

IN THE COURT OF APPEALS OF IOWA

No. 3-749 / 12-1675
Filed September 5, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

MICHAEL ALLEN JENSEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, DeDra L. Schroeder, Judge.

Defendant appeals his conviction for possession of a controlled substance with intent to deliver, alleging an illegal investigatory stop and insufficient evidence of constructive possession. **AFFIRMED.**

Joseph R. Lapointe, Mason City, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Steven Tynan, Assistant County Attorney, for appellee.

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

TABOR, J.

Michael Jensen appeals his conviction for possession of a controlled substance with intent to deliver. He alleges law enforcement illegally stopped the car in which he was a passenger and the State did not prove he possessed the nearly 900 grams of marijuana found in the trunk. Because the officer had probable cause to stop the car based on a violation of Iowa Code section 321.37(3) (2011), we conclude the district court properly denied the motion to suppress. We also find sufficient evidence to establish Jensen's constructive possession of the marijuana. Accordingly, we affirm his conviction.

I. Background Facts and Proceedings

Just after midnight on August 30, 2012, Cerro Gordo County Sheriff's Deputy Chris Flatness was on patrol on Interstate 35 when he spotted a blue Saturn with a frame over its rear registration plate. The frame blocked the state name from his view. Deputy Flatness pulled into traffic, followed the vehicle, and initiated a stop. It was not until the deputy approached the car on foot that he could see "Wisconsin" written on the plate.

Deputy Flatness approached the passenger side of the car and encountered Michael Jensen. From the passenger window, the deputy smelled an odor of air fresheners so strong "it almost took [his] breath away." He noticed a large air freshener in the back seat and several air fresheners hanging from the steering column, as well as an odor absorber on the passenger floorboard. Deputy Flatness asked the driver, Ryan Lee, to sit in the front seat of the patrol car. Deputy Flatness discovered the vehicle belonged to Jensen's girlfriend. He

also learned both Jensen and Lee were from Wisconsin. As the deputy wrote the warning for the registration plate violation, he spoke to Lee. Lee said he and Jensen were returning home from Colorado after visiting “a buddy who had just moved out there.” The deputy noted Lee seemed nervous.

Deputy Flatness next spoke to Jensen, who said he and Lee were driving home after “seeing a buddy that had lived out in Colorado for about four years or so.” The deputy noted Jensen stared straight ahead and declined to make eye contact during their conversation. Deputy Flatness returned to his squad car and told Lee “he was good to go.” The deputy then asked Lee if he was “responsible for whatever belonged to him in the vehicle,” and Lee responded affirmatively. Deputy Flatness posed the same question to Jensen, and Jensen replied “he was responsible for what belonged to him.”

Deputy Flatness asked Lee for consent to search the car, but Lee refused. He then told Lee he was going to call for a dog sniff of the car. Lee said that was “okay.” Clear Lake Police Officer Cory Gute arrived with his police canine, Ranger, ten minutes later. According to Officer Gute, Ranger alerted to the presence of narcotics in the vehicle. Deputy Flatness told Lee and Jensen the dog “did indicate” and asked them if there was anything he needed to know; both said “no.”

The officers searched the vehicle. In the center console they found a pill bottle containing a green leafy substance, a grinder, and a glass marijuana pipe. They suspected the substance to be marijuana. As Deputy Flatness searched the vehicle, he smelled a strong odor of raw marijuana coming from the back

seat or trunk area. He recalled: “[T]he odor was so strong that it made my eyes water and it made my nose run.” He searched the trunk and found a red beer cooler. He then opened up the cooler and discovered three freezer bags of suspected marijuana, as well as \$14,500 in cash. Another box in the trunk contained several more freezer bags of suspected marijuana. All told, the officers discovered close to 900 grams of marijuana.

The State charged Jensen with possession with intent to deliver less than fifty kilograms of marijuana by trial information filed September 8, 2011. Jensen filed a motion to suppress evidence on October 31, 2011, alleging the stop and search of the car violated his rights under the Fourth Amendment and article I, section 8 of the Iowa Constitution. The court held a suppression hearing on January 18, 2012. Deputy Flatness and Officer Gute testified regarding the stop and search. The defense did not present evidence, but offered argument based on *State v. Pals*, 805 N.W.2d 767 (Iowa 2011).¹ The court denied the suppression motion on February 22, 2012.

Jensen agreed to a trial on the minutes of testimony on July 2, 2012. The court entered a verdict of guilty on July 8, 2012. Jensen filed a motion for a new trial and a motion in arrest of the judgment on August 2, 2012. The court denied both of the motions on September 5, 2012. On September 10, 2012, the court sentenced Jensen to an indeterminate term of five years, suspended the sentence, and placed him on probation for three years. Jensen now appeals from the suppression ruling and the conviction.

¹ Jensen does not renew his *Pals* argument on appeal.

II. Scope and Standards of Review

Jensen argues the search of his vehicle violated the Fourth Amendment to the United States Constitution and article 1, section 8 of the Iowa Constitution.² We review constitutional claims de novo. *State v. Tyler*, 830 N.W.2d 288, 291 (Iowa 2013).

Claims involving statutory interpretation, sufficiency of the evidence, and motions for new trial are all reviewed for corrections of errors at law. *State v. Romer*, 832 N.W.2d 169, 174 (Iowa 2013); *State v. O'Shea*, 634 N.W.2d 150, 154 (Iowa Ct. App. 2001).

III. Analysis

A. The Deputy Had Probable Cause To Stop The Vehicle.

"[I]t is well-settled law that a traffic violation, no matter how minor, gives a police officer probable cause to stop the motorist." *State v. Hoskins*, 711 N.W.2d 720, 726 (Iowa 2006) (internal citations omitted). In this case, Deputy Flatness stopped the car in which Jensen was a passenger because the frame around the license plate covered the name of the state. Iowa Code section 321.37(3) reads, "It is unlawful for the owner of a vehicle to place any frame around or over the registration plate which does not permit full view of all numerals and letters printed on the registration plate."

Jensen asserts because "the big numbers and letters" were visible, his license plate complied with section 321.37(3). He also asserts because his plate

² Because Jensen does not urge a different test under the Iowa Constitution, we apply the federal standards for interpreting search and seizure questions. See *State v. Tyler*, 830 N.W.2d 288, 292 (Iowa 2013).

was valid in Wisconsin, it is legal in Iowa. He does not dispute the plate frame blocked the word “Wisconsin” from view.³

In interpreting a statute, the primary goal is to give effect to the legislature’s intent. *Anderson v. State*, 801 N.W.2d 1, 3 (Iowa 2011). “When a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its express terms.” *Id.* Here, the statute says “all” letters printed on the registration plate. Because the frame obscured the state name, it did not permit a full view of all letters on the registration plate. We agree with the district court’s conclusion that “all” letters included the name of the issuing state.

Even if the phrase “all numerals and letters” could be considered ambiguous, we believe the legislature intended to include the “small letters” spelling out the state name, as well as the “big letters” unique to that plate. We look to the object to be accomplished by the statute being interpreted and the evils and mischiefs sought to be remedied, adopting the interpretation that will best effectuate the legislative purpose. *State v. Frazer*, 402 N.W.2d 446, 448 (Iowa 1987). The proper display of plates is important so peace officers can efficiently check vehicle registration and ownership. The inability to see the state of issuance on the registration plate would hinder law enforcement efforts. Indeed, Deputy Flatness testified when he cannot see the state name, dispatch must “run those letters and numbers through all 50 states until it [comes] back.”

Jensen asserts his license plate was legal in Wisconsin, the state of issuance, which exempts it from Iowa law. But a frame that blocks the state of

³ This circumstance separates this case from *Tyler*, 830 N.W.2d at 296, where the officer was able to read the plate despite the defendant’s use of a tinted cover.

issuance is also illegal in Wisconsin. See *Cnty. of Grant v. Collins*, No. 2009AP2469-FT 2010 WL 144903, at *1 (Wis. Ct. App. Jan. 14, 2010) (noting “the state of issuance is among the most basic information pertaining to vehicle identification and registration). Indeed, other jurisdictions have read similarly worded statutes to require the state name to be visible. See *United States v. Contreras-Trevino*, 448 F.3d 821, 824 (5th Cir. 2006); *Hinojosa v. State*, 319 S.W.3d 258, 262–263 (Ark. 2009); *State v. Pena*, 988 So. 2d 841, 846 (La. Ct. App. 2008).

Iowa exempts nonresidents from the duty to register a vehicle in Iowa as long as it displays a valid registration plate or plates from the state of issuance. Iowa Code § 321.53. But it does not excuse them from the enforcement of section 321.37(3). Moreover, the plate in this case violated both Wisconsin and Iowa law. Therefore, the deputy possessed probable cause to stop the vehicle.

B. The Record Contained Sufficient Evidence of Jensen’s Constructive Possession.

Jensen argues the State offered insufficient evidence to convict because he did not have actual or constructive possession of the marijuana at the time of its discovery. He argues the mere fact he was in the car does not prove his knowledge of the marijuana or that he exercised dominion or control over it.

A court’s verdict is binding upon a reviewing court unless there is an absence of substantial evidence in the record to sustain it. *State v. Hennings*, 791 N.W.2d 828, 832–33 (Iowa 2010). We view the evidence in the light most favorable to the State. *State v. Leckington*, 713 N.W.2d 208, 213 (Iowa 2006).

Possession can be either actual or constructive. *State v. Bash*, 670 N.W.2d 135, 138 (Iowa 2003). A defendant actually possesses contraband when police find it on his or her person. *Id.* Because the officers did not find the marijuana on Jensen's person, we look for constructive possession. A person constructively possesses an item when he or she has knowledge of its presence and the authority or right to maintain control of the item. *State v. Nickens*, 644 N.W.2d 38, 41 (Iowa Ct. App. 2002).

In joint occupancy cases, we cannot infer the defendant's knowledge of or ability to maintain control over contraband. "More proof is needed to draw the constructive possession inference." *State v. Kern*, 831 N.W.2d 149, 161 (Iowa 2013). Additional proof may include: (1) incriminating statements, (2) incriminating actions when police discover the contraband among or near the defendant's belongings, (3) fingerprints, or (4) any other circumstances linking the defendant to the contraband. *Id.* "A person who has knowledge of the presence of something and has the authority or right to maintain control of it either alone or together with someone else, is in constructive possession of it." *State v. Webb*, 648 N.W.2d 72, 79 (Iowa 2002).

Additionally, in a motor vehicle case, we consider the following: (1) Was the contraband in plain view? (2) Was it with the defendant's personal effects? (3) Was it found on the same side of the car or in close proximity to the defendant? (4) Did the defendant own the vehicle? and (5) Did the defendant engage in suspicious activity? *State v. Atkinson*, 620 N.W.2d 1, 4 (Iowa 2000) (adopting factors from *Plotts v. State*, 759 S.W.2d 793, 795 (Ark. 1988)). Other

states have considered these additional incriminating circumstances in determining constructive possession: finding a large quantity of drugs in the vehicle; finding drugs having a large monetary value in the vehicle; the odor of drugs in the vehicle; and the defendant's nervousness during the search. See *State v. Stover*, 388 S.W.3d 138, 147 (Mo. 2012).

Such factors are only a guide to decide if the State has established constructive possession. See *State v. Cashen*, 666 N.W.2d 566, 571 (Iowa 2003). "Even if some of these facts are present, we are still required to determine whether all of the facts and circumstances . . . allow a reasonable inference that the defendant knew of the drugs' presence and had control and dominion over the contraband." *State v. Kemp*, 688 N.W.2d 785, 789 (Iowa 2004) (internal citation omitted).

Like the district court, we find sufficient circumstances link Jensen to the marijuana in the trunk of the car. First, Jensen and Lee had been traveling together in the car for a cross-country trip,⁴ providing an inference both of them would be aware of its contents. See *State v. Robbins*, 979 So. 2d 630, 638–39 (La. Ct. App. 2008) (holding both occupants had equal access to the trunk on cross-country journey). This inference was strengthened by the fact that the car reeked of air fresheners, presumably to mask the strong smell of raw marijuana the deputy detected while searching the back seat near the trunk. It is unlikely a passenger on a trip of that duration would fail to notice a smell that made Deputy

⁴ We do not find it strengthens the State's argument that the pair was returning from Colorado, which the officers refer to as a "heavy source state for hydroponic marijuana." Cf. *United States v. Beck*, 140 F.3d 1129, 1138 n.3 (8th Cir. 1998) (finding geographic reference to "supply states" was "extremely weak" basis for suspecting criminal activity).

Flatness's eyes water and nose run. Second, the car belonged to Jensen's girlfriend, who did not accompany Jensen and Lee on their trip. Jensen's close connection to the owner allows an inference he would be mindful of what was being transported. Third, the officers found Jensen's luggage in the trunk of the car near the cooler holding the marijuana. Fourth, the officers recalled Jensen avoided eye contact and appeared nervous; he paced back and forth while waiting for the drug dog to arrive. And after being told the officers found the marijuana, Jensen started quickly typing on his cell phone and deleting messages from his inbox. Fifth, the officers found small amounts of marijuana and paraphernalia in the center console next to where Jensen was sitting.

Finally, officers found \$14,500 in the red cooler in the trunk, as well as \$885 in Jensen's wallet. While not dispositive, this large amount of cash possessed by Jensen contributed to the sufficiency of the evidence that he was trafficking drugs. See *State v. Mills*, 458 N.W.2d 395, 397 (Iowa Ct. App. 1990); see also *Pena v. Commonwealth*, 690 N.E.2d 429, 433 (Mass. 1998) (holding petitioner's arrest "with a large amount of cash on his person . . . strongly suggests his direct participation in the drug distribution"). Considered in the light most favorable to the State, we find the minutes contained substantial evidence to uphold the district court's verdict.⁵

AFFIRMED.

⁵ Duncan mentions the motion for new trial in his issue heading, but does not separately argue the district court's verdict was against the weight of the evidence. See Iowa R. Crim. P. 2.24(2)(b)(6). Accordingly, we analyze only the sufficiency of the evidence.