

### 309.10 ENTRAPMENT.<sup>1</sup>

The defendant has raised the defense of entrapment. Entrapment occurs when a person acting on behalf of a governmental agency induces the defendant to commit a crime not contemplated by the defendant for the purpose of instituting a criminal charge against the defendant. Entrapment is a complete defense to the crime charged.

The burden of proving entrapment is upon the defendant. However, the defendant is not required to prove entrapment beyond a reasonable doubt, but only to your satisfaction. For you to find that the defendant was entrapped, you must be satisfied of three things:

First, that the criminal intent to commit (*name crime*) did not originate in the mind of the defendant.<sup>2</sup>

Second, that the defendant was induced by another person to act. Merely providing an opportunity to commit (*name crime*) by a person would not be sufficient inducement. It must appear that that person used persuasion or trickery to cause the defendant to commit this crime which *he* was not otherwise willing to do.

And Third, that this person acted on behalf of a governmental agency.

If you are satisfied from the evidence that the criminal intent did not originate in the mind of the defendant and that another person induced the defendant by persuasion or trickery to commit (*name crime*), which the defendant was not otherwise willing to do, and that person acted on behalf of a governmental agency, then you must return a verdict of not guilty.

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1. Evidence of entrapment, at times, can be so overwhelming as to constitute entrapment as a matter of law. *State v. Stanley*, 288 N.C. 19 (1975).

2. See *State v. Keller*, 374 N.C. 455, 843 S.E.2d 58 (2020) (concluding that the trial court’s failure to instruct the jury on entrapment was prejudicial, and defendant was entitled to a new trial where the defendant presented substantial evidence that might allow a reasonable juror to find that it was the police officer and not defendant who repeatedly demanded that defendant agree to participate in sexual activity).