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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0456**

State of Minnesota,
Respondent,

vs.

Alexander Norwood,
Appellant.

**Filed June 17, 2008
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 06055462

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Considered and decided by Kalitowski, Presiding Judge; Peterson, Judge; and
Harten, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Alexander Norwood challenges his conviction of felon in possession of a firearm, arguing that (1) the evidence was insufficient to prove he possessed a gun and (2) the district court abused its discretion in denying his motion for a mistrial. We affirm.

DECISION

Appellant argues that the evidence presented to the jury was insufficient to establish that he actually or constructively possessed a firearm. We disagree.

A challenge to the sufficiency of the evidence requires “a very thorough analysis of the record” to determine whether the evidence was sufficient to permit the verdict. *State v. Spann*, 574 N.W.2d 47, 54 (Minn. 1998). We assume that the jury believed the state’s witnesses and rejected any contrary evidence. *State v. Jackson*, 726 N.W.2d 454, 460 (Minn. 2007).

Minn. Stat. § 624.713 (2006) prohibits certain persons from possessing firearms. The parties stipulated that appellant was prohibited from possessing a firearm. Accordingly, the only issue for the jury at trial was whether the possession did, in fact, occur. *See* Minn. Stat. § 624.713, subd. 2(b). Under the statute, possession can be actual or constructive. *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). Actual possession involves “direct physical control.” *Jacobson v. Aetna Cas. & Sur. Co.*, 233 Minn. 383, 388, 46 N.W.2d 868, 871 (1951). Constructive possession of an item can be established in two ways. The state can show that the item was in a place under the defendant’s “exclusive control to which other people did not

normally have access.” *State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975). Alternatively, if the item was in a place to which others had access, the state can show that there is a strong probability that the defendant was “at the time consciously exercising dominion and control over it.” *Id.* The purpose of constructive possession is to include within possession statutes those cases “where the inference is strong that the defendant at one time physically possessed the [item] and did not abandon his possessory interest in the [item] but rather continued to exercise dominion and control over it up to the time of the arrest.” *Id.* at 104-05, 226 N.W.2d at 610.

Circumstantial evidence is “based on inference and not on personal knowledge or observation.” *Black’s Law Dictionary* 595 (8th ed. 2004). This court will affirm the jury’s verdict “only if the circumstantial evidence forms a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt.” *State v. Laine*, 715 N.W.2d 425, 430-31 (Minn. 2006) (quotation omitted); *see also State v. Anderson*, 379 N.W.2d 70, 75 (Minn. 1985). Because a jury is generally in the best position to evaluate circumstantial evidence, its verdict is entitled to due deference. *State v. Berndt*, 392 N.W.2d 876, 880 (Minn. 1986).

Here, there is sufficient evidence to sustain the jury’s verdict. The jury heard appellant’s girlfriend testify that appellant was holding a gun the morning he was arrested while they were arguing. That testimony, if believed, establishes that appellant had “direct physical control” over, or actual possession of, the firearm. *See Jacobson*, 233 Minn. at 388, 46 N.W.2d at 871. But even if the jury discredited the testimony of

appellant's girlfriend, there was circumstantial evidence that appellant constructively possessed the firearm. In assessing constructive possession, proximity is an important consideration. *State v. Cusick*, 387 N.W.2d 179, 181 (Minn. 1986). A defendant may constructively possess a firearm if he placed the firearm where it was discovered. *Salcido-Perez v. State*, 615 N.W.2d 846, 848 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000). Here, a police officer testified that when appellant saw him appellant reached behind the refrigerator. And after the officer had drawn his weapon and repeatedly ordered appellant to raise his hands, appellant hesitated to do so. The officer further testified that when officers looked behind the refrigerator where appellant had reached, they found a gun that was clean while its surroundings were "dirty" and "dusty." We conclude that, based on this evidence, it was reasonable for the jury to infer that appellant possessed the firearm and placed it behind the refrigerator, where it was later discovered.

II.

Appellant contends that the district court abused its discretion by denying appellant's motion for a mistrial. Specifically, appellant argues that there was a reasonable probability that the police officer's testimony that appellant "had a substance on him" affected the verdict. We disagree.

We review a denial of a motion for a mistrial for an abuse of discretion. *State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003). The district court is in the best position to evaluate whether prejudice has occurred warranting a mistrial. *State v. Marchbanks*, 632 N.W.2d 725, 729 (Minn. App. 2001). A district court should deny a motion for a

mistrial unless there is a reasonable probability that the outcome of the trial would have been different had the event that prompted the motion not occurred. *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006).

The Minnesota Supreme Court recently held that even though an officer's reference during his testimony was "extremely troubling" and attributable to the prosecutor, because the reference was brief and because the district court promptly sustained the defense's objection and issued a curative instruction the district court's refusal to declare a mistrial was within its discretion. *State v. Mahkuk*, 736 N.W.2d 675, 689 (Minn. 2007). Here, there is no suggestion that the officer's inappropriate reference to "a substance" is attributable to the prosecutor. Moreover, the district court quickly struck the reference from the record and offered to give a curative instruction, which the defense declined. And finally we note that the reference to a substance, although improper, was ambiguous and not particularly prejudicial. We thus conclude that there is no reasonable probability that the substance reference affected the jury's verdict, and the district court did not abuse its discretion in denying appellant's motion for a mistrial.

Affirmed.