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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1211**

State of Minnesota,
Respondent,

vs.

Maria Epifania Lopez,
Appellant.

**Filed July 31, 2023
Affirmed
Gaïtas, Judge**

Kandiyohi County District Court
File No. 34-CR-22-91

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Shane Baker, Kandiyohi County Attorney, Julianna F. Passe, Assistant County Attorney, Willmar, Minnesota (for respondent)

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

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

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant Maria Epifania Lopez appeals her conviction for second-degree possession of methamphetamine following a jury trial. She argues that a new trial is

required because her waiver of trial counsel did not comport with constitutional requirements, and alternatively, that her conviction must be reversed due to insufficient evidence. Because we conclude that Lopez validly waived trial counsel and that the evidence established her guilt beyond a reasonable doubt, we affirm.

FACTS

Following a search of an apartment that Lopez shared with two other people in Willmar, respondent State of Minnesota charged Lopez with first-degree sale of methamphetamine, second-degree possession of methamphetamine, and possession of drug paraphernalia. At Lopez's request, the district court appointed a public defender to represent her. With the assistance of counsel, Lopez pleaded not guilty to the charges and requested a jury trial. But on her trial date, she fired her public defender and waived counsel. Lopez then represented herself at trial.

The state called three trial witnesses. A police sergeant testified about the execution of the search warrant at the two-bedroom apartment where Lopez lived. According to the sergeant, the target of the search warrant was Lopez's roommate, F.K. When the sergeant and other members of the search-warrant team entered the apartment, they encountered three people: a man on the couch in the living room who was later identified as Lopez's son, B.L.; a man exiting the east bedroom who was later identified as F.K.; and Lopez, who was in the bathroom taking a shower.

The sergeant testified that Lopez opened the bathroom door, wet and wearing a towel. She asked the officers whether she could get dressed, and then she walked into the second bedroom, which was located on the north side of the apartment. As Lopez was

dressing, the sergeant performed a cursory search of the bathroom. In a purse located in the bathroom, the sergeant observed “cut straws that people would commonly use for—for snorting—snorting controlled substances.”

The sergeant informed Lopez she would be arrested for the drug paraphernalia in her purse. Lopez responded that if she was going to jail, she needed more clothing. The sergeant testified that he then “escorted [Lopez] into the north bedroom where she put on additional pairs of pants and some additional shirts and a jacket.” According to the sergeant, Lopez expressed concern that her son would be arrested. The sergeant testified that Lopez said her son “was doing good and on probation” and “that nothing in the house was his.”

An agent who assisted in the execution of the search warrant and photographed items found in the apartment also testified at trial. In the purse located in the bathroom, the agent found “several snort tubes” used for “snorting cocaine or methamphetamine” and a Marlboro cigarette box containing “a glass pipe that had burnt residue on it.” The agent recognized the glass pipe in the Marlboro box as one “commonly used for smoking methamphetamine,” and the pipe field-tested positive for methamphetamine. According to the agent, there was also suspected methamphetamine in the north bedroom. Investigators found the substance in a small plastic bag in a cassette holder, in a pouch in a drawer containing jewelry, and in a box filled with multiple Marlboro packs, each containing both methamphetamine paraphernalia and suspected methamphetamine. The agent testified that many drug-related items were also found in the north bedroom, including “numerous meth pipes, several digital scales, new and unused packaging

materials as well as many old used baggies with meth residue inside of them.” “[A] mirror and a bong, [and] several snort tubes” were also seized. Although Lopez dressed in the north bedroom, the agent acknowledged that investigators also observed some male clothing in that room, including a male Vikings jersey.

The state’s final trial witness was a forensic scientist from the Minnesota Bureau of Criminal Apprehension (BCA). She testified that the substances found in the north bedroom were methamphetamine. In total, the weight of the seized methamphetamine was 25.083 grams.

After the state rested, Lopez testified. According to Lopez, she was a temporary resident of the apartment. She testified that she did not stay in the north bedroom, although she kept some of her belongings there. Instead, she slept in the living room and kept most of her belongings there. On cross-examination, Lopez admitted that she had been living in the apartment for more than two years, that she kept clothes, shoes, and jackets in the north bedroom, and that her purse contained drug paraphernalia. Lopez also testified that, during the search of the apartment, she told the police that her son did not have anything to do with the drugs found.

The jury found Lopez not guilty of first-degree sale of methamphetamine, but guilty of second-degree methamphetamine possession—a felony—and possession of drug paraphernalia—a petty misdemeanor. At sentencing, the district court sentenced Lopez to 58 months in prison for second-degree possession of methamphetamine.

DECISION

Lopez raises two issues on appeal. First, she argues that a new trial is required because her waiver of trial counsel was constitutionally invalid. Lopez contends that the district court failed to fully advise her of the information required by the Minnesota Rules of Criminal Procedure for a valid waiver of the right to counsel, and that her background, experience, and conduct show that her decision to waive counsel was not knowing or intelligent. Second, Lopez argues that her conviction for second-degree drug possession must be reversed because the state failed to prove beyond a reasonable doubt that she knowingly possessed the methamphetamine found in the north bedroom of the apartment. As explained below, we reject both of Lopez's arguments and affirm her conviction.

I. Lopez knowingly and intelligently waived her constitutional right to the assistance of counsel.¹

The United States and Minnesota Constitutions guarantee a criminal defendant the right to counsel. U.S. Const. amends. VI, XIV; Minn. Const. art. I, §§ 6, 7. To comport with constitutional requirements, a criminal defendant's waiver-of-counsel must be knowing, intelligent, and voluntary, *State v. Rhoads*, 813 N.W.2d 880, 884-85 (Minn.

¹ Although Lopez challenges the constitutionality of her waiver of counsel as to both the second-degree drug possession *and* the possession-of-drug-paraphernalia offenses, we note that a defendant does not have a right to counsel when charged with a petty misdemeanor. *See State v. Host*, 350 N.W.2d 479, 481-82 (Minn. App. 1984) (concluding that petty misdemeanor pleas made without counsel present can be used to enhance subsequent offense because a petty misdemeanor is not a crime, and as such, there was no right to counsel); *see also* Minn. R. Crim. P. 23.05, subd. 2 (stating that a defendant does not have the right to a public defender in petty misdemeanor cases), .06 ("A petty misdemeanor is not considered a crime."), 5.04, subd. 1 (discussing waivers of the right to counsel for only felonies, gross misdemeanors, and misdemeanors). Thus, we only consider this argument as to her felony drug-possession conviction.

2012), and it is the district court’s duty to ensure these constitutional requirements are met, *State v. Hawanchak*, 669 N.W.2d 912, 914 (Minn. App. 2003).

The Minnesota Rules of Criminal Procedure provide a process for the district court to follow to ensure that a defendant’s waiver-of-counsel is constitutional. *See* Minn. R. Crim. P. 5.04, subd. 1(4). Under rule 5.04, subdivision 1(4), “defendants charged with a felony who appear without counsel, do not request counsel, and wish to represent themselves,” must “enter on the record a voluntary and intelligent written waiver of the right to counsel.” If a defendant does not sign a written waiver, the district court must conduct an on-the-record advisory. *Id.*; *see also* Minn. Stat. § 611.19 (2022) (“Where counsel is waived by a defendant, the waiver shall in all instances be made in writing, signed by the defendant, except that in such situation if the defendant refuses to sign the written waiver, then the court shall make a record evidencing such refusal of counsel.”). The written waiver and the on-the-record advisory must inform the defendant of the following: the “nature of the charges,” any lesser included offenses within the charges, the “range of allowable punishments,” the fact that defenses and “mitigating circumstances may exist,” and “all other facts essential to a broad understanding of the consequences of the waiver of the right to counsel, including the advantages and disadvantages of the decision to waive counsel.” Minn. R. Crim. P. 5.04, subd. 1(4)(a)-(f).

Case law has supplemented the requirements of rule 5.04, subdivision 1. A district court must also inform a defendant of the “dangers and disadvantages of self-representation.” *State v. Worthy*, 583 N.W.2d 270, 276 (Minn. 1998) (quotation omitted). And the record of the waiver must “establish that [the defendant] knows what [they are]

doing and [their] choice is made with eyes open.” *Id.* (quotations omitted). The validity of a defendant’s waiver-of-counsel ultimately “depends on ‘the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.’” *State v. Haggins*, 798 N.W.2d 86, 90 (Minn. App. 2011) (quoting *Worthy*, 583 N.W.2d at 275-76).

“We review a finding that a defendant validly waived [the] right to counsel for clear error.” *State v. Bonkowske*, 957 N.W.2d 437, 440 (Minn. App. 2021). When there are no disputed facts underlying a district court’s finding of a valid waiver, the constitutional question of whether the waiver was knowing, intelligent, and voluntary is reviewed de novo. *Rhoads*, 813 N.W.2d at 885.

Before turning to the validity of Lopez’s waiver of counsel, we briefly discuss what the record reveals about the circumstances of the waiver. The record shows that there was some disagreement between Lopez and her public defender regarding whether Lopez should invoke her right to a speedy trial. At an early court appearance, the public defender entered a speedy-trial demand, and Lopez stated, “I don’t want a speedy trial. . . . I need my defense. I need to receive the discovery papers and I want to know what’s going on.” When the public defender explained that they could “remove” the demand if necessary, Lopez acquiesced. On the trial date, however, tension concerning this issue arose again. The public defender moved for a continuance, and the district court denied the motion. Although the public defender informed the district court that he was ready to begin trial, Lopez told the district court that she wished to discharge the public defender. She explained that she never wanted a speedy trial and that she did not trust the public defender

because, in his former role as a prosecutor, he had sent her son to prison. The public defender addressed Lopez's second concern, advising that he did not remember prosecuting Lopez's son and did not believe there was a conflict of interest.

Following the discussion with Lopez and the public defender, the district court ruled that Lopez would not receive a "replacement" public defender because her reasons for discharging the attorney on the trial date were insufficient. The district court explained the consequences of self-representation to Lopez and ordered a brief recess to give her a chance to reflect. Lopez ultimately decided to represent herself.

Before accepting Lopez's decision, the district court provided Lopez with a written waiver-of-counsel document, which Lopez reviewed and signed. The document served as an acknowledgment that: (1) she understood the charges against her; (2) she had "discussed [her] desire to represent [herself] with an attorney"; (3) she was not mentally or physically ill; (4) she understood she had "an absolute right" to an attorney; (5) by appearing pro se, she would be "bound by the same rules as an attorney," and would conduct all the phases of her trial on her own; (6) she was entitled to a jury trial; (7) she was informed that the maximum statutory penalty for the offenses was 30 years in prison and/or a fine of one million dollars; and (8) she may be entitled to advisory counsel. It also contained information about Lopez's rights during pretrial proceedings.

The district court reviewed Lopez's written waiver on the record and confirmed she understood the charges against her:

THE COURT: I see that you did go through and read through the petition here to proceed as pro se counsel. You're currently

60 years of age. You did go through two years of college; is that correct.

THE DEFENDANT: Yes, sir, or more.

THE COURT: And you understand the charges and the allegations in this matter?

THE DEFENDANT: Oh, yes, sir.

The district court also questioned Lopez on the record about her decision to waive counsel, and about her physical and mental health. When questioned, Lopez told the district court that she had never been a patient in a mental hospital, that she had never been treated by a psychiatrist for a mental breakdown, and that the only medication she took was a daily allergy pill. She further stated that, although she had been ill with COVID-19, she was “back to normal.” The district court cautioned Lopez about dismissing the public defender and informed her of the advantages and disadvantages of self-representation. *See* Minn. R. Crim. P. 5.04, subd. 1(4)(f). It explained:

[Y]ou would be expected to conduct yourself the same way any attorney would. You would be expected to know and discuss rules of evidence, rules of procedure. You would be expected to present matters to the jury for jury selection, to conduct your own jury selection, to offer any objections, to question witnesses, offer any exhibits you wish to or to object to any exhibits presented by the State. The Court would hold you to the same standards with regard to the rules of evidence when you question witnesses or cross-examine witnesses.

The district court gave Lopez an opportunity to ask questions. Lopez had no questions.

Finally, the following exchange occurred:

THE COURT: This is your decision, you’re not being coerced or threatened by any other person; is that correct?

THE DEFENDANT: No, sir.

....

THE COURT: Having heard all this, having reviewed the petition to proceed as pro se counsel, and based on my further discussions with you, is it still your request to discharge [counsel] and represent yourself today in trial?

THE DEFENDANT: It's a very hard decision but I have decided to represent myself, sir.

THE COURT: All right. Well, the Court does find that you made a knowing, voluntary and intelligent waiver of your rights.

We now address Lopez's challenges to the constitutional validity of her waiver of counsel applying de novo review. Lopez first argues that the district court failed to discuss each of the topics required by rule 5.04, subdivision 1, of the rules of criminal procedure. Specifically, she notes, the district court did not advise her of the nature of the charges and lesser-included offenses, the range of allowable punishments, or possible defenses and mitigating circumstances. Lopez faults the district court for not explaining on the record that she was only charged in connection with methamphetamine found in the north bedroom of the apartment, the definition of "sale" under Minnesota law is expansive, she could request a jury instruction on a lesser-included offense and argue that the state failed to prove the charged amount of drugs, she could raise an alternative-perpetrator defense, she could mitigate her guilt with evidence that she needed a place to stay or that she had a chemical addiction, and the top two counts in the complaint carried presumptive prison sentences.

But even if we agreed with Lopez that the district court had an obligation to provide such detailed information as part of the waiver proceeding—which we do not—any deficiencies in the district court's colloquy are mitigated by the fact that Lopez was

represented by a public defender until the first day of trial. *See Haggins*, 798 N.W.2d at 90 (stating that deficiencies in a defendant’s waiver of counsel can be mitigated by the particular facts and circumstances of the case); *see also Rhoads*, 813 N.W.2d at 886 (stating that the lack of an “on-the-record inquiry regarding waiver . . . does not require reversal when the particular facts and circumstances of the case demonstrate a valid waiver”). Because Lopez was represented by counsel until trial, we presume that counsel advised Lopez of the scope of the charges, possible defenses, and the presumptive sentences. Moreover, “[w]hen a defendant has consulted with an attorney prior to waiver, a trial court could ‘reasonably presume that the benefits of legal assistance and the risks of proceeding without it had been described to defendant in detail by counsel.’” *Worthy*, 583 N.W.2d at 276 (quoting *State v. Jones*, 266 N.W.2d 706, 712 (Minn. 1978)); *see also State v. Garibaldi*, 726 N.W.2d 823, 828 (Minn. App. 2007) (observing that Minnesota’s appellate courts have upheld waivers of counsel despite inadequate on-the-record inquiries when defendants have had “either extensive contact with defense attorneys or stand-by counsel or both”).

We also observe that, despite the deficiencies that Lopez alleges, the district court conducted an extensive on-the-record inquiry before finding that Lopez’s decision to represent herself was knowing, voluntary, and intelligent. The district court’s exchange with Lopez satisfied the requirements of rule 5.04, subdivision 1, and was sufficient to ensure that Lopez understood the perils of representing herself.

The district court's on-the-record discussion was not the only basis for its determination that Lopez knowingly, voluntarily, and intelligently waived counsel. Lopez also completed and signed a detailed written waiver of counsel.

But Lopez also takes issue with the written waiver. According to Lopez, the written waiver form was inadequate because it was *too* comprehensive, containing information about proceedings that had already occurred, such as a "probable cause hearing," and the availability of advisory counsel. And, according to Lopez, the written waiver did not include enough guidance about trying the case.

We are not persuaded that these alleged deficiencies impacted the validity of Lopez's waiver of counsel. As noted, because Lopez was represented by counsel until trial and the district court conducted a thorough on-the-record discussion of Lopez's decision to waive counsel, she had sufficient information to knowingly and intelligently waive counsel. And in signing the form, Lopez certified that she understood the charges, discussed self-representation with her attorney, and understood the maximum penalties for the charged offenses.

Lopez also challenges the written waiver form because it inaccurately stated that she had never been treated for a mental-health condition, that she had not been recently ill, and that she did not take medication. But Lopez does not assert that she was incapable of knowingly, voluntarily, or intelligently waiving counsel due to a physical or mental-health condition. Thus, we reject any argument that the inclusion of allegedly incorrect information affected the validity of her waiver of counsel.

Finally, Lopez argues that her personal circumstances show that her waiver of counsel was invalid. In considering the validity of a waiver of the right to counsel, courts may consider any relevant circumstances, including the defendant's background, experience, and conduct. *Edwards v. Arizona*, 451 U.S. 477, 482 (1981). Lopez suggests that she was not prepared for trial because she unsuccessfully attempted to withdraw her speedy-trial request. And she points out that she had minimal experience with the criminal justice system. However, we are not convinced that these circumstances made Lopez any less capable of knowingly and intelligently waiving counsel than any other defendant. Given the other circumstances in the case that we already addressed, including Lopez's earlier representation by counsel and the district court's thorough waiver-of-counsel colloquy, we are confident that Lopez understood the implications of waiving counsel.

Based on our de novo review, we conclude that Lopez's waiver of her constitutional right to counsel was knowing and intelligent.² We therefore reject her challenge to her decision to waive counsel and to represent herself at trial.

II. The state's evidence was sufficient to prove beyond a reasonable doubt that Lopez constructively possessed the methamphetamine in the north bedroom.

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). Lopez challenges the sufficiency of the state's evidence to prove the "possession" element of her second-degree drug-possession conviction. *See* Minn. Stat. § 152.022,

² Lopez does not argue that her waiver of counsel was involuntary, and thus, we do not address the voluntariness requirement.

subd. 2(a)(1) (2020) (providing that a person is guilty of second-degree possession of a controlled substance if the person “unlawfully possesses one or more mixtures of a total weight of 25 grams or more containing cocaine or methamphetamine”).

“Possession may be proved through evidence of actual or constructive possession.” *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Actual possession is proved by showing an individual physically possessed an item. *See State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975) (stating that there was no actual possession when there was clearly no evidence that the controlled substances found in an abandoned vehicle were physically possessed by the defendant). Constructive possession may be proven in two ways: (1) by showing that “the police found the [contraband] in a place under the defendant’s exclusive control to which other people normally did not have access” or (2) by showing “that 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 contraband].” *Harris*, 895 N.W.2d at 601. Possession can be joint or exclusive. *Id.* at 603 n.9.

Here, Lopez was not in actual, physical possession of the drugs when the police found them. The methamphetamine was found in a bedroom to which multiple people had access. Thus, to establish the element of possession, the state was required to prove beyond a reasonable doubt that Lopez constructively possessed the methamphetamine by showing “that there is a strong probability (inferable from other evidence) that[,] at the time [that the police found the drugs,] the defendant was consciously or knowingly exercising dominion and control over” the drugs. *Id.* at 601.

When evaluating a sufficiency-of-the-evidence claim, appellate courts view the evidence “in the light most favorable to the verdict, and it must be assumed that the factfinder disbelieved any evidence that conflicted with the verdict.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). But the level of scrutiny an appellate court applies depends 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). “[D]irect evidence is evidence that is based on personal knowledge or observation.” *Harris*, 895 N.W.2d at 599 (quotation omitted). Neither party argues that there was direct evidence that Lopez possessed the methamphetamine in the north bedroom.

Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted). A heightened two-step standard is used when reviewing the sufficiency of circumstantial evidence. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). First, appellate courts identify the circumstances proved. *Silvernail*, 831 N.W.2d at 598. In this step, appellate courts defer to “the jury’s acceptance of the proof of these circumstances” and “assume that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *Id.* at 598-99 (quotations omitted). Second, appellate courts determine if the circumstances are “consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether the inferences that point to guilt are reasonable.” *Id.* at 599 (quotations omitted). During this step of the analysis, reviewing courts do not defer to the fact-finder’s choice between reasonable inferences. *State v. Andersen*, 784 N.W.2d 320, 329-30 (Minn. 2010). To uphold a defendant’s conviction under this standard, “[c]ircumstantial 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 beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). A reviewing court should not, however, “overturn a conviction based on circumstantial evidence on the basis of mere conjecture.” *Id.* (quotation omitted).

Applying this standard of review, we now consider whether the state’s trial evidence proved beyond a reasonable doubt, that Lopez constructively possessed the methamphetamine found in the north bedroom.³ We first identify the circumstances proved as follows: (1) the police executed a search warrant for the apartment Lopez had lived in for over two years; (2) the apartment had an east-facing bedroom and a north-facing bedroom; (3) when the police entered the apartment to execute the search warrant, B.L. was lying on the couch, F.K. walked out of the east bedroom into the living room, and Lopez was in the shower; (4) Lopez got out of the shower and asked if she could get some clothes, which she then retrieved from the north bedroom; (5) while Lopez was retrieving her clothes, police looked into the purse left in the bathroom, which Lopez admitted was hers, and saw drug paraphernalia, which tested field-tested positive for methamphetamine residue; (6) some of the drug paraphernalia in Lopez’s purse was located inside a Marlboro

³ Lopez argues that the state failed to prove constructive possession because it never proved that Lopez had at any point been in actual possession of the methamphetamine. But the state did not need to prove actual possession to satisfy its burden. *See State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975) (upholding a defendant’s conviction based on circumstantial evidence because the circumstances proved “support an inference that defendant at one time had physical possession of [the contraband] and that at the time police found it, defendant, although then not in physical possession of it, continued to consciously exercise dominion and control over it”).

cigarette box; (7) when Lopez was told she was being arrested for the paraphernalia in her purse, she went back into the north bedroom to retrieve additional clothes, shoes, and jackets; (8) over 25 grams of methamphetamine and multiple pieces of drug paraphernalia were found in the north bedroom; and (9) multiple Marlboro cigarette boxes containing drug paraphernalia and methamphetamine were recovered from the north bedroom.⁴

We next examine the reasonable inferences that may be drawn from the circumstances proved. The circumstances are consistent with the reasonable inference that Lopez, at the very least, jointly possessed the methamphetamine in the north bedroom. It is reasonable to infer that Lopez knew the methamphetamine was in the north bedroom because drugs and drug paraphernalia were found in multiple places throughout that bedroom. Because Lopez's purse contained drug paraphernalia stored in a Marlboro box like the ones found in the north bedroom, it can be reasonably inferred that she recognized the substance in the north bedroom as methamphetamine. And finally, it is reasonable to infer that she had both control over and access to the north bedroom because she kept many of her belongings there. These inferences are consistent with guilt.

Lopez concedes that the circumstances proved "support a reasonable inference of guilt," but she argues that they "do not also eliminate a reasonable inference of innocence." Citing *Harris*, 895 N.W.2d at 601, she argues that the mere proximity of her belongings to

⁴ The state argues another circumstance proved is that Lopez's cellphone was charging on the bed in the north bedroom. The record does not support this argument. None of the state's witnesses discussed Lopez's cellphone, and none of the exhibits admitted during the state's case in chief show her cellphone. But Lopez introduced evidence that shows her cell phone charging on a bed that does not match the bed in the north bedroom.

the methamphetamine is not enough to eliminate the inference that she was “not exercising dominion and control” over the methamphetamine.⁵

We disagree. Initially, we note that the facts in *Harris* are quite different than the circumstances here. In *Harris*, the Minnesota Supreme Court affirmed the reversal of the defendant’s conviction for possession of a firearm by an ineligible person because the circumstances proved were consistent with a reasonable hypothesis of innocence. 895 N.W.2d at 603. Harris was driving two passengers in his brother’s car when he was pulled over by the police. *Id.* at 596-97. During a search of the car, officers found a gun in an empty space next to the car’s sunroof. *Id.* DNA from the gun could not exclude Harris or the other two passengers in the car. *Id.* The supreme court concluded that facts were “consistent with a reasonable inference that Harris did not know the firearm was in the car,” and thus, the circumstantial evidence was insufficient to establish guilt. *Id.* at 603.

Lopez contends that her case presents similar circumstances to those in *Harris* because multiple people had access to the north bedroom. We are not convinced. In *Harris*, the defendant’s connection to the borrowed car where the gun was found was minimal. Here, on the other hand, Lopez resided for two years in the apartment where the drugs were found. And in *Harris*, the supreme court emphasized that the gun, which was partly concealed, may not have been noticeable to a lay person. 895 N.W.2d at 603. But

⁵ Lopez also cites three nonprecedential cases—*State v. Yernatich*, No. A19-0841, 2020 WL 2116549 (Minn. App. 2020), *State v. Sanchez*, No. A20-0136, 2021 WL 318463 (Minn. App. 2021), and *State v. Christensen*, No. A11-2258, 2012 WL 5990236 (Minn. App. 2012), *rev. denied* (Minn. Jan. 29, 2013)—to support her argument. These cases are not binding, and because we conclude they are factually distinguishable, we do not rely on them for their persuasive value. See Minn. R. Civ. App. P. 136.01, subd. 1(c).

here, the methamphetamine in the north bedroom was not well hidden, particularly from someone who also stored clothing in that room. Thus, unlike *Harris*, it is not reasonable to infer from the circumstances here that Lopez did not knowingly possess the methamphetamine.

Harris aside, none of the alternative hypotheses of innocence that Lopez proposes are reasonable. It is not reasonable to infer that Lopez normally stayed in the living room and not the north bedroom given that she lived in the apartment for over two years and kept her clothes, shoes, and jackets in the bedroom. It is not reasonable to infer that if Lopez was staying in the north bedroom, she did not possess the drugs in that bedroom. Methamphetamine and drug paraphernalia were found in multiple places in the bedroom, and identical cigarette packs containing drug paraphernalia were found in both the north bedroom and Lopez's purse. Finally, because possession can be either exclusive or joint, the men's clothing in the north bedroom does not support a reasonable inference that someone else possessed the drugs. *Harris*, 895 N.W.2d at 603 n.9.

The circumstantial evidence here supports just one reasonable conclusion—that Lopez constructively possessed the methamphetamine in the north bedroom—while excluding, beyond a reasonable doubt, any reasonable inference other than Lopez's guilt. We therefore reject Lopez's challenge to the sufficiency of the evidence underlying her conviction for second-degree methamphetamine possession.

Affirmed.