STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0504

State of Minnesota,
Respondent,

vs.

Terrvante Rennicko Hicks,
Appellant.

Filed June 21, 2021
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-19-1545

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Charles F. Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and Rodenberg, Judge.*

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

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal, appellant Terrvante Rennicko Hicks challenges his conviction for third-degree possession of a controlled substance with the intent to sell. Hicks argues that (1) the evidence presented by respondent State of Minnesota is insufficient to prove beyond a reasonable doubt that he possessed the drugs found by police in his rental car and (2) the district court erred by permitting the state to introduce *Spreigl* evidence recovered from Hicks's cell phone to show his intent to sell the drugs found in the car. Hicks raises additional challenges in a pro se supplemental brief. We affirm.

FACTS

Hicks was charged with third-degree possession with intent to sell a controlled substance,[1] check forgery, and theft of leased or rented personal property. The following facts were established at his jury trial.

In June 2018, a bank employee called 911 to report that a customer had tried to cash a suspected fraudulent check. Police officers responded, and a bank employee identified Hicks, who was still in the bank, as the customer. Officers spoke with Hicks. The information that Hicks gave regarding the person he claimed was the account holder for the check, together with further investigation by the police, suggested that the check was fraudulent.

[1] Hicks was also charged with two fifth-degree possession-of-controlled-substance offenses.

At first, Hicks told officers that he had walked to the bank, but he then admitted that a female friend had driven him. Officers soon located a car, with a female driver and Illinois license plates, sitting in the parking lot of the bank. On approaching the car, two officers saw through the window a "tear off"—a common form of drug packaging—in the passenger armrest. This prompted officers to search the car.

On the floor of the front passenger side of the car, officers found a Styrofoam container with a large amount of suspected marijuana, a mason jar containing more suspected marijuana, an unmarked prescription bottle containing pills, and three cell phones. In the glove box, officers found four plastic bags of suspected cocaine, two plastic bags containing suspected opioids, more suspected marijuana, two digital scales, additional apparently fraudulent checks, and a storage rental contract in Hicks's name. One of the checks had the same account number and routing number as the check Hicks had tried to cash, but Hicks was listed as the account holder. Finally, officers found Hicks's driver's license in the center console of the car. Officers arrested Hicks and, while searching him incident to his arrest, found another cell phone and small plastic bags in his pocket.

After testing, officers determined that, collectively, there were around 85 grams of marijuana, 7.319 grams of cocaine, 0.165 grams of methamphetamine, and 0.194 grams of a mixture of methamphetamine and cocaine found in the car.

Police were able to access data from one of the cell phones. Investigators extracted several photos—including one of Hicks holding his driver's license, a picture of an employment stub in Hicks's name, a picture of Hicks's business card, and several photos of what appeared to be marijuana and pills. Investigators also extracted several text

messages discussing the price of certain drugs, drug amounts, and potential sales. At trial, the district court, over Hicks's objection, admitted this cell-phone evidence under Minnesota Rule of Evidence 404(b). A detective with the Anoka Hennepin Narcotics and Violent Crimes Task Force testified regarding the cell-phone evidence, explaining the slang used in the text messages and identifying the drugs that he believed were pictured in the photos.

Finally, officers learned that Hicks rented the car from a rental-car company. Hicks had signed the rental agreement for the car, and his driver's license number was listed in company's records of the rental. Hicks rented the car for four days but remained in possession of it for several weeks. After Hicks failed to return the car, the rental-car company called and texted him, sent a demand letter by certified mail, and reached out to Hicks's family members. Hicks did not extend his contract, pay for the extra days, or respond to most of the company's efforts to contact him.

The jury found Hicks guilty of all charges. The district court sentenced him to 65 months in prison for third-degree possession of a controlled substance with the intent to sell and to shorter, concurrent sentences for check forgery and theft of leased or rented property.[2]

Hicks appeals.

---

[2] Although the district court did not sentence Hicks for the fifth-degree controlled-substance possession offenses, it improperly entered convictions for those offenses in the warrant of commitment. *See* Minn. Stat. § 609.04, subd. 1(1) (2016) (providing that a person "may be convicted of either the crime charged or an included offense, but not both," and specifying that an included offense encompasses a "lesser degree of the same crime").

DECISION

In his counseled brief, Hicks presents two arguments challenging his third-degree controlled-substance conviction: that (1) the evidence is insufficient to prove that he constructively possessed the drugs found in the car and (2) the district court erred by admitting the *Spreigl* evidence from one of his cell phones. Hicks also submitted a pro se supplemental brief raising several issues. We address his arguments in turn.

I. The evidence is sufficient to prove that Hicks constructively possessed the drugs found in the car.

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. *Cf. State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015) (discussing firearm possession). Actual possession involves "direct physical control." *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted). Constructive possession, on the other hand, applies when the state "cannot prove actual or physical possession . . . but where the inference is strong that the defendant at one time physically possessed the [contraband] and did not abandon his possessory interest in the [contraband]." *Florine*, 226 N.W.2d at 610. The state may prove constructive possession by two methods: (1) by proving 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 (2) "if police found the item in a place to which others had access," by proving 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." *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017) (citation omitted).

Because officers found the drugs in the car while Hicks was still talking with officers inside the bank, Hicks did not actually possess the drugs and the state needed to prove constructive possession. And, because the drugs were not found in a place under Hicks's exclusive control, the state needed to prove constructive possession by the second method—by proving that Hicks consciously or knowingly exercised dominion and control over the drugs. *See id.*

The state used circumstantial evidence to prove Hicks's constructive possession of the drugs. We analyze the sufficiency of circumstantial evidence through a two-step analysis. *See State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved. *Id.* In doing so, we "defer to the jury's acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State." *Id.* at 598-99 (quotations omitted). Because the jury is in the best position to analyze credibility, we "consider only those circumstances that are consistent with the verdict." *Id.* at 599. We assume "that the jury believed the State's witnesses and disbelieved the defense witnesses." *Id.* (quotation omitted).

Next, "we determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (quotations omitted). Here, we give no deference to the jury's choice between any reasonable inferences. *See Harris*, 895 N.W.2d at 601. To uphold a conviction based on circumstantial evidence, "the circumstances must form a complete chain which, in light of the evidence as a whole, leads

so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt." *State v. Reed*, 737 N.W.2d 572, 581 (Minn. 2007) (quotation omitted).

The circumstances proved at trial were: (1) three weeks before his arrest, Hicks rented the car in which the drugs were found; (2) Hicks failed to return the car on time and was still in possession of it when officers arrested him; (3) Hicks acknowledged to officers that he was driven to the bank by a female friend; (4) the car, with a woman in the driver's seat, was in the bank parking lot; (5) all of the cocaine and methamphetamine recovered by officers from the car was in the glove box; (6) some of the marijuana recovered from the car was in the glove box; (7) officers found items in Hicks's name in the glove box, including a storage-unit rental agreement signed by Hicks and a fraudulent check with Hicks listed as the account holder; (8) officers found most of the marijuana recovered from the car on the front passenger side floor; (9) all of these drugs were in multiple containers, with the cocaine found in a tear-off plastic bag; (10) officers found more tear-off bags in the passenger side armrest of the car and small plastic bags in Hicks's pockets; (11) officers found several cell phones on the front passenger side floor of the car—one of them definitively found to belong to Hicks; and (12) officers found Hicks's driver's license in the center console of the car.

Hicks argues that the circumstances do not support the rational inference that he constructively possessed the drugs because he was not in the car when police found the drugs; therefore, he argues, he could not have been exercising dominion and control over them. But constructive possession is present when "the inference is strong that the

defendant physically possessed the item at one time and did not abandon his possessory interest in it." *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000) (citing *Florine*, 226 N.W.2d at 610), *review denied* (Minn. Jan. 16, 2001). Here, the inference is strong that Hicks was exercising dominion and control over the drugs in the car just prior to his arrest and that he had not abandoned his possessory interest in the drugs. The drugs were found in Hicks's rental car, in the glove box and on the floor of the front passenger seat where one could reasonably infer that Hicks had just been sitting, along with other items in the car linking Hicks to the drugs. In addition, Hicks's rental car was parked in the parking lot, suggesting that the driver was waiting for Hicks's return. Constructive possession has been upheld in other cases where evidence linked the defendant to contraband that was found by police when the defendant was not present but was expected to return to the location. *See, e.g.*, *State v. Mollberg*, 246 N.W.2d 463, 472 (Minn. 1976) (concluding that the evidence was sufficient to prove constructive possession of drugs found during a search of an occupied home, even though the defendant was not present at the time, because the defendant often stayed at the residence where the drugs were found and letters to the defendant and part of his motorcycle were found near the contraband).

Hicks also argues that the circumstances proved support a rational hypothesis consistent with innocence—specifically, that the female driver solely possessed the drugs. Hicks asserts that a reasonable inference of the driver's possession is established by Minnesota Statutes section 152.028, subdivision 2 (2016), which provides that a fact-finder may infer knowing possession of a controlled substance by the driver of an automobile when controlled substances are found in the automobile. But Hicks cites no authority for

the proposition that a permissive inference under that statute necessarily creates a rational hypothesis of innocence under the circumstantial-evidence standard of review. *Cf. State v. Sam*, 859 N.W.2d 825, 832 n.4 (Minn. App. 2015) (observing that section 152.028 did not change the court's *Silvernail* analysis in that case).

Applying the circumstantial-evidence standard of review to the circumstances proved here, we conclude that Hicks's proposed hypothesis of possession by the driver is not rational because it is based on speculation. It is true that the driver was alone in the car when police officers approached the car, but they did not find evidence connecting the driver to the drugs and they did not see her reach for, conceal, or move anything inside the car. In *State v. German*, we rejected a similar argument for a rational hypothesis of innocence based on the presence of another person. 929 N.W.2d 466, 474-75 (Minn. App. 2019). There, drugs were found in a duffel bag in the defendant's truck and the defendant argued that another occupant of the truck could have possessed the drugs and placed them in the duffel bag when she was left alone while police were securing the defendant in the squad car. *Id.* at 474. We rejected that argument, reasoning that, even though the passenger was alone in the car for a short time, "without additional evidence—such as furtive movements indicating that [the passenger] placed the drugs in the bag or evidence of methamphetamine on her person or in her purse" any hypothesis linking the passenger to the drugs was "wholly speculative and untied to the evidence before the jury." *Id.* at 475.

Moreover, even if the driver here had a possessory interest in the drugs, the circumstances do not reasonably support the inference that she was the sole possessor. "A person may constructively possess contraband jointly with another person." *State v.*

Ortega, 770 N.W.2d 145, 150 (Minn. 2009). Hicks argues that the state has forfeited the argument that the driver and Hicks jointly possessed the drugs because the state conceded during a pretrial hearing that the driver could jointly possess the marijuana but not the cocaine. Hicks's argument is unavailing. The jury was instructed on joint and exclusive possession, and the state discussed joint constructive possession in its closing argument. Regardless, when evaluating the sufficiency of the evidence, we are not bound by either the state's theory of the case at trial or the jury instructions. *Cf. Musacchio v. United States*, 136 S. Ct. 709, 715 (2016) ("All that a defendant is entitled to on a sufficiency challenge is for the court to make a 'legal' determination whether the evidence was strong enough to reach a jury at all."). Here, the circumstances proved at trial lead to the only rational conclusion that Hicks, either exclusively or jointly, constructively possessed the drugs found in the car.

II. The district court did not abuse its discretion by admitting *Spreigl* evidence from one of Hicks's cell phones.

Hicks next argues that the district court committed reversible error by admitting, over his objection, messages and photos found on one of Hicks's cell phones as evidence of his past involvement with drug transactions. We review a district court's decision to admit evidence of other bad acts for an abuse of discretion. *State v. Griffin*, 887 N.W.2d 257, 261 (Minn. 2016). "Evidentiary errors warrant reversal if there is any reasonable doubt the result would have been different had the evidence not been admitted." *State v. Grayson*, 546 N.W.2d 731, 736 (Minn. 1996) (quotation omitted). The defendant bears the burden

of showing that an error occurred and that the defendant was prejudiced as a result. *Griffin*, 887 N.W.2d at 261.

A. The district court did not abuse its discretion by admitting the *Spreigl* evidence.

Minnesota Rule of Evidence 404(b) governs admission of evidence of other crimes or bad acts—commonly referred to as "*Spreigl* evidence." *State v. Kennedy*, 585 N.W.2d 385, 389 (Minn. 1998) (citing *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965)). *Spreigl* evidence is not admissible to prove that a person acted in conformity with the other bad acts. Minn. R. Evid. 404(b). But the evidence may be admissible for another purpose, including "showing motive, intent, knowledge, identity, absence of mistake or accident, or a common scheme or plan." *State v. Ness*, 707 N.W.2d 676, 685 (Minn. 2006) (citations omitted). For the evidence to be admissible, the following conditions must be satisfied:

> (1) the state must give notice of its intent to admit the evidence; (2) the state must clearly indicate what the evidence will be offered to prove; (3) there must be clear and convincing evidence that the defendant participated in the prior act; (4) the evidence must be relevant and material to the state's case; and (5) the probative value of the evidence must not be outweighed by its potential prejudice to the defendant.

Id. at 686.

Hicks argues that the state failed to meet the fourth and fifth prongs under *Spreigl*—that the evidence was relevant and material to the state's case and that the evidence's probative value was not outweighed by its potential prejudicial impact.

Hicks makes three arguments why the cell-phone evidence was not relevant and material to the state's case. First, Hicks contends that the district court's reason for

admitting the cell-phone evidence was improper. He points to the district court's statement that the cell-phone evidence would go to prove "that [Hicks] was engaged in drug transactions." But the district court further explained that the purpose of proving those drug transactions was to prove the disputed issue of Hicks's intent to sell the contraband. The state, in its motion in limine, explained that it planned to use the cell-phone evidence to prove that Hicks "intended to sell the cocaine found in the vehicle and [Hicks's] knowledge of drug dealing practices including quantities, values, and arranging transactions." *Spreigl* evidence may be admitted when it is relevant to prove the defendant's criminal intent. *See State v. Fardan*, 773 N.W.2d 303, 317 (Minn. 2009).

Second, Hicks argues that the cell-phone evidence was not relevant or material because the state introduced other evidence of Hicks's intent through officer testimony about the drugs found in the car. Relevant evidence is broadly defined as any evidence tending to make the existence of a material fact more probable or less probable than it would be without the evidence. Minn. R. Evid. 401. "In determining the relevance and materiality of *Spreigl* evidence, the [district] court should consider the issues in the case, the reasons and need for the evidence, and whether there is a sufficiently close relationship between the charged offense and the *Spreigl* offense in time, place or modus operandi." *Kennedy*, 585 N.W.2d at 390 (quotation omitted). Intent is commonly shown with circumstantial evidence. *State v. McAllister*, 862 N.W.2d 49, 53 (Minn. 2015). The text messages show Hicks's familiarity with drug slang, prices, and quantities. The photos show Hicks with drugs in various forms—including pills and marijuana buds—and Hicks holding large amounts of cash. The district court did not abuse its discretion by finding the

cell-phone evidence relevant to prove Hicks's intent to sell the large quantity of drugs found in the car.

Finally, Hicks argues that, because several months had passed between the text messages and photos and Hicks's arrest, the cell-phone evidence was stale and therefore not relevant and material. Appellate courts will uphold the admission of *Spreigl* evidence "notwithstanding a lack of closeness in time or place if the relevance of the evidence was otherwise clear." *Kennedy*, 585 N.W.2d at 390 (quotation omitted). Though three to six months had passed between when Hicks sent the messages or took the photographs and the date of his arrest, the relevance of the cell-phone evidence in proving Hicks's intent remains clear.

Hicks also argues that any probative value of the cell-phone evidence was outweighed by the danger of unfair prejudice. Unfair prejudice "is not merely damaging evidence, even severely damaging evidence; rather, unfair prejudice is evidence that persuades by illegitimate means, giving one party an unfair advantage." *State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005). In balancing the probative value of *Spreigl* evidence against its potentially prejudicial effect, we consider the state's need for the evidence in its case against the defendant. *See Ness*, 707 N.W.2d at 690. Hicks argues that the cell-phone evidence was not needed because officers testified at trial about the drugs seized during Hicks's arrest and whether the quantity of drugs recovered was consistent with his personal use. In response, the state argues that the cell-phone evidence bolstered that circumstantial evidence. The state's argument is persuasive. The cell-phone evidence showed Hicks's knowledge of and familiarity with the drug market and thus bolstered the state's argument

that Hicks intended to sell the drugs found in his car. The probative value of the evidence was not outweighed by the danger of unfair prejudice.

B. Any abuse of discretion by admitting the evidence was harmless error.

Even if we were to assume that the district court abused its discretion by admitting the cell-phone evidence, we would not reverse. An appellate court will reverse a conviction based on the improper admission of *Spreigl* evidence only if there "is a reasonable possibility that the wrongfully admitted evidence significantly affected the verdict." *State v. Smith*, 940 N.W.2d 497, 503 (Minn. 2020) (quotation omitted). When determining whether the evidence affected the verdict, we look to factors including whether there was a limiting instruction, whether the state dwelled on the evidence during closing argument, and the strength of the case against the defendant. *See State v. Thao*, 875 N.W.2d 834, 839 (Minn. 2016). Here, the state did not dwell on the cell-phone evidence in its closing argument, and the case against Hicks was strong. As to a limiting instruction, the state requested that the district court give one in its final jury instructions, but the district court did not do so because Hicks objected, fearing it would highlight the evidence. Not giving a limiting instruction sua sponte is not plain error. *State v. Taylor*, 632 N.W.2d 676, 685 (Minn. 2001). And, considering all of the factors, we conclude that any error by admitting the *Spreigl* evidence did not significantly affect the verdict.

III. None of the claims in Hicks's pro se supplemental brief are meritorious.

In his supplemental brief, Hicks first argues that the evidence is insufficient to prove he stole the car because "there was no police report filed or made." But, because Hicks presents this argument through conclusory statements unsupported by legal authority, his

argument is forfeited. *See State v. Bartylla*, 755 N.W.2d 8, 22-23 (Minn. 2008) ("We will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority.").

Hicks next argues that the district court erred by imposing multiple sentences. Minnesota Statutes section 609.035, subdivision 1 (2016), prohibits the imposition of multiple sentences for crimes committed during a single behavioral incident. In determining whether multiple offenses arose from a single behavioral incident, courts consider whether the acts were unified in time and place and whether the conduct was motivated by the same criminal objective. *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995). Hicks was sentenced for three counts—check forgery, theft of a leased or rented property, and third-degree possession of a controlled substance with the intent to sell. Leaving aside questions regarding unity of time and place, each of these acts had a different criminal objective. Thus, the district court did not err by imposing a sentence for each crime.

Hicks next claims that the state improperly relied on perjured testimony from a detective during trial. But Hicks's argument is based on conclusory statements, and there is nothing in the record contradicting the detective's testimony. *See Bartylla*, 755 N.W.2d at 22-23.

Finally, Hicks argues that the district court violated his right to due process when it did not make a record of the state's pretrial continuance request. Even assuming for purposes of argument that Hicks is correct that the district court erred by not creating a record of the state's motion for a continuance, Hicks has not identified any prejudice from

the absence of the record. *See State v. Horst*, 880 N.W.2d 24, 38 (Minn. 2016) (establishing that the defendant bears the burden of showing that the error was prejudicial).

Affirmed.