# IN THE COURT OF APPEALS OF IOWA

No. 5-152 / 94-0643

**STATE OF IOWA,**
Plaintiff-Appellee,

**vs.**

**CHARLES MILLER a/k/a MARVIN L. MILLER,,**
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Defendant appeals from judgment and sentences entered upon his convictions of possession of crack cocaine with intent to deliver and failure to affix a drug tax stamp, in violation of Iowa Code sections 124.401(1)(b) and 453B.12 (1993). **AFFIRMED.**

James Bryson Clements, Davenport, for appellant.

Thomas J. Miller, Attorney General, Susan Crawford and Ann E. Brenden, Assistant Attorneys General, William E. Davis, County Attorney, and Hugh Pries, Assistant County Attorney, for appellee.

Heard by Habhab, P.J., and Cady and Huitink, JJ.

**HABHAB, P.J.**

On October 30, 1993, Officer Paul Sikorski received information about a complaint that two individuals were standing in an alleyway near a municipal parking lot between 14th and 15th Streets in Davenport. Officer Sikorski testified the area was the subject of numerous complaints of criminal activity. Officer Sikorski drove to the area to investigate. He observed two men standing behind an abandoned house near the alley. He drove through the parking lot and recognized one of the men as Robert Obleton, the codefendant in this case. At trial, Officer Sikorski identified Charles Miller as the other man he observed in the alley.

Officer Sikorski drove around the block and parked. He was able to observe the two men with the aid of binoculars. After about ten minutes, Sikorski saw another man approach and speak briefly with Miller and Obleton. Miller walked away with this man.

Another man entered the alley and approached Obleton. Obleton and this man spoke briefly, then Obleton put his hand in his pocket and extended his hand toward the man's face. The man appeared to pick up an object from Obleton's hand. The officer then observed the man hand something to Obleton. Officer Sikorski believed he had witnessed a drug transaction.

Obleton then walked to the yard of a nearby vacant house, bent down and appeared to pick something up. Obleton then bent down again and then returned to the alley. Miller returned to the alley alone.

A few minutes later, a silver or gray Chevrolet Cavalier pulled up beside the two men. There was one person in the vehicle and Obleton, standing on the driver's side, spoke with the person. Obleton put his hand in his pocket, then made a hand-to-hand exchange with the driver.

At this point, Officer Sikorski called other officers into the area to detain Miller and Obleton. As he waited for assistance, two more people entered the alley. Several officers converged on the alley area and apprehended all four persons, directing them to lie on the ground.

Officer Lindbom saw a plastic bag fall from Miller's waist when he was ordered to the ground. Miller laid on top of the plastic bag. After Miller was searched, Officer Lindbom retrieved the bag, which contained five separately wrapped rocks of crack cocaine. The crack weighed 1.16 grams.

Officer Sikorski directed the officers to search the alley and yard of the abandoned house. In that yard, Officer Snyder found a pink plastic container holding forty-five individually wrapped rocks of cocaine. This crack weighed 7.22 grams. A latent fingerprint found on the container did not match either Miller or Obleton.[1] Miller and Obleton were arrested and transported to the police station.

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[1] A fingerprint expert testified that this fact does not exclude either Miller or Obleton from ever having touched the container.

During booking, police removed $515.10 from Miller's pocket and $150 from Obleton's pocket. Obleton told officers he was unemployed. The booking report did not indicate whether Miller was or was not employed.

Miller and Obleton were charged with possession with intent to deliver crack and with failure to affix drug tax stamps. Following a bench trial, the district court concluded that "both defendants possessed more than seven grams of cocaine and they aided and abetted one another in their common scheme of possessing the cocaine with the specific intent of delivering it to other persons in return for money." They were also found guilty on the drug tax stamp charge. Miller's motion for new trial was overruled.

Miller appeals. We affirm.

The scope of review is for errors at law. Iowa R. App. P. 4. Ordinarily, the grant or denial of a new trial is committed to the sound discretion of the trial court, reviewable on appeal only for abuse of the discretion. *State v. Belt*, 505 N.W.2d 182, 184 (Iowa 1993). In addition, there is the issue of whether there is substantial evidence to prove defendant guilty beyond a reasonable doubt. *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993). In this respect, the findings of the trial court are broadly and liberally construed, rather than narrowly or technically construed, and, in case of ambiguity, the findings will be construed to uphold, rather than defeat, the judgment. *State v. Price*, 365 N.W.2d 632, 633 (Iowa App. 1985).

Miller asserts the district court erred in failing to grant his motion for a new trial based on his contention the conviction for possession with intent to deliver crack cocaine and failure to affix a drug tax stamp were contrary to the evidence.

The theory upon which Miller was convicted for possession with intent to deliver was aiding and abetting.

> To convict one of a crime on the theory of aiding and abetting, the State must produce substantial evidence that the accused
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> > assented to or lent countenance and approval to the criminal act either by active participation in it or by some manner encouraging it prior to or at the time of its commission.
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> *State v. Lott*, 255 N.W.2d 105, 107 (Iowa 1977). It is true the State must prove the accused knew of the crime at or before its commission. But such proof need not be -- and frequently cannot be -- established by direct proof. The proof may be either direct or circumstantial. *State v. Buttolph*, 204 N.W.2d 824, 825 (Iowa 1972).
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> Although such knowledge is essential, neither knowledge nor proximity to the scene is -- standing alone -- enough to prove aiding and abetting. *State v. Vesey*, 241 N.W.2d 888, 891 (Iowa 1976). But -- as the State points out -- such factors in combination with circumstantial evidence such as "presence, companionship, and conduct before and after the offense is committed" may be enough from which to infer a defendant's participation in the crime. *State v. Miles*, 346 N.W.2d 517, 520 (Iowa 1984).

*State v. Lewis*, 514 N.W.2d 63, 66 (Iowa 1994). We find the record supports the conviction on an aiding and abetting theory.

Miller and Obleton were arrested in an area known as a drug-dealing area. Officer Sikorski observed that Miller was present during the transaction involving the Chevrolet Cavalier. Officer Sikorski saw both Miller and Obleton talk to the passenger in the car. It appears clear Miller knew of the crime at or before its

commission. In fact, this observation shows both knowledge and proximity. In addition, Miller was carrying, at the time he was arrested, over $500 in small denominations and five individually wrapped rocks of crack cocaine wrapped in the same manner as the crack cocaine found in the plastic container. Possession of these items at the time of the arrest also links Miller to the common scheme of possession with intent to deliver. *See State v. Dandridge*, 213 N.W.2d 903, 904 (Iowa 1974); *State v. Birkestrand*, 239 N.W.2d 353, 362 (Iowa 1976); *State v. Ramirez*, 485 N.W.2d 857, 860 (Iowa App. 1992).

We conclude the conviction for possession of crack cocaine with intent to deliver was not contrary to the evidence based on an aiding and abetting theory. We further conclude Miller's guilt in aiding and abetting sufficiently links him to the plastic container of crack cocaine which supports his conviction of the drug tax stamp violation. We find the district court did not abuse its discretion in denying the motion for a new trial.

**AFFIRMED.**