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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1173**

State of Minnesota,
Respondent,

vs.

Curtis Allen Anderson,
Appellant.

**Filed July 1, 2019
Reversed and remanded
Connolly, Judge**

Hennepin County District Court
File No. 27-CR-17-28221

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

Considered and decided by Connolly, Presiding Judge; Halbrooks, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his controlled substance related convictions, arguing that (1) the state failed to present sufficient circumstantial evidence to prove that he possessed certain drugs found in his vehicle and (2) the district court abused its discretion by giving a prejudicial and erroneous permissive-inference-of-possession jury instruction. We conclude that there was sufficient circumstantial evidence to support the jury's verdicts. However, because we conclude that the permissive-inference-of-possession jury instruction was erroneous and we cannot conclude beyond a reasonable doubt that appellant would have been convicted without the instruction, we reverse and remand for a new trial.

FACTS

In November 2017, appellant Curtis Allen Anderson and his passenger V.S. were stopped by a police officer on suspicion of committing traffic violations. The officer became concerned that appellant was under the influence of a controlled substance because appellant was fidgety and speaking fast. Upon inquiry, appellant admitted to having used marijuana earlier in the day, to having used methamphetamine sometime within the last seven days, and told the officer that he had a marijuana pipe in his vehicle. A drug-detection dog was called and the dog alerted to the passenger side of the vehicle where V.S. had been sitting.

Appellant's vehicle was then searched. A cooler was discovered on the passenger-side floorboard that contained large amounts of marijuana, methamphetamine, and other

items commonly used in the drug trade. A headphone case containing marijuana was also discovered inside the vehicle. Appellant denied knowing anything about the cooler or its contents but admitted to possessing the marijuana found inside the headphone case. However, a lottery ticket, which was filled out by hand with appellant's name and address, was found inside a day planner in a pocket of the cooler. Appellant was subsequently arrested and charged with first-degree possession with intent to sell methamphetamine; first-degree possession of methamphetamine; fifth-degree possession of a mixture containing a controlled substance (THC Wax); and fifth-degree possession with intent to sell marijuana.

At trial, appellant argued that V.S. solely possessed the drugs found in the cooler, that he did not know what was in the cooler, and that the police officer's investigation was flawed and unfair. Appellant argued that the officer's testimony was the only evidence regarding the investigation into who possessed the drugs, pointing out that there was no squad car or body cam footage and that the officer took no photographs of the drugs to show their location within the car. Appellant also wanted to impeach the police officer with a recent court order in an extremely similar case that found "[t]he police officer's testimony . . . was not credible," and that the officer "testified frankly and without hesitation to material events that are not consistent with the video evidence." But the district court prevented appellant from impeaching the officer with that evidence.

At the close of trial, and over appellant's objection, the district court instructed the jury that they could infer appellant knowingly possessed the controlled substances found inside the vehicle if they found that appellant was the driver of the vehicle and that the

controlled substances were found in the vehicle. The jury found appellant guilty on all charged counts. Appellant filed a notice of appeal and argues that (1) there was insufficient circumstantial evidence to prove that he possessed the drugs found inside the cooler, (2) the district court gave a prejudicial and erroneous permissive-inference-of-possession jury instruction, which warrants a new trial, and (3) other issues related to sentencing and evidentiary determinations. Appellant also filed a pro se supplemental brief.

D E C I S I O N

I. Sufficiency of the Evidence

Appellant argues that the state's evidence was insufficient to prove that he constructively possessed the contraband found in the cooler. In reviewing the sufficiency of evidence, an appellate court is limited to ascertaining whether a jury could reasonably conclude that the defendant was guilty of the offense charged given the facts in the record and the legitimate inferences that can be drawn from those facts. *Bernhardt v. State*, 684 N.W.2d 465, 476 (Minn. 2004). This court considers the evidence in the light most favorable to the verdict when it reviews a claim for sufficient evidence. *Id.* at 477.

To prove constructive possession, the state was required to demonstrate either (1) the contraband was found “in a place under [appellant’s] exclusive control to which other people [do] not normally have access,” or (2) if found in a place to which others had access, appellant “was at the time consciously exercising dominion and control” over the contraband. *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975). Two people may be in joint constructive possession of an item. *State v. Harris*, 895 N.W.2d 592, 601 (Minn.

2017). “A conviction based on circumstantial evidence merits stricter scrutiny, requiring that the circumstances proved must be inconsistent with a rational hypothesis of innocence.” *State v. Barnes*, 618 N.W.2d 805, 812 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). However, we “still must give deference to the jury’s ability to assess the circumstantial evidence.” *Id.*

The marijuana and methamphetamine were found in a vehicle operated by appellant. Moreover, appellant displayed suspicious behavior prior to the search, admitted to using marijuana earlier in the day and to having a marijuana pipe in the vehicle, and made incriminating statements. However, arguably the strongest evidence against appellant was the lottery ticket bearing his name that was found inside the cooler containing the drugs. Consequently, there was sufficient circumstantial evidence to support the jury’s verdict.

II. Jury Instruction

Appellant contends that even if we find sufficient circumstantial evidence to support the jury’s verdict, he is still entitled to a new trial because the district court gave a prejudicial and erroneous permissive-inference-of-possession jury instruction.

The district court is given considerable latitude to select the language of jury instructions. *State v. Ihle*, 640 N.W.2d 910, 916 (Minn. 2002). This court “review[s] a district court’s decision to give a requested jury instruction for an abuse of discretion.” *State v. Carridine*, 812 N.W.2d 130, 142 (Minn. 2012). Moreover, jury instructions must “fairly and adequately explain the law of the case.” *Ihle*, 640 N.W.2d at 916. If an instruction materially misstates the law it is erroneous. *Id.* “[I]t is well settled that the

court's instructions must define the crime charged and the court should explain the elements of the offense rather than simply read statutes." *Id.*

Over appellant's objection, the district court instructed the jury that "the presence of a controlled substance in a passenger automobile, *permits the Fact Finder to infer knowing possession of a controlled substance by the driver or person in control of the automobile when the controlled substance was in the automobile.*" (Emphasis added.) The instruction mirrored Minn. Stat. § 152.028, subd. 2 (2016). We agree with appellant that the district court abused its discretion by giving this instruction.

The Minnesota Supreme Court has held that courts should not give permissive inference instructions, including those based on Minn. Stat. § 152.028. *See State v. LaBatte*, 482 N.W.2d 217, 218 (Minn. 1992) (holding an instruction erroneous that stated "*the law permits you to infer knowing possession of cocaine by the driver or person in control of the automobile when the cocaine was in the automobile.*" (emphasis added)). The supreme court has indicated that instructions like the one given in this case are clearly improper because they do not balance the various relevant factors bearing on a jury's determination of the disputed possession issue, but rather "single[] out and unfairly emphasize[] one factor, one piece of the circumstantial evidence, bearing on that determination, thereby suggesting to the jury that in the court's opinion that factor was of greater importance than other relevant factors." *State v. Olson*, 482 N.W.2d 212, 216 (Minn. 1992).

However, even though the jury instruction was erroneous, that does not necessarily require the grant of a new trial. "Rather, harmless error impact analysis is appropriate."

Id. Under this analysis, we ask whether the “record satisfies us beyond a reasonable doubt that the error in so instructing the jury was not prejudicial error requiring a new trial.” *LaBatte*, 482 N.W.2d at 218.

Applying this standard, the Minnesota Supreme Court stated in *Olson* that “[w]hile there undoubtedly was more than enough circumstantial evidence here to support the guilty verdict, we are concerned about the possible impact of the instruction in this case.” *Olson*, 482 N.W.2d at 216. And that “[a]lthough defendant *probably* would have been convicted in any event, we cannot conclude *beyond a reasonable doubt* that he would have been convicted in any event.” *Id.*

Like the supreme court in *Olson*, we cannot conclude *beyond a reasonable doubt* that appellant would have been convicted without the jury instruction. As we indicated above, there was sufficient circumstantial evidence to support the convictions. But the instruction informed the jurors that they were not required to consider appellant’s arguments that contradicted many of the circumstances proved. Consequently, although appellant *probably* would have been convicted in any event, we cannot say *beyond a reasonable doubt* that he would have been.¹

Reversed and remanded.

¹ Appellant filed a supplemental pro se brief challenging the district court’s denial of his motion to suppress arguing that the expansion of the traffic stop was not supported by a reasonable, articulable suspicion of other criminal activity. We have reviewed appellant’s pro se arguments and conclude that the officer had a reasonable, articulable suspicion to briefly expand the traffic stop to investigate other criminal activity. Because we conclude that appellant is entitled to a new trial, we decline to address appellant’s remaining sentencing and evidentiary arguments.