William Mitchell Law Review

Volume 6 | Issue 1 Article 5

1980

Criminal Procedure—Entrapment—State v. Ford, 276 N.W.2d 178 (Minn. 1979)

CASE NOTES

Criminal Procedure—ENTRAPMENT—*State v. Ford*, 276 N.W.2d 178 (Minn. 1979).

A criminal defendant may use the defense of entrapment when officers or agents of the government have induced the commission of a crime for the purpose of instigating criminal prosecution against the defendant.[1] The Minnesota Supreme Court has consistently followed the majority approach in holding that entrapment exists when officers have lured the defendant into committing a crime that defendant was not predisposed to commit.[2] The court reaffirmed its position in *State v. Ford*[3] and elaborated upon the various procedural applications of the entrapment defense.

In *Ford*, an arrest warrant for defendant was issued upon the basis of information that an unknown informant supplied to the police.[4] The defendant was arrested after police discovered heroin in his pocket; subsequent to his arrest they also discovered heroin in his apartment.[5] At the omnibus hearing, the defense moved for suppression of the heroin, arguing that there had been an illegal search and seizure because the person that had supplied the heroin was also a government informant.[6] These claims could be demonstrated, defense counsel asserted, if the state would produce the person whom defendant believed to be the informant.[7] At a reopened omnibus hearing, defense counsel informed the court that he was submitting an entrapment defense to the court for decision under the *State v. Grilli*[8] procedure, which allows defendants to elect between submitting the entrapment issue to either the court or the jury

1. *See, e.g.*, Hampton v. United States, 425 U.S. 484, 489-90 (1976); United States v. Russell, 411 U.S. 423, 434-35 (1973); Sherman v. United States, 356 U.S. 369, 372 (1958); Sorrells v. United States, 287 U.S. 435, 448 (1932) (interpreting statute). *See generally* Park, *The Entrapment Controversy*, 60 MINN. L. REV. 163 (1976).

2. *See, e.g.*, State v. Morris, 272 N.W.2d 35, 36 (Minn. 1978); State v. Grilli, 304 Minn. 80, 87-94, 230 N.W.2d 445, 451-54 (1975); State v. Poague, 245 Minn. 438, 443, 72 N.W.2d 620, 624-25 (1955).

3. 276 N.W.2d 178 (Minn. 1979).

4. An affidavit accompanying the application for the warrant stated that an informant associated with an agent of the Federal Drug Enforcement Administration had been at defendant's apartment within the previous 72 hours and had seen defendant in possession of heroin. *Id.* at 180.

5. *Id.*

6. *Id.*

7. The defense contended that one John Erickson, who could not be located, was the informant and that he had given defendant the heroin to hold as security for a debt. *Id.*

8. 304 Minn. 80, 230 N.W.2d 445 (1975).

for decision.[9] If the court ruled that there was no entrapment, defendant planned to assert his right at trial to have the jury decide the entrapment question.[10]

The trial court denied the defense motions, finding neither entrapment nor a due process violation.[11] At trial, the entrapment issue was not presented to the jury, although testimony was elicited suggesting that defendant had been framed.[12] The alleged informant was never produced and did not testify at trial.[13] The jury found defendant guilty[14] of actual possession[15] of the heroin on his person and of constructive possession[16] of the heroin found in his apartment. On appeal, the Minnesota Supreme Court affirmed the conviction,[17] finding the trial court had ruled correctly on the entrapment issue[18] and that it had not erred in refusing to order the production of the informant as a witness.[19]

The United States Supreme Court first recognized the entrapment defense in *Sorrells v. United States*.[20] In subsequent decisions, the Court consistently has applied the "subjective" theory of entrapment.[21] This approach focuses on the defendant's predisposition to commit the crime rather than on the conduct of the government's agents.[22] Under the

9. *Id.* at 95-96, 230 N.W.2d at 455-56.

10. 276 N.W.2d at 181.

11. *Id.*

12. *Id.* at 181-82.

13. *See id.* At the omnibus hearing, the trial court refused to order the state to disclose the informant's identity and pointed out that defendant could have subpoenaed the person he believed to have been the informant. *Id.*

14. *Id.* at 182.

15. Actual possession refers to a situation in which goods are in the personal custody of the person charged with possession. *See, e.g.*, United States v. Wynn, 544 F.2d 786, 788 (5th Cir. 1977).

16. Constructive possession is the legal right to possession without actual possession but with the elements of knowing dominion and control. *See, e.g.*, State v. Florine, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975); State v. LaBarre, 292 Minn. 228, 237, 195 N.W.2d 435, 441 (1972).

Testimony was given to the effect that an unknown person delivered the heroin that police found in Ford's apartment to the daughter of his girlfriend. The child allegedly gave it to her mother, who put it in a dresser drawer. 276 N.W.2d at 180-81. The girlfriend testified that both she and defendant concluded that the informant was the source of the heroin. Defendant admitted knowing that the heroin was in the drawer but claimed that he never touched it or exercised dominion or control over it. At trial, evidence was introduced to show that the heroin in the drawer came from the same source as the heroin that police found on defendant's person. *Id.* at 182.

17. 276 N.W.2d at 180.

18. *Id.*

19. *Id.*

20. 287 U.S. 435 (1932).

21. *See, e.g.*, Hampton v. United States, 425 U.S. 484, 488-89 (1976); United States v. Russell, 411 U.S. 423, 433 (1973); Sherman v. United States, 356 U.S. 369, 372-73 (1958).

22. The test applied in Sorrells v. United States, 287 U.S. 435 (1932), was whether or not the acts of the agent were such that even an otherwise law-abiding citizen could be

"subjective" theory, a defendant found to be predisposed to commit the crime cannot be entrapped.[23] In its most recent entrapment decision, *Hampton v. United States*,[24] the Supreme Court reaffirmed its adherence to the "subjective" approach and its primary focus on the defendant's predisposition.[25] The Court held that the entrapment defense would never be available to a defendant whose predisposition had been established.[26]

The Supreme Court has also discussed an entrapment-related defense based upon a due process theory. In *United States v. Russell*,[27] the Court noted that under some circumstances police conduct could be so outrageous as to violate an individual's right to due process despite that per-

---

lured into committing the crime. *See id.* at 448. *See generally* Park, *supra* note 1, at 165; Comment, *Entrapment: A Critical Discussion*, 37 MO. L. REV. 633, 634-35 (1972); 59 CORNELL L. REV. 546, 548-49 (1974).

Another approach, referred to as the "objective" theory of entrapment, was proposed by a concurring minority in *Sorrells*. *See* 287 U.S. at 454-55 (1932) (Roberts, J., concurring). This approach focuses on the conduct of government agents rather than on the defendant's predisposition. Since *Sorrells*, a minority of the Supreme Court has criticized the "subjective" theory. *See, e.g.*, Sherman v. United States, 356 U.S. 369, 378 (1958) (Frankfurter, J., concurring). Justice Frankfurter commented that:

> [i]t is wholly irrelevant to ask if the "intention" to commit the crime originated with the defendant or government officers, or if the criminal conduct was the product of "creative activity" of law enforcement officials . . . .
>
> This test [for entrapment] shifts attention from the record and predisposition of the particular defendant to the conduct of police and the likelihood, objectively considered, that it would entrap only those ready and willing to commit the crime. It is as objective a test as the subject matter permits, and will give guidance in regulating police conduct that is lacking when the reasonableness of police suspicions must be judged or the criminal disposition of the defendant retrospectively appraised.

Id. at 382, 384 (Frankfurter, J., concurring).

A minority of states supports the "objective" theory. *See, e.g.*, Grossman v. State, 457 P.2d 226 (Alaska 1969); People v. Barraza, 23 Cal. 3d 675, 591 P.2d 947, 153 Cal. Rptr. 459 (1979); State v. Mullen, 216 N.W.2d 375 (Iowa 1974); People v. Turner, 390 Mich. 7, 210 N.W.2d 336 (1973); HAWAII REV. STAT. § 702-237 (1976); N.H. REV. STAT. ANN. § 626:5 (1974); N.D. CENT. CODE § 12.1-05-11 (1976); PA. STAT. ANN. tit. 18, § 313 (Purdon 1973). Some federal courts also use the "objective" approach. *See, e.g.*, United States v. West, 511 F.2d 1083 (3d Cir. 1975); United States v. McGrath, 468 F.2d 1027 (7th Cir. 1972); Green v. United States, 454 F.2d 783 (9th Cir. 1971); United States v. Bueno, 447 F.2d 903 (5th Cir. 1971), *cert. denied*, 411 U.S. 949 (1973). *But see* United States v. Robinson, 539 F.2d 1181 (8th Cir. 1976), *cert. denied*, 429 U.S. 1101 (1977) (predisposition of defendant remains the principal test of entrapment).

23. *See, e.g.*, Hampton v. United States, 425 U.S. 484, 489-90 (1976); Sorrells v. United States, 287 U.S. 435, 441 (1932).

24. 425 U.S. 484 (1976).

25. *See id.* at 489.

26. *See id.* at 490. The *Ford* court followed this stance in holding that "no matter how involved the government is in inducing the commission of a crime, the *defense of entrapment* will not bar conviction if the government can prove beyond a reasonable doubt that the defendant was predisposed to commit the crime." 276 N.W.2d at 182 (emphasis in original).

27. 411 U.S. 423 (1973).

son's predisposition to commit a crime.[28] The Court did not, however, describe the types of conduct that would violate due process, stating only that government conduct would be unconstitutional if it violated "fundamental fairness"[29] and was "shocking to the universal sense of justice."[30]

While the Minnesota court has acknowledged the entrapment defense since 1909,[31] it has not outlined the procedural parameters of the defense until recently. In *State v. Grilli*,[32] the court held that a defendant claiming to be entrapped must elect before trial whether to have the entrapment claim presented to the jury or heard and decided by the court.[33] The purpose of the *Grilli* procedure is to allow a defendant to prevent the jury from hearing evidence of prior misconduct that may be used to prove defendant's predisposition.[34]

The procedure established by *Grilli* did not make any clear distinction among the various aspects of the entrapment defense. Because confusion had arisen due to the use of the term "entrapment as a matter of law" and its application to various related but distinct defenses,[35] the *Ford* court attempted to clarify the *Grilli* procedure by delineating the four

28. *See id.* at 431-32. The Court noted that "we may some day be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction . . . ." *Id.*

The Court cited Rochin v. California, 342 U.S. 165 (1952), as an example of police behavior sufficiently outrageous to warrant a due process-based defense. 411 U.S. at 432.

29. 411 U.S. at 432.

30. *Id.*

31. *See* State v. Gibbs, 109 Minn. 247, 123 N.W. 810 (1909).

32. 304 Minn. 80, 230 N.W.2d 445 (1975).

33. *Id.* at 95-96, 230 N.W.2d at 455. The new procedure required that:

> following complaint or indictment and at a time prior to the commencement of trial, a defendant shall elect whether to have his claim of entrapment presented in the traditional manner as a defense to the jury, or to have it heard and decided by the court as a matter of law. He shall give notice of such election to the court and prosecution, setting forth the basis for the claim of entrapment in reasonable detail. If the defendant elects to have the court hear the claim, he must in open court or in writing waive a jury trial as to that issue. Such a matter can be heard at a pretrial evidentiary hearing . . . . The trial court shall make findings of fact and conclusions of law on the record. If the court decides that defendant was entrapped into the commission of the crime charged, this will be a bar to further prosecution for that charge. The state may appeal this decision under Minn. St. 632.11. If the court holds that there was no entrapment, the issue is closed and defendant may not present the defense to the jury. However, as always, the defendant pursuant to Minn. St. 632.01 has the right to appeal from any resultant conviction with the pretrial denial of his entrapment claim a possible ground for reversal.
>
> In the alternative, defendant may elect to have his claim presented as a defense to be decided by the jury.

Id.

34. *See* 276 N.W.2d at 183.

35. *See id.*

entrapment-related defenses. Two defenses related to what the court considered "true entrapment." First is the common situation in which the entrapment issue is presented to the jury.[36] In the second "true entrapment" situation, a defendant elects to have the court rule on the issue prior to trial, thus waiving any consideration of entrapment by the jury.[37] The *Ford* court limited the use of the term "entrapment as a matter of law" to the third situation, which exists when evidence of entrapment presented at trial is such that the court must take the issue from the jury and rule on the matter.[38] Fourth is the due process defense, a legal defense to be decided by the court.[39]

While making it clear that *Grilli* does not permit a defendant to have the second "true entrapment" defense decided by the court at a pretrial hearing and then by the jury at trial if the court's decision is unfavorable,[40] the *Ford* court indicated that the entrapment-related defenses are distinct.[41] Thus, a defendant may raise a due process defense prior to trial while preserving the "true entrapment" defense for the jury.[42] This procedure allows a predisposed defendant who wishes to assert a potentially unsuccessful entrapment defense to have the additional advantage of a due process defense, which is available even to the predisposed defendant.[43] Whether or not the due process defense is successful, the defendant would still be entitled to a jury decision on the entrapment issue.

The result in *Ford* appears to be a logical approach to a difficult definitional and procedural problem.[44] The court's attempt to clear up the

---

36. *See id.* at 182-83.

37. *Id.* at 183. The *Grilli* court referred to this situation as entrapment "as a matter of law." *See* 304 Minn. at 95, 230 N.W.2d at 455.

38. 276 N.W.2d at 183.

39. State v. Morris, 272 N.W.2d 35, 36 (Minn. 1978); *see* notes 23-26 *supra* and accompanying text.

40. 276 N.W.2d at 183. The court commented that:

> [d]efense counsel's intent may have been to have the court decide the due-process issue at the omnibus hearing and preserve for the jury the predisposition-based entrapment defense. However, as we indicated, at the reopened omnibus hearing the court specifically asked defense counsel if he was submitting the entrapment issue to the court, and defense counsel, in defendant's presence, replied that he was and that he also wished to preserve his right to have the jury consider entrapment. *Grilli* does not permit the defense to have it both ways.

Id.

41. *Id.*

42. *See id.*

43. *See id.*

44. The United States Supreme Court has never actually defined the procedural requirements for the entrapment defense, though the trend appears to be that the jury rather than the court should decide the matter. *See, e.g.*, United States v. Burkley, 591 F.2d 903, 914-15 (D.C. Cir. 1978), *cert. denied*, 99 S. Ct. 1516 (1979); 6 FORDHAM URB. L.J. 427, 431-32 (1978). Some of the Justices, however, have expressed the opinion that the entrapment defense should be considered by the court. *See, e.g.*, United States v. Russell, 411 U.S. 423, 441 (1973) (Stewart, J., dissenting); Sherman v. United States, 356 U.S. 369,

confusion in terminology, however, may have operated to the disadvantage of the defendant Ford. The trial court assumed that the defendant had intended to submit both the "true entrapment" defense and the due process defense to the court at the omnibus hearing.[45] Accordingly, it ruled on both defenses at that time,[46] thereby precluding the defendant from presenting any claim of entrapment to the jury at trial.

The Minnesota court has yet to address the due process defense as

---

385 (1958) (Frankfurter, J., concurring); Sorrells v. United States, 287 U.S. 435, 457 (1932) (Roberts, J., concurring). Other courts are also in disagreement over whether the court or the jury should consider the entrapment issue. *See* Ranney, *The Entrapment Defense: What Hath the Model Penal Code Wrought?*, 16 DUQ. L. REV. 157, 164 n.42 (1977-1978). The Model Penal Code requires that the matter be submitted to the court:

> Except as provided in Subsection (3) of this Section, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of the evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried by the Court in the absence of the jury.

MODEL PENAL CODE § 2.13(2) (Proposed Official Draft 1962). A number of courts have adopted this approach. *See, e.g.*, Grossman v. State, 457 P.2d 226, 230 (Alaska 1969) (entrapment may be raised either before or during trial but the court alone decides the issue); People v. Cushman, 65 Mich. App. 161, 165-66, 237 N.W.2d 228, 231 (1975) (entrapment is an issue decided by the court in its supervisory role over the administration of criminal justice). Other courts require the matter to be heard by the jury. *See, e.g.*, State v. McKinney, 108 Ariz. 436, 440-41, 501 P.2d 378, 383 (1972) (entrapment issue a matter for the jury but can exist as a matter of law if evidence is uncontradicted that person was induced to commit crime); Mullins v. State, — Ark. —, —, 580 S.W.2d 941, 942-43 (1979) (in prosecution for delivery of cocaine, question of entrapment properly presented to jury); State v. Baumann, 236 N.W.2d 361, 364 (Iowa 1975) (when the operative facts of entrapment are disputed the issue is decided by the jury); Raymer v. City of Tulsa, 595 P.2d 810, 812 (Okla. Crim. App. 1979) (evidence of solicitation of another for prostitution presented question of fact under entrapment instruction); Commonwealth v. Mott, 234 Pa. Super. Ct. 52, 62, 334 A.2d 771, 777 (1975) (when defendant's credibility is disputed, entrapment issue is for the jury). The latter approach has been criticized because it allows the jury to hear the prosecutor's evidence of defendant's predisposition. *See, e.g.*, Donnelly, *Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs*, 60 YALE L.J. 1091, 1108 (1951); Comment, *The Entrapment Doctrine in General Courts and Some State Comparisons*, 49 J. CRIM. L.C. & P.S. 447, 455 (1959); Comment, *Entrapment By Federal Officers*, 33 N.Y.U.L. REV. 1033, 1038 (1958); Comment, *Entrapment in the Federal Courts*, 1 U.S.F.L. REV. 177, 180 (1966); Comment, *The Entrapment Defense in Kansas: Subjectivity Versus an Objective Standard*, 12 WASHBURN L.J. 64, 69 (1972). The *Grilli* procedure gives defendants the opportunity to avoid this problem by allowing them to choose between the court and the jury. State v. Grilli, 304 Minn. 80, 95, 230 N.W.2d 445, 455 (1975); *see* State v. Ford, 276 N.W.2d 178, 183 (Minn. 1979).

A Texas statute allows the court to hear the entrapment defense at a pretrial hearing. TEX. STAT. ANN. art. 28.01(9) (Vernon Cum. Supp. 1978-1979). One commentator has suggested that the court could make an independent finding on the entrapment claim as a matter of law and fact. If the court's decision is adverse to the defendant, the defendant could then present the issue to the jury at trial. *See* Comment, *Entrapment Under the 1974 Texas Penal Code—A Look At Some Problems the Statutory Defense Presents*, 13 HOUS. L. REV. 586, 610 (1976). The *Ford* court specifically objected to such a result. 276 N.W.2d at 183.

45. *See* 276 N.W.2d at 183.

46. *Id.*

applied to a situation in which the government supplies a defendant with narcotics. In the dissenting opinion in *Ford*, Justice Otis contended that the case should have been remanded in order to give the defendant a chance to prove that the heroin was provided by a government informant.[47] The court declined to discuss the due process matter, however, ruling only that the trial court had decided the issue correctly at the omnibus hearing,[48] and that the defendant, by presenting nothing more than his uncontroverted testimony, had failed to demonstrate that he had in fact received the heroin from a government agent.[49]

The significance of *Ford* lies not in its reaffirmation of the majority approach to the substantive aspects of entrapment, but in its discussion of the procedural elements of the entrapment-related defenses. The *Ford*

47. *Id.* at 184 (Otis, J., dissenting). Justice Otis argued that:

> [d]efendant was entitled to know whether or not the person he alleges furnished him with the heroin was a government informant, since it is conceded by the majority that if he was an informant we would be faced with a difficult due-process question, the resolution of which might well constitute a defense to the "actual possession" count.
>
> I would remand for a new trial on the charge only to afford defendant an opportunity to prove his claim that the state virtually thrust the heroin on him for the express purpose of promptly arresting him while it was still in his possession.

Id. (Otis, J., dissenting).

48. *See* 276 N.W.2d at 180.

49. *Id.* at 184. The trial court had ruled that:

> [d]efendant has offered only his testimony and the statement contained in the search warrant affidavit that the informant had been on the premises within 72 hours prior to the arrest to support his argument of entrapment as a matter of law. This showing, without more, does not place the obligation on the prosecution to call any witnesses to controvert defendant's testimony. . . .
>
> . . . Since the Court declines to rule that the alleged conduct of the informant in the case at bar constituted entrapment as a matter of law, it follows that the evidence seized pursuant to the search warrant will not be suppressed on due process grounds. . . .

State v. Ford, No. 66449 (Minn. 4th Dist. Ct. Jan. 3, 1977).

The defendant had argued that the search and seizure was illegal because the warrant was issued on the basis of information provided by a government informant who also provided defendant with the heroin, and then used his knowledge of defendant's possession of heroin to enable police to make the arrest. *See* 276 N.W.2d at 180. Because the state was not ordered to produce the alleged informant, defendant contended that he was unable adequately to prove one of the essential elements of entrapment. *See id.* at 184. In order to prove entrapment, a defendant must demonstrate by a fair preponderance of the evidence that the criminal conduct was induced by the government. The state must then prove beyond a reasonable doubt that the defendant was predisposed to commit the crime. *See* State v. Grilli, 304 Minn. 80, 96, 230 N.W.2d 445, 456 (1975).

The *Ford* court commented that defendant was not trying to obtain disclosure of the alleged informant's identity, since he claimed to know who the informant was. Instead, he wanted the state to produce the informant so that the due process claim could be established. 276 N.W.2d at 184. The supreme court argued that the matter could have been handled in camera, or that defendant could have obtained a continuance in order to locate and subpoena the alleged informant. *Id.*

court clarified the *Grilli* procedure by explaining that the defendant may present, in effect, a bifurcated defense. By defining the terms commonly used in entrapment cases, the *Ford* decision has made it clear that a defendant who raises both a "true entrapment" claim and an entrapment-related due process defense may have the two issues considered separately by the court and the jury. The court's ruling in *Ford* is likely to give defense attorneys greater latitude in employing entrapment-related defenses on behalf of their clients.

Paternity—THE RIGHT OF AN INDIGENT PUTATIVE FATHER TO COUNSEL IN A PATERNITY ACTION—*Hepfel v. Bashaw*, 279 N.W.2d 342 (Minn. 1979).

Illegitimate children have long been substantially equal to their legitimate siblings in the primary rights of maternal inheritance and support because of the certainty of the maternal blood tie.[1] Unlike the maternal blood tie, however, paternity is difficult to prove.[2] Thus, preference for the child of legitimate birth, whose paternity is presumed to be certain, has long been sanctioned by law in societies in which property and status are transferred from generation to generation through the father.[3] Due to the importance of accurately determining paternity in cases in which the identity of the father is contested, it would appear desirable for all

1. *See In re* Estate of Pakarinen, 287 Minn. 330, 337, 178 N.W.2d 714, 718 (1970) (identity of mother usually easily established), *appeal dismissed*, 402 U.S. 903 (1971); MINN. STAT. § 525.172 (1978) ("An illegitimate child shall inherit from his mother the same as if born in lawful wedlock . . . ."); H. KRAUSE, ILLEGITIMACY: LAW AND SOCIAL POLICY 5 (1971) ("[W]ith respect to its mother, the illegitimate has long been equal . . . to his legitimate sibling.").

2. "Paternity practice has suffered from the old saw to the effect that 'maternity is a matter of fact whereas paternity is a matter of opinion.' " H. KRAUSE, *supra* note 1, at 106. *See In re* Estate of Pakarinen, 287 Minn. 330, 337, 178 N.W.2d 714, 718 (1970) ("[N]o method of proof we are now aware of exists by which fatherhood can be conclusively established."), *appeal dismissed*, 402 U.S. 903 (1971). *See generally* Note, *Paternal Inheritance Rights of Illegitimate Children and the Problem of Proving Paternity*, 24 WAYNE L. REV. 1389 (1978).

3. As Justice Cardozo remarked in *In re* Findlay, 253 N.Y. 1, 170 N.E. 471 (1930):

> Potent, indeed, the presumption [of legitimate birth] is one of the strongest and most persuasive known to the law . . . , and yet subject to the sway of reason. Time was, the books tell us, when its rank was even higher. If a husband, not physically incapable, was within the four seas of England during the period of gestation, the court would not listen to evidence casting doubt on his paternity. The presumption in such circumstances was said to be conclusive.

Id. at 7, 170 N.E. at 472.

Today, the presumption of legitimacy is still normally given great weight. *See* 9 J. WIGMORE, A TREATISE ON THE ANGLO-AMERICAN SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW § 2527 (3d ed. 1940) (child born of a married woman during wedlock presumed the child of mother's current husband).