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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0922**

State of Minnesota,
Respondent,

vs.

Demetrius Farmer,
Appellant.

**Filed August 18, 2009
Affirmed
Larkin, Judge**

Dakota County District Court
File No. 19-K4-06-004207

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and

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Considered and decided by Larkin, Presiding Judge; Ross, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

LARKIN, Judge

Appellant challenges his conviction of being an ineligible person in possession of a firearm, arguing that there was insufficient evidence to establish his guilt beyond a reasonable doubt. Appellant also makes various pro se arguments. Because the evidence is sufficient to sustain appellant's conviction, and appellant's pro se arguments are based on matters outside of the record, we affirm.

FACTS

On December 18, 2006, police officers found a handgun in a black plastic bag along a road upon which appellant Demetrius Farmer had driven a few minutes earlier. Farmer's palm print was on the bag, and Farmer's DNA was on a pair of gloves within the bag. The bag had a gold logo on it for a store called "To New York." Police officers found black plastic bags with the same logo at Farmer's residence. Farmer was charged with being an ineligible person in possession of a firearm in violation of Minn. Stat. § 624.713, subds. 1(b), 2(b) (2006). The state's theory was that Farmer threw the bag containing the handgun from his vehicle after observing police officers.

Farmer waived his right to a jury trial and proceeded with a bench trial on a stipulated record. Farmer also stipulated that it was unlawful for him to possess a firearm because he had been convicted of a "crime of violence" as defined by Minnesota Statute, section 624.712, subdivision 5 (2006). The district court received 16 exhibits, including (1) two police reports describing Farmer's arrest and the recovery of the handgun; (2) a police report describing the search of Farmer's residence; (3) two Minnesota Bureau of

Criminal Apprehension (BCA) reports concerning finger print and DNA analysis of the black plastic bag, handgun, and gloves; and (4) photographs of the aforementioned items and items found during the search of Farmer's residence. After reviewing the exhibits and Farmer's stipulation, the district court found Farmer guilty. The district court sentenced Farmer to serve 60 months in prison. This appeal follows.

D E C I S I O N

When assessing the sufficiency of evidence, appellate courts review bench trials in the same manner as jury trials. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). This court's review is "limited to a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the [district court] to reach the verdict which [it] did." *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court will not disturb the verdict if the district court, "while acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense, given the facts in evidence and the legitimate inferences that could be drawn therefrom." *State v. Crow*, 730 N.W.2d 272, 280 (Minn. 2007). This court must defer to the district court's findings, unless clearly erroneous, even if they are based on the district court's evaluation of written police reports. *State v. Christiansen*, 515 N.W.2d 110, 112 & n.1 (Minn. App. 1994), *review denied* (Minn. June 15, 1994).

"A conviction based on circumstantial evidence merits stricter scrutiny." *State v. Bias*, 419 N.W.2d 480, 484 (Minn. 1988). But circumstantial evidence is "entitled to the same weight as any 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.” *Id.* The conviction stands where the circumstances form “a complete chain which, in 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). This stricter standard, though, “still recognizes a [finder of fact] is in the best position to evaluate the circumstantial evidence surrounding the crime.” *Bias*, 419 N.W.2d at 484 (quotation omitted).

Section 624.713, subdivision 1(b), provides that a person is not entitled to “possess a pistol” or “any other firearm” if the person “has been convicted of, . . . in this state or elsewhere, a crime of violence.” Farmer argues that there was insufficient evidence to prove beyond a reasonable doubt that he was in possession of a firearm because there was no direct evidence that Farmer tossed the plastic bag containing the handgun from his vehicle and because DNA analysis did not yield a finding that he was a contributor to the DNA on the handgun sufficient to satisfy the state’s burden of proof.

The state contends that there was sufficient evidence to prove that Farmer was in constructive possession of the handgun. *See State v. Loyd*, 321 N.W.2d 901, 902 (Minn. 1982) (stating that a person may be convicted under this statute if he actually or constructively possessed a firearm).

[I]n order to prove constructive possession the state should have to show (a) that the police found the substance in a place under defendant’s exclusive control to which other people did not normally have access, or (b) that, if police found it in a place to which others had access, there is a strong probability (inferable from other evidence) that defendant was at the time consciously exercising dominion and control over it.

State v. Florine, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975). This court considers the totality of the circumstances in determining whether the evidence was sufficient to prove possession. See *State v. Munoz*, 385 N.W.2d 373, 377-78 (Minn. App. 1986) (holding that the totality of the circumstances indicates state met its burden to prove defendant has dominion and control over narcotics at time of arrest).

Proximity is an important consideration for the district court when assessing constructive possession. See *State v. Cusick*, 387 N.W.2d 179, 181 (Minn. 1986) (citing several cases in which proximity was a factor in upholding convictions based on constructive possession). “Moreover, constructive possession need not be exclusive, but may be shared.” *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000) (citing *State v. LaBarre*, 292 Minn. 228, 237, 195 N.W.2d 435, 441 (1972)), review denied (Minn. Jan. 16, 2001). In addition, “a defendant may constructively possess a firearm if he placed the firearm where it was discovered.” *Id.*

After reviewing the record, we conclude the evidence is sufficient to sustain Farmer’s conviction. Sgt. Smith received information that Farmer may have been traveling to Apple Valley and that officers needed to initiate a high-risk traffic stop because Farmer was a suspect in a “robbery that was going to happen.” Sgt. Smith had been provided with a photograph of Farmer and a description of a black Dodge Charger that Farmer was anticipated to be driving. Later that day, as Sgt. Smith was driving on 160th Street, he saw a black Dodge Charger approaching from the opposite direction. Sgt. Smith believed that the driver “resembled” Farmer. Sgt. Smith could see the driver

“straighten out in the vehicle as if he was pushing up with his legs to . . . straighten his body.” It appeared to Sgt. Smith that the driver had pulled his sweatshirt up near his chin and then reached down and pulled something black from the area of his stomach.

The Dodge Charger entered a residential development that contained only one route of entry and exit. Sgt. Smith stopped in an area where he could observe the vehicle’s route and waited for other officers to arrive. The officers then followed the route taken by the Dodge Charger and encountered the vehicle. The officers initiated a stop and arrested Farmer, who was confirmed to be the driver of the vehicle. After the arrest, officers found a black plastic bag on the side of the street halfway between the areas where Sgt. Smith observed the Dodge Charger traveling and where the vehicle was stopped.

Investigator Blackus’s report states that the bag was found a “short distance away from where Farmer was stopped” and that “[t]he bag was located on a route that Farmer had . . . driven.” Investigator Blackus observed that the black plastic bag had “gold printing on it for a store called ‘To New York.’” Inside the bag, Investigator Blackus found a black handgun, a pair of cloth gloves, and sunglasses. The handgun’s hand grip was wrapped in duct tape.

The black plastic bag, handgun, gloves, and sunglasses were sent to the BCA for analysis. The BCA analysis identified Farmer’s palm print on the black plastic bag. The BCA analysis also indicated Farmer could not be excluded as the source of the predominant DNA profile found on the gloves within the bag. According to the DNA analysis, 99.9999992 percent of the population can be excluded as contributors to the

DNA mixture found on the gloves. In addition, officers searched Farmer's residence and found two "To New York" black plastic bags identical to the black plastic bag containing the handgun and a roll of duct tape.

Viewing this evidence and Farmer's stipulation in the light most favorable to the verdict, we conclude that the circumstances form a complete chain which leads so directly to the guilt of Farmer as to exclude, beyond a reasonable doubt, any reasonable inference other than that Farmer was an ineligible person who consciously exercised dominion and control over a firearm.

Farmer's pro se arguments amount to assertions of fact that are unsupported by the record. We do not consider matters outside of the record on appeal. *See* Minn. R. Civ. App. P. 110.01 (defining record on appeal). Further, Farmer's factual assertions would not change our decision because this court resolves disputes of fact by viewing the evidence in the light most favorable to conviction. *Webb*, 440 N.W.2d at 430.

Affirmed.

Dated: _____

The Honorable Michelle A. Larkin
Minnesota Court of Appeals