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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	Filed November 30, 1983
Plaintiff-Appellee,	)	
vs.	)	3-279 69260 & 69301
JOHN DAVID VOLLBRECHT,	)	
Defendant-Appellant.	)	

Appeal from Webster District Court, Albert L. Habhab, Judge.

The defendant appeals his convictions and sentences on delivery of a Schedule I controlled substance, in violation of Iowa Code section 204.401.1(1)(a)(1981), and delivery of a Schedule I controlled substance, in violation of Iowa Code section 204.401(1)(b)(1981). AFFIRMED.

Raymond E. Rogers, Assistant Appellate Defender, for defendant-appellant.

Thomas J. Miller, Attorney General, and Lona Hansen, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Snell and Hayden, JJ.

OXBERGER, C.J.

The defendant appeals his convictions and sentences on delivery of a Schedule I controlled substance, heroin, in violation of Iowa Code section 204.401.1(1)(a)(1981), and delivery of a Schedule I controlled substance, LSD, in violation of Iowa Code section 204.401(1)(b)(1981). The defendant claims that the trial court erred in overruling the defendant's relevancy objection to testimony regarding the dangerous nature of undercover drug investigations and that the trial court erred in overruling the defendant's motion for judgment of acquittal on the heroin charge based on the alleged lack of substantial evidence to rebut the defendant's entrapment defense to the heroin charge. We affirm.

Admission of Evidence

At trial defense counsel objected to the admission of testimony regarding the dangerous nature of undercover drug investigations on the ground that danger was not relevant to this case. The trial court overruled his objection. On appeal Vollbrecht contends the trial court erred in so doing. He further contends the admission of this testimony plainly implied that he was dangerous, would carry guns, and would assault state officers. He alleges that since the evidence was irrelevant and obviously prejudicial, the trial court abused its discretion in allowing the evidence to be admitted and he should be granted a new trial.

First of all, we need only deal with the relevancy question. Although defense counsel did object to the relevancy of this testimony, that objection was not sufficient to authorize on appeal the allegation of undue prejudice. State v. Mark, 286 N.W.2d 396, 410 (Iowa 1979).

The test of relevancy is whether the evidence offered would render the desired inference more probable than it would be without such evidence.

Irrelevant evidence is that which has no logical tendency to establish any material proposition. Mark at 410-11. The admission of such evidence lies within the sound discretion of the trial court and we will not find abuse of that discretion unless the action of the trial court is clearly unreasonable under the attendant circumstances. State v. DeBerg, 288 N.W.2d 348, 351 (Iowa 1980). We do not find such to be the case here.

The testimony admitted concerning the dangerous nature of an undercover drug investigation is relevant for two purposes, at a minimum. First of all, it is evidence of the circumstances that surround the commission of the crime. See State v. Duncan, 312 N.W.2d 519, 522 (Iowa 1981). Agent Ramaeker's testimony was used to explain the investigation and surveillance procedures used in an agent's drug purchase. Furthermore, by alluding to the dangers involved, this testimony helped to explain why a certain selection process was used to obtain informants. For these reasons, we find the action of the trial court was not clearly unreasonable under these circumstances. DeBerg at 351.

But even if we assume, arguendo, that there was an error in admission of this evidence, unless it is prejudicial to the accused, there is no cause for reversal. State v. Wallace, 145 N.W.2d 615, 619 (Iowa 1966). This testimony purported to give the general nature of this investigation. We do not find that it "plainly implied" that Vollbrecht was dangerous, would carry guns, and would assault state agents. Therefore, we do not find such prejudice to defendant as would warrant reversal.

Accordingly, we affirm the trial court's decision to overrule the relevancy objection.

II. Entrapment

The defendant claims he was entrapped by "appeals to close personal friendship." 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).

Once evidence of entrapment is introduced, as it was here, the State has the burden of persuading the trier of fact beyond a reasonable doubt entrapment did not occur. State v. Levsen, 261 N.W.2d 471, 473 (Iowa 1978). The defendant contends that the evidence is not sufficient to disprove entrapment beyond a reasonable doubt.

In Vollbrecht's testimony, he contends that he and the informant, Miller, became very close friends. He indicated, inter alia, that the two of them attempted to buy a $22,000 trailer together; that he washed Miller's clothes; that they applied for jobs, drank, and partied together; that he loaned Miller money; and that he let Miller borrow his van. Miller contends that there was no "close personal friendship"; that any so-called "friendship" they had, was only an "acting friendship" on his part. Miller further denied many of Vollbrecht's allegations. Undisputed testimony indicates that Miller met Vollbrecht in the last part of May 1981. The last drug purchase was made the second week of July 1981. Appeals to close personal friendship may in a proper setting constitute entrapment. Levsen at 474.

However, after reviewing all the evidence in the light most favorable to the prosecution, we conclude the record contains substantial evidence to support the guilty verdict. State v. Robinson, 288 N.W.2d 337, 341 (Iowa 1980). Although Vollbrecht had witnesses which corroborated portions of his testimony, we may infer that the jury found the testimony given by the State's witnesses more credible. Determination of that credibility and the weight of the evidence is a function of the factfinder. Robinson at 341.

Defendant contends he is entitled to a dismissal of the charges as a matter of law because the State failed to present sufficient evidence to contradict a "take back entrapment" as defined in State v. Overmann, 220 N.W.2d 914, 917 (Iowa 1974).

A "take back entrapment" is a scheme where: (1) the government through an agent or informer, supplied drugs to defendant, and (2) the government, through an agent or informer, later reappropriates any of those drugs from the accused. Overmann at 917.

Miller denied he supplied the defendant with heroine. Defendant's assertions that Miller was an unbelievable witness were solely matters for the jury's determination in its function in assessing credibility.

Therefore, we find no error and affirm the trial court's denial of Vollbrecht's motion for judgment of acquittal.

AFFIRMED.