FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	Filed February 22, 1979
v.	)	
DARREN LEE CIRILLI,	)	795/62098
Appellant.	)	

Appeal from Story District Court - Newt Draheim, Judge.

Defendant appeals conviction of possession of controlled substances with intent to deliver for profit. - Affirmed.

John L. McKinney, Ames, for Appellant.

Thomas J. Miller, Attorney General of Iowa, and Thomas A. Evans, Assistant Attorney General, for Appellee.

Heard by Oxberger, C. J., and Snell, Carter and Johnson, JJ. Donielson, J., takes no part.

PER CURIAM

Defendant Darren Cirilli appeals conviction for possession of controlled substances with the intent to deliver for the purpose of making a profit in violation of § 204.401(1), The Code, 1977. He raises several issues for review.

Consent Search

At pretrial hearing, defendant denied having consented to the search of his car and sought to suppress evidence seized therefrom as well as all the fruits of the search. He contends the search was conducted in violation of his constitutional rights. On appeal, we independently evaluate the search's validity by examining the totality of the circumstances. State v. Smith, 217 N.W.2d 633 (Iowa 1974). Both officers testified that they asked for defendant's permission before searching his vehicle. Defendant purportedly responded, "Go ahead, I don't have anything to hide." There is no evidence that at the time of the search defendant was intoxicated or under the influence of drugs. Neither is there evidence that the defendant was coerced into consenting or that he merely acquiesced to asserted authority. At one point, in fact, defendant voluntarily assisted the officers in opening the trunk of the car. We find the State established by clear and convincing evidence that defendant freely consented to the search.

Defendant's Control over Evidence

Defendant also contends that exhibits 13 through 38 were erroneously admitted against him at trial. Exhibit 38 was a box, taken from the northwest basement room at 211 Campus Avenue. Exhibits 13 through 36 consisted of various controlled substances which were contained in Exhibit 38. Exhibit 37 was a bottle of white tablets found in the basement's northeast room. Defendant argues the State failed to establish that defendant was in possession of these articles, and therefore the same should not have been admitted since they were irrelevant.

Defendant's argument in this regard focuses almost entirely on the claim that there is an insufficient showing of his dominion over the premises where these exhibits were found. The problem with this argument is that there is substantial evidence to connect defendant with the evidence quite apart from his dominion, or lack thereof, over said premises. There was testimony from the witness, Jean Henke, that defendant approached her and initiated the sale of 150 amphetamine tablets on October 16, 1977. At this time, defendant told her that if she wanted more drugs in the future or knew of other persons who did, he had an assortment of drugs available for sale "just like the candy man." He told her that he had obtained the drugs from a pharmacy in Illinois owned by his father.

Although not revealing the source of her information, this witness testified that she knew defendant was residing with two other persons at 211 Campus Avenue in Ames, the address where the challenged exhibits were found. When police officers executed a search warrant at this location on November 4, 1977, defendant received a telephone call there from an unidentified source. There was evidence that the drugs contained in Ex. 38 were bottled and labeled as if they had come from a pharmacy. The drugs found in Ex. 38 were covered with a Peoria, Illinois newspaper. The evidence established Peoria to be the closest major city to Canton, Illinois, the city where the pharmacy of defendant's father was located. A police officer testified that he had confirmed from the Canton, Illinois police that drugs of the type involved had been reported stolen from the pharmacy of defendant's father. Defendant himself told the police that the date of this burglary was approximately one and one-half months prior to his arrest. Defendant also told police that he had been staying at the 211 Campus Avenue address as recently as the night before he was arrested (two days before the search warrant was executed).

Based upon the foregoing evidence, we conclude the circumstantial evidence is sufficient to connect defendant with these exhibits regardless of the extent to which he is shown to have exercised dominion over the premises where the drugs were found. The trial court did not err in overruling defendant's objections to these exhibits. (Defendant does not challenge on appeal the sufficiency of the evidence of possession to convict him of the crime charged although this issue was raised below in a motion for directed verdict. Accordingly, we do not consider this issue. Rule 14(a)(3)

Sufficiency of Evidence

Next, defendant alleges insufficiency of evidence to prove his intent to deliver controlled substances for profit. The State argues that it was not required to prove a "for profit" motive but needed only to disprove a "for accommodation" motive. This was true prior to the latest amendment to § 204.410, The Code. That section now makes it essential for the State to produce substantial evidence from which the jury could find defendant possessed the drugs with an intent to obtain the excess of returns over expenditures, in other words, to make a profit. See State v. Didley, 264 N.W.2d 732, 733

(Iowa 1978). Witness Henke testified that she purchased 150 pills from defendant for $140 and that defendant told her he had an assortment of drugs in case she wanted other kinds or knew people who wanted some. He also allegedly told her he obtained the drugs from his father's pharmacy in Illinois. There is evidence that the drugs were stolen so that the cost to defendant was zero. Ms. Henke testified that her relationship with defendant was not such that she would expect him to sell drugs to her without profit. A large sum of cash was found in defendant's automobile when he was arrested.

We find that consistent with the principles relating to circumstantial evidence of intent to deliver and to profit which were applied in State v. Metcalf, 260 N.W.2d 857, 861-62 (Iowa 1977), the evidence is sufficient to sustain the conviction. We have considered all issues presented and find no basis for reversal.

AFFIRMED.