IN THE COURT OF APPEALS OF IOWA

No. 0-370 / 89-1145

FILED
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CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

BRIAN JAMES PRITCHARD,

Appellant.

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Appeal from the Iowa District Court for Warren County, Darrell Goodhue, Judge.

The defendant appeals from his conviction, following a jury trial, for delivery of cocaine. He contends the district court erred by restricting his cross-examination of a police informant. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and Patricia R. Lapointe, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General; Sarah J. Coats, Assistant Attorney General; John W. Criswell, County Attorney; and Kevin Parker, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Sackett, JJ.

DONIELSON, J.

A jury found defendant, Brian Pritchard, guilty of delivery of cocaine. Pritchard appeals the resulting conviction. He contends the trial court erred in restricting his cross-examination of a police informant. We affirm.

I. **Background facts.** At Pritchard's trial, witness Becky Boyer testified she resided in Indianola, Iowa, and was employed at the Ma and Pa convenience store from October, 1987, to April, 1989. During the time she worked at the Ma and Pa store she met the defendant and worked undercover for the Indianola Police Department. According to Boyer, she previously had casual conversations with Pritchard and on August 29, 1988, she asked him if he knew where she could get some cocaine. He agreed to sell her cocaine himself; the price was set at $300. The transaction took place at 6 p.m. on the same day at the house of Boyer's mother.

Before the transaction, Boyer contacted Officer Tab Bartling, who had a video camera with audio set up at the house. Boyer wore a transmitter taped to her chest, enabling Officer Bartling to listen to her conversations.

The cocaine was purchased with city funds. Boyer testified the defendant delivered a package to her in exchange for $300. Pritchard told Boyer at the time of the sale how cocaine had "messed up his life and his job." The entire transaction was recorded and the video tape was admitted into evidence and played to the jury.

On cross-examination, Boyer denied she had asked Pritchard for drugs on prior occasions. She also denied doing Pritchard any favors when he had come into the store where she was employed. Pritchard sought to cross-examine Boyer on two additional matters: (1) whether she had kept controlled substances in her apartment around the time of the purchase from Pritchard, and (2) whether she had asked persons other than Pritchard to sell her drugs. The district court refused to allow cross-examination on either subject on relevance grounds.

Pritchard alleged a defense of entrapment. He testified he was approached by Boyer to obtain drugs on four or five occasions prior to the transaction leading to this charge. He testified he lived near the Ma and Pa store and shopped there. He stated Boyer allowed him and his girlfriend to rent VCR tapes and return them late without paying more than the one-day fee and that Boyer had given them free merchandise.

Pritchard's live-in girlfriend also testified. She stated she heard Boyer twice ask Pritchard to obtain drugs for her prior August 29. She testified Pritchard told her of other occasions that Boyer asked him for drugs. She also testified Boyer had given the couple a free toy, a free sausage stick, and allowed them to return tapes late without additional charge.

The jury found Pritchard guilty of delivery of cocaine.

Pritchard appeals from the resulting conviction. He contends the district court erred in restricting his cross-examination of Boyer. Pritchard asserts his proposed questions were relevant to his entrapment defense.

II. **Scope of cross-examination and standard of review.**

> A defendant's right to cross-examine a witness is secured by the confrontation clause of the sixth amendment of the United States Constitution. Davis v. Alaska, 415 U.S. 308, 315-16, 94 S. Ct. 1105, 1110, 39 L. Ed.2d 347, 353 (1974); State v. Durrell, 300 N.W.2d 134, 137 (Iowa 1981). This right is made applicable to the states by the fourteenth amendment. Pointer v. Texas, 380 U.S. 400, 403, 85 S. Ct. 1065, 1067, 13 L. Ed. 2d 923, 936 (1965). There exists no constitutional right, however, to elicit by cross-examination facts which are irrelevant or immaterial to the issues in the case being tried. State v. Davis, 269 N.W.2d 434, 439 (Iowa 1978).
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> "A reasonable latitude must be accorded the cross-examiner but the scope thereof as to any proper subject of inquiry rests generally in the trial court's sound discretion." State v. Carney, 236 N.W.2d 44, 46 (Iowa 1975). Generally, no offer of proof is necessary to preserve the issue as to whether the trial court abused its discretion in limiting a defendant's cross-examination, State v. Cornell, 266 N.W.2d 15, 21 (Iowa 1978), "however, when defendant's questions ask for irrelevant information, no error lies in curtailing such cross-examination where, as here defendant makes no attempt to show the trial court that the questions serve as foundation for further questions in an area of relevant inquiry." Davis, 269 N.W.2d at 439.

State v. Richardson, 442 N.W.2d 91, 93 (Iowa 1989).

III. **Relevance.** Pritchard asserts the questions asked of Boyer on cross-examination were relevant to his entrapment defense.

Relevant evidence is that which has "any tendency to make the existence of any fact that is of consequence to

the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 401. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Iowa R. Evid. 403.

Our present law regarding entrapment was formulated in State v. Mullen, 216 N.W.2d 375 (Iowa 1974). The defense is allowed as a curb upon improper law enforcement techniques and the concern is "police actions that are so reprehensible that they should not be tolerated as a matter of public policy." State v. Agent, 443 N.W.2d 701 (Iowa 1989). In Mullen, an objective test was adopted to find whether entrapment had occurred.

> Entrapment occurs when a law enforcement agent induces the commission of an offense, using persuasion or other means likely to cause normally law-abiding persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

216 N.W.2d at 382.

Inducements or persuasion by Boyer would be a fact of consequence to the determination of Pritchard's guilt so long as those inducements or persuasions were in some manner directed at Pritchard. In other words, the law enforcement agent's conduct in relation to the defendant is relevant to an entrapment defense. However, the conduct of the agent unrelated to defendant is not relevant to the defense.

The trial court concluded Pritchard's questions addressed to Boyer's possession of drugs and her requests of drugs from persons other than defendant were irrelevant to Pritchard's entrapment defense. We, too, conclude defendant's cross-examination of the State's informant sought irrelevant testimony. The trial court acted within its discretion in sustaining the State's objections. Therefore, we affirm the judgment of the district court.

AFFIRMED.