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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0070**

State of Minnesota,
Respondent,

vs.

Randy Donald Reed,
Appellant.

**Filed January 8, 2018
Affirmed
Rodenberg, Judge**

Morrison County District Court
File No. 49-CR-14-1797

Lori Swanson, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General,
St. Paul, Minnesota; and

Brian Middendorf, Morrison County Attorney, Little Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Benjamin J. Butler, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Worke, Judge; and
Toussaint, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Randy Donald Reed appeals from his conviction, after a jury verdict, of being a prohibited person in possession of a firearm. Appellant challenges the sufficiency of the circumstantial evidence that he constructively possessed the firearm, and argues that the district court lacked jurisdiction to determine his guilt because the district court did not comply with the Uniform Mandatory Disposition of Detainers Act (UMDDA). Because the record evidence sufficiently supports the jury's guilty verdict, and because the UMDDA timeline was tolled by appellant's pretrial motions, we affirm.

FACTS

On October 27, 2014, an arrest warrant was issued for appellant, a convicted felon.¹ Two days later, officers arrived at the property of appellant's parents looking for appellant. The officers spoke with several family members and searched the surrounding property, including the camper trailer where appellant's girlfriend was then living and a steel shed attached to a chicken coop. The officers walked around the exterior of the shed and found three doors, two of which were padlocked from the outside and a third that was locked from the inside. Suspecting that appellant was inside the shed, an officer used the public-address system on a law enforcement vehicle to announce that appellant should come out of the shed.

¹ Neither the arrest warrant nor appellant's status as a felon is challenged here.

When appellant did not respond, two teams of officers entered the shed. Once inside, officers observed a “kind of shop or storage area” that included a loft above it. The area also included a makeshift bedroom containing a bunkbed and several coolers. The officers did not immediately see appellant. One officer saw a Winchester 30/30 lever-action rifle laying on a waist-high shelf, approximately four feet from the bunkbed. The officers eventually found appellant lying on the dirt floor beneath the bunkbed.

The state charged appellant with being a prohibited person in possession of the Winchester rifle in violation of Minn. Stat. § 624.713, subd. 1(2) (2014). On June 24, 2015, and while he was incarcerated on an unrelated conviction, appellant signed a written request for disposition under the UMDDA. The request was filed with the district court on July 2, 2015. The UMDDA, enacted in this state as Minn. Stat. § 629.292 (2016), requires the state to bring to trial any untried indictment or complaint against an imprisoned person within six months of the imprisoned person’s request. Appellant did not talk to anyone about the form’s significance and maintains on appeal that he signed it “without knowing what it was about.”

Over the next six months, appellant was assigned a public defender who was unaware of appellant’s UMDDA request. Appellant’s attorney requested two separate 60-day continuances to prepare motions, in August and in November of 2015. These continuances were granted. On December 30, 2015, appellant moved to suppress evidence. Before the omnibus hearing where the motion to suppress would be argued, appellant’s attorney learned that the UMDDA six-month period had expired. Appellant’s attorney requested a continuance of the omnibus hearing because he was in trial in another county.

Appellant's attorney raised the UMDDA issue for the first time at the hearing. After the contested omnibus hearing, the district court denied appellant's suppression motion. Concerning the UMDDA, the district court denied appellant's motion to dismiss the complaint for noncompliance with the UMDDA. The district court ordered that the charges against appellant be tried within 120 days of January 2, 2016, the original UMDDA deadline, adding this 120-day additional period because of the two 60-day continuances that had been granted at the request of appellant's attorney.

The case was tried over three days, from March 21 to 23, 2016. The jury found appellant guilty of possession of a firearm by a prohibited person. Appellant's posttrial motion for acquittal was denied.

This appeal followed.

D E C I S I O N

I. Sufficient evidence supports the jury's verdict.

The jury found appellant guilty of being a prohibited person in possession of a firearm under Minn. Stat. § 624.713, subd. 1(2). Appellant challenges the district court's denial of his motion for judgment of acquittal, arguing that the evidence is insufficient to prove that he constructively possessed the rifle found in the shed near his bunkbed. On appeal, appellant challenges the sufficiency of the evidence and argues specifically that the circumstantial evidence tending to prove constructive possession is insufficient to establish that he had exclusive dominion and control over the rifle.

We review the sufficiency of the evidence based on a thorough analysis of the record, viewing the evidence in "the light most favorable to the conviction." *State v. Webb*,

440 N.W.2d 426, 430 (Minn. 1989); *see also State v. Hawkins*, 260 N.W.2d 150, 157 (Minn. 1977) (requiring a reviewing court to consider the evidence in a manner that is “most favorable to the state” and assume that the jury “disbelieved” any contradictory testimony). If the evidence is “sufficient to permit the jurors to reach the verdict which they did,” *Webb*, 440 N.W.2d at 430, and the jury “could reasonably conclude that the defendant was guilty of the offense charged,” then this court “will not disturb the verdict.” *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

A jury may reach a guilty verdict based on direct or circumstantial evidence. Direct evidence is “based on personal knowledge or observation . . . that, if true, proves a fact without inference or presumption.” *State v. Silvernail*, 831 N.W.2d 594, 604 (Minn. 2013) (quotation omitted). Circumstantial evidence is that “from which the factfinder can infer whether the facts in dispute existed” and “always requires an inferential step to prove a fact.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotations and citations omitted). A conviction based on circumstantial evidence is subject to heightened scrutiny. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). This heightened scrutiny requires us to apply a two-step analysis. *Harris*, 895 N.W.2d at 600. First, we identify the circumstances proved and 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 State.” *Silvernail*, 831 N.W.2d at 598-99 (quotation omitted). Second, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* at 599 (quotation omitted). “[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.” *Al-Nasseer*, 788 N.W.2d at 474 (quotation omitted).

Here, the record contains no direct evidence that appellant actually possessed the rifle. The state relied on circumstantial evidence to prove that appellant constructively possessed it. Constructive possession exists when “there is a strong probability (inferable from other evidence) that the defendant was at the time consciously exercising dominion and control over [the firearm].” *State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975). The constructive-possession doctrine applies in

cases where the state cannot prove actual or physical possession at the time of arrest but where the inference is strong that the defendant at one time physically possessed the [contraband] and did not abandon his possessory interest in the [contraband] but rather continued to exercise dominion and control over it up to the time of arrest.

Id. at 104-05, 226 N.W.2d at 610. To prove constructive possession, the state must show the object in question to have been either (1) “in a place under the defendant’s exclusive control to which other[s] did not normally have access,” or (2) where, despite others having had access to where the object was found, a strong probability exists that the defendant was “consciously exercising dominion and control over it.” *Id.* at 105, 226 N.W.2d at 611.

The state proved these circumstances at trial: appellant, the only person inside the shed with the rifle, had locked the shed from the inside; appellant was the only occupant of the shed; he constructed a bed near where the rifle was found; appellant had been sleeping in the shed for 30 to 40 nights before his arrest; a medical condition prevented appellant from climbing stairs, which would have been necessary for him to enter his

parents' home; the officers found the rifle on a shelf only four feet from the bunkbed under which appellant was hiding; and there were two padlocks on the outside of the shed. The record does not reveal who padlocked the shed from the outside or whether and when others might have had access to the shed.

We next examine the circumstances proved to determine whether there is any rational inference from those circumstances that is inconsistent with appellant's guilt. See *Silvernail*, 831 N.W.2d at 599 (stating that a reviewing court must determine whether circumstances proved are "consistent with guilt"). We see no such inference here. Appellant's proximity to the rifle is an important factor in determining constructive possession. See e.g., *State v. Breaux*, 620 N.W.2d 326, 334 (Minn. App. 2001) ("Proximity is an important factor when establishing constructive possession."); *State v. Denison*, 607 N.W.2d 796, 800 (Minn. App. 2000) (reasoning that the close proximity of a banned substance near the defendant was a factor permitting a jury to infer she had constructive possession of the substance). Appellant was found mere feet from where the rifle was stored, and he remained inside the shed with the rifle despite multiple police orders to come out.² Appellant was the only person in the shed. He was essentially living there when the rifle was found. The rifle was not concealed from view; officers saw it lying on a shelf

² There was testimony that another person owned the rifle found in the shed. But the jury was not obligated to accept that testimony, and the guilty verdict suggests that it may not have believed that testimony. Regardless, it does not matter whether appellant owned the rifle, because the act of exercising dominion and control over the rifle does not depend on ownership. See *State v. Salyers*, 858 N.W.2d 156, 160 n.3 (Minn. 2015) ("[A] person may possess property even if another person owns that property.").

very near appellant's bed. Although appellant raises alternative inferences, "[w]e will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture." *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted). Here, the circumstances proved give rise to a single rational inference—that appellant constructively possessed the rifle found mere feet from where he was arrested, in a space occupied only by him.

II. The district court had jurisdiction despite appellant's UMDDA request made more than six months before disposition.

Appellant also argues that the district court lost jurisdiction over the case because it did not honor his UMDDA request and failed to dispose of this charge within six months of appellant's request. The district court here determined that the six-month period was tolled by appellant's continuance requests.

The UMDDA allows detained persons charged with a crime to request a final disposition of a pending untried indictment or complaint. Minn. Stat. § 629.292, subd. 1. Once a petition is received by the court and prosecuting attorney, the case must be "brought to trial" within six months. Minn. Stat. § 629.292, subd. 3. The purpose of the UMDDA is to "establish a prisoner's right to a speedy disposition of untried charges." *State v. Miller*, 525 N.W.2d 576, 583 (Minn. App. 1994). Additional time may be added to the six-month period when the district court finds good cause, when the parties stipulate for a continuance, or when a continuance is granted "on notice to the attorney of record and opportunity for the attorney to be heard." Minn. Stat. § 629.292, subd. 3.

Here, the district court did not find "good cause" to exceed the UMDDA's six-month period before that period ended. We recognized in *State v. Kurz* that a "good cause"

determination to extend the applicable period must be made within it. 685 N.W.2d 447, 449 (Minn. App. 2004), *review denied* (Minn. Oct. 27, 2004). Accordingly, the good-cause provision of Minn. Stat. § 629.292, subd. 3, has no application here.

Kurz also recognized a tolling exception when a delay in disposition is caused by the defendant. 685 N.W.2d at 449-50. Here, we follow the analysis in *Kurz* rather than the earlier *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972), analysis we applied in *Miller*. Compare *Kurz*, 685 N.W.2d at 450 with *Miller*, 525 N.W.2d at 581-83. The district court recognized that appellant requested the stipulated continuances that occasioned the delay in disposing of the charge. The state received appellant's signed UMDDA request on July 2, 2015. Six months from that date was January 2, 2016. On August 31, 2015, appellant's attorney requested a 60-day continuance to prepare omnibus motions. On November 2, 2015, appellant's attorney requested another 60-day continuance to prepare a motion to suppress evidence. The state did not object to either continuance request. The district court granted both continuances.

The district court did not err. These continuances requested by appellant's lawyer tolled the six-month period under the UMDDA. See Minn. Stat. § 629.292, subd. 3; *Kurz*, 685 N.W.2d 447. The UMDDA trial period was tolled for the duration of the time afforded to appellant's lawyer under the continuances, and for the time that the district court considered appellant's motion to dismiss. See *Kurz*, 685 N.W.2d at 449-50. Appellant argues that there was no tolling because he did not know what he had signed and his attorney was unaware of his request. Regardless of the subjective belief or knowledge of the request, the continuances requested by appellant, and granted by the district court,

tolled the six-month period. The situation here is similar to that in *Kurz*: a defendant's filing of motions cannot "create a UMDDA violation" by causing the proceedings to extend beyond the six-month period. *Id.* at 450. The short extension of time to accommodate appellant's counsel were reasonable and tolled the UMDDA period.

Because the six-month period under the UMDDA was tolled during the period after appellant's lawyer requested continuances and until the district court decided appellant's motions, the district court retained jurisdiction to adjudicate the state's charge against appellant despite the expiration of more than six months from the receipt of appellant's UMDDA request. As we noted in *Kurz*, dismissal would be "absurd" in such a circumstance. *Id.*

Affirmed.