No. 126705

IN THE

SUPREME COURT OF ILLINOIS

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

APPELLEE'S REPLY IN SUPPORT OF REQUEST FOR CROSS-RELIEF

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APPELLEE'S REPLY IN SUPPORT OF REQUEST FOR CROSS-RELIEF

II. The State Failed to Prove Beyond a Reasonable Doubt That Shane Lewis Was Not Entrapped Into Committing the Offenses.

Shane Lewis sought out the company of an adult woman when he responded to an internet posting. The government agents responded by refusing to offer an option for adult women, and only offered sexual conduct involving minors. Shane Lewis replied, "wtf?? Not interested in minors. You crazy?" (St. Ex. 2). The government agents then tried to persuade Lewis to engage in sexual conduct with minors, by saying things like, "as long as u r gentle and treat my girls good... I'm here to protect my grls." (St. Ex. 2). Lewis repeatedly reaffirmed his interest in sexual conduct with adults stating, "Are you a female," "What if I just see u. Since your [*sic*] above 18," and "What about u how muck [*sic*] for u?" (St. Ex. 2). The government agents continued to deflect and attempt to persuade Lewis that sexual conduct with minors was acceptable by telling him things like "my girls want to do this... I won't put them into sum thing they don't wanna do," and "yea- I'll watch- u b 2 ruf on my girls I'll kick ur ass." (St. Ex. 2). When he arrived at the hotel room, Lewis continued to express his disinterest in sexual conduct with minors stating, "I'm, I'm a little nervous, the age like, it's not like I'm even in to that, honestly,"and "I'm very nervous to tell you the truth, like I feel weird about it with them being young like that." (St. Ex. 9). Thus, the notion of sexual conduct with minors originated with the government agents, and then they purposefully persuaded Lewis into an agreement by encouraging him, making him feel comfortable with the idea, and ignoring anything he expressed contrary to the officer's goal of arresting him for attempting to have sex with minors.

Although this evidence of inducement was not immense, it was sufficient to raise the entrapment defense and shift the burden to the State to prove beyond a reasonable doubt that Lewis was ready and willing to commit the offense before and without exposure to government agents. However, there was little to no evidence that Lewis was predisposed to engage in sexual conduct with minors before texting with Agent Taub. Thus, as a matter of law, Lewis established the defense of entrapment, and the State failed to prove beyond a reasonable doubt that he was not entrapped. Therefore, this Court should reverse Lewis's convictions for involuntary sexual servitude of a minor and traveling to meet a minor.

The State misconstrues the entrapment defense and encourages this Court to abandon decades of precedent cases in favor of an interpretation that treats inducement and predisposition as wholly separate elements. Contrary to the State's position, and as the Appellate Court rightfully found, "although inducement and [predisposition] are distinct elements of the entrapment defense, they are very much interrelated." *Lewis*, 2020 IL App (2d) 170900, ¶ 56. Inducement focuses on the government agent's conduct, while predisposition focuses on the defendant's conduct, and "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." *Id.* The Appellate Court's finding of interrelatedness is reasonable and consistent with precedent. See e.g. *People v. Ramirez*, 2012 IL App (1st) 093504, ¶ 38 (type and nature of inducement are one of several factors to be considered in the predisposition analysis after the burden has shifted to the State).

The State unreasonably claims that they can rebut the entrapment defense

solely by showing insufficient inducement regardless of predisposition. Initially, the State relies on a series of federal cases from various jurisdictions without any regard for the fact that Illinois, and Lewis's entrapment defense, are based on an Illinois statute separate from the federal common law defense of entrapment. Further, there is a difference between showing *no* government inducement and *insufficient* government inducement. In the federal cases cited by the State, the government can defeat the entrapment defense by showing that there was zero government inducement. See *U.S. v. Mayfield*, 771 F.3d 417, 4404 (7th Cir. 2014) (after granting defendant's motion in limine to present the entrapment defense based solely on defendant's proffer of testimony, the court stated that "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 added); *U.S. v. Burkley*, 591 F.2d 903, 915 (D.C. Cir. 1978) (the prosecution can rebut entrapment by proving predisposition or that there was "no government inducement of or participation in the crime whatsoever").

Decades of precedent establish that, in Illinois, when entrapment has been presented to the jury, the State bears the burden of proving "that the defendant was ready and willing to commit the crime without persuasion." *People v. Poulos*, 196 Ill. App. 3d 653, 658 (1st Dist. 1990) (emphasis added); see e.g. *People v. Latona*, 268 Ill. App. 3d 718, 725 (2d Dist. 1994) ("In order to sustain its burden of proving that defendant was not entrapped, the State needed to show that defendant was predisposed to commit the offense, i.e., he was ready and willing to commit it without persuasion"); *People v. Colano*, 231 Ill. App. 3d 345, 349 (2d Dist. 1992) ("the defendant first must demonstrate that the State induced him to commit a criminal

act; if he does so, then the burden is on the State to prove that the defendant was ready and willing to commit the crime without persuasion, that is, that he had a predisposition to commit the crime."); *People v. D'Angelo*, 223 Ill.App.3d 754, 775 (5th Dist. 1992) ("Once the defendant has demonstrated that the State induced him to commit a criminal act, then the burden is on the State to prove the defendant was ready and willing to commit the crime without persuasion, that is, that he had a predisposition to commit the crime").

The State's discussion on the burden of production vs. burden of persuasion is unnecessary. (St. R. Br. 5). Lewis maintains that the State could prevent the issue of entrapment from being presented to the jury if it proves that there was no inducement, as in no government persuasion or involvement, either in a motion in limine or before closing arguments. Further, Lewis maintains that inducement and predisposition are interrelated in the State's burden to rebut the entrapment defense to the jury. The State bears the burden of proving beyond a reasonable doubt that Lewis was ready and willing to commit the offense before and without government persuasion, and that the type, nature, and amount of the inducement are to be considered as one of several factors when determining if the State has met its burden. *Ramirez*, 2012 IL App (1st) 093504, ¶ 38.

Here, the State failed to meet its burden to rebut the entrapment defense. Several witnesses testified that Lewis had no history of inclination to engage in sexual conduct with minors, there was no evidence of any criminal history, and Lewis's electronic devices all had no indication of Lewis having a pre-existing interest in engaging in sexual conduct with minors. Lewis responded to an internet posting for the company of an adult female, the government agents then refused

to offer an adult female and insisted on repeatedly offering minors for sex. Lewis responded that he was "not interested" and continued to request the company of an adult female including government agents Taub and Sifferman. The government agents tried to persuade Lewis into engaging in sexual conduct with minors when they consistently told him that the underage women consented and wanted to have sex with him, that their mother was "ok" with it, and that Lewis was "not crazy," or a "creep," or an "ugly freak" for agreeing to engage in this conduct. Lewis consistently expressed his hesitation during the text conversation and at the hotel room. Thus, although the evidence of inducement was not egregious, the evidence suggesting that Lewis was ready and willing to engage in sexual conduct with minors before the government persuasion was non-existent. Therefore, this Court should reverse Lewis's convictions for involuntary sexual servitude of a minor and traveling to meet a minor.

III. The State Failed to Prove Lewis Guilty of Involuntary Sexual Servitude of a Minor Where That Statute Applies to Sex Traffickers, but not Patrons, Like Him.

Based on the plain language of the statute, the definitions provided therein, and methods of statutory interpretation, the word "obtain" as used in the trafficking in persons statute does not apply to patrons of commercial sexual activity. Because Lewis was a patron who did not obtain anyone, the State failed to prove that he committed the offense of involuntary sexual servitude of a minor.

As an initial matter, the State urges this court to adopt a dictionary definition of a term that is expressly defined by the Statute. (St. R. Br. 23). "Obtain," as defined by the Trafficking in Persons Statute, means "to secure performance" of "work of economic or financial value" or of "activities resulting from a relationship between

a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor." 720 ILCS 5/10-9(a)(7)(2015); 720 ILCS 5/10-9(a)(5)(2015); 720 ILCS 5/10-9(a)(8)(2015). Thus, under the plain meaning of the terms as defined by the Statute, to obtain another person only applies to a principal-agent relationship where the agent-victim performs services, sexual or non-sexual, for the economic benefit of the principal-trafficker.

Further, the dictionary definition proposed by the State also supports a finding that patrons-johns do not "obtain" another person. The State puts forth a definition for "obtain" as in to "get, acquire, or secure," or "gain or attain possession...of." (St. R. Br. 23). The State then suggests that Lewis obtained another person when he gave $200 to Agent Sifferman. The notion that you can "acquire" or "attain possession of" another person for only $200 is a shocking proposition which underscores the unreasonableness of the State's position. The State goes on to misportray Lewis's position when it states, "in defendant's view, therefore, a person obtains a minor within the meaning of the involuntary sexual servitude of a minor provision only if the person is acting as a 'pimp,' who has 'an ongoing relationship with the victim' and benefits from or supervises the activities the victim performs. (St. R. Br. 24-25). However, as Lewis has consistently argued, the involuntary sexual servitude of a minor provision applies to all traffickers, including recruiters, kidnappers, transporters, and auctioneers, as well as pimps and madams, because each of those roles are a step in the human trafficking chain where they use some degree of force, threat, or coercion against the victim for their own economic benefit. (Def. Br. 58-63); see also 720 ILCS 5/10-9 (b) (listing the means of obtaining another person).

The State also inadvertently points out the inappropriateness of applying this statute to mere patrons. As the State recognizes, attempting to patronize a juvenile prostitute is a separate crime, which Lewis was not charged with. (St. R. Br. 36); 720 ILCS 5/11-18.1(a-5)(2015). The State claims that the difference between the two crimes is that attempting to patronize a minor engaged in prostitution "does not require that a defendant attempt to gain control over a minor. Instead it requires only that defendant attempt to engage in a sex act with a minor" in exchange for anything of value. (St. R. Br. 37). Under the Involuntary Sexual Servitude of a Minor provision, the traffickers gain control over the minor-victims. Patrons like Lewis do not gain control over anyone, they are merely attempting to engage in a sex act in exchange for money. The State also points out that "involuntary sexual servitude of a minor prohibits a person from obtaining (or attempting to obtain) not labor or services, but 'another person.'" (St. R. Br. 31). This proposition also supports a finding that the statute does not apply to patrons because the patrons are receiving sexual services - they are not obtaining the person.

Lastly, the State's concern for punishing the demand side of human trafficking is unfounded. First off, paying to have sex with minors is already illegal. 720 ILCS 5/11-18.1(a-5). Thus, the criminal conduct at issue is already punished and disincentivized. Second, there is no reason to believe that the involuntary sexual servitude of a minor, or the entire Trafficking in Persons Statute, was intended to apply to the demand side - the statute's intent is to punish and criminalize the act of trafficking itself. And third, it is unreasonable to punish patrons with the same harsh Class X felony that applies to kidnappers, recruiters, transporters, or pimps, especially when there is no reason to believe that the patron was aware

of, or involved in, the act of trafficking.

In conclusion, Lewis was a mere patron of the commercial sexual activity. He did not attempt to recruit, entice, harbor, transport, provide, or obtain anyone. He did not use force, harm, restraint, intimidation, or threat to control the minor-victim, nor did he receive any economic benefit from any relationship with the minor-victim. Thus, Lewis did not perpetrate any involuntary servitude. Therefore, this Court should reverse Lewis's convictions for involuntary sexual servitude of a minor.

IV. Lewis's Class X Conviction and Sentence For Involuntary Sexual Servitude of a Minor Must Be Vacated Because, As Applied to Lewis, The Statute Violates Illinois' Proportionate Penalties Clause.

The State claims that attempting to patronize a minor engaged in prostitution does not contain identical elements to involuntary sexual servitude of a minor. (St. R. Br. 37). Specifically, the State claims that the difference between the two crimes is that attempting to patronize a minor engaged in prostitution "does not require that a defendant attempt to gain control over a minor. Instead it requires only that defendant attempt to engage in a sex act with a minor" in exchange for anything of value. (St. R. Br. 37). Yet the evidence presented only suggests that Lewis agreed to pay money in exchange for sexual acts with a minor - there was no evidence that he did anything further to "gain control over" a minor. Thus, if the elements are not identical, then the elements for involuntary sexual servitude of a minor were not met.

Alternatively, if nothing more is needed to constitute attempting to gain control over another person, other than paying money in exchange for sex, then the elements are identical. The State claims that there is a difference based on

whether the defendant "attempts to purchase sex with a minor directly." (St. R. Br. 38). However, neither crime requires that money be paid directly to a pimp, and neither crime prevents the money from being paid directly to the minor. In either offense, the money could be paid to a pimp, or to the minor. The State's argument is incorrect and not based on the elements of either offense.

As discussed in Lewis's opening brief, the elements of the two crimes are identical, and one carries a far harsher penalty. (Def. Br. 67-68). Lewis allegedly committed involuntary sexual servitude of a minor by (1) knowingly attempting to obtain a person, (2) to engage in any sex act in exchange for value, (3) and that person was a minor. 720 ILCS 5/10-9(c)(2) (2015). Likewise, he would have committed attempt patronizing a minor engaged in prostitution by (1) giving something of value, (2) to attempt to engage in sexual penetration or fondling of sex organs, (3) with a minor. 720 ILCS 5/11-18.1(a) (2015). If the definition of "obtain" is as broad as the State claims it is, then both crimes were simultaneously and identically committed when Lewis agreed to pay money for an act of sexual penetration with a minor. See *People v. Christy*, 188 Ill. App. 3d 330, 333 (3rd Dist. 1989), aff'd, 139 Ill. 2d 172 (1990) ("It is illogical that identical facts can render two different conclusions," therefore a defendant's constitutional rights are violated when he is convicted of an offense and there exists an offense based on identical conduct that would carry a less harsh sentence). Thus, Lewis's right to due process and the proportionate penalties provision of the Illinois Constitution were violated, because, as applied, the Class X felony offense of involuntary sexual servitude of a minor has identical elements and carries with it a much more severe sentence compared to attempt patronizing a minor engaged in prostitution, a Class A

misdemeanor. Therefore, this Court should vacate Lewis's conviction and sentence for involuntary sexual servitude of a minor.

CONCLUSION

For the foregoing reasons, Shane Lewis respectfully requests that this Court (II) vacate his convictions for involuntary sexual servitude of a minor and traveling to meet a minor, or (III, IV) vacate his sentence and conviction for involuntary sexual servitude of a minor.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages contained in the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and the certificate of service, is 11 pages.

/s/Thomas A. Lilien
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No. 126705

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NOTICE AND PROOF OF SERVICE

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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 January 6, 2022, the Reply in Support of Request for Cross-Relief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellee in an envelope deposited in a U.S. mail box in Elgin, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply in Support of Request for Cross-Relief to the Clerk of the above Court.

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