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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0690**

State of Minnesota,
Respondent,

vs.

Deon R. Williams,
Appellant.

**Filed September 16, 2008
Affirmed
Collins, Judge***

Hennepin County District Court
File No. 05066379

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

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Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and Collins, Judge.

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

UNPUBLISHED OPINION

COLLINS, Judge

Appellant challenges his conviction of being a legally prohibited person in possession of a firearm, arguing that (1) the district court committed prejudicial error when it instructed the jury that the parties stipulated that appellant is legally prohibited from possessing a firearm without obtaining a personal waiver from appellant either on the record or in writing and (2) the evidence is insufficient to support his conviction. We affirm.

FACTS

On October 14, 2005, Officers David Stichter and Roderick Rabine were dispatched to the intersection of Lowry and Logan Avenues in Minneapolis on a report of a man brandishing a gun in public. The officers were told that a 24-year-old black male, wearing a brown and white cap, blue jeans, brown jacket, and orange shirt, was carrying a silver-looking revolver. They saw a man matching that description standing on the southeast corner of the intersection. As the officers neared the intersection, the man turned and ran eastbound on Lowry Avenue to the edge of the building on the southeast corner of the intersection, to a parking lot, took one or two steps into the parking lot, then turned and ran westbound on Lowry to the corner, and then south on Logan Avenue from Lowry. The officers lost sight of the suspect as he turned and ran south on Logan.

Officer Rabine got out of the squad car to see if the suspect had abandoned a gun in the parking lot. While Rabine searched for a gun, a man wearing an orange shirt and blue jeans ran toward him from the south side of the building carrying a brown and white

cap and brown jacket. Rabine detained and searched the man but did not find a gun. The man was identified as Deon Rashod Williams. Officer Stichter returned to the scene and discovered a silver-colored handgun on the roof of the building on the southeast corner of the intersection, around which Williams had run. Stichter photographed the gun, seized it, and placed it in evidence to have it analyzed for fingerprints.

Williams was arrested and charged with being a legally prohibited person in possession of a firearm, in violation of Minn. Stat. §§ 624.713, subds. 1(b), 2(b), 609.11, subd. 5(b) (2004). His jury trial was held in January 2007.

At trial, the state presented the testimony of Officers Stichter and Rabine. The state also presented the testimony of Minneapolis Crime Lab Officer Kara Jorgensen, who testified about a department forensic scientist, Amy Wheeler, matching a fingerprint she found on the gun submitted by Stichter to Williams's known fingerprint; and Jorgensen was asked to verify that the fingerprint from the gun matched that of Williams. Jorgensen testified that she examined the fingerprint on the gun, compared it to a card containing Williams's known fingerprints, and determined that (1) the fingerprint from the gun had a sufficient level of detail to permit analysis, (2) the fingerprint from the gun matched one of Williams's fingerprints "to a reasonable scientific certainty", and (3) the fingerprint from the gun was that of Williams's "number one" finger.

The state also presented the testimony of the 911 caller, A.A., who testified that he called 911 twice on October 14, 2005, to report the man to police. A.A. did not identify Williams in court as the man he had seen, or recall precisely what the man was wearing on the day of the incident, but agreed that the clothes taken by police from Williams after

his arrest were the clothes that the man he had seen holding the gun had been wearing. The state played to the jury the audio tape of A.A.'s 911 calls, during which he told the 911 dispatcher that he had seen a black male dressed in a brown and white hat, brown jacket, orange shirt, and blue jeans carrying and waving a gun in the parking lot of the gas station he owns and that he saw the man run across the street to the southeast corner of the intersection.

During jury instructions, as counsel in Williams's presence had agreed and requested, the district court informed the jury that Williams stipulated that he was legally prohibited from possessing a firearm, stating: "The parties stipulate that the defendant is legally prohibited from possessing a firearm. 'Stipulate' means they agree that that is a fact." The jury convicted Williams of being a prohibited person in possession of a firearm. This appeal followed.

D E C I S I O N

I.

Williams contends that the district court committed prejudicial error when it told the jury that Williams stipulated that he was prohibited from possessing a firearm, without securing his personal waiver on the record or in writing.

Whether a defendant's waiver was constitutionally adequate is an issue this court reviews de novo. *State v. Tlapa*, 642 N.W.2d 72, 74 (Minn. App. 2002), *review denied* (Minn. June 18, 2002). We review alleged errors regarding a district court's decision to accept a stipulation to an element of an offense under harmless-error analysis. *State v. Wright*, 679 N.W.2d 186, 191 (Minn. App. 2004), *review denied* (Minn. June 29, 2004).

Under harmless-error analysis, this court is to determine whether the alleged error was error, and, if so, whether there is a reasonable possibility that the error contributed to the verdict. *Id.*

Williams argues that the district court's statement to the jury that Williams stipulated that he is legally prohibited from possessing a firearm is error because Williams did not personally waive his right to a jury trial on that element either orally on the record or in writing.

The United States and Minnesota Constitutions guarantee a criminal defendant the right to a jury trial on all elements of the charged offense. U.S. Const. amend. VI; Minn. Const. art. I, § 6. A defendant may stipulate to an element of the charged offense and, by doing so, "effectively waives the right to a jury trial on that element and removes unduly prejudicial evidence from the jury's consideration." *Wright*, 679 N.W.2d at 191. Such a waiver must be an oral waiver on the record or a written waiver, made personally by the defendant. *Id.*

Williams was charged with possessing a firearm while being legally prohibited from doing so, in violation of Minn. Stat. § 624.713, subs. 1(b), 2(b) (2004), which provides in pertinent part: "The following persons shall not be entitled to possess a pistol or semiautomatic military-style assault weapon or . . . any other firearm: . . . a person who has been convicted of . . . a crime of violence." A "crime of violence" includes "crimes in other states or jurisdictions which would have been crimes of violence as herein defined if they had been committed in this state." *Id.*; see Minn. Stat. § 624.712, subd. 5 (2004) (defining "crime of violence" to include violations of drug and controlled

substance laws). Thus, an element of the charged offense was that Williams “has been convicted or adjudicated delinquent or convicted as an extended jurisdiction juvenile in this state or elsewhere for committing a crime of violence.” 10A *Minnesota Practice*, CRIMJIG 32.21 (2006).

Williams was present and said nothing while the stipulation was composed and the instruction was requested. But nowhere in the record does there appear any personal waiver by Williams of his right to a jury trial on the element of having been convicted of a crime of violence and thus being prohibited from possessing a firearm. The failure by the district court to obtain such a waiver before instructing the jury that Williams stipulated to being legally prohibited from possessing a firearm is error. *See Wright*, 679 N.W.2d at 191 (“we conclude that it was error to accept the stipulation to proof of an element of an offense without [appellant’s] consent in writing or orally on the record”). We therefore turn to whether that error was prejudicial.

Williams argues that the district court’s statement to the jury that Williams stipulated that he is prohibited from possessing a firearm was prejudicial. A constitutional error “will be found prejudicial if there is ‘a reasonable possibility’ that the error complained of might have contributed to the conviction.” *State v. Larson*, 389 N.W.2d 872, 875 (Minn. 1986). A new trial is not warranted, however, if the state can establish beyond a reasonable doubt that the constitutional error was harmless. *State v. Jones*, 556 N.W.2d 903, 910 (Minn. 1996).

Applying the harmless-error test, we conclude that the verdict was surely unattributable to the district court’s reference to the stipulation. No doubt, absent the

stipulation the state would have presented evidence to show that Williams was previously convicted of felony drug crimes.¹ Williams does not dispute the fact of these convictions, that these convictions are “crimes of violence” under section 624.712, or that they render him legally prohibited from possessing a firearm under section 624.713. Accepting and instructing the jury on the stipulation served to minimize prejudice to Williams by precluding evidence of his convictions from being presented to the jury. Furthermore, the district court only alluded to the stipulation in the context of instructions to the jury, and the prosecutor referred to the stipulation on only three occasions during Williams’s four-day trial; at no point was the factual basis of the stipulation ever specified. The district court’s acceptance and disclosure of the stipulation was therefore harmless beyond a reasonable doubt. *See State v. Hinton*, 702 N.W.2d 278, 282 (Minn. App. 2005) (concluding that a district court’s error in failing to secure a valid waiver prior to accepting a stipulation of prior conviction was harmless when the record of the prior conviction was accurate and not contested), *review denied* (Minn. Oct. 26, 2005).

II.

Williams contends that the fingerprint evidence presented at trial is insufficient to support his conviction of being a prohibited person in possession of a firearm. In reviewing a claim of insufficient evidence, this court’s review is limited to a “painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which

¹ Williams has been convicted twice of felony drug crimes in Illinois. Each of these convictions qualifies as a “crime of violence” and renders him prohibited from possessing a firearm in Minnesota. Minn. Stat. §§ 624.713, subd. 1(b), .712, subd. 5 (2004).

they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court must assume that the jury believed the state’s witnesses and disbelieved any evidence to the contrary. *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). This court will uphold a conviction based on circumstantial evidence “if the reasonable inferences drawn from the evidence are inconsistent with any rational hypothesis except that of the defendant’s guilt.” *State v. Gates*, 615 N.W.2d 331, 337 (Minn. 2000). A jury is in the best position to evaluate circumstantial evidence, and its verdict is entitled to deference. *State v. Morris*, 606 N.W.2d 430, 437 (Minn. 2000).

To convict Williams of possessing a firearm while legally prohibited from doing so, the state had to prove beyond a reasonable doubt that (1) Williams had been convicted of a “crime of violence”, (2) Williams possessed a firearm, and (3) Williams did so at a particular time and place. Minn. Stat. § 624.713, subd. 1(b); CRIMJIG 32.21.

Viewing the evidence in the light most favorable to the conviction, we conclude that there is sufficient evidence to support the jury’s verdict. A.A.’s testimony, the 911 call recording, the arresting officers’ testimony, the gun found on the roof of the building, and Jorgensen’s testimony about the fingerprint from the gun found on the roof, as well as the stipulation, “form a complete chain that leads directly to [Williams’s] guilt.” *Gates*, 615 N.W.2d at 337-38.

Williams also argues that Jorgensen’s testimony lacked sufficient foundation and was not helpful to the trier of fact. Williams did not object to Jorgensen’s testimony at trial on either of these grounds, and his challenges to her testimony here have therefore been waived. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996); *Kenney v. Chicago*

Great W. Ry. Co., 245 Minn. 284, 289, 71 N.W.2d 669, 673 (1955) (concluding that defendant waived the right to have opinion testimony stricken or receive a new trial because the defendant failed to object to the expert's opinion and questioned the witness on cross-examination).

Even were we to thoroughly analyze Williams's arguments on appeal, we would conclude that they are without merit for several reasons. First, our review of the transcript shows that there was sufficient foundation for Jorgensen's opinion testimony. Second, Jorgensen's testimony that she examined the fingerprint found on the gun, compared it to Williams's known fingerprint, and concluded that it was a match, was clearly helpful to the jury in understanding the evidence and determining whether Williams had possessed the gun found on the roof of the building. Third, Williams's arguments on appeal regarding Jorgensen's testimony, which are similar to those presented in Williams's closing argument to the jury, relate more to the weight and credibility of Jorgensen's testimony than the legal sufficiency of her foundational testimony. *McPherson v. Buege*, 360 N.W.2d 344, 348 (Minn. App. 1984). The weight to be given to an expert's testimony is a question for the jury. *DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984).

Affirmed.