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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1114**

State of Minnesota,  
Respondent,

vs.

Solomon A.L. Mack,  
Appellant.

**Filed August 19, 2008  
Affirmed  
Peterson, Judge**

Clay County District Court  
File No. K3-03-2064

Lori Swanson, Attorney General, Peter R. Marker, Assistant Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Lawrence Hammerling, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Peterson, Presiding Judge; Kalitowski, Judge; and Halbrooks, Judge.

## **UNPUBLISHED OPINION**

**PETERSON**, Judge

Appellant challenges his conviction of ineligible person in possession of a firearm, arguing that the district court's references to his felon status undermined the benefit he sought in stipulating that he was ineligible to possess a firearm. We affirm.

### **FACTS**

On the evening of October 11, 2006, police officer David Miller pursued a fleeing vehicle. When the pursuit began, Miller turned on his lights, which activated the camera mounted inside his squad car. At one point during the pursuit, the vehicle stopped, and Miller saw what he believed to be a lone male driver with short hair. The vehicle then sped off, and the pursuit continued. During the pursuit, Miller saw a previously unseen front-seat passenger with fuller, bushier hair reach into the back seat and retrieve either a coat or a blanket. The vehicle stopped again, and when Miller approached it, the occupants were gone. Appellant Solomon Albert Lee Mack and a female suspect were eventually apprehended at separate locations.

Miller went back to his squad car and reviewed the video recording from his mounted camera. By slowing down the recording, he saw that at one point during the pursuit, the vehicle veered into the oncoming lane of traffic and the brake lights went on. Miller also saw an object lying across the fog line. Other officers later recovered an AK-47 replica rifle at that location.

Appellant was charged with (1) being a felon in possession of a firearm in violation of Minn. Stat. § 624.713, subds. 1(b), 2(b) (2006); (2) fleeing a police officer in

a motor vehicle in violation of Minn. Stat. § 609.487, subd. 3 (2006); (3) fleeing a police officer by means other than a motor vehicle in violation of Minn. Stat. § 609.487, subd. 6 (2006); and (4) underage drinking and driving in violation of Minn. Stat. § 169A.33, subd. 2 (2006). Appellant stipulated on the record that he was ineligible to possess a firearm. The jury found appellant guilty as charged, and he was sentenced to a 60-month prison term for the felon-in-possession charge and to a concurrent 13-month term for fleeing a police officer in a motor vehicle. This appeal followed.

### **DECISION**

In his brief to this court, appellant argued that his felon-in-possession conviction must be reversed because appellant did not personally on the record waive his right to a jury trial on the element of his ineligibility to possess a firearm. *See State v. Wright*, 679 N.W.2d 186, 191 (Minn. App. 2004) (holding that “an oral or written waiver of rights also is required before a defendant personally elects to stipulate at trial to one of several elements of an offense”), *review denied* (Minn. Jan. 29, 2004). But in his reply brief, appellant acknowledges that the transcript reveals that appellant personally on the record agreed to stipulate that he was ineligible to possess a firearm and waived his right to submit that element to the jury. Consequently, appellant has withdrawn this argument.

Appellant argues that he is entitled to a new trial because any benefit that he sought to gain from the stipulation was undercut when the district court on two separate occasions referred to his felon status. The first reference occurred during the district court’s opening comments to the prospective jury panel when the district court explained that a complaint had been filed alleging that appellant had committed four offenses,

including “being a felon or ineligible person in possession of a firearm.”<sup>1</sup> The second reference occurred while the district court was explaining the verdict forms to the jury and stated: “The second form relative to this count 1 will read: ‘We, the jury, find [appellant] guilty of the charge of felon in possession of a firearm.’”<sup>2</sup> Appellant has provided no argument or citation to any authority to support his claim that these statements by the district court undercut any benefit he sought to gain by his stipulation.

An assignment of error based on mere assertions and not supported by any argument or authority “will not be considered on appeal unless prejudicial error appears obvious on inspection of the record.” *State v. Lipscomb*, 289 Minn. 511, 513, 183 N.W.2d 790, 792 (1971). “An error is prejudicial if there is a ‘reasonable likelihood the error had a significant effect on the verdict.’” *State v. Budreau*, 641 N.W.2d 919, 926 (Minn. 2002) (quoting *State v. Patterson*, 587 N.W.2d 45, 52 (Minn. 1998)) (other quotation omitted).

To obtain a conviction for being a felon in possession of a firearm, the state must establish either actual or constructive possession of a firearm. *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001).

Constructive possession may be proven by showing that  
(a) the police found the item in a place under the defendant’s  
exclusive control to which other people did not have access,  
or (b) that, if the police found the item in a place to which

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<sup>1</sup> When the district court made this statement, appellant had not stipulated that he was ineligible to possess a firearm.

<sup>2</sup> The district court’s statement was incorrect. The verdict form actually listed the charge as “ineligible person in possession of a firearm.”

others had access, there is a strong probability, inferable from the evidence, that the defendant was consciously exercising dominion and control over the item at the time. Essentially, the constructive possession doctrine permits a conviction where the state cannot prove actual possession, but the inference is strong that the defendant physically possessed the item at one time and did not abandon his possessory interest in it.

*Id.* (citation omitted).

The jury was presented with the video recording from the squad-car camera and Miller's testimony stating his belief that a male with short hair was driving the fleeing automobile and recounting how the automobile moved into the oncoming lane of traffic at one point during the chase. Miller also testified that after reviewing the recording of this particular movement, he determined that an object (later found to be the rifle) had been thrown from the vehicle and landed on the fog line of the oncoming lane where the vehicle had veered. This evidence supports inferences that appellant was driving the vehicle that Miller pursued and that the rifle was thrown out the driver's side window of the vehicle. This court has found that there was sufficient evidence to support a finding that a defendant constructively possessed a firearm when he placed it where it was eventually discovered. *Salcido-Perez v. State*, 615 N.W.2d 846, 848 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000). The evidence that appellant threw the rifle from the vehicle is sufficient to support the jury's finding that appellant consciously exercised dominion and control over the rifle.

In light of the evidence of constructive possession that was presented to the jury, it is not obvious on inspection of the record that there is a reasonable likelihood that the

district court's references to appellant's felon status had a significant effect on the jury's verdict. There being no prejudicial error obvious on inspection of the record, we will not consider appellant's claim that the district court's references to appellant's felon status undercut any benefit that he sought to gain from his stipulation.

**Affirmed.**