



IN THE COURT OF APPEALS OF IOWA

Filed August 25, 1981

STATE OF IOWA,

Plaintiff-Appellee,)

1-146
64849

vs.)

ROLAND ANTHONY GARCIA,)

Defendant-Appellant.)

Appeal from Cerro Gordo District Court. B. C. Sullivan, Judge.

Defendant appeals his conviction of delivery of cocaine for profit in violation of Iowa Code section 204.401(1)(a). AFFIRMED.

Steve R. Bakke, of Forest City, Ia., for defendant-appellant.

Thomas J. Miller, Attorney General of Iowa and Mark R. Schuling, Assistant Attorney General, for plaintiff-appellee.

Submitted to Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Roland Anthony Garcia, appeals his conviction of delivery of cocaine for profit in violation of Iowa Code section 204.401(1)(a). We affirm.

I. WAIVER

Defendant, Roland Anthony Garcia, claims the trial court erred when it overruled his objection to the amended list of witnesses and testimony. After defendant's counsel objected to the timeliness of the amended minutes of testimony, he expressly waived his objection. In order to preserve error, objection must be made at trial. State v. Gibb, 303 N.W.2d 673 (Iowa 1981). An express waiver of an objection waives the defendant's right to assert the issue on appeal. State v. Rouse, 290 N.W.2d 911 (Iowa 1980); State v. Gilliland, 108 N.W.2d 74, 252 Iowa 664 (1961). Therefore, our review will be limited to the grounds asserted before the trial court. State v. Matlock, 289 N.W.2d 625 (Iowa 1980).

II. Coconspirator's Exception to the Hearsay Rule.

The defendant argues that the introduction of tape-recorded conversations between undercover agents and two other individuals, neither of which was the defendant, regarding the proposed sale of cocaine was error because they were hearsay, and did not come within the coconspirator's exception to the hearsay rule.

The coconspirator's exception allows evidence of any act or declaration by a coconspirator made during the conspiracy, which is in furtherance of the conspiracy, to be admitted against each coconspirator if the State has laid a foundation for its introduction by independent proof of the conspiracy. State v. Waterbury, No. 84-64852 (Sup. Ct. Iowa, filed June 17, 1981); State v. Blyth, 226 N.W.2d 250 (Iowa 1975). The coconspirator exception applies whether or not the offense charged is conspiracy, so long as there is substantial evidence of a conspiracy. State v. Kidd, 239 N.W.2d 860 (Iowa 1976).

A conspiracy is "a combination or agreement between two or more persons to do or accomplish a criminal or unlawful act," State v. Blyth, 226 N.W.2d at 263. It does not depend on fulfillment of the act, and it may be proven by direct or circumstantial evidence. State v. Blyth, 226 N.W.2d at 263.

The following evidence is independent proof of the conspiracy to sell cocaine, and of the defendant's connection with the conspiracy: 1) Lyle Sweeney and Timothy Ginapp

entered into a transaction with undercover agents to sell cocaine for a profit. 2) Sweeney stated there would be another person present to watch the transaction take place. 3) When the agents first saw Ginapp standing in front of the grocery store, his hands were empty. 4) Soon after that, the agents saw Ginapp and another individual standing at the rear corner of the store building talking together. 5) The agents then saw Ginapp walking toward them with the box of cocaine in his hand. 6) The other individual was described as having a dark bushy Afro, wearing glasses, and being short. 7) This individual kept peeking around the corner, watching the entire transaction. 8) When the police drove into the parking lot, the person turned and ran. 9) An agent chased the individual, saw him one-half block from the scene one and one-half minutes after the transaction, yelled he was a police officer, at which time the person dove to the pavement, and was immediately arrested. 10) The person arrested matched the description of the person peeking around the grocery store and two agents testified he was the same person. 11) The person arrested was Roland Garcia, the defendant. 12) Roland Garcia lived at 1617 North Pennsylvania, Mason City, Iowa, which was in the direction he was running at the time of his arrest.

The State must prove a prima facie case of the existence of a conspiracy for the coconspirator exception to apply. State v. Blyth, 226 N.W.2d 250 (Iowa 1975). There was sufficient evidence to allow the trial court to find that the State had made a prima facie case of a conspiracy to sell cocaine, and that the defendant was involved in the conspiracy. Therefore, the coconspirator exception did apply, and the trial court did not err in allowing the taped conversation between the undercover agents, Sweeney, and Ginapp into evidence.

III.

The State argues that the Defendant's brief should not be considered because it contains general statements of issues, no divisions in the argument, lacks references to the record, and fails to include specific arguments. Defendant's brief does not conform to the requirements of Iowa R. App. P. 14. We instruct counsel to comply with the rule in the future. We will proceed to dispose of this appeal on its merits. Agans v. General Mills, 242 Iowa 978, 48 N.W.2d 242 (1951). Therefore, we have considered the appellant's arguments so far as it was possible to discern them.

However, issues III and IV in the appellant's brief are general statements which do

not contain specific assignments of error. In his argument, the appellant does not discuss any specific error, nor does he refer to the record to point out where any error was made. We could refuse to consider these two assignments. Elkin v. Johnson, 260 Iowa 46, 148 N.W.2d 442 (1967); Price v. McNeill, 237 Iowa 1120, 24 N.W.2d 464 (1946). However, we will consider the sufficiency of the evidence as a matter of grace, in order to dispose of the issue on the merits. Findings of fact in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f). "Substantial evidence" is defined as "such evidence as could convince a rational trier of fact that defendant is guilty beyond a reasonable doubt." State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). In determining the sufficiency of the evidence to support a finding of guilt, we consider all of the evidence in the light most favorable to the prosecution. Id at 340. For these purposes, direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16).

Applying these principles, we conclude that the evidence is sufficient to support the judgment. In addition to the evidence considered in division II of this opinion, there was repeated reference to a third person who was the man with the cocaine. This third person's requirements as to where the transaction was to take place were considered by the others involved. There was testimony showing a continuous conspiracy to sell a large quantity of cocaine between March 7th and March 21, 1979. A sample of cocaine was purchased from Sweeney on March 9. Sweeney referred to a guy in Mason City who was in on the deal, and to "the guy who owned the coke" as being in Mason City. He also stated Ginapp had known "this guy" for fifteen or twenty years. Sweeney stated that \$1,000 of the payment was his, and the other \$30,000 was theirs. Sweeney and Ginapp stated the man with the cocaine lived near Ginapp's house, which was near the defendant's house.

The trial court admitted and considered evidence regarding a vehicle which was parked near the grocery store. As the trial court stated in its findings of fact, "there is no evidence in this record that Paul Garcia, the registered owner of the vehicle, is in any way related to the defendant Roland Garcia". Therefore, it was error to admit and consider evidence regarding the vehicle or to make any inferences from such evidence. However, since there was other evidence which was sufficient to support the judgment, this was harmless error and will not require reversal. The defendant is entitled to a fair

trial, not a perfect one. State v. King, 256 N.W.2d 1 (Iowa 1977).

We conclude that this evidence is sufficient to convince a rational finder of fact that the defendant was guilty beyond a reasonable doubt.

Issue VI is not argued at all in appellant's brief. The issue is merely restated in the conclusion. Failure to argue an assignment of error waives such assignment. Iowa R. App. R. 14(a)(3); DeCook v. Environmental Sec. Corp., Inc., 258 N.W.2d 721, 725 (Iowa 1977); State v. Bahl, 242 N.W.2d 298, 302 (Iowa 1976); Wilkes v. Iowa State Highway Commission, 172 N.W.2d 790, 798 (Iowa 1969).

Based on the above, we affirm the trial court's judgment.

AFFIRMED.