FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	Filed October 27, 1981
Plaintiff-Appellee,	)	
vs.	)	1-229 64854
STEVEN JOHN STOLTENBERG,	)	
Defendant-Appellant.	)	

Appeal from Cerro Gordo District Court, Ray E. Clough, Judge.

Defendant appeals from his conviction for delivery of marijuana for profit in violation of section 204.401(1)(b), The Code 1979. AFFIRMED.

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

Michael G. Byrne, Cerro Gordo Public Defender's Office, Mason City, for defendant-appellant.

Heard by Oxberger, C.J., and Donielson, Carter, and Johnson, JJ. Snell J., takes no part.

PER CURIAM

I. Defendant asserts that the court erred in overruling defendant's motion for acquittal on the issue of delivery for profit because the evidence was not sufficient to establish the profit element. We affirm.

The evidence shows that defendant delivered a 96-gram package of marijuana to the agents when they had paid for 112 grams. Though defendant claimed he received no money or marijuana for his part in acting as the middleman, a rational trier of fact could disbelieve defendant's testimony and have believed instead that he acted as a middleman because he intended to profit from the transaction, profiting by delivering less marijuana that the agents paid him for. The State needs only to prove the purpose, not the accomplishment of profit, with profit defined as the excess of returns over expenditures. State v. Hillsman, 281 N.W.2d 114, 116 (Iowa 1979). We affirm the trial court, as a directed verdict on this point would have been improper.

II. Defendant additionally asserts as error the trial court overruling his motions for mistrial based upon two instances of the prosecutor's alleged misconduct.

In each case of alleged misconduct, the court either made clarifying statements to the jury and gave appropriate directions to prevent further problems or offered to do so, but defendant rejected the offer. The court's actions sufficiently corrected the alleged misconduct, and the court was within its discretion in refusing to grant a mistrial on those grounds.

Unless the prosecutor's conduct results in prejudice, his actions will not result in a reversal. State v. Hall, 235 N.W.2d 702, 726 (Iowa 1975). Such prejudice was not shown by defendant. Thus, the trial court did not abuse its discretion by denying defendant's motion for a mistrial.

III. Defendant further contends the trial court erred in overruling his motion for a directed verdict on the issue of entrapment. Defendant says he established entrapment as a matter of law. Unless there is no dispute as to the facts or the inferences to be drawn from them, the issue is to be submitted to the jury. State v. Mullen, 216 N.W.2d 375, 382 (Iowa 1974). Because different conclusions and inferences could be drawn from the evidence that was presented, the issue was for the jury determination.

IV. A police detective was called as a rebuttal witness to contest defendant's assertion that he had never previously been involved in the sale of marijuana. The detective testified he had witnessed defendant deliver marijuana to an undercover

informer in 1977. After his conviction defendant discovered that another person admitted that it was he, not the defendant Stoltenberg, who had sold marijuana to the informer in the transaction witnessed by the police detective.

The prosecutor stipulated this discovery as new evidence which could not have been discovered by reasonable and diligent efforts prior to the end of the trial, but the court denied defendant's motion for a new trial based upon this evidence.

A defendant who seeks a new trial based on newly discovered evidence must meet the following test: (1) The evidence was discovered after trial and before judgment; (2) it could not have been discovered during the trial in the exercise of due diligence; (3) it is material to the issue and not merely cumulative and impeaching; and (4) such evidence would probably change the result if a new trial were granted. State v. McGhee, 280 N.W.2d 436, 442 (Iowa 1979).

The county attorney stipulated to the first two requirements, and the third was the basis the trial court used to overrule defendant's motion for a new trial. The court viewed the new evidence as impeaching the detective's testimony and as cumulative of defendant's testimony that he was not involved in the 1977 drug transaction. We agree. Newly discovered evidence will not entitle a defendant to a new trial unless all the conditions in McGhee are met. We agree that the new evidence was impeaching and cumulative. Trial courts have wide discretion in ruling upon motions for new trial, and we will not overturn such a ruling unless an abuse of discretion is shown. State v. McGhee, 280 N.W.2d at 442. Such an abuse was not shown.

AFFIRMED.