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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1014**

State of Minnesota,
Respondent,

vs.

Antwan James Woods,
Appellant.

**Filed May 14, 2018
Affirmed
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-15-4581

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Reilly, Judge; and Klaphake, Judge.*

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

UNPUBLISHED OPINION

REILLY, Judge

Appellant Antwan James Woods challenges his conviction for unlawful possession of a firearm, arguing that he received ineffective assistance of counsel and is entitled to relief on his pro se claims. We affirm.

FACTS

In September 2014, Minneapolis police officers responded to an emergency call that involved a man with a gun in a confrontation outside a bar. The bar's security officer, R.S., and a patron at the bar, J.D., saw appellant carrying a gun. J.D. later saw appellant throw the gun into the front seat of a van. Both witnesses identified appellant as the person holding the gun. Officers took appellant into custody and placed him in the back of a police vehicle. The officers escorted J.D. to the police vehicle and asked J.D. if he could identify appellant as the man holding the gun, in a procedure known as a "show-up identification." J.D. identified appellant as the man with the gun and stated that he was "1,000 percent sure" of his identification.

Police officers later recovered the gun from inside the van, collected a DNA sample from both the gun and appellant, and sent the forensic evidence to the Minnesota Bureau of Criminal Apprehension (the BCA) for analysis. The BCA analyst determined that the DNA profile obtained from swabbings of the gun matched appellant's DNA profile.

The state charged appellant with unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2014), and the matter proceeded to a jury trial. The jury heard testimony from R.S., J.D., the responding police officers, the BCA analyst, and

appellant, who testified in his own defense and denied possessing the gun. The jury returned a verdict finding appellant guilty of unlawful possession of a firearm, and the district court imposed the presumptive sentence. This appeal follows.

D E C I S I O N

I. Appellant received effective assistance of counsel.

A defendant is entitled to effective assistance of counsel. *State v. Bobo*, 770 N.W.2d 129, 137 (Minn. 2009). We review ineffective-assistance-of-counsel claims de novo. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003) (citing *Strickland v. Washington*, 466 U.S. 668, 698, 104 S. Ct. 2052, 2070 (1984)). To prevail on such a claim, the defendant must show “(1) that his counsel’s representation ‘fell below an objective standard of reasonableness’; and (2) ‘there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Nissalke v. State*, 861 N.W.2d 88, 94 (Minn. 2015) (quoting *Strickland*, 466 U.S. at 688, 694, 104 S. Ct. at 2064, 2068). In this context, a reasonable probability is defined as “a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068.

“The objective standard of reasonableness is defined as representation by an attorney exercising the customary skills and diligence that a reasonably competent attorney would perform under similar circumstances.” *State v. Vang*, 847 N.W.2d 248, 266-67 (Minn. 2014) (quotations omitted). Trial counsel’s performance is presumed reasonable, and we give “particular deference to trial counsel’s strategic decisions. . . .” *Schneider v.*

State, 725 N.W.2d 516, 521-22 (Minn. 2007). Appellant bears the burden of proving both prongs of the *Strickland* test. *Gates v. State*, 398 N.W.2d 558, 561 (Minn. 1987).

Appellant argues that he was deprived of effective assistance of counsel because his attorney did not challenge the show-up identification procedure. Because counsel's failure to challenge the identification procedure is appellant's principal allegation of ineffectiveness, he must prove that his "claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice." *Kimmelman v. Morrison*, 477 U.S. 365, 375, 106 S. Ct. 2574, 2583 (1986). A reviewing court applies a two-part test to determine whether an identification procedure must be suppressed for violating a defendant's due-process rights. *State v. Ostrem*, 535 N.W.2d 916, 921 (Minn. 1995). We first look to whether the identification procedure was "unnecessarily suggestive" in that the defendant "was unfairly singled out for identification." *Id.* "However, under the second prong of the test, the identification evidence, even if suggestive, may be admissible if the totality of the circumstances establishes that the evidence was reliable." *Id.* A totality-of-the-circumstances analysis considers (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the degree of attention paid to the criminal; (3) the accuracy of the prior description of the criminal; (4) the level of certainty demonstrated by the witness during the identification; and (5) the time between the crime and the confrontation. *Id.*

We determine that the identification procedure was reliable under the totality of the circumstances, even if the show-up identification procedure was unnecessarily suggestive. *See State v. Young*, 710 N.W.2d 272, 282 (Minn. 2006) (stating that identification evidence

may be admissible if totality of circumstances establishes reliability of evidence, even if identification procedure was unnecessarily suggestive). First, the two witnesses had the opportunity to view appellant at the time of the fight. J.D. was approximately ten feet away from appellant and testified that he was “1,000 percent” certain of his identification. Second, both witnesses paid a high degree of attention to appellant. The witnesses testified that they watched the altercation take place. Both witnesses saw appellant holding the gun. Third, J.D. and R.S.’s descriptions of appellant were accurate and consistent. Fourth, the witnesses displayed a high degree of certainty during the identification, and J.D. testified that he was “1,000 percent certain” of his identification. Fifth, very little time—approximately 20 minutes—passed between the crime and the identification.

Taken as a whole, the identification was reliable under the totality of the circumstances, even if the show-up identification procedure was impermissibly suggestive. Because the identification evidence would not have been suppressed at trial, the trial result would not have been different and trial counsel’s representation did not fall below an objective standard of reasonableness. On this record, we determine that appellant failed to satisfy the first prong of *Strickland* because he did not demonstrate that his trial counsel’s performance fell below an objective standard of reasonableness.

Generally, a reviewing court need not address both prongs of the *Strickland* test if one is dispositive. *Hawes v. State*, 826 N.W.2d 775, 783 (Minn. 2013). Nevertheless, we determine that the outcome of the trial would not have been different if counsel had challenged the show-up identification procedure. Even without this evidence, the eyewitnesses identified appellant as the man holding the gun. The witnesses were standing

approximately ten feet away from the confrontation. Both witnesses pointed the police officers toward appellant as the man they had seen holding the gun. Officers later found the gun, and forensic testing revealed that the major DNA profile on the gun slide matched appellant's DNA and the probability that any other person would match the same DNA profile was one in seventy-two billion. Because the outcome of the trial would not have differed if defense counsel had objected to the identification procedure, we determine that appellant failed to satisfy the second *Strickland* prong. Because appellant has not satisfied his burden of establishing ineffective assistance of counsel, we affirm his conviction.

II. Appellant is not entitled to relief on his pro se arguments.

a. Sufficiency of the Evidence

Appellant challenges the sufficiency of the evidence underlying his conviction. Appellant was convicted of possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(2), 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.” Appellant stipulated that he was ineligible to possess a weapon and the only issue for the jury was whether appellant knowingly possessed the gun. The state may prove possession through evidence of actual or constructive possession. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). Actual possession requires “proof that [the defendant] physically had the [gun] on his person,” *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), while constructive possession requires proof that there is a strong probability, inferable from the evidence, that the defendant consciously exercised dominion and control over the firearm

at the time of arrest, *see State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975). Constructive possession may be proved by direct or circumstantial evidence. *See Salyers*, 858 N.W.2d at 160-61.

The parties disagree over the appropriate standard of review. The state argues that the conviction is sustained by direct evidence supplied by two eyewitnesses who saw appellant holding the gun and forensic analysis confirming that appellant's DNA profile matched the DNA material found on the gun. Appellant argues that a heightened standard for review of circumstantial evidence applies. We determine that appellant is not entitled to relief, even under a heightened standard of review. We apply a heightened standard of review when an element of the offense rests on circumstantial evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010). We apply a two-step analysis requiring us to first identify the circumstances proved and then "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved," including "inferences consistent with a hypothesis other than guilt." *State v. Porte*, 832 N.W.2d 303, 310 (Minn. App. 2013) (quotations omitted).

Here, the state proved the following circumstances: (1) two witnesses saw appellant engaged in a confrontation in the middle of the street; (2) both witnesses saw appellant holding the gun; (3) when the police officers arrived 20 minutes later, both witnesses identified appellant as the man holding the gun; (4) police officers retrieved the gun, collected a sample of appellant's DNA, and sent the gun and the DNA samples to the BCA for forensic testing; (5) forensic testing confirmed that the DNA samples matched; and (6) the probability of randomly selecting someone with a DNA profile that matched the

major DNA profile found on the gun was one in seventy-two billion. These circumstances are consistent with a determination that appellant possessed the gun. *See Porte*, 832 N.W.2d at 310.

We next consider whether the circumstances proved are consistent with a reasonable inference other than guilt. *Al-Naseer*, 788 N.W.2d at 473-74. In light of these circumstances, it would be unreasonable for a fact-finder to infer that appellant did not possess the gun. Sufficient evidence exists to permit the jury to conclude beyond a reasonable doubt that appellant was guilty of unlawfully possessing a gun.

b. Legality of Arrest

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures, subject to certain exceptions. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Under Fourth Amendment caselaw, one such exception exists when an officer conducts “a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016) (quoting *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008)). Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate a “particularized and objective basis for suspecting the seized person of criminal activity.” *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (quotation omitted). This standard is “not high,” and a trained police officer may “draw inferences on the basis of all of the circumstances . . . inferences and deductions that might well elude an untrained person.” *Id.* (quotations omitted). Law enforcement may continue the detention as long as

reasonable suspicion remains and the officers act diligently and reasonably in pursuing the investigation. *State v. Moffatt*, 450 N.W.2d 116, 119 (Minn. 1990).

Appellant argues that he was unlawfully seized and detained. We disagree. At the time of appellant's detention, police officers had statements from two witnesses who stated that appellant had been holding a gun. R.S. testified that his view was unobstructed and he did not have "any doubt" that he saw appellant holding a gun. When the officers arrived, R.S. approached the officers and identified appellant as the man holding the gun. J.D. also informed the officers that he saw appellant holding the gun. In light of these circumstances, we conclude that the officers had a reasonable, articulable basis to suspect appellant of criminal activity sufficient to temporarily detain him.

c. Chain of Custody

Appellant urges this court to overturn his conviction on the ground that the chain of custody was broken. "The chain of custody rule requires the prosecution to account for the whereabouts of physical evidence connected with a crime from the time of its seizure to its offer at trial." *State v. Farah*, 855 N.W.2d 317, 321 (Minn. App. 2014) (quotations omitted), *review denied* (Minn. Dec. 30, 2014). This rule requires the district court to be satisfied that "the item offered is the same as the item seized and is substantially unchanged in condition." *Id.* (quotation omitted). But "when the object of real evidence is unique and thus identifiable in court based on its distinctive appearance, a chain of custody is not needed." *State v. Bellikka*, 490 N.W.2d 660, 663 (Minn. App. 1992), *review denied* (Minn. Nov. 25, 1992). The state provided evidence through a police officer that the gun recovered from the scene was the same gun presented into evidence at trial. The officer testified that

he recovered the gun, tagged it with the case number and the gun's serial number, put it into a bag, and placed it into a locked locker in the property room. At trial, the officer identified the gun as the same one he recovered during the night at the bar, based on the identifying information. Appellant did not object to this evidence at trial. *See State v. Quick*, 659 N.W.2d 701, 717 (Minn. 2003) (recognizing that failure to object to admission of evidence constitutes forfeiture). Because the uncontroverted testimony established that the gun collected at the scene was the same gun presented at trial, appellant's chain-of-custody argument fails.

Affirmed.