SCC File No. 38165

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ONTARIO)

B E T W E E N:

JAVID AHMAD

APPELLANT

-and-

HER MAJESTY THE QUEEN

RESPONDENT

FACTUM OF THE APPELLANT

(Pursuant to Rule 42 of the Rules of the *Supreme Court of Canada*)

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PART I – OVERVIEW AND STATEMENT OF FACTS

> Every court has an inherent power and duty to prevent abuse of its process. This is a fundamental principle of the rule of law. By recourse to this principle courts ensure that executive agents of the state do not misuse the coercive, law enforcement functions of the courts and thereby oppress citizens of the state. Entrapment … is an instance where such misuse may occur. It is simply not acceptable that the state through its agents should lure its citizens into committing acts forbidden by the law and then seek to prosecute them for doing so. That would be entrapment. That would be a misuse of state power, and an abuse of the process of the courts. The unattractive consequences, frightening and sinister in extreme cases, which state conduct of this nature could have are obvious. The role of the courts is to stand between the state and its citizens and make sure this does not happen.[1]

1. Entrapment, a species of the abuse of process doctrine, enables the judiciary to vacate a criminal conviction through a stay of proceedings in order to protect individuals against improper and unfair state conduct[2]. The doctrine recognizes that, although society wants law enforcement to investigate crime, including pursuing legitimate investigative leads, society does not want officers being the instigators or architects of crimes that may not have been committed but for the police involvement. Nor does society want state agents randomly (without some articulated *bona fide* basis tantamount to a "reasonable suspicion") targeting citizens otherwise going about their business to see if they can entice them to commit a criminal offence. In such cases, as Lord Hoffman has observed, "the court has jurisdiction … to stay the prosecution on the ground that the integrity of the criminal justice system would be compromised by allowing the state to punish someone whom the state itself has caused to transgress."[3] Allowing the police to engage in any investigative step whatsoever, regardless of the context, is antithetical to principles of fundamental justice. As one jurist described it:

> …the central consideration underlying the entire principle [abuse of process and entrapment], is that the various situations in questions all involved the defendant standing trial when, but for an abuse of executive power, he would not have been before the Court at all. …. in entrapment cases, the defendant only committed the offence because the enforcement officer wrongly incited him to do so. True… a fair trial could take place.

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[1] *R. v. Looseley* [2001] UKHL 53 at para 1, per Lord Nicholls of Birkenhead
[2] Kent Roach, "Entrapment and Equality in Terrorism Prosecutions: A Comparative Examination of North American and European Approaches". 80:4 Miss. L.J. 1455 (2010-2011).
[3] *R. v. Looseley*, [2001] UKHL 53 at para. 36, per Lord Hoffman.

> But, given that there should have been no trial at all, the imperative consideration became the vindication of the rule of law.[4]

The doctrine is less about the moral culpability of the individual than it is about the collective community sense of what is an appropriate role for the police to take when investigating crime. As Justice Doherty observed in *R. v. Simpson*, the fundamental concern the entrapment doctrine addresses is "the need to balance society's interest in the detection of crime and the punishment of criminals with society's interest in maintaining the freedom of its individual members."[5]

2. This case concerns the application of the entrapment doctrine in the context of purported "dial-a-dope" investigations, where the police receive information that someone is selling drugs and using a particular phone number to facilitate the transactions. Previous jurisprudence of this Court recognized the "*bona fide*" investigation exception in the context of "geographical locations."[6] As the Court explained in *R. v. Mack*, as an exception to the general rule that the police cannot provide opportunities to commit offences absent individualized reasonable suspicion, the police could target a high-crime geographical area without improperly entrapping people within that area. Such tactics are permissible as a *bona fide* investigation because there is reason to suspect that criminal activity is occurring in the specified geographical area. In this case, the Court of Appeal for Ontario concluded that the investigation of "dial-a-dope" schemes "presents challenges to the existing entrapment framework", particularly in relation to the *bona fide* branch of the entrapment. Relying, in part, on the decision of the British Columbia Court of Appeal in *R. v. Le*[7], the Court held that the existing entrapment doctrine could be extended to permit the police to investigate telephone numbers that are provided to them through a single unconfirmed and uncorroborated tip by offering persons associated with those phone lines the opportunity to commit a criminal offence in the absence of individualized reasonable suspicion. The Court below articulated the test for entrapment in the context of *bona fide* inquiries into phone numbers as follows[8]:

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[4] *Takiveikata v. State* [2008] FJHC 315.
[5] *R. v. Simpson* (1993), 12 O.R. (3d) 182, [1993] O.J. No. 308 (C.A.).
[6] *R. v. Mack*, [1988] 2 S.C.R. 903 ["*Mack*"].
[7] *R. v. Le*, 2016 BCCA 155, leave to appeal ref'd [2016] S.C.C.A. No. 272 ["*Le*"].
[8] Decision of the Court of Appeal for Ontario, 2018 ONCA 534 at para. 68, [Appellant's Record ("A.R."), Tab 5].

> [68] … A *bona fide* inquiry, however, is not necessarily limited to a particular geographic location. In the context of a dial-a-dope scheme, the police will be engaged in a *bona fide* inquiry if they are acting for the purpose of investigating and repressing criminal activity and their investigation is directed at a person or persons associated with a phone line that is reasonably suspected to be used in the scheme.

3. In the Appellant's case, the majority of the Court of Appeal for Ontario recognized that when the police contacted him through a phone number they had received by way of a tip from a confidential source they had no "reasonable suspicion" that he was involved in any criminal activity at all[9]. Even when the target started to engage in conversation with the undercover officer, the Court held that the officer could not have developed any individualized reasonable suspicion by the time he provided the Appellant an opportunity to commit the offence[10]. Applying the criteria set out by this Court in *Mack*, without the modification advocated by the majority decision, entrapment would have been made out and a stay entered on appeal. Instead, the majority dismissed the Applicant's appeal on the basis that the police were engaged in a *bona fide* investigation into the phone line itself on the basis of the single uncorroborated tip and did not require individualized reasonable suspicion. The Court erred in so concluding.

4. It is the Appellant's position that the *bona fide* investigation exception to entrapping police conduct cannot apply to investigations into phone numbers (or any other digital space) on the basis of a single unconfirmed tip of unknown reliability or credibility. The decision of the Court below substitutes a substantially lower threshold for a *bona fide* inquiry where police are investigating the trafficking of drugs through mobile phone numbers than for high-crime geographic areas. It is not consistent with the limits placed on police conduct in *Mack* and creates a situation where the check and balance that the entrapment doctrine seeks to effect is completely obliterated. In dismissing the Appellant's appeal, the lower Court conflated legitimate "good faith" police conduct with the *bona fide* inquiry entrapment exception.

5. The Appellant submits that, properly applied, the existing entrapment doctrine developed in *R. v. Mack* and *R. v. Barnes*[11] is sufficiently flexible to encompass digital spaces without compromising the balance between investigative efficacy and the right of individuals not to be

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[9] *Ibid* at para. 48.
[10] *Ibid* at para. 45.
[11] *R. v. Barnes*, [1991] 1 S.C.R. 449, 63 CCC (3d) 1 ["*Barnes*"].

punished for criminal activity that the state itself was instrumental in instigating. On a proper application of the entrapment framework, it is the Appellant's position that, at the time that the officer offered the Appellant the opportunity to engage in criminal activity the police had neither reasonable suspicion that the Appellant himself was engaged in drug trafficking, nor were they engaged in a *bona fide* inquiry as the investigation was based on a single uncorroborated tip from an informant of unknown reliability. To conclude otherwise is to expand the scope of permissible police investigations to allow random virtue testing of people who are using telephones, email communications or other electronic/digital communications.

A. FACTUAL BACKGROUND

6. On April 19, 2012, a fellow officer provided D.C. Limsiaco, a member of the Toronto Police Service ("TPS") drug squad, with information received from a confidential informant. The information was limited to three facts: a first name, a phone number, and the assertion that the cocaine could be purchased from Romeo by calling that number[12].

7. Without any further investigation, D.C. Limsiaco called the number and had an initial conversation, which he reproduced in his notes[13]:

> Male: Hello.
> Limsiaco: Hey, It's Mike. Matt said I can give you a call. This is Romeo?
> Male: He did, did he?
> Limsiaco: Yeah, said you can help me out?
> Male: What do you need?
> Limsiaco: Two soft.
> Male: Hold on, I'll get back to you.
> Limsiaco: Alright.

8. D.C. Limsiaco received a call back from the male a short while later. The officer recorded this second conversation in his notes as follows[14]:

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[12] Transcript of Entrapment Hearing at p. 4 [A.R. Vol. II, Tab 14, p. 141].
[13] *Ibid* at pp. 7-8 [A.R. Vol. II, Tab 14, pp. 144-145].
[14] *Ibid* at p. 10 [A.R. Vol. II, Tab 14, p. 10].

Limsiaco: Hello.

Male: So what do you need again?

Limsiaco: Two soft. Where you at?

Male: Can meet you at Yorkdale.

Limsiaco: Sure. $160 good, an hour?

Male: $140, hour's good, go by theatres.

Limsiaco: Cool.

9. In his testimony at trial, D.C. Limsiaco acknowledged that his notes were not a verbatim transcript of the call[15], but the trial judge accepted that the notes were an accurate record of the conversation[16]. According to D.C. Limsiaco, he began the conversation by asking "can you help me out" because he knew this was common parlance in the drug world to indicate an interest in purchasing drugs[17]. Similarly, he testified that the individual's response, asking "what do you need" was a common inquiry made by drug dealers. By requesting "two soft", he was indicating his intention to purchase two grams of powder cocaine[18].

10. D.C. Limsiaco attended the Yorkdale mall shortly thereafter with a supporting team of TPS Drug Squad officers. Once there, he received a text message directing him to go to a spot near the movie theatre. He called the number, and observed a male of what appeared to be middle eastern descent, about 5'8" in height with short dark hair and glasses answer his phone and walk toward him. D.C. Limsiaco testified that he went outside with the male and exchanged the money for the drugs[19].

11. Once the exchange was made, D.C. Limsiaco walked away and gave the signal to the rest of the team positioned around the mall to arrest the male. The surveillance team moved in and arrested the Appellant. The police searched Mr. Ahmad's person and backpack, discovering

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[15] *Ibid* at p. 7 [A.R. Vol. II, Tab 14, p. 144].
[16] Reasons for Judgment at paras. 21-23 [A.R. Vol. I, pp. 24-25].
[17] Transcript of Entrapment Hearing at p. 8 [A.R. Vol. II, Tab 14, p. 145].
[18] *Ibid* at p. 9 [A.R. Vol. II, Tab 14, p. 146].
[19] Transcript of Proceedings at Trial, June 2, 2014 at pp. 19-27 [A.R. Vol. II, Tab 12, pp. 32-40].

quantities of cocaine and cash, as well as two cellphones, including one which used the same number D.C. Limsiaco had called, and an envelope with "Romeo" written on it[20].

12. The Appellant was charged with possession for the purpose of trafficking and possession of the proceeds of crime[21].

13. The Appellant's defence at trial was that the D.C. Limsiaco had actually concluded the exchange with a friend of his, Mikey, who he had been with at the mall. Mikey had dropped the backpack immediately after the exchange and had then absconded. The police approached the Appellant demanding that he provide them with the whereabouts of Mikey. When he refused, telling them that he did not know who Mikey was, they arrested him in Mikey's place. The Appellant testified that he did not give the police Mikey's name because he did not want to be seen as a snitch and feared that his safety would be imperiled if he did. The Appellant also did not believe the charges would proceed[22].

14. The trial proceeded in the Superior Court of Justice on a judge alone basis in front of Justice B. Allen. Justice Allen found that the Appellant's testimony did not leave her with a reasonable doubt, and that she was convinced of his guilt beyond a reasonable doubt. The trial judge convicted him of both possession for the purpose of trafficking and possession of the proceeds of crime[23].

15. The Appellant subsequently brought an application to stay the proceedings alleging that that the police had offered him an opportunity to commit an offence in the absence of reasonable suspicion that he was engaged in illegal activity. The entrapment application was argued on the basis of whether Officer Limsiaco had reasonable suspicion to offer the Appellant an opportunity to commit an offence[24]. Notably, the Crown did not argue that the police were engaged in a *bona fide* inquiry or that they were investigating a "dial-a-dope" operation such that the entrapment

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[20] See Reasons for Judgment of Allen J., 2014 ONSC 3818 at paras. 22-25 [A.R. Vol. I, pp. 11-12].
[21] Indictment [A.R. Vol. I, pp. 1-2].
[22] The Appellant's evidence is summarized in the Reasons for Judgment at paras. 26-35 [A.R. Vol. I, pp. 12-13].
[23] Reasons for Judgment at paras. 58-60 [A.R. Vol. I, pp. 17-18].
[24] Transcript of Entrapment Hearing at pp. 55-56 [A.R. Vol. II, pp. 192-193].

doctrine should be modified to allow greater police freedom to investigate and suppress these crimes. In the end result, Justice Allen concluded that D.C. Limsiaco had acquired the requisite reasonable suspicion once the person on the phone asked D.C. Limsiaco "what do you need?"[25]. She concluded that the conversation leading up to this point had only consisted of legitimate investigative steps, and had not reached the point of offering an opportunity to commit an offence[26]. As a result, she dismissed the application to stay the proceedings, and ultimately sentenced the Appellant to two years less than a day in prison[27].

B. THE DECISION OF THE COURT OF APPEAL

16. The Appellant appealed his conviction, the dismissal of his stay application and his sentence to the Court of Appeal for Ontario. On the Crown's motion, the Appellant's appeal was joined with another outstanding appeal, *R. v. Williams*[28], as both raised issues relating to the proper application of the entrapment doctrine in the context of purported dial-a-dope drug dealing operations.

17. The Court of Appeal unanimously dismissed the Appellant's appeal. However, the panel split on the rationale for dismissing the ground of appeal related to the entrapment application. For the majority, Justice Hourigan, writing for himself and Justice Brown, concluded that, contrary to the trial judge's finding, the police offered the Appellant an opportunity to commit an offence without reasonable suspicion. Justice Hourigan determined that D.C. Limsiaco offered the Appellant an opportunity to commit an offence when he asked him for "two soft". In the majority's view, there was an absence of suspicion because there was no investigation of the tip that the police were acting on, nor were there any details provided about Romeo beyond a name and the Appellant "did not confirm that he was 'Romeo' during the call"[29].

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[25] Reasons for Judgment on Entrapment Application at paras. 43-44 [A.R. Vol. I, p. 28].
[26] *Ibid* at para. 49 [A.R. Vol. I, p. 29].
[27] Reasons for Sentence [A.R. Tab I, pp. 33ff].
[28] Mr. Williams also appealed to this Court as of right, and his appeal is scheduled to be heard together with the Appellant's.
[29] Judgment of the Court of Appeal for Ontario, at paras. 42, 44, 47 [A.R. Vol. I, pp. 61-63].

18. Despite the fact that it had not been argued at trial, and had been raised by the Crown for the first time on appeal, the majority proceeded to consider whether D.C. Limsiaco had acted in the course of a *bona fide* inquiry, pursuant to this Court's decision in *R. v. Barnes*. Justice Hourigan acknowledged that the "absence of a set location in a dial-a-dope scheme presents challenges to the existing entrapment framework". He concluded however that this absence "should not foreclose the possibility that the police may be engaged in a *bona fide* inquiry when they contact a phone line associated with a dial-a-dope scheme." Justice Hourigan recognized that it was only where police reasonably suspected that the phone line was being used for a dial-a-dope scheme that they were entitled "to provide an opportunity to a person associated with that phone line as part of a *bona fide* inquiry."[30]

19. Justice Hourigan distinguished reasonable suspicion that the individual who answered the phone was engaged in drug-dealing activity versus reasonable suspicion that the phone line itself was being used for that activity, and took the view that reasonable suspicion vis-à-vis the latter may exist even in the absence of the former, as "the relevant considerations will vary depending on the context"[31]. The majority concluded that D.C. Limsiaco had a reasonable suspicion that the phone line was being used to facilitate drug-dealing, and was therefore engaged in a *bona fide* inquiry that permitted him to offer anyone associated with that phone number an opportunity to commit an offence, even though D.C. Limsiaco could not have reasonably suspected the Appellant himself. Further he determined that "police are not required to investigate the reliability of a source before embarking on a phone conversation."[32] He pointed to the fact that the person on the phone did not deny that he was Romeo and made no inquiries about the name. He noted that D.C. Limsiaco asked the person to help him out, "a common phrase in the drug trade", and was met with the response "what do you need", another "common phrase in the drug trade". Ultimately, the majority concluded that "While the objectively discernible facts do not rise to the level of reasonable suspicion that Mr. Ahmad

[30] Judgment of the Court of Appeal for Ontario, at paras. 49, 55, 59 [A.R. Vol. I, pp. 63, 67, 69].
[31] *Ibid* at para. 67 [A.R. Vol. I, p. 74].
[32] *Ibid* at para. 75 [A.R. Vol. I, p. 77].

specifically was already engaged in criminal activity, they do support reasonable suspicion that the phone line he was using was being used to sell drugs."[33]

20. Justice Himel (*ad hoc*) concurred in the result, but disagreed with the majority that the police did not have reasonable suspicion that the Appellant was engaged in dealing drugs. Justice Himel offered two criticisms of the majority's approach. First, she argued that it was unrealistic to suggest that one could have reasonable suspicion that the phone line was being used to deal drugs, but not reasonably suspect that the individual answering the phone was dealing drugs, because, as she observed, "phones are increasingly personal". Second, she questioned why the facts that could support reasonable suspicion of the phone line did not also support reasonable suspicion of the person answering the phone[34]. As she observed, the majority rejected the possibility that the response "what do you need" justified a reasonable suspicion that the Appellant was engaged in drug dealing, but warranted the police having reasonable suspicion that the phone line was associated with drug dealing. Justice Himel also disagreed that a request for a specific amount of drugs constituted an opportunity for the purpose of the entrapment analysis[35].

PART II – STATEMENT OF ISSUES

21. The Appellant raises the following issue on appeal:

> a. Did the majority of the Court of Appeal for Ontario err by expanding the application of the *bona fide* inquiry branch of the entrapment doctrine to permit police to offer an opportunity to commit a criminal offence to any one associated with a phone number on the basis of a single uncorroborated tip and in the absence of individualized reasonable suspicion?

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[33] *Ibid* at paras. 77-78 [A.R. Vol. I, pp. 77-78].
[34] *Ibid* at paras. 109-110 [A.R. Vol. I, p. 91].
[35] *Ibid* at paras. 116-121 [A.R. Vol. I, pp. 95-98].

PART III – STATEMENT OF ARGUMENT

ISSUE 1: DID THE MAJORITY ERR BY EXPANDING THE ENTRAPMENT DOCTRINE TO MOBILE PHONE NUMBERS?

A. THE CONTINUING IMPORTANCE OF THE ENTRAPMENT DOCTRINE

22. The entrapment doctrine is one strand in a fabric of protections that the law has erected against undue state intrusion. Much like the requirements that police have reasonable grounds to search, or reasonable suspicion to detain, the entrapment doctrine imposes a minimum threshold that police must meet before they can instigate or provide the opportunity to commit a criminal offence. The doctrine focuses not on the target of the investigation, but on the police conduct. The fact that the person targeted takes the bait is irrelevant. The question is whether the police were entitled to go fishing. The rationale is explained with great clarity and force by Justice Lamer in *R. v. Mack*, and it holds equal force today: "It is a deeply ingrained value in our democratic system that the ends do not justify the means. In particular, evidence or convictions may, at times, be obtained at too high a price. This proposition explains why as a society we insist on respect for individual rights and procedural guarantees."[36] Entrapment, as a specific instantiation of the abuse of process doctrine, proceeds on the basis that the justice system should not condone state action that goes beyond investigating ongoing crime into "manipulat[ing] people and events for the purpose of attaining the specific objective of obtaining convictions."[37]

23. The general rule articulated in *Mack* is that law enforcement should not present an opportunity to commit an offence absent reasonable suspicion that the target is already engaged in that criminal activity. However, the Court also recognized that there may be exceptional circumstances where police could target individuals who they do not reasonably suspect of engaging in criminal activity, but who are within a geographically defined location where it is reasonably suspected that the criminal behaviour in question is occurring.[38] This exception was the subject of further discussion in *R. v. Barnes*, where this Court concluded that the "tailored geographical" location exception did not constitute "random" virtue testing because of the known link between the crime under investigation and the defined location in which individuals

[36] *Mack*, *supra* at para. 74.
[37] *Mack*, *supra* at para. 79.
[38] *Mack*, *supra* at paras. 112-113.

are approached[39]. The imposition of a reasonable suspicion requirement is the procedural protection that provides the court with comfort that the police are investigating ongoing crime, and have not crossed the line into becoming the architects of crime. This threshold strikes the appropriate balance between investigative efficacy and improper police conduct. It is where police instigate crime in the absence of a reasonable suspicion that such criminal activity is already ongoing that the state conduct in attempting to prosecute that individual becomes abusive, and warrants the court staying the proceedings to preserve the integrity of its process.

24. Reasonable suspicion that criminal activity is occurring in a particular geographic location only arises where there is a credible basis to believe that such activity is occurring within the defined area[40]. It cannot and should not arise from a single report, particularly when that tip is anonymous or from an untested informant. For instance, if the police received a single tip (of unknown reliability) that someone was selling cocaine on the front lawn of the Supreme Court of Canada, they would not be permitted to randomly approach people in an undercover capacity on the lawn and engage them in a conversation to test the waters as to whether they would be prepared to sell cocaine. There would be neither individualized suspicion nor a "particular location[41]" for which it could be "reasonably suspected" that drug trafficking was occurring. Doing so would constitute entrapment warranting a stay of proceedings. Legitimizing these investigative tactics on such thin premises would be abhorrent to Canadians, because they would obliterate the sense of freedom that Canadians enjoy to occupy and traverse public places free from arbitrary state interference. It would also be contrary to the community's sense of fairness and decency to allow the police to test a random person's ability to refuse the opportunity to commit a criminal offence. That is why the police conduct will only be tolerated if they are engaged in a true *bona fide* inquiry based on reasonable suspicion of ongoing criminal activity.

25. Because the *bona fide* exception is not based on individualized suspicion, but rather geographical or spatial suspicion (the "chat room", a telephone number, the front lawn of the Court house), the Appellant submits that the threshold for what the police must establish before

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[39] *Barnes, supra* at 463.
[40] *Barnes, supra* at 461-462.
[41] *Mack, supra* at para 113.

randomly targeting occupants ought to be higher than where there is individualized suspicion. This is so because there is a greater possibility that a person present in a physical or virtual location may in fact not be engaged in the criminal activities that the location is known to facilitate. The person may in fact be in the wrong place at the wrong time[42]. Additionally, police can target and approach a significantly greater number of people, increasing the intrusive nature of the investigation. Thus, even several tips that drug dealing was occurring on the Supreme Court's front lawn ought not justify the police in randomly offering individuals otherwise going about their business in that place the opportunity to traffic in drugs.[43] Instead, to justify such conduct, there must be an enhanced suspicion tantamount to "reasonable and probable grounds" to believe that the location is being used largely to facilitate illegal transactions.

B. THE EXISTING ENTRAPMENT DOCTRINE AND ITS LOGICAL EXTENSION TO VIRTUAL SPACES

26. The rationale underlying the entrapment doctrine does not vanish simply because the alleged offence occurs over the phone or in some other virtual space rather than person-to-person. The Court of Appeal's approach in this case virtually immunizes police conduct in investigating "dial-a-dope" schemes from judicial review. In fact, some judicial commentary seems to suggest that there is no need in this context for the protection the entrapment doctrine affords. For instance, in *Le*, Bennett J.A. decried the focus on the language employed by officers as deviating from the principle underlying the doctrine in *Mack*[44]:

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[42] See *R. v. Moore & Anor* [2013] EWCA Crim 85 at paras 52-56 summarizing D. Ormerod, *Recent Developments in Entrapment* [2006] Covert Policing Review 65.

[43] Recall that in *R. v. Barnes*, the information that the police had in relation to Granville Mall was as follows:

> (a) Of the 2,294 persons charged with drug offences, approximately 22% were from incidents in the Granville Mall area;
>
> (b) 506 arrests were made on the mall resulting in 659 charges -- 289 for trafficking, 199 for possession for the purpose of trafficking;
>
> (c) 315 arrests were made in "buy and bust" operations resulting in 475 charges.

[44] *Le, supra* at para. 95.

> [95] Objectively speaking, innocent and otherwise law-abiding individuals would not be "manipulated" or tempted to enter the dangerous and illicit drug trade if asked by a stranger over the phone to sell him drugs. It defies common sense to suggest that asking whether an individual is willing to sell specific types, quantities or values of illicit drugs runs the "serious unnecessary risk" that an otherwise innocent person would then go out, procure the drugs, meet with and sell them to a stranger[45]

27. This argument strays perilously close to the "predisposition" formulation of the doctrine that has flourished in the United States[46], but was rejected by Lamer J. (as he then was) in *Mack*, after a thorough review of the American jurisprudence:

> the test for entrapment cannot be safely based on the assumption that a predisposed person can never be responding to police conduct in the same way a non-predisposed person could be. It is always possible that, notwithstanding a person's predisposition, in the particular case it is the conduct of the police which has led the accused into the commission of a crime.
>
> Those who argue for an inquiry into predisposition, and thereby deny the availability of an allegation of police misconduct, ignore this possibility. I am unwilling to do so. Obviously it is difficult to determine exactly what caused the accused's actions, but given that the focus is not the accused's state of mind but rather the conduct of the police, I think it is sufficient for the accused to demonstrate that, viewed objectively, the police conduct is improper. To justify police entrapment techniques on the ground that they were directed at a predisposed individual is to permit unequal treatment.[47]

28. Police dial-a-dope operations do not pose any less risk of ensnaring individuals who would otherwise not have committed criminal activity. Diluting the reach of the entrapment doctrine to accommodate the circumstances of this case limits the ability of the judiciary to properly scrutinize police conduct. Unnecessary restriction of the entrapment doctrine is particularly problematic given that racialized and other disenfranchised people are disproportionately subject to such techniques and there is a greater risk of systemic or subconscious bias affecting policing decisions. As Professor Tanovich persuasively argues:

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[45] This dictum was approved of by Justice Himel in the concurrence in the court below and has been adopted in a number of other cases: *R. v. Ghotra*, 2016 ONSC 5675 at paras. 31-32; *R. v. Shier*, 2018 ONSC 2425 at para. 12; *R. v. Nuttall*, 2016 BCSC 1404 at para. 569; *R. v. Henneh*, [2017] O.J. No. 7173 (S.C.J.) at para. 20 ["*Henneh*"].

[46] See *Sorrells v. United States*, 287 US 435, 53 S. Ct. 210 (1932).

[47] *Mack*, *supra* at paras. 109-110.

> Allowing the police to target areas to facilitate drug crime [or a phone number on the basis of the Court of Appeal decision], in an apparent effort to defeat it, has the potential to harass, tempt, and ultimately engulf countless individuals in the criminal justice system. In addition, being poor and racialized makes it more likely you will be harassed and tempted as the "war on drugs" has a disproportionate impact on poor and racialized communities. Judicial control and *Charter* scrutiny of putative entrapment techniques that contain 'the potential for abuse inherent in such low-visibility exercise of discretionary power' is therefore, essential to protect against overreaching and discriminatory policing.[48]

29. This is no less true in the context of "dial-a-dope" investigations or investigations in other virtual spaces or locations. While it may be unlikely that someone who had never been involved with the drug trade would seize upon the unexpected opportunity to deal drugs, this does not mean that the police "dial-a-dope" investigations inevitably capture operating drug dealers. They also risk ensnaring vulnerable or disadvantaged individuals. Individuals, for instance, who may once have participated in the drug trade but have since escaped and are trying to live a law-abiding life. Such individuals may be particularly susceptible to sophisticated police investigative techniques – burdened with a criminal record, dim or non-existent employment prospects, trapped in poverty[49], but with connections in the drug world from their prior life, a person receiving a call to purchase drugs may not be able to afford to turn down the opportunity to make easy money by selling drugs at the instigation of the police[50]. Similarly, someone who has never participated in, but by virtue of their socio-economic and geographic circumstances is acquainted with, the drug trade may also be unable to resist the temptation to obtain drugs from their neighbours or acquaintances in order to complete a sale for easy money to make ends meet. So too, the recovering drug addict in a fight to maintain sobriety may not have the wherewithal to refrain from the opportunity to make a quick buck or score some product to feed a habit if they are unexpectedly provided with the opportunity to do so by way of a random phone call. The doctrine does not protect the sophisticated, well-grounded, assured and steadfast in our communities. The doctrine protects the vulnerable, those who struggle, the disenfranchised and the weak. The scenarios above may not be commonplace, but they illustrate why the entrapment

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[48] D. Tanovich, "Rethinking the *bona fides* of entrapment" (2011) 43:2 U.B.C. Law Review 417 citing Iacobucci J. in *R. v. Mann* 2003 SCC 52 at para 18 in the context of street-level police encounters.

[49] This Court recently recognized the difficulty such individuals face in *R. v. Boudreault*, 2018 SCC 58.

[50] See e.g. *R. v. Clarke*, 2018 ONCJ 263 at para. 21.

doctrine continues to offer meaningful protection in relation to virtual spaces in the same way as it does in relation to physical locations.

30. Recognizing that the doctrine of entrapment applies to virtual locations will not "gut" the ability of the police to pro-actively investigate internet based crimes in relation to drug activity or otherwise (particularly child exploitation which is particularly concerning)[51]. If there is a legitimate basis to suspect that a particular chat room, user group, Facebook group or other virtual location is being used for the purpose of child exploitation offences and criminal activity is likely occurring therein there would be nothing preventing the police, engaged in a *bona fide* inquiry, from canvassing whether users in the space would engage in criminal activity[52]. The entrapment doctrine would, however, prohibit the police from sending out mass emails, making robo-calls, posing as consumers of illicit product with messages to multiple Facebook pages or engaging in other indiscriminate investigative activities to see if they could snare a criminal.

C. APPLYING THE ENTRAPMENT DOCTRINE IN THE CONTEXT OF "DIAL-A-DOPE" INVESTIGATIONS

31. Applied properly, the entrapment doctrine developed in *Mack* and *Barnes* is sufficiently flexible to apply to phone numbers and other digital spaces that are analogous to confined geographic locations without modification. The decision of the Court below however,

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[51] *R. v. Levigne* 2010 SCC 25; *R. v. Legare* 2009 SCC 56.

[52] *R. v. Chiang* 2012 BCCA 85 is another example where there was a "credibly based belief" that a virtual location was associated with illegal activities thereby warranting targeting potential criminals using a Craigslist advertisement. See also the decision of the England and Wales Court of Appeal in *R. v. T.L.*, [2018] EWCA Crim 1821 where the Court recognized at para 36 that:

> …The police might well proceed on an intelligence led basis. That would involve more sophisticated evaluation of the intelligence, but to do so would not be objectionable. If they had then engaged in just the same way as did Mr U [a civilian] their conduct would not have supported a stay for abuse. On the contrary, this would have been an example of the type of investigation of potentially serious criminal activity where the absence of suspicion of an individual, but intelligence to suggest that a dating site was being used for criminal purposes, would provide a proper basis for targeting that site. Of course, great care would need to be taken to do no more than give an opportunity for others to commit offences, but that is what Mr U did.

significantly diminishes the threshold for embarking on a *bona fide* inquiry in the context of dial-a-dope investigations vis-a-vis investigations of geographic locations. As argued above, no court could countenance the police offering opportunities to commit offences to random people who happen to be in a geographic location on the basis of a single tip. Yet in the analysis of the majority below, a single tip of unknown reliability in relation to the mobile phone number allowed the police officer to call that number and randomly canvass whether the person who answered would sell them drugs. Properly analogizing a phone number to a geographic location would require the police to have numerous tips about the same phone number or to have conducted an independent investigation into the reliability of the information provided by the tip. Courts have repeatedly concluded that a single unsubstantiated tip does not furnish the police with reasonable suspicion that an *individual* is committing a criminal activity.[53] A single tip, without more, should certainly not suffice to launch a *bona fide* inquiry.

32. Despite this, some lower courts appear to treat the *bona fide* exception as equivalent to a finding that the police are not acting in bad faith. In *R. v. Henneh*, for instance, the court held that entrapment was not made out where the police offered the accused an opportunity to traffic in drugs without individualized reasonable suspicion because the police were neither engaged in random virtue testing nor acting in bad faith.[54] Similarly, in *R. v. Henry-Osbourne*, the court concluded that *Mack* stood for the proposition that:

> an opportunity to offend may properly be extended to the target of a *bona fide* investigation if it is in the course of and for the purposes of the investigation whether the information in the possession of the police at the time of the offer rises to a reasonable suspicion or is only at the level of a 'mere' suspicion.[55]

Respectfully, this approach conflates a *bona fide* inquiry with police good faith, and ignores the requirement for reasonable suspicion that criminal activity is occurring in the particular area.

33. This expansion of the *bona fide* inquiry exception set out in these cases, and adopted by the Court of Appeal in this case dilutes the entrapment doctrine to such an extent that it no longer

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[53] See e.g. *R. v. Gladue*, 2012 ABCA 143, leave to appeal ref'd [2012] S.C.C.A. No. 305 at para. 11 ["*Gladue*"]; *R. v. Stubbs*, 2012 ONSC 1882 at para. 8; *R. v. Silverthorn*, 2012 ONSC 6784 at para. 2; *R. v. Olazo*, 2012 BCCA 59 at para. 29.
[54] *Henneh, supra* at paras. 14-20.
[55] *R. v. Henry-Osbourne*, [2017] O.J. No. 5779 (S.C.J.) at para. 27.

protects individuals at all. The "exception" is no longer exceptional. Because of the lower court's decision in this case, the police in Ontario are now free to offer a limitless number of unknown persons who happen to answer the phone the opportunity to commit a criminal offence through this wide scale random virtue testing. The entrapment doctrine so applied has been neutered so as to be unrecognizable and does nothing to prevent the abuse of state power it aims to curb. The purported "law enforcement" necessity justification for modifying the entrapment doctrine in the "dial-a-dope" context is not persuasive.

34. In the Appellant's view, the proper approach to applying the entrapment doctrine in the context of "dial-a-dope" investigations is illustrated by the British Columbia Court of Appeal in *R. v. Swan*, and it conflicts with the approach of the majority in the Court below. In *Swan*, the police compiled a list of telephone numbers associated with drug dealing through sources like anonymous tips, and then began calling the numbers at random and offering those individuals the opportunity to sell drugs. The Court held that this behavior did not constitute a *bona fide* inquiry because the police proceeded

> armed only with mere suspicion and the hope that their unknown targets will provide the 'something more' which was a necessary precursor to the invitation to traffic in drugs. They pursued their investigative goals in circumstances where more information was, or could have been, available to them, but which they chose to disregard for reasons of expediency.[56]

Contrary to the later distinction by a different panel of the same court in the *Le* case,[57] which was relied upon by the majority in the Court below, it was not the fact that the police made hundreds of random calls that established entrapment, but the fact that the police made calls to individuals on the list based only on bare, uncorroborated tips. The frequency of the calls was not the issue. It was the randomness and lack of investigation associated with each individual call. The Alberta Court of Appeal made the same point in *R. v. Gladue*: "[a]ssuming, without deciding, that a phone can be equated to a specific physical location, the requirement for a reasonable suspicion must still be met."[58] The Court of Appeal in *Gladue* properly concluded that a single uncorroborated tip about a phone number fell short of the threshold for embarking upon a *bona*

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[56] *R. v. Swan*, 2009 BCCA 142 at para. 143 ["*Swan*"].
[57] *Le*, *supra* at para. 96.
[58] *Gladue*, *supra* at para. 12.

fide inquiry. As a different panel of the same court later observed in *R. v. Pucci*, dismissing a Crown application to reconsider the reasoning in *Gladue*[59]:

> [11] Under the principles in *Gladue*, the police cannot elide the reasonable suspicion requirement within what otherwise may well be a legitimate preliminary investigation. It may be that the police will need to make a second call to verify what the first call suggested, a circumstantial evidence phenomenon raised by Fish J in *R v Baldree*, 2013 SCC 35 (CanLII) at paras 71 to 72, [2013] 2 SCR 520. It may be that the police will have to do other inquiries or checking about the phone number or any named target. It may be that the original informer or some other source will have provided a constellation of details which can be checked as to whether they give rise to a 'locational' reasonable suspicion. Other alternatives can be imagined.
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> [12] The reasonable suspicion requirement set out in *Imoro* as applied in *Gladue* is not a heavy price to pay to uphold the relevant aspects of the rule of law in this province. There is no plain defect in the decision in *Gladue*.

35. As the Court in *Pucci* recognized, the existing framework does not place law enforcement in any unnecessary straitjacket in investigating this sort of criminal activity. The police, upon receiving a tip that a phone number is being used to sell drugs, may proceed in one of two ways.

1. Attempt to Develop Reasonable Suspicion that the Individual is Engaged in Drug Dealing

36. First, they may simply call the number, and attempt, through the course of the conversation, to ascertain whether or not there is reasonable suspicion that the individual on the other end of the line is engaged in dealing drugs. A request for a quantity or type of drug is properly characterized as the opportunity to commit the offence, because an affirmative response would constitute a meeting of the minds in this context, and would arguably make out a criminal offence. Distinguishing between an investigative step and offering an opportunity to commit a crime is not as difficult as some courts have made it out to be[60]. Cases have repeatedly found that the opportunity arises upon a request to purchase a quantity or type of drug. Thus, for instance, statements such as "I need 40"[61], "I need six greens"[62], and "half a B"[63] all constitute

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[59] *R. v. Pucci*, 2018 ABCA 149 at paras. 11-12.
[60] The distinction was first identified in *R. v. Townsend*, [1997] O.J. No. 6516 (Gen. Div.), and was implicitly approved by this court in *R. v. Imoro*, 2010 ONCA 122, aff'd 2010 SCC 50.
[61] *R. v. Marino-Montero*, [2012] O.J. No. 1287.
[62] *R. v. Izzard*, [2012] O.J. No. 2516.
[63] *R. v. Arriagada*, [2008] O.J. No. 5791.

opportunities. As Justice Trotter (as he then was) explained in the trial-level decision in the companion case of *Williams*:

> The distinction between statements such as "I need product"/"Can you hook me up?"/ "Are you around?" /"Where are you?"[4], on the one hand, and "I need 80" /"I need 40" /"I need 6 greens"/"I need half a B", on the other, might appear quite subtle. However, the latter statements, involving requests to purchase a specific quantity of drugs, are more definite and less exploratory. With the former, the possibility of a deal still needs to be explored and developed; with the latter, all the accused needs to say is say "yes." That is what happened in this case. That is where the line appears to be currently drawn.[64]

37. This distinction provides reasonable guidance to the police without unnecessarily constraining their participation in the conversation or rendering it formulaic. In any drug transaction, a purchaser will at some point have to convey the quantity of drugs that he or she wishes to purchase. The police may phrase the request in whatever fashion they so desire, but they must be aware that when they request a specific quantity or type of drug, they have offered their interlocutor an opportunity to commit a criminal offence. Drawing the line where Justice Trotter identified it provides the police with a clear and workable framework.

38. Prior to making any request to purchase a concrete quantity or type of drug therefore, an officer's reasonable suspicion that the individual is engaged in drug dealing ought to have crystallized. Reasonable suspicion must be based on responses that make it more likely that the individual is engaged in criminal activity. Affirmative responses to neutral questions cannot furnish police with reasonable suspicion. As Justice Karakatsanis held in *R. v. Chehil*, "characteristics that apply broadly to innocent people are insufficient, as they are markers only of generalized suspicion. The same is true of factors that may 'go both ways', such as an individual's making or failing to make eye contact."[65] Thus, affirmative responses to generic questions such as "can you help me out?", "are you working?" should not be sufficient on their own to ground reasonable suspicion. The response "what do you need?" to the question "can you help me out?" may just as reasonably come from the mouth of a mechanic, a plumber, or even a lawyer, as from that of a drug dealer. As the B.C. Court of Appeal recognized in *Swan*, the question "are you working" and an affirmative response "were readily susceptible to a perfectly

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[64] *R. v. Williams*, 2014 ONSC 2370 at para. 27. See also *R. v. Gould*, 2016 ONSC 4069 at para. 18.

[65] *R. v. Chehil*, 2013 SCC 49 at para. 27.

innocent characterization…such a question and answer cannot be viewed as having an inherent, or even likely, drug connotation."[66] Courts must be cautious not to unduly expand the ambit of what may be drug-coded language on the basis of bare assertions of officers who have not been qualified as experts.

39. Again, the Appellant rejects any notion that this unnecessarily confines the police in their interactions with a potential drug dealer. The police conversation ought to be aimed at confirming information from the tip they received. To the extent that such information is confirmed, it provides the objectively verifiable foundation for the officer's reasonable suspicion. The police can embark on these conversations in any number of ways. There is no reason to think that requiring the police to ask questions that are not susceptible of innocent explanations will unduly hamper their investigations.

40. Some courts have raised concerns with the necessary focus on the language used. In *Le*, for instance, the Court commented that "[p]arsing the language of undercover drugs calls in dial-a-dope investigations in this way takes an unnecessarily narrow approach"[67], a concern echoed by Justice Himel in the Court below in her concurrence. These concerns are not warranted. Language matters. It is the primary medium of encounters between law enforcement and its citizens and the characterization of these encounters must necessarily turn on the language employed. For instance, whether an individual is detained or not may legitimately depend on subtle variations in an officer's phrasing. Abjuring a rigorous focus on how the conversation between the officer and accused proceeded is tantamount to removing such interactions from under the umbrella of the entrapment protection entirely. If courts are not to parse the language used in the encounter, how can they exercise any degree of judicial review into whether the police crossed the line? The answer is they cannot.

2. Attempt to Develop Reasonable Suspicion that the Phone Number is being Used for Drug Dealing

41. Second, the police can proceed by doing further investigation into the tip. Is the informant reliable? Have there been other reports that this phone number is being used to

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[66] *Swan*, *supra* at para. 28.
[67] *Le*, *supra* at para. 93.

purchase drugs? If a name is given, do the police have intelligence regarding a dealer who goes by that name? If further information is available, it may provide an independent basis to suspect that the phone line is being used to facilitate the trafficking of drugs. If further information is unavailable, then the police are not prohibited from investigating the tip. They must simply attempt to develop an independent basis for suspicion that the person on the other end of the line is engaged in drug-dealing activity in line with the approach described above. What the courts must not allow is for police officers who have failed to develop individualized reasonable suspicion to hide behind the *bona fide* inquiry as a refuge for poor police work. A *bona fide* inquiry exists as an exception and alternative to developing individualized reasonable suspicion where the police need to investigate a high-crime area, not as a backup plan when the officer has attempted, but failed, to find grounds to reasonably suspect the individual of drug-dealing.

42. In the Court below, the majority reasoned that information obtained during the call that could not be used to support a reasonable suspicion of the Appellant himself could nevertheless support a reasonable suspicion that the phone line itself was being used to facilitate drug trafficking. The Appellant respectfully submits that this approach is neither logical nor practical. For example, as Justice Himel pointed out in her concurrence, it is difficult to understand how the response "what do you need?" supports a reasonable suspicion that the phone line itself is being used for drug trafficking but not that the person uttering those words is engaged in the drug trade. While the Appellant does not agree with Justice Himel (or the majority) that this response constitutes "coded language", her criticism is a cogent one. While it is possible that one could contemplate situations where confirmation of a piece of information implicates the phone line but not the individual, the Appellant submits that, in general, police must have acquired the reasonable suspicion that the phone line is being used for drug trafficking *before* calling the number in order to come within the *bona fide* inquiry exception. The police should not be entitled to bootstrap a *bona fide* inquiry retrospectively where they were not otherwise engaged in one.

D. THE POLICE ENTRAPPED THE APPELLANT

43. The Appellant submits that in the case at bar, D.C. Limsiaco had neither a reasonable suspicion that the Appellant himself was dealing drugs at the moment he requested "two soft"

from the Appellant, nor a reasonable suspicion that the phone line itself was being used for drug dealing.

44. As the majority properly concluded, the responses to D.C. Limsiaco's initial questions did not amount to a reasonable suspicion vis-à-vis the Appellant. D.C. Limsiaco received the tip from a fellow officer. He had no knowledge about the informant, and made no inquiries into his or her reliability. He possessed only three pieces of information: a name ("Romeo"); a phone number; and, the information that he could purchase cocaine by calling this number. The officer called the number and asked two questions before making a request to purchase "two soft". First, he informed the person who answered that somebody named Matt had told him to call, and asked whether he was speaking to Romeo. As the majority recognized, the Appellant did not confirm that he was Romeo, responding only "he did, did he?". D.C. Limsiaco then asked a very generic question – whether he could "help him out". The response was direct: "what do you need?" In the Appellant's submission, it strains credulity to suggest that this exchange constituted any sort of coded language unique to the drug trade[68]. Words such as "help" and "need" would not be out of place in many exchanges between a service provider, and someone wishing to make use of that service. The innocuous response, taken in conjunction with the failure to confirm the identity of the individual, cannot possibly have added to the officer's grounds for suspicion. D.C. Limsiaco himself acknowledged that nothing in the phone call added to his grounds before he made the request to purchase drugs[69]. As such, D.C. Limsiaco proffered the opportunity to sell drugs without any reasonable suspicion. The police conduct does not meet the threshold of the first branch of entrapment.

45. This conclusion is supported by appellate case law. In *Gladue*, for example, the police received a tip from a first-time informant with a criminal record that a phone number was being used in a "dial-a-dope" scheme. Much like in the case at bar, the officer called the number without further investigation, inquired of the accused whether he was "working" or "rolling", and in response to the accused asking what the officer wanted, arranged a drug purchase. The Court of Appeal held that an affirmative response to the question of whether the accused was

[68] D.C. Limsiaco agreed with the suggestion that this question and answer could have non-drug related meanings, Transcript of Entrapment Application at p. 18 [A.R. Vol. II, p. 155].

[69] Transcript of Entrapment Application at p. 21 [A.R. Vol. II, p. 158].

"working" or "rolling" was insufficient "to elevate the circumstances beyond mere suspicion"[70]. It is no different in this case.

46. The police cannot take refuge in the *bona fide* exception in the circumstances of this case. The officer himself never once testified that he believed himself to be engaged in a *bona fide* investigation, nor did the Crown rely on this branch at trial. The Crown raised the issue for the first time on appeal at the Court of Appeal for Ontario. It was not raised at trial for good reason, as there was no suggestion that the police had information that a mobile number was being used as part of a large scale "dial-a-dope" investigation at all. The phrase "dial-a-dope" does not appear once in the trial judge's entrapment ruling, in the reasons for judgment or the reasons for sentence. The police were investigating a purported drug dealer named Romeo and had a contact number for him – nothing more. There was not an iota of evidence that the number was being used as part of a commercial operation involving multiple drug transactions. The lower Court's conclusion at paragraph 56 and following of their judgment that expanding the *bona fide* inquiry exception was necessary given the problems and difficulties investigating purported "dial-a-dope" investigations was not grounded in any evidence. The investigative necessity rationale in relation to "dial-a-dope" investigations which was relied upon by the Court to anchor their conclusions did not even arise on this record. There was no basis upon which the police could reasonably suspect that the number in this case was such a phone number. The police acted on a single tip in relation to the phone number that they contacted. There was no evidence that police believed the phone number to be involved in multiple drug transactions apart from the single tip that the police had received.

E. CONCLUSION

47. The entrapment doctrine, as summarized in *Mack*, is not being applied properly or consistently by lower courts. The decision in the Court below represents a considerable expansion of the *bona fide* inquiry exception to the entrapment doctrine. It undermines the balance struck in *Mack* between effective police investigation and the risk that the state becomes

[70] *Gladue, supra* at para. 11.

the architect of crime that ensnares otherwise law-abiding citizens, at great cost to their liberty. Criminals are industrious. The police must keep up with the new techniques and tools being utilized by criminals to commit offences. There is no question that the digital world creates a challenge when applying existing common law or constitutional concepts to police conduct. But as this Court has demonstrated, it can be done[71]. And, importantly, the fact that crimes may now be committed, facilitated or communicated in different ways using technology that was never contemplated is not a stand-alone justification for gutting fundamental rights. The overarching goal of allowing the state to investigate, suppress and prosecute crimes to protect law abiding people, cannot justify permitting state actors to do so by any means necessary. The entrapment doctrine properly circumscribes state conduct accordingly. It does not need to be abolished or overhauled. It simply needs to be reinvigorated and adapted to the modern digital world in a way that ensures the police are not in fact creating crimes that would otherwise not be committed.

PART IV – SUBMISSION REGARDING COSTS

48. The Appellant does not ask for costs, and requests that no costs be awarded against him.

PART V – ORDER REQUESTED

49. The Appellant respectfully requests that this Court grant the appeal and enter a stay of proceedings.

PART VI – SUBMISSIONS ON CASE SENSITIVITY

50. Not applicable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of March, 2019

Michael W. Lacy
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[71] See e.g. *R. v. Marakah*, 2017 SCC 59, *R. v. Vu*, 2013 SCC 60, *R. v. Fearon*, 2014 SCC 77.

PART VI – TABLE OF AUTHORITIES

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D. Tanovich, "Rethinking the *bona fides* of entrapment" (2011) 43:2 U.B.C. Law Review 417	28

STATUTORY PROVISIONS

No statutory provisions were relied upon.