

IN THE COURT OF APPEALS OF IOWA

FILED

MAY 22 1984

CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,)

Filed May 22, 1984

vs.)

MICHAEL RAY STOCKDALL,)

4-83
69589

Defendant-Appellant.)

Appeal from the Iowa District Court for Wapello County - Richard D. Vogel,
Judge.

Defendant appeals from his conviction of possession with intent to deliver a
controlled substance (cocaine), in violation of Iowa Code § 204.401(1)(a) (1981).

AFFIRMED.

Fern S. Shupeck, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Sherie Barnett, Assistant Attorney
General, for plaintiff-appellee.

Heard by Donielson, P.J., and Snell and Sackett, JJ.

Defendant appeals from his conviction of possession with intent to deliver a controlled substance (cocaine), in violation of Iowa Code § 204.401(1)(a) (1981). He asserts that (1) as a matter of law, the State failed to rebut his defense of entrapment, so the trial court should have granted his motion for a directed verdict; (2) the State failed to establish the chain of custody for the cocaine; and he was denied effective assistance of counsel. We affirm.

In the spring of 1981, two state troopers were conducting an undercover investigation into the activities of several subjects, including the defendant, who were suspected of dealing in stolen motorcycles and motorcycle parts.

To facilitate their undercover efforts, the officers altered their physical appearance and conduct in order to create an impression that they were persons who would be interested in purchasing stolen motorcycles and motorcycle parts. As part of their investigation, the agents made contact with the defendant on five occasions, beginning with the afternoon of March 18, 1981. On that day, the agents drove an "old, beat up" Ford van to the Malcom interchange on Interstate 80. The officers parked just west of an abandoned gas station being used by the defendant as a motorcycle repair shop. Here, the officers caused their van to malfunction and then approached the defendant's shop pretending to need assistance. An employee of the shop informed the officers that the shop would be unable to repair their vehicle.

Approximately ten minutes later, the defendant arrived and the four men became engaged in what the officers characterized as a "general" conversation for the purpose of becoming acquainted with the defendant.

Although the target of the undercover investigation was a suspected stolen motorcycle and parts ring, the officers inquired of defendant whether he could get them drugs. The acquaintance extended over a period of several months with the patrolmen buying defendant drinks and giving him one or two old motorcycle parts

that he could use in his motorcycle repair business. After having made five contacts with the defendant by phone and in person, defendant put them in touch with "Fat Mike" of Ottumwa, who agreed to sell the officers some cocaine. The officers and defendant drove to Ottumwa together. When they arrived at Fat Mike's house, the officers declined to go in and asked defendant to go in for them and close the sale. This he did.

Defendant was subsequently arrested and charged with possession with intent to deliver a controlled substance (cocaine) pursuant to Iowa Code § 204.401(1)(a) (1981). He was tried to a jury, which found him guilty of the charge. He was sentenced to imprisonment for up to ten years. This appeal followed.

I.

Defendant asserts that the evidence was insufficient to support the jury's verdict as the State failed to present evidence from which the jury could have found beyond a reasonable doubt that defendant was not entrapped. When reviewing the sufficiency of the evidence, this court views the evidence in the light most favorable to the State without regard to contradictions or inconsistencies. State v. Robinson, 288 N.W.2d 337, 338 (Iowa 1980).

"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." State v. Mullen, 216 N.W.2d 375, 382 (Iowa 1974). Conduct which might constitute entrapment includes "extreme pleas of desperate illness, appeals based primarily on sympathy, pity or close personal friendship, and offers of inordinate sums of money." Id. at 383.

In the present case, the defendant asserts that he was pressured into arranging the purchase and delivery of three grams of cocaine by the conduct of the two state troopers who were assigned to the Auto Theft Unit of the Iowa State

Patrol at the time of the events in question.

211

The record reflects that sometime after the second meeting, the officers called defendant and asked if he would be able to obtain hashish for them. He responded that he could, but he failed to produce the hashish on the date promised. The agents met with defendant on that date and asked if he could get them cocaine. Defendant responded by placing some phone calls, the second of which was to "Fat Mike," the supplier of the cocaine. The defendant handed one of the agents the phone, and the agent arranged the sale of the cocaine from "Fat Mike." The officers and the defendant then went to Ottumwa where defendant went into a house and returned with the packets of cocaine.

This evidence was sufficient for the jury to find that defendant was not entrapped. The record reflects that the agents and the defendant were only acquaintances at the time of the sale and that he was not threatened by the agents into making the delivery of the cocaine. Furthermore the jury could have found that a normally law-abiding person would not commit an illegal act out of gratitude for a few drinks and old cycle parts. The evidence was sufficient to rebut the defense of entrapment and support defendant's conviction.

II.

Defendant objects to the admission of the laboratory case report from the DCI laboratory which indicated that the substance brought in by one of the agents was cocaine, arguing that the State had failed to establish a sufficient chain of custody for the packets of powder which defendant gave the agent. The trial court admitted the report over this objection.

The agent testified that defendant personally handed him the packets of cocaine which he placed in a bag in his pocket until he returned to his residence in Des Moines. After arriving at his apartment, he placed the packets next to his bed where they remained until the following morning when he took them to the DCI laboratory. The agent further testified that he had no cocaine on his person

when he received the packets and that his apartment was locked during the night. He stated that, with the exception of the apartment house manager, no one else had a key to his apartment. There was no indication that the manager would have placed cocaine on the agent's nightstand.

Admission of evidence over a chain of custody objection is within the discretion of the trial court, and the court's ruling will be set aside only where a clear abuse of discretion is shown. State v. Lamp, 322 N.W.2d 48, 57 (Iowa 1982). Before the exhibit was admitted, the State had the burden of showing that it was reasonably probable that the cocaine was not altered and the sufficiency of this showing must have been analyzed in light of the cocaine's susceptibility to tampering. When evaluating the sufficiency of a chain of custody, the court may presume that the State's agent will not tamper with the exhibit. State v. Gibb, 303 N.W.2d 673, 681 (Iowa 1981). This presumption, coupled with the agent's testimony, was sufficient for the trial court to find that it was reasonably probable that no one had tampered with the packets the agent received from the defendant. We decline to disturb the trial court's finding in this regard. Although drugs are susceptible to tampering, the State demonstrated that it was reasonably probable that the cocaine had not been altered before it was tested.

III.

Finally, defendant asserts that he was denied effective assistance of counsel at trial. The record is not sufficient for us to make a determination of this issue at this time.

The conviction is affirmed.

AFFIRMED.