STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0905

State of Minnesota,
Respondent,

vs.

John Demarco Butler,
Appellant.

Filed May 27, 2025
Affirmed
Halbrooks, Judge[*]

Washington County District Court
File No. 82-CR-20-4547

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

Kevin Magnuson, Washington County Attorney, Andrew T. Jackola, Assistant County Attorney, Stillwater, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew J. Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bond, Presiding Judge; Bjorkman, Judge; and Halbrooks, Judge.

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellant challenges his conviction of unlawful possession of a firearm, arguing that (1) the evidence that respondent presented at trial was insufficient to show that he "knowingly possessed a firearm" and (2) the prosecutor committed misconduct that constituted reversible plain error when she used a "we" statement during closing argument. We affirm.

FACTS

On December 10, 2020, a state trooper attempted to pull over appellant John Demarco Butler after noticing that the car he was driving had expired registration. Butler initially pulled over but then sped off as the trooper approached the car. The trooper pursued Butler, who crashed a short distance from the attempted stop. Butler was injured from the crash and needed medical attention.

Before Butler was placed in the ambulance, an officer with the Oakdale Police Department searched him out of concern for the medical responders' safety because Butler "had just been involved with a crime," namely, fleeing the state trooper. The officer felt what seemed to be a handgun in Butler's right jacket pocket, reached in his pocket, and pulled out a loaded handgun and magazine. The officer turned the gun over to the state trooper who had initially pursued Butler.

Respondent State of Minnesota charged Butler with five counts, including unlawful possession of a firearm (count I) and fleeing a peace officer (count III), in addition to three other charges that it dismissed before trial. The jury convicted Butler of both remaining

counts and the district court sentenced him to 60 months on count I and 19 months on count III, to be served concurrently.[1] This appeal follows.

DECISION

I. The evidence the state presented at trial was sufficient to sustain Butler's conviction for unlawful possession of a firearm.

Butler argues that the evidence the state presented at trial was insufficient to show that he knowingly possessed a firearm. When considering claims for sufficiency of the evidence, we "conduct a painstaking review of the record to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the jury to reach its verdict." *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotations omitted). We will not disturb the jury's verdict if it could have reasonably concluded that the defendant was guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

To prove unlawful possession of a firearm, the state must show that a defendant (1) knowingly, (2) possessed a firearm, and (3) was legally prohibited from possessing one. *See State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017); *State v. Salyers*, 858 N.W.2d 156, 161 (Minn. 2015); Minn. Stat. § 624.713, subd. 1(2) (2020). While the state used direct evidence to prove that Butler possessed the firearm, it used circumstantial evidence to prove that Butler's possession was done knowingly.

"A defendant's state of mind is generally proven by circumstantial evidence and can be inferred from their words or actions." *State v. Metcalfe*, 13 N.W.3d 704, 714 (Minn.

[1] Butler is not appealing his conviction on count III, fleeing a peace officer.

App. 2024). "Circumstantial evidence is defined as evidence based on inference and not on personal knowledge or observation and all evidence that is not given by eyewitness testimony." *State v. Barker*, 888 N.W.2d 348, 354 n.1 (Minn. App. 2016) (quotation omitted). Appellate courts utilize a two-step test to review the sufficiency of circumstantial evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473-74 (Minn. 2010).

We first identify the circumstances proved at trial, disregarding evidence that is inconsistent with the jury's verdict. *Harris*, 895 N.W.2d at 601. Second, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt" and "give no deference to the fact[-]finder's choice between reasonable inferences." *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotations omitted). Because Butler challenges the mens rea element of unlawful possession of a firearm, we apply the circumstantial-evidence test. *Al-Naseer*, 788 N.W.2d at 474.

Here, the circumstances proved at trial consistent with the jury's verdict include:

- Butler fled a traffic stop by a state trooper on December 10, 2020;
- Butler was the only person in the vehicle;
- Immediately after fleeing the traffic stop, Butler crashed the car he was driving and was injured;
- Law enforcement and medical personnel removed Butler from the vehicle, which was on top of him;
- Prior to placing Butler in an ambulance, an Oakdale police officer conducted a safety pat down of Butler and felt what appeared to be a firearm in his right jacket pocket;

- The police officer removed a loaded black Smith and Wesson firearm with a silver slide and a full magazine from Butler's right jacket pocket and gave the firearm to the trooper;

- The trooper put the firearm in an evidence bag and transported it to a secure investigations locker; and

- Butler was prohibited by law from possessing a firearm.

Butler concedes that "[t]he circumstances proved in this case support the reasonable hypothesis that [he] knew the firearm was in his coat." This is indeed the only rational hypothesis that can be drawn from the circumstances proved.[2] This is not a case where a gun was found somewhere in the vehicle and it was possible that Butler did not know the gun was there, or where multiple people were in the car and the gun could have belonged to another person. Rather, it is undisputed that Butler was the sole occupant of the vehicle and a firearm was discovered in his jacket pocket. Butler points to no evidence in the record to support his claim that he was unaware of a loaded handgun and magazine in his pocket. That he would be unaware of the gun in his pocket, given the circumstances, defies logic. We therefore conclude that the circumstances proved at trial are inconsistent with any rational hypothesis except that Butler knew the firearm was in his pocket and, therefore, he knowingly possessed it.

[2] Butler appears to make a chain-of-custody argument in his brief. But because that argument, which is unavailing, is inapplicable to the knowledge element that he contests, we decline to address it.

II. The prosecutor's "we" statements during closing argument, while plainly erroneous, did not affect Butler's substantial rights.

Butler argues for the first time on appeal that the prosecutor committed misconduct that requires reversal because she used an improper "we" statement during closing argument. We review unobjected-to claims of prosecutorial misconduct under a modified plain-error standard. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under this standard, if the defendant demonstrates that the prosecutor's misconduct constituted (1) error, (2) that was plain, the burden shifts to the state to show that the plain error did not affect the defendant's substantial rights. *Id*. A plain error is one that is clear or obvious, which is usually shown if it is against caselaw, a rule, or a standard of conduct. *Id.* "Prosecutorial misconduct affects substantial rights if there is a reasonable likelihood that the absence of misconduct would have had a significant effect on the jury's verdict." *State v. Davis*, 735 N.W.2d 674, 681-82 (Minn. 2007). "If the defendant satisfies the first two prongs and the [s]tate fails to satisfy the third prong, we determine whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings." *State v. Westrom*, 6. N.W.3d 145, 157 (Minn. 2024), *cert. denied*, 145 S. Ct. 418 (2024) (quotation omitted).

In determining whether the misconduct significantly affected the jury's verdict, we "consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *Davis*, 735 N.W.2d at 682. A prosecutor's "statement

must be read in context," and we look at "the closing argument as a whole, rather than to selected phrases and remarks." *Ture v. State*, 681 N.W.2d 9, 19-20 (Minn. 2004).

In *State v. Mayhorn*, the supreme court held that the prosecutor committed misconduct during closing argument in a case where the defendant was involved in drug trafficking when she stated, "[T]his is kind of foreign for all of us, I believe, because we're not really accustomed to his drug world and drug dealing." 720 N.W.2d 776, 780, 789, 790 (Minn. 2006). The supreme court's determination of prosecutorial misconduct was based on its conclusion that the prosecutor described "herself and the jury as a group of which the defendant" was not a part. *Id.* at 790.

In contrast, the supreme court held that the prosecutor's "we" statements, like "[w]e learned in this case that he possesses and carries guns" in *Nunn v. State* did not constitute misconduct. 753 N.W.2d 657, 662-63 (Minn. 2008). The supreme court distinguished those "we" statements from the statements in *Mayhorn*, explaining that while the *Nunn* prosecutor's statements may have "align[ed] the prosecutor with the jurors, [they] [did] not necessarily exclude the defendant because the 'we' could reasonably be interpreted in this context to refer to everybody who was in court when the evidence was presented." *Id*. at 663.

Here, the prosecutor's statements were: "We know why he fled. Because the rest of the evidence tells us why he fled, which brings us to the next charge." These statements constituted plain error because, unlike the statements in *Nunn*, they could not be reasonably interpreted to include the defendant within the term "we". *Contra Nunn*, 753 N.W.2d at 663.

However, a review of the considerations articulated in *Davis* leads us to conclude that this error did not affect Butler's substantial rights. *See Davis*, 735 N.W.2d at 682. First, the strength of the evidence against Butler was strong. Two witnesses testified that he possessed a gun and one of these witnesses actually pulled the gun out of Butler's jacket pocket. Second, the prosecutor's improper statements were not pervasive. Instead, they were one-time remarks during closing argument after the jury heard all the evidence in the case. Third, Butler had an opportunity to rebut the prosecutor's statements. While Butler's counsel did not object to the prosecutor's remarks, she seemingly rebutted it in closing argument when she stated, "We don't know why he left." When considering the prosecutor's closing argument in its entirety, we conclude that the state met its burden of showing that her "we" statements did not affect Butler's substantial rights. Therefore, Butler's argument fails.

Affirmed.