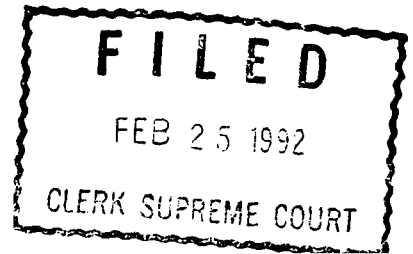


IN THE COURT OF APPEALS OF IOWA

No. 1-607 / 91-148



STATE OF IOWA,

Plaintiff-Appellee,

vs.

JERRY PARKER,

Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County,
David J. Sohr and Margaret Briles, Judges.

Parker appeals from his conviction and sentence
following trial to the court of possession of controlled
substance with intent to deliver. **AFFIRMED.**

Stephen P. Wing of Dwyer, Wing, Zamora, Taylor &
Walters, Davenport, for appellant.

Bonnie J. Campbell, Attorney General, Julie Ann
Halligan, Assistant Attorney General, William E. Davis,
County Attorney, and H.J. Pries, Assistant County Attorney,
for appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

PER CURIAM

Defendant-appellant Jerry Parker appeals his conviction for possession of a controlled substance with intent to deliver in violation of Iowa Code section 204.401(1)(c) (1989).

He contends (1) his motion to suppress evidence taken under a search warrant should be suppressed because there was not probable cause to support issuing the warrant, and (2) there was not substantial evidence to support his conviction. We affirm.

Defendant was present in a house at 810 West 5th Street in Davenport, Iowa, when law enforcement officials entered the house by using a steel ram. The house was searched. The search yielded drugs, including heroin, substantial drug paraphernalia, cash, and new electronic equipment.

I.

Defendant first contends there was not probable cause to execute the warrant. The State contends there was probable cause to issue the warrant and the issue was not preserved for review. We find there was probable cause to issue the warrant and, therefore, find it unnecessary to consider whether the issue was preserved for review.

Our review on this issue is de novo. See State v. Seiler, 342 N.W.2d 264, 266 (Iowa 1983). The test for probable cause to issue a search warrant is whether a reasonable person would believe a crime was being committed

on the premises to be searched or that evidence of a crime would be located there. See State v. Todd, 468 N.W.2d 462, 466 (Iowa 1991).

The search warrant was issued on the application of Officer Gregory Trudell. The application filed on August 8, 1990, stated:

The Metropolitan Enforcement Group has received information from a minimum of four separate sources that the house located at 810 W. Fifth Street in Davenport, Iowa was being used as a "stash" house and place where cocaine and heroin was being sold.

On August 8, 1990 officers conducted surveillance of a purchase of cocaine made at the residence under controlled conditions. While officers were conducting surveillance of the residence, lookouts were observed both in front of and behind the residence. The purchase took only approximately two minutes.

Later that date, an individual who is a convicted drug trafficker was observed leaving the residence carrying a paper bag.

and:

The primary informant made contact with an unwitting source who made purchase referred to earlier in the residence. The informant was searched before and after the purchase and no controlled substance other than that purchased was found.

The judge issuing the warrant made the following findings:

Based on sworn application made to the Court, I have found that probable cause exists to believe at the place (and on or otherwise in the possession of the person(s) and in the vehicle(s) described as follows: 810 W. 5th Street, Davenport, Iowa in Scott County, there is now certain property, namely: Cocaine, heroine, and other controlled substances, materials for packaging, weighing and using controlled substances, financial records of drug

sales or proceeds thereof. Official Advance Funds of the Metropolitan Enforcement Group.

The defendant argues probable cause was not shown because (1) there was no evidence the purchased substance was tested to determine what it was, but the judge determined it was a controlled substance, and (2) there was no evidence the person making the controlled substance buy did not obtain the drugs before or after the alleged purchase. The evidence rose to the level necessary to establish probable cause that a purchase of a controlled substance was made at the residence. We affirm on this issue.

II.

Defendant next contends there was not sufficient evidence to support his conviction. In assessing this issue, we view the evidence in a light most favorable to the State. State v. Jones, 271 N.W.2d 761, 763 (Iowa 1978); State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976). To succeed on this issue, the defendant must show there is not substantial evidence in the record to support the charge. State v. York, 256 N.W.2d 922, 927 (Iowa 1977). The trial court's findings of guilt is binding on us if supported by substantial evidence. Overstreet, 243 N.W.2d at 884; State v. Dahlstrom, 224 N.W.2d 443, 448 (Iowa 1974).

To convict the defendant of possession with intent to deliver, the State must prove the following elements:

1. That on or about August 8, 1990, the defendant knowingly possessed a controlled substance. In this case, heroin.

2. The defendant knew the substance he possessed was heroin.

3. The defendant possessed the substance with the specific intent to deliver a controlled substance.

See Iowa Code § 204.401(1).

In searching the premises, the officers found seventeen packets of heroin in a fold-out couch, in a heating vent, and in the attic. Substantial drug paraphernalia, including syringes, a sifter, and a glass pipe were found in a bedroom. Used syringes were strewn around the house. Cash was discovered, as was new electronic equipment which, according to police testimony, frequently is exchanged for drugs. The trial court found that drugs were being used and sold on the premises. These findings are clearly supported by the evidence. The difficult issue is whether there is substantial evidence connecting defendant to these activities. When arrested, the defendant told police he had lived on the premises for two months. This testimony was contradicted at trial by two witnesses who testified the defendant lived elsewhere. The trial court believed the police officer. The trial court found defendant knew the heroin was present and that it was intended to be delivered to users.

The State relies in part on \$396 in cash found in defendant's possession, including \$40 in what the State refers to as marked money. While the State argues the marked money was taken in the controlled buy earlier in the day, the trial court did not find that it was. The defendant claims he won the money gambling. The State argues there was no gambling going on in the house. We remind the State it bears the burden of showing the cash's connection with drug dealing. To associate an item with drug dealing the State must show the item is associated with dealing and not merely something that may be found in the possession of an innocent person. See State v. Rios, ___ N.W.2d ___, ___ (Iowa App. 1991). We agree with the trial court there is no direct evidence connecting the marked bills to any drug sale.

Intent is seldom capable of direct proof and may be ascertained by "such reasonable inferences and deductions as may be drawn from the facts proved by the evidence in accordance with common experience and observation." State v. Luter, 346 N.W.2d 802, 809 (Iowa 1984). Relevant considerations include manner of packaging the substance, presence of weighing devices, and existence of other paraphernalia commonly used in drug dealing. Id. Intent must often be proven by circumstantial evidence which is equally as probative as direct evidence so long as the evidence raises a fair inference of guilt and does more

than create speculation, suspicion, or conjecture. State v. Salkil, 441 N.W.2d 386, 388 (Iowa App. 1989).

It is the task of the fact finder to resolve questions of fact and assess the credibility of the witnesses. State v. Mills, 458 N.W.2d 395, 397 (Iowa App. 1990). A fact finder is not required to accept a defendant's version of the facts. Id. Evidence defendant had lived for several months in the home where the extensive supply of drugs was found with other evidence associated with scales, supplies evidence from which a fact finder could find defendant delivered the drugs. See State v. Lain, 246 N.W.2d 238, 241 (Iowa 1976); State v. Body, 224 N.W.2d 609, 612-13 (Iowa 1974).

We find there was substantial evidence in the record to support defendant's conviction.

AFFIRMED.