

**IN THE COURT OF APPEALS OF IOWA**

No. 3-508 / 12-1250  
Filed July 24, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**TIMOTHY EUGENE ANGEL JR.,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers,  
Judge.

Defendant challenges the sufficiency of the evidence and the sentence  
imposed. **AFFIRMED.**

Eric D. Puryear and Eric S. Mail of Puryear Law, P.C., Davenport, for  
appellant.

Thomas J. Miller, Attorney General, Thomas H. Miller, Assistant Attorney  
General, Michael J. Walton, County Attorney, and Dion Trowers, Assistant  
County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

**EISENHAUER, C.J.**

Timothy Eugene Angel Jr. appeals from his convictions, following a jury trial, for delivery of crack cocaine and failure to affix a drug tax stamp. Angel challenges the sufficiency of the evidence and the sentence imposed. We affirm.

**I. Sufficiency of the Evidence.**

Angel argues the State's evidence was insufficient to support his convictions. On count I, the jury was instructed the State had to prove Angel "did unlawfully deliver a controlled substance or act with, enter into a common scheme or design with, or conspire with one or more other persons to deliver a Schedule II controlled substance." On count II, the jury was instructed the State had to prove Angel "possessed ten or more dosage units of crack cocaine" without the appropriate tax stamp.

We review Angel's challenge to the sufficiency of the evidence for correction of errors at law. See *State v. Hearn*, 797 N.W.2d 577, 579 (Iowa 2011). The jury's verdict is binding if supported by substantial evidence. *Id.* Substantial evidence is evidence upon which a rational finder of fact could find a defendant guilty beyond a reasonable doubt. *State v. Rohm*, 609 N.W.2d 504, 509 (Iowa 2000). We view all the evidence in the record in the "light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the evidence." *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006). We recognize the jury's freedom "to reject certain evidence, and credit other evidence." *State v. Nitchev*, 720 N.W.2d 547, 556 (Iowa 2006).

On September 6, 2011, the police apprehended Charlene Nelson in possession of a quarter ounce of crack cocaine. Due to her criminal history, she faced a potential life sentence in federal prison. In order to “get out of trouble,” Nelson agreed to act as a confidential source in a controlled buy from her supplier, Angel. Detective Morel supervised and recorded Nelson’s call to Angel setting up a meeting to buy half an ounce of crack cocaine. This recording was played for the jury. Morel searched Nelson’s person and vehicle to insure she did not have drugs or cash. Morel gave Nelson \$600 in recorded bills and a digital recorder. Nelson drove to the meeting site—the street parking in front of her house. Several police officers conducted surveillance, including Officer Koepke. Koepke had attended junior high school with Angel.

While Nelson waited inside her vehicle, her boyfriend twice approached and argued with her. At one point, he passed a pop to her. After approximately ninety minutes, Angel arrived in a Yukon. Nelson testified she got into the Yukon and gave Angel \$600 in exchange for crack cocaine. Nelson returned to her car and drove a few blocks to a prearranged meeting spot where Morel again searched Nelson and her vehicle. Morel testified Nelson did not have the \$600 and she had a small plastic bag containing 14.85 grams of crack cocaine. No tax stamps were affixed to the drugs.

Angel drove away, and the surveillance officers followed. As the Yukon and the surveillance vehicles approached an apartment complex, Koepke entered the parking lot ahead of Angel and parked. Angel parked beside Koepke, who testified:

[Angel] was actually so close it was uncomfortably close. I just looked out my passenger window and his window was lined up with my window and I could see directly into his car . . . . I had to turn my radio down we were so close. I didn't want him to hear my radio, so I was advising I could see [Angel] look around and you could tell he was nervous and he was seeing cars pulling into that lot . . . . I knew that we had to approach him soon because he was going to take off.

. . . One of our undercover vehicles pulled up to block him in.

. . . When the undercover vehicle . . . blocked him in, I got out of my vehicle and pulled out my service weapon and I pointed it over the hood of the car at [Angel] and I said, "Police Department. Show me your hands."

. . . [Angel] looked at me and accelerated and eventually jumped the curb.

The surveillance officers followed Angel as he fled. Angel abandoned the Yukon and fled on foot. When the officers searched the Yukon, they found one plastic bag with a fifty-dollar rock of crack cocaine and several documents issued to Angel. However, the \$600 was not recovered.

During the June 2012 trial, an in-court identification of Angel was made by three witnesses: Nelson, Officer Koepke, and Detective Smull (a surveillance officer who observed Angel's face as their cars passed each other). Nelson testified she did not receive anything from her boyfriend other than the pop.

Angel argues: (1) Nelson's testimony lacked credibility; (2) the jury was required to speculate whether a transaction occurred due to the "lack of control over the controlled buy"; (3) the officers' testimony identifying Angel as the person they pursued lacks credibility; and (4) "the lack of connection between the SUV and the buy money with Mr. Angel" renders the evidence insufficient.

We note the credibility of witnesses is for the fact-finder to decide except for those rare circumstances where the testimony is absurd, impossible, or self-

contradictory. *State v. Kostman*, 585 N.W.2d 209, 211 (Iowa 1998). None of those factors apply to the challenged testimony. Further, the jury could reasonably conclude Angel took the \$600 with him when he abandoned the Yukon. Accordingly, a reasonable jury could find Angel delivered crack cocaine without a tax stamp. We affirm his convictions.<sup>1</sup>

## II. Sentencing.

During allocution, Angel explained his education and ongoing carpentry business. Defense counsel requested a suspended sentence. The presentence investigation report (PSI) recommended incarceration. The court sentenced Angel to an indeterminate twenty-five-year term on count I and an indeterminate five-year term on count II. The court ruled the sentences would run concurrently “in recognition of the fact” Angel did not have a lengthy criminal record. Angel argues the court abused its discretion by only considering the severity or nature of the offense in setting the sentences for each count at the maximum sentence.

Our review of sentencing decisions is for correction of errors at law. *State v. Thomas*, 547 N.W.2d 223, 225 (Iowa 1996). “An abuse of discretion is found only when the sentencing court exercises its discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable.” *Id.* The sentencing court is generally not required to give its reasons for rejecting particular sentencing options. *Id.*

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<sup>1</sup> Angel also argues trial counsel rendered ineffective assistance by failing to conduct depositions and failing to file a motion to suppress. To establish the requisite prejudice element on this claim, Angel must prove “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” See *State v. Graves*, 668 N.W.2d 860, 882 (Iowa 2006). We recognize “[t]he most important factor under the test for prejudice is the strength of the State’s case.” *State v. Carey*, 709 N.W.2d 547, 559 (Iowa 2006). Accordingly, we find no merit to this claim.

We conclude the district court considered and weighed numerous, appropriate factors in arriving at a sentence. The court heard and considered a statement from both Angel and his attorney. The court informed Angel it had read and considered all the letters of support submitted on his behalf. The court ruled incarceration rather than suspension was appropriate due to the seriousness of the charge, the large quantity of drugs involved, and the issue of community safety. The court also stated:

The needs that are identified for you [in the PSI] are that you need to accept law-abiding behavior, responsibility for the crime, get a stable residence, have pro-social companions, and have meaningful leisure activities. I think some of those matters you have already worked on as an adult. The capabilities listed here are that [you are] a high school graduate, you have some college experience, and [you are] employable. In fact, you have been employed a good deal of the time here.

Accordingly, the court not only considered the serious nature of the offense, an appropriate factor, see *State v. Dvorsky*, 322 N.W.2d 62, 67 (Iowa 1982) (stating the nature of the offense is a necessary factor to consider when exercising sentencing discretion), but also considered other appropriate factors. Finding no abuse of discretion, we affirm the sentence.

**AFFIRMED.**