IN THE COURT OF APPEALS OF IOWA 335

No. 0-24 / 89-357

STATE OF IOWA,

Appellee,

vs.

JODI SUE LINDQUIST,

Appellant.

FILED
MAR 27 1990
CLERK SUPREME COURT

Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge.

The defendant appeals the judgment and sentence entered by the trial court, following a jury trial, finding her guilty of theft in the fourth degree and solicitation. **AFFIRMED.**

Joseph R. LaPointe, Mason City, for appellant.

Thomas J. Miller, Attorney General; Julie A. Halligan, Assistant Attorney General; Paul Martin, County Attorney; and Michael Houchins, Assistant County Attorney; for appellee.

Considered by Oxberger, C.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

In 1981 the defendant, Jodi Sue Lindquist, and Michelle Baltes were prostitutes working for Charles Thompson. Thompson found out the women were planning to "roll a john"--take a customer's money without providing sex. Thompson forced Baltes to have sex with two men at gunpoint and then forced Lindquist to have sex with him. He then beat Lindquist.

In October 1987, Lindquist arrived at Baltes' home after telephoning. Lindquist drove Baltes and her son to defendant's home and they went inside. Two men and a woman were already there.

The two women argued about the 1981 incident. Baltes was convinced Lindquist thought Baltes had ratted to Thompson.

Lindquist and Baltes discussed a plan to get money from a customer in return for Baltes' sexual favors. Lindquist negotiated with the customer, agreeing on $50 for the trick. They planned to meet the customer at a motel.

The two women went to a bar where Lindquist bought Baltes a soda. They then went to a bank, where Baltes withdrew $64 from her account and gave it to Lindquist.

Following the money transaction, Lindquist and Baltes met with the trick (customer). Baltes then had sexual intercourse with the paying costumer.

On April 12, 1988, Lindquist was charged by trial information with theft in the fourth degree and solicitation. The court appointed an assistant public defender to represent her. She pleaded not guilty and waived her right to a speedy trial. Following a hearing on an application for a new court-appointed attorney, the court appointed a local attorney to represent defendant. Two local attorneys were appointed and subsequently withdrew. A third attorney, James J. Brandt, was appointed on November 9, 1988. In December, defendant filed an application for another court-appointed attorney, asserting she disagreed with her attorney's assessment of her case. Following a hearing, this last application was denied. The court concluded Lindquist had not gotten along with her previous attorneys and there was no indication she could get along better with another. Trial was held, and the jury found Lindquist guilty on both charges. She now appeals.

Lindquist argues the trial court erred in overruling her application for a new court-appointed attorney. She asserts on appeal Brandt was ineffective since he had never tried a criminal case, and was therefore not prepared for the subtle nuances of trial. Lindquist contends Brandt prejudiced her case by repeatedly referring to her as a "bad apple," or someone of bad moral character, in the course of his opening statement. Lindquist urges this

court to adopt a new rule which would prevent recent law school graduates from being appointed to represent a defendant in a criminal case unless they had cochaired an entire criminal trial.

Lindquist states she was denied her right to effective assistance of counsel in violation of the sixth amendment.

Lindquist contends the trial court erred in curtailing her cross-examination of Baltes. She argues she should have been permitted to ask Baltes if she had ever stolen to support her drug habit.

Finally, Lindquist argues the trial court erred in overruling her motion for directed verdict with regard to the charge of theft.

We affirm, preserving the issue of ineffective assistance of counsel for a postconviction relief proceeding.

1. **REQUEST FOR A NEW ATTORNEY.** Lindquist asks this court to adopt a new policy which would require the court to inquire into the competence and experience of the lawyer prior to an appointment for an indigent criminal defendant. We are sympathetic with defendant's complaints and acknowledge the record indicates a more experienced lawyer would have been preferable. However, we decline defendant's request. It is not within the purview of this court to establish or change the existing practices of Iowa trial courts in appointing lawyers to represent indigent

defendants. See Iowa R. App. P. 401(c). Such a change in practice, policy, or rules concerning this subject is the exclusive domain of the Iowa Supreme Court. We cite Iowa Code section 602.1201, "Supervision and administration":

> The supreme court has supervisory and administrative control over the department and over all judicial offices.

and section 602.1206(1), "Rules for judges and attorneys":

> The supreme court shall prescribe rules as necessary to the conduct of attorneys and judicial officers. These rules shall be executed by the chief justice.

2. **INEFFECTIVE ASSISTANCE OF COUNSEL.** Lindquist contends she was denied the effective assistance of counsel, which violates her constitutional right to counsel under the constitutions of the United States and Iowa. To support this claim, defendant refers us to the opening statement which she maintains contains derogatory and prejudicial comments about her as well as confusing and, at times unintelligible, statements. She also asserts the attorney's failure to preserve error, failure to object to jury instructions, and failure to file a motion for a new trial evidence ineffective assistance of counsel.

We decline to decide this issue on this appeal. Ordinarily, an appellate court does not decide this question on direct appeal, preferring to reserve it for postconviction proceedings, at which time counsel can

defend against the charge. State v. Poyner, 306 N.W.2d 716, 719 (Iowa 1981).

Our supreme court has considered the issue on direct appeal when the record is sufficiently developed to provide adequate review. State v. Hildebrant, 405 N.W.2d 839, 841 (Iowa 1987). The record in this case is insufficient to support such a review at this stage.

3. **CROSS EXAMINATION OF STATE'S WITNESS.** Lindquist argues the trial court erred in sustaining the State's objection to cross-examination of Baltes regarding whether she had ever stolen to support her drug habit.

During the trial, defendant countered the State's relevancy objection by stating the testimony went to credibility. "Somebody who steals for a living might not be the most reliable person in the world."

The court concluded Iowa Rule of Evidence 608 does not include the kind of testimony defendant intended to elicit.

Assuming without deciding the exclusion of the evidence was wrong because the court's reason was erroneous, we hold the exclusion was not prejudicial error. Absent prejudice, a reversal is not called for because of this ruling. State v. Clark, 325 N.W.2d 381, 383 (Iowa 1982) citing to State v. Trudo, 253 N.W.2d 101, 107-08 (Iowa 1977).

As in Clark, the case against the defendant, at least regarding the solicitation charge, was strong. The jury

had sufficient information to assess Baltes' credibility. Baltes testified she had previously engaged in illegal activity such as prostitution and drug usage. She also testified that when she was a prostitute, she unsuccessfully attempted to steal from a customer by "rolling the john." The information defendant wanted to elicit was not necessary for the jury to further assess the witness's credibility. We affirm the solicitation conviction.

4. THE THEFT CHARGE. Lindquist asserts the evidence against her was insufficient as a matter of law to sustain her conviction for theft. She argues the State failed to prove she took possession of the money with the intent to permanently deprive Baltes of it. Therefore, the trial court erred in overruling defendant's motion for directed verdict on the theft charge. We do not agree.

Iowa Code section 714.1 defines the crime of theft as follows:

> A person commits theft when the person does any of the following:
>
> 1. Takes possession or control of the property of another, or property in the possession of another, with the intent to deprive the other thereof.

Section 714.2(4) designates theft in the fourth degree as follows:

> 4. The theft of property exceeding fifty dollars in value but not exceeding one hundred dollars in value is theft in the fourth degree. Theft in the fourth degree is a serious misdemeanor.

When reviewing a challenge to the sufficiency of the evidence, we are guided by well-established principles. The court will view the evidence in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984).

A jury verdict of guilty is binding upon this court unless there is no substantial evidence in the record to support it, or such finding is clearly against the weight of evidence. State v. Overstreet, 243 N.W.2d 880, 884 (Iowa 1976). Substantial evidence means evidence which would convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Schertz, 328 N.W.2d 320, 321 (Iowa 1982).

There is evidence in the record defendant: threatened to get a gun if Baltes didn't cooperate; was holding Baltes' child and threatening Baltes might not see him again; arranged, against Baltes' will, for Baltes to commit an act of prostitution; and demanded money from Baltes or her family. A rational trier of fact could reasonably find Lindquist did not view the $64 as a gift and she had no intention of repaying Baltes. We hold there is substantial evidence in this record to support the jury's verdict on the theft charge. We affirm the theft conviction.

AFFIRMED.