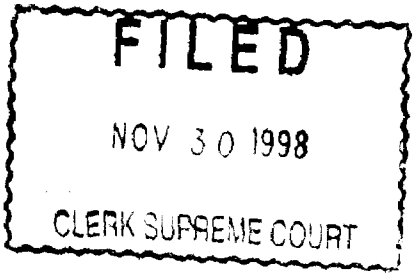
IN THE COURT OF APPEALS OF IOWA

No. 8-544 / 97-1733
Filed November 30, 1998



STATE OF IOWA,
Appellee,

vs.

NAPOLEON J. EVANS,
Appellant.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge.

Defendant appeals the judgment and sentence entered upon his conviction of possession of a controlled substance with intent to deliver, in violation of Iowa Code section 124.401(1)(b)(3), and failure to possess a tax stamp, in violation of sections 453B.3 and 453B.12. **REVERSED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, John P. Sarcone, County Attorney, and Jamie Bowers, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

VOGEL, J.

The defendant, Napoleon Evans, appeals his conviction for possession of a controlled substance with intent to deliver, in violation of Iowa Code section 124.401(1)(b)(3), and failure to possess a tax stamp, in violation of sections 453B.3 and 453B.12. He contends the district court erred by overruling his motion for judgment of acquittal because the evidence was insufficient to support his conviction. We reverse his convictions.

Background. At approximately 3:00 a.m. on April 25, 1997, police officers, responding to a call about two possible theft suspects carrying a television, spotted the defendant and another man standing together in an alley. It appeared they were looking at something in the defendant' hands. According to the officers, when the defendant spotted them, he began walking rapidly away from them, while the other individual began walking toward them at a slower pace. The defendant passed through a dark area and was momentarily out of sight. When he reemerged, the officers stopped the defendant because he resembled the description of one theft suspect. A search of the defendant's person revealed no contraband, weapons, large amount of cash, pager, nor drug paraphernalia. In searching the dark area near where they stopped the defendant, the officers found two plastic bags containing crack cocaine between some parked cars. The officers had not seen the defendant throw anything to the ground.

Trial. The State charged the defendant with possession of a controlled substance with intent to deliver and failure to possess tax stamps. A jury found the defendant guilty on both counts. The district court sentenced the defendant to an indeterminate twenty-five year term on the possession offense and a five year term on the tax stamp offense, suspended the sentences, and placed the defendant on probation for two years.

Scope of review. Our review is for correction of errors of law. Iowa R. App. P. 4; *State v. Thomas*, 561 N.W.2d 37, 39 (Iowa 1997). When evaluating a claim the evidence is insufficient to support a jury's verdict, we must determine whether substantial evidence supports the verdict. Iowa R. App. P. 14(f)(1); *State v. Veal*, 564 N.W.2d 797, 803 (Iowa 1997); *State v. LeGear*, 346 N.W.2d 21,23 (Iowa 1984). We view all the evidence presented at trial in the light most favorable to the State. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980). We ask whether a rational jury could find the essential elements of the crime(s) beyond a reasonable doubt. *Thomas*, 561 N.W.2d at 39; *see State v. Turner*, 345 N.W.2d 552 (Iowa 1983). Direct and circumstantial evidence are equally probative. Iowa R. App. P. 14(f)(16); *State v. Walker*, 574 N.W.2d 280, 284 (Iowa 1998). "Evidence, whether direct or circumstantial, must however do more than create speculation, suspicion or conjecture." *Id.* If the State introduced sufficient evidence to sustain a conviction, we must sustain the conviction. *State v. Franklin*, 368 N.W.2d 716, 718 (Iowa 1985); *State v. Aldape*, 307 N.W.2d 32, 39 (Iowa 1981).

Discussion. On appeal, the defendant contends the district court erred in overruling his motion for judgment of acquittal because the evidence was insufficient to support the convictions. We agree. No contraband or other suspicious items were found on the defendant's person. No witness saw the defendant with anything. No witness saw the defendant dispose of anything. Although crack cocaine was later found on the ground, in the general vicinity, the testimony was that drug transactions routinely took place in the area. The most that can be said is that the defendant acted suspiciously. We conclude no rational trier of fact could do more than speculate, suspect, or conjecture the defendant possessed the drugs and disposed of them before he was stopped. The amount of evidence to support possession of a controlled substance, whether actual or constructive, does not rise to the level of proof beyond a reasonable doubt necessary to sustain the verdict. The trial court should have granted the defendant's motion for judgment of acquittal. We therefore reverse the defendant's convictions.

REVERSED.