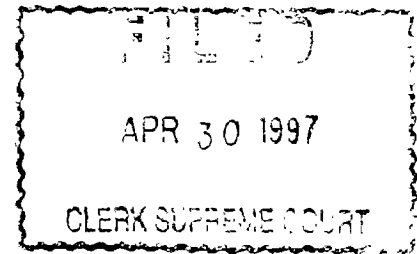


IN THE COURT OF APPEALS OF IOWA

No. 7-105 / 96-0949



STATE OF IOWA,
Plaintiff-Appellee,

vs.

REGGIE RAY BRANNON,
Defendant-Appellant.

Appeal from the Iowa District Court for Lee County (North), John C. Miller,
Judge.

The defendant appeals his convictions, following a jury trial, for possession with intent to deliver marijuana, in violation of Iowa Code section 124.401(1)(d) (1995), and failure to affix a drug tax stamp, in violation of section 453B.12.

AFFIRMED.

Henry Hamilton and Alfredo Parrish of Parrish, Kruidenier, Moss, Dunn & Montgomery, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, and Michael P. Short, County Attorney, for appellee.

Heard by Habhab, C.J., and Huitink and Streit, JJ.

HUITINK, J.

Reggie Ray Brannon appeals his conviction of possession of marijuana with intent to deliver and a drug stamp violation. We affirm.

I. Background Facts and Proceedings.

Brannon was charged with these offenses following a search of his Lee County residence. When officers arrived at Brannon's home to execute the search warrant, Brannon directed them to marijuana located in his garage and living room. The search yielded two baggies of marijuana, a small bindle containing a white powdery substance, and four one-gallon bags of marijuana that were found above a ceiling. A total of five pounds of marijuana and \$10,450 in cash were seized as a result of this search. None of the marijuana seized bore the required tax stamps.

Prior to Brannon's trial on these charges, the State unsuccessfully attempted to forfeit the money seized during the search. The district court denied the State's forfeiture request citing the State's failure to prove the cash was used or intended to facilitate the purchase or distribution of controlled substances.

The Iowa Department of Revenue made a jeopardy tax assessment against Brannon's property based on his failure to pay the applicable drug stamp taxes. The distress warrant issued to collect the \$25,416 assessment resulted in the seizure of \$20,148 of Brannon's cash assets.

At trial the State relied on the seized evidence to prove Brannon knowingly possessed marijuana. The State also cited the amount of marijuana discovered, the uniformity of packaging, Brannon's drying facilities, and the cash as circumstantial evidence supporting an inference Brannon possessed this marijuana with the intent to deliver it.

Brannon did not deny the substances seized were marijuana and that the drugs were found in his possession. He, however, disputed the State's claim that he intended to deliver it. Brannon cited the absence of any classic dealer paraphernalia at his home and the forfeiture court's finding regarding the cash seized from his home. He also argued the amount of marijuana discovered was not inconsistent with personal use.

On appeal Brannon challenges the sufficiency of the evidence supporting his convictions. He also argues his tax stamp conviction following the Department of Revenue's tax assessment constitutes double jeopardy.

II. Double Jeopardy.

We initially reject Brannon's double jeopardy claim. Iowa Code section 453B.12, the drug tax statute, is not punitive. *State v. Lange*, 531 N.W.2d 108, 116-117 (Iowa 1995). Accordingly, Brannon's tax stamp conviction does not implicate the double jeopardy clause of the Fifth amendment.

III. Sufficiency of the Evidence.

A guilty verdict will be reversed only when it is not supported by substantial evidence or it is clearly against the weight of the evidence. *State v. McGrew*, 515 N.W.2d 36, 37-38 (Iowa 1994). Substantial evidence means evidence that could convince a rational trier of fact the defendant is guilty of the crime beyond a reasonable doubt. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). We view 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. Bass*, 349 N.W.2d 498, 500 (Iowa 1984).

Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). A guilty verdict can rest on circumstantial evidence alone. *State v. Torres*, 506 N.W.2d 470, 472 (Iowa App. 1993).

Brannon contends the evidence is insufficient to prove he intended to deliver marijuana. Intent is seldom capable of direct proof. The jury in the absence of direct evidence may rely on reasonable inferences drawn from the other facts proved to make its determination on this issue. *State v. Luter*, 346 N.W.2d 802, 809 (Iowa 1984) (citations omitted).

There are no guidelines suggesting what quantity of drugs raises an inference of intent to deliver. *State v. Boyd*, 224 N.W.2d 609, 613 (Iowa 1974). We consider the quantity of drugs together with other circumstances such as uniform packaging,

large amounts of cash, weighing devices, and the existence of other paraphernalia commonly used in drug dealing. *See State v. Simpson*, 528 N.W.2d 627, 633 (Iowa 1995).

In this case, some but not all of these additional circumstances are present. There is evidence of uniform packaging, drying facilities, and a large amount of cash. We believe these facts, combined with the amount of drugs seized (five pounds of marijuana), provide sufficient evidentiary support for the jury's finding that Brannon had the requisite intent to deliver the drugs seized. The jury was not obligated to accept Brannon's evidence supporting a contrary inference. *See State v. Allen*, 348 N.W.2d 243, 247 (Iowa 1984) (where evidence is in conflict jury is empowered to resolve conflicts in accordance with its own views).

We also reject Brannon's contention that the forfeiture court's findings regarding the origins of the money seized are preclusive on the issue of his intent. We are unable to find any authority, and Brannon cites none, supporting this proposition. Iowa R. App. P. 14(a)(3); *see also State v. Olsen*, 482 N.W.2d 452, 456 (Iowa App. 1992) (argument considered waived where defendant cited no supporting authority).

The judgment of the district court is affirmed.

AFFIRMED.