

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FABRICIO PONCE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 89548-COA

FILED

AUG 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Fabricio Ponce appeals from a judgment of conviction, pursuant to a jury verdict, of luring or attempting to lure a child or mentally ill person with the use of computer technology to engage in sexual conduct, attempted statutory sexual seduction by a person over 21, and attempted child abuse or neglect. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

Ponce, then age 27, was arrested in a reverse sting operation in Reno. He responded to a Facebook post in which police officers were posing as a teenage girl asking for help sneaking out of her parents' house. While messaging the profile, the decoy informed Ponce that she was 14 years old. After initially expressing some reluctance about continuing to chat with the decoy, Ponce eventually sent sexually explicit and innuendo-laden messages. He also suggested coming to her house to pick her up after the decoy told him he should not worry about getting in trouble with law enforcement. When he arrived at the provided address, he was arrested by Reno police. Ponce had a package of condoms in his pocket per the decoy's request and admitted he was seeking a sexual relationship with the decoy.

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Ponce moved to dismiss the information, and a hearing was conducted where Ponce argued that dismissal was warranted due to outrageous government conduct and entrapment. Following the hearing, the district court summarily denied the motion, and the case proceeded to trial. The jury ultimately rejected Ponce's entrapment defense and found him guilty of attempting to lure a child or mentally ill person with the use of computer technology to engage in sexual conduct, attempted statutory sexual seduction by a person over 21, and attempted child abuse or neglect.

On appeal, Ponce argues that reversal is warranted because the district court erred in denying his motion to dismiss because the reverse sting operation constituted outrageous government conduct, which violated his due process rights. This court typically reviews a district court's denial of a motion to dismiss an information for abuse of discretion. *Martinez v. State*, 140 Nev., Adv. Op. 70, 558 P.3d 346, 354 (2024). However, when the motion alleges outrageous government conduct, which is of constitutional magnitude, courts review the denial of the motion de novo. *Id.* at 354-55. This court considers the totality of the circumstances, including several nonexhaustive factors, when evaluating whether government conduct is "so outrageous or grossly shocking as to warrant dismissal." *Id.* at 355 (internal quotation marks omitted) (addressing a similar reverse sting operation and concluding that law enforcement's actions did not constitute outrageous governmental conduct). The relevant factors are

- (1) known criminal characteristics of the defendants;
- (2) individualized suspicion of the defendants;
- (3) the government's role in creating the crime of conviction;
- (4) the government's encouragement of the defendants to commit the offense conduct;
- (5) the nature of the government's participation in the offense conduct; and
- (6) the nature of the crime being pursued and necessity for

the actions taken in light of the nature of the criminal enterprise at issue.

Id. (internal quotation marks omitted). Because every individual's interaction with law enforcement will be different, even within the same sting operation, each case requires independent analysis "on the basis of its own facts and circumstances." *Id.* at 356. However, examining the totality of the circumstances, aided by applying the aforementioned factors, we reach the same result as the Nevada Supreme Court did in *Martinez* and conclude that the district court did not err by denying Ponce's motion to dismiss the information.


The first and second factors from *Martinez* favor Ponce because law enforcement did not have firsthand knowledge of Ponce or any of his criminal propensities before launching the sting. However, the remaining factors favor the State. Ultimately, the evidence establishes that Ponce knowingly sought to have sex with a decoy that he believed was 14 years old. Though he expressed momentary reservations after learning her age, he proceeded to send explicit messages and formulate a plan to meet the decoy within hours of being told she was 14 after she reassured him that his fears of being caught were unfounded. After he got that reassurance, he offered to teach the decoy whatever she wanted to know about sex and drove to the address the decoy gave him to carry out those acts.

Thus, the government did not have a substantial role in creating the crime of conviction beyond setting up the reverse sting operation with the online portrayal of a 14-year-old girl, and Ponce required little encouragement or coaxing from the decoy to attempt the illegal conduct. *Cf. State v. Solomon*, 419 P.3d 436, 438 (Wash. Ct. App. 2018) (finding outrageous government conduct when the police, using a fake profile of a 14-year-old girl, sent defendant nearly 100 messages replete

with graphic sexual language and innuendo and persistently solicited him to have sex with the decoy despite him rejecting the decoy's advances seven times). Given that online child sex trafficking is difficult to police by traditional means, reverse sting operations like the one here are often an effective and constitutionally sound method to identify adults seeking to engage in sexual conduct with minors, so long as they comport with due process principles. See *United States v. Lofstead*, 574 F. Supp. 3d 831, 855 (D. Nev. 2021) (explaining that because victims of child sex trafficking are often reluctant to contact the police, tactics such as reverse stings can be necessary to combat this type of crime as long as they comport with due process). Further, we note that Ponce was able to present his theory of defense, entrapment, to the jury.

Based on the totality of the circumstances, this court cannot say that the police officers' conduct violated Ponce's due process rights. Like *Martinez*, this case does not showcase conduct "so outrageous" or "grossly shocking" to warrant dismissal. *United States v. Russell*, 411 U.S. 423, 431-32 (1973); *United States v. Stinson*, 647 F.3d 1196, 1209 (9th Cir. 2011) (internal quotation marks omitted). Thus, we conclude that the district court did not err in denying Ponce's motion to dismiss. Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk