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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

434

STATE OF IOWA,
Plaintiff-Appellee,
vs.
MARY ANN GOMES,
Defendant-Appellant.

9-113
88-788

Appeal from the Iowa District Court for Woodbury County (42743), Richard J. Vipond, Judge.

Defendant appeals her conviction of pimping and pandering. Her trial was to the court. **AFFIRMED.**

William L. Wegman, State Public Defender, and Linda Del Gallo, Assistant State Public Defender, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Bruce Kempkes, Assistant Attorney General, for plaintiff-appellee.

Considered by Donielson, P.J., and Hayden and Habhab, JJ.

PER CURIAM 135

Defendant was charged by trial information and convicted of pimping, by knowingly furnishing a room or other place to be used for the purpose of prostitution in violation of Iowa Code section 725.2 (1987). Also, she was charged with and convicted of pandering by keeping or maintaining a premises for the purpose of prostitution in violation of Iowa Code section 725.3. Defendant waived her right to a jury trial and was tried to the court. She was found guilty on both counts. She appeals.

Defendant claims the trial court erred by overruling her hearsay objections to testimony by officer Gear concerning what "Lisa" said to him upstairs indicating prostitution took place in her house. Defendant also claims the State presented insufficient evidence to support the verdict. We affirm.

On October 30, 1987, Sioux City police officer, Paul Geer, and three other officers investigated a case of suspected prostitution.

After telephoning a number in an ad in the Sioux City Journal newspaper, he went to the house at 1505 West 14th Street in Sioux City. He had a hidden body transmitter microphone upon his person. Geer recognized the voice of the woman who answered the door as the same person he had talked to earlier on the phone. This woman's name was Lisa. She introduced Geer to her friend, Bri. Bri's real

name is Mary Ann Gomes, the defendant in this appeal. Lisa asked if she or defendant could be of service and Geer said Lisa could be. Geer and Lisa went upstairs. Defendant remained downstairs and apparently went into the living room.

While Geer and Lisa were in an upstairs bedroom, other police officers entered and arrested Lisa. Defendant was in the house on the first floor.

The police obtained a search warrant and an arrest warrant. On November 20, 1987, Officer Joe Long went to defendant's house and seized a notebook. This notebook had Bri's name in it. The letter "B" was listed as an operator on some of the pages. The entries were dated from January 4, 1987, to March 3, 1987. Officer Long testified an "operator" was a prostitute and the notebook was a "trick book."

A real estate contract was admitted into evidence. This contract showed defendant had agreed to purchase the house on August 27, 1987.

I.

During the trial the court permitted Officer Geer to testify about his conversation with Lisa and her comments and statements. This conversation was in the upstairs bedroom out of the presence of defendant. Defendant's attorney made timely hearsay objections to this testimony.

Lisa's portion of the conversation defendant objected to went as follows: She asked Geer how much money he had; she wanted $50; she used condoms and she supplied them; and for $50, he got 30 minutes and intercourse.

> Under our rules, "hearsay" is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Iowa R. Evid. 801(c). Statements that otherwise would be considered hearsay, offered not for the purpose of proving the truth of the statements but rather offered to help explain relevant conduct taken in response to them, are not hearsay and are not excludable as such.

State v. Hollins, 397 N.W.2d 701, 705 (Iowa 1986).

> If, on a review of the record, the evidence is deemed relevant and otherwise admissible for the purpose for which it supposedly was offered, then that purpose is supported objectively in the record and will be accepted.

Id. at 706.

We hold Lisa's statements were admissible as circumstantial evidence of the relationship between Geer and Lisa. Thus, they were not admitted to show the truth or falsity of the matter asserted. See State v. Hilleshiem, 305 N.W.2d 710, 712 (Iowa 1981).

II.

Next defendant argues there was insufficient evidence to convict defendant of the crimes of pimping and pandering. In addressing this issue, we first look to the applicable statutes.

Iowa Code section 725.2 (1987) defines pimping as follows:

> A person who solicits a patron for a prostitute, or who knowingly takes or shares in the earnings of a prostitute, or who knowingly furnishes a room or other place to be used for the purpose of prostitution, whether for compensation or not, commits a class "D" felony.

The crime of pandering is defined in Iowa Code section 725.3(1) as follows:

> A person who persuades, arranges, coerces, or otherwise causes another, not a minor, to become a prostitute, to return to the practice of prostitution after having abandoned it, or keeps or maintains any premises for the purposes of prostitution or takes a share in the income from such premises knowing the character and content of such income, commits a class "D" felony.

For purposes of this appeal, in order to convict defendant of pimping the State had to prove on October 30, 1987, defendant furnished a room to Lisa, knowing such was to be used by Lisa for a sex act. To convict defendant of pandering in this case the State had to prove defendant kept or maintained the house located at 1505 West 14th Street in Sioux City, knowing and intending it be used for the purpose of prostitution.

Defendant was present when Lisa asked Geer if either she or defendant could be of service to him. This occurred in defendant's house. Defendant had in her possession baby powder and oil and a sexual aid. Also, a notebook or "trick book" with her trade name noted in it was recovered from her premises on November 20, 1987. These facts constitute substantial proof defendant knew or believed the upstairs bedroom and her house was used and furnished for the purpose of prostitution.

The offense of pimping is committed when a person furnishes a room or other place with the intent that it be used or belief that it will be used for the purpose of prostitution. State v. Williams, 315 N.W.2d 45, 51 (Iowa 1982).

We hold there was substantial evidence presented to uphold defendant's convictions.

AFFIRMED.