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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1250**

Troy William Drusch, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed March 11, 2019
Affirmed
Connolly, Judge**

Ramsey County District Court
File No. 62-CR-15-9379

Cathryn Middlebrook, Chief Appellate Public Defender, Rachel F. Bond, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

John J. Choi, Ramsey County Attorney, Adam E. Petras, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Bjorkman, Judge; and
Florey, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant challenges his conviction of possession of a firearm by an ineligible person arguing that the state failed to present sufficient evidence that he possessed the firearm recovered from the vehicle he was driving. Because the evidence in the record was sufficient to prove that appellant possessed the firearm, we affirm.

FACTS

In June 2015, a Maplewood police officer observed a car traveling with a burned-out brake light. The officer scanned the license plate number and learned that the registered owner of the car had an active warrant for his arrest. The officer activated the squad car's overhead lights, the vehicle turned into a gas station, and came to a stop. The officer noticed that the driver still had the vehicle in gear and asked the driver to put the vehicle in park and to turn off the ignition.

The driver of the car was appellant Troy William Drusch. Appellant was accompanied by three other individuals. The police were unable to initially determine if appellant was or was not the registered owner because appellant did not have any identification. The officer then asked appellant to step out of the vehicle so his identity could be determined. Appellant appeared overly nervous and was breathing rapidly. He then attempted to flee the scene in the vehicle.

Appellant was stopped by the police when officers jumped through the sunroof, broke the driver-side door window, and reached through the passenger window. Once the vehicle was stopped, the two rear passengers were removed along with D.H., the front seat

passenger who was appellant's then girlfriend. As appellant was being taken into custody, he told police to tell D.H. to "remember what [he] did for her."

A black bag was found on the floor of the front passenger area during a search of the car. The bag contained a loaded .22 caliber pistol. The pistol was not registered to anyone in the car. The police asked D.H. about the bag, and she repeatedly told them that "appellant handed me the bag" right before the traffic stop and that she did not know what was in it. She also shook her head yes when asked by one officer if appellant's comment about asking her to remember what he did for her was in reference to persuading her to say the gun was hers. A DNA sample was taken off the gun. Appellant was subsequently charged with one count of possession of a firearm by an ineligible person pursuant to Minn. Stat. § 624.713, subd. 1(2) (2014).

At appellant's trial, the jury heard testimony from D.H., police officers, and a forensic scientist who examined the DNA collected from the gun. The forensic scientist testified that a DNA sample of skin cells was acquired. It was determined that the gun contained the DNA of at least three individuals. The major profile in the mixture matched appellant's DNA. The DNA did not match the other passengers' DNA. The probability of randomly selecting someone with a DNA profile that matches the major DNA profile found on the firearm was one in one hundred thirty million. The forensic scientist explained that it is unusual that a secondary transfer of skin cells would result in an amount of DNA, let alone a major DNA profile, as significant as what was present on the gun.

D.H. also testified. She stated that she recalled the black bag the police found, but claimed that it was her bag and that no one handed it to her that night. D.H. testified that

she knew there was a gun in the bag because it was her gun. She suggested that her DNA was likely not on the gun because she had just cleaned it off, but that appellant's DNA was likely on it because she had asked him to retrieve drugs from the bag. When state confronted D.H. with her inconsistent statements, she testified that she was untruthful with the officers in order to avoid getting in trouble.

At the conclusion of all of the testimony, the district court instructed the jury that “[e]vidence of any prior inconsistent statement or conduct should be considered only to test the believability and weight of the witness’[s] testimony.” The jury found appellant guilty. Appellant then filed a postverdict motion for a new trial challenging the sufficiency of the evidence, which was denied. This appeal follows.

D E C I S I O N

Appellant argues that his conviction must be reversed because the evidence presented at trial was insufficient to prove that he possessed the firearm found in the vehicle. When considering a claim of insufficient evidence, an appellate court carefully analyzes the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume the jury believed the state's witnesses and disbelieved evidence to the contrary. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). A “verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *State v. Fox*, 868 N.W.2d 206, 223 (Minn. 2015).

The state was required to prove that appellant knowingly possessed the gun in order to convict him of possession of a firearm by an ineligible person. *State v. Salyers*, 858 N.W.2d 156, 161 (Minn. 2015). In order to prove constructive possession, the state must show either that: “(1) the police found the [firearm] in a place under defendant’s exclusive control to which other people did not normally have access, or (2) if police found the contraband in a place to which others had access, there is a strong probability that the defendant was at time consciously exercising dominion and control over [the firearm].” *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975). Because the firearm was retrieved from a vehicle not registered to appellant, which was carrying multiple passengers, the question becomes whether the state’s evidence was sufficient under the second prong—whether appellant was knowingly exercising dominion and control. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017)

When a case is based on circumstantial evidence, as it is here, stricter scrutiny is given to this court’s review of a sufficiency of the evidence challenge. *State v. Bolstad*, 686 N.W.2d 531, 539 (Minn. 2004). This court applies a two-step analysis when reviewing the sufficiency of circumstantial evidence. *Harris*, 895 N.W.2d at 600-01. The first step requires us to determine the circumstances proved. *Id.* at 601. In making this determination, “we disregard evidence that is inconsistent with the jury’s verdict.” *Id.* The second step requires us to “independently consider the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole.” *Id.* “To sustain a conviction based on circumstantial evidence, the reasonable inferences that can be drawn from the circumstances proved as a whole must be consistent with the hypothesis that the

accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Fox*, 868 N.W.2d at 223.

The circumstances proved in this case are that (1) appellant was pulled over because the vehicle’s brake light was burned out and the registered owner of the vehicle was determined to have had an active warrant for his arrest; (2) appellant left his vehicle in gear when he was first pulled over by the police, appeared very nervous, was breathing rapidly, and attempted to flee from the scene when multiple officers approached the vehicle; (3) appellant then told the arresting officer to tell D.H. to “remember what he did for her;” (4) the police found a handgun in a black bag on the floor of the front passenger seat; (5) the major DNA profile found on the firearm matched appellant’s DNA and excluded the other three passengers in the vehicle; (6) the probability of randomly selecting someone with a DNA profile that matched the major DNA profile recovered on the gun was one in one hundred thirty million, and; (7) there was quite a bit of DNA recovered from the gun, and it would be abnormal for a secondary transfer to be responsible for the major DNA profile.

Appellant agrees that the circumstances proved are consistent with guilt, but argues that there is also a reasonable inference inconsistent with guilt: that his DNA was planted on the gun through a secondary transfer. Here, appellant points to the testimony of D.H. who stated that it was her gun in the bag, that appellant did not know of it, that she told appellant to grab drugs from the bag, that his DNA ended up on the gun as he was reaching for the drugs, and that her DNA was not on the gun because she had wiped it off. Thus, appellant argues that there is evidence that his DNA could have been transferred onto the gun when he reached into the bag to grab drugs. However, the testimony of D.H. does not

qualify as a circumstance proved and cannot be used to show a hypothesis inconsistent with guilt in an appeal based on insufficient circumstantial evidence. See *Harris*, 895 N.W.2d at 597-601 (Minn. 2017) (“in determining the circumstances proved, we disregard evidence that is inconsistent with the jury’s verdict.”).

Appellant also points to the testimony of the forensic scientist, who stated that a secondary transfer could not be ruled out, as demonstrating that a secondary transfer was a reasonable hypothesis for how the DNA ended up on the gun. However, the forensic scientist testified that she did not believe that a secondary transfer was likely to have occurred in this case. She did not believe it was likely because “quite a bit of DNA” was recovered from the gun. And that DNA samples that are the product of secondary transfers would normally “be weaker than if [there had been] a direct transfer.” She further testified that while she has reviewed studies on secondary transfers, she did not “know of any studies that have been done that said a major profile was then found”—particularly with skin cells opposed to bodily fluid. Thus, although the forensic scientist could not rule out the possibility of a secondary transfer, mere possibilities are not grounds for reversal “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); *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998) (An appellate court “will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.”).

The evidence taken as a whole makes appellant’s secondary transfer argument an unreasonable inference. Again, the forensic scientist testified that the DNA test resulted in a finding that there was a mixture of at least three individuals’ DNA on the gun, but

determined there was a major DNA profile, which meant that “one person contribut[ed] more DNA than the rest.” She testified that this major profile matched appellant’s DNA. She also concluded that “the probability of obtaining this same profile amongst unrelated individuals would be approximately one in one hundred thirty million. Moreover, the other passengers’ DNA was not found on the gun, appellant tried to flee from the police, and appellant told D.H. to “remember what he did for her.” Based on the circumstance proved as a whole, there is no rational hypothesis except that of guilt. Viewing the evidence in the light most favorable to the jury’s verdict, we conclude that there was sufficient evidence that appellant possessed the gun.

Affirmed.