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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0459**

State of Minnesota,
Respondent,

vs.

Louis Maynard Krueger, II,
Appellant.

**Filed January 27, 2020
Affirmed in part and reversed in part
Klaphake, Judge***

St. Louis County District Court
File No. 69HI-CR-18-375

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

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Considered and decided by Rodenberg, Presiding Judge; Ross, Judge; and
Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant challenges his convictions for second-degree controlled-substance crime and being an ineligible person in possession of a firearm, arguing that the evidence was insufficient to prove that he sold more than 10 grams of methamphetamine or that he possessed a firearm. We affirm in part and reverse in part.

DECISION

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).

When a conviction is based on circumstantial evidence, we use a two-step process. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved, assuming that the jury resolved any factual disputes in a manner that is consistent with the jury’s verdict. *Id.* at 598-99. Second, we independently examine the reasonableness of the inferences the jury could draw from those circumstances. *Id.* at 599.

All circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010).

On May 8, 2018, Sergeant Luke Hendrickson of the St. Louis County Sheriff's Office arranged for an informant, R.J., to conduct a controlled purchase of methamphetamine from appellant Louis Maynard Krueger, II. R.J. went to Krueger's apartment and purchased 7.7 grams of methamphetamine. Following the controlled purchase, law enforcement detained Krueger and executed a search warrant at his apartment. The officers discovered 8.4 grams of methamphetamine in a drawer in the "shower room," and a firearm in Krueger's roommate's bedroom. Respondent State of Minnesota charged Krueger with second-degree controlled substance crime (sale) and being an ineligible person in possession of a firearm. A jury found Krueger guilty on both counts.

Krueger argues that the evidence is insufficient to prove that he committed second-degree controlled-substance crime. To prove that Krueger committed second-degree controlled-substance crime, the state was required to prove that he sold ten or more grams of methamphetamine. Minn. Stat. § 152.022, subd. 1(1) (2016). Under Minn. Stat. § 152.01, subd. 15a (2016) "[s]ell" is defined to mean

- (1) to sell, give away, barter, deliver, exchange, distribute or dispose of to another, or to manufacture; or
- (2) to offer or agree to perform an act listed in clause (1); or
- (3) to possess with intent to perform an act listed in clause (1).

Krueger acknowledges that the state provided direct evidence that he sold 7.7 grams of methamphetamine to R.J. But he argues that the evidence was insufficient to prove he

intended to sell at least 2.3 grams of the 8.4 grams of methamphetamine discovered in his apartment. He concedes that, based on the evidence presented, there is a rational inference that he possessed the 8.4 grams of methamphetamine with the intent to sell it, but argues that the circumstances proved do not exclude the rational hypothesis that he possessed at least 6.2 grams of the methamphetamine for personal use.

Here, the circumstances proved are as follows. On May 8, 2018, law enforcement arranged for R.J. to conduct a controlled purchase of methamphetamine from Krueger. When R.J. arrived at the residence, Krueger went into the shower room and returned with two bags of methamphetamine weighing a combined total of 7.7 grams. As R.J. was exiting the apartment, she asked Krueger “if he had enough for another larger purchase for later if [she] possibly found somebody,” and he responded “yes.” After the controlled purchase, law enforcement executed a search warrant at Krueger’s apartment. They discovered a drawer in the shower room that contained 8.4 grams of methamphetamine, a scale, small plastic bags, a spoon with white residue, and a handwritten ledger.

Based on these circumstances, there is not a reasonable inference that Krueger possessed the methamphetamine for personal use. The methamphetamine was found in a drawer that also contained a scale, small plastic bags, a spoon, and a ledger—items consistent with the packaging and sale of controlled substances. And after Krueger sold R.J. 7.7 grams of methamphetamine, he told her that he had enough methamphetamine for a larger purchase, if she found a buyer. Minnesota courts have held that these circumstances support the conclusion that the only rational inference is that the individual intended to sell the controlled substances. *See State v. Hanson*, 800 N.W.2d 618, 623-24

(Minn. 2011) (holding that the discovery of 12.6 grams of methamphetamine along with items commonly used for packaging and distribution was sufficient to support conviction); *State v. Porte*, 832 N.W.2d 303, 310 (Minn. App. 2013) (stating that the recent sale of controlled substance and agreement to conduct additional sales in the future supported conviction). On this record, the evidence was sufficient to support the conviction for second-degree controlled-substance crime.

Krueger next argues that the evidence was insufficient to support the conviction for being an ineligible person in possession of a firearm. In order to convict Krueger of possession of a firearm as an ineligible person under Minn. Stat. § 624.713, subd. 1(2) (2016), the state was required to prove that Krueger is ineligible to possess a firearm and that he knowingly possessed the firearm. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Possession may be actual or constructive. *Id.* 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.*

Krueger argues that the circumstances proved support the rational hypothesis that he did not possess the firearm. The circumstances proved are as follows. Krueger and S.N. shared a one bedroom apartment. S.N. was described as being approximately five feet tall, old, and “very frail.” Krueger slept in the living room, and S.N. slept in the bedroom. The firearm, a long and heavy rifle, was discovered under the bed in S.N.’s

bedroom. Krueger argues that the circumstances proved may create an inference that it would be “physically difficult” for S.N. to use the firearm, but do not establish that he was exercising dominion and control over the firearm. We agree. There was no testimony or physical evidence linking Krueger to the firearm. R.J. stated that she believed that there were firearms in the apartment, but did not say that they belonged to Krueger and could not identify what type of firearms. She did not testify that she saw a firearm during the controlled purchase, and during the controlled purchase Krueger did not go into S.N.’s bedroom at any point. On this record, the evidence is insufficient to establish that Krueger was consciously or knowingly exercising dominion and control over the firearm. The mere fact that S.N. might have difficulty using the weapon does not dispel the rational hypothesis that the firearm found in her bedroom belonged to her. Accordingly, Krueger’s conviction of being an ineligible person in possession of a firearm must be reversed.

Affirmed in part and reversed in part.