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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1824**

State of Minnesota,
Respondent,

vs.

James Demetrius Redd,
Appellant.

**Filed July 14, 2025
Affirmed
Smith, John, Judge ***

St. Louis County District Court
File No. 69VI-CR-22-472

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

Kimberly J. Maki, St. Louis County Attorney, Chris Florey, Assistant County Attorney,
Virginia, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Laura G. Heinrich, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Connolly, Judge; and Smith,
John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm appellant's conviction of unlawful possession of a firearm because (1) the district court properly denied appellant's motion to suppress evidence of a firearm found in his house, (2) the district court did not abuse its discretion in its evidentiary rulings during trial, (3) there was sufficient evidence to prove beyond a reasonable doubt that appellant possessed the firearm, and (4) the district court did not abuse its discretion by denying appellant's petition for postconviction relief.

FACTS

At the time of this offense, appellant James Demetrius Redd was on parole and subject to conditions of supervised release. Under those conditions, Redd could not legally possess or own any weapons. In April 2022, Redd's supervising parole officer learned of a seven-month-old video that depicted Redd brandishing a firearm while riding in a recreational vehicle. After viewing the video, the parole officer collaborated with local law enforcement to prepare for a search of Redd's home. During that preparation, local law enforcement did not apply for a warrant to search Redd's home.

Around three weeks later, several parole and police officers visited Redd's home to search for a firearm. When they arrived, Redd was outside of his house. A police officer arrested Redd and acquired the keys to his home. Law enforcement then entered Redd's home to conduct the search. Upon entering Redd's home, officers were met by Redd's daughter and toddler-aged granddaughter, who came out of a spare bedroom. The officers instructed Redd's daughter and granddaughter, who did not live there, to leave.

The search of Redd's home ensued. One parole officer searched Redd's bedroom and found a gun-cleaning kit in Redd's closet. Another parole officer searched the spare bedroom, where he found a gun holster and packages of laser cartridges. In Redd's bathroom, an investigator found a loose vent cover on the floor. The investigator opened the vent, reached in, and found a gun that was hidden in a sock. Based on the gun found in Redd's home, respondent State of Minnesota charged Redd with one count of unlawful possession of a firearm in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2020).

Redd moved to suppress evidence of the handgun found in his home, arguing that the warrantless search of his home was unlawful. The district court held a contested omnibus hearing on Redd's motion, at which the state called Redd's supervising parole agent and the investigator who found the gun. The state also admitted exhibits containing the video of Redd brandishing a firearm and Redd's conditions of parole. Following briefing, the district court denied Redd's motion.

The case proceeded to a two-day jury trial. Before jury selection, the district court granted Redd's motion in limine to exclude evidence of his prior criminal conduct or convictions. After that ruling, the prosecutor disclosed that he intended to call three parole officers and asked whether he would "get in trouble if [he] . . . elicit[ed] some testimony" about Redd's supervision. The district court noted the fact of Redd's supervision "can't be avoided." But the district court cautioned the prosecutor that "any reference to the reason that he is [subject to supervision] . . . obviously would be . . . objectionable." Redd then stipulated to having a prior conviction of a crime of violence, thereby waiving his right to

a jury determination on the element of whether he was ineligible to possess a firearm. As a result, the only issue for the jury was whether Redd possessed a firearm on April 28, 2022.

During the trial, the state called six witnesses: three parole officers, two police officers, and a forensic scientist from the Minnesota Bureau of Criminal Apprehension (BCA). The state also introduced 13 exhibits, consisting of the handgun found in Redd's home, photographs taken during the search, and the forensic scientist's report. The parole officers and police officers generally testified about the investigation and search of Redd's home, as described above.

The forensic scientist testified that she analyzed DNA samples gathered from the gun found in Redd's home and compared it to Redd's DNA. According to the forensic scientist, samples from the gun's grip and trigger each contained a mixture of three people's DNA. Redd's DNA was more prominent than the other DNA on the handle. Likewise, Redd could not be ruled out as a contributor to the mixture of DNA found on the trigger.

On cross-examination, the forensic scientist acknowledged that DNA testing was not conclusive of whether Redd in fact handled the gun. The forensic scientist conceded that Redd's DNA could have been transferred onto the gun by someone else who touched it after inadvertently acquiring Redd's DNA by, for instance, shaking Redd's hand. The forensic scientist also admitted that she did not analyze the sock that was covering the gun and that Redd's DNA could have been transferred to the gun via the sock.

Redd did not testify in his own defense. Instead, Redd called J.E., who testified that the gun was his—and not Redd's. J.E. testified that he was working on a car on Redd's

property in April 2022. J.E. said that, while he was working on Redd's property, his fiancé called him and said that police were at his home with a warrant for his arrest. J.E. claimed that he was carrying a .45 caliber handgun that day. J.E. testified that he wanted to hide the gun so it would not be confiscated by law enforcement. So, according to J.E., he went into Redd's bathroom, where he found a pile of Redd's clothes. J.E. alleged that he "grabbed a sock, stuffed [the gun] in that sock, and threw it in [Redd's] floor vent."

On cross-examination, the prosecutor asked J.E. about discrepancies between his trial testimony and his initial statement to the defense, which he gave six weeks before the trial. For instance, J.E. did not initially mention that he placed the gun in a sock, but instead disclosed that he "wrapped the gun." And, contrary to his trial testimony, J.E. initially stated that the gun was a nine-millimeter firearm.

Following the parties' presentation of evidence and closing arguments, the jury found Redd guilty of unlawful possession of a firearm. The district court convicted Redd and committed him to the commissioner of corrections for an executed sentence of 60 months.

Redd appealed directly from the judgment of conviction, but we stayed his appeal so he could pursue postconviction relief in district court. In his petition for postconviction relief, Redd argued that he received ineffective assistance of counsel because his attorney did not adequately cross-examine the forensic scientist or call an expert witness to rebut the DNA testimony. The district court denied Redd's petition without holding a hearing, concluding that the purported ineffectiveness of counsel amounted to unreviewable trial

strategy. After the district court denied his motion for reconsideration, we dissolved the stay and reinstated this appeal.

DECISION

I. The district court did not err by denying Redd’s motion to suppress evidence of the handgun.

Redd first argues that the district court erred by denying his pretrial motion to suppress evidence of the handgun. When reviewing a pretrial suppression ruling, we review the district court’s factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). The facts are not in dispute, and so we review de novo “whether the police articulated an adequate basis for the search . . . at issue.” *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011) (quotation omitted).

Redd contends that evidence of the handgun should have been suppressed because the warrantless search of his house was unlawful. Both the United States and Minnesota Constitutions protect the rights of individuals to be free from unreasonable searches of their houses. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches are presumptively unreasonable, but that presumption may be overcome in some circumstances. *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015). And the constitutional right to be free from unreasonable searches “is a personal right, the protection of which may be invoked by showing that a person ‘has an expectation of privacy in the place searched, and that his expectation is reasonable.’” *State v. Heaton*, 812 N.W.2d 904, 907 (Minn. App. 2012) (quoting *Minnesota v. Carter*, 525 U.S. 83, 88 (1998)), *rev. denied* (Minn. July 17, 2012).

An individual's "expectation of privacy [is] diminished simply by [their] status as a parolee." *Id.* at 908. A parolee's reasonable expectation of privacy is diminished because "the state has a legitimate, substantial interest in ensuring that parolees abide by the terms of parole and protecting potential victims from illegal conduct the parolee may commit." *Id.* at 908-09 (quotation omitted). For these reasons, "a warrantless search of [a parolee's home is] lawful if reasonable suspicion of criminal conduct can be established." *Id.* at 909.

"Reasonable suspicion requires a sufficiently high probability that criminal conduct is occurring to make the intrusion on the [parolee's] privacy interest reasonable." *State v. Anderson*, 733 N.W.2d 128, 138 (Minn. 2007) (quotation omitted). Reasonable suspicion, which is more than an "unarticulated hunch," requires "a particularized and objective basis for suspecting a person of criminal activity." *Id.* (quotations omitted). We consider the totality of the circumstances when determining whether law enforcement had reasonable suspicion to conduct a search. *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021). "The state has the burden to allege specific and articulable facts that establish that such objectively reasonable suspicion exists." *State v. Flowers*, 734 N.W.2d 239, 256 (Minn. 2007).

Redd, who concedes that his reasonable expectation of privacy is diminished by his status as a parolee, argues that the state did not allege sufficient facts to establish that law enforcement reasonably suspected he was engaged in criminal activity by possessing a firearm in his house. At the contested omnibus hearing, the state introduced the recording of Redd brandishing a firearm and the testimony of a parole officer and an investigator.

The state established that the parole officer viewed the video seven months after it was created. Based on the video, law enforcement searched Redd and his home for firearms

The district court determined that the video provided law enforcement with reasonable suspicion of Redd's criminal activity, thereby authorizing the warrantless search. The district court found that the video showed Redd "clearly possessing a firearm in violation of his probation status." The district court added that the video "appears to show [Redd] drawing the firearm from his side pocket and maintaining possession of it, suggesting the firearm belonged to and stayed with him to support a suspicion of ongoing criminal activity." Lastly, addressing the age of the video, the district court found that a firearm is "not likely to perish" and Redd's parolee status made it "very unlikely that he could have transferred the firearm to anyone else" in that time. We agree with the district court's analysis. The video of Redd drawing a firearm from his hip area is a "specific and articulable fact[]" that gives rise to objective, reasonable suspicion that Redd was harboring a firearm in his house at the time of the search. *See Flowers*, 734 N.W.2d at 256.

Redd argues that the district court's reliance on the video is misplaced because it was created over seven months before law enforcement searched his residence. Redd also contends that there is an insufficient nexus between the gun depicted in the video and his residence. We are not persuaded by either argument.

Redd first asserts that the video was too "stale" to support reasonable suspicion. At times, information can be too old to support a reasonable search and is therefore "stale." *State v. Souto*, 578 N.W.2d 744, 750 (Minn. 1998). Whether information is stale is not subject to bright-line temporal guidelines but must instead be determined case-by-case.

State v. Jannetta, 355 N.W.2d 189, 193 (Minn. App. 1984) (citing *Sgro v. United States*, 287 U.S. 206, 210-11 (1932)), *rev. denied* (Minn. Jan. 14, 1985). The supreme court has identified a nonexclusive list of four factors relevant to assessing whether information is stale: (1) “whether there is any indication of ongoing criminal activity”; (2) “whether the articles sought are innocuous or incriminating”; (3) “whether the property sought is easily disposable or transferable”; and (4) “whether the items sought are of enduring utility.” *Souto*, 578 N.W.2d at 750.¹

In support of his staleness argument, Redd focuses on the ongoing-criminal-activity and ease-of-disposability factors. But even assuming that there was no indication of Redd’s ongoing criminal activity and that Redd could easily have disposed of the handgun, the fourth factor—regarding the enduring utility of a handgun—outweighs those other factors. Information “has been held not stale even after the passage of several months where the items sought are of enduring utility” to their possessor. *State v. DeWald*, 463 N.W.2d 741, 746 (Minn. 1990) (quotation omitted). While interpreting the reasonableness of a search under the Fourth Amendment, federal courts have consistently held that, because of the enduring utility of firearms, months-old information related to firearm possession is not stale. *See, e.g., United States v. Neal*, 528 F.3d 1069, 1074 (8th Cir. 2008) (“Information that someone is suspected of possessing firearms illegally is not stale, even

¹ We note that *Souto* concerned whether information was stale for the purposes of a *probable-cause* determination. 578 N.W.2d at 750. Probable cause is a higher standard than reasonable suspicion. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). As such, the extent to which the *Souto* staleness factors apply to a reasonable-suspicion determination is unclear. Because the state does not dispute the applicability of a staleness analysis here, we assume without deciding that the *Souto* factors apply.

several months later, because individuals who possess firearms tend to keep them for long periods of time.”). Consistent with these authorities, we conclude that the seven-month-old video of Redd brandishing a firearm, an object of enduring utility, was not stale for purposes of establishing reasonable suspicion that Redd continued to possess a firearm at the time of the search.

Redd also argues that there is an insufficient nexus between the video and his home. For a search to be reasonable, there must be a nexus “between the evidence sought and the place to be searched.” *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014). “A nexus may be inferred from the totality of the circumstances.” *Id.*

Redd argues that there is no nexus between the gun depicted in the video and his house. Redd asserts that “[t]he video showed [him] on a four-wheeler in some unidentified location.” Although Redd’s location in the video is indiscernible, the video depicts Redd drawing the handgun from his person. We agree with the district court that a reasonable inference from the video is that Redd therefore owned the handgun. And the supreme court has recognized that, “[r]egarding gun evidence, . . . it is reasonable to infer that such evidence would be kept at a defendant’s residence, thereby satisfying the nexus requirement.” *Id.* at 623. For these reasons, it was reasonable for law enforcement to infer from the video that Redd likely possessed a firearm in his house. The state therefore carried its burden of establishing a sufficient nexus between the gun in the video and Redd’s home.

In sum, the state articulated sufficient facts at the omnibus hearing establishing that law enforcement had reasonable suspicion that Redd kept a firearm in his house in violation of his parole conditions. Accordingly, the warrantless search of Redd’s home was

reasonable under the federal and state constitutions. *See Heaton*, 812 N.W.2d at 909. The district court did not err by denying Redd’s motion to suppress.²

II. The district court did not abuse its discretion by permitting the state’s witnesses to testify about Redd’s parole status.

Redd next challenges the district court’s ruling permitting the state to present evidence about his parole status. A district court’s evidentiary rulings are reviewed for an abuse of discretion. *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014). “A district court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Guzman*, 892 N.W.2d 801, 810 (Minn. 2017).

Before trial, the prosecutor informed the district court that he intended to call three parole officers, and he wanted to clarify that he would not “get in trouble if [he] . . . elicit[ed] some testimony” about Redd’s supervision. While the district court noted that evidence of Redd’s supervision was unavoidable, the court cautioned the prosecutor against eliciting any testimony about the underlying offenses that resulted in Redd’s supervision.

² In his supplemental brief, Redd argues that he did not sign an agreement regarding certain conditions of his release, including a condition subjecting him to unannounced searches of his home. Redd contends that this fact establishes that the search of his home was unreasonable. But it is undisputed that Redd was on parole at the time of his search. And our caselaw is clear that, regardless of which conditions were explicitly agreed to, Redd’s mere status as a parolee diminishes his reasonable expectation of privacy. *See Heaton*, 812 N.W.2d at 908. While we are sympathetic to Redd’s position, our decision in *Heaton* did not infringe on Redd’s constitutional right to be free from unreasonable searches. Instead, we simply stated that warrantless searches of a parolee’s home based only on reasonable suspicion are reasonable. *Id.* at 909. In light of *Heaton*, the precise conditions of release that Redd agreed to are immaterial to our analysis of reasonableness.

During trial, the state elicited the following evidence of Redd's parole status. One parole officer testified that he had supervised Redd for two years and visited his home 25 to 30 times; Redd was under both "special conditions" and "standard conditions" of parole; Redd's status required home visits; and Redd was required to consent to unannounced searches. Another officer testified that his agency supervised Redd on a "day to day basis, a few times a week"; the officer had "performed many field visits" at Redd's home; Redd's "level of supervision . . . required more supervision than is standard"; and a team of parole officers supervised Redd because "in these higher level of supervision cases . . . [the officers] see [the parolee] more often."

Redd contends that this evidence was irrelevant because it "had nothing to do with" the only material fact at trial—whether Redd possessed a firearm on April 28, 2022. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. Relevant evidence is presumptively admissible and irrelevant evidence is inadmissible. Minn. R. Evid. 402. "[E]vidence is generally admissible to give jurors the context for an investigation." *Ali*, 855 N.W.2d at 249.

We conclude that the limited testimony about Redd's parole status provided the jury relevant context as to why law-enforcement officers were investigating Redd for possessing a firearm. This evidence was further relevant to establish a basis for parole officers' extended knowledge of Redd's past living arrangements, which supported the state's argument that Redd's possession of the gun was more likely because he lived alone.

The evidence was also relevant to Redd's defense. Defense counsel cross-examined one agent about his "multiple" prior visits to Redd's house as part of the supervision. Through that cross-examination, defense counsel elicited testimony that the agent had never seen any firearms in Redd's house during those past visits, which supported Redd's defense that the firearm was not his. The parties' use of this evidence demonstrates that it had, at the very least, "*any tendency*" to make Redd's possession of the firearm more or less likely. *See* Minn. R. Evid. 401 (emphasis added). Thus, the evidence was not irrelevant.

Redd next argues that the evidence should have been excluded because it was unfairly prejudicial. When evidence's probative value is "substantially outweighed" by its danger of unfair prejudice, the district court may exclude the evidence. Minn. R. Evid. 403. "Unfair prejudice 'does not mean the damage to the opponent's case that results from the legitimate probative force of the evidence; rather, it refers to the unfair advantage that results from the capacity of the evidence to persuade by illegitimate means.'" *State v. Hahn*, 799 N.W.2d 25, 33 (Minn. App. 2011) (quoting *State v. Bolte*, 530 N.W.2d 191, 197 n.3 (Minn. 1995)), *rev. denied* (Minn. Aug. 24, 2011).

Redd argues that evidence of his parole status ran the risk of unfairly prejudicing him by "insinuating that [he] was a scary man who needed heightened supervision." But, because there was no evidence of the nature of the crimes underlying Redd's supervision, the risk of unfair prejudice was diminished. *See State v. Halverson*, 381 N.W.2d 40, 44 (Minn. App. 1986) (holding that the risk of unfair prejudice from evidence of a defendant's incarceration was limited "by the fact that no evidence of the nature of the crime for which [the defendant] was in jail was introduced"), *rev. denied* (Minn. Mar. 21, 1986).

Additionally, Redd's reliance on the evidence suggests that it was not unfairly prejudicial. *See State v. Vick*, 632 N.W.2d 676, 686-87 (Minn. 2001) (holding that defendant was not prejudiced by evidence where defendant's theory of defense was not affected by admission). For these reasons, any risk of unfair prejudice was significantly diminished. Accordingly, we are not persuaded that the challenged evidence's risk of unfairly prejudicing Redd *substantially* outweighed the evidence's probative value. *See* Minn. R. Evid. 403.

In sum, Redd has not demonstrated that the evidence of his parole status was irrelevant or unfairly prejudicial. We therefore conclude the district court did not abuse its discretion by admitting the evidence.

III. The circumstantial evidence was sufficient to prove beyond a reasonable doubt that Redd possessed the firearm found in his bathroom vent.

Next, Redd asks us to reverse his conviction because the evidence at trial was insufficient to support his conviction of unlawful possession of a firearm. The state charged Redd with unlawful possession of a firearm under section 624.713, subdivision 1(2), which required the state to prove that Redd had been convicted of a crime of violence and that he "possess[ed]" a firearm on the date in question. Due process requires the state to prove each element of the charged offense beyond a reasonable doubt. *State v. Beganovic*, 991 N.W.2d 638, 654 (Minn. 2023). Because he stipulated to his prior conviction of a crime of violence, the state had to prove only that Redd possessed the firearm found in his home on April 28, 2022.

“Possession may be proved through evidence of actual or constructive possession.” *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). The parties agree that the state’s theory at trial was that Redd constructively possessed the handgun. As applicable here, an individual constructively possesses an item when the state shows “there is a strong probability (inferable from other evidence) that at the time [the item was found] the defendant was consciously or knowingly exercising dominion and control over it.”³ *Id.* The purpose of the constructive-possession doctrine is to include “those cases where the state cannot prove actual or physical possession at the time of arrest but where the inference is strong that the defendant at one time physically possessed the [firearm] and did not abandon his possessory interest in the [firearm].” *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015) (quotation omitted). This requires the state to “prove more than the defendant’s mere proximity to the firearm.” *Harris*, 895 N.W.2d at 601.

Redd argues that the state’s evidence was insufficient to prove beyond a reasonable doubt that he knowingly exercised dominion and control over the firearm when law enforcement found it in his home. When addressing a challenge to the sufficiency of the evidence supporting a conviction, “we conduct a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Frieze*, 959

³ The state can also prove constructive possession when an item is found “in a place under the defendant’s exclusive control to which other people normally did not have access.” *Harris*, 895 N.W.2d at 601. This version of constructive possession is inapplicable here because it is undisputed that Redd’s daughter and granddaughter had access to Redd’s bathroom on April 28, 2022.

N.W.2d 205, 214 (Minn. 2021). We will not reverse a conviction for insufficient evidence “if the jury, acting with due regard for the presumption of innocence and for the necessity of overcoming it by proof beyond a reasonable doubt, could reasonably conclude that [the] defendant was proven guilty of the offense charged.” *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004) (quotation omitted).

It is undisputed that Redd’s constructive possession of the firearm was proved with circumstantial evidence. Unlike direct evidence, “circumstantial evidence always requires an inferential step to prove a fact.” *Harris*, 895 N.W.2d at 599. When proof of an element of an offense depends on circumstantial evidence, we use “a heightened two-step standard” to assess the sufficiency of the evidence. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

Our first step is to “identify the circumstances proved by the state.” *Id.* In identifying these circumstances, we defer to “the jury’s acceptance of the State’s evidence and its rejection of any evidence in the record that is inconsistent with the circumstances proved by the State.” *Id.* At step two, we determine whether the circumstances proved are consistent solely with guilt. *Id.* If the circumstances proved are also consistent with “any rational hypothesis other than guilt,” we must reverse the conviction. *Id.* (quotation omitted). During the second step, we do not defer to the jury and instead “independently examine the reasonableness of all inferences that might be drawn from the circumstances proved.” *Id.* (quotation omitted).

Applying this two-step standard here, we first identify the circumstances proved by the state. On April 28, 2022, law-enforcement officers visited Redd’s home to conduct a

search. The officers found Redd outside and acquired Redd's house keys to enter his home. Redd's daughter and granddaughter, who did not live in Redd's home, were in a spare bedroom when officers entered the house. Although parole officers had encountered various people at Redd's home during past visits, Redd was the only person who permanently resided there. Upon searching Redd's home, a parole officer found a gun cleaning kit in Redd's bedroom closet. In the spare bedroom, another officer found a gun holster in a box and packages of laser cartridges in a desk drawer. In the bathroom, an investigator found a gun wrapped in a sock hidden inside of a vent. DNA testing on the gun's grip and trigger revealed three DNA profiles, including Redd's. Redd's DNA was the most prominent profile on the grip, and his DNA could not be ruled out from the trigger sample.

Redd argues that these circumstances are consistent with the rational hypothesis "that someone other than [Redd] was consciously exercising dominion and control over the firearm law enforcement found in the air vent." Redd asserts that the state's theory of Redd's possession "is just as easily applied to Redd's daughter." We disagree.

Redd is correct that the circumstances proved include that Redd's daughter had recently exited the spare bedroom where law enforcement found a gun holster and laser cartridges. But the circumstances proved lack any evidence that those items, which were in a drawer and a box, were linked to Redd's daughter. And Redd's daughter came out of the spare bedroom when officers arrived, not the bathroom where the gun was found. Moreover, the state proved that Redd's daughter did not reside in Redd's home. Simply put, it is not reasonable to infer from these circumstances that Redd's daughter, by her mere

proximity to the gun and the gun accessories (which were hidden from plain sight), was actively exercising dominion and control over the gun hidden in Redd's bathroom vent.⁴ The only rational inference from these circumstances is instead that Redd exercised dominion and control over the gun hidden in his bathroom vent. The evidence was therefore sufficient to prove beyond a reasonable doubt that Redd constructively possessed the gun.

⁴ Redd likens the facts in this case to those in *State v. Smith*, No. A20-0654, 2021 WL 2528432 (Minn. App. June 21, 2021), and *State v. Sanchez*, No. A20-0136, 2021 WL 318463 (Minn. App. Feb. 1, 2021). In both *Smith* and *Sanchez*, we reversed unlawful-possession convictions for insufficient evidence of the appellant's constructive possession. 2021 WL 2528432, at *5-6; 2021 WL 318463, at *2-3.

The problem with Redd's reliance on these cases is twofold. First, they are not precedential. See *Kruse v. Comm'r of Pub. Safety*, 906 N.W.2d 554, 559 (Minn. App. 2018) (noting that this court's nonprecedential decisions are not binding).

Second, each case is distinguishable. In *Smith*, law enforcement searched a home occupied by both the appellant *and* his mother. 2021 WL 2528432, at *1. Law enforcement found a gun in a woman's purse in a room that appellant's mother was sleeping in when law enforcement arrived. *Id.*, at *5. We concluded that these circumstances supported a reasonable hypothesis that the appellant did not constructively possess the firearm. *Id.* Unlike in *Smith*, there is no evidence here that Redd's daughter resided in Redd's home or kept any belongings there.

And *Sanchez* involved ammunition found in a home into which the appellant had only recently moved. 2021 WL 318463, at *1. The house's previous owner of 20 years, who still had access to the house, had only partially moved his belongings out of the house at the time of the search. *Id.* We determined that it was reasonable to infer that someone other than the appellant possessed the ammunition. *Id.* at *3. Unlike in *Sanchez*, the circumstances proved establish that Redd was the sole owner and occupant of his residence for more than a year prior to this search.

For these reasons, Redd's reliance on this court's nonprecedential decisions is unpersuasive.

IV. The district court did not abuse its discretion by denying Redd’s postconviction claim of ineffective assistance of counsel.

Lastly, Redd challenges the district court’s denial of his postconviction petition. A person convicted of a crime may seek postconviction relief by filing a petition in the district court alleging that the conviction “violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2022). The district court must hold an evidentiary hearing on the petition “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2022). When determining whether the petitioner is entitled to an evidentiary hearing, the district court must consider the facts alleged in the petition as true and construe them in the light most favorable to the petitioner. *Andersen v. State*, 913 N.W.2d 417, 422-23 (Minn. 2018). “[T]he burden is on a petitioner to show facts entitling the petitioner to relief.” *Allwine v. State*, 994 N.W.2d 528, 541 (Minn. 2023). We review the summary denial of a postconviction petition for an abuse of discretion, reviewing the district court’s factual findings for clear error and its legal conclusions de novo. *Riley v. State*, 819 N.W.2d 162, 167 (Minn. 2012).

In his postconviction petition, Redd alleged that he received ineffective assistance of counsel. A postconviction petitioner is entitled to a hearing on a claim of ineffective assistance of counsel only when they allege facts that, “if proven by a fair preponderance of the evidence,” would satisfy the two-prong test from *Strickland v. Washington*, 466 U.S. 668 (1984). *State v. Nicks*, 831 N.W.2d 493, 504 (Minn. 2013) (quotation omitted). Under *Strickland*, a defendant must prove that (1) “counsel’s representation fell below an

objective standard of reasonableness” and (2) “there was a reasonable probability that, but for counsel’s errors, the result of the proceeding would have been different.” *Id.* (citing *Strickland*, 466 U.S. at 687-96). There is a strong presumption that counsel’s performance was reasonable. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). If an appellant cannot meet one of the *Strickland* prongs, the claim fails, and this court need not address the other prong. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020).

In his postconviction petition, Redd argued that he received ineffective assistance of counsel because his trial attorney should have better leveraged resources in the public defender’s office before trial and “attacked the DNA evidence” more thoroughly on cross-examination. The district court summarily denied Redd’s petition, concluding that his allegations related to unreviewable issues of trial strategy. We agree with the district court’s conclusion.

Appellate courts typically will not “second-guess[]” matters of trial strategy, which “lie within the discretion of trial counsel.” *Leake v. State*, 737 N.W.2d 531, 536 (Minn. 2007). Unreviewable matters of trial strategy include “conduct[ing] cross-examination in a certain manner,” *State v. Irwin*, 379 N.W.2d 110, 115 (Minn. App. 1985), *rev. denied* (Minn. Jan. 23, 1986), deciding how to impeach adverse witnesses, *Andersen*, 830 N.W.2d at 13, and determining “[w]hich witnesses to call at trial and what information to present to the jury,” *State v. Jones*, 392 N.W.2d 224, 236 (Minn. 1986).

In his petition, Redd alleged that, as part of a “secondary transfer” defense theory, defense counsel should not have conceded that Redd’s DNA was present on the gun. Instead, Redd asserted that defense counsel should have presented scientific articles that

refuted the forensic scientist's conclusion that Redd's DNA was present. Redd also alleged that defense counsel's cross-examination was deficient because counsel "did not request review of his case from the specialized DNA team within the public defender's office nor did he even request the entire BCA file." Redd further contended that defense counsel should have consulted a forensic DNA expert. Lastly, Redd asserted that defense counsel should have consulted a specific attorney in the public defender's office to assist with trial preparation or "even conduct the cross-examination in Redd's case."

Redd's allegations relate to defense counsel's manner of cross-examination and decisions about what evidence to present and which witnesses to call. As the district court noted, rather than attacking the reliability of the DNA analysis linking Redd to the handgun, defense counsel instead argued that Redd's DNA could have gotten on the gun through a secondary transfer and that J.E. hid the gun in the vent. And defense counsel successfully elicited testimony from the forensic scientist casting doubt on the implication of the presence of Redd's DNA on the firearm. We are "in no position to second-guess counsel's decision to focus his strategy on other defenses instead of investigating" the alternative DNA theories Redd points to on appeal. *See Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004). We conclude that all of Redd's allegations of ineffectiveness fall firmly within unreviewable matters of trial strategy. Thus, even if Redd's trial-strategy allegations are true, he has not established that defense counsel's performance fell below an objective standard of reasonableness.

Because Redd has not satisfied the first *Strickland* prong, we need not reach the second. *Peltier*, 946 N.W.2d at 372. Therefore, the district court did not abuse its discretion by summarily denying Redd's postconviction petition. *See* Minn. Stat. § 590.04, subd. 1.

Affirmed.