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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1832**

State of Minnesota,  
Respondent,

vs.

Jacob Ochan Yien,  
Appellant

**Filed September 16, 2019  
Affirmed  
Smith, John, Judge\***

Blue Earth County District Court  
File No. 07-CR-17-1583

Keith Ellison, Attorney General, St. Paul, Minnesota; and

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Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Christopher A. Delong, Special Assistant Public Defender, Dorsey & Whitney LLP,  
Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Rodenberg, Judge; and Smith,  
John, Judge.

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

## UNPUBLISHED OPINION

**SMITH, JOHN**, Judge

We affirm appellant's conviction for ineligible person in possession of ammunition because sufficient evidence supports the conviction.

### FACTS

Respondent State of Minnesota charged appellant Jacob Ochan Yien with three counts of ineligible person in possession of ammunition (ineligible possession), one count of theft, two counts of receiving stolen property, and one count of motor-vehicle theft. The complaint alleges that on April 24, 2017, victim R.B. reported that his vehicle, containing a .22-caliber rifle and ammunition, was stolen. On April 25, law enforcement found Yien hunched over the driver's seat of the stolen vehicle on the side of a road; when searching the vehicle, officers found the rifle and a box of ammunition. At a bench trial, Yien stipulated to having a second-degree-burglary conviction. Relevant to this appeal, the court found Yien guilty of one count of ineligible possession of ammunition and sentenced him to 60 months.<sup>1</sup>

### DECISION

“When evaluating the sufficiency of the evidence, we carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the fact[-]finder to reasonably conclude that the defendant was guilty beyond a reasonable

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<sup>1</sup> The court also found Yien guilty of one count of theft, two counts of receiving stolen property, and one count of motor-vehicle theft; the court sentenced him to 19 months concurrent for motor-vehicle theft. Yien does not challenge these convictions and the sentence.

doubt of the offense of which he was convicted.” *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). “The evidence must be viewed in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the verdict.” *Id.* (quotation omitted). “The verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the State’s burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense.” *Id.* (quotation omitted).

Yien’s conviction relies on circumstantial evidence. Under the circumstantial-evidence test, appellate courts “identify the circumstances proved and independently consider the reasonable inferences that can be drawn from those circumstances, when viewed as a whole.” *State v. Harris*, 895 N.W.2d 592, 598 (Minn. 2017). “To sustain a conviction based on circumstantial evidence, the reasonable inferences that can be drawn from the circumstances proved as a whole must be consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted). Under this test, the fact-finder “is in a unique position to determine the credibility of the witnesses and weigh the evidence before it.” *Id.* at 600.

To convict Yien of ineligible possession of ammunition, the state had to prove beyond a reasonable doubt that he had been convicted of a crime of violence and that he possessed ammunition. *See* Minn. Stat. § 624.713, subs. 1(2), 2(a) (2016) (listing elements of offense). A “crime of violence” includes second-degree burglary. Minn. Stat. § 624.712, subd. 5 (2016). Here, Yien stipulated to being convicted of second-degree burglary, and that the ammunition was found in the vehicle, therefore the only disputed element is

whether he knowingly possessed the ammunition. *See Harris*, 895 N.W.2d at 601 (“To convict [defendant] of possession of [ammunition] by an ineligible person, the State was required to prove in relevant part that he knowingly possessed the [ammunition].”).

Possession may be actual or constructive. *Id.* at 601. Constructive possession is proved when the state shows “that the police found the item in a place under the defendant’s exclusive control to which other people normally did not have access,” or “if police found the item in a place others had access, the State must show that there is a strong probability . . . that at the time the defendant was consciously or knowingly exercising dominion and control over it.” *Id.* In order to show that a defendant consciously or knowingly exercised dominion and control over an item, the state “must prove more than . . . mere proximity,” it “must prove that the defendant had an ability and intent to exercise dominion and control” over the item. *Id.* at 601-02. The purpose of the constructive-possession doctrine is to establish possession in

those cases where the state cannot prove actual or physical possession at the time of arrest but where the inference is strong that the defendant at one time physically possessed the [item] and did not abandon his possessory interest in the [item] but rather continued to exercise dominion and control over it up to the time of the arrest.

*State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975).

The first step of the circumstantial-evidence test is “to winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury’s verdict, resulting in a subset of facts that constitute the circumstances proved.” *Harris*, 895 N.W.2d at 600 (quotation omitted). Here, as the district court found, the circumstances prove that:

(1) during the early morning of April 25, 2018, a police officer found Yien “hunch[ed] down” in a Jeep Grand Cherokee; (2) when the officer checked the plates of the Jeep, it came back as a stolen vehicle; (3) a box of .22 caliber ammunition was found on the backseat floorboard of the vehicle underneath grocery items placed over the ammunition by Yien; and (4) R.B. stored the ammunition inside the center console.

Next, we “independently consider the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole.” *Id.* at 601. We conclude that the circumstances, when viewed as a whole, are consistent with a reasonable inference that Yien constructively possessed the ammunition. Yien at least saw the box of ammunition<sup>2</sup> either when he moved it from the center console to the floorboards or when he placed his groceries down, and he did not abandon the ammunition, thus supporting a finding that he had the ability and intent to exercise dominion and control over it. *See State v. Barnes*, 618 N.W.2d 805, 813 (Minn. App. 2000) (concluding sufficient evidence supported controlled-substance offense where defendant’s effects were found “in close proximity” to the substance); *cf. Florine*, 226 N.W.2d at 611 (“Because defendant did not have exclusive possession of the automobile, one [cannot] automatically infer from the mere fact that [drugs were] found in the automobile that the [drugs] belonged to defendant.”).

Yien argues that when a viewed as a whole, the circumstances proved are inconsistent with a finding of guilt: that he did not know of the box of ammunition or what

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<sup>2</sup> The stipulated-to picture of the box of ammunition shows a thin box made from what appears to be cardboard with a cover reading “.22 long rifle 325 rounds,” and on the front reading “federal ammunition” “Target grade performance” “325 rounds.”

it contained. At trial, for the first time, Yien claimed that he borrowed the car from a “random individual” named “D” to go get groceries for grilling out. Yien testified that he drove home and had some drinks, admitting to being drunk that night; he then drove the vehicle to buy groceries and put them in the back seat. Yien denied opening the center console and seeing or knowing the box of ammunition was present. But the district court here found “[Yien]’s story [] incredible and, frankly, unbelievable,” and this court must “preserve[] the [fact-finder]’s credibility findings.” *Harris*, 895 N.W.2d at 600. We therefore reject Yien’s argument because, based on the court’s credibility finding, it presumes as one of the circumstances proved at trial the testimony expressly rejected as “unbelievable” by the district court, acting as the fact-finder.

In sum, the circumstances proved here are consistent with guilt and do not lead to any inconsistent inferences that Yien did not constructively possess the box of ammunition found in the stolen vehicle. *See State v. Smith*, 619 N.W.2d 766, 769-71 (Minn. App. 2000) (affirming conviction where officers found defendant passed out in rental car, a gun sticking out beneath his leg, and defendant claimed that he had never seen the gun), *review denied* (Minn. Jan. 16, 2001). Accordingly, Yien’s claim of insufficient evidence fails, and we affirm.

**Affirmed.**