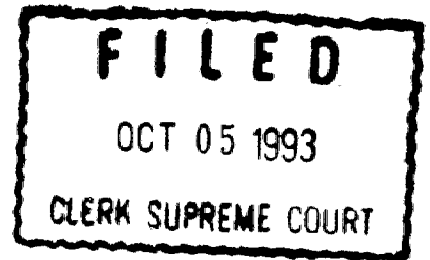


IN THE COURT OF APPEALS OF IOWA

No. 3-423 / 92-1566



STATE OF IOWA,

Appellee,

vs.

DARRYL F. JACKSON,

Appellant.

000621

Appeal from the Iowa District Court for Linn County,
Thomas M. Horan, Judge.

The defendant appeals his convictions for robbery in the second degree in violation of Iowa Code sections 711.1 and 711.3 (1991) and delivery of a controlled substance or simulated controlled substance (crack cocaine) in violation of Iowa Code section 204.401(1)(c)(3) (1991). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds Lapointe, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Bridget Chambers, Assistant Attorney General; and Denver Dillard, County Attorney, for appellee.

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

000622

DONIELSON, P.J.

Appellant, Darryl Jackson, was charged in an amended trial information with robbery in the second degree in violation of Iowa Code sections 711.1 and 711.3 (1991) and with delivery of a controlled substance or simulated controlled substance (crack cocaine) in violation of Iowa Code section 204.401(1)(c)(3) (1991). The charges stemmed from an aborted drug deal on April 23, 1992, involving a police informant, James Dixon.

Dixon had agreed to assist the police in drug cases in return for receiving no jail time on a driving-while-barred charge. On April 23, 1992, police wired Dixon with a voice transmitter and tape recorder which were hidden underneath his clothing and gave him \$100 for the purchase of crack cocaine. Dixon engaged in a conversation with a man regarding the purchase of a fifty-dollar rock of cocaine, and the man led Dixon to another man who had the drug and offered to sell some of it to Dixon. Dixon claims he handed the man a \$100 bill in exchange for the drug and asked for his change. Apparently a third man approached Dixon and indicated that Dixon should be searched because they did not know him. When the search indicated Dixon was wired for police surveillance, the men assaulted Dixon while attempting to get the transmitter. Dixon fled the scene, leaving his shirt and jacket behind. He also left the \$100 bill and the drug.

000623

At an initial photographic identification, Dixon identified the defendant as the man who sold him the drug. At a second photographic identification, Dixon identified Jerome Smith as the man who introduced him to the others involved in the aborted drug deal and assisted in the assault. During a third photographic identification, Dixon identified Donald Thomas as the man who sold him the crack cocaine. Dixon indicated that he was incorrect when he initially identified the defendant as the one who sold him the drug. Dixon indicated that the defendant was the man who became involved when Dixon requested change and that the defendant assisted in the assault.

During the trial, Dixon testified about the incident as indicated above. His testimony was corroborated in part by police officers who were providing surveillance. The defendant, his wife, and another man present at the scene testified that although the defendant was present, he did not participate in the incident.

A jury returned a verdict of guilty on both charges. On September 25, 1992, the court sentenced appellant to an indeterminate ten-year term on the second-degree robbery charge, an indeterminate ten-year term on the delivery charge, and ordered him to serve a mandatory minimum of one-third of his sentence. The court ordered the sentences to run concurrently. The district court stated its reasons for imposing the sentence were based on the recommendations of the presentence investigator and the county attorney.

The court also noted a crime of violence was involved and the crime involved the delivery or sale of drugs. The court stated its belief the sentence would provide an excellent opportunity for rehabilitation of the defendant and also provide protection to society.

On September 28, 1992, appellant filed notice of appeal. He argues that the evidence was insufficient to convict him on either charge. He also asserts the court abused its sentencing discretion by failing to waive the mandatory minimum sentence requirement.

I. Our standard of review of claims the evidence is insufficient 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. We view the evidence in the light most favorable to the State, including all legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports guilt. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980). Normally, however, the jury determines the credibility of witnesses, State v. Allen, 348 N.W.2d 243, 247 (Iowa 1984) (citing State v. Jones, 271 N.W.2d 761, 763 (Iowa 1978)), and determines what weight to give

to evidence, State v. Watts, 441 N.W.2d 395, 399 (Iowa 1989) (citing State v. Schertz, 328 N.W.2d 320, 322 (Iowa 1982)). We normally defer to the jury's choice when evidence conflicts. See Robinson, 288 N.W.2d at 340.

Appellant's primary argument concerning the robbery conviction is that the State did not prove the requisite intent. We disagree. Intent frequently cannot be determined from direct evidence. State v. Delay, 320 N.W.2d 831, 835 (Iowa 1982). Intent is often proved by circumstantial evidence and inferences drawn from the evidence, since direct and circumstantial evidence are equally probative in establishing intent. State v. Roby, 495 N.W.2d 773, 776, (Iowa App. 1992); Iowa R. App. P. 14(f)(16). The trier of fact in criminal cases can presume a person intends the natural consequences of his intentional act. State v. Chatterson, 259 N.W.2d 766, 770 (Iowa 1977). We believe the record contains sufficient evidence from the testimony of Dixon and several police officers to allow the jury to find appellant had the requisite intent to take possession or control of the police "wire" equipment and to deprive Dixon and the police of it. We affirm the trial court on this issue.

Appellant next asserts the evidence is insufficient to prove he was involved in the delivery of the drug. Appellant points to conflicting testimony concerning his involvement in the drug deal as showing the jury's verdict was against the weight of evidence. We disagree. As we

stated earlier, the jury evaluates the credibility of witnesses, determines what weight to give to evidence, and decides between any conflicting evidence. The jury had the opportunity to hear the testimony and observe the witnesses. We believe the testimony introduced at trial provided a sufficient basis for the jury to do its job. We decline to upset the jury's verdict and the judgment of the court.

II. Appellant also asserts the court abused its discretion in sentencing by not waiving the mandatory minimum sentence. We disagree. When sentencing discretion has been accorded and exercised, it is subject to limited appellate review. State v. Pappas, 337 N.W.2d 490, 494 (Iowa 1983). We interfere in discretionary sentencing only if there has been an abuse of discretion. State v. Dvorsky, 322 N.W.2d 62, 67 (Iowa 1982). An abuse will not be found unless the defendant shows that such discretion was exercised on grounds or for reasons clearly untenable or to an extent clearly unreasonable. Pappas, 337 N.W.2d at 493. The district court, within the limits of applicable statutes, has the discretion to select a sentence that would "provide maximum opportunity for the rehabilitation of the defendant, and for the protection of the community from further offenses by the defendant and others." Iowa Code § 901.5 (1993). There is a strong presumption that the discretion of the trial court was rightfully exercised. Pappas, 337 N.W.2d at 494.

Appellant has a heavy burden of affirmatively showing abuse and prejudice to overcome this presumption of regularity.

Id.

The trial court imposed sentences clearly within the limits of the applicable statutes. The court expressly considered the presentence investigation, the nature of the crimes, the opportunity for appellant's rehabilitation, and the need to protect the community from the commission of like crimes by appellant. Appellant has failed to carry his burden to show the court abused its discretion in its choice of sentences.

AFFIRMED.