

IN THE COURT OF APPEALS OF IOWA

No. 9-522 / 08-0891
Filed August 6, 2009

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JAMES PHILLIP URBAN,
Defendant-Appellant.

Appeal from the Iowa District Court for Plymouth County, James D. Scott,
Judge.

Defendant appeals his conviction for unlawful possession of animal furs.

AFFIRMED.

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

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney
General, Darin J. Raymond, County Attorney, and Amy K. Oetken, Assistant
County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran, J., and Beeghly, S.J.*

*Senior Judge assigned by order pursuant to Iowa Code section 602.9206
(2009).

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

Conservation officers from the Iowa Department of Natural Resources were suspicious that James Urban (Urban) was trapping animals without a license. The trapping of fur-bearing animals requires a fur harvester license under Iowa Code section 483A.1 (2007). In December 2006 officers followed Urban while he stopped on a seldom-used dirt road. After Urban left, officers went to the same area and found a raccoon in a snare. The name on the snare was Travis Urban (Travis), Urban's son.

Officers obtained a search warrant for Urban's home, which they executed on January 20, 2007. Urban was the only person at the residence at the time of the search warrant. Officers found hundreds of traps and snares, trapping lures, and bait. They also found forty dead raccoons and one dead badger.¹ Some of the traps and snares had Urban's name on them, and some had Travis's name on them. A container with parts for snares was found in the same room as Urban. On the kitchen countertop was a trap tag with Travis's name, a lock for a snare, some change, a comb, and Urban's work ID card.

The officers found an envelope addressed to Urban from W & R Furs, a fur dealer from Fairmont, Minnesota. There was a receipt dated December 23, 2006, with Travis's name on the top, but with the notation on the bottom, "Jim Forgot envelope so here is 250 will pay rest next Sat."

¹ Raccoons and badgers are fur-bearing animals as the term is used in chapters 481A and 483A. Iowa Code § 481A.1(20).

Urban was charged with trapping without a license, fourth offense, in violation of sections 481A.135 and 483A.1, and unlawful possession of animal furs, fourth offense, in violation of sections 481A.38 and 481A.135. Urban stipulated that between September 2006 and January 2007 he did not have a valid trapping license. Urban also admitted he had three previous convictions for violating trapping laws.

The case proceeded to trial. The district court denied Urban's motion for judgment of acquittal. Travis testified that he had been living with his father. He stated he had a trapping license, and the raccoons in the garage belonged to him. On cross-examination Travis admitted that he had previously told conservation officers that he was not living with his dad. Dorothy Urban testified she was married to Urban, but was living at a different place. She testified the traps and snares at Urban's home were owned by her and Urban, but Travis was using them, and the raccoons were Travis's. DuWayne Anderson, of W & R Furs, testified he had not purchased furs from Urban during the relevant period of time, but had purchased some from Travis. Anderson testified, however, that in late 2006 Urban called him and asked him to pick up some furs from the home.

The jury returned a verdict finding Urban not guilty of trapping animals without a valid license, and guilty of unlawful possession of animal furs. Urban filed a motion for a new trial, claiming the jury's verdict was not supported by the evidence. The district court denied the motion for new trial. Urban was sentenced to 365 days in jail, with all but 120 days suspended. He was placed

on probation for a period of two years. He was suspended from having a trapping license for five years. Urban appeals his conviction.

II. Sufficiency of the Evidence

Urban contends there is insufficient evidence in the record to show he illegally possessed fur-bearing animals. He asserts he did not have exclusive possession over the animal furs because Travis was using the garage to store his furs and trapping materials. Urban claims the State did not adequately show he had constructive possession of the animal furs.

We review challenges to the sufficiency of the evidence in a criminal case for the correction of errors at law. *State v. Heuser*, 661 N.W.2d 157, 165 (Iowa 2003). A jury's verdict will be upheld if it is supported by substantial evidence. *Id.* at 165-66. Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). We view the evidence in the light most favorable to the State. *State v. Padavich*, 536 N.W.2d 743, 751 (Iowa 1995).

In a crime involving possession of contraband, possession can be actual as well as constructive. *State v. Nickens*, 644 N.W.2d 38, 41 (Iowa Ct. App. 2002). A person is considered to be in actual possession when the person "has direct physical control of something on or around his person." *State v. Nitche*, 720 N.W.2d 547, 558 (Iowa 2006). Constructive possession occurs when the person "has knowledge of the presence of something and has the authority or

right to maintain control of it either alone or together with someone else.” *State v. Maghee*, 573 N.W.2d 1, 10 (Iowa 1997) (citation omitted).

Constructive possession cannot be inferred from the defendant’s joint possession of premises with others. *State v. Bash*, 670 N.W.2d 135, 138 (Iowa 2003). The State must present other evidence linking the defendant to the illegal contraband. *Id.* When a defendant does not have exclusive possession of the premises, the State must show “evidence establishing actual knowledge by the accused, or evidence of incriminating statements or circumstances from which the jury might lawfully infer knowledge by the accused of the presence of the [items] on the premises.” *State v. McDowell*, 622 N.W.2d 305, 308 (Iowa 2001) (citation omitted).

If the jury determined Urban was living in his home alone, it could find he was in actual possession of the furs. There was contradictory evidence as to whether Travis was living in the same home as Urban. The jury was free to reject certain evidence and credit other evidence. *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994). The jury could have rejected Travis’s testimony that he was living with his father, and that the raccoons belonged to him.

On the other hand, even if the jury found Urban and Travis had joint possession of the premises, there was sufficient evidence in the record to show Urban had constructive possession of the animal furs. There was no evidence the animal furs were hidden, and it is clear Urban would have knowledge of over forty dead animal pelts in his garage. Furthermore, the envelope from W & R Furs addressed to Urban and Urban’s telephone call to Anderson about picking

up furs, shows his authority and right to maintain control over the animal furs. We conclude there is substantial evidence in the record to show Urban had constructive possession of the animal furs.

We conclude the district court did not err in denying Urban's motion for judgment of acquittal.

III. Ineffective Assistance

Urban contends he received ineffective assistance because his trial counsel failed to file a motion to adjudicate law points to determine what license is required to possess furs. He asserts that while section 483A.1 provides for a fur harvester license, there is no corresponding license under the Iowa Code for the possession of the fur of a fur-bearing animal. Urban claims there is no specified license he could obtain to possess furs.

We review claims of ineffective assistance of counsel *de novo*. *State v. Bergmann*, 600 N.W.2d 311, 313 (Iowa 1999). To establish a claim of ineffective assistance of counsel, a defendant must show (1) the attorney failed to perform an essential duty, and (2) prejudice resulted to the extent it denied defendant a fair trial. *State v. Shanahan*, 712 N.W.2d 121, 136 (Iowa 2006). Absent evidence to the contrary, we assume that the attorney's conduct falls within the wide range of reasonable professional assistance. *State v. Hepperle*, 530 N.W.2d 735, 739 (Iowa 1995).

Section 481A.38 provides:

It is unlawful for a person to take, pursue, kill, trap or ensnare, buy, sell, possess, transport, . . . any game, protected nongame animals, fur-bearing animals or fur or skin of such

animals, . . . except upon such terms, conditions, limitations and restrictions set forth herein

(Emphasis added). Also, section 483A.1 provides:

Except as otherwise provided in this chapter, a person shall not fish, trap, hunt, pursue, catch, kill, take in any manner, use, *have possession of*, sell, or transport all or a part of any wild animal, bird, game, or fish, the protection and regulation of which is desirable for the conservation of resources of the state, without first obtaining a license for that purpose and the payment of a fee as follows:

(Emphasis added). Thereafter follows a list of the types of licenses available in Iowa, including a fur harvester license and a fur dealer license.

Under the Iowa statutory scheme, a person may not possess the fur of a fur-bearing animal taken from the wild, such as a raccoon or badger, without a license. See Iowa Code §§ 481A.38, 483A.1. The only licenses that pertain to the possession of animal furs are the fur harvester license and the fur dealer license. It therefore follows that a person must have one of these licenses in order to possess the fur of a fur-bearing animal. Urban did not have either type of license.

We conclude Urban has not shown he received ineffective assistance due to his counsel's failure to file a motion to adjudicate law points to determine what type of license would be needed to possess the fur of a fur-bearing animal.

We affirm Urban's conviction.

AFFIRMED.