

*This opinion is nonprecedential except as provided by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
A21-0114**

State of Minnesota,
Respondent,

vs.

Freddie Tyrone Dudley,
Appellant.

**Filed October 18, 2021
Affirmed
Frisch, Judge**

Sherburne County District Court
File No. 71-CR-20-799

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

Kathleen A. Heaney, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Johnson, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

On appeal from an unlawful-possession-of-a-firearm conviction, appellant argues that the circumstantial evidence showing that he possessed a firearm was insufficient to prove his guilt. We affirm.

FACTS

On July 11, 2020, a police officer spotted a vehicle with certain equipment violations and conducted a traffic stop. Upon pulling over the vehicle, the officer observed the female driver and the female passenger in the rear right seat switch positions inside the vehicle. The officer found this behavior suspicious and called for backup. A Minnesota state trooper arrived shortly thereafter.

Appellant Freddie Tyrone Dudley was seated in the rear driver's-side seat. Dudley wore a white t-shirt with a Nike "swoosh" symbol, black pants, and all-white shoes. Dudley told the trooper that he did not have a driver's license or any identification and identified himself as "Markil Jones." Neither law-enforcement official was able to find a Markil Jones in their database. The officer asked Dudley to exit the vehicle, and Dudley complied.

When the trooper returned to the vehicle after checking the database, he noticed a lanyard on the floor of the SUV emerging from underneath the driver's seat into the space where the rear driver's-seat passenger's feet would rest. The trooper testified that the lanyard was "directly in front" of Dudley, lying "[b]etween his feet." The trooper pulled on the lanyard, which was attached to a red Champion-brand fanny pack. The trooper opened the fanny pack and discovered a loaded handgun inside. The trooper arrested Dudley after discovering the firearm.

The trooper then spoke with the rear-seat female passenger, who showed him a Facebook profile photo of Dudley. This photo showed Dudley dressed in the same white t-shirt with a Nike "swoosh," black pants, and all-white shoes that Dudley wore at the time

of his arrest. The photo also showed Dudley wearing a red Champion fanny pack strapped across his chest. The red Champion fanny pack was identical to the one the trooper discovered in the car.

The state charged Dudley with unlawful possession of a firearm. Minn. Stat. § 624.713, subd. 1(2) (2018). The district court held a court trial and found Dudley guilty of unlawful possession of a firearm. It found that the officer and trooper testified credibly and made the following findings, relevant to this appeal.

Dudley sat in the rear driver's-side seat of the vehicle. The officer asked him to identify himself and Dudley provided a false name and birthdate. A "red object" was visible on the floor of the SUV under the driver's seat near Dudley's feet. The trooper pulled on the lanyard, which was attached to a red Champion fanny pack. A loaded firearm was inside the fanny pack. The officer viewed a Facebook photo of Dudley wearing a red Champion fanny pack identical to the one discovered in the vehicle. It would have been "difficult" for the driver or anyone other than Dudley to access the fanny pack because of its proximity to Dudley and its location inside of the vehicle.

The district court concluded that Dudley knowingly and unlawfully possessed a firearm at the time of his arrest. As Dudley stipulated that he had previously been convicted of a crime of violence and was not allowed to possess a firearm, the district court found that Dudley unlawfully possessed a firearm in violation of Minn. Stat. § 624.713, subd. 1(2). The district court convicted Dudley and sentenced him to the mandatory minimum of 60 months' imprisonment.

This appeal follows.

DECISION

Dudley urges us to reverse his conviction, arguing that the state's evidence was insufficient to prove beyond a reasonable doubt that he constructively possessed the firearm. The state argues that the evidence of Dudley's constructive possession precludes any rational hypothesis inconsistent with guilt.

In evaluating sufficiency-of-the-evidence challenges, 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.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). If the state uses exclusively circumstantial evidence to prove an element of the offense, we apply a heightened standard of review to the evidence underlying that element. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). 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).

We review the sufficiency of circumstantial evidence by conducting a two-step analysis. *State v. German*, 929 N.W.2d 466, 472 (Minn. App. 2019). First, we identify the circumstances proved by the state. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). We “assume that the [fact-finder] resolved any factual disputes in a manner that is consistent” with the verdict. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014).

Second, we determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). We do not defer to the fact-finder's choice between reasonable

inferences. *Silvernail*, 831 N.W.2d at 599. We must reverse the conviction if a reasonable inference other than guilt exists. *Loving*, 891 N.W.2d at 643. But we will uphold the verdict if the circumstantial evidence forms “a complete chain” which leads “directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Peterson*, 910 N.W.2d 1, 7 (Minn. 2018) (quoting *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010)).

The state was required to show that Dudley knowingly possessed a firearm. Minn. Stat. § 624.713, subd. 1 (2018). The state may prove possession of a firearm through either actual or constructive possession.¹ *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). Actual possession is “direct physical control” of the firearm. *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted). Constructive possession exists where “the state cannot prove actual or physical possession at the time of the arrest but where the inference is strong that the defendant at one time physically possessed the [firearm] and . . . continued to exercise dominion and control over it up to the time of the arrest.” *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). Multiple persons may constructively possess a firearm jointly. *Harris*, 895 N.W.2d at 601.

The state may establish constructive possession by either of two methods: (1) by showing that law enforcement found the firearm in a place under the defendant’s exclusive control where others did not have access or, (2) where law enforcement discovered the gun

¹ Dudley contends, and the state concedes, that the state failed to prove actual possession. We therefore review the sufficiency of the evidence only as to the state’s theory of constructive possession.

in a place where others did have access, by showing a “strong probability” that the appellant exercised dominion and control over the firearm. *Id.*

Applying the circumstantial-evidence test, we first determine the circumstances proved by the state. *Silvernail*, 831 N.W.2d at 598. The state proved that (1) Dudley was a passenger sitting in the rear driver’s side of the vehicle; (2) a lanyard extended from underneath the driver’s seat to the floor space “directly” “[b]etween” Dudley’s feet; (3) the lanyard was physically attached to a red Champion-brand fanny pack positioned under the driver’s seat, which contained a loaded handgun; (4) the fanny pack was within reach of any person sitting in the rear, driver’s side seat; (5) Dudley gave the police officer a false name and birthdate; (6) the officer and the trooper viewed a Facebook photograph of Dudley wearing clothing identical to the clothes he wore at the time of the arrest—a white t-shirt with a Nike “swoosh,” black pants, and all-white shoes; (7) this Facebook photograph of Dudley also showed the identical red fanny pack strapped across Dudley’s chest.

We next consider whether the circumstances proved are consistent with Dudley’s guilt and preclude any rational hypothesis inconsistent with his guilt. *Loving*, 891 N.W.2d at 643. Because the firearm was found in a location accessible to others, the state must show that there was a strong probability that Dudley consciously exercised dominion and control over the gun. *Barker*, 888 N.W.2d at 353-54.

Dudley’s alternative hypothesis that he did not consciously exercise dominion and control over the fanny pack and its contents at the time of the stop is not rational. The circumstances proved preclude the inference that Dudley lacked dominion and control.

Dudley had easy access to the fanny pack, which he could reach by pulling the lanyard “directly in front of him” and “[b]etween his feet.” No other passenger had such access to the fanny pack. Although it was “possible” for the driver to access the fanny pack, such access would have been “difficult.” The Facebook photo showed that Dudley exerted dominion and control over the fanny pack, which was strapped across his chest. Dudley also provided law enforcement with a false name and birthdate, which is evidence suggesting a consciousness of guilt. *State v. McTague*, 252 N.W. 446, 448 (Minn. 1934) (“[T]he fact of an accused’s . . . assumption of a false name . . . [is] admissible as evidence of consciousness of guilt, and thus of guilt itself.”).

Taken together, the only reasonable hypothesis from these circumstances proved is that Dudley constructively possessed the fanny pack and the firearm within it. And even if, as Dudley claims, the driver or another passenger also may have exerted dominion or control over the fanny pack, the circumstances proved show that Dudley would still have jointly possessed the fanny pack and firearm with that other passenger. *See Harris*, 895 N.W.2d at 601 (stating that multiple persons may constructively possess an object at the same time).

This case is distinguishable from *Harris* where the supreme court reversed a conviction because a reasonable inference from the circumstantial evidence was that the defendant-driver did not constructively possess a firearm that police found hidden in the car. *Id.* at 603. There, the circumstances proved established that Harris drove a car with two other passengers when the police initiated their lights and sirens to pull him over. *Id.* at 602. When the police searched the vehicle, they discovered a firearm hidden in the space

where the sunroof panel retracts, behind the ceiling fabric. *Id.* The court held that these circumstances did not preclude a reasonable inference that Harris did not know that the firearm was in the car, noting that Harris did not own the car, made no furtive movements toward the ceiling, and may not have even recognized the object in the ceiling as a firearm in the dark of night. *Id.* at 603.

Here, unlike the circumstances in *Harris*, Dudley could readily access the firearm and no other occupant of the car was in a similar position to access the firearm. The gun in *Harris* was hidden in the ceiling in the top-middle of the car and could not be tied by its location to any specific occupant; in contrast, the firearm here was inside the fanny pack Dudley was seen wearing in a photograph. That fanny pack was attached to a lanyard “directly in front” of Dudley and “[b]etween his feet.”

The circumstances proved in this case, taken together, do not support any reasonable hypothesis other than Dudley’s guilt. We therefore affirm Dudley’s conviction.

Affirmed.