STATE OF MINNESOTA
IN COURT OF APPEALS
A11-297

State of Minnesota,
Respondent,

vs.

Michael Dale Stauffacher,
Appellant.

Filed November 21, 2011
Affirmed
Connolly, Judge

Rice County District Court
File No. 66-CR-09-2001

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

G. Paul Beaumaster, Rice County Attorney, Benjamin Bejar, Assistant County Attorney, Faribault, Minnesota (for respondent)

Joel A. Fisher, Smith Fisher, Richfield, Minnesota; and

William Gatton, Minneapolis, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Hudson, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant challenges his convictions on two counts of felony receiving stolen property. Appellant argues that: (1) the district court erred in denying his motion to suppress the evidence because the search warrant issued for his residence lacked probable cause to believe stolen items would be found there; (2) the district court erred by not suppressing all of the items seized during the execution of the search warrant because the search substantially exceeded the scope of the warrant and was conducted with flagrant disregard for the terms of the warrant; and (3) there was insufficient evidence to support his conviction of receiving stolen property in excess of $5,000 because the jury lacked sufficient evidence to find that he constructively possessed the stolen appliances found in his residence. Because the district court did not err in finding that the warrant was supported by probable cause and in not suppressing all of the items seized in the execution of the search warrant, and because there was sufficient evidence to support appellant's conviction, we affirm.

FACTS

In May 2009, a burglary of a residence under construction in Credit River Township, Scott County was reported to Scott County authorities. One of the items reported stolen was a new stainless steel custom-ordered Electrolux cooktop, valued at approximately $1,300. The victim was able to provide police with the exact model and serial number of the stolen cooktop. A Scott County Sheriff's Detective began an

investigation by checking online pawn shop databases and Craigslist ads, but was unable to locate any similar items for sale.

On May 21, the victim reported that an identical Electrolux cooktop was being offered on Craigslist. The detective viewed the ad and noted that it specified the exact model number of the stolen custom cooktop, was listed as "never been used," "cash only," bore a post date of "May 21, 2009, at 2:25 p.m.," and was located in Farmington, near Credit River Township.

Posing as a contractor interested in purchasing the cooktop, the detective arranged to buy the cooktop for $1,000 and to meet with the seller on the evening of May 27 in a restaurant parking lot. The detective arrived in plain clothes and observed a van parked in the back of the parking lot with a male driver, later identified as appellant, Michael Dale Stauffacher, in the driver's seat, and a female, later identified as K.A.C., in the passenger's seat. Appellant showed the detective the cooktop, and the detective was able to confirm that the serial number matched that of the stolen cooktop.

After appellant helped the detective load the cooktop into the detective's vehicle, the detective identified himself as a police officer and told appellant and K.A.C. that the cooktop was stolen property. Appellant appeared to become very nervous, with the color draining from his face, backing away from the officer, and needed to be escorted to the restroom. The detective detained appellant by handcuffing him in the front seat of his truck and began asking questions about the cooktop. Appellant gave the detective his address and indicated that he had stored the cooktop in the garage of his home (later identified as K.A.C.'s home, where appellant also resided) for about ten days before he

loaded it into the van that day. After speaking with appellant and K.A.C., the detective released them pending further investigation.

On May 28, the detective spoke with the victim and was informed that the victim's brother-in-law had seen and saved other similar Craigslist ads posted from Farmington, posted within 30 minutes or so and nearly identical in format to the stolen cooktop ad, offering "still in box" items for "cash only." Some of the ads had recently been deleted. While viewing the links, the detective recognized some of the items, including a 26" Samsung LCD television, as also having been reported as stolen from another residence under construction in Credit River Township. The detective began applying for a warrant to search appellant's van and residence for the 26" Samsung LCD television and a Kenmore Beverage Center, as well as for computers, cameras, and other equipment that could have been used in creating the Craigslist ads.

While in the process of obtaining the search warrant, the detective called appellant to let him know that police officers were at his address and would like him to come home. Appellant replied that he was near the airport and could not come back to the house, but a few minutes later, the detective observed appellant approaching the home on foot. The detective informed appellant that he was applying for a search warrant and asked appellant if there was any more stolen property inside the home. Appellant replied that he was going to have to think about that and began to walk away. Shortly thereafter, the detective obtained the search warrant and Northfield police assisted the Scott County detectives in executing the search warrant.

The officers seized computers and cameras, but did not find either the 26" Samsung LCD television or the Kenmore Beverage Center named in the warrant. The officers did, however, observe numerous items in plain view that they recognized as having been reported stolen from residential construction sites in Northfield, and seized those items they suspected of having been stolen. The items seized by the police included: (1) an LG side-by-side stainless steel refrigerator valued at $1,800; (2) two Liebherr wine cabinet chillers, valued at $1,659 and $1,749, respectively; (3) nine bundles of wood flooring; (4) a General Electric oven; (5) a microwave oven; (6) a 19" Samsung television; (7) a Dyson vacuum cleaner; and (8) an Omni wall mount for an LCD television. The serial numbers of the refrigerator and wine cabinets matched those of stolen appliances reported to the police.

Appellant was charged by amended complaint with one count of felony receiving stolen property over $1,000 but less than $5,000 for the custom Electrolux cooktop, in violation of Minn. Stat. §§ 609.53, subd. 1 and .52, subd. 3(3)(a) (2008), and one count of felony receiving stolen property over $5,000 for the other appliances, electronics, household goods, and wood flooring, in violation of Minn. Stat. §§ 609.53, subd. 1 and .52, subd. 3(2) (2008).

Appellant moved to suppress all evidence seized from his residence. After a pretrial omnibus hearing and appellant's motion to reconsider, the district court found that the complaint and search warrant were supported by probable cause, but suppressed the General Electric oven, microwave oven, bundles of flooring, Omni wall mount, and Dyson vacuum cleaner. The district court admitted the LG refrigerator, the two wine

cabinets, and the 19" Samsung television. Following trial, the jury found appellant guilty of both counts of receiving stolen property. This appeal follows.

D E C I S I O N

Appellant raises three issues on appeal. First, he challenges the district court's determination that the search warrant was supported by probable cause. While appellant acknowledges that the warrant may have supported the conclusion that he was involved in posting the other Craigslist ads, appellant argues that the information in the warrant application did not provide a substantial basis to conclude that there was probable cause to believe that the stolen items would be found at the house. In the supporting affidavit, the detective stated that appellant told him that he had stored the Electrolux cooktop at a residence in Northfield (the residence to be searched). Appellant argues that, because the affidavit did not indicate that appellant was *living* at that address or why appellant had been storing the cooktop at that location, the affidavit did not support the conclusion that appellant would keep other stolen items or computers at the same location.[1]

The United States and Minnesota Constitutions require that search warrants be supported by probable cause. U.S. Const. amends. IV, XIV, § 1; Minn. Const. art. I, § 10. When reviewing a district court's probable-cause determination in issuing a search warrant, this court grants the district court "great deference" and limits its review to considering "whether the issuing judge had a substantial basis for concluding that

[1] Although the detective had been informed that appellant was residing at the Northfield residence, this information was not included in the application for the search warrant. "[I]n examining the issuing judge's basis for finding probable cause, we look only to information presented in the affidavit and not to information that the police possessed but did not present in the affidavit . . . ." *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005).

probable cause existed." *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001). This deferential standard of review supports the strong constitutional preference for searches conducted pursuant to a warrant. *Id.* at 805. Doubtful or marginal cases on review are to be resolved in favor of the preference accorded to search warrants. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985).

Probable cause to search exists when there is a "fair probability that contraband or evidence of a crime will be found in a particular place." *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). "Elements bearing on this probability include information linking the crime to the place to be searched and the freshness of the information." *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998). We examine the totality of the circumstances to determine whether there were "specific facts to establish a direct connection between the alleged criminal activity and the site to be searched." *Carter*, 697 N.W.2d at 205 (quotation omitted).

Here, police sought a warrant to search a particular Northfield residence. The search warrant application requested authority to search the residence for a Samsung television and Kenmore Beverage Center that had been posted for sale on Craigslist in ads similar to the ad appellant posted to sell the stolen Electrolux cooktop. The warrant application also sought authority to search the residence for computers, cameras, and related equipment that could have been used to create the Craigslist postings. The supporting affidavit stated that appellant told the affiant detective that "he had stored the stolen cooktop in the garage at [the Northfield residence] until he loaded it in the van [to sell to the undercover detective]." Appellant asserts that, because the affidavit did not

state that appellant lived at the residence, there was not a substantial basis for the issuing judge to find probable cause. We disagree.

The warrant-issuing judge must consider the totality of the circumstances and determine whether the facts suggest a connection between the criminal activity and the place to be searched. *Carter*, 697 N.W.2d at 205 (quotation omitted). In determining whether there is a nexus between the criminal activity and the place to be searched, the issuing court must consider "'the type of crime, the nature of the items sought, the extent of the suspect's opportunity for concealment, and the normal inferences as to where the suspect would normally keep the items.'" *State v. Harris*, 589 N.W.2d 782, 788 (Minn. 1999) (quoting *State v. Pierce*, 358 N.W.2d 672, 673 (Minn. 1984)). Here, based on the totality of the circumstances, there was sufficient probable cause for the district court to find a "fair probability" that evidence of a crime would be found at the Northfield residence. Like the stolen cooktop that appellant admitted to storing at the Northfield residence, the stolen items sought under the search warrant were large appliances. The similarity of the items created a reasonable inference that appellant had access to, and could conceal and store such items at, the Northfield residence, even if the affidavit did not specify that appellant lived at that residence. Moreover, appellant's admission that he had stored the stolen cooktop in the garage of the residence until he loaded it into the van to sell to the detective provided the court with fresh information linking the crime to the place to be searched.

Appellant attempts to compare this case to *Souto*. 578 N.W.2d 744. *Souto* involved a search warrant application to search a woman's residence. *Id.* at 748. The

affidavit sought to establish that Souto was a drug trafficker, and therefore likely to have drugs or information pertaining to drug deals in her residence, based on the following information: (1) a package containing drugs was mailed to her from California ten months prior, although Souto never received the package; (2) an informant stated that a suspected drug dealer received his packages of methamphetamine from a woman in California; (3) at parties six months prior to the execution of the search warrant, Souto had used drugs; (4) there were phone calls between Souto's residence and a known drug dealer; and (5) the affiant "knew" that Souto was involved in wide-scale possession and/or distribution of drugs. *Id.* As in this case, the warrant application in *Souto* did not state whether Souto lived at or frequented the residence to be searched. *Id.* at 747. However, the court did not address this failure in its decision. Instead, the court focused on the fact that the search warrant application failed to establish a nexus between Souto's alleged drug activity and her residence. *Id.* at 745. Unlike *Souto*, in this case the affidavit established a clear nexus between the criminal activity and the residence to be searched; the affidavit clearly stated that appellant had previously stored stolen items at the residence.

The warrant-issuing court is granted great deference in its determination of probable cause. Here, the issuing judge had a substantial basis for concluding that stolen items listed for sale on Craigslist would be found at the Northfield residence where appellant admitted to previously storing a stolen item. Although the affidavit did not state that appellant lived at the Northfield residence, there was a substantial basis for finding a fair probability that evidence of a crime would be found there because appellant

admitted that he had stored the stolen cooktop at that residence. Therefore, the district court did not err in finding that there was probable cause to support the issuance of a warrant.

Next, appellant argues that the district court erred by not suppressing all of the items seized in the execution of the warrant. Prior to the omnibus hearing, appellant moved to suppress all evidence seized from his place of residence on the ground that the search exceeded the scope of the warrant. In a highly detailed and well-written opinion, the district court determined that blanket suppression of all seized items was not necessary, though the court did order suppression of five of the nine items of allegedly stolen property, finding no probable cause for the seizure of those items. Appellant argues that the district court erred in not suppressing all of the seized items because the search substantially exceeded the scope of the warrant and there was flagrant disregard for the terms of the warrant. We disagree.

When a defendant contests the admissibility of evidence on federal constitutional grounds, "a pretrial fact hearing on the admissibility of the evidence will be held" and the district court will rule on the admissibility of evidence "[u]pon the record of the evidence elicited at the time of such hearing." *State ex. rel. Rasmussen v. Tahash*, 272 Minn. 539, 554, 141 N.W.2d 3, 13 (1966). "When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). This court accepts the district court's

underlying factual determinations unless they are clearly erroneous. *State v. Lemieux*, 726 N.W.2d 783, 787 (Minn. 2007).

"Generally, the seizure of some items beyond those specified in a search warrant does not alone require suppression of those items lawfully seized." *State v. Bonynge*, 450 N.W.2d 331, 337 (Minn. App. 1990) (citations omitted), *review denied* (Minn. Feb. 21, 1990). Only where officers demonstrate a flagrant disregard for the limitations of the terms of a search warrant, making an otherwise valid search an impermissible general search, is suppression of all evidence seized during the search required. *Marvin v. United States*, 732 F.2d 669, 674-75 (8th Cir. 1984); *see also Bonynge*, 450 N.W.2d at 337. However, the flagrant disregard standard applies only where the government exceeded the scope of the search in terms of the places searched; not in cases where the government indulged in excessive seizures. *United States v. Tenerelli*, 614 F.3d 764, 771 (8th Cir. 2010), *cert. denied*, 131 S. Ct. 1589 (2011). Where police officers seize items but do not flagrantly disregard the terms of the warrant by unreasonably searching unauthorized places, there is no requirement that the lawfully seized evidence be suppressed. *Id.*

Because police officers here did not unreasonably search unauthorized places, there was no flagrant disregard for the terms of the warrant so as to require blanket suppression. The remedy of blanket suppression is simply inapplicable in this case. Moreover, even if the court were to consider blanket suppression for excessive seizures, appellant has failed to show that the remedy of blanket suppression is warranted. The Tenth Circuit, in the case cited by appellant, recognized that "the extreme remedy of

blanket suppression should only be imposed in the most 'extraordinary' of cases" which are "exceedingly rare" and noted the "dearth of appellate cases authorizing blanket suppression." *United States v. Foster*, 100 F.3d 846, 852 (10th Cir. 1996).

In considering appellant's motion to suppress, the district court properly determined that not all of the evidence seized was inadmissible. In determining admissibility, the court found that four of the items seized—the refrigerator, the two wine cabinets, and the 19" television—were admissible, but that five of the items seized—the General Electric oven, the microwave oven, the bundles of flooring, the wall mount for an LCD television, and the Dyson vacuum cleaner—were inadmissible. In its determination, the court relied on the "plain-view" exception to the warrant requirement and focused on whether or not the items were readily identifiable as a particular stolen good. *See State v. Bradford*, 618 N.W.2d 782, 795 (Minn. 2000) (noting that items not listed in a search warrant may be seized if in plain view and if there is probable cause to believe they are "immediately apparent evidence of crime").

Under the plain-view exception to the warrant requirement, the police may seize, without a warrant, an object they believe to be the fruit or instrumentality of a crime where: (1) the police are legitimately in the position from which they view the object; (2) they have a lawful right of access to that object; and (3) the object's incriminating nature is immediately apparent. *State v. Zanter*, 535 N.W.2d 624, 631 (Minn. 1995) (applying plain-view exception to seizure of items not listed in the search warrant). Because we hold that the search warrant was supported by probable cause, the police in this case were legitimately in a position (inside the residence) from which they viewed

the stolen property and therefore had lawful right of access to those stolen items. The only issue remaining in determining whether the police properly seized the allegedly stolen items without a warrant is whether the property's incriminating nature was immediately apparent.

In order to seize items in plain view, police must have probable cause. *Id.* "The police have probable cause to seize items in plain view when 'the facts available to the officer would warrant a [person] of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of crime.'" *Id.* at 632 (quoting *Texas v. Brown*, 460 U.S. 730, 742, 103 S. Ct. 1535, 1543 (1983)) (quotations omitted). The incriminating nature of stolen property may be deduced from police observations of the totality of the circumstances surrounding the property's possession. *State v. Metz*, 422 N.W.2d 754, 757 (Minn. App. 1988). To determine whether the incriminating nature of the evidence is immediately apparent, "police may consider such things as any background information they have which casts light on the nature of the property . . . ." *State v. DeWald*, 463 N.W.2d 741, 747 (Minn. 1990) (quotation omitted).

In differentiating between the seized items that were admissible and those that were inadmissible, the district court focused on whether or not the items were readily identifiable by police as a particular stolen good. The four items held to be admissible, the refrigerator, two wine cabinets, and 19" television, were all in plain view and their incriminating nature was immediately apparent to police. The refrigerator still had plastic shipping packaging on it and was recognized as a stolen item. The model and serial numbers were visible and confirmed against those of the stolen unit. The two wine

cabinets had also been reported as stolen, and police recognized and matched the manufacturer and model numbers before moving the cabinets to confirm the serial numbers. While moving the wine cabinets to check the serial numbers constituted a search, at the time of the search police already had probable cause to seize the cabinets because the totality of the circumstances indicated their incriminating nature. Police are allowed to handle objects to determine serial numbers where there is probable cause to believe the items are stolen. *Metz*, 422 N.W.2d at 758. Finally, the 19" Samsung television had also been reported as stolen. The serial number had been removed, but the model number matched that of the stolen television. The fact that the television's serial number had been removed tended to show that the property was stolen. This fact, combined with the fact that a television of the same model had been reported as stolen from the same residence as other items discovered in the home, suggested the incriminating nature of the television and gave police probable cause to seize it.

The district court found that the other five items—the General Electric oven, microwave oven, wood flooring, television wall mount, and Dyson vacuum cleaner—were improperly seized, and therefore inadmissible. With regard to the General Electric oven, the state conceded that it was improperly seized because it was mistakenly identified as a stolen item. Appellant argues that police were reckless in seizing this oven because the stolen oven was a wall-mounted unit, while the seized oven was a free-standing unit. However, a mistaken seizure cannot be the basis for invalidating the entire warrant and imposing blanket suppression. *United States v. Uzenski*, 434 F.3d 690, 708 (4th Cir. 2006); *Bonynge*, 450 N.W.2d at 337.

The microwave oven was initially held to be admissible, but at the omnibus hearing the district court granted defendant's motion to suppress. The court found that, because the microwave did not have a serial number or other corroborating information that made its incriminating nature immediately apparent, the microwave should be suppressed. The court also suppressed the bundles of wood flooring because there was no identifying information that would have made the incriminating nature of the flooring immediately apparent to police. Similarly, the television wall mount did not have identifying information, such as a model or serial number, which would have allowed the police to identify the wall mount as the one stolen. Finally, the vacuum cleaner was found in a closet and there was nothing about the vacuum's location or appearance to suggest an incriminating nature.

Appellant argues that the trial court's suppression of five of the nine items seized demonstrates that the police executed the search warrant so recklessly that all of the seized items should be suppressed. Appellant points out that the officers executing the warrant ignored advice from an assistant county attorney who advised them during the search that if the officers planned on moving items not listed in the search warrant, that they should obtain a second search warrant. Appellant also notes that, while the district court did not order blanket suppression, the court did not approve of the procedure the police used, concluding that the most appropriate procedure would have been to procure a second search warrant. Despite these objections, the four items of stolen property were properly admitted because the police had probable cause to seize the items in plain view where the items' incriminating nature was immediately apparent. Because the police had

probable cause to seize those four items, and did not flagrantly disregard the limits of the search warrant, the district court properly denied appellant's motion to suppress all of the items seized in the execution of the search warrant.

Finally, appellant asserts that the state did not present sufficient evidence to support his conviction of receiving stolen property in excess of $5,000 in violation of Minn. Stat. § 609.53, subd. 1. At trial, the state attempted to prove by circumstantial evidence that appellant possessed or constructively possessed the items of stolen property, with a combined value over $5,000, and that he knew or had reason to know that the property was stolen. Appellant argues that the circumstantial evidence presented to the jury was insufficient to support his conviction. Specifically, appellant argues that he did not have exclusive control over the stolen items because he lived at the residence with K.A.C., the homeowner, and that there is insufficient evidence that he exercised dominion and control over the stolen items because he was a mere resident of the home. He submits that the evidence in the case does not exclude, beyond a reasonable doubt, any reasonable inference other than guilt.

In reviewing a conviction for sufficiency of the evidence, this court must determine "'whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.'" *Harris*, 589 N.W.2d at 791 (quoting *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989)). In doing so, this court assumes that the jury believed the state's witnesses and disbelieved contrary evidence. *Id.* On review, we are limited to determining whether the jury could

reasonably conclude that the appellant was guilty based on the facts in the record and legitimate inferences made from those facts. *Id.*

To find a defendant guilty of receiving stolen property, the state must prove beyond a reasonable doubt that the defendant received, possessed, transferred, bought, or concealed property, knowing or having reason to know the property was stolen. Minn. Stat. § 609.53, subd. 1 (2010). To obtain a conviction under Minn. Stat. § 609.53, subd. 1, the state must establish either actual or constructive possession of stolen property. *State v. Peterson*, 375 N.W.2d 93, 95 (Minn. App. 1985). Because this case involved large appliances, actual possession is not at issue; the state needed to prove constructive possession. To prove constructive possession, the state must prove that: (1) the police found the property in a place under appellant's exclusive control to which other people did not normally have access; or (2) if found in a place to which others had access, there is a strong probability, inferable from the evidence, that appellant was at the time consciously exercising dominion and control over it. *Id.* This court looks to the totality of the circumstances in assessing whether or not constructive possession has been proved. *State v. Munoz*, 385 N.W.2d 373, 377 (Minn. App. 1986).

Because the jury is in the best position to evaluate circumstantial evidence, a jury verdict is entitled to deference. *State v. Smith*, 619 N.W.2d 766, 769 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). Circumstantial evidence is entitled to the same weight as other evidence. *State v. Denison*, 607 N.W.2d 796, 799 (Minn. App. 2000), *review denied* (Minn. June 13, 2000). However, convictions based on circumstantial evidence merit stricter scrutiny. *Id.* This heightened scrutiny requires us to consider

"whether the reasonable inferences that can be drawn from the circumstances proved support a rational hypothesis other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). The circumstances proved 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." *Id.* (quotation omitted).

Here, the circumstances formed a chain that led directly to appellant's guilt so as to exclude any reasonable inference other than guilt. The totality of the circumstances presented by the state led the jury to reasonably infer that appellant constructively possessed the stolen appliances, even if they were not under his exclusive control. Appellant was living in a home owned and lived in by K.A.C., so at least one other person had regular access and control over the property. Appellant argues that, because he did not have exclusive control over the residence, he could not constructively possess the stolen appliances. However, "constructive possession need not be exclusive, but may be shared." *Smith*, 619 N.W.2d at 770 (citation omitted); *see also Denison*, 607 N.W.2d at 800 (noting that constructive possession of a controlled substance may be alone or with others). The stolen appliances were seized from common areas of the home, to which it was reasonable to assume that both appellant and K.A.C. had access, including the kitchen and finished basement. The appliances were plugged in and being used.

Moreover, the jury also heard evidence of appellant's nervous behavior when the detective confronted him about the stolen nature of the cooktop. The jury heard evidence that appellant admitted to the detective that he lived at the Northfield residence and that

he had stored the stolen cooktop in the garage of that residence for several days before *he* loaded it into the van to meet with the detective. Further, in response to a call from the detective prior to executing the search warrant, appellant acted suspiciously, returning to the residence on foot and, when asked if there was more stolen property in the home, he stated that he would have to think about it. Finally, the jury heard evidence that it was appellant who opened the garage door to permit police to enter. The totality of the circumstances presented to the jury tended to demonstrate that, because appellant shared access to the home with K.A.C., he jointly exercised dominion and control over the residence, thereby constructively possessing the stolen appliances. The circumstantial evidence presented to the jury formed a complete chain that led so directly to appellant's guilt as to exclude beyond a reasonable doubt any reasonable inference other than guilt.

Appellant argues that his mere presence as a resident of the home and his access to the stolen property items is not enough to infer constructive possession, citing *State v. Slifka*. 256 N.W.2d 90 (Minn. 1977). In *Slifka*, the court found no probable cause for arresting and searching a car passenger where the driver had violated the open-bottle law and where there was marijuana found in the glove compartment. *Id.* at 91. *Slifka* is distinguishable from the present case. In *Slifka*, the car where the marijuana was found in the glove compartment belonged to the driver, who was in control of the car. *Id.* Here, appellant shared control of K.A.C.'s home because he lived with her. Moreover, the Minnesota Supreme Court has since clarified the rule in *Slifka*, highlighting that *Slifka* goes to the issue of search and/or arrest of a person merely because they are present, but does not preclude the search of containers within a vehicle (even if they belong to a

person who is merely present). *State v. Bigelow*, 451 N.W.2d 311, 313 (Minn. 1990). Similarly, in this case, police searched items of property in the home they believed to have been stolen, but did not conduct a search of appellant's person merely because he was present at the home. The facts in this case more closely resemble those in *Denison* and *State v. Lozar*. In *Denison*, this court rejected the appellant's claim of passive presence in the residence and affirmed a finding of constructive possession of a controlled substance found in areas where appellant likely exercised joint dominion and control. 607 N.W.2d at 800. Similarly, in *Lozar*, this court found sufficient evidence to convict appellant of possession and intent to distribute when large quantities of packaged marijuana were found in the home and garage that appellant shared with her husband. 458 N.W.2d 434, 441 (Minn. App. 1990), *review denied* (Minn. Sept. 28, 1990).

Taken as a whole, the circumstantial evidence presented by the state makes appellant's theory—that he was a mere resident of the Northfield home and did not constructively possess the large stolen appliances found in the home's common areas—unreasonable. When viewed in a light most favorable to the conviction, the evidence presented by the state was sufficient for the jury to reasonably infer that appellant constructively possessed the stolen appliances found in the home.

In conclusion, the district court did not err in finding that the search warrant was supported by probable cause. Despite the fact that the affidavit did not state that appellant lived at the Northfield address, the affidavit contained sufficient information to allow the issuing judge to find a fair probability that evidence of a crime would be found there because the affidavit contained information that appellant had previously stored

stolen property at that residence. The district court also properly denied appellant's motion to suppress all of the evidence seized in the execution of the search warrant. The district court properly admitted four of the nine items of allegedly stolen property because police had probable cause to seize those items in plain view where the items' incriminating nature was immediately apparent. Finally, the state presented sufficient evidence to support appellant's conviction of receiving stolen property in excess of $5,000. The evidence presented was sufficient for the jury to reasonably infer that appellant constructively possessed the stolen appliances found in the home.

Affirmed.