STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2258

State of Minnesota,
Respondent,

vs.

Paschen Marie Christensen,
Appellant.

Filed December 3, 2012
Reversed
Stauber, Judge
Hooten, Judge, dissenting

Mille Lacs County District Court
File No. 48CR10788

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

Janice S. Jude, Mille Lacs County Attorney, Mark J. Herzing, Assistant County Attorney, Milaca, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant State Public Defender, St. Paul, Minnesota; and

Glenna L. Gilbert, Special Assistant Public Defender, Larkin, Hoffman, Daly & Lindgren, Ltd., Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Peterson, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

STAUBER, Judge

On appeal from her conviction of one count of possession of a controlled substance in the fifth degree, appellant argues that her conviction must be reversed because the evidence against her was circumstantial and the government failed to exclude the reasonable inference that someone other than her possessed the drugs. Because a reasonable inference other than guilt cannot be excluded, we reverse.

FACTS

Appellant Paschen Marie Christensen was charged with one count of possession of a controlled substance in the fifth degree. At trial, evidence and testimony was presented establishing that appellant lived in a house owned by her grandfather. According to Officer Tim Kintop, he arrived at the home in the morning of April 12, 2010, investigating an unrelated matter not involving appellant. Officer Kintop testified that after he knocked on the door, someone inside the house pushed the door shut and locked it. Officer Kintop then contacted other officers who set up a perimeter around the house and waited for a search warrant.

About a half hour to an hour after Officer Kintop arrived at the house, appellant left the house alone. An hour or so later, six other individuals left the house and were seized and questioned by the officers. Law enforcement subsequently executed the search warrant on the house for weapons and ammunition relating to the incident unrelated to appellant. In an unlocked bedroom used by appellant, an officer observed items and mail containing appellant's name indicative to her occupancy of the room. The officer also noticed, in an

unlocked and open closet in the bedroom, a pair of pants hanging with "the corner of a plastic bag sticking out of a pocket." The plastic bag contained bindles of an off-white substance that was later determined to be a small amount of cocaine. The officer also found a small digital scale in a drawer in the kitchen of the house.

Appellant admitted that the pants were hers, but denied that the cocaine was hers. Appellant also denied using cocaine and claimed that she did not know how the cocaine ended up in her pants pocket.

A jury found appellant guilty of the charged offense. The district court sentenced appellant to a year and a day, but stayed imposition of the sentence on the condition that appellant serve 90 days in the county jail. This appeal follows.

D E C I S I O N

In considering a claim of insufficient evidence, an appellate court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that "the jury believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The verdict will not be disturbed if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

To sustain a conviction for the controlled-substance-crime charge, the state must establish that appellant "unlawfully possesse[d] one or more mixtures containing a controlled substance." *See* Minn. Stat. § 152.025, subd. 2(a)(1) (Supp. 2009). Possession means that appellant "physically possessed the substance and did not abandon [her] possessory interest in the substance but rather continued to exercise dominion and control over it up to the time of the arrest." *State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 610 (1975). To prove constructive possession, the state must establish either that: "(1) the controlled substance was found in an area under [appellant'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 [appellant] exercised dominion and control over the area." *See State v. Denison*, 607 N.W.2d 796, 800 (Minn. App. 2000), *review denied* (Minn. June 13, 2000). "Proximity is an important consideration in assessing constructive possession," and "constructive possession need not be exclusive, but may be shared." *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). In determining possession, including cases of constructive possession, courts consider the totality of the circumstances. *Denison*, 607 N.W.2d at 800.

Appellant argues that the evidence was insufficient to establish that she constructively possessed the cocaine that was discovered in the pocket of her pants. In reviewing a conviction based on circumstantial evidence, an appellate court applies a two-part test. *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). We first identify the circumstances underpinning the conviction, granting deference to "the jury's acceptance

of the proof of these circumstances as well as to the jury's rejection of evidence in the record that conflicted with the circumstances proved." *Id.* Here, the state presented the following circumstances at trial: (1) appellant was present at the house approximately one hour before cocaine was discovered; (2) cocaine was discovered in the pocket of a pair of pants that were hanging in the bedroom closet; (3) appellant admitted that the pants belonged to her; (4) there was mail addressed to appellant in the bedroom; and (5) a small scale that is commonly used for weighing narcotics was found in the kitchen of the house.

Additionally, there were circumstances presented at trial indicating that someone other than appellant possessed the cocaine. The evidence established that six people spent the previous night partying at the house and departed the house about an hour after appellant left.[1] The six were apprehended and questioned by law enforcement relating to a prior weapons incident that was unrelated to appellant. Moreover, the bedroom that appellant occupied was open and unlocked, as was the closet, providing these six individuals with full access to the room and closet both before and after appellant left the house. And the state presented no evidence that appellant had cocaine in her system, that appellant had a history of using cocaine, or that appellant's fingerprints or DNA were on the baggie containing the cocaine.[2] Other than the cocaine being found in the pocket of a

[1] The testimony suggests that initially there were ten people at the home. Only six spent the night and remained after appellant left the home.

[2] Law enforcement chose not to test for fingerprints or DNA even though the case was highly circumstantial and the evidence was sent to the BCA for testing and weighing.

pair of pants belonging to appellant that were hanging in her bedroom closet, there was no evidence linking appellant to the cocaine.

Because the government did not present any direct evidence that appellant possessed the cocaine, the second part of our analysis requires us to "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt." *Hanson*, 800 N.W.2d at 622 (quotation omitted); *see also State v. Stein*, 776 N.W.2d 709, 714-15 (Minn. 2010) (stating that in circumstantial evidence cases, the "circumstances proved must be consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of his guilt" (quotation omitted)). "In contrast to the deference given when identifying the circumstances proved, [this court] give[s] no deference to the fact finder's choice between reasonable inferences." *Id.* (quotation omitted). In order to sustain the conviction, the "[c]ircumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). "In assessing the inferences drawn from the circumstances proved, . . . it must also be true that there are no other reasonable, rational inferences that are inconsistent with guilt." *Hanson*, 800 N.W.2d at 622 (quotation omitted).

In this case, the circumstances presented at trial established that appellant lived at the house and that cocaine was discovered in her room and in pants belonging to her that were hanging in her closet. Although not substantial, this evidence, by itself, could

support a conclusion that appellant constructively possessed the cocaine. But the parties at trial agreed that this was a circumstantial evidence case, and appellant's theory at trial was that somebody else placed the cocaine in the pocket of appellant's pants after she left the house. Thus, under *Hanson*, we must "examine independently" the reasonableness of this inference. *See id.*

The circumstances established at trial to support the alternative inference raised by appellant include evidence that appellant had been partying with ten other people at her house the night before the cocaine was discovered in the pocket of her pants. The circumstances also establish that six of these individuals stayed the night at the house with appellant—one having occupied the same bedroom—and that these six people remained in the house for at least an hour after appellant left the house. The circumstances further establish that appellant's room was unlocked and open and that these six people had unfettered access to appellant's room. Moreover, the evidence establishes that these six individuals refused to exit the house earlier, knowing the police were waiting for them outside, and that when the six left the house, all were detained by police with guns drawn. Appellant's trial counsel capitalized on this evidence, insinuating that these six individuals were the type of people who would possess drugs. A logical conclusion from this evidence is that somebody other than appellant placed the cocaine in the pocket of appellant's pants. *See Black's Law Dictionary* 847 (9th ed. 2009) (defining "inference" as "[a] conclusion reached by considering other facts and deducing a logical consequence from them"). Thus, we conclude that the evidence here

clearly establishes a credible inference that is reasonable and is consistent with a hypothesis other than guilt.

The dissent argues that this inference is not reasonable because there was no evidence presented that any of these six individuals used or possessed cocaine, were detained for drug possession charges, were attempting to hide cocaine, or had motivation to frame appellant by planting cocaine in appellant's pants pocket. The dissent contends that without this evidence, the inference is based on sheer speculation or conjecture. But the lack of additional evidence does not make the alternative inference unreasonable or reliant upon conjecture. Rather, the circumstances proved remove the need to rely upon speculation to infer that somebody other than appellant may have placed the cocaine in the pocket of her pants that were hanging in the bedroom closet. We agree that without the circumstances proved at trial, it would be speculation to infer that because the cocaine was found in pants that appellant was not wearing, somebody else may have placed it in the pocket of the pants. But evidence that six individuals who were suspected of criminal offenses and had unfettered access to appellant's room after she left the house removes the conjecture and makes the inference reasonable. In fact, the additional evidence suggested by the dissent would simply be circumstantial evidence that could exonerate appellant.

Because we conclude that the alternative inference is reasonable, appellant's conviction can only be sustained if the state's "[c]ircumstantial evidence . . . form[s] a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of [appellant] as to exclude beyond a reasonable doubt any reasonable inference other than

guilt." *Al-Naseer*, 788 N.W.2d at 473. And because we conclude that the alternative theory is reasonable, we need not give "deference to the fact finder's choice between reasonable inferences." *Hanson*, 800 N.W.2d at 622. In considering the alternative theory, we note that "[t]he primary rule of evidence in a criminal case is that, in order to convict the accused, the jury must be satisfied beyond a reasonable doubt of his guilt, and the test is whether or not there is evidence sufficient to justify the jury in finding him guilty beyond a reasonable doubt." *Stein*, 776 N.W.2d at 714 (quoting *State v. Johnson*, 173 Minn. 543, 545-46, 217 N.W. 683, 684 (1928)). And although there are "[v]arious secondary rules relating to circumstantial evidence," the secondary rules revert back to the reasonable doubt rule that "if any one or more circumstances found proved are inconsistent with guilt, or consistent with innocence, that a reasonable doubt as to guilt arises." *Id.* (quotation omitted).

Here, although the cocaine was found in the pocket of appellant's pants, the evidence establishes that six partiers remained in the house after appellant left the house, and that these partiers had access to appellant's bedroom. And other than the fact that the cocaine was found in the pocket of her pants—pants she was not wearing—there is no further evidence linking appellant to the cocaine, such as fingerprints or DNA on the baggie containing the cocaine, or evidence that appellant had cocaine in her system or a history of using cocaine. As the dissent points out in concluding that the alternative theory is not reasonable, the evidence presented by the state to prove appellant's guilt is simply lacking one more piece of evidence to form the complete chain leading to guilt. The difference, however, is that the evidence to establish the alternative theory need only

make the inference reasonable, whereas the evidence to prove guilt must be established beyond a reasonable doubt. Finally, we note that the state did not allege shared possession and, therefore, the evidence presented needed to exclude beyond a reasonable doubt the reasonable inference that one of the six individuals in the house for more than an hour after appellant left put the drugs in the pocket of the pants. Considering the totality of the circumstances, we cannot conclude that the evidence presented excluded such alternative inference beyond a reasonable doubt.

Reversed.

HOOTEN, Judge (dissenting)

I respectfully dissent. The majority is correct that *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011), sets forth the heightened standard of review of a conviction based upon circumstantial evidence. While we must defer to the jury relative to proof of the circumstances proved at trial in "assessing the inferences drawn from the circumstances proved," we must determine "that there are no other reasonable, rational inferences that are inconsistent with guilt." *Id.* (quotations omitted). As explained by the court in *State v. Stein*:

> Even in cases based on circumstantial evidence, however, we have recognized that "the jury is in the best position to evaluate the evidence[,]" and we "will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture." *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998).
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> To successfully challenge a conviction based upon circumstantial evidence, a defendant must point to evidence in the record that is consistent with a rational theory other than his guilt. However, possibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable.

776 N.W.2d 709, 714 (Minn. 2010) (quotations omitted).

However, the majority opinion interprets this standard to require that the state prove there are no other possible inferences, whether based on fact or sheer speculation, inconsistent with guilt. The majority does not contest that there was substantial circumstantial evidence supporting the jury's verdict that appellant had constructive possession of the drugs found in the pocket of her pants, which were located in her bedroom closet. But, the majority reverses the verdict on the basis that there is

reasonable doubt as to whether there is a reasonable, rational inference that can be drawn from the facts that are inconsistent with appellant's guilt.

However, as recognized in *Stein*, "[o]ur cases have long distinguished between a review of the 'circumstances proved' based on the factual evidence, and the inferences to be drawn from those circumstances." 776 N.W.2d at 714. "By the term 'circumstances proved' is not meant every circumstance as to which there may be some testimony in the case, but only such circumstances that the jury finds proved by the evidence." *Id.* at 715 (quoting *State v. Johnson*, 173 Minn. 543, 545, 217 N.W. 683, 684 (1928)).

The only facts submitted to the jury regarding the alternative explanation for the presence of crack cocaine found in appellant's pants consisted of the following: (1) six other persons spent the night in appellant's home; (2) one of the six, her boyfriend, slept in appellant's room during the night; (3) the six other persons were in the home for one hour after appellant left the home and was detained by the police; and (4) the six other persons were detained by police when they eventually left the home. There was no evidence that any of these six persons used or possessed crack cocaine or that they were detained for drug-related charges. In fact, the undisputed evidence was that the police were present and eventually obtained a search warrant allowing them to search the home for guns and ammunition, not drugs. There was no evidence that any of the six persons, who were guests in appellant's home, were attempting to hide crack cocaine or any other drugs. There was no evidence that any of these six persons, knowing the police were outside, had some unsavory motivation to frame their host by planting crack cocaine in

the pocket of her jeans so that the drugs were visible to the police during the search for weapons and ammunition.

The critical aspect of our analysis is that the state must prove "that there are no other reasonable, rational inferences that are inconsistent with guilt." *Hanson*, 800 N.W.2d at 622. An "inference" is defined as "[a] conclusion reached by considering other facts and deducting a logical consequence from them." *Black's Law Dictionary* 781 (7th ed. 1999). Acceptance of appellant's alternative theory requires one to engage in conjecture and speculation, as it is not supported by any proven facts or inferences based upon proven facts, but is based solely upon multiple and unsubstantiated inferences. It is well settled that "[s]uch double inferences are too remote to constitute evidence." *Wesson v. U. S.*, 172 F.2d 931, 936 (8th Cir. 1949) (citations omitted).

> As said by the Supreme Court in *United States v. Ross*, 92 U.S. 281, 283–84, 23 L.Ed. 707: They are inferences from inferences; presumptions resting on the basis of another presumption. Such a mode of arriving at a conclusion of fact is generally, if not universally, inadmissible. No inference of fact or of law is reliable drawn from premises which are uncertain.

Id.

While convictions based upon circumstantial evidence are highly scrutinized by this court, such heightened scrutiny does not allow us to second-guess a jury based upon any possible envisioned scenario inconsistent with the state's theory of guilt. As the court recognized in *State v. Tscheu*, "possibilities of innocence do not require reversal of a jury verdict." 758 N.W.2d 849, 858 (Minn. 2008).

At trial, the jury had the unique opportunity to listen to all of the witnesses and the arguments of counsel, review the evidence, and evaluate the alternative theory inconsistent with appellant's guilt. After considering the proven circumstances and the reasonable inferences from those proven circumstances, it rejected the alternative theory that one of the six persons within the home planted the crack cocaine in appellant's pants in such a manner that it would be found and appellant would be arrested.

There is substantial evidence, including facts not mentioned by the majority, in support of the jury's verdict of guilt and the rejection of this alternate theory. At trial, appellant testified that after socializing with a number of persons at her home on the night prior to her arrest, including the six that had slept over, she fell asleep in her bedroom while still in her clothes. The next morning, around eleven o'clock, she was awakened in her bedroom by one of her house guests who told her that there were police in front of her house. She looked through the window and observed four or five policemen. Thinking that the police were there because of her neighbors across the street, she, without changing her clothes, walked outside to talk to the police to find out what was going on.

Once outside, she was detained, given her rights, and required to sit in the squad car with a policeman while he and other police formed a perimeter around her home. When questioned by police about who was present in the home, she, by her own admission, lied. According to the police, she initially denied that any other persons were present within the home. However, according to appellant, she told police that only her boyfriend was present, even though she was aware that five other persons spent the night at her home and were present in the house at the time of the interview.

While appellant admitted ownership of the pants and that the pants were found in the bedroom closet in the home where she lived, she denied that she owned the crack cocaine that was found in her pants by police. She also explained that, while she had seen the scale which could be used for measuring drugs in the kitchen, it was not her property. The jury, in finding appellant guilty, implicitly did not find this explanation credible.

The majority opinion infers, from the fact that six persons were present within the home, at least one of the six had crack cocaine on his or her person, and that he or she wished to hide it from police waiting outside the home. The majority additionally infers that even though the police sat outside the home for more than an hour, the best place that this person or persons could envision to hide or get rid of the drugs within the home, which presumably had toilets and crawl spaces, was to plant the crack cocaine in the pocket of appellant's pants in her bedroom closet in such a way that it was readily visible to the police when they searched for weapons and ammunition.

Upon being presented with this alternative explanation of how the crack cocaine ended up in appellant's pants, the jury rejected this theory as irrational and unreasonable. By doing so, the jury implicitly declined to engage in unsupported speculation and conjecture or base its analysis of the evidence upon multiple inferences upon inferences from unproven facts. In recognition of the jury's enhanced ability to judge the credibility of appellant and the witnesses, and because there is substantial evidence supporting the jury's verdict of guilt and the rejection of this alternative theory of guilt, we should not be substituting our own view of the evidence for that of the jury. I would affirm.