IN THE COURT OF APPEALS OF IOWA

FILED
JAN 26 1989
CLERK SUPREME COURT

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STATE OF IOWA,	)	
Plaintiff-Appellee,	)	
vs.	)	
JAMES FREDERICK SUTOR, JR.,	)	8-617 88-116
Defendant-Appellant.	)	

Appeal from the Iowa District Court for Polk County (No CR 34989), Anthony M. Critelli, Judge.

Defendant appeals his conviction, following a bench trial, for conspiracy to deliver a controlled substance (cocaine). **AFFIRMED.**

Dennis L. Eaton, Des Moines, for the defendant-appellant.

Thomas J. Miller, Attorney General; Ann E. Brenden, Assistant Attorney General; and George Karnas, Assistant County Attorney, for plaintiff-appellee.

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

PER CURIAM

Defendant James Frederick Sutor, Jr., appeals from his conviction, in a bench trial, of conspiracy to deliver a controlled substance (cocaine). The trial court found defendant and another, John Buckley, conspired on March 27, 1987, to sell cocaine to an undercover police officer. The single error urged on appeal is the insufficiency of the evidence to support defendant's conviction.

The State contends defendant has waived his right to challenge the sufficiency of the evidence by failing to make a motion for judgment of acquittal in the trial court. We need not address this issue because we find substantial evidence to support defendant's conviction.

We consider the evidence in the light most favorable to the State. State v. McFadden, 320 N.W.2d 608, 614 (Iowa 1982). The verdict must be upheld if supported by substantial evidence. Id. Substantial evidence means such evidence as could convince a rational trier of fact that the defendant is guilty beyond a reasonable doubt. Id. We allow the State all legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Blair, 347 N.W.2d 416, 419 (Iowa 1984). Direct and circumstantial evidence are equally probative. State v. Duncan, 312 N.W.2d 519, 522 (Iowa 1981). These principles apply to a review of verdicts following trial to the court, as well as jury verdicts. See State v. Miles, 346 N.W.2d 517, 519-20 (Iowa 1984).

The crime of which defendant was convicted was a violation of section 204.401: "[e]xcept as authorized by this chapter, it is unlawful for any person to . . . conspire with one or more other persons to . . . deliver . . . a controlled substance." Iowa Code (1987).

The evidence in this case, when viewed in the light most favorable to the State, allows the rational fact finder to determine the following set of facts. On or about March 27, 1987, undercover police officers Randy Dawson and Debbie Richardson were introduced to John Buckley for the purpose of buying three to five ounces of cocaine. The officers were able to purchase one ounce of the illegal drug right away. They paid Buckley $1,900 in marked one-hundred dollar bills, but they were told he had to call his "source" before he could get another four ounces. The undercover officers and Buckley drove to a nearby bar. The call was made. Buckley, followed by Officers Hickle and Anderson, left Cooney's and drove to another bar, the Gin Mill. The officers observed Buckley inside the bar sitting with the defendant and a woman. Soon the defendant, Buckley and the woman left. The officers followed three or four minutes later. The officers observed Buckley in his car, the woman in another car, and the defendant walking away from Buckley's car to enter the woman's car. The officers followed Buckley back to Cooney's. A few minutes later Buckley and Officer

Dawson came out of the bar. Buckley was arrested and found to have another ounce of cocaine with him but he no longer had the money. The defendant was then arrested and found to be in possession of the $1,900 in marked bills.

From these facts the court was justified in finding defendant was the source of the controlled substance defendant delivered to Buckley who in turn delivered it to the police officer. There is substantial evidence to support the conviction.

AFFIRMED.