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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1706**

State of Minnesota,
Respondent,

vs.

Phillip Edward Jackson,
Appellant.

**Filed September 10, 2018
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-17-9546

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Worke, Judge; and Bratvold,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges the sufficiency of the evidence supporting his convictions of possession of a firearm by an ineligible person and reckless discharge of a firearm. We affirm.

DECISION

A jury found appellant Phillip Edward Jackson guilty of possession of a firearm by an ineligible person and reckless discharge of a firearm. Jackson challenges the sufficiency of the evidence supporting his convictions.

In considering a claim of insufficient evidence, our review is limited to a thorough analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court assumes 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 not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

The jury found Jackson guilty of possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2016), and reckless discharge of a firearm within a municipality, in violation of Minn. Stat. § 609.66, subd. 1a(a)(3) (2016).

To convict Jackson of possession of a firearm by an ineligible person, the state was required to prove that Jackson knowingly possessed a firearm and is ineligible to possess a firearm. *See State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Jackson stipulated that he is ineligible to possess a firearm under Minnesota law. Thus, the state was required to prove only that Jackson knowingly possessed a gun. To convict Jackson of reckless discharge of a firearm in a municipality, the state was required to prove that Jackson discharged a firearm and acted recklessly in the discharge of the firearm. *See State v. Engle*, 743 N.W.2d 592, 595-96 (Minn. 2008). Jackson argues that the state failed to prove that he possessed and fired the gun.

Possession may be actual or constructive. *Harris*, 895 N.W.2d at 601. Actual possession is generally proven by showing that the defendant had “actual or physical possession [of the firearm] at the time of arrest.” *State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975). However, “[t]he 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.” *State v. Barker*, 888 N.W.2d 348, 354 (Minn. App. 2016).

Constructive possession can be proved either by showing that the firearm was under the defendant’s exclusive control in a location to which other people normally did not have access, or, if the firearm was found in a place to which others had access, the state “must show that there is a strong probability (inferable from other evidence) that at the time the defendant was consciously or knowingly exercising dominion and control over it.” *Harris*, 895 N.W.2d at 601. Proximity is a factor in establishing constructive possession. *State v. Porte*, 832 N.W.2d 303, 308 (Minn. App. 2013).

Possession may be proven by direct or circumstantial evidence. *See State v. Sam*, 859 N.W.2d 825, 833 (Minn. App. 2015). “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). Eyewitness testimony is direct evidence. *See State v. Olson*, 887 N.W.2d 692, 700 (Minn. App. 2016) (stating that the state presented direct evidence in the form of eyewitness testimony).

Here, Officer Alberts was on patrol on April 16, 2017, when he heard shots fired. He looked down an alley and saw an “individual firing a handgun.” Officer Alberts followed the person until the person stopped running and put his hands up. Officer Alberts patted Jackson down and did not find a gun. Officer Alberts found eight .380 caliber shell casings at the location where he saw the gunfire. Officer Alberts located a .380 caliber handgun in the grass near where Jackson stopped running. No usable fingerprint was found on the gun for analysis nor was enough DNA detected for analysis.

Jackson claims that the state’s case was based on circumstantial evidence, which might support the jury’s verdict, but which also supports a reasonable inference that he was not the person who possessed or fired the gun. However, the state’s case was based on direct evidence, which we assume the jury believed and which was sufficient to support Jackson’s convictions.

Officer Alberts wore a body camera that night that recorded Officer Alberts making the following statements:

I watched you shoot in the alley. I’m gonna find your f-ckin’ gun and you’re going to jail.

I watched [Jackson] shoot in the alley, so he . . . threw a gun back there somewhere.

[Jackson] was the only guy I saw back in the alley.

I was right at the end of this alley. I watched him shooting up the alley. . . . And then he ran back, he ran straight down this way.

I didn't see where he threw the gun, but . . . I know he did, [be]cause he had one.

[Jackson] was right here . . . firing northbound in the alley.

[Jackson] was literally standing right here, firing north up the alley.

I see [Jackson], I see that dude standing in the alley—boom-boom-boom-boom—shooting . . . 6 or 8 shots. I take off down the alley after him, he takes off running. . . . [H]e pitches the gun somewhere, I never saw him throw it So I don't know where the gun is. We got to find the gun. But, I mean, that's the dude.

In these statements, Officer Alberts identified Jackson as the person he saw shooting the firearm. This is direct evidence. *See State v. White*, 349 N.W.2d 603, 603 (Minn. App. 1984) (“[E]yewitness testimony by a state trooper was sufficient to establish that defendant was the driver.”).

Jackson claims that Officer Alberts did not see the person who shot the gun, because another officer asked Officer Alberts if Jackson got out of his sight and Officer Alberts replied: “Yes. . . . I mean, he was never out of my sight, but . . . I couldn't see him throw [the gun]” Officer Alberts clarified when he testified that he never lost sight of Jackson, and meant only that he did not see Jackson throw the gun. The following exchange occurred between the prosecutor and Officer Alberts:

Q: But you saw [Jackson] shoot?
A: Yes.
Q: You chased [Jackson] down the alley?
A: Yes.
Q: You saw him the entire time?
A: Yes.
Q: He surrendered?
A: Yes.
Q: And you found the gun pretty close to where he surrendered?
A: Yes.
Q: He was the guy?
A: Yes.

Officer Alberts testified that he saw Jackson shoot the gun. This is direct evidence that we assume the jury believed. The evidence sufficiently supports Jackson's convictions because it shows that Jackson possessed and fired the gun—Officer Alberts saw Jackson fire the gun, the shell casings were found at the location where the gun was fired, and the gun, although not found on Jackson, was found in close proximity to where he surrendered.

Affirmed.