

ENTRAPMENT
(N.J.S.A. 2C:2-12)

The defendant claims that (he/she) was entrapped. That means that (he/she) does not necessarily deny that (he/she) violated the criminal laws.¹ Therefore, if you find beyond a reasonable doubt that (he/she) did commit the crime(s) charged, you should then consider (his/her) claim that the law enforcement officials (and/or their agent or informant) caused (him/her) to commit the offense by methods which were contrary to legal standards.

The law authorizes law enforcement officers to use stealth and strategy, decoys, traps and deception as a tactic to outwit and catch those engaged in criminal enterprise. But the law does not authorize a law enforcement officer whether by (himself/herself) or through an agent or informant, or together with others to trap another person by inducing or encouraging (him/her) to commit an offense and then as a direct result of that inducement or encouragement, cause that other person to commit an offense.

Therefore, to establish entrapment as a defense, the burden is on the defendant to prove by a preponderance of evidence that a law enforcement officer (either by (himself/herself) or through an agent or informant, or together with others) did induce or encourage the defendant to commit the crime(s), and as a direct result thereof, (he/she) did cause the defendant to commit the offense(s) charged.

The defendant must prove by a preponderance of evidence that (he/she) was induced or encouraged to commit the offense by the law enforcement officers (the officer's agent or informant, or others) (select appropriate) or knowing false representations which by their very nature created a substantial risk that the crime would be committed by an average person who was NOT otherwise ready to commit it.

In addition, the defendant must prove that the police conduct in fact caused (him/her) to commit the crime; in other words, that the crime was a direct result of the police action.

(Where the State introduces evidence of the defendant's predisposition to commit the crime, the following should be added.)

The State has introduced evidence to demonstrate, if believed, that the defendant was not an innocent person who would not have committed the offense were it not for the inducement of the law enforcement officer. That in fact (he/she) was predisposed to commit the crime. Therefore, for this purpose, the Court has permitted the State to introduce for your consideration

¹ See State v. Branam, 161 N.J.Super. 53 (1978 aff'd 79 N.J. 301 (1979)).

evidence of (select appropriate) the defendant's previous convictions of crime; (his/her) reputation for criminal activities; evidence that (he/she) was unusually susceptible to inducement, or that an ordinary person would not have succumbed to the type of inducement or opportunity to commit the offense to which the defendant succumbed.²

Whether such evidence along with other facts and surrounding circumstances, shows a predisposition on the part of the defendant to commit the offense is for you to determine.

If you find that the defendant had been predisposed to commit the offense even without the law enforcement officer's participation or inducement, then the defendant's participation was not the direct result of the officer's activity, and the defense of entrapment has not been proven and it is unavailable to (him/her).³

Entrapment is an affirmative defense. This means that the defendant has the burden of proving it by , as I have said before, a preponderance of evidence. That means, by the greater weight of believable evidence. A preponderance means evidence that is more probable, more persuasive, or of a greater probative value. By that I mean that the evidence introduced on behalf of the defendant must weigh more heavily in your minds and be more convincing than that introduced on behalf of the State. It does not mean that the defendant must have more witnesses than the State. The burden of proof is sustained by the quality of the evidence rather than the quantity.

If you find that the State has failed to prove beyond a reasonable doubt any element of the offense, or the defendant's participation in the offense, you must find the defendant not guilty and you need not consider the evidence as to the defendant's claim of entrapment.

If you find that the State has proven beyond a reasonable doubt each essential element of the offense, you must then consider the evidence as to the claim of entrapment.

If you find that the defendant has established the defense by a preponderance of evidence, you must find the defendant not guilty. On the other hand, if you find that the defendant has not established the defense by a preponderance of evidence, you must find the defendant guilty.⁴

² See State v. Donald Rochholt, 96 N.J. 570, 476 A. 2d 1236 (1984).

³ When official conduct inducing an offense is so egregious as to impugn the integrity of a court that permits a conviction, predisposition of a defendant becomes irrelevant, and there may be entrapment as a matter of law. State v. Molnar, 81 N.J. 476.

⁴ The defense of entrapment is unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment. N.J.S.A. 2C:2-12C.