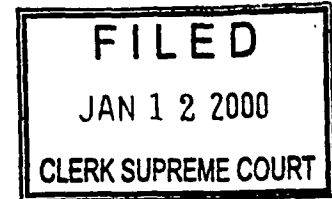


IN THE COURT OF APPEALS OF IOWA

No. 1999-335 (9-588) / 98-1553
Filed January 12, 2000



STATE OF IOWA,
Appellee,

vs.

JAMON WINFREY,
Appellant.

Appeal from the Iowa District Court for Polk County, Darrell Goodhue, Judge.

Jamon Winfrey appeals his judgment and sentence, following a jury trial, for possession of a controlled substance with intent to deliver. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis D. Hendrickson, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, John P. Sarcone, County Attorney, and Jamie D. Bowers, Assistant County Attorney, for appellee.

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

VOGEL, J.

Jamon Winfrey appeals his judgment and sentence, following a jury trial, for possession of a controlled substance with intent to deliver. We affirm.

Background facts. On April 10, 1998, Des Moines police executed a search warrant at 1961 Lincoln in Des Moines. After unsuccessfully trying to ram the front door of the small, one-story house, officers found two men trying to escape through the back door. The officers arrested the men and entered the house. Another officer quickly apprehended Winfrey in a hallway. In searching the house, police discovered crack cocaine, a .38 revolver, a scale, \$1144 in cash, a pager, a cellular phone, a scanner and plastic baggies.

Winfrey was charged by trial information with possession of a controlled substance with intent to deliver in violation of Iowa Code section 124.401(1)(c)(3) (1997) (Count I) and possession of firearms by a felon in violation of Iowa Code section 124.401(1)(e) (1997) (Count II). On the eve of trial, the State amended the information to charge two habitual offender sentencing enhancements and asked that Count II be severed from trial. Following trial, a jury convicted Winfrey of Count I and answered a special interrogatory, finding that Winfrey was in immediate possession or control of a firearm while participating in the commission of Count I. Count II was dismissed on the State's motion at sentencing. On appeal, Winfrey challenges only the jury's answer to the special interrogatory.

Sufficiency of the evidence. Winfrey contends there was insufficient evidence to support the jury's finding that he was in immediate possession or control of a firearm pursuant to Iowa Code section 124.401(1)(e).

We review sufficiency of the evidence claims for errors at law. Iowa R. App. P. 4. We are bound by the jury verdict unless the verdict is not supported by substantial evidence. *State v. Lewis*, 514 N.W.2d 63, 65-66 (Iowa 1994). In making this determination, we must consider all the evidence in the light most favorable to the State. *State v. Peck*, 539 N.W.2d 170, 172 (Iowa 1995). We accept all legitimate inferences that may fairly and reasonably be deducted from the evidence. *State v. Bayles*, 551 N.W.2d 600, 608 (Iowa 1996). Evidence is substantial if it could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.* Direct and circumstantial evidence are equally probative; however, evidence which merely raises suspicion, speculation, or conjecture is insufficient. *See id.*

Iowa Code section 124.401(1)(e) provides that:

A person in the immediate possession or control of a firearm while participating in a violation of this subsection shall be sentenced to two times the term otherwise imposed by law, and no such judgment, sentence, or part thereof shall be deferred or suspended.

Our supreme court has previously defined and noted a distinction between the concepts of "immediate possession" and "immediate control." *See State v. Eickelberg*, 574 N.W.2d 1, 4 (Iowa 1997). In *Eickelberg*, the court stated:

[W]hile immediate possession, as found in section 124.401(1)(e), may require the firearm to be located on the defendant's person, *immediate control necessitates only that the firearm be in such close proximity to*

the defendant as to enable him to claim immediate dominion over the firearm.

Id. (emphasis added).

In this case, the revolver in question was found on top of a chair in the living room, just around the corner from the hallway where Winfrey was apprehended. Although the exact dimensions of the house were not presented at trial, when viewing the evidence in a light most favorable to the State, a reasonable jury could find that the revolver was less than three steps away from Winfrey's location. We find this short distance sufficient to establish that Winfrey was close enough to claim "immediate dominion" over the revolver. *Cf. id.* at 5 (defendants found in immediate control where they only needed to take one or two large steps toward a closet to retrieve firearm); *State v. Engle*, 590 N.W.2d 549, 550 (Iowa App. 1998) (defendant found near a closet where firearm was hanging in its holster was found to be in immediate dominion of that firearm). We therefore find sufficient evidence to support the jury's affirmative answer to the special interrogatory.

Having considered all issues properly before us on appeal, we hereby affirm the convictions and sentences of Jamon Winfrey.

AFFIRMED.

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