IN THE COURT OF APPEALS OF IOWA

No. 2-373 / 11-1567
Filed June 27, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JOHN DAVID COLEMAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil, District Associate Judge.

Defendant appeals from his conviction of possession of a controlled substance, third offense. **AFFIRMED.**

Martha McMinn, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Benjamin Parrott, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Sue Swan, Assistant County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Potterfield and Mullins, JJ.

EISENHAUER, C.J.

John Coleman appeals from his conviction, following a jury trial, of possession of a controlled substance, marijuana, third offense. He contends the court erred in denying his motion for judgment of acquittal and his trial attorney was ineffective. We affirm.

During a traffic stop for running a stop sign, Coleman was arrested for driving while his license was suspended, patted down for weapons, handcuffed with his hands in front, and placed in the backseat of the police car while the officer searched Coleman's car. When Coleman was removed from the police car at the station, the officer smelled marijuana. The officer then removed the backseat to search where Coleman had been sitting. The officer found a plastic bag of what later tested as marijuana stuffed between the seat back and the bench seat cushion. The bag was torn open, and some of the marijuana had spilled out under the seat. Coleman was charged with possession of a controlled substance.

At Coleman's trial, the officer testified he searches his police car every day and after each time anyone has been in the backseat. At the close of the State's case, Coleman moved for judgment of acquittal, asserting the evidence was insufficient to convict. The court denied the motion. The jury found Coleman guilty. Coleman appeals.

We review challenges to the sufficiency of the evidence for correction of errors at law. *State v. Neitzel*, 801 N.W.2d 612, 624 (Iowa Ct. App. 2011). "If a verdict is supported by substantial evidence, we will uphold a finding of guilt. Substantial evidence is that upon which a rational trier of fact could find the

defendant guilty beyond a reasonable doubt." *State v. Henderson*, 696 N.W.2d 5, 7 (Iowa 2005). We draw all fair and reasonable inferences that may be deduced from the evidence. *State v. Hennings*, 791 N.W.2d 828, 832-33 (Iowa 2010). Direct and circumstantial evidence are equally probative. *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011).

"We uphold the denial of a motion for judgment of acquittal if there is any substantial evidence in the record supporting the charges." *State v. Boleyn*, 547 N.W.2d 202, 204 (Iowa 1996). In determining the correctness of a court's ruling on a motion for judgment of acquittal, we do not resolve conflicts in the evidence, pass upon the credibility of witnesses, or weigh the evidence; such matters are for the jury. *State v. Hutchison*, 721 N.W.2d 776, 780 (Iowa 2006). Instead, we determine whether the evidence could convince a rational jury of the defendant's guilt beyond a reasonable doubt. *Id.*

We review ineffective-assistance-of-counsel claims de novo. *Neitzel*, 801 N.W.2d at 624. In order to succeed on a claim counsel was ineffective, a defendant must prove by a preponderance of evidence (1) counsel failed to perform an essential duty and (2) prejudice resulted. *State v. Graves*, 668 N.W.2d 860, 869 (Iowa 2003). A defendant's inability to prove either element is fatal, and we may resolve a defendant's claim on either prong. *Id.*

Sufficiency of the Evidence; Judgment of Acquittal. On appeal, Coleman contends there was nothing linking him to the marijuana the officer found in the police car. The officer did not find marijuana on him during the initial pat-down. Although the officer testified his routine was to search the car every day and after transporting anyone, he did not testify he remembered searching the car that

morning and did not remember if he had put anyone in the backseat that day before transporting Coleman to the police station. However, the officer's written report, admitted into evidence, noted Coleman "had been the only person in the backseat of my patrol vehicle since I last searched the backseat." The officer is the only person who uses that police car.

The State argues the jury could reasonably infer the marijuana was hidden in the backseat by Coleman. The officer's routine search in the morning would have found the marijuana if it had been in the car then. Coleman was alone in the backseat while the officer searched Coleman's car. When the officer arrived at the station and opened the door to let Coleman out, he could smell marijuana. The marijuana, in a torn plastic bag, was discovered immediately after Coleman had been in the backseat.

A conviction for possession of a controlled substance may be based on actual or constructive possession of the controlled substance. *State v. Maxwell*, 743 N.W.2d 185, 193 (Iowa 2008). A person has actual possession when the substance is found on the person. *Id.* A person has constructive possession "when the person has knowledge of the presence of the controlled substance and the authority or right to maintain control of it." *Henderson*, 696 N.W.2d at 9 (citation omitted). "The existence of constructive possession turns on the peculiar facts of each case." *State v. Webb*, 648 N.W.2d 72, 79 (Iowa 2002).

The State had to prove Coleman knowingly or intentionally possessed marijuana and knew it was marijuana. The possession could be actual or constructive. Concerning constructive possession, the court instructed the jury in part: "If something is found in a place which is exclusively accessible to only one

person and subject to his dominion and control, you may, but are not required to, conclude that the person has constructive possession of it."

For a time, Coleman was alone in the backseat of the police car with his hands handcuffed in front of him. He was the first person to be there after the officer searched the car at the beginning of his shift. The officer smelled marijuana when letting Coleman out of the backseat. There is a window separating the front seat from the back in the car. The officer found a torn bag of marijuana stuffed under the seat. Taking the evidence in the light most favorable to the State and drawing all fair and reasonable inferences that may be deduced from the evidence, we conclude there was sufficient evidence from which a reasonable jury could find Coleman knowingly possessed the marijuana found in the patrol car. The court did not err in denying Coleman's motion for judgment of acquittal at the end of the State's case.

Ineffective Assistance. Coleman asserts his attorney was ineffective in not objecting to testimony from the officer not contained in the minutes of evidence initially provided to Coleman. The officer testified Coleman was moving around in the backseat during the ride to the police station. When Coleman's attorney asked the officer to point out where that information was in the officer's report, it was discovered the report differed from the report attached to the trial information. Coleman's attorney offered the two different reports as exhibits and challenged the officer's credibility with the two different reports. During closing argument, Coleman's attorney used the officer's "mistake" in creating two different reports to argue the officer made other mistakes in this case—such as not searching his patrol car before putting Coleman in the backseat.

Ineffective-assistance-of-counsel claims are normally considered in postconviction relief proceedings. *State v. Soboroff*, 798 N.W.2d 1, 8 (Iowa 2011). A primary reason for doing so is to allow the attorney charged to respond to the defendant's claims. *State v. Brubaker*, 805 N.W.2d 164, 170 (Iowa 2011). The State contends the attorney's actions reflected strategic decisions and such strategic decisions are "virtually unchallengeable." *Strickland v. Washington*, 466 U.S. 668, 690-91 (1984). We agree "[i]mprovident trial strategy, miscalculated tactics, or mistakes in judgment do not necessarily amount to ineffective assistance of counsel." *Kane v. State*, 436 N.W.2d 624, 627 (Iowa 1989). The record before us, however, is inadequate to make a determination whether the attorney's actions were the result of trial strategy or tactics. Accordingly, we preserve this claim for possible postconviction relief proceedings to allow development of an adequate record and to allow Coleman's attorney to respond to the claim. *See State v. Bentley*, 757 N.W.2d 257, 264 (Iowa 2008).

AFFIRMED.