

IN THE COURT OF APPEALS OF IOWA

No. 2-089 / 11-0470
Filed February 29, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN LEE PFALTZGRAFF,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager, Judge.

John Lee Pfaltzgraff appeals from his conviction and sentence for possession of a controlled substance, third offense. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie L. Knipfer, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

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

TABOR, J.

A jury found John Lee Pfaltzgraff guilty of cocaine possession. He now contends the State offered insufficient evidence to support his conviction. Viewing the evidence in the light most favorable to the verdict, we find the record supports a reasonable inference that Pfaltzgraff constructively possessed a crack pipe found next to him on the ground. Because substantial evidence supports his conviction, we affirm.

I. Background Facts and Proceedings.

At approximately 3:30 a.m. on March 5, 2010, Waterloo Police Officer Mark Nissen was patrolling downtown Waterloo when he spotted Pfaltzgraff in an alley behind Flirts Gentleman's Club, which had closed at 2:00 a.m. Officer Nissen observed Pfaltzgraff holding something in his hand and carrying a flashlight. Because of the high crime rate in the area, Officer Nissen was suspicious Pfaltzgraff may have been burglarizing vehicles or looking to steal something so he turned his patrol car around to investigate. Pfaltzgraff had walked through a parking lot, crossed the street, and was standing in front of the Wonder Bread building when Officer Nissen pulled up to the curb.

Officer Nissen requested identification and noticed Pfaltzgraff was holding a plastic bag with bottles, napkins, and other miscellaneous items inside. Pfaltzgraff stood and waited on a grassy area partially covered in snow as the officer checked for any outstanding warrants. When Officer Nissen left the patrol car and approached, Pfaltzgraff set the plastic bag on the ground. It was then that Officer Nissen noticed a metal pipe used for smoking crack cocaine lying on

the ground about six inches from the bag and about a foot away from Pfaltzgraff. When the officer picked up the pipe, it was not cold to the touch. Officer Nissen described it as “room temperature,” which he did not believe to be consistent with being on the ground in the chilly weather—less than twenty degrees by the officer’s estimate—for any amount of time.

Officer Nissen arrested Pfaltzgraff. When jailers conducted a booking search, they found a lighter in Pfaltzgraff’s pocket. Evidence technicians could not identify any fingerprints on the pipe, but criminalists detected burnt cocaine residue in the pipe. The county attorney charged Pfaltzgraff with third-offense possession of a controlled substance in violation of Iowa Code section 124.401(5) (2009).

A jury trial began on February 1, 2011. After the State’s case in chief, Pfaltzgraff moved for judgment of acquittal, arguing the prosecution failed to establish he was in constructive possession of the pipe. The district court denied the motion. The jury returned a guilty verdict. And the court denied Pfaltzgraff’s post-trial motions. Pfaltzgraff admitted two prior controlled substance violations. The court sentenced Pfaltzgraff to a five-year term of incarceration and a fine of \$750, suspending both. He filed a timely notice of appeal.

II. Scope and Standard of Review.

We review sufficiency-of-the-evidence claims for the correction of errors at law. *State v. Brubaker*, 805 N.W.2d 164, 171 (Iowa 2011). We will uphold a verdict if it is supported by substantial evidence. *Id.* Substantial evidence is

evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.*

We review the evidence in the light most favorable to the State. *Id.* All of the evidence presented at trial is considered, not just the evidence that supports the verdict. *Id.* The State has the burden of proving every fact necessary to constitute the crime charged. *Id.* The evidence presented “must raise a fair inference of guilt and do more than create speculation, suspicion, or conjecture.” *Id.* Evidence that allows two or more inferences to be drawn, without more, is insufficient to support guilt. *Id.* at 172.

III. Sufficiency of the Evidence.

To support a conviction for possession of a controlled substance, the State must establish the defendant knew that the contraband was present, knew its illegal nature, and exercised dominion and control over it. *State v. Maxwell*, 743 N.W.2d 185, 193 (Iowa 2008). The State doesn’t need to prove the controlled substance was found on the person, but rather—as here—may prove constructive possession. *Id.* Constructive possession requires proof of two elements: (1) knowledge of the presence of the controlled substance and (2) the authority or right to maintain control of it. *Id.*

Pfaltzgraff challenges the sufficiency of the evidence showing he constructively possessed the pipe. When a person does not have exclusive possession of the place where an officer finds drugs, we must evaluate other circumstances to see if they support a reasonable inference that the defendant

knew the drugs were there and had authority to control them. Relevant factors include:

(1) incriminating statements made by the person; (2) incriminating actions of the person upon the police's discovery of a controlled substance among or near the person's personal belongings; (3) the person's fingerprints on the packages containing the controlled substance; and (4) any other circumstances linking the person to the controlled substance.

Id. at 194. In this case, a police witness acknowledged that she did not find Pfaltzgraff's fingerprints on the evidence, but also testified she had never had any success in finding fingerprints suitable for identification on a crack pipe. Pfaltzgraff also points out that he did not make any incriminating statements or gestures indicating ownership of the pipe. No DNA evidence linked him to the pipe.

The State emphasizes Pfaltzgraff's close proximity to the pipe at the time of its discovery. While constructive possession cannot rest on mere proximity to drugs, *State v. Cashen*, 666 N.W.2d 566, 572 (Iowa 2003), in this case, timing and temperature bolster the inference that the crack pipe belonged to Pfaltzgraff. Officer Nissen testified the early March weather was cold, below twenty degrees, and there was snow on the ground. The officer, who was trained and experienced in narcotics investigations, explained that a metal pipe like the one found near Pfaltzgraff would cool very quickly in that climate. When the officer picked up the pipe, it was not cold to the touch but was "room temperature," as though it had just been in someone's pocket. Officer Nissen did not see the pipe on the ground when he first approached Pfaltzgraff, and testified that the presence of such contraband would have caught his attention.

Courts from other jurisdictions have upheld jury verdicts on similar evidence showing recent possession through the temperature of the contraband. *See, e.g., State v. McLane*, 136 S.W.3d 170, 173-74 (Mo. Ct. App. 2004) (finding sufficient evidence that defendant “undertook to surreptitiously dispose” of contraband where change purse containing methamphetamine was found two feet from defendant’s vehicle and “remained warm to the touch” though the temperature was about 30 degrees); *State v. Barksdale*, 638 S.E.2d 579, 582 (N.C. Ct. App. 2007) (concluding ample evidence existed for possession of firearm by a felon where warm, dry handgun was found in wet grass six inches from defendant’s hand); *Doherty v. State*, 131 P.3d 963, 969 (Wyo. 2006) (finding reasonable inference to support possession of controlled substance from fact methamphetamine was discovered inches away from defendant and was “warm to the touch”).

In addition, Officer Nissen did not see anyone else in the area from the time he first noticed Pfaltzgraff walking in the downtown area at 3:30 a.m. through the time of the stop. Nor did the officer’s patrol-car camera show any other people in the area. Nor did the police call log show any other stops on that same block in the previous twenty-four hours. Finally, the jury could have found additional support for the inference that Pfaltzgraff possessed the crack pipe from his possession of a lighter—which the officer told the jury was necessary to the process of smoking the cocaine.

Viewing the evidence in the light most favorable to the verdict, we conclude a reasonable jury could have considered the evidence adequate to

prove Pfaltzgraff's constructive possession of the pipe. We have recognized that jurors can rely on their common knowledge and experience from personal observation. See *State v. Stevens*, 719 N.W.2d 547, 552 (Iowa 2006). Here, the jurors could appreciate that a metal pipe found on snow-covered ground would not retain its warmth for any significant amount of time. Because no one else was in the area in the minutes leading up to the pipe's discovery, the only reasonable inference to draw from the facts is that Pfaltzgraff possessed the crack pipe—which later tested positive for cocaine residue—and dropped it on the ground when stopped by the police.

Because sufficient evidence supports the verdict, we affirm.

AFFIRMED.