

IN THE COURT OF APPEALS OF IOWA

No. 2-196 / 11-0618
Filed April 25, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KEETHA LONTEZ TEMPLE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison,
Judge.

Keetha Temple appeals from his conviction for delivery of a controlled
substance (marijuana) and sentence enhancement based on a prior conviction.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, John P. Sarcone, County Attorney, and Joseph Crisp, Assistant County
Attorney, for appellee.

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

VOGEL, P.J.

Keetha Temple appeals from his conviction for delivery of a controlled substance (marijuana). Because we agree with the district court that the State presented sufficient evidence to deny Temple's motion for judgment of acquittal and that the jury's findings are supported by substantial evidence in the record, we affirm.

I. Background Facts and Proceedings

On March 2, 2010, officers from the Des Moines Police Department worked with a confidential informant to facilitate a controlled buy of marijuana. A transaction was scheduled to occur in a grocery store parking lot in Des Moines. Prior to the scheduled transaction, Sergeant Cynthia Donahue and Investigator Chad Nicolino—who both work for the Des Moines Police Department's Narcotics Control Section—met with the confidential informant at East 6th and Court in Des Moines. Nicolino performed a thorough search of the confidential informant's person—including pockets—and vehicle to confirm the individual did not take any drugs or money into the transaction. Nicolino found nothing and the officers then provided the confidential informant with \$200 issued by the Narcotics Control Section.

Donahue and Nicolino then followed the confidential informant—in an unmarked vehicle—to the location where the transaction was to take place. The confidential informant made no stops along the way, was in the officers' view during the entire drive, and the officers were able to verify the confidential informant was meeting Temple at the predetermined location. As the confidential informant pulled into the grocery store parking lot, Nicolino observed a green

Lincoln parked to the south of the store. Donahue and Nicolino then drove to a parking lot two or three buildings to the north.

Prior to the time the transaction was scheduled to occur, Officer Kelly Fisher, also of the Narcotics Control Section, positioned herself directly across the street from the grocery store parking lot. Fisher conducted surveillance of the transaction and informed Donahue and Nicolino of her observations of the transaction between the confidential informant and Temple. Nicolino kept time notations and wrote down Fisher's observations throughout the transaction.

Fisher observed the confidential informant arrive at the grocery store parking lot, park near Temple's vehicle, and then exit the vehicle. She saw the confidential informant and Temple meet up for a short time but did not observe a transaction take place due to her vantage point. Less than two minutes later, the confidential informant and Temple each returned to their vehicles and parted ways.

Fisher followed Temple's green Lincoln; Temple drove to a second grocery store north of where the transaction occurred, making no stops along the way. Meanwhile, Donahue and Nicolino followed the confidential informant to a nearby hospital parking lot for a post-transaction briefing; the confidential informant made no stops along the way. The confidential informant turned over approximately one ounce of marijuana and \$100 of remaining cash, not used in

the purchase. Nicolino performed a thorough, post-transaction search¹ of the confidential informant's person and vehicle; no additional contraband or cash was discovered. Following this post-transaction briefing, Donahue and Nicolino returned to the second grocery store parking lot to assist the other officers with surveillance of Temple.

Donahue and Nicolino observed Temple sitting in his vehicle and then meeting up with a female who arrived in a white vehicle. Temple and the female briefly met in the parking lot, entered the grocery store where they remained for approximately thirty minutes, left the store, briefly conversed, and then parted ways. After Temple drove away, Officers Michael Fong and Ryan Doty initiated a traffic stop. Temple exited the vehicle, was identified, and consented to a search of his person and his vehicle; the officers did not find anything illegal.

On August 3, 2010, Temple was charged by trial information of delivery of a controlled substance (marijuana) in violation of Iowa Code section 124.401(1)(d) (2009). Temple was also provided notice that the "Second or Subsequent Offender" provision of Iowa Code section 124.411 applied due to a previous drug felony conviction from March 30, 2006. A trial was held March 2 to 3, 2011. The jury returned a guilty verdict. Temple stipulated to his prior conviction. Temple was sentenced for a period of incarceration not to exceed

¹ Nicolino testified that this search was, the same as it was at the first meeting: Searched all pockets inside and out, searched the waist where the jeans or the pants would come up, pants legs, socks; and then also searched the vehicle, you know, the glove box, center console, seats, under seats, head liner, visors, doors, the maps pockets in the doors.

fifteen years; however, this sentence was suspended and he was placed on supervised probation for five years. Temple appeals.

II. Standard of Review

We review sufficiency-of-the-evidence claims for correction of errors at law. *State v. Enderle*, 745 N.W.2d 438, 443 (Iowa 2007).

The jury's findings are binding on appeal if the findings are supported by substantial evidence. Substantial evidence is evidence that could convince a rational trier of fact that a defendant is guilty beyond a reasonable doubt. 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.

See *id.* (citing *State v. Leckington*, 713 N.W.2d 208, 212–13 (Iowa 2006)). “In assessing the sufficiency of the evidence, we find circumstantial evidence equally as probative as direct.” *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011).

III. Sufficiency of the Evidence

Temple raises one issue on appeal—that the evidence was insufficient to prove beyond a reasonable doubt that he delivered marijuana to the confidential informant on March 2, 2010. He argues that because there was no observation of an actual transfer, nor marijuana nor marked money found in his possession following the alleged transaction, there was insufficient evidence to support his conviction. The State counters that “[Temple’s] speculation does not overcome the natural and compelling inferences based upon the evidence received.”

The State called Sergeant Donahue, as well as Officers Fisher and Nicolino, to testify at trial (collectively the officers). The officers testified regarding the events before, during, and after the transaction; their surveillance

of the confidential informant to protect the “integrity” of the transaction; and that following the confidential informant’s brief encounter with Temple in the grocery store parking lot, the confidential informant obtained approximately one ounce of marijuana and had only \$100 in cash remaining. Temple called Officer Fong to testify regarding the traffic stop and subsequent searches of Temple’s person and vehicle, which yielded no contraband nor marked cash.

The State has the burden of proving “every fact necessary to constitute the crime with which the defendant is charged, and the evidence presented must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.” *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011). Under Iowa Code section 124.401(1)(d), the State was required to prove (1) Temple delivered marijuana and (2) Temple knew the substance he was delivering was a controlled substance. *See State v. Spies*, 672 N.W.2d 792, 796 (Iowa 2003). “Because it is difficult to prove intent by direct evidence, proof of intent usually consists of circumstantial evidence and the inferences that can be drawn from that evidence.” *State v. Adams*, 554 N.W.2d 686, 692 (Iowa 1996).

Donahue and Nicolino, who were working as a team on March 2, 2010, both testified that Nicolino had a pre-transaction briefing with the confidential informant—which included a search of the confidential informant’s person and vehicle, that they followed the confidential informant to the location of the scheduled transaction to verify that the transaction was to occur as purported by the confidential informant, that they both listened to, and Nicolino transcribed, Fisher’s observations of the encounter between the confidential informant and Temple, and that after the transaction they followed the confidential informant to

a hospital parking lot for a post-transaction briefing—which included another search of the confidential informant's person and vehicle performed by Nicolino. Nicolino explained the confidential informant was under the surveillance of officers before, during, and after the transaction. When asked why this was significant, Nicolino replied,

That is done to protect the integrity of the investigation. Like I stated earlier, it's important for us that when we arrange a transaction with an informant and an individual who is dealing drugs, that what they say—as in the informant—happened, happened. So we confirm what they tell us by what we see during our surveillance. So we follow them before and after the buy so that we can say that they took the money that we gave them after they were searched and went directly to the location that they were supposed to go to meet the dealer and conduct the transaction.

Then we follow them after the transaction to—back to another location so we can say that after that meeting, they didn't stop anywhere else to leave the drugs or pick up an additional quantity of drugs. And then the surveillance is done during the time as well so we can corroborate what the informant states happened with what we saw happen.

From the time the confidential informant left the initial briefing until the post-transaction briefing, the confidential informant had contact with only one person—Temple. Nicolino, who has worked in the Narcotics Control Section since April 2004, further testified that not finding narcotics on Temple's person nor in his vehicle did not play a role in the investigation because

I know through my training and experience, that a lot of times when drug transactions would take place, the drug dealer only will take the quantity of drugs that they're selling to the informant at that specific time. And one of the main reasons why that happens is because most drug dealers fear that if they drive around with all their drugs and all their money when they go to meet people, that if that becomes a pattern and other individuals or customers that they sell to notice that, that they might become an easy target for a robbery.

Nicolino also explained that the reason he did not send the clear plastic bags that contained the marijuana to a lab to check for fingerprints is because in his hundreds of narcotics investigations, he has submitted clear plastic bags for fingerprint analysis and only on two occasions had fingerprints actually been retrieved.

Fisher testified that she observed the confidential informant arrive at the grocery store parking lot and park near Temple's green Lincoln, the two met for a brief amount of time—in her opinion “less than a couple minutes,” and then parted ways. Fisher explained that from her perspective, she observed Temple and the confidential informant “meet up,” but did not observe the transaction take place. She did, however, state that it was determined that a transaction had taken place based on the confidential informant's purchase of marijuana.

At the close of the State's evidence, Temple moved for a directed verdict or judgment of acquittal. The district court overruled the motion, finding there was sufficient evidence to generate a question for the jury regarding whether a transaction occurred. We agree with the district court and we reject Temple's sufficiency of the evidence claim, as a rational trier of fact could find Temple (1) delivered marijuana to the confidential informant and (2) knew the substance he delivered was a controlled substance. See *Spies*, 672 N.W.2d at 796. Moreover, because we view the evidence in the light most favorable to the State and find circumstantial evidence equally as probative as direct evidence, we conclude the jury's findings are supported by substantial evidence and will not disturb them on appeal. See *Enderle*, 745 N.W.2d at 443 (stating when jury's

findings are binding on appeal); *Meyers*, 799 N.W.2d at 138 (explaining “circumstantial evidence is equally as probative as direct”). We therefore affirm.

AFFIRMED.