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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Plaintiff-Appellee,)
vs.)
EDNA M. STILES,)
Defendant-Appellant.)

Filed November 20, 1984

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4-356
83-1215

Appeal from the Iowa District Court for Pottawattamie County - Paul H. Sulhoff, Judge.

Defendant appeals from her conviction for second-degree murder. She contends the evidence was insufficient to support the conviction. AFFIRMED.

Charles Harrington, Appellate Defender, and Patrick R. Grady, 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 Schlegel, and Hayden, JJ.

DONIELSON, P.J.

The defendant appeals from her conviction for second-degree murder. She contends that evidence was insufficient to support the conviction. We affirm.

Edna M. Stiles was charged with murder in connection with the death of her husband. She was accused of helping a friend of hers, Michael Bolander, to enter the house and stab her husband under the pretext of burglary. The State charged her under alternative theories of aiding and abetting, as defined in Iowa Code section 703.1, or joint criminal conduct as defined in section 703.2.

A jury found the defendant guilty of murder in the second degree. The defendant has appealed from the resulting conviction, asserting that there is insufficient evidence to support either of the State's theories.

Our review is on assigned error only. Iowa R. App. P. 4. In reviewing the defendant's insufficiency of evidence claim, we consider the factors set forth in State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981):

> In reviewing motions for . . . a new trial based upon sufficiency of the evidence in criminal cases, this court views the evidence in a light most favorable to the State. All legitimate inferences which may fairly and reasonably be deducted therefrom will be accepted. It is necessary to consider all of the evidence when determining evidential sufficiency. . . . [A] jury verdict of guilty is binding . . . unless there is no substantial evidence in the record to support it or such finding is clearly against the weight of the evidence. Substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt.

In light of these principles, we conclude that sufficient evidence exists to prove Stiles was guilty of second-degree murder.

In order to prove that Stiles was guilty of aiding and abetting in the second-degree murder, it must be shown that she "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. Heidebrink, 334 N.W.2d 344, 347 (Iowa Ct. App. 1983) quoting State v. Lott, 255 N.W.2d 105, 107

(Iowa 1977). Circumstantial evidence is sufficient to establish guilt. Id.

We believe the jury could have found from the evidence that Edna and Michael planned to go to Edna's home and physically assault her husband Orvil or tamper with his car in such a way as to cause Orvil physical injury.

The evidence produced at trial demonstrated that Edna and Orvil did not have a happy marriage. Although they still lived in the same house, they had gone their separate ways since 1975.

Edna met Michael Bolander at a bar several weeks prior to Orvil's death. On the night of the murder, Edna told Michael that her husband had refused to help her when she was being beaten by her son and his wife. Michael indicated that she should not be treated in that manner and that he would "fix" her husband or "fix" his car. According to one witness, he also told Edna to drop him off a short distance from her home and he would make it look like a burglary. Edna testified that she did not know what "fix" meant and that she told Michael not to hurt her husband.

Later that night Edna took Michael back to her home. After arriving at the house, Michael tied Edna's hands around a kitchen chair and went down the hall to the bedrooms carrying a stick. Edna began screaming and, apparently in response to her screaming, Orvil came out of his bedroom with a gun that shot blanks. After calling the police, Orvil fired down the hall, and Michael Bolander struggled with him and ultimately stabbed Orvil to death.

In light of these facts, a jury could properly find that Edna actively participated in the crime or encouraged its commission. The jury was not required to believe Edna's claim that she was unaware Michael planned to hurt Orvil.

The defendant argues that it was necessary for the State to prove Edna knew Orvil would be killed. We disagree. Second-degree murder does not require a specific intent to kill. State v. Reese, 259 N.W.2d 771, 778 (Iowa 1977). Rather, malice aforethought is required, which has been defined as "a fixed purpose or

design to do some physical harm to another which exists prior to the act committed." State v. Sharpe, 304 N.W.2d 220, 226 (Iowa), cert. denied 454 U.S. 834, 102 S. Ct. 134, 70 L. Ed. 2d 113 (1981). There is sufficient evidence for a jury to conclude Edna knew Michael planned to physically harm Orvil and encourage it. The evidence reflects she knew he planned to "fix" her husband and drove Michael to the house with that purpose in mind.

This court also believes evidence would support a verdict of guilty under the theory of joint criminal conduct. See Iowa Code § 703.2 (1983). In State v. Irvin, 334 N.W.2d 312, 314 (Iowa Ct. App. 1983), we set forth the essential elements of joint criminal conduct: 1) knowing participation in a public offense; 2) a different crime is committed by another participant in furtherance of that offense; and 3) the commission of the other crime could have been reasonably foreseen.

A jury could properly find that Edna went to the house with Michael to "fix" Orvil by convincing him he was being burglarized. This would satisfy the element of knowing participation in a public offense. See Iowa Code § 708.1(2) (1983) (assault by placing another in fear). Furthermore, even if the jury chose to believe Edna's claim that she did not want to hurt her husband, it was reasonably foreseeable that he would have been physically harmed or killed during the feigned burglary. Edna testified that she knew Michael had a knife with him at the time. She also knew that her husband had a gun. Viewing the evidence in a light most favorable to the State, we conclude that evidence is sufficient to convince a rational trier of fact that Edna was guilty of second-degree murder.

Finding no error, we affirm.

AFFIRMED.