

IN THE COURT OF APPEALS OF IOWA

No. 2-1025 / 12-0083
Filed January 9, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LAWRENCE D. ROBERTS JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Buena Vista County, Charles K. Borth, District Associate Judge.

Lawrence Roberts appeals from his trial on the minutes of testimony and conviction for possession of a controlled substance, marijuana, second offense.

AFFIRMED.

Mark C. Smith, State Appellate Defender, and Bradley M. Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Richard J. Bennett, Assistant Attorney General, David Patton, County Attorney, and James McHugh and Kiyoko Balk, Assistant County Attorneys, for appellee.

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

POTTERFIELD, P.J.

Lawrence Roberts appeals from his trial on the minutes of testimony and conviction for possession of a controlled substance, marijuana, second offense. He contends the minutes of testimony provided insufficient evidence to support his conviction. We affirm, finding the minutes of testimony provided sufficient evidence to show the substance possessed by Roberts was marijuana.

I. Facts and Proceedings

Roberts was sitting in the backseat of a car when police conducted a traffic stop of the vehicle. He was told to exit the vehicle and complied. He was informed that a warrant was executed at his residence and that police were looking for him. During this time, Roberts was rapidly chewing on something, and both of the officers present smelled marijuana. When asked by a one officer what was in his mouth and to open it so the officer could see what he was chewing, Roberts tipped his head back. The officers grabbed Roberts and applied pressure to his throat to prevent him from swallowing the substance. Roberts eventually spat out some of the substance, which was identified by officers as marijuana, containing part of a plastic bag. No laboratory test was done on this substance to confirm it was marijuana.

Roberts was taken into custody and admitted he began chewing the marijuana because he wanted to get rid of his stash and keep something in his mouth to prevent him from smoking cigarettes. Roberts was charged by trial information with possession of a controlled substance, second offense. Roberts filed a motion to suppress alleging the officers did not have probable cause for arrest when he was ordered out of the vehicle. This motion was denied. He then

filed a motion to reconsider the motion to suppress in light of testimony by officers in a related matter. This too was denied.¹ Roberts then waived his right to a jury trial and requested trial be conducted on the minutes of testimony. The court determined the minutes supported a finding that Roberts was guilty of possession of a controlled substance, marijuana, second offense. At the sentencing hearing, Roberts was ordered to pay various fines, court costs, and court-appointed attorney fees. He now appeals, contending the minutes did not contain sufficient evidence to support his conviction.

II. Analysis

We review claims regarding the sufficiency of evidence to support a conviction for the correction of errors at law. *State v. Dewitt*, 811 N.W.2d 460, 467 (Iowa 2012). “The court’s findings of guilt are binding if we find they were supported by substantial evidence. Evidence is substantial if it would convince a rational trier of fact the defendant is guilty beyond a reasonable doubt.” *Id.*

Roberts calls our attention to our supreme court’s decision in *State v. Brubaker*, 805 N.W.2d 164, 172 (Iowa 2011). This case, he says, supports the proposition that a visual identification of a substance is insufficient to establish a substance is a controlled one. In *Brubaker*, a criminalist testified for the State that pills seized from the defendant were consistent in appearance with a particular prescription drug. 805 N.W. 2d at 172. The court found this testimony was insufficient to support the conclusion that the substance was, in fact, that particular prescription drug. *Id.* at 173. The court noted:

¹ Roberts does not contest this ruling on appeal.

We have always recognized that, for a person to be convicted of a drug offense, the State is not required to test the purported drug. The finder of fact is free to use circumstantial evidence to find that the substance is an illegal drug. The reason for this rule is that circumstantial evidence is not inferior to direct evidence. In a given case, circumstantial evidence may be more persuasive than direct evidence. Circumstantial evidence is equally probative as direct evidence for the State to use to prove a defendant guilty beyond a reasonable doubt.

Id. (internal citations omitted). The court described what kind of circumstantial evidence would support such a determination, such as how the defendant referred to the substance and the odor of the substance. *Id.*

Here, the minutes of testimony provide more circumstantial and direct evidence than was available in *Brubaker*. Roberts was ordered to open his mouth to show what he was chewing and did not initially comply. Both officers noticed the smell of marijuana. One of the officers ordered Roberts to “spit out the dope in your mouth.” Another officer had to apply pressure to Roberts’s throat to keep him from swallowing the substance identified by the officers from experience as “less than one gram of marijuana.” Once Roberts spat out the substance, the minutes show “a small amount of the clear plastic bag was still visible mixed in with the chewed marijuana.” When Roberts was asked about the marijuana at the station, he stated he was chewing it “because he wanted to get rid of the last of his stash.” He also stated he threw the bag and the substance as a whole in his mouth to chew.

The minutes also reflect that Roberts had a pending charge for possession of marijuana and that more drugs were located at Roberts’s residence during the execution of a search warrant. Given the smell of the

substance, Roberts's behavior and statements, and the circumstances as a whole, we conclude substantial evidence existed in the minutes of testimony to support Roberts's conviction. *See id.*

AFFIRMED.