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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1885**

State of Minnesota,
Respondent,

vs.

Stanley Julius Loyd,
Appellant.

**Filed September 22, 2009
Affirmed
Halbrooks, Judge**

Ramsey County District Court
File No. 62-K7-07-004103

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)

Marie L. Wolf, Interim Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and Larkin, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

On direct appeal from his conviction of possession of a firearm by an ineligible person, appellant contends that there was insufficient evidence to convict him. Because the state presented sufficient circumstantial evidence showing that appellant possessed a firearm, we affirm.

FACTS

On November 24, 2007, state trooper Eric Micek was driving eastbound on Interstate 94 in St. Paul when he saw a white passenger vehicle, containing four individuals, drive up behind him at a high speed. Trooper Micek, who was in a marked squad car, clocked the vehicle at 79 miles per hour. Trooper Micek attempted to stop the vehicle using his emergency lights and emergency siren, but the vehicle failed to stop. The vehicle eventually exited the freeway at Seventh Street and stopped at a red light at the corner of Seventh and Wall Streets. Trooper Micek pulled alongside the vehicle and ordered it to pull over using the public-address system. When the light turned green, the vehicle proceeded through the intersection and went south on Wall Street. As the vehicle went through the intersection, Trooper Micek saw the front-seat passenger, later identified as appellant Stanley Julius Loyd, jump out of the vehicle and run west down Seventh Street. Trooper Micek forced the vehicle to stop less than a block away from the intersection. The trooper subsequently detained the remaining passengers and found a .25-caliber Phoenix pistol underneath the vehicle's back seat.

As the vehicle drove through the intersection of Seventh and Wall Streets, Officer Jeremy Ryan was driving westbound in a squad car on Seventh Street, just east of the intersection. When the vehicle passed in front of Officer Ryan, he saw appellant leave the front passenger side of the vehicle and run west down Seventh Street. Officer Ryan followed appellant, who was running while holding a bulge in the front of his pants. Officer Ryan concluded that appellant was holding a weapon because Officer Ryan had carried a weapon in a similar fashion in the past. Appellant then ran into a construction site and went behind a trailer. Officer Ryan decided not to follow appellant behind the construction trailer because he thought that appellant was planning an ambush. Appellant eventually doubled back and ran out from behind the trailer. As appellant ran away from the trailer, he moved both arms as though he was not holding anything. Appellant then ran into an alley, fell down, and was apprehended. Officer Ryan did not find any firearms on appellant. During the chase and apprehension, Officer Ryan did not see any other pedestrian traffic in the area.

After appellant was apprehended, Officer Ryan retraced the route that appellant had run. When Officer Ryan went behind the construction trailer, he found a .357 Smith & Wesson revolver. Officer Ryan then used his thermal-imaging device to look at the revolver. Officer Ryan was trained to use a thermal-imaging device during his service in the United States Army. Through the thermal-imaging device, the revolver appeared to be white-hot, in contrast to the dark ground, and it appeared that the weapon was cooling when compared to the background. A sergeant from the St. Paul Police Department's crime lab compared a fingerprint recovered on the revolver with the fingerprints of

appellant and the vehicle's other passengers but did not find a match. DNA was recovered from the revolver. Appellant was excluded as a possible source of the DNA, but another passenger was determined to be a possible source of the DNA.

Appellant was charged with possession of a firearm by an ineligible person, in violation of Minn. Stat. § 624.713 (2006), and a bench trial was held. Appellant testified that he ran from the vehicle because of outstanding warrants. He also testified that he ran directly into the alley and did not run into the construction site. At trial, appellant wore the clothing from the night of his arrest. Appellant testified that his clothing fit loosely on November 24, 2007, and was still baggy despite gaining 20 pounds since his arrest. Following the presentation of evidence, the district court found appellant guilty of possession of a firearm by an ineligible person because appellant had possessed the revolver found at the construction site and had previously been adjudicated delinquent of fifth-degree possession of a controlled substance. This appeal follows.

DECISION

Appellant argues that there is insufficient evidence of his possession of the revolver to convict him. In considering a claim of insufficient evidence, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The reviewing court must assume that the fact-finder "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Moore*, 438 N.W.2d

101, 108 (Minn. 1989). This is especially true when resolution of the matter depends mainly on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980).

While “a conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence,” *State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994), “circumstantial evidence is entitled to the same weight as direct evidence,” *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). The circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt. *Jones*, 516 N.W.2d at 549. The fact-finder is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *Webb*, 440 N.W.2d at 430.

To be convicted of possession of a firearm by an ineligible person, appellant must have possessed a firearm as an ineligible person. *See* Minn. Stat. § 624.713, subd. 1(b). Appellant does not contest that he was prohibited from possessing a firearm based on his 2006 delinquency adjudication for fifth-degree possession of a controlled substance.

We conclude there is sufficient evidence that appellant was in possession of the revolver. Officer Ryan saw appellant running while holding a bulge in the front of his pants; Officer Ryan thought that the bulge was a weapon. After Officer Ryan’s view of appellant was obstructed by the construction trailer, the officer saw appellant running normally and not holding anything. After appellant was apprehended, Officer Ryan found a revolver behind the construction trailer where appellant had been, and the officer did not see anyone else in the area. Officer Ryan’s thermal-imaging device showed that

the revolver had been placed there recently. Finally, the DNA on the revolver did not exclude one of the occupants of the vehicle, which suggests that the revolver had been in the vehicle before being placed behind the construction trailer.

Appellant argues that some of the evidence is inconsistent with guilt. Specifically, appellant contends that he ran from police because of outstanding warrants, that his initial running form was a result of his pants being too big for him, and that he fell in the alley because he was trying to run without holding up his pants. Appellant also argues that the evidence from the thermal-imaging device should be given little weight because Officer Ryan was not certified to use the device and there was no testimony as to the time frame of heat loss for the revolver. But these arguments do not take the evidence in a light most favorable to the verdict, as is required by *Webb*, 440 N.W.2d at 430. When viewed in a light most favorable to the verdict, the evidence of appellant's differing gaits, the presence of a bulge in appellant's pants, appellant's stop behind the construction trailer, the later discovery of the revolver behind the construction trailer, the lack of other people around the trailer, and the cooling of the revolver as shown by the thermal-imaging device is sufficient to convict appellant.

Affirmed.