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**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0259**

State of Minnesota,
Respondent,

vs.

Benjamin Wayne Blaschka,
Appellant.

**Filed December 23, 2013
Affirmed
Worke, Judge**

Winona County District Court
File No. 85-CR-12-904

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

Karin L. Sonneman, Winona County Attorney, Justin A. Wesley, Assistant County Attorney, Winona, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the evidence was insufficient to convict him of being an ineligible person in constructive possession of a firearm. We affirm.

DECISION

Appellant Benjamin Wayne Blaschka argues that the evidence was insufficient for the jury to find him guilty of being an ineligible person in possession of a firearm. In considering a claim of insufficient evidence, this court's review is limited to an analysis of the record to determine whether the evidence, viewed in a light most favorable to the conviction, is sufficient to allow the jury to reach the verdict that it did. *State v. Hurd*, 763 N.W.2d 17, 26 (Minn. 2009). 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 charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Blaschka was convicted of violating Minn. Stat. § 624.713, subd. 1(2) (2010), which prohibits certain persons from possessing firearms. Under the statute, possession can be actual or constructive. *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). Actual possession would require proof that Blaschka had the firearm "on his person." *Id.* Constructive possession may be proven when the firearm is found in a place (1) under the defendant's "exclusive control to which other people did not normally have access"; or (2) to which others had access, but 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. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975). "[C]onstructive possession need not be exclusive, but may be shared." *Smith*, 619 N.W.2d at 770. We look at the totality of the

circumstances in assessing whether constructive possession has been proved. *State v. Munoz*, 385 N.W.2d 373, 377 (Minn. App. 1986).

Evidence at trial established that in November 2011, Blaschka and Taylor Suchla sold two guns to the owner of an antique shop. Police interviewed Blaschka in late November, and clips from the interview were played for the jury. Blaschka stated that he was somewhat of a “mentor” to Suchla. He admitted that he respected Suchla because Suchla was always willing to “hustle someone for some money,” and he “made [Blaschka] a lot of money.”

Blaschka further stated that Suchla brought two rifles to him. Blaschka stated that he carries a gun only when he knows that he is going to have to use it, so he “didn’t want any guns.” He “tried to get rid of them” because he knew that “possessing a gun for [him] is sixty months.” Blaschka admitted that he and Suchla took the guns to an antique dealer and that he was “there for the transaction.” He stated: “I acted like one [gun] was mine,” and Suchla “acted like the other [gun] was his.” He stated that while he was talking “to the dude, [he] was looking [the gun] up on [his] phone.”

Blaschka argues that his conviction should be reversed because the evidence shows only that he “associated with Suchla, was aware of the firearms and told Suchla he could not have them in [his] home.” But direct evidence, in the form of Blaschka’s admissions, shows his constructive possession. Blaschka acknowledged that he wanted to get rid of the guns and admitted that he took the guns to the dealer, was there for the transaction, asserted that one of the guns belonged to him, and looked the gun up on his phone during the transaction. This conduct suggests “a strong probability” that Blaschka

exercised “dominion and control” over the firearm. The evidence was sufficient for the jury to find Blaschka guilty of being an ineligible person in constructive possession of a firearm.

Affirmed.