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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0377**

State of Minnesota,
Respondent,

vs.

Dak Luk Ret,
Appellant.

**Filed February 21, 2023
Affirmed
Gaïtas, Judge**

Steele County District Court
File No. 74-CR-20-1856

Keith Ellison, Attorney General, Lisa Lodin Peralta, Assistant Attorney General, St. Paul, Minnesota; and

Dan McIntosh, Steele County Attorney, Owatonna, Minnesota (for respondent)

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

Considered and decided by Larson, Presiding Judge; Bratvold, Judge; and Gaïtas, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Dak Luk Ret challenges his conviction, following a jury trial, for possession of a firearm by an ineligible person. He contends that the evidence was insufficient to prove his guilt beyond a reasonable doubt. Alternatively, Ret seeks a new

trial, arguing that the district court erred by prohibiting him from impeaching a witness with her probationary status while allowing evidence of his probation, the prosecutor committed misconduct during closing argument, and cumulatively, these errors deprived him of a fair trial. Because respondent State of Minnesota satisfied its burden of establishing Ret's guilt, and the other errors that Ret alleges did not affect the jury's verdict, we affirm.

FACTS

In November 2020, police responded to a drug-activity call at an apartment building in Owatonna and observed three people—D.J., M.P.-T., and Ret—sleeping in a commercial van located in the parking lot. The officers eventually searched the van and found a handgun in the area where Ret had been sleeping. Subsequent forensic analysis revealed that the major DNA profile found on the gun's grip matched Ret's DNA. Because Ret was prohibited from possessing a gun, the state charged him with possession of a firearm by an ineligible person.¹

Following a trial, a jury found Ret guilty, and the district court sentenced him to 61 months in prison. On appeal, Ret argues that the state's evidence did not establish that he possessed the gun found in the van, the district court abused its discretion in ruling on the admissibility of evidence, and the prosecutor committed misconduct in closing argument by misstating the state's burden of proof and by aligning herself with the jury.

¹ The state also charged Ret with one count of fifth-degree drug possession. But the district court dismissed the charge for lack of probable cause.

The trial evidence was as follows. After being dispatched to investigate possible drug activity at an apartment building, the responding police officers approached the van because its parking lights were on. Inside the van, they observed D.J. sleeping on the floor between the front bucket seats. An officer woke D.J., who then climbed into the driver's seat and rolled down the window. The officer smelled marijuana and noticed a blunt in D.J.'s hand. D.J. admitted that he had marijuana and handed over the blunt. He then awakened Ret and M.P.-T., who were sleeping side-by-side on the floor in the back of the van.

An officer searched the van, and his body-worn camera recorded the search. The officer ultimately found a stolen Taurus-brand handgun underneath a black plastic bag or tarp on the floor where Ret had been sleeping.

Following this discovery, the officer handcuffed Ret, searched D.J.'s person, and then handcuffed M.P.-T. Without changing his gloves, the officer then retrieved the gun from the back of the van. The gun's magazine contained 12 live rounds of ammunition, but there was no round in the chamber.

Ret made statements to both responding officers. He said that D.J. was his friend, he got into the van to smoke marijuana and socialize before work, and he had not been in the van for long.

According to M.P.-T., because she was drunk and under the influence of marijuana, she remembered very little about the night of the search. But she denied ever owning or possessing a firearm. M.P.-T. also testified that she did not see a gun in the van that night or any other time.

The van's owner testified that he owns a construction company, which occasionally employs D.J. Because D.J. was having car trouble, he let D.J. use the company van. Although the van owner acknowledged that he owns registered firearms, he testified that he did not store any guns in the van.

A forensic scientist testified that a swabbing from the gun's grip contained a mixture of DNA from at least four people. But there was just one major profile, which matched Ret's DNA and that "would not be expected to occur more than once among unrelated individuals in the world's population." A second forensic scientist acknowledged that "it's possible" for DNA to be transferred from one item to another, and that such a transfer could occur if one pair of gloves touched multiple items.

DECISION

I. The trial evidence established Ret's guilt beyond a reasonable doubt.

Ret argues that the trial evidence was insufficient to support his conviction for possession of a firearm by an ineligible person. He contends that the evidence, which was purely circumstantial, was equally consistent with his trial theory that M.P.-T., D.J., or someone else possessed the gun, and thus, his conviction must be reversed. We conclude that the circumstantial evidence only supports one reasonable theory—that Ret possessed the gun.

In a criminal case, due process requires the prosecution to prove every element of the charged crime beyond a reasonable doubt. *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020). Ret challenges the sufficiency of the state's evidence underlying one element of the gun-possession offense—the element of possession. To convict Ret of possession of a

firearm by an ineligible person, the state was required to prove, among other elements, that Ret knowingly possessed a firearm. *See* Minn. Stat. § 624.713, subd. 1(2) (2020); *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017) (“To convict [a defendant] of possession of a firearm by an ineligible person, the [s]tate was required to prove in relevant part that he knowingly possessed the firearm.”). “Possession may be proved through evidence of actual or constructive possession.” *Harris*, 895 N.W.2d at 601. Here, Ret was not in actual, physical possession of the gun when the police found it. *See State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (defining actual possession as the exercise of “direct physical control” over an object (quoting *Jacobson v. Aetna Cas. & Sur. Co.*, 46 N.W.2d 868, 871 (Minn. 1951))). Thus, to establish the element of possession, the state was required to prove beyond a reasonable doubt that Ret constructively possessed the gun.

Constructive possession may be established in two ways. *Harris*, 895 N.W.2d at 601. The state must show either (1) the “police found the item in a place under the defendant’s exclusive control to which other people normally did not have access,” or (2) if others had access, “there is a strong probability (inferable from other evidence) that at the time the defendant was consciously or knowingly exercising dominion and control over [the item].” *Id.* “[C]onstructive possession need not be exclusive, but may be shared.” *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *rev. denied* (Minn. Jan. 16, 2001).

We next identify the standard of review that we must apply in considering whether the state’s evidence was sufficient to prove that Ret constructively possessed the gun. As a general matter, we must view the evidence “in the light most favorable to the verdict, and it must be assumed that the fact-finder disbelieved any evidence that conflicted with the

verdict.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (citing *Palmer*, 803 N.W.2d at 733).

But the level of scrutiny that the appellate court applies turns on whether the elements of an offense are supported by direct or circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). Direct evidence is “based on personal knowledge or observation and . . . proves a fact without inference or presumption.” *Harris*, 895 N.W.2d at 599 (quotation omitted). “[C]ircumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* When the trial evidence supporting an element of an offense was entirely circumstantial, an appellate court more closely scrutinizes the sufficiency of that evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473-75 (Minn. 2010). The parties agree that the evidence of Ret’s possession was entirely circumstantial and that we must apply the heightened circumstantial-evidence standard of review.

The circumstantial-evidence standard requires a two-step process. *Silvernail*, 831 N.W.2d at 598. “The first step is to identify the circumstances proved.” *Id.* A reviewing court assumes the trier of fact believed the state’s witnesses and rejected all evidence contrary to the verdict; all conflicting evidence is resolved in the state’s favor. *See State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). The second step is to “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Silvernail*, 831 N.W.2d at 599 (quotation omitted). During this step of the analysis, the reviewing court does not defer to the fact-finder’s choice between reasonable inferences. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010).

“Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted).

Applying this standard of review, we consider whether the state’s trial evidence established, beyond a reasonable doubt, that Ret constructively possessed the gun found in the back of the van. We first identify the circumstances proved as follows. Police discovered three people sleeping in the parked commercial van. D.J. was sleeping between the two front seats. He woke up first. During the encounter with the police, neither officer saw D.J. make any movements that could have been consistent with concealing a gun in the back of the van. The officers observed Ret and M.P.-T. sleeping on the floor in the back of the van. During a search of the van, an officer found a stolen handgun concealed under a black bag or tarp located “directly where [Ret] had been lying down.” Before collecting the firearm from the back of the van, the officer first handcuffed Ret, then searched D.J.’s person, and finally handcuffed M.P.-T. Following these tasks, and without changing gloves, the officer removed the gun from the back of the van. Ret told the police that D.J. was his friend, he entered the van to smoke marijuana and socialize before work, and he had only been in the van for a short time. M.P.-T. had never owned a firearm and she did not see a firearm in the van. The owner of the van did not store any firearms in the vehicle. Forensic analysis of a sample taken from the gun’s grip revealed that Ret’s DNA was the major profile in a mixture of DNA from four individuals.

We next examine the reasonable inferences that may be drawn from the circumstances proved. The circumstances proved are entirely consistent with Ret's guilt. As Ret acknowledges on appeal, it can be inferred from the evidence that Ret knowingly exercised dominion and control over the gun that was concealed under his sleeping spot in the van.

But Ret argues that the circumstances proved also support a reasonable inference that the gun belongs to someone else, most likely M.P.-T. Ret notes that, of the three people in the van, he was there for the briefest period. He points out that, because it was dark, the police officers were unable to see clearly inside the van and he would not have noticed the gun himself. However, Ret's argument overlooks some of the circumstances proved, including M.P.-T.'s testimony that the gun did not belong to her, the officers' observation that D.J. could not have moved the gun to where it was found during the encounter, and the van owner's testimony that he did not keep guns in the van. Considering only the circumstances proved—as required by our standard of review, *see Tschau*, 758 N.W.2d at 858—it is not reasonable to infer that the gun belonged to someone else.

Ret also argues that the officer's failure to don fresh gloves before handling the gun could have resulted in a transfer of his DNA to the gun's grip. He contends that the DNA evidence was the sole evidence tying him to the gun, and without it, the state's case failed. Ret's argument, which is supported only by a forensic scientist's testimony that "it's possible" for DNA to be transferred from one item to another, is speculative. A reviewing court should not "overturn a conviction based on circumstantial evidence on the basis of

mere conjecture.” *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted). The argument is also inconsistent with the circumstances proved. According to the officer, before retrieving the gun, he first touched Ret, then D.J., and then M.P.-T. Yet, the only major DNA profile found on the gun’s grip was Ret’s. And we reject Ret’s premise that the DNA evidence was the sole evidence of his guilt. As noted, the other circumstances proved—including the fact that the gun was found directly beneath the area where Ret was sleeping—also support the finding of Ret’s guilt.

Finally, even if someone else also could have possessed the gun, this inference alone does not support a reasonable hypothesis that Ret did *not* possess the gun. Because constructive possession can be joint, *State v. Sam*, 859 N.W.2d 825, 834 (Minn. App. 2015), speculation that another person also may have possessed the gun does not establish a reasonable inference other than guilt.

Because the inferences from the circumstances proved are consistent with Ret’s guilt—and only with Ret’s guilt—the evidence was sufficient to support Ret’s conviction.

II. The district court did not prejudicially err by prohibiting Ret from impeaching M.P.-T. with her alleged probation.

Ret argues that the district court abused its discretion when it prohibited him from impeaching M.P.-T.’s trial testimony with evidence that she had received a stay of adjudication and was on probation at the time of the incident. “Evidentiary rulings rest within the sound discretion of the district court, and [appellate courts] will not reverse an evidentiary ruling absent a clear abuse of discretion.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). “A district court abuses its discretion when its decision is based on an

erroneous view of the law or is against logic and the facts in the record.” *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019) (quotation omitted). “A defendant claiming error in the district court’s reception of evidence has the burden of showing both the error and the prejudice resulting from the error.” *Holt v. State*, 772 N.W.2d 470, 483 (Minn. 2009) (quotation omitted).

Before trial, Ret moved to impeach M.P.-T. with evidence that she was on probation when the police found the gun in the van. He argued to the district court that M.P.-T.’s probationary status showed that she had an “incentive to cooperate and curry favor with the state.” *See* Minn. R. Evid. 616 (“For the purpose of attacking the credibility of a witness, evidence of bias, prejudice, or interest of the witness for or against any party to the case is admissible.”). As an offer of proof, Ret presented court records showing that M.P.-T. had been charged with gross misdemeanor fifth-degree drug possession in September 2019, the district court had stayed adjudication of the offense, and M.P.-T. had been ordered to complete one year of probation beginning on December 30, 2019. The state objected to the admission of any evidence of M.P.-T.’s probation, arguing that it was improper impeachment evidence and irrelevant.

The district court denied Ret’s motion to impeach M.P.-T. with her probationary status, concluding that it was irrelevant to M.P.-T.’s bias or “incentive to cooperate and curry favor” for two reasons. First, the district court found that Ret’s offer of proof did not establish that M.P.-T. was even on probation on November 19, 2020, when the alleged offense occurred. Second, the district court observed that the sentencing order issued in

M.P.-T.'s case did not prohibit her from possessing a gun. Given these concerns, the district court prohibited Ret from inquiring about M.P.-T.'s probation status at trial.

We discern no abuse of discretion in the district court's ruling. Although "a witness may be cross-examined about [her] probationary status to establish that the witness had an incentive to cooperate and curry favor with the state as a result of [her] status," *State v. Johnson*, 699 N.W.2d 335, 339 (Minn. App. 2005), *rev. denied* (Minn. Sept. 28, 2005), the district court determined that Ret failed to establish that M.P.-T. was on probation on the date of the incident, and the record supports that determination.

Furthermore, even if the district court erred in its ruling, Ret cannot satisfy his burden of showing prejudice. *See State v. Guzman*, 892 N.W.2d 801, 812 (Minn. 2017) (stating that an evidentiary error only requires reversal of a conviction if it was prejudicial). Erroneously admitted evidence is prejudicial if there is a reasonable possibility that the jury's verdict would have been different in the absence of the evidence. *State v. Fichtner*, 867 N.W.2d 242, 252 (Minn. App. 2015), *rev. denied* (Minn. Sept. 29, 2015). There is no reasonable possibility that evidence of M.P.-T.'s alleged probation status would have changed the outcome of Ret's trial. M.P.-T. did not directly implicate Ret during her testimony. And the other evidence of Ret's guilt—including the evidence that he was sleeping on the gun and his DNA was found on the gun's grip—was strong. Thus, the district court did not prejudicially err by prohibiting Ret from impeaching M.P.-T. with her alleged probation.

III. A witness's spontaneous and isolated remark about Ret's parole status does not warrant reversal of Ret's conviction.

Ret contends that the district court abused its discretion by ruling before trial that the state could introduce evidence in its case-in-chief that Ret was on parole at the time of the offense. Although the state “generally” agreed with Ret’s pretrial motion to exclude such evidence, the district court ruled that Ret’s parole status would be admissible because it informed the actions of the responding police officers.

However, during the trial, the state did not present evidence of Ret’s parole during its case-in-chief. Rather, on cross-examination by Ret’s counsel, one of the responding officers volunteered that Ret was on parole.

Q: Did you have any indication that [Ret] was also smoking marijuana that day?

A: I didn’t have any indication that [Ret] was smoking marijuana. Only that [D.J.] had said he can’t be around it because he’s on parole. He, being [Ret].

Following this exchange, a juror interrupted, stating: “Could the officer repeat his response? I did not understand what he said.” The district court responded that “part of the answer was actually not responsive to the question, so I think the best way to address this, [defense counsel], would be to have you repeat the question and then just answer the question that is asked.” Ret’s counsel then asked the officer: “I believe the question was, [officer], if you had any indication that Mr. Ret had been smoking marijuana that morning.” The officer responded: “No.”

Later, and outside of the jury's presence, the district court sua sponte offered to provide the jury with a curative instruction. Ret's counsel declined any curative instruction based on concern that an instruction would draw further attention to the officer's remark.

Ret contends that the district court's ruling was somehow to blame for the officer's spontaneous remark. He argues that the district court's ruling was an abuse of discretion and that the erroneously admitted evidence was prejudicial error. *See Guzman*, 892 N.W.2d 812 (stating that for an objected-to evidentiary error, an appellant must show that the district court abused its discretion and that the error was prejudicial). The state asks us to apply the plain-error standard of review because, despite the district court's ruling, the state did not elicit the testimony and Ret failed to object to it. *See State v. Strommen*, 648 N.W.2d 681, 686 (Minn. 2002) (stating that for evidentiary errors not preserved with an objection, an appellant must show "(1) error; (2) that was plain; and (3) that affected substantial rights").

Even applying the less stringent standard that Ret requests, any error in the officer's spontaneous remark was harmless. As noted, to determine whether an evidentiary error was prejudicial, we must consider whether there is a reasonable possibility that the trial outcome would have been different without the evidence. *Fichtner*, 867 N.W.2d at 252. Here, there is no reasonable possibility that the jury would have found Ret not guilty in the absence of the officer's remark. We initially observe that the officer did not testify that Ret *was* on parole, only that D.J. claimed Ret was on parole. Thus, the remark itself was less damaging than it would have been if it had been based on the officer's own knowledge of Ret's parole status. The remark—a single comment during a trial involving multiple

witnesses—was also isolated. And it may not have been audible to the jurors. The record shows that at least one juror did not hear the remark. Finally, this was not a close case. Because the evidence of Ret’s guilt was strong, the remark likely had minimal, if any, impact on the jury’s finding of guilt. We therefore conclude that the officer’s spontaneous remark was not reversible error.

IV. The prosecutor did not commit misconduct during closing argument.

Ret argues that the prosecutor committed misconduct during closing argument by diluting the state’s burden of proof and by improperly aligning herself with the jury. He contends that the prosecutor’s comments deprived him of a fair trial, requiring reversal of his conviction.

Ret did not object to any of the alleged misconduct. In reviewing alleged misconduct that was not objected to, an appellate court applies the modified-plain-error standard. *See State v. Matthews*, 779 N.W.2d 543, 551 (Minn. 2010). Under this standard, the appellant must show that the prosecutor committed an error that was plain. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). An error is plain if it “contravenes case law, a rule, or a standard of conduct.” *Id.* If an appellant demonstrates plain error, the burden shifts to the state to show that the error did not affect the appellant’s substantial rights. *See id.* Even in cases where there was such an error, an appellate court “may correct the error only if it seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.” *State v. Mosley*, 853 N.W.2d 789, 797 (Minn. 2014) (alteration in original) (quotation omitted).

A. Diluting the State's Burden of Proof

Ret first argues that the prosecutor committed reversible misconduct by misstating or diluting the state's burden of proof. The state must prove each element of an offense beyond a reasonable doubt. *Culver*, 941 N.W.2d at 142. Misstating or diluting the burden of proof is "highly improper and constitutes prosecutorial misconduct." *State v. McDaniel*, 777 N.W.2d 739, 750 (Minn. 2010) (quotation omitted). "Prosecutors improperly shift the burden of proof when they imply that a defendant has the burden of proving his innocence." *Id.* (quotation omitted). To determine whether the prosecutor misstated the burden of proof in closing argument, reviewing courts look at the argument "as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence." *State v. Carridine*, 812 N.W.2d 130, 148 (Minn. 2012) (quotation omitted).

Ret highlights five instances where he claims the prosecutor diluted the burden of proof by asking the jury to choose its verdict based on which side presented the more reasonable trial theory. The instances of alleged misconduct are as follows.

Or did he not do that because he was the one that brought the firearm into the van. And when he was ordered out, he slipped it out of his waistband, or wherever he had it, slid it just underneath that bag, and got out of the van. That's more reasonable based on the evidence that you have before you. That's more reasonable based on the fact that [M.P.-T.] says it's not hers, [the van owner] says it's not his, and [D.J.] was cooperative throughout the whole process.

. . . [H]ow reasonable is it to think that a person is just going to leave a firearm laying in the back of a work van sliding around all over like it would have been where it was found. Is that reasonable? Or is it more reasonable that, again, Mr. Ret had it with him, and when he knew he was getting out and there

were officers outside that van, he tucked it under that bag so it wouldn't be found, hoping it wouldn't be found.

. . . .

. . . [I]t's not likely that someone just left their gun laying in the back of a van; that most likely Mr. Ret brought that gun in the back of the van and left it there himself.

. . . .

. . . So the evidence here is that Mr. Ret's DNA is on the grip of that firearm most likely because he himself had touched that, not that Officer Plein had transferred that onto the firearm.

. . . .

. . . [W]hat's reasonable from the evidence is that Mr. Ret got into the back of his van. He already had the firearm in his possession. And when he was ordered out of that van by law enforcement, he removed that firearm from his person and placed in under that bag. It doesn't make sense that [D.J.] was able to slide that firearm [H]e would have had to slide that behind him and magically get it to land underneath that black plastic bag. How reasonable is that? That's just not reasonable in light of the evidence that you have here. It's more reasonable that Mr. Ret was able to slide that gun under the bag before he got out of the car.

In arguing that the prosecutor's statements were improper, Ret cites *Strommen*, where the Minnesota Supreme Court reversed a conviction based, in part, on prosecutorial misconduct. 648 N.W.2d at 690. There, the prosecutor stated: "When we have difficult cases like this, sometimes the only way to deal with [such cases] is just to weigh the story in each hand and decide which one is most reasonable, which one makes the most sense." *Id.* at 685. The supreme court determined that this remark misstated the state's burden to prove each element of the crime charged beyond a reasonable doubt by suggesting that the

appellant was required to present a story and the jury need only assess which theory was more “reasonable.” *Id.* at 690.

Here, however, the prosecutor did not ask the jury to choose between two stories by determining which one was more reasonable. Rather, the prosecutor encouraged the jury to evaluate the reasonableness of the inferences from the evidence. This was not misconduct. The supreme court has “made it clear that the prosecutor is free to specifically argue that there is no merit to a particular defense in view of the evidence or no merit to a particular argument.” *State v. Salitros*, 499 N.W.2d 815, 818 (Minn. 1993). Moreover, the prosecutor acknowledged the state’s burden to prove guilt beyond a reasonable doubt in an opening statement and multiple times during closing argument. Ret therefore fails to establish that the prosecutor improperly diluted the burden of proof. We discern no error in the prosecutor’s comments.

B. Aligning with the Jury

Ret also argues that the prosecutor improperly aligned with the jury by using two “we” statements. “[A] prosecutor is not a member of the jury, so to use ‘we’ and ‘us’ is inappropriate and may be an effort to appeal to the jury’s passions.” *State v. Mayhorn*, 720 N.W.2d 776, 790 (Minn. 2006). While “we” statements may be disfavored generally, they are not prosecutorial misconduct per se. *Nunn v. State*, 753 N.W.2d 657, 663 (Minn. 2008). A prosecutor does not engage in misconduct by using the word “we” when summarizing the evidence that has been presented at trial. *Id.*

The challenged statements occurred near the end of the closing argument as the prosecutor summarized the evidence:

So based on the evidence here, members of the jury, the circumstances show you that the gun found by Officer Plein was Mr. Ret's. *We know it wasn't [M.P.-T.]'s. We know it wasn't [the van owner's].* You saw how cooperative [D.J.] was, and no one saw him sliding it back there or putting it back there. The only one who was right there where that firearm was found was Mr. Ret, and his DNA is on that firearm.

We do not agree with Ret that the prosecutor committed misconduct by using the word “we” in these two instances. In *Mayhorn*, where the supreme court determined that the prosecutor's “we” statements were misconduct, the prosecutor stated, “This is kind of foreign for all of us, I believe, because we're not really accustomed to this drug world and drug dealing.” 720 N.W.2d at 789. The supreme court was concerned that the prosecutor's comment aligned the prosecutor and the jury against the appellant. *Id.* at 790. Additionally, the supreme court observed that the prosecutor's comment highlighted “cultural differences between the predominantly white jury and the [appellant].” *Id.* at 789 (footnote omitted). Here, by contrast, the comments did not align the prosecutor with the jury against Ret or reference cultural differences.

The comments here were more akin to those in *Nunn*. There, as here, the prosecutor used the word “we” in summarizing the evidence, stating, “Two people were involved in the shooting. We may never know who the other one was. We know who one of them was. It was this defendant.” 753 N.W.2d at 663. The supreme court determined that such statements did not constitute misconduct. *Id.* We likewise conclude that the prosecutor here did not commit misconduct by twice using the word “we” to summarize the evidence at Ret's trial. Again, Ret has failed to establish that the prosecutor's statements were error.

V. Ret does not establish that the alleged cumulative errors require reversal.

Where no single trial error alone warrants reversal, but the cumulative effect of the errors prejudiced the outcome of a trial, reversal of the resulting conviction may be required. *See State v. Penkaty*, 708 N.W.2d 185, 206 (Minn. 2006). Ret argues that the cumulative effect of the errors at his trial requires reversal of his conviction. We reject this argument because Ret has failed to establish that more than one error occurred at his trial.

Affirmed.