

SUPREME COURT OF IOWA

State of Iowa v. Carolee Philpott

702 N.W.2d 500 (Iowa 2005) · No. No. 04-0060 · Decided August 19, 2005

SUMMARY

The Supreme Court of Iowa affirmed Carolee Philpott's conviction for mechanical eavesdropping under Iowa Code section 727.8. The court rejected her constitutional, sufficiency-of-the-evidence, jury-instruction, and evidentiary challenges, concluding that substantial evidence supported the conviction based on recordings made by a tape recorder left operating in her workplace.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Iowa
DECIDED	August 19, 2005
DOCKET	No. 04-0060
DISPOSITION	affirmed
PROCEDURAL POSTURE	Philpott appealed her jury-trial conviction for mechanical eavesdropping under Iowa Code section 727.8. The Iowa Court of Appeals affirmed, and the Supreme Court of Iowa reviewed and affirmed the court of appeals' decision and the district court judgment.
STANDARD OF REVIEW	A jury's findings are binding on appeal if supported by substantial evidence. Evidence is substantial when it would convince a rational jury of the defendant's guilt beyond a reasonable doubt. Challenges to jury instructions are reviewed for legal correctness and prejudice, and inadequately specified evidentiary claims may be declined for review.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Iowa
PARTIES	Carolee Philpott v. State of Iowa

TOPICS

- criminal procedure
- due process
- equal protection
- void for vagueness
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Iowa Code section 727.8 violates equal protection or due process because it does not define the phrase "right or authority to do so" or expressly incorporate an expectation-of-privacy requirement.
2. Whether section 727.8 is unconstitutionally vague as applied to Philpott.
3. Whether section 727.8 violates due process because it could permit conviction for accidental recording.
4. Whether the evidence was sufficient to support the conviction despite the loss of the tape.
5. Whether the district court erred by giving Uniform Criminal Jury Instruction No. 100.6 concerning direct and circumstantial evidence.
6. Whether the district court erred in admitting evidence challenged generally as irrelevant, lacking foundation, or unfairly prejudicial.

HOLDINGS

1. The equal-protection challenge fails because Philpott identified no similarly situated class treated more favorably under the statute.
2. The court declined to decide whether an expectation of privacy is constitutionally required because the jury was instructed that the recorded matter had to be uttered by persons exhibiting a subjective expectation of privacy that was reasonable by societal standards.
3. The phrase "right or authority to do so" was not vague as applied to Philpott's conduct. Because no fundamental right was involved, she could not bring a facial due-process challenge.
4. The court rejected Philpott's due-process challenge without deciding whether the statute reaches accidental recordings or whether such coverage would be unconstitutional, because the jury was instructed that the State had to prove she intended the recording conduct.
5. The evidence was sufficient to support the conviction even though the tape was lost. Circumstantial evidence supported recording on October 7 and 8, and the district judge's testimony provided direct evidence of recording on October 9; the October 9 event alone could support the single-count conviction.
6. The district court did not err in giving Uniform Criminal Jury Instruction No. 100.6 because the instruction correctly stated the law and did not prejudice Philpott.
7. Philpott's evidentiary arguments were too vague and indefinite to support relief because she did not identify specific questions and objections whose overruling constituted error.

KEY QUOTATIONS

"There was only one count in the information, so the October 9 event, standing alone, was sufficient to convict." (at 504)

"We will decline to consider arguments that do not pinpoint specific questions and objections the overruling of which is alleged to be error." (at 504)

FACTUAL BACKGROUND

Carolee Philpott worked in the Franklin County clerk of court's office and had ongoing disputes with coworkers. After union officials advised her that recording conversations could protect her if she was present and participating in or listening, she brought a tape recorder to work. On October 7, 8, and 9, 2002, coworkers observed the recorder operating while Philpott was absent, and a district judge testified that on October 9 he heard a recorded conversation and a test whistle from the device. The tape was later lost, but the State prosecuted Philpott for mechanical eavesdropping.

PROCEDURAL HISTORY

The State filed a trial information on August 4, 2003, charging Philpott with violating Iowa Code section 727.8. A jury found her guilty, and the district court entered judgment. The court of appeals affirmed; the Supreme Court of Iowa separately considered Philpott's constitutional, sufficiency-of-the-evidence, jury-instruction, and evidentiary challenges and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Reed, 618 N.W.2d 327, 332 (Iowa 2000)
- State v. Weatherly, 679 N.W.2d 13, 16 (Iowa 2004)
- State v. Speicher, 625 N.W.2d 738, 740 (Iowa 2001)
- Miller v. Griffith, 246 Iowa 476, 480, 66 N.W.2d 505, 507 (1954)

OPINION

PER CURIAM.

702 N.W.2d 500 (2005) STATE of Iowa, Appellee, v. Carolee PHILPOTT, Appellant. No. 04-0060. Supreme Court of Iowa. August 19, 2005. *502 Judith M. O'Donohoe of Elwood, O'Donohoe, Stochl, Braun & Churbuck, Charles City, for appellant. Thomas J. Miller, Attorney General, Bruce Kempkes and Cris C. Douglass, Assistant Attorneys General, and Marilyn J. Dettmer, County Attorney, for appellee.

PER CURIAM. Defendant, Carolee Philpott, appeals from a judgment following a jury trial convicting her of mechanical eavesdropping in violation of Iowa Code section 727.8 (2003). The court of appeals affirmed her conviction.

After reviewing the record and considering the arguments presented, we affirm the decision of the court of appeals and the judgment of the district court. Defendant, who had worked for twenty-five years in the office of the clerk of court for Franklin County, was involved in a series of

acrimonious exchanges with fellow employees in the office who repeatedly accused her of discourtesy toward them and members of the public.

Defendant, who was a union representative, consulted union officials and was advised that in order to protect herself in these situations she should tape-record conversations in the office. She was told that this was proper if she was present and participating in or listening to the recorded conversations. Upon receiving this advice, defendant brought a tape recorder to work, where it remained on her desk from November 2001 through October 2002.

The criminal prosecution that is now before us concerns events that took place on October 7, 8, and 9 of 2002. Evidence presented at trial through the testimony of defendant's coworkers indicated that on October 7 defendant left the tape recorder operating in a working area in the office while she was at lunch. This conduct was reported to the acting district court administrator and the county attorney.

On October 8, when defendant left to participate in a conference call on court-related business, coemployees testified that they again observed that the tape recorder was left running. On October 9, while defendant was at lunch, coworkers observed the tape recorder was running and called a district judge.

The judge testified at the trial that he observed the tape recorder in operation and attempted to play the tape. When he backed the tape up and switched it to play mode, he heard a conversation between an employee in the office and a juvenile probation officer that he could recognize as having taken place while he was watching the tape recorder function. He also heard some whistling on the tape that he had initiated as a test for determining that it was functioning.

Following a staff meeting, the defendant removed the recorder from the office. On August 4, 2003, the State filed a trial information charging the defendant with a violation of Iowa Code section 727.8. She was found guilty following a jury trial.

We separately consider defendant's several challenges to her conviction. I. Defendant's Constitutional Challenges. Defendant urges that the statute under which she was charged violates both due process and equal protection because the words "right or authority to do so" are not specifically defined and because the statute *503 does not embrace a concept of expectation of privacy.

Iowa Code section 727.8 provides: Any person, having no right or authority to do so, who taps into or connects a listening or recording device to any telephone or other communication wire, or who by any electronic or mechanical means listens to, records, or otherwise intercepts a conversation or communication of any kind, commits a serious misdemeanor; provided, that the sender or recipient of a message or one who is openly present and participating in or listening to a communication shall not be prohibited hereby from recording such message or communication;

and further provided, that nothing herein shall restrict the use of any radio or television receiver to receive any communication transmitted by radio or wireless signal.

Defendant's equal-protection argument must fail because she has identified no similar class of persons that is treated more favorably under the act than she was. Her contention that an expectation of privacy must exist in order for the statute to satisfy substantive due-process requirements is of doubtful constitutional merit.

We need not decide that question, however, because the district court instructed the jury that, in order to convict, the recorded matter "must have been uttered by a person or persons who exhibited a subjective expectation of privacy which was reasonable by societal standards." [1] With respect to defendant's contention that the words "right or authority to do so" are not sufficiently definite to withstand a vagueness challenge, we are convinced that the words are not vague as applied to her situation.

Because no fundamental right is involved, defendant may not lodge a facial due-process challenge to the statute. *State v. Reed*, 618 N.W.2d 327, 332 (Iowa 2000). Defendant also argues that section 727.8 violates due process because it would permit the conviction of a person who accidentally records a conversation. Without deciding whether the statute is defective in that manner or, if so, whether this would violate due process, we reject defendant's challenge because the district court instructed the jury that the State was required to show defendant intended the actions, i.e., the recording of conversations, on which the prosecution was based.

II. Sufficiency of Evidence. Defendant urges that the evidence was insufficient to warrant her conviction because the tape became lost prior to trial and thus there was no evidence presented to the jury that anything had been recorded.

We reject this contention. The jury's findings are binding on us if supported by substantial evidence. *State v. Weatherly*, 679 N.W.2d 13, 16 (Iowa 2004); *State v. Speicher*, 625 N.W.2d 738, 740 (Iowa 2001). In order to be substantial, the evidence must be such as would convince a rational jury of a defendant's guilt beyond a reasonable doubt. *Weatherly*, 679 N.W.2d at 16.

We are satisfied that there was sufficient circumstantial evidence to establish that conversations in the clerk's office were being *504 recorded on defendant's tape recorder on October 7 and 8. In addition, there was direct evidence through the testimony of a district judge that conversations were in fact being recorded on October 9. There was only one count in the information, so the October 9 event, standing alone, was sufficient to convict.

In addition, the evidence revealed that defendant had advised her coworkers that she had brought the tape recorder to the office for purposes of tape recording the conversations with coworkers as a result of their prior disagreements. Defendant argues that she only intended to record

conversations to which she was listening or in which she was participating while openly present at the place where the conversations were taking place.

However, the evidence indicated that, at least part of the time the recorder was present on October 7, 8, and 9, it was set on voice-activation mode so that it would record conversations automatically in defendant's absence.

The jury could find from that circumstance that defendant intended to record conversations that took place during her absence. III. Objection to Jury Instructions. Defendant urges that the district court erred in giving Uniform Criminal Jury Instruction No. 100.6 describing direct and circumstantial evidence. Defendant contends that this instruction invites the jury to make decisions based on speculation.

The instruction given was a correct statement of the law and nothing contained therein served to prejudice the defendant in the present case. IV. Objections to Evidence. As observed by the court of appeals with respect to defendant's evidentiary challenges: The defendant fills more than two pages in her brief with a list of examples of four categories of evidence which was admitted over objection that she claims was irrelevant, lacking foundation, or unfairly prejudicial.

Her summary conclusion is that "Taken as the whole, this evidence was more prejudicial than probative and the Court should have granted a new trial on this ground." Although the court of appeals attempted to respond in a general manner to the arguments that were thus presented, we do not.

We will decline to consider arguments that do not pinpoint specific questions and objections the overruling of which is alleged to be error. *Miller v. Griffith*, 246 Iowa 476, 480, 66 N.W.2d 505, 507 (1954). Defendant's arguments on the evidentiary issues are too vague and indefinite to support the granting of relief based on the admission of improper evidence.

We have considered all issues presented and conclude that the decision of the court of appeals and the judgment of the district court should be affirmed. AFFIRMED. NOTES [1] Defendant's argument assumes that the statute prohibits the recording of conversations irrespective of whether the situation is one in which an expectation of privacy exists.

We do not suggest that this interpretation is not correct. The validity of the district court's instruction suggesting a contrary view is not before us, and we express no opinion in regard to the correctness of that instruction. It is, however, the law of the case for purposes of defendant's claims on appeal.