FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-318 / 89-1171

STATE OF IOWA,

Appellee,

vs.

PAMELA JEAN UNTIEDT,

Appellant.

Appeal from the Iowa District Court for Linn County, Paul J. Kilburg, Judge.

The defendant appeals from her conviction, following a jury trial, for delivery of cocaine. She challenges the admissibility and sufficiency of evidence. **AFFIRMED.**

Raymond E. Rogers, State Appellate Defender, and Brian K. Sissel, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General; Sheryl A. Soich, Assistant Attorney General; Denver D. Dillard, County Attorney; and Todd Tripp, Assistant County Attorney, for appellee.

Considered by Oxberger, C.J., and Donielson and Schlegel, JJ.

DONIELSON, J.

An undercover police officer purchased cocaine from Cheryl Wells. In the course of this transaction, he was introduced to Wells' neighbor and friend, the defendant, Pamela Untiedt. Untiedt had no role in this drug sale.

After the drug sale, Wells gave the undercover officer her telephone number and Untiedt's telephone number, telling him to call Untiedt if he could not locate Wells.

On April 21, 1987, the officer telephoned Wells to set up another drug purchase and, when there was no answer at Wells' phone number, the officer called Untiedt. During this telephone conversation, Untiedt spoke with the officer in slang drug terms and, after the officer indicated he was interested in buying cocaine, Untiedt stated, "I'll call and see what I can do." After calling Untiedt back at a previously arranged time, the officer was told to pick up Wells at her mother's house and bring her to Untiedt's apartment. He was told by Untiedt that he would have to "front the money" and was quoted a price for the cocaine of $100.

The officer did pick Wells up and drive to Untiedt's apartment. Once there, the officer gave Wells the money to buy the cocaine, and Wells left to purchase the cocaine. The officer waited with Untiedt in Untiedt's apartment. About one-half hour later, Wells returned to Untiedt's apartment and handed cocaine to the officer.

As a result of these events, Untiedt was charged with delivery of a controlled substance, on a theory that she had aided and abetted Wells. A jury found Untiedt guilty of delivery of a controlled substance. She has appealed from the resulting conviction.

Untiedt challenges the admission of testimony by the undercover officer that Cheryl Wells had given him Untiedt's phone number and had told him to call Untiedt if he could not locate Wells. Untiedt contends this testimony was inadmissible hearsay.

Untiedt also challenges the sufficiency of the evidence to prove that she aided and abetted Wells in the delivery of cocaine.

I. **ADMISSIBILITY OF TESTIMONY.** Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Iowa R. Evid. 801(c). Statements that otherwise would be hearsay, but are offered to help explain relevant conduct taken in response to them, are not hearsay and are not excludable on that basis. State v. Hollins, 397 N.W.2d 701, 705 (Iowa 1986). In reviewing the trial court's admission of evidence the State argues was offered for the purpose of explaining responsive conduct, we will "review the relevant record to determine if the purpose voiced by the State can reasonably be found to be the real purpose for which the challenged testimony was offered." Id. (citations

omitted). To determine the "real" purpose for which evidence was offered we apply an objective test:

> If, on a review of the record, the evidence is deemed relevant and otherwise admissible for the purpose for which it supposedly was offered, then that purpose is supported objectively in the record and will be accepted.

Id. at 706.

Here, defendant contends Wells' statement (testified to by the officer), "get in touch with [Untiedt] if you can't get ahold of me," asserts the two women were dealing drugs together and was offered to prove the truth of the matter asserted. Even assuming the statement makes such an assertion, the testimony explained why the officer telephoned Untiedt rather than Wells for a subsequent cocaine purchase. The evidence was relevant and admissible for the purpose of helping to explain the officer's subsequent actions and was not excludable as hearsay.

II. **SUFFICIENCY OF THE EVIDENCE.** The standard of review in challenging the sufficiency of the evidence is well established. State v. Lampman, 342 N.W.2d 77, 81 (Iowa App. 1982). We will uphold a verdict where there is substantial evidence in the record tending to support the charge. State v. Aldape, 307 N.W.2d 32, 39 (Iowa 1981).

When reviewing a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the state, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence in the record. State v. Hall, 371 N.W.2d

187, 188 (Iowa App. 1985); State v. Bass, 349 N.W.2d 498, 500 (Iowa 1984). It is necessary to consider all the evidence in the record and not just the evidence supporting the verdict to determine whether there is substantial evidence to support the charge. Hall, 371 N.W.2d at 188; Bass, 349 N.W.2d at 500. Substantial evidence means evidence which would convince a rational factfinder that the defendant is guilty beyond a reasonable doubt. Hall, 371 N.W.2d at 188; State v. LeGear, 346 N.W.2d 21, 23 (Iowa 1984).

To convict a defendant of aiding and abetting in violation of Iowa Code § 703.1 (1987), the State must show that the defendant "assented to or lent countenance or approval to the criminal act either by active participation in it or by in some manner encouraging it . . . ." State v. Phams, 342 N.W.2d 792, 796 (Iowa 1983). The record before us reflects that Untiedt involved herself in all aspects of the cocaine purchasing transaction except the actual exchanging of money and cocaine; she used her apartment for the site of the deal, acted as a contact between the officer and Wells, quoted the officer the price of cocaine, and made arrangements for the meeting. There is substantial evidence to support her conviction.

AFFIRMED.