

IN THE COURT OF APPEALS OF IOWA

No. 0-244 / 09-1023
Filed May 26, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

VINCENT ALLEN DOWDELL,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp, District Associate Judge.

Vincent Dowdell appeals from judgment entered for possession of marijuana. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mary E. Tabor, Assistant Attorney General, Eric McBurney, Legal Intern, Paul L. Martin, County Attorney, and Erica W. Clark, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Potterfield and Danilson, JJ. Tabor, J. takes no part.

POTTERFIELD, J.**I. Background Facts and Proceedings**

On December 19, 2008, Vincent Dowdell stopped his vehicle at a stop sign with his blinker on. With his blinker still on, Dowdell proceeded straight through the stop sign. State Trooper Keith Duenow was in the area and noticed Dowdell. He testified that he could smell antifreeze burning and saw smoke coming out of the back of Dowdell's car. Duenow stopped Dowdell, the registered owner, the driver, and the only person in the car.

Duenow asked for Dowdell's driver's license, proof of insurance, and registration. Dowdell could not produce proof of insurance or a valid driver's license. Duenow arrested Dowdell and arranged to have his vehicle towed.

Duenow did an inventory search of Dowdell's vehicle before the tow truck arrived. Duenow found what he believed to be a marijuana stem in the front passenger ashtray. In a storage pocket behind the passenger seat, Duenow found a plastic wrapper full of a "green leafy like substance," which he believed to be marijuana. Duenow also found a marijuana cigarette on top of cigarette butts in a partially opened ashtray in the front center of the vehicle, located within reach of the driver's seat. Testing later confirmed the cigarette contained marijuana.

Duenow testified that Dowdell was cooperative and did not appear to be nervous. He testified that the vehicle did not smell like marijuana. Dowdell denied that the marijuana was his. He stated that he did not sit in the back seat of the car and that other people sometimes drove the car. He testified that his coworkers, friends, and potential buyers had recently driven the car, which he

was trying to sell. Notably, he testified that his brother, who has some history with controlled substance usage, sometimes drove his car.

On December 23, 2008, the State charged Dowdell with possession of marijuana in violation of Iowa Code sections 124.401(5) and 124.204(4)(m) (2007). After a bench trial on April 30, 2009, the district court filed its verdict finding Dowdell guilty. Dowdell appeals, arguing the State failed to present sufficient evidence to convict him of possession of marijuana.

II. Standard of Review

We review challenges to the sufficiency of the evidence for errors at law. *State v. Atkinson*, 620 N.W.2d 1, 3 (Iowa 2000). The State bears the burden of proving every element of the crime with which Dowdell is charged. See *State v. Cashen*, 666 N.W.2d 566, 569 (Iowa 2003). We uphold a finding of guilt if substantial evidence supports the verdict. *Id.* Substantial evidence is evidence upon which a rational fact finder could find a defendant guilty beyond a reasonable doubt. *Id.* We review the facts in the light most favorable to the State, including legitimate inferences and presumptions that may reasonably be deduced from the evidence in the record. *Id.* “The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.” *Id.*

III. Possession

Possession can be either actual or constructive. *State v. Kemp*, 688 N.W.2d 785, 789 (Iowa 2003). Because the marijuana was not found on Dowdell’s person, this is a constructive possession case. See *Atkinson*, 620 N.W.2d at 3. To prove constructive possession, the State had to prove Dowdell:

(1) exercised dominion and control over the substance; (2) had knowledge of its presence; and (3) had knowledge the material was a controlled substance. See *State v. Carter*, 696 N.W.2d 31, 38 (Iowa 2005).

Our supreme court has distinguished between evidence sufficient to prove constructive possession when drugs are found on premises in the exclusive possession of the accused and when drugs are found on premises in joint possession of the accused and others. *Kemp*, 688 N.W.2d at 789.

[I]f the premises on which such substances are found are in the exclusive possession of the accused, knowledge of their presence on such premises coupled with his ability to maintain control over such substances may be inferred. . . . But where the accused has not been in exclusive possession of the premises but only in joint possession, knowledge of the presence of the substances on the premises and the ability to maintain control over them by the accused will not be inferred but must be established by proof.

Id. (emphasis omitted). If no inference can be made, we must consider the following factors to determine whether the State proved constructive possession: (1) incriminating statements made by the defendant; (2) incriminating actions by the defendant upon discovery of the drugs; (3) the defendant's fingerprints on the packages containing drugs; and (4) any other circumstances linking the defendant to the drugs. *Id.* Because the drugs in this case were found in a car, we may also consider: (1) whether the contraband was in plain view; (2) whether it was with the defendant's personal effects; (3) whether it was found on the same side of the car seat or next to the defendant; (4) whether the defendant was the owner of the vehicle; and (5) whether there was suspicious activity by the defendant. *Id.*

We find that Dowdell was in exclusive possession of the vehicle in which Duenow found the marijuana. Dowdell was the driver and only person in the car at the time Duenow found the marijuana. The car was registered solely in Dowdell's name. Though Dowdell asserted at trial that other people drove his car, Dowdell never pointed to a specific or recent time during which someone else had driven his car. Further, we consider the district court's credibility findings that "[t]here is no credible evidence to support the suggestion of the Defendant that the marijuana cigarette was left by others who used that car at some different or remote time." Dowdell testified that he smoked cigarettes during his drive from Albert Lea to Clear Lake and that he used the ashtray, along with an open window and the floor to ash his cigarettes. The marijuana cigarette was on top of other butts in the ashtray, which was partially open, and within Dowdell's immediate reach. We agree with the State that the evidence was sufficient to permit a fact finder to determine that Dowdell knew of and exercised control and dominion over the marijuana cigarette in the front central ashtray of his car. There is sufficient evidence to support Dowdell's conviction.

AFFIRMED.