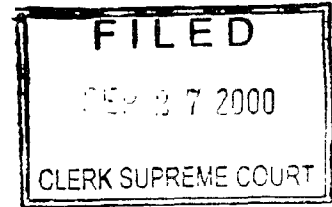


IN THE COURT OF APPEALS OF IOWA

No. 0-377 / 98-1673
Filed September 27, 2000



STATE OF IOWA,
Plaintiff-Appellee,

vs.

DANNY KNOWLES,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille, Judge.

On appeal from his conviction for, among other things, receipt of a precursor substance with intent to manufacture controlled substances, defendant contends the court erred in instructing the jury regarding the "receipt" requirement. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Nan Jennisch, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, John P. Sarcone, County Attorney, and Teresa Vens, Assistant County Attorney, for appellee.

Considered by Vogel, P.J., and Miller and Hecht, JJ.

MILLER, J.

Defendant Danny Knowles appeals his conviction and sentence, following jury trial, for receiving a precursor substance with intent to unlawfully manufacture a controlled substance, in violation of Iowa Code section 124B.9(2) (1997). He contends the trial court erred in instructing the jury on the definition of "receive." We affirm.

Knowles was stopped by a Des Moines police officer in February 1998 for having no license plates on his truck. Because the officer had probable cause to believe Knowles had been drinking from an open container of alcoholic beverage, he wished to secure Knowles in his squad car to determine whether Knowles had been consuming. Prior to placing Knowles in his squad car the officer conducted a pat-down search. The search revealed marijuana and methamphetamine, several items of suspected drug paraphernalia, and several hundred dollars in cash. Knowles was then placed under arrest. A search of his vehicle incident to the arrest revealed two tote bags, which contained several items believed by the officer to be consistent with the production of methamphetamine.

At trial, Knowles testified he made money by "dumpster diving," essentially going through dumpsters to find metal items he could sell for scrap. He testified that one evening after cleaning his truck he returned to the hotel at which he was staying and observed two men carrying duffel bags behind the hotel; after observing the two men leave without the duffel bags he picked up two of the

three duffel bags;¹ and before placing them in his truck he went through the bags, not finding anything of significance to him. He described the items as "basically junk . . . vacuum hoses . . . gas filters, coffee filters, batteries." He denied any intent to use the items to manufacture methamphetamine.

The jury found Knowles guilty of receiving a precursor substance with intent to unlawfully manufacture a controlled substance (Count I), possession of ephedrine or pseudoephedrine with intent to use the substance as a precursor (Count II, Iowa Code section 124.401(4) (1997)), possession of marijuana (Count III), and possession of methamphetamine (Count IV). Finding Count II to be a lesser included offense of Count I, the trial court ruled that Count II merged into Count I and sentenced Knowles to a prison term not to exceed ten years on Count I. The sentences on Counts III and IV were ordered to run concurrently with the sentence on Count I. Knowles appeals only his conviction of Count I. He contends the trial court erred in instructing the jury on the definition of "receive."

The trial court's jury instructions included the following:

INSTRUCTION NO. 17

. . . As to Count I of the Trial Information, the State must prove both of the following elements of Receiving a Precursor Substance With Intent to Unlawfully Manufacture a Controlled Substance:

- 1. On or about the 14th day of February, 1998, the Defendant received a precursor substance.**
- 2. The precursor substance was received with the intent to use the substance to unlawfully manufacture a controlled substance, or to aid and abet another in so doing.**

If the State has proved both of the elements, the Defendant is guilty of Receiving a Precursor Substance With Intent to Unlawfully Manufacturer a Controlled Substance. If the State has

¹ He testified he could not get near the third bag because it made him gag and took the air from him.

failed to prove either of the elements, the Defendant is not guilty as to Count I of the Trial Information.

INSTRUCTION NO. 20

You are instructed that the word "receive" means to take or acquire.

INSTRUCTION NO. 22

The word "possession" includes actual as well as constructive possession, and also sole as well as joint possession.

A person who has direct physical control of something on or around his person is in actual possession of it.

A person who is not in actual possession, but who has knowledge of the presence of something and has the authority or right to maintain control of it either alone or together with someone else, is in constructive possession of it.

If one person alone has possession of something, possession is sole. If two or more persons share possession, possession is joint.

When the trial court and parties made a record on the court's proposed instructions, the defendant had only one objection. Counsel for the defendant objected to the court giving Instruction No. 20, and requested that if the objection were overruled the instruction be modified by adding language to point out that Instruction No. 20's definition of the word "receive" was drawn from some particular dictionary. The defendant's objection and supporting argument was as follows:

And there is one objection that I would take to the Instructions, and that is in the inclusion of Instruction No. 20 regarding the Instruction defining the word "receive". Under Count I of the Trial Information – This is the dictionary definition, as the Court is aware.

As the Court is also aware, there is no legal definition under that section of The Code.

My feeling is that the word "receive" is a self-defining term.

While the dictionary definition is close to relatively accurate, taken in context, I'm afraid that what it does is creates the impression or at least raises the possibility of creating the impression in the jury's mind that the word "receive" has some legal definition above and beyond what the definition that they may use in common parlance. I think that may lead to a misinterpretation of the statute.

My fear is especially great in view of the argument that I made in support of my motion for judgment of acquittal.

Mr. Knowles is charged with two separate counts, with violations of two laws which are almost identical on their face except that one of them prohibits the receipt of pseudoephedrine under the facts of this case and the other one restricts the possession of pseudoephedrine.

I'm afraid, you know, my fear is that if the receipt provision is interpreted in such a way that the jury is allowed to infer receipt from possession, then there is – then the terms receipt and possession become synonymous, really, in the eyes of the law and at least one of these provisions becomes meaningless.

The Court is supposed to, is supposed to construe statutes in a manner that they all have effect, where there are competing statutes, and that they all have meaning. And I'm afraid that if we're allowed to construe the receipt statute in such a manner, they won't both have meaning.

I think that the word "receive" should be left to the jury to use its common knowledge of the word "receive". And the attorneys should be free to argue what that term means in the context of this particular charge.

Finally, if the Court chooses to overrule my objection to Instruction No. 20, I would ask the Court to clarify Instruction 20 by adding the language that the word "receive", as defined by whatever dictionary defined it in this case, defines it as "To take or acquire" so that the jury understands that this is a dictionary definition and not a legal term of art.

The Court overruled the objection to Instruction No. 20 being given, and overruled the alternative request that the instruction be supplemented to point out that the definition came from some particular dictionary.

On appeal the defendant claims, "The trial court erred in instructing the jury that mere acquisition of precursor substance constitutes the offense of 'receiving' precursor substance under Iowa Code § 124B.9 (1997)." More specifically, the defendant urges that "the trial court gave an incorrect and misleading instruction in defining the term 'receive'." The defendant goes on to correctly point out that the dictionary from which the definition of "receive" used by the trial court was drawn more fully defines "receive" as, "To take or acquire

(something given, offered, or transmitted).” The defendant then proceeds to argue that Instruction No. 20 “creates the impression in the jury’s mind that the word ‘receive’ has some legal definition above and beyond the definition which may be used in common parlance.” The defendant notes that the offense of which he was convicted under Count I appears in a code section dealing not only with the receipt of precursor substances, but also with the sale, transfer and furnishing of precursor substances, and argues that the statute therefore appears to be directed at conduct involving transactions. The defendant concludes that the trial court’s definition of “receive” renders it synonymous with “possession” a result not intended by the legislature because receipt of a precursor substance is a class “C” felony, while possession of a precursor substance is a class “D” felony. Compare Iowa Code § 124B.9(2) (1997) with Iowa Code § 124.401(4) (1997).

The State first contends Knowles’ assertions on appeal were not preserved in the trial court. As stated by our supreme court:

Rules relating to civil jury instructions apply to criminal trials. Iowa Rule of Civil Procedure 196 governs civil jury instructions. Rule 196 requires all objections to be made and ruled upon before arguments to the jury. Within such time a party must object to the giving or failing to give any instruction ... specifying the matter objected to and on what grounds. No other grounds or objections shall be asserted thereafter, or considered on appeal.

Well-settled principles following the tenor of rule 196 govern our review of objections to instructions. We consider only those objections to instructions a party previously raised with the district court. A party objecting to the court’s instruction must specify the subject and grounds of the objection. A party’s objection must be sufficiently specific to alert the district court to the basis for the complaint so that if there is an error the court can correct it before submitting the case to the jury. A party’s general objection to an instruction preserves nothing for review. Additionally, a party is bound by the objection the party makes to the district court’s instructions and may not amplify or change the objection on appeal.

State v. Maghee, 573 N.W.2d 1, 8 (Iowa 1997) (internal quotations and citations omitted). Objections to a jury instruction “should be as specific and as penetrating as the stress of the trial permits,” so that the trial judge has “an opportunity to catch exactly what is in counsel’s mind and thereby determine whether the objection possesses merit. . . .” *State v. Baskin*, 220 N.W.2d 882, 886 (Iowa 1974). Although we find the question to be very close, we will assume, without deciding, that the trial court was sufficiently alerted to the arguments now advanced on appeal. We therefore address the merits. . .

Our scope of review on objections to instructions is on assigned error. Iowa R. App. P. 4.; *State v. Hepperle*, 530 N.W.2d 735, 738 (Iowa 1995). The district court has a duty to instruct fully and fairly on the law regarding all issues raised by the evidence. Iowa R. Crim. P. 18(5)(f); *State v. Liggins*, 557 N.W.2d 263, 267 (Iowa 1996). The court may phrase the instructions in its own words as long as the instructions given fully and fairly advise the jury of the issues it is to decide and the law which is applicable. *Id.* When a single instruction is challenged, it will be judged in context with other instructions relating to the criminal charge, not in isolation. *Id.* Any error in jury instructions must be prejudicial to warrant reversal. *State v. Countryman*, 572 N.W.2d 553, 561 (Iowa 1997).

As noted above, Knowles contends the definition of “receive,” as instructed by the trial court, equates the term “receive” with “possession.” This argument requires the court to interpret the meaning of statutory terms. The controlling rule of statutory construction is “[w]hen the text of a statute is plain and its meaning clear, courts are not permitted to search for meaning beyond its

express terms.” *State v. Knowles*, 602 N.W.2d 800, 801 (Iowa 1999) (quoting *State v. Chang*, 587 N.W.2d 459, 461 (Iowa 1998)).

Iowa Code section 124B.9(2) does not define “receive.” We therefore resort to that word’s ordinary meaning. *Id.* (turning to dictionary for meaning of “knowingly” and “intentionally”). The district court defined “receive” as “to take or acquire.” We believe this to be an accurate definition of “receive.” See Webster’s New Collegiate Dictionary 956 (1980) (defining “receive” as “to come into possession of”). See also Black’s Law Dictionary 1268 (6th ed. 1990) (defining “receive” as “to take into possession and control; accept custody of; collect.”). The question remains whether the definition given by the trial court equates the terms “receive” and “possession.”

Count I charged the defendant with receiving with intent, and Count II charged him with possessing with intent. We discern two principal differences between the two charges. Under Count I the State was required to prove the act or acts by which the defendant came into possession of a precursor substance, and was required to prove that the defendant harbored the requisite intent at the time he acquired the precursor. In contrast, under Count II the State was not required to prove the act or acts by which the defendant came into possession, but rather was only required to prove that the defendant was in possession. Further, under Count II no specific intent need have existed at the time of acquisition. Rather, the State was only required to prove that the defendant had the requisite intent at some time during his possession of the product.

The defendant’s expressed concern is that he not be convicted under Count I (Iowa Code section 124B.9(2), receiving with intent) for conduct that in

fact constitutes nothing more than the charge in Count II (Iowa Code section 124.401(4), possessing with intent). The trial court addressed that concern by defining the term "receive." The trial court's definition was an accurate definition. The trial court's definition adequately and properly differentiated "receive" from "possess" by pointing out that receiving is the act by which one acquires something, that is the act by which one comes into possession (rather than the possession itself). We conclude the trial court properly chose to define the term "receive," that the definition given was accurate, and that the definition given was adequate to avoid potential confusion between receipt and possession. We therefore affirm.

AFFIRMED.