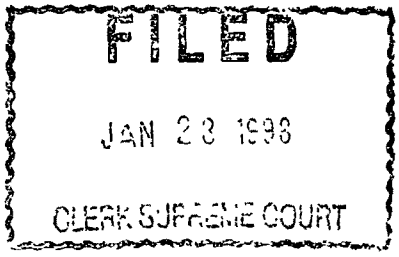
IN THE COURT OF APPEALS OF IOWA

000493

No. 7-632 / 97-0315
Filed January 28, 1998



STATE OF IOWA,
Appellee,

vs.

MICHAEL STIGLER, JR.,
Appellant.

Appeal from the Iowa District Court for Black Hawk County, Todd A. Geer, Judge.

Defendant appeals the judgment and sentence entered upon his conviction of aiding and abetting prostitution in violation of Iowa Code sections 703.1 and 725.1 (1995). **REVERSED.**

Linda Del Gallo, State Appellate Defender, and Tricia A. Johnston, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and D. Raymond Walton, Assistant County Attorney, for appellee.

Heard by Cady, C.J., and Sackett and Streit, JJ.

STREIT, J.

Defendant Michael Stigler appeals the district court's denial of his motion for judgment of acquittal on his aiding and abetting prostitution charge. He argues the State did not have substantial evidence Virginia Tensely committed the crime of prostitution by offering to sell sex. Because there is no evidence Tensley made an offer to sell sex, the crime of prostitution was not committed and Stigler did not aid and abet the crime. His motion for acquittal should have been granted.

I. Background & Facts.

In the Spring of 1995 at about 10:30 p.m. Frederick Levy drove Tensley and Stigler to John McCarter's house. Tensley told Levy she would get gas money from McCarter. The three did not discuss the purpose of Tensley's trip to McCarter's house, but Levy assumed Tensley was going to sell sex to McCarter.

Once at McCarter's door, Tensley got out of the car while Stigler and Levy waited. Tensley knocked on McCarter's door and when he answered, she asked him for gas money. McCarter told her he did not owe her anything and shut the door. She forced open the door, twisted McCarter's arm behind his back when he tried to use the phone, stole his wallet, and left. A short time later the three were stopped by the police. Stigler was charged with aiding and abetting prostitution.

Before trial, Stigler stated the purpose of the trip to McCarter's house was for Tensley to sell sex to McCarter. At trial, McCarter admitted he allowed Tensley to come into his residence prior to this incident, but claimed he did not know her.

McCarter denied Tensley made an offer to perform sex for money. Stigler moved for judgment of acquittal at the close of the State's evidence. The court denied the motion and Stigler was found guilty as charged. He appeals.

II. Standard of Review.

Stigler argues the trial court erred in failing to grant his motion for judgment of acquittal based on his contention the State did not produce sufficient evidence to prove he aided and abetted prostitution. Challenges to the sufficiency of the evidence are reviewed for correction of errors at law. *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). Considering the evidence in the light most favorable to the State, we look to see whether substantial evidence supports the verdict. *State v. Coffman*, 562 N.W.2d 766, 768 (Iowa App. 1997). *Id.* We consider all the evidence, not just the evidence supporting the verdict. *State v. Blair*, 347 N.W.2d 416, 419 (Iowa 1984). We will affirm the verdict provided the evidence raises "a fair inference of guilt and [does] more than create speculation, suspicion or conjecture." *Coffman*, 562 N.W.2d at 768.

III. Aiding & Abetting Prostitution.

A person aids and abets a crime when he or she either actively participates in the crime, advises, or encourages the crime before or when it is committed. *See* Iowa Code 703.1 (1997); *State v. Pearson*, 547 N.W.2d 236, 242 (Iowa App. 1996). Aiding and abetting is not like the crime of conspiracy which only requires a person to take steps toward commission of the crime to be guilty. *See State v. Elam*, 328

N.W.2d 314, 319 (Iowa 1982). A person found to have aided and abetted in the commission of a crime is charged, tried, and punished as a principal. *Id.*

The State claims Stigler aided and abetted the crime of prostitution. A person commits prostitution if he or she sells or offers for sale sex acts. Iowa Code § 725.1 (1997). For Stigler to aid and abet prostitution, *the crime must have actually occurred. See* Iowa Code § 703.1 The State has no evidence Tensley sold or offered to sell sex to McCarter.

There is evidence Stigler and Tensley drove to McCarter's house with the intent Tensley would solicit sex. Aiding and abetting requires more than taking steps toward committing a crime. There is no evidence the crime was carried out. The State's evidence of prostitution is that Tensley approached McCarter's door, asked him for gas money, forced her way into his residence, stole his wallet, and left. Although certain inferences can be drawn from these events, it takes more than inferences to prove the crime of prostitution. The State argues an offer may arise from words, a gesture, or other physical conduct. Yet here, there were no words or gestures that offered sex. Conduct of parties can denote the existence of a contract, *see Central Iowa Grading, Inc. v. UDE Corp.*, 392 N.W.2d 857, 860 (Iowa App. 1986); *Adair County Farm Service v. Creston Feed & Grain, Inc.*, 390 N.W.2d 608, 610-11 (Iowa App. 1986), but the conduct of the parties that evening did not speak of a contract. Even assuming Tensley was a prostitute and had relations in the past with McCarter, the State failed to offer any evidence that the mere approaching of

McCarter's house by a prostitute constituted an offer for sex. That Tensley offered McCarter sex is mere speculation, suspicion, and conjecture. *See Coffman*, 562 N.W.2d at 768. Because the record here does not show by substantial evidence Tensley committed the crime of prostitution, Stigler could not have been found guilty of aiding and abetting. His motion for acquittal should have been granted.

REVERSED.

CADY, C.J. (dissenting)

I respectfully dissent. I would conclude the State produced sufficient evidence to support the conviction.

The majority finds Stigler cannot be guilty of aiding and abetting because Tensley did not offer to sell sex by merely going to McCarter's house and asking him for "gas money."

An offer to sell sex to support the crime of prostitution does not need to be explicit and direct. Instead, the important inquiry focuses on the intent of the offeror. Intent is one element of a crime which is seldom susceptible of proof by direct evidence. *State v. Finnel*, 515 N.W.2d 41, 42 (Iowa 1994). Thus, proof of intent will depend on the surrounding circumstances and all inferences reasonably drawn from those circumstances. *Id.* The requirement of proof beyond a reasonable doubt is satisfied if it is more likely than not that the inference is true. *Id.*

I believe a reasonable juror could infer Tensley's actions and words constituted an offer to sell sex. The majority concludes otherwise, even assuming Tensley was a prostitute and had sold sex to McCarter in the past. I believe, however, these assumptions can be reasonably drawn from the evidence and are important circumstances to help support a finding Tensley was offering sex. Furthermore, one of the occupants in the vehicle used to transport Tensley to McCarter's house assumed Tensley was going to sell sex to McCarter.

I would affirm the district court.