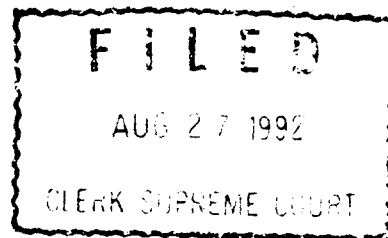


IN THE COURT OF APPEALS OF IOWA

No. 2-276 / 91-702



STATE OF IOWA,

Appellee,

vs.

JAMES ALTON TURNER, JR.,

Appellant.

Appeal from the Iowa District Court for Scott County,
James R. Haverkamp, Judge.

James Turner appeals his judgment and sentence entered upon his conviction for possession with intent to deliver a controlled substance, cocaine, in violation of Iowa Code section 204.401(1)(c). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Martha E. Boesen, Assistant Attorney General, William E. Davis, County Attorney, and Hugh J. Pries, Assistant County Attorney, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

HAYDEN, J.

On December 7, 1990, James Turner and Richard Rogers were charged by trial information with two counts of delivery of a controlled substance. Turner was also charged with possession of cocaine with intent to deliver. Rogers was charged with delivery of marijuana.

Prior to trial Turner filed a motion to sever his case from Rogers' and to sever his possession with intent to deliver charge from the other charges. The defendant contended the charges were not part of a common scheme. The district court denied the motion to sever. Prior to trial Rogers entered a guilty plea to all charges against him.

Turner's case proceeded to trial in March of 1991. At trial evidence was presented concerning meetings between Rogers and a confidential informant in October of 1990. On October 17 and 23, 1990, Rogers sold crack cocaine to the informant. On both occasions Rogers was seen meeting with Turner and then returning to the informant with the crack cocaine. A police officer also testified he observed Turner on October 25, 1990, searching a yard, picking up an item, and then dropping an item near a tree when officers approached him. After Turner left the scene the officers found a film canister filled with eleven individually wrapped rocks of crack cocaine in the location where Turner had been searching. One officer testified this amount of crack cocaine could possibly be for personal use, however,

the amount and the packaging indicated it was consistent with drug dealing.

The jury acquitted Turner on the two delivery of cocaine charges but found him guilty on the possession with intent to deliver charge. The district court overruled Turner's motion for a new trial and sentenced him to ten years. Turner has filed this appeal.

Our standard of review requires a verdict to be upheld when substantial evidence supports the charge. State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means evidence which could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). The court views the evidence 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, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence supporting the verdict. Id.

The defendant alleges the State's evidence is insufficient to convince a rational trier of fact beyond a reasonable doubt the defendant committed the crime of possession with intent to deliver. The elements of possession of cocaine with the intent to deliver are: (1) the defendant knowingly possessed cocaine, (2) the defendant knew the substance he possessed was cocaine, and (3) the defendant possessed the cocaine with the intent to

deliver it. We find the evidence, especially with regard to the defendant's interactions with Rogers at the time of the cocaine sales to the informant and the defendant's search of an area in which cocaine was found, sufficiently supports the conviction. We affirm.

The second issue is whether the district court properly denied the defendant's motion to sever the possession charge from the other two drug charges. The defendant alleges the district court abused its discretion in denying severance and consequently prejudiced the defendant's case. A court may sever charges if a defendant carries the burden of showing his or her interests in receiving a fair trial outweighs the State's interest in judicial economy. State v. Gibb, 303 N.W.2d 673, 677 (Iowa 1981) (citations omitted). The grouping of controlled substance violations is governed by statute. Iowa Code section 204.408 provides, in part:

The court may grant a severance and separate trial to any accused person jointly charged or indicted if it appears that substantial injustice would result to such accused person unless a separate trial was granted.

Iowa Code § 204.408 (1991). The defendant failed to show any prejudice from the district court's denial to sever the charges. All of the charges involved violations of Iowa law regarding controlled substances, occurred in close proximity with regard to time, and indicate the defendant was participating "in a common scheme or plan" to sell cocaine. See State v. Lam, 391 N.W.2d 245, 250 (Iowa

1986). We find the district court did not abuse its discretion in denying severance, and affirm.

The costs of this appeal are taxed to Turner.

AFFIRMED.