

The reasons for judgment of the Court were delivered orally by:

HART, J.A.:

This is an appeal against a stay of proceedings granted by Mr. Justice Donald Hall at the conclusion of a trial of the respondent on a charge of trafficking in a narcotic, cannabis resin, contrary to s. 4(1) of the **Narcotic Control Act**, R.S.C. 1985, c. N-1. The stay was based on the doctrine of entrapment.

On March 25, 1994, the respondent was visiting a friend and met Robert Rygiel there. He did not know that Rygiel was an agent employed by the Kentville Police to purchase narcotics from suspected drug traffickers. While there Rygiel asked the respondent if he had any "hash" and when told "no" he asked if he would go and get him some since he was the only one there with a vehicle. The respondent says he refused but later after Rygiel persisted he took the \$20 bill from Rygiel and drove to an address suggested by the agent and obtained some "hash" which he turned over to Rygiel.

Rygiel was a person with a substantial criminal record incurred both before and after this transaction. The trial judge accepted the evidence of the respondent in preference to that of the informer and concluded that the respondent who had not been involved with drugs before had been entrapped into committing a serious criminal offence by the efforts of the police. He stated:

" I am satisfied that the defence has established on a balance of probabilities that there has been an unlawful entrapment here and that there ought to be a stay. It is clear the offence was instigated by the urging of Mr. Rygiel who was clearly an agent of the police and as a result of his request and his persistence the accused agreed to make a purchase of hashish and provided it to Mr. Rygiel. Thus he was ensnared into the commission of the offence by police conduct. At the

time the accused was not targeted as a known drug dealer and in fact he testified and I accept for the purposes of this proceeding that he indeed is not a trafficker in narcotics nor even a user of such. I am satisfied, as well, that there was significant calculated inveigling and persistent importuning on the part of Mr. Rygiel to induce the accused to commit the offence."

The trial judge relied upon the definition of entrapment as explained by Lamer

J. (as he then was) in **R. v. Mack** (1988), 44 C.C.C. (3d) 513 at p. 559 where it was stated:

" In conclusion, and to summarize, the proper approach to the doctrine of entrapment is that which was articulated by Estey J. in *Amato, supra*, and elaborated upon in these reasons. As mentioned and explained earlier there is entrapment when,

- (a) the authorities provide a person with an opportunity to commit an offence without acting on a reasonable suspicion that this person is already engaged in criminal activity or pursuant to a *bona fide* inquiry;
- (b) although having such a reasonable suspicion or acting in the course of a *bona fide* inquiry, they go beyond providing an opportunity and induce the commission of an offence."

We see no error on the part of the trial judge in his assessment of the facts and application of the law and would dismiss this appeal against the granting of a stay of proceedings.

G.S.L. Hart

Concurred in:

Freeman, J.A.

Roscoe, J.A.

C.A.C. No. 114290

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

- and -
FOR

BY:
KEVIN BLAIR SMITH

Respondent

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) REASONS
) JUDGMENT
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) HART, J.A.
) (orally)
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