IN THE COURT OF APPEALS OF IOWA

No. 6-800 / 96-728

STATE OF IOWA,

Plaintiff-Appellee,

vs.

ROOSEVELT H. THOMAS,

Defendant-Appellant.

FILED
JAN 29 1997
CLERK SUPREME COURT

Appeal from the Iowa District Court for Scott County, Edward B. deSilva, Jr., Judge.

Defendant appeals his convictions of possession of an offensive weapon and carrying a dangerous weapon. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Annette L. Hitchcock and John M. Priester, Assistant State Appellate Defenders, for appellant.

Thomas J. Miller, Attorney General, Ann E. Brenden, Assistant Attorney General, William E. Davis, County Attorney, and Robert E. Weinberg, Assistant County Attorney, for appellee.

Considered by Habhab, C.J., Huitink, and Vogel, JJ.

PER CURIAM

Defendant Roosevelt Thomas appeals his convictions of possession of an offensive weapon, in violation of Iowa Code section 724.3(1995), and carrying a dangerous weapon, in violation of Iowa Code section 724.4. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Roosevelt Thomas was charged with possession of an offensive weapon, carrying a dangerous weapon, and interference with official acts after police officers found a sawed-off shotgun and an AK-47 in the white Chrysler New Yorker Thomas had been driving. Officers became interested in the New Yorker because it matched the description of a vehicle that had been involved in an incident earlier in the evening. Officers began to follow the New Yorker, which sped up. When the New Yorker stopped at a red light, the officers turned on their flashing lights, got out of their patrol car, and approached the New Yorker on foot. The officers ceased their approach, however, because the officers' flashlight illuminated the passenger (later identified as Tony Lance Spears), who was turned around in the front seat and watching the officers. When the officers stopped their approach, the New Yorker sped away. The officers then returned to their car and pursued the New Yorker. The New Yorker crashed into a tree and Thomas and Spears fled on foot. Officers chased and apprehended Thomas, and, later, Spears.

Meanwhile, another officer approached the New Yorker, which had both front doors open. The officer observed a jacket draped between the back and front seats

in such a fashion that it could have concealed a person. The officer ordered anyone inside out of the vehicle and then "removed the jacket from the back seat by flipping it over the back seat." A sawed-off shotgun on the back seat and an AK-47 on the floor were revealed. Thomas and Spears denied knowing the weapons were in the car. The car was not registered to either Thomas or Spears.

Thomas was convicted as charged and now appeals, contending there is insufficient evidence that he knowingly possessed the weapons found in the backseat of the borrowed car. A jury's verdict is binding on us unless we conclude the record lacks substantial evidence to support it. *State v. Miles*, 490 N.W.2d 798, 799 (Iowa 1992). We conclude there is substantial evidence in the record to support a finding that Thomas had constructive possession of the weapons and knew of their presence.

Constructive possession may be imputed when the contraband is found in a place which is immediately accessible to the accused and subject to the joint dominion and control of the accused and another. *State v. Pierce*, 240 N.W.2d 678, 679 (Iowa 1976); *see also State v. Rudd*, 454 N.W.2d 570, 571-72 (Iowa 1990). Thomas was driving the New Yorker. The two weapons were readily accessible to Thomas and subject to his dominion and control. The manner in which the jacket was draped across the back and front seats suggests an attempt to conceal the weapons. The jury could infer, from this "tent" and Thomas's two attempts to flee from officers that he was aware of the weapons' presence. *Cf. State v. Bass*, 349 N.W.2d 498, 502

(Iowa 1984) (an individual's flight from scene of crime is circumstance from which jury may find defendant departed because of consciousness of guilt).

We affirm Thomas's convictions of possession of an offensive weapon and carrying a dangerous weapon.

AFFIRMED.