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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1299**

State of Minnesota,
Respondent,

vs.

Marc Richard Redmond,
Appellant.

**Filed July 31, 2023
Affirmed in part, reversed in part, and remanded
Gaïtas, Judge**

Watonwan County District Court
File No. 83-CR-21-426

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

Stephen Lindee, Watonwan County Attorney, St. James, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, 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NONPRECEDENTIAL OPINION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 Marc Richard Redmond challenges his convictions, following a jury trial, for seven offenses that respondent State of Minnesota charged after police found Redmond in a shed located on someone else's property. Redmond argues that the evidence was

insufficient to prove his guilt of any of the offenses and that the warrant of commitment unlawfully reflects convictions for both second-degree burglary and the lesser-included offense of third-degree burglary. Additionally, Redmond raises several issues in a pro se supplemental brief. Because sufficient evidence supports Redmond's convictions, and Redmond fails to adequately support the issues raised in his pro se supplemental brief, we affirm in part. But because the warrant of commitment shows convictions for both second-degree burglary and the lesser-included offense of third-degree burglary, we reverse in part and remand for the district court to correct the warrant of commitment.

FACTS

In August 2021, law enforcement officers arrested Redmond after finding him in E.K.'s shed, which was located on a rural property in Watonwan County. Following the arrest, the state charged Redmond with seven criminal offenses: second- and third-degree burglary, possession of burglary tools, fifth-degree drug possession, fleeing a police officer, receiving stolen property, and possession of drug paraphernalia. Redmond maintained his innocence and demanded a jury trial. The trial was held in May 2022.

At trial, E.K. testified that he owns a farm in Watonwan County, but he does not regularly reside there. There are at least two buildings on the farm—a residence and a machine shed. In late August 2021, E.K. discovered that the farm residence had been ransacked and damaged. Some items were missing from the residence, and the windows and doors had been left open. E.K. alerted the police and installed trail cameras around his property.

On August 30, 2021, E.K. returned to check on the farm, arriving at about noon. Soon after he arrived, he heard a tractor in the driveway. He was on the north side of the shed. E.K. looked around the corner of the shed and saw that the tractor was towing a flatbed trailer. According to E.K., he did not recognize the driver. E.K. observed the tractor park on the west side of the shed, where there was a sliding barn-style door. Then, E.K. heard the driver enter the shed and begin to “rummag[e]” and “root[]” around inside. E.K. testified that he called law enforcement and that officers arrived about ten minutes later while the intruder was still in the shed. He later provided police with footage from the trail cameras, which showed the intruder—who was ultimately identified as Redmond—looking at, touching, and moving items in the shed. E.K. testified that he did not know Redmond and had not given Redmond permission to be on his farm, to enter the shed, or to take any property.

Responding to E.K.’s call, a sergeant with the sheriff’s department arrived at the farm and entered the shed. As the sergeant entered the shed, he shouted “sheriff’s office.” The sergeant testified that he observed the person who was later identified as Redmond inside the shed. According to the sergeant, Redmond ran toward the opposite side of the shed.

Another law enforcement officer—a deputy—was parked on the opposite side of the shed near the sliding barn-style door. The deputy testified that he saw Redmond’s hands and face briefly appear at the barn door and then disappear.

Soon, Redmond surrendered, putting his hands up. The sergeant arrested him.

Following Redmond's arrest, the sergeant spoke with E.K. According to the sergeant, E.K. had been in the shed the day before—on August 29—and noted that his motorcycles were in their usual spot on the eastern wall of the shed. But after Redmond's entry into the shed, E.K. observed that one motorcycle had been moved "two-thirds" of the way across the shed, and it was now located nearer to the door on the west side of the building.

While other law enforcement officers were apprehending Redmond, the chief deputy monitored the tractor and attached flatbed trailer. He testified that he continuously observed these items until a tow truck arrived, and then followed them as they were towed to an impound facility. According to the chief deputy, there were items on the trailer, which remained undisturbed until they were removed by the sergeant pursuant to a search warrant.

Once a search warrant was obtained, officers removed a white cardboard box from the trailer. Inside the box, they found the following items: a saw; a silver-black box containing pipes to smoke methamphetamine, torch lighters, a small blue container with a white crystal substance, some coins, and some pens; a knife; two flashlights; and items that belonged to E.K., which had been stolen from the home a week before, including a drawstring athletic bag, a military bag, and some paracord.

According to the sergeant, the saw, which was cordless and had a blade for cutting metal, was "made for destruction." The sergeant testified that it was the type of saw that is often used for criminal behavior, such as catalytic convertor thefts. A forensic scientist testified that the white crystal substance in the small blue container was methamphetamine.

The state also introduced thirty-four photos into evidence, including photos from trail cameras on E.K.'s property and photos from the police investigation.

Following the state's case, Redmond testified on his own behalf. He admitted that he drove the tractor to E.K.'s property and entered the shed, and he acknowledged that he did not have permission to be on the property. Redmond testified that he went there because he had recently purchased a few push mowers from a "guy at [Redmond's lawnmower] shop" for about \$30. He implied during his testimony that the mowers were on E.K.'s property and that he had been instructed to pick them up there. Redmond testified that, when the police arrived and announced themselves, he immediately surrendered. He also testified that the white cardboard box was "simply not on [his] trailer."

The jury found Redmond guilty of all seven charged offenses. Following the jury's verdicts, the district court adjudicated Redmond guilty of second-degree burglary, fleeing a police officer, receiving stolen property, and the petty misdemeanor offense of possession of drug paraphernalia, and stayed adjudication for the offense of fifth-degree drug possession. The district court stayed imposition of sentence for the second-degree burglary conviction, placed Redmond on probation for five years, and ordered him to serve 90 days in jail. It imposed concurrent 90-day jail sentences for the remaining convictions, and a \$100 fine for the petty misdemeanor. Although the district court did not adjudicate guilt or pronounce sentences for the offenses of third-degree burglary or possession of burglary tools, the warrant of commitment reflects a disposition of "convicted" for those offenses.

DECISION

I. Sufficient trial evidence established Redmond's guilt of the offenses beyond a reasonable doubt.

Redmond argues that the trial evidence was insufficient to support his convictions. He therefore contends that his seven convictions must be reversed.

Before turning to the evidence underlying Redmond's convictions, we note our standard of review. Due process requires the prosecution to prove every element of a charged crime beyond a reasonable doubt. *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020). "In considering a claim of insufficient evidence, this court's review 'is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction,' is sufficient to allow the fact-finder to reach the verdict that it did." *In re Welfare of C.J.W.J.*, 699 N.W.2d 328, 334 (Minn. App. 2005) (quoting *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989)). Because the appellate court does not evaluate the credibility of witnesses, *State v. Hawes*, 801 N.W.2d 659, 670 (Minn. 2011), it "must assume the fact-finder believed the state's witnesses and disbelieved any evidence to the contrary," *C.J.W.J.*, 699 N.W.2d at 334 (citing *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989)). "The reviewing court will not disturb the verdict if the fact-finder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude the defendant was guilty of the charged offense." *Id.* (citing *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988)).

When an element of an offense is supported by circumstantial evidence alone, however, an appellate court applies a heightened level of scrutiny in reviewing the sufficiency of that evidence. *State v. Al-Naseer*, 788 N.W.2d 469, 473-75 (Minn. 2010).

To determine the level of scrutiny required, the appellate court must first consider whether the elements of an offense are supported by direct evidence or solely 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.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). “[C]ircumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.*

If the evidence underlying an element of an offense is entirely circumstantial, the court applies a two-step standard of review. *Silvernail*, 831 N.W.2d at 598. “The first step is to identify the circumstances proved.” *Id.* In applying this step, the appellate court assumes the trier of fact believed the state’s witnesses and rejected all evidence contrary to the verdict; in other words, 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 factfinder’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).

Having identified our standard of review, we next consider Redmond’s challenges to the sufficiency of the evidence underlying his convictions. We separately address each conviction.

A. Second-and third-degree burglary

Redmond presents two challenges to the sufficiency of the evidence underlying his burglary convictions. First, he argues that the state failed to prove an element of second-degree burglary—that he possessed a tool to gain access to money or property while entering or in the building. Second, he argues that the state failed to prove the intent element of both the second- and third-degree burglary offenses. We reject both of these arguments.

1. The evidence established that Redmond possessed a tool to gain access to property while entering or in the shed.

Minnesota law defines the relevant second-degree burglary offense as follows:

Whoever enters a building without consent and with intent to commit [theft]¹, or enters a building without consent and commits [theft] while in the building . . . commits burglary in the second degree . . . if:

. . . .

when entering or while in the building, the burglar possesses a tool to gain access to money or property.

Minn. Stat. § 609.582, subd. 2(a)(4). At trial, the state argued to the jury that, when entering or while in the shed, Redmond possessed a saw to gain access to property.

¹ Although the statute criminalizes the entry of a building with intent to commit “a crime,” the jury in Redmond’s case was instructed that the specific crime at issue was theft. Minn. Stat. § 609.582, subd. 2(a)(4) (2020). In our analysis, we likewise assume that the specific crime at issue was theft.

Redmond argues that, because the saw was on the flatbed trailer and not on his person, the state failed to establish that he *possessed* the saw when entering or while in the shed. And, Redmond contends, the state also failed to prove that his *purpose* in possessing the saw was to gain access to property.

We first consider Redmond’s possession argument. Ordinarily, “[p]ossession may be proved through evidence of actual or constructive possession.” *Harris*, 895 N.W.2d at 601. As Redmond notes, when he was apprehended, he was not in actual, physical possession of the saw. *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 (quotation omitted)).

Redmond seems to suggest that to be convicted of second-degree burglary under Minnesota Statutes section 609.582, subdivision 2(a)(4), there must be evidence of actual physical possession of a tool at the time of apprehension. To the extent that Redmond is making such an argument, the law does not support it. In *State v. Spangler*, the Minnesota Supreme Court specifically rejected such a narrow interpretation of the second-degree burglary statute, stating that “[i]t is sufficient under our statute that [a] defendant have constructive possession and immediate access to the tools.” 153 N.W.2d 278, 192 (Minn. 1967).² Moreover, the language of the second-degree-burglary statute does not contain

² The supreme court considered a predecessor version of the statute that contained an almost identical tool-possession element. *See* Minn. Stat. § 609.58, subd. 2(1)(a) (1965) (“When entering or while in the building, [the defendant] possesses an explosive or tool to gain access to money or property.”).

any requirement for actual physical possession at the time of apprehension, merely requiring possession “when entering or while in the building.”

We further conclude that the state presented sufficient evidence to establish both that Redmond constructively possessed the saw when entering the shed, and that he constructively possessed the saw while he was in the shed. Constructive possession may be established in two ways. *Harris*, 895 N.W.2d at 601. The state must show that 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 it.” *Id.*

Because the evidence of constructive possession was entirely circumstantial, we must identify and examine the circumstances proved. The circumstances proved are as follows. One week before law enforcement officers found Redmond in the shed, E.K. discovered that the residence located on the same property had been burglarized. On August 30, Redmond drove a tractor with an attached trailer onto the property. Redmond did not have permission to be there. He parked the tractor a few feet away from the shed near a barn-style door. In a box on the trailer, there was a portable saw, which was capable of cutting metal, and of a type commonly used for criminal purposes, including catalytic converter thefts. E.K. heard Redmond enter the shed, and then heard him “rummaging” and “rooting” around inside. E.K. called the police to report a burglary. Still photos created from surveillance-camera footage from inside the shed show Redmond looking at, touching, and moving items. A motorcycle, which had been located near one side of the

shed the day before was moved “two-thirds of the way across” the shed toward the door on the opposite side of the shed. Redmond’s tractor—and the trailer where the saw was located—was parked just outside the shed door. The box that contained the saw also contained items that had been stolen from the residence the week before. A law enforcement officer continuously observed the box containing the saw and did not observe anyone in the vicinity. When law enforcement arrived at the scene, Redmond initially tried to leave the shed in the direction of the tractor.

The second step of the circumstantial-evidence analysis requires us to examine the reasonable inferences that may be drawn from the circumstances proved. Those circumstances are consistent with Redmond’s guilt, and only with Redmond’s guilt. The circumstances proved establish that Redmond alone brought the saw to the property. No one else had access to the saw while Redmond was there. The circumstances proved also establish that, at all times, the saw was readily accessible to Redmond. While he drove the tractor, the saw was just behind him on the attached trailer. And while Redmond entered and was in the shed, the saw remained on the trailer, which was parked just outside the shed door. Thus, the circumstantial evidence proved beyond a reasonable doubt that Redmond constructively possessed the saw while he entered and was in the shed.³

We next consider Redmond’s argument that the evidence did not prove that he possessed the saw with the purpose of using it to gain access to property. Minn. Stat. § 609.582, subd. 2(a)(4). Redmond notes that the state was required to prove that he

³ Redmond does not argue that the circumstances proved also support a theory of innocence, and we do not speculate as to what such a theory might be.

possessed the saw when he entered or was in the shed for the *purpose* of gaining access to money or property. Citing *State v. Nixon*, Redmond suggests, but does not explicitly argue, that it imposes an additional requirement on the state—showing that a tool was *used* during a burglary. 957 N.W.2d 131, 137 (Minn. App. 2021). However, *Nixon* does no such thing. There, we determined that the evidence was insufficient to establish that Nixon used a tool to break a window because no tool was ever found and there was no evidence that a tool was used. *Id.* at 136-37. This court also rejected the state’s argument that Nixon used gloves and a garbage bag as tools to gain access to money or property. *Id.* at 137. We noted that neither gloves nor a garbage bag was needed to access the property that Nixon stole once he entered the building. *Id.* *Nixon* did not alter the elements of second-degree burglary; rather, the decision considered the sufficiency of the evidence under the circumstances presented. Section 609.582, subdivision 2(a)(4), which provides the elements of second-degree burglary, contains no “use” requirement. Rather, it requires proof that the purpose of the tool was to gain access to money or property. Minn. Stat. § 609.582, subd. 2(a)(4).

Here, the only reasonable inference from the circumstances proved is that Redmond possessed the saw to gain access to the shed or to property inside the shed. The saw had a special blade used to cut metal and was made “for destruction.” Again, the saw was capable of cutting metal. It is a type of saw often used in criminal activity. And Redmond brought the saw to a burglary. We therefore conclude that the state’s evidence established that Redmond possessed a tool to gain access to money or property.

2. The state proved that Redmond intended to commit theft, an element of second- and third-degree burglary.

To convict Redmond of second-degree burglary and third-degree burglary, the state was required to prove beyond a reasonable doubt that Redmond entered the building with intent to commit a crime or that he committed a crime in the building. Minn. Stat. § 609.582, subds. 2(a) (“Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, either directly or as an accomplice, commits burglary in the second degree”), 3 (“Whoever enters a building without consent and with intent to steal or commit any felony or gross misdemeanor while in the building, or enters a building without consent and steals or commits a felony or gross misdemeanor while in the building, either directly or as an accomplice, commits burglary in the third degree”) (2020). The state’s trial theory was that law enforcement interrupted a burglary in progress. Thus, the state opted to prove Redmond’s intent to commit a crime—theft—that was not completed.⁴

Redmond argues that the circumstantial evidence was insufficient to prove that he intended to commit the offense of theft. He argues that the evidence supported a reasonable alternative hypothesis—that he went to the property because a “buddy” instructed him to go there to pick up lawn mowers. As noted, the appellate court must resolve all conflicting evidence in the state’s favor. *Tscheu*, 758 N.W.2d at 858. Redmond’s alternative hypothesis is based entirely on his own testimony. Because we do not include Redmond’s

⁴ Redmond’s jury was instructed that a theft occurs when a person “intentionally or without claim of right takes, uses, transfers, conceals or retains possession of moveable property of another without the other’s consent and with the intent to permanently deprive the owner of possession of the property.” See Minn. Stat. § 609.52, subd. 2(a)(1) (2020).

testimony in the circumstances proved, there is no support for his proposed alternative hypothesis. Moreover, the circumstances proved are wholly consistent with the state's theory that Redmond entered the shed with the intent to commit theft. Thus, the evidence was sufficient to support the jury's guilty verdicts for second-degree burglary and third-degree burglary.

B. Possession of burglary tools

To convict a person for the offense of possession of burglary tools, the state must prove beyond a reasonable doubt that a person possessed a tool “with intent to use . . . [the tool] to commit burglary or theft.” Minn. Stat. § 609.59 (2020). Such intent “may be drawn from the character of the objects and from the circumstances surrounding [the defendant's] possession.” *State v. Conaway*, 319 N.W.2d 35, 41 (Minn. 1982). The intent is a general intent to use the tools, or permit the use of the tools, in the commission of a burglary or theft. *Id.* At trial, the state argued to the jury that the saw was a burglary tool.

Redmond argues that the circumstantial evidence was insufficient to prove that the saw was a burglary tool. He argues that the evidence is equally consistent with the alternative theory that he intended to use it for a “legal purpose.”

Beyond Redmond's testimony, which we do not include in the circumstances proved, there was no evidence from which the jury could infer a legal purpose for the saw. 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). Because the circumstances proved are only consistent with the state's theory that Redmond intended

to use the saw to commit burglary or theft, the evidence was sufficient to support his conviction of this offense.

C. Receiving stolen property

To establish that a person committed the offense of receiving stolen property, the state must prove that the person knew or had reason to know that “the property was stolen or obtained by robbery.” Minn. Stat. § 609.53 (2020). At trial, the state argued to the jury that Redmond was guilty of receiving stolen property because he possessed property taken during the earlier burglary of E.K.’s residence, which was found in the white box on the trailer.

Redmond contends that the evidence was insufficient to support his conviction of this offense because the circumstantial evidence was consistent with the alternative hypothesis that Redmond did not know the items were stolen. Because the circumstances proved do not support Redmond’s argument, we reject it. We conclude that the evidence was sufficient to prove Redmond’s guilt beyond a reasonable doubt of receiving stolen property.

D. Possession of methamphetamine⁵

To convict Redmond of fifth-degree drug possession, the state was required to prove beyond a reasonable doubt that Redmond possessed methamphetamine, either actually or

⁵ In addition to challenging the sufficiency of the evidence underlying his drug-possession conviction, Redmond’s brief also argues there was insufficient evidence to support the judgment for the petty-misdemeanor offense of possession of drug paraphernalia. *See* Minn. Stat. § 152.092(a) (2020). But to challenge this offense, Redmond was required to file an appeal within 30 days of final judgment or entry of order. *See* Minn. R. Crim. P. 28.02, subd. 4(3)(b). The district court entered judgment on the drug paraphernalia offense

constructively. Minn. Stat. § 152.025, subd. 2(1) (2020). The state’s theory at trial was that Redmond constructively possessed the methamphetamine found in the box on the trailer.

Redmond argues that the evidence of possession was insufficient. He contends that the only evidence that the box containing the methamphetamine was on the trailer was the testimony of law enforcement officers. He also points to his own testimony that the methamphetamine was not on the trailer.

We reject Redmond’s argument. Because witnesses testified that they observed the box on the trailer—providing direct evidence of that fact—we apply the standard of review for direct evidence. That standard of review requires us to assume that the jury believed the state’s witnesses and did not believe any contrary evidence. *C.J.W.J.*, 699 N.W.2d at 334. We therefore assume that the jury believed the law enforcement witnesses and did not believe Redmond. Because the jury reasonably could have concluded from the evidence that Redmond possessed the methamphetamine located in the box on the trailer, the evidence was sufficient to support his conviction for fifth-degree drug possession.

E. Fleeing a police officer

To convict Redmond of fleeing a police officer, the state was required to prove that Redmond attempted to “evade or elude a peace officer . . . by means of running, hiding, or by any other means except fleeing in a motor vehicle.” Minn. Stat. § 609.487, subd. 6 (2020). Here, the state relied on direct evidence to prove this offense. The sergeant

on June 22, 2022, and Redmond did not file an appeal within 30 days of that date. We therefore address only the drug-possession conviction.

testified that when he yelled, “sheriff’s office,” Redmond “ran away” from him “instead of stopping as [the sergeant] instructed.” Another officer, the deputy who was positioned outside the other side of the shed, testified that Redmond “attempt[ed] to come out” the barn-style door but, after observing the deputy, Redmond retreated back into the shed.

Redmond argues that the evidence of fleeing a police officer was insufficient because the state “did not present any evidence that [he] attempted to evade or elude the officers after they announced their presence.” However, Redmond’s argument is not supported by the direct evidence. Assuming that the sergeant and deputy testified truthfully, as we must, *see C.J.W.J.*, 699 N.W.2d at 334, we conclude that a reasonable jury could have found that Redmond was guilty of fleeing the police. Thus, the evidence was sufficient to support his conviction of this offense.

II. Redmond is not entitled to relief based on his pro se claims.

Redmond makes the following claims in his pro se supplemental brief: (1) a warrant signed by a judge was incomplete or invalid; (2) Redmond’s request for a new judge was improperly denied; (3) the jurors were not impartial because Redmond knew some jurors, and other jurors knew the prosecutor and state’s witnesses; (4) voir dire, trial, and sentencing “in one day is unfair” and caused the jurors to “rush[]” the verdict; (5) “everything [should] have been fingerprinted” because the drugs in E.K.’s bag belonged to E.K.; (6) testimony and the pictures of the trailer do not unequivocally demonstrate that the white box was on the trailer; (7) other arguments challenging the sufficiency of the evidence, and (8) Redmond’s sentences, including probation, court-ordered treatment, and fines, “set [him] up for failure.”

The arguments of a pro se appellant are waived if they contain no argument or citation to legal authority. *State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002). Factual assertions must also be supported by citation to the record. *Hecker v. Hecker*, 543 N.W.2d 678, 681 n.2 (Minn. App. 1996), *aff'd*, 568 N.W.2d 705 (Minn. 1997); *see State v. Manley*, 664 N.W.2d 275, 286 (Minn. 2003) (refusing to consider portions of pro se briefs that contain only argument and are not supported by the facts in the record).

Here, Redmond's pro se brief contains no citations to the factual record or to legal authority. Thus, we conclude that he has waived the claims made in his pro se supplemental brief.

III. The warrant of commitment erroneously reflects a conviction for the lesser-included offense of third-degree burglary.

Redmond argues, and the state agrees, that the warrant of commitment improperly shows the entry of a conviction for third-degree burglary, which is a lesser-included offense of second-degree burglary, for which Redmond was also convicted. *See* Minn. Stat. § 609.04, subd. 1(1) (2020) (stating that a defendant may not be convicted of both the crime charged or “a lesser degree of the same crime”). We agree. The district court did not direct the entry of a conviction for the third-degree burglary at sentencing. But the warrant of commitment erroneously includes a conviction for this offense. Because the inclusion of a conviction for the lesser-included offense of third-degree burglary violates section 609.04, subd. 1(1), we reverse and remand for correction of the error.

Affirmed in part, reversed in part, and remanded.