FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,)
Appellee,)
vs.)
MICHAEL JOHNSON,)
Appellant.)

Filed September 9, 1977

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Appeal from Linn District Court - Brent G. Harstad, Judge.

Appeal from conviction under Section 714.12, alteration of manufacturer's serial number, claiming insufficient evidence of possession and unconstitutionality of statute. - Affirmed.

Cynthia H. Danielson and Lloyd E. Humphreys, of Cedar Rapids, for Appellant.

Richard C. Turner, Attorney General of Iowa and Eugene J. Kopecky, Linn County Attorney, for Appellee.

Submitted to Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant, Michael Johnson, appeals his conviction by jury of the crime of alteration of manufacturer's serial number in violation of section 714.12, The Code. Specifically, defendant was found guilty of possessing a handgun whose serial number had been altered or removed in violation of §714.12. On appeal, defendant attacks the sufficiency of the evidence and the constitutionality of §714.13, The Code, which permits the trier of fact to presume alteration in violation of §714.12 if it appears that the person charged had possession of the altered item.

Defendant's first assignment of error is that there is insufficient evidence to establish he had possession of the handgun and hence, insufficient evidence to support a finding of guilt. Therefore, it was error for the trial court to overrule his motion to dismiss. We treat the motion to dismiss as a motion for directed verdict.

In making a determination as to the propriety of a trial court's ruling on a motion for directed verdict in a criminal case, this court views the evidence in the light most favorable to the State and every legitimate inference that may be fairly and reasonably deducted therefrom must be carried to the aid of the evidence. State v. Overstreet, 243 N.W.2d 880, 883 (Iowa 1976); State v. Lewis, 242 N.W.2d 711, 724 (Iowa 1976). Therefore, the cause should be submitted to the jury and the trial court should not direct a verdict of acquittal if there is any substantial evidence reasonably tending to support the charge. **Overstreet,** supra; **Lewis,** supra.

In the instant case, there was testimony by officer Douglas Fuller that when they entered the residence they found defendant and a female standing behind a davenport. He also saw defendant throw something on the floor. The handgun with the serial number ground off was found laying on the floor by defendant's feet. Other guns found in a closet had the serial numbers intact. These were the only two people in the room at the time.

Evidence of the possession element is sufficient if it shows constructive possession. Constructive possession exists when the accused has control or the right to control the substance. State v. Pierce, 240 N.W.2d 678, 679 (Iowa 1976); State v. Reeves, 209 N.W.2d 18, 22 (Iowa 1973). In **Reeves,** the supreme court equated possession with the right to exercise "dominion and control (i.e. possession) over the

contraband."

We find that there was substantial evidence to support the charge; therefore, a jury question was created. The trial court did not err in overruling defendant's motion to dismiss. In addition, the jury verdict is binding upon this court because we are unable to find it is without substantial support in the record. State v. Overstreet, 243 N.W.2d at 884.

Defendant's final contention is that §714.13, The Code, as applied by jury instructions six, seven and eight is unconstitutional because it denies him due process of law contrary to the 14th amendment to the U.S. Constitution. Instruction six sets forth the presumption of alteration based on possession contained in §714.12. Instruction seven contains the definition of possession and Instruction eight, the definition of knowledge. Defendant's allegation of unconstitutionality as applied is based upon a belief that Instructions seven and eight allow the jury to bootstrap from mere presence to possession and, via the statutory presumption, from possession to actual alteration thereby allowing the State to build its case from inferences rather than facts and evidence.

The record discloses no objection on constitutional grounds was made to Instruction 8. Regarding Instructions 7 and 6, defendant objected that the statute was unconstitutional without specifying any provision, state or federal, relied upon. Objections to instructions must be sufficiently specific to alert the trial court to any alleged error to be corrected. State v. Bell, 223 N.W.2d 181 (Iowa 1974). A bare objection to an instruction without specifying any ground affords no basis for consideration on review. State v. Brandt, 182 N.W.2d 916 (Iowa 1971). Constitutional questions cannot be considered on appeal unless specifically raised in the trial court. See State v. Hardesty, 261 Iowa 382, 153 N.W.2d 464 (1967). See also State v. Waterman, 217 N.W.2d 621 (Iowa 1974); State v. Tokatlian, 203 N.W.2d 116 (Iowa 1972); State v. Franklin, 163 N.W.2d 437 (Iowa 1968).

Affirmed.