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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2002**

State of Minnesota,
Respondent,

vs.

Domonick Deshay Wright,
Appellant.

**Filed September 17, 2012
Affirmed
Larkin, Judge**

Hennepin County District Court
File No. 27-CR-10-1447

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Elizabeth Johnston, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Wright, Judge; and Larkin,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of unlawful possession of a firearm, arguing that (1) the circumstantial evidence was insufficient as a matter of law to sustain the conviction; (2) the district court erred by instructing the jury that because appellant stipulated to a prior felony conviction, the jury must consider that element as proved; and (3) the district court abused its discretion by permitting the state to impeach him with evidence of his two prior controlled-substance convictions. We affirm.

FACTS

While on patrol, Hennepin County Deputy Sheriff Steffens noticed that the taillights of a gold-colored Monte Carlo were obscured by snow. Steffens ran the license-plate number of the car and discovered that it did not match a newly issued plate registered to that car. Steffens stopped the car, which was registered in the name of L.L. Appellant Domonick Deshay Wright was the sole occupant of the car. Wright was cooperative, did not appear nervous, and made no unusual movements. Steffens quickly ascertained that Wright did not have a valid driver's license and that he had pending citations for driving after license suspension. Steffens arrested Wright and called for backup to perform an inventory search of the car before it was towed.

Deputies McKloskey and Lee responded and began a search of the car. McKloskey leaned into the driver's side door and braced himself against the center console to look under the driver's seat. The console was loose, as though it was not fastened to the floor. When McKloskey stood up, he noticed an open cavity in the

console and he saw the butt end of a handgun in the cavity. McKloskey removed the entire plastic top of the console, revealing a handgun nestled inside the console. McKloskey also found a small plastic door on the floor by the gas pedal; this plastic door corresponded to the opening of the cavity.

Detective Sweitzer arrived at the scene and informed Wright that a handgun had been found in the car; Wright stated “that was not possible.” Because of his two prior felony convictions, Wright was prohibited from possessing a firearm.

As the chief investigator, Sweitzer reviewed the recordings of two telephone calls made by appellant during his resulting pre-trial incarceration. In these calls, Wright did not admit that the gun was his. Sweitzer also interviewed the registered owner of the car, L.L. When Sweitzer spoke with L.L. on January 11, 2010, she told him that she had not had possession of the car for approximately two weeks.

At Wright’s ensuing jury trial on a charge of unlawful possession of a firearm, L.L. testified that she drove the car on January 5 or 6, 2010, and that she also drove it to her workplace on January 8, the date of the offense, with Wright in the car. L.L. stated that she was not truthful in her earlier statement to detective Sweitzer because she was frightened. She testified that Wright previously used the car on a few occasions and that she let several other friends use the car. L.L. also testified that when she drove the car on January 8, the center console was intact and solid. Deputy McKloskey testified that the console was loose. He further testified that he had not removed the plastic door to the cavity in the console, but that it could have fallen off when he braced himself against the console.

Wright testified in his own defense, stating that the console was intact when he drove the car and that he had not hidden a gun in the console. He denied having a gun or knowing that there was a gun in the car. He testified that he drove L.L. to work in order to use the car, but could not remember where he had driven her. He also testified that he was picking up a friend whom he had known for several years, but was unable to recall his last name. Wright admitted that he had two felony convictions for possession of a controlled substance.

Two lab investigators testified that they were unable to retrieve reliable DNA evidence or fingerprints from the gun, but that this was not unusual.

The jury found appellant guilty of unlawful possession of a firearm, and the district court sentenced appellant to serve a mandatory minimum term of 60 months in prison. This appeal follows.

DECISION

Sufficiency of the Evidence

Wright argues that there is insufficient evidence to prove that he constructively possessed the handgun found in the car. An appellate court assesses the sufficiency of the evidence supporting a conviction by determining whether the legitimate inferences drawn from the record evidence would permit a jury to conclude that the defendant was guilty beyond a reasonable doubt. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). An appellate court is “limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to

permit the jurors to reach their verdict.” *State v. Caine*, 746 N.W.2d 339, 356 (Minn. 2008) (quotation omitted).

The charge of prohibited person in possession of a firearm requires proof of ineligibility to possess a firearm, to which Wright stipulated, and of possession. Minn. Stat. § 624.713, subd. 1 (2010). Possession may be actual or constructive. *State v. Porter*, 674 N.W.2d 424, 427 (Minn. App. 2004). Because Wright did not have actual possession of the handgun, the state had to prove constructive possession: either the handgun was in a place under Wright’s exclusive control to which other people normally did not have access, or, if others had access, there was a strong probability, based on the evidence, that he was consciously exercising dominion or control over the handgun. *Id.* Proof of constructive possession usually is based on circumstantial evidence. *Id.*

An appellate court applies heightened scrutiny when reviewing a verdict based on circumstantial evidence. *Pratt*, 813 N.W.2d at 874. The circumstances proved must be consistent with guilt and inconsistent with any other rational hypothesis. *Id.* Minnesota courts employ a two-step process when reviewing convictions based on circumstantial evidence. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). First, the reviewing court identifies the circumstances proved. *Id.* In doing so, the court views the evidence in the light most favorable to the verdict. *See Pratt*, 813 N.W.2d at 874 (stating that “when we consider the evidence in the light most favorable to the verdict, the circumstances proved are as follows”). The court defers to the jury’s acceptance and rejection of proof and to the jury’s credibility determinations. *Andersen*, 784 N.W.2d at 329; *see also State v. Hughes*, 749 N.W.2d 307, 312 (Minn. 2008) (stating that juries are

generally “in the best position to weigh the credibility of the evidence and thus determine which witnesses to believe and how much weight to give their testimony”).

Next, the reviewing court examines the reasonableness of the inferences that can be drawn from the circumstances proved, including inferences of innocence as well as guilt. *Anderson*, 784 N.W.2d at 329. All of the circumstances proved must be consistent with guilt and inconsistent with any other rational hypothesis negating guilt. *Id.* at 330. The reviewing court does not defer to the jury’s choice between rational hypotheses. *Id.* at 329-30. But a rational hypothesis that negates guilt must be based on more than mere conjecture. *Id.* at 330.

Viewing the evidence in the light most favorable to the verdict and deferring to the jury’s credibility determinations, we conclude that the following circumstances are proved. Wright was the driver and sole occupant of the Monte Carlo. The owner of the car, L.L., frequently allowed others, including Wright, to use the car. The responding deputies did not observe Wright make any unusual movements during the traffic stop, and Wright did not appear nervous. The deputies found a handgun in the center console of the Monte Carlo, in close proximity to the driver’s seat. No physical evidence, including DNA or fingerprints, linked the handgun with Wright, but based on the experts’ testimony, that was not unusual. Finally, although Wright testified that he did not place the gun in the console or know that the gun was there, the verdict indicates that the jury rejected his testimony as not credible. Thus, the circumstances proved include Wright’s knowledge that the gun was in the car.

We next examine the reasonableness of the inferences that can be drawn from the circumstances proved, without deference to the jury's choice of hypothesis. *State v. Nelson*, 812 N.W.2d 184, 189-90 (Minn. App. 2012). Because the circumstances proved include Wright's knowledge that the gun was in the car, the only reasonable inference is that Wright consciously exercised dominion and control over the gun by transporting it in the car. Wright's alternative hypothesis—that he did not know there was a gun in the car—is inconsistent with the circumstances proved. Moreover, acceptance of Wright's hypothesis would require us to ignore the jury's rejection of his testimony, which is not permitted. *See Andersen*, 784 N.W.2d at 329. In sum, there is sufficient evidence to support the jury's verdict.

Jury Instruction

Wright contends that the district court erred by instructing the jury that it was bound by Wright's stipulation that he was prohibited from possessing a firearm and by instructing the jury that it was required to consider the prohibited-person element of the charged offense proved. Wright argues that the district court's instruction "invaded the province of the jury and directed a verdict against [him] on this element of the charged offense." Wright further argues that the instruction was either structural error or plain error that affected his substantial rights.

The first step in our analysis is to determine whether the district court erred. *See State v. Kuhlmann*, 806 N.W.2d 844, 850 (Minn. 2011) ("Having determined that the trial court erred, we must *next* determine what standard of review to apply in reviewing the error.") (emphasis added). Wright relies on *State v. Moore*, 699 N.W.2d 733 (Minn.

2005), in which the supreme court held that the district court erred by instructing the jury, over defense objection, that the loss of a tooth satisfied the great-bodily-harm element of the offense of first-degree assault. *Id.* at 737. The supreme court concluded that “the instruction removed from consideration by the jury the question of whether the loss of a tooth constitutes ‘great bodily harm,’ violating the requirement that criminal convictions must rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt.” *Id.* (quotation omitted). Similarly, in *State v. Nunn*, this court observed that “the trial court committed reversible error for commenting to the jury that ‘it is undisputed that . . . a robbery did occur’” when the defendant’s theory was that he did not commit an aggravated robbery, but committed theft. 351 N.W.2d 16, 19 (Minn. App. 1984). This court stated that “[a] trial court should not instruct the jury that an uncontradicted fact exists when the fact constitutes an essential element of the offense.” *Id.* (quotation omitted).

But both *Moore* and *Nunn* are distinguishable from this case. Wright stipulated that he was prohibited from possessing a firearm and thus removed that element from the jury’s consideration. *See State v. Davidson*, 351 N.W.2d 8, 10-12 (Minn. 1984) (holding, in a prosecution of a defendant for being a felon in possession of a handgun, that the district court erred by refusing “to accept the stipulation that defendant had a prior felony conviction and thus remove that element of the offense from the jury”). Wright specifically agreed, in writing, that the jury would be instructed that it was bound by the

stipulation.¹ We are not aware of any precedential authority holding that a district court errs by instructing the jury that a *stipulated-to* element has been proved. In fact, in *State v. Carlson*, the supreme court stated the “rule” that “if the defendant admits certain elements, then the court can so instruct the jury.” 268 N.W.2d 553, 560 (Minn. 1978). *See also State v. Perkins*, 353 N.W.2d 557, 561 (Minn. 1984) (stating the “rule that the trial court may not direct a verdict for the state in a criminal case and may not instruct the jury that any of the elements of the offense have been proven beyond a reasonable doubt, absent a judicial admission by the defendant of any of the elements”); *Lamere v. State*, 278 N.W.2d 552, 557 (Minn. 1979) (stating that “generally a trial court should not instruct the jury that an uncontradicted fact exists when that fact constitutes an essential element of the offense” but that if a defendant “actually admits certain elements, then the court properly may so instruct the jury”).

Moreover, the supreme court has suggested the instruction in this case was proper. In concluding that the district court erred by refusing to accept the defendant’s stipulation that he had a prior felony conviction and thus remove that element of the offense from the jury, the court in *State v. Davidson* stated that the district court

should have instructed the jury to the effect that defendant had stipulated that under Minnesota law he was not entitled to possess a pistol and that therefore the jury should direct its

¹ The parties’ stipulation was reduced to writing and signed by the prosecuting attorney, Wright’s trial attorney, and Wright. The stipulation states: “The parties have stipulated that the Defendant, Domonick Deshay Wright, is prohibited from possessing a firearm under Minnesota law. The Court instructs you that you are bound by the Stipulation agreed to by the parties that Defendant Wright was barred under Minnesota law from possessing a firearm on the date in question. You are not to speculate about why it [is] illegal for Defendant Wright to possess a firearm.”

attention to the issue of whether or not the state had established beyond a reasonable doubt that [defendant] possessed the pistol, either actually or constructively.

351 N.W.2d at 12.

Because Wright stipulated to the ineligibility element, the district court did not err by instructing the jury that it must consider that element as proved. In short, the district court's instruction was not error, either structural or plain.

Impeachment

Wright argues that the district court abused its discretion by permitting the state to impeach him with his two prior felony convictions of fifth-degree possession of a controlled substance. An appellate court reviews the district court's decision to permit impeachment of a defendant with prior convictions for an abuse of discretion. *State v. Williams*, 771 N.W.2d 514, 518 (Minn. 2009). A witness may be impeached with evidence of a prior conviction if the crime is one of dishonesty, or if it is a felony and the probative value of admitting the evidence outweighs its prejudicial effect. *Id.*; Minn. R. Evid. 609(a).

A district court considers five factors to determine whether a defendant may be impeached by evidence of a prior conviction:

- (1) the impeachment value of the prior crime,
- (2) the date of the conviction and the defendant's subsequent history,
- (3) the similarity of the past crime with the charged crime (the greater the similarity, the greater the reason for not permitting use of the prior crime to impeach),
- (4) the importance of defendant's testimony, and
- (5) the centrality of the credibility issue.

State v. Jones, 271 N.W.2d 534, 538 (Minn. 1978). Minnesota courts continue to rely on the *Jones* factors. *See, e.g., State v. Hill*, 801 N.W.2d 646, 653 (Minn. 2011). A district court must make a record of its consideration of the *Jones* factors in order to facilitate review. *State v. Swanson*, 707 N.W.2d 645, 654-55 (Minn. 2006). In this case, the district court reviewed the *Jones* factors and determined that the two convictions could be used as impeachment evidence if Wright testified. After reviewing the record, we conclude that the district court did not abuse its discretion.

Although controlled-substance convictions do not directly relate to a defendant's veracity, they do allow a jury to "see the whole person of the defendant and better evaluate his or her truthfulness." *Id.* at 655 (quotation omitted); *see also Williams*, 771 N.W.2d at 518-19 (determining that prior controlled-substance conviction was admissible for impeachment purposes). Second, Wright's convictions are from 2008 and 2009, well within the ten-year period assumed to be relevant, and are not similar to the current charge; these factors weigh in favor of admissibility.

Because the current charge was based on circumstantial evidence and Wright denied possession of the firearm, Wright's testimony was important to his defense. But despite the district court's ruling, Wright testified and the jury was permitted to hear his version of events. This factor either favors admissibility or is neutral. *See State v. Craig*, 807 N.W.2d 453, 470 (Minn. App. 2011), *review granted* (Minn. Feb. 14, 2012). Finally, Wright's credibility was central; it "provided the main evidence for his side of the story, making the admission of the impeachment evidence necessary." *Id.*

Wright asserts that “the use of prior felony convictions to impeach criminal defendants has become a free-for-all with almost no discretion applied by district court judges.” But this court has stated that use of prior convictions as impeachment evidence “allows for a broader credibility assessment, perhaps aptly described . . . as general trustworthiness [prompting] the question . . . of whether a person who violates the law in a serious way can be trusted to tell the truth in the matter at issue.” *State v. Flemino*, 721 N.W.2d 326, 329 (Minn. App. 2006). Put another way, “it is the general lack of respect for the law, rather than the specific nature of the conviction, that informs the fact-finder about a witness’s credibility, at least with respect to convictions other than those involving dishonesty or false statements.” *Hill*, 801 N.W.2d at 652. There is no question that current law permits the use of controlled-substance convictions as impeachment evidence. *Id.* Wright’s dissatisfaction with the law is not a basis for reversal.

Affirmed.