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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0982**

State of Minnesota,
Respondent,

vs.

Torrance Lovell Jefferson,
Appellant.

**Filed April 30, 2018
Affirmed
Klaphake, Judge***

Hennepin County District Court
File No. 27-CR-16-19773

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jodi Lynn Proulx, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

In this appeal from his conviction of ineligible person in possession of a firearm, appellant Torrance Lovell Johnson argues that the state failed to prove his guilt beyond a reasonable doubt and the district court erred by admitting prejudicial hearsay evidence. We affirm.

DECISION

1. Sufficiency of the evidence

Jefferson argues that the evidence he knowingly possessed a firearm is not sufficient to support his conviction. On a claim of insufficient evidence, this court conducts “a painstaking review of the record to determine whether the evidence and the reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). If a conviction is based on circumstantial evidence, we apply a two-step analysis. *Id.* First, we identify the circumstances proved, deferring to the jury’s acceptance or rejection of evidence. *Id.* Second, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any other rational hypothesis other than guilt.” *Id.* (quotation omitted). At this point in the analysis, we do not defer to the jury. *Id.*

Jefferson was convicted of being an ineligible person in possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2016). Jefferson stipulated that he was not eligible to possess a firearm, so the only question for the jury was whether he knowingly

possessed a firearm. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Possession may be actual or constructive. *Id.* Constructive possession is shown by proving that the firearm was under a defendant's exclusive control, or, if other people had access to the firearm, that "there is a strong probability (inferable from other evidence) that at the time [the firearm is found] the defendant was consciously or knowingly exercising dominion and control over it." *Id.*

The jury found the following circumstances: (1) police were called to a parking lot, where they saw Jefferson, who appeared to be urinating, and two others; (2) Jefferson fled from police, and was arrested by police within two minutes, and he did not challenge his identification as the person who fled; (3) Jefferson jumped a fence and headed into an alley between Washburn Avenue and Vincent Avenue; (4) one officer remained in the parking lot and his partner, who was in his squad car, began to circle the block; (5) the officer saw Jefferson heading west near 3031 Vincent Avenue, which backs up to garages at 3100 and 3104 Washburn Avenue; (6) the officer in the squad radioed the other officer, who seized Jefferson in a vacant lot next to 3104 Washburn; (7) within a few minutes, another officer began looking for contraband in that area and found a gun in between the garages at 3100 and 3104 Washburn; (8) the gun was in good condition and apparently had not been in place for very long; (9) Jefferson cut his hand and was bleeding, but no evidence was given about the extent of the injury, and no blood was found on the gun; (10) no fingerprints were found on the gun, but Jefferson could not be excluded as a source of the DNA found on the gun, although 89.9 percent of the population could be excluded; (11) the BCA was satisfied that the DNA evidence was valid despite potential contamination by a BCA employee; (12)

a juvenile female, who was at the parking lot and who was detained because she did not have identification, was placed in the squad car with Jefferson, and remarked, “You’re not goin[g] to jail. You don’t have your fingerprints on it;” and (13) the juvenile appeared to be speaking about the gun, and not the taser that was removed from her possession before she was placed in the squad car.

Jefferson argues that this is similar to *Harris*, in which the supreme court concluded that the circumstantial evidence was not sufficient to show that Harris knowingly possessed a firearm. 895 N.W.2d at 602-03. But in *Harris*, three people were found in close proximity to the handgun, none of whom could be excluded by DNA testing; Harris was driving a car that he did not own; and the handgun was concealed in the roof of the car, slightly behind the driver’s seat. *Id.* at 602. Here, the other two people at the scene were detained in the parking lot by one officer and testimony placed Jefferson in the area where the handgun was found. Jefferson’s sudden flight from a marked squad car also supports an inference of guilt. *See State v. McDaniel*, 777 N.W.2d 739, 747 (Minn. 2010) (stating that consciousness of guilt can lead a defendant to flee police, even if there are other motivations, and it is the jury’s job to determine if a defendant’s story is credible).

These proved circumstances are consistent with guilt and inconsistent with any rational hypothesis other than guilt, based on the short time involved in the entire incident, the observation of Jefferson by either one officer or the other at key points during the incident, the discovery of the gun in the area where Jefferson was seen, the good condition of the gun, the DNA evidence, and the juvenile’s comment that was recorded in the squad car. The circumstantial evidence is sufficient to sustain Jefferson’s conviction.

2. Admission of hearsay evidence

Jefferson argues that the district court erred by permitting the state to introduce the squad audio recording, which contained the juvenile's hearsay statement, "You're not goin[g] to jail. You don't have your fingerprints on it." Jefferson did not object to introduction of the audio recording containing the hearsay statement. A reviewing court may refuse to consider a challenge to evidence admitted when the defendant has not objected or given grounds for the objection, but may consider whether an evidentiary ruling constituted plain error. *See State v. Rossberg*, 851 N.W.2d 609, 617-18 (Minn. 2014). In doing so, we determine whether there was error, whether the error was plain, and whether it affected the defendant's substantial rights. *Id.* at 618. If we conclude that all three of these elements are present, we will assess whether we "should address the error to ensure fairness and the integrity of the judicial proceedings." *Id.* (quotation omitted).

Both parties agree that the juvenile's recorded remark is hearsay. Hearsay statements are statements, "other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Minn. R. Evid. 801(c). Hearsay statements are generally not admissible, unless they fit within an exception to the rule. Minn. R. Evid. 802. The remark here does not fit within the specific exceptions enumerated in Minn. R. Evid. 803, 804. But "[a] statement not specifically covered by rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule," if certain conditions are met. Minn. R. Evid. 807. The court may admit such a statement if (1) it is offered as evidence of a

material fact; (2) it is more probative than any other evidence the proponent can find with reasonable effort; and (3) “the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.” *Id.*¹

The juvenile’s statement meets these criteria. The state offered the statement to prove that Jefferson knowingly possessed the handgun, a material fact. With no admission by Jefferson, and no direct evidence that he possessed the handgun, it was more probative than other evidence of possession. The general purpose of the evidentiary rules—fairness, elimination of expense, ascertainment of truth, and just determination of proceedings—is served by statement’s admission. Minn. R. Evid. 102. Finally, the statement has “equivalent circumstantial guarantees of trustworthiness.” The statement was voluntary; the declarant appeared to be trying to reassure Jefferson; the declarant had personal knowledge of the situation; and her remarks are corroborated by the circumstantial evidence in the case. *See State v. Griffin*, 834 N.W.2d 688, 693-95 (Minn. 2013). In addition, the juvenile’s statement was recorded and, therefore, accurate—there was no need to rely on someone’s memory of the remarks.

The hearsay statement was admissible under rule 807. Therefore, Jefferson has failed to demonstrate error, the first prong of the plain-error doctrine.

Affirmed.

¹ This rule also requires the statement’s proponent to inform the adverse party in advance; the audio recording’s existence was known to Jefferson before trial.