IN THE COURT OF APPEALS OF IOWA

No. 0-720 / 99-1958
Filed January 24, 2001

FILED
JAN 24 2001
CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

ALLAN HILL,
Appellant.

Appeal from the Iowa District Court for Polk County, Artis Reis, Judge.

Allan Hill appeals the judgment and sentence following his convictions for possession of a controlled substance with intent to deliver and possession of a simulated conrolled substance with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and John P. Messina, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kristin Mueller, Assistant Attorney General, John P. Sarcone, County Attorney, and Daniel Voogt, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Mahan and Vaitheswaran, JJ.

MAHAN, J.

Allan Hill appeals his convictions for possession of a controlled substance with intent to deliver and possession of a simulated controlled substance with intent to deliver. He contends the trial court erred in refusing to grant his motion for judgment of acquittal. We affirm.

On June 28, 1999, Officer Lori Hickman observed Hill, Jason Tate, and four other youths hanging out near their cars, which were parked along a street in Des Moines. Officer Hickman approached the group in her police cruiser, meaning to tell them to move along, when she detected the smell of marijuana. Upon exiting her vehicle, she instructed the individuals to put their hands on the car they were gathered around. Four of the persons followed her instructions. Hill and Tate, however, appeared "real nervous" and "sketchy" and started to walk away.

At this time, Officer Edward Kirkman arrived at the scene. He observed Tate throw something on the ground as he was walking away from the vehicles. Officer Kirkman exited his vehicle and instructed Hill and Tate to put their hands on the vehicle. This time they complied.

In a subsequent survey of the scene, the officers found a baggie containing three rocks of fake crack cocaine on the ground near where Tate was standing, a bag containing five individually packaged rocks of crack cocaine on the ground between Hill's feet, and an empty bag smelling strongly of marijuana near Hill. A search of Hill's person uncovered $1296 in his pocket. He had a pay stub accounting for $597, but he was unable to account for the rest of the money.

Hill admitted the marijuana baggie belonged to him, but denied any association with the crack cocaine. He was charged with possession of a controlled substance and a simulated controlled substance with intent to deliver and tried before a jury. His motion for judgment of acquittal citing the State's failure to prove he possessed the crack cocaine was overruled. He was convicted as charged, resulting in this appeal.

I. SUFFICIENCY OF THE EVIDENCE.

Hill claims the State did not provide sufficient evidence to prove his guilt beyond a reasonable doubt. Hill argues although the drugs were found near him, the evidence is more consistent with a finding the drugs belonged to Tate, who was also in close proximity to the drugs and who was observed throwing something to the ground in the area where the drugs were recovered. In addition, he contends there was no evidence anyone saw him with cocaine or he was acting in concert with Tate.

The State asserts error has not been preserved on this argument because Hill's counsel did not make this specific sufficiency of evidence argument at trial. We disagree. The import of defense counsel's objections, both at trial and on appeal, was the State's failure to prove Hill was in possession of the crack cocaine. *See State v. Maghee*, 573 N.W.2d 1, 9 (Iowa 1997) (finding issue preserved for further review where it was properly raised in motion for judgment of acquittal). We accordingly address the merits of Hill's sufficiency claim.

We review challenges to the sufficiency of the evidence for errors at law. Iowa R. App. P. 4; *State v. Kraklio*, 560 N.W.2d 16, 17 (Iowa 1997). In

evaluating such a claim, we view the evidence in the light most favorable to the State, including all legitimate inferences and presumptions that may fairly and reasonably be deduced from the evidence in the record. *State v. Parrish*, 502 N.W.2d 1, 3 (Iowa 1993). Direct and circumstantial evidence are equally probative so long as the evidence raises a fair inference of guilt and does more than create speculation, suspicion, or conjecture. *State v. Wheeler,* 403 N.W.2d 58, 60 (Iowa App. 1987). A jury verdict supported by substantial evidence is binding on us. *State v. Garr*, 461 N.W.2d 171, 173 (Iowa 1990). Substantial evidence is evidence that could convince a rational fact finder a defendant is guilty beyond a reasonable doubt. *Id.* We consider all evidence at trial, not just the evidence supporting the verdict. *See Wheeler,* 403 N.W.2d at 60.

We find the State provided substantial evidence against Hill to allow the jury to determine he was guilty of possession of a controlled substance and a simulated controlled substance with intent to deliver. The State's expert testified a typical method of dealing crack in Des Moines is to sell crack as a team, with one person handling the money and the other carrying the drugs in order to alleviate risk of conviction. He also described the distinguishing factors between a user and dealer: A user often will carry only one rock of crack cocaine with drug paraphernalia, while a dealer will often carry more than one rock, packaged individually as if for sale. Moreover, he explained it is common practice for a team to sell real crack to regular customers and fake crack to those they do not know.

This testimony substantially parallels the evidence in this case. First, Hill was carrying over $1200 in cash and Tate appears to have been carrying the drugs. Second, a total of eight rocks of fake and real crack cocaine were found in the surrounding area, each individually packaged. Moreover, both Hill and Tate appeared very nervous when the police arrived and appeared to be beginning to flee. *See State v. Ash*, 244 N.W.2d 812, 816 (Iowa 1976) ("Evidence of flight may be considered in determining guilt or innocence."). We find these facts are sufficient to support the jury's verdict and thus affirm the district court decision in full.

AFFIRMED.