IN THE COURT OF APPEALS OF IOWA

No. 9-370 / 08-0621
Filed August 6, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANIEL ANDRZEJ WOLOSZYN,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, Gary D. McKenrick, Judge.

A defendant appeals his judgment and sentence for possession of marijuana with intent to deliver and failure to affix a drug tax stamp, contending (1) there was insufficient evidence to establish that he possessed the drugs and (2) trial counsel was ineffective in several respects. **AFFIRMED.**

Lori Kieffer-Garrison, Rock Island, Illinois, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Michael J. Walton, County Attorney, and Kelly Cunningham, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Doyle, JJ.

VAITHESWARAN, P.J.

Daniel Woloszyn, a passenger in the back seat of a rental car, was caught in a sting operation designed to interdict drugs. Following a consensual search of the rental car, a substantial quantity of marijuana was found in the trunk of the vehicle.

The State charged Woloszyn with possession of marijuana with intent to deliver and failure to affix a drug tax stamp. A jury was unable to reach a verdict. The State and Woloszyn subsequently agreed that the matter would be submitted to the district court for a trial on stipulated evidence. The court found Woloszyn guilty.

On appeal, Woloszyn contends (1) there was insufficient evidence to establish that he possessed the drugs and (2) trial counsel was ineffective in several respects.

I. Sufficiency of the Evidence

The key question before the district court was whether Woloszyn "possessed" the drugs in the trunk of the vehicle. This is an element of both the crimes with which he was charged. *See* Iowa Code §§ 124.401(1), 453B.3 (2007).

Our review is for substantial evidence. *State v. Carter*, 696 N.W.2d 31, 36 (Iowa 2005). We are required to view the evidence in the light most favorable to the State. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984).

There are two types of possession—actual and constructive. *State v. Cashen*, 666 N.W.2d 566, 569 (Iowa 2003). It is undisputed that Woloszyn did

not have actual possession of the drugs. Therefore, the focus was on constructive possession.

Constructive possession requires proof that "(1) the accused exercised dominion and control over the contraband; (2) the accused had knowledge of the contraband's presence; and (3) the accused had knowledge the material was a narcotic." *Id.*

The record reveals the following facts. Officers from a special drug enforcement task force set up signs along Interstate 80 near the Iowa-Illinois border stating that a drug checkpoint was located ahead and all vehicles were subject to search; no such checkpoint existed. Special undercover agents were positioned at a nearby rest area to monitor motorists who pulled off of the interstate before the fake checkpoint.

Woloszyn was the only person in the back seat of a large vehicle with New Jersey license plates. That vehicle pulled into the rest stop directly ahead of another vehicle with California license plates. The occupants of both vehicles talked to each other and took turns going to the restroom. From the vantage point of a plainclothes agent seated near the vehicles, it appeared that someone was guarding the New Jersey vehicle at all times.

The agents' suspicions were heightened when one of them overheard discussions among the occupants about the drug check point. Soon, the original driver of the vehicle with California plates got into the driver's seat of the vehicle with New Jersey plates. The New Jersey vehicle stayed at the rest stop while the other vehicle left.

Two agents approached the New Jersey vehicle. One talked to Woloszyn, who was coatless and shivering in the November weather. Woloszyn told the officer that he was going to visit friends in Chicago, a statement that was inconsistent with his attire. The officer asked Woloszyn if he had any luggage in the vehicle. Woloszyn did not respond. The officer asked him whether he rented the vehicle. Woloszyn initially said the occupants rented it together but later said he did not know who rented the vehicle.

The other two occupants consented to a search of the vehicle. The officers discovered over one hundred pounds of marijuana in two suitcases in the back compartment of the vehicle. One of the suitcases also contained several DVDs with Woloszyn's fingerprints on them and wire transfer receipts bearing his name. A special agent testified that drug couriers tend to wire money home so that it is not intercepted by the police, and the sum on the wire transfer receipts could reflect compensation for the transportation service. Additionally, there was testimony that short cross-country trips such as those reflected in the wire transfer receipts were an indication of drug trafficking.

This evidence, viewed in the light most favorable to the State, amounts to substantial evidence supporting the district court's implicit finding that Woloszyn constructively possessed the marijuana as an aider and abetor. *See Carter*, 696 N.W.2d at 41; *see also State v. Maxwell*, 743 N.W.2d 185, 193 (Iowa 2008) (reviewing for any basis in record to support judgment and noting that court "must have found" requisite quantum of evidence).

II. Ineffective Assistance of Counsel

Woloszyn next complains that trial counsel was ineffective in: (1) failing to insist on a colloquy with the court to establish that he willingly testified during his bench trial, (2) stipulating to certain exhibits, and (3) permitting representation by multiple attorneys.

The State correctly points out that Woloszyn cites no authority for the first proposition. A defendant has a constitutional right to testify in a criminal matter. *State v. Reynolds*, 670 N.W.2d 405, 411 (Iowa 2003). There is no duty to determine on the record that a defendant has voluntarily, knowingly, and intelligently exercised that right. Accordingly, we reject that claim.

Woloszyn next contends that his attorney should not have stipulated to the admission of the wire transfer receipts because they were successfully excluded as hearsay at his jury trial. A stipulation to otherwise inadmissible evidence could be grounds for an ineffective-assistance-of-counsel claim. *See State v. Reynolds*, 746 N.W.2d 837, 845 (Iowa 2008) (finding counsel ineffective for not objecting to the admission of evidence that would have been considered hearsay). However, in this case, it was clear that the evidence would have been admissible with a proper foundational witness. Specifically, while the district court excluded the evidence at the jury trial because the foundational witness was deemed inadequate, the court left open the possibility that a better witness might lead to in a different ruling. The court stated, "I think I really need to hear testimony from the store that issued the MoneyGram indicating some level of reliance and compliance with that purported guideline in terms of identification." *See* Iowa R. Evid. 5.803(6) (business records exception to hearsay rule). In light

of this statement, we conclude counsel was not ineffective in stipulating to the admission of the wire transfer receipts.

Woloszyn also argues that trial counsel should not have stipulated to the fact that the DVDs were found inside one of the suitcases. The State counters that it simply could have called the person who found the DVDs to testify about their location inside the suitcase. We agree. For this reason, we conclude trial counsel was not ineffective in stipulating to the location of the DVDs.

Finally, Woloszyn claims that counsel was ineffective because he was represented by "three separate attorneys" during the pendency of his case. Woloszyn cites no authority for the proposition that an attorney breaches a duty to his client by allowing someone else to represent him. He also fails to point out how he was prejudiced. Accordingly, we reject this ineffective-assistance-of-counsel claim.

We affirm Woloszyn's judgment and sentence.

AFFIRMED.