

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

State of North Dakota,)	
)	
Plaintiff-Appellee,)	
)	Supreme Court No. 20210276
vs.)	
)	District Court No. 02-2019-CR-00260
Steven Ronald Dahl,)	
)	
Defendant-Appellant.)	

BRIEF OF PLAINTIFF-APPELLEE

APPEAL FROM CRIMINAL JUDGMENT DATED 09/29/2021

BARNES COUNTY DISTRICT COURT
SOUTHWEST JUDICIAL DISTRICT
HONORABLE JAY SCHMITZ, PRESIDING

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STATEMENT OF THE ISSUES

- [¶ 1] Whether the evidence received was sufficient to support the jury's verdicts.
- [¶ 2] Whether the jury instructions correctly informed the jury of the applicable law.

STATEMENT OF THE CASE

[¶ 3] Appellant, Steven Ronald Dahl (“Dahl”) was charged with 1 count of Theft of Property, in violation of N.D.C.C. § 12.1-23-02(1), a class C Felony, and 4 counts of Unlawful Possession of Drug Paraphernalia, in violation of N.D.C.C. § 19-03.1-04(2), one class C Felony, two Class A Misdemeanors, and one Class B Misdemeanor, by an Amended Criminal Information dated August 19, 2020.

[¶ 4] A jury trial was held August 20-21, 2020. The Court dismissed the Theft of Property pursuant to a Rule 29 motion. At the conclusion of the trial, the jury returned guilty verdicts for the Class C Felony drug paraphernalia charge, and for one Class A misdemeanor drug paraphernalia charge, specifically counts 3 and 4 of the amended criminal information.

[¶ 5] This appeal eventually ensued after Dahl failed to show up for sentencing and wasn’t arrested on his warrant for almost a year. A notice of appeal and order for transcripts was filed on October 5, 2021.

STATEMENT OF THE FACTS

[¶ 6] This case began after a search warrant was executed on the residence of Dahl and Tim Newman (“Newman”). (Tr. pgs. 77-78) The residence is a house in Valley City that is owned by Newman’s grandmother, but is considered to be Newman’s place. (Tr. pg. 51) Newman stated that he lived upstairs in the house and Dahl stayed downstairs in the living room on the couch. (Tr. pg. 52) Newman stated that Dahl lived in the dining room or living room on one of the couches. (Tr. pg. 54) Newman stated that him and Dahl had lived there together for about two and a half years. (Tr. pg. 55) Newman told the jury that when the warrant was executed, he was home but he was sleeping. (Tr. pg. 51-52) Newman testified that Dahl and him both smoked Eagle 20’s cigarettes, and that Newman smoked the blue type and Dahl smokes the red type. (Tr. pg. 66) Newman also stated that him and Dahl would occasionally use controlled substances together. (Tr. pg. 66) Newman stated that in his experience, it isn’t common for people to leave their smoking devices behind after a party unless the device had been broken. (Tr. pg. 67) When Newman was asked later if he would ever store his smoking devices in a red Eagle 20’s pack, he responded “I wouldn’t have a red pack.” (Tr. pg. 71)

[¶ 7] The jury in this case also heard from law enforcement that was part of the execution of the search warrant. Deputy Josh Magnuson (“Magnuson”) testified that he was part of this case after conducting a traffic stop on a vehicle driven by Kyle Ronningen (“Ronningen”). (Tr. pg. 75) Magnuson testified that Ronningen was going to the Dahl residence to trade off his unicycle for a different bike. (Tr. pg. 76) Magnuson testified that Officer Runge (“Runge”) then came to Magnuson’s location and had a conversation with Ronningen. (Tr. pg. 77) Magnuson testified that Runge told Magnuson that he was going

to apply for a search warrant. (Tr. pg. 77) Magnuson watched the residence from a couple blocks away while Runge applied for the search warrant. (Tr. pg. 78) Eventually Magnuson participated in the search of the residence. (Tr. pg. 78) During the search, Magnuson located a smoking device with residue on it on a coffee table in the living room and noted “I believe it was in a cigarette pack.” (Tr. pg. 78-79) When asked what kind of cigarette pack the device was found in, Magnuson replied that he believed it was in a red Eagle 20’s. (Tr. pg. 79) Magnuson described what the device looked like and stated that based on his training and experience, that kind of device is used for methamphetamine. (Tr. pg. 79-80) When asked later about the location of where the smoking device was found, Magnuson testified that it was a downstairs living room... there was a couch there... it was on the coffee table next to it. (Tr. pg. 82)

[¶ 8] The jury also heard from Sgt. Nick Horner (“Horner”) about his participation in the execution of the search warrant. (Tr. pg. 91) Horner testified that during the search he located plastic baggies with residue in them. (Tr. pg. 92) Horner explained that the residue appeared to be a white crystal powdery substance inside the bags and further explained that based on his training and experience, he believed this residue may be from methamphetamine. (Tr. pg. 92) Horner testified that he located these baggies on a table in the common living area right next to where Dahl had mentioned that he was sleeping. (Tr. pg. 92) Horner also testified that typically controlled substances are stored in small individual baggies, not general containers. (Tr. pg. 96) Horner testified that big baggies like sandwich baggies are bigger. These were small little what we call “dime bag” that are small and contain the product individually. (Tr. pg. 96) Horner testified that the purpose of

that bag is to store the controlled substance and that the bag is used for storing it... a lot of times that's how it's packaged for individual sale is in that process. (Tr. pg. 96)

[¶ 9] The jury next heard from Runge about his involvement in this case. Runge testified about how this case began with him taking a report from Beth Gonzales (“Gonzales”) earlier in the day about a stolen bicycle of hers, at which time Gonzales described what the bike looked like. (Tr. pg. 100) Runge testified that he had later talked to Magnuson and informed Magnuson that he had received this report and that people had been staling bikes around town and they were ending up at Newman’s residence. (Tr. pg. 101) Runge testified that after talking to Ronningen, he went to Dahl’s house and knocked at the door, but nobody answered. (Tr. pg. 102) While knocking at Dahl’s house, Runge observed one bicycle that had matched the description of one that was stolen, along with a bunch of other bicycle and bike parts in the area. (Tr. pg. 102) After not receiving an answer at the door, Runge left and applied for a search warrant for the residence. (Tr. pg. 103) Runge testified that after being granted a search warrant, he returned to the residence, knocked on the door, and Dahl answered the door. (Tr. pg. 104) Runge stated that Dahl was subsequently detained and the residence was cleared for safety reasons. (Tr. pg. 105) Newman and Lilly Brant (“Brant”) were located in the residence during this process. (Tr. pg. 106) While clearing the residence, Runge had observed drug paraphernalia in plain view, so after clearing was complete, the scene was secured while Runge left to apply for an additional warrant to include drug paraphernalia. (Tr. pg. 108-109) Runge had taken pictures as part of this investigation, and the jury was able to view several exhibits during Runge’s testimony. Runge talked about exhibit 15, which was a picture of the Eagle 20 cigarette package with a glass pipe inside of it. (Tr. pg. 120) Runge also described exhibit 17, which

was a photograph from inside the living room area that showed two small baggies on the table along with other miscellaneous bike parts. (Tr. pg. 123) In that exhibit, there is one baggie right on top of the cigarette package and one baggie just below the one on the cigarette package, all of which was located on the coffee table in the living room. (Tr. pg. 124) Runge also testified about exhibit 18 which showed a closer up view of the baggies that were located. Runge explained to the jury what “residue” means and how it’s left behind typically in baggies that had methamphetamine in them previously. (Tr. pg. 125) Runge also told the jury that based on his training and experience, the smoking device that was located was used for smoking methamphetamine. (Tr. pg. 126) When later asked about the drug paraphernalia, Dahl stated that it wasn’t his. (Tr. pg. 135) Ironically, however, when Dahl was asked what kind of cigarette he smokes, he told Runge that he smokes red Eagle 20’s. (Tr. pg. 135)

[¶ 10] The jury lastly heard from Chris Gocke (“Gocke”) of the North Dakota State Crime Lab. (Tr. pg. 185) Gocke is a forensic scientist that analyzes physical evidence submitted by law enforcement agencies from across the state. (Tr. pg. 185) Gocke has been at the crime lab for almost 23 years and has analyzed thousands and thousands of samples throughout his career. (Tr. pg. 186) Gocke explained how the process at the crime lab works and eventually talked about what he analyzed in this case. (Tr. pg. 187-188) Gocke talked about exhibit 45, which was one of the baggies sent in to be analyzed. (Tr. pg. 193) Gocke told the jury about how he analyzed this item and determined that the residue inside the baggie was from methamphetamine. (Tr. pg. 194-195) Gocke further testified about exhibit 46. (Tr. pg. 196) Gocke described how that piece of evidence was analyzed and that the smoking device is used to smoke or ingest methamphetamine. (Tr. pg. 101) Gocke

described how all of their findings are eventually put together into a report, as was done in this case. (Tr. pg. 199) The jury received this report for their consideration as well, as exhibit 43. (Tr. pg. 200)

ARGUMENT

I. THE EVIDENCE RECEIVED BY THE JURY WAS SUFFICIENT TO SUSTAIN THE CONVICTIONS IN THIS CASE.

a. Standard of Review

[¶ 11] The standard of review for sufficiency of the evidence is as follows:

- i. When the sufficiency of evidence to support a criminal conviction is challenged, this Court merely reviews the record to determine if there is competent evidence allowing the jury to draw an inference reasonably tending to prove guilt and fairly warranting a conviction. The defendant bears the burden of showing the evidence reveals no reasonable inference of guilt when viewed in the light most favorable to the verdict. When considering insufficiency of the evidence, we will not reweigh conflicting evidence or judge the credibility of witnesses.... A jury may find a defendant guilty even though evidence exists which, if believed, could lead to a verdict of not guilty.
- ii. State v. Nakvinda, 2011 ND 217, ¶ 12, 807 N.W.2d 204 (citations omitted). “When the verdict is attacked and the evidence is legally sufficient to sustain the verdict, we will not disturb the verdict and judgment even though the trial included conflicting evidence and testimony.” Id. (citing Hochstetler v. Graber, 78 N.D. 90, 93, 48 N.W.2d 15, 18 (1951)). State v. Galvez, 2015 ND 14, ¶ 18, 858 N.W.2d 619, 624.

b. The Evidence received by the Jury was Sufficient to Support Dahl’s Convictions.

[¶ 12] In an appeal challenging the sufficiency of the evidence, this Court “look[s] only to the evidence most favorable to the verdict and the reasonable inferences therefrom to see if there is substantial evidence to warrant a conviction.” State v. Charette, 2004 ND 187, ¶ 7, 687 N.W.2d 484, 487–88. “A conviction rests upon insufficient evidence only

when no rational fact finder could have found the defendant guilty beyond a reasonable doubt after viewing the evidence in a light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor.” Id.

[¶ 13] “A verdict based on circumstantial evidence carries the same presumption of correctness as other verdicts, and will not be disturbed on appeal unless it is unwarranted.” State v. Steinbach, 1998 ND 18, ¶ 16, 575 N.W.2d 193. “A conviction may be justified on circumstantial evidence alone if it is of such probative force as to enable the trier of fact to find the defendant guilty beyond a reasonable doubt.” Id. And, importantly, “[a] jury may find a defendant guilty even though evidence exists which, if believed, could lead to a verdict of not guilty.” State v. Wilson, 2004 ND 51, ¶ 9, 676 N.W.2d 98 (quoting State v. Hatch, 346 N.W.2d 268, 277 (N.D.1984)); see also Zander v. Workforce Safety and Insurance, 2003 ND 194, ¶ 13, 672 N.W.2d 668.

[¶ 14] The jury heard the story in this case of how this case began with a stolen bike report that Runge received. It continued with a traffic stop that led to a knock at Dahl’s door, then a search warrant. After the initial search warrant began being executed, Dahl was detained, and then Newman and Brant were found, sleeping, upstairs at the residence. Dahl’s argument that Newman and Brant somehow could have possessed these items because they were in the residence is without merit. Newman and Brant were sleeping when they were located, upstairs, in the residence. Newman testified about the layout of the house as well as where Dahl stayed, specifically on the couch in the dining/living room area. Newman testified about how he resided upstairs, which appears to be accurate based on where he was located when officers were clearing the house.

[¶ 15] There is an abundance of evidence in this record that link Dahl to the items of drug paraphernalia that he was convicted of possessing. Dahl's argument that because he was not seen physically holding the items, or that they were not fingerprinted, etc., and because he denied the items were his, somehow means that there is no way he can be convicted of the counts thereof, is an erroneous view. It in essence is an argument that circumstantial evidence isn't a way to obtain a conviction. Of course the State is submitting this is a circumstantial evidence case.

[¶ 16] Our Courts have previously held that “[p]ossession may be actual or constructive, exclusive or joint and may be shown entirely by circumstantial evidence.” State v. Morris, 331 N.W.2d 48, 53 (N.D.1983). Constructive possession is proven when the evidence “establishes that the accused had the power and capability to exercise dominion and control over the [controlled substance].” Id. “Some of the additional circumstances which may support an inference of constructive possession are an accused's presence in the place where a controlled substance is found, his proximity to the place where it is found, and the fact that the controlled substance is found in plain view.” Id. at 54.

[¶ 17] Here, Dahl had told officers at one point that he had been sleeping prior to the officer's arriving. Newman testified that Dahl slept on the couch. The couch was right next to the coffee table that had the red Eagle 20's pack on it, along with numerous bike parts. The record is extensive about the bike parts, and Newman had talked about how those were Dahl's bike parts. Runge testified that he observed drug paraphernalia in plain view. Dahl admitted to officers that he smokes red Eagle 20's cigarettes. Dahl was sleeping next to the pack of red Eagle 20's when officers arrived, according to his own admissions. Dahl certainly had the power and capability to exercise dominion and control over the drug

paraphernalia that was found in his cigarette pack, as well as the baggies that were found on top of, and next to, his cigarette pack. Dahl didn't just have a mere presence in the area to this paraphernalia. A solid link was established through the evidence in this case on how Dahl was the person who constructively possessed these items.

[¶ 18] As described above, the verdicts in this case that are based on circumstantial evidence, carry the same presumption of correctness as other verdicts. Disturbing these verdicts on appeal would be absolutely unwarranted. The jury clearly weighed the evidence carefully since Dahl was acquitted of other charges during the trial by the jury. That is a reflection of the thought the jury put into the weight of all of the evidence they received.

II. THE JURY INSTRUCTIONS IN THIS CASE CORRECTLY DESCRIBED THE LAW TO BE APPLIED FOR THE JURORS.

[¶ 19] Dahl's next argument is that the State should have somehow known that the Court would decide, some two years later, a decision in State v. Nupdal, 2021 ND 200, relating to drug paraphernalia charges being limited to the eight enumerated ways in the statute. This case and trial took place in 2019 and 2020. At the time of trial, the statute read the same way the jury instructions read. More importantly, during trial, the following conversation between the Court and counsel took place:

Court: So after pack, repack, it would be store, contain, conceal?

Ms. Duffy: Store, contain, or conceal a controlled substance.

Court: Mr. Douglas, do you agree that's the statute as applicable to an offense committed July 2019?

Mr. Douglas: Yes, your Honor. I read the statute this morning and it appears applicable.

Court: Then I will have to add those three words to each of those offenses and essential elements. With that exception, is the instruction correct do you believe?

Ms. Duffy: Other than that I think it's okay.

Court: So it's agreed that would be the proper instruction for Counts 2 and 3?

Mr. Douglas: Yes, your Honor.

Court: Ms. Duffy?

Ms. Duffy: I agree, Judge.

(Tr. pgs. 263-264)

[¶ 20] There was not an objection to the jury instructions as presented during trial, and in fact, it was the opposite – all parties agreed they were correct. As such, this issue was not preserved for appeal.

[¶ 21] Generally, issues not properly preserved at the trial court level will not be heard on appeal. See State v. Yineman, 2002 ND 145, ¶ 21, 651 N.W.2d 648. However, under N.D.R.Crim.P. 52(b), this Court is allowed to notice obvious errors which are revealed in the record. See Yineman, at ¶ 21. “Obvious errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” N.D.R.Crim.P. 52(b). Our Court has stated that it will only exercise its power to notice obvious error in “exceptional circumstances where the accused has suffered serious injustice.” State v. Johnson, 2001 ND 184, ¶ 12, 636 N.W.2d 391. We exercise our power to find obvious error cautiously and have very rarely found obvious error under Rule 52(b). See Johnson, at ¶ 12. State v. Bingaman, 2002 ND 202, ¶ 9, 655 N.W.2d 51, 53

[¶ 22] There is not an obvious error or a defect that affects Dahl's substantial rights applicable here, either. As such, Dahl's argument, while clever, is without merit.

CONCLUSION

[¶ 23] There was sufficient evidence to uphold the verdict's received in Dahl's case. The jury instructions provided to the jurors were also correct but shouldn't even be addressed due to the failure to preserve the issue for appeal.

[¶ 24] Based on the foregoing, the State respectfully asks this Court to affirm the jury's verdicts in this case and deny Dahl's request to have the holding in Nupdal apply to this case.

Dated the 9th day of February, 2022.

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Pursuant to North Dakota Rules of Appellant Procedure 32(e), I certify the Appellee’s Brief is not in excess of thirty-eight (38) pages. The document consists of seventeen (17) pages, including the cover page, table of contents, table of authorities, the written brief, the certificate of electronic service and the certificate of compliance.

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I hereby certify that on February 9, 2022, I served an electronic copy of Appellee’s Brief, the Certificate of Compliance, and this Certificate of Service via e-mail through the

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