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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1636**

State of Minnesota,
Respondent,

vs.

Chue Feng Yang,
Appellant.

**Filed September 18, 2017
Affirmed
Kirk, Judge**

Anoka County District Court
File No. 02-CR-15-5870

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

Anthony C. Palumbo, Anoka County Attorney, Kelsey R. Kelley, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Kirk, Judge; and Florey, Judge.

UNPUBLISHED OPINION

KIRK, Judge

Appellant challenges his conviction for possession of a firearm and ammunition by an ineligible person, arguing that there was insufficient evidence of constructive possession to support the conviction. Because the state presented sufficient evidence for the jury to

conclude beyond a reasonable doubt that appellant was in constructive possession of the firearm and ammunition, we affirm.

FACTS

On September 10, 2015, appellant Chue Feng Yang was charged with possession of a firearm by an ineligible person, possession of ammunition by an ineligible person, and possession of a silencer.¹ At trial, the only contested element of the offenses was whether appellant possessed the firearm and ammunition. The state proceeded on a theory of constructive possession. The following evidence was presented to the jury:

J.Y., appellant's sister, testified that she visited her brother at his mother-in-law's house in St. Paul on September 8, 2015. Their friend, Y.X., needed a ride to Lino Lakes. Sometime between 10:00 p.m. and midnight, Y.X. was dropped off at appellant's mother-in-law's house and J.Y., Y.X., and appellant left right away for Lino Lakes in appellant's wife's car. J.Y. did not remember if she saw Y.X. get dropped off. On the way to Lino Lakes, they stopped at a gas station to pump gas and also went through a drive-thru. J.Y. drove the entire time and appellant always rode in the backseat. J.Y., Y.X., and appellant were the only people in the car that night.

At approximately 1:48 a.m. on September 9, Lino Lakes Police Officer Peter Noll stopped the car. The car was registered to appellant's wife. The traffic stop occurred in an area that was not well-lit and Officer Noll's ability to see any movement or who was in the car was limited. J.Y. had two male passengers, Y.X., who was the front-seat passenger,

¹ Appellant was acquitted by the district court of count 3, possession of a silencer.

and appellant, who was sitting behind Y.X. in the backseat. J.Y. testified that Y.X. started to act nervous when they got pulled over. He told her that he had an arrest warrant.

Lino Lakes Police Officer Kristen Mobraten responded to the scene of the traffic stop and helped Officer Noll search the car. Before the search, Officer Noll opened the back-passenger-side door of the car for appellant to get out and observed two .22 shell casings on the floor. After appellant got out of the car, Officer Noll observed an additional shell casing on the seat where appellant had been sitting.

Officer Mobraten started searching on the driver side of the car. Officer Mobraten moved a brown towel on the floor behind the driver's seat and exposed a rifle that was attached to a "suspicious" cut-off baseball bat. The rifle was a .22 with a shortened stock and "essentially stretched across the entire backseat . . . door to door." When the rifle was seized, it was loaded and there were two rounds in the firearm. Appellant denied knowing anything about the rifle.

The rifle was not listed as stolen in the FBI's NCIC database. Swabbings were taken from the rifle's stock, trigger, and barrel, and from the baseball bat which was believed to be a homemade silencer. The swabbings were analyzed by Rebecca Dian, a forensic scientist in the biology section at the Tri County Regional Forensic Laboratory. None of the swabbings had enough genetic information for her to make a comparison to a known DNA profile. There were DNA types present, but she could not render an opinion as to whether appellant's DNA was on the rifle.

Dian also received a swabbing from plastic packaging found in the car. The swabbing came from a large baggie that held methamphetamine and was found in the back

pocket of the car's driver seat. Dian was able to determine that the DNA on the plastic "was a mixture of two or more individuals with a major DNA profile that matched [Y.X]." Dian could not make any other determinations as to who else contributed to the DNA profile.

Forensic scientist Erica Henderson of the Bureau of Criminal Apprehension examined the rifle and the three shell casings recovered from the car. She also discovered two shell casings inside the bat when she removed it from the barrel of the rifle. Henderson test fired the rifle to create additional shell casings. She then took the test-fired casings, which she knew came from the rifle, and compared them with the five unknown shell casings. Henderson verified that all of the shell casings had been fired from the same rifle.

After being instructed on actual and constructive possession, as well as exclusive and joint possession, the jury convicted appellant of possession of a firearm and possession of ammunition by an ineligible person.

D E C I S I O N

In considering a claim of insufficient evidence, this court's review is limited to a thorough analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that

the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

“Direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* at 477 n.11 (quotation omitted). “[A] conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence.” *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994). “While it warrants stricter scrutiny, circumstantial evidence is entitled to the same weight as direct evidence.” *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *Jones*, 516 N.W.2d at 549. A jury, however, is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *Webb*, 440 N.W.2d at 430.

In applying the circumstantial-evidence standard, the reviewing court uses a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 600-01 (Minn. 2017); *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 jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate.” *Silvernail*, 831 N.W.2d at 598-99 (quotation omitted). The reviewing court “construe[s] conflicting evidence in the light most favorable to the verdict and assume[s] that the jury believed the [s]tate’s witnesses and disbelieved the defense witnesses.” *Id.* at 599 (quotation omitted).

“The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted). No deference is given to “the fact finder’s choice between reasonable inferences.” *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010). “[I]f any one or more circumstances found proved are inconsistent with guilt, or consistent with innocence, then a reasonable doubt as to guilt arises.” *State v. Al-Nasseer*, 788 N.W.2d 469, 474 (Minn. 2010) (quotation omitted).

Appellant was convicted of possession of a firearm and possession of ammunition by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (Supp. 2015), which provides that a person who has been convicted of a crime of violence “shall not be entitled to possess ammunition or a pistol or semiautomatic military-style assault weapon or . . . any other firearm.” “Possess” is not defined within the statute, but caselaw dictates that the state may prove possession by either actual or constructive possession. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). Because the firearm was not found on appellant’s person, the state’s evidence of possession was circumstantial.

In order to prove constructive possession, the state must show that there is a strong probability, inferable from the evidence, that the defendant consciously exercised dominion and control over the firearm and ammunition at the time. *State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975); *see also Salyers*, 858 N.W.2d at 159 (noting that Minnesota courts “have consistently applied *Florine*’s analysis as the test for constructive possession”). The constructive-possession doctrine allows a conviction where the state cannot prove actual possession, but where “the inference is strong that the

defendant physically possessed the item at one time and did not abandon his possessory interest in it.” *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). Constructive possession means that either: (1) the items were found in a place under the defendant’s exclusive control that other people did not normally have access to, or (2) if the items were found in a place that others had access to, there is a strong probability, inferable from the evidence, that the defendant was, at the time, consciously exercising dominion and control over them. *State v. Porter*, 674 N.W.2d 424, 427 (Minn. App. 2004). “Proximity is an important factor in establishing constructive possession.” *State v. Porte*, 832 N.W.2d 303, 308 (Minn. App. 2013) (quoting *State v. Breaux*, 620 N.W.2d 326, 334 (Minn. App. 2001)). Constructive possession may be exclusive or joint. *See State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009).

Appellant argues that his convictions must be reversed because the state failed to present sufficient evidence that he was in constructive possession of the firearm and ammunition. Appellant asserts that the state’s circumstantial evidence did not form the “complete chain” necessary to support his convictions. Appellant notes that, although proximity is an important factor in establishing constructive possession, proximity itself is not sufficient. *See State v. Sam*, 859 N.W.2d 825, 834 (Minn. App. 2015) (noting that, where appellant did not have exclusive possession of the vehicle, the presence of contraband alone was not sufficient to establish appellant possessed it).

Appellant argues that the state failed to present evidence tying him directly to the illegal items. *See id.* at 835. He asserts that there was no evidence presented that he was aware the firearm and ammunition were in the car, and that even if he was aware of their

presence, that there was no evidence presented that he “exercised dominion and control” over them. *See State v. Smith*, 749 N.W.2d 88, 96 (Minn. App. 2008) (noting that “it is not illegal for [an ineligible person] to be in the presence of firearms—as long as he does not possess them”); *see also Florine*, 303 Minn. at 105, 226 N.W.2d at 611 (noting that “one could not automatically infer from the mere fact that cocaine was found in the automobile that the cocaine belonged to defendant” where possession of the automobile was non-exclusive).

The state argues that appellant’s position that he may not have known the items were in the car is not enough to overturn his conviction because this court “will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010) (quotation omitted). The state also notes that even if the other occupants of the car possessed the firearm and ammunition, appellant is not precluded from having joint constructive possession of them. The state asserts that the only rational hypothesis here is appellant’s guilt and concludes that “it is unreasonable to infer from these facts that [appellant] was unaware of the presence of the rifle or ammunition in the backseat with him.” The state asks this court to affirm appellant’s convictions.

Here, the circumstances proved at trial are: Appellant was a backseat passenger in the car from 10:00 p.m. on September 8, through the traffic stop on September 9. The car was registered to appellant’s wife. Appellant, J.Y., and Y.X. left appellant’s mother-in-law’s house together to drive Y.X. to Lino Lakes right after Y.X. arrived at the house. Y.X. was nervous at the time of the traffic stop and said it was because he had an arrest warrant.

Y.X.'s DNA was found on a plastic baggie containing methamphetamine in the back pocket of the car's driver seat. A .22 rifle with two active rounds of ammunition and five spent shell casings were found in the car. The rifle was found on the floor in the backseat and stretched the full width of the backseat. The spent shell casings had been fired out of the rifle. There was not enough DNA on the rifle to run a DNA comparison.

In this case, there is no evidence that the car was under appellant's exclusive control or that other people did not normally have access to it. The car was registered to appellant's wife, and although appellant was a backseat passenger throughout the relevant time period, J.Y. and Y.X. also could have accessed the backseat. Neither J.Y. nor Y.X. could likely have moved the rifle from their seats in the car due to its length, but they could have placed it in the car or accessed it at the gas station or any time the car stopped. Because appellant did not have exclusive control over the backseat, the state was required to prove that there was a strong probability, inferable from the evidence, that appellant consciously exercised dominion and control over the firearm at the time.

Viewing the evidence in the light most favorable to the conviction, the jury could have reasonably concluded, beyond a reasonable doubt, that appellant consciously exercised dominion and control over the loaded rifle. Here, appellant was closest to the rifle and was the only person who could manipulate it from where he was seated in the car. The car also belonged to his wife, and he sat in its backseat throughout the relevant time period. At the very least, sufficient evidence was presented for the jury to conclude that appellant was in joint constructive possession of the loaded rifle.

Here, because of its location, and because of appellant's relationship to the car's owner, it is not rational to conclude that appellant was not aware of the loaded firearm and that he was not exercising dominion and control over it. Any hypothesis other than guilt would have required the jury to conclude that appellant, despite having the closest ties to the car and being its backseat passenger, was unaware of the presence of a firearm spanning the entire width of the backseat. That hypothesis is not rational on this evidence. The state presented sufficient evidence for the jury to conclude beyond a reasonable doubt that appellant had joint constructive possession of the firearm and ammunition.

Affirmed.