

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0030**

State of Minnesota,
Respondent,

vs.

Idris A. Bengazi,
Appellant.

**Filed April 22, 2008
Affirmed
Crippen, Judge***

Ramsey County District Court
File No. K7-06-2230

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

Susan Gaertner, Ramsey County Attorney, Mark Nathan Lystig, Assistant County Attorney, 50 Kellogg Boulevard West, Suite 315, St. Paul, MN 55102 (for respondent)

John M. Stuart, State Public Defender, Jessica Godes, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Schellhas, Judge; and
Crippen, Judge.

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

UNPUBLISHED OPINION

CRIPPEN, Judge

Appellant Idris Bengazi challenges his conviction of unlawful possession of a firearm, contending that the evidence at trial was insufficient to support his conviction. We affirm.

FACTS

At approximately 10:00 p.m. on June 6, 2006, Officers Robert Vetsch and Thomas Tanghe observed three males, including appellant, standing outside an apartment building on a street corner. As their squad car approached, appellant began to walk away. After taking a few quick steps, appellant ran away from the officer's car. The other males stayed on the corner.

Appellant ran and Officer Vetsch chased after him on foot. When appellant lost his footing on a ledge, Vetsch caught him, and they both fell down. In the ensuing struggle, as appellant tried to crawl away, Officer Vetsch saw appellant trying to get his hands underneath him in his groin or waist area. Vetsch struck appellant several times in his chest, abdomen, and arm as he attempted to pull appellant's hands out from underneath him, fearing that appellant was reaching for a weapon.

After appellant first crawled away, Vetsch subdued and cuffed him. Police then found a large caliber, loaded handgun on the ground where appellant and Officer Vetsch struggled. Vetsch did not see the gun during the struggle. When the gun and bullets were checked for fingerprints, only unidentifiable smudges were found.

Appellant told police the gun was not his but refused to provide the name of the person he claimed dropped it. Appellant was charged with possession of a firearm as a person ineligible, in violation of Minn. Stat. § 624.713, subd. 1(b) (2004). He was found guilty following a jury trial.

D E C I S I O N

An appellate court will not disturb the jury's verdict if the jury, considering the presumption of innocence and the requirement of proof beyond a reasonable doubt, could have reasonably concluded that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). The court reviews 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 the verdict which they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

Because no one saw appellant in possession of the gun and no fingerprint or DNA evidence directly linked appellant to the gun, his conviction is based on circumstantial evidence. *See Bernhardt*, 684 N.W.2d at 477 n.11 (“‘Direct evidence’ is ‘[e]vidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption. *Black’s Law Dictionary* 596 (8th ed. 2004)’”). “‘Circumstantial evidence’ is defined as ‘[e]vidence based on inference and not on personal knowledge or observation’ and ‘[a]ll evidence that is not given by eyewitness testimony.’” *Id.* (quoting *Black’s Law Dictionary* 595 (8th ed. 2004)).

“A conviction may be based on circumstantial evidence and will be upheld if the reasonable inferences from such evidence are consistent only with [the] defendant's guilt

and inconsistent with any rational hypothesis except that of his guilt.” *State v. Anderson*, 379 N.W.2d 70, 75 (Minn. 1985) (quotation omitted). Circumstantial evidence must “form a complete chain which, in the 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. Wahlberg*, 296 N.W.2d 408, 411 (Minn. 1980). “To successfully challenge a verdict based on circumstantial evidence, [an appellant] must show his claim is consistent with a rational hypothesis other than guilt.” *State v. Bias*, 419 N.W.2d 480, 486 (Minn. 1988). A jury normally is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *State v. Berndt*, 392 N.W.2d 876, 880 (Minn. 1986).

Appellant was shown to have been in actual or constructive possession of the handgun by evidence that it was found at the spot where he struggled with Officer Vetsch, that he had reached toward his waist or groin during the struggle, that Vetsch feared appellant was reaching for a weapon, and that no other individuals were seen by police in the area where the handgun was found. Examining this evidence in a light most favorable to appellant’s conviction, it is clear that a logical chain is formed between the circumstantial evidence and appellant’s possession of the handgun.

Although there is not an overwhelming volume of evidence, there is no other reasonable inference that can be drawn from the state’s evidence. *Cf. State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994) (insufficient link between respondent and the charged crimes where other rational conclusions could be drawn from the state’s evidence); *State v. Scharmer*, 501 N.W.2d 620, 622 (Minn. 1993) (insufficient evidence to support

conviction where there was no link between defendant and physical evidence and defendant was identified primarily because of the color of his skin). The evidence presented by the state here supports only one reasonable inference: that appellant was in possession of the handgun found at the scene. The jury is in the best position to draw inferences regarding circumstantial evidence, and the record does not permit deviating from their conclusions. *Berndt*, 392 N.W.2d at 880.

Appellant contends that his own testimony at trial leads to a rational conclusion other than guilt. Appellant testified that he saw other men in the area where the struggle occurred and that the gun was dropped by one of these other men. Appellant suggested that police did not see these other men because they fled as the police arrived. When testifying in court, appellant named the man who he claimed before trial dropped the gun. Appellant also suggests that the public nature of the area where the gun was found creates a reasonable inference other than guilt; police were aware of reports of narcotics trafficking at the apartment building nearby. Finally, appellant contends that it is only speculation that he was reaching for a gun when Officer Vetsch was struggling with him.

It is a reasonable inference that appellant was reaching for the weapon found in the same location as the struggle, and the jury is entitled to deference in drawing this conclusion. *Id.* Evidence of others in the area did not compel a finding that possession by others was a reasonable inference.

Affirmed.