IN THE COURT OF APPEALS OF IOWA

No. 0-636 / 00-0125
Filed November 8, 2000

FILED
NOV 08 2000
CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

JAMES WESLIE LARIMER,
Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge.

Defendant appeals the judgment and sentence entered upon a jury verdict finding him guilty of possession of a controlled substance, third offense, in violation of Iowa Code section 124.401(5) (1999). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Robert P. Ranschau, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Thomas S. Tauber, Assistant Attorney General, John P. Sarcone, County Attorney, and Chuck Kenville, Assistant County Attorney, for appellee.

Considered by Streit, P.J., and Vogel and Miller, JJ.

VOGEL, J.

James W. Larimer appeals the judgment and sentence entered upon a jury verdict finding him guilty of possession of a controlled substance, third offense, in violation of Iowa Code section 124.401(5) (1999). We find the record contains sufficient evidence to support the verdict and affirm.

Background facts. On July 29, 1999, Officer Jeffrey Cronin observed a vehicle parked in an Osco Drug Store parking lot. The store was closed and the lot was dark. He pulled into the lot and asked Larimer if his car was broken down. Larimer hesitantly responded that it was not and that he was waiting for someone. Officer Cronin, noticing that Larimer seemed very nervous, asked for his name. Larimer hesitated, then responded with "Jerry" and began to pace with his hands in his pocket. Officer Cronin got out of his vehicle. Larimer stopped pacing and Officer Cronin observed him to be standing on several plastic baggies containing rocks, which later tested positive as crack cocaine. The officer put Larimer in handcuffs and completed a pat-down search, revealing a push rod, associated with the use of a crack pipe. Larimer was convicted of possession of a controlled substance, third offense, and sentenced to a five-year indeterminate term of incarceration, which was suspended, a two-year probationary period, and a $500 fine, also suspended.

Scope of review. Our standard of review is well settled. A verdict will be upheld where there is substantial evidence to support the charge. *State v. LeGear,* 346 N.W.2d 21, 23 (Iowa 1984). 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. *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Blair,* 347 N.W.2d 416, 418-19 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Laffey,* 600 N.W.2d 57, 59 (Iowa 1999).

Sufficiency of the evidence. Larimer asserts the record contains insufficient evidence to allow the jury to arrive at a guilty verdict and, therefore, the trial court should have granted his motion for judgment of acquittal. The State contends the evidence was sufficient for a rational trier of fact to find Larimer guilty of possession of a controlled substance.

Larimer alleges the crack cocaine found under his foot in the vacant parking lot could have been dropped there by anyone without his knowledge and the evidence was insufficient to tie him to possession of that narcotic. The State argues the jury was justified in making several legitimate inferences and these presumptions must be considered as part of the record on appeal.

The record shows Larimer was waiting at night in the dark parking lot of a closed store to meet someone. Officer Cronin addressed him. Observing Larimer's hesitant and nervous mannerisms, the officer exited his vehicle, at which point, Larimer stopped pacing. Officer Cronin then noticed that Larimer was standing on several baggies containing what appeared to be rocks of crack cocaine. Larimer alleges he had no knowledge of the baggies' presence under his feet but the jury was free to infer otherwise considering the drug was in rock

form. In addition, the officer found a push-rod in Larimer's shirt pocket, which he testified is often used to insert a Brillo-pad like material into a pipe to keep the crack in place as it is lit and inhaled. Larimer argues the jury should not have considered this item because the push-rod was not retained and offered as evidence for the jury to see. Officer Cronin, however, testified as to the physical description of the item and its common use among crack cocaine users. The jury could have found the officer to be a credible witness and accepted his experience with such items. Larimer further asserts Officer Cronin did not see him drop the narcotics and, given the fact that the general public had access to the parking lot, the evidence was not sufficient to tie him to the possession of the drugs. Officer Cronin testified that it is not common to find drugs laying around unattended in vacant parking lots. The jury could have made an inference that due to the monetary value and illegal nature of crack cocaine, Larimer's theory that someone else had previously placed the drugs in the exact spot he happened to be standing when the officer arrived was simply not credible. They could have determined that the State's theory wherein Larimer was confronted by the officer, became nervous and began pacing then dropped the narcotics and attempted to conceal them with his foot was the more credible version of events.

We find the evidence in the record, when considered together with the reasonable inferences available to the jury, constitutes substantial evidence to allow the jury to find Larimer guilty of possession of an illegal narcotic beyond a reasonable doubt. Accordingly, we affirm.

AFFIRMED.