

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0136**

State of Minnesota,
Respondent,

vs.

Leonard Steven Sanchez,
Appellant.

**Filed February 1, 2021
Reversed
Ross, Judge**

Pennington County District Court
File No. 57-CR-18-995

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

Seamus Duffy, Pennington County Attorney, Kristin J. Hanson, Assistant County Attorney, Thief River Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Ross, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Police found random ammunition components in the trailer home where Leonard Sanchez had recently moved in to live with his fiancée shortly after his fiancée's father had moved out, leaving many of his possessions. Sanchez, a felon prohibited from possessing ammunition, appeals from his ammunition-possession conviction on evidence-sufficiency

and other grounds. Because the state did not submit evidence sufficient to exclude the alternative reasonable hypothesis that the ammunition belonged to Sanchez's fiancée's father, we reverse the conviction.

FACTS

Leroy Stromgren owned and resided for 20 years in a trailer home in Thief River Falls. He lived there with his wife and stepdaughter until his wife died in September 2018. He moved out soon after she died, but he says he still kept "pretty much everything [he] owned" at the trailer home. That same month, Leonard Sanchez moved into the home to live with Stromgren's stepdaughter, his fiancée.

Stromgren visited a pawnshop a few months after moving out and saw some of his tools, which he had been keeping at the trailer home. Concerned that Sanchez had stolen and sold his tools, Stromgren reported the events to police. Police investigating the stolen tools discovered an outstanding warrant for his arrest, and they went to the trailer home to execute it. Once inside to make the arrest, police found drug paraphernalia and a single bullet casing in plain sight, prompting them to obtain a search warrant.

When police searched the home, they discovered a single .243 complete bullet, a .243 bullet that was missing only its primer, a bullet casing, and a box of ammunition primers. The state charged Sanchez with theft and unlawful possession of ammunition by a prohibited person.

The district court held a jury trial during which the state provided evidence that both Stromgren and Sanchez are felons prohibited from possessing guns or ammunition. Stromgren testified that he had asked his wife to remove his guns and ammunition from

the home, and he denied ever having owned a gun that fired .243 ammunition. Stromgren's daughter and Sanchez both testified that they knew nothing about the ammunition found in the home. During the state's closing argument, the prosecutor suggested that, by residing in a home, a person possesses the objects inside, stating, "[I]n a house, where you live, there is possession," and, "[I]f you live in a house . . . you are in control of the items in that house."

The jury found Sanchez guilty of unlawful ammunition possession, and the district court sentenced him to serve 60 months in prison. This appeal follows.

DECISION

Sanchez argues that the state presented insufficient evidence to establish that he possessed the ammunition police found in the home. To convict Sanchez, the state had to produce evidence proving that he knowingly possessed ammunition or a firearm. Minn. Stat. § 609.165, subd. 1b(a) (2018); *State v. Salyers*, 858 N.W.2d 156, 161 (Minn. 2015) (recognizing the mens rea element). "Ammunition" includes "cartridge cases, primers, bullets, [and] propellant powder designed for use in any firearm." Minn. Stat. § 609.02, subd. 17 (2018). Sanchez does not deny that the state proved that he is ineligible to possess ammunition or that the items seized during the search constitute ammunition. He argues only that the state did not prove that he knowingly possessed the ammunition.

To address Sanchez's argument, we must first characterize the type of evidence the state relied on to show that he possessed the ammunition knowingly. Where, as here, an element of the offense rests on circumstantial rather than direct evidence, we apply a heightened, two-step standard of review to determine whether the evidence is sufficient to

sustain the guilty verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). We first determine the circumstances proved based on the evidence presented and on the verdict, construing the evidence in the light most favorable to the verdict. *State v. Griffin*, 887 N.W.2d 257, 263–64 (Minn. 2016). We then independently determine whether these circumstances proved are consistent with guilt and inconsistent with any reasonable alternative hypothesis. *Id.* at 264. We do so by affording no deference to the fact-finder’s choice between reasonable inferences. *Id.* Sanchez’s conviction cannot survive our review under that standard.

Sanchez proposes that the circumstances proved would permit the reasonable conclusion that someone other than he exclusively possessed the ammunition, focusing on Stromgren’s and Stromgren’s wife’s recent occupancy and Stromgren’s continued access to the residence. The circumstances proved at trial consist in relevant part of the following. Stromgren and his wife resided in the home until September 2018. Stromgren’s move out was not complete, in that he left “pretty much everything [he] owned” in the trailer home and exercised his right to continued access, returning multiple times from September through December 2018, retrieving mail and clothes. Sanchez had been living steadily in the home for less than three months when the police discovered the ammunition inside. Police found the items of ammunition on a TV stand in the living room and on the floor nearby. Stromgren never owned a .243-caliber firearm or ammunition, and he had asked his wife to remove his ammunition from the trailer. These circumstances leave two significant gaps in the state’s case.

The first gap in the state's case flows from the manner it sought to prove that Sanchez possessed the ammunition. It is true, as the state argues, that the state may prove Sanchez's possession by establishing that he either actually or constructively possessed the ammunition. *See Salyers*, 858 N.W.2d at 159. The constructive-possession argument offered by the state to the jury—that Sanchez's merely occupying the home where police found the ammunition established his possession of it—is legally flawed. By persuading the jury that “in a house, where you live, there is possession” and “if you live in a house . . . you are in control of the items in that house,” the prosecutor relied on a bright-line theory of possession that the law does not support. Instead, when a defendant occupies a home shared by or accessed by others, the defendant's guilt cannot rest merely on the contraband's presence and his occupancy. *See id.* The proof offered by the state to show Sanchez's possession was basically that.

The state's probative evidence of Sanchez's constructive possession is not much more than its improper argument of possession. Sanchez would be guilty of constructively possessing the ammunition either if the ammunition was in a location under his exclusive control and to which others did not normally have access or if the evidence creates the strong probability that he consciously exercised “dominion and control” over the objects when police found them. *Id.* (quotation omitted). The state did not establish either. Stromgren's partial move out and his continued access to the home (returning about once every other week) prevented the state from establishing constructive possession merely based on Sanchez's alleged control over the home, because his control was not exclusive. The state emphasizes that, like Sanchez, Stromgren testified that he knew nothing of the

ammunition. We disregard Sanchez's testimony, of course, because we consider only the evidence that is consistent with the circumstances proved. *State v. Hawes*, 801 N.W.2d 659, 669–70 (Minn. 2011) (noting that testimony contrary to the verdict is not a circumstance proved). But Stromgren's testimony does not itself establish Sanchez's possession because Stromgren never recounted any facts tending to indicate that Sanchez had exercised any dominion and control over the ammunition; Stromgren merely denied his own ownership or possession. The location of the items also does not suggest any relationship to Sanchez's things or to Sanchez, so it too does not prove Sanchez's exercise of any control over the items. And although Stromgren testified that he asked his wife to remove his ammunition, the state offered no testimony that she actually removed all ammunition from the home on Stromgren's request.

This is not a close case. These gaps in evidence, coupled with the photographic evidence depicting a very cluttered, unkempt environment inside the home, do not allow us to say that there is a strong probability that Sanchez exercised dominion and control over the small and few isolated bits of ammunition that might have been in the home before he arrived. We see only paper-thin evidence in the record that Sanchez possessed the contraband. In addition to the lack of evidence of Sanchez's possession, we are not satisfied that the circumstances proved foreclose the possibility that Stromgren's wife failed to clear the home of all remnants of ammunition that belonged to someone other than Sanchez.

Sanchez also challenges his conviction based on the prosecutor's misleading statements during closing argument. We need not reach that issue in light of our holding.

Reversed.