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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0371**

State of Minnesota,
Respondent,

vs.

Shaketio Antonio Webster,
Appellant.

**Filed December 16, 2024
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-22-1221

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

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant challenges his conviction of ineligible possession of a firearm, arguing that the state failed to prove beyond a reasonable doubt that he possessed the firearm. We affirm.

FACTS

Officers received a tip from a confidential reliable informant that appellant Shaketio Antonio Webster possessed a firearm and heroin. Acting on this information, officers obtained a search warrant authorizing a search of appellant and a Toyota Camry in which officers recently observed appellant. Appellant's girlfriend, M.R., owned the Camry.

On January 19, 2022, an officer observed the Camry in a Walmart parking lot in Bloomington, and saw appellant exiting the Camry's front-passenger seat and M.R. exiting the driver's seat. Appellant and M.R. entered the Walmart. Officers detained them as they returned to the Camry. An officer searched the Camry, finding packaged marijuana and scissors in the passenger-side door pocket. The officer also found a backpack on the driver-side back seat. The officer lifted the backpack and, noticing it felt heavy, opened it and found a loaded 9mm semi-automatic pistol, packaged marijuana, and scissors.

The next day, officers collected buccal swabs from appellant and M.R. Officers also swabbed the pistol and ammunition. Bureau of Criminal Apprehension (BCA) testing revealed that the DNA profile on the pistol contained a mixture of DNA from five individuals. The BCA testing excluded M.R. as a DNA contributor on the pistol but could not exclude appellant. Respondent State of Minnesota charged appellant with unlawful possession of a firearm. *See* Minn. Stat. §§ 624.713, subds. 1(2), 2(b), 609.11, subd. 5 (2020).

The district court held a court trial at which it heard testimony from the officer who conducted the DNA testing. The officer testified that, based on testing, the probability of the mixture containing the DNA of appellant and four unknown, unrelated individuals was

1.2 billion times greater than if the profile contained the DNA of five unknown, unrelated individuals. The officer additionally testified that the inability to exclude appellant as a possible DNA contributor is equivalent to appellant being included as a contributor. The district court found appellant guilty and sentenced him to 60 months in prison.

This appeal follows.

DECISION

Appellant argues that the state presented insufficient circumstantial evidence for the district court to find that he possessed the pistol because there is an alternative rational hypothesis consistent with him not having possessed the pistol. We disagree.

The applicable standard of review depends on whether the district court relied on circumstantial or direct evidence in finding appellant guilty. Appellant argues, and the state does not dispute, that his conviction relies on circumstantial evidence. Because the parties have analyzed this issue under the circumstantial-evidence standard, and we discern no reason that the parties were incorrect in so doing, we apply the same standard.

Appellate courts subject verdicts based on circumstantial evidence to heightened scrutiny. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Under this approach, appellate courts first identify the “circumstances proved,” deferring 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.” *State v. Alarcon*, 932 N.W.2d 641, 648 (Minn. 2019) (quotation omitted). Second, appellate courts independently examine the reasonableness of all inferences that may be drawn from the circumstances proved, giving no deference to the fact-finder’s choice between reasonable inferences. *Id.* To

sustain a conviction, “the circumstances proved, when viewed as a whole, must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted). This two-step review also applies to court trials. *State v. Holliday*, 745 N.W.2d 556, 562 (Minn. 2008).

A hypothesis inconsistent with guilt need not be the most likely hypothesis; it only needs to be rational or reasonable. *See State v. Sam*, 859 N.W.2d 825, 831 (Minn. App. 2015). However, appellate courts will not overturn a guilty verdict on mere conjecture. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

A conviction of ineligible possession of a firearm requires proof that appellant possessed the pistol. Minn. Stat. § 624.713, subd. 1; *Harris*, 895 N.W.2d at 601. Possession may be actual or constructive. *Harris*, 895 N.W.2d at 601. Actual possession involves “direct physical control” over the object. *State v. Stone*, 982 N.W.2d 500, 510 (Minn. App. 2022) (quotation omitted), *aff’d*, 995 N.W.2d 617 (Minn. 2023).

In contrast, constructive possession occurs when “the inference is strong that the defendant at one time physically possessed the [item] and did not abandon [their] possessory interest in the [item] but rather continued to exercise dominion and control over it up to the time of arrest.” *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). This inference exists when (1) an object is found “in a place under the defendant’s exclusive control” or (2) there is “a strong probability (inferable from other evidence), that at the time the defendant was consciously or knowingly exercising dominion and control over [the object].” *Harris*, 895 N.W.2d at 601. “Proximity is an important consideration in assessing constructive possession.” *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App.

2000), *rev. denied* (Minn. Jan. 16, 2001). Constructive possession does not require exclusive possession. *Id.* Because officers found the pistol in a backpack on the back seat of the car rather than on appellant's person, we apply a constructive-possession analysis. Further, because both appellant and M.R. could access the backpack, meaning that officers did not find the pistol in a place under appellant's exclusive control, we review constructive possession under the second prong.

We start by outlining the circumstances proved. Pertinent to the possession issue, the district court found that: (1) officers secured a search warrant for M.R.'s vehicle; (2) appellant was seated in the passenger seat of M.R.'s Camry; (3) officers found packaged marijuana with scissors in the passenger-side-door pocket, by which appellant had been sitting; (4) officers located a backpack on the back seat of the car, in an area accessible to appellant and M.R.; (5) the backpack contained a pistol, packaged marijuana, and scissors; (6) M.R. lacked a permit to carry the pistol; (7) DNA testing results of the pistol revealed DNA profiles of five individuals; (8) DNA testing results excluded M.R. as a contributor; (9) DNA testing results did not exclude appellant as a contributor; (10) the probability of the mixture containing the DNA of appellant and four unknown individuals was 1.2 billion times greater than if the profile contained a mixture of five unknown, unrelated individuals; and (11) the inability to exclude appellant as a possible DNA contributor is equivalent to appellant being included as a contributor.

The circumstances proved are consistent with the conclusion that appellant constructively possessed the pistol because DNA testing indicates that appellant at one time possessed the pistol and the presence of the pistol in close proximity to appellant shows

that he continued to exercise dominion and control over the pistol at the time of his arrest. *See Harris*, 895 N.W.2d at 601. The presence of marijuana and scissors in both the backpack and the side-door pocket near where appellant was seated bolsters the inference that appellant possessed the pistol. *See State v. Craig*, 826 N.W.2d 789, 797 (Minn. 2013) (highlighting connection between drug transactions and firearms). We therefore conclude that the circumstances proved are consistent with guilt.

Appellant argues that there is a rational inference that M.R. had exclusive possession of the pistol because: (1) officers secured a warrant to search M.R.'s car; (2) M.R. was the driver immediately before the search; (3) the backpack was accessible to M.R.; (4) the absence of M.R.'s fingerprints on the pistol does not exclude the possibility that she handled the pistol; (5) the absence of M.R.'s DNA on the pistol does not exclude the possibility that she possessed and handled it because officers did not swab the pistol's entire surface; and (6) it is unknown how appellant's DNA got onto the pistol, assuming it was present on the pistol.

Appellant's argument fails for several reasons. First, the absence of evidence is not a circumstance proved, *State v. German*, 929 N.W.2d 466, 473-74 (Minn. App. 2019), and the latter three "circumstances proved" that appellant offers are inferences or mere allegations in support of inferences rather than circumstances proved. Moreover, they are not reasonable inferences or allegations. Appellant appears to raise the point about the lack of information about how his DNA got on the pistol to support the broader inference that his DNA may have passively transferred to the pistol, meaning he never possessed it. None of the circumstances proved support this inference. Inferences four and five are directly

contradicted by the circumstance proved that the DNA testing excluded M.R. as a contributor. Finally, even if we were to accept appellant's inference that M.R. also possessed the pistol, that inference is not inconsistent with guilt because DNA testing revealed that appellant handled the pistol, meaning that M.R.'s possession would not have been exclusive. *See Smith*, 619 N.W.2d at 770 (holding that constructive possession need not be exclusive).

Nor are we able to identify any other rational hypothesis inconsistent with guilt. Appellant cites *Harris*, which involved a reversal of a conviction of ineligible possession of a firearm despite testing being unable to exclude the appellant as a contributor to DNA found on the firearm. 895 N.W.2d at 596-97, 603. But in *Harris*, the other two occupants of the vehicle in which officers found the firearm, along with 25% of the general population, could also not be excluded as DNA contributors. 895 N.W.2d at 596-97, 603. Here, the DNA testing excluded the other occupant and showed that the probability of the mixture containing the DNA of appellant and four unknown, unrelated individuals was 1.2 billion times greater than if the profile contained the DNA of five unknown, unrelated individuals.

Appellant also relies on *Sam*, in which officers found methamphetamine in a vehicle glove compartment and a firearm in the center console of a vehicle that the appellant was driving while transporting a passenger, but that case is similarly distinguishable. 859 N.W.2d at 829. This court reversed the appellant's conviction because there were multiple reasonable ways for the methamphetamine to have gotten in the vehicle that were inconsistent with the appellant's guilt, including that (1) the methamphetamine was already

in the vehicle when the appellant borrowed it and (2) the passenger put the methamphetamine in the center console. *Id.* at 835. Here, the circumstances proved do not support a reasonable inference that another individual placed the pistol in the vehicle given the strong DNA evidence tying the pistol to appellant and the absence of DNA on the pistol from the only other person present in the vehicle. As stated above, mere conjecture cannot establish a rational hypothesis inconsistent with guilt. *Palmer*, 803 N.W.2d at 733. Because the circumstances proved are consistent with appellant's guilt and inconsistent with any other rational hypothesis, we affirm appellant's conviction.

Affirmed.