

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 37978

STATE OF IDAHO,)	2011 Unpublished Opinion No. 612
)	
Plaintiff-Respondent,)	Filed: September 8, 2011
)	
v.)	Stephen W. Kenyon, Clerk
)	
DAVID EVERETT RAMSTEAD,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

Judgment of conviction and sentence for possession of a controlled substance, affirmed.

Molly J. Huskey, State Appellate Public Defender; Spencer J. Hahn, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Mark W. Olson, Deputy Attorney General, Boise, for respondent.

LANSING, Judge

David Everett Ramstead appeals from a judgment of conviction for possession of a controlled substance. He argues that the district court erred by denying his motion for a judgment of acquittal, denying his motion for a new trial, and imposing an excessive punishment.

I.

FACTUAL AND PROCEDURAL BACKGROUND

On May 20, 2009, Ramstead was observed driving his vehicle by an officer who knew that Ramstead’s driving privileges were suspended. As the officer attempted to arrest Ramstead for this offense, Ramstead physically resisted, and the officer shocked him with a Taser in an attempt to subdue him. Ramstead continued to struggle, raised his fists in a threatening manner, and then fled up his driveway that led alongside a fence and toward the back of Ramstead’s

residence. Ramstead dropped or discarded items as he ran. The officer pursued Ramstead, shocking him two additional times, and finally subdued him as the officer's police dog and another officer closed in. The officer subsequently retraced Ramstead's path, finding keys Ramstead dropped near his truck and a plastic bag containing methamphetamine near the adjacent fence. Ramstead was charged with possession of methamphetamine, Idaho Code § 37-2732(c)(1), with a persistent violator sentence enhancement, I.C. § 19-2514.

At trial, Ramstead was found guilty. Approximately eleven weeks after trial, but prior to sentencing, Ramstead filed a motion for a new trial based on newly discovered evidence. The alleged new evidence was testimony of a witness who claimed that she left a bag of methamphetamine near Ramstead's fence at some point prior to Ramstead's arrest. The court denied Ramstead's motion for a new trial and sentenced him to a unified term of fifteen years with three years fixed. Ramstead now appeals, arguing that the trial evidence was insufficient to prove he possessed the methamphetamine, that the court erred in denying his motion for a new trial, and that his sentence was excessive.

II. ANALYSIS

A. Sufficiency of the Evidence

Ramstead argues that the State's evidence was not sufficient to support a conviction for possession of a controlled substance because he was not seen holding or throwing the bag containing methamphetamine and because anyone could have left the bag where it was found by the officer on Ramstead's driveway near the fence.

Idaho Criminal Rule 29 provides that on motion of the defendant, the court must order the entry of a judgment of acquittal if the evidence is insufficient to sustain a conviction of the offense. On appellate review of an order denying a motion for judgment of acquittal, we examine whether the evidence was sufficient to sustain the conviction. *State v. Fields*, 127 Idaho 904, 912-13, 908 P.2d 1211, 1219-20 (1995). Evidence is sufficient if there is substantial evidence upon which a reasonable trier of fact could have found that the prosecution sustained its burden of proving the essential elements of a crime beyond a reasonable doubt. *State v. Herrera-Brito*, 131 Idaho 383, 385, 957 P.2d 1099, 1101 (Ct. App. 1998); *State v. Knutson*, 121 Idaho 101, 104, 822 P.2d 998, 1001 (Ct. App. 1991). We do not substitute our view for that of the jury as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable

inferences to be drawn from the evidence. *Knutson*, 121 Idaho at 104, 822 P.2d at 1001; *State v. Decker*, 108 Idaho 683, 684, 701 P.2d 303, 304 (Ct. App. 1985). Rather, we consider the evidence in the light most favorable to the prosecution. *Herrera-Brito*, 131 Idaho at 385, 957 P.2d at 1101; *Knutson*, 121 Idaho at 104, 822 P.2d at 1001.

The State characterizes this case as one of actual possession of a controlled substance, and Ramstead primarily characterizes it as one of constructive possession. These characterizations, however, are not determinative of the sufficiency of the evidence issue. A person has possession of a controlled substance when the person knows of its presence and either has physical control of it (actual possession) or the power and intention to control it (constructive possession). *State v. Blake*, 133 Idaho 237, 240-41, 985 P.2d 117, 120-21 (1999); *State v. Garza*, 112 Idaho 778, 784, 735 P.2d 1089, 1095 (Ct. App. 1987). Constructive possession requires the State to show a “nexus between the accused and the substance . . . so as to give rise to the reasonable inference that the accused was not simply a bystander but, rather, had the power and intent to exercise dominion and control over the substance.” *State v. Rogerson*, 132 Idaho 53, 58, 966 P.2d 53, 58 (Ct. App. 1998) (quoting *State v. Rozajewski*, 130 Idaho 644, 647, 945 P.2d 1390, 1393 (Ct. App. 1997)). Either actual or constructive possession may be proven by direct or circumstantial evidence. *State v. Seitter*, 127 Idaho 356, 360, 900 P.2d 1367, 1371 (1995). *Rozajewski*, 130 Idaho at 647, 945 P.2d at 1393. Under either set of elements, the State carried the burden to prove all the elements beyond a reasonable doubt.

The State’s theory at trial was that Ramstead had the methamphetamine on his person and that he discarded it in his driveway in an effort to hide it from the arresting officer. The State presented substantial circumstantial evidence to prove this theory. This circumstantial evidence begins with Ramstead’s unusual reactions to the arresting officer. As the officer initially approached, Ramstead re-entered the truck he had just left. When the officer informed Ramstead that his license was suspended and requested Ramstead’s license, registration, and proof of insurance, Ramstead began frantically moving things around inside the vehicle, leading the officer to believe that he might be attempting to get rid of drug evidence. When the officer directed Ramstead to exit the vehicle, he refused, and he resisted as the officer attempted to pull him from the vehicle. At that point, the officer fired his Taser. At some point during Ramstead’s continued struggle, he raised his fists as if to fight. After being shocked a second and third time, Ramstead continued to resist arrest and ran from the officer, carrying papers from

his car as he went. As Ramstead fled up his driveway, the officer saw his keys hit the ground. Ramstead finally submitted to arrest only after the officer drew his baton and approached with his police dog, who had escaped from the patrol car, and another officer who had arrived at the scene. The arresting officer retraced Ramstead's path, finding the keys and also finding a plastic bag containing methamphetamine near the fence.

Based upon Ramstead's bizarre and disproportionate response to being told he was being arrested for a misdemeanor, the officer's observation of an item being discarded as Ramstead ran from the officer, and the proximity of the methamphetamine to Ramstead's flight path, reasonable jurors could properly infer that Ramstead had discarded the methamphetamine as he ran. This inference satisfied all of the elements of actual or constructive possession, including knowledge and physical control or power and intent to control the drugs. Therefore, the district court correctly denied Ramstead's motion for judgment of acquittal.

B. Motion for a New Trial Based on Newly Discovered Evidence

Ramstead next argues that the district court erred by denying his motion for a new trial that was based on newly discovered evidence. After Ramstead was found guilty but before he was sentenced, Rita Wilson sent a letter to the district court in which she claimed that she, not Ramstead, had placed the bag of methamphetamine near Ramstead's fence. Based on this letter, Ramstead filed a motion for a new trial, and he presented Wilson's testimony at the hearing. The district court denied the motion, finding Wilson's testimony to lack credibility and concluding that, if presented at a new trial, the testimony would not be likely to lead to an acquittal. Ramstead posits error in this ruling.

On a defendant's motion in a criminal case, the trial court may grant a new trial in the interest of justice. Idaho Criminal Rule 34. Idaho Code Section 19-2406 authorizes a new trial when the defendant demonstrates that there exists new evidence material to the defense that could not have been produced at the trial with reasonable diligence. I.C. § 19-2406(7). Newly discovered evidence will warrant a new trial only if it satisfies a four-part test requiring that: (1) the evidence is newly discovered and was unknown to the defendant at the time of trial; (2) the evidence is material, not merely cumulative or impeaching; (3) it will probably produce an acquittal; and (4) failure to learn of the evidence was not due to a lack of diligence on the part of the defendant. *State v. Drapeau*, 97 Idaho 685, 691, 551 P.2d 972, 978 (1976); *State v. Ames*, 112 Idaho 144, 146, 730 P.2d 1064, 1066 (Ct. App. 1986).

We review the denial of a motion for new trial for an abuse of discretion. *State v. Egersdorf*, 126 Idaho 684, 687, 889 P.2d 118, 121 (Ct. App. 1995). A motion for a new trial based on newly discovered evidence involves questions of both fact and law. An abuse of discretion will be found if the trial court's findings of fact are not supported by substantial evidence or if the trial court does not correctly apply the law. *See Fullmer v. Collard*, 143 Idaho 171, 173, 139 P.3d 773, 775 (Ct. App. 2006). Motions for a new trial based on newly discovered evidence are disfavored and should be granted with caution, reflecting the importance accorded to considerations of repose, regularity of decision making, and conservation of scarce judicial resources. *State v. Ellington*, 151 Idaho 53, 72, 253 P.3d 727, 746 (2011); *State v. Eddins*, 142 Idaho 423, 425, 128 P.3d 960, 962 (Ct. App. 2006).

Here, the district court found that the first and fourth of the *Drapeau* factors were satisfied because Rita Wilson did not come forward with her claim until March 10, more than six weeks after the jury had returned a verdict against Ramstead. Thus, the evidence was unknown to Ramstead at the time of trial, and his failure to discover it was not due to a lack of diligence on the part of Ramstead or his attorney. The second factor, the materiality prong, was also satisfied because Wilson's claim contained substantive evidence and was not merely cumulative or impeaching.

The district court held, however, that the remaining *Drapeau* factor was not satisfied because the new evidence would not probably produce an acquittal. Evidence that is so lacking in credibility that it probably would not be believable to a jury will not satisfy the third prong of the *Drapeau* test. *See Fields*, 127 Idaho at 913-14, 908 P.2d at 1220-21; *State v. Araiza*, 124 Idaho 82, 94, 856 P.2d 872, 884 (1993). The trial court determined that Wilson's testimony was not credible due to (1) her uncertainty regarding the date of her visit, (2) her inaccurate descriptions of Ramstead's property, (3) inaccuracies regarding her descriptions of the bag of methamphetamine, and (4) her demeanor.

We find no error in the district court's assessment. Wilson testified that she came forward to take responsibility when she learned that Ramstead, who was a casual acquaintance, had been found guilty of possession of a bag of methamphetamine discovered on his driveway. She testified that she had once hidden a bag of methamphetamine against a fence at his residence and returned the next morning to retrieve it, but it was gone. Wilson was unsure of the day, month, or year of her visit to Ramstead's residence. She alternatively testified that it occurred in

2009, 2008, or “2007, maybe,” and repeatedly qualified her testimony by saying she was “not sure exactly when it was” and was “not certain which year” she visited Ramstead. She finally settled on 2009 during redirect examination, apparently relying upon the death of her baby in November of 2008, more than six months prior to Ramstead’s arrest, as the nearest mental point of reference. Although Wilson initially testified that she was certain of the month of her visit, she waived when pressed, saying “[i]t was around May” and “I’m not very certain what month it was. It was May. I’m pretty sure it was May.” When pressed for the day of the week Wilson said “I don’t know, I was really high on drugs,” and “I don’t know what day it was. I don’t remember the day,” but testified that it was before her birthday on May 15.

Wilson was also unable to accurately describe Ramstead’s property. When asked to describe the driveway between Ramstead’s house and the fence where she claimed to have left the methamphetamine, she testified that there were no cars in the driveway, which she described as dirt and pavement; but other evidence, including photos taken the day of Ramstead’s arrest, shows that there were two inoperable vehicles that occupied nearly the entire concrete driveway and almost completely obstructed access to the side of the house. Wilson testified that she entered Ramstead’s house through a side door and sat in his living room on a chair. Other evidence, however, showed that the house had no side door and that the living room had no furniture. Rather, it was nearly filled from floor to ceiling with boxes, with only a narrow walkway leading from room to room.

Wilson was unable to provide accurate details regarding the bag of methamphetamine. She estimated that her bag of methamphetamine contained three to four “rocks” of methamphetamine, but the bag located by the officer contained a single large chunk of white crystal substance. Additionally, Wilson testified that she left the bag under the tire of a bike on the east side of the fence, but the bag located by the officer was located on the west side of the fence.

Finally, Wilson’s demeanor contributed to the district court’s determination that her testimony was not credible. The trial court assessed Wilson’s demeanor in conjunction with the many inconsistencies in her testimony, her repeated admissions that she had been high on drugs at the time and could not remember details, and her repeated attempts to deflect questions, ultimately determining that her testimony was not credible.

We acknowledge that Wilson's testimony was self-incriminating, which can be strong evidence of credibility. Nevertheless, the incriminating nature of her testimony was substantially outweighed by her demeanor and the inconsistencies and inaccuracies of her story. The district court applied the correct legal principles and did not abuse its discretion by determining that Wilson's testimony would not probably produce an acquittal because a jury would not find it credible.¹ Thus, we find no error with the denial of the motion for a new trial.

C. Excessive Sentence

Lastly, Ramstead argues that because he has a minimal recent criminal history, the district court abused its discretion by imposing a unified fifteen-year sentence with a three-year fixed term. Where a sentence is within statutory limits, the appellant has the burden to show that it is unreasonable and thus a clear abuse of discretion. *State v. Jackson*, 130 Idaho 293, 294, 939 P.2d 1372, 1373 (1997); *State v. Brown*, 121 Idaho 385, 393, 825 P.2d 482, 490 (1992); *State v. Burdett*, 134 Idaho 271, 276, 1 P.3d 299, 304 (Ct. App. 2000). A sentence of confinement is reasonable if it appears at the time of sentencing that confinement is necessary "to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution applicable to a given case." *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). Where an appellant contends that the sentencing court imposed an excessively harsh sentence, we conduct an independent review of the record, having regard for the nature of the offense, the character of the offender, and the protection of the public interest. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982).

Ramstead does not allege that his sentence exceeds the statutory maximum (a potential sentence of life imprisonment due to the persistent violator enhancement, I.C. § 19-2514), and he thus bears the burden of proving a clear abuse of discretion. Ramstead merely cites evidence of

¹ Although not noted by either party, we also observe that even if Wilson's testimony were accepted as credible, the timeframe presented by her testimony indicates that the methamphetamine found by the arresting officer was not the methamphetamine left by Wilson. Wilson testified that the day after she left the methamphetamine, she returned to retrieve it, but it was not there. Based on Wilson's most precise estimate of the date of her first visit--prior to May 15, 2009--the date of her attempted retrieval would have been no later than May 15, five days prior to Ramstead's arrest. Thus, Wilson's testimony is that at least five days prior to Ramstead's arrest, there was no bag of methamphetamine in the area near the fence, further supporting the State's argument that the bag of methamphetamine located by the arresting officer was discarded by Ramstead.

“his minimal criminal history between his release from prison in 2005” and his arrest in 2009, along with select positive reports from the same period, arguing that rehabilitation is an important factor that should be considered by the court. Rehabilitation is indeed an important factor, but so are the other factors of societal protection, retribution, and deterrence, as noted by the district court. Giving consideration to all of these factors, and in light of Ramstead’s lengthy criminal history that includes five previous felony convictions and numerous misdemeanor convictions, we conclude that Ramstead’s fifteen-year sentence with a three-year fixed term was not a clear abuse of discretion.

III.

CONCLUSION

The trial evidence was sufficient to sustain the jury’s finding of guilt, and the trial court correctly denied Ramstead’s motion for a new trial. Ramstead’s sentence is not excessive. Therefore, the judgment of conviction and sentence are affirmed.

Chief Judge GRATTON and Judge MELANSON **CONCUR.**