



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Plaintiff-Appellee,	)	Filed August 30, 1983
vs.	)	<u>3-107</u>
LANNY RAY LEEPER,	)	69044
Defendant-Appellant.	)	

Appeal from Polk District Court, Anthony M. Critelli, Judge.

Defendant appeals from his conviction for terrorism in violation of Iowa Code section 708.6. **AFFIRMED.**

Lylea M. Dodson, Des Moines, for defendant-appellant.

Thomas J. Miller, Attorney General, and Richard L. Cleland, Assistant Attorney General, and Eveadean M. Myers, Student Legal Intern, for plaintiff-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Schlegel, and Hayden, JJ.

OXBERGER, C.J.

Defendant appeals from his conviction for terrorism in violation of Iowa Code section 708.6. We affirm.

I. Insufficiency of the Evidence

In our review of a motion for directed verdict of acquittal based upon insufficiency of the evidence in a criminal case, we view the evidence in a light most favorable to the State and all of the evidence must be considered. State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981). If there is any evidence that could convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt, the trial court's denial of the motion will withstand a challenge. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980).

James Waters testified that Lanny drew a loaded revolver inside his tavern and pointed it in the direction of his customers, ordering them to "stay away." The testimony indicated that the gun was ready to fire with the safety off and a round in the chamber. Further testimony indicated that Lanny told one individual he was "going to blow his head off." We believe that Lanny's conduct along with his statements could have convinced a rational trier of fact that Lanny Leeper was guilty beyond a reasonable doubt of the crime of terrorism. Thus the evidence was sufficient to support the trial court's denial of defendant's motion.

II. Amendment of Trial Information

Lanny argues that the trial information as amended was duplicitous and as such fails to protect him from double jeopardy. We disagree.

Lanny was charged with a single act of terrorism. Whether the trial information used the word "and" or "or," Lanny was still only charged with one act of terrorism, not with five separate offenses as he alleges. Rule 6(1) of the Iowa Rules of Criminal Procedure requires separate counts for "more than one public offense" arising out of the same transaction or occurrence. State v. Duncan, 312

N.W.2d 519, 523 (Iowa 1981). See Iowa R. Crim. P. 6(1). The court in Duncan went on to state that a citation of Rule 6(1) begs the question. Id. at 523. They held that the occasion involving burglary of a marina and a boat could be charged as one burglary consisting of the marina and boat conjunctively or alternatively. Id. at 523. Likewise, the State could have charged five separate offenses of terrorism by putting each in a separate count. Instead, they took the alleged occasion of terrorism on several victims and charged it as one offense in the alternative, as was done in Duncan. Therefore, there is no duplicity as Lanny alleges. Likewise, Lanny is adequately protected against double jeopardy. Even though this single act may have produced multiple victims, the State is barred from charging Lanny in a successive trial with terrorism based on any of the five victims included in this charge. State v. McFadden, 320 N.W.2d 609, 618 (Iowa 1982), see Iowa Code § 816.1.

Therefore, we find no merit in this contention.

III. Instructions 10, 12, 13 & 16

Although the subsection numbers of § 708.6 have been eliminated with the new amendment, we agree that Lanny was charged under the second alternative of § 708.6, i.e., threatens to commit such an act under circumstances raising a reasonable expectation that the threat will be carried out. As such the victim's state of mind is not a factor to be considered. State v. Jackson, 305 N.W.2d 420, 423 (Iowa 1981). Rather the focus is upon the accused's intent in communicating the threat and remains upon his expectations that the threat be carried out. Id. at 423. There is ample evidence in the record to support that intent and expectation in Lanny.

Although instruction ten, twelve, and thirteen were incorrect in that they were not consistent with Jackson, they were not prejudicial to Lanny. If anything, the instructions, as written, placed a heavier burden on the State to show "state of mind" per Instruction 12 and 13, when Jackson does not require that.

We further believe that the trial court erred in not listing the names of all the victims in instruction 10 and 16. However, again that error was not prejudicial to Lanny. Since, in this case, it is the accused's intent and expectation that is important, diluting the number of victims simply eliminates alternatives on which a guilty verdict could be found. Therefore, this error should work to the benefit of the defendant.

For these reasons, we hold that there was sufficient evidence to submit the charge of terrorism to the jury, that the trial information was not duplicitous nor failed to provide double jeopardy protection, and that the defendant, Lanny Leeper, was not prejudiced by any errors in the trial court's instructions to the jury.

AFFIRMED.