IN THE COURT OF APPEALS OF IOWA

FILED
AUG 17 1995
CLERK SUPREME COURT

No. 5-274/94-0918

STATE OF IOWA,

Appellee,

vs.

EDWARD NORVEL ANDERSON,

Appellant.

Appeal from the Iowa District Court for Webster County, Kurt L. Wilke, Judge.

Anderson appeals the judgment and sentence entered upon his conviction, following a jury trial, of attempted murder in violation of Iowa Code section 707.11 (1993). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Annette L. Hitchcock, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General: Robert P. Ewald, Assistant Attorney General; James J. Koll, County Attorney; and Robert E. Hansen, Assistant County Attorney, for appellee.

Heard by Donielson, C.J., and Sackett and Huitink, JJ.

DONIELSON, C.J.

The defendant, Edward Anderson, appeals from the judgment and sentence entered upon his conviction of attempt to commit murder. He was acquitted of the offense of solicitation to commit murder. The defendant contends the State failed to disprove his entrapment defense beyond a reasonable doubt and there was insufficient evidence to support the guilty verdict.

I. ENTRAPMENT.

Entrapment may occur when a law enforcement agent induces the commission of an offense, using persuasion or other means likely to cause law-abiding persons to commit it. *State v. Babers*, 514 N.W.2d 79, 83 (Iowa 1994). Merely providing the opportunity or the facilities for the commission of a crime does not constitute entrapment. *Id.* Entrapment must involve the use of excessive incitement, urging, persuasion, or temptation by law enforcement agents. *Id.* "Examples of prohibited activity may 'include extreme pleas of desperate illness, appeals based primarily on sympathy, pity, or close personal friendship, and offers of inordinate sums of money.'" *Id.* quoting *State v. Mullen*, 216 N.W.2d 375, 383 (Iowa 1974).

We use an objective test for the defense of entrapment. *Babers*, 514 N.W.2d at 83. The defendant bears the burden to generate a fact issue on this defense. *Id.* "To determine the sufficiency of the evidence we consider the transactions between the government agent and the defendant and the agent's conduct." *Id.*

The defendant argues the State failed to disprove his entrapment defense beyond a reasonable doubt. He asserts the conduct of informant Compton was outrageous and induced the defendant to take actions he would not otherwise have taken. The defendant contends the State failed to present any evidence which contradicted his claim that he was entrapped by the authorities.

We have reviewed the record and find sufficient evidence existed to support the jury's finding that the defendant had not been entrapped. There was no evidence of the type of prohibited activity usually indicative of entrapment. There was no excessive incitement, urging, persuasion or temptation by law enforcement agents. Twice the informant gave the defendant an opportunity back out, but each time the defendant confirmed that he wanted Compton to kill his wife. The defendant negotiated an arrangement with Compton by which he agreed to pay $7,000 in exchange for the murder. The State disproved the entrapment defense beyond a reasonable doubt.

II. SUFFICIENCY OF THE EVIDENCE.

The defendant argues there was insufficient evidence to support a guilty verdict. When reviewing criminal convictions for sufficiency of the evidence, we review the evidence in a light most favorable to the State. *State v. McGrew*, 515 N.W.2d 36, 37 (Iowa 1994). A conviction is reversed only if there is no substantial evidence in the record supporting the verdict or the verdict is clearly against the

weight of the evidence. *Id.* at 37-38. Substantial evidence is evidence that could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* at 38. A fair inference of guilt with respect to each element of the crime charged is sufficient to uphold a verdict. *Id.* We consider all of the evidence, not merely that supportive of the conviction, in determining the sufficiency of the evidence to support a guilty verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980).

The defendant argues his acquittal on the charge of solicitation precludes a guilty verdict on the crime of attempt to commit murder. He contends the jury verdicts are inconsistent and his conviction should be vacated. The elements of attempted murder are:

> 1. An act,
> 2. Which the person so acting expects to set in motion a force or chain of events which will cause or result in death of another,
> 3. With the intent to cause that death.

State v. Jackson, 422 N.W.2d 475, 478 (Iowa 1988); Iowa Code § 707.11 (1993). Solicitation is composed of the following elements:

> 1. Commanding, entreating, or otherwise attempting to persuade another to commit a particular felony.
>
> 2. With the intent that such felony be committed,
> 3. Under circumstances corroborating that intent.

Jackson, 422 N.W.2d at 478; Iowa Code § 705.1 (1993).

The Iowa Supreme Court has held solicitation is not a lesser included offense of the crime of attempted murder. *Jackson*, 422 N.W.2d at 478. The "act" by which one may commit attempted murder need not constitute an act of solicitation as defined in section 705.1. The defendant's acquittal on the solicitation charge did not preclude the jury from finding he attempted to commit murder.

The testimony of informant Compton and the tape-recorded conversation between him and the defendant provides sufficient evidence of the defendant's intent to cause his wife's death. There was also sufficient evidence to establish the defendant had contracted for the murder of his wife in exchange for his execution of a $7,000 promissory note. There was substantial evidence from which the jury could find the defendant expected this act to set in motion a force or chain of events which would result in the death of his wife. There was sufficient evidence in the record to support the guilty verdict and the conviction is affirmed.

AFFIRMED.