IN THE COURT OF APPEALS OF IOWA

No. 1-253 / 00-0517
Filed June 13, 2001

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CLERK SUPREME COURT

STATE OF IOWA,
Appellee,

vs.

JUAN MOLINA MALDONADO,
Appellant.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge.

The defendant appeals his conviction and sentence for marijuana possession and failure to affix a drug tax stamp. **AFFIRMED.**

Patrick Thomas Parry of Forker and Parry, Sioux City, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney General, Thomas S. Mullin, County Attorney, and James J. Katcher, Assistant County Attorney, for appellee.

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

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VOGEL, P.J.

Juan Molina Maldonado appeals his conviction and sentence for possession of marijuana and failure to affix a drug tax stamp. He claims the convictions are not supported by sufficient evidence and that trial counsel was ineffective in a number of particulars. Because we find Maldonado has failed to demonstrate either claim, we affirm.

Background Facts. The night of May 20, 1999, police were conducting surveillance on the residence of Jay Lezner, as that address was believed to be associated with drug activity. At approximately 11:30 p.m. a car stopped at the Lezner home, and police witnessed one individual leave the car, enter the house, and return to the car fifteen to twenty minutes later. During the occupant's absence a license plate check revealed the vehicle was registered to Maldonado and that his driver's license was under suspension.

Officers on the scene arranged for the Maldonado vehicle to be stopped once it had left the area, and it was stopped at approximately 11:54 p.m., within minutes of leaving the Lezner residence. At that time Maldonado was the only occupant of the vehicle and had in his possession keys to both the ignition and the locked trunk. During an inventory search of the vehicle, police discovered what was later identified as approximately 72.4 grams of marijuana.

Scope of Review. Claims of ineffective assistance of counsel are constitutional challenges, and we conduct a de novo review of the district court ruling, assessing its decision in light of the totality of the circumstances. *Wemark v. State*, 602 N.W.2d 810, 814 (Iowa 1999). In contrast, a determination that a

verdict is supported by sufficient evidence is reviewed for correction of errors at law. Iowa R. App. P. 4. A jury verdict is binding on appeal if supported by substantial evidence. *State v. Hopkins*, 576 N.W.2d 374, 377 (Iowa 1998). Substantial evidence is found when, viewing all the evidence in the light most favorable to the State, a rational trier of fact could be convinced of the defendant's guilt beyond a reasonable doubt. *Id.*

Sufficiency of the Evidence. Since the marijuana was not found on his person, the State was required to prove Maldonado was in constructive possession of the drug. *See State v. Atkinson*, 620 N.W.2d 1, 3 (Iowa 2000). Constructive possession is shown by demonstrating a defendant's dominion and control over the drug, knowledge of its presence, and knowledge that it was in fact an illegal drug. *Id.* When a person does not have the exclusive right to the use and control of the location where the illegal substance was found, knowledge will not be inferred but must be shown by proof of actual knowledge or "evidence of incriminating statements or circumstances from which a jury might lawfully infer knowledge by the accused." *Id.* (quoting *State v. Reeves*, 209 N.W.2d 18, 23 (Iowa 1973)).

Since Maldonado was the only occupant in the vehicle during the stop, and as he had keys to the trunk of the car, the record clearly establishes his right to exclusive dominion and control over the car and the trunk at the time the marijuana was found. However, testimony regarding prior use of the car by his family members and a second set of keys that was often stored in an unlocked garage indicate joint control over the vehicle prior to his trip to the Lezner

residence. Accordingly, the record must demonstrate facts and circumstances from which a reasonable jury could infer Maldonado's knowledge of the drug.

The jury was presented with testimony that the Lezner residence was the site of suspected drug activity and that a person left the Maldonado vehicle and entered Lezner's home for a period of time reasonably related to the purchase of drugs. While officers could not definitively state the car contained only one person, they were confident it was the driver who left the vehicle and entered the house. They testified that when the car was stopped almost immediately after leaving the area, Maldonado was alone in the vehicle, with drugs and a scale located in the trunk. Maldonado was unable to indicate any specific person he suspected of placing the marijuana in the trunk, stating that his sons denied any knowledge of the drug. While noting his wife had taken the car grocery shopping earlier that night, he admitted he had not observed any drugs in the trunk when he helped her to unload the groceries. He further admitted to knowing what marijuana was and how it was used.

Maldonado's story contradicted the officers' testimony in almost every respect. He claimed Lezner's son and the son's friend were visiting at the Maldonado home, and that he agreed to give the boys a ride home so he could speak with the Lezners about the Maldonados babysitting one of the Lezners' children. Maldonado contends he stayed in the car while the boys entered the residence to ascertain if the Lezners were at home, and then left after one of the boys shouted from the door that the couple was not there. He contends he never left the car and was at the Lezner residence for approximately five minutes.

The jury was free to accept or reject Maldonado's version of events and assess credibility to the evidence before it. *See State v. Garr*, 461 N.W.2d 171, 174 (Iowa 1990). With the exception of Maldonado's claims regarding the series of events at the Lezner residence and his implicit speculation that anyone entering his garage and finding the car keys might have secreted drugs in the trunk, all the evidence in the record supports an inference of knowledge on the part of Maldonado. The jury was free to make this inference and find that Maldonado was in constructive possession of the marijuana. Viewing all the evidence in the light most favorable to the State, a reasonable jury could find Maldonado guilty beyond a reasonable doubt, and the district court properly found substantial evidence supported his conviction.

Ineffective Assistance of Counsel. Maldonado claims his trial counsel was ineffective for failing to properly investigate Jay Lezner and his own sons as potential defense witnesses. He argues that further investigation would have led trial counsel to at least discover whether Lezner could have supported Maldonado's claim of an innocent motive for visiting the Lezner home, and whether his own sons had any further evidence about the marijuana. Maldonado reasons that any such evidence could have led the jury to find him credible, thus leading to his acquittal.

In reviewing these claims it appears they are too general to be preserved for postconviction proceedings.

> [I]t is not enough . . . to simply claim that counsel should have done a better job. [A defendant] must state the specific ways in which counsel's performance was inadequate and identify how competent representation probably would have changed the outcome.

State v. Astello, 602 N.W.2d 190, 198 (Iowa Ct. App. 1999). Here Maldonado has not specifically identified how any investigation by counsel would have changed the outcome of his trial, other than to point to the potential impact on the jury's credibility assessment. Even if his claims are sufficiently specific, they do not meet the requisite standards of proof for an ineffectiveness finding.

To establish ineffective assistance of trial counsel, Maldonado must overcome a strong presumption of his counsel's competence. *State v. Nucaro*, 614 N.W.2d 856, 858 (Iowa Ct. App. 2000). He must demonstrate, by a preponderance of the evidence, that his attorney failed to perform an essential duty and that he was prejudiced as a result of this failure. *Id.* Prejudice requires proof of a reasonable probability that, but for counsel's failure to investigate the potential defense witnesses, the jury would have rendered a different verdict. *See id.* A reasonable probability is one that undercuts confidence in the outcome of his trial. *Id.*

The record is somewhat sparse in regard to an assessment of trial counsel's duty to investigate and whether that duty was met. Where the record on appeal is inadequate for the purpose of review, we will preserve ineffective assistance of counsel claims for postconviction proceedings. *See Astello*, 602 N.W.2d at 198. We need not take such a step in this case, however, as Maldonado has failed to establish any prejudice resulted from the alleged failure.

Here, the jury was presented with eyewitness testimony from police officers, describing a series of events wholly consistent with a finding Maldonado had purchased drugs and placed them in the trunk of the car, and directly

contradictory to Maldonado's own version of events. Even if we assume Lezner and Maldonado's unidentified sons were willing and able to testify on his behalf, any potential testimony must be viewed in light of all the evidence presented at trial. When placed in that context, Maldonado has failed to demonstrate that testimony from Lezner or his sons would create a reasonable probability of acquittal.

Assuming Lezner would have testified he asked Maldonado to care for his child, and even if such testimony led the jury to believe Maldonado's contention he went to Lezner's home to discuss the situation, such a conclusion does not preclude the jury from finding Maldonado purchased drugs once at the home. Similarly, it is unclear what prejudice Maldonado could suffer from his sons' failure to testify, as he explicitly stated his sons disclaimed knowledge of the marijuana. Since Maldonado has failed to demonstrate any prejudice from his counsel's alleged failure to investigate, we find no showing that trial counsel was ineffective.

AFFIRMED.