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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1029**

State of Minnesota,
Respondent,

vs.

Jesse James Newcomer,
Appellant.

**Filed April 9, 2012
Reversed
Cleary, Judge**

Wabasha County District Court
File No. 79-CR-09-1060

Lori Swanson, Attorney General, Kelly O'Neill Moller, Assistant Attorney General,
St. Paul, Minnesota; and

James C. Nordstrom, Wabasha County Attorney, Wabasha, Minnesota (for respondent)

Deborah Ellis, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Klaphake, Judge; and
Cleary, Judge.

UNPUBLISHED OPINION

CLEARY, Judge

On appeal from his convictions of fifth-degree sale of marijuana, fifth-degree possession of marijuana, and failure to possess controlled substance tax stamps, appellant Jesse James Newcomer argues that the evidence is insufficient to prove beyond a

reasonable doubt that he had constructive possession of marijuana found at a residence in Mazeppa. Because we find the evidence to be insufficient to support the convictions, we reverse.

FACTS

In September 2009, law enforcement officers from Wabasha County and the Southeast Minnesota Narcotics and Gang Task Force executed a search warrant at an address in Mazeppa. Officers discovered a marijuana grow operation in a hidden room in the basement area of this address. The marijuana being grown weighed 1.8 kilograms.

Officers observed a bedroom in the basement that “appeared to have been lived in.” Officers found a grow light and a drying marijuana plant inside the basement bedroom and observed men’s clothing hanging in the bedroom’s closet. Also located inside the basement bedroom were two documents containing Newcomer’s name. These documents were addressed to Newcomer at an address in Rochester, not the Mazeppa address where officers executed the search warrant. In the bathroom adjacent to the basement bedroom, officers observed a “hydroponic bed for starting marijuana plants,” which was operational and hooked up to a water supply.

Later that night, the homeowner of the Mazeppa address called Plainview Police Officer Ken Douglas, whom he knew from prior non-law enforcement contact, and agreed to turn himself in. Newcomer apparently accompanied the homeowner, and both men were taken into custody.

The state charged Newcomer with fifth-degree sale of marijuana, a violation of Minn. Stat. § 152.025, subd. 1(a)(1) (Supp. 2009), fifth-degree possession of marijuana, a

violation of Minn. Stat. § 152.025, subd. 2(a)(1) (Supp. 2009), and failure to possess controlled substance tax stamps, a violation of Minn. Stat. §§ 297D.04, .09, subd. 1a (2008).¹

Newcomer challenged the complaint on the grounds of probable cause and moved to dismiss the charges at an omnibus hearing. The court denied the motion in October 2010, concluding that the state's evidence, if believed, was sufficient to prove that Newcomer occupied the basement bedroom.

The parties agreed to a trial based on stipulated facts, pursuant to Minn. R. Crim. P. 26.01, subd. 3. The "stipulated facts" took the form of the following body of evidence: photographs and video taken during the execution of the search warrant; incident reports prepared by officers who participated in the execution of the search warrant; an incident complaint report prepared by Officer Douglas; the application for the search warrant; the search warrant; an inventory sheet documenting items found at the residence; an evidence report documenting where each item was found; and five pages of transcript from the omnibus hearing.

The district court issued a verdict in March 2011 finding Newcomer guilty on all three counts. In an attached memorandum, the district court found that Newcomer occupied the basement bedroom of the Mazeppa address and that he participated in the grow operation due to "the proximity of [his] bedroom to the growing operation" and the presence of a grow light and a drying marijuana plant in the basement bedroom. The

¹ The state originally sought firearms enhancements pursuant to Minn. Stat. § 609.11 (2008), but later agreed to drop the enhancements.

court subsequently sentenced Newcomer to a stay of imposition for five years on all three counts. Newcomer appeals.

DECISION

Newcomer makes three arguments on appeal. First, he challenges the district court's written findings of fact as insufficient to comply with Minn. R. Crim. P. 26.01, subd. 2. Second, he argues that the evidence is insufficient to sustain his convictions. Third, he challenges his sentences as violating Minn. Stat. § 609.035 (2008).

I.

Before reaching Newcomer's arguments, we first address the posture of this case. The parties agreed to a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 3. But in doing so, the parties did not stipulate to any facts. Rather, the parties merely submitted a number of contested documents to the district court and allowed the court to reach a verdict based on them. "A stipulated facts trial held pursuant to Minn. R. Crim. P. 26.01, subd. 3, must be based on facts agreed to by the parties, and not on a body of evidence including disputed facts." *Dereje v. State*, No. A11-1147, *slip op.* at 10 (Minn. App. Apr. 2, 2012). Thus, the procedure employed by the parties is more appropriately characterized as a court trial held without a jury, pursuant to subdivision 2 of rule 26.01, which allows "stipulation to a body of evidence [and] permit[s] a court trial to proceed without live witnesses and based only on documentary testimony." *Id.* at 9 (citing Minn. R. Crim. P. 26.01, subd. 2).² A district court's factual findings are subject to a clearly

² This conclusion has no effect on our analysis of this case. In a court trial without a jury, the court must still provide written findings of the essential facts, *see* Minn. R. Crim. P.

erroneous standard of review. *State v. Critt*, 554 N.W.2d 93, 95 (Minn. App. 1996), *review denied* (Minn. Nov. 20, 1996).

II.

Newcomer argues that the district court's written findings of fact failed to comply with the requirements of Minn. R. Crim. P. 26.01, subd. 2. Specifically, he contends that the court failed to provide facts supporting its conclusion that he occupied the basement bedroom of the Mazeppa address. In a court trial without a jury, the district court must "make findings in writing of the essential facts" within seven days after making a general finding of guilt in a felony case. Minn. R. Crim. P. 26.01, subd. 2(b). An opinion or memorandum filed by the court satisfies this requirement as long as the essential facts appear in the opinion or memorandum. *Id.*, subd. 2(d).

We agree with Newcomer that the district court's memorandum supporting its general finding of guilt, consisting of one-half of one page, is not the most detailed of documents. But rule 26.01, subdivision 2, does not require the level of detail urged by Newcomer. The rule only requires written findings of the "essential facts" and provides that "[a]n opinion or memorandum of decision filed by the court satisfies the requirement to find the essential facts if they appear in the opinion or memorandum." *Id.*, subd. 2(b), (d). The court's conclusion that Newcomer occupied the basement bedroom of the Mazeppa address is one of the "essential facts" necessary to support the court's general finding of guilt, and nothing in the rule requires the district court to support an essential

26.01, subds. 2(b), 3(d), and the defendant may still challenge the sufficiency of the evidence, *see State v. Eakins*, 720 N.W.2d 597, 603 (Minn. App. 2006).

fact with further factual findings. *See id.* Newcomer's argument is more appropriately characterized as a challenge to the sufficiency of the evidence supporting the district court's conclusion, which is discussed below. *See State v. Oanes*, 543 N.W.2d 658, 662–64 (Minn. App. 1996) (concluding similarly in a challenge to a district court's failure to provide written factual findings on asserted defense).

III.

Newcomer argues that the evidence submitted to the district court is insufficient to prove beyond a reasonable doubt that he had constructive possession of the marijuana found at the Mazeppa address. He contends that the evidence does not support the district court's conclusion that he occupied the basement bedroom at that address.

In a challenge to the sufficiency of the evidence, this court reviews the record in the light most favorable to the verdict and asks “whether the jury could reasonably find the defendant guilty given the facts in evidence and the legitimate inferences which could be drawn from those facts.” *State v. Miles*, 585 N.W.2d 368, 372 (Minn. 1998). This standard of review applies to both bench trials and jury trials. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999); *State v. Eakins*, 720 N.W.2d 597, 603 (Minn. App. 2006).

A conviction for unlawful possession of a controlled substance requires the state to prove that the defendant either physically or constructively possessed the substance. *State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975).

Constructive possession may be proved by showing either that (1) the controlled substance was found in an area under the defendant's control and to which others normally had no access; or (2) if others had access to the location of the controlled substance, the evidence indicates a strong

probability that the defendant exercised dominion and control over the area.

State v. Denison, 607 N.W.2d 796, 800 (Minn. App. 2000), *review denied* (Minn. June 13, 2000). “A person may constructively possess a controlled substance alone or with others.” *Id.* at 799. In deciding whether or not constructive possession has been proved, a court looks at the totality of the circumstances. *Id.* at 800.

Courts have found constructive possession when controlled substances have been found in close proximity to the personal effects of a defendant. For example, in *State v. Mollberg*, 310 Minn. 376, 390, 246 N.W.2d 463, 472 (1976), marijuana was found in a bedroom closet of a residence. The evidence showed that appellant frequently stayed at the residence, that numerous letters addressed to him were found in the bedroom, that a motorcycle part belonging to him was found in the bedroom, and that he was observed riding the motorcycle after execution of the search warrant. *Id.* This evidence provided a “strong probability” that appellant exercised dominion or control over the bedroom where the marijuana was found and, therefore, that he had constructive possession of the marijuana. *Id.*

If Newcomer occupied the basement bedroom of the Mazeppa address, we would have little difficulty finding a “strong probability” that he constructively possessed the marijuana found at that address, due to the proximity of the bedroom to the grow operation and the presence of tools used to grow marijuana located in and around that bedroom area. *See id.*; *see also Denison*, 607 N.W.2d at 800. But we conclude that, based on the evidence presented to the district court, the court’s finding that Newcomer

occupied the basement bedroom is clearly erroneous. The only evidence arguably supporting the court's finding on this point are the two documents addressed to Newcomer that were found in the basement bedroom.³ Notably, however, these documents were addressed to Newcomer at a Rochester addresses, not the Mazeppa address. Moreover, the state failed to introduce any evidence regarding how these documents came to be in the basement bedroom or how long they had been there. The state also failed to introduce any evidence regarding the frequency with which Newcomer stayed at the Mazeppa address, or even if he had *ever* stayed at the Mazeppa address. And, the basement bedroom did not contain any of Newcomer's personal effects other than the two documents addressed to him. Even when viewing the evidence in the light most favorable to the verdict, the presence of only two documents bearing an individual's name, without more, does not prove that the individual is occupying that bedroom. *Cf. Mollberg*, 310 Minn. at 390, 246 N.W.2d at 472 (concluding that appellant had constructive possession of marijuana when, combined with the presence of other personal effects belonging to appellant located in the bedroom where the marijuana was found, "numerous letters" addressed to appellant were found "scattered on the floor of the bedroom").

The state contends that the presence of men's clothing hanging in the closet in the basement bedroom (not identified as belonging to or fitting anyone in particular) shows that someone was occupying that bedroom. The state further argues that the clothing,

³ A third, handwritten document listing over a dozen names with adjoining figures, including "Jesse" and "500" was found in the kitchen and entered into evidence without any further foundation.

along with the two documents addressed to Newcomer, establish that Newcomer was the person staying in the bedroom. We disagree. The presence of clothing hanging in a closet does not necessarily indicate that anyone is living in that room. Further, even if one were to assume that a man lived in the bedroom due to the men's clothing that was found there, the two items of mail addressed to Newcomer at a different address, without any evidence as to how and when those documents were put in the bedroom, are inadequate to conclude that Newcomer occupied the bedroom.

The state also argues that police reports submitted into evidence, which list Newcomer as having the Mazeppa address and describe certain evidence as having been found in "downstairs Newcomer's rm," are sufficient to support the district court's finding that Newcomer lived in the basement. We disagree for two reasons. First, Newcomer did not stipulate to the contents of the police reports. Second, the evidence submitted to the court did not show that the officers had any foundation for concluding that Newcomer occupied the basement. Rather, testimony from the omnibus hearing reveals that the police reached this conclusion simply because they had found the two documents previously described in the basement bedroom. Even when viewed in the light most favorable to the verdict, this evidence is insufficient to support the finding that Newcomer lived in the basement. The conclusion reached by the police does not make the evidence any less insufficient.

Accordingly, we conclude that the evidence is insufficient to support the district court's finding of fact that Newcomer occupied the basement bedroom of the Mazeppa address. Because the evidence fails to prove that Newcomer occupied the basement

bedroom, even when viewing the evidence in the light most favorable to the verdict, there is nothing in the record that adequately supports the conclusion that Newcomer constructively possessed the marijuana. Therefore, Newcomer's convictions must be reversed.⁴

Reversed.

Dated: _____

Judge Edward J. Cleary

⁴ Based on our conclusion, we need not address Newcomer's third argument regarding his sentences.