

FILED

APR 27 1982

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

Filed April 27, 1982

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vs.

)

PEDRO ANTONIO AGUASVIVAS,

)

2-68

66910

Defendant-Appellant.

)

Appeal from Johnson District Court - Robert Osmundson, Judge.

Defendant appeals his conviction of bribery in violation of section 722.1, The Code 1979. Defendant asserts that the trial court erred by: (1) overruling defendant's motion to suppress without a hearing; (2) failing to sustain defendant's motion for judgment of acquittal based on insufficiency of the evidence and the alleged need to corroborate testimony of the allegedly bribed officer as a solicited person under Iowa R. Crim. P. 20(3); and (3) ruling that the defendant could properly be charged with bribery rather than interference with official acts in violation of section 719.1, The Code 1979. REVERSED.

Mark C. Meyer of Kinnamon, Kinnamon, Russo & Meyer, Cedar Rapids, for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa, and Shirley Ann Steffe, Assistant Attorney General, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

PER CURIAM

Defendant appeals his conviction of bribery in violation of section 722.1, The Code 1979. Defendant asserts that the trial court erred by: (1) overruling defendant's motion to suppress without a hearing; (2) failing to sustain defendant's motion for judgment of acquittal based on insufficiency of the evidence and the alleged need to corroborate testimony of the allegedly bribed officer as a solicited person under Iowa R. Crim. P. 20(3); and (3) ruling that the defendant could properly be charged with bribery rather than interference with official acts in violation of section 719.1, The Code 1979. We reverse.

Generally, our review of criminal proceedings is at law for correction of errors only, and not de novo. Iowa R. App. P. 4. However, when a constitutional issue is presented, the evidence relevant to that issue is reviewed de novo. Rinehart v. State, 234 N.W.2d 649, 658 (Iowa 1975).

I.

Defendant was arrested for driving while his license was under suspension for failure to file proof of financial responsibility and apprised that he "would have to be taken into custody and held until morning when he would see the charge judge." Officer Dreckman, the arresting officer, transported defendant to the Iowa City Police Department. Dreckman claimed that while booking defendant and inventorying defendant's property, defendant, while holding \$1870, made a gesture and said, "Let me go home, man. Let me just go. Come on, man, I'll leave one, and I'll just go." Dreckman also testified that even though he told defendant he would have to be held in jail overnight defendant indicated more than once that he did not feel he should have to spend the night in jail for the suspended license offense and inquired as to what he could do to take care of the charge and not have to spend the night in jail. Dreckman also testified that after defendant made

the gesture accompanied by the offer, he told defendant "that that sounded an awful lot like bribery, and he ought to shut up." Defendant responded "that he wouldn't do anything like that."

Defendant testified that he had asked Dreckman if there was any way he could leave some money so he could return later and repeatedly asked if there was some way he could get out. Defendant, however, denied inter alia making a gesture toward Dreckman with the money and denied making the statements which led to the bribery charge.

The defendant filed a motion to suppress evidence, asserting that the evidence was obtained as a result of an illegal stop. The defendant requested a hearing on the motion, but the trial court overruled the motion without a hearing. The defendant asked for reconsideration of the ruling and requested a hearing on the issues raised. The trial court refused to grant a hearing concluding:

Accepting for the purpose of this ruling that the defendant's premise that the stop of the defendant's vehicle by the police officer was illegal, it is the ruling of this Court that the offense with which the defendant is charged, that is Bribery, was committed, if it was committed, as a result of acts by the defendant and not from any information obtained by the law enforcement officer based on the illegal stop.

The defendant also filed a request for determination of a question of law concerning whether the defendant should have been charged with interference with the official acts of a peace officer in violation of section 719.1, The Code 1979, rather than bribery under the facts of this case. The court ruled that the peace officer was a public employee within the definition of bribery as provided in section 722.1, The Code 1979, and that the defendant was properly charged.

At the close of the State's case, the defendant moved for a judgment of acquittal, asserting that there was insufficient evidence to sustain a conviction of

the crime and particularly that the evidence was insufficient because officer's testimony was not corroborated in the manner required by Iowa R. Crim. P. 20(3). The court overruled the motions.

The jury returned a guilty verdict. Defendant subsequently instituted this appeal.

II.

Defendant contends that the trial court erred by overruling defendant's motion to suppress without a hearing. We disagree.

The trial court was not required to grant an evidentiary hearing on defendant's motion to suppress when it could be determined without a hearing that suppression would be improper as a matter of law. United States v. Losing, 539 F.2d 1174, 1177-78 (8th Cir. 1976), appeal after remand, 560 F.2d 906 (8th Cir. 1977), cert. denied, 434 U.S. 969, 98 S. Ct. 516, 55 L. Ed. 2d 457 (1977). In this case it is clear that the charged offense of bribery was committed independently of the offense for which the defendant was initially arrested and, therefore, would not warrant application of the exclusionary rule. See State v. Jackson, 315 N.W.2d 766 (Iowa 1982).

III.

Defendant asserts that his motion for judgment of acquittal should have been sustained because the State failed to corroborate the testimony of the alleged "solicited person," Officer Dreckman, under Iowa R. Crim. P. 20(3) and the State failed generally to generate evidence sufficient to support a guilty verdict. On the issue of corroboration the supreme court has held that rule 20(3), which requires corroboration, applies only to when the accused is charged with the

offense of solicitation under Section 705.1, The Code. State v. Williams, 315 N.W.2d 45, 58 (Iowa 1982). Defendant was charged with violating section 722.1. Accordingly, the motion for judgment of acquittal was properly denied on this issue.

However, we must determine if there is substantial evidence which could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. The only evidence presented in support of the charge was defendant's statement and gesture with money in his hand. This evidence came by testimony of the officer to whom the alleged bribe was directed. When the officer told defendant that it sounded like a bribe was being offered, defendant immediately denied that interpretation by saying "[I] wouldn't do anything like that." No other person testified to hearing the conversation and no other evidence supported the interpretation that a bribe offer was made.

The testimony indicates that defendant was not suggesting the charge be dropped, but only that he wanted to go home and not have to spend the night in jail. Defendant may have been referring to the posting of bond. Moreover, a general ambiguity of the phrase "I'll leave one" is present. Accordingly, we hold this evidence is insufficient for a jury to find guilt beyond a reasonable doubt and the motion for directed verdict of acquittal should have been granted. See State v. Mulder, 313 N.W.2d 885, 888 (Iowa 1981); State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981).

IV.

Defendant's final assertion is that the trial court erred by ruling that defendant could be properly charged with bribery rather than interference with official acts under section 719.1, The Code 1979. This argument is without merit. Section 722.1, The Code 1979, was enacted to deal with precisely the type of behavior that defendant was charged with. The fact that section 719.1 does not specifically mention bribery of peace officers while section 722.1 does specifically

mention interference with official acts of peace officers is irrelevant. The trial court was correct to rule defendant was properly charged under section 719.1, which applies specifically to bribery.

REVERSED.

All judges concur except Donielson and Johnson, JJ., who dissent.

I dissent. The evidence in this case was sufficient to generate a jury question as to whether defendant violated section 722.1, The Code, by attempting to bribe a police officer. The jury decided this issue adversely to defendant and the trial judge, who had an opportunity to hear all the evidence and observe the witnesses, subsequently denied defendant's motion for judgment of acquittal. For these reasons I cannot agree with the majority's decision to reverse this case on the ground of insufficient evidence. I would affirm defendant's conviction.

Johnson, J., joins this dissent.