

*This opinion is nonprecedential except as provided by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
A20-0215**

State of Minnesota,
Respondent,

vs.

Steven Vincent Pierce,
Appellant.

**Filed June 28, 2021
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-19-14363

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Reilly, Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from judgment of conviction for unlawful possession of a firearm and ammunition, appellant Steven Vincent Pierce argues that (1) the evidence is

insufficient to prove beyond a reasonable doubt that he knowingly possessed a firearm and (2) the prosecutor committed misconduct during closing arguments. We affirm.

FACTS

The following facts were established during Pierce's jury trial. One morning in February 2019, officers of the Minneapolis Police Department responded to a report of an unresponsive person inside of a pickup truck. Upon approaching the truck, officers observed that the "vehicle was running, the driver's side window was rolled approximately halfway down," and Pierce, sitting upright, "appeared to be sleeping" in the driver's seat. No other occupants were inside the truck, and its doors were locked. After unlocking the door through the open window, officers opened the door and took hold of Pierce's wrists to remove him from the car. Although officers had removed the keys from the truck's ignition, Pierce grabbed at the truck's gearshift, apparently attempting to put the truck in gear. Officers were ultimately able to remove Pierce from the truck. They observed that he seemed to be in an "altered [mental] state" and began to lose consciousness so they called for emergency medical personnel. Responding emergency personnel informed the officers that a firearm was located on the driver's side floor pan of the truck. An officer retrieved the firearm and determined that it had two bullets in its magazine and one in its chamber.

Respondent State of Minnesota charged Pierce with being an ineligible person in possession of a firearm or ammunition, in violation of Minn. Stat. § 624.713, subd. 1(2) (2018). The firearm, cartridges, and magazine were all swabbed, but none contained sufficient DNA to perform a DNA test. Similarly, no useful "ridge impression[s]" were found for purposes of a fingerprint comparison. At trial, the parties stipulated to Pierce's

ineligibility to possess a firearm. The jury found Pierce guilty, and the district court imposed the presumptive sentence of 60 months' imprisonment.

Pierce appeals.

DECISION

I. The evidence is sufficient to prove that Pierce knowingly possessed the firearm found in the truck.

Pierce argues that the state failed to prove beyond a reasonable doubt that he knowingly possessed the firearm that officers found in the truck. When an appellant claims that the state failed to satisfy its burden of proving the elements of a crime, an appellate court conducts “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. Silvernail*, 831 N.W.2d 594, 603 (Minn. 2013) (quotation omitted).

To convict Pierce, the jury had to determine that he was an ineligible person and “possess[ed]” ammunition or a firearm. Minn. Stat. § 624.713, subd. 1(2). Possession of a firearm may be either actual or constructive. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). To establish constructive possession of a firearm, the state must demonstrate either that “the prohibited item was found in a place under defendant’s exclusive control to which other people did not normally have access,” or that, “if the prohibited item was found in a place to which others had access, there is a strong probability . . . that defendant was at the time consciously exercising dominion and control over it.” *Id.* (quotation omitted). In either

instance, the state must prove that the defendant's possession of a firearm is knowing. *Id.* at 161.

Pierce does not allege that the evidence is insufficient to establish his possession of a firearm or ammunition or that he was ineligible to possess a firearm or ammunition. Instead, he contests only whether the evidence is sufficient to prove that he knowingly possessed the firearm.

Knowledge, as a state of mind, is generally proved through circumstantial evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). A conviction based on circumstantial evidence is subject to heightened scrutiny. *Id.* at 474. Appellate courts analyze the sufficiency of circumstantial evidence through a two-step analysis. *Silvernail*, 831 N.W.2d at 598. First, we identify the circumstances proved. *See id.* In doing so, we “defer to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *Id.* at 598-99 (quotations omitted). Similarly, we “consider only those circumstances that are consistent with the verdict.” *Id.* at 599.

Next, we “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* at 599 (quotations omitted). At this step, we do not defer to the jury’s choice between reasonable inferences. *See Al-Naseer*, 788 N.W.2d at 474. To uphold a conviction based on circumstantial evidence, “the circumstances must form a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt.” *State v. Reed*, 737 N.W.2d 572,

581 (Minn. 2007) (quotation omitted). Accordingly, if there is any rational hypothesis of innocence, the evidence is insufficient and we must overturn the conviction. *See Al-Naseer*, 788 N.W.2d at 474.

The circumstances proved in this case include that officers found Pierce in the driver's seat of a locked, running truck, in which he was the sole occupant. When officers attempted to remove Pierce from the truck, he tried to engage the vehicle to drive. After his removal from the truck, emergency personnel located a loaded firearm in plain view at the foot of the driver's seat.

Pierce argues that the circumstances proved do not give rise to the rational inference that he knew that the firearm was in the vehicle or that they at least give rise to the rational inference that he did not know that the firearm was in the vehicle. He contends that the firearm's proximity and his access to it are not enough to demonstrate knowing possession, and that, given his "altered state of mind" when officers found him in the truck, he may not have noticed the firearm. Pierce emphasizes the fact that the state did not prove ownership of the truck, the firearm, or any other item within the truck and points to the absence of any evidence as to whether he would have seen the firearm when he first got into the truck. We are not persuaded.

As the state observes, the circumstances of this case are similar to the facts underlying this court's decision in *State v. Smith*, 619 N.W.2d 766 (Minn. App. 2000), *review denied* (Minn. Jan. 16, 2001). In *Smith*, law enforcement located the defendant "slumped over in the driver's seat of an automobile with the driver's side door locked and the engine running." *Id.* at 768. The defendant "appeared to be asleep," and law

enforcement located a handgun on the driver's seat. *Id.* Fingerprint testing of the firearm was insufficient to establish a match with the defendant. *Id.* at 769. The defendant did not own but was renting the vehicle in which he was found, and, the day before his arrest, he had "smoked crack" and consumed alcohol before falling asleep in the vehicle. *Id.* The state charged the defendant with unlawful possession of a firearm, and the defendant argued at trial that he did not know the firearm was in the vehicle. *Id.* The jury found him guilty, and, on review, we concluded that the fact that the defendant was found "alone and asleep in a partly locked vehicle, engine running, with a handgun partially beneath his right leg is sufficient to find the defendant possessed a firearm." *Id.* at 772. Here, Pierce was found alone in a locked truck, engine running, with a firearm in plain view at his feet. We see no reason to conclude that the firearm's location at Pierce's feet, rather than on the driver's seat, should dictate a different result than in *Smith*.

Pierce argues, though, that it is a reasonable inference that the firearm started under the driver's seat when he entered the truck and, without Pierce's knowledge, shifted to Pierce's feet while the truck was in motion. However, although its engine was running, the truck was parked when Pierce was found. The proposition that, while Pierce was driving the truck, the firearm shifted from under the seat to its place at Pierce's feet without his noticing it is conjecture based on no evidence. This court will not overturn a conviction based on mere speculation. *See State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010) (quotation omitted).

We conclude that the circumstances of this case, when viewed as a whole, are consistent with guilt and inconsistent with any rational hypothesis of innocence.

II. The prosecutor did not commit reversible plain error in closing argument.

Pierce argues that the prosecutor committed prejudicial plain error by informing the jury during closing arguments that persons convicted of crimes of violence are ineligible to possess a firearm or ammunition, despite the parties' stipulation that Pierce is ineligible. He contends the prosecutor then directed the jury to speculate as to why he was ineligible by telling them that "there's a reason" the law does not allow certain people to possess firearms, and that both statements affected his substantial rights.

In turn, the state argues that the prosecutor's statements were not error when read in context. Additionally, it contends that the prosecutor's statements did not misstate the law or the admissible evidence.

Because Pierce failed to object during the prosecutor's closing argument, his claim of prosecutorial misconduct is reviewed under a modified plain-error standard. *See State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under that standard, Pierce bears the burden of establishing an error that is plain. *See id.* If Pierce establishes plain error, the state then has the burden to show that Pierce's substantial rights were not affected. *See id.* If the state fails to meet its burden, we will order a new trial only if the error "seriously affects the fairness, integrity, or public reputation of judicial proceedings." *State v. Peltier*, 874 N.W.2d 792, 804 (Minn. 2016) (quotation omitted).

Pierce's argument centers on the following portion of the state's closing argument:

[Prosecutor]: What [the district court] has just given you about this charge is the law. He's described to you the definition of this crime which says whoever has been convicted of a crime of violence and possesses or receives a firearm or ammunition is guilty of a crime.

Later stating:

[Prosecutor]: We talked in jury selection about guns being serious, being violent.

And, on rebuttal:

[Prosecutor]: We have laws that prohibit certain people from possessing firearms, and there's a reason for those.

Assuming without deciding that the prosecutor's statements constituted plain error, we turn to the question of whether the state has satisfied its burden of establishing that Pierce's substantial rights were not affected. To do so, the state must show that there is "no reasonable likelihood" the misconduct significantly affected the verdict. *Ramey*, 721 N.W.2d at 302 (quotation omitted). In evaluating whether the state has met its burden, this court considers "the strength of evidence against the defendant, the pervasiveness of improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010).

First, the state's evidence, although circumstantial, was particularly strong. Pierce was found asleep in the driver's seat of a locked, running truck, in which he was the sole occupant. Soon after officers unlocked the truck and removed Pierce from it, emergency personnel saw the loaded firearm in plain view on the driver's-side floor pan of the truck. And Pierce stipulated that he was ineligible to possess a firearm. In sum, the state presented strong evidence that Pierce was ineligible and possessed ammunition or a firearm.

Second, the prosecutor's statements were not pervasive, constituting three sentences of the prosecutor's 13-page closing arguments.

Finally, Pierce did not address in his closing argument the prosecutor's statement pertaining to persons convicted of violent crimes, but we cannot say that Pierce had, but ignored, a meaningful opportunity to rebut the improper suggestion because addressing it may have only highlighted it. And Pierce did not have the opportunity to rebut the prosecutor's statement that there is a "reason" individuals are ineligible from possessing firearms because the statement was made during the prosecutor's rebuttal argument. Nevertheless, the district court mitigated the effect of the prosecutor's comments by instructing the jury that "[t]he law does not permit jurors to be governed by sympathy, prejudice, or public opinion." *See State v. Hawkins*, 511 N.W.2d 9, 13 (Minn. 1994) (determining that instructions "lessened the impact of the improper comments").

Considering all three factors, we conclude that the state met its burden to demonstrate that the prosecutor's statements in closing arguments did not affect Pierce's substantial rights.

Affirmed.