IN THE COURT OF APPEALS OF IOWA

No. 3-939 / 12-2181
Filed November 6, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EDDIE DEAN SEALS,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Christopher C. Foy (trial) and Colleen D. Weiland (sentencing), Judges.

Eddie Seals appeals his conviction following a jury trial for possession of marijuana. **AFFIRMED**.

Drew H. Kouris, Council Bluffs, for appellant.

Thomas J. Miller, Attorney General, Tyler J. Buller, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Erica Clark, Assistant County Attorney, for appellee.

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

VOGEL, P.J.

Eddie Seals appeals his conviction following a jury trial for possession of marijuana, claiming trial counsel was ineffective in failing to assert Seals's rights with respect to the penalty enhancement phase, and failing to make an evidentiary objection to the introduction of pictures of methamphetamine pipes at trial. Seals further argues the evidence was insufficient to establish he knowingly possessed marijuana, and the trial court erred in instructing the jury on the definition of possession. We preserve his ineffective claims for possible postconviction relief proceedings. We also find there was sufficient evidence for a reasonable jury to conclude Seals knowingly possessed the marijuana, and he did not preserve error with respect to his jury instruction claim. Therefore, we affirm.

I. Factual and Procedural Background

On December 8, 2011, police tracked a robbery suspect to Seals's apartment. The suspect, Joshua Winders, was found taking a shower in the apartment's bathroom and was apprehended. Police waited in the living room of the one-bedroom apartment with Seals until a search warrant was obtained.

Upon a search of the residence, police found clothing belonging to Winders on the bathroom floor, as well as cash from the robbery hidden in the toilet tank. In Seals's bedroom, police found an electronic scale, two glass pipes used for smoking methamphetamine, and a .28 gram baggie of marijuana, which were located on the dresser. Inside the dresser police found prescription medication and paperwork belonging to Seals. In the bedroom closet police also found two glass methamphetamine pipes, straws, and a baggie in a fanny pack.

On top of the television in the living room police found two more pipes, one of which was for methamphetamine and the other for marijuana.

Seals was arrested following the search of the apartment. The State filed a trial information on December 15, 2011, charging Seals with possession of marijuana as a third or subsequent offender. On February 6, 2012, the trial information was amended to charge Seals with being an habitual offender pursuant to Iowa Code sections 902.8 and 902.9(3) (2011). The case proceeded to trial on September 11, 2012, and the jury returned a guilty verdict on September 13.

At trial, Seals testified in his own defense, claiming he knew nothing of the drugs or paraphernalia, and that Winders must have placed the items in Seals's apartment. However, investigator Jeremy Ryal testified Seals never mentioned Winders going into his bedroom when police were conducting the search of the apartment. As to the amended trial information, Seals testified during direct examination that he had two prior felony convictions. Because Seals made this admission, a second trial to prove the prior convictions for the sentencing enhancement was not held. Seals appeals.

II. Ineffective Assistance of Counsel Claims

Seals asserts "trial counsel failed to safeguard [his] rights during his enhancement proceeding." Citing *State v. Kukowski*, Seals argues: "It is time for this court to establish a bright-line ruling on this issue to require a colloquy identical or at least similar to the colloquy required for a plea of guilty." *See State v. Kukowski*, 704 N.W.2d 687, 692 (Iowa 2005) ("An affirmative response by the defendant under the rule . . . does not necessarily serve as an admission to

support the imposition of an enhanced penalty as a multiple offender. The court has a duty to conduct a further inquiry, similar to the colloquy required under rule 2.8(2), prior to sentencing to ensure that the affirmation is voluntary and intelligent."). Seals also claims counsel was ineffective for failing to object to the introduction of photographs of some of the methamphetamine pipes and the electronic scale, as well as testimony those pipes were used for smoking methamphetamine.

We review ineffective assistance of counsel claims de novo. *State v. Ortiz*, 789 N.W.2d 761, 764 (Iowa 2010). A defendant may raise an ineffective-assistance claim on direct appeal if the record is adequate to address the claim. *State v. Straw*, 709 N.W.2d 128, 133 (Iowa 2006). We may either decide the record is adequate and issue a ruling on the merits, or we may choose to preserve the claim for postconviction proceedings. *Id.* To succeed on this claim, the defendant must show, first, that counsel breached an essential duty, and, second, that he was prejudiced by counsel's failure. *Id.*

While we could review the merits of these claims, we are hesitant to do so without counsel being afforded the opportunity to speak in her own defense. *See State v. Truesdell*, 679 N.W.2d 611, 616 (Iowa 2004) ("Ordinarily, ineffective assistance of counsel claims are best resolved by postconviction proceedings to enable a complete record to be developed and afford trial counsel an opportunity to respond to the claim."). Therefore, these two claims are preserved for possible postconviction relief proceedings, where a more complete record may be established. *See Straw*, 709 N.W.2d at 133.

Seals also sets forth several arguments regarding the amendment of the trial information and a speedy indictment violation. However, he presented no argument or case law supporting these claims, particularly in the context of ineffective assistance of counsel, and we therefore deem these claims waived. *See* Iowa R. App. P. 6.903(2)(g)(3).

III. Sufficiency of the Evidence

Seals next asserts there was not enough evidence supporting the jury's verdict he knowingly possessed the marijuana, such that the district court erred in denying his motion for directed verdict. He directs us to his testimony he did not know about the marijuana, the fact there were other people in the apartment, and that there were no fingerprints on any of the evidence seized from the apartment, which, taken together, undermine the jury's verdict.

We review challenges to the sufficiency of the evidence for correction of errors at law. *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005). We view the record in the light most favorable to the non-moving party—that is, the State—and make all legitimate inferences and presumptions that may be reasonably deduced from the evidence. *Id.* If substantial evidence supports the verdict, we will affirm. *Id.* Evidence is substantial if it would convince a reasonable trier of fact the defendant is guilty beyond a reasonable doubt. *Id.*

To establish possession, the State must prove the defendant 1) exercised dominion and control over the controlled substance, 2) had knowledge of its presence, and 3) had knowledge the material was a controlled substance. *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003). Circumstantial evidence is just as probative as direct evidence, and evidence of constructive possession "turns on

the peculiar facts of each case." *State v. Webb*, 648 N.W.2d 72, 79 (Iowa 2002). We may rely on the totality of the circumstances when inquiring whether the defendant constructively possessed the controlled substance. *Id.*

Viewing the evidence in the light most favorable to the State, we find substantial evidence supports the jury's verdict. The marijuana was found in Seals's bedroom as well as spread throughout the small apartment. Items unquestionably belonging to Seals—labeled pill bottles and legal documents bearing Seals's name—were found in and around the marijuana and paraphernalia. This evidence supports the jury's finding that Seals possessed the marijuana. *See State v. Henderson*, 696 N.W.2d 5, 9 (Iowa 2005) ("The quantity of drugs and drug paraphernalia in the premises, their widespread disbursement throughout the apartment, and their location in places that would not ordinarily be used by a guest suggest that these items did not belong to a temporary visitor, but rather to the person residing there."). Furthermore, the marijuana pipe is enough to establish Seals knew the controlled substance in his possession was marijuana. This evidence is sufficient for a reasonable jury to conclude beyond a reasonable doubt that Seals knowingly possessed the marijuana. Therefore, the district court did not err in denying Seals's motion for directed verdict, and we affirm his conviction.

IV. Jury Instruction

Seals further claims the trial court erred in instructing the jury on the definition of possession, asserting the instruction inaccurately defined constructive possession. The State responds Seals failed to preserve error on

this claim, but even if the proper objection would have been made at trial, the instruction given was accurate.

"The doctrine of error preservation has two components—a substantive component and a timeliness component." *State v. Krogmann*, 804 N.W.2d 518, 523 (Iowa 2011). To preserve error on appeal, the party must first state the objection in a timely manner, that is, at a time when corrective action can be taken, in addition to the basis for the objection. *Id.* at 524. The court must then rule on the issue. *Lamasters v. State*, 821 N.W.2d 856, 864 (Iowa 2012). "If the court's ruling indicates that the court *considered* the issue and necessarily ruled on it, even if the court's reasoning is 'incomplete or sparse,' the issue has been preserved." *Id.* (quoting *Meier v. Senecaut*, 641 N.W.2d 532, 540 (Iowa 2002)).

When discussing the jury instruction on possession, the following exchange occurred:

> Defense Counsel: The instruction on constructive possession.
>
> The Court: I believe that's instruction No. 20.
>
> Defense Counsel: Thank you . . . . The law recognizes several different kinds of possession. I don't believe that it goes far enough to talk about sole possession being the standard being that the person had exclusive access to a location or that it was found on him. I mean sole possession—even constructive possession requires that the person have sole access and sole control. In other words, right to dominion over a thing. In other words, it—he's the only one who can access it and he's the only one who has the right and authority to dispose of it in any way.
>
> I think that would be very helpful for the jury. I think it's consistent with Bashen (sic). I think it's consistent with Alatoree. I think it's consistent with, um, other case law that has—has been recognized by the Iowa Supreme Court. To narrow the definition of constructive possession.
>
> Your Honor, I would have—Ask that my proposed jury instruction talking about constructive possession and sole control and access to would have been adopted, however, um, um. And I

> would take exception to Instruction No. 20 and resist its inclusion as it's written.
>
> The Court: All right. Thank you, [defense counsel]. The—the Court is going to overrule both exceptions.[1]

Counsel's objection at trial concerned Seals's access and control over the marijuana, rather than the fact the instruction should include the definition of actual knowledge, which is what he now asserts on appeal. It is clear the two arguments differ substantially. Consequently, the district court did not consider Seals's present argument, and we find error was not preserved. *See id.*

Anticipating the lack of error preservation, Seals alternatively requests we consider this argument as an ineffective-assistance-of-counsel claim. However, he makes no assertions supporting this claim in the context of ineffective assistance of counsel, that is, he fails to demonstrate prejudice. Therefore, we deem this argument waived. *See* Iowa R. App. P. 6.903(2)(g)(3).

Having considered all claims properly framed and preserved for appeal, we affirm Seals's conviction, and preserve his two ineffective-assistance claims for possible post-conviction relief proceedings.

AFFIRMED.

[1] We note, in this section of the brief, Seals was not in full compliance with Iowa Rule of Appellate Procedure 14(a), which requires every proposition put forth in a brief to be followed by a precise cite to the appendix. This allows the reviewing court to quickly and accurately determine the facts and issues before it. *See State v. Stoen*, 596 N.W.2d 504, 507 (Iowa 1999). However, when referencing the prior proceedings, Seals did not cite to the record, nor were the relevant portions even contained in the appendix.