

IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-1650
Buchanan County No. FECRO85207

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DARIUS LEJUAN WADE,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BUCHANAN COUNTY
THE HONORABLE KELLYANN M. LEKAR, JUDGE

APPELLEE'S BRIEF

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FINAL

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. **Whether sufficient evidence supported Wade's conviction.**

Authorities

State v. Reeves, 209 N.W.2d 18 (Iowa 1973)
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State v. Anderson, 517 N.W.2d 208 (Iowa 1994)
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State v. Webb, 648 N.W.2d 72 (Iowa 2002)
State v. Williams, 695 N.W.2d 23 (Iowa 2005)
Iowa R. App. P. 6.904(3)(p)

II. **Whether the district court erred by entering a probation sentence that was a range of time.**

Authorities

In re Estate of Voss, 553 N.W.2d 878 (Iowa 1996)
In re Marshall, 805 N.W.2d 145 (Iowa 2011)
State v. Arnold, No. 20-0915, 2021 WL 4592837
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ROUTING STATEMENT

This case can be decided based on existing legal principles. Transfer to the Court of Appeals would be appropriate. Iowa R. App. P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Defendant Darius Wade appeals his judgment and sentence on his conviction for one count of possession of a firearm or offensive weapon by a felon as a habitual offender, in violation of Iowa Code section 724.26(1), and one count of operating while intoxicated, second offense, in violation of Iowa Code section 321J.2(2)(b). The district court found Wade guilty of both counts after a bench trial and sentenced him to 15 years on the first count, suspending the sentence, and ordering him to probation for a period from two to five years. The district court also sentenced him to two years on the second count, suspending all but seven days which could be served in 48-hour increments. On appeal, Wade argues whether there was sufficient evidence to convict him of the first count and asserts the district court erred by entering an illegal sentence because it ordered an indefinite period of probation. The State disagrees.

Course of Proceedings

The State accepts the defendant's course of proceedings as adequate and essentially correct. Iowa R. App. P. 6.903(3).

Facts

On October 1, 2021, traveling westbound in the city of Jesup, Iowa, Wade was pulled over for speeding. Trial Tr. 14:1–14. Officer Brandon French of the Laurens Police Department clocked Wade traveling at over 60 miles per hour in a 45-mile per hour zone. Trial Tr. 15:5–12. Officer French turned on his lights and began to follow Wade's car, which was the only car on the road. Trial tr. 15:11–20. Wade "came to a slow roll of a stop" despite being the only car the officer could have been pursuing. Trial Tr. 15:21–16:1. Despite seeing the emergency lights behind him, Wade did not immediately pull over despite there being a clear shoulder on the roadway. Trial Tr. 16:11–18.

When Officer French approached the vehicle, he noticed a strong odor of burnt marijuana emitting from the interior of the car. Trial Tr. 19:8–17. Officer French then asked Wade to exit the car and take a seat in the passenger seat of the police cruiser. Trial Tr. 19:21–20:4. Even outside of his own car, Wade continued to emit a strong

odor of marijuana as well as alcohol. Trial tr. 21:3–13. When questioned, Wade stated that it was his birthday and that he had been around people who were smoking marijuana immediately prior to the traffic stop. Trial Tr. 21:19–24. Wade denied smoking marijuana or drinking to Officer French. Trial Tr. 21:9–24.

Based on the odor of marijuana and alcohol, Officer French conducted a search of Wade’s car. Trial Tr. 22:1–6. Wade was placed in the back seat of the squad car while Officer French searched his car. Trial tr. 22:12–16. Officer French found a backpack on the front passenger’s seat that contained a 9mm handgun as well as a wallet containing Wade’s ID. Trial Tr. 23:2–9. Officer French unloaded the firearm and secured it before walking back to his squad car to question Wade. Trial Tr. 23:21–24:1. At that point, Wade admitted he was a felon. Trial Tr. 24:2–7. When confronted with the handgun, Wade exclaimed “Oh shit, he found it.” State’s Ex. A at 17:06–17:10. Wade then stated that he did not know the gun was in his backpack. Trial Tr. 24:14–19.

Officer French then placed Wade under arrest and conducted field sobriety tests. Trial Tr. 32:13–22. Officer French conducted a horizontal gaze nystagmus test, from which he observed Wade had a

lack of smooth pursuit, distinct and sustained nystagmus at maximum deviation in both eyes, and an onset of nystagmus before the eyes reached 45 degrees – all six cues that officers are trained to look for when conducting this test. Trial Tr. 38:7–13. Officer French also observed that Wade failed four out of eight cues for the walk-and-turn test. Trial tr. 41:5–15. Officer French repeatedly offered a breath test, to which Wade responded that he did not want to “further incriminate himself.” Trial Tr. 45:5–15.

ARGUMENT

I. Sufficient Evidence Proved Wade Guilty of Possessing a Firearm.

Preservation of Error

“[A] defendant need not file a motion for judgment of acquittal to challenge the sufficiency of the evidence on direct appeal.” *State v. Crawford*, 972 N.W.2d 189, 198 (Iowa 2022).

Standard of Review

“We review the sufficiency of the evidence for correction of errors at law.” *Id.* at 202 (quoting *State v. Buman*, 955 N.W.2d 215, 219 (Iowa 2021)). “In conducting that review, we are highly deferential to the jury’s verdict. The jury’s verdict binds this court if the verdict is supported by substantial evidence.” *Id.* (citing *State v.*

Tipton, 897 N.W.2d 653, 692 (Iowa 2017)). “Substantial evidence is evidence sufficient to convince a rational trier of fact the defendant is guilty beyond a reasonable doubt.” *Id.* “In determining whether the jury’s verdict is supported by substantial evidence, we view the evidence in the light most favorable to the State, including all ‘legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence.’” *Id.* Direct and circumstantial evidence are equally probative. Iowa R. App. P. 6.904(3)(p).

Merits

A challenge to the sufficiency of the evidence does not allow a reviewing court to weigh evidence or determine that the jury weighed the evidence incorrectly. “In determining the correctness of a ruling on a motion for judgment of acquittal, we do not resolve conflicts in the evidence, pass upon the credibility of witnesses, or weigh the evidence.” *State v. Hutchison*, 721 N.W.2d 776, 780 (Iowa 2006) (citing *State v. Williams*, 695 N.W.2d 23, 28 (Iowa 2005)). Instead, “review on questions of sufficiency of the evidence is to determine if there is substantial evidence to support the verdict of the jury.” *State v. Martens*, 569 N.W.2d 482, 484 (Iowa 1997) (citing *State v. Monk*,

514 N.W.2d 448, 451 (Iowa 1994)). This occurs when “a rational trier of fact could have found that the elements of the crime were established beyond a reasonable doubt.” *State v. Keopasa euth*, 645 N.W.2d 637, 640 (Iowa 2002) (citing *State v. Anderson*, 517 N.W.2d 208, 211 (Iowa 1994)). In conducting its analysis, this Court should “consider all evidence, not just the evidence supporting the conviction, and view the evidence in the light most favorable to the State, ‘including legitimate inferences and presumptions that may fairly and reasonably be deduced from the record evidence.’ ” *State v. Ernst*, 954 N.W.2d 50, 54 (Iowa 2021) (quoting *Tipton*, 897 N.W.2d at 692).

Our appellate courts “review a trial court’s findings in a jury-waived case as [they] would a jury verdict: If the verdict is supported by substantial evidence, [the Court] will affirm.” *State v. Weaver*, 608 N.W.2d 797, 804 (Iowa 2000) (citing *State v. Torres*, 495 N.W.2d 678, 681 (Iowa 1993)). As with a jury trial, our appellate courts “review the evidence in the light most favorable to the State to determine if, when considered as a whole, a reasonable person could find guilt beyond a reasonable doubt.” *State v. Alvarado*, 875 N.W.2d 713, 715 (Iowa 2016) (quoting *State v. Pearson*, 514 N.W.2d 452, 456 (Iowa 1994)).

Wade only challenges the sufficiency of the evidence supporting his conviction of being a felon in possession of a gun. Wade argues that the State failed to prove actual or constructive possession of the gun. Under *State v. Reeves*, a conviction may be obtained “when the accused maintains control or a right to control” the contraband. 209 N.W.2d 18, 22 (Iowa 1973). Possession “may be imputed when the contraband is found in a place which is immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another.” *Id.* The State may show either “ ‘actual possession’ or ‘constructive possession.’ ” *State v. Thomas*, 847 N.W.2d 438, 442 (Iowa 2014).

In an attempt to avoid convicting individuals who condone illicit possession but are otherwise innocent, the Iowa Supreme Court has suggested that in jointly possessed spaces mere physical proximity is insufficient to support a conviction. *See, e.g., State v. Reed*, 875 N.W.2d 693, 709–10 (Iowa 2016); *State v. Bash*, 670 N.W.2d 135, 138–39 (Iowa 2003). Actual possession can be found “when substantial evidence supports a finding it was on his or her person ‘at one time.’ ” *Id.* (quoting *State v. Vance*, 790 N.W.2d 775, 784 (Iowa 2010)); *see Reed*, 875 N.W.2d at 705 n.5. Constructive

possession authorizes conviction where evidence and inferences support a finding of guilt “based on the location of the contraband and other circumstances.” *Thomas*, 847 N.W.2d at 443. Proof of possession—actual or constructive—may be established by direct or circumstantial evidence. *Vance*, 790 N.W.2d at 784.

The State must adduce additional evidence to support a finding the individual possessed the contraband. This additional proof of possession may be established by:

- (1) incriminating statements made by a person;
- (2) incriminating actions of the person upon the police’s discovery of [contraband] among or near the person’s personal belongings;
- (3) the person’s fingerprints on the packages containing the [contraband]; and (4) any other circumstances linking the person to the [contraband].

State v. Maxwell, 743 N.W.2d 185, 194 (Iowa 2008).

These factors are neither dispositive nor exclusive. *Thomas*, 847 N.W.2d at 443; *State v. DeWitt*, 811 N.W.2d 460, 475 (Iowa 2012); *Maxwell*, 743 N.W.2d at 194; *State v. Webb*, 648 N.W.2d 72, 79 (Iowa 2002) (“The existence of constructive possession turns on the peculiar facts of each case.”). They serve as a guide for parties and courts to determine whether sufficient evidence of constructive possession was established.

When the contraband is found in a motor vehicle, several other factors apply, including: “(1) was the contraband in plain view, (2) was it with the accused’s personal effects, (3) was it found on the same side of the car seat as the accused or immediately next to him, (4) was the accused the owner of the vehicle, (5) was there suspicious activity by the accused.” *State v. Carter*, 696 N.W.2d 31, 39 (Iowa 2005) (citing *State v. Kemp*, 688 N.W.2d 785, 789 (Iowa 2004))

First, the gun was found in a backpack, in the driver’s side seat of a truck that was driven by Wade, owned by Wade, and Wade was the only passenger in the car that night. State’s Ex. A (Police Body Camera). Based on those circumstances alone, the State arguably established actual possession, particularly in light of the fact that Wade admitted the backpack was his. Trial Tr. 93:21–94:9. Second, even if this court considered the constructive possession standard, there was overwhelming evidence supporting Wade’s conviction.

Wade claims he made no incriminating statements or commit any incriminating actions. Appellant’s Br. at 30. However, when the Officer French approached the vehicle with the gun in hand, Wade waffled whether he is a felon or not. State’s Ex. A at 16:40–16:52. Then, once he admitted he is a felon, Officer French asked him why

he has a handgun, to which Wade replied “where’d you get it at?” State’s Ex. A at 16:59–17:08. Immediately afterwards, to the individual on the phone with Wade, he stated, “Shit, he found it.” State’s Ex. A at 17:08–17:09. Shortly thereafter, Officer French made his way around to the backseat to talk to Wade and Wade immediately put his hands out as if expecting to be arrested and stated to the person on the phone “I’m probably going to be arrested.” State’s Ex. A at 17:30–17:51. These statements and actions are incriminating.

Wade also argues that when he saw the police lights, he “pulled over and did not try to elude or evade the police.” Appellant’s Br. at 30. Not really. Officer French testified that Wade “came to a slow roll of a stop” despite being the only car the officer could have been pursuing. Trial Tr. 15:21–16:1. Despite seeing the emergency lights behind him, Wade did not immediately pull over despite there being a clear shoulder on the roadway. Trial Tr. 16:11–18. Wade admitted to Officer French that it was his backpack. State’s Ex. A at 18:20–18:35. His wallet, along with a driver’s license, was found in the same backpack. State’s Ex. A at 13:25–13:30. Although some of the factors

for constructive possession are not dispositive, all of them together are compelling evidence.

Even when analyzing the contraband under the standard set for possession in a vehicle, the evidence favors a conviction. The gun was not in plain view but the backpack certainly was in plain view. The gun was found in a backpack that also contains Wade's ID. The gun was immediately next to him on the seat. Wade was the owner of the car. State's Ex. A at 2:30–2:40. At trial, Wade was evasive to questions surrounding his use of the backpack and his knowledge about the gun.

Q And you use that backpack too?

A No.

Q No?

A No.

Q Why, when speaking with Officer French, did you refer to it as your backpack?

A Because everything in my house is mine, the cars are mine—

Q Okay, so if the backpack is yours, is not the gun inside yours too?

A No.

Q Okay. Why was there a wallet with your ID in the backpack?

A It's an old wallet I don't use. It was used to carry my fishing license in it when we go out fishing or boating or something.

Q So you would use the backpack?

A I mean, during recreational times, yeah, we both would. It's a backpack.

Trial Tr. 9:2–20.

Wade also claimed on the stand that he had been discussing the gun with his girlfriend shortly before Officer French reentered the vehicle, which is why he made the incriminating statement. Trial Tr. 99:9–100:2. But when Wade's girlfriend took the stand, she testified multiple times that when she was on the phone with Wade, there was no discussion about the gun prior to Wade exclaiming that Officer French had found the weapon. Trial tr. 109:14–19; 111:2–6. Wade admitted he was the only individual with control over the backpack. Trial tr. 100:17–21. There was sufficient evidence to convict Wade for possessing the firearm while he was a felon.

II. The District Court Did Not Enter an Illegal Sentence.

Preservation of Error

The State does not contest error preservation. The normal rules of error preservation do not apply to a direct appeal of a sentence. *See*

State v. Cooley, 587 N.W.2d 752, 754 (Iowa 1998). And an illegal sentence may be corrected at any time. Iowa R. Crim. P. 2.24(5)(a).

Standard of Review

“Challenges to the legality of a sentence are reviewed for correction of errors at law.” *State v. Hall*, 740 N.W.2d 200, 202 (Iowa 2007) (citing *State v. Freeman*, 705 N.W.2d 286, 287 (Iowa 2005)). Constitutional questions, including double jeopardy claims, are reviewed de novo. *State v. Goodson*, 773 N.W.2d 791, 798 (Iowa 2021).

Merits

Wade argues that the district court erred when it ordered Wade to probation for a “period of supervised probation of two to five years.” Appellant’s Br. at 39; Sent. Tr. 8:16–17. Iowa Code section 907.7(1) provides:

The length of the probation shall be for a period as the court shall fix but not to exceed five years if the offense is a felony or not to exceed two years if the offense is a misdemeanor. The period of probation may be extended for up to one year including one year beyond the maximum period as provided in section 908.11.

Wade asserts the district court ordering a range for a period of probation violates the statute because his sentence is not “fixed”

under the meaning of the statute. Appellant’s Br. at 40–42. Wade challenges the meaning of the word “fix.”

As it relates to the statutory interpretation question, “[w]e do not inquire what the legislature meant; we ask only what the statute means.” Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 Harv. L. Rev. 417, 419 (1899). Using traditional interpretative tools, we seek to determine the ordinary and fair meaning of the statutory language at issue. *See State v. Davis*, 922 N.W.2d 326, 330 (Iowa 2019) (“We give words their ordinary meaning absent legislative definition.”); *In re Marshall*, 805 N.W.2d 145, 158 (Iowa 2011) (“We should give the language of the statute its fair meaning, but should not extend its reach beyond its express terms.”); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 33 (2012) [hereinafter Scalia & Garner, *Reading Law*] (defining “fair reading method” as “determining the application of a governing text to given facts on the basis of how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued”).

In determining the ordinary and fair meaning of the statutory language at issue, we consider the language’s relationship to other

provisions of the same statute and other provisions of related statutes. *See* Iowa Code § 4.1(38) (“Words and phrases shall be construed according to the context and the approved usage of the language ...”); *State v. Doe*, 903 N.W.2d 347, 351 (Iowa 2017) (stating we consider the “relevant language, read in the context of the entire statute”). If the “text of a statute is plain and its meaning clear, we will not search for a meaning beyond the express terms of the statute or resort to rules of construction.” *In re Estate of Voss*, 553 N.W.2d 878, 880 (Iowa 1996); *see State v. Richardson*, 890 N.W.2d 609, 616 (Iowa 2017) (“If the language is unambiguous, our inquiry stops there.”). If the language of the statute is ambiguous or vague, we “may resort to other tools of statutory interpretation.” *Doe*, 903 N.W.2d at 351.

The district court fixed a range for probation. Although “fix” can mean to set in place, nothing prevents a court from setting a range in place. *See State v. Arnold*, No. 20-0915, 2021 WL 4592837 at *1 (Iowa Ct. App. Oct. 6, 2021) (“He received suspended prison sentences and was placed on probation to the department of correctional services for two to five years.”). The remainder of the statute in question supports this proposition. First, the district court

has the ability reduce the length of probation “if the court determines that the purposes of probation have been fulfilled and the fees imposed under section 905.14 have been paid[.]” Iowa Code § 907.7(3). The district court may have ordered five years of probation with the eligibility to request a reduction after two years, thereby ordering a range of probation spanning from two to five years.

Second, the code also provides that the “court shall determine what period is most likely to provide maximum opportunity for the rehabilitation of the defendant[.]” Iowa Code § 907.7(4). A “period” is defined as a length of time, which implies both a fixed date from the present and a range of time. *See Fix*, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/period> (last visited Aug. 18, 2023) (defining the noun period as “a length of time”). The district court did not err in entering a range for probation.

CONCLUSION

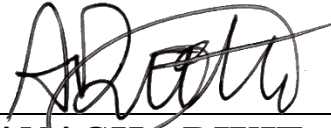
For all the reasons set forth above, the State requests that this Court affirm Wade’s convictions.

REQUEST FOR NONORAL SUBMISSION

The State believes that this case can be resolved by reference to the briefs without further elaboration at oral argument.

Respectfully submitted,

BRENNA BIRD
Attorney General of Iowa

A handwritten signature in black ink, appearing to read 'ADIXIT', is written over a horizontal line.

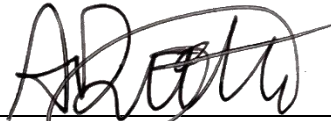
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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **3,269** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: September 13, 2023



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