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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-431 / 93-1686

IN THE INTEREST OF A.W.,

A.W.,
Appellant.

Appeal from the Iowa District Court for Scott County, John G. Mullen, District Associate Judge.

A.W., appeals the juvenile court's order finding that she committed the offense of possession of crack cocaine with intent to deliver in violation of Iowa Code section 124.401(1)(c) (1993) and adjudicating her delinquent. **AFFIRMED.**

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

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, Charles K. Phillips, Assistant Attorney General, and Gerda Lane, Assistant County Attorney, for appellee-State.

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

SACKETT, P.J.

Ann, a fourteen year old girl, appeals the juvenile court's finding she was guilty of possession of crack cocaine with the intent to deliver in violation of Iowa Code section 124.401(1)(c). Ann contends the evidence was not sufficient to support a finding she committed the offense and the mere possession of cocaine does not support conviction of an intent to deliver. Ann is black and lives with her grandmother in a Davenport neighborhood that has a high level of drug trafficking. Ann was originally stopped by a Davenport police officer when she was driving a moped. The officer arrested her for driving without a license and operating a moped without lights, a flag, or plates. Despite the presence of her grandmother at the scene, the officer elected to place Ann under arrest and searched her before putting her in the patrol car. In the search, the officer found a sandwich bag and inside the sandwich bag were five small bags each with a knot on them. Three of the small bags contained one white rock and two of the small bags had two white rocks in them. The officer was of the opinion the seven rocks appeared to be cocaine. The rocks were tested by the Iowa Division of Criminal Investigation and found to be cocaine. Ann was taken to the police station, charged with possession of crack cocaine with the intention to deliver, and released to her grandmother's custody.

At trial, there was testimony of the above facts, together with the officer's testimony he had seen Ann wearing a jacket similar to the one in which the cocaine was found on other occasions.

At trial, Ann testified the jacket was not hers. Ann said she and other children in the neighborhood were together playing and, when the weather warmed, jackets were hung on the fence. Ann said her jacket zipped and buttoned and was black with a Raiders emblem on the back and the jacket she was wearing was a black pullover with a Kings emblem. Ann testified she had taken the jacket off the fence.

The district court found Ann had committed the act with which she was charged. In its findings, the trial court determined her intent to deliver could be inferred from the amount of cocaine and the manner it was packaged. The trial court concluded, even though the officer could not positively identify the jacket as the one he had seen Ann wearing, it did not believe a person would leave more than $100 worth of crack cocaine in the pocket of a jacket hung over a fence for Ann to pick up and wear. The court determined this was evidence for the State.

At trial, Ann had contended the search was improper, the arrest was racially motivated, and there was not sufficient evidence she had committed the offense. Ann's only arguments on appeal are there was not sufficient evidence to support the juvenile court's finding she

committed the offense of possession of a controlled substance with an intent tc deliver and the mere possession of the cocaine does not support conviction of an intent to deliver.

The State had the burden of proving beyond a reasonable doubt that Ann was engaged in the alleged delinquent conduct. See Iowa Code § 232.47(10) (1993); see also In re Thompson, 241 N.W.2d 2, 4 (Iowa 1976). A charge of possession with intent to deliver under section 204.401(1)[1] involves three elements: the persons charged must (1) knowingly possess a controlled substance, (2) with intent to deliver and (3) for profit. See State v. Metcalf, 260 N.W.2d 857, 860 (Iowa 1977).

We review de novo. In re D.L.C., 464 N.W.2d 881, 882 (Iowa 1991). We give weight to the factual findings of the juvenile court, especially when considering the credibility of witnesses, but we are not bound by them. In re J.D.S., 436 N.W.2d 342, 343 (Iowa 1989).

The factual dispute centers over Ann's knowledge of the presence of the cocaine in the jacket. Ann and her grandmother testified the jacket Ann was wearing when she was arrested was not hers. They both testified Ann's jacket had a Raiders emblem on it and Ann did not have a jacket that said Kings. The grandmother testified, at the time of Ann's arrest, Ann's jacket was in her house.

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1. Iowa Code section 204.401(1) is now codified at Iowa Code section 124.401(1) (1993).

The jacket Ann wore at the time of the arrest was not admitted into evidence. The officer's evidence he had seen Ann wearing the jacket was not strong. The officer was not certain he had seen her wearing it. The officer was not certain what emblem it had on the back, he did not know if the jacket had a lining or a hood or an emblem on the sleeve or if it zipped or snapped. The officer testified quite a few children in the neighborhood wear black jackets. There was evidence many of the children in the neighborhood had similar jackets.

Ann was wearing the jacket. This is evidence the jacket either belonged to her or she knew what was in the jacket. And it is substantial evidence she was in constructive possession of the cocaine and from this fact, as a fact finder, we can presume Ann had knowledge the cocaine was in the jacket. See State v. Brandt, 444 N.W.2d 97, 98-99 (Iowa App. 1989). The juvenile court disbelieved Ann and her grandmother's testimony concerning Ann's ownership of the jacket. We find no reason to disagree with this finding. We find the State proved the first element of the charge, that is, Ann had possession of a controlled substance and knew the substance she possessed was a controlled substance. Possession of a controlled substance is constructive possession where the defendant maintains dominion and control directly or indirectly over place were substance is found. See State v. Parrish, 502 N.W.2d 1, 3 (Iowa 1993).

The more difficult issue is whether we should find Ann had an intent to deliver for a profit.

An officer testified the packaging of the substance and the neighborhood were sufficient evidence to support the conviction. Ann contends she lives with her grandmother and has no choice where she lives. Ann contends if she is convicted of a crime because she lives in a drug-infested neighborhood, this is wrong. We will not consider a child's presence in the neighborhood where the child lives with a parent, grandparent, or guardian and where there is substantial drug trafficking, evidence against a child charged with delivery of a controlled substance. We do not consider as evidence against Ann the fact the neighborhood where she lived had a high level of drug trafficking. We are not certain what weight, if any, the trial court put on this evidence. However; because we review de novo, we need not decide.

The manner in which the cocaine was packaged is some, but not strong, evidence Ann intended to deliver the cocaine. The packaging would be the same on a controlled substance just purchased as on a controlled substance ready for sale.

Ann claims because the amount of substance in her jacket would not qualify her as a dealer for purposes of Chapter 453B, Excise Tax on Unlawful Dealing In Certain Substances, we should find the State failed to prove she had an intent to deliver.

Iowa Code section 453B.1 Definintions, provides:

> As used in this chapter, unless the context otherwise requires:
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> . . . .
>
> 3. "Dealer" means any person who ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces in this state any of the following:
>
> . . . .
>
> c. Ten or more dosage units of a taxable substance which is not sold by weight. (Emphasis supplied).

Iowa Code §§ 453B.1(3), 453B.1(3)(c) (1993).

We do not accept Ann's argument the definition of a dealer in section 453B.1(3) controls the amount of a controlled substance necessary to prove delivery under section 124.401. The legislature clearly spelled out the definitions in section 453B.1 apply as used in that chapter.

To convict Ann, the State must prove beyond a reasonable doubt that, in addition to possession of the cocaine, she had possession of it with a specific intent to deliver it for profit.

Is the possession of five doses of cocaine, individually packaged, sufficient evidence for us to find beyond a reasonable doubt Ann intended to deliver the drugs for a profit?

Conviction of an intent to deliver have historically been supported by stronger evidence than was introduced

against Ann. State v. Goodson, 503 N.W.2d 395 (Iowa 1993) (evidence defendant in possession of fifteen individually wrapped packages containing fifty rocks of crack cocaine, a semi-automatic handgun, and handwritten poems extolling the virtues of being a drug dealer); State v. Bumpus, 459 N.W.2d 619 (Iowa 1990) (evidence defendant and his companions were crouched behind a car in a specific location where drug transactions were an ongoing problem and were passing something back and forth between them, officers found a pouch with forty-nine individual portions of crack cocaine); State v. Sykes, 412 N.W.2d 578 (Iowa 1987) (evidence defendant in possession of three and one-half pounds of marijuana, finger-held scales, numerous plastic bags, and supplies of cash hidden in apartment supported conviction of possession with intent); State v. Metcalf, 260 N.W.2d 857 (Iowa 1977) (evidence defendant in possession of cache containing ten bags of highly pure heroin weighing 13.4 grams (enough for about 214 doses at 1/16th gram each), a scale of a kind used to weigh drugs, a coke spoon containing a small depression and soot on the bottom, of a kind used to "snort" cocaine, powdery substance (heroin) in folded aluminum foil in a pill bottle, a brown case containing two syringes and a small glass vial, a green tube fashioned to be a water pipe--a "hash pipe" for smoking marijuana or hashish; marijuana roaches in a shoe box, three handmade pipes of a kind used to smoke marijuana or hashish; a plastic bag of marijuana,

cigarette papers, two plastic bags of seeds, a roach clip, a package of bags (same kind of bags as in the heroin cache), glossy paper of a kind used to wrap drugs, and $310 in cash); State v. Birkestrand, 239 N.W.2d 353 (Iowa 1976) (evidence defendant in possession of a hashish pipe and some plant-like material, two suitcases containing over 29 pounds of marijuana, some in 12-ounce compressed brick form, some in baggies, some LSD and hashish, a dial-a-gram scale, commonly used by pharmacists and drug dealers, with a greenish-olive residue on and around it); State v. Oppedal, 232 N.W.2d 517 (Iowa 1975) (evidence defendant in possession of eight 1-ounce cellophane bags of marijuana, list of names and phone numbers (some of which the officers were familiar), quantity of cellophane baggies, a scale, a container of seeds and green plant-like substance, and a white sack containing stems and stalks); State v. Hill, 465 N.W.2d 309 (Iowa App. 1990) (evidence defendant was observed carrying a shopping bag which contained a sensitive gram scale, commonly used by drug dealers to measure small quantities of drugs, into an apartment shortly before a search. During the search, a large cache of drugs was found as well as a purse containing heroin, cocaine, and a glass "snorting tube").

We affirm the charge.

AFFIRMED.