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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0679**

State of Minnesota,
Respondent,

vs.

Ricky Lee Collins, Jr.,
Appellant.

**Filed April 9, 2018
Affirmed
Connolly, Judge**

Scott County District Court
File No. 70-CR-16-6485

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

Ronald Hovevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for respondent)

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

Considered and decided by Connolly, Presiding Judge; Halbrooks, Judge; and
Reilly, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his conviction for illegal possession of a firearm and ammunition, arguing that (1) his right to due process was violated when he was required to choose between his right to challenge the admissibility of the state's evidence at a pretrial hearing and his right to a speedy trial and (2) the evidence supports the reasonable inference that appellant was unaware of the presence of the firearm and the ammunition in the vehicle he was driving. Because appellant's right to due process was not violated and because the evidence was sufficient to support the jury's verdict, we affirm.

FACTS

On April 5, 2016, a police officer saw a car with no front license plate, no front bumper, and a smashed windshield exit a gas station parking lot without buying gas. The officer stopped the car, which was being driven by a man later identified as appellant Ricky Collins; two women, later identified as S.F. and J.B., were in the back seat. When the officer asked appellant for identification, appellant said he had no identification with him.

The officer saw an open bottle of vodka in the back seat. A police search of the car produced an empty gun case on the back seat floor, a 9mm magazine loaded with 17 rounds under the armrest on the front seat, an unloaded 9mm handgun and an empty magazine in the locked glove compartment, and seven .38 special rounds of ammunition in the trunk. The search also revealed a wallet lying on top of the gun in the locked glove compartment; the wallet contained multiple identification cards for appellant and for J.B., who said she

owned the gun. Appellant said he did not know that the gun and the ammunition were in the car.

Appellant and J.B. were arrested and taken to the police station, where they conversed in the back seat of the squad car. Their conversation was recorded. Appellant referred to “the gun in the glove compartment” and “the clip” that he “left off” and later said, “I don’t see no crime. [The gun was] unloaded in the glove compartment. . . . Unloaded, no clip in it.” Appellant was charged with three counts of possession of a firearm by an ineligible person.

In August 2016, appellant failed to appear for the contested omnibus hearing at which he planned to challenge the search of the vehicle. A warrant was issued for appellant’s arrest, and his bond was forfeited. His public defender was discharged from the case because of appellant’s failure to appear, in accordance with the standard practice of the public defender’s office in this judicial district.

In October 2016, appellant was arrested in another state and returned to Minnesota. He was not represented at a bail hearing. A public defender was reappointed to his case. A hearing occurred in November, but, because the defense had not filed a statement of the issues to be decided, the state had no witnesses present. Appellant expressed his desire for a speedy trial, saying, “[G]et a fast speedy trial—ain’t no contested omnibus date” and “I just got to go with the fastest [trial date].” He was told that, if he wanted the 60-day period for a speedy trial to start running then, he would need to waive the issues he planned to raise at a contested omnibus hearing. He chose to waive the issues, and a trial was scheduled for December 20, 2016.

In December, the state requested a two-week continuance so the BCA could complete its analysis of fingerprints and the defense could complete expert review of DNA evidence. Over appellant's objection, the continuance was granted.

In January 2017, a jury trial was held on the charges of possession of a handgun, possession of 17 rounds of 9mm ammunition in the front seat of the car, and possession of .38 caliber ammunition in the trunk. During the trial, the police officer testified that his squad car video showed appellant admitting that he picked up the clip, and parts of the video were played for the jury. Appellant wanted the jury to hear the entire video, but his attorney said he believed the video contained inadmissible and unfairly prejudicial evidence. Appellant then fired his attorney and represented himself for the rest of the trial.¹

A forensic scientist testified that she had done DNA testing on the gun and both magazines and found appellant's DNA on each item. Appellant testified that he did not know that the gun was in the car or that a loaded magazine was right next to him.

The jury convicted appellant of illegal possession of the gun and of the ammunition on the car seat, but acquitted him of possession of the ammunition in the car trunk. Appellant was sentenced to 60 months in prison.

He challenges his conviction, arguing that his right to due process was violated when he was required to choose between starting the 60-day countdown period for a speedy trial and having a hearing on the admissibility of the state's evidence and that the evidence was not sufficient to sustain the jury's verdict.

¹ The district court appointed a private attorney as advisory counsel for appellant.

DECISION

1. Right to a speedy trial and right to a hearing on contested evidence

Both rights are governed by the Rules of Criminal Procedure. See Minn. R. Crim. P. 8.03 (a defendant who does not plead guilty must either waive or demand a hearing on the admissibility of evidence); Minn. R. Crim. P. 11.02 (if a hearing is demanded, the district court must conduct one); Minn. R. Crim. P. 11.09 (if a defendant demands a speedy trial, the district court must start the trial within 60 days). “The interpretation of the rules of criminal procedure is a question of law subject to de novo review.” *Ford v. State*, 690 N.W.2d 706, 712 (Minn. 2005).

Appellant argues that he was told that, if he wanted the 60-day period for a speedy trial to start running immediately, he would have to waive the hearing on the contested evidence; alternatively, the evidentiary issues could be resolved before the 60-day period started running. He argues that being required to make this choice violated his rights because “there is nothing in Minn. R. Crim. P. 11 or any other rule that requires a defendant to choose between his right to challenge the admissibility of evidence and his right to a speedy trial.” But appellant was not required to make that choice: he was told that he could either have a hearing and then start the speedy trial period running or start the speedy trial period running immediately and forego the hearing. His choice was whether to have the hearing before starting the 60-day period.

He argues now that “[t]he proper procedure would have been to schedule both events within 60 days and to deal with scheduling conflicts, witness availability, and any other hindrances, as they arise. Then, if necessary, appellant’s speedy trial date could be

pushed out past the 60-day window based on good cause.” See Minn. R. Crim P. 11.09 (providing that, after speedy-trial demand, trial must start within 60 days “*unless the court finds good cause for a later trial date*” (emphasis added)). But appellant had told the district court, “[G]et a fast speedy trial—ain’t no contested omnibus date” and “I just got to go with the fastest [trial date]”, from which the district court reasonably concluded that appellant would not be amenable to pushing the trial “out past the 60-day window,” as he now suggests should have been done.

“[T]he criminal process often requires suspects and defendants to make difficult choices.” *South Dakota v. Neville*, 459 U.S. 553, 564, 103 S. Ct. 916, 923 (1983). Appellant made one choice when he absented himself from the first scheduled omnibus hearing in August and remained in another state until October, thus delaying the hearing until November. That choice had, inevitably, an impact on his right to a speedy trial. Appellant was then without a lawyer, and the November hearing was set to get the case back on a public defender’s calendar, not to address evidentiary issues, because no issue statement had been filed. The fact that appellant’s omnibus hearing had not already occurred when he decided to start the 60-day speedy trial period running was the result of his own choices.²

² Actually, 77 days passed between appellant’s demand and his trial because the BCA evidence was not available. But appellant’s argument that “Despite charging appellant on April 6, 2016, the state was still unprepared to go to trial over eight months later” takes no account of the fact that appellant chose to miss his first omnibus hearing and remain out of the state for four of those months, during which he was unrepresented and his case did not proceed.

2. Sufficiency of the Evidence

Appellant challenges the sufficiency of the evidence to sustain his convictions for possession of a handgun and possession of 17 rounds of 9mm ammunition in the front seat of the car. This court will not disturb a verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably have concluded that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). The issue for a reviewing court is “whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Salyers*, 858 N.W.2d 156, 160 (Minn. 2015) (citations omitted).

Possession “may be proved through actual or constructive possession.” *Id.* at 159. Constructive possession of an item requires a showing that the item was in a place under the defendant’s exclusive control to which other people normally did not have access or, if other people did have access, there is a strong probability inferable from other evidence that the defendant was knowingly exercising dominion and control over the item. *Id.*

When appellant was in the back seat of the squad car with J.B., he referred to “the gun in the glove compartment” and to that gun as “[u]nloaded in the glove compartment . . . no clip in it,” and he said he “left the clip off one time.”³ This was direct evidence of possession of the gun and the clip. *See State v. Larsen*, 901 N.W.2d 433, 439 (Minn. App.

³ A “clip” is defined as “a magazine from which ammunition is fed into the chamber of a firearm.” *Webster’s Ninth New Collegiate Dictionary* 249 (1986).

2017) (noting that a defendant's admission to driving a car was direct evidence that he was driving the car), *review denied* (Minn. Nov. 14, 2017). Also, appellant was the only person in the front seat of the car, there was a gun in the locked glove compartment of the car, and appellant had the key of the glove compartment attached to the ignition of the car. Having the key to the place in which a gun is concealed is direct evidence of constructive possession of that gun. *Salyers*, 858 N.W.2d at 161. The clip was under the armrest next to appellant on the car seat. He concedes that "the firearm and some of the ammunition were found in close proximity to where [he] had been sitting" and that proximity is important to a determination of possession.

Appellant relies on *State v. Harris*, 895 N.W.2d 592 (Minn. 2017), but that case is distinguishable. In *Harris*, evidence showed that: (1) part of a gun was visible to an officer in the space between the headliner and the roof of the car, (2) DNA results placed the defendant in the 25% of the population that could not be excluded from having handled the gun, and (3) there was an alternative explanation for the defendant's failure to stop the car immediately for the police. 895 N.W.2d at 602-03. Collectively, these pieces of evidence were not sufficient to support an inference of possession. *Id.*

Here, the evidence was more significant in three ways. First, the DNA results were conclusive: the DNA found on the ammunition under the armrest had a male profile that "matched the profile of [appellant] and . . . wouldn't be expected to relate to unrelated individuals in approximately one in one billion people" and the DNA on the slide of the gun "did match [appellant's] and would not be expected to occur more than once among unrelated individuals in the world population." Second, although appellant's identification

was in a wallet in the glove compartment, he told the officer he had no identification with him rather than open the glove compartment that contained a gun. Finally, in a videotaped conversation, appellant referred to both the gun in the glove compartment and the ammunition clip on the seat. No reasonable inference other than that appellant was knowingly in possession of the gun and the ammunition could be drawn from this evidence. *See id.* at 600 (upholding the circumstantial-evidence standard of review requiring consideration of both whether a reasonable inference of guilt can be drawn and whether any reasonable inference inconsistent with guilt can be drawn). The evidence was sufficient to support the jury's verdict.

Affirmed.