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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1615**

State of Minnesota,
Respondent,

vs.

Kenneth Bernard Williams,
Appellant.

**Filed July 16, 2012
Affirmed
Peterson, Judge**

Dakota County District Court
File No. 19HA-CR-11-240

Lori Swanson, Attorney General, St. Paul, Minnesota; and

James C. Backstrom, Dakota County Attorney, Helen R. Brosnahan, Assistant County
Attorney, Hastings, Minnesota (for respondent)

Melissa Sheridan, Assistant Appellate Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and
Willis, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a conviction of ineligible person in possession of a firearm, appellant argues that the evidence failed to prove beyond a reasonable doubt that he constructively possessed a rifle found in another man's car. We affirm.

FACTS

At approximately 6:30 on a January evening, four police officers were dispatched to a residence in response to a report of a disturbance with the possible presence of a weapon. When the first officer arrived on the scene, appellant Kenneth Bernard Williams was in the street in an intersection. A vehicle was parked about one-quarter of a block away from appellant. There was one person in the vehicle, sitting in the driver's seat. A police officer saw a rifle in the vehicle between the passenger door and passenger seat. The rifle was within the person's arm's reach.

A police officer detained appellant, handcuffed him, and placed him in the rear seat of a squad car. An officer removed the rifle from the vehicle and disarmed it by removing five rounds of ammunition. While the officer was disarming the rifle, appellant yelled from the squad car, "Nope, you're going to shoot yourself. You have to pump it and pump it again, then pump it again." In the trunk of the vehicle, officers found a backpack that contained a BB gun, appellant's birth certificate, other documents bearing appellant's name, mail addressed to appellant, and several different types of ammunition, including ammunition of the same type removed from the rifle.

Appellant was taken to jail and interviewed by an officer. During the interview, appellant admitted that he had borrowed the rifle from someone. He admitted that he had been seated in the passenger seat of the vehicle and stated that the rifle did not belong to the driver. Appellant told the officer that “he always carries a gun on him, that [he will] always have one, and that people have known that he is always known to carry a gun on him.” Appellant also told the officer, “You got me red-handed. It was near me.”

Appellant was charged with one count of terroristic threats. The state amended the complaint to add one count of possession of a firearm by an ineligible person in violation of Minn. Stat. § 624.713, subd. 1(2) (2010). Before trial, the state dismissed the terroristic-threats charge. Appellant admitted that he had been convicted of an offense that made him ineligible to possess a firearm and waived his right to a jury trial on that element of the offense. *See* Minn. Stat. § 624.713, subd. 1(2) (a person who has been convicted of a crime of violence shall not possess a firearm). A jury found appellant guilty of possession of a firearm by an ineligible person, and he was sentenced to 60 months in prison. This appeal followed.

D E C I S I O N

I.

Appellant argues that the evidence was insufficient to support the jury’s verdict. When considering a claim of insufficient evidence, this court conducts “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction,” was sufficient to allow the jurors to reach the verdict that they reached. *State v. Caine*, 746 N.W.2d 339, 356 (Minn. 2008) (quotation omitted).

We 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). “We 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 that the defendant was guilty of the crime charged. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quoting *State v. McCullum*, 289 N.W.2d 89, 91 (Minn. 1979)) (other quotation omitted).

Appellant argues that because his conviction was based entirely on circumstantial evidence, this court must apply stricter scrutiny in reviewing the sufficiency of the evidence. *See State v. Jones*, 516 N.W.2d 545, 549 (Minn. 1994) (stating that “conviction based entirely on circumstantial evidence merits stricter scrutiny than convictions based in part on direct evidence”). But the officer who interviewed appellant testified that appellant admitted that he had borrowed the rifle from someone, that it did not belong to the driver, that he had been sitting in the passenger seat, and that the officer got him “red-handed.” Because appellant’s admissions are direct evidence, we do not apply the stricter scrutiny afforded convictions based entirely on circumstantial evidence. *See State v. Weber*, 272 Minn. 243, 254, 137 N.W.2d 527, 535 (1965) (stating that admissions of defendant constituted direct and not circumstantial evidence).

Appellant argues that the state failed to prove that he was in actual or constructive possession of the rifle. *See State v. Porter*, 674 N.W.2d 424, 427 (Minn. App. 2004) (requiring for conviction of possession of firearm by ineligible person that state prove “actual or constructive possession of a firearm”). The state may prove constructive

possession by showing that, if the police found [the item] in a place to which others had access, that there is a strong probability, inferable from the evidence, that the defendant was, at the time, consciously exercising dominion and control over it.” *State v. Lee*, 683 N.W.2d 309, 316, n.7 (Minn. 2004). In assessing constructive possession, we examine the totality of the circumstances and view the evidence in the light most favorable to the verdict. *State v. Denison*, 607 N.W.2d 796, 799-800 (Minn. App. 2000).

The evidence was sufficient to prove that appellant consciously exercised dominion and control over the rifle. The rifle was found between the passenger seat and the passenger door, appellant was one-quarter of a block away from the vehicle, and admitted that he had been seated in the passenger seat. The fact that the rifle was in close proximity to the person in the vehicle does not preclude the conclusion that appellant exercised dominion and control over the rifle. *See State v. Labarre*, 292 Minn. 228, 231, 237, 195 N.W.2d 435, 438, 441 (1972) (evidence, including defendant’s admissions, was sufficient to prove that defendant constructively possessed narcotics despite fact that defendant was not in residence occupied by several other people at time police found narcotics).

In addition to the location of the rifle, appellant admitted that he had borrowed the rifle from someone, that he has a reputation for carrying guns, and that the officer got him “red-handed.” Also, when an officer was disarming the rifle, appellant demonstrated familiarity with the rifle by instructing the officer how to safely disarm it. And ammunition that could be used in the rifle was found in a backpack along with documents bearing appellant’s name, which supports the inference that the backpack belonged to

appellant. Examining the totality of the circumstances, the evidence was sufficient to allow the jury to reasonably conclude that appellant was guilty of possessing the rifle.

II.

Appellant argues in his pro se brief that, when the officer testified about appellant's admissions, the prosecutor's failure to introduce the recording of appellant's statements violated the hearsay rule. But, under the hearsay rule, a statement offered against a party is not hearsay if the statement is "the party's own statement, in either an individual or a representative capacity." Minn. R. Evid. 801(d)(2)(A). The admissions that the officer testified about were appellant's own statements, and the statements were offered against appellant. Therefore, the statements were not hearsay. *See also State v. Reed*, 737 N.W.2d 572, 590 (Minn. 2007) (upholding admission of statements defendant made to inmate during jailhouse conversation that were offered against defendant at trial). Admitting the statements did not violate the hearsay rule.

Affirmed.