

IN THE COURT OF APPEALS OF IOWA

No. 8-149 / 07-0457
Filed March 26, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DORSEY DWIGHT WILSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Carol L. Coppola,
District Associate Judge.

Defendant appeals his conviction for possession of marijuana, second
offense. **AFFIRMED.**

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

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney
General, John P. Sarcone, County Attorney, and Celene Gogerty, Assistant
County Attorney, for appellee.

Considered by Huitink, P.J., and Miller, J., and Beeghly, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BEEGHLY, S.J.**I. Background Facts & Proceedings**

On December 15, 2006, Des Moines police officer Tim Fricke stopped a vehicle because it did not have a rear license plate. Dorsey Wilson was the only passenger in the car. When officer Fricke asked Wilson to get out of the car so it could be impounded, he noticed that on the front passenger seat where Wilson had been sitting was a corner of a baggie, which officer Fricke knew was consistent with baggies that were used for carrying illegal drugs. Underneath the front passenger seat officer Fricke found loose marijuana on top of a CD jacket.

Officer Abby Vannausdle took Wilson back to her patrol car. When she asked Wilson if there were more drugs in the vehicle, he stated there was more marijuana in a black cup in the cup holder on the passenger side of the vehicle. The officers found a baggie of marijuana in a cup holder, as described by Wilson. Officer Fricke also found cigarillos on the center console of the vehicle. He stated drug users sometimes removed the tobacco from a cigarillo or cigar and filled it with marijuana.

Officer Vannausdle asked Wilson what had been going on that day, and he replied “they were getting ready to go smoke the marijuana.” She testified he did not say this in a condescending or sarcastic manner. She was further questioned:

Q. And you said from his tone of voice you did not think he was joking about being ready to smoke or use the marijuana. Do you recall what his tone of voice was? A. It was just very serious, even tones. It wasn't really a joking matter. We weren't joking with each other, and the conversation we were having – it was a serious straightforward conversation.

Wilson was charged with possession of a controlled substance (marijuana), second offense, in violation of Iowa Code section 124.401(5) (2005). At the trial his sister, Mary Wilson, testified the marijuana belonged to her. She stated she placed some in a flyer, and threw it on the floor under the seat. She also stated she placed some in the backseat ashtray. Defendant testified he was not serious when he told officer Vannausdle, "What do you think? I was going to roll it up and smoke it?"

The jury returned a verdict finding Wilson guilty of possession of marijuana. He was sentenced to sixty days in the county jail, to be served consecutively to another sentence. Wilson appeals, claiming there is insufficient evidence to support his conviction.

II. Standard of Review

We review challenges to the sufficiency of the evidence for the correction of errors at law. *State v. Schmidt*, 480 N.W.2d 886, 887 (Iowa 1992). A guilty verdict is binding on appeal, unless there is not substantial evidence in the record to support it, or the verdict is clearly against the weight of the evidence. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.*

III. Merits

Wilson contends there is insufficient evidence in the record to show he had constructive possession of the marijuana. He asserts there is not sufficient evidence to show he had knowledge of the marijuana, let alone that he exercised

dominion and control over the illegal drugs. He states he was merely the passenger in the car where marijuana happened to be present.

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). Constructive possession is found “when the person has knowledge of the presence of the controlled substance and has the authority or right to maintain control of it.” *State v. Henderson*, 696 N.W.2d 5, 9 (Iowa 2005) (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).

Several factors are considered on the issue of constructive possession when a person does not have exclusive possession of the premises where the illegal drugs were found, including: (1) incriminating statements made by the person; (2) incriminating actions of the person upon the police’s discovery of the controlled substance; (3) the person’s fingerprints on the packaging of the controlled substance; (4) any other circumstances linking the person to the controlled substance. *State v. Kemp*, 688 N.W.2d 785, 798 (Iowa 2004).

When the case involves a motor vehicle, these additional factors are considered: (1) whether the contraband was in plain view; (2) whether it was with the person’s personal effects; (3) whether it was found on the same side of the car or immediately next to the person; (4) whether the person was the owner of the vehicle; and (5) whether the person engaged in suspicious activity. *State v. Carter*, 696 N.W.2d 31, 39 (Iowa 2005).

In the present case, the marijuana was found on the same side of the vehicle as Wilson. A corner of a baggie, of a type commonly used to transport illegal drugs, was on the car seat where Wilson had been sitting. Loose marijuana was found immediately underneath Wilson's seat in the car. Wilson told the officers where more marijuana could be found in the car. Furthermore, Wilson stated he had intended to smoke the marijuana. The cigarillos found in the car could have been used to smoke the marijuana.

Looking at the evidence as a whole, we find there is substantial evidence in the record to support Wilson's conviction for possession of marijuana. Wilson's statement that he intended to smoke the marijuana showed he intended to exercise dominion and control over the controlled substance. Wilson's conviction is not based merely on the fact that marijuana was found in a car where he was a passenger.

We affirm Wilson's conviction.

AFFIRMED.