

14-5161. Entrapment; law enforcement unconscionable methods and illegitimate purposes.¹

An issue in this case is whether government agents exceeded the bounds of permissible law enforcement conduct. Permissible law enforcement conduct is exceeded if government agents

[supplied the _____² to the defendant and then obtained the same _____² from the defendant];

[or]

[_____ (describe unconscionable method or illegitimate purpose)]³;

or

[engaged in conduct which creates a substantial risk that an ordinary person would commit the crime of _____].⁴

“Government agents” include law enforcement officers or persons acting under their direction, influence, or control.

The burden is on the state to prove to your satisfaction beyond a reasonable doubt that government agents did not exceed the bounds of permissible law enforcement conduct. If you have a reasonable doubt as to whether the government agents exceeded the bounds of permissible law enforcement conduct, you must find the defendant not guilty.

USE NOTES

1. When entrapment is in issue this instruction or UJI 14-5160 NMRA, or both instructions, may be appropriate. This instruction must be given upon request in three different situations. First, it must be given when there is evidence of a circular transaction, in which government agents both transferred items to the defendant and subsequently reacquired some or all of the items from the defendant. Second, this instruction must be given when there is evidence that government agents created “a substantial risk” through their actions that an ordinary person would have been caused to commit the crime charged. Third, this instruction must be given when there is evidence that the conduct of government agents exceeded the bounds of proper investigation. If the court has decided as a matter of law the alleged conduct would be impermissible if it occurred, the jury must be instructed as provided in this instruction. If there is evidence that the defendant was not predisposed to commit the offense but was unfairly induced to do so, UJI-14-5160 NMRA also must be given upon request.

2. Describe the contraband or property transferred or sold which resulted in the charges against the defendant.

3. In *State v. Vallejos*, 1997-NMSC-040, ¶¶ 18-19, 123 N.M. 739, 945 P.2d 957, the Supreme Court gave extensive specific—but non-dispositive or exclusive—examples of unconscionable methods or illegitimate purposes and delineated the roles of the court and the jury in resolving such claims.

4. Insert the name of the felony or the felonies in the disjunctive.

[Adopted, effective September 1, 1994; as amended, effective July 1, 1998; January 1,

2000; as amended by Supreme Court Order No. 18-8300-012, effective for all cases pending or filed on or after December 31, 2018.]