

*This opinion is nonprecedential except as provided by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
A20-0767**

State of Minnesota,
Respondent,

vs.

Wayland Deshawn Jones,
Appellant.

**Filed May 24, 2021
Affirmed
Smith, John, Judge***

Hennepin County District Court
File No. 27-CR-19-3056

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Florey, Judge; and Smith, John, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm appellant Wayland Deshawn Jones' conviction for unlawful possession of a firearm because sufficient evidence supports the jury verdict that he constructively possessed the firearm, and the jury instructions were not improper.

FACTS

On May 24, 2018, Minneapolis Police Officer Joel Pucely was conducting surveillance in an area in Minneapolis when he saw a vehicle without license plates stop in the middle of the street and block traffic. Officer Pucely saw a man walk directly up to the driver's side window and make contact with the driver. The male handed "something small" to the driver and "receive[d] something in return." Based on his training and experience, the officer believed that a hand-to-hand transaction such as this was consistent with someone exchanging something small, such as narcotics, for money. The vehicle then drove away from the intersection.

Police Officer Justin Stetson and another officer were assisting Officer Pucely with the surveillance. Officer Pucely informed Officer Stetson that he had seen the driver of the vehicle perform a hand-to-hand transaction at the intersection and directed Officer Stetson to stop the vehicle. Officer Stetson stopped the vehicle and identified appellant as the driver. Appellant was the only person in the vehicle. Officer Stetson's partner noticed the smell of marijuana coming from the vehicle, and Officer Stetson saw marijuana on appellant. The officers removed appellant from the vehicle and placed him in a squad car.

During a vehicle search, the officers found marijuana on the driver's side seat and a purse in the backseat containing a firearm and a loaded magazine.

Appellant told officers that the vehicle belonged to his girlfriend, B.W., and he "denied any knowledge" of the purse. Officers later interviewed B.W. She acknowledged that the vehicle belonged to her, but told officers that appellant was the primary driver of the vehicle. B.W. also told officers that she did not own a handgun and did not leave a handgun in a purse in the backseat of the vehicle.

The Minnesota Bureau of Criminal Apprehension (the BCA) obtained a DNA sample from appellant via a cheek swab. The BCA also swabbed the firearm. The BCA found that there was a mixture of DNA from three or more individuals on the gun swab. The BCA analyst testified that it is not uncommon to have a mixture of more than one person's DNA on an item, especially with "touch-type samples" such as handguns. The BCA analyst testified that approximately 97.6 percent of the general population could be excluded from the sample found on the firearm, but that appellant could not "be excluded from being a possible contributor to that mixture."

Respondent State of Minnesota charged appellant with possession of a firearm by an ineligible person under Minn. Stat. § 624.713, subd. 1(2) (2016). Before trial, appellant stipulated that he was prohibited from possessing a firearm due to his juvenile conviction for second-degree assault. Following a four-day jury trial, the jury found appellant guilty of the charged offense.

DECISION

I. Sufficiency of the Evidence

A. Standard of Review

Appellant challenges the sufficiency of the evidence underlying his conviction. In evaluating 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 fact[-]finder 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 [s]tate’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 an 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). Circumstantial evidence is “evidence from which the fact[-]finder 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 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 such as this, we apply a two-step test. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). We first identify the circumstances proved. *Id.* (citing *State v. Andersen*, 784 N.W.2d 320, 329-30 (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.” *Id.* (citing *Andersen*, 784 N.W.2d at 329). We then independently examine the “reasonableness of the inferences that might be drawn from the circumstances proved,” and then “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotations omitted). We consider the evidence as a whole and do not examine each piece in isolation. *Andersen*, 784 N.W.2d at 332.

B. Constructive Possession

The jury convicted appellant of unlawful possession of a firearm under Minn. Stat. § 624.713, subd. 1(2) (prohibiting persons convicted of a “crime of violence” from possessing a firearm or ammunition). Possession may be either actual or constructive. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). Actual possession is “direct physical control.” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted). 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. *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975). Two people may jointly constructively possess an item. *Harris*, 895 N.W.2d at 601.

At the first step, we identify the circumstances proved. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). Here, a police officer observed appellant stop his vehicle in the middle of the street and engage in a hand-to-hand transaction with someone who approached him. The officer saw the man hand something small to appellant and receive something small in return. Based on his training and experience, the officer believed he had witnessed a drug transaction. Officers stopped appellant's vehicle and noted that he was the only occupant. As they were speaking with appellant, one officer noticed the smell of marijuana coming from appellant, while another observed marijuana on appellant. During the subsequent vehicle search, officers found marijuana on the driver's seat and a loaded handgun and magazine in a purse in the backseat of the vehicle. Appellant's girlfriend, B.W., acknowledged that the vehicle belonged to her, but she testified that both she and appellant drove it. B.W. denied owning a firearm and testified that she did not leave it in a purse in the vehicle. Analysts from the BCA collected DNA from appellant and from the firearm. The BCA analyst testified that approximately 97.6 percent of the general population could be excluded but that appellant could not "be excluded from being a possible contributor to [the] mixture" found on the firearm. The evidence presented at trial supports a determination that appellant exercised dominion and control over the firearm. Thus, the circumstances proved are consistent with guilt.

We next 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). Appellant argues that the circumstantial evidence supports a reasonable inference that B.W., alone, possessed the firearm and appellant did

not know it was in the vehicle. B.W. was the registered owner of the vehicle and the firearm and magazine were found in one of her purses. Appellant notes that officers did not find his identification or other personal items in the purse. Appellant also argues that the BCA could not find any usable fingerprints on the handgun, and that his DNA profile was insufficiently defined. Appellant argues that these circumstances suggest that he is not guilty of the offense.

We are not persuaded. The inferences presented by appellant do not support his theory that B.W. possessed the firearm on her own. As stated, two people may jointly constructively possess an item. *Harris*, 895 N.W.2d at 601. And here, B.W. testified that although she owned the vehicle, appellant was the primary driver. B.W. testified that she did not own a firearm and did not place a purse containing a firearm into the vehicle. Uncontroverted testimony established that appellant was the sole occupant of the vehicle at the time of the traffic stop. *Cf. id.* at 596 (considering reasonable hypothesis other than guilt when driver had two additional occupants in vehicle). Lastly, although officers did not find any of appellant's personal items in the purse, the BCA analysts found a mixture of DNA on the firearm and appellant could not be excluded as a contributor to this mixture.

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 firearm and is therefore guilty of the charged offense.

II. Jury Instructions

Appellant argues that he is entitled to a new trial because the district court provided an improper supplemental instruction to the jury when the jury indicated it was deadlocked.

A district court is afforded broad discretion to formulate appropriate jury instructions and only abuses that discretion if the jury instructions “confuse, mislead, or materially misstate the law.” *State v. Kelley*, 855 N.W.2d 269, 274 (Minn. 2014).

During deliberations, the jury sent a note to the district court. The note indicated that the jury would “like to state as a hung jury” because five jurors believed appellant was guilty and seven jurors believed he was not guilty. The district court discussed the note with counsel and informed them, “[the court’s] intention is to—they’ve only been deliberating a few hours—tell them to continue to deliberate. They’ve only done about two and a half hours of deliberation, maybe three.” Counsel did not object to the district court’s proposed instruction. The jury returned to the courtroom and the district court instructed them as follows:

Here is my response and instruction to you in [regard to the request to stop deliberating]. The jury room is no place for pride of opinion or for espousing and maintaining either side of a cause in the spirit of controversy. The single object to be affected in the jury room is to arrive at a true verdict. This can be done only by deliberation, mutual concession, and a due deference to the opinions of each other.

Both a verdict to which a juror agrees must, of course, be his or own verdict and the result of his or her own convictions rather than a mere acquiescence in the conclusions of his or her fellow jurors. In order to bring 12 minds to a unanimous result, you must examine the questions submitted to you with candor and with a proper regard and deference to the opinions of each other.

Though no juror is required to sacrifice conscientious convictions, he or she ought nevertheless to weigh carefully the opinions of his or her fellow jurors and the arguments and the reasons upon which they are founded. And if upon due consideration he or she is convinced they are right and he or

she is in error, it is his or her duty to agree with them. It is therefore your duty, ladies and gentlemen, to make all reasonable efforts to reach an agreement.

So, with these words, I am going to ask you to resume your deliberations at this time.

The jury continued deliberating for the rest of the day and for several additional hours on the following day.

We apply an abuse-of-discretion standard of review to a district court's supplemental instruction concerning a jury's obligation to continue deliberating if it may be deadlocked. *State v. Cox*, 820 N.W.2d 540, 550 (Minn. 2012). In so doing, we consider whether the instructions, when taken as a whole, fairly and adequately explain the law. *State v. Moore*, 699 N.W.2d 733, 736 (Minn. 2005). When a jury seems deadlocked, it "may be discharged without a verdict if the court finds there is no reasonable probability of agreement." Minn. R. Crim. P. 26.03, subd. 20(4). A district court may not instruct a jury that it must continue deliberating if there is no reasonable probability of agreement. *See id.* But a district court may require the jury to continue deliberating for a reasonable amount of time. *State v. Kelley*, 517 N.W.2d 905, 909 (Minn. 1994). "The reasonableness of the deliberation period depends on such factors as the length of the trial, the nature or complexity of the case, the volume and nature of the evidence, the presence of multiple counts or multiple defendants, and the jurors' statements to the court concerning the probability of agreement." *Id.* The supreme court has recommended a jury instruction in situations such as this, which is contained in the jury instruction guides. *See* 10 Minnesota

Dist. Judges' Ass'n, Minnesota Practice—Jury Instruction Guides, § 3.04, at 42-43 (6th ed. 2015).

Here, the jury trial lasted several days. The jury delivered a note to the district court after they had only been deliberating for approximately three hours. Given this short amount of time, the district court decided to give an instruction encouraging the jurors to continue their deliberations. The district court discussed its proposed instructions with counsel, who did not object. The district court then told the jurors that a verdict could be reached through “deliberation, mutual concession, and a due deference to the opinions of each other.” However, the district court cautioned that “a verdict to which a juror agrees must, of course, be his or own verdict and the result of his or her own convictions rather than a mere acquiescence in the conclusions of his or her fellows jurors.” The district court’s instruction to deliberate with a view to reaching an agreement is well within its discretion. *See, e.g., State v. Martin*, 211 N.W.2d 765, 773 (Minn. 1973) (noting that trial court may instruct jury “to consult and deliberate with a view to reaching an agreement consistent with their individual judgments”). Accordingly, we conclude that appellant is not entitled to a new trial on the basis of improper jury instructions.

Affirmed.