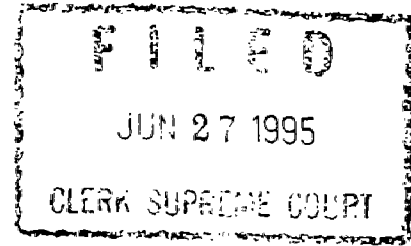


IN THE COURT OF APPEALS OF IOWA

No. 5-215 / 94-0713



STATE OF IOWA,

Plaintiff-Appellee,

VS.

TREVOR ANTHONY MONTGOMERY,

Defendant-Appellant.

Appeal from the Iowa District Court for Audubon County, Keith E. Burgett,
Judge.

Defendant appeals from judgment and sentence, following jury trial, entered
upon his conviction of possession of marijuana, in violation of Iowa Code section
124.401(3) (1993). **AFFIRMED.**

W. Edward Anstey, Atlantic, for appellant.

~~Thomas~~ J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney
General, and Francine O'Brien Andersen, County Attorney, for appellee.

Heard by Hayden, P.J., and Sackett and Cady, JJ.

SACKETT, J.

Defendant-appellant Trevor Anthony Montgomery appeals his conviction of possession of marijuana in violation of Iowa Code section 124.401(3) (1993). He contends: (1) there was not substantial evidence to prove beyond a reasonable doubt he was guilty and the trial court should have directed a verdict of acquittal; (2) the district court erred in suspending his driver's license, first for an indefinite period and later for a period of six months; (3) the district court abused its discretion in enhancing defendant's punishment because he had gone to trial; and (4) the revocation of his commercial driver's license under the provisions of section 321.212 and 321.209(8) in this case is an excessive fine prohibited under the Eighth Amendment to the United States Constitution and Article I, Section 17 of the Iowa Constitution. We affirm.

In January 1994, defendant and a passenger were stopped for speeding in Audubon County by a deputy sheriff. A trooper arrived to assist the deputy. The law enforcement officers thought they saw a marijuana roach in the ashtray and used a trained dog to search the car. The dog found a gold pipe in a holder behind the passenger seat in a film container. The deputy seized the pipe and suspected roach from the ashtray. The roach was put in the film container with the pipe and sent to the state lab in the same mailer. There was no evidence defendant was impaired by drugs. Both defendant and his passenger were charged with possession of marijuana. The passenger pled guilty.

At trial, the state criminalist admitted the evidence had not been properly handled, and the roach and the pipe should not have been delivered to the lab in the same mailer. The roach tested positive for marijuana. The lab took what they identified as marijuana residue from inside the stem of the pipe.

Defendant argues this is not sufficient evidence to support his finding of guilt. Defendant said there is no evidence he knew the marijuana was present in the car. He contends the evidence from the lab that there was residue in the pipe was not sufficient because the evidence had not been properly handled. Defendant further argues the passenger admitted he possessed marijuana in defendant's car; therefore, there was not sufficient evidence to show defendant exercised dominion or control over the marijuana. Defendant contends the passenger's admission is particularly relevant because defendant showed no sign of the effects of marijuana use.

Our standard of review is well settled. A verdict will be upheld where there is substantial evidence to support the charge. *State v. LeGear*, 346 N.W.2d 21, 23 (Iowa 1984). Substantial evidence means such evidence as could convince a rational trier of fact the defendant is guilty of the crime charged beyond a reasonable doubt. *Id.* The evidence is viewed in the light most favorable to the State, including legitimate inferences and presumptions which may fairly and reasonably be deduced from the record. *State v. Bass*, 349 N.W.2d 498, 500 (Iowa 1984). We consider all the evidence at trial, not just the evidence that supports the verdict. *State v. Robinson*, 288 N.W.2d 337, 340 (Iowa 1980).

The roach was located in an ashtray between the driver and passenger seats. There was evidence from the trooper the car smelled of marijuana.

The evidence is sufficient to show defendant jointly possessed marijuana with the passenger. A person can exercise dominion over a controlled substance even if the substance is not in his or her exclusive possession. *State v. Rudd*, 454 N.W.2d 570, 573 (Iowa 1990).

Defendant challenges the trial court's statement regarding suspension of his driver's license. We need not address the issue. The State advances the trial court did not suspend defendant's driver's license; rather, the Department of Transportation revokes drivers' licenses. We agree. The issue of whether the license is properly revoked becomes an issue only if and when the Department of Transportation takes action to revoke the license. Defendant retains the right to challenge an action by the Department at that time.

Defendant contends the trial court abused its discretion in sentencing him, and the sentence given was the result of defendant's requesting a trial. Defendant argues the most he could have possessed was a minuscule amount of marijuana. Defendant indicated the judge came to Audubon County early in the morning and commented in sentencing that the jury had only deliberated a short time. Defendant contends he was given the maximum sentence, six months in the county jail and a \$1000 fine, although five months of incarceration was suspended as was \$500 of the fine. Defendant asks the matter be remanded for resentencing. A sentence will not be upset

on appellate review unless the defendant demonstrates an abuse of trial court discretion or a defect in the sentencing procedure. *State v. Wright*, 340 N.W.2d 590, 592 (Iowa 1983); *State v. Floyd*, 466 N.W.2d 919, 924 (Iowa App. 1990).

Defendant has not made a sufficient showing to succeed on this issue.

Defendant further contends, in taking his commercial driver's license for six months, the court deprived him of the means by which he gained his livelihood. He advances this punishment is too severe for the offense in a country where the President admittedly experimented with marijuana but did not inhale. Defendant's arguments should be addressed to the legislature, not the courts. Again, we need not address this issue because the license has not yet been revoked and defendant retains the right to challenge the revocation if and when requested.

AFFIRMED.