STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1073

State of Minnesota,
Respondent,

vs.

Emanuel Joseph Mash Babineaux,
Appellant.

Filed June 30, 2025
Affirmed
Wheelock, Judge

Anoka County District Court
File No. 02-CR-23-5461

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brad Johnson, Anoka County Attorney, Carl E. Erickson, Assistant County Attorney, Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Richard Schmitz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges his conviction for unlawful possession of a firearm, arguing that the state's evidence failed to establish possession and that the district court violated

his Fourth Amendment rights by ordering him to surrender a DNA sample without issuing a warrant. We affirm.

FACTS

A person called 911 in the early hours of August 21, 2023, to report that a couple had been fighting in a parking lot near an apartment building in Anoka County.[1] The caller reported that the couple had a vehicle with Texas license plates and that the individuals had been behaving suspiciously. The caller did not know if either of the individuals had a weapon. Dispatch sent Officer N.B. to the parking lot to investigate.

When Officer N.B. located the vehicle, he saw a man, whom he later identified as appellant Emanuel Joseph Mash Babineaux, walking away from it. Officer N.B. got out of his squad car and asked Babineaux to turn and face the squad car, to which Babineaux responded, "Why do I have to?" Then Babineaux turned and ran away. A chase ensued.

As Babineaux ran, he reached down towards the front of his waistband. This caused Officer N.B. concern that Babineaux was reaching for a weapon. As Officer N.B. pursued Babineaux on foot, Babineaux's girlfriend drove her vehicle—the vehicle with Texas license plates—and pulled up next to Babineaux; Babineaux jumped into the front passenger seat of the vehicle, and they drove away from law enforcement in reverse. By that time, another law-enforcement officer—Officer A.P.—had arrived on the scene, and he pursued the couple in his squad car as they fled. Officer A.P. eventually stopped the

[1] We take the following facts from the appellate record, including jury-trial transcripts, exhibits submitted by the parties, and documents filed with the district court.

vehicle by executing a PIT maneuver.[2] Babineaux emerged from the vehicle and began to run, but Officer A.P. chased Babineaux down and tackled him. Another officer, Officer K.S., assisted Officer A.P. in apprehending Babineaux.

In the course of apprehending Babineaux and placing him in handcuffs, the officers' sweat and skin appeared to come into contact with Babineaux. After law enforcement had Babineaux in handcuffs, Officer K.S. put on a pair of latex gloves and searched Babineaux. Officer K.S. then put on a pair of fabric gloves and searched the vehicle.

While searching the vehicle, Officer K.S. recovered a fully loaded .40-caliber Glock 22 handgun laying on top of a blanket and underneath a stuffed animal. He also found a nine-millimeter Taurus handgun and magazine buried under many items. Upon seeing the firearms—and before handling them—Officer K.S. donned a fresh pair of latex gloves. The officers then took Babineaux into the police station.

At the station, Babineaux informed officers that he knew his girlfriend owned firearms—"a 9 and a .40"—but that he did not know whether she had been storing her firearms in the vehicle, which was where the couple had been living. Respondent State of Minnesota charged Babineaux with unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (Supp. 2023), and with fleeing a police officer in a motor vehicle in violation of Minn. Stat. § 609.487, subd. 3 (2022), and on foot in violation of Minn. Stat. § 609.487, subd. 6 (2022). The state amended its complaint twice: once to omit

[2] A PIT maneuver, or "pursuit intervention technique," is a law-enforcement tactic to stop fleeing vehicles by forcing them to come to a halt.

the charge for fleeing a peace officer in a motor vehicle and later to add a second count for unlawfully possessing a firearm.

The state filed a motion to compel discovery, requesting a buccal swab from Babineaux pursuant to Minn. R. Crim. P. 9.02, which Babineaux opposed. The district court granted the state's motion over Babineaux's objection, stating:

> Denying the State's motion would only delay things. And if this were presented to me with the same information on a search warrant, I likely would sign that warrant. Because if there is biological evidence on the firearms recovered, then a sample of Mr. Babineaux's DNA would be obtainable by search warrant, I would find probable cause under that standard.

The state swabbed the firearms and magazines for DNA, and testing revealed that "a major male profile" recovered from the .40-caliber Glock 22 handgun "matche[d] Emanuel Joseph Mash Babineaux. And this major profile would not be expected to occur more than once among unrelated individuals in the world population." Babineaux pleaded not guilty, and the matter proceeded to a jury trial.

Babineaux stipulated that, "on all relevant dates, [he was] ineligible to possess any firearm and/or ammunition." The jury returned guilty verdicts on all counts: one count for fleeing a police officer in violation of Minn. Stat. § 609.487, subd. 6, and one count for each illegally possessed firearm in violation of Minn. Stat. § 624.713, subd. 1(2). The district court entered convictions on the count for fleeing law enforcement and one of Babineaux's unlawful-possession counts.

Babineaux appeals.

DECISION

I. The state presented sufficient evidence to establish that Babineaux constructively possessed the firearm.

Babineaux first argues that the state failed to prove that he constructively possessed a firearm because the matching DNA evidence recovered from the firearm in his girlfriend's vehicle would not have been on the firearm but for the fact that law enforcement inadvertently transferred his DNA onto it when law enforcement searched the vehicle. We are not persuaded.

"Possession may be proved through evidence of actual or constructive possession." *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Actual possession requires proof that the defendant physically possessed the contraband on their person at the time of arrest, while constructive possession requires proof from which "the inference is strong that the defendant at one time physically possessed the [contraband] and did not abandon his possessory interest in it but rather continued to exercise dominion and control over it." *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). Constructive possession may be proved by showing that the contraband was found "in a place under defendant's exclusive control to which other people did not normally have access." *Id.* at 611. But if the contraband was found "in a place to which others had access," the state must prove that "there is a strong probability (inferable from other evidence) that defendant was at the time consciously exercising dominion and control over it." *Id.* Mere proximity or "ease of access to a firearm" is insufficient; rather, "the State must prove that the defendant had an

ability and intent to exercise dominion and control over the firearm." *Harris*, 895 N.W.2d at 602. "A defendant may possess an item jointly with another person." *Id.* at 601.

When evaluating the sufficiency of circumstantial evidence, appellate courts apply a heightened, two-step review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Under the circumstantial-evidence standard, appellate courts first identify the circumstances proved at trial, viewing conflicting evidence in the light most favorable to the verdict. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010). Second, appellate courts independently examine the reasonable inferences that may be drawn from those circumstances to determine whether they are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). In doing so, appellate courts review the evidence as a whole and do not defer to the fact-finder's choice between reasonable inferences. *Id.*

Here, the circumstances proved include the following:

- Babineaux was living in the vehicle where law enforcement found the firearms;
- During the initial foot chase with law enforcement, Babineaux was reaching for the front of his waistband, and officers testified that this behavior is consistent with possessing a firearm;
- Babineaux's girlfriend picked him up in the vehicle, and Babineaux continued his flight in the vehicle;
- Upon searching the vehicle immediately after apprehending Babineaux, law enforcement discovered a firearm on top of a blanket behind the driver's seat and a second firearm on the floor of the vehicle, buried under many items;

- Babineaux's DNA matched a major DNA profile recovered from the .40-caliber Glock 22 handgun found in his girlfriend's vehicle, and that profile "would not be expected to occur more than once among unrelated individuals in the world population"; and

- While in custody, Babineaux accurately identified the calibers of each firearm.

Assuming without deciding that the DNA evidence should have been excluded, as Babineaux argues and we address in the next issue, a reasonable jury could have concluded that Babineaux constructively possessed the firearms. The evidence exhibits more than "ease of access" to the firearms, *Harris*, 895 N.W.2d at 602, because they were found loose in the vehicle in which Babineaux had been living, Babineaux knew their respective calibers, and Babineaux exhibited behavior that was consistent with possessing a firearm. When we consider the evidence as a whole, the circumstances proved are consistent with an inference that Babineaux exercised dominion and control over each of the firearms and inconsistent with any rational hypothesis other than guilt. *See Florine*, 266 N.W.2d at 610.

Babineaux presents a hypothesis that is inconsistent with guilt—that Officer K.S. tainted the firearms with Babineaux's DNA while searching the vehicle—but this is an irrational hypothesis. Although the officers' skin may have come into contact with Babineaux when they apprehended him, Officer K.S. wore gloves when he conducted the search and when he handled the firearms. He even put on a fresh pair of latex gloves before handling either of them. We thus reject Babineaux's alternative theory as irrational and based on conjecture. *See Silvernail*, 831 N.W.2d at 599. We are not persuaded that law enforcement tainted the firearms with Babineaux's DNA while searching the vehicle.

Thus, we conclude that the circumstantial evidence was sufficient to prove that Babineaux unlawfully possessed the firearms.

II. Because the inevitable-discovery doctrine applies to the state's collection of Babineaux's DNA pursuant to Minnesota Rule of Criminal Procedure 9.02, the district court did not err by not suppressing it.

Babineaux next argues that the district court violated his Fourth Amendment rights when it allowed the state to collect his DNA pursuant to a Minn. R. Crim. P. 9.02 motion rather than a search warrant.[3] The state acknowledges that, under *State v. Steeprock*, 10 N.W.3d 683 (Minn. App. 2024), *rev. granted* (Minn. Nov. 19, 2024),[4] Babineaux's buccal-swab DNA evidence would be suppressed, but argues that, here, the inevitable-discovery doctrine precludes suppression. Specifically, the state cites *In re Welfare of J.W.K.* to support its position that the inevitable-discovery doctrine applies to prevent the suppression of the DNA evidence collected from Babineaux because the district court explicitly stated that it would have signed a search warrant for Babineaux's DNA had the state applied for one using the facts it cited in its rule 9.02 motion. 583 N.W.2d 752,

[3] We apply Minnesota law to Babineaux's Fourth Amendment challenge because both parties relied on Minnesota caselaw in their briefing. Additionally, although Babineaux did not specifically raise a constitutional objection to the state's use of rule 9.02 before the district court, because the district court determined that probable cause would exist had the state requested a sample of Babineaux's DNA via a warrant, thus addressing the constitutional basis for the request, we conclude that Babineaux's Fourth Amendment argument is sufficiently preserved for review. *See State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989) (providing that appellate courts typically only decide issues that are "first addressed by the [district] court").

[4] *Steeprock* held that obtaining a DNA sample via a Minn. R. Crim. P. 9.02 motion, rather than a search warrant, violates a criminal defendant's Fourth Amendment rights. *Id.* at 687.

757 (Minn. 1998). In its brief, the state concedes that, if the inevitable-discovery doctrine does not apply, it cannot meet its burden to demonstrate that "the verdict was surely unattributable" to the admission of Babineaux's DNA evidence.[5] We agree and thus proceed to consider whether the inevitable-discovery doctrine applies here.

The inevitable-discovery doctrine provides that, "[i]f the state can establish by a preponderance of the evidence that the fruits of a challenged search 'ultimately or inevitably would have been discovered by lawful means,' then the seized evidence is admissible even if the search violated the warrant requirement." *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (quoting *Nix v. Williams*, 467 U.S. 431, 444 (1984)). Appellate courts apply a clear-error standard of review to findings of fact and a de novo standard of review to the legal analysis based on those facts. *State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011). In analyzing the doctrine's applicability, we first review the relevant caselaw.

In 2011, the supreme court clarified the inevitable-discovery doctrine when it observed that "[t]he State may not show inevitable discovery by claiming that if it had not searched illegally, it would have done so legally." *Id.* In making this observation, the supreme court cited *State v. Hatton*, 389 N.W.2d 229, 234 (Minn. App. 1986), *rev. denied* (Minn. Aug. 13, 1986), an opinion from this court that declined to apply the inevitable-discovery doctrine when the state did not pursue lawful means of obtaining the evidence, quoting it in a parenthetical: "If police . . . are only required to show that lawful

[5] We appreciate the state's concession.

means could have been available even though not pursued, the narrow 'inevitable discovery' exception would 'swallow' the entire Fourth Amendment protection." *Diede*, 795 N.W.2d at 849. Babineaux argues that *Hatton* and *Diede* render the inevitable-discovery doctrine inapplicable to his case because the state takes the same position here that it did in those cases—that law enforcement "would have" obtained a search warrant. But Babineaux does not account for *J.W.K.*—an opinion the supreme court released between *Hatton* and *Diede* that, the state maintains, permits the application of the inevitable-discovery doctrine to affirm the district court's decision to admit Babineaux's DNA into evidence.

In *J.W.K.*, law enforcement was investigating a juvenile's potential involvement in an act of vandalism. 583 N.W.2d at 753-54. The juvenile and his mother consented to provide a sample of the juvenile's DNA to law enforcement to facilitate the investigation of his alleged involvement in the vandalism. *Id.* at 754. After obtaining a confession from other suspects, however, law enforcement determined that the juvenile was not involved in the vandalism. *Id.*

Law enforcement retained the juvenile's DNA sample and later used it to investigate an unrelated prior burglary, determining that the juvenile had been involved in the prior burglary by comparing his DNA sample to DNA from the burglary crime scene. *Id.* Neither the juvenile nor his mother had consented to law enforcement's use of the DNA sample to investigate any other crime. *Id.* Law enforcement confronted the juvenile with the DNA evidence, and he confessed. *Id.* The juvenile moved to suppress the DNA evidence and his subsequent confession. *Id.*

The district court granted the motion, concluding that the identification and confession were fruit of the poisonous tree because the juvenile's consent to the use of the DNA sample in the vandalism investigation did not extend to the burglary investigation. *Id.* But on appeal, the supreme court reversed because it concluded that the inevitable-discovery doctrine applied. *Id.* at 757. The supreme court reasoned that "the police presumably *would have sought and obtained* a warrant authorizing either the taking of a new sample or the submission of the previously-obtained sample to the BCA for DNA profiling." *Id.* (emphasis added).

This court declined to address *J.W.K.* in *Steeprock*, deciding that *J.W.K.* did not apply because the record in *Steeprock* did "not support an appellate determination of probable cause" like the record in *J.W.K.* did. *Steeprock*, 10 N.W.3d at 698 n.12. Because *Steeprock* does not resolve the issue presented here, we proceed to analyze whether the inevitable-discovery doctrine applies based on the caselaw discussed above.

At the hearing on the motion to suppress, which occurred prior to the release of *Steeprock*, the district court made the following statement when it granted the state's rule 9.02 motion for the buccal swab over Babineaux's objection:

> Denying the State's motion would only delay things. And if this were presented to me with the same information on a search warrant, I likely would sign that warrant. Because if there is biological evidence on the firearms recovered, then a sample of Mr. Babineaux's DNA would be obtainable by search warrant, I would find probable cause under that standard.

Thus, the state can show "by a preponderance of the evidence that the fruits of a challenged search ultimately or inevitably would have been discovered by lawful means"

because the district court explicitly told both parties that it would have granted a warrant on the same facts on which the rule 9.02 motion relied had the state requested a warrant. *Licari*, 659 N.W.2d at 254 (quotation omitted). Based on the district court's observation that there was probable cause to support issuing a warrant, we conclude that Babineaux's DNA ultimately would have been discovered by lawful means.

We therefore conclude that, notwithstanding that the district court's grant of the state's rule 9.02 motion to obtain Babineaux's DNA violated Babineaux's Fourth Amendment rights under *Steeprock*, the inevitable-discovery doctrine applies to the challenged evidence.

Affirmed.