OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION THREE

STATE OF MISSOURI,	)	No. ED108941
	)	
Respondent,	)	Appeal from the Circuit Court of
	)	Washington County
vs.	)	
	)	Honorable Wendy W. Horn
ERIC G. HOLLOWELL,	)	
	)	
Appellant.	)	Filed: August 17, 2021

Eric Hollowell ("Appellant") appeals his convictions of fifteen counts of unlawful possession of a firearm in violation of Mo. Rev. Stat. § 571.070. In Point I, Appellant argues the trial court erred by overruling his motion for acquittal because the State failed to prove he possessed and controlled firearms. In Point II, Appellant argues the trial court abused its discretion by admitting inadmissible hearsay testimony to establish Appellant's control over the firearms. Points I and II are dispositive and we need not review Points III and IV.

REVERSED AND REMANDED FOR JUDGMENT OF ACQUITTAL.

DIVISION III HOLDS:

Point II requires reversal, is dispositive of Point I, and is granted. "When out-of-court statements go beyond what is necessary to explain subsequent police conduct, they are hearsay." *State v. Douglas*, 131 S.W.3d 818, 824 (Mo. App. W.D. 2004). Objected-to testimony is not prejudicial when the defendant elicits the same testimony "from its own witnesses." *State v. Placke*, 290 S.W.3d 145, 154 (Mo. App. S.D. 2009). However, "when a party objects to the admission of evidence and then cross-examines a witness about the matter, the objecting party has not waived the error in admitting the evidence." *Trident Group, LLC v. Mississippi Valley Roofing, Inc.*, 279 S.W.3d 192, 199 (Mo. App. E.D. 2009). The trial court abused its discretion by permitting a detective to testify to Appellant's wife's hearsay statement. Appellant was prejudiced because the inadmissible testimony was the only evidence establishing Appellant illegally possessed firearms.

Point I is granted. To establish possession, the State had to prove Appellant had "access to and control over" the area where the guns were found. *State v. Glass*, 439 S.W.3d 838, 846 (Mo. App. E.D. 2014). A defendant may have either constructive or actual possession. *State v. McCauley*, 528 S.W.3d 421, 430 (Mo. App. E.D. 2017). When a defendant has shared control of the premises, the State must produce additional evidence specifically connecting the defendant to the contraband. *Id*. The State did not prove Appellant had "access to and control over" the area

where the guns were found *and* present additional evidence specifically connecting him to the guns. *Glass*, 439 S.W.3d at 846; *McCauley*, 528 S.W.3d at 430.

Opinion by: Philip M. Hess, Presiding Judge
Angela T. Quigless, Judge and Colleen Dolan, Judge concur.

Attorney for Appellant: William J. Swift

Attorney for Respondent: Richard A. Starnes

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.