

**IN THE COURT OF APPEALS OF IOWA**

No. 3-857 / 12-1255  
Filed October 2, 2013

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**ROBERT LYLE STEPHENSON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Polk County, Scott D. Rosenberg,  
Judge.

Robert Stephenson appeals his convictions following a jury trial for the crimes of conspiracy to deliver a controlled substance (methamphetamine), possession of a controlled substance with intent to deliver (methamphetamine), and failure to possess a tax stamp. **AFFIRMED.**

Matthew G. Sease of Kemp & Sease, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Chandra Peterson, Student Legal Intern, John Sarcone, County Attorney, and Stephanie Cox, Assistant County Attorney, for appellee.

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

**VOGEL P.J.**

Robert Stephenson appeals his convictions following a jury trial for conspiracy to deliver a controlled substance (methamphetamine), possession of a controlled substance with intent to deliver (methamphetamine), and failure to possess a tax stamp, claiming substantial evidence does not support the verdict. Because substantial evidence exists to sustain the finding of guilt on each count, we affirm.

Stephenson's three convictions arise out of his activities the night of February 8, 2012. That evening, Stephenson, Phyllis Oberender, Marjorie Lara, and an unidentified male drove to a downtown Des Moines hotel. Stephenson, Oberender, and Lara went up to a room in the hotel. At trial, Oberender testified while she was putting on her makeup in the bathroom, Stephenson came in, moved ceiling tiles, removed items from the rafters, and handed them to her. One of the items was a sock, which Oberender placed on top of her purse. She put the other items in her front sweatshirt pocket. Stephenson and Lara instructed Oberender to leave by using the stairwell, instead of the elevator.

The three parties then met at the car and attempted to drive away, but were stopped by police. Oberender admitted to having illegal items on her person and directed police to the front pouch of her sweatshirt, in which police found methamphetamine and a green vial containing a small amount of marijuana. She further directed police to the sock in her purse, in which officers found methamphetamine, a digital scale, and a glass pipe that tested positive for Stephenson's DNA. During the initial interview, Oberender informed officers she did not know what was in the sock, but in a later interview, and at trial, she

claimed to know she was transporting methamphetamine. Specifically, when asked whether she knew what was in the items, she stated:

A: I assumed, yes.

Q: What did you assume they were?

A: Drugs.

Q: Why did you assume that?

A: That's—I mean, they were wanting me to go a different way. They were being—it was obvious it was drugs. That's what he does. That's what he did.

Additionally, when interviewed by police the night of February 8, Stephenson informed the officers he was dealing drugs again and that he planned to meet with another man to sell the methamphetamine. At the close of evidence, Stephenson moved for a judgment of acquittal, which the district court denied. The case was submitted to the jury, and on May 10, 2012, the jury returned a verdict of guilty on all three counts.

Stephenson appeals, claiming the district court erred in denying his motion for judgment of acquittal. He asserts the State failed to prove he conspired to deliver a controlled substance because Oberender did not enter into an agreement with Stephenson to sell drugs, nor did she even understand what was happening when Stephenson handed her the items in the hotel room. As such, a conspiracy did not form. Stephenson further claims substantial evidence does not support the guilty verdicts for possession of a controlled substance with intent to deliver and failure to possess a tax stamp, given there was no evidence he exercised dominion or control over the drugs found on Oberender's person, and the State failed to prove he intended to sell the methamphetamine.

We review challenges to the sufficiency of the evidence for correction of errors at law. *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005). We will affirm a

jury's verdict if it is supported by substantial evidence, that is, evidence that could convince a rational trier of fact the defendant is guilty beyond a reasonable doubt. *Id.* While we consider all the evidence presented, we review the evidence in the light most favorable to the State, making all legitimate inferences and presumptions that can fairly and reasonably be deduced. *Id.*

To be convicted of conspiracy to deliver a controlled substance, the defendant must enter into an agreement with another person to deliver drugs. An agreement forms when there is a "concert of free wills, union of the minds of at least two persons [or] a mental confederation involving at least two persons." *State v. Speicher*, 625 N.W.2d 738, 742 (Iowa 2001) (internal citations omitted); see also Iowa Code § 706.1 (2011). Both direct and circumstantial evidence can be used to determine if a conspiracy exists, and a tacit understanding, inferred from the conspirators' conduct, is sufficient to sustain a conviction for conspiracy. *Speicher*, 625 N.W.2d at 742.

Here, sufficient evidence exists to support the finding of guilt with respect to the crime of conspiracy to deliver a controlled substance. Oberender admitted at trial she knew Stephenson was using her to transport drugs, which he would then later sell. Thus, though unspoken, a tacit understanding existed between Oberender and Stephenson that they were working together to deliver a controlled substance, that is, methamphetamine. Moreover, the quantity of methamphetamine found, in addition to the scale and Stephenson's own admission he was selling drugs again, corroborates Oberender's testimony. Therefore, viewing the evidence in the light most favorable to the State, substantial evidence supports the jury's verdict.

With respect to the crime of possession, the defendant must actually or constructively possess the controlled substance with the intent to distribute it. *State v. Cashen*, 666 N.W.2d 566, 569 (Iowa 2003). Constructive possession occurs when the defendant has knowledge of the presence of the controlled substance as well as the authority or right to maintain control of it. *Id.* at 569–70. Constructive possession must involve more than simple proximity to the controlled substance. *Id.* at 570. Several factors guide the issue of whether constructive possession occurred, including:

(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.

*State v. Dewitt*, 811 N.W.2d 460, 475 (Iowa 2012).

Here, the jury could infer from the testimony at trial Stephenson had both actual and constructive possession of the methamphetamine. He actually possessed the methamphetamine when he handed the items to Oberender in the hotel, and gave her instructions regarding what she should do with the items and how to leave the hotel with them. We can further infer constructive possession as well as intent to distribute based on his statements to police he intended to sell the methamphetamine, and that he intended to deliver the methamphetamine to another individual. In combination with Oberender's testimony she knew she was only transporting the drugs at Stephenson's request and would eventually need to give the drugs back to him, we can infer Stephenson exercised dominion and control over the sock and other items containing methamphetamine. *See id.*

Therefore, substantial evidence supports both convictions for possession of a controlled substance with intent to deliver and failure to possess a tax stamp. Consequently, we affirm Stephenson's convictions.

**AFFIRMED.**