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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2052**

State of Minnesota,
Respondent,

vs.

Kenny Lashaun Robertson,
Appellant.

**Filed January 27, 2009
Affirmed
Ross, Judge**

Hennepin County District Court
File No. 27-CR-07-036311

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, Minneapolis, MN 55487 (for respondent)

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

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Bjorkman, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Kenny Robertson appeals from his conviction of being a prohibited person in possession of a firearm. Robertson questions the sufficiency of the evidence and argues

that the state did not prove that he knew that guns were in the car that he was driving when police stopped him. Because the evidence supports the jury's guilty verdict, we affirm.

FACTS

Minneapolis police noticed a car pull away from a curb and onto the roadway without signaling and without using headlights at about 2 a.m. on June 5, 2007. Police stopped the car. Kenny Robertson was driving and his friend, Henry McGee, was the front-seat passenger. The officers approached the car and saw a silver 9 millimeter handgun between the seats. They drew their weapons, ordered Robertson and McGee to raise their hands, and called for backup.

After backup officers arrived, officers ordered Robertson and McGee from the car and conducted a search. They found the 9 millimeter and a loaded .22 caliber semiautomatic handgun beneath the driver's seat.

A police sergeant recorded a discussion with Robertson about the guns. Robertson admitted that he saw the guns days earlier, claiming that an unidentified "Mexican" came to his "cousin" Joseph Givens's home selling them when he and McGee were visiting. He admitted that he touched the .22 caliber semiautomatic, that he thought about buying it, that it was loaded, and that he supposedly changed his mind after he noticed that it was scratched. Robertson told the sergeant that the car belonged to his cousin's girlfriend. Robertson referred to only one person as his cousin during his conversation: Joseph Givens.

Robertson's criminal background classifies him as a person prohibited from possessing a firearm under Minnesota Statutes section 624.713, subdivision 1 (2006). He was charged with possession of the .22 caliber, violating that prohibition. The officers who stopped Robertson and conducted the search testified at trial that they never told Robertson the caliber of either gun and that they did not show him either gun. They explained that the textured handles and curves on the .22 caliber prevented fingerprint identification. The jury also heard Robertson's recorded conversation with the sergeant.

Robertson attempted to mitigate the inculpatory impact of his recorded conversation. He testified that he knew that the guns were loaded only because the unidentified gun seller loaded them in his presence. He claimed that he told the gun seller that he was "just looking" at the guns. He maintained that because he knew he could face trouble, he left without buying a gun. Robertson explained that the word "cousin" meant a friend, that it applied to McGee and Givens, and that the car belonged to his "cousin" McGee's girlfriend. He admitted on cross-examination that he saw the .22 caliber's scratches.

The jury was not persuaded, and it convicted Robertson. The district court sentenced him to 60 months in prison, and Robertson appeals.

DECISION

Robertson challenges his conviction, asserting that the evidence failed to prove that he knew that the guns were in the car. We therefore analyze the record "to determine whether the evidence, when viewed in a light most favorable to the conviction," sufficiently allows the jury to reach that verdict. *State v. Webb*, 440 N.W.2d 426, 430

(Minn. 1989). Circumstantial evidence is entitled to no less weight than direct evidence. *Id.* Juries are best situated to evaluate the case's circumstantial evidence and to determine the credibility and weight of witness testimony. *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988). To sustain a conviction based solely on circumstantial evidence, the reasonable inferences based on all of the evidence must lead directly to the defendant's guilt and exclude "any rational hypothesis except that of his guilt." *State v. Anderson*, 379 N.W.2d 70, 75 (Minn. 1985).

Because Robertson did not physically possess the semiautomatic handgun, we consider whether the evidence established that he constructively possessed it. The state can prove constructive possession by showing that "the police found the [item] in a place under the defendant's exclusive control to which other people did not normally have access" or that although police discovered it where others had access, a strong inferable probability exists "that [the] defendant was at the time consciously exercising dominion and control over [the item]." *State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975). Proximity is an important factor for determining constructive possession. *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). Constructive possession does not need to be exclusive and can be shared. *Id.*

The state's evidence supports the jury's decision that Robertson constructively possessed the .22 caliber handgun. Police found it under the driver's seat and within Robertson's reach. Robertson was the car's driver. McGee sat in the passenger seat, never drove, and appeared concerned primarily about hiding his own handgun from police as they approached. The jury could reject Robertson's claim that he merely saw

the .22 caliber days earlier and that he never took control of it. It had no obligation to accept Robertson's testimony. *State v. Simon*, 275 N.W.2d 51, 52 (Minn. 1979). Robertson's admissions, though they were not offered as such, support the reasonable conclusion that he possessed the handgun; he talked with a gun seller about it, handled it, knew it was loaded, knew its caliber, and he wanted to own it. His testimony implied that it was merely a coincidence that the same gun that the unknown "Mexican" presented to Robertson and his "cousin" found itself beneath Robertson's seat. This apparently was a notion too great for the jury to swallow.

Given the jury's reasonable credibility determinations regarding Robertson's constructive possession of the .22 caliber handgun and his admission to being a person ineligible to possess a firearm, the evidence sufficiently supports Robertson's conviction.

Affirmed.