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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0550**

State of Minnesota,
Respondent,

vs.

Zachary Lee Frye,
Appellant.

**Filed March 3, 2025
Affirmed
Bjorkman, Judge**

St. Louis County District Court
File No. 69VI-CR-21-882

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

Kimberly J. Maki, St. Louis County Attorney, Duluth, Minnesota; and

Chris Florey, Assistant County Attorney, Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Frisch, Chief Judge; and
Reyes, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges two convictions of unlawful possession of a firearm, arguing
that (1) the record evidence is insufficient to support either conviction and (2) the district

court erred by not granting him a new trial for juror bias because it clearly erred by finding that a juror who gave inaccurate information about her criminal history was not actually biased. We affirm.

FACTS

During the afternoon of August 11, 2021, law enforcement received information that led them to believe that appellant Zachary Lee Frye, with whom they were familiar because of prior “psych related” contacts, needed a mental-health evaluation. They also received information that a black Cadillac registered to Frye and his mother (mother) was driving “all over the road.” An officer called and spoke to Frye, who said that he was driving from mother’s house to his bank. The officer also called mother, who was in the vicinity of the bank having a tire on her vehicle fixed. The officer knew her to commonly drive a white van. Mother and the officer agreed to meet at the bank to speak to Frye.

Multiple officers met mother and Frye outside the bank. Frye sought to get in his vehicle—the black Cadillac—but an officer stopped him. The officers talked to Frye about going to the hospital for a mental-health evaluation. Frye agreed but refused the officers’ request to ride with them, saying he would go only if he drove himself. As he became “increasingly agitated,” the officers believed he was going to fight, resist, or run. They worked together to bring him to the ground. Frye resisted, reaching for things around him in the process. He grabbed one officer’s radio and then grabbed another’s holstered firearm. The second officer shouted, “He has got my gun.” Frye pulled the firearm from the holster and held it in his hand for five to ten seconds before the officers were able to remove it from his grasp and handcuff him.

Frye then told the officers that there was a firearm and ammunition in his vehicle. The officers searched the Cadillac and found the firearm and ammunition on the driver's side of the back seat. The firearm was registered to mother.

Respondent State of Minnesota charged Frye with two counts of unlawful possession of a firearm (the officer's firearm and the firearm in the Cadillac) and one count of disarming a police officer. After a jury trial, Frye was acquitted of disarming an officer but found guilty and convicted of the unlawful-possession offenses and sentenced to concurrent 60-month prison terms.

Frye appealed, then obtained a stay to pursue postconviction relief. His postconviction petition sought a new trial on the ground of juror bias, asserting that information obtained after he filed this appeal shows that a juror (Juror A) "demonstrated bias" by "not being truthful regarding her criminal record" during jury selection.

The same district court that presided over the jury trial conducted a *Schwartz*¹ hearing during which it questioned Juror A under oath. The court began by reminding her that all jurors were asked about their criminal history during jury selection and explaining that it learned she "may not have disclosed a criminal history" at that time. It then asked her about court records indicating that she was charged with and pleaded guilty to disorderly conduct in 2000; she responded that she did not recall the charge or plea. The court also asked about three charges from 2005—fifth-degree possession of a controlled substance, driving after license suspension, and driving without proof of insurance.

¹ *Schwartz v. Minneapolis Suburban Bus Co.*, 104 N.W.2d 301, 303 (Minn. 1960).

Juror A recalled the charges and indicated that she pleaded guilty to the possession offense and received a stay of adjudication; she also agreed she was “[p]ossibly” on probation until 2008 but only saw a probation officer once. When asked why she did not disclose this information during jury selection, particularly since jurors were told to do so even if they were only “accused” of an offense, Juror A responded: “I guess I didn’t even realize that it—because it was a stay of adjudication, so it was all supposed to be dismissed. It wasn’t even supposed to—so I didn’t know. . . . It was 20 some years ago.”

The district court also asked Juror A whether anything about her own experience with the criminal-justice system “cause[d] [her] to have a strong feeling” about either party or the court. She said no and agreed that she was “treated fairly.” And when asked if anything about her own experience would “have impacted [her] ability to make a determination only on the evidence shown in this courtroom and the law as [the court] gave it to [her],” she replied, “I don’t think so.”

Following the hearing, the district court found that Juror A failed to disclose her criminal history during voir dire and inaccurately reported her criminal history at the hearing by saying that she received a stay of adjudication when court records indicate she received a stay of imposition. But it found her testimony credible, attributing her omissions and errors to “some difficulty with recall of the prior events” and “an apparent misunderstanding” of the court’s questioning about her criminal history. The district court expressly found that Juror A “did not intentionally make any false statements regarding her criminal history” and that her experience with the criminal-justice system did not cause her to be biased against the parties or the court. Based on these findings, the court determined

that Frye did not demonstrate that Juror A had “actual bias” and denied postconviction relief.

Thereafter, we granted Frye’s motion to dissolve the stay of this appeal and ordered supplemental briefing addressing Frye’s challenge to the district court’s postconviction decision.

DECISION

I. Sufficient evidence supports Frye’s convictions.

When considering a claim of insufficient evidence, we carefully review the record “to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict.” *Lapenotiere v. State*, 916 N.W.2d 351, 360-61 (Minn. 2018) (quotation omitted). We assume that the jury “disbelieved any testimony conflicting with that verdict.” *State v. Bradley*, 4 N.W.3d 105, 110-11 (Minn. 2024) (quotation omitted).

If an element of a conviction is based on circumstantial evidence, we apply a heightened two-step analysis.² *State v. Colgrove*, 996 N.W.2d 145, 150 (Minn. 2023). First, we identify the “circumstances proved.” *Id.* (quotation omitted). This step involves “winnow[ing] down the evidence presented at trial by resolving all questions of fact in favor of the jury’s verdict,” yielding “a subset of facts that constitute the circumstances proved.” *Id.* (quotations omitted). Second, we independently consider the reasonable

² Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist,” whereas direct evidence is “evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotations omitted).

inferences that can be drawn from the circumstances proved. *Id.* The circumstances proved must, as a whole, “be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Harris*, 895 N.W.2d at 601.

To establish Frye’s guilt for each unlawful-possession offense, the state was required to prove, in relevant part, that he possessed the firearm, Minn. Stat. § 624.713, subd. 1(2) (2020), and that he did so knowingly, *Harris*, 895 N.W.2d at 601. Frye challenges the sufficiency of the evidence proving both of these elements for his conviction related to the officer’s firearm, and the sufficiency of the evidence proving possession for his conviction related to the firearm in the Cadillac. We address each conviction in turn.

The Officer’s Firearm

Frye first contends that insufficient evidence proves that he possessed the officer’s firearm. “Possession may be proved through evidence of actual or constructive possession.” *Harris*, 895 N.W.2d at 601. A defendant has actual possession of an item if they have “direct physical control” over it. *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted). A defendant has constructive possession of an item if (1) it is in a place under their exclusive control, to which others did not normally have access; or (2) the item is in a place to which others had access but the defendant “consciously or knowingly exercise[d] dominion and control” over the item. *Harris*, 895 N.W.2d at 601.

Direct evidence establishes that Frye had actual possession of the officer’s firearm. Three officers testified that they saw Frye grab the firearm in the holster, remove it, and

hold it in his hand for five to ten seconds. This sequence of events is not clearly visible from the officer's body-camera footage, but the commotion shown in that footage and the statements it recorded are consistent with that testimony. Indeed, it is undisputed that Frye held the firearm in his hand for five to ten seconds.

Frye asserts that this evidence does not prove possession because he held the firearm only briefly and "he never had control" over it because others were trying to take it from him the entire time. Neither argument is persuasive. The fact that Frye held the firearm for a brief time does not negate possession because Minnesota does not recognize a "fleeting-control exception" to the unlawful-possession offense. *In re Welfare of S.J.J.*, 755 N.W.2d 316, 318-19 (Minn. App. 2008). And Frye identifies no authority for the proposition that a person does not possess a firearm that they hold in their hand simply because someone else is trying to wrest it from them. To the contrary, the second person's effort to gain possession of the firearm tends to confirm that the first person has possession. Moreover, the lack of evidence that Frye tried or intended to use the firearm does not negate possession because possession does not imply intent to use. *See State v. Stone*, 995 N.W.2d 617, 624 (Minn. 2023) (distinguishing between possession and use of a firearm).

Frye next argues that, even if he possessed the firearm, insufficient evidence proves that he did so knowingly. This knowledge element "requires only that the actor believes that the specified fact exists." Minn. Stat. § 609.02, subd. 9(2) (2020). A defendant's knowledge may be, and commonly is, proved by circumstantial evidence. *State v. Al-Naseer*, 734 N.W.2d 679, 688 (Minn. 2007).

As to Frye’s knowledge, the state proved the following circumstances. While the officers sought to restrain him, Frye resisted and grabbed at various things around him. He put his hand on the officer’s holstered firearm and began pulling. The officer shouted that Frye “got [his] gun” and tried to keep the firearm in its holster with his hand. The holster was a level-two retention holster, meaning a person must “make two full actions” to remove the firearm—first, undo a snap, and second, pull the firearm forward. Frye performed both actions and removed the firearm from the holster. He then held the gun in his hand for five to ten seconds rather than dropping it or throwing it aside. Officers pinned his hand to the ground and removed the firearm.

Frye acknowledges that these circumstances support a reasonable inference that he knew he possessed the firearm. But he contends that they also support a reasonable inference that he did so unknowingly, pointing out that he grabbed at multiple items, not just the firearm; he held the firearm only briefly; and the jury acquitted him of the disarming offense, which requires proof that he intentionally took possession of the firearm.³ But these facts do not account for the circumstances proved showing that, even if Frye did not intend to grab the firearm, he nonetheless did so, was verbally alerted that it was a firearm, and did not let go of it. Indeed, he not only held onto the firearm but also undertook the multiple actions necessary to remove it from the holster; he continued to hold it in his hand,

³ The offense of disarming an officer involves “intentionally” taking possession of an officer’s firearm or other defensive device. Minn. Stat. § 609.504, subd. 2 (2020). “‘Intentionally’ means that the actor either has a purpose to do the thing or cause the result specified or believes that the act performed by the actor, if successful, will cause that result.” Minn. Stat. § 609.02, subd. 9(3) (2020).

rather than dropping it or throwing it aside, until officers pinned down his hand and forcibly took it from him. The only reasonable inference to be drawn from the totality of the circumstances proved is that Frye knew he possessed the firearm.

Firearm in the Cadillac

Frye contends that the circumstantial evidence is insufficient to prove that he constructively possessed the firearm in the Cadillac. As noted above, a defendant has constructive possession of a firearm if (1) it is in a place under the defendant's exclusive control, to which others did not normally have access; or (2) it is in a place to which others had access but the defendant "consciously or knowingly exercis[ed] dominion and control" over it. *Harris*, 895 N.W.2d at 601. Under the second scenario, "mere proximity" or easy access to the firearm are relevant considerations but not independently sufficient to prove dominion and control. *Id.* at 601-02. A person may possess property even if another person owns that property. *See State v. Spence*, 768 N.W.2d 104, 108 (Minn. 2009) (rejecting argument that "lawful possession" is synonymous with "legal ownership").

The circumstances proved regarding the firearm in the Cadillac are as follows. The Cadillac was registered to Frye and mother, but Frye typically drove it while mother typically drove a different vehicle. On the day in question, Frye acknowledged driving to the bank. Mother acknowledged that she was not in the area where the Cadillac was seen driving erratically; she was elsewhere having her own vehicle fixed. And when Frye left the bank, he attempted to get into the Cadillac. He knew there was a firearm and ammunition in the Cadillac and told officers as much. And the officers confirmed that both the firearm and ammunition were on the back seat. The firearm was registered to mother.

Frye agrees that these circumstances support a reasonable inference that he constructively possessed the firearm. But he argues that they also support a reasonable inference that he was not in constructive possession because he did not exercise dominion and control over the firearm by interacting with it. We disagree. Frye normally drove the Cadillac and had sole access to it on the afternoon in question. As such, he had exclusive control over its contents, particularly those he had actual knowledge of, including the firearm. And even if we viewed the Cadillac as a space to which Frye and mother shared access, Frye exercised dominion and control over the firearm by choosing to drive the Cadillac, alone, with the knowledge that the firearm was inside it. In short, the only reasonable view of the circumstances proved is that Frye constructively possessed the firearm in the Cadillac, through sole access to and conscious dominion and control over it.

II. The district court did not clearly err by finding that Juror A was not actually biased.

A party seeking to obtain a new trial based on juror bias bears the burden of demonstrating actual bias. *State v. Evans*, 756 N.W.2d 854, 870 (Minn. 2008). Actual bias refers to “a state of mind on the part of the juror, in reference to the case or to either party, which would prevent the juror from trying the issue impartially and without prejudice to the substantial rights of either party.” *Id.* (quotation omitted). Whether a juror is actually biased is a question of fact that the district court is best positioned to determine based on its assessment of demeanor and credibility. *State v. Munt*, 831 N.W.2d 569, 576 (Minn. 2013). We afford the district court’s findings regarding juror bias “great deference” and will not disturb them unless they are clearly erroneous. *Evans*, 756 N.W.2d at 870. “The

clearly erroneous standard requires that we be left with the definite and firm conviction that a mistake has been made.” *Id.* (quotation omitted).

Frye challenges the district court’s factual finding that Juror A was not biased because she did not intentionally misstate her criminal history. He contends that finding is clearly erroneous because, under *State v. McKinley*, 891 N.W.2d 64 (Minn. App. 2017), *rev. denied* (Minn. Apr. 26, 2017), a juror who provides inaccurate information during voir dire is dishonest and evasive and lacks candor, which establishes bias. His reliance on *McKinley* is misplaced for two reasons. First, that case involved the removal of a juror for cause before trial, not the circumstance here—impeachment of a guilty verdict based on a claim that a seated juror was biased. *McKinley*, 891 N.W.2d at 67. Second, *McKinley* says only that, if a court is “convinced” a juror is “untruthful, evasive, or lacking in candor,” then it is “allow[ed]” to remove the juror for cause because the juror cannot try the case impartially. *Id.* at 69. It does not say that a juror who provides inaccurate information is necessarily untruthful, or that a juror who is untruthful is necessarily biased. In short, *McKinley* does not preclude the factual finding that the district court made here—that Juror A was not actually biased. Accordingly, Frye’s challenge to that finding fails.

Affirmed.