

IN THE COURT OF APPEALS OF IOWA

No. 1999-131 (9-347) / 98-1419

Filed August 27, 1999

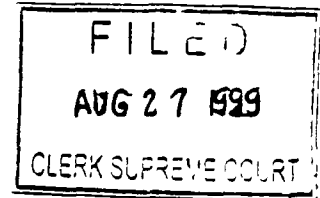
STATE OF IOWA,

Appellee,

vs.

GREGORY SCOTT NIEDERT,

Appellant.



Appeal from the Iowa District Court for Black Hawk County, Thomas N. Bower, Judge.

Defendant appeals from the judgment and sentence entered upon his conviction of possession of marijuana with intent to deliver (second offense), and a drug tax stamp violation. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Kimberly Griffith, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., Streit, J., and Habhab, S.J.* Vogel, J., takes no part.

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1999).

HABHAB, S.J.

Defendant appeals his convictions for possession of marijuana with intent to deliver (second offense), in violation of Iowa Code sections 124.401(1)(d) and 124.411 (1997), and failure to affix a drug tax stamp, in violation of section 453B.12. He claims there was not sufficient evidence to support his convictions. We affirm on appeal.

On August 8, 1997, police officers executed a search warrant at the home of Gregory Niedert in Waterloo, Iowa. Niedert was in the living room when officers entered the home. Under the living room sofa, officers found a camera case which contained about 140 grams of marijuana and \$557 in cash. Niedert's bedroom was in the main level of the home, while the bedroom of his adult son, Torey Smith, was in the basement. In Niedert's bedroom, officers found a scale and plastic baggies. In the kitchen, officers found baggies with marijuana residue and a marijuana pipe. Marijuana and drug paraphernalia were also found in Smith's bedroom in the basement.

Niedert was charged with possession of marijuana with intent to deliver (second offense) and failure to affix a drug tax stamp. In 1995, he was convicted of possession of marijuana with intent to deliver, manufacture of a controlled substance, and failure to affix a drug tax stamp. He was on probation for these crimes at the time he was arrested on the current charges.

The case was tried to the bench. Niedert testified all of the drugs and drug paraphernalia in the home belonged to Smith. He stated he was no longer using drugs

and was not involved with their sale. On cross-examination, defendant admitted he had drug tests in January and August 1997 which were positive for marijuana. He also admitted the amount of marijuana found in the home was not consistent with personal use.

The district court found the scale and plastic baggies found in Niedert's bedroom, together with the large amount of marijuana found in the room where he was observed prior to the execution of the search warrant, allowed the State to meet its burden of proof beyond a reasonable doubt. Defendant was sentenced to a term of imprisonment not to exceed fifteen years on the delivery charge and a term of imprisonment not to exceed five years on the tax stamp charge, the sentences to be served concurrently.

Our review of a substantial evidence claim is on error. *State v. Walker*, 574 N.W.2d 280, 284 (Iowa 1998). We are bound by the fact-finder's decision unless the verdict is not supported by substantial evidence. *Id.* In making this determination, we must consider all the evidence in the light most favorable to the State. *State v. Bayles*, 551 N.W.2d 600, 608 (Iowa 1996). Evidence is substantial if it could convince a rational fact-finder the defendant is guilty beyond a reasonable doubt. *State v. Sanborn*, 564 N.W.2d 813, 816 (Iowa 1997).

Niedert contends there is insufficient evidence in the record to support ¹ convictions. He relies on these statements by the district court:

The Defendant's explanation that the marijuana belonged to his son was plausible. The Defendant quite convincingly testified that he was not selling marijuana that night and that he was not using drugs i

any manner and was attending Narcotics Anonymous classes. However, during the Defendant's cross-examination, it became apparent that the Defendant has continued to use drugs over the last several months. Even without this testimony, the Court determines that the State has proven each of the elements required beyond a reasonable doubt,

Niedert asserts the district court's findings are inconsistent. He claims that since the court determined he was credible, the court should have accepted his testimony the contraband in the home belonged to Smith.

We find the district court's statements merely show the court initially found Niedert's testimony to be plausible. Once defendant was subjected to cross-examination, however, his credibility was compromised because the evidence showed he was still involved with marijuana. The district court's findings are not inconsistent.

In any event, there is sufficient evidence in the record to support defendant's convictions. A scale and plastic baggies were found in Niedert's bedroom. A camera bag containing marijuana and cash were found under a sofa near defendant's location when officers entered the home. Niedert testified he was aware of the marijuana pipe in the kitchen. Furthermore, defendant admitted he sold marijuana in 1992 and 1994. We conclude there is sufficient evidence to support defendant's convictions.

We affirm Niedert's convictions for possession of marijuana with intent to deliver (second offense) and failure to affix a drug tax stamp. Costs of this appeal are assessed to Niedert.

AFFIRMED.