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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1086**

State of Minnesota,
Respondent,

vs.

Edbin Jose Coreas,
Appellant.

**Filed June 26, 2023
Affirmed in part and reversed in part
Segal, Chief Judge**

Mower County District Court
File No. 50-CR-19-669

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

Kristen Nelsen, Mower County Attorney, Austin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Segal, Chief Judge; and
Ross, Judge.

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this direct appeal, appellant challenges his convictions of unlawful possession of a firearm and of receiving stolen property. He argues that the evidence was not sufficient to prove he was in constructive possession of the firearm or that he knew or had reason to

know the firearm was stolen. He also argues that the prosecutor committed misconduct by misstating the law on constructive possession in his rebuttal closing argument. We affirm appellant's conviction of unlawful possession of a firearm, but we reverse his conviction of receiving stolen property because the evidence was insufficient to prove that appellant knew or had reason to know the firearm was stolen.

FACTS

On the night of December 20, 2018, a deputy with the Mower County Sheriff's Office was on patrol when he noticed a pickup truck being driven in an erratic manner. He observed the truck leave a parking lot at "such a speed" that it missed a turn onto a frontage road, back up, do "a burnout," and then drive across the highway. At one point, the deputy observed the truck slow down almost to a complete stop before accelerating again. The deputy activated his emergency lights to initiate a traffic stop. The truck by then was parked and the driver, identified as appellant Edbin Jose Coreas, got out of the truck, along with a passenger.

While speaking with Coreas and the passenger, the deputy detected the odor of alcohol coming from Coreas and observed that Coreas had slurred speech and watery eyes. The deputy attempted to administer field sobriety tests, but Coreas did not follow the deputy's instructions. The deputy placed Coreas under arrest for suspicion of driving while impaired (DWI). The deputy put Coreas in the back of the squad car, then searched the truck Coreas was driving. During the search, the deputy discovered a plastic cup in the center console that contained a substance that the deputy believed to be alcohol. The

deputy emptied the contents of the cup on the side of the road and photographed the empty cup with the remnants of a brown liquid on the bottom.

Additional police officers responded to the scene. The deputy asked one of the officers to search the area where Coreas's car had slowed to a virtual stop because the deputy suspected something may have been thrown from the truck. The officer searched the area and discovered a handgun in the snow. The officer believed the handgun had been placed in the snow recently because it had broken through the top layer of fresh snow. The officer also noticed the snow was melting around the handgun, suggesting the handgun was warm. The officer photographed the handgun as he found it in the snow and then collected it as evidence. Based on the location of the handgun and the deputy's description of the driving conduct, the officer believed that the handgun had been thrown from the passenger side of the truck. A different police officer stayed with the passenger during the search. The officer observed that the passenger kept looking toward the area where the handgun was ultimately discovered. Law enforcement ran the serial number of the handgun and discovered that the handgun had been reported stolen.

Coreas and the passenger are both prohibited from possessing firearms due to prior convictions for crimes of violence. As a result, the passenger was also placed under arrest.

The deputy transported Coreas and the passenger to the Mower County Jail and applied for a search warrant to test Coreas's blood or urine for alcohol and controlled substances. After the application for a search warrant was granted by the district court, the deputy advised Coreas of the warrant and that refusal to submit to a blood or urine test is a crime. Coreas refused to provide a blood or urine sample.

Respondent State of Minnesota charged Coreas with unlawful possession of a firearm, second-degree DWI (test refusal), and violation of the open-bottle law. The state later amended the complaint to add a charge of receiving stolen property. The case was tried to a jury over two days in April 2022. In addition to the deputy and officers who were involved in the arrest and investigation, the jury heard testimony from an analyst with the Minnesota Bureau of Criminal Apprehension (BCA) and R.O., the owner of the handgun. The BCA analyst testified that he compared DNA samples from both Coreas and the passenger with the DNA swabs taken from the handgun. None of the DNA recovered from the handgun matched the passenger, but a major DNA profile found on the handle and magazine release of the handgun matched Coreas. The BCA analyst explained that a major profile occurs when “the majority of the DNA in that sample is being contributed by at least one individual.” R.O. testified that he reported the handgun stolen on November 7, 2018, which was “soon after” he discovered the theft.

Coreas’s theory of the case at trial was that his DNA profile was on the handgun not because he had any direct contact with the gun, but because of a secondary transfer. Coreas’s counsel argued at trial that the DNA came from Coreas’s saliva that got into the liquid in the cup found in the center console of the truck. Coreas’s counsel posited that, based on the deputy’s testimony that Coreas was driving erratically, the beverage likely sloshed around the truck’s interior with some of the liquid landing on the handgun. Counsel argued that it was thus Coreas’s saliva from the liquid in the cup that caused a secondary transfer of Coreas’s DNA to the gun and that Coreas was never in possession of the handgun.

The jury found Coreas guilty of unlawful possession of a firearm, second-degree DWI (test refusal), and receiving stolen property, but found Coreas not guilty of violating the open-bottle law. The district court sentenced Coreas to 60 months in prison for unlawful possession of a firearm, 365 days in jail for second-degree DWI (test refusal), and 21 months in prison for receiving stolen property.

DECISION

Coreas raises three arguments on appeal.¹ The first two arguments challenge the sufficiency of the evidence to support his conviction of unlawful possession of a firearm and of receiving stolen property. Alternatively, Coreas asserts that the prosecutor committed misconduct by misstating the law on constructive possession and that his firearm-possession conviction must therefore be reversed and the case remanded for a new trial on that charge. We address each in turn.

I. The evidence is sufficient to support Coreas’s conviction of unlawful possession of a firearm but insufficient to support his conviction of receiving stolen property.

Coreas argues that the evidence is insufficient to support his convictions of unlawful possession of a firearm and receiving stolen property. In analyzing a claim of insufficient evidence, we review the record “to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach their verdict.” *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004). In doing so we

assume that the jury believed the state’s witnesses and disbelieved any evidence to the contrary. We will not disturb

¹ The state did not file a respondent’s brief, but we must, nevertheless, decide the case on the merits. *See* Minn. R. Civ. App. P. 142.03.

the verdict if the jury, while acting with proper regard for the presumption of innocence and regard for the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.

Id. at 25-26 (citations omitted).

When a conviction is based on circumstantial evidence, as is the case here, we use a two-step process. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved, assuming that the jury resolved any factual disputes in a manner that is consistent with the jury's verdict. *Id.* at 598-99. Second, we independently examine the reasonableness of the inferences the jury could draw from those circumstances. *Id.* at 599. All circumstances proved must be consistent with guilt and inconsistent with any rational hypothesis except that of guilt. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010).

A. Unlawful Possession of a Firearm

The offense of unlawful possession of a firearm has two elements: (1) that Coreas was ineligible to possess a firearm because he had been convicted of a “crime of violence” and (2) that he was in possession of a firearm. *See* Minn. Stat. § 624.713, subd. 1(2) (2018). Coreas stipulated to the first element—that he had the requisite prior conviction of a crime of violence. Coreas argues, however, that the evidence was not sufficient to establish the second element—that he was in possession of the handgun. Coreas asserts two theories to support his contention. First, he argues that the circumstances proved are consistent with the rational hypothesis that the passenger was in exclusive possession of the handgun. Second, Coreas maintains that, even if he possessed the handgun at one point, any such

possessory interest in the handgun was abandoned prior to his arrest when the handgun was thrown out of the truck.

Possession

Possession may be actual or constructive. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Actual possession “involves direct physical control.” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted). But “[t]he mere fact that an item is not in a defendant’s physical possession at the time of apprehension does not preclude prosecution for actual possession of contraband.” *Id.* at 354. Constructive possession occurs when the defendant did not have actual possession of the item at the time of arrest, but law enforcement found the item (1) “in a place under the defendant’s exclusive control to which other people normally did not have access” or (2) “in a place to which others had access . . . [but] there is a strong probability (inferable from other evidence) that at the time the defendant was consciously or knowingly exercising dominion and control over it.” *Harris*, 895 N.W.2d at 601. Finally, the state does not have to establish that the defendant was in *exclusive* possession of the item; “[a] defendant may possess an item jointly with another person.” *Id.*

As required by the applicable standard of review, we begin our analysis by setting out the circumstances proved that support Coreas’s conviction of being an ineligible person in possession of a firearm. Those circumstances include the following. On the night of Coreas’s arrest, the deputy observed a truck being driven erratically. At one point, the deputy observed the truck slow down almost to a complete stop. The deputy initially thought someone was going to exit the truck and run, but when no one did, the deputy

began to suspect that something may have been thrown from the truck. The deputy later asked another officer to search the area where the truck had slowed down, and that is where the officer discovered a handgun in the snow. The handgun had broken through the top layer of fresh snow and the snow was melting around the handgun, which led the officer to believe that the handgun was warm and had recently been put there. The handgun was swabbed for DNA, and a major DNA profile found on the handle and magazine release of the handgun matched Coreas's DNA sample. None of the DNA recovered from the handgun matched the sample from the passenger.

Coreas concedes that "[t]he jury could infer from the circumstances proved that Coreas constructively possessed the [hand]gun found in the snow." But he maintains that the circumstances proved also support a rational hypothesis that is inconsistent with guilt—that the passenger was in exclusive possession of the handgun. In support of this hypothesis, Coreas points to the officers' testimony that it appeared that the handgun was thrown from the passenger side of the truck and that the passenger was acting nervously and kept looking at the area where the handgun was ultimately found.

To explain the presence of his DNA on the handgun, Coreas argues that the DNA found on the handgun was the result of a secondary transfer from his saliva. As he theorized at trial, Coreas posits that his saliva could have gotten into the liquid in the cup found in the center console of the truck. The cup might then have been jolted by Coreas's erratic driving, causing the liquid with the saliva mixture to splash onto the handgun. And that the splashed liquid caused a secondary transfer of his DNA without Coreas ever exercising any dominion or control over the gun. Coreas maintains that this theory is

supported by the deputy's observation that Coreas was driving erratically and the testimony of the BCA analyst who acknowledged that, "in theory, there could be saliva or something on" the handgun and that secondary transfer is more likely with bodily fluids than with skin cells.

Coreas's DNA-secondary-transfer theory, however, lacks adequate evidentiary support. For example, the BCA analyst testified that, if the serologist who swabbed the handgun for DNA samples observed any bodily fluid on the handgun, the serologist would have included that in the report and the report contained no such notation. In addition, there is no evidence in the record to support that Coreas spit into or drank from the cup, how full the cup was, or that any of the liquid in the cup spilled onto the interior of the truck, let alone on the handgun. Coreas's theory thus requires multiple levels of speculation. A rational hypothesis cannot be based on mere speculation or conjecture—it must have evidence in the record to support it. *See State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010); *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008).

We therefore reject as too speculative Coreas's theory that his DNA profile was transferred to the handgun from saliva in sloshing liquid from the cup. Accordingly, we conclude that the circumstances proved do not support a rational hypothesis that the passenger was in exclusive possession of the handgun.

Abandonment

Coreas next argues that the evidence is insufficient to establish that he possessed the handgun because, even if he possessed the handgun at one point, any such possessory interest was abandoned when the handgun was tossed out of the truck. Coreas relies on

State v. Florine, which addressed constructive possession in the context of a controlled substance case, in support of his argument. 226 N.W.2d 609 (Minn. 1975). In *Florine*, the Minnesota Supreme Court explained:

The purpose of the constructive-possession doctrine is to include within the possession statute those cases where the state cannot prove actual or physical possession at the time of arrest but where the inference is strong that the defendant at one time physically possessed the substance and did not abandon his possessory interest in the substance but rather continued to exercise dominion and control over it up to the time of the arrest.

Id. at 610. Coreas argues that *Florine* supports his hypothesis that because the handgun was tossed out of the truck, he no longer exercised any alleged “dominion and control” over the handgun as of the time of his arrest and thus cannot be convicted of possessing the gun. *Florine*, however, cannot be read as supporting such a claim.

In *Florine*, law enforcement discovered cocaine “in an unlocked abandoned vehicle.” *Id.* Subsequent investigation revealed that Florine had been in possession of the vehicle prior to its discovery by law enforcement, and he was ultimately convicted of possession of the cocaine. *Id.* Florine appealed and the supreme court affirmed his conviction after observing that constructive possession requires a showing that the individual “at one time physically possessed the substance and did not abandon his possessory interest in the substance.” *Id.* Thus, the supreme court did not find that Florine had abandoned the cocaine, despite its discovery “in an unlocked abandoned vehicle.” *Id.* Additionally, there is even less evidence to support a claim of abandonment here because the moment of alleged abandonment was in the presence of law enforcement. Coreas’s

reading of *Florine* to suggest that an individual may avoid prosecution for possession of contraband by throwing it to the ground while in the presence of law enforcement is simply unreasonable.

As we have explained above, the circumstances proved establish that Coreas possessed the handgun, at least jointly with the passenger, while in the truck. Moreover, Coreas does not dispute that the handgun was in the truck at some point prior to his arrest—he in fact relies on that premise to explain how his DNA ended up on the handle. And it is established caselaw that “[t]he mere fact that an item is not in a defendant’s physical possession at the time of apprehension does not preclude prosecution for actual possession of contraband.” *Barker*, 888 N.W.2d at 354. By logical extension, it also does not preclude prosecution for constructive possession, and we thus reject Coreas’s abandonment argument.

On this record, we conclude that the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt. The evidence is thus sufficient to support Coreas’s conviction of being an ineligible person in possession of a firearm.

B. Receiving Stolen Property

We next address Coreas’s argument that the evidence is insufficient to support his conviction of receiving stolen property. To sustain a conviction for receiving stolen property under Minn. Stat. § 609.53, subd. 1 (2018), the state was required to prove that Coreas “receive[d], possesse[d], transfer[red], b[ought] or conceal[ed] any stolen property” and that he “kn[ew] or ha[d] reason to know the property was stolen.” It is undisputed that

the handgun was stolen. And as discussed above, there was sufficient evidence to establish that Coreas possessed the handgun. Accordingly, the only remaining element of proof is whether Coreas knew or had reason to know that the handgun was stolen.

In the absence of direct evidence that Coreas knew or had reason to know the handgun was stolen, we turn again to the test set out above for proof by circumstantial evidence. The circumstances proved on the issue of Coreas's knowledge are as follows. R.O. reported the handgun stolen on November 7, 2018, and Coreas was in possession of the handgun on the date of his arrest, December 20, 2018. Coreas also stipulated that he is ineligible to possess firearms due to a prior conviction for a crime of violence and, based on that circumstance, it is possible to infer that Coreas was unable to acquire a firearm through any lawful means. This falls short, however, of supporting a reasonable inference that Coreas knew or had reason to know that the handgun had been stolen.

This court has observed that, when considering whether the evidence is sufficient to establish that an individual knew or had reason to know that property was stolen, the “individual’s ‘unexplained possession of stolen property within a reasonable time after a . . . theft will in and of itself be sufficient to sustain a conviction.’” *State v. Hager*, 727 N.W.2d 668, 677-78 (Minn. App. 2007) (quoting *State v. Bagley*, 175 N.W.2d 448, 454 (Minn. 1970)). But in *Hager*, the defendant was in possession of multiple items that were stolen over the course of two thefts. *Id.* at 677. We reasoned that, under the circumstances of the case, “[l]egitimate acquisition of property from both thefts [wa]s improbable,” and we affirmed the conviction. *Id.* In *Bagley*, the case relied on by *Hager*, the supreme court similarly affirmed the sufficiency of the evidence on the issue of knowledge when the

evidence demonstrated that the defendant was in possession of multiple items stolen over the course of three thefts and the last theft was committed within a week of the discovery of the property. 175 N.W.2d at 454.

Here, Coreas was in possession of one item that was stolen approximately six weeks prior to his arrest. This distinguishes the facts of this case from *Hager* and *Bagley* in which the defendants were found in possession of multiple items stolen from multiple thefts. The state in this case also presented no evidence that linked Coreas to the theft itself. Under these circumstances, we agree with Coreas that the evidence was insufficient to support his conviction for receiving stolen property. We acknowledge that Coreas is ineligible to possess a firearm and therefore could not obtain one through legitimate means, but this fact alone is not sufficient to rule out an alternate hypothesis that Coreas was not aware of the theft of the handgun and did not know or have reason to know that the handgun had been stolen. We therefore conclude that the evidence is not sufficient to support Coreas's conviction of receiving stolen property, and we reverse that conviction.

II. Coreas was not denied his right to a fair trial due to prosecutorial misconduct.

Coreas's final argument is that he is entitled to a new trial because statements made by the prosecutor in the state's rebuttal closing argument misstated the law on constructive possession. Coreas acknowledges that, because he did not object to the challenged statements at trial, his argument is subject to review for plain error.

In cases of unobjected-to prosecutorial misconduct, we apply a modified plain-error test. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Under the modified plain-error test, the appellant bears the burden to show both that the prosecutor committed error and

that the error is plain. *Id.* If the appellant makes such a showing, the burden then shifts to the state to demonstrate that the error did not prejudice the appellant’s substantial rights. *Id.* If the state fails to meet that burden, we must then determine whether reversal is required to uphold the fairness and integrity of the judicial proceedings. *Id.* (citing *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998)).

Plain Error

An error is plain if it “was clear or obvious.” *State v. Strommen*, 648 N.W.2d 681, 688 (Minn. 2002) (quotation omitted). Plain error can be shown in a prosecutor’s action or statement that clearly “contravenes case law, a rule, or a standard of conduct.” *State v. Wren*, 738 N.W.2d 378, 393 (Minn. 2007) (quotation omitted). Consequently, a prosecutor’s misstatement of the law may constitute plain-error misconduct. *Strommen*, 648 N.W.2d at 690. In determining whether a prosecutor committed plain error in a closing argument, we look “at the closing argument as a whole, rather than just selective phrases or remarks that may be taken out of context or given undue prominence.” *State v. Walsh*, 495 N.W.2d 602, 607 (Minn. 1993).

Coreas claims that the following statements made by the prosecutor to the jury in his rebuttal closing argument misstated the law on constructive possession:

So let’s talk about this theory that somehow he was drinking from a cup, and his spit got on this gun in his truck that he allegedly didn’t possess. Remember, he was the driver of that vehicle. In control of that vehicle. In control of who got in that vehicle and in control of what got in that vehicle. And he is ineligible. So if his friend, [the passenger], brought that gun into his truck, and it is somewhere that his spit can get on it, if you go with that theory. . . . The gun was in his truck, the truck that he was in control of, and he was exercising dominion and

control of what was in that truck. He was possessing the gun. Whether it is when he held it in his hand, or put it in his truck, or allowed it to be near his spit cup, he was possessing the gun.

The prosecutor also argued,

We know [the handgun] was in his truck. We know it came out of his truck. . . . They say well, we didn't know where the gun was inside the truck. But . . . their theory . . . says it was somewhere close to his cup, which would be right within hand's reach, arm's reach, in his vehicle. Which is in his possession.

Coreas asserts that the prosecutor misstated the law on constructive possession because constructive possession requires more than “mere proximity” to an item. *Harris*, 895 N.W.2d at 601. He cites *State v. Hunter*, where the appellant argued that a jury instruction materially “misstate[d] the law by diverting the jury’s attention from whether [the appellant] exercised dominion and control over the cocaine to whether he merely exercised dominion and control over his SUV where the cocaine was found.” 857 N.W.2d 537, 542 (Minn. App. 2014). This court agreed, noting that the law on constructive possession “indicates that a defendant must exercise dominion and control over the substance itself in order to constructively possess it” and that the instruction impermissibly “direct[ed] the jury to find constructive possession if it found that [the appellant] had exercised dominion and control over the SUV.” *Id.*

Applying those precedents here, we agree with Coreas that the prosecutor misstated the law concerning constructive possession by arguing to the jury that “[t]he gun was in his truck, the truck that he was in control of, and he was exercising dominion and control of what was in that truck.” This statement erroneously suggested that exercising dominion

and control over the truck was sufficient to prove that Coreas was in constructive possession of the handgun. We also conclude that this error is plain based on *Hunter*.

In reaching that conclusion, we note the permissive inference in Minn. Stat. § 609.672 (2018), which provides that, subject to certain exceptions, the driver of a passenger automobile is in knowing possession of any firearm discovered in the automobile. *See also* Minn. Stat. § 152.028, subd. 2 (2018) (establishing an analogous permissible inference for controlled substances in passenger automobiles). However, this court has observed that the permissible inference does not negate other reasonable inferences. *See State v. Harris*, No. A15-0711, 2016 WL 1396689, at *4 n.1 (Minn. App. Apr. 11, 2016) (discussing Minn. Stat. § 609.672 and cited for its persuasive value), *aff'd*, 895 N.W.2d 592 (Minn. 2017); *State v. Sam*, 859 N.W.2d 825, 832 n.4 (Minn. App. 2015) (discussing Minn. Stat. § 152.028). Accordingly, the fact that Coreas was driving the vehicle may support an inference that he knowingly possessed the handgun while it was in the vehicle, but not necessarily support proof beyond a reasonable doubt of such knowing possession. As explained in *Hunter*, it is erroneous to instruct a jury that it can find constructive possession based only on a finding “that [a defendant] ha[s] exercised dominion and control over” a vehicle. 857 N.W.2d at 542.

Effect on Substantial Rights

Having determined that Coreas has shown that the prosecutor’s statements were plainly erroneous, we now assess whether the state has met its burden to show that the error did not affect Coreas’s substantial rights. *See Ramey*, 721 N.W.2d at 296. To meet this burden, the state must show that there is no “reasonable likelihood that the error actually

impacted the verdict.” *State v. McDaniel*, 777 N.W.2d 739, 749 (Minn. 2010). The state, however, failed to file a brief and, because the state has the burden to establish that the error did not likely impact the verdict, we will not engage in speculation concerning the state’s arguments on this issue. To independently evaluate this prong, when the state has not attempted to meet its burden, would inappropriately relieve the state of satisfying its burden. *See State v. Moodie*, No. A15-0537, 2016 WL 596275, at *5 (Minn. App. Feb. 16, 2016) (citing *State v. Porte*, 832 N.W.2d 303, 312-13 (Minn. App. 2013)) (holding—in a nonprecedential opinion we cite for its persuasive value—that the state’s failure to file a brief constituted waiver of the substantial-rights prong). We therefore assume that the misconduct affected Coreas’s substantial rights.

Fairness and Integrity of the Judicial Proceedings

We must now assess the final prong of the modified plain-error test, whether “address[ing] the error [is needed] to ensure fairness and the integrity of the judicial proceedings.” *Griller*, 583 N.W.2d at 740. Reversal is warranted if the prosecutor’s misconduct, in the context of the entire trial, “was so serious and prejudicial that” it impaired the appellant’s constitutional right to a fair trial. *State v. Johnson*, 616 N.W.2d 720, 727-28 (Minn. 2000).

In *Griller*, the supreme court held that an erroneous jury instruction on self-defense did not warrant granting the appellant a new trial when the appellant “was afforded a complete adversarial trial that lasted eight days” and “thoroughly presented his self-defense theory of the case.” 583 N.W.2d at 742. The supreme court reasoned that, because the

jury had adequately “considered and rejected” the appellant’s version of events despite a misstatement of the law in jury instructions, granting a new trial would be futile. *Id.*

Similarly here, we are not persuaded that fairness and the integrity of the judicial proceedings require a reversal of the verdict. First, the only error asserted by Coreas concerning the conduct of the trial involves the challenged statements made by the prosecution in the rebuttal closing argument. We also note that, in the state’s initial closing argument, the prosecutor argued to the jury that it should find that Coreas possessed the handgun based on the presence of his DNA on the handle of the gun; the prosecutor did not make the argument that constructive possession could be found merely because Coreas was the driver of the truck.

Second, the state presented strong evidence that Coreas had in fact exercised dominion and control over the handgun. The BCA analyst testified that Coreas’s DNA was found on the handle and magazine release of the handgun and that his DNA was the “major profile” found on the gun. And Coreas argued that the handgun was in close enough proximity within the truck that liquid from the cup in the center console could have splashed onto the gun.

Finally, the jury was accurately instructed by the district court on the issue of constructive possession. The district court instructed the jury that “[a] person is in constructive possession of an item if the item was placed under his exclusive control to which other people did not normally have access, or if found in a place to which others had access, the person knowingly exercised dominion and control over the item.” Unlike the instruction that was found to be erroneous in *Hunter*, the district court’s instruction properly placed the emphasis on whether Coreas exercised dominion and control over the

contraband *item*—in this case the handgun—not on whether he exercised dominion and control over the truck. *See Hunter*, 857 N.W.2d at 542-43.

We therefore conclude that considerations of fairness and the integrity of the judicial proceedings do not require reversal and a new trial on the grounds of prosecutorial misconduct.

Affirmed in part and reversed in part.