

People v. Graves
(November 20, 2001) __ Cal.App.4th __

ISSUE

Was Graves “set up” by prosecutors or Secret Service agents?

FACTS

Beginning in 1992 or maybe earlier, Graves was operating what amounted to an illicit travel agency. The operation went like this: Graves was somehow able to obtain legitimate credit card numbers and their expiration dates. He then used these numbers to buy airline tickets which, in turn, he sold on the underground market at huge discounts. It was a lucrative business for a few years. But in 1977 it was closed down—or so it seemed—when investigators developed probable cause and arrested Graves, who was subsequently charged with grand theft and conspiracy by the L.A. County DA’s Office.

On October 8, 1999 Graves pled guilty to the charges with the understanding he would serve one year in the county jail and be placed on five-years probation. It was further agreed that if Graves violated the terms of his probation, he could be sent to prison for seven years. As usual, the terms of probation included a requirement that he “obey all laws.”

At Graves’ request, he was allowed to remain out of custody for 60 days after he pled. So what did he do during this time? Was he obeying all laws? Hardly. Not only was he continuing to operate his illicit airline ticket business, he was now offering convenient electronic ticketing.

There was only one problem: Graves was now being watched by the U.S. Secret Service. How did the Secret Service get involved?

It started a little after August 31, 1999 when a man named Reggie Cooks drove over to his travel agent’s office to buy two airline tickets. As Cooks was about to walk inside, he was approached by a man who offered sell him two airline tickets for \$50 cash. Recognizing a good deal when he saw one, Cooks gave the man \$50. The man then told Cooks to call a certain telephone number in two hours and ask for “T” who would give him his confirmation number (which is essentially an electronic airline ticket). When Cooks called, “T” gave him a legitimate confirmation number which, as it turned out, had been purchased on a stolen Citibank card.

When Secret Service agents were notified of the transaction, they went to visit Cooks to find out what was going on. When Cooks told them about “T,” they persuaded Cooks to phone “T” and order some more tickets; this time, two round-trip tickets to Hawaii. During the monitored phone call, “T” told Cooks the price was \$600 cash. Cooks said okay and agreed to meet with “T” later that day and give him the money. During the meeting, Cooks paid “T” the \$600, and “T” told Cooks to phone him the next day to receive his confirmation number. When “T” gave Cooks the number, agents determined the ticket had been purchased by means of an unauthorized charge to an American Express card.

Having observed “T” at the meeting with Cooks, the agents also determined that “T” was Graves.

The agents decided to give Graves a little more rope on which to hang himself. So on October 11, 1999 they had Cooks phone him again and say he was calling from Hawaii, that he and his girlfriend were boarding their return flight when they were told their tickets had been purchased on a stolen credit card and were, therefore, cancelled. Graves told Cooks not to worry, that he would get him some new tickets. And he did. Within a few hours, Graves phoned Cooks and gave him the confirmation numbers for two tickets on a flight leaving Hawaii that same day. These particular tickets were purchased on another American Express card whose owner was unaware of the transaction.

Graves was subsequently arrested on a federal charge of using an unauthorized access device. Based on the arrest, the L.A. County DA's Office filed a petition to revoke Graves' state probation. The petition was granted and Graves was sentenced to five years in prison, to run consecutively with his federal prison sentence.

DISCUSSION

Graves contended he should be permitted to withdraw his guilty plea because he was "set up" by the DA's Office and "entrapped" by the Secret Service. As for the "set up," Graves claimed that when prosecutors entered into the plea bargain with him they knew he was under investigation by the Secret Service and that he was continuing to operate an illicit travel agency. Thus, Graves reasoned, the DA's Office acted in bad faith when prosecutors offered him a year in the county jail because they knew that he would be in violation of his probation and, therefore, they knew he would be going to state prison on the probation violation, not county jail.

The Court of Appeal rejected this argument, noting that even if prosecutors were aware that Secret Service agents were investigating Graves, they did not know that Graves was, in fact, continuing his illegitimate airline ticket business. Said the court, "[E]ven if [Graves] knew that federal agents intended to provide appellant with another opportunity to commit an illegal act, the prosecutor could not have known with certainty that appellant would take that opportunity and therefore violate his probation. [Consequently] there is no basis for appellant's claim that he was misled by the prosecutor about the consequences of his plea."

The court also rejected Graves' argument that he was "entrapped" by Cooks when, at the request of Secret Service agents, Cooks phoned him from Hawaii and claimed he needed new tickets. The court pointed out that under California law entrapment occurs only if officers engaged in conduct that was "likely to induce a normally law-abiding person to commit the offense."¹ But, said the court, "A normally law-abiding person would not be induced by [Cooks'] telephone call to purchase more airline tickets with a stolen credit card in order

¹ See *People v. Barraza* (1979) 23 Cal.3d 675, 689-90; *People v. McClellan* (1980) 107 Cal.App.3d 297, 302; *People v. Peppers* (1983) 140 Cal.App.3d 677, 683; *People v. Thoi* (1989) 213 Cal.App.3d 689, 694-6; *People v. Grant* (1985) 165 Cal.App.3d 496, 500; *Reyes v. Municipal Court* (1981) 117 Cal.App.3d 771, 777; *Arellanes v. Civil Service Com.* (1995) 41 Cal.App.4th 1208, 1215; *U.S. v. Poehlman* (9th Cir. 2000) 217 F.3d 692, 698 ["Inducement can be any government conduct creating a substantial risk that an otherwise law-abiding citizen would commit an offense, including persuasion, fraudulent misrepresentations, threats, coercive tactics, harassment, promises of reward, or pleas based on need, sympathy or friendship."].

to help the caller. Cooks' telephone call provided appellant with nothing more than an opportunity to act unlawfully."

Graves state prison sentence was affirmed.