UNITED STATES V. MAYWEATHER: ELEVENTH CIRCUIT CLARIFIES THE MEANING OF GOVERNMENT INDUCEMENT IN AN ENTRAPMENT DEFENSE AND THE USE OF *MCDONNELL* INSTRUCTIONS

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In *United States v. Mayweather*, the U.S. Court of Appeals for the Eleventh Circuit considered the convictions of four corrections officers for their roles in a drug smuggling operation.[1] The officers were convicted under the Hobbs Act[2] for extortion and attempt to distribute cocaine and methamphetamines.[3] The officers argued on appeal that: (1) the trial court erred by refusing to allow them to use entrapment as a defense, and (2) the trial court improperly withheld instructions on the meaning of "official act" with regard to extortion under the Hobbs Act.[4]

First, Eleventh Circuit considered each officer's case and the entrapment defense claim, and it ultimately affirmed two convictions where the facts would not support an entrapment claim and reversed two convictions where sufficient evidence existed to show that the defendants were entitled to a jury instruction on the defense.[5] The court next considered the second issue related to the "official act" definition, and the Eleventh Circuit found that the lower court had erred in not providing the definition and reversed and remanded that portion of the case for all four officers.[6]

The genesis of the charges leveled against the four corrections officers here came in 2014 as the result of a months-long FBI investigation into allegations of drug smuggling into Georgia Department of Corrections ("GDC") prisons.[7] An undercover FBI informant, Aakeem Woodard, arranged fake drug deals with uniformed corrections officers outside the facilities in which they were employed.[8] Woodard first approached defendant Jeremy Fluellen about transporting drugs into the prison.[9] Fluellen noted in one conversation with Woodard that he needed to come up with money to pay a fine related to a DUI, and Woodard told him "not [to] worry

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[1] United States v. Mayweather, 991 F.3d 1163, 1168 (11th Cir. 2021).

[2] 18 U.S.C. § 1951.

[3] *Mayweather*, 991 F.3d at 1168.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* at 1168–69.

[8] *Id.* at 1169.

[9] *Mayweather*, 991 F.3d at 1171.

about them bills."[10] Woodard asked Fluellen to wear his GDC uniform during the drug transport because the police would likely not pull over a car with a uniformed officer inside.[11] Fluellen had nine conversations with Woodard regarding the scheme and, when the time came, assisted with the transport of fake drugs into the facility.[12]

Officer Christopher Williams, a corrections officer in the same facility as Fluellen, was recruited by Woodard for the operation when he attended a meeting at a restaurant with Fluellen and other officers.[13] At the meeting, Woodard told the attendees that they were free to leave at any time, but Williams and Fluellen both remained.[14] Between 2014 and 2015, Williams participated in a total of nine fake drug deliveries to corrections facilities and also helped bring in two other individuals, Tramaine Tucker and Chelsey Mayweather, who would later become co-defendants.[15] Woodard requested Tucker ride with him on a transport for protection, and Tucker eventually went on to deliver several shipments of fake drugs and introduce Mayweather to Woodard.[16] During Mayweather's first meeting with Woodard, Woodard told Mayweather, "'I don't want nobody being forced' to do the job," to which Mayweather responded,"[n]obody's forcing me."[17] Mayweather eventually assisted with two transactions.[18] All four defendants were convicted at trial for extortion charges under the Hobbs Act and for the attempted distribution of cocaine and methamphetamines.[19]

On appeal, the Eleventh Circuit first considered the issue of whether the defendants were entitled to an entrapment defense and jury instructions.[20] The court explained that "[e]ntrapment is the government's inducement of the commission of a crime by one not predisposed to commit it."[21] The affirmative defense of entrapment may be successfully raised if the defendant can show: (1) government inducement, and (2) a lack of the defendant's predisposition to commit the crime.[22] In order to determine whether an entrapment defense is warranted, a defendant must show that there is "more than a scintilla" of evidence showing that the government induced him to

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[10] *Id.*
[11] *Id.*
[12] *Id.* at 1172.
[13] *Id.*
[14] *Id.* at 1172–73.
[15] *Mayweather*, 991 F.3d at 1173.
[16] *Id.* at 1173–74.
[17] *Id.* at 1174.
[18] *Id.*
[19] *Id.* at 1169.
[20] *Id.* at 1175.
[21] *Mayweather*, 991 F.3d at 1175 (quoting United States v. Humphrey, 670 F.2d 153, 155 (11th Cir. 1982)).
[22] *Id.* at 1176 (citing Mathews v. United States, 485 U.S. 58, 63 (1988)).

commit a crime.[23] In order to show government inducement, there must be more than just an "'attractive' opportunity to commit a crime" presented by the government.[24] The element of inducement may be satisfied if there was "an opportunity *plus* some added government behavior that aims to pressure, manipulate, or coerce the defendant into criminal activity . . . ."[25]

As to the first defendant, Fluellen, the Eleventh Circuit found that Woodard's promise to help Fluellen pay his DUI fine coupled with the fact that he was a government representative who discussed the scheme nine separate times with a hesitant Fluellen was evidence enough of the government's potential inducement, and Fluellen was entitled to an entrapment defense and a corresponding jury instruction.[26] Similarly, the court held that Williams was also entitled to an entrapment defense and jury instruction based on Woodard's offers to take care of any trouble and his comments to Williams that, among other things, the task was not dangerous and involved "no gun play."[27]

However, as to Tucker, the court held that no evidence existed of any persuasion; Woodard simply presented the scheme to Tucker and even gave him an opportunity to back out of the deal, which Tucker refused.[28] As such, Tucker's conviction was affirmed.[29] Similarly, the court held that Mayweather did not satisfy the requirements of an inducement defense, as the court reasoned that she was the one who initiated contact with Woodard and no evidence existed of any persuasion or inducement on behalf of Woodard as a government representative.[30] Thus, the first two defendants' charges were reversed and remanded; however, the latter two defendants could not cross the low threshold and their convictions were affirmed as to the entrapment issue.[31]

The Eleventh Circuit next addressed the second issue raised by the defendants regarding whether they should have received a jury instruction for the meaning of "official act" as it relates to extortion charges under the Hobbs Act.[32] The Hobbs Act makes it a crime to affect commerce by extortion or attempted extortion and defines extortion as "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened

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[23] *Id.* (quoting United States v. Timberlake, 559 F.2d 1375, 1379 (5th Cir. 1977)).
[24] *Id.* at 1177 (quoting United States v. Sistrunk, 622 F.3d 1328, 1334 (11th Cir. 2010)).
[25] *Id.*
[26] *Id.* at 1177–78.
[27] *Mayweather*, 991 F.3d at 1178–79.
[28] *Id.* at 1179.
[29] *Id.*
[30] *Id.*
[31] *Id.* at 1177–80.
[32] *Id.* at 1181–82.

force, violence, or fear, or under color of official right."[33] The Supreme Court has clarified that "under color of official right" means that a defendant was performing an "official act."[34] Here, the defendants asked that the trial court include a pattern jury instruction—also called a *McDonnell* jury instruction—used within the Eleventh Circuit defining the term "official act," but were denied and no definition was provided to the jury.[35]

The trial judge reasoned that a *McDonnell* jury instruction was not necessary because it was not applicable to the facts of the case and would thus be confusing to the jury.[36] After much discussion of the circumstances of the *McDonnell* case, the Eleventh Circuit agreed with the government's argument that giving a *McDonnell* instruction would be confusing to a jury but reversed nonetheless because the district court was required to define "official act" based on the constitutional framework underlying the decision.[37] Specifically, the Supreme Court in *McDonnell* was concerned the government's definition of "official act" was overly expansive and might include "lawful interactions between state officials and constituents, vagueness, and federalism."[38] Here, the Eleventh Circuit was likewise concerned about this expansive government definition of "official act," and the defendants were thus entitled to a definition of the term to the jury.[39] The court determined the district court's failure to provide a definition of "official act" to the jury was a "misstatement of the law" because this omission essentially deprived the defendants of a fair trial; therefore, the Eleventh Circuit reversed the convictions and remanded for a new trial.[40]

Mayweather provides important guidance within the Eleventh Circuit as to what constitutes government inducement with regards to an entrapment defense. While the burden of proof is light, there must be more than a scintilla of evidence regarding the defense. *Mayweather* may aid both prosecutors and defense attorneys in understanding where the line is drawn regarding the defense. Additionally, the opinion compared and applied precedent on the *McDonnell* jury instruction issue in a manner that may prove useful for attorneys seeking to protect the rights of their clients.

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[33] *Mayweather*, 991 F.3d at 1182 (quoting 18 U.S.C. § 1951).
[34] *Id.* (citing Evans v. United States, 504 U.S. 255, 268 (1992)).
[35] *Id.* at 1182–83. The Eleventh Circuit adopted its pattern jury instructions to align with the Supreme Court's opinion in McDonnell v. United States, 136 S. Ct. 2355 (2016), which further defined "official act." In its discussion, the court references these jury instructions as the "post-*McDonnell*" instructions.
[36] *Id.* at 1183.
[37] *Id.* at 1183–86.
[38] *Id.* at 1185.
[39] *Mayweather*, 991 F.3d at 1185–86.
[40] *Id.*