

**IN THE SUPREME COURT  
FOR THE STATE OF NORTH DAKOTA**

State of North Dakota,	)	
	)	
Plaintiff-Appellee,	)	Supreme Court No.: 20170306
	)	District Court No.: 36-2017-CR-00102
v.	)	
	)	
Steven Doyle Newman,	)	
	)	
Defendant-Appellant.	)	

**APPEAL FROM THE VERDICT AND CRIMINAL JUDGMENT ENTERED  
JULY 13, 2017 BY DISTRICT COURT FOR THE NORTHEAST JUDICIAL  
DISTRICT, THE HONORABLE DONOVAN A. FOUGHTY, PRESIDING**

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**BRIEF OF THE APPELLEE**

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**ATTORNEY FOR APPELLEE**

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## **ISSUES PRESENTED**

[¶1] I. Whether the evidence is sufficient to support a finding that Steven Newman (hereinafter Newman) is guilty of the charge of unlawful possession of a firearm in violation of N.D.C.C. § 62.1-02-01?

II. Whether the trial court erred in denying Newman’s motion for judgment of acquittal?

## **STATEMENT OF THE CASE**

[¶2] This case comes to this Court from an appeal brought by Newman after the district court denied Newman’s motion for judgment of acquittal on August 4, 2017. (Appellee’s Appendix (hereinafter “A.App.”) 6

[¶3] Newman was charged with Felon in Possession of a Firearm, a Class C Felony, and two counts of Possession of Drug Paraphernalia, Class A and B Misdemeanors, on February 24, 2017. (Appellant’s Appendix (hereinafter “App.”) 9-11 Count 2-possession of drug paraphernalia was dismissed by the State and Newman pled guilty to Count 3-possession of drug paraphernalia prior to the jury trial in this matter. A jury trial was held on July 12, 2017 and the jury found Newman guilty of Count 1. Newman filed a motion for new trial and a motion for judgment of acquittal, the State opposed both motions and ultimately the trial court denied the motions on October 4, 2017. Newman’s Notice of Appeal was filed on August 14, 2017. (App. 24)

## STATEMENT OF THE FACTS

[¶4] On February 24, 2017, the State filed a Complaint/Information charging in Count 1 that on or about the 27<sup>th</sup> day of January, 2017, Newman was a felon in possession of a firearm in violation of Section 62.1-02-01 of the North Dakota Century Code. (App. 9-11). A Jury Trial was held in the matter on July 12, 2017.

[¶5] Aaron Hall, (hereinafter Officer Hall), a probation officer for the state of North Dakota testified a probation search was conducted on January 27, 2017, at the residence and garage rented by Newman. (Transcript (hereinafter “Tr.”) p. 13, lines 13-24) Officer Hall testified the garage was search because he believed Newman rented the garage. (Tr. p. 14, lines 9-12.) In the garage, officers found a vehicle registered to Newman, a motorcycle, ammunition, and a safe. (Tr. p. 15 lines 5-10). Within the safe, officers found several guns, two shotguns, and a MAK 90 Sporter gun. (Tr. p. 17, lines 12-14)

[¶6] Jeanette Feldner (hereinafter Mrs. Feldner) testified she assisted her son with his rental properties. (Tr. p. 39, lines 7-10). Mrs. Feldner testified she assisted Newman with renting the garage and the home in Starkweather, ND on November 1, 2016. (Tr. p. 39, lines 11-23) Mrs. Feldner further testified she gave Newman one key for the garage and she herself had the other key. (Tr. p. 39, lines 4-9). Finally Mrs. Feldner testified she herself had no property in the garage. (Tr. p. 39, lines 10-11).

[¶7] Kenneth Feldner (hereinafter Mr. Feldner) testified he was the owner of the house and garage rented by Newman. (Tr. p. 35, lines 10-21) Mr. Feldner testified prior to rental by Newman, he had personally been in the garage cleaning it out from the previous

renters. (Tr. p. 36, lines 3-6.) Mr. Feldner testified he cleaned the garage end of October 2016. (Tr. p. 36, lines 5-9). Mr. Feldner testified the only things remaining in the garage was two floor jacks. (Tr. p. 36, lines 12-15)

[¶8] After the State rested its case, the defense moved for a Judgment of Acquittal. (Tr. p. 43, lines 3-22) The State resisted. (Tr. p. 43-44, lines 23-16) The trial court denied the defense motion. (Tr. p. 44, line 17) The jury returned a guilty verdict and conviction was entered. (App. 3).

[¶9] Newman filed a motion for new trial (App. 5) and for judgment of acquittal (App. 4). The State resisted both motions. (A.App. 1-5). The district court entered an Order denying Newman's motions. (A.App. 6).

### **LAW AND ARGUMENT**

[¶10] Newman argues that there was insufficient evidence to sustain his conviction and the trial court improperly denied his motion for judgment of acquittal. The State contends the evidence is sufficient to support a conviction and the district court properly denied Newman's motion for acquittal. The standard of review for appeals challenging sufficiency of the evidence, has been stated as:

In an appeal challenging the sufficiency of the evidence, we look only to the evidence and reasonable inferences most favorable to the verdict to ascertain if there is substantial evidence to warrant the conviction. A conviction rests upon insufficient evidence only when, after reviewing the evidence in the light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonable to be drawn in its favor, no rational fact finder could find the defendant guilty beyond a reasonable doubt. *State v. Rufus*, 2015 ND 212, ¶6, 868 N.W.2d 534 (quoting *State v. Corman*, 2009 ND 85, ¶8, 765 N.W.2d 530).

[¶11] Newman was found guilty by a jury for Count 1, Felon in Possession of a Firearm in violation of N.D.C.C. § 62.1-02-01. The State’s burden of proof at the trial was to show beyond a reasonable doubt, the following essential elements:

1. That on or about January 27, 2017, in Ramsey County, North Dakota, the Defendant, did own, possess, or control a firearm (MAK 90 Sporter rifle, Stoeger Arms Shotgun, or Winchester 1300 Defender shotgun);
2. That the Defendant, has been convicted of a felony offense; and
3. That the Defendant’s release from incarceration, parole or probation, whichever is latest, was within five (5) years of possession of the firearm.

Id.

The defense stipulated to elements 2, 3 of the offense and thus the State’s burden was to show element 1. (Tr. p. 55, lines 2-5).

[¶12] “A conviction may be justified on circumstantial evidence alone if the evidence has such probative force as to enable the trier of fact to find the defendant guilty beyond a reasonable doubt. A verdict based on circumstantial evidence carries the same presumption of correctness as other verdicts.” State v. Nakvinda, 2011 ND 217 ¶ 17, 807 N.W.2d 204. Further, possession may be “actual or constructive, exclusive or joint and may be shown entirely by circumstantial evidence.” State v. Demarais, 2009 ND 143 ¶ 8, 770 N.W.2d 246 (quoting State v. Morris, 331 N.W.2d 48, 53 (N.D. 1983) Also, constructive possession is proven where evidence “establishes that the accused had the power and capability to exercise dominion and control” over an item. Morris, 331

N.W.2d at 54 (allowing for an inference of constructive possession under a “totality of [the] circumstances”).

[¶13] At trial, Officer Hall testified that January 27, 2017 a probation search was done of Newman’s home and garage. (Tr. p. 13, lines 13-17) Officer Hall testified Newman’s home and garage were in Starkweather, Ramsey County, ND. (Tr. p. 13-14, lines 18-16). Officer Hall further testified the safe was found within Newman’s garage. (Tr. p. 15, lines 11-13) Within the safe firearms were located. (Tr. p. 17, lines 11-16) Mr. Feldner testified he himself cleaned out the garage immediately before Newman’s renting of the garage and only two floor jacks were in the garage. (Tr. p. 36, lines 3-16) Mrs. Feldner testified Newman had rented the garage and only herself and Newman had a key to the garage. (Tr. p. 40, lines 4-9) Officer Hall testified the garage was locked when they began the search, gaining entry from a window. (Tr. p. 14-15, lines 17-3) Agent Travis Zahn testified Newman’s car was in the garage. (Tr. p. 28-29, lines 25-5) Agent Zahn testified it would be possible for one person to move the safe. (Tr. p. 33-34, lines 22-1)

[¶14] The credibility of the State’s evidence, testimonial and otherwise was reinforced through Newman’s cross examination. There is sufficient evidence to show Newman on January 27, 2017, was in possession of firearms within Ramsey County.

[¶15] Newman next argues the district court erred in denying his motion for judgment of acquittal. “In deciding a motion for judgment of acquittal, the district court, upon reviewing the evidence most favorable to the prosecution, ‘must deny the motion if there is substantial evidence upon which a reasonable mind could find guilty beyond a reasonable doubt.’” State v. Gonzalez, 2000 ND 32, ¶14, 606 N.W.2d 873 (quoting State v. Hafner, 1998 ND 220, ¶ 21, 587 N.W.2d 177). On appeal from an order denying a



motion for judgment of acquittal, “the defendant must show the evidence, when viewed in the light most favorable to the verdict, permits no reasonable inference of guilt.” Id. The trial court properly denied Newman’s motion. The evidence presented, including all the reasons listed above, clearly support a denial of Newman’s motion for judgment of acquittal.

### **CONCLUSION**

[¶16] The testimony and evidence submitted at the trial was sufficient and of such probative force that it enable the jury, to find the defendant guilty, beyond a reasonable doubt, of Felon in Possession of a Firearm. The Appellee requests that the Court affirm the conviction and trial court’s order denying Newman’s motion for judgment of acquittal.

Respectively submitted on January 4, 2018.

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<b>Plaintiff and Appellee,</b>	)	<b>Supreme Court No.: 20170306</b>
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	)	
<b>Steven Doyle Newmn,</b>	)	<b>Certificate of Service</b>
	)	
<b>Defendant and Appellant.</b>	)	

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The undersigned, being of legal age, being first duly sworn deposes and says that she served true copy of the following:

Appellee's Brief & Appellee's Appendix

Upon:

Ulysses S. Jones, Appellant's Attorney, by electronic mail at [joneslawoffice@gondtc.com](mailto:joneslawoffice@gondtc.com)

Dated January 4, 2018

/s/Kari M. Agotness

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