STATE OF MINNESOTA
IN COURT OF APPEALS
A10-308

State of Minnesota,
Respondent,

vs.

Allen Wayne Nagle,
Appellant.

Filed January 18, 2011
Affirmed
Connolly, Judge

Scott County District Court
File No. 70-CR-09-7078

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

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Melissa Sheridan, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Klaphake, 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 the sufficiency of the evidence underlying his convictions of misdemeanor receiving stolen property in violation of Minn. Stat. § 609.53, subd. 1

(2008); felony theft of a motor vehicle in violation of Minn. Stat. § 609.52, subd. 2(17) (2008); and felony fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2008). He also raises, pro se, three additional arguments. Because we conclude that the evidence was sufficient to sustain appellant's convictions and that his pro se arguments are without merit, we affirm.

FACTS

Early in the evening of March 28, 2009, D.B. and his wife returned to find their home in disarray. A back window was broken and had pry marks on it. D.B.'s wedding band, coin collection, Olympic stamp collection, and high-school ring, which was engraved with his initials, were gone. His wife was missing some of her jewelry, including pearl earrings and gold rings. Their Lincoln Towncar was no longer in their driveway. D.B. called the police and reported the crime.

The next day, Prior Lake Police Officer Craig Johnson ran a routine, license-plate check on a Lincoln Towncar he observed near Mystic Lake Casino and learned that the car had been stolen. Officer Johnson followed the car into the parking ramp, blocked it in a parking space, and held the car's driver and passenger at gunpoint until Prior Lake Officers Adam Boser and Daniel Olson arrived at the scene. Appellant Allen Wayne Nagle was subsequently identified as the driver, and C.C. as his passenger.

Officer Johnson searched C.C.'s purse and found a glass pipe used to smoke methamphetamine. He also removed a heavy, green backpack from the back seat and heard what he thought might be coins rattling inside. He opened the backpack and found coins, foreign currency, stamps, jewelry, and a checkbook in the name of another woman.

Officer Boser searched the car and found a glass pipe used to smoke methamphetamine under the driver's seat, where appellant had been sitting. Officer Olson also assisted in searching the car and found a plastic baggie containing methamphetamine between the front seats where appellant and C.C. had been sitting.

Officer Johnson observed that the back passenger window of the car was smashed. He asked appellant about the car; appellant said that he got the car from a friend, whom he did not identify. When asked about the backpack, appellant did not respond.

Officer Boser searched appellant and found a plastic bag with 46 diamond-shaped gemstones, 2 blue gemstones, various coins, and a gold ring in appellant's pockets.

Appellant was ultimately charged with misdemeanor receiving stolen property under Minn. Stat. § 609.53, subd. 1; felony theft of a motor vehicle under Minn. Stat. § 609.52, subd. 2(17); and felony fifth-degree possession of a controlled substance under Minn. Stat. § 152.025, subd. 2(1).

At his bail hearing, appellant told the district court that C.C. did not know about any of the items in the car:

> May I say something? This lady that I was picked up with, she has no knowledge of anything that was in that car. She has no knowledge of any of that. Just so you all know. Someone gave me that car. I'm just trying to make it clear she had no knowledge of what was in that car.

At appellant's jury trial, D.B. identified the car appellant was driving as the car that had been stolen from his driveway and the ring found in appellant's pocket as his high-school ring engraved with his initials. D.B. also identified many of the coins, stamps, jewelry, and cash in the backpack as items that had been taken from his home. In

addition to calling D.B., the state also called Officers Johnson, Boser, and Olson as well as a Bureau of Criminal Apprehension scientist. The state introduced the statement made by appellant at his bail hearing.

Appellant did not testify at trial. He called K.B., his girlfriend, who testified that she was with him at his residence from approximately 11:00 p.m. on March 28 until approximately 5:00 p.m. on March 29, when her roommate, R.M., came to pick up her and appellant, and that she and R.M. dropped appellant off at another house. R.M. testified that she picked up appellant and K.B. and dropped appellant off at another house and that appellant came to K.B.'s house around 10:00 p.m. on March 29 to drop off K.B.'s cell phone.

In his closing argument, appellant asserted that a friend gave him the car and appellant did not know or have any reason to know that the car was stolen or that there were drugs in it.

The jury convicted appellant on all three counts. Appellant was sentenced as a career offender to a prison term of 42 months for his conviction of theft of a motor vehicle and a concurrent prison term of 21 months for the fifth-degree-possession conviction. This appeal follows.

D E C I S I O N

I. The evidence was sufficient to show beyond a reasonable doubt that appellant committed the charged crimes.

Appellate review of the sufficiency of the evidence to support a conviction "is limited to a painstaking analysis of the record to determine whether the evidence, when

viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). When considering the evidence in the light most favorable to the jury's verdict, this court "assum[es] 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 for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that a defendant was proven guilty of the offense charged." *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted). "[T]he [s]tate's burden is to not remove *all* doubt, but to remove all *reasonable* doubt." *State v. Hughes*, 749 N.W.2d 307, 313 (Minn. 2008).

"A conviction based on circumstantial evidence receives stricter scrutiny than a conviction based on direct evidence." *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010) (plurality opinion). Although warranting stricter scrutiny, circumstantial evidence "is entitled to as much weight as any other kind of evidence so long as the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994) (quotation omitted). "'Circumstantial 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.'" *Stein*, 776 N.W.2d at 714 (quoting *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002)). "[T]he inquiry is not simply whether the inferences leading to guilt are reasonable. . . . [I]t must

also be true that there are no other reasonable, rational inferences that are inconsistent with guilt." *Id.* at 716; *see also State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010) ("[T]he circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt."). When reviewing a conviction based on circumstantial evidence, an appellate court first identifies the circumstances proved and then independently considers the inferences that might be drawn from those circumstances to determine if there are any rational inferences consistent with a hypothesis other than guilt. *Andersen*, 784 N.W.2d at 329-30; *see also State v. Al-Naseer*, 788 N.W.2d 469, 477 (Minn. 2010) (stating an appellate court "must first identify the circumstances proved, and then . . . independently consider the inferences that might be drawn from those circumstances, to determine if there are any rational inferences consistent with a hypothesis other than guilt").

A. The evidence was sufficient to show beyond a reasonable doubt that appellant knew or should have known the car and personal property were stolen.

To convict appellant of theft of a motor vehicle and receiving stolen property, the state was required to prove, among other elements, that he knew or had reason to know that (1) he did not have the owner's consent to drive the car and (2) the property inside the car was stolen. *See* Minn. Stat. §§ 609.52, subd. 2(17) (including as a theft crime the "tak[ing] or driv[ing of] a motor vehicle without the consent of the owner . . . , *knowing or having reason to know that the owner . . . did not give consent* (emphasis added)), .53, subd. 1 (defining receiving stolen property as "any person who receives, possesses,

transfers, buys or conceals any stolen property or property obtained by robbery, *knowing or having reason to know the property was stolen*" (emphasis added)).

Appellant concedes that the state proved that D.B.'s car and some of his property were stolen and that appellant was found driving D.B.'s car, which contained the stolen property. But appellant argues that the state did not prove beyond a reasonable doubt that appellant knew or had reason to know that he was driving a stolen car that contained stolen property, the state presented no evidence connecting appellant to the backpack found in the back seat, and no physical evidence showed that appellant was involved in the theft of D.B.'s car and property.

We disagree. As the state points out, appellant's "defense hinges on one piece of evidence—his statement to the officer and to the [district court] that his friend 'gave him the car.'" The circumstances supporting the jury's inference that appellant knew or had reason to know he was driving a stolen car that contained stolen property included: (1) the back passenger window of the car was shattered; (2) appellant was found driving the car, which had been reported stolen; (3) appellant would not identify the friend who allegedly loaned him the car; (4) a backpack found inside the car contained coins, stamps, foreign currency, and jewelry, all of which had been reported stolen along with the car; (5) appellant offered no response when asked about the backpack; and (6) a search of appellant's person revealed a bag containing 46 diamond-shaped stones, several coins, foreign currency, and a ring engraved with D.B.'s initials, items which had also been reported stolen along with the car. We agree with the state that "[i]n order to believe [appellant's] story, the jury would have had to believe that not only did [appellant's]

friend give him a stolen car, but [appellant's] friend also loaded it with stolen jewelry and stolen stamps and stolen coins and broken glass . . . and then stuffed related jewelry into [appellant's] pockets."

Furthermore, the credibility of K.B. and R.M. in accounting for appellant's whereabouts on March 28 and 29 was an issue for the jury. The verdict indicates that the jury did not find either witness credible. Without a satisfactory explanation as to how appellant came into possession of either the stolen car or the stolen property, the jury reasonably inferred that he knew or had reason to know that the items were stolen. Appellant's unexplained possession of the stolen items shortly after the theft occurred is itself sufficient to show that appellant knew or had reason to know that the car and the property within were stolen. *See State v. Hager*, 727 N.W.2d 668, 677-78 (Minn. App. 2007) (observing that an individual's unexplained possession of stolen property within a reasonable time after the theft is in and of itself sufficient evidence to support a conviction); *State v. French*, 400 N.W.2d 111, 116 (Minn. App. 1987) ("Unexplained possession of recently stolen property supports a conclusion that appellant knew the property was stolen."), *review denied* (Minn. Mar. 25, 1987).

Construing the evidence in the light most favorable to the verdict, the state's evidence reasonably excludes the possibility that appellant was simply borrowing the car from a friend. Even assuming that appellant did borrow the car, there is still no rational explanation for why D.B.'s property was in appellant's pockets. We conclude that the evidence was sufficient to sustain appellant's convictions of misdemeanor receiving

stolen property under Minn. Stat. § 609.53, subd. 1, and felony theft of a motor vehicle under Minn. Stat. § 609.52, subd. 2(17).

B. The evidence was sufficient to show beyond a reasonable doubt that appellant constructively possessed the methamphetamine.

"A person is guilty of controlled substance crime in the fifth degree . . . if . . . the person unlawfully possesses one or more mixtures containing a controlled substance . . . ." Minn. Stat. § 152.025, subd. 2(1). "[I]n order to convict a defendant of unlawful possession of a controlled substance, the state must prove that [the] defendant consciously possessed, either physically or constructively, the substance and that [the] defendant had actual knowledge of the nature of the substance." *State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975). The methamphetamine was found between appellant's seat and the adjacent front seat. Therefore, the state was required to prove that appellant constructively possessed the methamphetamine.

The purpose of the constructive-possession doctrine is to bring within the purview of the possession statute cases in which, although

> the state cannot prove actual or physical possession at the time of arrest[,] . . . the inference is strong that the defendant at one time physically possessed the substance and did not abandon his possessory interest in the substance 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.

> 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). In assessing whether the evidence was sufficient to prove constructive possession, we consider the totality of the circumstances. *Id.*

Appellant correctly argues that the state was required to prove that there was a strong probability that appellant exercised dominion and control over the area because other individuals had access to the car. Appellant contends that the evidence was insufficient to show that he constructively possessed the methamphetamine because he did not own the car and was merely present in the car when the drugs were found, citing *State v. Albino*, 384 N.W.2d 525 (Minn. App. 1986). Appellant also asserts that the methamphetamine more likely belonged to C.C. because she had a pipe in her purse. We disagree.

Appellant appears to rely on the idea that only one individual can constructively possess the methamphetamine at a single point in time. Caselaw is clear, however, that "[a] person may constructively possess a controlled substance alone or with others." *Denison*, 607 N.W.2d at 799. Thus, even if the methamphetamine belonged to C.C. or appellant's friend, this does not make the state's evidence insufficient to show appellant's constructive possession.

In *State v. Cusick*, police officers were dispatched to the scene of a one-car accident in which the car had been flipped on its side. 387 N.W.2d 179, 180 (Minn. 1986). The defendant had borrowed the car from his girlfriend and was the only

occupant. *Id.* The officers found a cocaine kit, including cocaine, next to the defendant's wallet. *Id.* Both items were lying on the ground where the driver's side door had been. *Id.* Although the defendant's girlfriend testified that she was addicted to cocaine at the time and that the kit had been in her purse, which was in the back seat with her clothing and other items found scattered on the ground near the rear of the car, the Minnesota Supreme Court concluded that the evidence was sufficient to show that the defendant constructively possessed the cocaine, given the close proximity in which it was found to the defendant's wallet as compared to other items in the car. *Id.* at 180-81. As appellant concedes, proximity is an important consideration when analyzing constructive possession. Here, the second pipe was found under appellant's seat, in the car he had been driving, and the methamphetamine was between appellant and his passenger.

Additionally, the state correctly asserts that *Albino* dealt with probable cause to arrest a passenger for constructive possession of methamphetamine, not the question of possession. 384 N.W.2d at 527-28; *see id.* at 527 (noting that "[t]he portion of the complaint charging [the passenger] with possession of the drugs found in the camera case was later dropped"). In *Albino*, we concluded that there was no probable cause to arrest the passenger merely because she was a passenger in a vehicle where drugs were found when she did not flee the scene, make any furtive movements, attempt to conceal the camera case, or claim any ownership or control over the vehicle. *Id.* at 528-29. We compared the passenger to a similarly situated defendant in *State v. Slifka*, who had also been a passenger in a vehicle in which drugs were found, and distinguished the defendant from the driver, whom police had probable cause to arrest for constructive possession

because the drugs were found in the glove compartment, and the driver owned the car and was in control of it at the time. *Albino*, 384 N.W.2d at 528 (citing 256 N.W.2d 90, 91 (Minn. 1977)). Although appellant did not own the car, he was driving the car and thus in control of it at the time of his arrest. Moreover, even if we were to assume that appellant had borrowed the car from a friend, appellant's friend was not exercising control over the vehicle at the time the methamphetamine was found.

Taking account of all of these circumstances, the evidence was sufficient for the jury to conclude that appellant had exercised dominion and control over the pipe and methamphetamine that the officers discovered under the driver's seat and in the adjacent area. *See State v. Willis*, 320 N.W.2d 726, 727-29 (Minn. 1982) (concluding constructive possession was established when a gun was found underneath the seat where defendant had been sitting and defendant engaged in furtive movements prior to stop); *State v. Johnson*, 551 N.W.2d 244, 247 (Minn. App. 1996) ("The heroin was not any less within Johnson's dominion and control merely because it was on his nightstand, rather than on his person."), *review denied* (Minn. Sept. 20, 1996).

II. Appellant's pro se arguments are without merit.

The three additional arguments appellant raises in his pro se supplemental brief are without merit.

Appellant first asserts that D.B.'s class ring was "tainted evidence" because the chain of custody was broken when the ring was allowed to leave the evidence room. As the state points out, "when the object of real evidence is unique and thus identifiable in court based on its distinctive appearance, a chain of custody is not needed." *State v.*

Bellikka, 490 N.W.2d 660, 663 (Minn. App. 1992), *review denied* (Minn. Nov. 25, 1992). D.B.'s class ring was unique and distinctive; it had both the emblem of his high school and his initials on it. D.B. identified the ring as such at trial. Because of the ring's unique properties, the state did not need to prove chain of custody, and D.B.'s testimony was sufficient.

Appellant next claims the district court erred when "a witness," C.C., was present in the courtroom after the district court issued a sequestration order. Appellant states that C.C. "refused to testify because she heard what [K.B.] had to say," but that "the judge ruled [that] she meaning [C.C.] never had time to hear what [K.B.] said. Speculate was the word the judge used." However, the record does not indicate that this issue was raised with the district court after K.B.'s testimony or after R.M.'s testimony. The record indicates that appellant's attorney requested a moment to check on another witness, but does not identify the witness. A discussion then took place off the record, after which the proceedings were concluded for the day with no discussion of C.C.

The following morning, appellant's attorney indicated that the defense has "a witness that's supposed to be here at any time"; the witness was subsequently identified as J.T. Although there is another off-the-record discussion between counsel and the district court, the record contains no indication that the issue of C.C. testifying was raised with the district court following K.B.'s testimony. In any event, C.C. did not testify. Thus, even assuming C.C. had been present, she did not violate the sequestration order, which pertained only to witnesses.

Appellant's final argument appears to assert that the state did not give proper notice of its request to introduce *Spreigl* evidence regarding appellant's prior convictions of theft of a motor vehicle, receiving stolen property, and theft. *See generally State v. Ness*, 707 N.W.2d 676 (Minn. 2006) (discussing the admissibility of prior bad acts evidence). However, the district court did not allow evidence of any of these incidents to come in. Consequently, even assuming the state did not give proper notice, appellant's substantial rights were not affected and any error was harmless. *See* Minn. R. Crim. P. 31.01 ("Any error that does not affect substantial rights must be disregarded.").

Affirmed.