IN THE COURT OF APPEALS OF IOWA

No. 0-248 / 99-975
Filed May 31, 2000

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TYKEL D. ROBINSON,
Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Woodbury County, Phillip S. Dandos, Judge.

Defendant appeals from the judgment and sentence entered upon his conviction, following a bench trial, of possession of cocaine with intent to deliver and failure to affix a drug tax stamp. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Stephan J. Japuntich, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, Thomas S. Mullin, County Attorney, and James J. Katcher, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink and Vaitheswaran, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

Robinson was charged with possession of cocaine with intent to deliver and a drug tax stamp violation following a traffic stop of a car in which he was riding. The trial record indicates a Sioux City police officer saw Robinson get into a car parked near a residence where police officers had made a recent controlled drug purchase. Officers stopped the car after determining its license plates did not match the car.

When the car stopped, Robinson got out and attempted to flee. During the resulting foot chase, Robinson discarded his coat. After subduing Robinson, officers retraced the path of Robinson's flight and discovered three bags of cocaine in some shrubbery near a church along Robinson's flight path.

After a bench trial the district court made the following findings of fact:

> The only question here is whether Robinson dropped the three Baggies of cocaine in the shrubbery near the church. The evidence proves beyond a reasonable doubt that he had both the reason and opportunity to do so and that his actions were those of a person who had been in possession of the three Baggies of cocaine before he threw them in the shrubbery. The amount of cocaine shows an intent to deliver the cocaine. Further, the cocaine did not have affixed to it the appropriate drug tax stamp. The amount was over 22 grams, more than the 7 grams on which a tax stamp must be affixed.

Based on these and other findings, the court found Robinson guilty of possession of cocaine with intent to deliver cocaine and a drug tax stamp violation in violation of Iowa Code section 124.401(e)(2), 453B.1 and 453B.12. The court, however, rejected the State's claim that Robinson had the intent to deliver cocaine within 1000 feet of a school. *See* Iowa Code § 124.401A.

Robinson was sentenced to concurrent ten and five-year terms of confinement. He was also ordered to pay a statutorily required fine, surcharge, and court costs. On appeal Robinson challenges the sufficiency of the evidence supporting his conviction. He also claims he was denied effective assistance of trial counsel.

II. Sufficiency of Evidence.

A. Standard of Review. Our standard of review for claims of insufficient evidence is well established. We review such claims for errors at law. Iowa R. App. P. 4.; *State v. McFarland*, 598 N.W.2d 318, 320 (Iowa App. 1999).

B. Merits. A verdict of guilty is binding on appeal unless no substantial evidence in the record exists to support, or it is clearly against, the weight of the evidence. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa App. 1998). Substantial evidence means evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *State v. Maghee*, 573 N.W.2d 1, 10 (Iowa 1997). In determining the sufficiency of the evidence, we view the evidence in the light most favorable to the State. *State v. Milner*, 571 N.W.2d 7, 10 (Iowa 1997). All evidence is considered, not merely the evidence supporting the verdict. *Shortridge*, 589 N.W.2d at 80. Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14 (f)(16). Although a jury verdict can rest on circumstantial evidence, the evidence must raise a fair inference of guilt as to each element of the crime. *McFarland*, 598 N.W.2d at 320.

Robinson contends the district court made impermissible inferences of guilt based on his flight from the scene of the traffic stop. He argues this

evidence does not support the court's finding that he either possessed crack cocaine or intended to deliver it. We disagree.

The State correctly notes that the record includes more than evidence of Robinson's flight and the district court's resulting inference of guilt. The record also includes evidence of drug residue found on the car seat where Robinson was seated prior to the traffic stop. The location where the drugs were found and evidence that a trained drug dog detected the scent of drugs near the place where Robinson's coat was found lend additional evidentiary support for the district court's findings. Lastly, we note expert testimony indicating the quantity of cocaine, twenty-two ounces, was consistent with dealing drugs and exceeds the amount required for purchasing a tax stamp. Because this evidence provides substantial support for the district court's findings of fact and resulting verdicts, we affirm.

III. Ineffective Assistance of Counsel.

Robinson argues his counsel provided ineffective assistance by (1) failing to file a motion to suppress the drugs and (2) failing to file a motion for a new trial. We conclude there is an inadequate record for us to adjudicate Robinson's claims without counsel's explanation. We therefore preserve Robinson's ineffective assistance of counsel claims for postconviction proceedings. *See State v. Atley*, 564 N.W.2d 817, 833 (Iowa 1997).

AFFIRMED.