IN THE COURT OF APPEALS OF IOWA

No. 0-273 / 99-1541
Filed May 31, 2000

FILED
MAY 31 2000
CLERK SUPREME COURT

IN THE INTEREST OF

C.G., A Child,

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Appellant.

Appeal from the Iowa District Court for Linn County, Susan Flaherty, Juvenile Court Judge.

C.G. appeals the juvenile court's order finding her guilty of solicitation to commit a felony in violation of Iowa Code section 705.1 (1999). **AFFIRMED.**

Mary E. Chicchelly of Seidl & Chicchelly, Marion, for appellant.

Thomas J. Miller, Attorney General, Charles K. Phillips, Assistant Attorney General, and Rebecca Belcher, Assistant County Attorney, for appellee-State.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

VAITHESWARAN, J.

Cassie and Amber went to high school together. In 1999, Amber admitted to vandalizing a high school gymnasium. She implicated Cassie in the incident, but Cassie denied any involvement. The relationship between the girls deteriorated, with each spreading rumors about the other at school.

In the spring of 1999, Cassie asked several students, including Amber's brother, if they would assault Amber in return for payment of between $200 and $500. She specifically asked Amber's brother if he would smother Amber with a pillow while she was sleeping. No one accepted the offer.

The State petitioned the juvenile court to have Cassie adjudicated a delinquent for soliciting others to commit a felony, in violation of Iowa Code section 705.1. The court found she committed the offense, adjudicated her a delinquent, and ordered her placed in a residential treatment facility. On appeal, Cassie contends (1) the State did not satisfy its burdens of proof and (2) Iowa Code section 705.1 is unconstitutional. We affirm.

I. Standard of Review

"Juvenile delinquency proceedings are not criminal prosecutions, but are special proceedings that serve as an ameliorative alternative to the criminal prosecution of children." *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). We review juvenile delinquency proceedings de novo. *In re S.M.D.*, 569 N.W.2d 609, 610 (Iowa 1997). While we give weight to the fact findings of the juvenile court, especially credibility determinations, those findings do not bind us. *J.D.F.*, 553 N.W.2d at 587.

II. Solicitation

Cassie contends the State (1) did not establish she intended to commit the offense and (2) did not corroborate the elements of felony solicitation.

The elements of solicitation are: (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. Iowa Code § 705.1; *State v. Jackson*, 422 N.W.2d 475, 478 (Iowa 1988). The State must establish the first two elements by proof beyond a reasonable doubt and the third element by clear and convincing evidence. *See State v. Robertson*, 351 N.W.2d 790, 793-94 (Iowa 1984) (holding clear and convincing evidence burden constitutional).

A. Proof of Intent

Intent can rarely be proved directly. *State v. Kirchner*, 600 N.W.2d 330, 334 (Iowa App. 1999). Instead, we examine circumstantial evidence and inferences drawn from the evidence. *Id.* Cassie asked not one, but five students to injure or kill Amber. She offered to pay the students for their efforts and appeared serious when she made the requests. Indeed, in a voluntary statement to police, Cassie acknowledged she "heavily insinuated" she would pay money to have Amber beaten up. Although she later denied an intent to injure Amber, we agree with the juvenile court that her actions and written statement "do not support her self serving testimony". On our de novo review of the record, we conclude the State proved Cassie intended to commit the crime of solicitation.

B. Corroboration

Cassie next contends the State failed to sufficiently corroborate her intent to commit solicitation. Iowa Rule of Criminal Procedure 20(3) provides:

> A conviction cannot be had upon the testimony of an accomplice or a solicited person, unless corroborated by other evidence which shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.
> Corroboration of the testimony of victims shall not be required.

Corroboration is required to ensure "that a conviction will not result from an accused's statements that were misunderstood or not intended to be taken seriously or upon fabricated testimony of the person allegedly solicited." *Id.* Corroborating evidence may be direct or circumstantial. *State v. Bugley*, 562 N.W.2d 173, 176 (Iowa 1997). The evidence does not need to be strong or totally inconsistent with innocence. *State v. Astello*, 602 N.W.2d 190, 198 (Iowa App. 1999). It must corroborate a material fact which connects the defendant with the commission of the crime. *Bugley*, 562 N.W.2d at 176.

Cassie's own written statement corroborates the testimony of the solicited persons. *See State v. Martin*, 274 N.W.2d 348, 349-50 (Iowa 1979) (noting defendant's testimony sufficient to corroborate accomplice testimony). She stated,

> Amber M. and I are not getting along because of the disagreement we had about 3 weeks ago pertaining to the vandalism. Amber stated that I lied about saying that she saw me in her statement. We have been fighting ever since then. I have never threatened anything about hurting Amber M. I may have insinuated but I have never actually said it. I stated that I would pay any amount of money if it was legal to fight her. I would get the money because I really, really want to fight her. I have never said I would pay money to beat up Amber M. I have asked a general statement to people

> about hurting people for money, what would they do, but I have never directly said it about Amber. I have been very careful about this, never saying Amber's name.
>
> I did make those comments but I never said Amber M.'s name it was just insinuated. I have been very careful not to come right out and say Amber M. but I did insinuate it. I have heavily insinuated but I have been very, very careful not to say Amber M.'s name. I was very careful not to because of this.
>
> I have not asked anybody outside of Lisbon because they would want the money up front. They would do it and ask me for the money and I wouldn't give it to them. If they beat me up for the money I wouldn't worry because I could take it.
>
> I did not tell Mecca that I would bring a gun to school and shoot her. I was talking with Heidi and we decided to talk to Mr. Hanken about Amber's threat. Mecca confronted me about going to Mr. Hanken and we got into an argument. Mecca shoved me and I shoved her back. I am concerned about Mecca saying that I made that comment.
>
> I definitely never said that I specifically said Amber M.'s name but I heavily insinuated. I insinuated this because I can't stand her. I can't just stay away from her, I'm not like that. I can't stand to see her and look at her and not say anything. She has been making up stuff that I found was not true and I don't like that.

(Victim's last name omitted). Although Cassie states she did not name Amber in her solicitations, she essentially admits it was understood Amber was the target. This statement, therefore, lends credence to the students' testimony.

We find further corroboration in the fact that Cassie offered to pay the students for their efforts, and had the ability to do so. According to one witness who was not solicited, Cassie showed her $200 to $400 which she kept in a book at home.

Finally, because Cassie independently solicited students to harm or kill Amber and the testimony of those students was corroborated by Cassie's own

statement, we conclude that each student's testimony is sufficiently reliable to corroborate the testimony of the others. *Cf. State v. Ware*, 338 N.W.2d 707, 710-11 (Iowa 1983) (noting where defendant did not establish corroborating witness was an accomplice as a matter of fact, that witness' testimony could be used to corroborate accomplice testimony). A contrary holding would not serve the purposes behind the corroboration rule as applied to solicited person testimony. Specifically, the fact that five individuals were made the same offer minimizes the likelihood that (1) Cassie was misunderstood; (2) her words were misconstrued; or (3) one or more of the solicited persons fabricated their testimony. We conclude the State presented clear and convincing evidence to corroborate Cassie's intent.

III. Constitutional Claim

Cassie contends the State violated her right to free speech under the First Amendment to the United States Constitution by prosecuting her on the basis of uncorroborated comments. The State counters Cassie failed to preserve error. We agree with the State. Cassie did not obtain a ruling from the juvenile court on this issue. She also did not seek to enlarge or amend the court's findings. *See* Iowa R. Civ. P. 179(b); *In re A.M.H.*, 516 N.W.2d 867, 872 (Iowa 1994) (applying rule 179(b) to child in need of assistance proceedings). Therefore, we conclude she failed to preserve error on her claim and we will not address her argument on appeal. *See In re B.B.*, 598 N.W.2d 312, 315 (Iowa App. 1999) (holding parents did not preserve error on first amendment claim where they

discussed religious beliefs during child in need of assistance proceeding, but did not raise constitutional issue at trial and did not obtain a ruling on issue).

We affirm the juvenile court's finding that Cassie engaged in solicitation to commit a felony, as well as its ruling adjudicating her a delinquent.

AFFIRMED.