No. 126705

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. SHANE LEWIS, Defendant-Appellee.	)	Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-17-0900 There on Appeal from the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois, No. 15 CF 44 The Honorable Linda S. Abrahamson, Judge Presiding.

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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NATURE OF THE ACTION

The People appeal from the judgment of the Illinois Appellate Court, Second District, which reversed defendant's convictions for involuntary sexual servitude of a minor and traveling to meet a minor on the ground that defendant's trial counsel rendered ineffective assistance in presenting defendant's entrapment defense.

ISSUES PRESENTED FOR REVIEW

1. Whether counsel's alleged errors were nonprejudicial where the evidence overwhelmingly rebutted defendant's entrapment defense.

2. Whether trial counsel competently presented defendant's entrapment defense.

JURISDICTION

This Court allowed the People's petition for leave to appeal on March 24, 2021. Jurisdiction thus lies under Supreme Court Rules 315 and 612(b).

STATUTE INVOLVED

Section 7-12 of the Criminal Code of 2012, entitled "Entrapment," provides:

> A person is not guilty of an offense if his or her conduct is incited or induced by a public officer or employee, or agent of either, for the purpose of obtaining evidence for the prosecution of that person. However, this Section is inapplicable if the person was pre-disposed to commit the offense and the public officer or employee, or agent of either, merely affords to that person the opportunity or facility for committing an offense.

720 ILCS 5/7-12.

STATEMENT OF FACTS

A. Defendant Is Convicted of Several Sex Offenses After Being Caught in an Undercover Sting Operation.

To confront the growing scourge of juvenile prostitution and child sex trafficking, the Aurora Police Department and the United States Department of Homeland Security — led respectively by Investigator Erik Swastek and Special Agent Geoffrey Howard — launched a joint undercover sting operation in early 2015 to catch individuals attempting to have sex with minors. R332-36, 370-72.[1] Defendant was caught in the sting and was charged with involuntary sexual servitude of a minor (720 ILCS 5/10-9(c)(2) (2014)), traveling to meet a minor (720 ILCS 5/11-26(a) (2014)), and grooming (720 ILCS 5/11-25(a) (2014)).

The operation involved posting an advertisement for an escort on Backpage.com (Backpage) with a phone number for potential customers to send a text message in response. R335-36. Backpage hosted ads for various goods and services and included a section dedicated to "adult services," including "escort services." *Id.* It featured "an extensive amount of ads" for prostitution, including ads "that involve[d] underage women." R336.[2]

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[1] "C," "R," "E," "Peo. Exh.," and "A" refer, respectively, to the common law record, the report of proceedings, the consecutively paginated volume of exhibits in the electronic record, the People's exhibits found only in the physical record, and this brief's appendix.

[2] Federal authorities shut down Backpage in April 2018, after it was "repeatedly accused of enabling prostitution and sex trafficking of minors." Charlie Savage and Timothy Williams, *U.S. Seizes Backpage.com, a Site*

Before posting the ad, agents reserved adjoining rooms at a hotel in Aurora. R339-40. In the "target room," an undercover agent portrayed a mother who was offering her 14- and 15-year-old daughters for sex. R340-41, 669. In the "control room," several agents (portraying the same fictional mother) were on hand to reply to text messages received in response to the ad. R340-41, 385-86, 619. Other agents in the control room monitored surveillance cameras set up in the hallway and the target room. R341-43.

The operation went live on January 8, 2015. That afternoon, Investigator Swastek posted an ad in the adult services section of Backpage. R375. The ad was titled "young warm and ready :) - 18." E5. The body of the ad read:

> its ssooooooo cold outside, come warm up with a hot little co
> ed. Im young, eager to please and more than willing to meet all
> your desires. come keep me warm and I promise to return the
> favor :O:):) ask about my two for one special
> text me at [phone number]
> 100 donation for hh
> 150 donation full hour
>
> Poster's age: 18

Id.[3] Next to the ad's text was a photograph of a female wearing cut-off jean shorts and a midriff-baring top, with her face cropped out. E5.

Accused of Enabling Prostitution, New York Times, Apr. 7, 2018, https://www.nytimes.com/2018/04/07/us/politics/backpage-prostitution-classified.html.

[3] When posting the ad, Investigator Swastek inserted the number 18 into a box labeled "poster's age." Backpage then automatically generated the "-18" in the ad's title. R600-01.

Although the operation was targeted at individuals seeking sex with minors, Investigator Swastek listed the poster's age as 18 because anything younger would have caused the ad to be flagged and blocked. R376. Swastek used a photograph of a woman in her early 20s, rather than a girl who was clearly under 18, for the same reason. R567-68. Swastek explained that, in an earlier interview with a prostitute he had arrested, he learned there was "a good chance" that Backpage ads ostensibly for 18-year-old women actually involved underage girls. R377.

At 10:02 p.m., defendant sent a text message to the phone number listed in the ad. R386-88. He then had the following exchange with Special Agent Spencer Taub, one of the undercover agents in the control room. R621.

Defendant 10:02 p.m.	Hey looking to get warm
Taub 10:03 p.m.	hey - my girls could use some warming up 2 ;)
Defendant 10:05 p.m.	What's up with 2 girl. I only see pic of one ?
Taub 10:06 p.m.	no can't post pix of my daughters, 2 risky
Defendant 10:06 p.m.	Haha. Well what's the 2 girl special ? And do u serve downers grove
Taub 10:07 p.m.	no we r in aurora. infall only[4]

[4] Taub testified that "infall" was a typographical error; she meant to type "incall." R630.

Defendant 10:08 p.m.	Well it's not to far from me but to come out in this weather I would have to know what they look like. U don't have to post a pic. U can text some
Taub 10:09 p.m.	200 for 2 grls
Defendant 10:10 p.m.	That's fine but I need to know what they look like
Taub 10:11 p.m.	the 14 yrs is blond and 15 yrs is brunet - both r in sports
Defendant 10:12 p.m.	wtf??[5] Not interested in minors. You crazy?
Defendant 10:12 p.m.	I'm 32
Defendant 10:13 p.m.	18 is good but nothing under that too risky !!
Taub 10:14 p.m.	as long as u r gentle and treat my girls good
Taub 10:14 p.m.	i'm here to protect my grls
Defendant 10:14 p.m.	Are you a female ?
Defendant 10:15 p.m.	Are u affiliated with the law or something ?
Taub 10:15 p.m.	yes
Defendant 10:15 p.m.	Yes your with the law

[5] Taub testified that she understood "wtf" to mean "[w]hat the fuck." R631.

Taub 10:15 p.m.	ummm... no... r u?
Defendant 10:16 p.m.	No.
Defendant 10:16 p.m.	Are u affiliated with the law. I want to make this question clear. Please answer in your next text
Defendant 10:16 p.m.	I am not!!
Defendant 10:17 p.m.	What if I just see u. Since your above 18
Taub 10:17 p.m.	no - wat r u talking about? r u a cop? ur txt sounds like u r
Defendant 10:18 p.m.	No im not ! But why wud u advertise their age when u know that's illegal under 18.
Taub 10:18 p.m.	i said yes to being a female - u txt way 2 fast
Defendant 10:18 p.m.	Haha sorry for fast text.
Taub 10:18 p.m.	because i don't want fricken cops at my fucking door
Defendant 10:19 p.m.	I think naturally they are old enough but the law says they are not.
Taub 10:20 p.m.	i do 2 - my girls want 2 do this
Defendant 10:20 p.m.	Send me a pic
Taub 10:20 p.m.	i won't put them into sum thing they don't wanna do

Defendant 10:22 p.m.	Ok where u at
Taub 10:22 p.m.	haha my txts are cumin in so fucked up
Taub 10:24 p.m.	im in aurora
Defendant 10:24 p.m.	Where you at. I'll come only if your there watching
Defendant 10:25 p.m.	I know aurora. Where at ?
Taub 10:25 p.m.	yea - i'll watch - u b 2 ruf on my girls i'll kick ur ass.
Taub 10:25 p.m.	which one u want? 14 yr or 15, or both? both is 200?
Defendant 10:26 p.m.	What about u how muck for u
Taub 10:26 p.m.	not a ?... both is 200.
Defendant 10:26 p.m.	How much for all 3 of u
Taub 10:26 p.m.	i'm not in hun
Defendant 10:27 p.m.	U sure this is safe ?
Defendant 10:27 p.m.	Ok tell me where to come
Taub 10:28 p.m.	what u want?
Defendant 10:28 p.m.	Both

Taub 10:29 p.m.	k 14 yr old is shy - so b gentle. no anal, must wear condom
Defendant 10:29 p.m.	No anal for sure and condom yes
Defendant 10:29 p.m.	If she doesn't want to she doesn't have to
Taub 10:31 p.m.	ok 88 and orchard
Defendant 10:32 p.m.	Hotel ?
Taub 10:32 p.m.	i appreciate that. so just sex? if something else let me tell her
Taub 10:32 p.m.	yes hotel
Defendant 10:33 p.m.	On my way
Taub 10:34 p.m.	ok txt when u r at 88 and orchard
Defendant 10:34 p.m.	I
Defendant 10:34 p.m.	K
Defendant 10:47 p.m.	What's the exit number does it say orchard ?
Taub 10:47 p.m.	its south orchard exit
Defendant 10:48 p.m.	Thanks
Defendant 11:02 p.m.	Ok I'm at exit

Taub 11:03 p.m.	ok - we r at holiday inn txt when u r in lot.
Defendant 11:13 p.m.	K in lot
Taub 11:13 p.m.	k room 311
Defendant 11:16 p.m.	K

E9-12; *see* R626-645.

In the video footage captured by the hallway surveillance camera, Peo. Exh. 1, defendant is seen emerging from the elevator bay at 11:16 p.m. He walks up and down the hallway for several minutes before knocking on the door of the target room at around 11:20 p.m.

Inside the target room, Special Agent Melissa Siffermann posed as the mother of the girls being offered for sex. R670-71. When defendant knocked, she opened the door and invited him in. R672-73. At defendant's trial, Siffermann described him as well dressed and polite but seemingly nervous. R673. An audiovisual recording of their encounter, Peo. Exh. 9, taken from the target room surveillance camera, was played for the jury. R674-78.[6] It captured the following exchange between defendant and Siffermann:

> [Siffermann]: So, um, so you're good, you want the 14 year old and . . .

[6] Because a television in the background was audible on the recording, the People submitted a transcript of the conversation, E20-26, for the jury to use as an aid while listening to the recording, R676-77.

[Defendant]: I'm, I'm a little nervous, the age like, it's not like I'm even in to that, honestly.

[Siffermann]: Ok.

[Defendant]: Um, I didn't have any clue like that when I texted you originally.

[Siffermann]: Ok.

[Defendant]: But I put four or five hits out here, you're the only one to answer me.

[Siffermann]: Ok, ok.

[Defendant]: So I don't, in all honestly I'm very nervous to tell you the truth, like I feel . . .

[Siffermann]: Sure.

[Defendant]: . . . weird about it with them being young like that.

[Siffermann]: Yeah, ok, um.

[Defendant]: (laugh) You know what I mean?

[Siffermann]: Yeah. Well that's . . .

[Defendant]: And I just like.

[Siffermann]: . . . that's why, I like to, I like to meet the guys first just to make sure that they're not . . .

[Defendant]: I don't even know . . .

[Siffermann]: . . . crazy

[Defendant]: . . . like really I just found out, I just like I'm curious, that's why I had to . . .

[Siffermann]: Yeah.

[Defendant]: . . . come by. I think I am more, just nervous, like set up or something, you know what I mean?

[Siffermann]: Yeah, no, I mean . . .

[Defendant]: Like . . .

[Siffermann]: I think it would be too late for that now, you can see me, I'm here, so, everything's fine. I just want to make sure that you're not . . .

[Defendant]: It just makes me nervous, I don't know why . . .

[Siffermann]: Yeah.

[Defendant]: No I'm not, definitely not.

[Siffermann]: Ok, you're not?

[Defendant]: No, just got off work, I'm actually here from Philly.

[Siffermann]: Oh, ok.

[Defendant]: It was just, um, you know, I was worried like I don't do this very often and when you're telling me their ages, I'm like this sounds like they're trying to like lure somebody in . . .

[Siffermann]: Ooooh.

[Defendant]: . . . that likes younger girls.

[Siffermann]: Oh fuck no. Yeah.

[Defendant]: Yeah.

[Siffermann]: I just like to meet everyone first ahead of time just to make sure that they're safe. You know . . .

[Defendant]: And I was thinking that if it was a trap, they would probably advertise on BackPage that it

was younger and you didn't, you know what I mean . . .

[Siffermann]: No.

[Defendant]: (Inaudible)

[Siffermann]: And you have to tell someone if they're a cop and I'm not a cop.

[Defendant]: That's why I asked.

[Siffermann]: And you're not a cop.

[Defendant]: That's why I asked you . . .

[Siffermann]: Yeah, exactly.

[Defendant]: . . . that (inaudible).

[Siffermann]: Cuz otherwise, yeah.

[Defendant]: It's hot in here.

[Siffermann]: Yeah, take your coat off. Relax. So I just want to be sure, um, before ahead of time, like I like to meet everybody, but you know you look like a nice guy so I'm not as worried. You can get some real creeps out there.

[Defendant]: Sure.

[Siffermann]: . . . you know what I mean? Um . . .

[Defendant]: I just wanna get shizzed.[7]

[Siffermann]: Yeah. (laughing) So, I just want to make sure that: no anal[.]

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[7] Siffermann testified that "shizzed" is a combination of "shit and jizzed," meaning to "climax [so] intensely as to defecate yourself." R687. At trial, defendant denied having said the word and asserted that the audio was unclear. R805. For the relevant portion of the recording, *see* Peo. Exh. 9 at 11:21:47 p.m.

[Defendant]: No.

[Siffermann]: Yeah, and condoms.

[Defendant]: Fine.

[Siffermann]: No matter what. Ok. So, um, I'll bring both girls up, do you, do you know ahead of time, like I just want to prepare them, they have a little bit of experience but obviously they're not like, they're not pros. You know what I mean.

[Defendant]: Sure, sure.

[Siffermann]: I mean, they're younger so, did you . . .

[Defendant]: I don't really have much of a plan now I guess I was more just kind of curious and nervous at the same time but um . . .

[Siffermann]: Yeah.

[Defendant]: . . . um, are, I mean we, we can show them the way.

[Siffermann]: Ok, ok.

[Defendant]: You're not weird about that if you're there and I'm like do this or tell them to do that.

[Siffermann]: No, I'm gonna tell them ahead of time and then I'll be close. I, I will be honest with you, I'll be right outside . . . cuz I don't . . . there's only so much I can do you know, cuz, they'll like, you know, one's my stepdaughter and the other girl's my daughter, the 14 year old's my daughter, so, I'm still like, you know, like, so I'll be close by.

[Defendant]: Well I knew you would be here cuz that kind of makes me more nervous cuz I mean I feel like you're going to leave me alone with them too. And then . . .

[Siffermann]: Ok.

[Defendant]: Something's going to happen.

[Siffermann]: Ok, that's fine, that's fine, I mean I can just stay in the bathroom with the door open.

[Defendant]: You know what I'm saying though?

[Siffermann]: Yeah, I see it, yeah, yeah.

[Defendant]: Leave me alone with my pants down and somebody might come in or something.

[Siffermann]: Oh, fuck no, that would be . . . no, no, yeah, um.

[Defendant]: The girls have school tomorrow?

[Siffermann]: Yeah.

[Defendant]: Yeah.

[Siffermann]: Yeah, it's a late start.

[Defendant]: Ok.

[Siffermann]: So, but we'll be gone by, I mean check out's like at noon or something.

[Defendant]: (inaudible)

[Siffermann]: We'll be gone before then. But they have their own routine in the morning anyway, it takes them too long to get ready, and I usually have to clean up the place cuz they're teenagers and they fuckin trash everything you know what I mean?

[Defendant]: You sure they're I mean they're totally cool without the (inaudible)?

[Siffermann]: Yeah, I'm going to call them ahead of time, like it's ok, like I met him, he's not some ugly freak, you know, 'cuz there are some freaks out there and I meet them and I'm like no, sorry pretty much, you know.

[Defendant]: This makes me nervous just saying their ages, like why don't you just tell me they are eighteen and nineteen please. (laughs)

[Siffermann]: Well, yea, (laughs) I, I don't know 'cuz I don't want anyone to be like, you know go, like if I go psycho on me or anything.

[Defendant]: I mean like naturally I think that you know, once a girl has her period she's ready for that kind of thing but . . .

[Siffermann]: Yeah.

[Defendant]: legally, obviously . . .

[Siffermann]: Yeah.

[Defendant]: . . . it's not the right thing (laughs).

[Siffermann]: Yeah, well I just want to make sure that you know, that you're not going to do anything freaky or anything else like that but you know I'll be right in the bathroom then.

[Defendant]: And just like that, just sex, like . . .

[Siffermann]: Ok.

[Defendant]: Like porno sex, just sex.

[Siffermann]: Ok, well you're good, you seem like a good guy.

[Defendant]: I'm a good man, I'm just really nervous so I don't really know . . .

[Siffermann]: Yeah. No.

[Defendant]: . . . so you have to stay here too, I don't like you leaving I feel like someone's . . .

[Siffermann]: Oh, I won't, I won't leave then, I'll just finish brushing my teeth.

[Defendant]: I'm not gonna give any money to them, only to you.

[Siffermann]: Ok, ok.

[Defendant]: (inaudible)

[Siffermann]: Do you have money?

[Defendant]: Yeah.[8]

[Siffermann]: I just want to make sure yeah.

[Siffermann]: Are you here for work?

[Defendant]: Yeah.

[Siffermann]: For like for a week? Cuz we could be here.

[Defendant]: Just until Saturday night.

[Siffermann]: I guess it's cold in Philadelphia too, though.

[Defendant]: It is, not quite this cold but it's still cold yeah.

[Siffermann]: Yeah.

[Defendant]: It was like, it was getting cold when I left there actually so . . .

[Siffermann]: Yeah. Have you been here like through the holidays?

[Defendant]: No, I just got here Tuesday.

[Siffermann]: Oh, ok.

[Siffermann]: Are you staying close by?

[Defendant]: Downers Grove, do you know where that's at?

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[8] At this point, defendant retrieved $200 in cash from his coat pocket, which he placed on a nightstand just outside of camera view. Peo. Exh. 9 at 11:24:21 p.m.; *see also* R673-74.

[Siffermann]: Yeah.

[Defendant]: Not too far.

[Siffermann]: No.

[Defendant]: Twenty minutes or so.

[Siffermann]: Ok.

[Defendant]: You from here?

[Siffermann]: Yeah, South Side. I've been to Philadelphia, I tried all the cheese cake, it's ok. Ok, I'm just gonna tell them it's fine. Ok, I'm just gonna brush my teeth. I'll be right here.

[Defendant]: All right, all right.

E20-26.

At that point, around 11:25 p.m., Siffermann entered the bathroom and closed the door behind her. Peo. Exh. 9; *see* R674. Seconds later, an arrest team entered the room and detained defendant. Peo. Exh. 9. As agents handcuffed him, defendant stated: "I told her I didn't want anything to do with younger, young, young, that's what I told her." Peo. Exh. 9 at 11:25:42 p.m.; E26.

When defendant was searched following his arrest, agents recovered his cell phone, a box of condoms, and cash. R392-93; *see also* R395, R779. Agents also found an iPad in defendant's car. R573. Defendant was then transported to the police station, where he was interviewed by Investigator Greg Christoffel. R691-93. After waiving his *Miranda* rights, E27, R693-96, defendant stated that he was in town for work and was feeling lonely, so he

responded to three or four Backpage ads, which he had never done before, R697. He stated that he received a text message "from a female that he believed to be the mother of a 14- and 15-year-old female [*sic*] that were available for intercourse." *Id.* He said he was initially in disbelief and thought "it was a typo" but continued to respond out of "curiosity." R697-98. He said he had no intention of having sex with underage girls, but also stated that he "personally believed that 14 and 15-year-olds were old enough for sexual intercourse" even though "he knew that the law did not." R698-700.

During the interview, defendant consented to a search of his cell phone and iPad. E29-30, R700-01. The cell phone search revealed that, shortly before responding to the ad at issue here, defendant sent the following text messages to three other phone numbers: "Hey hey. Looking for apt," "Hi looking to get warm," and "Hey what up." R608-10; E18. Defendant had also saved the phone number listed in the ad as "Auroro [*sic*] Girls" in his phone's contacts. R608; E16-18.

No inappropriate pictures of minors, internet searches for child pornography, or evidence that defendant had tried to solicit an adult or minor for sex on any other occasion was found on defendant's electronic devices. R576, 593-95, 615. Special Agent Howard and Investigator Swastek testified that defendant was not a specific target of the operation and that they had no prior familiarity with him. R348, 354-55, 570.

Taking the stand in his own defense, defendant testified that, at the time of the offense, he was 35 years old and lived in Pennsylvania, where he was the vice president of sales for a vacation rental company. R751-52. He often traveled to the company's branch offices, including one in Downers Grove. R753-54. On the date of the offense, he had been working at the Downers Grove office for two days and was staying at a hotel in Naperville. R754, 757.

After finishing work that evening, defendant returned to the parking lot of his hotel and sat in his car and cried. R756-77. He explained that he was lonely and depressed because he and his wife had been separated for the past six months and he had spent Christmas and New Year's alone. R754-55, 757-58. As he sat in his car, he began to search the Backpage website on his phone. R757. He had learned about the site from a fellow business traveler and visited it once before. R758-59.

Defendant went to Backpage's "adult services" section, checked a box acknowledging that the section was for adults only, and then clicked on a link that said "adult escort." R759, 761. He testified that he was looking for companionship, not sex. R758-59. He sent text messages in response to four ads and waited for a reply. R759-60. He assumed that the ads involved adults because they were posted in the adults only section and listed the poster's age. R761-62. He testified that when he responded to the ads, he

was not seeking a minor and did not know that any of the ads involved minors. R760-62.

Defendant testified that, after exchanging a few texts with Special Agent Taub, it became apparent to him that "there was a sexual agenda there." R760. He testified that, when Taub mentioned her underage daughters, he replied that he was not interested in minors and tried to redirect the conversation toward his interest in having sex with her. R762-63. He testified that both Taub and Special Agent Siffermann, while portraying the fictional mother, made him "feel somewhat comfortable" with the idea of paying for sex with the underage girls by complimenting him and stating that the girls wanted to do it. R767-68.

Defendant testified that he had never had any desire as an adult to have sex with a minor, R769, and that he agreed to do so only because the agents "put an idea in [his] head that was never there before," R810. When asked about his comment that he "think[s] naturally [14- and 15-year-old girls] are old enough but the law says they are not," he testified that he meant that girls that age are "capable" of having sex. R764-65. He also testified that, when he told Special Agent Siffermann and Investigator Christoffel that he came to the hotel because he was curious, he meant "curious about what's going on," not curious about what it would be like to have sex with two underage girls. R806-07.

Defendant also called four character witnesses. His sister, Krista Jackson, testified that she had "never seen any inclination" that defendant was interested in or predisposed to having sex with underage girls. R742. His niece, Tanisha Lewis, testified that defendant had never expressed to her any interest in having sex with underage girls and that she had not seen him do anything that would indicate a predisposition to do so. R746-47. Kevin Carlson, a longtime friend and co-worker, testified that defendant had never talked about underage girls with him or behaved in a manner that would indicate a predisposition for or interest in having sex with underage girls. R730. Another longtime friend and co-worker, Adam Kaper, testified that defendant had "never shown any want to be with an underage person." R736.

Over the People's objection, the trial court granted defendant's request to instruct the jury on the defense of entrapment. R835-37. The trial court delivered Illinois Pattern Jury Instruction, Criminal (IPI Criminal), No. 24–25.04 (4th ed. 2000):

> It is a defense to the charge made against the defendant that he was entrapped, that is, that for the purpose of obtaining evidence against the defendant, he was incited or induced by a public officer to commit an offense.
>
> However, the defendant was not entrapped if he was predisposed to commit the offense and a public officer merely afforded to the defendant the opportunity or facility for committing an offense.

C152, R933-34. Pursuant to IPI Criminal No. 24–25.04A, the trial court also instructed the jury that, for each charged offense, in addition to the elements

of the offense, the People must also prove beyond a reasonable doubt that defendant "was not entrapped." C143, 148, 150; R929-33.

During deliberations, the jury submitted three notes to the court. The first two notes were received at 12:37 p.m. C188-89. The first note read: "Legal definition of incited and induced and predisposed." C188. The second note asked for transcripts of the testimony of Special Agent Howard and Investigator Swastek. C189.

Addressing the first note, the prosecutor stated that she had recently read a decision (which she did not identify) that held that a defense attorney was not ineffective for agreeing not to provide further instructions to the jury in response to the same question because the words at issue are common terms. R943. The court noted that the IPI instructions do not define the terms and that it was not inclined to provide the jury with dictionary definitions. R944-45. The parties agreed with the court's proposal to respond: "You have your instructions. Please continue to deliberate." R944-45. The court handwrote the response on the note. C188; R945.

The court and the parties then discussed the second note, both on and off the record. R945-47. Ultimately, they crafted the following response, which the court handwrote on the note: "Typically a court reporter can prepare a transcript in double the time it took the witness to testify. Please advise which transcript you wish to have prepared first." R947, C189. The court then returned both notes to the jury. R947.

At 1:05 p.m., the court received a third note from the jury, which stated: "predisposition — what does this mean — please give defini[tion]." C190.[9] With no objection, the court responded by writing on the note: "You have all of the instructions, please continue to deliberate." C190; R948. Sometime after receiving that answer, the jury returned its verdict.[10]

The jury found defendant guilty of all charges. C191-93, R818. In a post-trial motion, defendant argued, among other things, that the People did not prove beyond a reasonable doubt that he was not entrapped, that the involuntary sexual servitude of a minor statute does not apply where no actual minor is involved, and that, as applied to him, that statute violates the Illinois Constitution's Proportionate Penalties Clause because its elements are identical to the offense of attempting to patronize a minor engaged in prostitution, which has a lower sentencing range. C201-213. The trial court denied defendant's motion, R1016-1021, and sentenced him to concurrent terms of imprisonment of six years on the involuntary sexual servitude of a

[9] The court suggested that the jury may have prepared the third note before receiving answers to the first two notes. *See* R948-49 (commenting that "that buzzer went off really fast" and "I do think that this was ready to go before the other" notes).

[10] The appellate court stated that the trial court's discussion of the third note "apparently was interrupted by the jury announcing that it had reached a verdict." A12, ¶ 25. But the record reveals that, after the discussion had concluded, the court went into "recess until the jury reached a verdict." R949.

minor conviction and two years on the traveling to meet a minor conviction. C215-220, R1061.[11]

B. The Appellate Court Concludes that Defendant's Trial Counsel Ineffectively Presented His Entrapment Defense and Reverses His Convictions.

The appellate court reversed defendant's convictions and remanded for a new trial, agreeing with defendant's contention that his trial counsel rendered ineffective assistance in presenting his entrapment defense. A1-2, ¶ 1.[12]

The appellate court found trial counsel's performance deficient in three respects. First, it held that counsel was deficient for acquiescing in the trial court's decision not to provide jurors with a definition of "predisposed" in response to their inquiries. A13-17, ¶¶ 32-40. The court acknowledged that another district of the appellate court had rejected a nearly identical claim on the ground that "predisposed" has "'a commonly understood meaning'" and "'need not [be] define[d] . . . with additional instructions.'" A14, ¶ 34 (quoting

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[11] The court neither entered judgment nor imposed a sentence on the grooming verdict, which merged with the traveling to meet a minor conviction. C221.

[12] Defendant also argued on appeal that the evidence was insufficient to prove beyond a reasonable doubt that he was not entrapped, that the involuntary sexual servitude of a minor statute does not apply as a matter of law to patrons of sexual services, and that the statute, as applied to him, violates the Proportionate Penalties Clause. *See* A1-2, ¶ 1. The appellate court rejected defendant's sufficiency challenge in the context of holding that double jeopardy principles did not bar his retrial, and the court otherwise found it unnecessary to "address the remaining issues on appeal." A22-23, ¶ 60.

People v. Sanchez, 388 Ill. App. 3d 467, 477-78 (1st Dist. 2009)). Nevertheless, it declined to follow that decision. *Id.*

Instead, the appellate court concluded that further instruction in response to the jury's questions was necessary because, in its view, the commonly understood meaning of "predisposed" differs from its legal meaning. A15-16, ¶ 38. It noted that, in the entrapment context, a person is predisposed to commit an offense if he "'was ready and willing to commit the crime without persuasion and before his or her initial exposure to government agents.'" A15, ¶ 37 (quoting *People v. Bonner*, 385 Ill. App. 3d 141, 146 (2d Dist. 2008)) (emphasis omitted). In contrast, the court thought that the common understanding of "predisposition" lacks any temporal focus and instead encompasses the broader concept of "[a] person's inclination to engage in a particular activity." *Id.* (quoting *Black's Law Dictionary* 1216 (8th ed. 2004)).

Because that "common understanding does not focus the jury on the correct timeframe for its predisposition analysis," the court concluded, defense counsel's failure to tender the narrower legal definition of predisposition "potentially allowed the jury to find that defendant was predisposed to commit the offenses by focusing on" his state of mind at "the time he entered the hotel room" rather than before his initial "exposure to the government agents." A15-16, ¶ 38.

Second, the appellate court concluded that trial counsel was deficient for failing to introduce evidence that defendant had no prior criminal record. A17-18, ¶¶ 41-44. The court noted that a defendant's lack of criminal history "is relevant to an entrapment defense because it tends to show that the defendant was less likely to be predisposed to commit the charged offense." A17, ¶ 43 (citing *People v. Ramirez*, 2012 IL App (1st) 093504, ¶ 43). Because defendant's clean criminal record "was strong evidence demonstrating [his] lack of predisposition," the court held, trial counsel's "failure to present this evidence [was] an obvious failure to function as the counsel guaranteed by the sixth amendment." A18, ¶ 44.

Third, the appellate court found that trial counsel "unreasonably failed to object" to two asserted misstatements of law in the People's closing argument. A19, ¶ 49; *see* A18-19, ¶¶ 45-49. When discussing the two prongs of the entrapment defense, the prosecutor told the jury: "if you find that the police did incite or induce [defendant], then you can look at the next step," whether defendant "was predisposed." R917. The appellate court held that this comment improperly "shift[ed] the burden" of proof by implying that defendant was required to prove that he was incited or induced, rather than the People being required to prove beyond a reasonable doubt that he was not. A18-19, ¶ 47.

The appellate court also found fault with a comment by the prosecutor concerning the predisposition element of the entrapment defense. When

addressing defendant's contention that he did not seek out sex with minors on the day in question, the prosecutor said: "I'm not saying he went out there — and the law does not say that we have to prove that he went out there to find someone under . . . age. What we have to prove is that he was willing to do that and the opportunity was there." R915-16. Referring to its earlier discussion distinguishing the common understanding of "predisposition" from its legal meaning in the entrapment context, the court held that "trial counsel should have objected to any argument that failed to pinpoint the proper timeframe for the predisposition analysis." A19, ¶ 48.

Next, the appellate court concluded that defendant was prejudiced by the deficient aspects of trial counsel's performance. A19-22, ¶¶ 51-59. Initially, the court rejected the argument that any deficiencies in counsel's performance with respect to the predisposition element of the entrapment defense were nonprejudicial in light of the evidence that defendant was not incited or induced. *See* A20-21, ¶¶ 54-56. The court found itself unable to "say with any certainty that the State proved beyond a reasonable doubt that defendant was not induced" and reasoned that "any meaningful attempt to parse through the evidence to decide the inducement prong was irreparably thwarted by the State's argument to the jury that it first had to find inducement before reaching the predisposition question." *Id.*, ¶ 55.

Instead, the appellate court concluded that defendant was prejudiced because "the cumulative effect of counsel's deficient performance rendered

the proceeding unreliable[.]" A22, ¶ 59. In particular, the court found that counsel's failure "to clarify the jury's confusion over the meaning of 'predisposition' created a serious danger that the jury convicted defendant based upon a consideration of predisposition untethered from the relevant timeframe, *i.e.*, prior to his exposure to government agents." A21, ¶ 57. In addition, the court reasoned that "the effect of the State's burden-shifting inducement argument and the jury's confusion over predisposition was further compounded by defense counsel's failure to inform the jury that defendant had no criminal history," which "would have been objective evidence that defendant was not predisposed to commit the offenses before his exposure to law enforcement." A21-22, ¶ 58.

ARGUMENT

I. Standard of Review and Background Principles

A. Standard of Review

An ineffective assistance of counsel claim presents a mixed question of law and fact that requires deference to a trial court's factual findings, but the ultimate legal question of whether counsel's assistance was ineffective is reviewed de novo. *Strickland v. Washington*, 466 U.S. 668, 698 (1984). Because defendant did not raise his ineffective assistance claim in the trial court, and that court made no factual findings relevant to the claim, this Court's review is de novo. *See People v. Berrier*, 362 Ill. App. 3d 1153, 1167 (2d Dist. 2006).

B. Ineffective Assistance of Counsel

To prevail on an ineffective assistance claim, a defendant must show that his counsel performed deficiently and that he was prejudiced as a result. *Strickland*, 466 U.S. at 687; *People v. Moore*, 2020 IL 124538, ¶ 29. The failure to establish either prong is fatal to a defendant's claim. *People v. Clendenin*, 238 Ill. 2d 302, 317-18 (2010). Thus, where it is easier for a court to resolve an ineffective assistance claim based on an insufficient showing of prejudice, which "will often be" the case, the court may do so without first addressing the adequacy of counsel's performance. *Strickland*, 466 U.S. at 697; *see also People v. Patterson*, 2014 IL 115102, ¶ 81.

To establish deficient performance, a defendant "must show that counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688; *see People v. Dupree*, 2018 IL 122307, ¶ 44. When reviewing counsel's performance, courts "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance" and that "the challenged action might be considered sound trial strategy." *Strickland*, 466 U.S. at 689 (internal quotation marks omitted).

To demonstrate prejudice, the defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694; *see Dupree*, 2018 IL 122307, ¶ 44. "A reasonable probability is a probability

sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

C. The Entrapment Defense

The entrapment defense provides that "[a] person is not guilty of an offense if his or her conduct is incited or induced by a public officer . . . for the purpose of obtaining evidence for the prosecution of that person," except "if the person was pre-disposed to commit the offense and the public officer . . . merely affords to that person the opportunity or facility for committing an offense." 720 ILCS 5/7-12. The defense thus consists of two separate, yet related, elements: (1) government incitement or inducement of an offense, and (2) the defendant's lack of predisposition to commit the offense. *See Mathews v. United States*, 485 U.S. 58, 63 (1988) ("a valid entrapment defense has two related elements: government inducement of the crime, and a lack of predisposition on the part of the defendant to engage in the criminal conduct").

A person's conduct is not incited or induced where a government agent "merely affords to that person the opportunity or facility for committing an offense." 720 ILCS 5/7-12; *see People v. Ramirez*, 2012 IL App (1st) 093504, ¶ 31 ("Inducement is not established where the government merely affords the defendant an opportunity to commit the crime."). As this Court explained long ago, "officers may afford opportunities or facilities for the commission of crime and may use artifice to catch those engaged in criminal ventures," but

they may not "inspire, incite, persuade or lure the defendant to commit a crime which he otherwise had no intention of perpetrating." *People v. Outten*, 13 Ill. 2d 21, 24 (1958).

Although this Court has not further elucidated the scope of this element of the entrapment defense under the current version of the statute,[13] federal courts interpreting the substantively similar entrapment defense under federal law have held that "inducement means government solicitation of the crime *plus* some other government conduct that creates a risk that a person who would not commit the crime if left to his own devices will do so in response to the government's efforts." *United States v. Mayfield*, 771 F.3d 417, 434-35 (7th Cir. 2014) (*en banc*) (emphasis in original); *see also United States v. Gendron*, 18 F.3d 955, 961 (1st Cir. 1994) (Breyer, C.J.) ("An 'inducement' consists of an 'opportunity' *plus* something else—typically, excessive pressure by the government upon the defendant or the

[13] An earlier version provided that a defendant was not entrapped if a government agent "merely afford[ed] to such person the opportunity or facility for committing an offense *in furtherance of a criminal purpose which such person ha[d] originated*." 720 ILCS 5/7-12 (West 1994) (emphasis added). In light of the emphasized language, this Court's prior decisions often focused on "whether the 'criminal purpose' of [committing the offense] originated with the defendant[ ]." *People v. Cross*, 77 Ill. 2d 396, 404 (1979). However, when the statute was amended in 1996, the General Assembly "eliminated the need for the prosecution to prove that [the] defendant had originated the criminal purpose." *People v. Criss*, 307 Ill. App. 3d 888, 897 (1st Dist. 1999). While the People still must prove that the defendant was predisposed to commit the offense, "having a predisposition to commit an offense is *not* synonymous with having originated a criminal purpose." *Id.* (emphasis in original).

government's taking advantage of an alternative, non-criminal type of motive.") (emphasis in original).

Such additional conduct can include "repeated attempts at persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward beyond that inherent in the customary execution of the crime, [or] pleas based on need, sympathy, or friendship." *Mayfield*, 771 F.3d at 435; *see also United States v. Poehlman*, 217 F.3d 692, 698 (9th Cir. 2000) ("Inducement can be any government conduct creating a substantial risk that an otherwise law-abiding citizen would commit an offense, including persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward, or pleas based on need, sympathy or friendship.").

Without expressly articulating the inducement prong in these terms, prior decisions of the appellate court implicitly recognize a similar principle. *See People v. Bonner*, 385 Ill. App. 3d 141, 145 (2d Dist. 2008) (finding inducement to commit drug offense where government informant "did more than furnish [the defendant] an opportunity for illegality" but instead "solicited him constantly" and overcame his repeated refusals by "offer[ing] sexual favors, a tactic of known efficacy") (internal quotation marks omitted); *People v. Kulwin*, 229 Ill. App. 3d 36, 40 (1st Dist. 1992) (finding entrapment as a matter of law where the defendant "finally acquiesced" to "repeated and persistent inducement" by a government informant and an undercover

officer, "who persuaded him [to engage in a drug deal] with full knowledge and awareness of his financial misfortune").

The predisposition element of the entrapment defense is designed to distinguish between "an 'unwary innocent' [and] an 'unwary criminal' who readily availed himself of the opportunity to perpetrate the crime." *Mathews*, 485 U.S. at 63. Although this Court has not previously defined "predisposed," the appellate court is in agreement that "predisposition is established by proof that the defendant was ready and willing to commit the crime without persuasion and before his or her initial exposure to government agents." *Criss*, 307 Ill. App. 3d at 897; *see also Ramirez*, 2012 IL App (1st) 093504, ¶ 38; *Bonner*, 385 Ill. App. 3d at 146.

Federal courts similarly recognize that "predisposition is measured *prior to* the government's attempts to persuade the defendant to commit the crime." *Mayfield*, 771 F.3d at 436 (emphasis in original); *see also Jacobson v. United States*, 503 U.S. 540, 549 (1992) ("the prosecution must prove beyond reasonable doubt that the defendant was disposed to commit the criminal act prior to first being approached by Government agents"); *Poehlman*, 217 F.3d at 703 ("the relevant time frame for assessing a defendant's disposition comes before he has any contact with government agents, which is doubtless why it's called *pre*disposition") (emphasis in original).

Illinois courts consider several factors when assessing whether a defendant was predisposed to commit an offense, including:

> (1) the character of the defendant; (2) whether the government initiated the alleged criminal activity; (3) whether the defendant had a history of criminal activity for profit; (4) whether the defendant showed hesitation in committing the crime, which was only overcome by repeated persuasion; (5) the type of inducement or persuasion applied by the government, or the way in which it was applied; and (6) the defendant's prior criminal record.

Ramirez, 2012 IL App (1st) 093504, ¶ 38. The Seventh Circuit, which looks to similar factors, has recognized that "[n]o one factor controls" but that "the most significant is whether the defendant was reluctant to commit the offense." *Mayfield*, 771 F.3d at 435 (internal quotation marks omitted).

To warrant a jury instruction on entrapment, the defendant bears the burden of producing at least "slight evidence" supporting each element of the defense. *People v. Wielgos*, 142 Ill. 2d 133, 136 (1991). If the defendant satisfies that minimal burden, the People must then "rebut the entrapment defense beyond a reasonable doubt, in addition to proving all other elements of the crime." *People v. Placek*, 184 Ill. 2d 370, 381 (1998). As the appellate court recognized, the People may rebut a defendant's entrapment defense by proving either that the defendant was not incited or induced to commit the offense or that he was predisposed to do so. A18, ¶ 47; *see also Mayfield*, 771 F.3d at 440 (explaining that under "a fair reading of the two-element structure of the defense," "the government can defeat the entrapment defense at trial by proving *either* that the defendant was predisposed to commit the crime *or* that there was no government inducement") (emphasis in original).

II. The Appellate Court Erred in Granting Relief on Defendant's Ineffective Assistance Claim.

This Court need not review the adequacy of trial counsel's performance because the evidence overwhelmingly rebutted defendant's entrapment defense, and thus there is no reasonable probability that the jury's verdict would have been different without counsel's alleged errors. Alternatively, the Court may reverse the appellate court's judgment because trial counsel competently presented defendant's entrapment defense.

A. Defendant Suffered No Prejudice From Trial Counsel's Asserted Errors.

To overcome the entrapment defense, the People bore the burden of proving beyond a reasonable doubt either that (1) defendant was not incited or induced to commit the offenses, or (2) he was predisposed to commit them. *Mayfield*, 771 F.3d at 440. Given the strength of the People's case and the nature of counsel's alleged errors, no reasonable probability exists that, absent the alleged errors, the jury would have found that the People failed to satisfy their burden of proof as to either prong of the entrapment defense, let alone as to both.

1. There is no reasonable probability that counsel's alleged errors affected the jury's assessment of inducement.

The evidence convincingly demonstrated that defendant was not incited or induced to commit the charged offenses because the agents involved in the sting operation did no more than "afford[ ] to [him] the

opportunity or facility for committing [the] offense[s]." 720 ILCS 5/7-12. Although the agents solicited defendant to pay for sex with underage girls, defendant's text message exchange with Special Agent Taub and the recording of his hotel room conversation with Special Agent Siffermann make clear that the agents did not engage in any additional conduct — like "repeated attempts at persuasion, fraudulent representations, threats, coercive tactics, harassment, promises of reward beyond that inherent in the customary execution of the crime, [or] pleas based on need, sympathy, or friendship" — "that create[d] a risk that a person who would not commit the crime if left to his own devices [would] do so in response to the government's efforts." *Mayfield*, 771 F.3d at 434-35.

To start, the appellate court believed the evidence of inducement was close because Special Agent Taub "was the first to mention sex with minors." A20, ¶ 55. But "the fact that the government's agents initiated contact with the defendant and offered an ordinary opportunity to commit the charged crime is insufficient to raise an entrapment defense." *Mayfield*, 771 F.3d at 433. Likewise, it was not improper for agents to publicly post an ad for an 18-year-old escort and tell defendant only after he responded that underage girls were available. It has long been accepted that agents "may use artifice to catch those engaged in criminal ventures." *Outten*, 13 Ill. 2d at 24. Such tactics are especially important when investigating criminal offenses carried out in secret, like those involving forced prostitution and trafficking of

minors. *See* Wayne R. LaFave, Substantive Criminal Law § 9.8 (3d ed. Oct. 2020 update) ("Certain criminal offenses present the police with unique and difficult detection problems because they are committed privately between individuals who are willing participants.").

As Investigator Swastek explained, had agents tried to post an ad that expressly referred to underage girls, it likely would have been blocked. R376. And there is no doubt that any such ad that did manage to get posted would have triggered the suspicions of potential customers who preferred to be more discrete in their law-breaking. That explains why, as Swastek explained, there was "a good chance" that ordinary Backpage ads offering sex with 18-year-old women actually involved underage girls. R377. By publicly posting an ad for an 18-year-old escort and privately informing individuals who responded that underage girls were available for sex, the agents merely "furnish[ed] an opportunity to commit [the charged crimes] on customary terms," which does not amount to inducement under the entrapment statute. *Mayfield*, 771 F.3d at 432.

The appellate court also found evidence of inducement in the fact that Special Agent Taub "continued to suggest [sex with underage girls] after defendant initially expressed disinterest." A20, ¶ 55. But neither Taub's nor Special Agent Siffermann's interactions with defendant amounted to the type of "government conduct [that] creat[es] a substantial risk that an otherwise law-abiding citizen [will] commit an offense." *Poehlman*, 217 F.3d at 698.

When Special Agent Taub first mentioned that she was offering underage girls for sex, defendant responded that he was "[n]ot interested in minors" and that anything under 18 was "too risky," to which Taub replied: "as long as u r gentle and treat my girls good . . . i'm here to protect my grls." E10. Defendant then asked Taub several times whether she was with law enforcement, before asking: "What if I just see u. Since your above 18." *Id.* Taub did not respond to the latter question, as she was busy responding to defendant's earlier questions about whether she was a police officer. *Id.* Defendant then asked, "why wud u advertise their age when u know that's illegal under 18," and said, unprompted, "I think naturally they are old enough but the law says they are not." E10-11. Taub responded: "i do 2 - my girls want 2 do this . . . i won't put them into sum thing they don't wanna do." E11. That was all it took. Just 11 minutes after Taub first mentioned underage girls, defendant texted: "Ok where u at." *Id.*

After Taub told defendant she was in Aurora, defendant said he would "come only if your there watching," to which Taub replied, "yea - i'll watch - u b 2 ruf on my girls i'll kick ur ass." E11. Taub then asked defendant which daughter he wanted and stated that both would cost $200. *Id.* Defendant asked, "What about u how muc[h] for u . . . How much for all 3 of u." *Id.* When Taub told him that she was not available, defendant said: "Ok tell me where to come" and affirmed that he wanted "[b]oth" girls. E11-12. That was 17 minutes after defendant first learned that he was being offered underage

girls for sex. Five minutes later, after getting directions to the hotel and agreeing that he would use a condom and not have anal sex, defendant said he was "[o]n [his] way." E12.

When he arrived at the hotel about 45 minutes later,[14] defendant told Special Agent Siffermann that he was "nervous" about the situation and "not . . . even in to" underage girls, but that he decided to come because he was "curious" and had not received any other replies. E20-21; *see* E20 ("I put four or five hits out here, you're the only one to answer me."). Defendant expressed concern that he was being "set up or something," E21, and laughed as he asked "why don't you just tell me they are eighteen and nineteen please," E24. Siffermann said she "like[s] to meet the guys first" to make sure "they're safe" and not "crazy," but that she was "not as worried" because defendant "look[ed] like a nice guy" and not "some . . . creep[ ]." E21-22. She told defendant that she "just want[ed] to make sure that [he was] not going to do anything freaky," and told him that she would "call [her daughters] ahead of time" to let them know "it's ok . . . he's not some ugly freak." E24. Less than four and a half minutes after entering the hotel room, defendant gave Siffermann $200 to have sex with her underage daughters. Peo. Exh. 9 at 11:24:21 p.m.; R673-74.

[14] During this time, defendant's only interaction with law enforcement consisted of sporadic text messages with Taub concerning directions to the hotel. *See* E12.

Nothing about defendant's 22-minute text exchange with Special Agent Taub[15] or four-minute hotel room conversation with Special Agent Siffermann remotely resembles the type of government conduct that is typically deemed inducement. In *Poehlman*, for instance, the Ninth Circuit found inducement where, over the course of six months and numerous email messages, an undercover agent "played on [the defendant's] obvious need for an adult relationship" to "artful[ly] manipulat[e]" him into agreeing to serve as a "sexual mentor" to her underage daughters. 217 F.3d at 702 (internal quotation marks omitted). In the "increasingly intimate and sexually explicit" exchange, the undercover agent conveyed "acceptance [of the defendant's cross-dressing] and friendship" and "condition[ed] . . . her own continued interest in [the defendant]" on his agreeing "to have a sexual relationship with her minor daughters." *Id.* at 699-700. The agent went so far as to "cast[ ] the activity as an act of parental responsibility and the selection of a sexual mentor as an expression of friendship and confidence," "claim[ing] to have herself benefitted from such experiences" as a child. *Id.* at 702.

The protracted and psychologically manipulative tactics employed in *Poehlman* are not at all comparable to the brief and business-like approach the agents used here. Neither Special Agent Taub nor Special Agent

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[15] As measured from Taub's first mention of underage girls to defendant's statement that he was on his way to the hotel after having agreed to pay $200 for sex with both girls.

Siffermann developed a personal relationship with defendant, much less conditioned the formation or continued existence of such a relationship on defendant's agreement to pay for sex with underage girls. Nor did the agents try to convince defendant that paying for sex with the girls "would be in [the girls'] best interest." *Poehlman*, 217 F.3d at 702. While Taub stated that she was "here to protect [her] grls" and would not "put them into sum thing they don't wanna do," E10-11, those comments fall far short of the sort of encouragement and high-minded rationalizations offered in *Poehlman*, which were designed to "allay[ ] fears [the] defendant might have had that the activities would be harmful, distasteful or inappropriate." *Poehlman*, 217 F.3d at 702. Likewise, although Siffermann said that defendant "look[ed] like a nice guy" and not "some . . . creep[ ]" or "ugly freak," E22-24, those comments hardly amounted to expressions of "acceptance and friendship." *Poehlman*, 217 F.3d at 700.

A review of other decisions addressing the entrapment defense further illustrates the absence of inducement here. For example, in *Jacobson v. United States*, 503 U.S. 540 (1992), the government conceded inducement in a child pornography prosecution where undercover agents "devoted 2½ years to convincing [the defendant] that he had or should have the right to engage in the very behavior proscribed by law," including "by waving the banner of individual rights and disparaging the legitimacy and constitutionality of efforts to restrict the availability of sexually explicit materials." *Id.* at 552-

53. Nothing that Special Agents Taub and Siffermann said to defendant during their far shorter interactions amounted to that type of affirmative justification or persuasion to engage in unlawful behavior.

In *Sherman v. United States*, 356 U.S. 369 (1958), the Court found inducement where a government informant succeeded in persuading the defendant, a recovering drug addict, to obtain drugs for him after repeatedly appealing to the defendant's sympathy for the informant as a fellow addict suffering from symptoms of withdrawal. *Id.* at 371-73. Similarly, in *Sorrells v. United States*, 287 U.S. 435 (1932), the Court found sufficient evidence to instruct the jury on entrapment in a Prohibition-era prosecution, where an undercover agent persuaded the defendant to sell him whisky after "repeated and persistent solicitation in which he succeeded by taking advantage of the sentiment aroused by reminiscences of their experiences as companions in arms in the World War." *Id.* at 441.

And in *Mayfield*, the Seventh Circuit found sufficient evidence of inducement to warrant instructing the jury on entrapment where the defendant agreed to participate in the robbery of a fictitious drug stash house after his coworker (a government informant) "pestered [him] over a substantial period of time" by repeatedly invoking his financial concerns, appealing to their friendship and shared struggle as convicted felons, and even implying that if the defendant did not repay a loan from the informant he would be met with gang violence. 771 F.3d at 441; *see id.* at 420-22.

In each of these cases, government agents engaged in some conduct — be it repeated attempts at persuasion, fraudulent representations, threats or coercive tactics, harassment, promises of reward, or pleas based on need, sympathy, or friendship — that created a risk that an otherwise law-abiding person would be led to commit an offense. *Mayfield*, 771 F.3d at 434-35; *Poehlman*, 217 F.3d at 698; *see also People v. Salazar*, 284 Ill. App. 3d 794, 801 (1st Dist. 1996) (finding inducement where government informant "had to approach defendants 10 or more times before they agreed to participate in the [drug] transaction" and told defendants that undercover officer posing as drug dealer "was not one to 'play with'"). In contrast, the evidence here revealed no comparable conduct by the undercover agents involved in the sting operation.

While defendant may argue that his marital trouble and loneliness made him susceptible to inducement, it was undisputed at trial that the agents were unfamiliar with defendant and thus could not have played on his personal circumstances. *See People v. McSmith*, 23 Ill. 2d 87, 96 (1961) ("The fallacy in this argument is that the record is devoid of any showing that the informer knew of defendant's unemployment and personal situation, or that she dangled them in front of him in an effort to instigate his crime."); *cf. Kulwin*, 229 Ill. App. 3d at 40 (explaining that government agents persuaded defendant to commit drug offense "with full knowledge and awareness of his financial misfortune"). Rather, the evidence clearly established that the

agents merely "offered [defendant] an ordinary opportunity to commit the charged crime[s]," *Mayfield*, 771 F.3d at 433, and thus proved beyond a reasonable doubt that he was not incited or induced within the meaning of the entrapment statute.

In light of both the overwhelming evidence that defendant was not induced to commit the offenses, and the nature of trial counsel's alleged errors, no reasonable probability exists that the jury would not have found a lack of inducement absent the alleged errors.

All but one of counsel's alleged errors — failing to tender a definition of "predisposed" in response to the jury's questions, failing to introduce evidence that defendant had no prior criminal history, and failing to object to the prosecutor's articulation of the predisposition element that omitted reference to the temporal focus of the analysis — related solely to the predisposition element of the entrapment defense.[16] Only one of counsel's alleged errors had any relation to the inducement prong, namely, the failure to object to the

[16] While the appellate court correctly noted that inducement and predisposition are related inquiries, A21, ¶ 56, it did not explain how an error in defining predisposition or the failure to introduce evidence concerning defendant's lack of criminal history could have any effect on the jury's assessment of inducement. As the appellate court observed, "the need for greater inducement may suggest that the defendant was not predisposed to commit the crime, while, conversely, a ready response to minimal inducement may indicate predisposition." *Id.* But while it is true that "[t]he character and degree of the inducement — and the defendant's reaction to it — may affect the jury's assessment of predisposition," *Mayfield*, 771 F.3d at 437, it does not follow that evidence bearing on the defendant's predisposition is relevant to assessing whether the conduct of government agents amounted to inducement rather than mere solicitation of an offense.

prosecutor's closing argument comment that "if you find that the police did incite or induce [defendant], then you can look at" whether defendant "was predisposed." R917.

The appellate court held that this comment improperly shifted the burden of proving inducement to defendant, which "irreparably thwarted" the jury's assessment of that prong. A20-21, ¶ 55. It is evident in context, however, that the prosecutor's comment, although inartful, was intended to (correctly) convey to the jury that it need not determine whether defendant was predisposed to commit the offenses if it found that the People proved beyond a reasonable doubt that he was not incited or induced. *See* R917 ("He has to be incited or induced first."). And while the comment could be understood in isolation to suggest that it was defendant's burden to prove inducement rather than the People's burden to disprove it, there is no reasonable probability that the jury actually operated under that mistaken understanding.

Elsewhere in closing argument, when previewing the instructions the jury would later receive, the prosecutor affirmed that, for each charged offense, it was the People's burden to prove that defendant was not entrapped. *See* R849-54. Defense counsel likewise told the jury that the People must prove beyond a reasonable doubt that defendant was not entrapped. *See* R878, 881. Most importantly, after closing arguments, the court instructed the jury that "[t]he State has the burden of proving the guilt

of the defendant beyond a reasonable doubt," R928, and that, for each charge, the People must prove beyond a reasonable doubt not only every element of the offense but also that defendant was not entrapped, R929-33.

Viewed in context of the closing arguments as a whole and the court's subsequent jury instructions, then, no reasonable probability exists that the prosecutor's unobjected-to comment led the jury to place the burden of proving inducement on defendant. *See People v. Lawler*, 142 Ill. 2d 548, 564 (1991) (explaining that jury instructions can have "a curative effect on [an] improper argument"); *People v. Willis*, 409 Ill. App. 3d 804, 814 (1st Dist. 2011) ("improper arguments can be corrected by proper jury instructions, which carry more weight than the arguments of counsel"). There is thus no reasonable probability, given the overwhelming evidence that defendant was not induced, that the jury's verdict would have been different if counsel had objected to the comment.

2. There is no reasonable probability that counsel's alleged errors affected the jury's assessment of defendant's predisposition.

Nor is there a reasonable probability that, without counsel's alleged errors, the jury would not have found that defendant was predisposed to commit the charged offenses.

The evidence convincingly established that defendant "was ready and willing to commit the crime without persuasion and before his . . . initial exposure to government agents." *Criss*, 307 Ill. App. 3d at 897. Among the

factors that courts consider when assessing predisposition, *see Ramirez*, 2012 IL App (1st) 093504, ¶ 38 (listing six factors), two (related) factors weigh in defendant's favor: his lack of a criminal record and history of engaging in criminal activity for profit. A third factor — whether the government initiated the criminal activity — also favors defendant. But the weight accorded to that factor should be minimal, since "the fact [that] a government agent proposed an illicit transaction . . . is insufficient to establish entrapment." *United States v. Barger*, 931 F.2d 359, 367 (6th Cir. 1991).

The evidence related to a fourth factor — the defendant's character — was mixed. Four witnesses testified that defendant had never said or done anything that would suggest to them that he was inclined or predisposed to having sex with minors. *See* R730, 736, 742, 746-47. In addition, the jury heard that, when defendant's cell phone and iPad were searched after his arrest, no inappropriate pictures of minors, internet searches for child pornography, or evidence that he had previously tried to solicit an adult or minor for sex were found. R576, 593-95, 615.

On the other hand, defendant told both Special Agents Taub and Siffermann, unprompted, that he believed 14- and 15-year-old girls were old enough to have sex, s*ee* E11 ("I think naturally they are old enough but the law says they are not"); E24 ("I mean like naturally I think that . . . once a girl has her period she's ready for that kind of thing but . . . legally, obviously . . . it's not the right thing."), a view he repeated to Investigator Christoffel

after he was arrested, s*ee* R700. The jury also heard defendant describe the type of sex he intended to have with the underage girls as "porno sex," E25, and state that he wanted to "get shizzed," E22. While a defendant's predisposition is measured prior to his exposure to government agents, "evidence of the defendant's conduct after the initial contact by the government's agents" — including "his actions or statements during the planning stages of the criminal scheme" — remains "relevant to the determination of predisposition." *Mayfield*, 771 F.3d at 437; *see id.* ("the defendant's response to the government's offer may be important evidence of his predisposition").

The remaining factors — the type of inducement or persuasion applied by the government, and whether the defendant showed hesitation in committing the crimes, which was only overcome by repeated persuasion — weigh against defendant. To the extent the undercover agents applied any inducement or persuasion at all, it was exceedingly minimal, as discussed above. *See supra* pp. 36-44. Defendant's "ready response to [that] minimal inducement indicates [his] criminal predisposition." *United States v. Myers*, 575 F.3d 801, 805 (8th Cir. 2009); *see also Poehlman*, 217 F.3d at 698 ("If a defendant is predisposed to commit the offense, he will require little or no inducement to do so; conversely, if the government must work hard to induce a defendant to commit the offense, it is far less likely that he was predisposed.").

Nor did defendant exhibit a hesitation that was overcome only by repeated persuasion — "the most significant" factor in the predisposition analysis. *Mayfield*, 771 F.3d at 435 (internal quotation marks omitted). Indeed, it is apparent that the hesitation defendant initially expressed was borne not of reluctance to pay for sex with underage girls, but of his suspicion that the offer was a set-up. He told Special Agent Taub that anyone under 18 was "too risky" and repeatedly asked if she was with law enforcement. E10. He told Special Agent Siffermann that he was "nervous" that the situation was a "set up or something." E21. He later said it "ma[de] [him] nervous just saying their ages" and asked "why don't you just tell me they are eighteen and nineteen please." E24. And he told Siffermann that he would not "give any money to [the girls], only to you." E25.

Defendant's expressions of hesitation thus do little to suggest that he lacked a predisposition to commit the offenses. *See McSmith*, 23 Ill. 2d at 94 ("While defendant professed to have no knowledge of where narcotics could be obtained on the occasions of his first two meetings with the informer, it is readily apparent from subsequent events that by [these] denials he sought no more than to exhibit the natural caution and hesitancy that could be expected from one engaged in the illegal narcotics trade."); *People v. Lambrecht*, 231 Ill. App. 3d 426, 436 (2d Dist. 1992) ("The jury could have concluded that defendant's initial hesitance was due to the caution a drug trafficker might

be expected to exercise in dealing with a new customer whom he had not yet come to trust.").

The totality of the evidence thus firmly established that defendant was predisposed to commit the charged offenses. And in light of the strength of that evidence, and the nature of counsel's alleged errors, there is no reasonable probability that the jury would not have found predisposition absent the alleged errors.

The appellate court identified two alleged errors related to counsel's failure to inform the jury that the legal definition of predisposition focuses on the defendant's state of mind before his exposure to government agents. *See Criss*, 307 Ill. App. 3d at 897 ("predisposition is established by proof that the defendant was ready and willing to commit the crime without persuasion and before his or her initial exposure to government agents"). In particular, the appellate court found error in counsel's decision not to tender the definition of "predisposition" articulated in *Criss* in response to the jury's requests during deliberations, A13-17, ¶¶ 33-40, and in counsel's failure to object when the prosecutor discussed the predisposition element in closing argument without an explicit temporal focus, A19, ¶ 48.

But no explicit reference to the predisposition element's temporal focus was necessary here, because the common understanding of "predisposed," as used in the entrapment defense, implicitly incorporates that temporal concept. Webster's Third New International Dictionary, for instance, defines

"predispose" as "to dispose *in advance*" or "make susceptible." *Webster's Third New International Dictionary* 1786 (2002) (emphasis added). It likewise defines "predisposed" as "having a predisposition" or "arranged or settled *in advance*." *Id.* (emphasis added). And it defines "predisposition" as "a condition of being predisposed," with "inclination" and "tendency" listed as synonyms. *Id.* The New Oxford American Dictionary similarly defines "predisposition" as "a liability or *tendency* to suffer from a particular condition, hold a particular attitude, or act in a particular way." *New Oxford American Dictionary* 1336 (2d ed. 2005) (emphasis added). Beyond these definitions, the prefix "pre" in "predisposed" and "predisposition" itself conveys a temporal focus on the defendant's state of mind before being exposed to government agents. *See Poehlman*, 217 F.3d at 703 ("the relevant time frame for assessing a defendant's disposition comes before he has any contact with government agents, which is doubtless why it's called *pre*disposition") (emphasis in original).

In *Jacobson*, where the Court stressed that the prosecution must prove that the defendant "was predisposed to violate the law *before* the Government intervened," 503 U.S. at 549 n.2 (emphasis in original), the facts showed that the defendant "had already been the target of 26 months of" government attempts at persuasion before he "finally placed his order" for child pornography, *id*. at 550. As the Eleventh Circuit has commented, "[p]erhaps in situations like *Jacobson*, where a long and complex government campaign

made the defendant's independent state of mind difficult to determine, extra clarity would be required to keep the temporal frame in focus." *United States v. Brown*, 43 F.3d 618, 628 n.8 (11th Cir. 1995).

But this is not a case where the government's involvement with the defendant stretched for months or years — or even for days or weeks. Instead, defendant's exposure to the undercover agents consisted of a 30-minute text message exchange[17] followed by a five-minute hotel room conversation. On these facts, there is no reasonable probability that the jury focused its predisposition analysis on defendant's state of mind when "he entered the hotel room" rather than "before [his] exposure to the government agents," as the appellate court suggested. A16, ¶ 38.

The appellate court also found error in counsel's failure to introduce evidence that defendant had no prior criminal history. A17-18, ¶¶ 42-44. As the court noted, such evidence "is relevant to an entrapment defense because it tends to show that the defendant was less likely to be predisposed to commit the charged offense." A17, ¶ 43 (citing *Ramirez*, 2012 IL App (1st) 093504, ¶ 43). But there is no reasonable probability that counsel's failure to present evidence that defendant had no prior criminal history affected the jury's verdict.

[17] Plus sporadic text messages for directions over a 45-minute period as defendant drove to the hotel.

While counsel did not present evidence that defendant had no prior criminal history, counsel did elicit testimony that defendant was not a specific target of the sting operation and that the agents had no prior familiarity with him. R354-55, 570. Counsel also elicited testimony that searches of defendant's electronic devices following his arrest uncovered no evidence of inappropriate pictures of minors, internet searches for child pornography, or prior attempts to solicit an adult or minor for sex, R576, 593-95, 615, suggesting that he had not engaged in similar criminal conduct before. Finally, as discussed above, *see supra* pp. 46-49, the evidence of defendant's predisposition was strong despite his lack of criminal history. Considering the totality of the evidence, no reasonable probability exists that the jury's verdict would have been different had it learned that defendant had no prior criminal history.

B. Trial Counsel Competently Presented Defendant's Entrapment Defense.

In addition to a lack of prejudice, defendant has not shown that trial counsel's presentation of his entrapment defense was deficient.

1. Counsel reasonably decided not to offer a definition of predisposed in response to the jury's requests or object to the prosecutor's discussion of that element in closing argument.

Defendant has not established that counsel's acquiescence in the trial court's decision not to provide jurors with a definition of "predisposed" or "predisposition" in response to their inquiries amounted to deficient

performance. The appellate court found that this aspect of counsel's performance was deficient because, in its view, the legal definition of "predisposition," as articulated in decisions addressing the entrapment defense, was necessary to "focus the jury on the correct timeframe for its predisposition analysis, *i.e.*, before defendant's initial exposure to government agents." A15-16, ¶ 38.[18] For the same reason, the court found counsel deficient for failing to object to an articulation of the predisposition element in the prosecutor's closing argument that did not explicitly mention the temporal focus of the analysis, but that instead told the jury that the People had "to prove . . . that [defendant] was willing to [commit the offense] and the opportunity was there." A19, ¶ 48.

But in light of the exceedingly short period of time between defendant's initial exposure to the undercover agents and his subsequent commission of the crimes — less than an hour and a half in total,[19] during which time defendant and the agents were in active communication for about 35 minutes — it was not objectively unreasonable for counsel to conclude that expressly advising the jury of the predisposition element's temporal focus was

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[18] Notably, the appellate court did not question the jurors' understanding of the common meaning of predisposition. *See* A16, ¶ 38 n.1 ("The issue is not the dictionary definition itself but rather where to focus the dictionary definition for purposes of the entrapment analysis, *i.e.*, prior to exposure to government agents.").

[19] Measured from defendant's first text message responding to the ad to his handing cash to Special Agent Siffermann in the hotel room.

unnecessary. *Cf. Brown*, 43 F.3d at 628 n.8 (observing that "extra clarity [may] be required to keep the temporal frame in focus" "where a long and complex government campaign made the defendant's independent state of mind difficult to determine").

Further, counsel could have reasonably concluded that giving jurors a definition of "predisposed" or "predisposition" in response to their inquiries was unwarranted because the IPI does not include definitions of those terms, which have a commonly understood meaning. Indeed, that is precisely what another district of the appellate court had held at the time, in rejecting an ineffective assistance claim identical to the one presented here. *See People v. Sanchez*, 388 Ill. App. 3d 467, 477-78 (1st Dist. 2009) (rejecting claim that counsel was ineffective for failing to request further instruction on the meaning of "predisposed" in response to a jury note seeking clarification of the term because "[t]here is no indication that an additional definition [is] needed" when the IPI instruction on entrapment is given).

Although a trial court generally "has a duty to provide instruction to the jury where it has posed an explicit question or requested clarification on a point of law arising from facts about which there is doubt or confusion," a trial court may nevertheless exercise its discretion to refrain from answering a jury question under appropriate circumstances, such as "where the instructions are readily understandable and sufficiently explain the relevant law, where further instructions would serve no useful purpose or would

potentially mislead the jury, when the jury's inquiry involves a question of fact, or if the giving of an answer would cause the court to express an opinion which would likely direct a verdict." *People v. Childs*, 159 Ill. 2d 217, 228-29 (1994); *see People v. Millsap*, 189 Ill. 2d 155, 161 (2000).

In *Childs*, where the defendant was charged with murder, voluntary and involuntary manslaughter, and armed robbery, the jury asked the court during deliberations whether it could find the defendant "guilty of armed robbery and voluntary or involuntary manslaughter or must murder be the only option with armed robbery?" 159 Ill. 2d at 225. Without informing defense counsel of the question, the court advised the jury to re-read its instructions and continue deliberating. *Id.* This Court found an abuse of discretion in the trial court's non-responsive answer because the jury had "posed an explicit question which manifested juror confusion on a substantive legal issue," suggesting that "at least some jurors believed that if they found defendant guilty of armed robbery they had no alternative but to also return a verdict of guilty of murder." *Id.* at 229-30.

Here, the jurors' requests for the "[l]egal definition of . . . predisposed," C188, and the "mean[ing]" of "predisposition," C190, did not "manifest[ ] juror confusion on a substantive legal issue," as in *Childs*. 159 Ill. 2d at 229. Unlike in *Childs*, there is no suggestion in the jury notes that any juror in

this case may have misunderstood the governing law.[20] Moreover, this Court has never held that a trial court must, in response to a jury request, provide the definition of a word used in a jury instruction where the word is not defined in a separate IPI instruction. *Cf. People v. Lowry*, 354 Ill. App. 3d 760, 762-67 (1st Dist. 2004) (finding ineffective assistance where counsel failed to tender IPI definition of "knowingly" in response to jury question concerning the term).

Although some decisions of the appellate court have found error in such circumstances, *see, e.g.*, *People v. Landwer*, 279 Ill. App. 3d 306, 313-17 (2d Dist. 1996) (finding abuse of discretion where trial court failed to define "originated" as used in earlier version of entrapment statute), the better view is that "[w]hen words in a jury instruction have a commonly understood meaning, the court need not define them with additional instructions," "especially . . . where the pattern jury instructions do not provide that an additional definition is necessary." *Sanchez*, 388 Ill. App. 3d at 477-78; *see also People v. Hicks*, 2015 IL App (1st) 120035, ¶ 57 (rejecting claim that counsel was ineffective for failing to offer legal definition of "force" as used in robbery statute and distinguishing *Lowry* because there "the pattern instructions required the court to further define the term the jury sought to

[20] As noted, the appellate court did not rely on any possibility that jurors were unfamiliar with the common understanding of "predisposition," but only that they might not have understood the legal definition's temporal focus. *See supra* n.18.

clarify"). At the very least, given the appellate court's decision in *Sanchez* and the uncertainty in this Court's precedent, counsel should not be deemed deficient for failing to request that jurors be given a definition of "predisposed" or "predisposition" in response to their requests. *See People v. English*, 2013 IL 112890, ¶ 35 ("counsel cannot be deemed deficient for failing to predict" changes in the law).

2. Counsel reasonably decided not to object to the prosecutor's closing argument concerning the relationship between the inducement and predisposition elements.

Nor has defendant established that counsel was deficient in declining to object when the prosecutor stated in closing argument: "if you find that the police did incite or induce [defendant], then you can look at the next step," whether defendant "was predisposed." R917. As discussed above, *see supra* p. 45, this comment correctly conveyed that, under "the two-element structure of the [entrapment] defense," the People may prevail "by proving *either* that the defendant was predisposed to commit the crime *or* that there was no government inducement." *Mayfield*, 771 F.3d at 440 (emphasis in original).

To the extent the comment could also be interpreted as implying that defendant had to prove that he was induced, rather than requiring the People to prove he was not, it was not objectively unreasonable for counsel not to object because, as also discussed, *see supra* pp. 45-46, earlier in closing argument both the prosecutor and defense counsel had correctly explained

that the People bore the burden of proving defendant was not entrapped, *see* R849-54, 878, 881, and because counsel could be confident that the court would correctly instruct the jury following closing arguments, as the court went on to do, *see* R929-33.

3. Counsel was not deficient for failing to introduce evidence of defendant's lack of criminal history.

Finally, defendant has not shown that counsel's failure to introduce evidence that he had no criminal record amounted to constitutionally deficient performance. Although "[a] defendant who raises the affirmative defense of entrapment has a right to introduce evidence of a lack of prior criminal behavior such as that with which he is charged because it is relevant to the trier of fact's determination of his predisposition," *Ramirez*, 2012 IL App (1st) 093504, ¶ 43, counsel's failure to introduce evidence that defendant had no prior criminal record was not an error of such magnitude that it deprived defendant of "the 'counsel' guaranteed [to him] by the Sixth Amendment." *Strickland*, 466 U.S. at 687; *see also People v. Palmer*, 162 Ill. 2d 465, 476 (1994) ("effective assistance of counsel refers to competent, not perfect, representation").

"Decisions concerning which witnesses to call at trial and what evidence to present on [a] defendant's behalf" are generally "viewed as matters of trial strategy" that are "immune from claims of ineffective assistance of counsel." *People v. West*, 187 Ill. 2d 418, 432 (1999) (internal citations omitted). Here, as discussed, *see supra* p. 53, while counsel did not

present evidence that defendant had no prior criminal record, counsel did elicit on cross-examination of the People's witnesses that defendant was not a specific target of the sting operation and that the agents had no prior familiarity with him. R354-55, 570. Counsel also elicited the fact that searches of defendant's electronic devices following his arrest revealed no evidence of inappropriate pictures of minors, internet searches for child pornography, or prior attempts to solicit sex. R576, 593-95, 615. And counsel presented four character witnesses on defendant's behalf, who testified that defendant had never said or done anything to suggest he was inclined or predisposed to having sex with minors. R730, 736, 742, 746-47.

In light of the competence with which counsel otherwise performed at trial, counsel's failure to present evidence that defendant had no criminal history, standing alone, is insufficient to establish that his performance was constitutionally deficient. *See Harrington v. Richter*, 562 U.S. 86, 111 (2011) ("while in some instances even an isolated error can support an ineffective-assistance claim if it is sufficiently egregious and prejudicial . . . it is difficult to establish ineffective assistance when counsel's overall performance indicates active and capable advocacy") (internal quotation marks and citation omitted).

CONCLUSION

This Court should reverse the appellate court's judgment and remand for consideration of defendant's remaining arguments on appeal.

June 2, 2021

Respectfully submitted,

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RULE 341(c) CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,148 words.

/s/ Eric M. Levin
ERIC M. LEVIN
Assistant Attorney General

APPENDIX

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2020 IL App (2d) 170900
No. 2-17-0900
Opinion filed November 12, 2020

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SHANE LEWIS, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Kane County. No. 15-CF-44 Honorable Linda S. Abrahamson, Judge, Presiding.

JUSTICE BRENNAN delivered the judgment of the court, with opinion.
Justices Jorgensen and Bridges concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Shane Lewis, was charged by indictment with involuntary sexual servitude of a minor (720 ILCS 5/10-9(c)(2) (West 2014)), traveling to meet a minor (*id.* § 11-26(a)), and grooming (*id.* § 11-25(a)). At a jury trial, defendant asserted the defense of entrapment. The jury found defendant guilty of the charged offenses. On appeal, he argues that (1) in presenting the affirmative defense of entrapment, defense counsel rendered ineffective assistance of counsel for failing to (a) provide a definition for "predisposed" when requested by the jury, instead acquiescing in the court's decision not to answer the question, (b) present to the jury that defendant had no criminal record, and (c) object to the State's mischaracterization of the entrapment defense during closing argument; (2) the State failed to prove beyond a reasonable doubt that he was not

entrapped into committing the offenses; (3) the State failed to prove that defendant was guilty of involuntary sexual servitude of a minor where the statute applies to sex traffickers but not to patrons like him, there was no minor involved, and, alternatively, no minor was threatened or coerced; and (4) defendant's conviction and sentence for involuntary sexual servitude of a minor must be vacated because the statute violated the proportionate penalties clause of the Illinois Constitution. Based on defense counsel's ineffective assistance, we reverse defendant's convictions and remand for a new trial. Because this issue is dispositive, we do not address the remaining issues on appeal.

¶ 2 I. BACKGROUND

¶ 3 Before trial, defendant, claiming that no actual minor was involved in the alleged offense, filed a motion to dismiss the charge of involuntary sexual servitude of a minor. Defendant also argued that the statute was unconstitutional because the Class X felony offense of involuntary sexual servitude of a minor contained identical elements to the Class A misdemeanor offense of attempted patronizing a minor engaged in prostitution. Noting that the State may no longer criminally prosecute juvenile prostitutes, the trial court concluded that attempted patronizing a minor engaged in prostitution could not be a comparable offense. The court therefore denied defendant's motion. Defendant filed a motion to reconsider. The court expressed its opinion that patronizing a minor engaged in prostitution should no longer be "on the books." The court also found that the same criminal behavior can result in different penalties without offending the proportionate penalties clause. The court denied the motion to reconsider except as to the issue of the absence of actual minors. The court stated that it would decide that issue when the parties discussed the jury instructions. The court ultimately denied that aspect of the motion as well.

¶ 4 The trial commenced on July 31, 2017, during which the following relevant evidence was presented. On January 8, 2015, defendant responded by text to the phone number listed in an advertisement for a female prostitute on the website "Backpage.com." The ad was titled "young warm and ready :)—18." It highlighted a photograph of a brunette female wearing cut-off jean shorts and a midriff-baring top. The female's face could not be seen. The advertisement read as follows:

> "Its ssooooooo cold outside, come warm up with a hot little coed. Im young, eager to please and more than willing to meet all your desires. come keep me warm and I promise to return the favor: 0:):) ask about my two for one special text me at [xxx-xxx-xxxx].
>
> 100 donation for hh
>
> 150 donation full hour
>
> Poster's age: 18"

Defendant was not aware when responding to the ad that he was communicating with Agent Spencer Taub of the United States Department of Homeland Security (DHS). The following is the text exchange that occurred between the two:

> "[DEFENDANT]: Hey looking to get warm
>
> [TAUB]: hey—my girls could use some warming up 2 ;)
>
> [DEFENDANT]: What's up with 2 girl. I only see pic of one?
>
> [TAUB]: no can't post pix of my daughters, 2 risky
>
> [DEFENDANT]: HaHa. Well what's the 2 girl special? And do u serve downers grove
>
> [TAUB]: no we r in aurora. infall only

[DEFENDANT]: Well it's not to far from me but to come out in this weather I would have to know what they look like. U don't have to post a pic. U can text some

[TAUB]: 200 for 2 grls

[DEFENDANT]: That's fine but I need to know what they look like

[TAUB]: the 14 yrs is blond and 15 yrs is brunet—both r in sports

[DEFENDANT]: wtf?? Not interested in minors. You crazy?

[DEFENDANT]: I'm 32

[DEFENDANT]: 18 is good but nothing under that too risky!!

[TAUB]: as long as u r gentle and treat my girls good

[TAUB]: I'm here to protect my grls

[DEFENDANT]: Are you a female?

[DEFENDANT]: Are u affiliated with the law or something?

[TAUB]: yes

[DEFENDANT]: Yes your with the law

[TAUB]: ummm… no… r u?

[DEFENDANT]: No.

[DEFENDANT]: Are u affiliated with the law. I want to make this question clear. Please answer in your next text

[DEFENDANT]: I am not!!

[DEFENDANT]: What if I just see u. Since your above 18

[TAUB]: no—wat r u talking about? r u a cop? Ur txt sounds like u r

[DEFENDANT]: No im not! But why wud u advertise their age when u know that's illegal under 18.

[TAUB]: I said yes to being a female—u txt way 2 fast

[DEFENDANT]: Haha sorry for fast text.

[TAUB]: because I don't want fricken cops at my f*** door

[DEFENDANT]: I think naturally they are old enough but the law says they are not.

[TAUB]: i do 2—my girls want 2 do this

[DEFENDANT]: Send me a pic

[TAUB]: i won't put them into sum thing they don't wann do

[DEFENDANT]: Ok where u at

[TAUB]: haha my txts are cumin in so f*** up

[TAUB]: im in aurora

[DEFENDANT]: Where you at. I'll come only if your there watching

[DEFENDANT]: I know aurora. Where at?

[TAUB]: yea—i'll watch—u b 2 ruf on my girls i'll kick ur a***.

[TAUB]: which one u want? 14 yr or 15, or both? Both is 200?

[DEFENDANT]: What about u how much for u

[TAUB]: not a ? both is 200

[DEFENDANT]: How much for all 3 of u

[TAUB]: I'm not in hun

[DEFENDANT]: U sure this is safe?

[DEFENDANT]: Ok tell me where to come

[TAUB]: what u want?

[DEFENDANT]: Both

[TAUB]: k 14 yr old is shy- so b gentl. No anal, must wear condom

[DEFENDANT]: No anal for sure and condom yes

[DEFENDANT]: If she doesn't want to she doesn't have to

[TAUB]: ok 88 and orchard

[DEFENDANT]: Hotel?

[TAUB]: i appreciate that. so just sex? if something else let me tell her

[TAUB]: yes hotel

[DEFENDANT]: On my way

¶ 5 Defendant entered the hotel room and met Melissa Siffermann, a special agent with DHS, posing as the mother offering her two daughters for sex. Defendant provided $200 in cash, which he left on the nightstand next to the bed. After they conversed for several minutes, defendant was arrested.

¶ 6 The court admitted into evidence a video recording of the conversation between Siffermann and defendant. As an aid, the State provided a transcript of the recording to the jury as they watched the video. During that conversation, defendant admitted that he was nervous about the age of the girls. He mentioned that he just "wanna get shizzed," to which Siffermann responded: "I just want to make sure that [there was] no anal." Defendant told her that he really did not have much of a plan, that he was "just kind of curious and nervous at the same time but um, *** we can show them the way." Defendant continued that "[t]his makes me nervous just saying their ages, like why don't you just tell me they are eighteen and nineteen please." "I mean like naturally I think that you know, once a girl has her period she's ready for that kind of thing but *** legally, obviously *** it's not the right thing."

¶ 7 Geoffrey Howard, a special agent with DHS, testified that his department entered into a partnership with the Aurora Police Department as part of an ongoing sting operation called "Child Shield" to target individuals who were seeking to have sex with minors. On January 8, 2015, an ad was posted on an escort service webpage called "Backpage.com." The ad provided a phone number to which interested individuals could sent a text. In order to keep the high volume of messages straight, the officers used a computer system called Callyo, which allowed them to respond to incoming texts via computer rather than phone. The program created a record of incoming and outgoing messages.

¶ 8 Howard recalled that there had been a snowstorm on January 8, 2015, and it was very cold, with high winds and blowing snow. On that night, Howard arranged a set up at a hotel off Orchard Road and I-88 in Aurora. He chose that hotel primarily because of its proximity to the interstate and to the Chicago area in general.

¶ 9 Howard explained how he set up the sting operation at the hotel. The agents conducted the operation out of two adjoining rooms. One room, called the "target room," was used as a meeting room for the targeted individuals and the undercover officer who played the "mother." The other room was used as the control room where several officers would correspond by text messages with individuals responding to the online ad. Two surveillance cameras were set up. One camera recorded the hallway outside of the meeting room. The other camera recorded the inside of the meeting room. Several agents monitored the surveillance equipment.

¶ 10 Investigator Erik Swastek of the Aurora Police Department testified that he posted the ad in the adult section of Backpage.com on January 8, 2015. He stated that, if an ad included someone younger than 18, the ad would not post. However, based on what he learned from a prostitute, people trying to find juveniles on Backpage.com looked for people posing as 18- or 19-year-olds.

¶ 11 Swastek stated that the phone number used was a "spoof" number. After someone responded to the ad, Swastek assigned the number to an officer who would then be responsible for communicating with that person. At approximately 10:02 p.m., on January 8, 2015, a text message was received in response to the ad, which Swastek assigned to Taub. On that particular day, Swastek remembered that "it was a snowy, cold, miserable day."

¶ 12 Taub testified that he was assigned to respond to the texts coming in from defendant that night. He portrayed the role of a mother offering her daughters for sexual services. All the texters were given the same instructions. Taub testified to the contents of the text conversation with defendant. Taub explained that the word "infall" was a typo for the word "incall," which meant you had to come to the hotel for sexual services. The last text occurred around 11:16. p.m. when defendant arrived at the hotel parking lot and Taub texted him the room number.

¶ 13 Siffermann testified that she portrayed the mother who offered her two teenage daughters for sex on the night in question. She was aware that someone responded to the ad and would be arriving at the meeting room. At approximately 11:19 p.m., defendant entered, they began talking, and he gave her $200. The conversation lasted a few minutes, ending with defendant expecting Siffermann's daughters to arrive in the room and Siffermann excusing herself to the bathroom. After she entered the bathroom, the arrest team entered the room and arrested defendant.

¶ 14 Siffermann testified that during the conversation defendant used the term "shizzed." In the context of her experience with sex trafficking and prostitution operations, she described it to mean a person who climaxes so intensely as to defecate on oneself.

¶ 15 Following his arrest, police found a cell phone, a box of condoms, and $400 in defendant's pocket. Nothing incriminating was found on defendant's cell phone or iPad beyond the text messages admitted at trial.

¶ 16 Defendant signed a waiver of his *Miranda* rights. See *Miranda v. Arizona*, 384 U.S. 436 (1966). Aurora police officer Greg Christoffel, who interviewed defendant, recalled that defendant told him that he in was in town on business when he decided to go on an adult website because he was lonely. He received a text message from someone he believed to be the mother of a 14- and a 15-year-old, who stated that they were available for sex. Defendant thought the ages were a typo but responded out of "curiosity," even though he had no intention of having sex with a 14- or 15-year-old.

¶ 17 Defendant called several character witnesses on his behalf. Kevin Carlson testified that he had known defendant for more than 10 years and that they had worked together for 8 years. Defendant was his "best friend" and a "great mentor." They went to bars together, but they never picked up women. Carlson lived with defendant and his wife for two years. Carlson stated that defendant "never, ever talked about underage girls before."

¶ 18 Alan Kaper testified that he had worked with defendant and that they had been friends for 13 years. They attended charity events, football games, and had gone on vacation together several times. Occasionally, they discussed their sex lives, but they did not pick up women together. Kaper stated that defendant "absolutely has never shown any want to be with an underage person."

¶ 19 Defendant's sister, Krista Jackson, testified that she had a close relationship with her brother. She testified that he would "never" have sex with an underage girl and that she had never seen him display any inclination, predisposition, or interest in underage girls.

¶ 20 Defendant's 23-year-old niece, Tanisha Lewis, testified that she was very close with her uncle. She stated that she lived with him for a while and that he had no predisposition or interest in having sex with underage girls.

¶ 21 Defendant testified that he lived in Pennsylvania and had been married for 14 years. On January 8, 2015, he was 35 years old and was in town on business and staying in a hotel in Downers Grove. At that time, he had been separated from his wife for nearly six months. Defendant finished work at about 8:45 p.m. As he sat in the hotel parking lot in Downers Grove, he started searching through Backpage.com because he was depressed, lonely, and looking for companionship. He had been on the site before, after a business traveler he had met a few weeks earlier told him about it. Defendant stated that he was not looking for sex, but shortly after he started texting with Taub, it became apparent to him that "there was a sexual agenda there." Defendant stated that, when one clicks on the ad, there is an indication that you must agree that this is an adult site only. When he responded to the ad that said, "my girls just want to get warm," defendant had no idea that there were minors involved. At some point when the texter mentioned her daughters were minors, defendant said, "Wtf, I'm not interested in that. Are you crazy?"

¶ 22 Defendant acknowledged texting that he knew that girls aged 14 and 15 were old enough to have sex "but the law says they are not." Defendant meant that girls can get pregnant at those ages and thus are "capable." Defendant did not believe that it is "okay to have sex with girls that age." Defendant stated that his memory was somewhat "foggy" about that night, and he hardly could believe that he texted those words. Once he arrived at the hotel, he thought it was okay because the mother was there. Defendant explained that, because the "mom" kept talking and trying to get him to agree to the transaction, it made him feel comfortable.

¶ 23 During cross-examination, defendant testified that it was not his goal that night to have sex with a 14- and a 15-year-old. Defendant explained that the business traveler who recommended the site told him that the adult services had a variety of amenities, including people who would go out with you for dinner and "cuddle" with you. Defendant testified that he asked how much for all

three, the mother and the two teens, because he was politely trying to divert the conversation back to the texter. Defendant believed that, from the initial contact, there was a sexual agenda, so he stopped to buy condoms at a gas station on the way. Defendant denied using the word shizzed, and he claimed that it was not clear from the video that he used the word.

¶ 24 The trial court ruled that defendant could present an entrapment defense and provided defendant's Illinois Pattern Jury Instruction, Criminal, No. 24-25.04 (4th ed. 2000) (hereinafter IPI Criminal 4th) concerning entrapment to the jury. The instruction provided that a defendant was entrapped if he was "incited or induced by a public offender to commit [the] offense," unless he was "predisposed to commit the offense[.]" During its deliberations, the jury sent a written question to the court that read, "Legal definition of incited and induced and predisposed." The prosecutor informed the court that he recalled reading a case holding that defense counsel was not ineffective for agreeing not to provide definitions for those same terms. The prosecutor was concerned that there were no legal definitions, to which the court responded that there are and that "[y]ou can look it up in Black's. That's the legal dictionary. So there is one in there, but I don't want to go down that path. There's no IPI on it." Defense counsel responded that he was fine with that and agreed with the court responding to the jury: "You have all of your instructions, please continue to deliberate." Just over thirty minutes later, the jury again asked, "Predisposition—what does this mean—please give definition[.]" The following colloquy then took place:

> "MS. GLEASON [(ASSISTANT STATE'S ATTORNEY)]: I thought—didn't they ask that the last time?
>
> THE COURT: I think that as induce, incite or—was that the third thing?
>
> MS. GLEASON: That's what I wrote down, but I could be wrong.
>
> MR. ZUELKE [(DEFENSE COUNSEL)]: I got that you said predisposed.

THE COURT: Whatever it is. And if you guys were writing down what I said last time, 'you have all your instructions. Please continue to deliberate.' Is that what I said?

MR. ZUELKE: Yes.

MS. GLEASON: I had, 'You have all of the instructions. Please continue to deliberate.'

THE COURT: All right. 'You have all of the instructions. Please continue to deliberate.'

And now that they have had a chance to digest the answers to the other, so just maybe stand by for a minute or two just in case because that buzzer went off really fast."

¶ 25 The discussion apparently was interrupted by the jury announcing that it had reached a verdict. The jury found defendant guilty of all three offenses. Defendant filed a motion for a new trial, claiming, *inter alia*, that he could not have knowingly committed the offense of involuntary servitude where there was no actual minor involved and that the statute defining the offense violated the proportionate penalties clause of the Illinois Constitution. The court denied the motion.

¶ 26 Following a sentencing hearing, the trial court sentenced defendant to six years' imprisonment on his conviction of involuntary sexual servitude of a minor and to two years on his conviction of traveling to meet a minor, to run concurrently. The grooming conviction merged into the conviction of traveling to meet a minor. Defendant timely appeals.

¶ 27 II. ANALYSIS

¶ 28 Defendant contends that his trial counsel rendered ineffective assistance of counsel by (1) failing to provide a definition for "predisposed" when requested by the jury, instead acquiescing in the court's decision not to answer the question, (2) failing to present to the jury that

he had no prior criminal history as it related to the question of predisposition, and (3) failing to object to several aspects of the State's closing argument regarding entrapment.

¶ 29 To establish ineffective assistance of counsel, a defendant must show both (1) deficient performance by counsel that fell below an objective standard of reasonableness and (2) prejudice, meaning a reasonable probability that absent counsel's error, the result would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under the first prong of the *Strickland* test, defendant must overcome a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." (Internal quotation marks omitted.) *Id.* at 689. Under *Strickland*'s prejudice prong, a "reasonable probability" that the result would be different is a probability that is sufficient to undermine confidence in the outcome of the trial. *People v. Houston*, 229 Ill. 2d 1, 4 (2008). The failure to satisfy either of the *Strickland* prongs dooms the claim. *People v. Givens*, 237 Ill. 2d 311, 331 (2010).

¶ 30 Defendant argues that the individual and cumulative effect of his counsel's deficient performance prejudiced the jury and deprived him of a fair trial. We first address the three ineffectiveness claims individually to determine if there was deficient performance. We then consider whether, cumulatively, any such deficiencies prejudiced defendant such that confidence in the trial's outcome has been undermined.

¶ 31 A. Deficient Performance

¶ 32 1. Failure to Submit Definition of "[P]redisposed"

¶ 33 Initially, defendant argues that trial counsel was ineffective where he failed to offer a definition of "predisposed," instead acquiescing in the court's decision to instruct the jurors, "You

have all your instructions, please continue to deliberate." Defendant asserts that this was deficient performance because the common understanding of the term "predisposed" is at odds with the more narrowly focused understanding of the term for purposes of the entrapment defense. Because defendant, in claiming entrapment, admitted committing the elements of the charged offenses, the issue of his predisposition was the lynchpin of his defense, and the jury should not have been allowed to labor under a misunderstanding of that concept.

¶ 34 The State counters that it was not deficient performance to acquiesce in the decision not to answer the jury's questions. The State cites *People v. Sanchez*, 388 Ill. App. 3d 467 (2009), where the First District held that defense counsel was not ineffective for acquiescing in the trial court's decision not to provide a requested definition for "predisposed" in an entrapment case. The *Sanchez* court noted, "[w]hen words in a jury instruction have a commonly understood meaning, the court need not define them with additional instructions. [Citation.] This is especially true where the pattern jury instructions do not provide that an additional definition is necessary." *Id.* at 477-78. For the reasons that follow, we decline to follow our sister court's analysis in *Sanchez*.

¶ 35 In this case, the jury was instructed with the IPI Criminal 4th instruction regarding the affirmative defense of entrapment, which states:

> "It is a defense to the charge made against the defendant that he was entrapped, that is, that for the purpose of obtaining evidence against the defendant, he was incited or induced by a public officer to commit an offense.
>
> However, the defendant was not entrapped if he was predisposed to commit the offense and a public officer merely afforded to the defendant the opportunity or facility for committing an offense." IPI Criminal 4th No. 24-25.04.

During deliberations, the jury asked the trial court for the legal definition of "predisposed," which, with the acquiescence of defense counsel, was not provided. The jury subsequently asked for the definition of "predisposition," but as the judge and the parties discussed the response, the jury apparently reached its verdict and the question was not further addressed.

¶ 36 "[T]he general rule is that the trial court has a duty to provide instruction to the jury where it has posed an explicit question or requested clarification on a point of law arising from facts about which there is doubt or confusion." *People v. Childs*, 159 Ill. 2d 217, 228-29 (1994). "This is true even though the jury was properly instructed originally." *Id.* at 229.

¶ 37 Here, the concern raised by defendant is that the commonly understood meaning of "predisposed" is broader than how the concept is understood in the governing case law for purposes of the entrapment defense. "Predisposition," as understood in the entrapment context, focuses on the defendant's *mens rea* before the exposure to government agents: " '[P]redisposition is established by proof that the defendant was ready and willing to commit the crime without persuasion *and before his or her initial exposure to government agents*.' " (Emphasis added.) *People v. Bonner*, 385 Ill. App. 3d 141, 146 (2008) (quoting *People v. Criss*, 307 Ill. App. 3d 888, 897 (1999)); see also *People v. Ramirez*, 2012 IL App (1st) 093504, ¶ 38; *Sanchez*, 388 Ill. App. 3d at 474. Webster's Third New International Dictionary defines "predisposed" as "having a predisposition." Webster's Third New International Dictionary, 1786 (1993). Black's Law Dictionary defines "predisposition" as "[a] person's inclination to engage in a particular activity." Black's Law Dictionary 1216 (8th ed. 2004).

¶ 38 Accepting that the common understanding of "predisposed" mirrors the above dictionary definitions rather than the narrower understanding in our governing case law, the defendant's problem is readily apparent. The common understanding does not focus the jury on the correct

timeframe for its predisposition analysis, *i.e.*, before defendant's initial exposure to government agents. See *Bonner*, 385 Ill. App. 3d at 146-47. Accordingly, the failure to properly define predisposition potentially allowed the jury to find that defendant was predisposed to commit the offenses by focusing on the wrong timeframe, *e.g.*, the time he entered the hotel room—a far easier point from which to find predisposition than from the time before defendant's exposure to the government agents.[1]

¶ 39 To ensure that the jury properly understood the concept of predisposition despite having twice expressed confusion about it, the trial court should have answered the jury's question with reference to the readily available explanation of predisposition set forth in *Bonner*. *Bonner*, 385 Ill. App. 3d at 146. Of course, we must acknowledge that the court's failure to provide the *Bonner* definition cannot be said to be error in the traditional sense, insofar as defense counsel acquiesced in the court's decision not to answer the question and defendant does not assert plain error on appeal. This acquiescence, however, and the failure to provide the *Bonner* definition to the court,

[1] Though neither of the parties cite the legislative history of the entrapment statute, we note, parenthetically, a discussion on the House floor between the sponsor of the 1996 amendment to the statute and another member wherein they agreed that the dictionary definition of predisposition would apply in lieu of defining the term in the statute. See 89th Ill. Gen. Assem., House Proceedings, March 22, 1995, at 108 (statements of Representatives Durkin and Hoffman); Pub. Act 89-332, § 5 (eff. Jan. 1, 1996) (amending 720 ILCS 5/7-12). We do not, however, find this discussion in any way determinative of our current analysis. The issue is not the dictionary definition itself but rather where to focus the dictionary definition for purposes of the entrapment analysis, *i.e.*, prior to exposure to government agents.

was deficient performance on the part of trial counsel, given that lack of predisposition was the lynchpin of the defense. Given the difference between the common understanding of "predisposition" and its narrower meaning in the entrapment context as set forth above—a distinction that the *Sanchez* court did not address—we decline to follow the holding in *Sanchez* that it was not ineffective assistance of counsel to acquiesce in the decision to decline the jury's request for the definition of predisposition. *Sanchez*, 388 Ill. App. 3d at 477-78.

¶ 40 Simply put, there is no strategic basis for allowing a confused jury to potentially stray from the proper timeframe—the time before defendant's exposure to government agents—in deciding whether defendant was predisposed to commit the offenses he otherwise admitted committing. Allowing the jury that leeway was deficient performance as it relates to the entrapment defense.

¶ 41 2. Failure to Present Evidence of Defendant's Lack of Prior Criminal Record

¶ 42 Defendant further contends that his trial counsel rendered deficient performance by failing to present to the jury the material fact that he had no criminal record, which was relevant to whether he was predisposed to commit the charged offenses before exposure to law enforcement.

¶ 43 A criminal defendant is constitutionally guaranteed a meaningful opportunity to present a complete defense. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8; *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006). Lack of a criminal record is relevant to an entrapment defense because it tends to show that the defendant was less likely to be predisposed to commit the charged offense. *Ramirez*, 2012 IL App (1st) 093504, ¶ 43; see also *Criss*, 307 Ill. App. 3d at 899 (trial court erred in excluding evidence of defendant's lack of criminal record in entrapment case).

¶ 44 Defendant had no criminal background at all, but his counsel did not present that fact to the jury. A defendant raising the defense of entrapment must admit to the factfinder that he has committed the charged offense, while urging that he lacked the predisposition to commit the

offense. See *Ramirez*, 2012 IL App (1st) 093504, ¶ 28. Informing the jury that defendant had no criminal history, including no previous criminal convictions involving sexual conduct with minors, would have bolstered defendant's argument to the jury that he was not predisposed to commit the offenses before exposure to government agents. Defendant's lack of a criminal record was strong evidence demonstrating this lack of predisposition, and counsel's failure to present this evidence is an obvious failure to function as the counsel guaranteed by the sixth amendment.

¶ 45 3. Failure to Object to the State's Entrapment Argument

¶ 46 Defendant finally contends that counsel performed deficiently by failing to object to the State's closing argument as it related to both inducement and predisposition. During closing, the prosecutor told the jury, "[i]f you find that the police did incite or induce him, then you can look at the next step," which was predisposition. Defendant argues that this two-step articulation improperly suggested to the jury that it had to first find inducement before considering the predisposition issue. This articulation ignores that it became the State's burden to disprove inducement, or prove predisposition, beyond a reasonable doubt once the trial court decided there was sufficient evidence to allow the affirmative defense of entrapment. *Bonner*, 385 Ill. App. 3d at 145. The State counters that it has wide latitude in closing argument and that its argument appropriately mirrored the IPI Criminal 4th entrapment instruction.

¶ 47 Defendant correctly construes the State's argument as shifting the burden. Once the trial court finds sufficient evidence to warrant allowing defendant to submit the affirmative defense of entrapment to the jury, it is the State's burden to defeat the defense by proving beyond a reasonable doubt either (1) that defendant was not induced or (2) that he was predisposed to commit the offense before his exposure to government agents. To suggest that the jury had to first determine that defendant was induced misallocates the burden. The jury did not have to "find inducement"

for defendant's entrapment instruction to prevail; rather, the State had to disprove that defendant was entrapped beyond a reasonable doubt. *Ramirez*, 2012 Il App (1st) 093504, ¶ 28.

¶ 48 Defendant further argues that his counsel was deficient for failing to object to the prosecutor's predisposition argument that, "what we have to prove is that [defendant] was willing to do this and the opportunity was there." We agree with defendant that the State was required to prove beyond a reasonable doubt that defendant was willing to commit the crime without persuasion and before his initial exposure to government agents. *Bonner*, 385 Ill. App. 3d at 145; *Ramirez*, 2012 IL App (1st) 093504, ¶ 38; *Sanchez*, 388 Ill. App. 3d at 474. For the reasons we articulated (*supra* ¶ 37-39) regarding the definition of predisposition, trial counsel should have objected to any argument that failed to pinpoint the proper timeframe for the predisposition analysis.

¶ 49 We find that counsel unreasonably failed to object to the mischaracterization of the burden of proof and to an improperly broad articulation of predisposition.

¶ 50 B. Prejudice

¶ 51 Having identified the above deficiencies in trial counsel's performance, all of which relate in some fashion to the question of defendant's predisposition to commit the offenses, it remains to determine whether defendant was prejudiced such that there was ineffective assistance of counsel. See *Houston*, 229 Ill. 2d at 4. Defendant urges that the predisposition question was the lynchpin of his defense and so the jury's obvious confusion as to the meaning of predisposition undermines confidence in the outcome of the trial.

¶ 52 The State counters that there was no prejudice, because the evidence demonstrates beyond a reasonable doubt that defendant was not induced and, in the alternative, that defendant was predisposed to commit the admitted-to offenses.

¶ 53 A defendant raising entrapment must present at least slight evidence that (1) the State induced or incited him to commit the crime and (2) he was not otherwise predisposed to do so. *People v. Placek*, 184 Ill. 2d 370, 380-81 (1998). Once the defendant presents slight evidence of entrapment, and the trial court allows the affirmative defense, the burden shifts to the State to rebut the entrapment defense beyond a reasonable doubt. *Bonner*, 384 Ill. App. 3d at 145. Here, defendant presented enough evidence to warrant allowing him to pursue the affirmative defense of entrapment. Regarding inducement, Taub was the first person to bring up the possibility of sex with minors and persisted in pursuing that option with defendant even after he expressed that he was not interested. Regarding predisposition, defendant and his witnesses testified to defendant's lack of sexual interest in minors.

¶ 54 Arguing that defendant was not induced, the State invites us to engage in a bifurcated prejudice analysis that first considers the question of inducement. It argues that because the evidence showed that defendant was not induced beyond a reasonable doubt, it proved that defendant was not entrapped, rendering any deficient performance on the predisposition issue nonprejudicial.

¶ 55 While the question of entrapment is generally one for the jury to decide (*Placek*, 184 Ill. 2d at 381), we cannot say with any certainty that the State proved beyond a reasonable doubt that defendant was not induced. On the one hand, Taub was the first to mention sex with minors to defendant, and Taub continued to suggest the conduct after defendant initially expressed disinterest. On the other hand, defendant quickly overcame his expressed disinterest in sex with minors and proceeded to plan a sexual encounter with the minors whom Taub described, ultimately traveling in a snowstorm to accomplish this purpose. Further, any meaningful attempt to parse through the evidence to decide the inducement prong was irreparably thwarted by the State's

argument to the jury that it first had to find inducement before reaching the predisposition question. This argument implicitly shifted the burden to the defense to disprove entrapment. The two-step process that the State proposed to the jury raises serious concerns about how the jury approached the entrapment defense.

¶ 56 Therefore, we reject the State's suggestion that its evidence on inducement dispenses with our need to determine prejudice. We note that, although inducement and prejudice are distinct elements of the entrapment defense, they are very much interrelated. Inducement focuses on the government's actions, whereas predisposition "focuses upon whether the defendant was an 'unwary innocent' or, instead, an 'unwary criminal' who readily availed himself of the opportunity to perpetrate the crime." *Mathews v. United States*, 485 U.S. 58, 63 (1988) (quoting *Sherman v. United States*, 356 U.S. 369, 372 (1958)). The two inquiries are often closely linked because the need for greater inducement may suggest that the defendant was not predisposed to commit the crime, while, conversely, a ready response to minimal inducement may indicate predisposition.

¶ 57 Next, we consider whether the failure to offer a readily available definition of predisposition was prejudicial to defendant. The refusal to clarify the jury's confusion over the meaning of "predisposition" created a serious danger that the jury convicted defendant based upon a consideration of predisposition untethered from the relevant timeframe, *i.e.*, prior to his exposure to government agents. For example, it is entirely feasible that the jury considered the predisposition question focused on the timeframe when defendant arrived at the hotel, condoms and cash in hand—a timeframe whereby it would be much easier to conclude defendant was predisposed to commit the offenses.

¶ 58 Of course, the effect of the State's burden-shifting inducement argument and the jury's confusion over predisposition was further compounded by defense counsel's failure to inform the

jury that defendant had no criminal history—a fact that would have bolstered the argument that defendant was not predisposed to commit the offenses before his exposure to government agents. The State argues that defendant was not prejudiced by this, because character witnesses testified that defendant never showed any sexual interest or inclination toward minors. We, however, agree with defendant. The jury might have thought that, since these witnesses were defendant's family and friends, they were biased or simply unaware of defendant's sexual interest in minors—an interest which defendant presumably would keep secret from them. Conversely, defendant's lack of a criminal record would have been objective evidence that defendant was not predisposed to commit the offenses before his exposure to law enforcement.

¶ 59 During closing argument, the State told the jurors that the instructions contained "a lot of legal words *** that [p]robably a good contract attorney *** might be able to figure out what they all are." While we find this characterization of the instructions unfortunate in that it suggested to the jurors that the salient terms might be beyond their understanding, there is no question that both the failure to define predisposition to the jury and the State's burden-shifting explanation of inducement certainly muddied the waters. *Strickland*'s prejudice prong is not simply an "outcome-determinative" test but may be satisfied if the defendant demonstrates that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. *People v. Jackson*, 205 Ill. 2d 247, 259 (2001). Here, the cumulative effect of counsel's deficient performance rendered the proceeding unreliable under *Strickland*. Therefore, we reverse defendant's convictions and remand the matter to the trial court for a new trial.

¶ 60 Since we reverse and remand, we need not address the remaining issues on appeal. We must, however, review the sufficiency of the evidence to determine whether it sufficed for double jeopardy purposes. See *People v. Macon*, 396 Ill. App. 3d 451, 458 (2009) ("where a conviction

has been set aside because of an error in the proceedings leading to the conviction," the State may retry the defendant; thus, the appellate court must review the sufficiency of the evidence to "prevent the risk of exposing [the] defendant to double jeopardy"). After reviewing the record in the light most favorable to the State, we conclude that the evidence is sufficient to support the jury's verdicts beyond a reasonable doubt. Our determination is not binding on retrial and does not express our opinion as to defendant's guilt or innocence.

¶ 61 III. CONCLUSION

¶ 62 Based on the foregoing, we reverse defendant's convictions and remand for a new trial.

¶ 63 Reversed and remanded.

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APPELLATE COURT 2ND DISTRICT

IN THE

APPELLATE COURT OF ILLINOIS

SC

SECOND JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- SHANE LEWIS, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of the Sixteenth Judicial Circuit, Kane County, Illinois No. 15 CF 44 Honorable Linda Abrahamson, Judge Presiding.

Thomas M. Kartsotis
Clerk of the Circuit Court
Kane County, IL

FEB 16 2018

FILED 058
ENTERED

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Second District, from the judgment described below:

Appellant's Name:	Shane Lewis, Register No. Y25015
Appellant's Address:	Lincoln Correctional Center P.O. Box 549 Lincoln, IL 62656
Appellant's Attorney:	Office of the State Appellate Defender
Appellant's Address:	One Douglas Avenue, Second Floor Elgin, IL 60120
Offense of which convicted:	Traveling to meet a minor, involuntary sexual service of a minor
Date of Order:	October 6, 2017
Sentence:	2 years and 6 years, concurrent

Respectfully submitted,

By: /s/ Thomas A. Lilien
Deputy Defender

E-FILED
3/25/2021 8:54 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff.
vs.
Shane Lewis Defendant.
General Number 15CF44

NOTICE OF APPEAL

An appeal is taken from the order or judgment described below.

(1) Court to which appeal is taken: Second District Appellate Court

(2) Name of appellant and address to which notices shall be sent.

Name: Shane Lewis, Inmate #: Y-25815
Address: Lincoln Correctional Center, P.O. Box 549
Lincoln, IL 62656

(3) Name and address of appellant's attorney on appeal.

Name: State Appellate Defender, 1 Douglas Ave., 2nd Floor
Address: Elgin, Illinois 60120

If appellant is indigent and has no attorney, does he want one appointed? Yes

(4) Date of judgment or order: 10-6-17

(5) Offense of which convicted: Involuntary Sexual Servitude of a Minor; Traveling to Meet a Minor; Grooming.

(6) Sentence: 6 years IDOC

(7) If appeal is not from a conviction, nature of order appealed from:

Dori Zuelke
Defendant's Attorney
6188579

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. 15CF44

People of State of Illinois Plaintiff(s)	Shane Lewis Defendant(s)	Clerk of the Circuit Court Kane County, IL OCT 6 2017 FILED 107 ENTERED
Barger/Gleason Plaintiff(s) Atty.	Zulbe Defendant(s) Atty.	
Judge Abrahamson	Court Reporter Lisa	Deputy Clerk Rosa
A copy of this order ☐ should be sent ☐ has been sent ☐ Plaintiff Atty. ☐ Defense Atty. ☐ Other		File Stamp

JUDGMENT ORDER (JGMTO)

☒ The Court/Jury having found the defendant guilty of: CT 1 Indecent Sexual Solicitation of a Minor
☒ Original ☐ Lesser/Incl. ☐ Amended Statute: 720 ILCS 5/10-9(a) Class X
☐ A motor vehicle was involved in the commission of the felony
☒ Judgment entered on conviction and sentence
☐ Nolle Prosequi Count(s) _____

UPON THE DEFENDANT'S PLEA/VERDICT OF GUILTY THE FOLLOWING SENTENCE IS HEREBY IMPOSED

	Months	Days
☐ 208 - Withhold Judgment - Court Supervision		
☐ 215 - Withhold Judgment - 720 ILCS 550/710 Probation		
☐ 216 - Withhold Judgment - 720 ILCS 570/410 Probation		
☐ 204 - Probation $50 per month fee or ☐ _____ per month fee ☐ fee waived		
☐ 210 - Intensive Probation for _____ months.		
☐ 206 - Conditional Discharge, $100 per year fee or ☐ _____ per year fee ☐ fee waived		
☐ 213 - Electronic Monitoring: $ _____ (per day) $ _____ (total)		
☐ 209 - Perform public service _____ hours, to be completed by _____ $50 for 6 months, $25 per month thereafter ☐ fee waived ☐ Defendant exempt		

The Defendant to report to ☐ Judge ☐ Court Services ☐ Judge and Court Services ☐ Non Reporting

☒ Fine: $ 0 ☒ Fine = $ 0 after Pretrial Detention Credit. ☒ Costs: $ 430.00 ☐ Sex Assault Fee $100
☐ Statutory Assessment Fee: $ _____ ☐ Sex Registration Fee: $ _____ ☐ Drug Assessment Fee $ _____
☒ DNA Fee $250 ☐ Spinal Cord Injury $5 ☐ Drug Fine: $ _____ ☒ Trauma Center Fee: $100 ☐ Abuser Serv. Fee $20
☐ Drug Testing Fee: $ _____ ☐ IPS-Fee $200 ☐ Crime Lab Fee $100 ☐ Pub Def Fee of $ _____ ☐ Reserved
☐ Restitution: $ _____ to _____ (Name and Address)
☐ Sheriffs costs: $ _____ ☐ Fee Waived ☒ Other $ 400.00

THE DEFENDANT SHALL PAY FINES, COSTS, AND FEES, totaling (including probation, conditional discharge, and supervised community service) $ _____ in monthly payments of $ _____ per month, with the first payment due _____. Monthly payment does not include weekend fees or any fees assessed prior to or post disposition.

THE DEFENDANT TO SERVE THE FOLLOWING PERIODS OF INCARCERATION

	Years	Months	Days
☒ 201 - Department of Corrections MSR 3 years	6 @ 50%		
☐ 202 - Kane County Jail			
☐ 203 - Periodic Imprisonment ($20 per day-weekend equals 3 days)			

☒ 250 - Credit for time served: 660 actual days 1/8/2015 to 11/9/2015 & 8/2/17 to present
☒ The sentence of Idoc shall run ☐ Consecutive ☒ Concurrent to the term imposed by the Circuit Court of Kane County, case number 15CF44 CT2
☐ Defendant to begin incarceration on _____

THE DEFENDANT TO COMPLY WITH THE FOLLOWING CONDITIONS:

☐ Follow all rules of ☐ Probation ☐ Conditional Discharge ☐ Electronic Home Monitoring ☐ Community Service ☐ TASC
☐ Alcohol/Drug Evaluation ☐ KCDC Evaluation/Treatment ☐ No Contact with _____
☒ Other: bond to apply to all outstanding Fines, costs, fees imposed

Date: 10/6/2017 Judge: _____

P1-CF-005 (04/12) Page 2 of 2 (Page 1 - P1-CR-001) White - Clerk Green - Probation Yellow - SAO Pink - Defendant Gold - Defendant Attorney

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. 17CF44

People Plaintiff(s)	Shane Lewis Defendant(s)
Bayer/Gleason Plaintiff(s) Atty.	Zuelke Defendant(s) Atty.
Judge Abramson	Court Reporter Lisa / Deputy Clerk Rosa

A copy of this order ☐ should be sent ☐ has been sent

☐ Plaintiff Atty. ☐ Defense Atty. ☐ Other _____

Clerk of the Circuit Court
Kane County, IL
OCT 6 2017
FILED 107
ENTERED _____
File Stamp

JUDGMENT ORDER
Illinois Department of Corrections

Crime For Which Defendant Convicted: CT 1 (Count)
Involuntary Sexual Sensitive Data Misuse
Chapter and Section:
720 ILCS 5/10-9(c)(2)
Date of Offense: 1/8/2015

Credit for Time Served:
☒ Kane County Jail: 1/8/2015 to 1/9/2015
8/2/17 to present
666 Day(s) _____ Month(s) ☐ NONE

☐ Other Credit: _____
(Type/Place/Agency)
_____ Day(s) _____ Month(s) ☐ NONE

Costs of These Proceedings:
Fine _____
Sheriff's Costs _____
Sub-total _____ (A)
Bond on Deposit _____
Less 10% (if applicable)(_____)
Credit Amount(_____)(B)
BALANCE DUE (A-B) _____
Balance Due:
☐ Instanter ☐ _____ (date)

Sentence of the Court:
_____ Day(s) _____ Month(s) 6 Year(s)
☒ Concurrent ☐ Consecutive with Case Number(s):
Count 2 50%
MSR 3 years
☐ Finding of guilty but mentally ill

Municipality of Arrest (if over 25,000 pop.):
Aurora

THE COURT being advised in the premises:

IT IS HEREBY ORDERED that the defendant named herein is guilty of the crime set forth in this case; and,

IT IS FURTHER ORDERED that the defendant be given credit for such time served as determined by the Court; and, that the defendant pay all costs of these proceedings.

NOW, THEREFORE, is Ordered, Adjudged and Decreed that the defendant be sentenced to the Illinois Department of Corrections for the crime he/she stands convicted, for a term of days, months or years as set forth herein; and,

FURTHER, that the defendant be taken from the bar of this Court to the Kane County Jail, and from there, by the Sheriff of Kane County, to the nearest reception and classification center of the Illinois Department of Corrections, and the Illinois Department of Corrections is hereby required and commanded to take the body of the defendant and confine him/her in a Penitentiary or State Penal Farm, according to the law, from and after delivery thereof until discharged according to law, provided such term of imprisonment shall be not less than nor more than the term of days, months or years for which the defendant stands convicted.

Date: 10/6/2017

Judge: _____

P1-MISC-007A (11/12) White Copy - Clerk Yellow Copy - IDOC Pink Copy - IDOC Gold Copy - Sheriff

By virtue of the within Judgment Order - Illinois Department of Correction, I have taken the body of the within named defendant and will deliver him/her to the Reception and Classification Center of the Illinois Department of Corrections.

Date: 10/06/17 Signed: _____
(Sheriff)

By: _____ #278
(Deputy Sheriff)

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. 15CF44

People of State of Illinois Plaintiff(s)	Shane Lewis Defendant(s)	Clerk of the Circuit Court Kane County, IL OCT 6 2017 FILED 107 ENTERED File Stamp
Bayer/Gleason Plaintiff(s) Atty.	Zuelke Defendant(s) Atty.	
Judge Arabimoen	Court Reporter Lisa	Deputy Clerk Rose
A copy of this order ☐ should be sent ☐ has been sent ☐ Plaintiff Atty. ☐ Defense Atty. ☐ Other		

JUDGMENT ORDER (JGMTO)

☒ The Court/Jury having found the defendant guilty of: CT 2 Trucking to meet a minor (Class 3)
☒ Original ☐ Lesser/Incl. ☐ Amended Statute: 720 ILCS 5/10-26(a)
☐ A motor vehicle was involved in the commission of the felony
☒ Judgment entered on conviction and sentence
☐ Nolle Prosequi Count(s) _____

UPON THE DEFENDANT'S PLEA/VERDICT OF GUILTY THE FOLLOWING SENTENCE IS HEREBY IMPOSED

	Months	Days
☐ 208 - Withhold Judgment - Court Supervision		
☐ 215 - Withhold Judgment - 720 ILCS 550/710 Probation		
☐ 216 - Withhold Judgment - 720 ILCS 570/410 Probation		
☐ 204 - Probation $50 per month fee or ☐ _____ per month fee ☐ fee waived		
☐ 210 - Intensive Probation for _____ months.		
☐ 206 - Conditional Discharge, $100 per year fee or ☐ _____ per year fee ☐ fee waived		
☐ 213 - Electronic Monitoring: $ _____ (per day) $ _____ (total)		
☐ 209 - Perform public service _____ hours, to be completed by _____ $50 for 6 months, $25 per month thereafter ☐ fee waived ☐ Defendant exempt		

The Defendant to report to ☐ Judge ☐ Court Services ☐ Judge and Court Services ☐ Non Reporting

☐ Fine: $ _____ ☐ Fine = $ _____ after Pretrial Detention Credit ☐ Costs: $ _____ ☐ Sex Assault Fee $100
☐ Statutory Assessment Fee: $ _____ ☒ Sex Registration Fee: $ 500.00 ☐ Drug Assessment Fee $ _____
☐ DNA Fee $200 ☐ Spinal Cord Injury $5 ☐ Drug Fine: $ _____ ☒ Trauma Center Fee: $100 ☐ Abuser Serv. Fee $20
☐ Drug Testing Fee: $ _____ ☐ IPS Fee $200 ☐ Crime Lab Fee $100 ☐ Pub Def Fee of $ _____ ☐ Reserved
☐ Restitution: $ _____ to _____ (Name and Address)
☐ Sheriffs costs: $ _____ ☐ Fee Waived ☐ Other $ _____

THE DEFENDANT SHALL PAY FINES, COSTS, AND FEES, totaling (including probation, conditional discharge, and supervised community service) $ _____ in monthly payments of $ _____ per month, with the first payment due _____. Monthly payment does not include weekend fees or any fees assessed prior to or post disposition.

THE DEFENDANT TO SERVE THE FOLLOWING PERIODS OF INCARCERATION

	Years	Months	Days
☐ 201 - Department of Corrections MSR 1 yr	2 @ 50%		
☐ 202 - Kane County Jail			
☐ 203 - Periodic Imprisonment ($20 per day-weekend equals 3 days)			
☒ 250 - Credit for time served: assessed in count 1			

☒ The sentence of 5 DOC shall run ☐ Consecutive ☒ Concurrent to the term imposed by the Circuit Court of Kane County, case number 15CF44 CT 1.
☐ Defendant to begin incarceration on _____

THE DEFENDANT TO COMPLY WITH THE FOLLOWING CONDITIONS:

☐ Follow all rules of ☐ Probation ☐ Conditional Discharge ☐ Electronic Home Monitoring ☐ Community Service ☐ TASC
☐ Alcohol/Drug Evaluation ☐ KCDC Evaluation/Treatment ☐ No Contact with _____
☒ Other: $ owed to be taken from bond

Date: 10/6/2017 Judge: _____

P1-CF-005 (04/12) Page 2 of 2 (Page 1 - P1-CR-001) White - Clerk Green - Probation Yellow - SAO Pink - Defendant Gold - Defendant Attorney

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. 15CF44

Plaintiff(s): People	Defendant(s): Shane Lewis
Plaintiff(s) Atty.: Boyer/Gleason	Defendant(s) Atty.: Zuelke
Judge: Abrahamson	Court Reporter: Lisa
Deputy Clerk: Rosa	

A copy of this order ☐ should be sent ☐ has been sent

☐ Plaintiff Atty. ☐ Defense Atty. ☐ Other _____

Clerk of the Circuit Court
Kane County, IL
OCT 6 2017
FILED 107
ENTERED

File Stamp

JUDGMENT ORDER
Illinois Department of Corrections

Crime For Which Defendant Convicted: AT 2
Traveling to meet a minor (Count 3)

Chapter and Section:
720 ILCS 5/11-26(a)

Date of Offense: 1/8/2015

Credit for Time Served:
☒ Kane County Jail:
_____ Day(s) _____ Month(s) ☐ NONE

☐ Other Credit: _____
(Type/Place/Agency)
_____ Day(s) _____ Month(s) ☐ NONE

Costs of These Proceedings:
Fine _____
Sheriff's Costs _____
Sub-total _____ (A)
Bond on Deposit _____
Less 10% (if applicable)(_____)
Credit Amount(_____)(B)
BALANCE DUE (A-B) _____
Balance Due:
☐ Instanter ☐ _____ (date)

Sentence of the Court:
_____ Day(s) _____ Month(s) 2 Year(s)
☒ Concurrent ☐ Consecutive with Case Number(s):
Count 1 50%

MSR 1 year

☐ Finding of guilty but mentally ill

Municipality of Arrest (if over 25,000 pop.):
Aurora

THE COURT being advised in the premises:

IT IS HEREBY ORDERED that the defendant named herein is guilty of the crime set forth in this case; and,

IT IS FURTHER ORDERED that the defendant be given credit for such time served as determined by the Court; and, that the defendant pay all costs of these proceedings.

NOW, THEREFORE, is Ordered, Adjudged and Decreed that the defendant be sentenced to the Illinois Department of Corrections for the crime he/she stands convicted, for a term of days, months or years as set forth herein; and,

FURTHER, that the defendant be taken from the bar of this Court to the Kane County Jail, and from there, by the Sheriff of Kane County, to the nearest reception and classification center of the Illinois Department of Corrections, and the Illinois Department of Corrections is hereby required and commanded to take the body of the defendant and confine him/her in a Penitentiary or State Penal Farm, according to the law, from and after delivery thereof until discharged according to law, provided such term of imprisonment shall be not less than nor more than the term of days, months or years for which the defendant stands convicted.

Date: 10/6/2017

Judge: _____

PI-MISC-007A (11/12) White Copy - Clerk Yellow Copy - IDOC Pink Copy - IDOC Gold Copy - Sheriff

By virtue of the within Judgment Order - Illinois Department of Correction, I have taken the body of the within named defendant and will deliver him/her to the Reception and Classification Center of the Illinois Department of Corrections.

Date. 10/06/17

Signed: _____
(Sheriff)

By: _____ #278
(Deputy Sheriff)

Index to the Record on Appeal

Common Law Record

Secured Common Law Record

Supplemental Common Law Record

Report of Proceedings

Exhibits

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 2, 2021, the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided service of such filing to the email addresses of the persons named below:

Thomas A. Lilien
Yasemin Eken
Office of the State Appellate Defender
Second Judicial District
One Douglas Avenue, Second Floor
Elgin, Illinois 60120
2nddistrict.eserve@osad.state.il.us

Counsel for Defendant-Appellee

Bryan G. Lesser
Gordon Rees Scully Mansukhani LLP
One North Franklin, Suite 800
Chicago, Illinois 60606
Blesser@grsm.com

Counsel for Defendant-Appellee

Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail thirteen copies of the **Brief and Appendix of Plaintiff-Appellant People of the State of Illinois** to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois 62701.

/s/ Eric M. Levin
ERIC M. LEVIN
Assistant Attorney General