



refusing to depart downward at sentencing because his agreement to purchase two night-vision goggles did not threaten the security of the United States. We affirm.

#### ENTRAPMENT

"Entrapment as a matter of law is established only where a reasonable jury could not find that the government discharged its burden of proving the defendant was predisposed to commit the charged crime." *United States v. Arditti*, 955 F.2d 331, 342 (5th Cir.), *cert. denied*, \_\_\_U.S.\_\_\_, 113 S.Ct. 597, 121 L.Ed.2d 534 (1992), \_\_\_U.S.\_\_\_, 113 S.Ct. 980, 122 L.Ed.2d 134 (1993). When the jury has rejected the entrapment defense, on appeal we apply the same standard of review that is applied to sufficiency of the evidence. *United States v. Johnson*, 872 F.2d 612, 621 (5th Cir. 1989). Reviewing the evidence presented a trial, we must determine "whether, viewing reasonable inferences and credibility choices in the light most favorable to the Government, a reasonable jury could find, beyond a reasonable doubt, that the defendant was predisposed to commit the offense." *Id.* The defendant's enthusiasm for the crime can satisfy the predisposition requirement. *United States v. Hudson*, 982 F.2d 160, 162 (5th Cir.), *cert. denied*, \_\_\_U.S.\_\_\_, 114 S.Ct. 100, 126 L.Ed.2d 67 (1993).

Vann's statements to an undercover agent (recorded by the Government), in which he admitted to the previous illegal transportation of various military material into Mexico, is sufficient to show his predisposition to commit the offense charged: conspiracy to purchase about 50 pairs of stolen night-

vision goggles and transport them to Mexico illegally. Based on that evidence, we find that a reasonable jury could find, beyond a reasonable doubt, that Vann was predisposed to commit the offense charged, rather than being "an 'unwary innocent,'" *Mathews v. United States*, 485 U.S. 58, 63, 108 S.Ct. 883, 99 L.Ed.2d 54 (1988).

#### DEPARTURE

The sentencing court's decision not to depart downward is discretionary; we must accept findings of fact unless clearly erroneous. *United States v. Soliman*, 954 F.2d 1012, 1014 (5th cir. 1992). We find the district court's refusal to depart was not in violation of the law because the court exercised its discretion not to depart and sentenced Vann within the applicable guidelines. Accordingly, the refusal to depart is not reviewable because it was not "in violation of the law." *United States v. Guajardo*, 950 F.2d 203, 208 (5th Cir. 1991), *cert. denied*, 503 U.S. 1009, 112 S.Ct. 1773, 118 L.Ed.2d 432 (1992).

#### CONCLUSION

For the reasons articulated above, Vann's conviction and sentence are AFFIRMED.