

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1986**

State of Minnesota,
Respondent,

vs.

Antonio Levell Washington,
Appellant.

**Filed April 19, 2021
Affirmed
Reyes, Judge**

Dakota County District Court
File No. 19HA-CR-18-1695

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

Kathryn M. Keena, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Jesson,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges his convictions of possession and sale of a controlled
substance and two counts of possession of a firearm by an ineligible person, arguing that

trial counsel's failure to object to hearsay statements amounted to ineffective assistance of counsel. We affirm.

FACTS

In November 2017, a police officer (officer 1) of the Cannon River Drug and Violent Offender Task Force began investigating appellant Antonio Levell Washington after receiving his Snapchat¹ user name from a confidential source. Officer 1 added appellant on Snapchat and appellant accepted officer 1's invitation. Officer 1 viewed a video story on appellant's Snapchat account which showed a Taurus handgun and the black and white Taurus box for that handgun.² The video featuring the Taurus handgun reads "Da real Antonio" on the top corner, which is appellant's screen name.³ Later, officer 1 saw a video of appellant driving a white BMW on his Snapchat account.

A police officer with the Minnesota Bureau of Criminal Apprehension (BCA officer) met with appellant who was driving a white BMW. Appellant told the BCA officer that the BMW belonged to his girlfriend K.S., which the BCA officer confirmed.

On November 29, 2017, officer 1 surveilled a house in Eagan (the house), believing that appellant and K.S. lived there. Although officer 1 did not see appellant or K.S. leave

¹ According to officer 1, Snapchat is a phone application that allows users to send temporarily viewable photos and videos to other added users (friends). Users can then message friends and individually send videos and photos through the application. Snapchat allows users to post photos and videos on a "story" which are viewable by all of that user's friends for 24 hours.

² The Taurus handgun box appears to be the cardboard packaging and not a gun safe or gun case.

³ According to officer 1, Snapchat allows users to have a unique user name and a screen name. The user name associated with appellant's account was "Gripping Tone" and the screen name was "Da real Antonio."

the house, the officer saw the two leaving the area of the house in a white Tahoe. A second officer (officer 2) saw K.S. and appellant leave the house in the white Tahoe. The officers then executed a search warrant on the house for “drugs, cash, [and] guns” with appellant and K.S. as the targets of the search warrant, focusing on the basement bedroom facing the street. The officers found women’s clothing on the right side of the bedroom. On the left side, officers found men’s clothing, men’s shoes underneath the left side of the bed, a dresser with a “significant amount of men’s clothing in it,” ripped-off bags, and a scale. Inside the dresser, the officers found a court summons with appellant’s name dated November 17, 2017, a bag of what was later identified as heroin, and \$880 in cash next to the heroin. The officers also found a handgun between the mattresses on the left side of the bed. Finally, the officers found a Taurus handgun box in the bedroom.

Officer 1 later obtained a signed warrant for appellant’s Snapchat account and reviewed conversations between appellant and another account. Officer 1 believed appellant and the owner of the other account were dating based on the nature of the communications. That account belonged to K.S.

The owner of the house, M.V., testified that K.S. lived in the basement bedroom facing the street and that K.S.’s daughter lived in the other. M.V. had met appellant once or twice when he was at the house and saw appellant another six to ten times at the house during November. M.V. testified that he believed K.S. and appellant were seeing each other “socially” but that appellant did not live there and did not have a key. K.S. testified that no other men visited the house except for her daughter’s father, who would come just to see K.S.’s daughter.

In an amended complaint, respondent State of Minnesota charged appellant with two counts of possession of firearm by an ineligible person, one count of possession of a controlled substance, and one count of sale of a controlled substance. After a four-day jury trial, the jury found appellant guilty of all four counts. Appellant did not testify at trial. The state called five officers, three forensic scientists, and the owner of the house, M.V., as witnesses. Appellant filed this direct appeal, then moved to stay the appeal to pursue postconviction relief, which we granted. The postconviction court did not hold an evidentiary hearing on the record, and concluded that trial counsel did not provide objectively unreasonable assistance and that appellant failed to show prejudice that would warrant reversal. This court reinstated appellant's direct appeal.

DECISION

Appellant argues that his trial counsel provided ineffective assistance of counsel by not objecting to hearsay statements. We are not persuaded.

When an appellant first files a direct appeal then later moves for an order staying the direct appeal to proceed with a postconviction hearing, we apply the standard for direct appeal. *Santiago v. State*, 644 N.W.2d 425, 439 (Minn. 2002). Because an ineffective-assistance-of-counsel claim presents mixed questions of law and fact, our review is de novo. *State v. Rhodes*, 657 N.W.2d 823, 842 (Minn. 2003).

To determine whether a criminal defendant received ineffective assistance of counsel, we apply the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064 (1984). See *State v. Mosley*, 895 N.W.2d 585, 591 (Minn. 2017). An appellant must show that (1) counsel's performance fell below an objective

standard of reasonableness and (2) a reasonable probability exists that the outcome would have been different but for counsel's errors. *Id.* "We need not address both the performance and prejudice prongs if one is determinative." *Rhodes*, 657 N.W.2d at 842. An appellate court considers the totality of the evidence presented in determining if appellant meets the prejudice prong. *Id.*

Here, appellant argues that statements from M.V. to the officers that "[K.S.] and [appellant] stayed in the basement bedroom," the officers' repetition of those statements, and the officers' statements about the search warrant to the jury amounted to prejudice warranting reversal. But the totality of the circumstances show that there is no reasonable probability that the result would have been different because of the overwhelming evidence presented by the state. The state did not need the statements at issue to establish appellant's constructive possession over the heroin and handguns. Appellant's screen name directly tied him to the Taurus handgun and handgun box, and his name was on a complaint in the dresser full of men's clothing next to the heroin and cash. No other men entered the basement bedroom and all of the men's clothing, the dresser full of men's clothing, and one of the handguns were on the left side of the bedroom, while women's belongings were on the right. Additionally, the Snapchat videos linked appellant to the BMW, the stacks of cash, the black Taurus handgun, and the handgun box. M.V.'s testimony that he had seen appellant six or ten times at the house in one month also shows appellant had constructive possession of the items. The officers testified that they saw appellant and K.S. leave the home just moments before the officers executed the search warrant. Based on these facts, there is no reasonable probability that the jury verdict would have been different.

Appellant argues that the jury reasonably could have believed that K.S. was the sole owner of the guns. The overwhelming evidence that places the guns and heroin in his possession does not support appellant's argument. We conclude that appellant cannot show that there is a reasonable probability that the jury verdict would have been different but for trial counsel's alleged errors, based on the totality of the circumstances. Accordingly, we do not consider the first prong of the *Strickland* analysis, and deny appellant's request to remand for an evidentiary hearing.

Affirmed.