IN THE COURT OF APPEALS OF IOWA

No. 2-662 / 92-48

FILED
AUG 06 1993
CLERK SUPREME COURT

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STATE OF IOWA,
Plaintiff-Appellee,

vs.

TIMOTHY J. RALSTON,
Defendant-Appellant.

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Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

Defendant appeals his conviction, following a jury trial, for control of a firearm by a felon and carrying a dangerous weapon. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia J. Cone-Fisher, Assistant State Appellate Defender, for appellant.

Bonnie J. Campbell, Attorney General, Gordon E. Allen, Deputy Attorney General, William E. Davis, County Attorney, and Joseph Grubisich, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Habhab, J., and Keefe, S.J.*

*Senior judge from the 1st Judicial District serving on this court by order of the Iowa Supreme Court.

KEEFE, S.J. 000880

Defendant Timothy J. Ralston was charged with control of a firearm by a felon, in violation of Iowa Code section 724.26 (1991), and carrying a dangerous weapon, in violation of section 724.4.

On July 4, 1991, at about 9:30 p.m., police officer Eric Court was engaged in surveillance near the New Diamond Tap in Davenport. Court observed a tan two-door Ford Escort stop near the bar. The car had two occupants. A third person got into the back seat of the car before it left.

Police officer Robert Mackie was parked in an alley near the New Diamond Tap. Upon the advice of Court, he drove behind the Escort. The Escort accelerated rapidly up to a speed of about fifty-five miles per hour in a thirty-five mile per hour zone. The Escort passed another vehicle in a no passing zone. Mackie signaled the Escort to stop, which it did.

Once the Escort was stopped, Mackie asked for back up. Police officers Gerald McCabe and Randy Willems soon arrived at the scene. Ralston was sitting in the front passenger seat. The front seats were bucket seats. After Ralston and the driver were removed from the car, McCabe saw a .45 automatic pistol near the center of the back seat. The gun was partially under the thigh of the passenger in the back seat. That passenger was also removed from the car.

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Police officer Michael Venema, who is an evidence technician, then arrived at the scene. Venema took pictures of the car and the position of the gun. Venema also took possession of the gun. The gun was loaded and ready to fire when it was recovered. Venema was not able to remove any fingerprints from the gun.

The trial in this case was held on November 18, 1991. Ralston stipulated that he had previously been convicted of a felony. Police officer Willems testified the gun was accessible to anyone in the front seat. Police officers Mackie and McCabe testified the gun was readily visible, and anyone in the car would have had easy access to the weapon. Ralston argued that he did not know the gun was in the car.

The jury found defendant guilty of control of a firearm by a felon, which is a class D felony, and carrying a dangerous weapon, which is an aggravated misdemeanor. Ralston was sentenced to a term of imprisonment not to exceed five years on the first charge, and a term of imprisonment not to exceed two years on the second charge. These sentences are to be served concurrently. Ralston has appealed.

Ralston contends the district court should have granted his motion for a directed verdict of acquittal on both charges. He claims the State did not present substantial evidence to show he knew of the gun's existence in the car. He points out that the person who sat in the back

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seat of the car was only in the car for a few minutes before they were stopped by police officers. He also points out that there was no evidence that he had turned around to see the gun in the back seat.

Due process requires the State to prove all the elements of a crime beyond a reasonable doubt. State v. Trammell, 458 N.W.2d 862, 863 (Iowa App. 1990). When a criminal defendant challenges the sufficiency of evidence to support a conviction, we review all the evidence in the record in a light most favorable to the State. State v. Garr, 461 N.W.2d 171, 174 (Iowa 1990). If there is substantial support for the verdict in the record, the jury verdict is conclusive. State v. Robinson, 288 N.W.2d 337, 339 (Iowa 1980). Substantial evidence means evidence which could convince a rational finder of fact of the fact in issue. State v. Frake, 450 N.W.2d 817, 818 (Iowa 1990).

Section 724.4(1) provides, in pertinent part:

> [A] person . . . who knowingly carries or transports in a vehicle a pistol or revolver, commits an aggravated misdemeanor.

Section 724.26 provides:

> A person who is convicted of a felony in a state or federal court and who knowingly has under the person's dominion and control, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of a class "D" felony.

The general rule is that a weapon that is easily accessible in an automobile violates statutory prohibitions against carrying weapons. State v. Alexander, 322 N.W.2d 71, 72 (Iowa 1982).

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The State must show the defendant was aware of the presence of the gun. See State v. Krana, 246 N.W.2d 293, 295 (Iowa 1976). Generally, the question of whether a defendant did or did not know of the presence of the gun is one for the jury. Id.

In Alexander, the defendant was driving a van, and there were two other passengers. 322 N.W.2d at 73. A revolver was half sticking out of a holder, slightly behind and to the right of the driver's seat. Id. The gun was visible from the rear of the van when the doors were open. Id. The supreme court found this evidence was sufficient to raise a reasonable inference that the defendant knew the revolver was there and that it was readily accessible for his use. Id.

In State v. Miles, 490 N.W.2d 798, 800 (Iowa 1992), a recently fired gun was found in defendant's pickup truck. Defendant was inside the truck, with two other people, moments before police discovered the gun. Id. Three police officers testified the gun was clearly visible from both the driver's and passenger's windows and was accessible to anyone inside the truck. Id. The supreme court found this was sufficient evidence to support a finding the defendant knowingly or intentionally possessed a firearm. Id.

We conclude there is sufficient evidence to raise a reasonable inference Ralston knew the gun was in the car and that it was readily accessible for his use. Ralston

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was inside the car when the gun was present. Police officers testified the gun was readily visible and anyone in the car had access to the gun. The question of whether Ralston knew of the presence of the gun was for the jury. There is substantial evidence in the record to support the jury's verdict.

We affirm defendant's convictions for control of a firearm by a felon and carrying a dangerous weapon.

**AFFIRMED.**