IN THE COURT OF APPEALS OF IOWA

No. 3-247 / 92-1074

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STATE OF IOWA,

Appellee,

vs.

CAROLYN J. ROARK,

Appellant.

Appeal from the Iowa District Court for Scott County, David H. Sivright, Judge.

Defendant appeals her conviction, following a jury trial, of possession of a controlled substance with intent to deliver in violation of Iowa Code section 204.401(1)(c) (1991). **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia J. Cone-Fisher, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General; Julie Halligan Brown, Assistant Attorney General; William E. Davis, County Attorney; and Realff H. Ottesen, Assistant County Attorney, for appellee.

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

HABHAB, J. 000886

Defendant, Carol J. Roark, appeals from her conviction, following a jury trial, of possession of a controlled substance with intent to deliver in violation of Iowa Code section 204.401 (1)(c) (1991). She contends the district court erred in (1) overruling her motion for a directed verdict of acquittal based on insufficiency of evidence, and (2) failing to exercise its discretion during sentencing when determining whether to suspend the fine imposed.

Roark was arrested during a police raid at a residence in Davenport. She was charged with possession of a controlled substance with intent to deliver. Her prior conviction of a felony offense under Iowa Code chapter 204 was added to the initial charge on the same day.

At trial, the State presented evidence that Roark was identified by two officers as being the only person on the porch when the raid commenced.[1] Roark was sitting next to individually-wrapped packages of rock cocaine and a large quantity of money. She had $592.40 in her purse along with a piece of paper with several figures and a name. An officer called this "a typical drug note." She also had a twenty-dollar bill and two ten-dollar bills on her suggesting two recent sales (a detective noted the

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1. Another officer testified there were several people on the porch when he arrived.

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average price for a rock is twenty dollars). Finally, a note found near her read in part: "I'll be glad when you stop selling, because I really think the dope fiends spend more time with you than I do." This note was addressed "Hey Love."

Roark moved for a directed verdict of acquittal, claiming that the State failed to present any evidence directly linking her to the drugs. The district court denied Roark's motions.

Roark was found guilty, and admitted her prior conviction under Iowa Code chapter 204. She was sentenced to a term not to exceed ten years with a one-third mandatory minimum. The district court also ordered her to pay a fine of $1000. Roark appeals. We affirm.

Our standard of review 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. The evidence is viewed 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). We consider all the evidence at trial, not just the evidence that supports the verdict. State v. Robinson, 288 N.W.2d 337, 340 (Iowa 1980).

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On appeal, Roark contends there was insufficient evidence that she possessed cocaine base. The three elements of possession are 1) dominion and control over the substance, 2) knowledge of its presence, and 3) knowledge of its nature. State v. Rudd, 454 N.W.2d 570, 571 (Iowa 1990); State v. Reeves, 209 N.W.2d 18, 21 (Iowa 1973). The knowledge required for the second and third elements can be inferred. Rudd, 454 N.W.2d at 571; Reeves, 209 N.W.2d at 22.

Possession is actual when "the substances are found on the person of the accused." Rudd, 454 N.W.2d at 571. Possession is constructive when the defendant maintains "dominion and control of the place where the substances are found." Id. This dominion and control can be either direct or indirect. Id. It is direct when the defendant is in such close proximity to the substance as to be able to claim immediate dominion over it. It is indirect when the defendant maintains or "closely shares exclusive dominion over the premises" where the substance is found. Id.

One of the functions of the jury is to decide what reasonable inferences may be drawn from the evidence. Reeves, 209 N.W.2d at 23. Here, the jury could have reasonably inferred from all the evidence that Roark possessed the cocaine found under the table. We conclude there was sufficient evidence for the jury to find

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defendant Roark possessed a controlled substance with intent to deliver. We therefore affirm Roark's conviction.

Roark also claims the sentencing court abused its discretion in failing to suspend the $1000 minimum fine imposed.

Iowa Code section 204.401(1)(c) (1991) provides:

> Violation of this subsection . . . is a class "C" felony, and in addition to the provisions of section 902.9, subsection 3, shall be punished by a fine of not less than one thousand dollars nor more than fifty thousand dollars[.]

However, under State v. Chana, 476 N.W.2d 38, 39-40 (Iowa 1991), the court does have the authority to suspend the fine imposed. The issue of suspending the fine imposed was never raised by the defendant. In absence of evidence to the contrary, we assume the sentencing court was aware of the possibility of suspending the fine, but opted against it. The court was not required to give its reasons for rejecting this particular sentencing option. See State v. Russian, 441 N.W.2d 374, 375 (Iowa 1989).

We find the sentencing court did not abuse its discretion in refusing to suspend the fine.

AFFIRMED.

Donielson, P.J., concurs; Sackett, J., dissents.

SACKETT, J. (dissenting)

I dissent.

Iowa Code section 204.402(1) states in part:

> Except as authorized by this chapter, it is unlawful for any person to . . . possess with the intent to . . . deliver, a controlled substance . . ., or to act with, enter into a common scheme or design with, or conspire with one or more other persons to . . . possess with the intent to . . . deliver a controlled substance. . . .

In order to convict a defendant, the State must present sufficient evidence to allow a rational trier of fact to find, beyond a reasonable doubt, defendant committed each and every element of the offense he or she is charged with committing. Jackson v. Virginia, 443 U.S. 307, 317-19, 99 S. Ct. 2781, 2788-89, 61 L. Ed. 2d 560, 572-73 (1979).

Police testified several people were around the house when they arrived to raid the residence as well as a person sitting in a parked car. The police described both the yard area and the porch as being quite small, therefore, the people had to be relatively close together.

The State did not directly link defendant with the drugs, such as finding her fingerprints on the bags containing the drugs. Because of the large number of people in the yard and on the porch when the police first arrived at the house, mere nearness to the area where the drugs were found during the raid failed to show beyond a reasonable doubt defendant possessed the drugs with the intent to deliver them.

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Many legitimate explanations exist for the money found on defendant and in her purse and for the piece of paper bearing vague notations also found in her purse. Thus, without more evidence linking defendant to the drugs, the State failed to prove defendant possessed, or aided and abetted in, the possession of the drugs with the intent to deliver.