

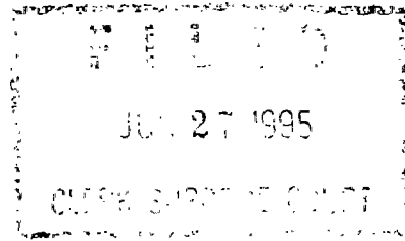
IN THE COURT OF APPEALS OF IOWA

No. 5-264 / 94-593

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ROBERT DANIEL OBLETON,
Defendant-Appellant.



Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Robert Obleton appeals from his conviction, following a bench trial, for possession with intent to deliver cocaine and failure to affix a drug tax stamp in violation of Iowa Code sections 124.401(1)(b) and 453B.12 (1993). **AFFIRMED.**

Kent A. Simmons, Davenport, for appellant.

Thomas J. Miller, Attorney General, Robert P. Ewald, Assistant Attorney General, William E. Davis, County Attorney, and Hugh Pries, County Attorney, for appellee.

Heard by Sackett, P.J., and Habhab and Cady, JJ.

SACKETT, P.J.

The question in this appeal is whether there was substantial evidence to find, beyond a reasonable doubt, defendant-appellant Robert Daniel Obleton possessed five or more grams of crack cocaine or that he possessed any crack cocaine. We find there was and we affirm.

Defendant was charged with possession with intent to deliver cocaine and failure to affix a drug tax stamp in violation of Iowa Code sections 124.401(1)(b) and 453B.12 (1993). The charge followed police surveillance of activities between defendant and Marvin Miller in the rear yard of an abandoned house in Davenport, Iowa. Defendant waived a jury and was tried to the court that found him guilty as charged and sentenced him to concurrent terms of twenty-five and five years in prison.

The question is whether there is substantial evidence to prove defendant guilty beyond a reasonable doubt. *See State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993). The findings of the trial court are broadly and liberally construed, rather than narrowly or technically construed and, in case of ambiguity, the findings will be construed to uphold, rather than defeat, the judgment. *State v. Price*, 365 N.W.2d 621, 633 (Iowa App. 1985).

The policeman, Officer Sikorski, started to observe defendant and Miller about nine o'clock in the evening. Defendant was not a known drug dealer. When the officer observed defendant and Miller, the men were standing behind an abandoned

house in an area that had a reputation for selling drugs. The officer watched the men through binoculars. He saw a man approach defendant and Miller and talk to them. He saw Miller leave with the man. Then a second man approached defendant. The officer saw defendant put his hand in his coat pocket, pull it out and show something to the man. The man looked at the palm of defendant's hand and the man picked something from defendant's palm. There was testimony this was consistent with the sale of cocaine. The officer then saw the man give defendant what the officer said appeared to be folded money. Defendant next went to the yard behind the abandoned house, bent over and picked something up. The officer could not see what it was, but he noted defendant fiddled with it for a few seconds and then bent over and put it back down and walked back to the alley.

Miller then returned and joined defendant. Then a car pulled up and stopped and Miller and defendant went to the driver's window and talked to the driver. Defendant reached in his pocket and the officer saw a hand-to-hand exchange with the driver. The car was not stopped.

The officer then decided to make the arrest and, as the officer called for help, two other people walked up to defendant and Miller. The officers made both Miller and defendant lay on the ground. An officer saw a baggie fall from Miller's waist as they put him on the ground. The baggie was found on the ground underneath Miller. There were five rocks of crack cocaine in the bag that weighed 1.16 grams. Miller

also had in his possession \$515 in cash. No cocaine or other controlled substance was found on defendant's person.

The officers subsequently searched the area and the police found a pink plastic vial in the yard of the abandoned house that contained forty-five rocks of crack cocaine weighing over seven grams. To find defendant guilty as charged, it was necessary to find he had custody or control of the forty-five rocks of cocaine.

The State claims the evidence that Sikorski saw defendant bend down and pick something up and put it back down coupled with the discovery of the vial is sufficient evidence to show this fact. Defendant's fingerprints were not on the vial but the State introduced evidence that one does not always leave a fingerprint. At trial, Sikorski identified the area where the vial was found as the area where he saw defendant bend down and pick something up. Defendant contends this is not sufficient because the officer who ultimately found the vial had to search for a half hour and, prior to the search, Sikorski had not identified the area where the vial was found.

The fact there may have been conflict in the evidence does not support defendant's position. There is evidence from which a fact finder could find beyond a reasonable doubt that Sikorski identified the area where defendant bent down and picked something up and put it down as the area where the vial was found. Additionally, there was testimony the activities defendant engaged in prior to the officers' intervention had the characteristics of drug sales. We agree with defendant there could be other reasonable explanations for the activities Sikorski observed.

However, these activities coupled with the discovery of the cash and crack cocaine are sufficient evidence for a rational fact finder to determine beyond a reasonable doubt that defendant was in possession of five or more grams of crack cocaine.

Defendant also challenges evidence of aiding and abetting. He contends there was not sufficient evidence he was aiding and abetting Miller. Defendant claims there was no evidence to show he knew Miller had cocaine in his possession. The State argues the observations of Sikorski support a finding the men were working together. We need not find that they were because there was substantial evidence tying defendant to the vial containing crack cocaine weighing 7.22 grams, an amount above the requirement that the State show defendant had in his possession or under his control of at least five grams.

AFFIRMED.