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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1695**

Randy Eugene Stevens, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed May 7, 2018
Affirmed
Peterson, Judge**

Clearwater County District Court
File No. 15-CR-15-35

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

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

David L. Hanson, Clearwater County Attorney, Bagley, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Peterson, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

In this appeal from an order denying his postconviction petition for relief from his conviction of ineligible person in possession of a firearm, appellant argues that the evidence was insufficient to show that he consciously exercised dominion and control over the firearm at the time of the offense. We affirm.

FACTS

Following a jury trial, appellant Randy Eugene Stevens was convicted of one count of ineligible person in possession of a firearm and fleeing the police on foot. The complaint specifically charged Stevens with possessing a rifle on December 25, 2014.

At trial, the state introduced the following evidence. J.N. testified that, in late fall 2014, Stevens asked to borrow J.N.'s rifle. J.N. was done hunting for the year because the Minnesota deer season had closed, but the White Earth Reservation season was still open, and Stevens, a family friend, wanted to use the rifle for hunting. Although J.N. was not sure of the date of the conversation, he knew that it occurred before December 25, 2014. J.N. loaned Stevens the rifle, and Stevens did not return it before December 25, 2014.

M.T. testified that, on December 25, 2014, he was driving on Lower Rice Lake Road when he saw a pickup truck in the ditch and two men beside the truck flagging him down. M.T. knew both men: Aaron Thompson, the truck's owner, and Stevens. M.T. stopped to help and was removing some chains from his truck bed when Deputy Sheriff Larry Olson drove up. M.T. testified that Thompson fled straight into the woods along the road and that Stevens ran back and forth before running into the woods. M.T. testified that Olson ran after the two men, and M.T. could hear the deputy calling for them to stop.

Olson testified that he originally stopped to assist the men and then believed that he recognized one of the men as having an outstanding felony warrant. Olson knew Thompson, but not Stevens, whom he mistakenly thought was the person with the warrant. Olson contacted local police, who told him that Thompson had an outstanding felony warrant. Olson went to Thompson's house, which was nearby, but no one responded when he knocked. He

returned to the truck in the ditch to arrange for a tow. While waiting for the tow, Olson discovered a loaded rifle under Thompson's truck near the left rear tire.

Investigator Christopher Benson from the Clearwater County Sheriff's Office submitted an inquiry to the Bureau of Alcohol, Tobacco, and Firearms and learned that the rifle was purchased by J.N. Benson then contacted J.N., who told Benson that he had loaned the rifle to Stevens.

The jury found Stevens guilty, and the district court sentenced him to 60 months in prison for the firearm conviction. Stevens did not file a direct appeal. Instead, he filed a postconviction petition asserting that the evidence was insufficient to prove beyond a reasonable doubt that he had actual or constructive possession of a firearm. The district court denied the petition. Stevens appeals.

D E C I S I O N

We review the postconviction court's denial of a petition for an abuse of discretion. *Lapenotiere v. State*, 902 N.W.2d 464, 465 (Minn. App. 2017). In doing so, we review the court's factual findings for clear error and its legal conclusions de novo. *Id.*

Stevens was convicted of ineligible person in possession of a firearm, in violation of Minn. Stat. § 624.713, subd. 1(2) (2014). Stevens stipulated that he was ineligible to possess a firearm. To convict Stevens, the state was required to prove that he knowingly possessed a firearm. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Possession may be proved by showing actual or constructive possession. *Id.* Constructive possession can be proved either by showing that the firearm was under the defendant's exclusive control in a location to which other people normally did not have access, or, if the firearm was found in a place to which

others had access, the state “must show that there is a strong probability (inferable from other evidence) that at the time the defendant was consciously or knowingly exercising dominion and control over it.” *Id.*

When a conviction depends on circumstantial evidence, the reviewing court applies a two-step analysis that first identifies the circumstances that are proved and then determines whether the circumstances proved “are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) (quotations omitted); see *State v. Robertson*, 884 N.W.2d 864, 871 (Minn. 2016). In identifying the circumstances proved, the appellate court defers to the jury’s “acceptance of the proof of these circumstances and rejection of evidence . . . that conflicted with the circumstances proved by the State.” *Robertson*, 884 N.W.2d at 871 (quotation omitted).

In applying the second step, the appellate court must determine the reasonableness of all inferences “that might be drawn from the circumstances proved.” *Id.* (quotations omitted). However, “possibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable.” *State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995).

The circumstances proved are: (1) J.N. loaned Stevens his rifle, and Stevens had not returned the rifle; (2) Stevens and Thompson were standing outside the driver’s-side door of Thompson’s pickup truck; (3) both men fled when Deputy Olson arrived, but Stevens ran back and forth by the truck before running away; (4) when Olson returned to the truck, he found a rifle underneath the driver’s side of the truck, near the rear tire; (5) the rifle was loaded and in good condition; and (6) the rifle was the rifle that J.N. had loaned to Stevens.

Stevens argues that *Harris* supports his claim of insufficient evidence. In *Harris*, after stopping a car that Harris was driving, police found a handgun in the headlining of the car, near the sunroof, slightly behind the driver's seat. 895 N.W.2d at 602. Harris had one passenger in the front seat and one passenger in the rear seat, and no evidence linked the gun to any of the three men. *Id.* The supreme court concluded that the circumstances proved did not preclude a reasonable inference that Harris did not know that the gun was in the car. *Id.*

Stevens contends that, similar to *Harris*, the circumstances here do not preclude the reasonable inference that he did not know that the rifle was under the truck. But, unlike *Harris*, the circumstances here are that J.N. loaned Stevens the rifle that was found under the truck, and Stevens was seen standing next to the truck shortly before Olson found the loaded rifle under the truck. These circumstances directly link Stevens to the rifle, and it is not reasonable to infer that, after receiving the rifle from J.N., Stevens relinquished dominion and control over it to someone else and did not know where it was, but, nevertheless, was standing a short distance from the loaded rifle shortly before it was found. The postconviction court did not err in concluding that the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than that, on December 25, 2014, Stevens was ineligible to possess a firearm and was consciously or knowingly exercising dominion and control over a firearm.

Affirmed.