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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1606**

State of Minnesota,
Respondent,

vs.

Alexander Taylor,
Appellant.

**Filed November 1, 2021
Affirmed
Hooten, Judge**

St. Louis County District Court
File No. 69DU-CR-19-2984

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Kimberly J. Maki, St. Louis County Attorney, Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant).

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

NONPRECEDENTIAL OPINION

HOOTEN, Judge

Appellant seeks reversal of his convictions for unlawful possession of firearms, arguing that the district court erred in denying his motion to suppress evidence because police officers violated his Fourth Amendment rights in their execution of a search warrant.

Alternatively, appellant argues that the state's evidence was insufficient to support the convictions because it failed to prove his actual or constructive possession of the firearms. We affirm.

FACTS

On July 28, 2019, Duluth police officers responded to a domestic violence complaint in which the victim alleged that appellant Alexander Taylor was extremely violent and threatened to shoot her. The victim maintained that Taylor possessed at least two firearms. The officers reviewed Taylor's criminal history, discovered several convictions for crimes which made Taylor ineligible to possess a firearm, and then applied for a no-knock warrant to search Taylor's residence. The officers cited Taylor's criminal history, the domestic violence complaint, his reported illegal possession of firearms, and police safety as reasons justifying the no-knock warrant. On these grounds, the district court issued a no-knock warrant, which permitted the officers to search the side of the duplex in which Taylor lived with his girlfriend, C.T.; his girlfriend's three sons; and another woman, A.B.

The officers executed the warrant in the afternoon on August 13, 2019. When they arrived at the residence, they observed two males and a female exit the residence and get into a passenger vehicle parked behind the residence. The officers blocked the vehicle from leaving the alleyway adjacent to the residence. One of the vehicle's occupants, a male, exited the vehicle and fled on foot, while the other male passenger, later identified as Taylor, went back inside the duplex. A police tactical team safely entered Taylor's residence and removed two women and the children. One of the women, C.T., denied that

Taylor was in the home. As the police continued to yell that Taylor should surrender, Taylor entered his neighbor's side of the duplex through a shared basement. He was later arrested as he exited his neighbor's entrance.

During the search of Taylor's portion of the duplex, officers found a revolver located in the ceiling of an upstairs bedroom with a container of live ammunition and a rifle located underneath the shared basement stairs of the duplex. DNA testing of the rifle and revolver revealed a mixture of three or more samples with one sample serving as the "major contributor."¹ Further testing revealed that the major contributor's DNA matched Taylor's DNA sample, while the remaining samples were too insignificant for a determination regarding identification.

Respondent State of Minnesota charged Taylor with two counts of unlawful possession of a firearm. Taylor moved to suppress the firearms on the grounds that they had been recovered during an unreasonable search. Taylor did not challenge the validity of the search warrant but argued that the police unreasonably executed the warrant. The district court denied the motion and a jury found Taylor guilty on both counts. The district court entered judgments of conviction and imposed one sentence of 60 months' imprisonment. He now appeals.

¹ The term "contributor" refers to the number of distinct DNA profiles found on an item. A "major contributor" refers to a person whose DNA matches the DNA found on an item at significant levels.

DECISION

I. The district court did not err by concluding that the officers acted reasonably during the execution of the search warrant.

Taylor challenges the district court's denial of his motion to suppress the evidence related to the firearm and revolver police discovered in his home. "When reviewing pretrial orders on a motion to suppress evidence, we independently review the facts and determine, as a matter of law, whether the district court erred in its ruling." *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (citation omitted). The district court's factual findings are reviewed under the clearly erroneous standard, but we review the district court's legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

Taylor argues that the methods police undertook when executing the search of his home were unreasonable under the Fourth Amendment. To address this argument, we must analyze whether the officers' actions were reasonable under the circumstances present at the time of search. *State v. Fay*, 488 N.W.2d 322, 324 (Minn. App. 1992). "Reasonableness depends upon a balance between public interest, and the individual's right to personal security free from arbitrary interference by law officers." *Id.* (quotation omitted). Even when officers have a warrant, a search may be unreasonable if, under the totality of the circumstances, the officers' conduct evinces a deliberate disregard of a criminal defendant's constitutional rights. *See id.*

In *Fay*, we concluded that the conduct of officers executing a search warrant was unreasonable when an "entry team" of five or more officers arrived at the defendant's home and broke down the door using a battering ram. *Id.* The officers approached the defendant

with guns drawn, threw him on the floor, and then, without the benefit of a *Miranda* warning, questioned him while he was handcuffed and blindfolded. *Id.* We concluded that this violent and unannounced entry, coupled with the officers' refusal to produce a search warrant, "evinced a deliberate disregard of [the defendant's] constitutional rights" and showed more than just a harmless error or a "relatively minor irregularit[y]" on the part of the officers. *Id.*

Taylor relies on our decision in *Fay* in support of his argument that the conduct of the officers who executed the no-knock warrant was unreasonable. He points to the fact that the officers wore bulletproof vests and used a battering ram to enter his home while also yelling at the home's occupants to support his argument that the officers' conduct was unjustified. He also relies on a police report that suggested that an officer yelled at C.T. when she exited Taylor's residence and told her that it would be her fault if Taylor was hurt after she denied that Taylor was in the home.

The district court recognized the similarities between the circumstances present in *Fay* and the circumstances present in Taylor's case, but concluded that the evidence establishing Taylor's violent and threatening nature permitted the use of more force than was authorized in *Fay*. We agree.

Unlike the circumstances present in *Fay*, the police had evidence to suggest that Taylor was violent and had access to weapons. The record before us indicates that Duluth police officers received a complaint of domestic violence days before they executed the search warrant at his home. The complainant alleged that Taylor had previously threatened her and had a history of violence. Police confirmed this by conducting a records search of

Taylor’s criminal history. The complainant also alleged that Taylor had at least two weapons in his home. The officers relied on this information and determined that the appropriate level of force to use when entering Taylor’s home was the use of a tactical team, bullet proof vests, and a battering ram. We cannot say that this decision was unreasonable.

The record supports the officers’ reasonable belief that a swift and forceful entry was justified because there was evidence that Taylor was armed and dangerous. Although the officers yelled at C.T., their conduct was justified because they reasonably believed that she was lying to them when she stated that Taylor was not in the home despite other officers seeing him enter and exit the home—a belief that was substantiated after Taylor surrendered to the officers. Further, unlike *Fay*, the officers did not use blindfolds on Taylor, throw him to the ground, question him without a *Miranda* warning, or otherwise use unreasonable force when apprehending him at the duplex. We therefore cannot conclude that the officers conduct “evinced a deliberate disregard of [Taylor’s] constitutional rights”; rather, the officers used the amount of force necessary to execute the search warrant keeping in mind Taylor’s violent criminal history and his alleged possession of firearms. *See id.*

Taylor does not seem to dispute these distinctions in his appellate brief, but rather argues that the police should not have relied on the domestic violence complaint to provide the basis for the level of force used, maintaining that “[t]he information . . . was old and outdated.” But the record confirms, and Taylor concedes, that the victim made the domestic violence complaint approximately two weeks before police executed the search

warrant at Taylor’s residence. Taylor points us to no caselaw, and we are unable to find any, that suggests the passage of two weeks makes the information from the complaint “outdated.” We therefore reject the argument.

Because we conclude that the officers acted reasonably in their execution of the search warrant of Taylor’s home and the district court therefore did not erroneously deny Taylor’s motion to suppress the evidence from the search, we need not reach the argument in Taylor’s appellate brief concerning the exclusionary rule.

II. The state presented sufficient evidence for a jury to conclude that Taylor constructively possessed the firearms.

Taylor alternatively argues that his convictions must be reversed because the state presented insufficient evidence to prove that he committed the charged crimes.

When evaluating a claim concerning the sufficiency of the evidence, “we 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). We 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 and citation omitted).

The state may prove a conviction by either direct or circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). Direct evidence is evidence that, if believed, directly proves the existence of a fact without requiring any inferences by the

factfinder. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). Circumstantial evidence, on the other hand, is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist” and “always requires an inferential step to prove a fact that is not required with direct evidence.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Both parties agree that the state presented circumstantial evidence to obtain Taylor’s conviction, so we will address whether that circumstantial evidence is sufficient to sustain the conviction.

When analyzing a claim under the circumstantial evidence standard, we apply a two-step standard of review. *Silvernail*, 831 N.W.2d at 598. First, we “identify the circumstances proved.” *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). In doing so, “we construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *Id.* (quotation omitted). Second, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted). We independently examine “the reasonableness of [the] inferences that might be drawn from the circumstances proved” and “give no deference to the fact finder’s choice between reasonable inferences.” *Id.* (quotation omitted).

The state charged Taylor with two counts of unlawful possession of a firearm pursuant to Minn. Stat. § 624.713, subd. 1(2) (2018). To prove a violation of that statute, the state must show that (1) the defendant was previously convicted of a crime of violence; and (2) the defendant knowingly possessed a firearm. Taylor does not dispute that he was

previously convicted of a crime of violence, so our analysis focuses on whether the state's evidence proves he knowingly possessed a firearm.

The state may establish a defendant's possession of a firearm through either actual or constructive possession. *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *rev. denied* (Minn. Jan. 16, 2001). Actual possession "require[s] proof that [the defendant] physically had the [firearm] on his person." *Id.* Constructive possession, on the other hand, exists if "the police found the [firearm] in a place under [the] defendant's exclusive control to which other people did not normally have access" or if the firearm is found "in a place to which others had access, there is a strong probability (inferable from other evidence) that [the] defendant was at the time consciously exercising dominion and control over" the firearm. *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975). The state concedes in its appellate brief that the firearms police found in Taylor's home "were found in areas in which other people had access," so our analysis is limited to whether the state's evidence proves Taylor was exercising dominion or control over the firearms.

We begin first by identifying the circumstances proved at trial, which are as follows: (1) Taylor lived in a duplex with C.T., a second woman, A.B., and C.T.'s children; (2) during the search of Taylor's home, officers found a rifle underneath the stairs in the basement that Taylor shared with the residents of the other side of the duplex; (3) Taylor considered the shared basement his room in the home; (4) Taylor passed through the basement area and used the shared stairs to exit the duplex through the front door of his neighbor's side of the duplex; (5) the rifle did not belong to Taylor's neighbor in the other side of the duplex; (6) officers also found a revolver and ammunition in the ceiling tiles of

one of the bedrooms located in the portion of the home where Taylor lived; (7) Taylor had access to the bedroom; and (8) DNA testing showed that Taylor's DNA was the major sample present on both firearms.

The only reasonable inference from the circumstances proved is that Taylor had dominion or control over the firearms police found. The rifle was found underneath the basement stairs of the duplex, adjacent to Taylor's bedroom. Taylor walked through that area prior to his arrest by police, and his neighbor testified the rifle did not belong to her. Police found the revolver and ammunition in a bedroom of the home that he had access to. And Taylor's DNA was found on both guns.

While Taylor concedes that one rational hypothesis from this evidence is that he possessed the firearms and that his DNA was transferred to them through possession, he argues that an alternate hypothesis is that there was a secondary transfer of his DNA to the firearms by someone who previously had contact with him and then touched the firearms, thereby distributing his DNA to the firearms. Taylor made this argument to the jury but presented no evidence to the jury that a secondary transfer occurred. Because the jury as evidenced by its guilty verdict rejected this argument at trial, and there is nothing in the record supporting how and when such a secondary transfer of Taylor's DNA to the two firearms occurred, we conclude that the circumstances presented to the jury were inconsistent with the alternative hypothesis that Taylor's DNA ended up on the firearms through a secondary transfer and consistent with the conclusion that Taylor possessed the firearms.

In addition to arguing that secondary transfer provides a reasonable inference inconsistent with guilt, Taylor relies on two cases to support his conclusion that the state failed to prove he constructively possessed the firearms: *Harris*, 895 N.W.2d at 592 and *State v. Sam*, 859 N.W.2d 825 (Minn. App. 2015). In *Harris*, the state charged Harris with possession of a firearm by an ineligible person after officers pulled over Harris, who was driving his brother's car with two passengers, and discovered a firearm behind the driver's seat wedged between the headliner and the roof of the car. 895 N.W.2d at 596–97. DNA testing revealed a mixture of male and female DNA from five or more people and that approximately 25% of the general population could not be excluded as contributors to the DNA mixture, including the car's two passengers. *Id.* at 597. The Minnesota Supreme Court concluded that this evidence was insufficient to sustain the conviction because the circumstances, viewed as a whole, did not preclude a reasonable inference that Harris may not have known about the firearm in the car. *Id.* at 603.

Similarly, in *Sam*, the state charged Sam with controlled substance possession after a trooper found drugs in the center console of a borrowed car driven by Sam. 859 N.W.2d at 828–29. The police also observed Sam's front seat passenger making a lot of movement toward the center of the car but did not observe Sam making any such movements. *Id.* at 834. An open beer bottle was found between where Sam's passenger sat in the front seat and the center console. *Id.* On appeal, utilizing the heightened circumstantial evidence standard of review, we concluded that the evidence was insufficient to sustain Sam's conviction because there was no evidence tying him directly to the illegal item. *Id.* at 835.

But unlike the facts presented in *Harris* or *Sam*, Taylor concedes that his DNA was on the firearms, effectively tying him to the illegal items. And although he argues that the firearms could have belonged to a third party, including his neighbor, testimony from the neighbor and the DNA testing negate that conclusion and provide sufficient circumstances to eliminate all reasonable inferences inconsistent with his guilt. We therefore reject Taylor's reliance on these cases.

We conclude that the circumstances presented to the jury proved Taylor's possession of the firearms and eliminated all reasonable inferences inconsistent with guilt. We therefore conclude that the evidence was sufficient to sustain his convictions.

Affirmed.