IN THE COURT OF APPEALS OF IOWA

No. 0-73 / 98-1451
Filed March 29, 2000

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CLERK SUPREME COURT

STATE OF IOWA,

Plaintiff-Appellee,

vs.

CHERYL BLANCHARD,

Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, James D. Scott, Judge.

Defendant appeals from her conviction for possession of methamphetamine with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, Stephan J. Japuntich, Assistant State Appellate Defender, and Lisa Lemons, Student Intern, for appellant.

Thomas J. Miller, Attorney General, Denise A. Timmins, Assistant Attorney General, Thomas S. Mullin, County Attorney, and James Katcher, Assistant County Attorney, for appellee.

Heard by Huitink, P.J., and Streit and Miller, JJ.

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STREIT, J.

A judge is "one who populates the city jails by grave decisions—heads or tails." Cheryl Blanchard likens her criminal conviction of possession with intent to deliver methamphetamine to such a coin flip. She claims her story, that the drugs in her possession were for personal use, was just as likely as the State's version of the events, and that she simply lost the coin flip. She attacks her conviction asserting the State failed to prove she had the requisite intent to deliver, the conviction was contrary to the weight of the evidence, and the trial court erred in admitting some damaging statements she made to the police. As we find her claims without merit, we affirm the conviction.

I. Background Facts & Proceedings.

In late October of 1997 an officer with the Sioux City Police Department had just finished assisting a fellow officer on a routine traffic stop when he spotted a van, previously tied to narcotics, with an equipment violation. The officer stopped the van and found it driven by the defendant, Cheryl Blanchard. The officer arrested Blanchard on an outstanding warrant. Blanchard consented to a search of the van. In Blanchard's purse the officer found a bag of low quality marijuana, four plastic bags of methamphetamine, and thirty-two dollars. The plastic bags containing the methamphetamine were tied off and the ends melted forming a seal. When confronted with the officer's findings, Blanchard admitted to possessing approximately two grams of methamphetamine, using methamphetamine earlier in the day, and to occasionally giving drugs to her sisters. Blanchard was charged with possession with intent to deliver

methamphetamine and possession of marijuana. Blanchard claimed the drugs were for her personal use only.

After the court overruled her motion for acquittal, the jury convicted Blanchard as charged. Blanchard filed a motion for a new trial alleging various problems with the jury deliberations. The court overruled the motion and sentenced Blanchard in accordance with the statutory prescriptions.

Blanchard appeals claiming the trial court erred in permitting evidence of her admissions, in overruling her motion for acquittal, and in denying her motion for new trial.

II. Admission of Blanchard's Statements.

Blanchard first claims the trial court erred in admitting into evidence her alleged statement of occasionally giving drugs to her sisters.

A. Standard of Review. We review evidentiary claims of error for an abuse of discretion. *State v. Sallis*, 574 N.W.2d 15, 16 (Iowa 1998).

B. The Merits. Evidence of prior bad acts is not admissible to show a general propensity to commit crime. *State v. Haskins*, 573 N.W.2d 39, 45 (Iowa App. 1997). Evidence of prior bad acts may be admitted, however, for one or more of the nonexclusive purposes listed in Iowa Rule of Evidence 404(b). *Id.* Iowa Rule of Evidence 404(b) provides:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The explanative list provided in rule 404(b) is not exhaustive. *State v. Brown*, 569 N.W.2d 113, 116 (Iowa 1997). Rather, the court employs a tiered analysis in reviewing admission of prior bad acts. *State v. Uthe*, 542 N.W.2d 810, 814 (Iowa 1996). The first tier requires the evidence be relevant for a purpose other than to show the general propensity of the defendant to commit crime. *Id.* If the evidence clears the relevancy hurdle, the court must then turn to the second tier of analysis: whether the probative value of the evidence "is substantially outweighed by the danger of prejudice." Iowa R. Evid. 403.

Evidence is relevant when it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Iowa R. Evid. 401. The balance between the probative value of the evidence and its prejudicial nature is tipped in favor of being unduly prejudicial when it:

> appeals to the jury's sympathies, arouses its sense of horror, provokes its instinct to punish, or triggers other mainsprings of human action [which] may cause a jury to base its decision on something other than the established propositions in the case.

State v. Plaster, 424 N.W.2d 226, 231 (Iowa 1988).

Admitting Blanchard's statement was relevant not to show she was a bad person but that she possessed the requisite intent to deliver a controlled substance. The core issue surrounding trial was the intended use of the drugs found on her person. Blanchard claimed the drugs were for her personal use, whereas the State argued they were intended for distribution. A statement concerning her past delivery of drugs can be viewed as illuminating the intended

purpose of the methamphetamine in the present case. The evidence therefore was clearly relevant.

Clearing the relevancy hurdle, we now turn to balancing the probative value of the evidence with the prejudice connoted by admission of prior bad acts. Evidence of Blanchard's previous deliveries is extremely probative of her intent. Because intent is a mental state, we must rely on circumstantial evidence in grasping the internal motivations of the accused. Blanchard's admission of prior deliveries tends to elucidate those internal motivations and is very probative. Also, the threat of prejudice was slight. Blanchard's defense throughout trial was her possession of the methamphetamine was for personal use only. She detailed her lengthy history of drug addiction and showed the jurors the needle tracks in her arms. The fact she occasionally gave drugs to her sister does not give rise to the level of inflammatory prejudice contemplated by Iowa Rule of Evidence 403. The trial court did not abuse its discretion in admitting the evidence.

III. Motion for Acquittal.

Blanchard's second claim of error is the trial court erred in denying her motion for acquittal. She claims the State failed to prove she had the requisite intent to deliver a controlled substance.

A. Standard of Review. We review claims of insufficient evidence for errors at law. Iowa R. App. P. 4. A jury's guilty verdict is binding upon us unless we conclude the record lacks substantial evidence to support such a finding. *State v. Bush*, 518 N.W.2d 778, 779 (Iowa 1994). Substantial evidence means

such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *State v. Taft*, 506 N.W.2d 757, 762 (Iowa 1993). Substantial evidence does not, however, denote some elevated quantity of proof. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). Rather, the relevant question in our review of the case "is whether, after viewing all the evidence in the light most favorable to the prosecution, any rational trier of facts could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

B. The Merits. Evidence of intent is rarely capable of direct proof. *State v. Delay*, 320 N.W.2d 831, 835 (Iowa 1982). Therefore, "proof of intent usually consists of circumstantial evidence and the inferences that can be drawn from that evidence." *State v. Adams*, 554 N.W.2d 686, 692 (Iowa 1996) (citation omitted). The requirement of proof beyond a reasonable doubt is satisfied if it is more likely than not the inference of intent is true. *State v. McFarland*, 598 N.W.2d 318, 321 (Iowa App. 1999). In finding intent, the jury may rely on its common experiences and observations. *State v. Serr*, 322 N.W.2d 96, 101 (Iowa App. 1982). The quantity and packaging of a controlled substance may be construed as indicia of an intent to deliver. *State v. See*, 532 N.W.2d 166, 169 (Iowa App. 1995).

When we take the manner in which the methamphetamine was packaged, the officer's expert testimony that such packaging is indicative of drug pushing, and Blanchard's own statements regarding past deliveries, we find a rational trier of facts could have found Blanchard had the requisite intent to deliver beyond a

reasonable doubt. The jury was free to believe or disbelieve Blanchard's theory the packages were more consistent with personal use rather than distribution. The jury accepted the State's explanation of the packaging, and there was sufficient evidence of the defendant's intent to deliver.

IV. Motion for New Trial.

Blanchard's final claim of error is the trial court erred in denying her motion for new trial. She claims the jury's verdict was against the weight of the evidence.

A. Standard of Review. Iowa Rule of Criminal Procedure 23(2)(b)(6) gives a trial court the discretionary ability to grant a new trial if the verdict is contrary to the evidence. The phrase "contrary to the evidence" calls upon the trial court to weigh the credibility of the evidence presented by each party and determine which side garners greater support. *State v. Ellis*, 578 N.W.2d 655, 657-58 (Iowa 1998). This is in stark contrast to the sufficiency-of-the-evidence standard utilized in a motion for acquittal where the court is only to view the evidence in the light most favorable to the State. *Id.* at 658. Therefore, in a motion for new trial the trial court is armed with far more expansive powers. *Id.* at 658-59. It is not hobbled by a narrowed view of the evidence, but is permitted to weigh the evidence and assess the credibility of the witnesses. *Id.* at 659. Despite the trial court's wide discretion in granting such motions, the court is to employ this broad sword sparingly and only after careful contemplation. *Id.*

B. The Merits. The trial court did not abuse its discretion in denying Blanchard's motion for new trial. Blanchard's statements to the officer, the expert

testimony of the officer, and the packaging of the methamphetamine belie her claim the drugs were strictly for her personal use. Furthermore, Blanchard's extensive history of criminal dishonesty reflects poorly on her credibility. The trial court correctly concluded the weight of credible evidenced tipped in favor of upholding the jury's verdict. The conviction is affirmed.

AFFIRMED.