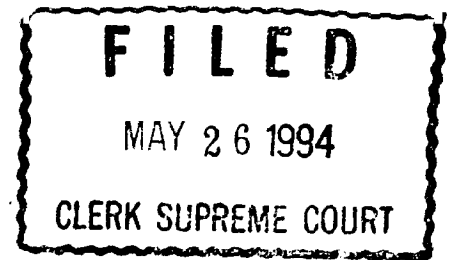


IN THE COURT OF APPEALS OF IOWA

No. 4-138 / 93-0457



STATE OF IOWA,

Plaintiff-Appellee,

vs.

LORI GRIMM-BAKKEN,

Defendant-Appellant.

Appeal from the Iowa District Court for Howard County,
John Bauercamper, Judge.

Defendant challenges her conviction for conspiracy to
deliver a simulated controlled substance. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia
Reynolds Lapointe, Assistant State Appellate Defender, for
appellant.

Bonnie J. Campbell, Attorney General, Robert P. Ewald,
Assistant Attorney General, and Joseph Haskovec, County
Attorney, for appellee.

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

SACKETT, P.J.

This is an appeal by defendant-appellant Lori Grimm-Bakken from a conviction and sentence for conspiracy to deliver a simulated controlled substance. Defendant was convicted following a jury trial. Defendant contends (1) the trial court abused its discretion in overruling her objection to evidence suggesting she had been previously involved in drug sales and (2) there is not substantial evidence to prove beyond a reasonable doubt she was guilty. We affirm.

Brian Coonradt lived with defendant and her two young children. Two men, a deputy sheriff and a confidential informant, arranged to buy drugs from Brian. At about two o'clock in the afternoon, the two men came to the house where Brian and defendant lived. They knocked on the door, were invited to enter by a female voice, and went into the kitchen where defendant was sitting at the kitchen table. They asked for Brian and were told he was in the next room. They went through an open doorway and found Brian in an overstuffed chair watching television. The men asked Brian if he had the stuff. He said he would get it. Staying in the chair, Brian called and asked the person at the other end of the phone line if he or she had four "eight balls." Brian told the men he would get it in an hour, and they should go to the informant's house and he would call and let them know where to meet him. They gave him \$420 and left through the kitchen. Defendant was

seated at the kitchen table and Brian told her she would need to drive him somewhere that afternoon.

At four o'clock the same afternoon, Brian called the informant and said the buy would take place at the Country Store, a convenience store in Freeport, Iowa, at five o'clock. When the deputy and informant arrived at the store at five o'clock, they found Brian in defendant's car. Brian walked to their car and handed the informant a small plastic bag containing three paper packets. Brian said the stuff might have some crack in it and he was "really zinging." He also asked if they knew where he could get some marijuana.

Field tests of the substances obtained from Brian were negative for controlled substances.

Before trial, defendant filed a motion to suppress any evidence not related to the crime in question and the trial court granted the motion as to the direct examination of witnesses. The court reserved ruling on whether the evidence could be admitted during cross-examination or rebuttal testimony.

Defendant took the witness stand in her own defense and testified she did not hear the conversation between the informant, the deputy, and Brian in the living room of the apartment because she was taking a shower. She denied talking to Brian in the kitchen as the two men were leaving. She admitted she drove her car to the convenience store but denied any knowledge Brian was delivering drugs from her car while she was in the store.

On cross-examination, defendant denied she had any knowledge Brian was involved with drugs on January 10, 1992. The county attorney then asked defendant how long she had known Brian; defendant's attorney objected and the jury was excused. The district court overruled the objection, and defendant testified she had only once seen defendant with drugs; in October 1990.

In rebuttal the State called a witness who testified, over the defendant's objections, that he was involved with a drug sale on November 16, 1992, where defendant drove Brian to the parking lot to complete a marijuana sale. He also testified that on November 8, 1991, while participating in another undercover drug buy, he heard defendant's voice on a radio transmitter worn by an informant. The witness said he confirmed it was defendant's voice with the informant although he was not 100 percent certain.

Defendant again testified relating she was not home on November 8, 1991, and did not drive Brian to the parking lot on November 16, 1992.

Defendant contends the trial court abused its discretion in overruling her objection to the testimony. She also contends the only remedy is reversal.

Iowa Rule of Evidence 404(b) provides:

(b) Other Crimes, Wrongs, or Acts. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he [or she] acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive,

opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The general rule is that the state cannot prove a defendant committed one crime with proof he or she committed another crime. See State v. Cott, 283 N.W.2d 324, 326 (Iowa 1979). The purpose of the rule is to exclude from the jury's consideration evidence that has no purpose except to show defendant is a bad person and is more likely to have committed the crime. State v. Walsh, 318 N.W.2d 184, 185 (Iowa 1982).

The State contends the evidence was admissible because it was not admitted to show defendant was a bad person, but it was admitted to prove she had prior knowledge of Brian's drug dealings and the rebuttal testimony directly contradicted her testimony she saw Brian with drugs on only one occasion. The State points out the evidence involved alleged transactions of a similar or less serious offense where the chief actor was Brian. The State contends Brian used defendant primarily for transportation, as he did in this case. The State advances that although the evidence was probably prejudicial to defendant, it cannot be said it was unfairly so. We agree the evidence is prejudicial. However, the first inquiry is whether it is relevant for a purpose listed in Iowa Rule of Evidence 404(b). We agree, it was. See State v. Munz, 355 N.W.2d 576, 579 (Iowa 1984).

The next question is whether the prejudice that flows to the defendant as a result of the evidence is more than a tendency to show defendant guilty of an element of the offense. We review for an abuse of discretion. Id. The trial court did not abuse its discretion.

Defendant next contends, with or without the bad acts evidence, she should have had a judgment of acquittal. She contends there is not sufficient evidence to prove she had a mutual understanding with Brian and she entered into an agreement with him with the intention of promoting or facilitating the delivery of the simulated cocaine.

The State is required to prove beyond a reasonable doubt the element of conspiracy to deliver a simulated controlled substance. See State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981). Those elements are:

1. On January 10, 1992, the defendant came to a mutual understanding with and agreed with Brian Coonradt that one of them would deliver or attempt to deliver the simulated cocaine.
2. The defendant entered into the agreement with the intent to promote or facilitate delivery of simulated cocaine.
3. The defendant or Brian Coonradt committed an overt act.
4. Mr. Coonradt was not a law enforcement agent or assisting law enforcement.

In determining the sufficiency of evidence to support a guilty verdict, we consider the evidence in the light most favorable to the State. State v. Klindt, 389 N.W.2d 670, 676 (Iowa 1986); State v. Blair, 347 N.W.2d 416, 418-19 (Iowa 1984). Substantial evidence means evidence that would convince a rational trier of fact that the defendant

is guilty of the crime charged beyond a reasonable doubt. State v. Origer, 418 N.W.2d 368, 369 (Iowa App. 1987). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16). Whether the evidence is direct or circumstantial, however, it must raise a fair inference of guilt; it must do more than create speculation, suspicion, or conjecture. Blair, 347 N.W.2d at 421.

There seems to be little disagreement the evidence against defendant was circumstantial. The State argues, however, the primary issue is defendant's state of mind and it is difficult to prove a state of mind by direct evidence. See State v. Erving, 346 N.W.2d 833, 836 (Iowa 1984).

The evidence viewed in the light most favorable to the State is:

1. Defendant was at the kitchen table when they came to arrange to buy drugs from Brian.

2. The conversation that resulted in the transaction took place in the next room. Defendant was not present in that room. There is no evidence she overheard the conversation.

3. Defendant was at the kitchen table when the deputy and informant left and Brian talked to her about driving him somewhere that afternoon.

4. Defendant drove Brian to the convenience store.

5. Defendant was not in the car when the transaction took place.

6. The substance sold was in a small bag which could have been concealed from the driver of the car.

7. Defendant was in the store while the activity took place and came out of the store with a small bag of groceries, and Brian said her timing was perfect.

8. Defendant had knowledge of Brian's prior dealings in drugs.

For circumstantial evidence to be sufficient for jury consideration in a criminal case, the jury must be able to find the evidence inconsistent with any rational hypothesis to the contrary. State v. McDaniel, 265 N.W.2d 917, 924 (Iowa 1978). Defendant's presence in her own kitchen and her decision to drive her car to the convenience store where she purchased groceries is not inconsistent with the hypothesis she was performing ordinary lawful tasks of everyday life. See State v. Schrier, 300 N.W.2d 305, 306-08 (Iowa 1981). Suspicion is no substitute for proof. State v. Barnes, 204 N.W.2d 827, 829 (Iowa 1972). However, considering all evidence, it is substantial.

AFFIRMED.