IN THE COURT OF APPEALS OF IOWA

FILED
JAN 29 1986
CLERK SUPREME COURT

STATE OF IOWA,)

Plaintiff-Appellee,) Filed January 29, 1986

vs.) 5-572 336
84-1224

ALTON R. HEER,)

Defendant-Appellant.)

Appeal from the Iowa District Court for Polk County, George W. Bergeson, Judge.

Defendant appeals from his conviction of aiding and abetting in the delivery of a controlled substance. **AFFIRMED.**

Ray Sullins, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General; Elizabeth E. Ciebell, Assistant Attorney General; and Odell McGhee, Assistant County Attorney, for plaintiff-appellee.

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

OXBERGER, C.J.

The defendant appeals from his conviction of aiding and abetting in the sale of cocaine. He says a directed verdict should have been granted, asserting the defense of entrapment was proven as a matter of law. We affirm.

Rhonda Currie, a friend of defendant Randy Heer and his girl friend Jody Cram, was employed by the Des Moines Police Department as an undercover agent. The department sought her involvement in a number of large drug purchases, but first required Currie participate in what is referred to as a "reliability buy." The defendant describes a reliability buy as a purchase by the prospective undercover agent made to prove their reliability as an informant.

Currie claims she thought no one would be arrested as a result of this reliability buy. Currie sought out Heer and Cram, and presented a Des Moines police officer as her boyfriend. She told Cram her boyfriend had recently lost $5700 in an earlier drug transaction and asked for Cram and Heer's help in recouping the money through another drug sale. Cram says he arranged for Currie and the police officer to buy cocaine from Heer because she had been a friend of Currie for some time and felt sorry for her. Cram testified Randy also felt sorry for Currie and her "boyfriend" and that this was the reason for providing cocaine for Currie to purchase.

The police officer posing as Currie's boyfriend said the purchase of cocaine in this case was an "introductory buy" rather than a reliability buy, but he also did not anticipate that the persons involved would be prosecuted. He testified that as the investigation went on, the department changed its tactics.

Based on this evidence, the defendant asserts that the sale of drugs was made solely because of sympathy and pity resulting from Currie's appeal to Cram and Heer and use of the friendship between Cram and Currie. Heer says

this is the type of conduct which was condemned in State v. Mullen, 216 N.W.2d 375 (Iowa 1974).

The State points out that Mullen presented an objective definition of entrapment:

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

Id. at 382. It has been noted that the use of undercover agents is necessary since, "It is a rare instance in which drugs are sold to strangers." State v. Leonard, 243 N.W.2d 79, 80 (Iowa 1976). In order to prevail on an entrapment defense, the defendant must show there is no dispute that the conduct is that which might induce a normally law-abiding person to commit the crime, and actions inducing a person engaged in a habitual course of unlawful conduct for gain or profit do not meet this standard. Id.

We find there was substantial dispute regarding the facts supporting a defense of entrapment. Although Currie and Cram maintained they were good friends, she admitted they were not the best of friends and that their relationship centered around drugs. She further indicated she did not need to prevail upon the friendship to arrange a deal to buy cocaine. Cram also stated she had provided Currie with drugs in the past and knew people who were able to provide large quantities of cocaine.

We believe the court could have determined that the facts would support the conclusion that the defendant was involved in regular dealing of drugs and that the friendship between Currie and the defendant and his girl friend was not the primary reason that he provided drugs to her. The fact finder properly was given the opportunity to determine whether the definition of entrapment was met and the directed verdict was properly overruled.

AFFIRMED.