

IN THE COURT OF APPEALS OF IOWA

No. 2-135 / 11-0857
Filed March 14, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANTWONE PARIS COOPER,
Defendant-Appellant.

Appeal from the Iowa District Court for Floyd County, Colleen D. Weiland,
Judge.

Antwone Cooper appeals the judgment entered on two counts of
possession of cocaine with intent to deliver. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Robert P. Ranschau,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout and Douglas
Hammerand, Assistant Attorneys General, Normand Klemesrud, County
Attorney, and Todd Prichard, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

POTTERFIELD, J.

Antwone Cooper appeals from the judgment entered after a jury found him guilty of two counts of possession of cocaine with intent to deliver. Cooper asserts the evidence at trial was insufficient to show he was the individual who sold drugs to a confidential informant during two controlled buys.

I. Background Facts and Proceedings

Judy Diesburg, a former crack cocaine addict, approached police and offered to help “get [crack] off the street.” In September 2009, Diesburg worked with Charles City Officers Leonard Luft and Joshua Douglas doing controlled buys of illegal drugs.

On September 24, 2009, Diesburg met Douglas and Luft to set up a controlled buy from Antwone Cooper. Diesburg, who had Cooper’s number programmed into her phone, called him and arranged to buy cocaine from him at his home. Luft and Douglas drove past Cooper’s house to a point where they could monitor the controlled buy. When they passed Cooper’s house, he was on the porch. Luft and Douglas both testified they knew Cooper from previous dealings. Once the officers were parked a block to the south of Cooper’s house, they communicated with Diesburg that she should proceed to Cooper’s house to start the controlled buy. Diesburg was equipped with a tape recorder that recorded the conversation during the transaction.

Diesburg testified that when she got to Cooper’s house, he was waiting outside and got into her car to complete the transaction. She testified she gave him fifty dollars and he gave her crack cocaine in exchange.

On September 28, 2009, Diesburg completed a second controlled buy from Cooper. Once again, a tape recorder on Diesburg's person captured the transaction and Diesburg's statements to the officers. Diesburg called Cooper and arranged to buy crack cocaine from him. Officers again arranged surveillance of Cooper's residence. Luft testified that while he was waiting for Diesburg to arrive at Cooper's residence, he saw an individual stop there. Cooper came out of the residence and spoke briefly with this individual, and then the individual left and Cooper returned inside his house. A short time later, Luft saw Diesburg arrive.

Diesburg testified she arrived at Cooper's house and went inside. She testified that inside his house, she gave him \$100 and he gave her \$100 worth of crack cocaine.

During Diesburg's testimony, she identified Cooper as the person who sold her crack cocaine during both controlled buys. Defense counsel cross-examined Diesburg about a statement she made on the September 28 tape about a short, fat, bald man who had threatened her. The tape was played to the jury while Diesburg was testifying,¹ but she was unable to explain to the jury the reference to the short, bald man. The officers testified that Cooper was six feet two inches tall and wore his hair in corn rows. Counsel argued to the jury in closing statements that the discrepancy in the descriptions created reasonable doubt as to the identity of the drug seller.

¹ No transcript of the tape was prepared, but a CD copy of both tapes is included in the record on appeal.

As a result of these two controlled buys, the State charged Cooper with two counts of possession of cocaine with intent to deliver.² After trial, a jury found Cooper guilty of both counts. Cooper now appeals, asserting the evidence was insufficient to prove he was the person who sold cocaine to Diesburg.

II. Scope of Review

We review Cooper's challenge to the sufficiency of the evidence for correction of errors at law, and we will uphold the jury's verdict if it is supported by substantial evidence. *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006). Evidence is considered substantial if a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. *State v. Casady*, 597 N.W.2d 801, 804 (Iowa 1999). We consider all the evidence in the light most favorable to the State, drawing all reasonable inferences. *State v. Milom*, 744 N.W.2d 117, 120 (Iowa Ct. App. 2007). The evidence must "raise a fair inference of guilt as to each essential element of the crime," and must not raise only suspicion, speculation, or conjecture. *State v. Speicher*, 625 N.W.2d 738, 741 (Iowa 2001) (citing *Casady*, 597 N.W.2d at 787).

III. Analysis

Cooper argues on appeal that the "Antwone" from whom Diesburg purchased the drugs was not him. Cooper's claim is based on differing physical descriptions given by the police and by Diesburg. In particular, Cooper takes issue with Diesburg's description of the seller as "the short, little fat one that threatened me, right, bald-headed," when the officers described Cooper as being six feet two inches tall with an average build and corn rows. Cooper also notes

² Cooper was charged with two other counts that are not relevant on appeal.

that although the officers observed Diesburg as she travelled to and from Cooper's house, they did not observe the drug transactions or verify that she was telephoning the same "Antwone" they believed she was contacting.

However, after a review of the record as a whole, we find substantial evidence supports the jury's verdict that Cooper was the individual who participated in both controlled buys with Diesburg. The defendant's name is Antwone Cooper, and Diesburg testified she went to Antwone Cooper's home for both controlled buys. Diesburg testified she knew Cooper before September 2009 and already had his number programmed into her phone. At Cooper's trial, she identified Cooper as the individual from whom she had purchased crack cocaine on both September 24 and September 28. She further testified she had no doubt the defendant was the individual from whom she had purchased the cocaine. In addition, the officers saw Cooper at the residence just before both controlled buys and observed Diesburg enter Cooper's residence during the September 28 transaction. See *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011) ("In assessing the sufficiency of the evidence, we find circumstantial evidence equally as probative as direct.").

Though Diesburg's physical description of Cooper differed from the officers' physical descriptions, the jurors were free to accept or reject any part of each witness's testimony and to give the testimony the weight they thought it should receive. *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006). "The function of the jury is to weigh the evidence and place credibility where it belongs." *Id.* (internal quotation marks removed). From the evidence presented,

a reasonable trier of fact could conclude Cooper was the individual who participated in the controlled buys with Diesburg.

AFFIRMED.