

*This opinion is nonprecedential except as provided by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
A20-0306**

State of Minnesota,
Respondent,

vs.

Richard Joseph Hamer,
Appellant.

**Filed January 25, 2021
Affirmed
Worke, Judge**

Lincoln County District Court
File No. 41-CR-19-33

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

Glen Petersen, Lincoln County Attorney, Ivanhoe, Minnesota; and

Abby Wikelius, Special Assistant County Attorney, Marshall, Minnesota (for respondent)

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(for appellant)

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges the sufficiency of the evidence supporting the jury's guilty verdicts on charges of felony fifth-degree controlled-substance possession and petty misdemeanor possession of drug paraphernalia. We affirm.

FACTS

Appellant Richard Joseph Hamer owns a building (shop) that is approximately nine blocks from his home. The shop serves several purposes. Hamer uses it as a workshop, for storage, and as a "pawn shop," holding collateral when he loans individuals money. Hamer's shop is filled with tools, guns, collectibles, and antiques.

Citizens complained about "people coming and going [from Hamer's shop] . . . all hours of the night." Based on these reports, officers believed that there was drug activity in the shop. Officers conducted surveillance at the shop approximately 80 times between November 2018 and February 2019. During this time, officers received information that methamphetamine and marijuana were being used in the shop. Officers collected names of individuals visiting the shop and recognized some of these individuals as those with histories of drug incidents.

Officers applied for a search warrant for the shop after receiving information from M.D., an individual known to officers. M.D. reported that on Sunday, February 24, 2019, he purchased an 8-ball of methamphetamine—3.5 grams. He split it evenly with another individual and consumed some of it. M.D. left roughly 1.5 grams of methamphetamine on a shelf behind a large table in Hamer's shop.

Officers executed the search warrant on February 27, 2019. A narcotics-detecting dog indicated the presence of a controlled substance on a workbench. There was a pack of cigarettes on the workbench that held a plastic baggie with a crystal-like substance that weighed 2.880 grams and field-tested positive for methamphetamine. On or near the workbench, officers also found two hollowed-out pens used to ingest methamphetamine that field-tested positive for methamphetamine, a “shake tray” that field-tested positive for methamphetamine, and loaded firearms. Additionally, officers found scales and a glass tube with white residue on it that field-tested positive for methamphetamine, a box scale and 83 small baggies underneath it, unused glass pipes, marijuana grinders, and a substance that field-tested positive for marijuana. Officers also seized over 55 firearms and ammunition.

An officer interviewed Hamer while the search warrant was executed. Hamer stated that he spends a lot of time at the shop and others use it as a hangout. Hamer stated that the day before the search, he was in and out of the shop until 10:00 p.m.

Hamer stated that he has used drugs, and that he first used methamphetamine 30 years ago. Hamer could not remember the last time that he used drugs. The officer asked Hamer if he used drugs a week ago, and Hamer replied, “no comment.” The officer asked Hamer if a urinalysis (UA) that day would be clean. Hamer replied, “I don’t know.” Hamer stated that he injured himself a couple of years ago and self-medicates with marijuana and methamphetamine. He stated that his drug of choice is marijuana. Hamer stated that “[t]here might be some [drugs] on the property,” but he does not sell drugs.

Hamer admitted that people do drugs at the shop and “hide their stuff” there. He said that “maybe it’s like a safe house.” He said he “helped a few people out that . . . needed it,” and that “when people are down and out it seems that [he has to] come to their rescue” and now he was going to “pay the price.” The officer told Hamer that they found some methamphetamine. Hamer replied, “I don’t know where that came from.” The officer said that they found “a couple grams to an 8-ball in that . . . Marlboro cigarette pack.” Hamer replied, “Yeah . . . well I guess I’m going to jail then [aren’t] I?”

Hamer went to trial on three charges: fifth-degree controlled-substance crime—possession of methamphetamine, fourth-degree controlled-substance crime—intent to sell, and possession of drug paraphernalia. Officers testified about the investigation, search, and discovery of the methamphetamine and drug paraphernalia. Hamer’s audio-recorded interview was played for the jury. Hamer did not testify.

The jury found Hamer guilty of the possession charges, but not guilty of the intention-to-sell charge. The district court imposed a statutory stay of adjudication with 30 days in jail for the fifth-degree possession offense, and a \$200 fine for the petty misdemeanor drug-paraphernalia offense. This appeal followed.

DECISION

Hamer challenges the sufficiency of the evidence supporting the jury’s guilty verdicts. In reaching its guilty verdicts, the jury relied on circumstantial evidence because there was no direct evidence showing that Hamer possessed the methamphetamine or the drug paraphernalia found in his shop.

This court examines the sufficiency of circumstantial evidence using a two-step approach. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, this court must “identify the circumstances proved.” *Id.* In doing so, this court “defer[s] to the jury’s acceptance of the proof of these circumstances” and its rejection of evidence that conflicts with these circumstances proved by the state. *Id.* at 598-99 (quotation omitted). Because the jury is in the best position to analyze credibility, this court will “consider only those circumstances that are consistent with the verdict.” *Id.* at 599.

Second, this court must “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotations omitted). If there is any rational hypothesis pointing to innocence, then the evidence is insufficient and the conviction must be overturned. *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010). To sustain 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) (quotation omitted).

The jury found Hamer guilty of fifth-degree controlled-substance possession. The state had to prove that he unlawfully possessed one or more mixtures containing methamphetamine. *See* Minn. Stat. § 152.025, subd. 2(1) (2018). The jury found Hamer guilty of possession of drug paraphernalia. The state had to prove that he knowingly or intentionally possessed drug paraphernalia. *See* Minn. Stat. § 152.092(a) (2018). Hamer

argues that the circumstances proved failed to establish the possession element of both crimes.

To prove possession, the state must show that the defendant “consciously possessed, either physically or constructively, the substance.” *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). Here, the state relied on the theory of constructive possession. 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 [it].” *Id.*

There are two ways to prove constructive possession. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). First, the state can prove constructive possession by showing that the contraband was found in a place under the defendant’s exclusive control to which others did not have access. *Id.* The state can also prove constructive possession by showing that the contraband was found in a place to which others had access, but that there existed “a strong probability (inferable from other evidence) that at the time the defendant was consciously or knowingly exercising dominion and control over it.” *Id.* An individual can jointly possess an item with another person. *Id.* Here, because others had access to Hamer’s shop, the state sought to prove that Hamer exercised dominion and control over the methamphetamine and drug paraphernalia through circumstantial evidence.

Hamer claims that the evidence is insufficient because others regularly used his shop, and he was not near the methamphetamine when it was found because he was at home, approximately nine blocks away. Hamer claims that there are at least two reasonable

inferences that show his innocence—the methamphetamine belonged to M.D., or it belonged to someone else.

But an evaluation of the circumstances proved do not lead to a rational hypothesis supporting Hamer's innocence. The circumstances proved are (1) law enforcement received complaints about Hamer's shop leading them to believe there was drug activity there; (2) during surveillance, officers recognized individuals with drug-use histories and received information that drugs were being used in the shop; (3) M.D. reported that three days before the search warrant was executed he left 1.5 grams of methamphetamine on a shelf in Hamer's shop; (4) a narcotics-detecting dog indicated the presence of a controlled substance on a workbench in the shop; (5) officers found 2.880 grams of methamphetamine—nearly twice as much as M.D. said he left there—in a plastic baggie inside a cigarette pack on the workbench; (6) officers found hollowed-out pens that field-tested positive for methamphetamine on the workbench; (7) officers found a “shake tray” that field-tested positive for methamphetamine near the workbench; (8) officers found loaded firearms within arm's reach of the workbench; (9) officers found scales and a glass tube that field-tested positive for methamphetamine; (10) officers found a box scale and 83 small baggies; (11) officers found unused glass pipes, marijuana grinders, and a substance that field-tested positive for marijuana; (12) Hamer was at the shop until 10:00 p.m. the day before the search warrant was executed; (13) Hamer has used drugs; (14) Hamer self-medicated with marijuana and methamphetamine; (15) Hamer did not know if his UA would be clean; (16) Hamer admitted that there might be drugs on the property; (17) Hamer admitted that people do drugs at the shop and “hide their stuff” there; (18) Hamer helped

people out when they needed drugs; and (19) when the officer told Hamer that they found methamphetamine in a cigarette pack, he replied, “Yeah . . . well I guess I’m going to jail then [aren’t] I?”

These circumstances proved “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.” *See Reed*, 737 N.W.2d at 581 (quotation omitted). These circumstances show that Hamer constructively possessed methamphetamine and drug paraphernalia because when they were found, there was a strong probability that Hamer was exercising dominion and control.

Further, the evidence does not support any rational theory that Hamer was innocent because constructive possession can be joint. Thus, even if the methamphetamine belonged to M.D., which is unlikely because the amount found was more than M.D. said he left and it was found in a different location than where M.D. said he left it, Hamer could still be guilty. Further, M.D.’s possession of the methamphetamine does not account for the drug paraphernalia. And even if the methamphetamine and paraphernalia belonged to someone else, they were in Hamer’s shop, and he admitted that there were drugs there. Further, it seems unlikely that Hamer would have allowed anyone in his shop when he was not there because of the shop’s contents. Hamer would likely protect his property and not allow known drug users to be in his shop when he is not there. Thus, the evidence is sufficient to support the jury’s verdicts.

Affirmed.