

*This opinion is nonprecedential except as provided by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
A20-0213**

State of Minnesota,
Respondent,

vs.

Curtis Allen Anderson,
Appellant.

**Filed January 25, 2021
Affirmed; motion granted
Reilly, Judge**

Hennepin County District Court
File No. 27-CR-17-28221

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

Michael O. Freeman, Hennepin County Attorney, Jean Burdorf, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

Appellant challenges his first-degree controlled-substance conviction on the grounds that (1) the verdict was not supported by sufficient evidence, and (2) the district court prejudicially erred by preventing him from impeaching a police officer with specific

instances of untruthfulness. The state also moved to strike portions of appellant's brief. We affirm the verdict and the district court's decision, and grant the state's motion to strike.

FACTS

In November 2017, a police officer saw a pickup commit a traffic violation and initiated a traffic stop. The officer identified appellant Curtis Allen Anderson as the driver and V.S. as a passenger in the pickup. Based on his observations of appellant's conduct, the officer believed appellant may have been under the influence of an illegal substance and asked appellant if he recently used narcotics. Appellant admitted that he used marijuana earlier in the day, used methamphetamine during the past week, and had a marijuana pipe in his pickup.

A drug-detection dog alerted to the presence or odor of narcotics in the pickup. Officers searched the pickup and found "numerous amounts of narcotics throughout the vehicle." Officers found a cooler on the passenger-side floorboard containing large amounts of marijuana, methamphetamine, a silicone container with a small amount of THC wax, white baggies, and other items often associated with drug use. A lottery ticket with appellant's name on it was inside the cooler. Officers also found a headphone case on the driver's-side dashboard containing marijuana. Appellant denied knowing anything about the cooler or its contents, but admitted that the marijuana inside the headphone case belonged to him.

Respondent State of Minnesota charged appellant with first-degree possession with intent to sell methamphetamine, first-degree possession of methamphetamine, fifth-degree possession of THC/marijuana wax, and fifth-degree possession with intent to sell

marijuana. A jury found appellant guilty on all counts, and appellant filed an appeal. *State v. Anderson*, No. A18-1173, 2019 WL 3000684, at *1 (Minn. App. July 1, 2019). We determined that sufficient circumstantial evidence supported the jury’s verdict. *Id.* at *2. But we reversed and remanded for a new trial because the district court erred in its jury instructions. *Id.* at *3.

On remand, the state filed an amended complaint adding aiding-and-abetting liability to the possession counts. At trial, an analyst with the Minnesota Bureau of Criminal Apprehension presented evidence that she found the presence of 54.777 grams of methamphetamine, 0.218 grams of THC/marijuana wax, and 15.751 grams of marijuana after testing the items recovered from the pickup. Two police officers testified about appellant’s phone calls in jail, including a phone call in which appellant told his friend, “Sure I got into a bunch of sh-t. But [V.S.], I gave [V.S.] your number. She’s gonna take the charge cuz she doesn’t have any charges, she has nothing on her record at all.” V.S. testified that she knew nothing about the narcotics in the cooler and believed they belonged to appellant.

Appellant testified on his own behalf at trial. Appellant described the vehicle stop and his discussion with the officer. Appellant stated that the officer asked him if there was anything illegal in the vehicle, and appellant acknowledged that he “knew about the marijuana in the vehicle.” Even so, appellant denied knowing anything about the drugs found in the cooler. Appellant testified that he told the officer that he smoked marijuana earlier in the day and used methamphetamine “about six days prior” to the stop. Appellant acknowledged that the drug-detection dog went “directly over to the passenger side,” where

officers found a cooler containing methamphetamine. Appellant testified that he did not notice the cooler before the officers removed it from the pickup, and did not know that it contained methamphetamine.

The jury found appellant guilty of first-degree possession of methamphetamine and fifth-degree possession of THC/marijuana wax, and acquitted appellant of the remaining charges. The district court sentenced appellant to 110 months in prison on the methamphetamine-possession charge, but did not pronounce a sentence on the fifth-degree-possession charge. This appeal follows.

DECISION

I. The state's motion to strike is granted.

The state moved to strike a footnote in appellant's brief referencing a newspaper article that was not in the district court record. "The record on appeal consists of the documents filed in the district court, the offered exhibits, and the transcript of proceedings, if any." Minn. R. Crim. P. 28.02, subd. 8. "An appellate court may not base its decision on matters outside the record on appeal, and may not consider matters not produced and received in evidence below." *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). Because appellant's brief refers to matters outside the record on appeal, we grant the state's motion to strike and do not consider the newspaper article in this appeal.

II. The evidence was sufficient to prove beyond a reasonable doubt that appellant constructively possessed the methamphetamine found in his pickup.

A. Standard of Review

Appellant challenges the sufficiency of the evidence supporting his conviction for possession of a controlled substance. To evaluate the sufficiency of the evidence, appellate courts “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the factfinder to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). Appellate courts review the evidence “in the light most favorable to the conviction” and “assume the jury believed the State’s witnesses and disbelieved any evidence to the contrary.” *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). Appellate courts “will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Id.*

If the state’s evidence on one or more elements of a charged offense consists solely of circumstantial evidence, we apply a heightened standard of review. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013); *see also Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004) (stating that a higher level of scrutiny is warranted if a conviction is based on circumstantial evidence). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Direct evidence, by contrast, is

“evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Id.* (quotation omitted).

In a circumstantial-evidence case, like this one, we apply a two-step test to determine the sufficiency of the evidence. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). First, we identify the circumstances proved. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). “In identifying the circumstances proved, [this court] assume[s] that the jury resolved any factual disputes in a manner that is consistent with the jury’s verdict.” *Moore*, 846 N.W.2d at 88. Next, we “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved,” including “inferences consistent with a hypothesis other than guilt.” *Anderson*, 784 N.W.2d at 329 (quotation omitted). We consider the evidence as a whole and do not examine any piece of evidence in isolation. *Id.* at 332.

B. Constructive Possession

The jury found appellant guilty of first-degree possession of methamphetamine under Minn. Stat. § 152.021, subd. 2(a)(1) (prohibiting unlawful possession of “one or more mixtures of a total weight of 50 grams or more containing . . . methamphetamine”) (2016). Possession may be either actual or constructive. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). Actual possession is defined as “direct physical control.” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted), *review denied* (Minn. Mar. 27, 2019). Constructive possession may be established either by (1) 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) proof of a strong probability that “the defendant was at

the time consciously exercising dominion and control over it,” even if the item were in a place to which others had access. *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975). Two people may have joint constructive possession of an item. *Harris*, 895 N.W.2d at 601.

Appellant argues that the evidence was insufficient to prove that he constructively possessed the methamphetamine in the cooler. We begin by identifying the circumstances proved. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). The circumstances proved show that officers stopped appellant’s pickup for a traffic violation. During the traffic stop, the officer noticed that appellant seemed fidgety, spoke rapidly, paced around, and seemed to be blocking the officer’s view of the pickup. Based on his expertise and training, the officer believed appellant was under the influence of an illegal substance. Appellant admitted that he smoked marijuana that day and used methamphetamine earlier in the week. Appellant also told the officer he had a marijuana pipe in the pickup. A drug-detection dog alerted to the presence or odor of a narcotic substance in the pickup. After conducting a search, officers found a cooler with a scale, a large bag of methamphetamine, several smaller bags of methamphetamine, marijuana, and other drug-related paraphernalia. A lottery ticket with appellant’s name on it was in the cooler with the drugs. Officers found a headphone case on the dashboard containing marijuana and other items, which appellant admitted belonged to him. Appellant called a friend from the county jail and stated that V.S. would claim responsibility for the drugs in the cooler. The evidence presented at trial supports a determination that appellant constructively possessed the drugs. Thus, the circumstances proved are consistent with guilt.

The next step requires us to evaluate “independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt.” *Id.* (quotation omitted). Under this test, the fact-finder “is in a unique position to determine the credibility of the witnesses and weigh the evidence before it.” *Harris*, 895 N.W.2d at 600. Appellant argues that the circumstantial evidence supports a reasonable inference inconsistent with guilt, specifically, that V.S. alone possessed the cooler and all of its contents. Appellant acknowledges that officers found a lottery ticket with his name on it inside the cooler, but claims he gave the ticket to V.S. and she placed it in the cooler. But this circumstance has not been proved.

We determine that it is unreasonable to infer from all the circumstances proved that appellant did not know the drugs were present and did not exercise dominion or control over them. A defendant may not rely on mere conjecture or speculation, but must instead point to specific evidence in the record consistent with innocence. *State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010). The inferences presented by appellant do not support his theory that V.S. alone possessed the drugs in the cooler. And, as stated, two people may jointly constructively possess an item. *Harris*, 895 N.W.2d at 601. The methamphetamine and other drug-related items in the cooler were in close proximity to appellant. See *State v. Breaux*, 620 N.W.2d 326, 334 (Minn. App. 2001) (“Proximity is an important factor in establishing constructive possession.”). Officers also found a lottery ticket with appellant’s name on it inside the cooler. Minnesota courts have found sufficient evidence of constructive possession when items identifying the defendant are discovered near the

drugs. *See, e.g., State v. Colsch*, 284 N.W.2d 839, 841 (Minn. 1979) (determining sufficient evidence existed when identifying papers and checkbook were found near drugs). Additionally, appellant's phone call to his friend from the jail stating that V.S. would take responsibility for the drugs further belies the idea that V.S. possessed the drugs alone.

Based on the evidence presented, and viewed in the light most favorable to the jury's verdict, we conclude that the state proved beyond a reasonable doubt that appellant constructively possessed the methamphetamine found in his pickup.

III. The district court did not abuse its discretion by prohibiting appellant from impeaching the police officer with a specific instance of untruthfulness.

Appellant challenges the district court's decision prohibiting him from cross-examining the officer about a specific instance of untruthfulness in another case, to attack his credibility. Evidentiary rulings rest within the sound discretion of the district court. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). "A district court abuses its discretion when it erroneously or illogically construes the law or the facts to reach its decision." *Browder v. State*, 899 N.W.2d 525, 528 (Minn. App. 2017), *review denied* (Minn. Aug. 22, 2017). Even if the district court abused its discretion, an appellant is not entitled to a new trial if the error was harmless. *State v. Robinson*, 718 N.W.2d 400, 407 (Minn. 2006). "On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *Amos*, 658 N.W.2d at 203 (citation omitted).

In September 2017, the district court, in an unrelated criminal case, granted a defendant's motion to suppress evidence discovered during a vehicle search by the same

officer as in this case. The district court in that matter determined that the officer's testimony was "not credible in many respects" about the stop and search of the vehicle. In this case, appellant argued that the fact patterns were similar and sought to impeach the officer by asking him about the 2017 order. The district court denied appellant's motion to impeach, reasoning that appellant could not impeach the officer with the 2017 order because it "lacks relevance" and "is not probative of [the officer's] character for truthfulness or untruthfulness."

We discern no abuse of discretion in the district court's decision. Prior misconduct, other than conviction of a crime, may be admissible to attack a witness's credibility if the prior misconduct is probative of untruthfulness. Minn. R. Evid. 608(b). Under the rule, "[s]pecific instances of the conduct of a witness, for the purpose of attacking or supporting the witness's character" may be proved only by cross-examination and "may not be proved by extrinsic evidence." *Id.* Specific instances of conduct are probative of credibility if they involved an untruth or an act of deception. *State v. Haynes*, 725 N.W.2d 524, 530-31 (Minn. 2007).

Appellant sought to prove that the officer was untruthful in his testimony in the 2017 case, and was also untruthful when he testified about the stop and search of appellant's pickup in this case. But the district court did not find that the officer lied under oath in 2017. Instead, the 2017 order stated only that the officer's testimony lacked credibility. The Minnesota Supreme Court recognizes that "[a] determination that a person's testimony is not credible is not necessarily probative of that person's character for truthfulness or untruthfulness." *Staffing Specifix, Inc. v. TempWorks Mgmt. Servs., Inc.*, 896 N.W.2d 115,

133 (Minn. App. 2017), *aff'd*, 913 N.W.2d 687 (Minn. 2018). Indeed, “[a] judge may find a witness not credible for any number of reasons, such as a lack of knowledge, or a poor vantage point for witnessing an event.” *Id.* Given this caselaw, we determine that the district court did not abuse its discretion by excluding the 2017 order.

Lastly, we determine that any error was harmless. *Amos*, 658 N.W.2d at 203; *see also State v. Cram*, 718 N.W.2d 898, 904 (Minn. 2006) (stating that even if district court abuses its discretion, “the decision will not be reversed if it is found to be harmless beyond a reasonable doubt” (quotation omitted)). Error related to the exclusion of evidence is harmless if the verdict is “surely unattributable to the error.” *State v. Richardson*, 670 N.W.2d 267, 279 (Minn. 2003) (quotation omitted). Appellant argues that the officer was the state’s key witness and any potential impeachment evidence was “highly significant.”

We are not persuaded. Appellant’s own testimony aligned with the officer’s testimony. Appellant testified that the officer conducted a traffic stop during which appellant admitted he had recently taken drugs and had drugs in his pickup. Appellant acknowledged that the cooler contained drugs and a lottery ticket in his name. While appellant argued that the drugs did not belong to him, the jury did not credit this testimony and we defer to the jury’s credibility determinations. *See State v. Cabrera*, 700 N.W.2d 469, 475 (Minn. 2005) (“It [is] up to the jury to judge the weight and credibility of the witnesses’ testimony.”). Given the evidentiary record, even if the district court erred by excluding the impeachment testimony, which we do not believe it did, any error did not have a significant impact on the outcome of the trial.

Affirmed; motion granted.