STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1252

State of Minnesota,
Respondent,

vs.

Todd Gerald Pletcher,
Appellant.

Filed August 30, 2021
Affirmed
Gaïtas, Judge

Chisago County District Court
File No. 13-CR-19-72

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

Janet Reiter, Chisago County Attorney, David Hemming, Assistant County Attorney, Center City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Segal, Chief Judge; and Worke, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

In this direct appeal from convictions for 15 counts of possession of pornographic works involving a minor, appellant Todd Gerald Pletcher challenges the sufficiency of the evidence. Specifically, he argues that the circumstantial evidence was insufficient to

establish that he knew or should have known that files on his cellphone and computer contained child pornography. Pletcher alternatively argues that the district court abused its discretion by denying his motion for a downward dispositional sentencing departure and imposing presumptive sentences. We affirm.

FACTS[1]

Between October 2018 and February 2019, the Minnesota Bureau of Criminal Apprehension (BCA) received a series of nine tips from the National Center for Missing and Exploited Children (NCMEC) regarding suspected child pornography downloaded by someone in Minnesota. An internet search provider and a social media company provided the initial tips, and they relayed specific usernames, email addresses, IP addresses, and two phone numbers associated with the accounts that downloaded the suspect content. Three of the email addresses had usernames containing "TGPCarpentry," "goingmgtow," and "beeks." The social media tip was for an account with the username Todd Pletcher.

After the NCMEC contacted the BCA, the BCA used administrative subpoenas to learn that the IP address associated with all nine tips was registered to Pletcher's mother at a specific residential address in Wyoming, Minnesota. A BCA investigator assigned to the internet-crimes-against-children unit forwarded the information gathered from the tips to the Wyoming Police Department. The investigator identified the residents of the address associated with the IP address, and then searched for any information connecting those residents with the provided usernames, email addresses, and phone numbers. He

[1] Our discussion of the facts is based on the evidence presented at Pletcher's court trial.

determined that Pletcher, his mother, his sister, and his aunt lived at the address. Additionally, he discovered from public records that Pletcher previously owned a company called TGP Carpentry, LLC.

The investigator obtained a search warrant for electronics, phones, computers, tablets, and hard drives at the Wyoming address where Pletcher was residing. A team of officers executed the warrant on January 22, 2019. When the officers arrived at the house, they found Pletcher, his mother, aunt, sister, and his friend J.N. They detained Pletcher and J.N. in the living room, and the others stayed in the kitchen.

During the search, the investigator asked Pletcher's mother for Pletcher's phone number. She provided a current number for Pletcher, saved in her phone, which matched one of the numbers from the tips. Additionally, the officers found a handwritten note in a kitchen cabinet that listed a previous number for Pletcher that matched the second phone number from the tips.

Officers asked Pletcher where his current cellphone was located, and Pletcher gave evasive answers. He initially claimed that it was outside in a vehicle, and then stated that it was outside in a fish house. When officers did not find the phone in either location, they told Pletcher that they would search the house until they found it. Pletcher then stood up and revealed that the phone was stuffed under the cushion of his chair. An officer called the number that Pletcher's mother had provided, and the call went through to the phone in the chair, which police seized for later examination.

Officers seized additional electronic devices from the property. In a fish house located behind the home and bearing Pletcher's name and address, they discovered a

personal computer and another cellphone. They also confiscated devices from inside the house that belonged to Pletcher's mother, sister, aunt, and J.N. Subsequent forensic testing revealed images and videos of child pornography saved on only two devices: the phone from under the cushion and the computer from the fish house.

Following the search, respondent State of Minnesota charged Pletcher with 15 counts of possession of pornographic work involving minors, in violation of Minnesota Statutes section 617.247, subdivision 4(a) (2018). The first ten counts correspond with ten specific files found on the cellphone, and the remaining five correspond with five specific files found on the computer.

Pletcher waived his right to a jury trial and opted for a trial to the court. At trial, the parties stipulated in writing that the images and videos identified in counts 1 through 15 in the complaint each constituted a separate "pornographic work" as defined by Minnesota law, *see* Minn. Stat. § 617.246, subd. 1(f) (2018), and that each pornographic work showed "a separate and distinct child." The state admitted 26 exhibits and called five witnesses, Pletcher's mother, two Wyoming Police Department investigators, and two Chisago County Sheriff's Office investigators. Pletcher did not testify or call any witnesses.

Pletcher's mother testified that Pletcher lives with her and has a room in her house, and that he built the fish house—a small portable house with room for a bed and a few chairs—located in the backyard. She stated that Pletcher spends "quite a bit" of time in the fish house, and that he uses it to smoke and spend time away from the family. Pletcher's mother relayed that J.N. occasionally stays over and sleeps in the fish house. She also

testified that Pletcher has only one computer, which Pletcher had moved from his bedroom to the fish house.

Investigators testified about the cyber tips, executing the search warrant, and extracting information from the devices obtained. One investigator examined the cellphone found in the chair, and he explained how he utilized a forensic examination program to extract the files. His examination generated a phone extraction report that was admitted as evidence. The report identified the device owner's name as "Looking Forfuntimes," with the "goingmgtow" email from the tips. And one of the email accounts on the phone was the "beeks" email address from the tips.

The investigator retrieved files containing videos and photographs saved on the physical memory of the cellphone. These included the ten videos and photographs that the parties agreed were child pornography. Each file has a time stamp that reflects when it was saved to the cellphone. These time stamps show that the files were saved on several different days in 2017, 2018, and 2019. The investigator could not, however, provide information as to when or if the files were viewed.

In addition to the images, the investigator also retrieved text messages from the cellphone. In one message, sent a few weeks before the search of the house, Pletcher's sister asked, "Do you have any open account on Instagram with your beeks?" Pletcher responded that he thought so but had not used it recently, and asked why she wanted to know. His sister explained: "Because there are accounts that you follow that have pictures of young girls. Not naked. Just thought maybe [C.] was screwing with you." Pletcher messaged back that he would check on it and delete the account.

Another investigator examined the files on the computer found in the fish house. The computer had only one user account, "beeks," and logging in did not require a password. The investigator used a software program to create a "mirror" image of the computer's hard drive, and he provided documentation at trial showing the file paths to the evidence that gave rise to the five computer-related charges. The computer's hard drive contained many personal photos, organized into folders, including photos of vacations and vehicles, and photos that Pletcher had taken of himself. Within the same folders as the personal pictures, the investigator found the five images and videos that Pletcher stipulated were child pornography.

Following the parties' written closing arguments, the district court issued an order finding Pletcher guilty of all 15 counts. At sentencing, Pletcher moved for a downward dispositional or durational departure, citing his particular amenability to probation and mental health, among other departure bases. The state opposed the motion and requested permissive consecutive sentences. The district court rejected both requests and imposed the presumptive sentence under the Minnesota Sentencing Guidelines for each count, with all sentences to run concurrently. The longest of these sentences is a 60-month, executed term of imprisonment.

Pletcher appeals.

DECISION

Pletcher first argues that his convictions must be reversed because they were not supported by sufficient evidence. In the alternative, he argues that the district court abused

its discretion by denying his motion for a downward dispositional sentencing departure.[2] We address each argument in turn.

I. The evidence is sufficient to establish that Pletcher knew or had reason to know that files on his cellphone and computer contained pornographic works involving minors.

Due process requires the prosecution to prove every element of a charged crime beyond a reasonable doubt. *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020). In considering a challenge to the sufficiency of the evidence to sustain a conviction, appellate courts carefully analyze the record to determine whether the evidence, viewed in a light most favorable to the conviction, was sufficient to permit the fact-finder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could reasonably have concluded that the state proved the defendant's guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). Appellate courts apply this same standard in reviewing convictions following both court trials and jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

Pletcher was convicted of violating Minnesota Statutes section 617.247, subdivision 4(a), which makes it a crime for a person to possess a "pornographic work or a computer disk or computer or other electronic . . . storage system . . . containing a pornographic work," if the person knows or has reason to know "its content and character." A

[2] Pletcher does not challenge the district court's decision to deny his request for a downward durational departure.

"pornographic work" is defined to include a picture or video that uses a minor to depict "sexual conduct." Minn. Stat. § 617.246, subd. 1(f).

The parties stipulated that the pictures and videos in each charged count constituted pornographic works. And Pletcher appears to concede that the evidence sufficiently proved that he possessed the phone and the computer and, by extension, the pornographic works.[3] Pletcher contends, though, that the evidence was insufficient to show that he knew or should have known the content of the 15 pornographic works.

The Minnesota Supreme Court has explained that "under Minn. Stat. § 617.247, subd. 4(a), a possessor of child pornography has 'reason to know' that a pornographic work involves a minor where the possessor is subjectively aware of a 'substantial and unjustifiable risk' that the work involves a minor." *State v. Mauer*, 741 N.W.2d 107, 115 (Minn. 2007). Such knowledge may be proven through circumstantial evidence. *Id.* Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist," whereas direct evidence "is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Harris*, 895 N.W.2d at 599 (quotations omitted).

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[3] "Possession may be proved through evidence of actual or constructive possession." *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). The district court found that Pletcher actually and constructively possessed the phone found in the couch cushion, along with the pornographic files on the phone, and that he constructively possessed the computer and its pornographic files. On appeal, Pletcher does not appear to challenge these determinations. Instead, he contends the evidence was insufficient to show that he "knew or had reason to know that the fifteen files found on his cellphone and computer contained pornographic works involving minors." The state argues in its brief that it offered direct, as opposed to circumstantial, evidence showing that Pletcher possessed the devices and their files, but we need not reach that issue because it appears that the element of possession is not in dispute.

The state relied on circumstantial evidence to prove Pletcher knew or should have known that his cellphone and computer contained pornographic works involving minors. *See State v. Myrland*, 681 N.W.2d 415, 420 (Minn. App. 2004) (applying circumstantial-evidence standard in case involving constructive possession of pornography because appellant "was not seen viewing the images or using the computers to do so"), *review denied* (Minn. Aug. 25, 2004). When an element of an offense is supported by circumstantial evidence alone, appellate courts apply a heightened, two-step standard in reviewing the sufficiency of the evidence underlying that element. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010); *see also State v. Porte*, 832 N.W.2d 303, 309-10 (Minn. App. 2013) (discussing heightened standard of review for circumstantial evidence), *review denied* (Minn. Jun. 16, 2015).

The first step in evaluating the sufficiency of circumstantial evidence is to identify the "circumstances proved" by the state at trial. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). A reviewing court assumes the trier of fact believed the state's witnesses and rejected all evidence contrary to the verdict; all conflicting evidence is resolved in the state's favor. *See State v. Tscheu*, 758 N.W.2d 849, 857-58 (Minn. 2008). After identifying the circumstances proved, the reviewing court next determines whether those circumstances are "consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotation omitted). At this step of the analysis, unlike the first step, appellate courts do not defer to the fact-finder's choice among reasonable inferences. *Id.* If the circumstances proved are

consistent with a reasonable inference other than guilt, the evidence is insufficient and the resulting conviction must be reversed. *See Harris*, 895 N.W.2d at 603.

The circumstances that the state proved regarding Pletcher's knowledge of the content and character of the pornographic files on his cellphone and computer are as follows. Multiple cyber tips from the NCMEC, spanning from 2018 to 2019, were traced to an IP address registered at the home where Pletcher lived. Several of the tips included Pletcher's current phone number, and the others had a phone number that he had previously used. One tip involved a social media account for user Todd Pletcher, and others involved email addresses with usernames containing "TGPCarpentry," "goingmgtow," and "beeks." Pletcher previously owned a business called TGP Carpentry. His current cellphone was associated with both the "goingmgtow" and "beeks" email addresses. Pletcher's computer had only one user account, named "beeks." And shortly before the search of the house, Pletcher's sister sent him a text message asking about an open social media account "with [his] beeks," and expressing concern that the "beeks" account followed accounts with "pictures of young girls."

When investigators executed the search warrant and asked Pletcher for his current cellphone, he was evasive about its location before finally revealing that it was stuffed under the cushion of the chair where he was seated. Investigators discovered videos and pictures of child pornography on the phone that were saved on several different days in 2018 and 2019. They also discovered videos and pictures of child pornography on a computer in the fish house, where Pletcher frequently spent time and which had his name on it. These pornographic works were saved in folders that also contained personal photos

of Pletcher. The officers searched devices belonging to Pletcher's mother, sister, aunt, and J.N. but did not find any child pornography or information associated with the cyber tips.

Pletcher seemingly agrees that these circumstances give rise to a rational hypothesis of guilt. The record supports this concession; the circumstances proved are certainly consistent with a rational hypothesis that Pletcher knew or should have known that his cellphone and computer contained pornographic works involving minors. *See Harris*, 895 N.W.2d at 601-02. Pletcher contends, though, that there is an alternative rational hypothesis: that he lacked any knowledge of the content of the files because someone else downloaded them to his devices and he never viewed them.

Specifically, Pletcher argues that the state's evidence only showed that the images and files were downloaded to the devices, not that they were ever viewed. He suggests that someone else could have downloaded the pictures and videos to his devices without his knowledge, and he points to evidence showing that the computer was not password protected and that J.N. spent time in the fish house. He further suggests that the images could have been "placed on the devices via a cloud-sharing program."

Pletcher cites this court's decision in *Myrland* to support his position. 681 N.W.2d 415. In *Myrland*, pornographic works depicting minors were discovered on school computers. *Id.* at 417. Myrland, who was a teacher at the school, admitted to using the computers to view adult pornography but denied viewing any child pornography. *Id.* at 417-18. Testimony presented at trial showed that Myrland was "one of potentially hundreds of people who could have accessed the computers in question." *Id.* at 418, 420. And the images of child pornography were stored amongst thousands of other images in

"unallocated space" on the computer hard drives, with "only a tiny fraction" appearing to depict minors. *Id.* In light of those circumstances, this court concluded that the evidence was insufficient to show that Myrland possessed, or intended to possess, child pornography knowing or with reason to know of its content. *Id.*

This case is distinguishable from *Myrland*. Here, the computer in question was, according to Pletcher's mother, Pletcher's personal computer. While the testimony suggested that other people used the fish house, no evidence suggested that other people used the computer. And the images were not stored in "unallocated space" on the computer's hard drive, but were instead stored in categorized folders that contained Pletcher's personal pictures. Moreover, pornographic works were stored not only on the computer, but also on Pletcher's cellphone, which he attempted to hide from officers during the search.

Although Pletcher contends that someone else could have downloaded the pornographic works to his devices without his knowledge, either through cloud-sharing or otherwise, this claim is inconsistent with the totality of the circumstances proved and relies on theoretical possibilities. Appellate courts "will not reverse a conviction, even one grounded only in circumstantial evidence, based on mere conjecture or the possibility of innocence when the evidence shows such possibility is unreasonable." *Tscheu*, 758 N.W.2d at 861. Given that multiple images and videos were downloaded over a span of two years, that the tips about the downloads contained various email addresses, phone numbers, and usernames associated with Pletcher, that Pletcher attempted to conceal his phone from investigators, that none of the devices belonging to other household members

or J.N. contained pornographic works or information associated with the tips, and that the pornographic works on the computer were intermixed with Pletcher's personal photos—the hypothesis that someone else downloaded the images and videos without his knowledge is simply unreasonable.

In sum, because the circumstances that the state proved are consistent with a reasonable inference of guilt and inconsistent with any reasonable inference of innocence, the evidence is sufficient to support Pletcher's convictions. *See Tscheu*, 758 N.W.2d at 861.

II. The district court did not abuse its discretion by denying Pletcher's request for a downward dispositional sentencing departure.

Pletcher next argues that we should reverse his sentences because compelling factors exist to support a downward dispositional departure. This court reviews a district court's sentencing decision for an abuse of discretion. *State v. Soto*, 855 N.W.2d 303, 307-08 (Minn. 2014).

District courts have a great deal of discretion in sentencing. *Id.* at 305. That discretion is limited, however, by the Minnesota Sentencing Guidelines, which prescribe a sentence that is "presumed to be appropriate for the crimes to which they apply." Minn. Sent. Guidelines 2.D.1 (2018). A district court may exercise its discretion to depart from the guidelines only if there are "identifiable, substantial, and compelling circumstances that distinguish a case and overcome the presumption in favor of the guidelines sentence." *Soto*, 855 N.W.2d at 308 (quotation omitted). "In fact, a sentencing court has no discretion

to depart from the sentencing guidelines unless aggravating or mitigating factors are present." *State v. Spain*, 590 N.W.2d 85, 88 (Minn. 1999).

The guidelines provide a nonexclusive list of mitigating factors that can justify a downward dispositional departure, including that "[t]he offender is particularly amenable to probation." Minn. Sent. Guidelines 2.D.3.a.(7) (2018). The qualifier "particularly" curbs the number of departures in a manner consistent with promoting the guidelines' purpose of sentencing uniformity. *See Soto*, 855 N.W.2d at 308-09. In determining whether a defendant is particularly amenable to probation, courts may consider various factors, such as "the defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982). A district court is not required to depart "from a presumptively executed prison sentence, even if there is evidence in the record that the defendant would be amenable to probation." *State v. Olson*, 765 N.W.2d 662, 663 (Minn. App. 2009).

Pletcher argued at sentencing that he was entitled to a downward dispositional departure because he had been successful on probation for a previous offense, he had strong family support, and he had a good attitude in court. His attorney also asserted that Pletcher would be more successful in sex-offender treatment if he remained in the community because he had mental and physical health issues that would be exacerbated in prison. While Pletcher continued to deny committing the offenses, his attorney contended that such denial was not a barrier to sex-offender treatment because many people initially deny committing these types of crimes.

In declining to grant the dispositional-departure request, the district court noted several favorable factors that could support a finding of amenability, such as Pletcher's attitude in court and lack of pretrial violations. But the district court concluded that there was not substantial and compelling evidence of Pletcher's particular amenability to probation. The district court reasoned that Pletcher's age—approximately 50—did not weigh in his favor, as his crimes did not reflect a youthful mistake or miscalculation of judgment. The district court also noted that while Pletcher was close to his family, he seemed to lack other prosocial supports like healthy adult friendships, interests, and hobbies. And the district court was also concerned that Pletcher did not show remorse, as he continued to deny committing the offenses.

The district court's sentencing decision does not reflect any abuse of discretion. Although there was some evidence that Pletcher was amenable to probation, the district court was within its discretion to conclude that the circumstances did not support a finding of particular amenability. *See Olson*, 765 N.W.2d at 663. The district court accordingly did not err by imposing presumptive sentences for the offenses.

Affirmed.