

IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,

)

Plaintiff-Appellee,

)

v.

)

LARRY DALE DITHMART,

)

Defendant-Appellant.

)

FILED

DEC 23 1986

CLERK SUPREME COURT

Filed December 23, 1986

6-181
85-374

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Appeal from the Iowa District Court for Clinton County (No. K-5330)

- L. D. Carstensen, Judge.

The Defendant appeals from his conviction for possession of explosive material without a valid permit or license in violation of Iowa Code section 101A.3(4) (1983). **AFFIRMED.**

John J. Wolfe, Jr., of McGee, Schoenauer & Wolfe of Clinton for defendant-appellant.

Thomas J. Miller, Attorney General; Brad Black, Assistant Attorney General; Gary J. Rolfes, Assistant Clinton County Attorney for plaintiff-appellee.

Heard by Oxberger, C.J., Donielson and Sackett, JJ.

OXBERGER, C.J.

The defendant in this appeal challenges his conviction for possession of explosive material without a valid permit or license in violation of Iowa Code section 101A.3(4)(1983). The defendant argues: (1) that the trial court erred in overruling his motions which asserted that the language of certain portions of chapter 101A is unconstitutionally vague; (2) that the evidence was insufficient to support the jury's conclusion that the defendant was in possession of the prohibited substances; and (3) that the trial court erred in failing to grant the defendant's motion for a new trial on the ground that the jury instructions were impermissibly confusing. We affirm.

I. VAGUENESS CHALLENGE

The defendant premises his vagueness challenge upon the definition of "explosive material" referred to in Iowa Code section 101A.3(4). This section provides:

It shall be unlawful for a person to willfully purchase, possess, transport, store or detonate explosive materials unless such person is the holder of a valid permit issued pursuant to this section or a valid license issued pursuant to section 101A.2.

"Explosive material" is defined in Section 101A.1(1) in relevant part as follows:

"Explosive" or "explosives" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, i.e., with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the United States department of transportation. The term "explosives" includes all material which is classified as class A, class B, and class C explosives by the United States department of transportation, and includes, but is not limited to, dynamite black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squibs... .

Iowa Code § 101A.1(1)(1983).

The defendant maintains that the classifications defining the word "explosive" devised by the United States Department of Transportation are unconstitu-

tionally vague because they are so technical that they fail to provide a person of reasonable intelligence with fair warning of what behavior is prohibited. It is significant, however, that the defendant's conviction did not relate to the use of explosives as defined by the Department of Transportation. The defendant's conviction rested upon his possession of black powder prohibited by the latter portion of the statute; that language is not vague, nor does the defendant argue that it is.

It is a well settled principle of constitutional law that, "One to whom application of a statute is constitutional lacks standing to attack the statute on the ground it might be susceptible of unconstitutional application to other persons or in other situations." State v. Henderson, 269 N.W.2d 404, 405 (Iowa 1978); see also State v. Williams, 238 N.W.2d 302, 306 (Iowa 1976). This principle proscribes us from addressing the merits of the defendant's contention. The defendant's argument is based upon the assertion that the statute may be vague as applied to other people in other circumstances. As such, we conclude that the defendant lacks the requisite standing to attack the constitutionality of the statute on vagueness grounds.¹ See State v. Henderson, 269 N.W.2d at 405; State v. Price, 237 N.W.2d 813, 816-17 (Iowa 1976).

II. SUFFICIENCY OF EVIDENCE

The defendant further maintains that the trial court erred in overruling his motion for judgment of acquittal in which he asserted that the State failed to present evidence sufficient to support the jury's conclusion that he was in possession of the prohibited substance. In examining a trial court's denial of motions based upon the alleged insufficiency of evidence, we view all of

¹The State's failure to raise the issue of standing before the trial court does not preclude appellate consideration of this constitutional requirement. See State v. Price, 237 N.W.2d at 816; see also State v. Dixon, 241 N.W.2d 21, 23 (Iowa 1976).

the evidence in the light most favorable to the State. State v. Schrier, 300 N.W.2d 305, 306 (Iowa 1981). In addition, we accept all legitimate inferences which may fairly and reasonably be deducted therefrom. State v. Blair, 347 N.W.2d 416, 418-19 (Iowa 1984). Moreover, a jury's verdict of guilty is binding unless there is no substantial evidence in the record supporting it, or if it is clearly against the weight of the evidence. State v. Schrier, 300 N.W.2d at 306. Substantial evidence is that which would convince a rational trier of fact that the defendant is guilty of the crime charged beyond a reasonable doubt. Id.

The defendant argues that the State failed to establish that the prohibited amount of black powder was in his possession. The supreme court set forth the principles governing the element of possession in State v. Reeves, 209 N.W.2d 18 (Iowa 1973). There, the court stated that evidence of the possession element is sufficient if constructive possession is established. Id. at 22; see also State v. Pierce, 240 N.W.2d 678, 679 (Iowa 1976). The court in Reeves further stated that, "Possession may be imputed when the contraband is found in a place which is immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another." Id. In addition, the court noted that:

But where the accused has not been in exclusive possession of the premises but only in joint possession, knowledge of the presence of the substances on the premises and the ability to maintain control over them by the accused will not be inferred but must be established by proof. Such proof may consist either of evidence establishing actual knowledge by the accused, or evidence of incriminating statements or circumstances from which a jury might lawfully infer knowledge by the accused of the presence of the substances on the premises. In any event, the question of scienter or knowledge is one which must be resolved by the jury under the evidence in the case and upon proper instruction by the court embodying the principles discussed above.

Reeves, 209 N.W.2d at 23.

The defendant urges that because he did not have exclusive access to the premises but rather shared access with his wife, it is incumbent upon the State to prove that he individually possessed at least five pounds of the powder. He maintains that because only 6.6 pounds was discovered, a showing of joint possession will not substantiate his conviction because his wife may have possessed a portion of the powder leaving less than five pounds in his possession. The defendant submits that the issue would be much different if ten or more pounds of powder had been found.

We think that the defendant's argument misinterprets the supreme court's decision in Reeves. The considerations surrounding the showing that must be made when a controlled substance or contraband is discovered upon jointly occupied premises arises only when a question of the defendant's knowledge, scienter, or ability to control the prohibited substance has been raised. See State v. Reeves, 209 N.W.2d at 23. No such argument has been made in the present case. The defendant does not maintain that he was unaware of the black powder or that it was under his wife's control; rather, he merely asserts that because the area in which the powder was discovered was jointly occupied, twice the prohibited amount must be found in order to establish an individual's possession. We have found no support for such an assertion. Accordingly, we adhere to the principles enunciated in Reeves and reject the defendant's argument. We conclude that the evidence adduced by the State was sufficient to support the jury's finding of possession.

III. JURY INSTRUCTIONS

Finally, the defendant contends that the trial court erred in failing to grant his motion for a new trial in which he asserted that the instructions submitted to the jury were impermissibly confusing. In support of this argument, the defendant asserts that the jury should have been instructed that "explosives"

within the meaning of section 101A.3(4) excludes the possession of black powder used for fireworks.²

The guidelines governing a trial court's submission of instructions to the jury are well established. It is undisputed that the jury must be instructed regarding the law applicable to the facts supported by the evidence. State v. Lamar, 210 N.W.2d 600, 605-606 (Iowa 1973). The trial court is not, however, required to instruct the jury on any issue which has no evidentiary support in the record. Lamar, 210 N.W.2d at 606.

We find no error in the trial court's refusal to instruct the jury that "explosive materials" as defined in chapter 101A excludes fireworks or materials possessed as fireworks. Although section 101A.1(1) specifically excludes fireworks from its definition of explosive materials, the statute explicitly states that black powder is an explosive material. Thus, as a matter of law, black powder is outside of the definition of fireworks. See State v. Durgin, 328 N.W.2d 507, 509 (Iowa 1983). Therefore, no evidentiary support for the defendant's requested instruction existed, and we conclude that it was properly refused.

AFFIRMED.

²Because of our disposition of the defendant's argument concerning the element of possession (Part II), we find it unnecessary to address his contention that the trial court erred in refusing his requested instruction on this issue.