1-09-1533

Third Division
March 9, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	07 CR 16789
	)	
IRIS LOZANO,	)	Honorable
	)	Rosemary Higgins-Grant,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Quinn specially concurred and Justice Steele concurred in the judgment.

ORDER

Held: Where a defendant made an out of court statement and said that she had dealt narcotics in the past and that she wanted to increase her sales, the trier of fact could find her guilty of possession of narcotics with intent to deliver. But where defense counsel failed to elicit admissible evidence that a State agent pressured the defendant into making the purchase to help the agent, and counsel failed to object to a lay witness's opinion about what some of the defendant's statements meant, counsel was deficient and would have achieved a different result if his representation had not fallen below an objective standard of competence. Therefore, with closely balanced evidence on entrapment, the appellate court found that defense counsel provided ineffective assistance and remanded the case for a new trial.

After a bench trial, the trial court found defendant, Iris Lozano, guilty of possession of more than 900 grams of cocaine with intent to deliver. In this appeal, Lozano argues that the State failed to meet its burden of disproving her defense that a police officer or agent entrapped her into committing the charged crime. Lozano also contends that she did not receive effective assistance of counsel.

We hold that the testimony of the officer who sold the cocaine to Lozano sufficiently shows Lozano's predisposition to commit the offense. However, we agree with Lozano that her attorney provided ineffective assistance because her attorney should have asked the court for its reasons for excluding Lozano's testimony about her conversations with the confidential informant, and the attorney should have objected to the officer's opinion about what Lozano meant by some of her statements. Because we find the evidence closely balanced on the issue of predisposition, we find that Lozano has shown a reasonable probability that she would have achieved a better result but for counsel's errors. Accordingly, we reverse and remand for a new trial.

BACKGROUND

On June 29, 2007, Lozano met with her friend Danny and Fabio Calderon, an undercover police officer posing as a drug dealer, at a Hooters restaurant. Lozano sought to buy one half of a kilogram of cocaine for $10,000. Calderon offered to sell her one kilogram for $20,000. They made no deal.

Lozano spoke with Calderon on the telephone on July 17, 2007, and told him that she still could get only $10,000. Calderon offered to give Lozano the full kilogram of cocaine in exchange for a $10,000 payment at the time of sale, as long as Lozano promised to pay him $10,000 more

within a few days of the initial transaction. They arranged for Calderon to give Lozano the cocaine on July 19, 2007, in the Hooters parking lot. On the day of the transaction, Calderon covertly recorded his conversations with Lozano. He and Lozano spoke a mix of Spanish and English in their conversations. A police officer translated the conversations and made a transcript of the translations. According to the transcript, Lozano told Calderon that someone was driving her to a spot near Hooters, and then she and her cousin, Princess Hernandez, would walk to the parking lot. When Lozano and Hernandez walked into the parking lot, Calderon asked them to come into his car. The transcript shows this conversation followed:

"Inv. Calderon When can you pay me the rest[?]

Iris [Lozano] In two days[.]

* * *

Inv. Calderon You want to check it out[,] check [it] out[.]

***

Iris can I pop it[?]

* * *

Inv. Calderon *** [Y]ou guys work together or what

Princess [Hernandez] [Laughs]

* * *

Inv. Calderon So how much is here?

Iris [N]ine thousand eight hundred [s]eventy dollars[.]

* * *

Inv. Calderon	*** [S]o you guys cook that shit or what[?]
Iris	depending on what we got.
	* * *
Inv. Calderon	*** [D]o you want me to drop you off somewhere[?]
Iris	yea[.]
Inv. Calderon	where
Iris	If you can do it two blocks up
Inv. Calderon	well where am I going[?]
Iris	*** [D]on't worry about it we will just walk. I just didn't want to leave out of here with the bag all suspicious[.]"

At that point, police officers came to the car, arrested Lozano and Hernandez, and charged them with possession of cocaine with intent to deliver. The State proceeded against the two defendants separately.

At Lozano's bench trial, the parties focused on the issues of entrapment and Lozano's predisposition to sell cocaine. Calderon testified that a confidential informant first contacted Lozano about the drug deal. Calderon did not know how often the informant contacted Lozano or what he said to her. Calderon testified that at their initial meeting, Lozano said she had long sold small amounts of drugs, and she wanted to start dealing larger amounts. Lozano called Calderon on July 17, 2007, and when she said she still had only $10,000, he told Lozano he could "front" her half a kilogram. The prosecutor asked, "what do you mean by that or what did she mean by that?"

Calderon answered, "I took it to mean that I would give her the cocaine *** and she would go ahead and distribute it. And when the proceeds c[a]me back [she would] repay me the outstanding balance."

Calderon testified that when Lozano handed him the cash, he handed her the bag with cocaine, and she put it in her lap. He gave her a knife and she put the knife in an opening in the bag, took out a little cocaine and smelled it.

Calderon read into the record the transcript of the conversation in the parking lot. When he read the line in which he said, "you guys cook that shit or what[?]," The prosecutor asked him what he meant. He said some distributors cook the cocaine and sell it as crack. This testimony followed:

> "Q. And what did you take by defendant Lozano's response of depending on what we got?
>
> A. My - - my initial thing was I believed depending on what type of customer she has, people that want to buy crack or people that want to buy powder."

On cross-examination, defense counsel elicited Calderon's testimony that he had worked on numerous cases as an undercover narcotics agent, and he first started working on narcotics cases in 1992.

Lozano testified that she had no prior involvement with drugs and she had no intention of selling the drugs she got from Calderon. Through her cousin Hernandez, she met a man named Danny, who had known Hernandez for a number of years. Some time before June 29, 2007, Danny called Lozano and asked her to buy one-half of a kilogram of cocaine as a favor for him. Danny said

he owed a drug dealer a lot of money, and the man had threatened Danny's life. Danny would raise the money by selling the cocaine. Danny prepared Lozano for the deal by telling her what to say so that the seller would trust her.

Lozano testified that on June 29, 2007, Lozano went to Hooters to meet Danny, and Danny introduced Calderon as the drug dealer to whom Danny owed a great deal of money. Following Danny's instructions, she told Calderon she had been "involved in the drug trafficking business since [she was] a teenager." After the meeting in June, when she made no deal with Calderon, Danny called her repeatedly, pleading with her to purchase the drugs. The court sustained the State's objection to the testimony. The court also sustained the State's objection to Lozano's testimony that Danny and Hernandez spoke to each other often between June 29 and July 17, 2007, and to a following question about "the nature of the calls."

Lozano testified that on July 19, Danny drove her and Hernandez to a gas station near Hooters. Danny told Lozano that he could not drive to the parking lot of Hooters because he did not want Calderon to know that Danny was purchasing the drugs. Danny gave Lozano a paper bag full of cash and told Lozano to bring the drugs back to him. Lozano testified that Danny did not promise to pay her anything for her help with the purchase. Lozano did not count the cash until Calderon asked her to count it in his car. When the cash in the bag came short of $10,000, Hernandez gave Lozano $400, but the total still came to only $9,870.

On cross-examination, Lozano testified that Hernandez said, "depending on what we got," and the transcript incorrectly attributed that line to Lozano. She admitted that she said, "can I pop it[?]" and she tried to act like she knew what to do to test the cocaine. But she denied possession

of the cocaine:

"Q. *** [Y]ou accepted a kilogram of cocaine from Investigator Calderon, correct?

A. No.

Q. You never took that kilo of cocaine?

A. Never in my hand.

Q. You didn't possess it?

A. No, sir."

The trial court rejected the entrapment defenses. In its summary of the evidence, the court said:

"[Calderon and Lozano] talked about how she was going to utilize these drugs and sell them, how she would cut them, how she cooked in the past. ***

***

[Lozano] talked about *** how it was cut or cooked in the past. She inspected it. She smelled it. She took possession of it."

The court found Lozano guilty of possession of more than 900 grams of cocaine with intent to deliver. The court sentenced her to the statutory minimum of 15 years in prison. 720 ILCS 570/401(a)(2)(D) (West 2006). Lozano now appeals.

ANALYSIS

Lozano argues: (1) the State did not meet its burden of disproving her entrapment defense; (2) the trial court should have permitted her to testify about her conversations with Danny and what

Hernandez said about her conversations with Danny; (3) the trial court should not have permitted Calderon to testify about what Lozano meant by some of the things she said to Calderon; (4) the trial court improperly drew conclusions that were not based on admissible evidence; and (5) defense counsel provided ineffective assistance.

Sufficiency of the Evidence

As a preliminary matter, we note some confusion over the proper standard of review when the defendant has presented some evidence of entrapment. In *People v. Rivas*, 302 Ill. App. 3d 421, 433 (1998), the court said, "The question of entrapment is usually one to be resolved by the trier of fact, and it will not be disturbed on review unless the reviewing court finds that a defendant was entrapped as a matter of law." See also *People v. Bonner*, 385 Ill. App. 3d 141, 145 (2008). That standard applies only when the parties do not dispute any material facts concerning the entrapment, and when the arguments on appeal do not depend on the credibility of the witnesses or the weight given to their testimony. Our supreme court stated the more generally applicable standard of review in *People v. Placek*, 184 Ill. 2d 370, 381 (1998):

> "Once a defendant presents some evidence to support an entrapment defense, the State bears the burden to rebut the entrapment defense beyond a reasonable doubt, in addition to proving all other elements of the crime. [Citation.] The question of whether the defendant was entrapped is to be resolved by the trier of fact. [Citation.] Following a conviction, a reviewing court must affirm where, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt."

That is, we will reverse the conviction for insufficient evidence only if every rational trier of fact would agree that the State failed to prove, beyond a reasonable doubt, that it did not entrap the defendant into committing the offense.

The State argues that Lozano did not properly raise a defense of entrapment, because she did not admit that she committed the offense. "In Illinois, the party pleading entrapment must first admit each of the facts constituting the offense for which he is charged." *People v. Lindo*, 169 Ill. App. 3d 877, 881 (1988). The State points out that Lozano testified that she never held the cocaine in her hand, and she agreed with the prosecutor that in this way she did not "possess" the cocaine.

The State raised a similar argument in *Lindo*, in which a confidential informant twice arranged for the defendant to sell packages of drugs to undercover narcotics agents. The defendant never completed the first transaction, and at the second transaction, police arrested him. The defendant admitted that for the first transaction, the confidential informant told him the bag contained hash oil. For the second transaction, the confidential informant told the defendant he was doing "the same thing as before," (*Lindo*, 169 Ill. App. 3d at 881), and he should act just as he did for the first transaction. The defendant testified that in the second transaction, he did not know what the bag contained because he never opened it, but he knew the bag held something illegal and valuable. The trial court refused to instruct the jury on the defense of entrapment, because the court held that the defendant did not sufficiently admit that he knew he possessed narcotics. The jury found the defendant guilty of possession of cannabis with intent to deliver.

The appellate court reversed the conviction and remanded for a new trial because the trial court should have instructed the jury on the defense of entrapment. The appellate court reasoned:

> "A defendant is entitled to an instruction on a defense theory if he presents only slight evidence of it. [Citations.] Defendant has certainly presented slight evidence that he had knowledge of the package's contents. *** Defendant's testimony in the record indicates that defendant knew to a substantial probability that the package he was in possession of and delivering *** contained hash oil." *Lindo*, 169 Ill. App. 3d at 881.

Thus, a defendant has properly raised an entrapment defense if she presents some evidence that State agents planned the offense, the defendant had no predisposition to commit the offense, and she committed the offense.

"To prove a charge of possession of a controlled substance with intent to deliver, the State must prove three elements: (1) the defendant's knowledge of the presence of narcotics; (2) the defendant's immediate possession or control of the narcotics; and (3) the defendant's intent to deliver the narcotics." *People v. Hammonds*, 399 Ill. App. 3d 927, 940 (2010). The State does not need to prove that Lozano held the drugs in her hands, or even that she possessed them, as long as she had them in her control or constructive possession. "To sustain a conviction on the basis of constructive possession, it must be shown that the defendant, although not having personal physical dominion, has the intent and capability to maintain control and possession" of the contraband. *People v. Holt*, 28 Ill. 2d 30, 33 (1963).

Here, Lozano admitted that she went to Calderon's car to exchange cash for a kilogram of cocaine. She knew the bag contained cocaine, and she did not deny that Calderon exchanged it for the cash, even if she claimed she never touched the cocaine. She admitted that she intended to bring

the cocaine to Danny. We find that Lozano sufficiently admitted that she had the capability to maintain control of the cocaine in the car, and she had the intent to control it long enough to deliver it to Danny. Following *Lindo*, we find that Lozano properly raised an entrapment defense.

Next, we must decide whether any rational trier of fact could have found, beyond a reasonable doubt, that the State did not entrap Lozano into committing the offense. Our supreme court has explained entrapment as follows:

> "Entrapment is the conception and planning of an offense by an officer or other person and his procurement of its commission by one who would not have perpetrated it except for the trickery, persuasion or fraud of the entrapper. [Citations.] As a general rule, entrapment can exist only when the criminal intent originates in the mind of the entrapping officer, and if such intent arose in the mind of the accused there is no entrapment, though officers may afford an opportunity for the commission of the offense and use artifice and strat[a]gem to apprehend one actually engaged in a criminal enterprise. It is not an instigation to perpetrate a crime if an officer, having reason to believe another is committing a crime, furnishes an opportunity for the commission of the offense, when the purpose is, in good faith to secure evidence against a guilty person and not to induce an innocent person to violate the law. [Citations.] The distinction between what may and may not be done by way of entrapment is *** that officers may afford opportunities or facilities for the commission of crime, and may use artifice to catch those engaged in criminal ventures, but entrapment constitutes a valid defense if the officers inspire, incite,

> persuade or lure the defendant to commit a crime which he otherwise had no intention of perpetrating. [Citation.] The law frowns upon the seduction of an otherwise innocent person into a criminal career but tolerates the use of decoys and various other artifices to catch the criminal." *People v. Outten*, 13 Ill. 2d 21, 23-24 (1958).

Thus, the court assessing an entrapment defense must weigh "two primary factors, *i.e.,* (1) whether the defendant was influenced or induced to commit the offense by governmental officials or someone working with the government; (2) whether the defendant was predisposed to commit the offense involved." *People v. Martin*, 124 Ill. App. 3d 590, 592-93 (1984).

The State admitted that its confidential informant arranged the transaction and contacted Lozano to induce her to participate. To find Lozano guilty despite the inducement, the trial court needed to find the following factors to determine whether Lozano was predisposed to sell narcotics:

> "Factors to be considered in assessing predisposition include the defendant's initial reluctance or his ready willingness to commit the crime, the defendant's familiarity with drugs and his willingness to accommodate the needs of drug users, the defendant's willingness to make a profit from the illegal act, the defendant's prior or current use of illegal drugs, and the defendant's participation in testing or cutting the drugs. [Citations.] Moreover, the trial court should consider whether the defendant engaged in a course of conduct involving similar offenses and whether the defendant had ready access to a drug supply. [Citation.] Finally, the trial court may consider evidence of a defendant's subsequent activities." *People v. Poulos*, 196 Ill. App. 3d

653, 661 (1990).

The parties presented conflicting evidence on predisposition. The State relied on evidence that Lozano told Calderon she had dealt small quantities of drugs for a number of years, and she wanted to deal in larger amounts. Lozano explained that she said to Calderon what Danny told her to say so that she could help Danny purchase the drugs. Calderon testified that Lozano tested the cocaine by taking a little out of the bag on a knife, and smelling it. Lozano testified that she did not use the knife and she did not smell the cocaine, although she admitted that she asked, "can I pop it[?]," and she tried to appear as though she knew how to test cocaine. Calderon testified that he believed Lozano meant she might prepare the cocaine in different ways for different markets, when she said, "depending on what we got." Lozano swore that Hernandez said that, not Lozano. Lozano testified that Danny pressured her and gave her the money to buy the drugs. Calderon admitted that he did not know how often the confidential informant called Lozano, or what he said to Lozano in those calls.

Lozano points out that the State's failure to present the confidential informant as a witness gives rise to an inference against the State. See *Poulos*, 196 Ill. App. 3d at 661. In particular, the trier of fact could infer that Danny gave Lozano the $9,470 she handed to Calderon to purchase the drugs. Except in unusual circumstances, a finding that the State supplied both the drugs and the money for the transaction requires a finding of entrapment. See *Martin*, 124 Ill. App. 3d at 593.

If the trier of fact believed Calderon's testimony and Lozano's out of court statements, rather than Lozano's testimony in court, then the trier of fact could find that Lozano indicated a desire to

buy the cocaine, she showed familiarity with drugs, she intended to profit from subsequent sale of the drugs, and she had in the past participated in numerous other sales. Lozano's testimony would support opposite findings on all of the predisposition factors. Because we defer to the trial court's assessment of the credibility of the witnesses (see *People v. A Parcel of Property Commonly Known as 1945 N. 31st St.*, 217 Ill. 2d 481, 507 (2005)), we find the evidence sufficient to show that Lozano was predisposed to commit the crime. Therefore, we find that a rational trier of fact could find Lozano guilty of possession of more than 900 grams of cocaine with intent to deliver.

Ineffective Assistance of Counsel

Lozano also argues that the trial court should have disallowed Calderon's testimony about what Lozano meant by some of what she said, and the court should have permitted Lozano to testify about her conversations with Danny and about what Hernandez told Lozano after her conversations with Danny. Because she recognizes that her trial counsel failed to preserve these issues for appellate review, she asks this court to find that counsel's failure to preserve these issues amounted to ineffective assistance. To show ineffective assistance of counsel, Lozano must show that her counsel's performance was so seriously deficient that it fell below an objective standard of reasonableness, and that she must establish a reasonable probability that she would have achieved a better result but for the deficient performance. *People v. Peeples*, 205 Ill. 2d 480, 512 (2002), citing *Strickland v. Washington*, 466 U.S. 668, 691-92 (1981).

Lozano testified that Danny called her repeatedly, pleading with her to buy the drugs. The court sustained the State's objection to the testimony. The prosecutor did not state any basis for the

objection, and the court gave no reason for its ruling. When defense counsel asked Lozano a question preliminary to testimony about her conversations with Hernandez, the court sustained the prosecutor's prompt objection. Again, the prosecutor did not state any basis for the objection and the court gave no reason for its ruling. Defense counsel never requested the basis for either the objections or the rulings, and defense counsel made no offer of proof to clarify further exactly what Danny and Hernandez said to Lozano to pressure her to buy the cocaine.

If the trial court sustains an objection when the party has stated no basis for the objection and the court gives no reason for its ruling, this court presumes that the trial court ruled on the grounds of relevancy. *People v. Upton*, 230 Ill. App. 3d 365, 372 (1992). Here, however, Lozano's conversations with Danny had undeniable relevance to her defense of entrapment, and conversations with Hernandez could further show that Lozano lacked a predisposition to commit the crime. In this appeal, the State does not suggest relevance as a basis for its objections or the trial court's ruling.

Instead, the State first suggests that the court might have excluded the testimony as hearsay. Lozano observes that Danny's pleas to Lozano do not constitute hearsay, because Lozano sought to use them to show the effect the statements had on Lozano – motivating her to buy drugs not for resale or profit, but only to help out her cousin's longtime friend – and not to prove the facts Danny stated. See *People v. Gonzalez*, 379 Ill. App. 3d 941, 954 (2008). Lozano's discussions with Hernandez would similarly serve a non-hearsay purpose. Defense counsel could have argued that the trial court should admit into evidence all of the conversations between Lozano, Hernandez and Danny under the coconspirator exception to the hearsay rule. See *People v. Schmidt*, 131 Ill. 2d 128,

141 (1989); *United States v. Hendricks*, 395 F.3d 173, 184 (3d Cir. 2005) (informant's portion of conversation with coconspirator admissible to provide context for coconspirator's statements). Lozano had no need to prove what Danny said to Hernandez to show that Lozano had no predisposition to sell the cocaine. She needed only to introduce evidence that Hernandez told Lozano that Danny called and that Hernandez further pressured Lozano to buy the drugs for Danny.

The State counters that the court correctly sustained the objections because defense counsel had not provided complete foundations for the conversations. Counsel did not ask Lozano about the time and place of the conversations, or about who else was present for the conversations. See *State v. Daniels*, 388 N.W.2d 446, 450 (1986); *Tesch v. Txport, Inc.*, 1996 U.S. Dist. Lexis 10277 (N.D. Ill. 1996); but see *Shallenberger v. Duncan*, 53 Cal. Rptr. 77 (1966).

We see no plausible strategic reason for defense counsel failing to ask the court for the reasons for its rulings, for failing to complete the foundation for the testimony, or for failing to make an offer of proof to clarify the full extent of the excluded testimony. We find that defense counsel's representation of Lozano fell below an objective standard of competence in this respect. The failure to challenge the court's ruling prevented Lozano from presenting relevant evidence to show that she did not have a predisposition to possess or distribute the cocaine.

Defense counsel also failed to object when Calderon interpreted some of Lozano's out of court statements, and when he testified about what he thought Lozano understood. Calderon testified that when he asked, "so you guys cook that shit or what[?]," Lozano answered, "depending on what we got." Calderon interpreted Lozano's response to mean she would prepare the cocaine as free base

or crack cocaine, depending on what kind of customers she found. Calderon also testified that when he offered to "front" Lozano half a kilogram of cocaine, he meant that "she would go ahead and distribute it. And when the proceeds c[a]me back [she would] repay [Calderon] the outstanding balance." Her acceptance of the offer, according to the prosecution, showed her intent to distribute the cocaine for profit. But the State presented no evidence of Calderon's special knowledge or expertise in interpreting Lozano's statements and acts. See *People v. Crump*, 319 Ill. App. 3d 538, 542 (2001) (A witness's opinion is not admissible because testimony must be confined to statements of facts of which the witness has personal knowledge).

We see no strategic reason for failing to object to Calderon's speculation about what Lozano meant and thought. Defense counsel's failure to object allowed the State to introduce into evidence Calderon's highly prejudicial opinions about Lozano's intent and her purpose in the transaction. The trial court's summary of the evidence shows that it relied on Calderon's speculation, as the court said Lozano "talked about how she was going to utilize these drugs and sell them, how she would cut them, how she cooked in the past." The only evidence to support this finding comes from Calderon's speculation about what Lozano meant when she said, "depending on what we got." We find no evidence anywhere in the record to support the court's finding that Lozano "talked about *** how she cooked [drugs] in the past."

The State contends that counsel's failure to object to this testimony did not prejudice Lozano because Calderon could interpret for the court his own words. Calderon testified that he told Lozano he would "front" her the cocaine, and he asked her whether she would "cook that shit." But Lozano

does not now object to Calderon's interpretation of his own words. Calderon's testimony went further, into his opinion about what Lozano's responses meant. The State argues that interpretation of her responses requires no expertise. But if the trier of fact needed no expert interpretation of Lozano's responses, the questions about Calderon's opinion as to what Lozano meant could not elicit admissible evidence. See *People v. Johnson*, 97 Ill. App. 3d 1055, 1069 (1981) (opinion testimony on matters of common knowledge is inadmissible). A prompt objection should have kept out of evidence Calderon's needless interpretation of Lozano's responses to his acts and questions.

In the alternative, the State argues that interpretation of Lozano's acts required expertise, and Calderon had the necessary expertise derived from his extensive personal experience in the drug trade. But the State presented no evidence of that experience. Instead, the State relies on evidence defense counsel elicited, that Calderon first started investigating narcotics cases in 1992, and he frequently worked undercover. Defense counsel's elicitation of this evidence further supports Lozano's contention that she did not receive effective assistance of counsel. Compare *People v. Bailey*, 374 Ill. App. 3d 608, 614-15 (2007).

Thus, if not for defense counsel's errors, the trial court might have admitted evidence about the pressure Danny and Hernandez put on Lozano to purchase the cocaine, and the court might have excluded evidence of Calderon's opinion about what Lozano meant when she let him front her the drugs and when she said, "depending on what we got." The case came down to a question of the credibility of Lozano's testimony about her motives for making the purchase. If the court had believed her testimony that she used Danny's money to buy drugs for him to distribute, so that he

could pay his debt and end the threats against his life, the court should have found that the State entrapped her. Instead, the court apparently believed, based on Lozano's out of court statements and Calderon's testimony, that Lozano bought the drugs so that she could break down the kilogram and distribute it for her own profit because she had a predisposition to sell the drugs. The trial court found some of Lozano's testimony credible, as the court accepted her testimony that Danny asked her to make the purchase and drove her to the site of the sale. And the unfavorable inference that arises when the State fails to produce the confidential informant as a witness could further support a finding that his testimony would help show that Lozano did not have a predisposition to commit this crime. In light of the closely balanced evidence, we find that Lozano has shown a reasonable probability that she would have achieved a better result if not for counsel's deficient performance which fell below an objective standard of competence.

Because we must reverse the conviction due to ineffective assistance of counsel, we need not reach the issue of whether the trial court's findings show that it considered inadmissible evidence and misunderstood the admissible evidence.

CONCLUSION

Calderon's testimony about Lozano's out of court statements highlighting her past drug transactions and her desire to increase the scale of her operations, together with Calderon's testimony that Lozano tested the cocaine, supports the trial court's finding that Lozano was predisposed to possess the cocaine with intent to sell it for a profit, and therefore it supports the conviction. However, defense counsel's errors led to the exclusion of admissible evidence about the extent to

which Danny and Hernandez pressured Lozano into making the purchase, and to the admission into evidence of Calderon's opinion about what some of Lozano's statements and acts meant. Because Lozano showed a reasonable probability that she would have achieved a better result but for counsel's errors, we reverse the conviction and remand for a new trial.

Reversed and remanded.

PRESIDING JUSTICE QUINN, specially concurring.

I concur with the majority's holding that defendant's trial counsel was ineffective. Counsel should have attempted to admit the conversations between Lozano and defendant. When counsel attempted to introduce the conversations between Lozano and Danny into evidence, counsel should have been prepared to explain the bases for doing so. This case entirely hinged on the defendant's defense of entrapment which was bound to fail if the evidence of the conversations between the defendant and Danny were excluded. It is clear that Danny was the prime mover of the transaction. It was unrebutted that Danny supplied the money to purchase the cocaine and introduced defendant to the undercover police officer who supplied the cocaine. Because the State chose not to produce Danny as a witness, it was also unrebutted that Danny strongly pressured Lozano to join in the transaction. Lozano brought nothing to the conspiracy except her presence. While this type of setup has the potential to apprehend people who are predisposed to sell narcotics, it also has the potential to ensnare people who are merely stupid and easily influenced when informants pressure them. This concern is the basis for the holdings of this court in *People v. Martin*, 124 Ill. App. 3d 590 (1984) and *People v. Poulos*, 196 Ill. App. 3d 653 (1990). Every piece of evidence relating to the defendant's motive in such cases is vitally important. Any failure on the part of defense counsel is magnified. Consequently, I concur with the majority's reversal of the instant case.

I write separately because I do not think defendant's trial counsel was ineffective for failing to object to Officer Calderone's testimony that "cooking" cocaine results in crack cocaine and that when someone "fronts" narcotics to a purchaser, the purchaser owes the dealer money.

The meaning of these statements is not speculative and Calderone did not require special knowledge or expertise in interpreting them. At the same time, the State properly presented the explanation to make the record clear. When cases are tried in the circuit court, it may be important to explain matters which are common knowledge to the trial judge and parties but may not be known to all members of the reviewing courts.