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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0219**

State of Minnesota,
Respondent,

vs.

Phillip Eugene Turner,
Appellant.

**Filed February 3, 2025
Affirmed
Cochran, Judge**

Olmsted County District Court
File No. 55-CR-22-8670

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

Mark A. Ostrem, Olmsted County Attorney, James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

Paul D. Sellers, Minnesota Legal Defense, Eagan, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and Harris, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges his convictions of attempted second-degree intentional murder, first-degree assault, second-degree assault, and unlawful possession of a firearm. Appellant raises four arguments on appeal. First, he challenges the district court's decision

to deny his motion to suppress evidence stemming from the warrantless acquisition of his location via his cell-phone provider. Second, he argues that the district court erred by failing to consider a statutory basis for suppressing the same evidence. Next, he contends that he received ineffective assistance of trial counsel. Finally, he argues that his Fifth Amendment right against self-incrimination was violated by his trial counsel's disclosure of a prior conviction to the state as required by the Minnesota Rules of Criminal Procedure. We affirm.

FACTS

Following a shooting in Rochester on December 24, 2022, law enforcement identified appellant Phillip Eugene Turner as the suspected shooter and arrested him the next day. Respondent State of Minnesota charged Turner with attempted second-degree intentional murder in violation of Minnesota Statutes section 609.19, subdivision 1(1) (2022); first-degree assault in violation of Minnesota Statutes section 609.221, subdivision 1 (2022); and second-degree assault with a dangerous weapon in violation of Minnesota Statutes section 609.222, subdivision 2 (2022). Turner pleaded not guilty.

Amended Complaint and Motion to Dismiss New Charge

By an amended complaint, the state added a charge of ineligible person in possession of a firearm in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2022). The state amended the complaint after Turner's attorney disclosed to the state that Turner had a 2008 Illinois conviction. As a result of the Illinois conviction, Turner was ineligible to possess a firearm in Minnesota. *See* Minn. Stat. § 624.713, subd. 1(2).

Turner's defense attorney discovered the Illinois conviction through discussions with Turner. Defense counsel determined that the Illinois conviction was not referenced in any of the state's disclosures to the defense. Counsel recognized that the Minnesota Rules of Criminal Procedure required that he disclose the Illinois conviction to the state. *See* Minn. R. Crim. P. 9.02, subd. 1(8) (requiring the defense to "inform the prosecutor of any convictions the defendant has, provided the prosecutor informs the defense of the defendant's record of convictions known to the prosecutor"). Concerned that disclosure of the conviction as required by rule 9.02 would violate the attorney-client privilege, defense counsel contacted the Minnesota Office of Lawyers Professional Responsibility. The office told counsel that he "absolutely must disclose [the Illinois conviction]." Counsel disclosed the Illinois conviction to the state, and, within two days of the disclosure, the state amended its complaint to add the new charge based on the Illinois conviction.

Before trial, Turner moved to dismiss the unlawful-possession charge, arguing that his attorney's disclosure of the conviction violated his Fifth Amendment right "to be honest and open with his counsel and have that be inviolate and absolutely protected." The state countered that, regardless of the attorney's disclosure of the conviction, the state was "aware" of the Illinois conviction after checking Turner's criminal history and "would have been in a position to inquire further" about it.

The district court denied Turner's motion to dismiss the unlawful-possession charge. The district court determined that the disclosure of the Illinois conviction did not violate Turner's constitutional right against self-incrimination because his prior conviction "is a fact that can be discovered and verified by court records."

Turner's Motion to Suppress Evidence

In addition to moving to dismiss the unlawful-possession charge, Turner moved to suppress evidence seized as a result of his arrest. Turner argued that police only found and arrested him via an unconstitutional, warrantless search of his cell phone's real-time cell-site location information (CSLI). The district court held a contested omnibus hearing in April 2023, at which the court heard testimony from various law-enforcement officials involved in the investigation. A summary of that testimony follows.

An Officer Finds the Injured Victim

On Christmas Day 2022, J.B. was picking up his children from their mother's apartment in Rochester at 11:00 a.m. The children's mother, J.R., did not answer her phone or her apartment buzzer. J.B. grew concerned for J.R. and the children and contacted police to conduct a welfare check.

A patrol officer with the Rochester Police Department (Officer S) responded to J.R.'s apartment complex to conduct an in-person welfare check. Once inside the building, Officer S knocked on J.R.'s door. A five-year-old child (child 1), one of J.R. and J.B.'s children, answered the door. Officer S asked child 1 where J.R. was. Child 1 replied, "She's in her room covered in blood and I think she's dead."

Officer S cleared the apartment and determined that no one else was present. Then, Officer S located J.R. in her bedroom, where she was lying on the floor in a pool of blood. J.R. had injuries that looked recent and were consistent with a gunshot wound to her head. When Officer S called out her name, J.R. made "guttural" responses and "slightly move[d] her left arm." Officer S immediately summoned more units and an ambulance. While

waiting for backup, Officer S searched J.R.'s room for evidence. He discovered a bullet casing and an unfired round near J.R.'s body. Both the casing and the round were later determined to be .380 caliber. Officer S did not find a gun in the apartment. Officer S found another child, child 1's two-year-old sister, hiding in the living room.

Investigation

In the hours following the discovery of J.R., numerous law-enforcement officers conducted interviews and attempted to identify suspects. Detective J arrived at the apartment complex while the other officers were still on the scene. Detective J spoke with child 1, who reported that he had been home with his mom (J.R.), sister, and a man named Phil. Child 1 stated that, the previous day, they all had lunch and then he and his sister took a nap. When child 1 woke up, Phil was gone and J.R. was bleeding on the floor. Child 1 reported that Phil was a Black male.

Officers also spoke to members of J.R.'s family at the hospital where J.R. was taken by ambulance. The family members confirmed that a man named Phil Turner could have been at J.R.'s apartment at the time of the shooting. The family members also disclosed that J.R. and Turner worked together at a restaurant and had become friends. J.R.'s family described Turner as a Black male with dreadlocks and a slender build. J.R.'s brother said that Turner was from Chicago and that, if he were to leave Rochester, he would probably head back to Chicago.

The statements of child 1 and J.R.'s family were relayed to Sergeant V, who started searching for Turner. Sergeant V used "in-house systems" to identify multiple phone numbers and addresses associated with Turner. Sergeant V confirmed that one of the phone

numbers was still active. Sergeant V also assigned officers to check several addresses associated with Turner. Officers “cleared” those addresses and determined that Turner was not present. Investigators discovered that the most recent address associated with Turner was a residence belonging to S.H., who “was known to be a significant other of Mr. Turner.”

Investigators Ping Turner’s Cell Phone and Arrest Him

Around that time, Detective J informed Sergeant V that he had established probable cause to detain Turner. Detective J felt that law enforcement “had to figure out where [Turner] was.” Detective J was concerned because Turner (1) was “an armed suspect” who posed a danger to the public; (2) could discard his gun or other evidence; and (3) could flee. So, the investigators decided to ping Turner’s phone number.

Detective J did not apply for a warrant to ping Turner’s phone. Detective J testified that it could have taken several hours to prepare a search warrant application and get judicial authorization on Christmas Day. Given the concerns about the nature of the crime, the risks to public safety, and the possibility of Turner fleeing or disposing of evidence, Detective J considered the situation to be an emergency requiring quick action.

Detective J instructed dispatch to provide Turner’s cell-service provider with a request to ping Turner’s location. A timestamp on the request form shows that it was sent or received at 3:58 p.m. on Christmas Day. Approximately 15 minutes later, law enforcement received a ping showing Turner’s phone was in the vicinity of S.H.’s residence.

In an unmarked squad car, Detective M parked roughly two blocks away from S.H.'s residence and surveilled the front of the residence. No officers attempted to enter S.H.'s residence because Turner was presumed to be armed, and officers did not want to risk a conflict by entering the residence.

Officer MC, who was posted near the residence, saw someone leaving from the rear entrance. Detective M, who was about two blocks away, drove in that direction and saw the person walking along the road. The person was a Black male with his hood up and with a mask covering most of his face. The man's build matched Turner's. At the request of Detective M, another officer, Officer MU, made contact with the man and asked, "Are you Phillip?" The man answered, "Yes." Officer MU and Detective M then arrested Turner.

Officer MU took a backpack off Turner's person and then placed Turner in handcuffs. Officer MU searched Turner and seized a cell phone. Detective M searched through Turner's backpack and found a pistol holster and a pistol magazine containing six rounds of .380 caliber ammunition. Across the street from where Turner was arrested, another officer found a pistol in a plastic bag that was left on a snowbank. The pistol was loaded with an empty magazine similar to the one found in Turner's backpack.

The District Court Denies Turner's Motion to Suppress

In his motion to suppress, Turner argued that all evidence seized as a result of his arrest should be suppressed because it stemmed from the warrantless search of his real-time CSLI. The district court rejected Turner's motion, concluding that no search had occurred because Turner did not have a constitutionally protected expectation of privacy in his

real-time CSLI and, in the alternative, exigent circumstances authorized a warrantless search of his real-time CSLI. Following the district court's denial of his motions, Turner entered a demand for speedy trial.

Trial and Verdict

After a week-long trial, the jury found Turner guilty of all counts. The district court adjudicated convictions on all counts but sentenced Turner only for the attempted-murder and unlawful-possession counts. The district court committed Turner to the Commissioner of Corrections for concurrent sentences of 219 months and 60 months.

Turner appeals.

DECISION

Turner makes four arguments on appeal. First, he challenges the district court's denial of his motion to suppress, arguing that the search of his CSLI violated his constitutional rights. Second, Turner argues that the search of his CSLI was prohibited by Minnesota Statutes section 626A.42 (2022). Third, Turner argues that he received ineffective assistance of counsel. Lastly, he asserts that his attorney's disclosure of his Illinois conviction to the state, as required by rule 9.02 of the Minnesota Rules of Criminal Procedure, violated his constitutional right against self-incrimination.

I. The district court did not err by concluding the warrantless search of Turner's CSLI did not violate the constitutional prohibition against unreasonable searches and seizures.

Turner first argues that the district court erred by denying his motion to suppress because the evidence at issue was seized as a result of a warrantless search of his real-time CSLI in violation of the federal and state constitutions. "When reviewing a district court's

pretrial order on a motion to suppress evidence, we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). We “may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed.” *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

The federal and state constitutions protect “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV; *accord* Minn. Const. art. I, § 10. A “search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable.” *Kyllo v. United States*, 533 U.S. 27, 33 (2001). “[T]he ultimate measure of the constitutionality of a governmental search is reasonableness.” *Maryland v. King*, 569 U.S. 435, 447 (2013) (quotations omitted). “Warrantless searches are presumptively unreasonable unless one of ‘a few specifically established and well-delineated exceptions’ applies.” *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)).

“One well-recognized exception applies when the exigencies of the situation make the needs of law enforcement so compelling that a warrantless search is objectively reasonable under the Fourth Amendment.” *Kentucky v. King*, 563 U.S. 452, 460 (2011) (quotations omitted). “In determining whether exigent circumstances exist, courts follow a totality-of-the-circumstances approach.” *State v. Trahan*, 886 N.W.2d 216, 222 (Minn. 2016) (citing *Missouri v. McNeely*, 569 U.S. 141, 149 (2013)). Courts apply six factors, the *Dorman* factors, in determining whether the totality of the circumstances

establish an exigency sufficient to make the search reasonable within the meaning of the constitution and thereby overcome the presumptive warrant requirement:

(a) whether a grave or violent offense is involved; (b) whether the suspect is reasonably believed to be armed; (c) whether there is strong probable cause connecting the suspect to the offense; (d) whether police have strong reason to believe the suspect is on the premises; (e) whether it is likely the suspect will escape if not swiftly apprehended; and (f) whether peaceable entry was made.

State v. Gray, 456 N.W.2d 251, 256 (Minn. 1990) (citing *Dorman v. United States*, 435 F.2d 385, 392-93 (D.C. Cir. 1970)). It is the state's burden to establish the existence of an exception to the constitutional warrant requirement. *Licari*, 659 N.W.2d at 250.

The district court concluded that no Fourth Amendment search occurred here because Turner did not have a reasonable expectation of privacy in his real-time CSLI. The district court further concluded that, even if Turner did have a reasonable expectation of privacy in his real-time CSLI, the totality of the circumstances established “an exigency . . . that required law enforcement to obtain” Turner’s CSLI and therefore the CSLI search was exempt from the constitutional warrant requirement. In reaching this conclusion, the district court considered the *Dorman* factors. The district court found that (1) “[t]he offense in question [was] undoubtedly grave and violent,” (2) “[a]fter observing the victim’s injuries and doing a cursory look around the apartment, law enforcement reasonably believed that [Turner] was in possession of the firearm, as no firearm was located in the victim’s apartment,” (3) “there was probable cause linking [Turner] to the crime being investigated,” and (4) “law enforcement had received information that [Turner] had ties to Chicago” and therefore could flee the state. In support of the

probable-cause piece, the district court further found that, at the time of the request to ping Turner's phone, law enforcement knew that:

(1) a man named 'Phil' may have been present at the scene of the shooting, (2) a man named 'Phil' had been working at [a restaurant] with the victim, and that this man was [B]lack and had dread locks, (3) a vehicle was located in [the restaurant's] parking lot that was registered to Phillip Turner, and (4) the minor child who had been present at the apartment told investigators that 'Phil' had been present at the apartment and that Phil was gone when the minor child awoke from a nap.

"[W]eighing the totality of the circumstances," the district court determined "there was ample cause under the *Dorman* factors to justify the warrantless search of [Turner's] real-time [CSLI]."

Turner contends that the district court erred in its analysis. Turner first argues that the district court erred when it determined that he did not have a reasonable expectation of privacy in his real-time CSLI. He next argues that the exigency exception to the constitutional warrant requirement does not support the search of his CSLI. The state counters that Turner did not have a reasonable expectation of privacy in his real-time CSLI, and therefore no warrant was required. In the alternative, the state argues that the warrantless acquisition of Turner's CSLI was lawful under the exigency exception. Assuming without deciding that Turner had a reasonable expectation of privacy in his real-time CSLI, we turn to whether the district court correctly determined that exigent circumstances supported the warrantless search of Turner's real-time CSLI.

Turner does not challenge the district court's findings on the *Dorman* factors. Instead, Turner argues the district court's legal conclusion "is contradicted by the facts"

and that the actual “exigency relied upon by [law enforcement] was merely their own desire to quickly apprehend [Turner].” He further argues that the constitutional protection against unreasonable searches supersedes the government’s interest in making “quick arrest[s].” But Turner ignores that the warrantless acquisition of his CSLI was justified by far more than the need to make a quick arrest. The uncontradicted evidence in the record shows that police found J.R. lying in a pool of her own blood caused by a gunshot wound to her head but were unable to find a gun at the scene. As a result, police faced a situation in which the presumptively armed Turner could have harmed others. And police discovered that Turner had multiple known addresses but were unable to find him after searching several of the addresses. By acquiring Turner’s real-time CSLI, police were able to expeditiously ensure that no one else was harmed by Turner and that Turner did not flee the state. Police were also able to limit the possibility that evidence was destroyed or lost by Turner. By arguing that police were overeager to make a quick arrest, Turner fails to address these serious exigent circumstances faced by law enforcement. His argument is therefore unavailing.

In sum, we agree with the district court that the circumstances following J.R.’s shooting were sufficiently exigent to make the warrantless search of Turner’s CSLI objectively reasonable under both the federal and state constitutions. We therefore conclude that the district court did not err by denying Turner’s motion to suppress based on the exigency exception.

II. Turner has forfeited his argument on the applicability of section 626A.42.

Next, Turner argues the district court erred in denying his motion to suppress because section 626A.42 “clear[ly] and unequivocal[ly]” requires the suppression of evidence obtained in connection with law enforcement’s warrantless acquisition of his real-time CSLI.¹ Turner did not raise an argument based on section 626A.42 before the district court. Generally, “[w]e do not decide issues which are not first addressed by the [district] court and are raised for the first time on appeal.” *State v. Roby*, 463 N.W.2d 506, 508 (Minn. 1990) (quotation omitted). Nonetheless, Turner asserts that this court should consider his argument and apply the plain-error standard of review. The state agrees, without much analysis, that the plain-error standard controls our review of this argument.

Despite the state’s agreement, we are obliged “to ‘decide cases in accordance with [the] law’ even when the parties agree on an issue.” *State v. Brown*, 937 N.W.2d 146, 157 (Minn. App. 2019) (quoting *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990)), *rev. denied* (Minn. Feb. 18, 2020). Based on our independent review of the applicable

¹ Section 626A.42 concerns “electronic device location information.” Under that section, “a government entity may not obtain the location information of an electronic device or unique identifier without a tracking warrant.” Minn. Stat. § 626A.42, subd. 2(a). An electronic device is defined as “a device that enables access to or use of an electronic communication service, remote computing service, or location information service.” *Id.*, subd. 1(c). A “tracking warrant” is defined as “an order in writing, in the name of the state, signed by a court other than a court exercising probate jurisdiction, directed to a peace officer, granting the officer access to location information of an electronic device or unique identifier.” *Id.*, subd. 1(h). Section 626A.42 provides that, “[e]xcept as proof of a violation of this section, no evidence obtained in violation of this section shall be admissible in any criminal, civil, administrative, or other proceeding.” *Id.*, subd. 6(a).

caselaw and rules, we conclude that Turner’s statutory argument is not subject to plain-error review but rather is forfeited based on the standard announced in *Roby*.

Under Minnesota Rule of Criminal Procedure 31.02, “[p]lain error affecting a substantial right can be considered by the court . . . on appeal even if it was not brought to the [district] court’s attention.” The supreme court’s application of rule 31.02 demonstrates that plain-error review is generally reserved for *unobjected-to trial errors*. See, e.g., *Montanaro v. State*, 802 N.W.2d 726, 732-34 (Minn. 2011) (observing that the plain-error rule gives courts “the discretion to review an unobjected-to trial error,” and reviewing unobjected-to prosecutorial misconduct during trial for plain error); *State v. Drew*, 889 N.W.2d 323, 329-30 (Minn. App. 2017) (reviewing unobjected-to evidentiary ruling at trial for plain error); *State v. Griller*, 583 N.W.2d 736, 740 (Minn. 1998) (reviewing unobjected-to jury instructions for plain error).

We are not convinced that rule 31.02 requires this court to open the door to appellants raising new legal arguments on appeal that were not first presented to the district court. Rule 31.02 provides that an appellate court “can” consider plain error on appeal even if the issue was not raised before the district court, but the rule does not require an appellate court to consider an argument based on plain error. And the types of errors that have been considered by appellate courts under the plain-error standard—prosecutorial misconduct, evidentiary rulings, and jury instructions that are unobjected to at trial—are distinguishable from a party’s failure to raise (and a district court’s purported failure to consider) an entire theory for the suppression of evidence prior to trial. In the case of the former, identifying the error and assessing whether it is plain is a straightforward task—

we look to see if the prosecutor’s conduct, the evidentiary ruling, or the jury instruction “contravenes case law, a rule, or a standard of conduct.” *State v. Barrientos-Quintana*, 787 N.W.2d 603, 612 (Minn. 2010) (quotation omitted). In the case of the latter, it is unclear to whom the error is even attributable. Turner would have us assign error to the district court here for failing to address an argument that Turner did not even ask the court to consider. But, if anything, Turner’s argument is better suited for a claim of ineffective assistance of counsel, which we address below.

For these reasons, we decline to accept the parties’ invitation to review Turner’s argument for plain error. Instead, we are persuaded that *Roby* controls our review, and we conclude that Turner has forfeited his argument for suppression pursuant to section 626A.42. To conclude otherwise would permit appellants to raise a wide range of legal issues for the first time on appeal, which runs counter to our role as an error-correcting court.

III. Turner has not shown that he received ineffective assistance of counsel.

Turner next asserts that his trial counsel was ineffective. Criminal defendants enjoy the right to effective assistance of counsel under the federal and state constitutions. U.S. Const. amend. VI; Minn. Const. art. I, § 6; *Crow v. State*, 923 N.W.2d 2, 14 (Minn. 2019).

When a claim for ineffective assistance of counsel is properly before this court, we follow the two-step framework announced by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, the defendant has the burden to show that “(1) counsel’s performance ‘fell below an objective standard of reasonableness,’ and (2) but for counsel’s error, the outcome of the proceeding would have

been different.” *State v. Smith*, 9 N.W.3d 543, 556 (Minn. 2024) (quoting *Strickland*, 466 U.S. at 688).

Claims of ineffective assistance of counsel should typically be raised in a postconviction petition for relief, rather than on direct appeal. *State v. Ellis-Strong*, 899 N.W.2d 531, 535 (Minn. App. 2017). That is “because an evidentiary hearing, if granted, provides the district court with additional facts to explain the parties’ decisions.” *Id.* But “[w]hen a claim of ineffective assistance of trial counsel can be determined on the basis of the trial record,” the claim is properly before this court on direct appeal. *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013).

Turner raises two ineffective-assistance-of-counsel theories. First, he contends that his counsel was ineffective for failing to raise an argument based on section 626A.42 in support of his motion to suppress. We conclude that the record is not sufficiently developed to determine whether trial counsel was ineffective in this regard. There is no evidence in the record regarding counsel’s reasons, or lack thereof, for declining to rely on section 626A.42 in support of the motion to suppress. Trial counsel may have had an objectively reasonable basis for concluding that a motion to suppress pursuant to section 626A.42 was unlikely to succeed. But without further development of the record, we cannot assess trial counsel’s performance. We therefore decline to decide the issue.²

Second, Turner argues that trial counsel was ineffective for disclosing Turner’s Illinois conviction to the state. On this issue, we are satisfied that the record is sufficiently

² Turner may raise this issue in a postconviction petition. We express no opinion as to the merits of the argument.

developed to address Turner's argument. The record before us reflects that, at a pretrial hearing, trial counsel stated that he was reluctant to disclose the Illinois conviction and did so only after consulting with the Minnesota Office of Lawyers Professional Responsibility. According to trial counsel, the office instructed him that he was obligated to disclose the Illinois conviction under rule 9.02. After disclosing the conviction, Turner's trial counsel then moved to dismiss the resulting unlawful-possession charge. Counsel argued that the charge, which resulted from the disclosure of the Illinois conviction, violated Turner's Fifth Amendment rights and the attorney-client privilege.

The foregoing circumstances demonstrate that trial counsel was diligent both in meeting his professional obligation to disclose the conviction under rule 9.02 and in moving to dismiss the resulting charge by raising constitutional and privilege concerns over the disclosure. Based on these facts, we are convinced that trial counsel's performance was objectively reasonable. Because Turner has not satisfied his burden under the first prong of *Strickland* regarding this claim, we need not analyze the second prong of the *Strickland* test. See *Smith*, 9 N.W.3d at 556 (noting that appellate courts "need not analyze both prongs if either one is determinative").

In sum, Turner's first claim of ineffective assistance of counsel is not properly before this court, and his second claim does not warrant reversal.

IV. Turner has not met his heavy burden of demonstrating that rule 9.02, subdivision 1(8), violates the Fifth Amendment.

Lastly, Turner raises a constitutional argument based on the Fifth Amendment. Turner contends that disclosure of his Illinois conviction as required by rule 9.02 violated

his rights under the Fifth Amendment, and therefore the district court erred by failing to dismiss the unlawful-possession charge premised on that conviction. Appellate courts review questions arising under the Fifth Amendment de novo. *State v. Diamond*, 905 N.W.2d 870, 873 (Minn. 2018). And appellate courts presume court rules to be constitutional; “to demonstrate otherwise is a very heavy burden.” *In re Panel Case No. 44387*, 932 N.W.2d 310, 315 (Minn. 2019).

Rule 9.02 provides:

The defendant *must*, at the prosecutor’s request and before the Rule 11 Omnibus Hearing, make the following disclosures and permit the prosecutor to inspect and reproduce them:

. . . .

(8) Criminal Record. The defendant must inform the prosecutor of any convictions the defendant has, provided the prosecutor informs the defense of the defendant’s record of convictions known to the prosecutor.

Minn. R. Crim. P. 9.02, subd. 1(8) (emphasis added).

“The Fifth Amendment, applicable to the states through the Fourteenth Amendment, provides that ‘no person . . . shall be compelled in any criminal case to be a witness against himself.’ *Diamond*, 905 N.W.2d at 873 (quoting U.S. Const. amend. V) (citation omitted). “[T]he Fifth Amendment privilege is a personal privilege: it adheres basically to the person, not to information that may incriminate him.” *Couch v. United States*, 409 U.S. 322, 328 (1973). Thus, “[a] party is privileged from producing [incriminating] evidence, but not from its production.” *Id.* (quotation omitted). “The privilege against self-incrimination

bars the state from (1) compelling a defendant (2) to make a testimonial communication to the state (3) that is incriminating.” *Diamond*, 905 N.W.2d at 873.

Turner has not met his “very heavy burden” of demonstrating the unconstitutionality of rule 9.02. Turner cites no authority suggesting that rule 9.02’s disclosure requirements violate his Fifth Amendment rights. Nor does Turner explain how the rule’s disclosure requirement equates to the state compelling Turner to testify against himself. As the district court observed, the existence of the Illinois conviction “is a fact that can be discovered and verified by court records.” Significantly, Turner’s discussion with his attorney about the Illinois conviction was not used as evidence of the Illinois conviction at trial. Instead, the state relied on certified records from Illinois demonstrating that Turner was convicted of a drug offense in 2008. And, while the rule required Turner’s attorney to disclose the existence of Turner’s prior convictions, the existence of the Illinois conviction is publicly accessible and could have been verified without Turner’s disclosure. Turner’s reliance on United States Supreme Court precedent to suggest otherwise is therefore unavailing. *C.f. Curcio v. United States*, 354 U.S. 118, 128 (1957) (holding that requiring records custodian to testify about the location of undisclosed, private records would “require[] him to disclose the contents of his own mind” in violation of the Fifth Amendment). Because Turner has not met his “very heavy burden” of establishing that rule 9.02 is unconstitutional, we conclude that the district court did not err by refusing to dismiss the charge for unlawful possession of a firearm based on the Illinois conviction.

Affirmed.