

*This opinion is nonprecedential except as provided by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
A23-1784**

State of Minnesota,
Respondent,

vs.

James Edward Jones, III,
Appellant.

**Filed November 4, 2024
Affirmed
Bratvold, Judge**

Carver County District Court
File No. 10-CR-21-1030

Keith Ellison, Attorney General, Lisa Lodin, Assistant Attorney General, St. Paul, Minnesota; and

Mark Metz, Carver County Attorney, Peter Ivy, Chief Deputy County Attorney, Chaska, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rebecca Ireland, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Johnson, Judge; and Reilly, Judge.*

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

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

While executing a warrant to search the house of appellant's on-again, off-again girlfriend, law enforcement found a handgun with appellant's DNA on it. In this direct appeal from the final judgment of conviction for unlawful possession of a firearm and ammunition, appellant argues that the record evidence is not sufficient to prove beyond a reasonable doubt that he constructively possessed the handgun. We conclude that the circumstantial evidence is consistent with appellant's guilt and inconsistent with any rational hypothesis except that of guilt. Thus, we affirm.

FACTS

Respondent State of Minnesota charged appellant James Edward Jones III with unlawful possession of a firearm and ammunition under Minn. Stat. § 624.713, subd. 1(2) (2020). The state later amended the complaint to charge unlawful possession "on or about December 21, 2020 and continuing through March 16, 2021."

The following summarizes the evidence received during Jones's jury trial in June 2023. Before trial, Jones stipulated that he was ineligible to possess a firearm during the period charged.

Jones and his girlfriend, K.B., began dating in 2008 and have since broken up many times. They have two minor children together (the minor children). Relevant to the appeal from this conviction, Jones and K.B. broke up from about mid-2020 through "the beginning" of 2021 and lived apart during this time.

On December 21, 2020, K.B. obtained a Rock Island Armory handgun (the handgun) from a pawn store by exchanging a defective handgun that she had purchased a couple of weeks earlier.

On March 16, 2021, law enforcement executed a warrant to search K.B.'s house in Chaska.¹ While searching K.B.'s living room, law enforcement found "a black bag, kind of like a purse," containing the handgun, which was loaded with .45-caliber ammunition.² The bag with the handgun inside was "[t]ucked in one of the corners right next to a couch and in back of the couch end table." In the nearby end table, law enforcement found two unopened envelopes addressed to Jones at K.B.'s home. One of them was postmarked on December 21, 2020.

Later, the Minnesota Bureau of Criminal Apprehension (BCA) performed a DNA analysis of the handgun. The BCA determined that the handgun had DNA from "three or more individuals," with a "major male DNA profile [that] matched James Edward Jones."³

Also during the March 16, 2021 search of K.B.'s house, law enforcement found the following items in one of the bedrooms: a wallet that contained Jones's Social Security card; a "Rock Island" gun case and manual that matched the handgun found in the living

¹ During trial, no evidence was offered to explain the probable cause for the warrant to search K.B.'s house.

² Exhibit 19 is the black bag, which was admitted into evidence during the trial. One sergeant described it during his testimony as a "black bag, kind of like a purse," and as a "tote style and a handbag." K.B. testified that the bag was "one of those reusable like shopping bags."

³ A forensic scientist at the BCA testified at trial that a major DNA profile means there is "a mixture of DNA" and one contributor's DNA is "there at a much higher concentration."

room; eight rounds of .45-caliber ammunition; and two envelopes addressed to Jones at K.B.'s house, one postmarked in April 2020 and the other postmarked in June 2020.

At trial, the state called seven law-enforcement officers, three forensic scientists, and the pawn-store owner. Together with the facts already summarized, the state offered three more pieces of evidence about Jones's connection to K.B.'s house in Chaska.

First, the record includes the registration for a 2007 Chevy Tahoe that listed Jones as the vehicle's owner and identified the address as K.B.'s house. The registration also stated that the Chevy Tahoe's license plates and title were issued on December 22, 2020.

Second, before the search of K.B.'s house, law enforcement obtained a court order and installed a GPS "tracker" on a 2007 white Chevy Tahoe.⁴ Tracking data showed that the Chevy Tahoe was at or near K.B.'s house "approximately 16" times over nine days between February 26 and March 15, 2021.

Third, on March 1, 2021, law enforcement conducted surveillance of K.B.'s house and observed Jones there. Law enforcement arrested Jones later the same day for violating a domestic-abuse no-contact order (DANCO) that protected K.B. and the minor children. Law enforcement initiated a traffic stop of the Chevy Tahoe, which K.B. was driving. Jones was in the passenger seat; the minor children were also in the Tahoe.

Jones called three witnesses in his defense. K.B. testified that the handgun belonged to her and that Jones was not aware she had the handgun. K.B. also testified that Jones moved out of her house around June 2020 but stayed there "off and on" until September

⁴ Other than establishing that the tracker was installed pursuant to a court order, the record evidence did not explain the probable cause for the tracker warrant.

2020. K.B. stated that the DANCO forbade Jones from going “back to [the house] to pick anything up” after he moved out, so he left behind “old mail, old wallets.” K.B. also testified that, “at the end of 2020, beginning of 2021,” she lived “in Minneapolis at [her] mom’s” and would only stay at her house in Chaska “[e]very now and then.” A law-enforcement officer testified that K.B. co-owned the Chevy Tahoe.

K.B.’s adult daughter, R.S., testified that she and her husband lived at K.B.’s house between December 2020 and mid-March 2021, along with K.B. and the minor children. R.S. testified that K.B. and the minor children “stayed elsewhere from time to time,” such as with K.B.’s mom. R.S. also testified that Jones did not live in K.B.’s house during the time that R.S. lived there.

R.S.’s husband testified that he lived at K.B.’s house between December 2020 and March 2021. R.S.’s husband also testified that Jones was “in and out” of the house but did not “actually stay[] there.”

The jury found Jones guilty of unlawful possession of a firearm. The district court sentenced Jones to 60 months in prison. Jones appeals.

DECISION

Jones raises one issue on appeal, arguing that the “state failed to prove beyond a reasonable doubt that [he] knowingly exercised dominion and control over the firearm.”

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution requires the state to “prove every element of [a criminal] offense beyond a reasonable doubt.” *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020). The state did not need to prove that Jones was ineligible to possess a firearm because he stipulated that he was ineligible

on the dates alleged in the complaint. But the state needed to prove beyond a reasonable doubt that Jones knowingly possessed the handgun. *See* Minn. Stat. § 624.713, subd. 1(2); *State v. Salyers*, 858 N.W.2d 156, 161 (Minn. 2015) (noting that the state must prove that a defendant’s possession of a firearm was knowing).

“Possession of a firearm may be proved through actual or constructive possession.” *Salyers*, 858 N.W.2d at 159. “Actual possession, also referred to as physical possession, involves direct physical control” over an item. *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted). “[W]here the state cannot prove actual or physical possession,” the state may rely on the constructive-possession doctrine. *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). To prove constructive possession, the state must show either that (a) law enforcement found the firearm “in a place under defendant’s exclusive control to which other people did not normally have access” or, (b) if the firearm was found “in a place to which others had access, there is a strong probability (inferable from other evidence) that defendant was at the time consciously exercising dominion and control over it.” *Id.* at 611. “A defendant may possess an item jointly with another person.” *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017).

When an appellant challenges the sufficiency of the evidence and “the evidence offered to prove the challenged element of the offense is circumstantial,” appellate courts apply a two-step process. *State v. Balandin*, 944 N.W.2d 204, 213 (Minn. 2020). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Harris*, 895 N.W.2d at 599 (quotation omitted). We

agree with the parties that the circumstantial-evidence standard of review applies. Thus, we assess the sufficiency of the evidence in two steps.

A. The Circumstances Proved

The first step is to “identify the circumstances proved, giving deference to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Balandin*, 944 N.W.2d at 213 (quotation omitted). In other words, this step requires that appellate courts “consider only those circumstances that are consistent with the verdict.” *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013).

The circumstances proved are the following: Jones and K.B. have been in an on-again, off-again relationship since 2008. Jones moved out of K.B.’s house around June 2020, when he and K.B. broke up, but he was at her house on and off until September 2020. Between December 2020 and March 2021, Jones was “in and out” of K.B.’s house.

Between December 21, 2020, and March 16, 2021, Jones was ineligible to possess a firearm.

On December 21, 2020, K.B. obtained the handgun by returning a different gun to a pawn store.

On March 16, 2021, law enforcement searched K.B.’s house and found the handgun loaded with .45-caliber ammunition in the living room. Law enforcement found the handgun inside a black bag, “kind of like a purse,” next to the couch and behind an end table. In the end table, law enforcement found two unopened envelopes addressed to Jones at K.B.’s house. One envelope was postmarked on December 21, 2020, the same day K.B.

acquired the handgun. The handgun had DNA from three or more individuals, with a major male DNA profile that matched Jones. In one of the bedrooms in K.B.'s house, law enforcement found a wallet with Jones's Social Security card inside, a gun case and manual—both of which matched the handgun, eight rounds of .45-caliber ammunition, and two envelopes addressed to Jones at K.B.'s house with postmarks from April and June 2020.

During an investigation, law enforcement found the vehicle registration for a 2007 Chevy Tahoe that showed Jones was the owner, his address was K.B.'s house, and the license plates and title were issued on December 22, 2020. K.B. co-owned the Chevy Tahoe.⁵

Tracking data from a GPS monitor law enforcement installed on the 2007 Chevy Tahoe showed that the Tahoe was at or near K.B.'s house around 16 times over nine days between February 26 and March 15, 2021. And on March 1, 2021, law enforcement observed Jones at K.B.'s house and later stopped K.B., who was driving the Chevy Tahoe, along with passengers Jones and the minor children.

⁵ The parties seem to dispute whether the law-enforcement officer's testimony that K.B. co-owned the Chevy Tahoe is a circumstance proved. Jones's brief to this court includes it as a circumstance proved. The state appears to argue that K.B.'s co-ownership of the Tahoe should not be included in the circumstances proved. The state argues that "even though there was evidence . . . that [K.B.] and [Jones] co-owned the Tahoe . . . the testimony to that effect was inconsistent with the Tahoe's vehicle registration in effect from December 2020 to December 2021."

While the vehicle registration lists Jones as the owner, it does not necessarily refute the officer's testimony that K.B. is a co-owner. As the state argues with respect to possession of the handgun, ownership may be joint. And the vehicle registration offered into evidence was generated on February 23, 2023. In an abundance of caution, we consider K.B.'s co-ownership of the Tahoe in the circumstances proved.

B. The Reasonable Inferences

The second step “is to examine independently the reasonableness of all inferences that might be drawn from the circumstances proved,” meaning that “all the circumstances proved must be consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of his guilt.” *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010) (quotations omitted). “Unlike the deference [appellate courts] give when reviewing circumstances proved,” in this step, appellate courts “give no deference to the fact finder’s choice between reasonable inferences.” *Id.* at 329-30 (quotation omitted).

The second step requires us to initially consider whether the circumstances proved are consistent with Jones’s guilt. *See id.* at 329. In his brief to this court, Jones does not argue that the circumstances proved are inconsistent with his guilt. And indeed, the circumstances proved show that Jones knowingly possessed the handgun that law enforcement found at K.B.’s house on March 16, 2021. The handgun had Jones’s DNA on it and was inside a bag near an end table that contained mail addressed to Jones at K.B.’s house. Although Jones had moved out of K.B.’s house in June 2020, he was “in and out” of K.B.’s house during the relevant dates. Jones registered a 2007 Chevy Tahoe in December 2020 in his own name and with K.B.’s address. The Chevy Tahoe was often found at K.B.’s house during the relevant dates, and K.B. drove Jones and the minor children in the Tahoe. Thus, the circumstances proved are consistent with Jones’s guilt of unlawful possession of the handgun.

The second step of the circumstantial-evidence test also requires us to determine whether the circumstances proved are inconsistent with any rational hypothesis except that

of Jones's guilt. *See id.* Jones argues that, "[e]ven if these circumstances give rise to a reasonable inference that Jones possessed [the] firearm," there is a "rational [alternative] hypothesis that Jones did not knowingly exercise dominion and control over the firearm." Jones contends that this alternative hypothesis is supported by evidence that the handgun was obtained by K.B. when she returned another gun and that law enforcement found the handgun "in a purse in a hard-to-get-to spot in the living room of an apartment where multiple people—none of which were Jones—were present and residing at the time." Jones also points out that "no one testified to seeing Jones with the [handgun], to seeing Jones handling the black purse in which the [handgun] was discovered, or even to seeing Jones in the living room" and that "the state did not prove *how* [Jones's] major DNA profile got onto the [handgun] (*i.e.*, whether by him handling it or by indirect transfer)" or when his DNA got onto the handgun.

The state counters that Jones's "arguments are about evidence missing from the record rather than about evidence *in* the record negating the inference of guilt" and that the absence of evidence is not a circumstance proved. The state also argues that, "even though it is unknown how and when [Jones's] DNA got on the handgun, there is no basis in the record to make an inference that it was accidentally transferred."

We conclude that the circumstances proved are inconsistent with any rational hypothesis except that of Jones's guilt. First, Jones's alternative hypothesis that he did not knowingly exercise dominion and control over the handgun does not consider *all* the circumstances proved. Jones's brief to this court omits evidence that an envelope addressed to Jones and postmarked on December 21, 2020, was in the end table by the handgun, Jones

was “in and out” of K.B.’s house during the relevant dates, and the Chevy Tahoe was at or near K.B.’s house about 16 times over nine days between February 26 and March 15, 2021.

Second, Jones mistakenly relies on the lack of certain evidence related to his possession of the handgun. We have held that “the absence of evidence in the record regarding a certain circumstance does not constitute a circumstance proved.” *State v. German*, 929 N.W.2d 466, 473-74 (Minn. App. 2019). And “the purpose of the first step of the sufficiency-of-the-circumstantial-evidence test . . . is to identify circumstances proved regarding the alleged crime, not the parties’ actions or inactions at trial.” *Id.* at 473. Thus, we decline to consider the lack of certain evidence in determining whether the circumstances proved are consistent with Jones’s alternative hypothesis that he did not knowingly exercise dominion and control over the handgun.

Third, we are not persuaded by Jones’s citation to *State v. Smith*, No. A20-0654, 2021 WL 2528432 (Minn. App. June 21, 2021).⁶ In *Smith*, we reversed Smith’s conviction for unlawful possession of a firearm based on insufficient evidence that Smith possessed the firearm on the specific date charged—the date the search warrant was executed. 2021 WL 2528432, at *1, *5. During a search of an apartment, law enforcement encountered Smith emerging from a rear bedroom while Smith’s mother was in bed in the front bedroom. *Id.* at *1. In the front-bedroom closet, law enforcement “found a green woman’s purse,” and “[i]nside the purse, concealed within a white sock, they discovered a

⁶ “Nonprecedential opinions and order opinions are not binding authority . . . but nonprecedential opinions may be cited as persuasive authority.” Minn. R. Civ. App. P. 136.01, subd. 1(c); see *State v. Jonsgaard*, 949 N.W.2d 161, 169 n.9 (Minn. App. 2020) (stating that unpublished opinions may be cited for their persuasive value).

nine-millimeter pistol with a loaded magazine and an additional nine-millimeter magazine.” *Id.* The BCA “identified Smith as the contributor of a partial major male DNA profile on the [pistol].” *Id.* at *2.

In considering Smith’s reasonable alternative hypothesis that he did not possess the pistol on the date charged, we noted that, “[a]lthough the DNA evidence may have established that Smith touched the [pistol] at some point, it did not establish when he had contact with it” and that the pistol “was not found in the bedroom where Smith appeared to be sleeping and storing his belongings” but was in a woman’s purse in the closet of the bedroom in which Smith’s mother was sleeping. *Id.* at *5.

In Jones’s brief to this court, he argues that the “same . . . reasonable [alternative] hypothesis exist[s] in this case.” The state disagrees, arguing that *Smith* is distinguishable “based on how the crime was charged.” Smith “was convicted of possessing a [pistol] on one specific date,” whereas here, Jones was convicted of possessing the handgun “at some point between December 21, 2020, and March 16, 2021.”

We conclude that *Smith* is distinguishable. In *Smith*, the state charged Smith with unlawful possession of the pistol *on one specific day*, unlike the state’s charges against Jones for unlawful possession during an almost three-month period. Also, while none of Smith’s possessions were found near the pistol and his DNA was only a partial major male profile on the pistol, Jones’s DNA was the major male profile on the handgun and Jones’s personal items were found near the handgun. Other record evidence showed Jones’s presence at K.B.’s house during the period alleged in the complaint. For example, R.S.’s

husband's testimony, law-enforcement surveillance, and tracking evidence from the Chevy Tahoe showed Jones was often at K.B.'s house during the relevant period.

The combination of Jones's DNA being on the handgun, his personal items being near the handgun, and the Chevy Tahoe registered to him frequenting K.B.'s house supports the inference that Jones consciously exercised dominion and control over the handgun. Caselaw has upheld the sufficiency of the evidence of constructive possession where the contraband was found in a defendant's residence along with or near the defendant's personal items. *See, e.g., State v. Colsch*, 284 N.W.2d 839, 841 (Minn. 1979) (concluding the evidence was sufficient to prove Colsch constructively possessed drugs when the drugs were found in a rear bedroom in Colsch's residence along with "items of male clothing, as well as papers and a checkbook bearing [Colsch's] name"); *State v. Mollberg*, 246 N.W.2d 463, 472 (Minn. 1976) (concluding the evidence was sufficient to prove Mollberg constructively possessed drugs found in a bedroom closet when Mollberg "frequently stayed" at the residence, "there were numerous letters addressed to [Mollberg] scattered on the floor of the bedroom," part of Mollberg's motorcycle was found in the bedroom, and Mollberg was "expected to return to the residence" on the day the drugs were found).

Jones's DNA on the handgun is like the personal items determined to be sufficient evidence of constructive possession of contraband in other cases. Along with Jones's DNA, an envelope addressed to Jones was in an end table near where the handgun was found in K.B.'s house. The envelope was postmarked on the same day that K.B. acquired the handgun. Jones also was "in and out" of K.B.'s house during the relevant dates. The 2007

Chevy Tahoe was registered in Jones's name and was often at K.B.'s house during the relevant dates.

Accordingly, the circumstances proved are inconsistent with any rational hypothesis except that of guilt, and thus, the evidence is sufficient to support Jones's conviction for unlawful possession of a firearm.

Affirmed.