

IN THE COURT OF APPEALS OF IOWA

No. 1-854 / 11-0040
Filed December 7, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DORAN ANDRE WALLACE,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Douglas S. Russell, Judge.

Doran Andrew Wallace appeals his conviction for possession of marijuana with intent to deliver and failure to affix a drug tax stamp. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Benjamin M. Parrott, Assistant Attorney General, Janet M. Lyness, County Attorney, and Meredith Rich-Chappell, Assistant County Attorney, for appellee.

Considered by Danilson, P.J., and Tabor and Mullins, JJ.

TABOR, J.

Doran Andrew Wallace challenges the State's proof that he possessed the four packages of marijuana found in a backpack on the floor of a bedroom closet in the condominium he listed as his address for probation officers. Viewing the testimony in the light most favorable to the jury's verdict, we find ample circumstantial evidence to link Wallace to the drugs and affirm his convictions for possession of marijuana with intent to deliver, in violation of Iowa Code sections 124.401(1)(d) and 124.204(4)(m) (2009), and failure to affix a drug tax stamp, in violation of sections 453B.7 and 453B.12.

I. Background Facts and Proceedings.

On September 11, 2010, probation officers Juan Santiago and Anjelica Atalig conducted a home check at the address Wallace identified as his residence. The purpose of a home check is to confirm the probationer is living at the address provided and is not engaging in illegal activity there.

Wallace reported to the department of correctional services that he lived at 2478 Rushmore Drive in Iowa City. Officers Santiago and Atalig saw the name "Wallace" on the mailbox for that condo. They knocked on the door and identified themselves, but received no answer for "at least five minutes." During this time, the officers heard movement inside. Officer Atalig explained that in her experience, a delay in answering the door means the probationer is taking time to hide something.

When Wallace finally answered the door, he confirmed for the officers that he was living there. Only Wallace and his two-year-old daughter were at home. The officers asked if there were any illegal substances in the condo, and Wallace answered “no.” Wallace allowed the officers to enter and search the residence. In the kitchen, Officer Atalig discovered a small digital scale with green leafy flecks on it. Wallace claimed to use the scale to measure sugar but when the officers asked what the residue looked like, he replied, “Looks like marijuana.”

Officer Santiago entered a spare bedroom and looked inside the closet, noting men’s clothing both hanging and on the floor. He also found a dark-colored backpack and searched its contents. The backpack contained children’s clothing, small Ziploc baggies, four individually wrapped packages of marijuana, and a piece of mail addressed to Wallace at that address. Later laboratory testing found the packages contained marijuana in the amounts of 28.16 grams, 28.72 grams, 27.93 grams, and 26.54 grams.

Officer Santiago testified Wallace admitted the backpack and mail were his, and that the clothing belonged to his daughter. But Wallace claimed the marijuana must belong to his cousin. Wallace also told officers his cousin had stayed the night, but he refused to tell them his cousin’s name. On cross-examination, defense counsel impeached Officer Santiago with his deposition where he testified that Wallace told him the backpack itself belonged to his cousin.

Officer Atalig found a pair of jeans in the living room; Wallace admitted they belonged to him. In the pocket, the officer found \$170 in cash, mostly ten dollar bills. Although unemployed,¹ Wallace acknowledged the money was his. Officer Atalig told the jury that drug transactions often took place with small denomination bills.

After discovering the marijuana, the officers called Daisy Ogoli, who was the mother of Wallace's child and also lived in the condo. When she arrived, she let the officers know that she was angry they had searched her residence without her permission. Ogoli testified that when she saw the backpack, she yelled: "Where is Gotti?"—referring to Wallace's cousin. The officers did not recall such an exclamation. Ogoli claimed the backpack and clothes belonged to Gotti and recalled asking the officers to call the cousin. She testified she knew Gotti, who was homeless, had been in her apartment that day because the shower was steaming when she came home.

At trial, Ogoli denied Wallace lived with her in the condo; she testified he was there that day to babysit their child while she took a test at the community college. She also testified Wallace earned money by cutting his friends' hair and his barber skills accounted for the \$170 in his jeans pocket.

The defense moved for judgment of acquittal, arguing, "[T]his entire case hinges on possession and . . . there is insufficient evidence that a jury could believe that Mr. Wallace was in possession of any marijuana on the date in question." The court overruled the motion. The jury convicted Wallace of

¹ The trial court denied the portion of Wallace's motion in limine that sought to exclude evidence regarding his unemployment.

possession of marijuana with intent to deliver and failure to affix a drug tax stamp. The court sentenced Wallace to concurrent terms not to exceed five years in prison.

II. Scope and Standard of Review.

We review challenges to the sufficiency of the evidence for the correction of legal error. *State v. Cashen*, 666 N.W.2d 566, 569 (Iowa 2003). We uphold the jury's verdict if the record contains substantial evidence to support it. *Id.* Substantial evidence is the quality and quantity of proof that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.* To gauge whether the evidence is substantial, we review the record in the light most favorable to the verdict. *Id.* We consider all of the evidence in the record, not just the evidence supporting guilt. *State v. Webb*, 648 N.W.2d 72, 76 (Iowa 2002).

III. Analysis.

As a threshold matter, the State contends Wallace did not articulate his motion for judgment of acquittal with enough specificity to preserve error. We disagree. Trial counsel argued the prosecution fell short of proving Wallace possessed the marijuana, an element of both crimes charged.² Counsel

² With regard to the charge of possession of marijuana with intent to deliver, the jury was instructed that in order to find Wallace guilty, the State had to prove:

1. On or about the 11th day of September 2009, that the Defendant knowingly possessed marijuana, a controlled substance.
2. The Defendant knew that the substance he possessed was marijuana.
3. The Defendant possessed marijuana with the intent to deliver it.

With regard to the charge of failure to affix a drug tax stamp, the jury was instructed that in order to find Wallace guilty, the State had to prove:

sufficiently alerted the State and the court to the grounds for the motion. See *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005).

Possession of a controlled substance can be either actual or constructive. *Cashen*, 666 N.W.2d at 569. Actual possession means the defendant has “direct physical control” over the drugs; constructive possession occurs when the defendant knows the drugs are present and has the authority or right to maintain control of them. *Id.* Because the officers did not find Wallace holding the marijuana, we must decide if he constructively possessed the contraband. See *id.* (“The officers did not find the marijuana on Cashen’s person. Under these circumstances, the possession to be found, if any, must be constructive.”).

“Unlawful possession of a controlled substance requires proof that the defendant: (1) exercised dominion and control over the contraband, (2) had knowledge of its presence, and (3) had knowledge that the material was a controlled substance.” *State v. Nitcher*, 720 N.W.2d 547, 558 (Iowa 2006). Our supreme court allows an inference of possession where the police find controlled substances in a location under the exclusive control of the accused; but no such inference is available where a defendant shares the premises with others. *Id.* In cases of shared quarters, the State may show possession through other proof, such as

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1. On or about the 11th day of September 2009, the Defendant knowingly or intentionally possessed a taxable substance as defined in Instruction No. 23.
 2. The Defendant possessed forty-two and one-half grams or more of the substance consisting of or containing marijuana.
 3. The taxable substance the Defendant possessed did not have permanently affixed to it a stamp, label or other official indication of payment of the state tax imposed on the substance.

incriminating statements made by the defendant, incriminating actions of the defendant upon the police's discovery of the controlled substance among or near the defendant's personal belongings, the defendant's fingerprints on the packages containing the controlled substance, and any other circumstances linking the defendant to the controlled substance.

Id. These factors are not exclusive. *Cashen*, 666 N.W.2d at 571. We look to all the facts and circumstances—including those not listed above—to evaluate whether the jury could reasonably infer the defendant knew of the drugs' presence and had control and dominion over them. *Id.* “The existence of constructive possession turns on the peculiar facts of each case.” *Webb*, 648 N.W.2d at 79.

Substantial evidence supports the jury's verdict that Wallace possessed the four packages of marijuana in the backpack. When the officers knocked and announced their purpose at the condo, Wallace kept them waiting as long as five minutes before answering the door, leading them to believe he was busy concealing something. These incriminating actions contributed to a finding of constructive possession. See *State v. Carter*, 696 N.W.2d 31, 40 (Iowa 2005) (finding constructive possession where Carter engaged in suspicious activity before and after a traffic stop).

The officers found the marijuana stuffed in a backpack with clothes belonging to Wallace's daughter and stashed in the closet of a spare bedroom that contained Wallace's own clothes. Even more telling, the backpack contained a piece of mail addressed to Wallace. *Cf. Webb*, 648 N.W.2d at 79 (noting none of the drug items were found near or among Webb's personal belongings).

The jury also was free to consider the officers' testimony that Wallace did not have a regular job, yet was carrying \$170 in small bills in his jeans pocket, a situation they found indicative of drug dealing. Wallace argues State did not specifically connect the cash to the marijuana in the closet, citing *Webb* for the proposition that the \$336 in cash found on the defendant in that case was "too tenuous and speculative to support an inference of constructive possession." *Webb*, 648 N.W.2d at 80. While the cash in Wallace's jeans may not have alone supported an inference of constructive possession, it was one factor the jury was allowed to weigh in deciding whether the State proved its case. See *State v. Mills*, 458 N.W.2d 395, 397 (Iowa Ct. App. 1990) (considering police testimony that holding cash was practice of drug traffickers in constructive possession case). In addition, the jury also could take into account the presence of a scale with marijuana residue found in the kitchen of Wallace's residence.

On appeal, Wallace highlights exculpatory evidence offered by Ogoli, the mother of his child. She claimed Wallace did not live with her and the marijuana likely belonged to his cousin. Her credibility was an issue for the jury. See *State v. Padavich*, 536 N.W.2d 743, 752 (Iowa 1995) (finding a witness's former romantic involvement with the defendant was one reason the jury could disbelieve her claim the marijuana belonged to her instead of the defendant). The jury was entitled to believe or disbelieve any testimony it desired and to assign the appropriate weight to the evidence offered. *State v. Thornton*, 498 N.W.2d 670, 673 (Iowa 1993).

When viewing the evidence as a whole in the light most favorable to the verdict, we find substantial evidence Wallace possessed the marijuana. Therefore, the district court properly denied Wallace's motion for judgment of acquittal and we affirm his convictions of possession of marijuana with intent to deliver and failure to affix a drug tax stamp.

AFFIRMED.