UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0864

September Term, 2014

DANIEL A. MENDOZA

v.

STATE OF MARYLAND

Kehoe,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: December 11, 2015

Following a jury trial in the Circuit Court for Montgomery County, Daniel Mendoza ("Mendoza") was convicted of solicitation to commit first-degree murder, for which he was sentenced to thirty years to the custody of the Department of Corrections. Mendoza filed a timely appeal and presents two questions for review, which he phrases as follows:

> 1. Did the trial court err in failing to determine, on evidence presented on the record, whether appellant was competent to stand trial in accordance with § 3-104 of the Criminal Procedure Article?
>
> 2. Did the trial court err in refusing to instruct the jury on the defense of entrapment?

Finding no error, we affirm the judgments of the circuit court.

I.
BACKGROUND

A. Matters Related to Competency

On July 11, 2012, which was about four months after Mendoza was charged in this case, Mendoza entered a plea of not criminally responsible. Thereafter, the court ordered a competency evaluation and committed Mendoza to the Department of Health and Mental Hygiene ("DHMH") pending the completion of the evaluation. The first evaluation by Clifton T. Perkins Hospital Center ("Perkins") was dated November 12, 2012. That report

resulted in a finding by DHMH that Mendoza was incompetent to stand trial.[1] The report noted, however, that Mendoza was "restorable."

On February 25, 2013, the circuit court held a hearing at which Mendoza's counsel was present. The following transpired at that hearing:

> [Defense Counsel]: Good morning, your honor. Samantha Sandler on behalf of Mr. Mendoza. He's not present. As your honor knows, he is at Perkins and considered incompetent. A writ was not issued for him today. I have provided an order for your honor to sign, which says basically that [you're] finding the defendant's incompetency. I think that moves the process along, and then they will, in due course, test him again or continue to test him.
>
> THE COURT: All right.
>
> [Prosecutor]: I spoke with Dr. Robinson at Perkins and what she said is we needed to have this finding in order to, I guess start the clock ticking so every six months they reevaluate him. So if this order is signed[,] my impression is that in six months he'll be reevaluated for competency.
>
> THE COURT: Okay.

Defense counsel then told the judge that she had no objection to the court signing an order finding her client incompetent. Accordingly, on February 25, 2013, the hearing judge signed an order finding that Mendoza was incompetent to stand trial. The court then committed appellant to Perkins until he was restored to competency.

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[1] "Incompetent to stand trial" means not able:

(1) to understand the nature or object of the proceeding; or
(2) to assist in one's defense.

Md. Code (2008 Repl. Vol.), Criminal Procedure Article, section 3-101(f).

On June 7, 2013, Perkins filed a report concluding that Mendoza was competent to stand trial. Upon receipt of the report, the circuit court held a status conference on June 12, 2013 at which all counsel acknowledged that Mendoza had been found competent to stand trial, which meant that he was currently able to understand the nature of the charges he faced, the object of the proceedings against him, and was able to assist in his own defense. At that status hearing, the court postponed, pending future evaluation of Mendoza's criminal responsibility, the date set for a motions hearing and the date of trial.

On September 18, 2013, Perkins submitted a report that was based on evaluations conducted on July 25 and August 29, 2013. The author of the September 18, 2013 report was Dr. Ameer Patel, a forensic psychiatrist. Dr. Patel opined that Mendoza was presently competent to stand trial and was criminally responsible.

Thereafter, the court held a scheduling conference on December 19, 2013. At the scheduling conference defense counsel acknowledged that Mendoza's competency had been restored. Nevertheless, defense counsel requested that Mendoza remain at Perkins until trial to ensure that he would continue to take his medication and continue his treatment. During that hearing, the courtroom clerk informed the court that there was no docket entry indicating that Mendoza was competent to stand trial. The court then directed the clerk to make a

docket entry stating that Perkins has found the defendant competent to stand trial. Without objection, the notation was made as ordered.[2]

Forty-three days later, on January 31, 2014, during a hearing on pending defense motions, defense counsel requested a continuance (from the February 24, 2014 trial date) to have Mendoza re-evaluated for competency. Defense counsel said that although she believed, in December 2013, that Mendoza was competent to stand trial, she met with him a few days prior to the hearing and noticed a change for the worse in Mendoza's behavior. Defense counsel added that when she told Mendoza something, her client was unable to repeat or explain what she had just said. In defense counsel's words: "If we were to go forward with motions, I do not believe that he would comprehend or be of any assistance to counsel based on his current mental state."

[2]The pertinent colloquy was as follows:

> THE COURT: The clerk was saying there hadn't been a notation made at least a docket entry that he was competent to stand trial.
>
> [DEFENSE COUNSEL]: Oh.
>
> THE COURT: So I don't know if you have any objection to making a docket entry.
>
> [DEFENSE COUNSEL]: Well, Perkins has found him competent. I mean, I'm not consenting to that necessarily - -
>
> THE COURT: Right. Right.

The prosecutor opposed a continuance being granted stating: "I'm skeptical of [Mendoza's] complete lack of memory [ ] and his lack of cooperation with Perkins." The prosecutor noted that she had talked to Mendoza's social worker and asked if there had been any changes in Mendoza's behavior. Mendoza's social worker was quoted as having said that she sees Mendoza about once a week and had observed "no material change. No deterioration in his condition at all."

The court noted that, according to Perkins, Mendoza was uncooperative when an evaluation was made and that "[u]ncooperative means it's an intentional volitional act to either muddy the water [or] cause a delay[.]" In denying defense counsel's request to postpone the trial, the court said:

> [H]e's been found to be competent. They found that he's criminally responsible. I've considered everything you [defense counsel] said. And you've made an outstanding record. And I'm not disputing anything you're telling me as an officer of the court. But respectfully, that's not enough for me to have him reevaluated for competency. That's all I'm saying. Is because I'm going with what independent test that's been done. The fact that he was incompetent once before. Court considered that. Then he's been found to be competent. He has been determined to be criminally responsible. I don't know whether you've got your own doctor on that or not which indicates that issue is moot. That's fine.
>
> Considering the totality of the situation, the age of this case, the court's going to deny your motion for a continuance of the trial date.

Later, at that same January 31, 2014 hearing, the court read into the record the part of Dr. Patel's report, dated September 18, 2013, in which the doctor opined that Mendoza was competent to stand trial and was criminally responsible. The court further explained:

> So I'm using also that as a basis of my decision to deny a postponement, to deny ordering Perkins to do another competency evaluation. . . . I have nothing since that time to indicate anything different. The only thing I have is a lay person which would be [Mendoza's] attorney indicating the contrary. There's a battery of things in here. And this is not ancient history. This report was done in September of 2013.

Defense counsel raised the competency issue again at a hearing on February 21, 2014, (three days before trial) stating:

> I am in the same position I was the other day. I still believe that my client is suffering from some mental health illness, and is not competent to go forward. That being said, he is not inclined or cannot understand, comprehend, or agree to the plea agreement that has been offered to him. So for that reason, I would ask the court, again, to consider a continuance of this – I don't care about this particular motion, but of the trial on Monday.

The trial judge denied the second request for a continuance. The judge said: "For the reasons I said before, I'm not going to grant you a postponement. The issues have been resolved. The court's indicated its position, and as far as the court's concerned, nothing's changed. So I'm going to deny the request for a postponement of the trial."

B. Evidence Presented at Trial

At trial, the following stipulation was read to the jury:

> In February of 2012, detectives from the [Washington, D.C.] Metropolitan Police Department contacted Detective Mark Janney of the Montgomery County Police Department Major Crimes Division with information that they had received from the confidential informant regarding the attempt by Mendoza to hire someone to murder his wife and her acquaintance. This confidential informant has been an informant for the Metropolitan Police Department for an extended period of time and has previously provided substantial assistance to the Metropolitan Police

> Department in several significant investigations resulting in felony arrests of career criminals.

After receiving the information regarding Mendoza's efforts to have someone kill his wife and "an acquaintance," Detective Charles Bullock of the Montgomery County Police Department was assigned by his employer to investigate the matter.

Detective Bullock met with the confidential informant ("CI") and the two developed a plan, which was that Detective Bullock would contact Mendoza and pretend to be a contract murderer from New York, who was the CI's half-brother. The CI arranged for Detective Bullock to meet Mendoza on March 5, 2012. On that date, Mendoza got into Detective Bullock's vehicle and the CI introduced Bullock to Mendoza as his brother who had come down from New York. At that meeting, Detective Bullock and the CI wore recording devices to tape the conversation. That recording was played for the jury and the conversation was transcribed in both English and Spanish, and admitted into evidence as State's Exhibit 15.

In the taped conversation, Mendoza said that he did not care how they killed his wife as long as they "have her disappear so there's no body or anything[.]" Detective Bullock and the CI then agreed to kill Mendoza's wife and his wife's boyfriend in return for five thousand dollars. Bullock and the CI told appellant that they would make the killing look like a robbery. Mendoza responded, albeit somewhat ambiguously, "the money I had since I paid the bond, I don't have it, all of it. So I have to sell that car, and I'm selling some property

in my, my country."[3] The CI and Detective Bullock then told Mendoza that they needed some money up front, even if it was just two hundred dollars. Alternatively, Mendoza was informed that if he didn't have that amount, it was sufficient if he gave them the title to his car. Mendoza responded by telling the CI that he (Mendoza)) did not have enough time to get the money together and for that reason, the CI brought his (the CI's) "brother" down from New York too early.

Detective Bullock testified that he and the CI next met with Mendoza the following day "[f]or the purposes of, again, talking about money, going and actually looking at the victim . . ." Bullock drove appellant to the Twinbrook Metro Station where Mendoza pointed out his wife to the undercover detective. Appellant next showed Bullock where his wife lived. Detective Bullock, the CI and Mendoza then drove the route that his wife usually took when she walked from the metro station to her home. According to Bullock, appellant then "went on [with his] plan on how he wanted it done."

Detective Bullock admitted that he and the CI continued to encourage and pressure Mendoza to come up with money or collateral, so that they could go ahead with killing Mendoza's wife. Detective Bullock, however, testified that he purposely gave Mendoza several opportunities to "back out of killing his wife[,]" but Mendoza "did not want to back out." Instead, he wanted to go forward with . . . "killing his wife." Mendoza assured Bullock

[3]Mendoza was a native of Honduras.

that he should not worry about being paid for the murder and that he would call when he had the money. After receiving the assurance that the money would be paid, the March 6, 2012 conversation concluded. Mendoza left Detective Bullock's car and got into his own vehicle. Members of the police surveillance team then placed Mendoza under arrest.

Ermosinda Saravia, appellant's wife, was called as a witness for the State. She testified that while married to appellant, she began dating Arturo Yangali in August 2011, and that appellant became upset when he found out about the affair. In September 2011, appellant began threatening to harm her and her parents, who lived in Honduras. On October 17, 2011, appellant moved out of their home. Prior to the date that he left, appellant's wife obtained a protective order from the District Court because she was afraid of appellant. Nevertheless, at the time that the order was signed, she did not think that her husband was going to hurt her.

The defense called Norberto Mendoza, appellant's brother. He had lived with appellant, Ms. Saravia, and appellant's children for five years prior to October 2011. Appellant's brother testified that he had never seen appellant hit or threaten Ms. Saravia, her boyfriend or appellant's children.

The defense also called Jose Hernandez, who had also lived with appellant and his wife prior to this separation. Hernandez testified that in 2011 appellant and his wife had a "fine"relationship and that he had never seen appellant hit or threaten his wife or children.

Additional facts will be added in order to address the issues presently.

II.

FIRST ISSUE PRESENTED

Md. Code (2008 Repl. Vol.) Criminal Procedure Article ("CP") section 3-104 provides:

> (a) *In general*. - - If, before or during a trial, the defendant in a criminal case or a violation of probation proceeding appears to the court to be incompetent to stand trial or the defendant alleges incompetence to stand trial, the court shall determine, on evidence presented on the record, whether the defendant is incompetent to stand trial.
>
> (b) *Court action if defendant found competent*. - - If, after receiving evidence, the court finds that the defendant is competent to stand trial, the trial shall begin as soon as practicable or, if already begun, shall continue.
>
> (c) *Reconsideration*. - - At any time before final judgment, the court may reconsider the question of whether the defendant is incompetent to stand trial.

Mendoza argues that "the trial court erred by failing to determine on the record that [he] was competent to stand trial in accordance with § 3-104(a) of the Criminal Procedure Article." According to Mendoza: "[a]t most, the court deferred to the evaluations prepared by the medical professionals at Perkins[,]" which was "clearly an impermissible delegation of judicial authority."

Mendoza's claim that actions by the court deviated from the procedures set forth in CP section 3-104(a), is difficult to understand. As already mentioned, Mendoza entered a plea of not criminally responsible, thereby requiring the court to comply with CP § 3-104(a).

Subsection (a) of section 3-104 provides that if a defendant alleges that he or she is incompetent to stand trial, the court is required to make a determination as to whether or not the defendant is competent to stand trial. This is precisely what the circuit court did on February 25, 2013, when, after a hearing, and based on the report from Perkins and with the agreement of defense counsel, the court found appellant incompetent to stand trial.

At the February 25, 2013 hearing, the circuit court, contrary to appellant's argument, did not improperly defer to the opinion rendered by the "professionals at Perkins." The determination of incompetency, which was based on the initial October 14, 2012 Perkins report, satisfied the requirements of CP § 3-104(a). *See Peaks v. State*, 419 Md. 239, 255 (2011). In *Peaks*, the court construed Md. Code (1984, 2000 Repl. Vol.), § 12-103 of the Health General Article, which was the precursor to CP section 3-104. Quoting *Sangster v. State*, 312 Md. 560, 568 (1988) (internal quotation marks omitted) the Court said: "the statute makes the report evidence on the record for consideration at the competency hearing to the same extent as if the report were formally offered and marked as an exhibit at the hearing."

It is possible to construe Mendoza's first argument as asserting that the circuit court erred by deferring to the Perkins report when, on December 19, 2013, the court directed the clerk to enter a docket entry that recorded a finding by the court that Mendoza was competent to stand trial. That (assumed) argument is waived, however, because on December 19, 2013, Mendoza's counsel never contended that her client was incompetent

to stand trial. Moreover, even if there was no waiver, the argument has no merit because the court, in finding a defendant competent, is allowed to rely on reports such as those prepared by Perkins. *Peaks*, 419 Md. at 255.

Appellant's argument can also be construed as asserting that whenever appellant's counsel made a post December 19, 2013 allegation that her client was incompetent, the court should have held an evidentiary hearing on the matter. If this is appellant's position, it is without merit because whether to have an additional hearing is discretionary. This was made clear in *Peaks* when the Court, in discussing the requirements of CP § 3-104, said that the statute:

> [M]andates actions to be undertaken by a trial court, if an accused's competency is properly called into question. These actions can be broken down into three distinct and simple steps: (1) First, a determination of competency may be made at any time before or during a trial; (2) Second, such a determination must be made if the defendant in a criminal case appears to be incompetent to stand trial or the defendant alleges incompetence to stand trial; and (3) Finally, the court must make its determination on the evidence presented on the record.
>
> *Id.*[4] This mandate "indicates that the Legislature intended for every accused, whose competency was called into question, to have at least one guaranteed review of his or her competency status." *Roberts*, 361 Md. at 366, 761 A.2d at 896. Once the issue of competency has been raised, a "determination that an accused is competent to stand trial must be found beyond a reasonable doubt." *Jolley v. State*, 282 Md. 353, 365, 384 A.2d 91, 98 (1978). Additionally, competency to stand trial is a factual determination which will not be reversed unless it is clearly erroneous. *Jolley*, 282 Md. at 375, 384 A.2d at 103.

[4]The quote is from *Roberts v. State*, 361 Md. 346, 364 (2000).

> Additionally, the determination of the court need not be in the form of a formal hearing. *See Roberts*, 361 Md. at 368, 761 A.2d at 897. A judge with no jury present is not "required to use any magic words to designate as a separate hearing the presentation to him of testimony and evidence for his determination of the competency of the accused to stand trial. It is sufficient if the testimony and evidence are on the record." *Id*. Further, once the trial court has determined that the defendant is competent to stand trial, "the court is not required to hold an additional hearing merely because [the defendant] again alleges he is incompetent." *Trimble*, 321 Md. at 255, 582 A.2d at 798; *see also Roberts*, 361 Md. at 364, 761 A.2d at 895 ("Once an initial determination has been made, a reconsideration of the accused's competency may be made and is controlled by the discretionary language of [§ 3-104(c)]").

Peaks, 419 Md. at 252-53 (emphasis added).

As can be seen, under the statute, the trial court was not required to hold a hearing just because defense counsel asked for one. The court provided cogent reasons for declining to postpone the trial so that a re-evaluation as to competency could be made and a re-hearing on the issue could be held. The court did not abuse its discretion[5] when it did so.

[5]Appellate courts have defined "abuse of discretion" in various ways, as we have summarized:

> It [abuse of discretion] has been said to occur where no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds[;] when the ruling is clearly against the logic and effect of facts and inferences before the court[;] when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result[;] when the ruling is violative of fact and logic[;] or when it constitutes an untenable judicial act that defies reason and works an injustice.

(continued...)

III.

Mendoza argues that the "trial court erred in refusing to instruct the jury concerning the defense of entrapment." The requested instruction read:

> The Defendant asserts that he was entrapped by law enforcement and someone acting on behalf of law enforcement to commit solicitation. A defendant may not be convicted of a crime if he was entrapped by the government to commit that crime.
>
> Entrapment occurs if:
>
> (1) the defendant was not predisposed to commit [solicitation] prior to the time law enforcement and someone acting on behalf of law enforcement made contact with him; and
>
> (2) the defendant was induced or persuaded by law enforcement and someone acting on behalf of law enforcement to commit solicitation.
>
> In order to convict the defendant, the State must show that law enforcement did not entrap the defendant. In other words, you are required to find the defendant not guilty unless the State has persuaded you, beyond a reasonable doubt, that at least one of the factors required to prove entrapment was absent.
>
> In determining whether entrapment occurred, you should consider all of the evidence concerning the intentions and disposition of the defendant before encountering law enforcement and someone acting on behalf of law enforcement, along with the nature of the inducement or persuasion by law enforcement and someone acting on behalf of law enforcement to cause the defendant to commit solicitation. *Bowser v. State*, 50 Md. App. 363 (1981).

[5](...continued)
North v. North, 102 Md. App. 1, 13-14 (1994) (internal citations and quotation marks omitted).

> In this case, a law enforcement official, acting in an undercover capacity, and a confidential informant induced Mr. Mendoza to make inquiries about a contract killing. Mr. Mendoza continually stated that he was not ready to have the crime committed. If you find that Mr. Mendoza was not inclined to have the "hitman" actually go through with the murder; then you must find him not guilty.

At trial, defense counsel argued that the instruction was generated because the confidential informant pressured Mendoza to pay him even though Mendoza repeatedly stated that he was not ready for the murder to be committed because he did not have the money yet. In declining to give the instruction, the court explained:

> The suggested – subjective entrapment test requires two inquiries: one whether there was an inducement on the part of the government official or their agents. And if so, whether defendant showed any predisposition to commit the offense.
>
> I clearly find as a matter of law that the defendant showed predisposition to commit the offense. And I also find that there was no inducement on the part of the government officials or their agents.
>
> * * *
>
> The only inducement, the only encouragement, I shouldn't even use those words, the only disagreement that they have throughout the entire text is the payment of money and trying to get money at him. That's the only type [sic] where the police are trying to get something.
>
> As far as the defendant having them commit the offense, there's absolutely no inducement. There is no – there's not one time when the defendant says anything along the lines, such as you know what? I'd rather not do it. Or are you sure you guys think you can do this? There was nothing along those lines.
>
> * * *

> So there's nothing in the evidence I say to even remotely suggest or yeah, suggest that there was any inducement on the part of any government official. And as I said, merely affording the opportunity, which they did. They met with them, and they went there, but – and the defendant showed enough predisposition to sink a battleship if you look at the entire record to commit this offense.
>
> * * *
>
> And the only other thing I'll point out was that citing the case of *Bowser v. State*, the criminal conduct must be due to the persuasion of the police, and not to the defendant's own readiness or predisposition to commit the offense.
>
> So as a matter of law, I don't find that either of those elements exist. So I'm going to deny the request, but your objection's noted.

"A trial court must give a requested jury instruction where '(1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in instructions actually given.'" *Cost v. State*, 417 Md. 360, 368-69 (2010) (quoting *Dickey v. State*, 404 Md. 187, 197-98 (2008)).

Only the second issue, whether the instruction is applicable to the facts of the case, is an issue in this appeal. Mendoza argues that the defense of entrapment was generated and, therefore, the court erred by failing to give the requested instruction inasmuch as there was some evidence that he was induced to solicit his wife's murder. The State responds that the entrapment defense was not generated because there was no evidence of inducement and "Mendoza failed to establish a lack of predisposition[.]"

"When a defendant requests a particular jury instruction, [the Court of Appeals] has held that a party need only produce 'some evidence' to support such an instruction." *Wood v. State*, 436 Md. 276, 293 (2013) (quoting *Bazzle v. State*, 426 Md. 541, 551 (2012)). Some evidence "calls for no more than what it says 'some,' as that word is understood in common, everyday usage. It need not rise to the level of 'beyond reasonable doubt' or 'clear and convincing' or 'preponderance.'" *Id*. (quoting *Dykes*, 319 Md. 206, 216-17 (1990)). "There must be some evidence to support each element of the defense, however." *McMillan v. State*, 428 Md. 333, 355 (2012).

"Entrapment occurs when a police officer or government agent induces the commission of a crime by one who, except for the government's enticement, solicitation or persuasion, would not have committed the crime." *Moore v. State*, 195 Md. App. 695, 733-34 (2010). "The test requires two inquiries: (1) [W]hether there was an inducement on the part of the government official . . . and if so (2) [W]hether the defendant showed any predisposition to commit the offense." *Id*. at 734. Accordingly, "'the elements of the defense that an accused must establish to make a prima facie case are: 1. The presence of an inducement, and 2. The absence of a predisposition.'" *Id*. (quoting *Sparks v. State*, 91 Md. App. 35, 65 (1992)).

"'An inducement, by its very nature, contemplates more than a request and an affirmative response. It embraces, as well, the indispensable notion of an effective catalytic agent. It is more than a solicitation. It is more than even a successful solicitation.'" *Id*. at

735 (quoting *Sparks*, 91 Md. App. at 87) (internal citations omitted). "'It involves that sort of grave threat, fraud, or extraordinary promise, . . . that can blind that ordinary person to his legal duties.'" *Id*. (quoting *Sparks*, 91 Md. App. at 87) (internal citations and quotation marks omitted). As such, "the mere affording of an opportunity to commit an offense does not constitute entrapment." *Id*. at 733.

"'Predisposition is the willingness to commit a crime and may be shown by evidence, direct or circumstantial, that the defendant was ready and willing to commit the crime charged prior to the time that the law enforcement officers made initial contact.'" *Id*. at 735 n.15 (quoting *Kamara v. State*, 184 Md. App. 59, 77 (2009) (internal quotation marks omitted).

For the purpose of determining whether Mendoza made a prima facie showing sufficient to warrant an entrapment instruction, we view the facts in the light most favorable to the defendant. *See Sparks*, 91 Md. App. at 43-44 ("The appellant gave a different version of the episode and it is, of course, his version that we must accept in determining the threshold question of whether he made out a prima facie case of entrapment.").

Even though he did not testify at trial, nor did he call any witnesses who had information concerning conversations between himself, the CI and Detective Bullock, Mendoza argues that he presented sufficient evidence to show that he "was induced to solicit his wife's murder by the persistent instigation of the undercover officer and the unnamed informant[.]" His full argument in support of his inducement argument is as follows:

> The surreptitiously recorded conversations reveal that during the "several weeks" that appellant had been allegedly talking to the informant, he had not asked anyone to have [his wife] murdered. This is made clear at the start of the conversation on March 5, when the informant urged appellant, "[w]hat is it you want us to do tell me at last." (Emphasis added). It was only after the informant's insistence - urging appellant, "how we gonna do the thing" and "How we gonna kill em" - that appellant said he wanted his wife to "disappear." The recorded conversations further make clear that appellant had not asked the informant to kill his wife or to introduce him to someone who would do so. Appellant clearly said that the informant "got ahead of himself" and "I didn't tell him to . .. bring you or something like that. So he's the one who called you." When appellant said, "we're not doing it" unless he had money to give them, the State agents disapprovingly said, "my time is money … I don't play with my money you know" and later added, "you already know we've been in this for several weeks now . . . So I don't know how it is . . . I don't know what we're gonna do understand."

(References to record omitted.)

It is not true, as appellant contends, that the conversation (that was taped and transcribed) made it clear that appellant had not asked the CI to find someone to murder appellant's wife. To the contrary, the taped conversation made it clear that the whole purpose of the March 5, 2012 meeting was to discuss the murder, which appellant had previously discussed with the CI.

But even if we were to accept Mendoza's characterization of the recorded conversations, the insistence and urging that Mendoza describes is not "'the kind of conduct that would persuade an otherwise innocent person to commit a crime.'" *Sparks*, 91 Md. App. at 88 (*quoting United States v. Velasquez*, 802 F.2d 104, 106 (4th Cir. 1986)). While Mendoza was encouraged to provide details as to how he wanted his wife to be killed and

was pushed to provide payment up front, there is nothing in the recording or elsewhere in the record that rises to the level of an inducement. Importantly, the CI and Detective Bullock never pressured Mendoza to agree to have them kill his wife. The tapes of the relevant conversation shows unequivocally that it was Mendoza's idea that his wife be killed and that he was "on board" with the plan to kill his wife from the beginning. The only debate or disagreement involved in the conversation concerned when the down payment for the murder would be made and how the killing would take place so that it would not be linked to Mendoza. There was no "grave threat, fraud, or extraordinary promise" made to convince Mendoza to solicit his wife's murder. *See Moore*, 195 Md. App. at 735 (quoting *Sparks*, 91 Md. App. at 87) (internal citations and quotation marks omitted).

Likewise, Mendoza failed to establish a lack of predisposition. A person who was not predisposed to having a paid "hitman" kill his wife would not show the person he thought was a hitman where his spouse worked, what she looked like, and her usual route to work; nor would he, as appellant did, tell the "hitman" that he wanted his wife's corpse to disappear.

The only evidence Mendoza presented that he claims supported his claim of a lack of predisposition was the testimony of the two witnesses he called who stated that they had not heard Mendoza threaten his wife or anyone else nor had he ever hit her. Even if the jury believed appellant's two defense witnesses who testified, in effect, that appellant was always kind to his wife in their presence, and disbelieved appellant's wife's testimony that, prior to

the solicitation, appellant had threatened to kill her, Mendoza did not present any evidence to establish that he was not "willing to commit the crime charged prior to the time that the law enforcement officers made initial contact." *See Moore*, 195 Md. App. at 735 n.15 (quoting *Kamara v. State*, 184 Md. App. 59, 77 (2009) (internal quotation marks omitted). Insofar as the entrapment issue is concerned, all the defense witnesses proved was that appellant never advertised his murderous intent to them.

For the reasons set forth above, we hold that the evidence was insufficient to generate the entrapment defense and therefore, the court did not err in declining to give the requested jury instruction. *See Sparks*, 91 Md. App. at 93 ("We hold that [the trial court] correctly ruled that the appellant had not met his burden of production and was, therefore, not entitled to have the jury instructed on the subject of entrapment.").

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.