COURT OF APPEALS
DECISION
DATED AND RELEASED

July 31, 1996

NOTICE

No. 95-1556-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ELIZABETH R. PETERS,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for La Crosse County: PETER G. PAPPAS, Judge. *Affirmed*.

Before Gartzke, P.J., Sundby and Vergeront, JJ.

PER CURIAM. Elizabeth R. Peters appeals from a judgment of conviction for conspiracy to commit the crime of escape. She contends the trial court erred in denying her request for a coercion instruction. She argues that when viewing the evidence most favorably to her, a coercion instruction was reasonably required. We affirm the judgment.

Peters was charged with conspiracy to commit the crime of escape by supplying hacksaw blades to Glen Blanke, an inmate at the La Crosse County Jail. At trial, Peters argued that she had been coerced by Blanke through numerous telephone calls. She testified that over a period of two to three weeks she received twelve calls from Blanke requesting she assist in the escape by tying four hacksaw blades to a string lowered outside a prison window. During these telephone conversations she could hear voices in the background saying that she was being watched and would be hurt if she did not cooperate.

The trial court refused to grant a coercion instruction. It first noted that the nature of the telephone conversations from the jail to Peters removed Peters from the imminent danger that would necessitate a coercion instruction. The court also determined that the threats were made by coconspirators, and that Peters did not make an attempt to contact the authorities.

"[W]here the defendant appeals from the denial of a request instruction, `the evidence is to be viewed in the most favorable light it will reasonably admit from the standpoint of the accused.'" ***State v. Stoehr***, 134 Wis.2d 66, 87, 396 N.W.2d 177, 185 (1986) (citation omitted). However, a defendant is not automatically entitled to a jury instruction on an offered defense. ***Id.*** The defendant has the initial burden of producing evidence to establish a statutory defense to criminal liability. ***Id.*** The reviewing court examines the record to determine whether the defendant presented enough evidence to warrant a jury instruction. ***Id.*** at 90, 396 N.W.2d at 186.

The defense of coercion requires that the threat must be made by a person other than the actor's coconspirator, must cause the actor to *reasonably believe* that the act is the *only means* of preventing *imminent death or great bodily harm* to the actor or another. Section 939.46(1), STATS. (emphasis added).

We do not decide whether the threats were made by Peters' coconspirators, as the trial court concluded. Instead we conclude that the evidence, viewed in the most favorable light it will reasonably admit from Peters' standpoint, does not show that she has met her burden of production for any of the three remaining requirements.

Peters testified that Blanke called her and asked her to assist in a break-out attempt, which she refused. Blanke responded "I'm just gonna go then", and ended the phone conversation. Peters stated that Blanke "kept calling and pressuring me," but he never directly threatened her. When he told her on the phone she had to get a gun, she heard others in the background saying, "we have people watching," and that "she'd be hurt" if she refused. Peters testified that she did not retrieve the gun because "she was afraid of guns". She further testified no matter what occurred she would not obtain the gun for Blanke.

Although Peters testified that she was "scared" and "very scared" by Blanke, she also stated that she did not know if he could or would harm her. On cross-examination, when asked why she feared Blanke, she stated that he had told her he had "hit" a prior girlfriend, and that he "was just very persistent in saying that I had to do it." She also testified that Blanke himself never threatened her with any consequences if she did not agree to do what he asked, rather "he just kept pressuring [her] to do it."

There was at least a two week period between the initiation of the twelve phone calls and the time that Peters was persuaded to assist Blanke in his break-out attempt. Blanke was incarcerated at the time of the phone calls. Peters did not contact the authorities. At best, the evidence establishes that Peters had a vague fear of future consequences. But, even if we assume for purposes of argument that Peters actually believed that assisting Blanke was the only way to prevent imminent great bodily harm to herself, the evidence, viewed most favorably to Peters, does not show that such a belief was reasonable. Given the time frame over which the telephone calls occurred and the fact that Blanke was incarcerated, it was not reasonable to believe that he would, or would have someone else, cause her serious bodily harm before she was able to take another course of action, such as contacting the authorities.

Coercion is a defense "limited to the most severe form of inducement." ***State v. Amundson***, 69 Wis.2d 554, 568, 230 N.W.2d 775, 783 (1975). The trial court correctly concluded that the evidence did not entitle Peters to a coercion instruction.

By the Court.--Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.