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

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A19-0149**

State of Minnesota,  
Respondent,

vs.

Jose Eduardo Medina,  
Appellant.

**Filed December 30, 2019  
Affirmed  
Smith, Tracy M., Judge**

Dakota County District Court  
File No. 19HA-CR-17-4737

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,  
Hastings, Minnesota (for respondent)

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

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and  
Kirk, 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## UNPUBLISHED OPINION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, TRACY M., Judge

On appeal from his convictions of two counts of first-degree controlled-substance crimes, appellant Jose Eduardo Medina argues that there was insufficient evidence to show that he was guilty beyond a reasonable doubt. We affirm.

### FACTS

On November 29, 2017, law enforcement searched the apartment in which Medina was staying. Another man, G.E., was the sole person on the lease for the apartment, but G.E. had agreed to let Medina stay there for monthly rent of \$250. Two other men lived in the apartment in addition to Medina and G.E. At the time of the search, Medina had spent most of the previous month sleeping on the couch in the living room. G.E. slept in one of the apartment's bedrooms, and the two other men slept in a second bedroom.

During the search, law enforcement found Medina sleeping on the couch. Under the couch cushion where Medina slept, officers found four small plastic bags of cocaine. Next to the couch, they found Medina's pants with over a thousand dollars in cash in a pocket. They also found digital scales and inositol powder<sup>1</sup> in the kitchen and the second bedroom. Finally, they found a small amount of cocaine in G.E.'s wallet, which was in his bedroom.

The state charged Medina with two counts of first-degree controlled-substance crimes (possession with intent to sell and possession). Medina waived his right to a jury trial. At the bench trial, Medina testified that he had only been at the apartment for three

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<sup>1</sup> Inositol powder is commonly used by cocaine dealers to cut cocaine, increasing the amount available for sale.

days and that some of the cash in his pockets was from his roommates to be used to get a money order to pay rent. Medina claimed it was not from the sale of narcotics. He testified that he does not sell drugs and did not know that the drugs were under the couch cushion. The district court found Medina's testimony not credible. G.E. also testified at the trial. He testified that he bought the cocaine found in his wallet from Medina. The district court found G.E.'s testimony credible.

The district court found Medina guilty of both counts. It also convicted Medina of both counts. The district court sentenced Medina on only the possession-with-intent-to-sell count, imposing 80 months of imprisonment.

This appeal follows.

## **D E C I S I O N**

Medina argues that the state did not provide sufficient evidence to prove beyond a reasonable doubt that Medina knowingly possessed the cocaine. Possession is an element of both counts with which Medina was charged. *See* Minn. Stat. § 152.021, subds. 1(1), 2(a)(1) (2016); *see also* Minn. Stat. § 152.01, subd. 15a (2016) (defining "sell" to include "possess[ing] with intent" to sell). In considering a claim of insufficient evidence, appellate courts review the record "to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach their verdict." *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004). This standard of review applies to both jury and bench trials. *State v. Barshaw*, 879 N.W.2d 356, 363 (Minn. 2016).

Both parties agree that Medina's convictions were obtained based on circumstantial evidence. To review the sufficiency of circumstantial evidence, an appellate court uses a

two-step process. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). First, the appellate court identifies the circumstances that the state proved. *Id.* To do so, it “winnow[s] down” the evidence “by resolving all questions of fact in favor of the . . . verdict” and disregarding any evidence inconsistent with the verdict. *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). Second, the appellate court determines “whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt.” *State v. Bahtuoh*, 840 N.W.2d 804, 810 (Minn. 2013). There are two questions within this inquiry: first, “whether the inferences that point to guilt are reasonable,” and, second, whether the circumstances exclude any reasonable inference other than guilt. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotation omitted). The appellate court evaluates the circumstances as a whole in determining whether an inference other than guilt is reasonable. *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). At this step, the court does not give deference to the fact-finder’s choice between reasonable inferences. *Silvernail*, 831 N.W.2d at 599.

To prove that a defendant possessed a controlled substance, “the state must prove that defendant consciously possessed . . . the substance and that defendant had actual knowledge of the nature of the substance.” *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). Possession can take two forms: actual or constructive. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). Actual possession involves direct physical control. *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016). Constructive possession, on the other hand, means either (1) “the prohibited item was found in a place under defendant’s exclusive control to which other people did not normally have access,” or (2) “if the prohibited item

was found in a place to which others had access, there is a strong probability (inferable from other evidence) that defendant was at the time consciously exercising dominion and control over it.” *Salyers*, 858 N.W.2d at 159 (quotation omitted). “A person may constructively possess contraband jointly with another person.” *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009).

The district court did not explain whether it found possession of the cocaine based on actual possession or constructive possession. Medina argues that only constructive possession is at issue, while the state argues that it proved both actual and constructive possession. Because guilt can be established by either, we begin with constructive possession. And because the drugs were found in the common area of the living room, we analyze the issue under the dominion-and-control standard for establishing constructive possession.

We first identify the circumstances proved. Because Medina elected to waive his right to a jury trial, we can draw the circumstances proved from the following facts found by the district court. When executing a search warrant at an apartment, law enforcement found Medina sleeping on the couch in the living room. Medina had spent the majority of the previous month staying at the apartment, sleeping on the couch. During the search, officers found (1) cocaine with a street value of \$1,800 to \$2,600, packaged consistent with sale, under one of the couch’s cushions; (2) over a thousand dollars in Medina’s pants pocket; (3) scales and inositol powder in the kitchen, which was next to the living room, and in one of the bedrooms; and (4) a small amount of cocaine in G.E.’s wallet, which had been sold to him by Medina.

Medina concedes that “it may [be] reasonable to infer from these circumstances” that he constructively possessed the drugs found under the couch cushion. Given that the drugs were found directly under him, in a place where he had been regularly sleeping for a month, it is indeed reasonable to infer that Medina was “consciously exercising dominion and control” over the drugs. But Medina claims that reasonable inferences other than guilt exist—namely, that the drugs belonged to one or both of the other two roommates who lived in the apartment with Medina and G.E. and that one of those roommates put the drugs under the couch cushion without Medina’s knowledge.

Medina focuses his argument on the fact that a scale and inositol powder were found in the bedroom and on the assertion that someone sleeping on a couch would not necessarily know something was hidden under the cushions. It is true that the scale and inositol powder found in the bedroom support a reasonable inference that Medina’s roommates constructively possessed the cocaine. But that inference does not exclude the inference that Medina also constructively possessed the drugs, because multiple parties can constructively possess prohibited items. *Ortega*, 770 N.W.2d at 150.

Moreover, it is unreasonable to infer from all the circumstances proved that Medina was unaware of, and not consciously exercising dominion and control over, the drugs. First, the drugs were found in very close proximity to Medina. *See State v. Breaux*, 620 N.W.2d 326, 334 (Minn. App. 2001) (“Proximity is an important factor in establishing constructive possession.”). He was found sleeping directly on top of the drugs and had been sleeping on the couch for the majority of the preceding month. The drugs had a street value of between \$1,800 and \$2,600. It is unreasonable to infer that the roommates would hide a stash of

valuable drugs in a shared couch, particularly when they knew someone else would regularly be sleeping on it. This inference is particularly unreasonable considering that the roommates in question had a separate space, in the form of their own bedroom, where they could have hidden the drugs instead.

Second, Medina was found with a large amount of cash in the pockets of his pants. At trial, Medina testified that he had the cash because he was going to get a money order to pay rent. Medina testified that he had obtained some of the money from a legitimate job, which he claims is common in the immigrant community. The district court found, however, that Medina's testimony was not credible. Based on testimony that the district court did find credible, Medina had previously sold cocaine for cash. While these circumstances do not contradict the possibility that one of Medina's roommates also constructively possessed the drugs, it is unreasonable to infer from them that Medina did not know about the drugs—on the contrary, the circumstances lead only to the reasonable conclusion that he was reaping financial rewards from selling cocaine and that he knew about the cocaine in the couch.

In evaluating the reasonableness of a hypothesis of innocence, an appellate court looks at the circumstances proved not as isolated facts but as “a complete chain that, in the view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude . . . any reasonable inference other than guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). Given the evidence as a whole, Medina's theory of innocence is unreasonable.

Medina argues that *State v. Harris* compels a different conclusion. 895 N.W.2d 592 (Minn. 2017). In *Harris*, the supreme court affirmed the court of appeal's decision to reverse the defendant's conviction, which had been based on constructive possession of a gun found in the headlining of the car that the defendant was driving. *Id.* at 602-03. Medina argues that the holding in *Harris* was based on the lack of forensic evidence, the presence of others in the car, and the defendant's lack of movement toward the gun. We read the supreme court's decision in *Harris* to be based primarily on the facts that the defendant did not own the car in question, the gun was not immediately visible to the driver or the passengers, and the defendant did not make any movements toward the gun. *Id.*

Regarding forensic evidence, in *Harris* there was DNA evidence that showed that roughly 25% of the population, including the defendant and the other occupants of the car, could have handled the gun. *Id.* at 602. But *Harris* did not hold that forensic evidence was required; instead, it decided that the DNA evidence there did not preclude a reasonable inference that the defendant did not know the gun was in the car. *Id.* at 603.

As for the facts we consider to have been key in *Harris*, here, while Medina similarly may not have owned the couch, and the drugs were not immediately visible, there are additional circumstances that connect Medina and the drugs. For most of the previous month, Medina had slept on the couch where law enforcement found the cocaine. He had previously sold cocaine to G.E. Medina was found with a large amount of cash. He was found sleeping near the kitchen, which contained other items commonly used by drug dealers. These circumstances connect Medina to the drugs in a way that the defendant in *Harris* was not connected to the gun.



Medina also points to an unpublished opinion to support his case.<sup>2</sup> In *State v. Knerr*, the driver of a vehicle was convicted of possessing drugs that were apparently thrown from the vehicle. No. A17-0148, 2018 WL 492621, at \*1-2 (Minn. App. Jan. 22, 2018). We reversed the conviction because there was a reasonable inference that the drugs were the passenger's and that the defendant did not know about them. *Id.* at \*4. We noted that, while the circumstances proved in that case made it perhaps unlikely that the passenger possessed the drugs without the defendant's knowledge, they did not make it unreasonable. *Id.*

As with *Harris*, however, the circumstances proved in *Knerr* lacked the connections to the defendant that were proved in this case. In *Knerr*, while the drugs were found in a location somewhat inconsistent with the passenger having disposed of the drugs, there was no evidence that made it unreasonable to infer the passenger could have possessed the drugs without the defendant's knowledge. *Id.* In this case, in contrast, the location and value of the drugs, along with the context of how long Medina had been using the couch as a bed, make it unreasonable to infer that someone else hid the drugs in the couch without his knowledge.

Medina argues that courts generally have “upheld convictions based on circumstantial evidence” only when there is “evidence tying a defendant directly to the illegal items.” *State v. Sam*, 859 N.W.2d 825, 835 (Minn. App. 2015). He claims there is no such evidence here because he has not been linked to the cocaine by forensic evidence and there has been no testimony that he actually possessed the cocaine. Constructive

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<sup>2</sup> Although unpublished decisions are not precedential, they may be of persuasive value. *Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800-01 (Minn. App. 1993).

possession, however, does not require the state to show that he actually possessed the drugs, and, as previously explained, the circumstances proved do tie Medina directly to the cocaine.

In sum, when considered as a whole, the circumstances proved exclude any reasonable inference other than Medina's guilt of constructively possessing cocaine. We need not reach the state's alternative argument of actual possession.

**Affirmed.**