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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0946**

State of Minnesota,
Respondent,

vs.

Desean James Solomon,
Appellant.

**Filed February 2, 2026
Affirmed
Jesson, Judge***

Hennepin County District Court
File No. 27-CR-20-15534

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

Mary F. Moriarty, Hennepin County Attorney, Matthew D. Hough, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Ede, Judge; and Jesson, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

JESSON, Judge

In connection to a shootout at the 200 Club, respondent State of Minnesota charged appellant Desean James Solomon with first-degree riot, second-degree murder as part of a drive-by shooting, and ineligible possession of a firearm. At trial, the district court permitted two police sergeants to identify Solomon in and then narrate surveillance footage of the event. The jury found Solomon guilty of all three counts. Solomon then petitioned for postconviction relief, arguing that he received ineffective assistance of counsel because his attorney misinterpreted a piece of the state's ballistic evidence. The postconviction court denied his claim, as it was not persuaded that Solomon's counsel misunderstood the evidence. Solomon appeals, arguing that the district court erred in admitting the sergeants' identifications because they constituted improper opinions of guilt and were unhelpful to the jury, and that the postconviction court abused its discretion by denying Solomon relief. Solomon also filed a pro se supplemental brief raising three additional arguments. Because the district court did not err in admitting the sergeants' identifications, Solomon received adequate representation at trial, and his pro se claims do not warrant relief, we affirm.

FACTS

Early on June 14, 2020, a shooting at the 200 Club in Minneapolis took the life of Marcus Banks. Investigators obtained surveillance footage from the 200 Club and a nearby business and asked Minneapolis Police Sergeant Adam Lepinski, who had policed that area of Minneapolis for years, to review some stills taken from the footage. Sergeant Lepinski identified an individual seen in the stills wearing a pink and white sweatshirt as Desean

James Solomon. Sergeant Lepinski knew Solomon from investigating other cases where Solomon was a suspect, seeing him in person ten to twenty times and having dozens of conversations with him since 2008, and having similar interactions with his associates. He knew that Solomon generally wore a short, cropped haircut and a tight beard.

Investigators also collected ballistic evidence, including over 100 discharged cartridge casings (DCCs) and multiple bullets from the scene, a bullet from a white Avalanche, two bullets from a red Tahoe, and a bullet from Banks's head. Forensic scientist Aaron Zirzow analyzed the DCCs and bullets to classify them by caliber class and rifling and to determine how many firearms were used in the shooting. Zirzow concluded that 12 different guns were fired in the shooting and that the bullet recovered from Banks was "consistent with .38 caliber class which includes 9mm and has conventional rifling." Of those 12 guns, five belonged to the .38-caliber, 9-millimeter, class such that they could not be ruled out of firing that bullet. Zirzow was not able to match the bullet to any firearm recovered from the scene.

Using Zirzow's analysis, investigators prepared a sketch of the scene depicting where they recovered the DCCs and grouping them by firearm. The sketch places 17 9-millimeter DCCs that Zirzow determined were discharged by the same firearm in piles immediately outside the 200 Club and about a block north of the bar.

Forensic scientists also processed the red Tahoe that investigators believed was at the scene. They photographed a blood-like substance on the front-passenger seat and door and used trajectory rods to determine the paths of the bullets that struck the vehicle.

With this evidence, the investigation homed in on Solomon. The state charged him with first-degree riot, second-degree murder as part of a drive-by shooting, and ineligible possession of a firearm. Minn. Stat. § 609.71, subd. 1 (2020); Minn. Stat. § 609.19, subd. 1(2) (2020); Minn. Stat. § 624.713, subd. 1(2) (2020).

Solomon moved in limine to exclude any law-enforcement testimony identifying him in the surveillance footage from trial. The district court ruled that Sergeant Lepinski may identify Solomon in the footage but that his foundation testimony must not disclose that their prior interactions were in the context of other criminal investigations.

At trial, Sergeant Lepinski identified Solomon in the stills for the jury. Sergeant Lepinski pointed out Solomon in the courtroom and noted that he was now wearing a burgundy suit and glasses. The state then played a selection of its surveillance-footage clips from the 200 Club, and Sergeant Lepinski narrated what was happening on-screen. Over an unspecified objection, the state asked Sergeant Lepinski:

Q: [H]ow confident are you that the person wearing that hoodie sweatshirt that we saw right outside and discharged his firearm is Desean James Solomon?

A: I am 100 percent sure that that individual is Mr. Desean Solomon.

The state then called Minneapolis Police Sergeant James Jensen who narrated a chronological timeline of surveillance-footage clips that, in his description, captured the moment Solomon fatally shot Banks. Sergeant Jensen did not independently identify Solomon in these clips, instead relying on Sergeant Lepinski's identification. Sergeant Jensen described the clips as showing Solomon running north up 2nd Avenue and firing a gun southbound at a white Avalanche as Banks enters a red Tahoe further up the street.

The Tahoe then drives off, out of the security camera's frame, as Solomon reaches and enters a car with some associates. According to Jensen's narration, the Tahoe reappears in the frame, headed north up 2nd Avenue, and as it passes Solomon's car, Solomon emerges and fires at the Tahoe multiple times. The state would argue in closing that this footage, as Sergeant Jensen described it, demonstrates that Solomon is the only person who could have shot Banks and places him by a DCC pile that could match the fatal bullet.

Solomon cross-examined Sergeant Jensen and asked him to confirm that he could not "tell the jury with any certainty who shot and killed Mr. Banks[.]" Sergeant Jensen replied, "Based on the casings of the bullets, I do believe that it's Mr. Solomon." In the following exchange, Sergeant Jensen elaborated that his conclusion was based on "the evidence at the scene" and the surveillance footage.

Solomon mounted an identity defense. He argued that the state rushed to charge him upon Sergeant Lepinski's identification alone while failing to procure an eyewitness or any other evidence placing him at the scene. Solomon put on witness testimony from a 200 Club patron who stated that she knew Solomon but did not see him at the bar that night. Solomon played for her a portion of the security footage that Sergeant Lepinski characterized as showing Solomon speaking with a woman. The witness identified herself in the footage but said the man to whom she was speaking was her friend "Bernard," not Solomon.

During deliberations, the jury sent the district court a note that read: "We are at an impasse. As of now, we are unable to conclude whether or not the defendant is the person in the video. (Currently eight yes four no) please advise." The district court called in the

jury and reread a jury instruction asking the jurors to decide the case for themselves. After more than a day of further deliberations, the jury then found Solomon guilty on all charges. The district court sentenced him to 438 months in the custody of the commissioner of corrections.

Solomon stayed his appeal and petitioned the district court for postconviction relief on ineffective-assistance-of-counsel grounds. Solomon argued his attorney's investigation sank below an objectively reasonable standard because he misunderstood the state's ballistic evidence as establishing that a 9-millimeter bullet killed Banks—rather than a .38-caliber-class bullet, which includes hundreds of bullet types. This failure, Solomon argued, prejudiced him by precluding his attorney from making an informed choice of trial strategy in deciding whether to supplement his identity defense with a wrong-gun defense.

At the evidentiary hearing on the petition, Solomon's trial counsel admitted that he believed that a .38-caliber-class bullet was equivalent to a 9-millimeter bullet and that he did not resolve this misunderstanding in his investigation. He later stated, however, that he considered raising a wrong-gun defense during trial and cross-examining Zirzow to draw out the difference between a 9-millimeter and .38-caliber-class bullet but decided against it to avoid diluting the identity defense.

The postconviction court denied Solomon's claim. The court acknowledged that the attorney admitted to misunderstanding the state's evidence during the investigation but stated it was not persuaded that he misunderstood the difference between a 9-millimeter and a .38-caliber-class bullet because he considered a wrong-gun defense. The court held that the attorney reasonably represented Solomon by solely presenting the identity defense

to avoid distracting the jury. The court also held that Solomon failed to show prejudice from his attorney's actions because the ballistic evidence, as properly understood, did not rule out associating the DCCs recovered from where the state placed Solomon on the scene with the fatal bullet.

Solomon appeals.

DECISION

Solomon raises two arguments in his principal brief and three more in a pro se supplemental brief. He argues that the district court erred by permitting the sergeants to identify him in and narrate the surveillance footage because these lay opinions were either impermissible opinions of guilt or unhelpful to the jury. Solomon also contends that the postconviction court abused its discretion by failing to find that he received ineffective assistance of counsel. In his pro se supplemental brief, Solomon asserts that the district court abused its discretion by permitting the sergeants to identify him in the surveillance footage for risk of unfair prejudice, that the state presented insufficient evidence to sustain his murder conviction, and that the state committed prosecutorial misconduct in its closing argument.¹ We address each argument in turn.

¹ Solomon's pro se supplemental brief also argues that Sergeant Lepinski offered an impermissible opinion of guilt by testifying that he was "100 percent sure" in his identification. As Solomon makes the same argument in his principal brief, we address it only once.

I. The district court did not abuse its discretion in permitting the sergeants to identify Solomon in and narrate the surveillance footage because this testimony constituted factual lay opinions that were helpful to the jury.

Solomon challenges the sergeants' identification and narration testimony as impermissible lay opinions on two grounds: that they were, first, impermissible opinions of guilt and, second, that they were unhelpful to the jury. The parties disagree on whether Solomon preserved these issues in his motion in limine or through objection and, therefore, whether his arguments should receive harmless-error or plain-error review. *See* Minn. R. Crim. P. 31.02. Assuming Solomon is correct that harmless-error review applies, he is not entitled to relief because the district court did not err in admitting these opinions. *State v. Medal-Mendoza*, 718 N.W.2d 910, 917-18 (Minn. 2006) (requiring the defendant to prove an error as the first step of harmless-error analysis).

A. The sergeants' testimony did not impermissibly opine on Solomon's guilt because they limited their opinions to factual, not legal, matters.

Solomon argues that the district court abused its discretion by letting the sergeants testify to their opinion that Solomon appears in the surveillance footage because it amounts to an opinion of his guilt. Exposing a jury to police-officer opinion testimony of a defendant's guilt is prejudicial enough to constitute error. *See State v. Hogetvedt*, 623 N.W.2d 909, 915-16 (Minn. App. 2001), *rev. denied* (Minn. May 29, 2001). But officers may testify to their opinion on factual issues so long as they avoid making legal conclusions. *State v. DeWald*, 463 N.W.2d 741, 744 (Minn. 1990).

Sergeants Lepinski and Jensen did not offer an opinion on Solomon's guilt because they only opined on facts, such as who they think the person in the footage is and what

they think that person is doing. They never testified that they believed Solomon was “guilty” or “committed a crime,” and they do not describe his actions using legal terms like “murder.” *Compare id.* (holding it permissible for officer to opine on who “killed” the victim), *with Hogetvedt*, 623 N.W.2d at 915-16 (holding it impermissible for officer to testify that he “believed” the defendant “assaulted” the victim). Even Sergeant Lepinski’s remark that he is “100 percent sure” that Solomon appears in the footage respects these limits. Sergeant Jensen’s response on cross that he “believe[d]” Solomon was the person who shot and killed Banks comes the closest to an opinion of guilt, but this remark remained factual, did not invoke legal terminology, and was a response to a leading question on cross-examination about his investigation. *DeWald*, 463 N.W.2d at 744; *see also State v. Patzold*, 917 N.W.2d 798, 808 (Minn. App. 2018), *rev. denied* (Minn. Nov. 27, 2018). We are satisfied that the district court did not abuse its discretion in determining that the sergeants’ lay-opinion testimony avoided the question of Solomon’s guilt.

To persuade us otherwise, Solomon argues that, since the central issue in this case was the shooter’s identity, the sergeants’ opinion that he is in the footage “was the equivalent” of an opinion that he is guilty. But just because one factual issue is particularly important does not relieve the state of its burden to prove all elements of a criminal offense beyond a reasonable doubt, *see In re Winship*, 397 U.S. 358, 365 (1970), and an opinion

on that factual issue alone does not encapsulate all that is contained in an opinion of guilt. We therefore decline to elevate a factual question to a legal opinion here.²

B. The sergeants' opinion testimony was helpful to the jury because it explained the course of the homicide investigation and made use of Sergeant Lepinski's familiarity with Solomon.

Solomon also challenges the sergeants' surveillance-footage identification and narration as unhelpful and therefore an inadmissible lay opinion because the jury was equally suited to identify Solomon in and interpret the footage. Lay-opinion testimony must be helpful in determining a fact issue or for understanding the witness's testimony. Minn. R. Evid. 701. Lay-witness speculation as to the contents of a photo is not helpful to a jury when the jury is equally capable of interpreting it. *Dahlbeck v. DICO Co., Inc.*, 355 N.W.2d 157, 165 (Minn. App. 1984), *rev. denied* (Minn. Feb. 6, 1985). But lay-witness identification of a person depicted in a surveillance photograph can be helpful if the witness is more likely to correctly identify the person than the jury, *United States v. Farnsworth*, 729 F.2d 1158, 1160 (8th Cir. 1984) (interpreting Federal Rule of Evidence 701).³ This may be the case when the witness is familiar with the person's appearance at the time of

² Solomon further compares his case to two nonprecedential cases, *State v. Williams* and *State v. Turner*, which bear factual similarities to his situation. No. A22-1573, 2024 WL 1044815, at *7 (Minn. App. Mar. 11, 2024); No. A23-1709, 2024 WL 4812939, at *7 (Minn. App. Nov. 18, 2024). But because our analysis is bound by the precedential authority established in *DeWald* and *Patzold*, which leads us to the above conclusion, we decline to be persuaded by these nonprecedential cases. 463 N.W.2d at 744; 917 N.W.2d at 808; *see also* Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions . . . are not binding authority . . . [but] may be cited as persuasive authority.").

³ We cite these federal court decisions for their persuasive value. *Roos v. HealthPartners, Inc.*, 22 N.W.3d 211, 214 n.2 (Minn. App. 2025).

the photo. *Id.* at 1160; *United States v. Stormer*, 938 F.2d 759, 762 (7th Cir. 1991) (holding that an identification of the defendant in a surveillance photo was helpful when the witness had prior contacts with the defendant and the photo was of poor quality). And lay-opinion testimony of a surveillance video's contents may also be helpful to a jury when it is used to explain the context of a police investigation. *State v. Ali*, 855 N.W.2d 235, 249-50 (Minn. 2014).

Here, the sergeants' narration of the surveillance footage and their identification of Solomon therein were helpful to the jury to both explain the context of the investigation and serve as substantive evidence of Solomon's identity. Sergeant Lepinski explained that he identified Solomon in the footage to aid the homicide investigation, and Sergeant Jensen explained that he had no other basis for identifying Solomon. Sergeant Lepinski's opinion that Solomon appeared in the footage, therefore, helped the jury understand why Sergeant Jensen's investigation focused on Solomon as the prime suspect. *Id.* Sergeant Lepinski's testimony also helped the jury identify Solomon in the surveillance footage because Sergeant Lepinski had extensive prior contacts with Solomon through which Sergeant Lepinski learned how Solomon looked at the time of the shooting. This made his lay opinion of Solomon's identity helpful to the jury because Solomon appeared differently at trial, as he was wearing different clothing and glasses, and portions of the surveillance footage were of poor quality. *See Farnsworth*, 729 F.2d at 1160; *Stormer*, 938 F.2d at 762. As Sergeant Lepinski's opinion testimony was helpful in these two ways, the district court did not abuse its discretion in coming to the same conclusion.

Where Solomon's argument concerns Sergeant Jensen, it fares no better. The district court held, and Solomon does not contest, that Sergeant Jensen did not independently identify Solomon but relied on Sergeant Lepinski's opinion to identify him. Sergeant Jensen's narration is therefore supported by Sergeant Lepinski's foundation, making his testimony helpful to the jury for the same reasons. *See Farnsworth*, 729 F.2d at 1160; *Stormer*, 938 F.2d at 762.

Solomon compares his case to *Dahlbeck*, *Dunshee v. Douglas*, and the nonprecedential *State v. Grunig*; these cases are all distinguishable because they involve a lay or expert witness who lacked any sort of knowledge that would have made their interpretation of a photo better than the jury's interpretation. *See* 355 N.W.2d at 165; 255 N.W.2d 42, 165 (Minn. 1977); No. A10-81, 2010 WL 4451281, at *1 (Minn. App. Nov. 9, 2010). Here, Sergeant Lepinski's significant and contemporaneous personal knowledge of Solomon's appearance better equipped him, and thereby Sergeant Jensen, to identify Solomon in this footage. This fact separates this case from these analogues.

In sum, even under harmless-error review, Solomon is not entitled to relief because the district court did not abuse its discretion by allowing the sergeants to narrate the surveillance video and identify Solomon.

II. The postconviction court did not abuse its discretion by denying Solomon's ineffective-assistance-of-counsel claim because its finding that Solomon's attorney understood the difference between a 9-millimeter and a .38-caliber-class bullet at trial is supported by the record and Solomon was not prejudiced by his attorney's alleged shortcomings.

Solomon argues that the postconviction court abused its discretion in denying his ineffective-assistance-of-counsel claim because his attorney's failure to understand the

state's ballistic evidence was objectively unreasonable, prejudicing the verdict against him. We review a postconviction court's denial of a petition for relief for an abuse of discretion. *Pearson v. State*, 891 N.W.2d 590, 596 (Minn. 2017). This occurs when its ruling is based on an erroneous view of the law or incorrect factual findings. *Id.* As a postconviction court's denial of relief on an ineffective-assistance-of-counsel claim is a mixed question of law and fact, this court reviews its legal determinations de novo and its factual findings for clear error. *State v. Nicks*, 831 N.W.2d 493, 503-04 (Minn. 2013).

To prevail on an ineffective-assistance-of-counsel claim, a petitioner must first show that their representation "fell below an objective standard of reasonableness." *Schleicher v. State*, 718 N.W.2d 440, 447 (Minn. 2006) (quoting *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)). Choices of trial strategy are almost unchallengeable when made after a thorough investigation of fact and law. *Strickland*, 466 U.S. at 689-90. But choices made after a limited investigation are only reasonable to the extent that professional standards justify those limits. *Id.* at 690-91. The petitioner must then show that, had they received effective representation, "there is a reasonable probability" of a different verdict. *Id.* at 694.

Solomon's argument fails on the first prong. He does not contest the postconviction court's finding that his attorney was aware of the difference between 9-millimeter and .38-caliber-class bullets during trial, based on his testimony claiming he considered the wrong-gun defense. And we will not upset this finding sua sponte, as the attorney's testimony that he "chose not to ask" Zirzow questions on these differences and not to supplement his identity defense with a wrong-gun defense because he "thought it was more prudent to

pursue the defense that [Solomon] wasn't there" and other similar passages suffice to support it under our deferential standard—even though other portions of his testimony cut against it. *See In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (explaining that, when reviewing district-court factual findings for clear error, the record must be viewed “in a light favorable to the findings”). With this finding intact, we must conclude that Solomon's attorney's investigation was sufficient to where he made an informed decision at trial to forgo pressing the state on this detail to focus the jury on the identity defense. *See Strickland*, 466 U.S. at 690-91. And the fact that this defense temporarily deadlocked the jury such that they sought the court's assistance in breaking its paralysis supports our conclusion that Solomon's representation met the standard of objective reasonability. Solomon is incorrect, therefore, in asserting that the postconviction court came to an incorrect legal conclusion here.

Even if Solomon were correct in that he was denied reasonable representation, his claim would still fail because the postconviction court did not abuse its discretion in holding that this shortcoming was not prejudicial for four reasons. *Id.* at 694. First, as Solomon's counsel harbored concerns that a wrong-gun defense would distract from his identity defense even while misunderstanding the ballistic evidence, he may not have made a different decision even if he understood it. Second, the jury never heard testimony or saw an exhibit capitalizing on Solomon's counsel's misconception such that they may have also believed that the bullet that killed Banks was a 9-millimeter bullet. Solomon does not contest this point and instead suggests “it is more than reasonable” to assume the jury also misunderstood the evidence, but doing so would relieve Solomon of his burden to

demonstrate prejudice. *Id.* at 695-96. Third, this ballistic information still contributes to the state's theory of the case when properly understood, as it excluded seven of the firearms used in the shooting from firing the fatal bullet, but not the one that ejected the DCCs where the state placed Solomon. Finally, the jury had other strong evidence of Solomon's guilt, including the surveillance footage, the sergeants' identification and narration testimony, and the remainder of the state's ballistic evidence. Because a fuller investigation may not have changed Solomon's attorney's trial strategy at all, and a change in strategy would not have created a "reasonable probability" of a different result, Solomon was not prejudiced even if he received ineffective representation in this limited regard. *Id.* at 689-90.

III. Solomon's assignments of error in his pro se supplemental brief do not entitle him to relief.

Solomon raises three unique arguments in his pro se supplemental brief: that the district court erred by permitting Sergeant Lepinski to identify Solomon in the security footage due to risk of unfair prejudice; that the state introduced insufficient evidence to prove second-degree murder; and that the prosecutor committed misconduct in her closing argument. For the following reasons, none of them justify a new trial.

A. The district court did not abuse its discretion by admitting Sergeant Lepinski's identification testimony because its high probative value was not substantially outweighed by a risk of unfair prejudice.

Solomon first argues that the district court erred by admitting Sergeant Lepinski's identification testimony because his weak foundation made the risk of unfair prejudice too great in comparison to its low probative value. Relevant evidence—that which tends to make any consequential fact more or less probable—is generally admissible. Minn. R.

Evid. 401, 402. But relevant evidence may be excluded if “its probative value is substantially outweighed by the danger of unfair prejudice[.]” Minn. R. Evid. 403; *see also State v. Schulz*, 691 N.W.2d 474, 478 (Minn. 2005). This includes witnesses’ lay opinions, which must be rationally based on the witness’s perspective and helpful to the fact-finder in understanding their testimony or establishing a relevant fact. Minn. R. Evid. 701. As Solomon raised this objection in his motion in limine, we review the district court’s decision for an abuse of discretion. *Medal-Mendoza*, 718 N.W.2d at 917.

The district court did not abuse its discretion by admitting this lay opinion because it properly determined that its high probative value was not “substantially” outweighed by a risk of unfair prejudice. Minn. R. Evid. 403. As discussed above, Sergeant Lepinski’s lay opinion identifying Solomon was helpful to the jury under rule 701 because their prior interactions better prepared him to identify Solomon in the footage and it helped explain the state’s investigation. And this lay opinion had high probative value by placing Solomon at the crime scene, requiring any risk of unfair prejudice to clear a high bar to substantially outweigh it. *See Schulz*, 691 N.W.2d at 478. Given Sergeant Lepinski’s multi-year history with Solomon, the district court did not abuse its discretion in determining that this history provided a sufficient foundation to tamp down any risk of misidentification. Its decision to limit Sergeant Lepinski’s foundation testimony to avoid disclosing Solomon’s prior encounters with law enforcement further mitigated any threat of unfair prejudice.

Solomon’s comparator cases do not convince us otherwise. *State v. Spann* is irrelevant, as it concerns analyzing police-identification procedures for impermissible suggestibility. 287 N.W.2d 406, 407-08 (Minn. 1979). And Solomon gives no reason why

Sergeant Lepinski's testimony presented a greater risk of prejudice or was less helpful to the jury than the opinion testimony held permissible in the nonprecedential *State v. Kasim*, No. A18-1322, 2019 WL 2415974, at *4 (Minn. App. June 10, 2019). We maintain, therefore, that the district court did not abuse its discretion in admitting Sergeant Lepinski's testimony under rule 403.

B. The state introduced sufficient direct evidence to sustain its second-degree murder conviction when the surveillance footage is interpreted in the light most favorable to the verdict.

Solomon also asserts a sufficiency-of-the-evidence challenge against his second-degree murder conviction, arguing that the state failed to prove causation because it could only establish through conjecture that Banks was in the red Tahoe the shooter fired into. When reviewing the sufficiency of the evidence, we interpret the evidence in favor of the verdict and uphold it if the jury reasonably could have found the defendant guilty. *State v. Bahtuoh*, 840 N.W.2d 804, 809 (Minn. 2013). When an element is proven with direct evidence, this court must decide whether a jury could reasonably find that the state met its burden of proof upon the facts in the record and the legitimate inferences drawn from them. *State v. Jones*, 4 N.W.3d 495, 500 (Minn. 2024). Surveillance footage provides direct evidence of what it shows. *State v. Blevins*, 10 N.W.3d 29, 39-40 (Minn. 2024). When the disputed element can be proven with direct evidence, we apply this analysis rather than the heightened circumstantial-evidence analysis. *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016).

When interpreted most favorably to the verdict, the state's direct evidence sustains the jury's finding that Solomon caused Banks's death. The surveillance footage, under this

lens, proves that Solomon shot into Banks's red Tahoe as it passed his vehicle on 2nd Avenue.⁴ Banks's autopsy proves that his death was caused by a gunshot wound to the head. Zirzow's ballistic analysis proved that the bullet that killed Banks was a member of the .38-caliber class. Investigators' recovery of DCCs places a cartridge pile where Solomon stood while shooting at the Tahoe. Zirzow's analysis of these DCCs establish that they are 9-millimeter DCCs fired from the same gun, meaning this gun cannot be ruled out of firing the fatal shot. Investigators found a blood-like substance in the passenger seat of the red Tahoe. From this direct evidence, it is reasonable to infer that when Solomon shot at the red Tahoe, he fired the bullet that struck Banks in the head and killed him. *See id.*

C. The state did not engage in prejudicial prosecutorial misconduct in the context of its entire closing argument.

Solomon argues that the prosecutor committed misconduct in her closing by improperly aligning herself with the jury, disparaging the defense, and inflaming passions about gun violence. We review unobjected-to prosecutorial misconduct under a modified plain-error analysis that requires the state to prove that any misconduct was not prejudicial. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006). Claims of prosecutorial misconduct during closing arguments require reviewing the closing as a whole to avoid taking individual phrases out of context. *State v. Jones*, 753 N.W.2d 677, 691 (Minn. 2008).

⁴ Solomon's argument that determining that the red Tahoe that drives out of frame to the south in the footage is the same red Tahoe that drives back into frame requires conjecture overlooks that jurors are permitted to make reasonable inferences from the evidence. *Jones*, 4 N.W.3d at 500.

None of the prosecutor's statements that Solomon contests amount to misconduct. Solomon's argument that the state impermissibly aligned itself with the jury through its use of "we," "our," and "us" is not convincing because the state did not use these terms to impermissibly exclude Solomon, it did so instead to describe the evidence presented during trial that all the parties in the courtroom saw. *See Nunn v. State*, 753 N.W.2d 657, 663 (Minn. 2008). And where Solomon flags the state's use of "they," the prosecutor is using this term as a plural pronoun to refer to, first, the bullets recovered for forensic analysis and, second, to the group of people whose actions gave rise to the riot charge. Solomon also argues that the state belittled the defense in its attacks on his witness's credibility and the defense's arguments distancing the murder weapon from Solomon and by requesting the jury to set aside their biases about police. Yet the state may attack the defense's theory of the case so long as they are based in evidence, *State v. Salitros*, 499 N.W.2d 815, 818 (Minn. 1993), and the prosecutor's remarks here were. Finally, the prosecutor's remark that "[t]he city of Minneapolis has become a playground for gun violence and riots" was isolated and sandwiched by discussions of the jury's responsibility to decide the case on the merits, preventing it from inflaming juror passions such that they would abandon their responsibility of deciding guilt to send a message on gun violence. *See State v. Montjoy*, 366 N.W.2d 103, 109 (Minn. 1985). As none of these remarks amount to misconduct, Solomon is not entitled to a new trial on these grounds.

Affirmed.