 2010 Text Messages Between Defendant and Jess*

No messages were sent between defendant and Jess on May 22, May 23, or May 24. On May 25, Caoutte sent a message, “hi.” Approximately two hours of extensive messaging followed. The following topics were discussed: Jess’s mom, the prospect of defendant being “fixed up” with Jess’s mom, and Jess’s 13-year-old friend who “also loves sex ALOT.” After defendant expressed a wish to “talk[] dirty,” he and Caoutte exchanged messages about what defendant would like to do to Jess, e.g., “play with your nipples,” “[l]et u suck me then fuck u,” and “[p]lay with ur clit.”

We excerpt several key subsequent exchanges. Caoutte: “u ever been with a 13 yr old.” Caoutte: “dont think u can handle me.” Defendant: “Ya. When i was 14.”

Defendant: “Ya. Right.” Caoutte: “haha how old r u now mr MAN.” Defendant: “45 old enough to be ur daddy. Isn’t that what u want.” Caoutte: “thats what I need.”

Defendant: “I want u alone first.” Caoutte: “then take me.” Defendant: “With my cock.” Caoutte: “I can take that is it BIG.” Defendant: “No im serious.” Caoutte: “how serious r u.” Caoutte: “if ur serious u should come work me out with me eheheh right now.” Defendant: “I want to but u can’t get out.” Caoutte: “WHO SAID THAT.” Caoutte: “i can sneak out,, plus she may be leaving for the bar any time soon.” Defendant: “Big enough for ur tight pussy.” Caoutte: “tight it is.” Caoutte: “I think u all talk mr MAN.”

Caoutte: “are we hooking up tonight or not.” Defendant: “I will if u want.” Caoutte: “im so horny, so if u want me u should come get me tonight,, I so can get out and meet u.” Defendant: “Yes if ur serious.” Caoutte: “im so serious,, u can’t imagine.” Defendant: “Lets do it.” But Jess later proposed they should meet the next day instead, and defendant agreed.

#### *May 26, 2010 Text Messages Between Defendant and Jess*

Caoutte sent a message to defendant at 2:12 p.m. on May 26, 2010. The following messages were spread out over the course of approximately five hours. Defendant asked how long Jess was alone for, and Caoutte replied until 1:00 a.m. Defendant: “Cool. You want me to cum over.” Caoutte: “ahh HELL yeah im exciteeeeeeeeeedddddddd.” Caoutte proposed meeting at a Carl’s Jr. Restaurant near Jess’s house. Defendant claimed he attempted to send a picture of his penis.<sup>2</sup> Defendant then claimed he could not obtain any money other than the \$10 he already had. Caoutte responded, “ok so whats the problem” and “ok,, so u can buy me dinner then hahahah.” Defendant responded he was not “flaking” on Jess, but that it was “up to you” and “your

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<sup>2</sup> Thankfully, no such photograph appears in the record, suggesting defendant either did not actually send this picture or was unsuccessful in his attempt.

call” with regard to whether he showed up. Jess replied, “im so excited about being with u,, just buy me some dinner that cool when u getting here.” Defendant and Caoutte then engaged in additional dirty talk (again concerning defendant’s penis). At approximately 7:34 p.m., defendant arrived at the Carl’s Jr.

### *Defendant’s Arrest and Admissions*

Police arrested defendant in his automobile. Defendant “was frantically trying to take the battery out of his cell phone.” Defendant admitted to officers that the female he was meeting had told him she was 13, he had agreed to pay her for sex, and he had brought condoms with him. Defendant stated he thought the mother of Jess must have been involved in alerting the police. Defendant stated at least once during his interview that he did not think the woman in the photograph sent to him was really 13 years old.

Defendant denied having ever contacted other minors for sex. Police efforts to find victims preyed on by defendant were unsuccessful. Searches of defendant’s computer did not disclose the presence of any child pornography.

### *Defendant’s Testimony*

Defendant was 53 years old at the time of trial. He was an unemployed computer technician at the time of his offense and at trial. He has been separated from his wife since 2005. He has four daughters and five granddaughters. He had never been convicted of a crime.

Defendant had previously communicated with about 12 people based on Craigslist personal ads and met a “couple of people” based on his communications. Defendant used his actual name on Craigslist. Defendant was drawn to the ad at issue because it was a woman seeking a man and she was ready to meet someone on that specific night. Defendant was not looking to meet a 13-year-old girl. Defendant’s initial

thought was that Jess was a prostitute engaged in role playing. His reaction when he received the photograph was “[t]his is an adult that wanted role-playing.” He estimated the individual in the photograph was in her early twenties. Defendant’s subsequent messages indicating he believed she was 13 (e.g., referring to her parents) was simply his attempt to continue role playing. Based on his experience talking to his own daughters and coaching girls’ sports, he did not believe the individual communicating with him could possibly be 13 years old based on the content of her messages. If defendant had showed up and there was an actual 13-year-old girl, he would have left immediately.

Defendant did not actually have enough money to pay for sex. He “probably figured [he] would get out of this just by telling her, okay, I don’t have the money.” But based on Jess suggesting \$10 or simply buying her dinner was enough, defendant appeared. Any admissions following his arrest were based on fear and wanting to get out of the interrogation room with the police officers.

### *Psychologist Testimony*

Psychologist Jody Ward, who evaluates sex offenders for criminal and juvenile courts, was called to testify by defendant. Having evaluated defendant and reviewed all relevant materials, Ward opined defendant does not have a deviant sexual interest in children and is not a pedophile. Ward conceded during cross-examination that her opinion does not suggest defendant could not have a sexual interest in a physically-developed 13-year-old girl.

## DISCUSSION

“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.” (*People v. Watson* (2000) 22 Cal.4th 220, 223.) “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.” (*People v. Barraza* (1979) 23 Cal.3d 675, 690 (*Barraza*).)

“As a general rule, the use of decoys to expose illicit activity does not constitute entrapment, so long as no pressure or overbearing conduct is employed by the decoy.” (*Proviso Corp. v. Alcoholic Beverage Control Appeals Bd.* (1994) 7 Cal.4th 561, 568-569 [state agency may use underage decoys to buy alcohol illegally for law enforcement purposes].) “Law enforcement officers have long used undercover vice officers to act as decoys for soliciting acts of prostitution . . . .” (*Id.* at p. 569.) The use of fictional decoys in child sex sting operations does not necessarily constitute entrapment. (See *People v. Reed* (1996) 53 Cal.App.4th 389, 393-395, 400-401 [although police first raised the prospect of sex with children and suggested the meeting place at which the defendant was arrested, court affirms findings at bench trial that “officers merely provided an opportunity for defendant to attempt to molest two girls under fourteen years of age”].)

Regardless of whether a defendant raises the issue, trial courts are required to instruct the jury on the affirmative defense of entrapment if substantial evidence supports the defense. (*Barraza, supra*, 23 Cal.3d at p. 691; *Federico, supra*, 191 Cal.App.4th at p. 1422.) In *Federico*, an internet sex sting case, the appellate court affirmed the trial court’s refusal to provide an entrapment instruction, in part because

there was no substantial evidence of entrapment.<sup>3</sup> (*Federico*, at pp. 1420-1424.) Federico contacted “Missie,” who had established an online profile stating her age as 12 years old and including a picture (which is not described in the opinion). (*Id.* at pp. 1420-1421.) Federico directed Missie to a picture of his penis, made sexually explicit comments to Missie, questioned Missie about her knowledge of sex, and masturbated in front of Missie via a Webcam. (*Id.* at p. 1421, 1423.) “Defendant arranged a time to visit Missie later, and asked that she answer the door wearing only her bra and underpants.” (*Id.* at p. 1421.) The individual pretending to be Missie “merely provided an opportunity for defendant to spend time alone with a 12-year-old girl in an empty house. There was no entrapment.” (*Id.* at p. 1424.)

Here, unlike *Federico*, there is substantial evidence of entrapment. The police lured defendant into an electronic conversation with Jess without providing any indication at the outset that she was underage. Indeed, the police conducted their sting on a Craigslist forum that is supposed to be limited to users age 18 and over. The police quickly disclosed Jess was 13 years old once defendant contacted her, but in response to defendant’s request for a picture of Jess, the police selected a photograph of an attractive and mature female body. Replying to defendant’s questioning during their first exchange of communications, Jess provided the first sexually explicit comments (e.g., “ill do anything but no anal.. it hurts (so i ve heard) ,, i have no hair and i like older men”; “i like doggy style,, and yes ive done it before.. i like a older man who takes control”).

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<sup>3</sup> Unlike the instant case, the private organization “Perverted Justice” conducted the internet sting operation in *Federico*. (*Federico, supra*, 191 Cal.App.4th at p. 1420.) The appellate court held that Perverted Justice did not act as an agent of the police, and defendant was therefore not entitled to an entrapment instruction. (*Id.* at p. 1423.) The court continued its analysis, however, and concluded that even if Perverted Justice had been an agent of the police, there was not substantial evidence of entrapment. (*Ibid.*) As the police conducted their own operation in this case, only the latter holding in *Federico* is relevant to our analysis.

After the initial contact on May 18, 2010, Jess initiated electronic communication with defendant on four separate occasions. Defendant did not initiate any of the series of electronic communications after May 19. Jess assured defendant she would never tell anyone in response to defendant's concern that he would be caught. Jess flattered defendant by suggesting "she" was sexually excited by defendant. Ultimately, while suggesting a meeting place, Jess seemingly dropped her demand to be paid in exchange for sex, noting only that defendant should buy her dinner (presumably at Carl's Jr.).

The forum and photograph selected by the police, along with the flirtatious and prurient "personality" displayed by Jess, contributed to an ambiguous and titillating scenario in which a normally law-abiding person who was seeking consensual sex with a woman on an internet forum might be enticed to pursue a fictional underage girl. By appealing to defendant's sexual fantasies and his ego, and by maintaining pressure on defendant to continue the exchange of communications and meet for sex, the police arguably engaged in entrapment.

We do not mean to endorse the practice of pursuing casual sex on a Craigslist forum.<sup>4</sup> It must be recalled, however, that the test for entrapment does not ask whether the *average* law-abiding citizen would be unduly tempted by the police conduct at issue. One hopes the typical law-abiding citizen does not spend his or her nights trolling Craigslist for "casual encounters." One also hopes the typical law-abiding citizen

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<sup>4</sup> It is not against the law to engage in this behavior, at least in theory. In practice, Craigslist has been criticized for facilitating prostitution by maintaining its "Casual Encounters" forum. The communications between defendant and Jess suggest defendant was immediately amenable in principle to paying for sex. But defendant was not charged with soliciting prostitution and, even if he were, his personal predisposition to solicit prostitution is irrelevant to the question of whether he was entrapped to commit the charged offenses in this case. (See *People v. Lee* (1990) 219 Cal.App.3d 829, 838-839 [a defendant's propensity to commit crime is irrelevant to the question of whether entrapment occurred under the objective "normally law-abiding person" standard].)

is not as gullible as defendant. The pertinent question in this case is whether an individual seeking consensual casual sex on the Internet who would normally confine the search and pursuit to adults, would nonetheless be induced by the police conduct at issue in this case to pursue lewd conduct with a minor. (See *Barraza, supra*, 23 Cal.3d at p. 690 [police conduct cannot “be viewed in a vacuum” but instead “should . . . be judged by the effect it would have on a normally law-abiding person situated in the circumstances of the case at hand”].)

Nor do we intend to “blame the victim” (putting to the side the fact that there is no “victim” in this case, other than perhaps the individual whose image was appropriated by the police for their sting). Obviously, the age of consent in California is a bright-line rule and does not depend upon the sexual development or sexual experience of the minor. The jury implicitly rejected defendant’s testimony that he thought Jess was an adult when he committed the charged crimes. The circumstances in which defendant made his choices do not excuse or justify defendant’s conduct (as found by the jury) in this case. But the affirmative defense of entrapment focuses on the conduct of the police, not whether defendant committed the crime alleged. (*Barraza, supra*, 23 Cal.3d at pp. 688-689.)

Our analysis suggests the government should not be in the business of testing the will of law-abiding citizens with elaborate (if improbable) fantasies of sensuous teenagers desperate to engage in sexual acts with random middle-aged men. (See *People v. Grizzle* (Colo. Ct.App. 2006) 140 P.3d 224, 227 [“It is, perhaps, inevitable that such an operation will ensnare an otherwise law-abiding citizen with sexual fantasies — involving conduct which is illegal, immoral, taboo, or all three — upon which he or she would not otherwise act were the opportunity not presented to them”].) “A normally-law-abiding person does not always take the high road in the face of pressures or inducements by the police or their agents. As Justice Frankfurter [once] observed . . . ‘Human nature is weak enough and sufficiently beset by temptations

without government adding to them and generating crime.’ [Citation.] The state ignores the purpose of the entrapment defense, which is to curb unsavory police conduct. Instead of focusing on the impermissible police conduct, the state chooses to blame [defendant] and to point out what he should have done differently. This argument is circuitous and leaves no situation where the defendant can assert entrapment as a defense.” (*Bradley v. Duncan* (9th Cir. 2002) 315 F.3d 1091, 1097-1101 [affirming grant of writ of habeas corpus by district court based on California court’s error in refusing to provide entrapment instruction].)

It is for the finder of fact upon remand to determine whether the police went too far in this case.<sup>5</sup> (*Barraza, supra*, 23 Cal.3d at p. 691, fn. 6 [“the defense of entrapment remains a jury question”].) Did the police merely provide an opportunity to defendant to commit a crime (legitimate use of a decoy) or did they unduly pressure defendant through overbearing conduct (entrapment)?

We reject the contention that an entrapment defense was inconsistent with the defense presented at trial. “Although the defense [of entrapment] is available to a defendant who is otherwise guilty [citation], it does not follow that the defendant must admit guilt to establish the defense. A defendant, for example, may deny that he committed every element of the crime charged, yet properly allege that such acts as he did commit were induced by law enforcement officers.” (*People v. Perez* (1965) 62 Cal.2d 769, 775; see also *Barraza, supra*, 23 Cal.3d at pp. 691-692.)

Finally, the lack of a sua sponte entrapment instruction was not harmless, as a more favorable result for defendant was reasonably probable had an entrapment

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<sup>5</sup> Other courts have recognized the necessity of an entrapment instruction in some Internet child sex sting scenarios. (*U.S. v. Gamache* (1st Cir. 1998) 156 F.3d 1, 9-12 [reversing for new trial because of lack of entrapment instruction]; *State v. Davies* (Ariz. Ct.App., Nov. 18, 2008, No. 1 CA-CR07-0931) 2008 WL4965306 [reversing for new trial based on lack of entrapment jury instruction; see also *U.S. v. Poehlman* (9th Cir. 2000) 217 F.3d 692, 698-703, 705 [defendant entrapped as a matter of law].)

instruction been provided. (See *People v. Sojka* (2011) 196 Cal.App.4th 733, 738 [reasonable probability standard applies to failure to instruct on defenses].) Contrary to the assertions of the Attorney General, the jury's verdict does not necessarily suggest the jury would have rejected the affirmative defense of entrapment. Entrapment is about the actions of the police, not the guilt of defendant. Our review of the record suggests a reasonable jury could find that the police conduct would illegitimately ensnare normally law-abiding individuals in an illegal conversation they would not have otherwise pursued and/or convinced normally law-abiding individuals to actually show up for a rendezvous with Jess when they otherwise would not have done so. In sum, the jury might have believed the conduct of the police was likely to induce a normally law-abiding person to commit some or all of the charged crimes. We therefore reverse the judgment.

#### DISPOSITION

The judgment is reversed and the matter is remanded for a new trial.

IKOLA, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.