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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0653**

State of Minnesota,
Respondent,

vs.

Desean Demetrius Crayton,
Appellant.

**Filed April 8, 2019
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-17-25403

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Public Defender, Lydia Maria Villalva Lijo, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Reyes, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

COCHRAN, Judge

Appellant Desean Demetrius Crayton challenges his conviction of first-degree drug possession under Minn. Stat. § 152.021, subd. 2(a)(3) (2016), arguing that the

circumstantial evidence presented at trial was insufficient to support the conviction. Because the evidence was sufficient, we affirm.

FACTS

On October 8, 2017, Airport Police Officer Zizzo learned that there was an active warrant for Desean Crayton's arrest. He received information that Crayton would be at the Minneapolis-St. Paul airport that day to meet a woman. Officer Zizzo viewed a photograph of Crayton and attempted to locate him at the airport.

The woman that was to meet Crayton arrived on a flight, and airport police monitored her as she moved about the airport. She eventually waited by a door near the baggage claim—door one. A taxi ultimately arrived and stopped in front of the door. The woman got on her phone and walked directly to the taxi. Officer Zizzo followed her.

Officer Zizzo reached the taxi after the woman had entered it. He opened the rear passenger door and immediately saw that Crayton was seated in the back seat with the woman. Officer Zizzo, who was in uniform, identified himself as a police officer. His weapon was drawn when he opened the door, but he put it away almost immediately when he saw that Crayton's hands were in the air and empty. According to Officer Zizzo, Crayton appeared panicked and in shock. Crayton reached for the door handle and fumbled with it multiple times. Officer Zizzo called Crayton by name and told him not to run. Crayton opened the door and ran out of the taxi.

Crayton initially ran towards door one. He encountered another police officer there, so he changed course and ran instead towards a different door—door two. Several other officers were in the area at that time. Crayton's pants fell as he changed course, which

caused him to stumble. He got back up and continued to run. Officer Zizzo caught Crayton and brought him to the ground. Crayton continued to try to get away even after he had been brought to the ground. Other officers in the area assisted Officer Zizzo. Crayton was placed in handcuffs and arrested. All told, Crayton had fled for about six seconds before he was apprehended. The officers searched Crayton and found several items, but no cell phone.

Just after Crayton was arrested, one of the officers checked the path that Crayton had run. She found a cellphone and a bag of suspected narcotics. Later testing revealed that the bag contained approximately 39 grams of heroin. The officer found these items near where Crayton had stumbled and approximately ten to twelve feet away from where Crayton was apprehended. Multiple officers saw Crayton stumble, but no officer actually observed Crayton drop the items. There were other people in the sidewalk area where Crayton fled.

The state charged Crayton with one count of first-degree drug possession under Minn. Stat. § 152.021, subd. 2(a)(3) (2016) and one count of fleeing a peace officer under Minn. Stat. § 609.487, subd. 6 (2016).¹ At trial, an airport surveillance video of the incident was introduced. The video showed Crayton fleeing the taxi and Officer Zizzo chasing after him, but did not show Crayton stumble.² The video also showed two objects on the

¹ The fleeing conviction is not at issue in this appeal.

² Crayton's entire flight from Officer Zizzo is not depicted in the video. As the camera is focused on the taxi's front end and license plate, Crayton's legs can be seen running past the back of the taxi. The camera then zooms out and pans to the left, where Crayton ran,

sidewalk approximately ten to twelve feet from where Crayton was apprehended. Still photographs from the surveillance video, also introduced at trial, showed that approximately two minutes before Crayton fled through the area, there was no cellphone or bag of heroin on the ground in this area.

Crayton moved for a judgment of acquittal, arguing that the evidence supported a reasonable hypothesis of innocence—that someone else possessed the heroin and dropped it on the airport sidewalk. The district court denied Crayton’s motion. The jury found Crayton guilty of possession of the heroin. The district court sentenced Crayton to 107 months in prison for the drug-possession conviction.

This appeal follows.

D E C I S I O N

Crayton argues that the evidence was insufficient to support the drug-possession conviction. To prove first-degree drug possession, the state must prove that Crayton possessed 25 grams or more of heroin. Minn. Stat. § 152.021.subd. 2(a)(3). There is no dispute that the bag of heroin found on the airport sidewalk near where Crayton stumbled contained approximately 39 grams of heroin. Thus, the question on appeal is whether there was sufficient evidence to prove that Crayton possessed the heroin.

When reviewing the sufficiency of the evidence, this court conducts “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn.

showing Officer Zizzo running towards the sidewalk. By the time the camera catches up to Crayton, he is being apprehended by multiple police officers on the airport sidewalk.

2012) (quotation omitted). We 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). “[W]e will 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.

When the conviction is based on circumstantial evidence, this court conducts a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). First, the court identifies the circumstances proved at trial, disregarding evidence that is not consistent with the jury’s verdict. *Id.* Second, the court considers the inferences that can be drawn from the circumstances proved. *Id.* Appellate courts give no deference to the jury’s choice among reasonable inferences at this second step. *Id.* The evidence is sufficient if the circumstances proved, viewed as a whole, are “consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* Speculation alone, however, is not enough to support a hypothesis consistent with innocence. *State v. Schnagl*, 907 N.W.2d 188, 197 (Minn. App. 2017) (citing *State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010)), *review denied* (Minn. Feb. 28, 2018).

Possession can take two forms—actual or constructive. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). Actual possession involves “direct physical control.” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quoting *Jacobson v. Aetna Cas. & Sur. Co.*, 46 N.W.2d 868, 871 (Minn. 1951)). “The mere fact that an item is not in a defendant’s physical possession at the time of apprehension does not preclude prosecution

for actual possession of [the item].” *Id.* at 354. Constructive possession is established where the state demonstrates:

(a) that the police found the substance in a place under [the] 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 [the] defendant was at the time consciously exercising dominion and control over it.

State v. Florine, 226 N.W.2d 609, 611 (Minn. 1975). Here, the state’s theory of guilt at trial was that Crayton had actual possession of the heroin before he dropped it as he fled from police. Applying the circumstantial-evidence test, we conclude that the evidence was sufficient to support Crayton’s conviction under an actual-possession theory.

The first step of our analysis is to determine the circumstances proved. *Harris*, 895 N.W.2d at 601. Viewing the evidence relevant to possession in the light most favorable to the conviction, the following circumstances were proved at trial: Officer Zizzo received information that Crayton would be at the airport to meet a woman; he also learned that there was an active warrant for Crayton’s arrest; police located and monitored the woman whom Crayton was purportedly going to meet at the airport; Crayton arrived at the airport in a taxi; the woman walked directly to the taxi and got in; Officer Zizzo followed the woman towards the taxi, opened the rear passenger door, and saw Crayton in the back seat; Officer Zizzo had his firearm drawn when he opened the door but put it away once he saw that Crayton was unarmed; Crayton appeared nervous, opened the taxi door, and ran towards door one of the airport; Crayton changed course when he saw a police officer at door one; as he changed course, Crayton’s pants fell and he stumbled; he got back up and

continued to run but he was apprehended shortly thereafter; Crayton fled for only a few seconds before he was apprehended; Crayton was searched and no cell phone was found on him; approximately ten to twelve feet from where Crayton was apprehended, on his flight path and near where he had stumbled, officers found a cell phone and a bag containing heroin; there were other people in the sidewalk area at the time Crayton fled; surveillance footage of the airport showed that the heroin and cell phone were not on the ground approximately two minutes before Crayton attempted to flee from police.

The second step of our analysis is to determine whether the circumstances proved are “consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Harris*, 895 N.W.2d at 601. Crayton acknowledges that it may have been reasonable for the jury to infer that he possessed the bag of heroin but argues that the circumstances proved are consistent with a reasonable hypothesis of innocence—namely, that someone else possessed the heroin and abandoned it on the sidewalk while or after he ran past the area. He asserts that this hypothesis is rational because there were plausible reasons for him to flee the police besides possession of a large amount of heroin, there was no evidence that anyone saw him drop the heroin, there was no forensic evidence (e.g., DNA or fingerprint evidence) that directly tied him to the heroin, and the sidewalk was accessible to passersby.

Despite the lack of forensic evidence and the fact that there were multiple plausible motivations for Crayton to flee from Officer Zizzo, we conclude that the circumstances proved are consistent with Crayton’s guilt and not consistent with any reasonable hypothesis of innocence. The heroin was found on the sidewalk on the path that Crayton

took while fleeing, near where Crayton stumbled, immediately after Crayton's attempted flight ended. And surveillance photos showed the heroin was not on the sidewalk just two minutes before Crayton fled. Considering the timeframe in which the heroin was dropped or placed on the sidewalk and the physical act of Crayton fleeing and stumbling where the heroin was discovered, we conclude that the circumstances proved are clearly consistent with a reasonable inference that Crayton physically and actually possessed the heroin before dropping it as he fled. The only possible hypothesis of innocence is that some other person at the airport dropped a large amount of heroin on the path that Crayton fled, near the spot where Crayton stumbled, at about the same time that Crayton fled, in the presence of several police officers who might have seen the person drop the heroin. "[P]ossibilities 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. Stein*, 776 N.W.2d 709, 719 (Minn. 2010) (quotation omitted). We disagree that Crayton's proposed hypothesis is rational in light of the circumstances proved and conclude that the evidence was sufficient to support Crayton's conviction under the actual-possession doctrine.

Crayton argues that *Harris*, *State v. Knerr*, No. A17-0148, 2018 WL 492621 (Minn. App. Jan. 22, 2018), and *State v. Bemboom*, No. A17-0188, 2017 WL 6567657 (Minn. App. Dec. 26, 2017), support his argument that the evidence was insufficient to prove possession. His reliance on these cases is misplaced. Each of these cases involved a defendant driving a vehicle with a passenger or passengers in the vehicle who might have possessed the contraband in question, without the knowledge of the defendant. *Harris*, 895 N.W.2d at 602; *Knerr*, 2018 WL 492621 at *4; *Bemboom*, 2017 WL 6567657 at *3. The

facts here are substantially different. There was no other person fleeing with Crayton on foot, and the heroin was found on the path that Crayton fled, near where Crayton had stumbled. Unlike in *Harris*, *Knerr*, and *Bemboom*, where the defendants were travelling with companions who also reasonably could have possessed contraband, it is not rational to conclude that somebody other than Crayton dropped the heroin on Crayton's flight path at about the time that Crayton fled.

In sum, the circumstantial evidence is sufficient to prove that Crayton had actual possession of the heroin before he dropped it on the ground near his flight path.

Affirmed.