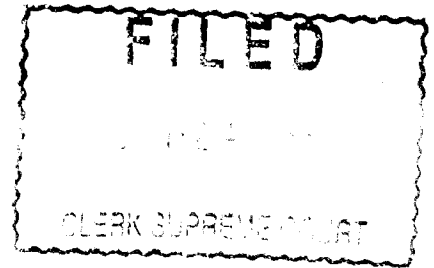


IN THE COURT OF APPEALS OF IOWA

No. 8-211 / 97-1110



STATE OF IOWA,
Appellee,

vs.

JOSEPH JOHN BAURES,
Appellant.

Appeal from the Iowa District Court for Allamakee County, John Bauercamper, Judge.

Defendant, Joseph Baures, appeals the judgment and sentence entered upon his convictions of manufacturing a controlled substance, marijuana, and dominion and control of a firearm as a felon in violation of Iowa Code sections 124.401(1)(d) and 724.26 (1995). **AFFIRMED.**

James Burns of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.C., Decorah, for appellant.

Thomas J. Miller, Attorney General, Karen Doland, Assistant Attorney General, and William Shafer, County Attorney, for appellee.

Heard by Cady, C.J., and Vogel and Mahan, JJ.

VOGEL, J.

Joseph Baures appeals his convictions of manufacturing a controlled substance, marijuana, and dominion and control of a firearm as a felon in violation of Iowa Code sections 124.401(1)(d) and 724.26 (1995). As we find: 1) there was probable cause for the search warrant to be issued; and 2) Baures had dominion and control over a firearm seized in his bedroom, we affirm the trial court's decision and uphold Baures' convictions.

Background facts. In June of 1996, a concerned citizen alerted the Allamakee County Sheriff's office that marijuana was being cultivated in a farm field near where Baures lived. Following several months of investigation, Deputy Sheriff Jerry Valley obtained a search warrant for Baures' residence.

Among the items seized pursuant to the warrant was a 12-gauge shotgun, which was found in a bedroom occupied by Baures and his wife. Also found were processed marijuana and drug paraphernalia. Deputy Valley spoke with Baures in his home after giving him his *Miranda* rights. Baures admitted growing the marijuana plants and that they were his.

The trial court found Baures guilty of manufacturing marijuana and dominion and control over a firearm as a felon. Baures was sentenced to serve a term of imprisonment not to exceed five years on each count.

I. Search warrant. Baures contends there was not probable cause to show his residence, as the place to be searched, was connected to his alleged criminal activity of growing marijuana plants in a field. We decide whether the judge or magistrate who issued the search warrant had a substantial basis for concluding probable cause existed. *State v. Green*, 540 N.W.2d 649, 655 (Iowa 1995). Warrants are preferred; we accordingly resolve all doubts in favor of their validity. *State v. Mehner*, 480 N.W.2d 872, 875 (Iowa 1992) (citing *State v. Bishop*, 387 N.W.2d 554, 558 (Iowa 1986)).

In reviewing the magistrate's determination of probable cause, our supreme court has stated:

The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

State v. Weir, 4414 N.W.2d 327, 329-30 (Iowa 1987) (citing *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)); accord *State v. Mehner*, 480 N.W.2d 872, 875 (Iowa 1992).

The trial court, in determining probable cause existed to search Baures' residence looked to the information contained in the affidavit, which included: cultivated marijuana plots were located near Baures' home; a trail led from the plots in the direction of his home; footprints were found in the plots and on the trail which

were similar; the plots were regularly cultivated; Baures had been convicted of growing marijuana plants, in a similar fashion, in the same area three years earlier; and Baures had been spotted driving his vehicle on the dead end road leading to the area the plants were being cultivated.

In *State v. Simpson*, 528 N.W.2d 627 (Iowa 1995), our supreme court found that marijuana plants growing in the rear of a house, the fact that individuals in the house were known to be involved in the dealing and/or use of marijuana, and the fact that one of the individuals previously was convicted for a marijuana drug violation, cumulatively supported the existence of probable cause to issue a search warrant.

We similarly find in this case the trial court correctly determined the magistrate found probable cause to issue a search warrant for Baures' residence as a place that evidence of a crime could be found. *See Franklin*, 564 N.W.2d 440, 442 (Iowa App. 1997).

II. Suppression of admissions. Baures next argues the district court erred in denying his motion to suppress statements made during the execution of the search warrant.

As Baures raises a constitutional issue, our review is de novo; we will, however, give weight to the trial court's findings of fact as it had an opportunity to assess the credibility of the witnesses. *State v. Morgan*, 559 N.W.2d 603, 608 (Iowa 1997).

When Baures arrived at his residence on October 3, 1996, Deputy Valley apprised him the officers had a warrant to search his residence. Deputy Valley sat with Baures in the kitchen and read him his *Miranda* rights. While Baures claims he told Deputy Valley he had “better talk to a lawyer,” Deputy Valley testified Baures made no request for an attorney, nor did he ask to make a phone call. Additionally, Baures claims he responded to questions after Deputy Valley said, “off the record, Joe.” Deputy Valley testified it was Baures who utilized this term when he was discussing the number of marijuana plants found in the field.

The trial court found in any event Baures “implicitly waived his right to counsel by first making voluntary, incriminating statements to Deputy Valley, and then voluntarily answering questions put to him thereafter.” Among these admissions, Baures conceded the plants were his, and he described how he grew them. We acknowledge the record is replete with factual inconsistencies conveyed through the contrasting testimonies of Baures and Deputy Valley. The trial court made an assessment of the parties and their respective testimony and found Baures’ version of the events to lack credibility. We defer to the trial court’s credibility findings. *State v. Jackson*, 542 N.W.2d 842, 846 (Iowa 1996). We accordingly affirm the trial court’s denial of Baures’ motion to suppress.

III. Dominion and control over firearm. Baures further contends the evidence was insufficient to show he had dominion and control of a firearm just

because it was found in a bedroom jointly occupied by him and his wife. At trial, Baures stipulated that his wife had purchased the shotgun from him and had maintained a hunting license for the past several years.

We review substantial evidence claims on error; “Evidence is substantial if it could convince a rational factfinder that the defendant is guilty beyond a reasonable doubt. Direct and circumstantial evidence are equally probative. Evidence, whether direct or circumstantial, must however do more than create speculation, suspicion, or conjecture.” *State v. Sanborn*, 564 N.W.2d 813, 816 (Iowa 1997) (quoting *State v. Bayles* 551 N.W.2d 600, 608 (Iowa 1996) (citations omitted)).

In order for Baures to be convicted of being a felon in possession of a weapon under Iowa Code section 724.26 (1995), it was incumbent on the State to prove beyond a reasonable doubt that Baures: (1) knowingly had dominion and control over a firearm at the time in question; and (2) was previously convicted of a felony. *State v. Brown* 569 N.W.2d 113, 116 (Iowa 1997). Iowa Criminal Jury Instruction 2400.9 defines “dominion and control” as ownership *or right to the firearm* and the power or authority to manage, regulate or oversee its use. The State showed Baures had access to the gun as it was found in the bedroom of his residence. The mere fact Baures’ wife owned and also may have used the gun does not mitigate the fact Baures also had dominion and control over the gun. *See State v. Padavich*, 536 N.W.2d 743, 751 (Iowa 1995) (stating in a case involving drugs a factfinder may infer constructive

possession when the item is found in a place which is subject to defendant's dominion and control, or the joint dominion and control of defendant and others); *State v. Parrish*, 502 N.W.2d 1, 3 (Iowa 1993) (stating dominion and control is direct when the defendant is in such close proximity to the substance that the defendant can claim immediate dominion over it; indirect dominion and control is when the defendant maintains or closely shares exclusive dominion over the premises where the substance is found).

Moreover, in *State v. Miles*, 490 N.W.2d 798 (Iowa 1992), the Iowa Supreme Court held there was sufficient evidence to support a verdict of the defendant as a felon in possession of a weapon where a recently fired gun was found inside the defendant's truck; the defendant was inside the truck moments before police discovered the gun; and the fact that the gun was clearly visible and accessible to anyone inside the truck. We do not agree with Baures' attempt to distinguish the *Miles* case by arguing there was no evidence the truck (as the place where evidence was seized) was jointly owned as the bedroom in his case was jointly inhabited by him and his wife. We find this distinction artificial and irrelevant for our purposes.

We find there was substantial evidence in this case to show Baures had dominion and control over a firearm and we affirm the trial court on this issue.

Having considered all other arguments properly before us on appeal, we affirm the trial court's decision in its entirety, and accordingly uphold Baures' convictions.

AFFIRMED.