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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1045**

State of Minnesota,
Respondent,

vs.

Roland Lee Anderson,
Appellant.

**Filed June 12, 2017
Affirmed
Cleary, Chief Judge**

Hennepin County District Court
File No. 27-CR-15-9339

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Lydia Maria Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Cleary, Chief Judge; and Connolly, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

Appellant Roland Lee Anderson challenges the district court's denial of his motion to suppress the evidence due to an unlawful search and seizure, and challenges his

conviction of ineligible possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2014). Because (1) appellant lacked a legitimate expectation of privacy relating to the area searched and the seized firearm in order to challenge the search and seizure, and (2) the evidence at trial was sufficient to prove appellant possessed the firearm, we affirm.

FACTS

In April 2015, the state charged appellant with one count of possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2). The charge stemmed from an incident on the evening of January 26, 2015, at the Little Earth of United Tribes housing complex in Minneapolis, when law enforcement stopped appellant as a passenger in a vehicle and discovered a firearm in an infant car seat.

Appellant moved the district court to suppress the evidence of the firearm contending that law enforcement lacked the requisite reasonable suspicion to seize appellant and lacked a warrant or warrant exception to justify the search of the vehicle where the firearm was discovered. The district court held a contested omnibus hearing on February 3, 2016, where three law-enforcement officers testified.

At the omnibus hearing, Officer Campbell testified that on the evening of January 26, 2015, he was patrolling the area of the Little Earth housing complex with his partner, Sergeant Hatle. Campbell and Hatle were working off-duty security for the housing complex. Campbell said that, as he and Hatle were driving past a parking lot entrance to the complex, he observed two people entering an SUV-type vehicle. The SUV was parked with its windshield facing away from the curb, as if it backed in. After passing

the parking lot entrance by a few feet, Campbell stopped their squad, backed up, and then entered the lot.

Campbell initially testified that the two people who entered the SUV were familiar to him from past arrests and incidents, however, he was not clear when exactly he realized their identities. Campbell next indicated that he did not initially identify the men and he stated that he backed up and entered the parking lot because he wanted to see who the men were. The person who sat in the front passenger seat of the SUV was later identified as appellant, and the person who entered the rear passenger side was identified as M.R. A woman was in the driver's seat, and two children and an infant were in the back seat.

After entering the parking lot, the officers shined their squad car's spotlight on the vehicle. Campbell testified that seeing appellant and M.R. in the area concerned him because appellant was trespassed "numerous times" from the housing area, and Campbell thought that M.R. had a probable-cause pickup for a recent shooting and was trespassing on the premises. Campbell said that he had no suspicion of criminal activity until he identified M.R.

Campbell said that he and Hatle approached the vehicle, identified themselves, and told the occupants of the vehicle to put their hands up. Campbell said that appellant "turned to the left in the front seat," and that he could not see appellant's hands. M.R. was in the backseat and he "kind of bent forward and turned to the left by the baby seat." Appellant and M.R. eventually complied with raising their hands and the officers removed them from the SUV.

Campbell detained M.R. because of the probable-cause pickup and trespass. Once M.R. was taken out of the SUV and detained, Campbell realized he was mistaken about the probable-cause pickup, but M.R. had been issued a trespass notice the previous October and the notice was still active. Campbell placed M.R. in his squad and began processing paperwork for the trespass. While M.R. was in the back of Campbell's squad car, police discovered a firearm in the SUV. M.R. told Campbell that appellant had handed him the firearm to hide it.

Campbell testified that appellant was detained because he thought that appellant was also trespassing. Campbell said that he eventually realized appellant was not on a trespass notice, but Campbell could not remember if this realization came before or after the search of the SUV.

Sergeant Hatle also testified at the omnibus hearing. Hatle said that as he and Campbell were passing the parking lot entrance, Campbell said to Hatle that he just observed someone duck when the person noticed their squad car and the person looked shocked. He said the SUV was 20 to 25 yards away at this point. Hatle confirmed the officers entered the parking lot and shined a spotlight on the SUV. He said that he noticed two males inside the SUV. He said the front passenger, appellant, caught his attention right away by the "shocked" look on his face. Hatle recognized appellant and thought he was on a trespass notice at the time. Hatle said that he observed appellant make a "movement real quick to the back seat like he was placing something . . . and then [M.R.] in the back seat was moving around."

Hatle said that his decision to draw his firearm and approach the vehicle was based on appellant and M.R.'s "furtive" movements and the surprised looks on their faces, and because he thought they were hiding either narcotics or a weapon. He also said that the area was dangerous.

Hatle radioed for backup, and other officers arrived moments after. He removed M.R. and appellant from the vehicle. The two were cuffed, pat-frisked, and handed off to other officers. No weapons were found on their persons. Hatle saw that there were children still in the SUV and the mother was outside the car. He testified that he ordered a responding officer, Officer Young, to search behind the driver's seat for weapons. Hatle said that he discovered that there was not a trespass notice in effect for appellant after the SUV was searched. Hatle testified that he did not view drugs or weapons in plain view, there was no "medical emergency" to justify a search, he had not received consent to search, and the vehicle was not being impounded.

Officer Young, then an on-duty officer with the Minneapolis Police Department, testified at the hearing that she responded to Hatle's call for assistance. When she arrived, appellant and M.R. were outside the SUV, and two older children and an infant in a car seat were still in the SUV. Young said that Hatle instructed her to assist with removing the children in the car. Young drew her attention to the infant in the car seat behind the driver's seat. Before Young lifted the infant out of the car seat, she observed what appeared to be a handgun. She could see the grip of the firearm sticking out from between the infant's legs. Young removed the infant and officers seized the firearm.

On March 3, 2016, the district court denied appellant's suppression motion. In its order, the district court confused the identities of appellant and M.R., and concluded that the police had a reasonable suspicion to stop appellant because they believed that they had probable cause to arrest appellant for a recent shooting.

A court trial was held in March 2016. The only issue at trial was whether appellant possessed the firearm. Testimony from law enforcement was substantially similar at trial to the testimony at the omnibus hearing. Appellant testified at trial and denied possessing the firearm. Appellant said that, when M.R. entered the back seat, appellant turned around to shake M.R.'s hand. Appellant testified that he was not aware M.R. had a gun. However, in a prior police statement, appellant said that M.R. had tried to hand him something, presumably the firearm, when police approached the SUV, but that he shrugged M.R. off.

The district court found appellant guilty on April 1, 2016. Appellant challenges the district court's order denying his motion to suppress and appeals his conviction.

D E C I S I O N

I. Motion to Suppress the Firearm

Appellate courts review de novo a district court's determination of reasonable suspicion as it relates to an investigatory stop. *In re G.M.*, 560 N.W.2d 687, 690 (Minn. 1997). Appellate courts independently review the facts and determine, as a matter of law, whether the district court erred in suppressing or not suppressing the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). A district court's findings of fact will not be set aside unless they are clearly erroneous. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn.

2008). Findings of fact are clearly erroneous if this court is left with the definite and firm conviction that a mistake occurred. *State v. Diede*, 795 N.W.2d 836, 853-54 (Minn. 2011).

Appellant argues that (1) the district court's order denying suppression was tainted by clearly erroneous factual findings that influenced the district court's decision, (2) law enforcement lacked the requisite reasonable suspicion to seize him, and (3) law enforcement unlawfully expanded the scope of the stop in searching the SUV where they discovered the firearm.

We agree with appellant that the district court's order denying suppression was tainted by clearly erroneous factual findings. Law enforcement did not have probable cause to believe that appellant was involved in a recent shooting. We also have doubts that law enforcement's mistakes of fact regarding whether appellant was trespassing were reasonable, and that without those facts they possessed a reasonable suspicion that appellant was engaged in criminal activity. Nevertheless, appellant cannot challenge the search of the SUV where law enforcement discovered the firearm because he had no expectation of privacy in the vehicle or the item seized.

In general, a passenger stopped in a vehicle may challenge the stop. *State v. Ritchie*, 379 N.W.2d 550, 552 (Minn. App. 1985), *review denied* (Minn. Feb. 14, 1986). But in order to contest a search of property, "a defendant must establish a legitimate expectation of privacy relating to the area searched or the item[s] seized." *State v. Licari*, 659 N.W.2d 243, 249 (Minn. 2003) (alteration in original) (quotation omitted); see *In re Welfare of B.R.K.*, 658 N.W.2d 565, 571 (Minn. 2003) (determining that a defendant must show that

he or she personally has an expectation of privacy in the place searched, and that his expectation is reasonable). “Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted.” *Rakas v. Illinois*, 439 U.S. 128, 133-34, 99 S. Ct. 421, 425 (1978) (quotation omitted).

Here, appellant has not contended he had a subjective, personal expectation of privacy in the SUV. The record shows appellant was only a passenger in the SUV, and appellant does not contend he had any possessory interest in the vehicle. Appellant denies that he possessed the item seized. Even if appellant asserted a subjective expectation of privacy in the back seat of a vehicle in which he was a passenger, this expectation would not be reasonable because there is no evidence that appellant was more than a brief passenger in the vehicle. Appellant did not sit in the back seat of the SUV, and was not inside the SUV when the back seat area was searched. Because appellant lacked a legitimate expectation of privacy in the area searched and the item seized, he has no standing to challenge the SUV search, or the admissibility of the firearm.

II. Sufficiency of the Evidence

Appellant next challenges his conviction, arguing the state failed to prove beyond a reasonable doubt at his court trial that he possessed the firearm.

In reviewing the sufficiency of evidence in a criminal case, appellate courts are limited to ascertaining whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a fact-finder could reasonably conclude that the defendant was guilty of the offense charged. *Bernhardt v. State*, 684 N.W.2d 465, 476

(Minn. 2004). The evidence is considered in the light most favorable to the verdict. *Id.* at 477. This court assumes the fact-finder believed the state’s witnesses and disbelieved any evidence to the contrary. *State v. Porter*, 674 N.W.2d 424, 427 (Minn. App. 2004).

It is a crime for a person to possess a firearm when the person has previously been convicted of a crime of violence. Minn. Stat. § 624.713, subd. 1(2). Appellant stipulated at his trial that he was convicted of a crime of violence, so the only issue was whether he possessed the firearm found in the SUV. To prove possession, the state must show beyond a reasonable doubt that appellant either had actual or constructive possession of the firearm. *Porter*, 674 N.W.2d at 427. “Actual possession, also referred to as physical possession, involves direct physical control.” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted).

Constructive possession may be established either (1) by proof that the item was in a place under the defendant’s exclusive control to which other people did not normally have access or (2) by proof of a strong probability that the defendant was at the time consciously exercising dominion and control over it, even if the item was in a place to which others had access.

Id. at 353-54 (quotations omitted).

Here, the district court concluded that appellant had constructive possession over the firearm. The court found that appellant “knowingly possessed the gun when police approached,” and that he “knowingly exercised dominion and control over the firearm.” The district court did not find appellant’s testimony that M.R. attempted to give him the firearm believable. The district court credited M.R.’s statement to police that appellant

gave M.R. the firearm. In its conclusions of law after the bench trial, the district court determined:

Officer Campbell, Sgt. Hatle, and Defendant all testified that defendant moved toward the backseat, toward [M.R.]. Sgt. Hatle saw that Defendant appeared to have something in his hand. Although the officer could not see at the time what was in Defendant's hand, it is reasonable to infer, and this Court expressly finds, that the object was the firearm. After Defendant handed the gun to [M.R.], [M.R.] made a quick movement to his left, so he could place the gun in that area. Neither individual complied with officer commands to put their hands up. Such behavior is consistent with hiding a handgun from police. . . . [M.R.] told police that Defendant gave him the gun to hide. Defendant told police that he knew the gun was in the car. Lastly, Defendant's DNA was likely on the handgun, consistent with Defendant having handled the gun.

Appellant argues that his conviction was based on circumstantial evidence, warranting a heightened standard of review. However, the direct evidence presented at trial was sufficient to prove appellant's guilt.¹ M.R. told police that appellant gave him the firearm, and the district court found this credible. "Because the weight and believability of witness testimony is an issue for the district court," this court gives deference to a district court's credibility determinations. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003). Further, the officers testified about their direct

¹ "‘Direct evidence’ is ‘[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.’” *Bernhardt*, 684 N.W.2d at 477 n.11 (alteration in original) (quoting *Black’s Law Dictionary* 596 (8th ed. 2004)). “‘Circumstantial evidence’ is defined as ‘[e]vidence based on inference and not on personal knowledge or observation’ and ‘[a]ll evidence that is not given by eyewitness testimony.’” *Id.* (alteration in original) (quoting *Black’s Law Dictionary* 595 (8th ed. 2004)).

observations of appellant and M.R.'s furtive movements, which were consistent with appellant possessing a gun and handing it to M.R. to hide in the back seat. In giving deference to the district court's acceptance of M.R.'s statement to police, there is sufficient direct evidence that appellant possessed the weapon.

We agree with the state that, even under the heightened circumstantial-evidence test, the evidence is sufficient. If a conviction is based on circumstantial evidence, "[t]he circumstances proved must be consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Bernhardt*, 684 N.W.2d at 477 (quotation omitted). Applying the circumstantial-evidence standard is a two-step process. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). "The first step is to identify the circumstances proved." In identifying the circumstances proved, we defer to the fact-finder's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the state. *Id.* at 598-99. As with direct evidence, conflicting evidence is construed in the light most favorable to the verdict. *Id.* at 599. The second step is to independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). In the second stage of the analysis, we give no deference to the fact-finder's choice between reasonable inferences. *Id.* at 329-30.

The circumstances proved at trial are the following findings by the district court: (1) when police shined a spotlight on the SUV, appellant immediately moved his entire

upper torso to his left; (2) appellant appeared to have something in his hand, and he moved his right arm over his left shoulder toward M.R.; (3) seconds later, M.R. made movements to his left near the infant car seat; (4) after being commanded to put their hands up, appellant and M.R. failed to comply; (5) M.R. told law enforcement that appellant gave him the gun; (6) appellant's statement to police suggested that he knew a firearm was in the vehicle; and (7) appellant's DNA was among the 4.5% of the general population that cannot be excluded as a DNA contributor to the firearm.

Appellant contends that there is an equally reasonable inference that M.R. solely possessed the weapon and placed it in the car seat, which was closest to M.R. However, because this court defers to the fact-finder's acceptance of the circumstances proved, this hypothesis is not reasonable as it does not offer an explanation of the object in appellant's hand and appellant's furtive movements reaching back to M.R.

In sum, under both the direct- and circumstantial-evidence standards of review, the evidence in this case was sufficient to prove beyond a reasonable doubt that appellant possessed the firearm.

Affirmed.