

IN THE COURT OF APPEALS OF IOWA

No. 7-949 / 07-0194
Filed January 30, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DONALD THOMAS COLEMAN JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Van Buren County, E. Richard Meadows Jr., Judge.

Donald Thomas Coleman Jr. appeals the judgment and sentence entered by the district court on a jury verdict finding him guilty of possession of ephedrine and/or pseudoephedrine with intent to manufacture methamphetamine.

AFFIRMED.

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

Thomas J. Miller, Attorney General, Sharon Hall, Assistant Attorney General, H. Craig Miller, County Attorney, and Ed Harvey, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan and Zimmer, JJ.

ZIMMER, J.

Donald Thomas Coleman Jr. appeals the judgment and sentence entered by the district court on a jury verdict finding him guilty of possession of ephedrine and/or pseudoephedrine with intent to manufacture methamphetamine in violation of Iowa Code section 124.401(4) (2005). He contends the evidence was insufficient to prove he constructively possessed the ephedrine and/or pseudoephedrine. We affirm.

I. Background Facts and Proceedings.

Viewing the evidence in the light most favorable to the State, the jury could have found the following facts: During the early evening on September 17, 2005, Deputy John Zane and Officer Dan Tedrow went to a rural residence in Van Buren County to serve an arrest warrant on Coleman, who was living in a camper trailer located behind a residence belonging to Greg Britton and Sherry Jones (now Britton).

As Deputy Zane drove up the long driveway toward the Brittons' house, he saw someone walk across the yard and enter the trailer. When Deputy Zane arrived at the Brittons' residence he talked to Greg Britton who told him that Coleman was in the trailer.¹ Deputy Zane then drove closer to the trailer and approached the trailer on foot. He heard movement from inside the trailer and called out for the defendant. Coleman came to the door and stepped outside, leaving the door open.

¹ At trial Sherry Britton explained Coleman had been staying on their property in the trailer belonging to Coleman's sister since July. Coleman had been helping Greg Britton paint his house because Britton had a broken leg. Coleman showered and used the bathroom inside the Brittons' residence because no utilities were hooked up to the trailer.

As Deputy Zane talked to Coleman about the arrest warrant, he observed a “test tube” lying on the counter next to the kitchen sink. Deputy Zane suspected the test tube was being used to smoke methamphetamine, and he stepped inside the trailer to examine it. Deputy Zane observed burn marks on the test tube and determined it was drug paraphernalia. He asked Officer Tedrow to handcuff Coleman. After Coleman was handcuffed, Deputy Zane told Coleman the officers were going to secure the trailer and get a search warrant for the trailer, to which Coleman replied, “I know how this works.” Deputy Zane reentered the trailer, placed the test tube back on the counter, and verified no one else was inside. As he placed the tube back on the counter, Deputy Zane noticed there was “an oily liquid with chunks of white solid stuff floating in it” in the kitchen sink. The officers secured the area and applied for a search warrant.

Before Deputy Zane left the area, Truitt Baxter approached the trailer from the Brittons’ residence. Baxter was inside the Brittons’ house getting a drink when the officers arrived. Baxter explained that Coleman had permitted him to stay in the trailer the last few nights because he had recently had a fight with his parents. The only possession he had in the trailer was a flannel shirt, which he wished to retrieve. Deputy Zane and Baxter entered the trailer, and Baxter pointed out a shirt that was in a pile of clothes inside the trailer door. Deputy Zane retrieved the shirt and briefly detained Baxter. Baxter said he had not noticed any substance in the kitchen sink when he left the trailer approximately

one hour earlier, and he denied crushing or soaking pills in the trailer. He did not notice anyone else in the trailer that day.²

Approximately one and one-half hours after Coleman's arrest, Iowa Department of Public Safety narcotics agent Justin Klodt arrived at the trailer to investigate a possible methamphetamine lab. Klodt observed two Kimax test tubes converted to pipes commonly used to smoke methamphetamine, one on the counter next to the sink and one on the couch. He also observed liquid with "a white to off-white substance and sediments in it" in the kitchen sink basin. Klodt testified the liquid and sediment mixture was "very moist," and noted it was not dried or "crusted up." Klodt also found an open glass jar containing white residue on the couch and a green lid next to the sink. Klodt suspected the jar's contents had recently been dumped into the sink. Laboratory testing revealed the substances from the sink and the jar contained pseudoephedrine.

Klodt also found a box of sinus medication that contains pseudoephedrine and a partial empty blister pack on the floor, and two boxes of cold, headache, and sinus medications that contain pseudoephedrine in a cabinet. Klodt explained the first step in manufacturing methamphetamine involved soaking pills containing pseudoephedrine in a solvent to transform them into liquid form. He testified the only time he had ever seen anyone crush up pseudoephedrine or ephedrine pills and add liquid was if they were manufacturing methamphetamine.

Additionally, Klodt observed several other items that are commonly used in the other steps of manufacturing methamphetamine. He observed an empty can of Coleman fuel, which can be used as a solvent, in the bathroom. He found

² At trial, Baxter testified that Coleman was always in the trailer when Baxter was there.

two large containers of salt, which could be used to convert liquid meth to a salt form, in an upper cabinet. He also found a bottle of Heet antifreeze, another type of solvent, under the sink. Klodt explained that it is common to manufacture methamphetamine in different stages at different locations to avoid detection. Klodt also seized an envelope addressed to Coleman in the care of Sherry Jones found inside the trailer.

On January 23, 2006, the State filed a trial information charging Coleman with possession of ephedrine with intent to manufacture. On December 12, 2006, a jury trial commenced. At the close of the State's case-in-chief, Coleman moved for judgment of acquittal, which the district court took under advisement. Coleman renewed his motion at the close of evidence, and the court denied the motion for judgment of acquittal. Also at the close of evidence, the State moved to amend the trial information to read "ephedrine and/or pseudoephedrine," and the court granted the motion.

The jury found Coleman guilty as charged. Following the trial, Coleman filed a motion for new trial, which the district court denied. At the sentencing hearing held on January 26, 2007, the court credited Coleman for time served, suspended the remaining indeterminate sentence, and placed him on probation for five years with the condition that he reside at a residential facility for 365 days or until maximum benefits had been achieved. The court also ordered him to pay a fine of \$750, but suspended payment of the fine. Coleman now appeals.

II. Scope and Standard of Review.

We review challenges to the sufficiency of the evidence supporting a guilty verdict for correction of errors at law. *State v. Williams*, 695 N.W.2d 23, 27 (Iowa

2005). We will uphold the jury's verdict if substantial evidence supports it. *Id.* We consider evidence substantial if it "would convince a rational fact finder that the defendant is guilty beyond a reasonable doubt." *State v. Acevedo*, 705 N.W.2d 1, 3 (Iowa 2005). We consider all the evidence in the record when we make sufficiency of the evidence determinations, not just the evidence supporting guilt. *State v. Carter*, 696 N.W.2d 31, 36 (Iowa 2005) (citing *State v. Quinn*, 691 N.W.2d 403, 407 (Iowa 2005)). However, we view the evidence in the light most favorable to the State, and we include legitimate inferences and presumptions that may be reasonably deduced from evidence in the record. *Id.*

III. Discussion.

To establish that Coleman unlawfully possessed ephedrine and/or pseudoephedrine, the State must prove he: (1) exercised dominion and control [i.e., possession] over the contraband, (2) had knowledge of its presence, and (3) had knowledge that the material was a controlled substance. *State v. Reeves*, 209 N.W.2d 18, 21 (Iowa 1973).

Actual possession occurs when a controlled substance is found on a defendant's person. *Carter*, 696 N.W.2d at 38. Because no ephedrine and/or pseudoephedrine was discovered on Coleman's person, the State had to proceed under a theory of constructive possession. Constructive possession occurs when a defendant has knowledge of the presence of the controlled substance and has the authority or right to maintain control of it. *State v. Bash*, 670 N.W.2d 135, 138 (Iowa 2003).

In cases of joint control over the location when the contraband is found, constructive possession cannot be inferred, but must be established by other proof, such as

incriminating statements made by the defendant, incriminating actions of the defendant upon the police's discovery of the controlled substance among or near the defendant's personal belongings, the defendant's fingerprints on the packages containing the controlled substance, and any other circumstances linking the defendant to the controlled substance.

Id.

Coleman maintains there is a lack of evidence in the record to establish his constructive possession of pseudoephedrine because he was not in exclusive possession of the camper trailer where the substance was found and therefore, did not have dominion and control of the substance containing pseudoephedrine. We conclude otherwise.

Coleman had been living in the trailer parked behind the Brittons' house for more than one month.³ Baxter had spent three nights at the trailer with Coleman; however, Baxter testified he had not been alone in the trailer at any time. When the officers arrived, Baxter was inside the Brittons' house getting a drink. He had not been inside the trailer for about one hour prior to the time the officers arrived and arrested Coleman. Baxter had not noticed any substance in the kitchen sink when he left the trailer. After the officers arrested Coleman, Baxter voluntarily approached the officers and asked if he could retrieve his flannel jacket from the trailer. He denied crushing or soaking pills in the trailer

³ Officers found an envelope addressed to Coleman in the care of Sherry Jones inside the trailer, indicating others knew he was residing at that address.

that day. The jury was free to accept or reject the testimony offered by Baxter. See *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006).

As Deputy Zane drove toward the Brittons' house, he saw someone walk across the yard and enter the trailer. A few minutes later, as he approached the trailer, Deputy Zane heard movement inside the trailer. When Deputy Zane told Coleman the officers were going to search the trailer and get a search warrant, Coleman did not seem surprised. Officers found a glass jar without a lid containing a residue on the couch, a lid next to the sink, and a test tube converted into a pipe used for smoking methamphetamine next to the sink. Deputy Zane found a liquid mixture with moist white sediment in the sink. See *id.* at 559 (noting moistness of substances indicate the process had recently occurred). The substance in the sink and the residue in the jar both contained pseudoephedrine. Additionally, an empty box and blister pack of pills containing pseudoephedrine was found on the floor, and two boxes of sinus medication also containing pseudoephedrine were found among Coleman's clothes. Additional items, such as a Coleman fuel container, Heet, and two large containers of salt, which could have been used in the methamphetamine manufacturing process, were also retrieved from the trailer in which Coleman was residing.⁴ Although Coleman argues these items were ordinary household items and the State did not establish who possessed each of these items, we believe a rational jury could have concluded Coleman was in the process of preparing pseudoephedrine pills

⁴ Although there was a Coleman stove on the kitchen counter and a few dishes in an upper cabinet, there was no evidence of food preparation. Furthermore, the trailer was not hooked up to any utilities or a water supply.

to make methamphetamine when interrupted by deputies, prompting him to pour the mixture of crushed pills and water down the sink.

When we view all the evidence in the light most favorable to the State, we conclude there was sufficient evidence to support Coleman's conviction for possession of ephedrine and/or pseudoephedrine with intent to manufacture methamphetamine.

IV. Conclusion.

Because we find no merit to Coleman's appellate claim, we affirm his conviction.

AFFIRMED.