

IN THE COURT OF APPEALS OF IOWA

No. 1-661 / 10-1512
Filed October 5, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

KASHANDRA WILSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Kashandra Wilson appeals the district court's denial of her motion for judgment of acquittal. **REVERSED.**

Erin M. Carr of Carr & Wright, P.L.C., Des Moines, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney General, Tyler J. Buller, Legal Intern, John Sarcone, County Attorney, and Joseph Crisp, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran and Tabor, JJ.

TABOR, J.

In this appeal we consider the sufficiency of the evidence to prove Kashandra Wilson's constructive possession of cocaine. Because the evidence presented at trial did not adequately connect Wilson with the apartment where police located the drugs and because police found a different woman's identification card in the dresser drawer with the drugs, we reverse.

I. Background Facts and Proceedings

On October 15, 2009, Des Moines police officers executed a search warrant at 1065 21st Street, Apartment No. 2. The search warrant named Kashandra Wilson as the focus of the narcotics investigation. Wilson leased Apartment No. 2 and placed the utilities in her name. But she was not among the four people present when police knocked and announced that they had a warrant, and receiving no answer, rammed down the door to enter.

Once inside the studio apartment, the police encountered two brothers, Dantaye and Diamonde Burton sitting at a table, as well as Duvalmetrise Brown and Britney Jackson in the bathroom "flushing narcotics down the toilet." During their search of Apartment No. 2, officers found seven rocks of crack cocaine behind the couch. They also noted the residents had installed brackets on either side of the door so that a board could be used to barricade the entrance.

Police did not find any women's clothing or toiletries in Apartment No. 2. The only item located by police to link Wilson to Apartment No. 2 was a Mediacom cable bill addressed to her and dated September 2, 2009. The bill

was stashed in a drawer full of loose plastic baggies, a common item used to package and distribute cocaine.

During their warranted search of Apartment No. 2, police obtained consent from Diamonde Burton to search Apartment No. 3, a separate residence located about ten feet from Apartment No. 2. Burton was listed as the tenant on the lease to Apartment No. 3. Officer John Scarlett testified there was “some evidence” Wilson was residing with Burton in Apartment No. 3. Officer Anthony Ballantini also testified that “during the course of [his] investigation, [he] learned that Kashandra Wilson was staying in Apartment No. 3.” The officers did not reveal for the jury how they learned Wilson was staying in Apartment No. 3.

On the top shelf of the bedroom closet in Apartment No. 3, officers found a second Mediacom bill addressed to Wilson at Apartment No. 2, this one dated October 2, 2009.¹ Behind the bill, the officers noticed an array of female toiletries. The closet also contained women’s clothing. Hidden beneath female undergarments in a dresser drawer, the police found a baggie containing approximately four grams of powder cocaine and fifteen rocks of crack cocaine packaged in what the narcotics officers called a “daisy chain” for individual distribution. Beside the drugs in the drawer was a Visa debit card emblazoned with a “Baby Phat” company logo in Wilson’s name, valid from July 2009 through July 2011, and an Iowa identification card in the name of Sherena Bolden, issued on September 2, 2009, and showing a different Des Moines address.

¹ The bill reflected that a payment of \$150 had been made on the September balance.

The narcotics officers considered the two apartments to be consistent with a common situation where a drug dealer will reside in one apartment and deal drugs from a nearby venue. Officer Scarlett explained: "Not only does it help them as far as being safe from getting robbed, but also helps them in regard to law enforcement coming, in this instance, in the execution of the search warrant."

The Polk County Attorney charged Wilson by trial information with possession of crack cocaine with intent to deliver, in violation of Iowa Code section 124.401(1)(c)(3) (2009); possession of powder cocaine with intent to deliver, also in violation of section 124.401(1)(c)(3); and failure to affix a tax stamp, in violation of sections 453B.3 and 453B.12. The charges related only to the drugs found in Apartment No. 3.

The drug prosecution came before a jury on July 28, 2010. The State presented the testimony of three narcotics officers who searched the apartments on 21st Street. Defense counsel moved for judgment of acquittal, arguing the State offered insufficient proof that Wilson constructively possessed the cocaine: "Try as they might, Judge, evidence did not come in that Miss Wilson was a resident of this particular apartment." The court reserved its ruling on the motion for judgment of acquittal until after the jury returned its verdict.

On September 9, 2010, the district court denied Wilson's motion for judgment of acquittal, finding the State met its burden to prove beyond a reasonable doubt that she knew of the presence of the drugs and was in a position to exercise dominion and control over them. The court sentenced Wilson to indeterminate terms of ten years on each count of possession with

intent to deliver and five years on the tax stamp violation, ordering the sentences to be served concurrently. Wilson appeals the court's denial of her motion for judgment of acquittal and alleges that she received ineffective assistance of counsel.

II. Scope and Standards of Review

"We review challenges to the sufficiency of the evidence supporting a guilty verdict for correction of errors at law." *State v. Webb*, 648 N.W.2d 72, 75 (Iowa 2002). The test is whether substantial record evidence supports the verdict. *Id.* "Evidence is substantial if it would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *Id.* at 75–76. Our review casts the evidence in the light most favorable to the verdict, including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record. *Id.* at 76. We consider all the evidence in the record, including evidence which detracts from the verdict. *Id.*

"The State must prove every fact necessary to constitute the crime with which the defendant is charged." *Id.* "The evidence must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture." *Id.*

III. Merits

To satisfy the element of unlawful possession of a controlled substance, the State must prove that the accused (1) knew of its presence, (2) knew of its illegal nature, and (3) exercised dominion and control over the contraband. See *State v. Bash*, 670 N.W.2d 135, 137 (Iowa 2003) (citing *State v. Reeves*, 209 N.W.2d 18, 21 (Iowa 1973)). "Proof of opportunity of access to a place where

narcotics are found will not, without more, support a finding of unlawful possession.” *Reeves*, 209 N.W.2d at 22.

Unlawful possession can be either actual or constructive. *Bash*, 670 N.W.2d at 138. Because police did not find the cocaine on Wilson’s person or in her direct physical control, the State sought to prove that she had constructive possession of the drugs. See *State v. Henderson*, 696 N.W.2d 5, 8–9 (Iowa 2005). “Constructive possession occurs when the defendant has knowledge of the presence of the controlled substance and has the authority or right to maintain control of it.” *Id.* at 9 (citation omitted). “The existence of constructive possession turns on the peculiar facts of each case.” *Webb*, 648 N.W.2d at 79.

Where the premises are in exclusive possession of the accused, the State enjoys an inference that the accused exercises dominion and control over items found there. *Henderson*, 696 N.W.2d at 9. But where—as in Wilson’s case—the accused has not been in exclusive possession of the premises, the State must prove her knowledge of the presence of the contraband and her ability to maintain control over the contraband. See *Reeves*, 209 N.W.2d at 23.

Our supreme court has developed a non-exclusive list of factors that may support a finding that “a defendant had knowledge of the presence of drugs and the right to exercise control over them as well as access and control of the place and premises where the drugs are found.” *Webb*, 648 N.W.2d at 79. These factors include

incriminating statements made by the defendant, incriminating actions of the defendant upon the police’s discovery of drugs among or near the defendant’s personal belongings, the

defendant's fingerprints on the packages containing the drugs, and any other circumstances linking the defendant to the drugs.

Id.

The first two factors are not available to the prosecution here because Wilson was not present when the drugs were found nor at any point during the investigation discussed by the officers at trial. In addition, Officer Ballanti explained the difficulty in lifting viable fingerprints off the surface of baggies holding drugs. But on cross examination, the defense attorney made the point that the officers exerted no effort to determine if Wilson's fingerprints were on the dresser where the drugs were found.

In this case, the prosecution relied on other circumstances tying the defendant to the controlled substances. The State offered evidence of Wilson's opened cable bill found in the closet of Apartment No. 3 and a Visa debit card bearing her name found beside the baggies of cocaine at the bottom of a woman's underwear drawer. On the surface, these discoveries appear to link Wilson to the drugs. But the State's case for constructive possession rests on a foundation of sand. The record provides no clue as to how Wilson's debit card² or cable bill³ made their way into Apartment No. 3.

² Officer Ballantini testified that he did not investigate the value of the Visa debit card, whether it was a gift card or carried a prepaid balance.

³ Officer Ballantini testified the bill was "something that a regular individual wouldn't have in there unless they resided there." We find the officer's speculation about what a "regular individual" might do with her mail to fall short of actual proof. Given the State's description of Apartment No. 2 as a "stash house" (a location used for selling drugs), it is equally plausible that numerous individuals had access to mail delivered there and Wilson may never have handled her October Mediacom bill. In fact, Wilson's September bill was found in Apartment No. 2, despite the officers' belief that no one actually resided in that apartment.

Diamonde Burton was the leaseholder for Apartment No. 3 and gave police permission to search it. But he did not testify at trial. The best the officers could say was that during the course of their investigation they “learned” Wilson was staying in Apartment No. 3. Without any foundation as to how or from whom the officers “learned” Wilson was staying there, their testimony was too conclusory to show her knowledge of the cocaine’s presence in Apartment No. 3 or her ability to maintain control over it.

In *Webb*, our supreme court found it significant that the defendant was not on the premises when officers initially entered and found the drugs, though he did arrive several hours later. 648 N.W.2d at 79. The *Webb* court noted: “[t]he State presented no evidence about when he was last on the premises before the search.” *Id.* In the instant case, Wilson was not present during either search and the State offered no testimony to place her inside Apartment No. 3 at any point in time. Under the *Reeves* analysis of constructive possession, evidence connecting the accused with the premises where the drugs are found is a prerequisite to our consideration of the other circumstances linking her to the drugs themselves. See *Reeves*, 209 N.W.2d at 23 (presupposing necessity of the defendant’s exclusive or joint possession of the premises where the drugs are found).

Furthermore, the officers’ discovery of women’s clothing and hygiene items in Apartment No. 3 did not prove beyond a reasonable doubt that Wilson was staying there. The State produced no evidence that the clothes or other products belonged to Wilson. Moreover, the presence of a current Iowa

identification card for a different woman named Sherena Bolden in the dresser drawer with the cocaine weakened any inference that the items belonged to Wilson. The State did not offer any evidence ruling out a connection between Ms. Bolden and Diamonde Burton's apartment.

Finally, we note that the evidence presented at trial did not establish Wilson was ever seen in Apartment No. 2 either. While the police officers testified to her legal connection to the apartment as the leaseholder and that the utilities were in her name, they did not testify that their surveillance of the apartment placed her there. Officers Scarlett and Ballantini testified that Wilson was the "target" of their investigation, but provided no details regarding what information they obtained that led them to target her.

The assistant county attorney told the court during the hearing on the motion for judgment of acquittal that no evidence was offered of Wilson's involvement in controlled buys from Apartment No. 2 because she was not being charged with those transactions. There does not appear to have been a motion in limine excluding the evidence of controlled buys and we take no position whether such evidence would have been admissible to show Wilson's knowledge of the presence of the cocaine. See *Webb*, 648 N.W.2d at 83 (Cady, J., dissenting) (opining that Webb's previous drug sales from residence "should logically be considered to show possession and control"). On the state of this record, the district court wisely determined that it could not "consider any specific instances that result in the search warrant" that were not the subject of testimony during the trial.

Even viewed in the light most favorable to the State, the evidence fell short of generating a jury question on the issue of constructive possession. Iowa cases have held that constructive possession cannot rest on the accused's "mere proximity" to the controlled substance. See *State v. Carter*, 696 N.W.2d 31, 40 (Iowa 2005). In this case, the police witnesses established no physical proximity at any time between the defendant and the location where the drugs were found. The police discovery of Wilson's debit card and cable bill—unmoored to any evidence of how those items came to be in Apartment No. 3—was not sufficient to show the defendant's knowledge of the cocaine or her ability to exercise dominion and control over it, especially when a different woman's personal identification card appeared in the same drawer with the contraband and no evidence was offered to explain the conflicting personal items found in the drawer. The district court should have granted Wilson's motion for judgment of acquittal.

Having found insufficient evidence to support Wilson's convictions, we do not need to reach her claim that she received ineffective assistance of counsel.

REVERSED.