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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0419**

State of Minnesota,
Respondent,

vs.

Jerrold Daylyn Jackson,
Appellant.

**Filed March 4, 2019
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-16-19607

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Patrick R. Lofton, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Tracy M. Smith, Presiding Judge; Ross, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A Hennepin County jury found Jerrold Daylyn Jackson guilty of possession of a firearm by an ineligible person based on evidence that a handgun was found in the rear

entryway of the apartment he shared with other people. He challenges the sufficiency of the evidence supporting the conviction. We conclude that the circumstantial evidence is sufficient to prove that Jackson knowingly possessed the handgun despite being ineligible to do so. Therefore, we affirm.

FACTS

In late January 2016, the Minneapolis Police Department received information from two confidential informants that Jackson was selling marijuana at his apartment. One of the informants, whom officers deemed reliable, also stated that he or she had seen Jackson inside his apartment with a firearm. Based on this information, the officers began to investigate. As part of their investigation, officers arranged for a controlled buy of marijuana from Jackson at his apartment. Officers then sought and obtained a warrant to search Jackson's apartment, which is the lower unit of a duplex. Officers executed the search warrant on February 3, 2016. Three persons were present: Jackson, D.A., and W.C. Jackson's uncle, who also resided in the apartment, was not present when the search warrant was executed.

Jackson's apartment consists of a living room, three bedrooms, a kitchen, and an entryway to a back door, which the parties sometimes call the "mudroom." In the front bedroom, officers found a small amount of marijuana and a plastic bag containing 29 individually wrapped bindles of cocaine. Subsequent DNA tests revealed that D.A.'s genetic material was on the plastic bag containing cocaine. In the same bedroom, the officers found personal items belonging to D.A., including her state identification card, credit cards, and prescription medication bottles. Jackson told the officers that he typically

sleeps in the front bedroom but allowed D.A. and W.C., who were guests, to sleep together in that bedroom the previous night.

In the kitchen area, officers found a digital scale, paperwork bearing Jackson's name, Jackson's cell phone, and several baggies and glass jars containing approximately 48 grams of marijuana. Jackson admitted to the officers that the marijuana belonged to him.

In the mudroom, which is adjacent to the kitchen, officers found a duffel bag containing clothing, a towel, and a loaded handgun on top of the towel. The duffel bag was approximately 12 feet from the marijuana on the kitchen table. When an officer asked Jackson about the handgun, Jackson denied knowing anything about it and asked where it had been found. Jackson stated to the officers that his DNA would not be found on the handgun, and he volunteered to give a sample of his DNA. Officers took a sample of Jackson's DNA and also obtained DNA samples from D.A. and W.C.

The state charged Jackson with (1) second-degree controlled-substance crime for selling cocaine, in violation of Minn. Stat. § 152.022, subd. 1(1) (2014); (2) third-degree controlled-substance crime for possessing cocaine, in violation of Minn. Stat. § 152.023, subd. 2(a)(1) (2014); (3) possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2014); (4) fifth-degree controlled-substance crime for possessing marijuana, in violation of Minn. Stat. § 152.025, subd. 2(b)(1) (2014); and (5) fifth-degree controlled-substance crime for selling marijuana, in violation of Minn. Stat. § 152.025, subd. 1(b)(1).

The case was tried on five days in October 2017. The parties stipulated that Jackson was ineligible to possess a firearm in January and February of 2016. The state presented the testimony of ten witnesses. The lead investigator testified that the quantity of marijuana found at Jackson's apartment was significantly more than what an average user would possess. The lead investigator also testified that drug dealers often keep a firearm for protection because they are likely to possess drugs and large amounts of cash and are less likely to notify the police to resolve disputes. During cross-examination by Jackson's trial attorney, the lead investigator testified that a confidential informant had stated that he or she saw Jackson with a firearm inside his apartment on a date that was approximately one or two weeks before the execution of the search warrant.

A forensic scientist testified that no fingerprints were found on the handgun. But the forensic scientist testified that such a result is not unusual because fingerprints sufficient for comparison are found on handguns in approximately 10 percent of tests. A different forensic scientist testified that DNA testing of the handgun revealed a mixture of the DNA of two or more persons, with a major DNA profile that matched Jackson and was not expected to occur more than once among unrelated persons in the world's population. On cross-examination, the forensic scientist acknowledged that it is possible that a person's DNA may be transferred from a towel to a handgun but, if so, is unlikely, and that it would be even less likely for that type of secondary transfer of DNA to establish a major DNA profile.

The jury found Jackson not guilty of the first and second charges and guilty of the third, fourth, and fifth charges. The district court imposed concurrent sentences of 60

months of imprisonment on count 3, which alleged unlawful possession of the handgun, and 36 months of imprisonment on count 5, which alleged a sale of marijuana. The district court did not impose a sentence on count 4. Jackson appeals.

D E C I S I O N

Jackson argues that the evidence is insufficient to support his conviction on count 3. To prove the offense of possession of a firearm by an ineligible person, the state must prove that a defendant knowingly possessed a firearm while prohibited by law from doing so. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). The parties stipulated that Jackson was ineligible to possess a firearm in January and February 2016. Thus, the question on appeal is whether Jackson knowingly possessed the handgun that was found in the duffel bag in the mudroom of his apartment.

When reviewing the sufficiency of the evidence, we ordinarily undertake “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient” to support the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We must assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). We do “not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

Jackson contends that his conviction rests on circumstantial evidence and that this court should apply the stricter standard of review that applies to circumstantial evidence.

The state disagrees, contending that the conviction is adequately supported by direct evidence. Specifically, the state contends that the record contains sufficient direct evidence in the form of the lead investigator's testimony that one of the confidential informants saw Jackson with a firearm inside his apartment. The state acknowledges that the officer's testimony is hearsay but notes that it was elicited without objection by Jackson's trial attorney during cross-examination and, thus, is admissible as substantive evidence. See *McNab v. Jeppesen*, 102 N.W.2d 709, 711-12 (Minn. 1960); *State v. Jackson*, 655 N.W.2d 828, 833 (Minn. App. 2003). The record is unclear as to whether the firearm observed by the confidential informant is the handgun that later was found in the duffel bag. The complaint alleged that Jackson possessed a firearm "on or about February 3, 2016," which is approximately one or two weeks after the confidential informant's observation. It is unclear whether Jackson's conviction can be based solely on evidence of conduct on a date that clearly precedes the date of the conduct alleged in the complaint. Cf. *State v. Dufour*, 143 N.W. 1126, 1126 (Minn. 1913). Thus, we reject the state's contention that the lead investigator's testimony concerning the confidential informant's observation of a firearm in Jackson's apartment is sufficient to support his conviction on count 3.

The state contends in the alternative that the record contains circumstantial evidence that is sufficient to support the conviction. When reviewing a conviction based on circumstantial evidence, this court applies a two-step analysis to determine the sufficiency of the evidence. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). First, we "identify the circumstances proved." *Id.* (citing *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010)). "In identifying the circumstances proved, we assume that the jury resolved any factual

disputes in a manner that is consistent with the jury's verdict." *Id.* (citing *Andersen*, 784 N.W.2d at 329). Second, we "examine independently the reasonableness of the inferences that might be drawn from the circumstances proved" and "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotations omitted). We must consider the evidence as a whole and not examine each piece of evidence in isolation. *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002).

Both parties focus their appellate arguments on the question whether the circumstantial evidence is sufficient to prove that Jackson constructively possessed the handgun. The supreme court has explained the constructive-possession doctrine as follows:

The purpose of the constructive-possession doctrine is to include within the possession statute those 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 substance and did not abandon his possessory interest in the substance but rather continued to exercise dominion and control over it up to the time of the arrest.

State v. Florine, 226 N.W.2d 609, 610-11 (Minn. 1975) (*per curiam*) (citing Charles H. Whitebread & Ronald Stevens, *Constructive Possession in Narcotics Cases: To Have and Have Not*, 58 Va. L. Rev. 751, 755 (1972)). To the extent that the state seeks to justify Jackson's conviction on the ground of constructive possession, the state's evidence must be sufficient to prove either:

(a) that the police found the substance in a place under defendant's exclusive control to which other people did not

normally have access, or (b) that, if police found it in a place to which others had access, there is a strong probability (inferable from other evidence) that defendant was at the time consciously exercising dominion and control over it.

Id. at 611. The state concedes that the first part of the constructive-possession test does not apply in this case. Accordingly, the key question is whether the state's circumstantial evidence is sufficient to prove that Jackson was "consciously exercising dominion and control over" the handgun when it was found in the duffel bag in his apartment. *See id.*

At the first step of the circumstantial-evidence analysis, we must identify the circumstances proved that are relevant to whether Jackson was consciously exercising dominion and control over the handgun. *See Moore*, 846 N.W.2d at 88. The relevant circumstances are as follows: Jackson lived in the apartment that was searched by law-enforcement officers. Jackson's uncle also lived in the apartment but was not present when officers executed the search warrant. D.A. and W.C. were guests at the apartment when the search warrant was executed, having slept in the front bedroom the previous night. Law-enforcement officers found several baggies and glass jars containing marijuana, a digital scale, Jackson's cell phone, and paperwork bearing Jackson's name in the kitchen area. Jackson admitted that the marijuana found in the kitchen belonged to him. Law-enforcement officers found a loaded handgun in a duffel bag, on top of a towel, in the mudroom that is adjacent to the kitchen. The firearm was found approximately 12 feet from the marijuana on the kitchen table. A forensic scientist was unable to identify any fingerprints on the handgun, which is true in approximately 90 percent of fingerprint tests performed on handguns. DNA testing of the handgun revealed a mixture of DNA from

two or more persons. The major DNA profile on the handgun did not match D.A. or W.C. but matched Jackson and would not be expected to occur more than once among unrelated persons in the world's population. A person's DNA possibly may be transferred from a towel to a handgun, but it is unlikely for that type of secondary transfer of DNA to establish a major DNA profile. A confidential informant observed Jackson in possession of a firearm at his apartment one or two weeks before the search of Jackson's apartment. The lead investigator testified that drug dealers often keep a firearm for personal protection.

At the second step of the analysis, we must "examine independently the reasonableness of the inferences that might be drawn from the circumstances proved" and "determine whether the circumstances proved are consistent with guilt." *Id.* (quotations omitted). The state's theory is that Jackson was exercising dominion and control over the handgun in the duffel bag when officers found it, either individually or jointly with D.A. and W.C., who likely were engaged in drug dealing as well. We agree that a reasonable inference from the state's circumstantial evidence is that Jackson was consciously exercising dominion and control over, and thus was in constructive possession of, the handgun in the duffel bag.

At the second step of the analysis, we also must determine whether the circumstances proved are "inconsistent with any rational hypothesis except that of guilt." *Id.* (quotations omitted). Jackson contends that the circumstances proved do not eliminate the reasonable hypothesis that he was not exercising dominion and control over the handgun. He contends that the state did not introduce any evidence connecting him to the mudroom or to the duffel bag. To the contrary, the mudroom is part of Jackson's

apartment. Although proximity and ease of access to contraband are not, by themselves, proof of constructive possession, they are factors in considering whether a defendant constructively possessed a firearm. *See Harris*, 895 N.W.2d at 601-02; *State v. Salyers*, 858 N.W.2d 156, 159-60 (Minn. 2015). Jackson also contends that the DNA evidence on the handgun is not dispositive evidence that he knew that the handgun was in the duffel bag in the mudroom. Jackson does not argue that his DNA might have been transferred from the towel to the handgun. In other words, Jackson does not contend that we may reasonably infer that he did not touch the handgun. Thus, the state's circumstantial evidence shows that Jackson possessed a firearm in his apartment approximately one to two weeks before the handgun was found, that the handgun was found in Jackson's apartment, that Jackson's DNA was found on the handgun, and that the major DNA profile on the handgun did not match D.A. or W.C. This circumstantial evidence is "inconsistent with any rational hypothesis except that of guilt." *See Moore*, 846 N.W.2d at 88 (quotation omitted). The sufficiency of the state's circumstantial evidence is confirmed by a comparison of the evidence in this case to the evidence in other cases in which the appellate courts have upheld convictions for unlawful possession of contraband that was found in a common area of a residence. *See, e.g., State v. Lorenz*, 368 N.W.2d 284, 287-88 (Minn. 1985); *State v. Colsch*, 284 N.W.2d 839, 841 (Minn. 1979); *State v. Barnes*, 618 N.W.2d 805, 812-13 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001).

In sum, the state's circumstantial evidence is sufficient to prove that Jackson was consciously exercising dominion and control over, and thus was in constructive possession of, the handgun that was found in the duffel bag in the mudroom of his apartment.

Affirmed.