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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-0368**

State of Minnesota,  
Respondent,

vs.

Andrew Vernard Glover,  
Appellant.

**Filed February 19, 2013  
Affirmed  
Hudson, Judge**

Ramsey County District Court  
File No. 62-CR-11-5630

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,  
St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle Rene Winn, Assistant  
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Chutich, Presiding Judge; Hudson, Judge; and  
Klaphake, Judge.\*

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

## UNPUBLISHED OPINION

**HUDSON**, Judge

Appellant challenges his conviction of possession of a firearm by an ineligible person, arguing that the circumstantial evidence is insufficient to support his conviction because an alternative rational hypothesis exists that his companion possessed the firearm. We affirm.

### FACTS

The state charged appellant Andrew Vernard Glover with one count of possession of a firearm by an ineligible person and one count of possession of a firearm by an ineligible person for the benefit of a gang. The charges arose when police recovered a gun lying near an off-white cloth in a back yard, near the location where appellant fled after a traffic stop. As he fled, police observed appellant carrying an object hidden under a light-colored cloth.

Appellant waived his right to a jury trial, and the district court held a bench trial. St. Paul police officer Keith Grundhauser testified that he was on patrol on Rice Street with a partner the night of the incident when the officers observed a car with a license-plate light hanging over the license plate, obscuring the plate from view, which they knew to be a traffic violation. They activated their siren and emergency lights to conduct a traffic stop; the car did not initially stop, but it stopped within about three blocks. The officers saw two people in the car: appellant, who was the passenger, and the driver, W.S. Officer Grundhauser testified that when the car came to a stop, appellant jumped out,

scrambled over a snowbank, and ran past the passenger side of the squad. Officer Patrick Kolodge chased after appellant, but appellant eluded him.

Officer Kolodge testified that when appellant first exited the car, he passed within ten feet of the squad, and the officer observed that appellant was carrying a light-colored cloth “that looked as though he was trying to wrap something up in it,” concealing something. Officer Kolodge testified that he was concerned that appellant was trying to hide a weapon because he believed, based on his training and experience, that people use cloths to conceal weapons so their DNA will not be found on the weapon. He therefore almost immediately started chasing appellant down the sidewalk and followed appellant to a residence, where he heard a gate shut in a fenced back yard. He then lost track of appellant and returned to the squad car to assist his partner. He testified that the evening was cold, with dry snow on the ground, and that the K-9 patrol began tracking within five minutes after he last saw appellant.

Meanwhile, Officer Grundhauser saw the car begin to travel away from the initial stop, stopped the car again, and arrested W.S. Officer Grundhauser testified that Officer Kolodge returned after being gone for a minute or two; dispatch was called, and the officers began to set up a perimeter around the location. A K-9 patrol alerted that someone was located in a vehicle at the back of a residence about a block away. They found appellant inside that vehicle and arrested him after they saw him make furtive movements toward the center console area. Officer Grundhauser testified that he was able to observe W.S. continuously from the time he saw the initial violation until he placed W.S. in the back of another squad.

Once appellant was in custody, Officer Kolodge retraced the steps of the foot chase in hope of finding what appellant had apparently discarded. He testified that he peered over the fence where he had seen appellant pass by and saw what he believed to be the cloth that appellant held when he exited the car. He also observed a handgun lying a few feet away in the back yard, with water beaded up on the cold parts of the gun, which indicated to him that the gun was warm. Officer Kolodge acknowledged that W.S.'s home was located almost directly across Oakland Cemetery from the traffic stop, but that appellant's home was a couple of miles away.

Appellant, who exercised his right not to testify, stipulated that he was ineligible to possess a firearm; that forensic testing showed that W.S.'s DNA, but not appellant's DNA, was found on the recovered gun; and that no fingerprints were found on the gun.

The district court found appellant guilty of possessing a firearm as an ineligible person and not guilty of possessing a firearm as an ineligible person for the benefit of a gang. The district court found that, although no direct evidence linked appellant to possessing the gun, the following "overwhelming" circumstantial evidence supported the conclusion that appellant possessed the gun: that he fled the traffic stop clutching a white cloth to his body; that Officer Kolodge saw him run near the back yard where the gun and cloth were found, and heard a gate close near that address; and that the handgun was covered in condensation, as though it had recently been handled. The district court found that, based on the circumstantial evidence, it could draw the logical inference that appellant fled with the gun wrapped in the white cloth and, while being pursued, threw the gun into the back yard.

The district court sentenced appellant to 60 months, and this appeal follows.

## D E C I S I O N

An appellate court reviews the sufficiency of the evidence to support a conviction by determining whether legitimate inferences drawn from the record evidence would allow a factfinder to conclude that the defendant was guilty beyond a reasonable doubt. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). In reviewing the sufficiency of the evidence, this court applies the same standard of review to bench trials, in which the district court is the trier of fact, and to jury trials. *Davis v. State*, 595 N.W.2d 520, 525 (Minn. 1999). An appellate court will not overturn a guilty verdict “if, giving due regard to the presumption of innocence and the prosecution’s burden of proving guilt beyond a reasonable doubt, the [factfinder] could reasonably have found the defendant guilty of the charged offense.” *State v. Leake*, 699 N.W.2d 312, 319 (Minn. 2005).

To convict appellant of possession of a firearm by an ineligible person, the state was required to prove beyond a reasonable doubt that he possessed the gun recovered in the back yard. Minn. Stat. § 624.713, subd. 2 (2010). In this case, the state was attempting to show that appellant physically had the firearm on his person when he fled the location of the stop. *See State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000) (defining actual possession), *review denied* (Minn. Jan. 16, 2001). The state provided direct evidence of Officer Kolodge’s observation that appellant was carrying a white cloth, which appeared to cover an object. *See State v. Hokanson*, 821 N.W.2d 340, 353 n.1 (Minn. 2012) (stating that “[d]irect evidence is that which proves a fact without an inference or presumption and which in itself, if true, establishes that fact”) (quotation

omitted). But in order to convict appellant, the state was also required to rely on circumstantial evidence. *See id.* at 354 n.3 (“Circumstantial evidence is evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.”).

Heightened scrutiny applies to a verdict based on circumstantial evidence. *Pratt*, 813 N.W.2d at 874. When evaluating convictions based on circumstantial evidence, Minnesota appellate courts use a two-step process. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). First, we examine the circumstances proved, deferring to the factfinder’s acceptance of proof of those circumstances, based on recognition that the factfinder “is in the best position to weigh the credibility of the evidence and thus determine which witnesses to believe and how much weight to give their testimony.” *Id.* at 329 (quotation omitted). We then “independently examine the reasonableness of the inferences to be drawn from the circumstances proved.” *Pratt*, 813 N.W.2d at 874. This includes inferences of innocence as well as guilt. *Andersen*, 784 N.W.2d at 329.

In this examination, all of the circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis negating guilt. *Id.* at 329–30. But a rational hypothesis that negates guilt must be based on more than mere conjecture. *Id.* at 330. “This formulation does not require that the State’s evidence must exclude *all* inferences other than that of guilt. The State’s obligation is to exclude all *reasonable* inferences other than guilt.” *Hokanson*, 821 N.W.2d at 354–55 (quotation omitted). In other words, “[t]he State does not have the burden of removing all doubt, but it must remove all reasonable doubt.” *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011).

Viewing the evidence in the light most favorable to the conviction, and deferring to the district court's credibility determinations, we identify the following circumstances proved: that appellant was observed attempting to hide something inside a white cloth after alighting from a car stopped by police; that he ran near a back yard; that within a few minutes, an off-white cloth and a handgun were found lying in that back yard; and that despite the cold weather, police observed that the handgun was partially covered with condensation, as though it had been recently handled. Considering all rational inferences from these circumstances, we conclude, as did the district court, that the only reasonable inference is that appellant possessed the gun under the cloth as he was running from the location of the stop.

Appellant argues that additional circumstantial evidence supports an alternative rational hypothesis other than his guilt: that W.S., who lived almost directly across Oakland Cemetery from the residence where the gun was found, discarded it earlier in the evening. Appellant argues that this hypothesis is reasonable because W.S.'s residence was located near where the gun was found, and it would explain why W.S.'s DNA was found on the gun, but appellant's DNA and fingerprints were not found on the gun. But given the circumstances proved, we do not agree that an inference that W.S., rather than appellant, discarded the gun is reasonable. Appellant's theory does not explain the condensation on the gun or why appellant, who was seen running with an object under a white cloth immediately after the stop, no longer possessed the cloth when he was arrested a few minutes later. Because we conclude that the state sustained its burden of

excluding every reasonable inference other than guilt, *Hokanson*, 821 N.W.2d at 354, the circumstantial evidence is sufficient to support appellant's conviction.

**Affirmed.**