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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0307**

State of Minnesota,
Respondent,

vs.

William Dumont White,
Appellant.

**Filed January 13, 2020
Affirmed
Reilly, Judge**

Stearns County District Court
File No. 73-CR-17-8469

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

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

Considered and decided by Reilly, Presiding Judge; Rodenberg, Judge; and Klaphake, Judge.*

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

UNPUBLISHED OPINION

REILLY, Judge

Appellant William Dumont White challenges his conviction and sentence for unlawful possession of a firearm, arguing that (1) insufficient evidence establishes that he possessed the firearm, (2) the district court erred by denying his motion to suppress the firearm evidence, and (3) his aggravated sentence is excessive. Appellant also presents several pro se arguments. We affirm.

FACTS

Late on September 19, 2017, A.N. was shot and taken to the hospital. Appellant received a call from his son (W.W.) that he was at the hospital with A.N. and needed appellant to pick him up. Appellant did not have a vehicle so he contacted his neighbor, J.V., and asked her to drive him to get W.W. She agreed, and the two of them left together in her car.

Meanwhile, St. Cloud Police Officers Kaleb Waaraniemi and Louis Bunde learned that W.W. might have information related to the shooting and had left the hospital on foot. They began a separate search for him. Officer Waaraniemi observed W.W. walking down the street and approached. But before the officer reached him, J.V. pulled up next to W.W., who opened the back passenger door of the vehicle and began to get in behind appellant, who was in the front passenger seat. Officer Waaraniemi called out, identifying himself and stating he wished to speak with W.W. W.W. stood there momentarily, half in and half out of the vehicle, then turned and moved toward the officer. As W.W. moved aside, the

officer noticed appellant, whom he recognized from previous contacts, in the passenger seat of the vehicle. J.V. pulled away and parked nearby.

Officer Bunde arrived shortly thereafter, and the two officers questioned W.W. and pat-searched him for weapons, finding none. Appellant approached on foot and asked why they were detaining his son. Officer Bunde asked appellant to leave, explaining that they did not believe he was involved in their investigation, and when he refused, the officers asked him to stand approximately 30 yards away. Appellant complied but then started shouting profanities at the officers, yelling so loudly that the officers testified that his voice echoed off nearby houses. After several warnings, the officers arrested appellant for disorderly conduct and noise violation and placed him in Officer Bunde's squad car.

As Officer Bunde was driving appellant to jail, he observed J.V.'s vehicle nearby. He approached, noticing a "strong" odor of marijuana from the vehicle and a glass in the vehicle that Officer Bunde suspected contained alcohol. He advised J.V. of his observations and asked for her consent to search the vehicle; she agreed. Officer Waaraniemi conducted the search, recovering a loaded semi-automatic handgun from the glovebox in front of where appellant had been sitting. When the officer discovered the firearm, J.V. became "visibly upset." She stated that the gun was not hers and she knew nothing about it. A search of the serial number revealed the gun was stolen.

Appellant was charged with possession of a firearm by an ineligible person. He moved to suppress the evidence of the gun. The district court denied the motion, reasoning, in an amended order, that the search of J.V.'s vehicle did not implicate appellant's Fourth Amendment rights and the search was valid based on J.V.'s consent. A jury found

appellant guilty and, after a sentencing trial, found that appellant is a “danger to public safety” under Minn. Stat. § 609.1095, subd. 2 (2016). Appellant moved for a judgment of acquittal because of insufficient evidence or a new trial based on claims of prosecutorial misconduct and juror misconduct. He also challenged the jury’s finding that he is a danger to public safety. The district court denied the posttrial motions and imposed an aggravated sentence of 180 months’ imprisonment. This appeal follows.

D E C I S I O N

I. Sufficient evidence supports appellant’s conviction.

In reviewing a claim of insufficient evidence, this court views “the evidence in the light most favorable to the verdict to determine whether the facts in the record and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Stewart*, 923 N.W.2d 668, 673 (Minn. App. 2019) (quotation omitted), *review denied* (Apr. 16, 2019). When an element of the charged offense, such as possession, is proved through circumstantial evidence, we apply a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 598-601 (Minn. 2017). We first identify the circumstances proved “by resolving all questions of fact in favor of the jury’s verdict,” in deference to the jury’s credibility determinations. *Id.* at 600. Then we independently consider the “reasonable inferences that can be drawn from the circumstances proved.” *Id.* at 601. The circumstances proved must, as a whole, “be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.*

To convict appellant, “the [s]tate was required to prove . . . that he knowingly possessed [a] firearm.”¹ Minn. Stat. § 624.713, subd. 2(b) (2016); *see Harris*, 895 N.W.2d at 601. But it was not required to prove that he physically possessed the firearm; evidence of constructive possession is sufficient. *Harris*, 895 N.W.2d at 601. The purpose of the constructive-possession doctrine is to include within the firearm-possession statute those cases “where the inference is strong that the defendant at one time physically possessed the [firearm] and did not abandon his possessory interest in the [firearm] but rather continued to exercise dominion and control over it up to the time of the arrest.” *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015) (quotation omitted). Thus, a person may be said to possess a firearm located in a place out of his physical control, and to which others had access, if the evidence establishes a strong probability that he was “consciously or knowingly exercising dominion and control over it.” *Harris*, 895 N.W.2d at 601. Factors such as proximity and ease of access are relevant but not dispositive. *Id.* at 601-02.

The state proved the following circumstances to show appellant constructively possessed the firearm. Appellant asked J.V. to drive him to pick up W.W. Appellant sat in the passenger seat of J.V.’s vehicle, nearest to the glove box. When they encountered W.W., J.V. stopped her vehicle and W.W. started to get in. Officer Waaraniemi called out to W.W., causing a disruption that distracted J.V. After W.W. left the vehicle to talk to the officer, appellant directed J.V. to drive around the block, park, and “stay there” while he talked to the police. She did so. She then consented to the officers searching her vehicle

¹ Appellant stipulated that he was ineligible to possess a firearm.

and was surprised that they discovered a gun in the glove box. She did not own a gun and did not recognize it. It was not there earlier that day or the day before when she looked in the glove box. And she was the only person with keys to the car. Taken together, these circumstances prove that appellant was the only person with access to the glove box and an opportunity to place the gun there.

Appellant argues that these circumstances do not exclude the hypothesis, inconsistent with his guilt, that it was J.V. who possessed the gun. He contends this hypothesis is rational because Minnesota law permits a fact-finder to infer that a driver knowingly possessed a firearm when it is found in a vehicle. *See* Minn. Stat. § 609.672 (2018). This argument is unavailing. The jury *could have* inferred that J.V. possessed the gun by virtue of its presence in her vehicle, and appellant encouraged it to do so. But because that inference is inconsistent with the circumstances proved, we presume that the jury ultimately rejected it in favor of J.V.’s testimony that the gun was not hers, she had never seen it before, it was not in the glove box shortly before she transported appellant, and nobody else had access to the vehicle. *See Harris*, 895 N.W.2d at 600 (requiring “appellate court to winnow down the evidence presented at trial” to “a subset of facts” that are the circumstances proved).

To avoid this presumption, appellant asserts that J.V.’s testimony was “untrustworthy as a matter of law” and could not be used to convict appellant without independent corroboration because of her self-interest in avoiding prosecution for unlawful firearm possession. J.V. testified that she was not then disqualified from possessing a firearm. And even if J.V. could have been charged with carrying a firearm without a

permit, see Minn. Stat. § 624.714, subd. 1a (2016), there is no indication that she “could have reasonably been charged with and convicted of aiding and abetting the crime at issue”—possession of a firearm by an ineligible person—such that she would be considered an accomplice. *State v. Larson*, 787 N.W.2d 592, 602 (Minn. 2010) (addressing when a jury must be instructed regarding the need for corroboration of an accomplice’s testimony). Rather, appellant’s assertion that it was J.V., not he, who possessed the firearm, frames J.V. as an alternative perpetrator, which undercuts his attempt to render her testimony not credible as a matter of law. See *id.* (recognizing that testimony of an alternative perpetrator does not require corroboration).

Appellant also argues that the evidence does not support a rational hypothesis that he constructively possessed the gun because, even if he once possessed it, he abandoned that possessory interest by placing the gun in J.V.’s glove box and leaving the vehicle. This argument is also unavailing. The circumstances proved include that appellant was the only person who could have placed the gun in the glove box; he did so without J.V.’s knowledge or consent; and he left the vehicle only after directing J.V. to “stay there” while he talked to the police. These circumstances demonstrate that appellant left J.V.’s vehicle with the intent to return to it—and the gun. That intent is not diminished by the fact that he had no right to use J.V.’s vehicle to hide the gun or to return to the vehicle to retrieve it.

In sum, the evidence adduced at trial, viewed in the light most favorable to the guilty verdict, supports only one reasonable hypothesis: that appellant intended to exercise

dominion and control over the gun by hiding it in J.V.'s glove box. Consequently, sufficient evidence supports appellant's conviction.²

II. The district court did not err by denying appellant's motion to suppress the firearm evidence.

When reviewing a pretrial order denying a motion to suppress evidence, this court independently reviews the facts and determines whether, as a matter of law, the district court erred in not suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). We review the district court's factual findings for clear error and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

The United States and Minnesota Constitutions protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. But "Fourth Amendment rights are personal rights which . . . may not be vicariously asserted." *Rakas v. Illinois*, 439 U.S. 128, 133-34, 99 S. Ct. 421, 425 (1978). A criminal defendant seeking to exclude evidence based on a claimed Fourth Amendment violation must demonstrate that the challenged search or seizure violated his own Fourth Amendment rights. *Id.* at 140, 99 S. Ct. at 429.

Appellant moved to suppress the firearm evidence under *State v. Miller*, 659 N.W.2d 275, 282 (Minn. App. 2003), review denied (Minn. July 15, 2003), which extends Fourth Amendment privacy protections to a passenger in a vehicle subject to an unreasonable stop or search. The district court determined that *Miller* is inapposite because

² Because sufficient evidence supports the conviction, the district court did not err by denying appellant's posttrial motion for judgment of acquittal.

appellant was not a passenger at the time the officers engaged J.V. and conducted the search. The record amply supports that determination. Appellant was a passenger, but he then directed J.V. to park the vehicle, left it to engage the officers, and was arrested; he was being transported to jail at the time of the search. Because appellant was temporally and physically removed from being a passenger at the time police pulled up behind J.V.'s parked vehicle and asked to search it, he cannot demonstrate any violation of his Fourth Amendment rights based on that police conduct.

Moreover, the district court's alternative reason for denying appellant's motion to suppress is equally valid. Police required no justification for searching the vehicle other than J.V.'s voluntary consent. *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011). The district court determined that J.V. consented, and appellant does not challenge that determination on appeal. Instead, he suggests that the officers improperly expanded the scope of his detention by seeking that consent and searching the vehicle, citing *Askerooth*, 681 N.W.2d at 364 (stating that "each incremental intrusion during a stop" must be tied to the circumstances that justified the stop, or justified by "independent probable cause or reasonableness"). This argument is unavailing. The search did not impact appellant's detention because his arrest was entirely independent of the search. His arrest did not lead the police to search the vehicle, and the search did not lead the police to arrest appellant. Nor did the officers enlarge appellant's detention by pausing to engage J.V. and search her vehicle. They already arrested appellant and were in the process of taking him to jail;

whether in the back of the squad car or at jail, he was not at liberty to leave.³ See *State v. Lopez*, 698 N.W.2d 18, 21 (Minn. App. 2005) (determining whether a seizure occurred based on whether a reasonable person under the same circumstances would believe he “was not free to leave”).

In sum, the district court did not err by denying appellant’s motion to suppress the firearm evidence obtained from the search of J.V.’s vehicle because the search did not implicate appellant’s own Fourth Amendment rights and the search was justified based on J.V.’s voluntary consent.

III. The district court did not abuse its discretion in sentencing appellant as a dangerous offender.

Appellate courts review a district court’s decision to depart from the presumptive sentencing range for an abuse of discretion, and will affirm if the reasons for the departure are “legally permissible and factually supported in the record.” *Vickla v. State*, 793 N.W.2d 265, 269 (Minn. 2011).

A district court generally must impose a sentence within the presumptive range identified in the Minnesota Sentencing Guidelines. Minn. Sent. Guidelines 2.C.1 (Supp. 2017). But the dangerous-offender statute permits a court sentencing an offender convicted of a violent crime to depart upward if (1) the offender has two or more prior convictions

³ Appellant suggests that the principle that a valid seizure becomes invalid if it expands in intensity or scope without justification “applies to police conduct following an arrest.” But he cites no authority for the proposition that police “expand” the scope or duration of an arrest by holding the arrestee in the back of a squad car for a period of time, rather than immediately transporting him to jail.

for violent crimes and (2) the fact-finder determines that he is “a danger to public safety.”⁴ Minn. Stat. § 609.1095, subd. 2. So long as the sentence is not disproportionate, the court has discretion to sentence a dangerous offender up to the statutory maximum. *Id.*; *Neal v. State*, 658 N.W.2d 536, 546 (Minn. 2003).

Appellant does not dispute that he has the requisite prior violent-crime convictions but appears to argue that he is not a danger to public safety because his “recent criminal history was not unusually bad.” The record indicates otherwise. Dangerousness can be determined from a defendant’s long history of criminal behavior or frequent criminal activity. Minn. Stat. § 609.1095, subd. 2(1). Appellant has a long history of regular criminal activity, as the state demonstrated in more than 200 pages of documentary evidence and accompanying testimony.

In 1998, the year appellant turned 18, he committed three felonies—receiving stolen property and two drug offenses. In 2002 and 2004, he unlawfully possessed a firearm, resulting in two more felony convictions. He also assaulted his children’s mother in 2004, resulting in a domestic-assault conviction. The following year, he committed two additional misdemeanor domestic assaults, followed by three felonies—fifth-degree assault (fear), domestic assault (aggravated because of the prior assaults), and fourth-degree assault against a peace officer. In 2007, appellant committed second-degree assault with a dangerous weapon, after which he spent more than two years in prison. He

⁴ If the offense is the defendant’s third violent *felony*, the court must impose a prison sentence that is “at least the length of the presumptive sentence.” Minn. Stat. § 609.1095, subd. 3 (2016).

committed domestic assault again in 2013, and gross-misdemeanor assault in 2016. And between 2000 and 2016 (the year before the current offense), he amassed numerous convictions for offenses involving drugs, drunk driving, and disruptive behavior, and repeatedly committed new offenses while on probation. Appellant unsuccessfully opposed this evidence by testifying that he is not dangerous to society because his assaults were generally against the mother of his children and involved “holler[ing],” not “beating her head in.” This record amply supports the jury’s finding that appellant is a danger to public safety.

Appellant also argues that his sentence of 180 months—the statutory maximum—is excessive because it is longer than the sentences imposed for others convicted of unlawful firearm possession. He emphasizes that recent cases of unlawful firearm possession generally have not resulted in upward sentencing departures, and none involved a sentence longer than 105 months. This argument is unavailing. We gauge excessiveness by comparison to other “sentencing departures.” *Neal*, 658 N.W.2d at 547. More specifically, “for a sentence to be comparable, the sentencing departure must be based upon the same or similar reasons.” *Vickla*, 793 N.W.2d at 270-71 (holding that a departure under the repeat-felony-offender statute required comparison to other repeat-felony-offender sentencings). Appellant has not identified any unlawful-firearm-possession cases that involve a sentencing departure based on the dangerous-offender statute, or a similar statute. The comparisons he offers on appeal are therefore unpersuasive under *Vickla*.

Finally, appellant argues that his sentence is disproportionate because nothing about the offense itself was egregious. This argument is misplaced. A sentence must be

proportionate to both “the severity of the crime for which the sentence is imposed and the offender’s criminal history.” Minn. Sent. Guidelines 2.D.1.b (Supp. 2017). The dangerous-offender statute addresses the latter. And the record demonstrates that appellant’s statutory-maximum sentence is proportionate to his criminal history. Appellant has a criminal-history score of nine, which materially exceeds the six-point threshold from which the sentencing guidelines calculates a presumptive sentence for an offender with an extensive criminal history. Minn. Sent. Guidelines 4.A (Supp. 2017) (“Six or more”). But even that score fails to adequately capture the extent and dangerousness of appellant’s criminal history. By imposing the statutory maximum, the district court accurately accounted for the fact that appellant spent the last 20 years in an unrelenting pattern of criminal conduct, much of it violent. As the district court told appellant at sentencing, he is “an extremely dangerous person,” who has “terrorized strangers, [his] partners, [his] children, and the public in general.”

The legislature recognized that in some extreme cases, a sentence of 15 years (180 months) is appropriate for unlawful possession of a firearm. Minn. Stat. § 624.713, subd. 2(b). It also recognized that a dangerous offender’s commission of unlawful possession of a firearm may well be such a case. Minn. Stat. § 609.1095, subds. 1(d), 2. Because the record demonstrates that appellant is an extremely dangerous offender, the district court did not abuse its discretion by determining that a sentence of 180 months is the appropriate sanction for his unlawful possession of a firearm.

IV. Appellant is not entitled to relief based on his pro se arguments.

In a pro se supplemental brief, appellant substantially repeats the arguments of his principal brief and also contends the district court erred by denying his posttrial claims of prosecutorial misconduct and juror misconduct. Neither argument is availing.

First, appellant claims that the prosecutor committed misconduct by failing to disclose exculpatory evidence (photographs of J.V.'s vehicle and the gun, and a squad car video) and eliciting false testimony from a police officer. It is improper for a prosecutor to suppress exculpatory or impeaching evidence, or to "allow[] false testimony to go uncorrected." *Pederson v. State*, 692 N.W.2d 452, 459, 461 (Minn. 2005). But reversal is warranted only if the misconduct prejudiced the defendant. *Id.* at 460-61. The record reflects neither misconduct nor prejudice. Defense counsel acknowledged receiving the photographs and video in question. The officer's testimony was not false simply because it exceeded the scope of the officer's report with respect to the handling and photographing of the gun. And appellant had ample opportunity to cross-examine the officer and address the photographs and video at trial. Moreover, appellant's underlying concern regarding the photographs and the officer's testimony is the validity the DNA testing performed on the gun, but that testing neither conclusively tied the gun to appellant nor ruled him out as a contributor to the DNA found on the gun. As such, it played a minimal role in appellant's trial and he has not demonstrated any prejudice from the claimed errors by the prosecutor.

Second, appellant claims juror misconduct based on one juror's complaint to the district court after trial that, being the only person of color on the jury, she felt intimidated and pressured by the other jurors to find appellant guilty. Jury misconduct, such as threats

or intimidation, may justify a new trial, but only if the defendant demonstrates actual overt acts of misconduct and resulting prejudice. *State v. Kelley*, 517 N.W.2d 905, 910 (Minn. 1994). The district court contacted both the prosecutor and defense counsel about the issue as soon as both were available, conducted a hearing to question the juror, and determined that the juror credibly indicated that she felt pressured to vote guilty, but not actually threatened or intimidated. On this record, the district court did not err by denying appellant's claim of juror misconduct.

Affirmed.