STATE OF MINNESOTA
IN COURT OF APPEALS
A08-2042

State of Minnesota,
Respondent,

vs.

Latrez Kemon Reed,
Appellant.

Filed December 29, 2009
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27CR0821536

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

Michael O. Freeman, Hennepin County Attorney, David C. Brown, Assistant County Attorney, C-2000 Government Center, Minneapolis, MN 55487 (for respondent)

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

Considered and decided by Hudson, Presiding Judge; Stoneburner, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

STONEBURNER, Judge

Appellant challenges his conviction of prohibited person in possession of a firearm, arguing that (1) the district court erred by admitting an unauthenticated letter into

evidence; (2) the evidence is insufficient to support his conviction; and (3) prosecutor misconduct constituted plain error that deprived him of a fair trial. We affirm.

FACTS

During an April 29, 2008 warranted search of an apartment, law enforcement officers found, on a cardboard box used as a nightstand in the master bedroom, evidence linking appellant Latrez Kemon Reed to the apartment. The evidence found included: (1) a letter from the Minnesota Department of Public Safety, Driver and Vehicle Services, dated April 5, 2008, addressed to Reed at the apartment; (2) a Minnesota driver's license/identification card application filled out by Reed, listing the apartment as his address and dated March 26, 2008; and (3) a handwritten letter addressed to Reed's brother at the prison in Rush City with Reed's name and the address of the apartment as the sender and return address. The letter contained a reference to their mother, indicating that the author of the letter was writing to his brother. The letter also contained obscenities and racial epithets; a reference to the writer as "holding heat"; a reference to a vehicle stop in which another person was found to be in possession of a controlled substance with Reed as a passenger; and a reference to the author feeling like he was in a movie scene in which someone had guns in a closet.

In the closet of the master bedroom, police found a loaded 9mm semi-automatic handgun. The gun was inside a white athletic stocking that was inside of a small bag. Next to the gun was Reed's social security card and a Hennepin County Jail picture-identification bracelet with Reed's picture and name on it.

Reed, who is not eligible to possess a firearm, was charged with prohibited person in possession of a firearm. He pleaded not guilty. At trial, Reed stipulated that he is prohibited from possessing a firearm.

At trial, a member of the Northwest Metro Drug Task Force testified that Reed told him that he stayed at the apartment frequently to care for his child but that he lived with his mother on Stinson Boulevard. The state called expert witnesses who testified that failure to find any DNA or fingerprints on the gun was not unusual. The state introduced the evidence linking Reed to the apartment. Although Reed's counsel made an objection when the prosecutor asked a witness to read from the letter that appeared to be from Reed to his brother, the grounds of the objection were not stated on the record, and there was no objection to admission of the letter into evidence.

Angelic Jones, who lived at the apartment and is the mother of Reed's child, testified as the only witness for the defense. She testified that Reed stayed overnight at the apartment about once a month and was there more often to care for or pick up their child but did not live there. Jones testified that Reed lived with his mother. Jones testified that she was not aware that there was a gun in the closet prior to the search. But when she was asked how the gun got there she replied: "my cousin." When questioned about Reed's documents being at the apartment, Jones testified that she and Reed used to live together, and she brought Reed's papers and things to the apartment when she moved to the apartment in June 2007. On cross-examination, Jones acknowledged that many of Reed's documents were dated in March or April of 2008–long after she moved to the apartment. She also acknowledged that she did not know what rooms Reed was in when

he cared for his child in the apartment. She acknowledged her understanding that "holding heat" meant possessing "a gun."

When Jones testified that Reed was not living at the apartment, the prosecutor asked her if anyone who said he was living there would be "an absolute liar." The prosecutor then referenced the driver's license/identification card application dated March 26, 2008, listing that apartment as his address and asked Jones if Reed was a liar. Jones denied that Reed is a liar and said he used the apartment as his mailing address because his mother moved frequently.

The jury found Reed guilty. The district court denied Reed's post-trial motion for a mistrial. Reed was sentenced, and this appeal followed.

D E C I S I O N

I. Admission of the letter

Reed argues that the district court abused its discretion by admitting the letter addressed to his brother because the letter was not authenticated, it was not relevant to constructive possession of the gun, and he was prejudiced by the failure to redact references to possession of other firearms. Reed asserts that the improperly admitted letter was prejudicial and affected the verdict, entitling him to a new trial. Because Reed did not properly object to admission of the letter at trial, this issue is waived on appeal.

Generally, failure to object to the admission of evidence constitutes a waiver of the right to appeal on that basis. *State v. Martinez*, 725 N.W.2d 733, 738 (Minn. 2007). "An objection must be specific as to the grounds for challenge." *State v. Rodriguez*, 505 N.W.2d 373, 376 (Minn. App. 1993) (citing *State v. Abraham*, 338 N.W.2d 264, 266

(Minn. 1983)), in which the supreme court declined to address an evidentiary issue on appeal in part because a precise objection was not made on the record, and stating that a "hearsay" objection could not have alerted the trial court to the detailed hearsay and confrontation-clause arguments Rodriguez raised on appeal), *review denied* (Minn. Oct. 19, 1993). Reed did not object to admission of the letter and his unspecified objection to the prosecutor's request that a witness read from the letter was not sufficient to preserve this issue for appeal.

Although this court may review alleged errors that were not objected to at trial, we do so only when such errors are plain and affected substantial rights. Minn. R. Crim. P. 31.02. On appeal, Reed has not argued that admission of the letter constituted plain error.

We note, however, that even if we were to review this issue under a plain-error analysis, Reed has not shown plain error. The record demonstrates that the letter was properly authenticated under Minn. R. Evid. 901(a) by "appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances." *See* Minn. R. Evid. 901 (b)(4). Therefore, there was no "authentication" error in admitting the letter.

Additionally, references in the letter to the author's possession of "heat" (guns) and guns in a closet were relevant to the charges against Reed such that there is no error in admitting the letter based on relevance. *See* Minn. R. Evid. 401 (stating evidence is relevant when it has "any tendency to make the existence of any fact of consequence to the determination of the action more probable or less probable than it would be without the evidence.") And Reed cites no authority for the proposition that, absent a request for

redaction, a district court commits plain error by failing to redact offered evidence. *See State v. Tovar*, 605 N.W.2d 717, 725–26 (Minn. 2000) (holding that it was not plain error for an entire interview tape to be admitted into evidence where the defendant did not object and did not request a limiting instruction). Therefore, Reed has not established error, let alone plain error, regarding admission of the letter.

II. Sufficiency of evidence

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 jury 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 the matter depends on conflicting testimony. *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). The reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

"[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). But 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. A jury is in the best position to evaluate circumstantial evidence, and its verdict is entitled to due deference. *Webb*, 440 N.W.2d at 430.

Because the firearm was not in appellant's actual possession, the state had to prove constructive possession beyond a reasonable doubt. *See State v. Loyd*, 321 N.W.2d 901, 902 (Minn. 1982). Constructive possession can be proved if the police found the gun in a place where others had access but there is a strong possibility that Reed was, at the time, consciously exercising dominion and control over it. *See State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975) (involving constructive possession of narcotics). Constructive possession need not be exclusive; it can be shared. *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). A reviewing court looks to the totality of the circumstances to determine whether constructive possession has been proven. *State v. Denison*, 607 N.W.2d 796, 800 (Minn. App. 2000), *review denied* (Minn. June 13, 2000).

Reed admitted staying at the apartment, if not living there. A number of Reed's papers and articles of personal property were found in the apartment and some were in close proximity to the gun. Reed's letter to his brother referred to his possession of a gun and stated that he felt like a character in "Da Movie when he got all Dem guns in a closet." Viewed in the light most favorable to the verdict, we conclude that the evidence was sufficient to support the verdict.

III. Prosecutorial misconduct

Reed argues that because the prosecutor asked Jones a "were-they-lying" question, commented on the experts called to explain the absence of fingerprints on the gun, and read and commented on portions of the letter he now objects to, Reed was denied a fair trial. Reed did not object to the prosecutor's conduct at trial, therefore this issue is also waived on appeal.

We may examine unobjected-to prosecutorial misconduct under the plain-error doctrine, and, if prosecutorial misconduct reaches the level of plain or obvious error, the prosecutor bears the burden of demonstrating that misconduct did not prejudice the defendant's substantial rights. *State v. Ramey*, 721 N.W.2d 294, 299-300 (Minn. 2006). Plain or obvious error is conduct that the prosecutor should know is improper. *Id.* at 300. Even if we were to reach these issues under a plain-error analysis, Reed has not demonstrated that he is entitled to relief based on the prosecutor's conduct.

A. "Were-they-lying" question

Reed asserts that the prosecutor's "were-they-lying" question addressed to Jones constituted misconduct. The supreme court has stated that "were-they-lying" questions generally have no probative value and are argumentative because they do not assist the jury. *State v. Pilot*, 595 N.W.2d 511, 518 (Minn. 1999). In this case, the state concedes that the prosecutor's use of such questions was improper. *See State v. Morton*, 701 N.W.2d 225, 235 (Minn. 2005) (holding that the use of "were-they-lying" questions was plain error where defendant had not put the credibility of the witnesses who were asked these questions at issue). But the prosecution has met its burden of showing that Reed

was not prejudiced by this line of questioning because the questioning allowed Jones to explain that Reed used the address of her apartment for his driver's license because he lived with his mother who moved frequently. And we conclude that the error did not seriously affect the fairness, integrity or public reputation of judicial proceedings, requiring a new trial.

B. The prosecutor did not inject racial or socioeconomic stereotypes into the case.

Reed objects to the prosecutor's opening statement characterizing his letter as "cryptic" and in a "style most of us would probably not understand." The prosecutor read from the letter and spelled out one of the racial epithets as it was written in the letter. Reed also objects to the prosecutor's use of the letter in closing, at which time the prosecutor stated that he was "not intending to make fun of it when I say that's how these things are spelled." The prosecutor told the jury that they could look at the letter themselves and called their attention to the sentence in which Reed refers to "holding too much heat for them to f*** in my business."

We find no merit in Reed's argument that the prosecutor's reading of the letter or comments about the letter constituted an improper injection of race or socioeconomic status into this case. The prosecutor introduced testimony to explain the use of the word "heat" in the letter, supporting his comment that the letter might not be readily understood without explanation. The jury had the letter and could see that the prosecutor spelled words as they were spelled in the letter. We conclude that the prosecutor's use of the letter, which was admitted without objection, did not constitute misconduct or error.

C. The prosecutor did not belittle Reed's defense.

The prosecutor explained to the jury that expert witnesses who testified regarding the lack of fingerprints or DNA on the gun were called to forestall an argument from the defense about the lack of forensic evidence. Reed asserts that these comments belittled his defense by suggesting that the jurors "should resent or hold the defense responsible for making the prosecutor waste their time." This argument is so speculative and devoid of merit that we decline to address it in the context of a plain-error analysis.

Affirmed.