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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1467**

State of Minnesota,
Respondent,

vs.

Abdullahi Ahmed Ali,
Appellant.

**Filed December 7, 2020
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-14-26417

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and Frisch, Judge.

U N P U B L I S H E D O P I N I O N

SMITH, TRACY M., Judge

In this direct appeal from final judgment, appellant Abdullahi Ahmed Ali challenges his conviction for being an ineligible person in possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2012). He argues that (1) his previous offense of first-degree

burglary is not a qualifying “crime of violence” that renders him ineligible to possess a firearm because the first-degree burglary was a juvenile adjudication, (2) the evidence is insufficient to prove beyond a reasonable doubt that he constructively possessed a firearm, and (3) Minn. Stat. § 624.713, subd. 1(2), is unconstitutionally enforced against men of color, including him. Ali’s first challenge fails because, after Ali filed his appellate brief, the Minnesota Supreme Court decided that a juvenile adjudication may qualify as a “crime of violence.” As to Ali’s remaining two challenges, we conclude that circumstantial evidence is sufficient to sustain Ali’s conviction for being an ineligible person in possession of a firearm and that Ali’s constitutional argument is forfeited because he failed to raise it to the district court. For these reasons, we affirm.

FACTS

The following facts were established at trial. In the early morning hours of April 25, 2014, two Minneapolis police officers stopped a car with a cracked windshield, believing that the crack may have been caused by a recently reported nearby shooting. Both officers approached the car—one on each side. There were three men in the car: the driver, a man in the front passenger seat, and Ali in the rear on the passenger’s side of the car. Because the rear driver’s-side window was dirty, the driver’s-side officer asked the driver to lower the window so he could see inside. When the window was down, the officer could see that the driver’s seat was reclined 45 degrees.

While talking with the driver, the driver’s-side officer noticed that Ali was acting nervous and gesturing towards the driver’s seat. When the officer looked closely to where Ali was gesturing, he noticed part of a handgun, initially obscured by the reclined driver’s

seat, peeking out from under the back of the driver's seat. The handgun was within Ali's reach.

The officers took the three men into custody, took photos of the scene, and collected the handgun (which was later determined to be operational). Another officer then transported two of the men, including Ali, to the Hennepin County jail. While en route, Ali asked the officer why he was being detained. When the officer replied that it was because of the gun found in the car, Ali said, "Okay," and seemed "kind of resigned."

DNA samples were taken from Ali and the other two men. The Minnesota Bureau of Criminal Apprehension (BCA) performed DNA testing on the samples and the handgun. The testing determined that at least five people left DNA on the handgun. It also determined that, while 88.2% of the general population, including the front-seat passenger, could be excluded from contributing to the DNA found on the handgun, Ali and the driver could not be excluded.

The state charged Ali with being an ineligible person in possession of a firearm, predicated on his 2007 juvenile adjudication for first-degree burglary. A jury found him guilty, and the district court sentenced Ali to 60 months in prison.

This appeal follows.

D E C I S I O N

Ali raises three issues with his conviction, which we address in turn.

I. Ali's 2007 juvenile adjudication qualifies as a "crime of violence."

Minn. Stat. § 624.713, subd. 1(2), prohibits ineligible persons from possessing firearms, and Ali was ineligible to possess a firearm if he had previously committed a

“crime of violence” as defined by Minn. Stat. § 624.712, subd. 5 (2012). Ali argues that his 2007 first-degree burglary did not qualify as a crime of violence because it was a juvenile adjudication. But the Minnesota Supreme Court recently decided that juvenile delinquency adjudications for felony-level offenses listed in Minn. Stat. § 624.712, subd. 5, “may be deemed ‘felony convictions’ and meet the statutory definition of a crime of violence.” *Roberts v. State*, 945 N.W.2d 850, 854 (Minn. 2020). Ali’s juvenile adjudication was for first-degree burglary—a crime that is identified as a crime of violence in section 624.712, subdivision 5. Thus, Ali’s juvenile adjudication is a predicate crime of violence rendering him ineligible to possess a firearm.

II. There is sufficient circumstantial evidence to prove that Ali constructively possessed the handgun.

Ali next argues the state presented insufficient evidence to prove beyond a reasonable doubt that he knowingly possessed the handgun.

Because the handgun was not found on Ali’s person but instead under the driver’s seat, the state argued that Ali constructively possessed the gun. Constructive possession applies when the state “cannot prove actual or physical possession . . . but where the inference is strong that the defendant at one time physically possessed the [contraband] and did not abandon his possessory interest in the [contraband].” *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). There are two ways to prove constructive possession. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). The state may prove that the contraband was found in a place under the defendant’s exclusive control to which others did not have access, or, if it was found in a place to which others had access, that there was “a strong probability (inferable from other evidence) that at the time the defendant was consciously

or knowingly exercising dominion and control over it.” *Id.* The exercise of dominion and control goes beyond “mere proximity” to the item. *Id.* An individual can jointly possess an item with another person. *Id.*

Because Ali did not have exclusive control over the car in which the handgun was found, the state’s theory was that he constructively possessed the handgun through his exercise of dominion and control over it. The state relied on circumstantial evidence to prove it.

“A conviction based on circumstantial evidence . . . warrants heightened scrutiny.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). We analyze the sufficiency of circumstantial evidence through a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we “identify the circumstances proved.” *Id.* “In identifying the circumstances proved, we 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.” *Id.* at 598-99 (quotations omitted). Because the jury is in the best position to analyze credibility, “we consider only those circumstances that are consistent with the verdict.” *Id.* at 599. Therefore, we assume “that the jury believed the [s]tate’s witnesses and disbelieved the defense witnesses.” *Id.*

Second, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotations omitted). Here, we give no deference to the jury’s choice between any reasonable inferences. *Harris*, 895 N.W.2d at 601. If there is any rational hypothesis pointing to innocence, then the evidence is insufficient and the conviction must be overturned. *Al-Naseer*, 788 N.W.2d at

474. To uphold a conviction based on circumstantial evidence, “the circumstances must form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt.” *State v. Reed*, 737 N.W.2d 572, 581 (Minn. 2007) (quotations omitted).

The circumstances proved are as follows. In the morning of April 25, 2014, two officers conducted a traffic stop of a car. The car had three occupants: the driver, a front-seat passenger, and Ali in the rear passenger-side seat. On approaching the driver’s side of the car, one of the officers asked the driver to lower the rear driver’s-side window so he could see inside. Ali was moving around and gesturing nervously towards the area underneath the driver’s seat. In response, the officer shined his flashlight in the area and saw a partially visible handgun underneath the driver’s seat. Ali was in arm’s reach of the handgun. Following DNA testing, the BCA determined that 88.2% of the general population, including the front-seat passenger, could be excluded from contributing to the DNA on the handgun, but neither Ali nor the driver could be excluded. Finally, while Ali was being driven to the Hennepin County jail, and after being told that he was being arrested for the gun, Ali said “okay” and seemed “kind of resigned.”

We now evaluate the inferences from the circumstances proved. Ali does not dispute that the circumstances yield the reasonable inference that he possessed the handgun. He contends, though, that the circumstances are also consistent with the rational hypothesis that he did not possess it. He points to the fact that the handgun had DNA from multiple people and that the handgun was close to the driver. Ali also suggests that he might have

said “okay” and seemed “resigned” simply because he had learned from the police that a gun was in the car. Ali contends that the case is markedly similar to *Harris* and that his conviction should likewise be reversed. *See Harris*, 895 N.W.2d at 592.

We conclude that this case is different from *Harris* and that the only reasonable inference from the circumstances is that Ali constructively possessed the firearm, either individually or jointly. In *Harris*, the defendant had been convicted of illegally possessing a firearm after police discovered a firearm hidden in the headlining of a car driven by Harris but owned by someone else. *Id.* at 596. The supreme court reversed the conviction because the evidence did not exclude the reasonable hypothesis that Harris was unaware that the firearm was in the car. *Id.* at 602. Three key facts differentiate this case from *Harris* and refute a hypothesis of innocence here. First, in *Harris*, the firearm was hidden within the lining of the car’s roof, behind the driver. *Id.* at 597. The handgun in this case was close to and visible to Ali, as it was sticking out from underneath the back of the driver’s seat. Second, in *Harris*, nothing suggested that the defendant knew that there was a firearm in the car, let alone that the defendant exercised any control over the firearm. *Id.* at 603. Here, Ali gestured nervously toward the nearby handgun, leading the officer to look in that direction and find it. Ali’s behavior demonstrates the conscious and knowing exercise of control over the handgun. *Florine*, 226 N.W.2d at 611. Third, the DNA results in this case are more conclusive than those in *Harris*. In *Harris*, the DNA sample was only able to exclude 75.7% of the general population. 895 N.W.2d at 602. Here, the DNA sample can exclude 88.2% of the general population but cannot exclude Ali. In addition, here Ali had an air of resignation when the officer told him why he was being arrested. In sum, unlike

in *Harris*, here, there is no other reasonable inference to be drawn from the circumstances proved than that Ali knowingly exercised dominion and control over the handgun. *See Florine*, 226 N.W.2d at 611.

Therefore, the circumstantial evidence is sufficient to sustain Ali's conviction.

III. Ali's constitutional argument is forfeited.

Ali raises a final argument in his pro se supplemental brief.¹ He argues that enforcement of the underlying statute, Minn. Stat. § 624.713, subd. 1(2), disproportionately affects men of color in violation of their right to equal protection. Issues that were not raised before the district court are generally forfeited on appeal. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). This principle applies to constitutional challenges to a statute. *State v. Frazier*, 649 N.W.2d 828, 839 (Minn. 2002) (quoting *Hampton v. Hampton*, 229 N.W.2d 139, 140 (Minn. 1975)). Even liberally construing Ali's argument as he urges us to do, we conclude that Ali's constitutional challenge was not raised before or considered by the district court and it is therefore forfeited.

Affirmed.

¹ Ali also asserts explanations for why the evidence is insufficient in this case. We review the sufficiency of the evidence based only on the record evidence that is consistent with the verdict. *See Silvernail*, 831 N.W.2d at 598-99. We performed that review above and concluded that the evidence was sufficient to support Ali's conviction.