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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

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| STATE OF IOWA, | ) | |
| Plaintiff-Appellee, | ) | Filed November 24, 1981 |
| vs. | ) | 1-291 / 65630 |
| KAILON COX GOETTSCHE, | ) | |
| Defendant-Appellant. | ) | |

Appeal from Pottawattamie District Court, Keith E. Burgett, Judge.

The defendant appeals from his conviction for delivery of cocaine for profit in violation of Section 204.401(1)(a), The Code 1979. AFFIRMED.

Charles L. Harrington of the State Appellate Defender's Office, for defendant-appellant.

Thomas J. Miller, Attorney General, and Richard L. Cleland, Assistant Attorney General, for defendant-appellant.

Heard by Oxberger, C.J., and Donielson, Carter, Snell, and Johnson, JJ.

**PER CURIAM** 

The defendant appeals from his conviction for delivery of cocaine for profit in violation of Section 204.401(1)(a), The Code 1979. We affirm.

The defendant was charged with delivery of cocaine for profit on March 24, 1980. On May 6, 1980, the defendant withdrew his plea of not guilty, waived his right to jury trial, and admitted that he had delivered cocaine on the date charged but that he had not done so for a profit. Trial to the court was held with profit being the only issue. The court found the defendant guilty as charged.

The defendant argues that the trial court erred in overruling his motion for acquittal and finding him guilty because the evidence was insufficient to establish the profit element. We disagree.

We consider the evidence in the light most favorable to the State. The evidence in this case shows a typical undercover purchase of cocaine. There had been three previous transactions between the defendant and the state agents. On the first occasion, the defendant provided the undercover agents with a small quantity of marijuana and three black capsules, purported to be a controlled substance, with the understanding that these were samples of defendant's products. No money changed hands during this transaction.

Two days later, the defendant requested that the agents meet him at his place of business. The agents purchased from the defendant 300 of the black capsules which had previously been shown to them for $165. The officers asked the defendant if he was taking care of himself. The defendant responded, "Let's say I don't do nothing for free."

About one month later the agents met with the defendant, who provided them with free samples of his drugs.

About two months later, on September 18, 1979, the events occurred that led to the current charge. The agents called the defendant to ask about the purchase of drugs. The defendant stated that cocaine was available for $600 per one-quarter ounce. The agents agreed to purchase one-quarter ounce. The agents met the defendant, who stated he had only $300, and the agents would have to advance him the other $300 so he could make the purchase. The agents did so, and the defendant left and returned sometime later with the cocaine. He then delivered approximately one-eighth ounce of cocaine to the agents, although they had originally agreed to purchase one-quarter ounce. Agent Birnie testified that the defendant stated he really appreciated the agents pooling their money with him because it allowed him to get a price break on the cocaine. "Profit" has been defined as "the excess of returns over expenditures in a given transaction or series of transactions." State v. Didley, 264 N.W.2d 732, 733 (Iowa 1978). The State offered no evidence to show whether the defendant obtained an excess of returns over expenditures. However, the State is not required to prove that the defendant actually obtained a profit, only that his purpose was to make a profit. State v. Hillsman, 281 N.W.2d 114 (Iowa 1979).

The defendant stated he appreciated the agents pooling their money with his so he could obtain a discount on the price by buying in quantity. There was no evidence to show that this half of the cocaine purchased was for anything other than the defendant's own use. Assuming arguendo that there was no intent to receive an excess of returns over expenditures for this one-half of the drugs purchased, the question remains as to the defendant's intent with regard to the other half of the drugs purchased.

The State is not required to produce direct evidence that the defendant's purpose was to make a profit. Circumstantial evidence is enough. State v. Didley, 264 N.W.2d 733 (Iowa 1978). The evidence showed a continuing series of transactions in which the defendant supplied drugs, and the agents received them either by purchase or as free samples. The defendant stated he "didn't do nothing for free." This statement, and the circumstances surrounding the transactions, were sufficient evidence to create an issue for the finder of fact as to whether the defendant intended to profit from his sale of the one-eighth ounce of cocaine to the officers. The judge, as finder of fact in the jury-waived trial, held that the defendant intended to profit from the sale. We affirm that finding.

AFFIRMED.