

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1748**

State of Minnesota,
Respondent,

vs.

Travares Ladell Cyrus,
Appellant.

**Filed September 30, 2019
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-CR-17-9273

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Donovan, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Hooten, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges his conviction of being an ineligible person in possession of a firearm and ammunition on the grounds that (1) the circumstantial evidence was insufficient to convict him because there is a rational hypothesis inconsistent with guilt, (2) the district court committed plain error affecting his substantial rights by admitting a witness's prior consistent statement when the witness's credibility was not challenged and the prior statement was not helpful in assessing credibility, (3) the district court committed plain error affecting substantial rights by permitting the probation officer to provide opinion testimony that the gun on the video was the same one found in the search, (4) the cumulative effect of the errors deprived appellant of a fair trial, and (5) the district court erred when it imposed sentences for two convictions under Minn. Stat. § 609.035 (2016). We affirm.

FACTS

In December 2017, Ramsey County probation officer Sean Corfits made an unannounced visit to the apartment appellant Travares Ladell Cyrus shared with his grandmother, F.C. Cyrus was on probation at the time. Approximately one hour after the visit, Corfits saw a video that Cyrus had posted to the social media application Snapchat. In the video, Cyrus was in a bedroom, and there was a handgun on the floor. Corfits contacted the St. Paul Police Department because Cyrus is ineligible to possess a firearm.

Officer Thomas Diaz accompanied Corfits to Cyrus's apartment. It took Cyrus between 30 seconds and two minutes to open the door. Cyrus and his girlfriend were

present, but F.C. was not home at the time. When the officers told Cyrus the reason for their visit, he asked the officers questions about searching the apartment. The officers heard Cyrus tell his girlfriend that the officers could search his bedroom but no other areas of the apartment. Cyrus informed the officers that they were not allowed to search his grandmother's bedroom.

In the course of searching Cyrus's bedroom, Corfits found a box of ammunition in the closet. Officer Diaz then called F.C. and asked her permission to search the rest of the apartment for firearms. F.C. consented to the search. While searching F.C.'s bedroom, the officers observed a red towel between the mattress and box spring. The officers removed the towel and found a handgun with ammunition in its magazine wrapped inside it.¹ Corfits believed that it was the same handgun that had been in the Snapchat video, but Cyrus denied knowledge of the gun or the ammunition. The officers placed Cyrus under arrest. Officer Diaz later interviewed F.C. She stated that she did not own any guns, had no knowledge of any guns being in the house, and that Cyrus must have put the gun under her mattress that morning. She also said that Cyrus's girlfriend sometimes stayed at the apartment in Cyrus's room.

Cyrus was charged with two counts of possession of a firearm or ammunition by an ineligible person: one count for the firearm and one count for the box of ammunition. The state later amended its complaint to add a third count of ineligible person in possession of a firearm/ammunition for the ammunition found in the magazine of the gun.

¹ The ammunition found in the closet did not fit the gun found under F.C.'s mattress.

The case proceeded to a jury trial, where Corfits, Officer Diaz, and F.C. testified. A Bureau of Criminal Apprehension (BCA) forensic scientist also testified about the results of DNA swabs from the gun and the ammunition, which were inconclusive. Over Cyrus's objections, the district court allowed three recordings to be played for the jury: the Snapchat video that Corfits saw, a jail call that Cyrus made after his arrest, and F.C.'s statement to Officer Diaz on the day of the search.

The jury found Cyrus guilty on all three counts. The district court imposed two 60-month sentences for counts one and three, to be served concurrently, but did not pronounce a sentence for count two. This appeal follows.

D E C I S I O N

A. Sufficiency of the Evidence

Cyrus challenges the sufficiency of the evidence underlying his convictions of possession of the firearm and the box of ammunition as an ineligible person. Upon review of a claim of insufficient evidence, we review the record to determine “whether the evidence, when viewed in the light most favorable to the conviction is sufficient to allow the jurors to reach their verdict.” *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004). We also

assume that the jury believed the state's witnesses and disbelieved any evidence to the contrary. We will not disturb the verdict if the jury, while acting with proper regard for the presumption of innocence and regard for the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.

Id. at 25-26 (citations omitted).

In order to convict Cyrus of possession of a firearm or ammunition as an ineligible person under Minn. Stat. § 624.713, subd. 1(2) (2016), the state was required to prove that Cyrus is ineligible to possess a firearm or ammunition and that he knowingly possessed the firearm and ammunition. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Cyrus stipulated to his ineligibility. Therefore, the issue is whether the evidence was sufficient to prove that Cyrus knowingly possessed the firearm and the ammunition. Possession may be actual or constructive. *Id.* Because Cyrus was not in physical possession of the firearm or the ammunition when the officers found them, we examine whether the evidence is sufficient to prove that Cyrus constructively possessed the firearm and the ammunition.

Constructive possession is established by proof that a defendant exclusively controlled the item in a place where others did not normally have access. *Id.* But if the item is found in a place where others have 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.* Two or more people can jointly constructively possess an item. *Id.* at 603 n.9. In cases of joint possession, the circumstances proved must support a reasonable inference that the defendant, whether alone or jointly at the time, was consciously exercising dominion and control over the item. *Id.* Additionally, the proximity of the item to the defendant is a factor in establishing constructive possession. *State v. Porte*, 832 N.W.2d 303, 308 (Minn. App. 2013).

Possession may be established by direct or circumstantial evidence. *State v. Sam*, 859 N.W.2d 825, 833 (Minn. App. 2015). The parties dispute whether the direct- or circumstantial-evidence standard of review controls. Cyrus contends that his convictions

are based on circumstantial evidence and therefore warrant heightened scrutiny. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (holding that convictions based on circumstantial evidence receive heightened scrutiny upon appellate review). The state asserts that Cyrus’s convictions are based on direct evidence, namely Corfits’s testimony that the firearm that Cyrus possessed in the Snapchat video was the same firearm later found in his grandmother’s bedroom and Cyrus’s statement during a jail call explaining why he was in custody: “Raiding my crib, found some hammas. My dumb a-- in the (inaudible). I’m on Snapchat, they ended up seeing a pole (inaudible). Went in the crib and (inaudible) found the hammas.”²

Direct evidence “is based on personal knowledge or observation . . . that, if true, proves a fact without inference or presumption.” *Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (quotation omitted). Neither Corfits’s “eyewitness account” (based on his review of the Snapchat video) nor Cyrus’s statement are sufficient to prove each element of the offense. *See Porte*, 832 N.W.2d at 309-10. Corfits did not observe the ammunition in the Snapchat video. And while Cyrus acknowledged that law enforcement found a firearm at his residence, he did not admit that he possessed the firearm or the ammunition. Accordingly, we apply the circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

When reviewing a challenge to the sufficiency of circumstantial evidence, we apply a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we

² Corfits testified that “hamma” and “pole” are slang terms for gun.

identify the circumstance proved, deferring to the jury's "acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State." *Id.* at 598-99 (quotation omitted). We assume that the jury "believed the State's witnesses and disbelieved the defense witnesses" and consider "only those circumstances that are consistent with the verdict." *Id.* at 599 (quotation omitted).

Here, the circumstances proved are: Cyrus lived in an apartment with F.C. An hour after visiting Cyrus at the apartment, Corfits saw a video that Cyrus posted to Snapchat. In the video, Cyrus was wearing the same clothes that Corfits had seen him wearing when he visited Cyrus, and there was a handgun visible on the bedroom floor. Corfits decided to search the apartment. It took Cyrus between 30 seconds and two minutes to open the door, which both Corfits and Officer Diaz found suspicious. Cyrus asked questions about the search and told the officers multiple times that they could not search F.C.'s bedroom. After Corfits found a box of ammunition in Cyrus's closet, F.C. consented by phone to a search of her bedroom. Corfits and Officer Diaz found a loaded handgun under the mattress in F.C.'s room. Corfits testified that the gun found in F.C.'s bedroom appeared to be the same gun that he had seen in the Snapchat video. F.C. does not own a gun and told Officer Diaz that Cyrus must have put the gun under her mattress. Cyrus stated in the jail phone call that he was arrested because Corfits saw a gun in the Snapchat video, searched his house, and found the gun.

Having identified the circumstances proved, we determine

whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt. We review the circumstantial evidence not as isolated facts, but

as a whole. We examine independently the reasonableness of all inferences that might be drawn from the circumstances proved; including the inferences consistent with a hypothesis other than guilt We give no deference to the fact finder's choice between reasonable inferences.

Id. (quotations and citations omitted).

Cyrus contends that there is a rational hypothesis inconsistent with his guilt: his girlfriend possessed the gun and the ammunition and that she hid both without his knowledge. But there are two problems with this hypothesis. First, Cyrus raised this theory during trial. During the testimony of the state's witnesses and in closing argument, Cyrus offered this alternative hypothesis, which was ultimately rejected by the jury. Second, even if his girlfriend was in possession of the gun or the ammunition, this theory does not eliminate Cyrus's liability under the joint-constructive-possession doctrine. The handgun was plainly visible in the Snapchat video that Cyrus posted and had been moved by the time that law enforcement searched the residence just a few hours later. The officers were suspicious of how long it took Cyrus to open the door when they arrived, and Cyrus repeatedly told the officers that they were not allowed to search his grandmother's room, where the handgun was ultimately discovered. The mere fact that the girlfriend was also present and had been there on other occasions does not change the "strong probability" that Cyrus knowingly exercised control over the firearm and the ammunition.

B. Evidentiary Issues

Cyrus asserts that the district court committed plain error affecting his substantial rights by admitting F.C.'s out-of-court statement as a prior consistent statement and failing to sua sponte strike it, and by allowing Corfits to give "unhelpful opinion testimony."

Because Cyrus did not object to the admission of either F.C.’s prior consistent statement or Corfits’s testimony on the grounds which he is now challenging their admissibility, the plain-error standard of review controls.

The United States Supreme Court has established a three-prong test for plain error, requiring that before an appellate court reviews an unobjected-to error, there must be (1) error; (2) that is plain; and (3) the error must affect substantial rights. If these three prongs are met, the appellate court then assesses whether it should address the error to ensure fairness and the integrity of the judicial proceedings.

State v. Griller, 583 N.W.2d 736, 740 (Minn. 1998) (footnote omitted). Error is plain when it “is clear or obvious, which is typically established if the error contravenes case law, a rule, or a standard of conduct.” *State v. Webster*, 894 N.W.2d 782, 787 (Minn. 2017) (quotation omitted).

F.C.’s Statement to Officer Diaz

Cyrus argues that F.C.’s recorded statement to Officer Diaz was inadmissible hearsay and that the district court erred by failing to sua sponte strike it. Hearsay is an out-of-court statement offered for the truth of the matter asserted. Minn. R. Evid. 801(c). But an out-of-court statement made by a testifying witness may be admissible as non-hearsay, and may be used as substantive evidence, if the statement is “consistent with the declarant’s testimony and helpful to the trier of fact in evaluating the declarant’s credibility as a witness.” Minn. R. Evid. 801(d)(1)(B).

Before a prior consistent statement can be admitted, the district court “must make a threshold determination of whether there has been a challenge to the witness’s credibility.” *State v. Bakken*, 604 N.W.2d 106, 109 (Minn. App. 2000), *review denied* (Minn. Feb. 24,

2000). Further, the district court must determine that the prior consistent statement was consistent with the witness's testimony and that it would be helpful to the jury. *Id.* That did not occur here.

At trial, Cyrus objected to the admission of F.C.'s statement on other grounds. As a result, the district court did not have the opportunity to rule on whether or not the statement was admissible under Minn. R. Evid. 801(d)(1)(B). We are not persuaded that failure to strike F.C.'s statement was error that was plain. But even if it was error, Cyrus has not met his burden of demonstrating that "there is a reasonable likelihood that the absence of the error would have had a significant effect on the jury's verdict." *State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (quotation omitted). When considering whether erroneously admitted evidence had a significant effect on the jury's verdict, we consider the persuasiveness of the evidence and the manner in which it was presented. *State v. Jackson*, 764 N.W.2d 612, 620 (Minn. App. 2009), *review denied* (Minn. July 22, 2009).

Here, F.C.'s statement to Officer Diaz was largely consistent with her testimony at trial. She consistently stated that she did not own a handgun and that the handgun discovered in her bedroom did not belong to her. While her statement about Cyrus putting the gun under her mattress may have been damaging, it was not particularly emphasized or dramatic. F.C.'s statement to Officer Diaz was one sentence in a three-day jury trial. In effect, F.C.'s statement overtly stated the inference that the state was asking the jury to make. The testimony of Corfits and Officer Diaz strongly implied that Cyrus delayed coming to the door because he was hiding the gun under the mattress. Based on all of the evidence presented, including the testimony of Corfits and Officer Diaz, the Snapchat

video, and Cyrus's jailhouse call, Cyrus has not met his burden of showing that the absence of F.C.'s statement to Officer Diaz would have had a significant effect on the verdict.

Corfits's Testimony

Cyrus contends that the district court erred because it did not strike testimony from Corfits that was "unhelpful" and called for scientific or technical knowledge. The prosecutor asked, "[W]hat's your opinion, I guess generally, on the similarities of that gun that was found in . . . [F.C.'s] room and the video—and the firearm that was in the Snapchat video?" Corfits responded, "From my eyes, it appeared to be the same firearm." Cyrus asserts that this testimony was unhelpful because it was speculative and because the jury was capable of reviewing the Snapchat video and determining if the gun in the video was the same gun discovered in F.C.'s bedroom. But as the state correctly points out, similar lay opinion testimony has been upheld by the supreme court. *See State v. Hudspeth*, 535 N.W.2d 292, 295 (Minn. 1995) (allowing a police officer's opinion testimony as "inference drawn from his observations").

Cyrus also contends that Corfits's testimony was inadmissible because it was based on technical and specialized knowledge of firearms and the state did not establish that Corfits was qualified to testify as an expert on firearms. But Corfits was merely stating his opinion based on viewing the Snapchat video and seeing the gun. His statement did not implicate any particular specialized or technical knowledge. As the state points out, "it is difficult to see what specialized knowledge would be required to compare the guns in the two photos." We conclude that there was no error because Corfits's testimony did not require expert knowledge, and it was helpful to the jury.

Cumulative Impact

Cyrus argues that the cumulative effects of the errors deprived him of a fair trial. We may reverse for a new trial when the cumulative effect of errors denied a defendant a fair trial. *In re Welfare of D.D.R.*, 713 N.W.2d 891, 903 (Minn. App. 2006). Because we conclude that the district court did not err by admitting F.C.’s statement or Corfits’s testimony, we reject this argument.

C. Sentencing

Cyrus contends that he was impermissibly sentenced in violation of Minn. Stat. § 609.035, subd. 1, which provides: “if a person’s conduct constitutes more than one offense under the laws of this state, the person may be punished for only one of the offenses.” Whether an offense occurred as part of a single behavioral incident for the purposes of Minn. Stat. § 609.035 is a mixed question of law and fact. *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). We review factual findings for clear error, and the district court’s application of the law de novo. *Id.*

Cyrus asserts that his possession of the firearm and the ammunition shared a unity in time and place and the same objective, and thus they were part of the same behavioral incident. But Minn. Stat. § 609.035, subd. 3, contains an exception. It states “a prosecution for or conviction of violation of . . . 624.713, subdivision 1, clause (2), is not a bar to conviction of or punishment for any other crime committed by the defendant as part of the same conduct.” Cyrus and the state acknowledge that this issue turns on the meaning of the phrase “any other crime.” In *State v. Holmes*, the supreme court interpreted the exception to the single-behavioral-incident rule in the context of burglary and assault

convictions. 778 N.W.2d 336, 339 (Minn. 2010). The supreme court determined that the “phrase ‘any other crime’ means a crime that requires proof of different statutory elements than the crime of burglary.” *Id.* at 341. Because the elements of first-degree burglary and third-degree assault are not identical, the supreme court held that multiple convictions and sentences were proper. *Id.*

Here, the state was required to prove: (1) that Cyrus is ineligible to possess a firearm and ammunition due to a previous conviction and (2) that Cyrus did possess a firearm and ammunition. As previously stated, Cyrus stipulated to his ineligibility. As a result, in order to convict Cyrus of possession of a firearm by an ineligible person, the state had to prove that Cyrus possessed a gun. In order to convict Cyrus of possession of ammunition by an ineligible person, the state had to prove that he possessed ammunition. The facts in this case make clear that Cyrus’s possession of the firearm and the ammunition are separate crimes. Because we conclude that Cyrus’s possession of the firearm and the ammunition satisfy the exception under Minn. Stat. § 609.035, subd. 3, to the single-behavioral-incident rule, we affirm his sentences.

Affirmed.