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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0555**

State of Minnesota,
Respondent,

vs.

Adam Eldon Switala,
Appellant.

**Filed April 20, 2020
Affirmed
Slieter, Judge**

Hennepin County District Court
File No. 27-CR-18-17615

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, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Slieter, Judge.

UNPUBLISHED OPINION

SLIETER, Judge

Appellant Adam Eldon Switala challenges his convictions of first-degree controlled-substance crime (sale) and second-degree controlled-substance crime

(possession). Switala argues that the state presented insufficient evidence that he constructively possessed the controlled substances found by law enforcement. Because the circumstances proved are consistent with Switala's guilt and inconsistent with any reasonable hypothesis except guilt, we affirm.

FACTS

The state charged Switala with first-degree controlled-substance crime (sale), in violation of Minn. Stat. § 152.021, subd. 1(1) (2016); and second-degree controlled-substance crime (possession), in violation of Minn. Stat. § 152.022, subd. 2(a)(1) (2016). The case was tried to a jury, and the following facts are based on the evidence presented at trial.

A police officer on patrol in Brooklyn Park stopped a vehicle for failure to signal a left-hand turn. The officer approached the vehicle, identified the female driver, and identified Switala as the front-seat passenger, though he initially provided the officer with a false name.

Based upon an odor of marijuana, the officer searched the vehicle and found a backpack on the floor where Switala sat which, it was later determined, contained a pouch with methamphetamine. The driver's credit card was also in the pouch. The officer then arrested Switala and the driver.

While detained at the law enforcement center, Switala spoke on the phone with his mother, who apparently has knowledge of the nature and economics of controlled-substance transactions. She suggested that Switala was in debt after surrendering "whatever was in the car" to law enforcement, and Switala responded that he was not in

debt because “everything was bought and paid for.” His mother then asked about the value of what was on him at the time of the stop, and Switala said “that cost \$500 total, Mom.” He went on to explain that “the price of drugs has plummeted” and that the vehicle’s driver “didn’t have anything on her” at the stop.

The jury found Switala guilty of first-degree controlled-substance crime (sale) and second-degree controlled-substance crime (possession). This appeal follows.

D E C I S I O N

Switala contends that the circumstantial evidence was insufficient to support the guilty verdict because the circumstances proved allow for a reasonable hypothesis that another person possessed the methamphetamine found in the backpack. The state does not dispute that Switala was convicted based upon circumstantial evidence. We agree.

“A conviction based on circumstantial evidence warrants particular scrutiny.” *State v. Bolstad*, 686 N.W.2d 531, 539 (Minn. 2004). Appellate courts must therefore apply a two-step analysis when reviewing the sufficiency of circumstantial evidence. *See State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, the reviewing court must identify the circumstances proved and “construe conflicting evidence in the light most favorable to the verdict.” *See id.* at 598-99 (quotation omitted). In doing so, the reviewing court must defer “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.” *See State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010) (quotation omitted).

The reviewing court must then “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not

simply whether the inferences that point to guilt are reasonable.” *See State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011) (quotation omitted). The state’s evidence does not need to exclude all inferences other than guilt, but it must “exclude all *reasonable* inferences other than guilt.” *State v. Tscheu*, 758 N.W.2d 849, 857 (Minn. 2008). The circumstances proved must also be viewed as a “complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010).

To convict a defendant of unlawful possession of a controlled-substance, “the state must prove that defendant consciously possessed, either physically or constructively, the substance and that defendant had actual knowledge of the nature of the substance.” *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). Physical possession involves direct physical control. *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016). The parties agree that Switala’s convictions were based on a theory of constructive possession and that Switala did not physically possess the drugs found in the minivan. Therefore, constructive possession applies. Constructive possession may be established either (1) by proof that the item was in a place under the defendant’s “exclusive control to which other people did not normally have access” or (2) by proof of a strong probability that the “defendant was at the time consciously exercising dominion and control over it,” even if the item was in a place to which others had access. *Id.* at 353-54 (quoting *Florine*, 226 N.W.2d at 611). The methamphetamine here was found in a place potentially accessible to others, so we must

assess whether Switala consciously exercised dominion and control over the methamphetamine in the backpack at the time of the stop.

Circumstances Proved

The circumstances proved at trial were:

Switala was the front seat passenger in a vehicle driven by a female;

an officer found a backpack on the floor of the vehicle near Switala's feet;

inside the backpack was a separate pouch with over 27 grams of methamphetamine, some marijuana, and the driver's credit card;

the backpack also contained several plastic baggies, a digital scale, a pair of men's jeans, and a stick of Old Spice brand deodorant;

Switala made several references to controlled substances in the backpack during a call to his mother from jail, including a statement that everything in the bag was "bought and paid for," that everything in the bag was worth \$500, and that the price of drugs had "plummeted"; and

Switala provided police a false name.

No Reasonable Hypothesis Other Than Guilt

Switala asserts that the jury could have reasonably inferred from the circumstances proved that he did not have dominion and control over the methamphetamine and that the vehicle's driver or another person could have constructively possessed the methamphetamine because (1) it was found in a separate pouch within the backpack with the driver's credit card; (2) a hypodermic needle with liquid was found in the driver's purse; (3) the driver owned the vehicle; and (4) his phone calls with his mother are too vague to demonstrate his guilt. Switala contends that, taken together, these circumstances create a

rational hypothesis that the driver or someone else constructively possessed the methamphetamine. We disagree.

Switala's hypothesis is unreasonable because it disregards the circumstances proved which demonstrate he constructively possessed the methamphetamine. First, "[p]roximity is an important factor in establishing constructive possession." *See State v. Porte*, 832 N.W.2d 303, 308 (Minn. App. 2013) (quotation omitted). The methamphetamine was found on the floor of the front passenger seat where Switala was sitting. Second, the backpack contained men's jeans and deodorant, which suggest the backpack belonged to Switala and not to the female driver. Third, Switala gave law enforcement a false name and made several statements to his mother that referenced his knowledge of controlled substances in the backpack. The statements to his mother are direct evidence of his controlled substance possession, which reinforces the argument that there are no reasonable inferences other than Switala's guilt. *See State v. Horst*, 880 N.W.2d 24, 39-40 (Minn. 2016) (statement "I want him dead" direct evidence of defendant's intent).

Moreover, a defendant "may constructively possess contraband jointly with another person." *State v. Lee*, 683 N.W.2d 309, 316 n.7 (Minn. 2004); *State v. Lorenz*, 368 N.W.2d 284, 287-88 (Minn. 1985) (concluding evidence sufficient to infer defendant jointly possessed marijuana found in defendant's bedroom with owner of the house). Even if the circumstances proved allow for the reasonable hypothesis that the vehicle's driver constructively possessed the methamphetamine, this hypothesis is not inconsistent with Switala having jointly possessed the controlled substances with the driver.

Thus, the circumstances proved are consistent with the jury's conclusion that Switala possessed the methamphetamine in the backpack, and this conclusion is inconsistent with any reasonable hypothesis other than Switala's guilt.

Affirmed.