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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-770**

State of Minnesota,
Appellant,

vs.

Savanah Marie Rhodes,
Respondent.

**Filed April 23, 2012
Affirmed
Worke, Judge**

Mower County District Court
File No. 50-CR-10-88

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Kristen Nelsen, Mower County Attorney, Jeremy Clinefelter, Assistant County Attorney,
Austin, Minnesota (for appellant)

Sharon E. Jacks, Minneapolis, Minnesota (for respondent)

Considered and decided by Peterson, Presiding Judge; Worke, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

The state challenges the district court's grant of acquittal following a jury's guilty verdict, arguing that the evidence was sufficient to support the jury's verdict. We affirm.

FACTS

At 6:00 a.m. on January 13, 2010, officers executed a search warrant at the residence of a known drug-dealer. Officers found 11 people inside the residence with drugs and drug paraphernalia scattered throughout the house. Officers found respondent Savannah Marie Rhodes in an upstairs bedroom near a spoon containing trace amounts of methamphetamine. Her purse contained a hypodermic syringe commonly used for injecting methamphetamine after the drug is liquefied on a spoon, and she appeared to be under the influence of methamphetamine. Respondent was charged with fifth-degree controlled-substance crime, in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2008), and petty-misdemeanor possession of drug paraphernalia.

At trial, respondent stipulated that she possessed drug paraphernalia, specifically the syringe found in her purse, and that the spoon found in the nightstand contained methamphetamine residue. Captain David McKichan was the only witness to testify. McKichan testified that he found respondent in the upstairs bedroom, approximately 20 seconds after police entered the residence. McKichan testified that respondent was alone in the bedroom, standing next to a nightstand with her purse at her feet. McKichan testified that a syringe was located inside respondent's purse, which was surrounded by four more syringes on the floor. McKichan further testified that respondent's cellphone was on the nightstand next to her, and the drawer of the nightstand was partially opened. Inside the nightstand drawer, McKichan testified that he found a spoon containing methamphetamine residue. McKichan also testified that respondent appeared to be "quite high on meth at the time."

McKichan acknowledged that respondent was not drug-tested, however, and also clarified that police did not attempt to take fingerprints from the spoon. McKichan testified that a juvenile was found in the upstairs hallway during the raid, and a wallet that did not belong to respondent was found on the nightstand next to respondent's phone. McKichan also testified that the other occupants were found downstairs during the raid, and that many of them possessed methamphetamine on their persons. McKichan further testified that a second spoon containing methamphetamine residue was found in a desk outside of the bedroom where respondent was found. There was no testimony regarding the age of the methamphetamine residue on the spoon found in the nightstand or the last time the spoon was believed to have been used.

Respondent moved for a judgment of acquittal after the state rested its case. The district court concluded that the state met its burden of demonstrating a prima facie case by a preponderance of the evidence and denied respondent's motion. Respondent rested and renewed her motion for acquittal, arguing that the evidence was insufficient to establish that she exercised dominion or control over the spoon found in the nightstand. The district court reserved its ruling on the motion and submitted the case to the jury for deliberation. The jury rendered a guilty verdict. The district court then granted respondent's motion for acquittal, determining that there was no evidence that respondent exercised dominion and control over the spoon and finding respondent not guilty of fifth-degree controlled-substance crime. The district court issued a written order echoing the findings made on the record. The district court noted that there was no testimony regarding the age of the methamphetamine found on the spoon or how recently the spoon

had been used. The district court further noted that the spoon was never tested for fingerprints. The district court found that respondent was with eight-to-ten other occupants at a known drug-dealer's house, and that there was insufficient evidence that she exercised dominion and control over the spoon. The state now appeals.

D E C I S I O N

The state challenges the district court's grant of respondent's motion for judgment of acquittal. A defendant may move for a judgment of acquittal at the close of evidence for either party if the evidence is insufficient to sustain a conviction. Minn. R. Crim. P. 26.03, subd. 18. On review, this court asks if the evidence was sufficient to support a conviction, an independent inquiry, which considers "whether, [] the facts in the record and any legitimate inferences that can be drawn from them," support a reasonable conclusion that the defendant was guilty of the offense charged. *State v. Tscheu*, 758 N.W.2d 849, 857 (Minn. 2008).

To sustain a conviction for a controlled-substance-crime charge, the state must establish that a defendant "unlawfully possesse[d] one or more mixtures containing a controlled substance[.]" Minn. Stat. § 152.025, subd. 2(a)(1). Possession means that respondent "physically possessed the substance and did not abandon [her] possessory interest in the substance but rather continued to exercise dominion and control over it up to the time of the arrest." *State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 610 (1975). To prove constructive possession, the state must establish either that: "(1) the controlled substance was found in an area under [respondent's] control and to which others normally had no access; or (2) if others had access to the location of the controlled

substance, the evidence indicates a strong probability that [respondent] exercised dominion and control over the area.” *State v. Denison*, 607 N.W.2d 796, 800 (Minn. App. 2000), *review denied* (Minn. June 13, 2000). “Proximity is an important consideration in assessing constructive possession,” and “constructive possession need not be exclusive, but may be shared.” *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). In determining whether possession occurred, including cases of constructive possession, courts consider the totality of the circumstances. *Denison*, 607 N.W.2d at 800.

The state argues that the district court erred by granting respondent’s motion for acquittal because the court essentially reweighed the evidence and failed to make findings in the light most favorable to the jury’s verdict. McKichan testified that respondent was the only person found in the bedroom at the time he entered. McKichan testified that respondent was standing next to her purse containing a syringe and surrounded by other syringes on the floor. He further testified that respondent was standing next to a nightstand with her cellphone on the nightstand and the drawer ajar. Inside the drawer, McKichan found a spoon containing methamphetamine residue. Furthermore, McKichan testified that respondent exhibited extreme signs of methamphetamine influence. The state asserts that this evidence, when viewed in the light most favorable to the jury’s guilty verdict, is sufficient to demonstrate a “strong probability that [respondent] exercised dominion and control over the area.” *See id.* (defining two ways that the state can establish constructive possession).

But, as the state concedes, the jury's guilty verdict rested on circumstantial evidence. In reviewing a conviction based on circumstantial evidence, this court applies a two-part test. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). First, we identify the circumstances underpinning the conviction, granting deference to "the jury's acceptance of the proof of these circumstances as well as to the jury's rejection of evidence in the record that conflicted with the circumstances proved." *Id.* The following circumstances were established at trial and presumably relied on by the jury in rendering the guilty verdict: respondent was found in a drug-dealer's house at 6:00 a.m.; respondent was found alone in a bedroom while all other occupants of the house were found downstairs, except for a juvenile found in the upstairs hallway; respondent was found standing next to a nightstand with a partially opened drawer; respondent was standing next to her purse, which contained a hypodermic needle, with other needles surrounding her on the floor; respondent was extremely high, presumably on methamphetamine; respondent's cellphone was on the nightstand; and a spoon containing methamphetamine residue was found in the partially opened drawer.

Alternatively, the following circumstances support an argument that someone else possessed the spoon: the homeowner and target of the raid was a known drug-dealer with a house replete with various narcotics and drug paraphernalia; a second spoon with trace amounts of methamphetamine was found in a desk outside of the upstairs bedroom; the trace amount of methamphetamine found on the spoon in the nightstand had dried and its most recent use was unknown; numerous syringe caps were also found in the nightstand drawer; a wallet belonging to another individual was found on the nightstand next to

respondent's cellphone; and 11 people were found in the home, many with methamphetamine on their persons.

The second part of our analysis requires us to “examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt.” *Id.* (quotation omitted). “In contrast to the deference given when identifying the circumstances proved, we give no deference to the fact finder’s choice between reasonable inferences.” *Id.* (quotation omitted). In order to sustain the conviction, the “[c]ircumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). “In assessing the inferences drawn from the circumstances proved, . . . it must also be true that there are no other reasonable, rational inferences that are inconsistent with guilt.” *Hanson*, 800 N.W.2d at 622 (quotation omitted).

Based on the circumstances established at trial, the evidence failed to exclude the reasonable, rational inference that someone other than respondent possessed the spoon. She was one of 11 people in a house full of drugs and drug paraphernalia, and many of the other individuals were found with methamphetamine on their persons. Another person’s wallet was found on the nightstand. There was no evidence that the spoon was used near the time that respondent was found. And a second spoon with methamphetamine residue was found in a desk outside of the bedroom. Although respondent was closest to the spoon at the time of the raid, her mere proximity does not

exclude the inference that the spoon belonged to the owner of the house or one of the other occupants; thus, the state failed to establish a strong probability that respondent exercised dominion and control over the spoon. Accordingly, the conviction cannot stand, and the district court did not err in granting respondent's motion for acquittal.

Affirmed.