

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-2037**

State of Minnesota,
Respondent,

vs.

James Alan Hanson,
Appellant.

**Filed October 23, 2017
Affirmed
Rodenberg, Judge**

Polk County District Court
File No. 60-CR-15-656

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

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney, Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Rodenberg, Judge; and Kirk, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant James Alan Hanson appeals his conviction of possessing a controlled substance within a prohibited zone under Minn. Stat. § 152.023, subd. 2(a)(6) (2016),

arguing that the state failed to prove beyond a reasonable doubt that he possessed methamphetamine. We affirm.

FACTS

Beginning in 2014, appellant and his then-girlfriend, Barbara Hart, resided at a residence in Fosston, with their friends Chad Norberg and M.E. As a result of another criminal case involving appellant and Norberg, in early April 2015, Norberg and M.E. moved out of the residence. Only appellant and Hart lived at the residence as of April 17, 2015, occupying the first-floor bedroom. They denied others entry to that bedroom, including Norberg's mother who had come to collect his property.

On April 17, 2017, Polk County Sheriff Deputy Zachary Folkert went to the Fosston residence after a new tenant, who was supposed to be moving into the residence, called law enforcement to complain that there were still people living in the house. When contacted by law enforcement, Norberg's mother also expressed concern over the presence of drugs in and vehicles coming and going from the residence. When Deputy Folkert arrived, Hart opened the front door and appellant invited Deputy Folkert into the house to look around. At the time, appellant was subject to conditions of release on bail, including random searches based on reasonable suspicion and urine and breath testing for intoxicants.

Appellant mentioned to Deputy Folkert that there were things in the house that could get him in trouble. Once inside the residence, Deputy Folkert noticed that water was still running in the bathroom toilet. Upon searching the toilet tank, Deputy Folkert found a red case containing drug paraphernalia. Further, during a search of the first-floor bedroom,

officers found methamphetamine residue on a glass plate on a nightstand next to the bed, along with other drug paraphernalia.

Appellant was arrested and taken to a correctional facility in Crookston. Corrections Officer Donovan Hoffman asked appellant to provide a urine sample. Appellant refused, stating that he was already in enough trouble and that he had been trying to quit using drugs. Appellant also asked Officer Hoffman to tell Hart that he was sorry that he had gotten her into trouble. Appellant was charged with one count of possessing a controlled substance within a prohibited zone, near a school, in violation of Minn. Stat. § 152.023, subd. 2(a)(6) (2014). After a court trial, appellant was found guilty and sentenced to 27 months in prison.

This appeal followed.

D E C I S I O N

Appellant argues that the record contains insufficient evidence to prove beyond a reasonable doubt that he possessed the methamphetamine residue found in his residence. In order to prove possession of methamphetamine in a prohibited zone, the state must prove (1) that the defendant knowingly possessed methamphetamine; (2) that the defendant knew or believed that the substance possessed was methamphetamine; (3) that the possession occurred in a school, park, public housing, or drug treatment zone; and (4) that the defendant's possession was unlawful. 10A *Minnesota Practice*, CRIMJIG 20.22 (2015). The district court found that the state proved beyond a reasonable doubt that methamphetamine residue was found at the Fosston residence and that the residence was located within one city block of a school. The district court also found that the state proved

beyond a reasonable doubt that appellant possessed the methamphetamine based on Hart's trial testimony that she and appellant had injected methamphetamine in the residence using the drug paraphernalia found on the nightstand in the first-floor bedroom, and that other physical evidence supported Hart's testimony. On appeal, appellant challenges only the district court's finding that he possessed the methamphetamine.

In considering whether the record evidence is sufficient, we thoroughly review "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 that they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). "We will not disturb the verdict if the [factfinder], acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that [the] defendant was proven guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted). "[Appellate courts] use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence." *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

Possession can be proven by direct or circumstantial evidence. "Direct evidence is [e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Bernhardt*, 684 N.W.2d at 477 n.11 (quotation omitted). Such evidence can be provided in the form of testimony by a person who perceived the fact through her senses or physical evidence of the fact itself. *State v. Williams*, 337 N.W.2d 387, 389 (Minn. 1983). In contrast, circumstantial evidence is

“evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted).

“Possession may be either actual or constructive.” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016). An item may be possessed jointly with another person. *Harris*, 895 N.W.2d at 601 (citing *State v. Lee*, 683 N.W.2d 309, 317 n.7 (Minn. 2004)). The state must prove that appellant possessed the methamphetamine itself, rather than simply possessing the location where it was found. *State v. Hunter*, 857 N.W.2d 537, 542-43 (Minn. App. 2014). Actual possession “involves direct physical control.” *Barker*, 888 N.W.2d at 353 (quoting *Jacobsen v. Aetna Cas. & Sur. Co.*, 233 Minn. 383, 388, 46 N.W.2d 868, 871 (1951)). “The mere fact that an item is not in a defendant’s physical possession at the time of apprehension does not preclude prosecution for actual possession of contraband.” *Id.* at 354. In contrast, constructive possession involves an item being “in a place under appellant’s exclusive control to which other people do not normally have access, or that there is a strong probability that appellant was, at the time of discovery, consciously exercising dominion and control over” that item. *State v. Sam*, 859 N.W.2d 825, 833 (Minn. App. 2015).

The district court found that Hart’s trial testimony was direct evidence that appellant actually possessed the methamphetamine residue. Specifically, the district court credited Hart’s testimony that she and appellant resided in the first-floor bedroom at the residence through April 17, 2015; that Norberg and M.E. were no longer residing at the residence after Norberg and appellant were arrested in early April 2015; and that Hart and appellant

had used the drug paraphernalia found on the first-floor bedroom nightstand to use and inject methamphetamine, the residue of which was seized by police.

Appellant argues that Hart was an accomplice to the methamphetamine possession, that her testimony requires independent corroboration, and that her testimony is insufficiently corroborated. The state argues that Hart's testimony did not require corroboration because she was an alternative perpetrator rather than an accomplice.

Assuming without deciding that Hart was an accomplice to appellant's methamphetamine possession, we conclude that the district court did not err in finding that Hart's testimony was sufficiently corroborated.

We review the sufficiency of the evidence tending to corroborate an accomplice's testimony "in the light most favorable to the verdict." *State v. Chavarria-Cruz*, 839 N.W.2d 515, 519 (Minn. 2013) (quotation omitted). Corroborating evidence may be direct or circumstantial and "need not establish a prima facie case of the defendant's guilt, [but] it must point to [the] defendant's guilt in some substantial way." *State v. Johnson*, 616 N.W.2d 720, 727 (Minn. 2000). "Corroborating evidence is sufficient if it 'restores confidence in the accomplice's testimony, confirming its truth and pointing to the defendant's guilt in some substantial degree.'" *State v. Ford*, 539 N.W.2d 214, 225 (Minn. 1995) (quoting *State v. Scruggs*, 421 N.W.2d 707, 713 (Minn. 1988)).

The district court found that Hart's testimony was corroborated by: (1) the drug paraphernalia found in the first-floor bedroom; (2) appellant and Hart's possession of the first-floor bedroom; (3) the drug paraphernalia found in the bathroom right after appellant used the bathroom; (4) appellant's protective behavior over the first-floor bedroom; and

(5) appellant's statements that there were things in the apartment that could get him in trouble, that he refused to provide a urine sample because he was "already in enough trouble" and was "trying to quit using drugs," and that he asked Officer Hoffman to tell Hart he was sorry he got her in trouble. When viewed in the light most favorable to the verdict, this evidence is sufficient to corroborate Hart's direct testimony that appellant used methamphetamine with her in the first-floor bedroom and was actually in possession of the residue that was discovered. The district court found that Hart's testimony, serving as direct evidence of appellant's possession of the methamphetamine, was credible. We defer to the district court's credibility findings. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003). Accordingly, there is sufficient evidence in the record to support the district court's finding that the state proved beyond a reasonable doubt that appellant actually possessed the methamphetamine residue.

The district court also found, in the alternative, that the circumstantial evidence proved that appellant had joint constructive possession of the methamphetamine residue beyond a reasonable doubt, even if Hart's testimony were entirely disregarded. The record, to our view of it, supports the district court's finding that the circumstantial evidence was sufficient to prove beyond a reasonable doubt that appellant exercised dominion and control over the methamphetamine residue, and therefore constructively possessed it. *See State v. Silvernail*, 831 N.W.2d 594, 598-99 (Minn. 2013) ("[I]n determining circumstances proved, we consider only those circumstances that are consistent with the verdict."). But thorough analysis of the sufficiency of the circumstantial evidence is unnecessary here

because the record supports the district court's finding that the state proved its case by direct evidence.

Affirmed.