



IN THE COURT OF APPEALS OF IOWA, CLERK SUPREME COURT

STATE OF IOWA,	)	
Appellee,	)	Filed December 28, 1977
v.	)	
JON ROBERT WILLIAMS,	)	307
Appellant.	)	59632
	)	

Appeal from Johnson District Court - Ansel J. Chapman, Judge

Defendant appeals his conviction for possession of L.S.D., claiming errors in the admission of evidence. Affirmed.

R. Brent Daniel, of Pritzker & Glass, Ltd., of Chicago, Illinois, and Johnson & Phelan, of Fort Madison, for appellant.

Richard C. Turner, Attorney General, J. Susan Carney, Assistant Attorney General, and Jack W. Dooley, Johnson County Attorney, for appellee.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

ALLBEE, C.J.

Defendant, Jon Robert Williams, appeals his conviction for possession of a controlled substance, in violation of § 204.401(3), The Code. He raises three contentions, which we discuss in the order briefed.

I. Defendant first asserts that the State failed to establish a chain of custody sufficient to justify admission of State's Exhibits 1 and 2.

Agent Roger Timko testified that he had maintained custody of the contraband taken from defendant's apartment until he personally delivered it to the Iowa Criminalistics Laboratory. According to Timko, no other persons had access to the contraband while it was in his possession; during the time that it was kept in his car, the car was locked. This testimony was sufficient to support a finding that it was "reasonably probable that tampering, substitution or alteration did not occur. Absolute certainty is not required." State v. Jeffs, 246 N.W.2d 913, 915 (Iowa 1976).

II. Defendant's second allegation of error depends entirely upon his first complaint, and adds nothing to it. As his first proposition fails, so must his second.

III. Finally, defendant argues that trial court should not have admitted testimony regarding the amount of marijuana found in defendant's apartment during the raid which yielded the L.S.D. defendant was convicted of possessing. It was an abuse of discretion to admit such evidence. State v. Oppedal, 232 N.W.2d 517 (Iowa 1975). The State could exercise its right to show circumstances surrounding the offense without any specific testimony of the large amounts of marijuana present. However, we apply the standards found in State v. Trudo, 253 N.W.2d 101, 107-108 (Iowa 1977), for errors of nonconstitutional dimensions, and determine that admission of the controverted testimony was harmless. There was overwhelming evidence in the record of defendant's guilt. Further, defendant testified on cross-examination (Tr. 87, 88) to facts which indicated a large quantity of marijuana was present in his apartment. This assignment is of no benefit to defendant.

AFFIRMED.

OXBERGER, J., concurs; DONIELSON, SNELL and CARTER, JJ., concur in divisions I and II and specially concur with division III.

CARTER, J. (specially concurring)

I concur in Divisions I and II of the opinion and in the result. With respect to Division III, I cannot agree that the trial court abused its discretion in admitting testimony concerning the amount of marijuana found in defendant's apartment. This marijuana was located and seized by authorities in defendant's residence at the same time as the controlled substance (L.S.D.) upon which this prosecution is based. The quantity of the respective controlled substances found at this time was 500-600 tablets of the substance believed to be L.S.D. and 61 pounds of marijuana.

The charge for which defendant was tried in this case was possession with intent to deliver L.S.D. One of the elements which the State was required to prove was that defendant's possession of this controlled substance was with the intent that it be "delivered" as defined in § 204.101(8), The Code. With respect to this issue it was the State's theory of the case that defendant operated a "warehouse" for wholesale selling of illegal drugs including the L.S.D. involved in the present charge. I believe the State's efforts to establish this theory on the issue of "intent to deliver" should not be precluded by the rule against allowing proof of crimes other than the one charged. It falls under the exception relating to proof of "intent" of the crime charged. See, e.g., State v. Harper, 222 N.W.2d 450, 452 (Iowa 1974). The quantity of all of the various controlled substances found at defendant's residence are relevant and material on this issue. Cf., State v. Metcalf, ___ N.W.2d ___ (Iowa, filed December 21, 1977).

This case is to be distinguished from State v. Jeffs, 246 N.W.2d 913 (Iowa 1976) where the charge was delivery and intent to deliver was not an element. State v. Oppedal, 232 N.W.2d 517 (Iowa 1975) is also to be distinguished as the controlled substance involved in that case was not found in the possession of the defendant.

DONIELSON, J., and SNELL, J., join in this special concurrence.