

IN THE COURT OF APPEALS OF IOWA

No. 1-091 / 90-254

FILED

APR 23 1991

CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

JOHN J. BLY,

Appellant.

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Appeal from the Iowa District Court for Dubuque County,
Peter Van Metre and Robert J. Curnan, Judges.

The defendant appeals his convictions, following a jury
trial, for several drug offenses. **AFFIRMED.**

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

Bonnie J. Campbell, Attorney General; Richard J.
Bennett, Assistant Attorney General; Fred H. McCaw, County
Attorney; and Timothy J. Gallagher, Assistant County
Attorney, for appellee.

Heard by Donielson, P.J., and Schlegel and Sackett, JJ.

DONIELSON, P.J.

A jury found John Bly guilty of delivery of cocaine, sponsoring a gathering where controlled substances were unlawfully used, possession of marijuana with intent to deliver, delivery of one ounce or less of marijuana, and knowingly keeping a premise resorted to by persons using controlled substances. Bly has now appealed the resulting convictions and sentences.

Bly challenges the sufficiency of the evidence to support his convictions for delivery of cocaine and for sponsoring a gathering where controlled substances were unlawfully used. He also alleges certain evidence should have been suppressed.

I. Admission of Evidence. Bly contends the district court should have suppressed certain evidence seized from his home during the execution of the search warrant. He acknowledges that some of the items seized either were covered by the warrant or were in plain view during the execution of the warrant. However, he argues certain other items should have been suppressed because they were not covered by the warrant and were not in plain view (and therefore their seizure and admission into evidence violated the fourth amendment).

When a defendant is alleging error involving a constitutional right, such as here, we make an independent evaluation of the totality of the relevant circumstances to determine if such an error was made. Rinehart v. State,

234 N.W.2d 649, 658 (Iowa 1975); State v. Jeffries, 417 N.W.2d 237, 239 (Iowa App. 1987).

Defendant's allegations of improperly seized evidence relate to items discovered while police officers were performing a safety check of the premises. Defendant does not argue the safety check was not legitimate.¹ We have reviewed the record and reach the same conclusion as did the district court: the items defendant contends should have been suppressed were discovered in plain view during the course of a legitimate safety check of the premises. The district court did not err in refusing to suppress the evidence.

II. Sufficiency of the Evidence. Bly contends the evidence was insufficient to support the charges of delivery of cocaine and sponsoring a gathering where controlled substances were unlawfully used. Here, our scope of review is on assigned error only. Iowa R. App. P. 4. 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).

1. Defendant makes some allusion that the plain view doctrine requires that discovery of the item be inadvertent. This court simply notes the plain view doctrine has no inadvertency requirement. See Horton v. California, 495 U.S. ___, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990).

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 that fairly and reasonably may 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). 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. Hamilton, 309 N.W.2d 471, 479 (Iowa 1981). 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 fact finder 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).

A. Delivery of Cocaine. With respect to the cocaine delivery charge, Bly asserts there was no evidence to corroborate the testimony of an alleged accomplice, Eckwood, as required by Iowa Rule of Criminal Procedure 20(3). He also asserts Eckwood's testimony was highly unreliable because Eckwood was testifying in return for leniency on other charges.

A conviction may not rest solely upon the testimony of "an accomplice or a solicited person" Iowa R. Crim. P. 20(3). Eckwood testified for the State that sometime between May and August 1987, defendant delivered three and one-half grams of cocaine to Eckwood and the agreed upon price was \$275. Defendant is incorrect in believing a purchaser of drugs is an accomplice to another's delivery of drugs. See State v. Hillsman, 281 N.W.2d 114, 115 (Iowa 1979); State v. Johnson, 219 N.W.2d 690, 694 (Iowa 1974).² We reject defendant's contention Eckwood's testimony cannot be sufficient, in itself, to support defendant's conviction for delivery of cocaine.

We next address defendant's contention concerning the reliability of Eckwood's testimony. Here, the jury observed Eckwood and heard his testimony. Eckwood was vigorously cross-examined by defense counsel and the jury heard Eckwood's testimony concerning his criminal history and his "deal" with the state. It was for the jury to determine whether to credit Eckwood's testimony and they obviously did. We affirm the conviction for delivery of cocaine.

B. Sponsoring a Gathering. With respect to the charge of sponsoring a gathering, Bly asserts the evidence was insufficient to show that he knew or intended

2. Contrary to defendant's assertion, nothing in State v. Brown, 397 N.W.2d 689 (Iowa 1986), or State v. Berney, 378 N.W.2d 915, 918 (Iowa 1985), changes this result.

controlled substances other than marijuana were used at the party in question. We have reviewed the evidence and conclude it was sufficient to support the conviction.

For all the reasons stated, defendant's convictions are affirmed.

AFFIRMED.