

IN THE COURT OF APPEALS OF IOWA

No. 9-970 / 09-0491
Filed January 22, 2010

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DARTONYA LEE SHIVERS,
Defendant-Appellant.

Appeal from the Iowa District Court for Hardin County, Carl D. Baker,
Judge.

Dartonya Shivers appeals, contending there is insufficient evidence to sustain the convictions for possession with intent to deliver, prohibited acts, and gatherings where controlled substances are unlawfully used. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Stephan J. Japuntich,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney
General, Randall J. Tilton, County Attorney, and Jim Sween, Assistant County
Attorney, for appellee.

Considered by Eisenhauer, P.J., Potterfield, J., and Mahan, S.J.*

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

POTTERFIELD, J.

Dartonya Shivers appeals from convictions for possession of a controlled substance (marijuana) with intent to deliver as a habitual offender, prohibited acts, and gatherings where controlled substances are unlawfully used. He contends there is insufficient evidence to sustain the convictions. We affirm.

We review a challenge to the sufficiency of the evidence for correction of errors at law. *State v. Canal*, 773 N.W.2d 528, 530 (Iowa 2009) (citations omitted). The court views the evidence in the light most favorable to the State in making this determination. *Id.* As to Shiver's ineffective-assistance-of-counsel claim,¹ we review it de novo because it has its basis in the Sixth Amendment to the United States Constitution. *Id.*

Shivers contends the jury's findings of guilt are not supported by substantial evidence. "Evidence is substantial if it could convince a rational jury of the defendant's guilt beyond a reasonable doubt." *State v. Musser*, 721 N.W.2d 758, 760 (Iowa 2006).

Evidence was presented at trial tending to show that in the fall of 2007, police became suspicious that Shivers was selling drugs out of his apartment in Iowa Falls. Police officers requested the city sanitation department to start delivering the contents of Shivers's apartment complex dumpster to the city garage where it was examined. On three separate occasions, in bags with mail or receipts addressed to Shivers, police found marijuana stems, seeds, and other

¹ To the extent that trial counsel failed to adequately preserve his sufficiency objection, Shivers argues trial counsel was ineffective. Because we address the merits of defendant's claim, we need not analyze whether trial counsel adequately preserved error.

indications of marijuana ingestion (a blunt² or pipe). The officers used this information to obtain a warrant to search Shivers's apartment.

The warrant was executed on October 17, 2007. When police entered Shivers's apartment, they found in the living room Shivers, Chelsea Carr (Shivers's girlfriend), Travis Yoders, Ivy Thomas, and Nicole Grover. In Grover's front pocket, police found a small baggie of marijuana. In Shivers's left front pocket was a baggie of marijuana and two \$20 bills. On the coffee table was a drug pipe. On the kitchen counter, the officers found two glass pipes used for smoking marijuana, a Styrofoam cup with marijuana residue, and plastic baggies consistent with packaging materials. An officer found sheets of paper labeled "money owed" and a list of names and amounts in the east upstairs bedroom. Above the ceiling tiles in the basement of the apartment complex, officers found a shopping bag containing a digital scale, 129 individually wrapped baggies of marijuana, and three Ziploc bags of portions from a brick of compressed marijuana. Shivers's fingerprints were found on the shopping bag and on a Ziploc bag contained therein.

At trial, Nicole Grover testified that she had been to Shivers's apartment on about ten occasions, and Shivers began selling her marijuana during her visits. Often Shivers would have others in his apartment when Grover was there; about half of the time they smoked marijuana together. On October 17, Grover called Shivers and went to his apartment to buy marijuana. She exchanged a \$20 bill for a baggie of marijuana she placed in her front pocket. Police arrived to

² A "blunt" is a cigar from which the tobacco has been removed and replaced with marijuana.

execute the search warrant about five or ten minutes later. When they searched her, officers found the marijuana she had just purchased from Shivers.

Shivers challenges Grover's testimony as biased and not credible. Assessment of a witness's credibility, however, is for the jury to decide. See *State v. Hulbert*, 481 N.W.2d 329, 332 (1992). The district court overruled Shivers's post-trial motions, finding "[t]he evidence supporting the verdicts was overwhelming." We agree with the district court that there was substantial evidence that could convince a rational trier of fact that the defendant was guilty of the crimes charged beyond a reasonable doubt. We therefore affirm.

AFFIRMED.