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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0898**

State of Minnesota,
Respondent,

vs.

Chanon Leigh Burke,
Appellant.

**Filed April 15, 2013
Affirmed
Connolly, Judge**

Cottonwood County District Court
File No. 17-CR-11-93

Lori Swanson, Attorney General, Karen B. Andrews, Assistant Attorney General,
St. Paul, Minnesota; and

Nicholas A. Anderson, Cottonwood County Attorney, Windom, Minnesota (for
respondent)

Kristian L. Oyen, Savage, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Connolly, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellant argues that insufficient evidence supports his convictions of constructive possession of a controlled substance and conspiracy to manufacture methamphetamine. Because circumstantial evidence excludes beyond a reasonable doubt any reasonable inference other than appellant's guilt of constructive possession of methamphetamine and because the testimony of appellant's accomplices and the corroborating evidence supports an inference of conspiracy to manufacture methamphetamine, we affirm.

FACTS

In February 2011, A.D. reported to the police that J.N. and Dan Henderson were purchasing pseudoephedrine for appellant Chanon Leigh Burke to use in the manufacture of methamphetamine. A.D. also reported seeing several items used to manufacture methamphetamine in the residence appellant shared with his girlfriend and seeing appellant give Henderson methamphetamine when she was with the two of them at Henderson's residence.

The execution of a search warrant for appellant's residence produced coffee filters with white residue later determined to contain methamphetamine, pieces of rubber hose or tubing, a device used for smoking methamphetamine or marijuana, and a jug of blue liquid inside the residence. The trash can outside the residence contained empty pseudoephedrine boxes, receipts for pseudoephedrine, a plastic bottle with a tube

protruding from it, a plastic bottle with tinfoil inside it, broken batteries, battery packages, and burnt tinfoil.

At appellant's trial, a Bureau of Criminal Apprehension special agent testified as to how these items are used in the manufacture of methamphetamine. Henderson, Jessica Flaherty, and Judy Graft testified that they purchased pseudoephedrine for appellant in exchange for methamphetamine for their personal use.¹ A police officer testified that the pseudoephedrine logs from nine area pharmacies showed that these three people had purchased pseudoephedrine, as had J.N. and appellant's girlfriend.²

The jury found appellant guilty of constructive possession of a controlled substance and of conspiracy to manufacture methamphetamine. He challenges his convictions on the ground of insufficient evidence.

D E C I S I O N

1. Constructive possession

“Circumstantial 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. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). “[T]he constructive possession doctrine permits a conviction where the state cannot prove actual possession, but the inference is strong that the defendant physically possessed the item at one time and did not abandon his possessory interest in it.” *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied*

¹ Henderson, Flaherty, and Graft were identified to the jury as appellant's accomplices.

² Appellant's girlfriend was subpoenaed but did not appear at the trial.

(Minn. Jan. 16, 2001). “Where drugs are found in a place to which others have access, constructive possession is proved when there is a strong probability (inferable from other evidence) that the defendant was at the time consciously exercising dominion and control over them.” *State v. Arnold*, 794 N.W.2d 397, 401 (Minn. App. 2011) (quotation omitted). Appellate courts consider the totality of the circumstances in determining whether the state has established constructive possession. *State v. Denison*, 607 N.W.2d 796, 800 (Minn. App. 2000), *review denied* (Minn. June 13, 2000).

Appellant’s girlfriend, who also lived in his residence, did not appear for trial. Appellant argues that, because “no testimony was offered by the prosecution as to [her] involvement [with the methamphetamine] . . . there was no way for the jury to have a strong probability inferable from other evidence that appellant was exercising dominion and control over the methamphetamine found [in the residence].” But “[a] person may constructively possess a controlled substance alone or with others.” *Id.*; *see also State v. Dickey*, __ N.W.2d __, __, 2013 WL 869650, at *2 (Minn. App. Mar. 11, 2013) (same). Thus, whether appellant’s girlfriend also constructively possessed the methamphetamine is irrelevant to whether appellant constructively possessed it.

Appellant concedes that “the evidence does show . . . that [a]ppellant shared a residence or stayed at the residence sometimes” but also argues that “testimony was in dispute that [a]ppellant lived at the residence.” This argument mischaracterizes the testimony of Henderson, Flaherty, Graft, and A.D.

Henderson answered “Yeah” when asked if he would recognize the house where appellant was living from December 2010 through February 2011; when shown a picture

of the house, Henderson said “That’s the house he [appellant] was staying at.” Graft testified that she and her husband owned the residence. When asked who was living there on February 14, she answered that appellant’s girlfriend and appellant lived there, adding that she knew “they were there in the winter because [appellant] blew snow there and at our house.” Flaherty was asked if she knew where appellant lived on February 10, 2011, and answered, “Not exactly, no. I know where he was staying”; she also identified the picture of the house as “the residence where he was staying.” A.D. answered “Yes” when asked if she knew where appellant lived in early February 2011; when shown a picture of appellant’s residence and asked what it was, she said, “[Appellant’s] house.”

No one offered testimony contradicting the views that appellant resided in the house where the methamphetamine was found. A consideration of the totality of the circumstances demonstrates that the state established appellant’s constructive possession of the methamphetamine. The circumstantial evidence was sufficient to exclude beyond a reasonable doubt any reasonable inference other than that of appellant’s guilt of constructive possession of methamphetamine.

II. Conspiracy to manufacture methamphetamine

Proof of conspiracy to manufacture methamphetamine requires proof of an agreement between two or more people to manufacture methamphetamine and an overt act in furtherance of the conspiracy. *State v. Tracy*, 667 N.W.2d 141, 146 (Minn. App. 2003). When “several persons commit separate acts which form parts of a connected whole, an inference of conspiracy—that there was concert in both planning and

execution—is permissible.” *State v. Burns*, 215 Minn. 182, 189, 9 N.W.2d 518, 521-22 (1943).

Appellant argues that, because there was no testimony that he was seen manufacturing methamphetamine or that he told people to purchase pseudoephedrine for him, the state failed to prove a conspiracy. But Henderson, Graft, and Flaherty testified that they and appellant committed acts that formed parts of a connected whole, i.e., the manufacture of methamphetamine, and other evidence corroborates their testimony. *See* Minn. Stat. § 634.04 (2012) (“A conviction cannot be had upon the testimony of an accomplice, unless it is corroborated by such other evidence as tends to convict the defendant of the commission of the offense.”); *Turnage v. State*, 708 N.W.2d 535, 543 (Minn. 2006) (noting that appellate courts review the sufficiency of corroborating evidence for accomplice testimony in the light most favorable to the verdict and resolve all conflicts in favor of the verdict).

Henderson, Graft, and Flaherty all provided accomplice testimony, and their testimony was corroborated by both A.D.’s testimony and the pseudoephedrine logs from the pharmacies.

Henderson testified:

- Q. Did [appellant] ever ask you to purchase anything for him?
A. Yes.
Q. What?
A. Pseudoephedrine.
Q. Do you know why?
A. To make methamphetamine.
Q. Did you purchase pseudoephedrine for him?
A. Yes, I did.

Q. How many times would you have done this?
A. Twice.
Q. And where would you have done this?
.....
A. The pharmacy in Jackson and Wal-Mart in Worthington.
.....
Q. . . . [W]hy did you purchase the Pseudoephedrine pills for him?
A. To get some meth.
.....
Q. Have you seen [appellant] ask others to purchase pills for him?
A. Yeah.
.....
Q. Have you seen others purchasing pills for [appellant]?
A. [J.N.]. That's it.
.....
Q. Would you then get anything in exchange for the pills that you gave [appellant]?
A. Yes.
Q. And what would you receive?
A. A bag of meth.

Graft testified:

Q. . . . [W]ould [appellant] ever ask you to buy anything for him?
A. Yes, I got pills a few times.
Q. Do you know what kind of pills you got?
A. Sudafed or generic.
.....
Q. What did you do with the Sudafed?
A. I gave them to [appellant].
.....
Q. Did you know what they were for?
A. Yes.
Q. And did you get anything in return for purchasing these pills?
A. I smoked a little of it, you know.
Q. The methamphetamine?
A. Yes.

Flaherty testified:

Q. Did [appellant] ever ask you to purchase anything for him?

A. Yes.

Q. What?

A. Pseudoephedrine pills.

....

Q. What were they for?

A. Manufacturing methamphetamine.

Q. And did [appellant] say whether or not he would give you something for buying these pills?

A. Yes.

Q. And what was that?

A. Three grams [of methamphetamine].

....

Q. And did you go and purchase pseudoephedrine?

A. Yes, sir.

....

Q. Okay, and when was the most recent time?

A. Me and [appellant] went down to Worthington.

Q. And where in Worthington did you go?

A. Walgreen's and Wal-Mart.

....

Q. And what did you do with the pills that you bought at Wal-Mart?

A. Kept them in the bag and gave them to [appellant].

....

Q. What did you buy at Walgreen's?

A. Same.

Q. And you gave him the pills right after you got out of the store?

A. Yes.

....

Q. Did he give you the three grams of methamphetamine?

A. No.

Q. Did he give you anything else?

A. He just smoked with me.

Q. He let you smoke some with him?

A. Yeah.

....

Q. When you bought the pills at Mountain Lake, what did you do with them?

A. I gave them to an acquaintance.
Q. Who was that?
A. I believe it was [appellant's girlfriend].
....
Q. And do you know where they were going from there?
A. I had an idea.
....
Q. What was that?
A. They were going to [appellant's].
....
Q. What happened with the pills that you purchased here in Windom?
A. Gave them to [L.].
Q. And do you know what [L.] did with them?
A. Gave them to [appellant].

A.D. testified:

Q. Were you aware of [J.N.] helping anyone to manufacture methamphetamines?
....
A. Yes.
Q. How?
A. He was buying Sudafed pills.
Q. Was he doing this with anybody?
A. Yes.
....
Q. How do you know that [J.N.] was purchasing?
A. I saw them do it.
Q. That would be [J.N.] and Henderson?
A. Yep.
Q. ... [W]ho were they doing this for?
....
A. [Appellant].
....
Q. Who was there [i.e., at appellant's residence] when you were there?
A. [J.N.], Dan Henderson, and I, and [appellant].
Q. ... [W]hy were you there?
A. Basically to get high.
Q. Did you see any items that you thought might be used to manufacture methamphetamine?
A. Yes.

....

Q. What rooms were these items in?

A. The kitchen and a small room that was off from the front door of the house . . . And there was a heater in there that had like a pan on there that looked like it was drying out meth on a coffee filter.

....

Q. And did you see [appellant] . . . ?

A. Yes.

Q. Where at?

A. Dan Henderson's house.

Q. And what did you . . . see?

A. I saw [appellant] give Dan meth.

Q. Did [appellant] say what it was for at all?

A. For them getting him pills.

A police officer testified that records from pharmacies indicated that Henderson, Graft, and Flaherty purchased pseudoephedrine pills at the times and in the places to which they testified.

Thus, A.D.'s testimony and the records corroborate the accomplices' testimony. The separate acts of the accomplices, and the surrounding circumstances, support the inference that appellant was guilty of conspiracy to manufacture methamphetamine.

There is sufficient evidence to support both of appellant's convictions.

Affirmed.