

IN THE COURT OF APPEALS OF IOWA

No. 9-754 / 09-0062
Filed October 21, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MELISSA ANN DUKES,
Defendant-Appellant.

Appeal from the Iowa District Court for Linn County, David M. Remley,
Judge.

Melissa Dukes appeals from her conviction of gathering where controlled
substances unlawfully used in violation of Iowa Code section 124.407 (2007).

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Martha Lucey, Assistant
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Bridget A. Chambers, Assistant
Attorney General, Harold Denton, County Attorney, and Jerry Vander Sanden,
Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., Mansfield, J., and Zimmer, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MANSFIELD, J.

Melissa Dukes appeals from her conviction of gathering where controlled substances unlawfully used in violation of Iowa Code section 124.407 (2007). The case was tried by stipulation on the minutes of testimony. On appeal Dukes challenges the sufficiency of the evidence. We affirm.

I. Background Facts and Proceedings.

On January 23, 2008, Dukes was charged with gathering where controlled substances unlawfully used in violation of Iowa Code section 124.407. The minutes of testimony stated:

[O]n January 14, 2008, Cedar Rapids police officers and other agencies executed a search warrant at 5537 North Town Place NE # 1 in Cedar Rapids, Iowa. This is the residence of Melissa Ann Dukes and Thomas Ray Reinhart. Upon entering the residence officers found a large number of items associated with the manufacture or use of methamphetamine. Items found included a bag with batteries that had been peeled which are then used in the manufacture of methamphetamine. A meth pipe was found on a bedroom table by investigator Faircloth. A baggie with residue was found in a bedroom by investigator Faircloth. She also found a silver digital scale with residue. Tubing, foil and a meth pipe and an orange fabric holder were found in a closet by Officer Wery. In addition four batteries and filters were found. Batteries contain lithium which is used in the manufacture of methamphetamine. Coleman fuel, mixing spoons, plastic ware, rubber gloves and 2 liter bottles were located in a vehicle by DEA Officer Yount. Officers [will] further testify as to other items related to drug use that were found at the residence and which are documented in the reports. Officers interviewed both defendants, Melissa Dukes and Thomas Ray Reinhart. Both defendants admitted that their residence had been used as a place for the smoking of methamphetamine by themselves and others. These witnesses will testify to further facts and details regarding this case and to the statements and admissions made by defendants and the items of evidence gathered in the search warrant.

Following a suppression hearing and a denial of her motion to suppress, Dukes waived her right to a jury trial and proceeded to a bench trial on a

stipulated record that included the trial information and minutes of testimony. On April 4, 2008, the district court found Dukes guilty as charged. On May 27, 2008, the district court deferred judgment and sentence, placed Dukes on probation for three years, and ordered Dukes to pay a civil penalty of \$750. However, Dukes continued to use methamphetamine and did not complete the required treatment programs. On January 5, 2009, the district court revoked Dukes's deferred judgment and entered a guilty verdict. Dukes was sentenced to five years in prison. Dukes appeals and challenges the sufficiency of the evidence.

II. Standard of Review.

We review challenges to the sufficiency of the evidence for correction of errors at law. *State v. Jorgensen*, 758 N.W.2d 830, 834 (Iowa 2008). “The district court’s findings of guilt are binding on appeal if supported by substantial evidence. Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt.” *Id.* In conducting our review, we consider all the evidence, not just the evidence that supports the verdict. *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005). “We review the evidence in the light most favorable to the State, including legitimate inferences and presumptions that may fairly reasonable be deduced from the evidence in the record.” *State v. Webb*, 648 N.W.2d 72, 76 (Iowa 2002); *State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998).¹

¹ Although we have before us the same minutes of testimony that were before the trial court, this does not affect our standard of review, which as noted involves deference to the trial court’s role as finder of fact. See *State v. Adams*, 554 N.W.2d 686, 691 (Iowa 1996) (applying the “substantial evidence” standard when reviewing a case tried on the minutes of testimony). Thus, the issue is not whether we believe guilt has been proved beyond a reasonable doubt, but whether a rational trier of fact could so find. Also, although other evidence was presented at the suppression hearing (generally, in our

III. Analysis.

The elements of this crime as applied to Dukes are (1) Dukes aided, promoted, or sponsored, or assisted in the sponsoring or promoting of (2) an assemblage, gathering, or meeting (3) with the knowledge or intent that a controlled substance be there distributed, used, or possessed. Iowa Code § 124.407; *State v. Carter*, 582 N.W.2d 164, 166 (Iowa 1998). Dukes challenges the first two elements, arguing that the minutes are insufficient to show she promoted or sponsored a gathering. “‘Promote’ means to move forward or further an enterprise. ‘Sponsor’ commonly means to assume responsibility for.” *Carter*, 582 N.W.2d at 166. A gathering is a coming together of two or more persons in one place, usually for a common purpose. See Iowa Crim. Jury Instructions 2320.2 (defining sponsoring, promoting, or aiding a gathering); see also *Carter*, 582 N.W.2d at 166 (stating that the use of the words meeting, gathering, or assemblage in the statute “encompass[es] small groups of people as well as large congregations of people”); *State v. Bush*, 518 N.W.2d 778, 780 (Iowa 1994) (“[A] reasonable, common, and ordinary definition of ‘within an assembly of people’ . . . is ‘into or through two or more persons at the same place.’”).

The minutes of testimony show Dukes and Reinhart were the residents of an apartment located at 5537 North Towne Place NE. On January 14, 2008, officers executed a search warrant at their residence, during which both Dukes

view, unfavorable to Dukes), neither party urges us to rely on that evidence and we confine our review to the minutes themselves. See *id.* (noting “[a]lthough [the defendant] cites to evidence introduced at the suppression hearing, for purposes of reviewing the sufficiency of the evidence to support the judgment of conviction, we confine our consideration to the trial record”).

and Reinhart admitted to officers that their apartment was used as a place for themselves and others to smoke methamphetamine. Throughout the apartment, officers found numerous items used in the manufacture and use of methamphetamine. These items included two methamphetamine pipes (one in a closet and one in a bedroom), a plastic bag containing residue of methamphetamine, a digital scale, “peeled” batteries, tubing, filters, foil, fuel, mixing spoons, plastic ware, rubber gloves, and two-liter bottles.

Dukes argues that this is not substantial evidence that she promoted or sponsored a gathering of persons who used methamphetamine. She points out that the minutes do not show how the unidentified other persons came to be in the apartment. Perhaps they were uninvited. She also argues that the individuals who admittedly used methamphetamine in the apartment may have done so individually and at different times. Perhaps there was no gathering. However, to be sufficient, the evidence need not eliminate every possible theory of innocence. Dukes’s scenarios seem implausible, and a reasonable fact finder could have concluded beyond a reasonable doubt that Dukes and Reinhart jointly possessed methamphetamine in the apartment, that they facilitated and encouraged visits to the apartment, and that as a result of these visits at least one gathering occurred where methamphetamine was distributed, used or possessed by two or more persons.²

In summary, viewed in the light most favorable to the State, the evidence was sufficient to find Dukes provided both her apartment and the illegal drugs so

² The State does not argue that the unlawful gathering could consist of just Dukes and Reinhart, and we are able to affirm without reaching that issue.

that a gathering of two or more persons therein could distribute, use, or possess illegal drugs. See *Carter*, 582 N.W.2d at 167 (finding a defendant promoted or sponsored a gathering where he provided the hotel room where drugs were used and distributed); *State v. Cartee*, 577 N.W.2d 649, 653 (Iowa 1998) (finding a defendant aided, promoted, or sponsored a gathering where he provided the drugs that were consumed at the gathering as well as a place to smoke them). Therefore, we affirm Dukes's conviction.

AFFIRMED.