STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1924

State of Minnesota,
Respondent,

vs.

Tad Isaac Butcher,
Appellant.

Filed September 16, 2019
Affirmed
Connolly, Judge

Red Lake County District Court
File No. 63-CR-17-46

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Mike Lacoursiere, Red Lake County Attorney, Red Lake Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa Sheridan, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Connolly, Judge; and Peterson, Judge.*

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

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges his convictions for ineligible possession of a firearm and possession of a short-barreled shotgun, arguing that the state presented insufficient evidence to prove that he constructively possessed the short-barreled shotgun found inside the trunk of the car he was driving. Because the state's evidence was sufficient to prove appellant possessed the shotgun, we affirm.

FACTS

In March 2017, appellant Tad Isaac Butcher was arrested and charged by amended complaint with (1) ineligible possession of a firearm; (2) possession of a short-barreled shotgun; (3) receiving stolen property; (4) second-degree driving while impaired (DWI); and (5) driving after revocation. He pleaded not guilty.

Prior to his arrest, appellant and his girlfriend spent the night at the residence of G.F., who was appellant's mother's significant other. When G.F. woke up the following morning, he discovered that his car was no longer parked outside his residence, his car keys and $140 had been taken from underneath his bed, and his beer was missing from the refrigerator. Because neither G.F. nor appellant's mother had given appellant permission to use the vehicle, G.R. contacted the Red Lake County Sheriff and reported the car stolen.

A Minnesota State Trooper located and stopped appellant, who was driving G.F.'s car on Highway 92. A deputy unlocked the trunk of the car using the key taken from the ignition and found the same brand of beer that was missing from G.F.'s refrigerator and a short-barreled shotgun wrapped in a white towel that was "pretty clean" compared to the

"dirty and dusty" items surrounding it. The barrels of the shotgun were "sawed off irregularly." After being transported to the Crookston Law Enforcement Center, appellant was read the Implied Consent Advisory, and a DataMaster test showed that he was driving with an alcohol concentration that was over the legal limit.

Prior to trial, appellant stipulated that he had been convicted of a prior crime of violence and was ineligible to possess a firearm, that he had the two prior DWI convictions that would enhance his DWI, and that his driving privileges were revoked and he was aware of the revocation. While he was incarcerated prior to trial, appellant used another inmate's telephone PIN number to call an unidentified female,[1] to whom he explained the concept of constructive possession; he directed her to tell anyone who was asked to say that appellant did not know about the gun. He then said, "[H]elp me a little bit here" and offered her $200.

At trial, G.F. testified that before the car went missing, "there was nothing in [his] trunk except a spare tire." He also denied that the shotgun belonged to him and further stated that he never kept guns in his car and did not even own a gun. Appellant was convicted on all charges except receiving stolen property. On appeal, he argues that the state presented insufficient evidence to prove that he possessed the firearm.

[1] Appellant states in his brief that he telephoned "his sister"; respondent State of Minnesota states that "[a]ppellant refers to the female as his sister, but the evidence at trial did not properly establish that fact." Appellant did not submit a reply brief refuting respondent's statement.

D E C I S I O N

When considering a claim of insufficient evidence, an appellate court carefully analyzes the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume the jury believed the state's witnesses and disbelieved evidence to the contrary. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). A "verdict will not be overturned if the fact-finder, upon application of the presumption of innocence and the [s]tate's burden of proving an offense beyond a reasonable doubt, could reasonably have found the defendant guilty of the charged offense." *State v. Fox*, 868 N.W.2d 206, 223 (Minn. 2015).

The state was required to prove that appellant knowingly possessed the short-barreled shotgun in order to convict him of both possession of a firearm by an ineligible person and possession of a short-barreled shotgun. *State v. Salyers*, 858 N.W.2d 156, 161 (Minn. 2015); Minn Stat. § 609.67, subds. 1(c), 2 (2016). Appellant does not dispute that he was ineligible to possess a firearm and that the shotgun was a "short-barreled shotgun." Thus, appellant challenges only the jury's determination that he possessed the firearm. Moreover, the state concedes that appellant was not in actual possession of the firearm at the time of his arrest, but it argues that it presented sufficient evidence to support the jury's verdict under the *Florine* test this court applies to constructive-possession cases.

To prove constructive possession, the state must show either that: "the police found the [firearm] in a place under defendant's exclusive control to which other people did not normally have access," or that "if police found [the firearm] in a place to which others had

access, there is a strong probability that the defendant was at the time consciously exercising dominion and control over [it]." *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975). Additionally, "[a] defendant may possess an item jointly with another person." *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Because the firearm was retrieved from the trunk of a vehicle not registered to appellant, which was carrying a passenger, the question becomes whether the state's evidence was sufficient under the second prong, i.e., whether appellant was knowingly exercising dominion and control over the firearm. *See id*.

When a case is based on circumstantial evidence, as it is here, stricter scrutiny is given to this court's review of a sufficiency-of-the-evidence challenge. *State v. Bolstad*, 686 N.W.2d 531, 539 (Minn. 2004). This court applies a two-step analysis when reviewing the sufficiency of circumstantial evidence. *Harris*, 895 N.W.2d at 600-01. The first step requires us to determine the circumstances proved. *Id.* at 601. In making this determination, "we disregard evidence that is inconsistent with the jury's verdict." *Id.* The second step requires us to "independently consider the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole." *Id.* "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." *Fox*, 868 N.W.2d at 223.

The state proved the following circumstances: (1) G.F. woke up and discovered that his car keys were gone, his beer was missing from the refrigerator, and his car was not

parked outside his home; (2) G.F. did not give appellant permission to take the car, so he filed a stolen vehicle report; (3) a state trooper apprehended appellant while he was driving G.F.'s car with his girlfriend as a passenger; (4) the state trooper discovered several items in the trunk of the car that were not there before appellant took the car a few hours earlier, including the same brand of beer that was missing from G.F.'s refrigerator and a short-barreled shotgun wrapped in a white towel that was cleaner than the other "dirty and dusty" items in the trunk; (5) Fahland did not own any firearms, the shotgun in the trunk did not belong to him, and it had a short barrel; (6) several months after appellant's arrest, he called a female from jail using another inmate's PIN number and told her that his criminal case would be going to trial soon and asked her to "help me a little bit here." Appellant also explained that because "whether or not [he] knew about the gun or . . . put the gun in the car" was relevant to constructive possession, anyone who asked about his case should say that "[he] didn't know about it, and [he] didn't put it there;" and (7) appellant offered the female $200.

Because we view the evidence in the light most favorable to the verdict, we must assume that the short-barreled shotgun was not in the vehicle prior to appellant taking it, and that it was in the vehicle a few hours later, while appellant was still in control of the car. Accordingly, appellant argues that there is a reasonable hypothesis that the gun was placed in the car by someone other than himself, without his knowledge, in the short time between his taking the car and his arrest.

To support his argument, appellant relies on *State v. Sam*, 859 N.W.2d 825, 834 (Minn. App. 2015) and *Harris*. In *Sam*, this court overturned a jury's verdict that a

defendant-driver possessed methamphetamine found in a glove compartment because (1) the defendant-driver was borrowing the vehicle and there was no evidence to negate the inference that the methamphetamine was in the glove compartment prior to the defendant-driver borrowing the car and (2) there was evidence directly tying the passenger to the methamphetamine, but not to the defendant. 859 N.W.2d at 834-35. In *Harris*, the supreme court held that evidence of a hidden firearm found in close proximity to a defendant-driver in a borrowed vehicle with multiple passengers, without more, is insufficient to support constructive possession. 895 N.W.2d at 602-03.

This case is distinguishable from both *Harris* and *Smith* because, in both cases, there was a reasonable inference that the illicit items could have been placed in the vehicles prior to the defendant-drivers' operation of the vehicles. Thus, in those cases it was reasonable to assume that the defendant-drivers did not have knowledge of the illicit items. But here, evidence was presented that the gun was not in the vehicle prior to appellant taking it. Moreover, there is no evidence in the record that would permit the inference that another individual other than appellant or his girlfriend put the firearm in the vehicle.

Moreover, appellant's argument that his girlfriend, or someone else, solely possessed the firearm and placed it in the trunk without his knowledge becomes less reasonable when we consider the evidence that appellant was the one who possessed the keys to the car, which the officer used to open the trunk. Appellant's argument becomes even more unreasonable when we consider the fact that appellant made a jail phone call using another inmate's PIN and, after explaining the legal concept of constructive possession to a female, asked her to "help [him] out a little" and to tell anyone who asked

about the case to say that appellant did not know about the gun, as well as offering her $200. *See State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998) (recognizing that appellate courts "will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture.").

Consequently, appellant's argument that the evidence is consistent with a rational hypothesis that the gun was placed in the vehicle by someone else without his knowledge is simply not reasonable. Therefore, the evidence was sufficient to prove that appellant possessed the short-barreled shotgun either solely or jointly with his passenger. *See Harris*, 895 N.W.2d at 601.

Affirmed.