STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0751

State of Minnesota,
Respondent,

vs.

Jimmie Dunlap, Jr.,
Appellant.

Filed June 2, 2025
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CR-23-13905

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

Mary F. Moriarty, Hennepin County Attorney, Robert I. Yount, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Frisch, Chief Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from the judgment of conviction for unlawful possession of ammunition and unlawful possession of a firearm, appellant Jimmie Dunlap Jr. argues that the evidence is insufficient to prove beyond a reasonable doubt that he constructively

possessed the ammunition or rifle found in his rental home. He also argues that the evidence is insufficient to prove that the rifle, which was white in color and blockier than a traditional firearm, met the definition of a "firearm" under Minnesota Statutes section 624.713, subdivision 1 (2022). Dunlap raises other arguments in a supplemental brief. We affirm.

FACTS

The following facts were established at trial. In the afternoon of July 1, 2023, a man was shot outside of a home rented solely by Dunlap. A neighbor called 9-1-1, and police officers arrived to find the victim bleeding on the ground outside of Dunlap's home. Officers identified Dunlap as a suspect, and he "was arrested on the scene."

As part of their investigation, officers spoke to individuals inside the home, including Dunlap's girlfriend and a couple with a baby. The couple and baby were encountered near a bed in the basement, and they informed an officer that Dunlap "was allowing them to hang out inside his home." An officer also obtained surveillance video footage from a neighbor across the street, which captured the shooting but did not clearly show that Dunlap was the shooter.

Additionally, pursuant to a search warrant, officers and forensic scientists searched Dunlap's home and discovered the following: One of the doors on the main level led to an upstairs area that appeared to be a finished attic containing a bed with a crawl-space-sized closet along the wall. In that upstairs room there were clothes, several size-11 Nike shoe boxes, "a lot of" mail addressed solely to Dunlap, and a pistol-cleaning kit. In the closet, amid more Nike and size-11 shoe boxes, there was a CZ-brand gun case. The case was designed to hold a pistol and a single magazine, both of which were missing from the case,

but the case contained seven 9-millimeter rounds. In the closet, there was also an empty CZ-brand 9-millimeter magazine on top of a shoe box. In the basement, on one side of the stairs, there was an open area with a bed, which is where officers encountered the couple with the baby. On the other side of the stairs, there was another open area with a few random items and laundry machines. In that area was a built-in closet that contained a gun case. The gun case contained a 10-millimeter rifle, an ammunition box, 10-millimeter bullets, and a 10-millimeter magazine.

Forensic scientists tested the gun case recovered from Dunlap's basement and found 18 fingerprints on the gun case and its contents. Of the prints on the ammunition box that were tested, one print was inconclusive and another was identified as belonging to an individual other than Dunlap. On the interior of the gun case, three of the prints that were tested did not result in matches and one matched another individual other than Dunlap. On the rifle, one print was considered "low quality" and was not analyzed, and another print from the muzzle end of the rifle matched Dunlap's right thumb print.

Outside the home, the police found a discharged 9-millimeter casing and a spent bullet at the site of the shooting. No 9-millimeter firearm was found in the home.

Respondent State of Minnesota charged Dunlap by amended complaint with three counts of unlawful possession of a firearm or ammunition in violation of Minnesota Statutes section 624.713, subdivision 1(2)—one count for possession of the unrecovered firearm used in the shooting, one for the rifle found in the basement, and one for the 9-millimeter bullets found in the upstairs bedroom—and one count of second-degree assault with a dangerous weapon in violation of Minnesota Statutes section 609.222, subdivision

1 (2022). At the beginning of trial, Dunlap stipulated that he was ineligible to possess a firearm or ammunition.

After the trial, the jury found Dunlap guilty of unlawful possession of the ammunition and rifle and acquitted him of the other two counts. The district court imposed concurrent 60-month prison sentences for the convictions.

Dunlap appeals.

DECISION

We first address Dunlap's argument that the evidence is insufficient to prove that he constructively possessed either the ammunition or the rifle. We next address his argument that the evidence is insufficient to establish that the rifle was a "firearm." And last, we address Dunlap's arguments in his supplemental brief.

I. The circumstantial evidence is sufficient to prove that Dunlap constructively possessed the ammunition and the rifle.

Dunlap argues that the state failed to prove beyond a reasonable doubt that he possessed either the ammunition or the rifle.

To obtain the convictions, the state had to establish that Dunlap had either actual or constructive possession of the ammunition and the rifle. *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *rev. denied* (Minn. Jan. 16, 2001). Constructive possession occurs when "the state cannot prove actual or physical possession . . . but where the inference is strong that the defendant at one time physically possessed the [contraband] and did not abandon his possessory interest in [it]." *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). Constructive possession can be proved two different ways. *State v. Harris*, 895

N.W.2d 592, 601 (Minn. 2017). The state may prove that the contraband was found in a place under the defendant's exclusive control to which others did not have access, or, if the contraband was found in a place to which others had access, the state may prove that there was "a strong probability (inferable from other evidence) that at the time the defendant was consciously or knowingly exercising dominion and control over it." *Id.* "A defendant may possess an item jointly with another person." *Id.*

There is no dispute that Dunlap was not found in actual possession of the ammunition or the rifle. The case is therefore one of constructive possession. The state defends both convictions under the second form of constructive possession, arguing that the evidence proves that Dunlap was consciously or knowingly exercising dominion and control over the ammunition and rifle.[1] We focus our analysis there.

To prove that Dunlap constructively possessed the ammunition and the rifle, the state relied on circumstantial evidence. Circumstantial evidence is "evidence from which the factfinder can infer whether the facts in dispute existed or did not exist" and "always requires an inferential step to prove a fact that is not required with direct evidence." *Id.* at 599 (quotation omitted). When an element of a conviction is based on circumstantial evidence, appellate courts apply a heightened two-step analysis. *State v. Colgrove*, 996 N.W.2d 145, 150 (Minn. 2023).

[1] The state notes that "[t]he record could support the conclusion [that Dunlap] had exclusive control over the ammunition," but it asserts that, because "the record more straightforwardly shows [Dunlap] had dominion and control over" the ammunition, it focuses on the second form of constructive possession.

First, we identify the circumstances proved, "winnow[ing] down the evidence presented at trial by resolving all questions of fact in favor of the jury's verdict." *Harris*, 895 N.W.2d at 600. "[W]e reject only the evidence that is inconsistent with—or in conflict with—the jury's verdict." *Colgrove*, 996 N.W.2d at 151. The remaining facts are considered the circumstances proved. *Id.* at 150.

Second, we independently consider "whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). The evidence "must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude . . . any reasonable inference other than guilt." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Appellate courts will reverse a conviction if a reasonable inference other than guilt exists. *Id.* at 473, 481.

Circumstances Proved

Here, viewing the evidence in the light most favorable to the verdict and eliminating any evidence that is inconsistent with the verdict, we identify the following circumstances proved. On July 1, 2023, a man was shot outside of a home rented solely to Dunlap. Dunlap was identified as a suspect and "was arrested on the scene." During the investigation, responding officers encountered multiple individuals in Dunlap's home, including Dunlap's girlfriend and a couple with a baby who were found by a bed in the basement and whom Dunlap "was allowing . . . to hang out inside his home." Inside the home, a door on the main level led to a finished attic containing a bed, clothing, shoe boxes, "a lot of" mail addressed solely to Dunlap, and a pistol-cleaning kit. In a small closet upstairs near the

bed, there was an empty 9-millimeter magazine on top of a shoe box, and amidst more shoe boxes, which were the same size and brand as those in the bedroom, there was an otherwise empty gun case containing 9-millimeter rounds. In a wall closet in the basement, in an open area near laundry machines, there was a gun case containing a rifle and 10-millimeter ammunition and magazines. One fingerprint on the muzzle end of the rifle matched Dunlap's right thumb print.

Before turning to the second step of the analysis, we address a dispute between the parties over whether there is another circumstance proved—namely, that law enforcement found Dunlap in the upstairs bedroom. Dunlap argues that "[n]o evidence showed [that he] was found in proximity to the ammunition" that was found in the upstairs closet. The state argues that Dunlap conceded during the trial that he was found and arrested in the bedroom. It bases that assertion on the following: (1) defense counsel's opening statement, during which defense counsel told the jury that they "[would] hear" how, when the police responded to the shooting, Dunlap " was in the upstairs bedroom"; (2) a conversation held between counsel on the record outside of the presence of the jury, during which the prosecutor questioned whether defense counsel was conceding several facts mentioned in defense's opening statement including that Dunlap was upstairs, and defense counsel responded that "those are the facts and we're not disputing those facts"; and (3) testimony from an officer during the trial, during which the officer agreed that Dunlap was "the individual that was arrested on the scene."

Circumstances proved are determined by "the *evidence* presented at trial." *Colgrove*, 996 N.W.2d at 150 (emphasis added) (quotation omitted). Opening statements

and closing arguments are not evidence. *State v. McCoy*, 682 N.W.2d 153, 158 (Minn. 2004); *see also Graham v. Davis*, No. A19-0283, 2019 WL 4008478, at *5 (Minn. App. Aug. 26, 2019) ("We cannot consider [a party's] opening statement and closing argument, because statements and arguments presented by counsel are not evidence.").[2] Similarly, a conversation between counsel outside of the presence of the jury is not evidence. *Cf. McCoy*, 682 N.W.2d at 158 (stating that arguments by attorneys are not evidence). Finally, although during trial testimony an officer confirmed that Dunlap was arrested "on the scene," the officer never identified where "on the scene" the arrest occurred.

Additionally, although the jury was instructed that they could consider agreements between the parties, defense counsel's opening statement appeared to be a summary of what counsel believed the jury "[would] hear" during the trial, not an agreement between the parties. And to the extent that, during the conversation outside of the presence of the jury, defense counsel agreed that Dunlap was upstairs at the time of arrest, the jury was never made aware of that conversation.

Because the record does not contain evidence that Dunlap was arrested in the upstairs bedroom and the parties did not stipulate to that fact, the circumstances proved do not include that law enforcement found Dunlap in the upstairs bedroom.

[2] We cite to this nonprecedential opinion for its persuasive value only. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

Inferences from the Circumstances Proved

Turning to step two of the analysis, we evaluate the inferences from the circumstances proved to determine whether they are consistent with Dunlap possessing the ammunition and rifle and inconsistent with a rational hypothesis other than guilt.

Starting with the ammunition in the upstairs bedroom, Dunlap argues that the ammunition being found in his home and his mail being found in the bedroom are insufficient facts to prove that he knowingly exercised dominion and control over the 9-millimeter bullets that were found in the upstairs closet. We disagree.

Dunlap is the sole renter of the home, and the upstairs contained a bed, clothing, shoe boxes, and a substantial amount of Dunlap's mail, which together indicate that Dunlap likely used the upstairs as his bedroom and that the items upstairs were his belongings. The small closet was located near the bed and the shoe boxes in the bedroom match those in the closet, making it reasonable to infer that Dunlap was using that closet to store his items. Finally, because there was a pistol-cleaning kit in the bedroom and the closet contained an empty 9-millimeter magazine that was sitting on top of the shoe boxes, clearly visible to anyone who opened the closet door, it is a reasonable inference that Dunlap knowingly stored and had dominion and control over the ammunition found in the upstairs closet. *Cf. State v. Simon*, 275 N.W.2d 51, 52 (Minn. 1979) (determining that evidence showing that the defendant's bedroom contained a controlled substance, syringe, passport, and balance scale was sufficient to prove constructive possession even though defendant jointly leased the home and his co-tenant may have had access to his room).

The evidence is also sufficient to preclude any reasonable inference other than that Dunlap knowingly exercised dominion and control of the ammunition. Dunlap asserts that others lived in the home, that those other individuals could have had access to the closet, and that the ammunition in the closet "was hidden" and therefore could have been placed there without Dunlap's knowledge. While other individuals were in the home and may have possessed the ammunition, an individual may jointly possess an item with others. *Harris*, 895 N.W.2d at 601. And, although the ammunition was in a gun case in the closet amid shoe boxes, Dunlap used the upstairs bedroom to store his items and there were other items related to the gun case and ammunition in that area, namely, the pistol-cleaning kit that was found in the bedroom and the 9-millimeter magazine that was clearly visible in the closet. Because the only reasonable inference is that Dunlap would have known about those other items, viewing the circumstances proved as a whole, we conclude that the only reasonable inference is that Dunlap also knowingly exercised dominion and control over the ammunition in the upstairs closet.

Turning to the rifle, Dunlap argues that the evidence is insufficient to prove that he had dominion and control over it because the rifle was hidden downstairs in an area near where the couple with the baby appeared to be living and the fingerprint on the rifle merely shows that Dunlap touched it at some time. We disagree.

While others were present in the home—including the couple who were found near the bed in the basement—Dunlap was the sole renter of the home and the rifle was not found in the bedroom area but instead in a wall closet on the side of the basement close to the laundry machines, an area that Dunlap likely used. And, even if other individuals had

touched the case in which the gun was stored, Dunlap's fingerprint was found on the rifle itself. While Dunlap is correct that the fingerprint only indicates that Dunlap touched the rifle, when the circumstances proved are viewed as a whole, the fingerprint combined with where the rifle was stored leads to only one reasonable inference—namely, that Dunlap knowingly had dominion and control over the rifle. And, as stated above, even if others also possessed the firearm, that is not inconsistent with guilt because an individual may jointly possess an item with others. *Id.*

In sum, the evidence is sufficient to establish that Dunlap constructively possessed the ammunition and rifle because the circumstances proved support a reasonable inference that Dunlap knowingly exercised dominion and control over both items and do not support a reasonable inference other than guilt.

II. The evidence is sufficient to prove beyond a reasonable doubt that the rifle was a "firearm" under Minnesota Statutes section 624.713, subdivision 1.

Dunlap also argues that the evidence is insufficient to prove beyond a reasonable doubt that the rifle that he was convicted of possessing was a "firearm" under Minnesota Statutes section 624.713, subdivision 1. A "firearm" under the statute "is a weapon, that is, an instrument designed for attack or defense, that expels a projectile by the action or force of gunpowder, combustion, or some other explosive force." *State v. Glover*, 952 N.W.2d 190, 195 (Minn. 2020).

Dunlap argues that the state failed to provide direct evidence that the rifle was a firearm, and so the circumstantial-evidence standard applies. The state disagrees, arguing that the direct-evidence standard applies because the rifle itself was introduced into

evidence and "physical evidence of the fact itself" is direct evidence. *See State v. Brazil*, 906 N.W.2d 274, 278 (Minn. App. 2017), *rev. denied* (Minn. Mar. 20, 2018).

When either direct or circumstantial evidence could apply, if "a disputed element is sufficiently proven by direct evidence alone . . . it is the traditional standard, rather than the circumstantial-evidence standard, that governs." *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016). Under the direct-evidence standard, appellate courts conduct "a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did." *State v. Stone*, 995 N.W.2d 617, 621-22 (Minn. 2023).

Here, although the rifle is white in color and blockier than a traditional firearm, its design has a clear resemblance to other semi-automatic rifles. We conclude that the rifle itself, upon inspection by the jury, was sufficient to permit the jury to determine beyond a reasonable doubt that the rifle fit within the caselaw definition of "firearm."

Moreover, even if viewing the rifle alone was insufficient, the circumstantial evidence proves beyond a reasonable doubt that the rifle was a firearm. Using the two-step analysis outlined above, the relevant circumstances proved include that the rifle was stored in a gun case along with 10-millimeter ammunition and a magazine. A reasonable inference from seeing an object that resembles a traditional firearm, is stored in a gun case with ammunition, and is called a "rifle" is that the object is a firearm. Further, the jury was not presented with any circumstance proved that would allow a reasonable inference that the rifle was not a firearm. Accordingly, we conclude that the evidence is sufficient to prove

that the rifle meets the definition of firearm under Minnesota Statutes section 624.713, subdivision 1.

III. Dunlap's supplemental brief does not establish any claim for which he is entitled to relief.

Dunlap appears to raise four other arguments in his supplemental brief.

First, Dunlap asserts that his due-process rights were violated when an officer listed him as the primary suspect in the search-warrant affidavit. In support of this argument, Dunlap cites the Fourteenth Amendment and appears to argue his case under the two-step analysis from the Supreme Court's decision in *Neil v. Biggers* regarding eyewitness identification. 409 U.S. 188, 196-200 (1972); *see also Seelye v. State*, 429 N.W.2d 669, 672-73 (Minn. App. 1988) (summarizing and applying the two-step analysis from *Biggers*). *Biggers* permits reversal of a conviction when the conviction is based on eyewitness identification at trial and the in-court identification was based on a pretrial photographic identification utilizing an impermissibly suggestive procedure. 409 U.S. at 196-97. Here, the search warrant is not in the appellate record, but the trial transcript shows that no witness at trial identified Dunlap as the shooter or stated that they saw Dunlap in physical possession of a firearm or ammunition. Instead, it was left to the jury to determine whether Dunlap was the shooter or possessor of the firearm and ammunition based on the evidence as a whole, including the surveillance video, testimony about what the shooter was wearing in the video and what Dunlap was wearing when he was arrested, and testimony about what was discovered in Dunlap's home. Because there was no eyewitness identification at trial, Dunlap's due-process rights were not violated under *Biggers*.

Second, Dunlap discusses the district court's pretrial decision to allow the state to amend the complaint. Dunlap then cites *State v. Baxter*, which states that the district court "retains broad discretion over how the case proceeds once it is filed," which "includes the power to grant or deny the prosecutor's request to amend the complaint." 686 N.W.2d 846, 851-52 (Minn. App. 2004). To the extent that Dunlap is arguing that the district court should not have permitted the state to amend its complaint, Dunlap has not explained how the district court erred or abused its discretion in doing so. Accordingly, we decline to consider whether the district court's decision to permit the state to amend the complaint is reversible error. *See State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008) ("[Appellate courts] will not consider pro se claims on appeal that are unsupported by either arguments or citations to legal authority.").

Third, Dunlap discusses the quality of the fingerprinting method used by the forensic scientists, asserting that it was not adequate. During the trial, a forensic scientist testified in-depth about his methods and Dunlap's counsel cross-examined the witness about the quality of the fingerprinting method, raising the same concerns that Dunlap now raises in his supplemental brief. Accordingly, the jury was informed of Dunlap's concerns and we defer to the jury's implicit determination that the forensic scientist's testimony about his method of fingerprint testing was credible. *See State v. Robinson*, 921 N.W.2d 755, 761 (Minn. 2019) (stating that appellate courts defer to the jury to assess witness credibility).

Finally, Dunlap appears to argue that the district court abused its discretion by not considering an affidavit from Dunlap's girlfriend that "was given after the jury

deliberated." However, Dunlap does not explain why the district court abused its discretion by not considering this document, instead simply stating that the district court "could have taken the affidavit into consideration." Because Dunlap does not provide us with an argument or sufficient legal authority to review whether the district court should have accepted the affidavit, we decline to consider this argument. *See Bartylla*, 755 N.W.2d at 22.

In conclusion, Dunlap's supplemental brief does not establish any valid claim for relief.

Affirmed.