

*This opinion will be unpublished and  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  
A07-1669**

State of Minnesota,  
Respondent,

vs.

Michael W. Wadena,  
Appellant.

**Filed December 9, 2009  
Affirmed  
Klaphake, Judge**

Hennepin County District Court  
File No. CR-06-071294

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, C-2000 Government Center, 300 S. 6th Street, Minneapolis, MN 55487 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Theodora K. Gaitas, Assistant State Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Lansing, Judge; and Worke, Judge.

## UNPUBLISHED OPINION

**KLAPHAKE**, Judge

Appellant Michael W. Wadena was found guilty of possession of a firearm by an ineligible person after a court trial. Appellant argues that because there was insufficient evidence to support the conviction, it should be vacated. Because the evidence is sufficient to support the conviction, we affirm.

### DECISION

Minn. Stat. § 624.713 (2006) prohibits certain persons from possessing firearms. There is no dispute that appellant, who had prior felony convictions, was prohibited from possessing firearms. Appellant argues that the evidence was insufficient to prove that he actually or constructively possessed the firearms. *See State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000) (holding that state must establish either actual possession or constructive possession for conviction under Minn. Stat. § 624.713), *review denied* (Minn. Jan. 16, 2001). This court reviews the record to determine if the facts and any legitimate inferences that can be drawn from such facts reasonably support the fact-finder's verdict. *State v. Race*, 383 N.W.2d 656, 661 (Minn. 1986). We assume that the fact-finder believed the state's witnesses and rejected any contrary evidence. *State v. Jackson*, 726 N.W.2d 454, 460 (Minn. 2007). A review of the evidence submitted to the court demonstrates that the record supports the court's conclusion that appellant possessed the two pistols.

Acting on a tip, police officers went to the apartment where appellant lived with his girlfriend, their child, and the girlfriend's mother. Appellant's girlfriend admitted the

police officers, who saw appellant fleeing out the back door of the apartment. A police officer testified that he observed appellant throw a black purse into a corner of a back bedroom as he fled. The evidence showed that no one else had access to the purse after appellant threw it into the corner. After securing appellant in the squad car, the officer returned to the apartment to retrieve the purse from the spot where he had observed appellant throw it. When the officer opened the purse, he found two guns inside white socks. The guns closely matched the description that he had been given by the girlfriend's mother, who first informed him of the presence of these guns.

This is direct evidence of actual possession; the police officer saw appellant with the black purse that contained the guns. That testimony, if believed, establishes that appellant had "direct physical control" over, or actual possession of, the firearms. *See Smith*, 619 N.W.2d at 770 (stating that actual possession occurs when defendant has handgun on his person). Further, a defendant may constructively possess a firearm if he placed the firearm where it was discovered. *See Salcido-Perez v. State*, 615 N.W.2d 846, 848 (Minn. App. 2000) (sufficient evidence supported a finding of constructive possession where defendant admitted that he placed firearms where they were discovered), *review denied* (Minn. Sept. 13, 2000). The officer discovered the firearms in the black purse in exactly the spot where appellant had thrown it. This testimony establishes that appellant, at a minimum, constructively possessed the firearms.

When the officer returned to the squad car with the guns, he and another officer both heard appellant make an unsolicited comment that the guns were his and that the guns were not loaded. Appellant denied making these statements; however, the fact that

the guns were not loaded corroborates the testimony about appellant's statement. The court could properly infer that appellant knew the guns were not loaded because they were his guns.

If this court assumes that the fact-finder believed the state's witnesses and rejected any contrary evidence, the testimony of the state's witnesses amply supports the court's finding that appellant possessed the two weapons.

**Affirmed.**