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AUG 31 1978
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,) Filed August 31, 1978
vs.)
PEGGY ADAIR,) 583/60923
Appellant.)

Appeal from Page District Court - Harold L. Martin, Judge.

Defendant appeals her conviction and sentence for delivery of a controlled substance, marijuana, with intent to profit by means of aiding and abetting in violation of § 204.401(1), The Code 1975. AFFIRMED.

Richard Davidson, of Davidson & Hemphill, of Clarinda, counsel for appellant.

Richard C. Turner, Attorney General of Iowa, William R. Armstrong, Assistant Attorney General, and Donald Mason, Page County Attorney, counsel for appellee.

Submitted to Donielson, Acting C. J., Snell, Oxberger and Carter, JJ.

DONIELSON, Acting C. J.

In this appeal following conviction for delivery of a controlled substance, marijuana, by means of aiding and abetting in violation of § 204.401(1), The Code 1975, defendant Peggy Adair presents issues of whether sufficient evidence existed to submit the case to the jury and whether the trial court, in sustaining a motion in limine by the State and failing to grant defendant a separate accommodation hearing pursuant to § 204.410, The Code 1975, committed reversible error.

The record reflects that on August 8, 1975, William Missman, a special agent with the Iowa Division of Narcotics and Drug Enforcement, placed a telephone call to defendant Adair's residence. He spoke with a woman who identified herself as Peggy Adair about the possible purchase of a pound of marijuana. Adair told him to come to her home that afternoon and she would then call a "subject" to get the marijuana. When Missman arrived at Adair's house with Larry Noble, a special agent with the Iowa Department of Public Safety, Adair admitted them into her living room and went to a bedroom for a minute or two to make a call "about the pound." Neither agent heard the call. Adair returned to the living room and conversed with the agents about a Jerry Rupp. Within ten minutes Rupp arrived, was introduced to the agents, and transacted with them the sale of a pound of marijuana in a brown paper sack for $170. Adair was in the living room during the exchange. After the three men left the house, Rupp told the agents to continue calling Adair when they wanted to get in touch with him.

On March 7, 1977, Adair was charged by grand jury's indictment with the instant offense and a trial resulted in her conviction. At trial, Adair denied receiving the phone call from Agent Missman and denied making any phone call while the agents were at her home "because the telephone is not in the bedroom." She testified that she paid no attention to the conversation or events taking place in her living room, saw nothing but a paper sack and received no money from Jerry Rupp.

Before trial, the State made a motion in limine asking that defendant be prohibited from asking questions concerning the fact that Jerry Rupp was at the time of trial acting as an informant for the Department of Public Safety. This motion was filed after the jury was selected and the only indication of its being sustained was a handwritten docket entry by the court. Nothing further concerning the motion or its

subject matter appeared in the trial transcript or post-trial proceedings. Defendant contends that the trial court erred in sustaining the motion.

While ordinarily the granting or rejecting of a motion in limine is not reversible error without a subsequent record, an exception exists when the motion in limine is granted on evidentiary hearing which completely apprises the court of the factual situation and nothing occurs at trial to change the posture of the parties. State v. Langley, 265 N.W.2d 718, 721 (Iowa 1978); State v. Garrett, 183 N.W.2d 652, 654 (Iowa 1971). However, we do not have to decide this issue since Rupp was not called by either side to testify at trial and his credibility was not in issue.

The State contends that defendant did not preserve error concerning the accommodation issue because she failed to request a separate accommodation hearing as required by § 204.410, The Code 1975, as it existed prior to July 1, 1976. State v. Miller, 241 N.W.2d 909, 910-911 (Iowa 1976); State v. Monroe, 236 N.W.2d 24, 37 (Iowa 1975). Failure to request an accommodation hearing prior to the time sentence was imposed was deemed a waiver of any right to the hearing. State v. Everhart, 243 N.W.2d 574, 575 (Iowa 1976). However, the amended version of § 204.410, Acts 1976 (66 G.A.) ch. 1245, ch. 4, § 231, which became effective July 1, 1976, abolished the bifurcated proceedings provided for under the earlier version of the statute.

Where the alleged offense giving rise to the charge occurs on or after July 1, 1976, the amended version is applicable. State v. Didley, 264 N.W.2d 732, 733 (Iowa 1978). However, where the alleged offense occurs prior to that date, the old version controls. State v. McDaniel, 265 N.W.2d 917, 923 (Iowa 1978). Since the transaction in the instant case occurred on August 8, 1975, the earlier version of § 204.410 governs and defendant was required to request a separate accommodation hearing in order to preserve error. Since she did not do so, she cannot prevail here.

Finally, defendant argues that the trial court should have sustained her motion for directed verdict at the close of her evidence based on insufficiency of proof of defendant's participation in delivery and the receipt of money. In passing upon such a motion, a court views the evidence in the light most favorable to the State and accepts reasonable inferences from the evidence which support the verdict. If substantial evidence supports the charge, the court submits the case to the jury for determination. State v. McDaniel, supra, at 922 citing State v. Beyer, 258 N.W.2d 353, 356 (Iowa 1977).

Defendant was charged with delivery of marijuana in violation of § 204.401(1), The Code 1975, by means of aiding and abetting Jerry Rupp. To support that charge, the court must find substantial evidence that Adair "assented to or lent countenance and approval to the criminal act either by active participation in it or by some manner encouraging it prior to or at the time of its commission." State v. Lott, 255 N.W.2d 105, 107 (Iowa 1977). The evidence presented at trial showed that Adair made the arrangements for the agents and Rupp to meet, and was present at the sale. The underlying precept of aiding and abetting is a requirement that "the accessory in some way associate himself with the venture, that he participate in it as something that he wishes to bring about, that he seek by his action to make it succeed." State v. Lott, supra, at 108. This precept was satisfied by the evidence in the present case. We hold the trial court was correct in overruling defendant's motion for directed verdict.

AFFIRMED.