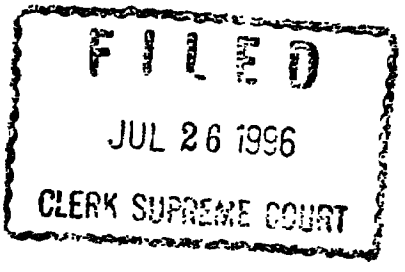
IN THE COURT OF APPEALS OF IOWA

No. 6-400 / 95-1400



STATE OF IOWA,

Appellee,

vs.

JEFFREY ALLEN WOLLESEN,

Appellant.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge.

Jeffrey Wollesen appeals his conviction, following a jury trial, for possession of methamphetamine with intent to deliver while in the immediate possession and control of a firearm. **AFFIRMED.**

David A. Morse of Garten & Wanek, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Mary Tabor, Assistant Attorney General, John P. Sarcone, County Attorney, and Jamie Bowers, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., Streit and Vogel, JJ.

PER CURIAM

This is an appeal by a defendant claiming his conviction for possession of methamphetamine with intent to deliver while in the immediate possession and control of a firearm should be overturned. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

On February 7, 1995, police officers arrested Jeffrey Wollesen at his home in Des Moines for probation violations. In conducting a pat down search of Wollesen, officers found 11.26 grams of methamphetamine and $181 in his pocket. The drug was in four baggies inside a larger baggie. Wollesen consented to a search of his home. Officers found a vial containing 0.90 grams of methamphetamine, a small scale, a loaded handgun, and a police scanner.

Wollesen was charged with possession of methamphetamine with intent to deliver while in the immediate control and possession of a firearm, in violation of Iowa Code sections 124.401(1)(c)(6) and (1)(e) (1993). A jury found him guilty of the crime charged. Wollesen now appeals his conviction.

I. Wollesen contends the State failed to present substantial evidence to show he possessed methamphetamine with intent to deliver. He testified he was addicted to methamphetamine and had purchased the drugs for his own personal use. Wollesen stated the scale belonged to his brother, the handgun was purchased for his girlfriend, and the scanner was used to keep track of his father, who was a member of the fire department.

We find there was substantial evidence to support defendant's conviction. The jury was not required to accept defendant's version of the facts. *See State v. Mills,* 458 N.W.2d 395, 397 (Iowa App. 1990). The State presented evidence that scales, handguns, and police scanners are often used by drug dealers. Also, the quantity and manner of packaging suggested the methamphetamine was ready for sale.

II. Wollesen claims the district court erred in its instructions to the jury concerning the proper definition of "immediate possession of a firearm," as used in section 124.401(1)(e). He believes the instruction used here allowed an enhancement of his sentence based on constructive possession instead of immediate possession, as required by the statute.

The jury instruction provided:

> With regard to possession of the firearm, a person has immediate possession or control of something if he/she has direct physical control of it on or about his/her person, or it is so situated as to be capable of use immediately by the Defendant, that is, without significant interval of time.

We find this instruction comports with the definition of "immediate possession" found in *State v. Mehner,* 480 N.W.2d 872, 878-879 (Iowa 1992). Furthermore, the evidence supported submission of the instruction. Defendant was taken into custody in the living room of his home. The gun was found on a shelf in an adjacent bedroom, where it would be readily accessible to defendant.

We affirm Wollesen's conviction for possession of methamphetamine with intent to deliver while in the immediate possession or control of a firearm. Costs of this appeal are assessed to Wollesen.

AFFIRMED.