STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0892

State of Minnesota,
Respondent,

vs.

Larry Eugene Burrell, Jr.
Appellant.

Filed October 18, 2021
Affirmed
Slieter, Judge

Hennepin County District Court
File No. 27-CR-19-29126

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Worke, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

This is a direct appeal from judgments of conviction based upon a jury finding appellant guilty of three controlled-substance charges and one illegal firearm-possession charge. Appellant argues that the district court abused its discretion in denying his motion

to suppress the results of a search of his residence or, alternatively, to convene a *Franks* hearing.[1] Appellant also claims the district court abused its discretion by denying his request to introduce "reverse-*Spreigl*"[2] evidence during trial. In a *pro se* supplemental brief, appellant claims there exists insufficient evidence to support the guilty verdicts. The search of the house was based upon a valid search warrant and appellant did not establish a sufficient basis to obtain a *Franks* hearing. Also, any error by denying the "reverse-*Spreigl*" evidence is harmless, and sufficient evidence supports the jury's guilty verdicts. For all these reasons, we affirm.

FACTS

During the execution of a no-knock search of a residence in Minneapolis, deputies found controlled substances and firearms in a locked bedroom which also contained a prescription bottle and several pieces of mail bearing the name of appellant Larry Eugene Burrell. Appellant was charged with first-degree sale of methamphetamine, first-degree possession of methamphetamine, third-degree possession of heroin, and unlawful possession of a firearm. A jury found appellant guilty of all charges.

Law enforcement first began investigating the residence following reports from a confidential reliable informant (CRI) in an "ongoing weapons and narcotics investigation" involving two individuals who were living at the residence. Appellant was not identified by the CRI as one of the individuals. A judge issued a no-knock search warrant for the

[1] *Franks v. Delaware*, 438 U.S. 154 (1985).
[2] *State v. Spreigl*, 139 N.W.2d 167 (Minn. 1965); *see also State v. Jones*, 678 N.W.2d 1, 16 (Minn. 2004) (*Jones I*) (defining "reverse-*Spreigl*").

residence. The search warrant application did not identify whether the residence to be searched was a single- or multiple-occupancy residence.

Upon entering the residence, deputies observed that it was a split-level home with steps to the lower and upper levels of the house. The deputies first searched the upstairs, which included a kitchen, dining room, living room, and a hallway leading to a bathroom and two bedrooms. One of the CRI-identified individuals was present in the home during the search and the deputies found several controlled substances, cash, paraphernalia, and .45 caliber bullets belonging to that person.

The deputies next searched downstairs, which included a living room, a laundry room, a bathroom, and two bedrooms. One of the downstairs bedrooms, which was locked and had to be forced open, contained numerous controlled substances as well as a firearm. The deputies also found a prescription bottle and several pieces of mail with appellant's name on each in this bedroom.

Appellant asked the district court to suppress the items seized pursuant to the search warrant because the search warrant application "lacked the particularity necessary to search a multiple occupancy building." Appellant alternatively requested a *Franks* hearing in order to establish that the deputy who signed the search warrant application "intentionally or recklessly . . . omitted material information about [appellant], other tenants, or the manner of house they intended to search." The district court denied both requests.

During trial appellant sought, as "reverse-*Spreigl*" evidence, to cross-examine the deputies who executed the search warrant regarding how the warrant was obtained. The district court disallowed this testimony as irrelevant, though it did allow the jury to learn

the names of the two individuals identified by the CRI. Following the jury's verdict, the district court sentenced appellant to 81 months' imprisonment. This appeal follows.

DECISION

Appellant claims three errors. First, that the district court abused its discretion in denying his motion to suppress the results of the search warrant or, alternatively, to convene a *Franks* hearing. Second, that the district court abused its discretion by denying his request to introduce "reverse-*Spreigl*" evidence during the trial. Third, appellant argues in a *pro se* supplemental brief that the evidence presented was insufficient. Each argument is addressed in turn.

I. Motion to Suppress

A. Multiple-Occupancy Residence

"When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted).

Appellant argues that the results from the search of his room in the residence should have been suppressed due to the invalidity of the search warrant. Alternatively, appellant argues that a *Franks* hearing should have been held to address his allegation that the deputy applying for the warrant "intentionally or recklessly . . . omitted material information about Mr. Burrell, other tenants, or the manner of house they intended to search."

Appellant claims the search warrant was invalid because the residence was a multiple-occupancy dwelling and "a search warrant for a 'multiple occupancy building' is

invalid unless it describes the particular unit to be searched with sufficient definiteness." *State v. Lorenz*, 368 N.W.2d 284, 286 (Minn. 1985).[3] However, as correctly analyzed by the district court, one exception to this rule is when "police, acting reasonably, do not learn until executing the warrant that the building is a multiple occupancy building." *In re Welfare of T.L.K.*, 487 N.W.2d 911, 913 (Minn. App. 1992) (emphasis omitted).

The district court concluded that "there were insufficient indicators that would have led officers to reasonably believe that [the house] was a multiple occupancy residence at the time of the execution of the search warrant." The record supports this conclusion.

Exhibits received and testimony of the deputies established that the residence was a typical split-level home with open stairs at the entrance leading to an upper and lower level. Nothing from the outside of the house, such as multiple mailboxes or dumpsters, would suggest this to be a multiple-occupancy residence. The upstairs contained several common areas, including a kitchen, dining room, living room, and a hall leading to a bathroom and two bedrooms. The downstairs contained more common areas, including a living room, laundry room, and bathroom, as well as two bedrooms. Though the bedroom doors were locked at the time of search, nothing in the record suggests the deputies who completed the search were aware of this until searching the home.

[3] No argument was made to the district court or to this court that the residence was a building which includes "two or more people . . . occupy[ing] a single residence in common" as described in *Lorenz*, which is, therefore, not a multiple-occupancy building. *Id.* We therefore presume the residence is a multiple-occupancy building and decline to address an issue not raised before the district court. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996).

We recently examined this issue in *State v. Marsh*, 931 N.W.2d 825 (Minn. App. 2019), which involved similar facts. Those facts are as follows:

> [A]n agent involved in the search . . . described the outside of the house as a traditional, two-story house. When he entered the bottom floor, it included a kitchen, dining room, living room, and an open staircase leading to a second floor. Upon going up the stairs, the agents came upon an open area with a mini fridge and doors leading to bedrooms. [Marsh]'s bedroom door was partially open, with a padlock on the outside. After talking with [Marsh], he agreed to leave and they conducted the search. The room did not have any number or signage on it identifying it as a separate rental unit.

Id. at 828. We recognized in *Marsh* that the "most significant fact that weighs in favor of appellant is that he had a padlock on the front door" but we noted that "it is not determinative of whether law enforcement objectively should have recognized it as a separate residence." *Id.* at 831. Ultimately, this court held that the record as a whole, "when viewed in the context of the entire house," was "not enough to have made the officers *at the time* realize that appellant's room was a separate residence." *Id.* (emphasis added).

On this record, the facts known to the deputies at the time of the search of the residence were "not enough to have made the officers at the time realize that appellant's room was a separate residence." *Id.* The search warrant was valid.

B. *Franks* Hearing

Appellant alternatively argues that, even if we conclude the district court did not err in its suppression ruling, it did abuse its discretion by not convening a *Franks* hearing. In *Franks*, the United States Supreme Court held that a defendant may invalidate an otherwise

valid search warrant by challenging the truthfulness of factual statements made in an affidavit supporting the warrant. *Franks*, 438 U.S. at 155; *see also State v. Moore*, 438 N.W.2d 101, 105 (Minn. 1989) (discussing and applying *Franks*). However, to do so, the defendant must show that "(1) the affiant deliberately made a statement that was false or in reckless disregard of the truth, and (2) the statement was material to the probable cause determination." *State v. Anderson*, 784 N.W.2d 320, 327 (Minn. 2010). If a defendant cannot establish a "substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth" has occurred, the district court may deny a *Franks* hearing. *Franks*, 438 U.S. at 155.

The issue we review is whether appellant made "a substantial preliminary showing" that the deputy knew that the residence was a multiple-occupancy residence and that he "intentionally or recklessly" omitted that information from the search warrant application. Appellant's claimed basis for a *Franks* hearing is that the lack of a multiple-occupancy identification in the search warrant application, despite a week of surveillance by the deputy of this residence and seeing multiple vehicles arriving and departing, entitles him to a *Franks* hearing. We disagree.

As we have already noted, the record supports the district court's conclusion that the deputy acted reasonably in not identifying the residence as a multiple-occupancy residence in the search warrant. This conclusion necessarily means that the mere absence of such a statement in the search warrant is not evidence of "intentionally or recklessly" omitting information. Appellant's contention that the deputy knew and intentionally withheld information regarding the status of the residence as a multiple-occupancy

residence is, without alleging any facts in support, speculative. The district court did not err in denying appellant's request for a *Franks* hearing.

II. Reverse-*Spreigl* Evidence

"Evidentiary rulings rest within the sound discretion of the district court, and we will not reverse an evidentiary ruling absent a clear abuse of discretion." *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). If the district court's evidentiary ruling results in the erroneous exclusion of defense evidence in violation of the defendant's constitutional right to present evidence, the verdict must be reversed unless the error was harmless beyond a reasonable doubt. *State v. Post*, 512 N.W.2d 99, 102 (Minn. 1994). Harmless beyond a reasonable doubt means that "the reviewing court must be satisfied beyond a reasonable doubt that if the evidence had been admitted and the damaging potential of the evidence fully realized, [a reasonable] jury . . . would have reached the same verdict." *Id.*

"Reverse-*Spreigl*" evidence has been referred to by the supreme court as "evidence of an alternative perpetrator's prior bad acts." *State v. Jones*, 753 N.W.2d 677, 696 (Minn. 2008) (*Jones II*). "This evidence may consist of . . . other facts tending to prove the third person committed the crime." *Woodruff v. State*, 608 N.W.2d 881, 885 (Minn. 2000).

Appellant reasserts his alternative-perpetrator claim that "[e]vidence [that the two individuals identified by the CRI] had recently sold drugs while carrying firearms 'for intimidation and protection' was not only relevant, it was fundamentally important to [appellant]'s case to show the drugs and the firearm found with it belonged to them." We need not decide whether the district court erred by denying the evidence. Assuming error

without so ruling, the record reveals that any such error was harmless beyond a reasonable doubt.

First, the evidence appellant sought to present as "reverse-*Spreigl*" was presented to the jury via the state's presentation of the deputies' testimony. The jury learned that the deputies were surveilling the two individuals identified by the CRI based on suspicion of selling narcotics and firearms possession. Therefore, the jury heard that the deputies obtained the search warrant based on information regarding those two individuals, not appellant.

Additionally, the jury heard that appellant also lived in the house and that the drugs and a firearm were found in a locked downstairs bedroom that had appellant's belongings in it. All other drugs and weapons were found in the two bedrooms upstairs and with other items which identified the other individuals who resided in the house. Denial of the "reverse-*Spreigl*" evidence was therefore harmless beyond a reasonable doubt.

III. Sufficiency of the Evidence

Finally, appellant argues in his *pro se* supplemental brief that "the evidence presented to the district court was insufficient to find appellant guilty of the constructive possession charges because the state never offered evidence [appellant] had exclusive access to or otherwise exercised control over the contraband nor the area [in which] it was found." Because the record demonstrates that the evidence presented was sufficient to establish appellant's constructive possession of the drugs and the firearm, we disagree.

In examining the sufficiency of the evidence, "[t]he 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." *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation and citations omitted). This court ordinarily undertakes "a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted).

The above-stated standard of review applies so long as a conviction is adequately supported by direct evidence. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). Direct evidence is "evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Circumstantial evidence, on the other hand, is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist." *Id.* (quotation omitted). A conviction depends on circumstantial evidence if proof of the offense, or a single element of the offense, is based solely on circumstantial evidence. *See State v. Fairbanks*, 842 N.W.2d 297, 307 (Minn. 2014).

The state relied upon circumstantial evidence that appellant constructively possessed the drugs and the firearm. Appellant was not in the home at the time of the search and the only evidence tying him to the contraband in the downstairs bedroom consisted of a prescription bottle and mail bearing his name found inside the locked bedroom. *See State v. Salyers*, 842 N.W.2d 28, 34 (Minn. App. 2014) ("The state can

prove possession either under a theory of actual possession or constructive possession."), *aff'd*, 865 N.W.2d 156 (Minn. 2015). To prove constructive possession, the state must prove either:

> (1) the police found [the contraband] in a place under the defendant's exclusive control to which other people did not normally have access; or (2) if the police found it in a place to which others had access, that there is a strong probability, inferable from the evidence, that the defendant was, at the time, consciously exercising dominion and control over it.

Id.

In reviewing the sufficiency of circumstantial evidence, appellate courts use a two-step analysis. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). "The first step is to identify the circumstances proved." *Id.* "The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt. We review the circumstantial evidence not as isolated facts, but as a whole." *Id.* at 599.

Regarding the first step, the circumstances proved in this matter are that contraband was found in a locked bedroom which also included a prescription bottle and mail bearing appellant's name. There was also evidence, arguably direct, that appellant lived in the home based upon the testimony of the landlord, which was supported with a written residential lease agreement.

Regarding the second step, the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. The circumstances proved in this matter are very similar to those in other cases in which constructive possession has

been found based simply on presence of contraband in an individual's bedroom. In *State v. Mollberg*, 246 N.W.2d 463, 472 (Minn. 1976), the supreme court determined that constructive possession was sufficiently established based on a "strong probability" that the defendant was consciously exercising dominion and control over marijuana found in a bedroom closet because, though the defendant was not present at the time the bedroom was searched, other personal possessions of the defendant were found within the bedroom. Similarly, in *Lorenz*, the supreme court found that drugs located in a defendant's dresser in his bedroom were sufficient to establish sufficient evidence of constructive possession. 368 N.W.2d at 287-88.

In light of the circumstances proved in the present case, the jury reasonably concluded that appellant had constructive possession over the drugs and gun found in the locked bedroom and these circumstances are inconsistent with any rational hypothesis other than guilt. The evidence in this case was sufficient to support the jury's findings of guilt.

Affirmed.