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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0663**

State of Minnesota,
Respondent,

vs.

Barry Alan Klingelhoets,
Appellant.

**Filed April 27, 2026
Affirmed
Ede, Judge**

Meeker County District Court
File No. 47-CR-23-1166

Keith Ellison, Attorney General, Timothy C. Rank, Assistant Attorney General, St. Paul, Minnesota; and

Brandi Schiefelbein, Meeker County Attorney, John P. Fitzgerald, First Assistant Attorney, Litchfield, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrew C. Wilson, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ede, Presiding Judge; Bentley, Judge; and Smith, John P., Judge.*

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

NONPRECEDENTIAL OPINION

EDE, Judge

In this direct appeal from final judgments of conviction for first- and second-degree burglary, unlawful possession of a firearm, unlawful possession of ammunition, and fifth-degree drug possession, appellant argues: (1) that the district court erred in denying his motion for judgment of acquittal after respondent rested its case-in-chief because the evidence was insufficient to prove that he constructively possessed certain items relating to the underlying charges; (2) that the court abused its discretion by declining to provide a jury instruction that he requested on circumstantial evidence; (3) that the court committed a structural error by not inviting him to allocute at sentencing; and (4) that, if the court's failure to invite him to allocute was not a structural error, he is entitled to be resentenced after being provided an opportunity to do so. We affirm.

FACTS

Respondent State of Minnesota charged appellant Barry Alan Klingelhoets by amended complaint with five counts: first-degree burglary, in violation of Minnesota Statutes section 609.582, subdivision 1(b) (2022); second-degree burglary, in violation of Minnesota Statutes section 609.582, subdivision 2(a)(4) (2022); unlawful possession of a firearm, in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2022); unlawful possession of ammunition, in violation of Minnesota Statutes section 624.713, subdivision 1(2); and fifth-degree possession of a controlled substance, in violation of Minnesota Statutes section 152.025, subdivision 2(1) (2022). These charges arose from an investigation following a call to law enforcement that reported someone had entered a

building without permission. The matter proceeded to a four-day trial, after which a jury found Klingelhoets guilty of all charges. Consistent with applicable law, the following factual summary is based on the trial evidence and presented in the light most favorable to the state.¹

Underlying Incident and Investigation

In the evening hours of December 26, 2023, D.J. received a notification from a surveillance camera that “somebody was in [a] building” in which D.J. rented space. The building, which was leased to D.J. and two other tenants, is a two-story “big warehouse.” D.J. rented a section of the building for the purpose of storing plumbing materials. A week before the December 26 incident, the building had been burglarized and several tenants, including D.J., had items stolen. In a photograph captured by the surveillance camera on December 26, a person wearing a backpack and a jacket with a hood covering his head can be seen looking through boxes in the building.

After D.J. received the notification from his camera on December 26, he called law enforcement and went to the building with his brother and his son, arriving at around 9:30 p.m. D.J., his brother, and his son “set up a perimeter” around the building to watch for anyone leaving, but they saw no one exit.

¹ See *State v. Firkus*, 31 N.W.3d 468, 493 (Minn. 2026) (concluding that, “when asked to rule on a motion for a judgment of acquittal before a verdict has been returned, a district court should view the evidence in the light most favorable to the State”); see also *Allwine v. State*, 994 N.W.2d 528, 537 (Minn. 2023) (explaining that, in considering a district court’s decision on a motion for judgment of acquittal, appellate courts “view all the evidence presented and draw any inferences in favor of the State”).

Law enforcement later arrived, set up their own perimeter around the building, announced their presence over a loudspeaker, encouraged the suspect to come out, stated that a police canine was on the scene, and said that there was a risk that the suspect could be bitten. Four officers and a police canine entered the building and attempted to find the suspect. After searching, the canine located Klingelhoets on the floor of a room inside the building. When he was arrested, Klingelhoets was wearing a hooded jacket and gloves with a leather or rubber exterior on both of his hands.

Near the location of Klingelhoets's arrest, law enforcement found a wrench, a butane torch, a lighter, and a glass pipe containing a substance that later tested positive for methamphetamine. The officers searched the rest of the building and did not find evidence that another individual had been present during the incident. Law enforcement also found a backpack on the ground roughly 20 feet away from where they arrested Klingelhoets.² The backpack contained 399 rounds of .22-caliber ammunition, a .22-caliber magazine, a container of gunpowder, a gun-cleaning kit, a screwdriver, and other tools. The officers found no other backpacks in the building. In addition, law enforcement observed that a wooden door on the outside of the building had been pried loose, which created an opening that allowed access inside.

The next day, two carpenters who were working to repair the wooden door called law enforcement because they had found a firearm in the building. The firearm was in a

² While we acknowledge there was some trial testimony that the backpack was 50 feet away from where law enforcement found Klingelhoets, other testimony by several officers establishes that the backpack was located at a distance of about 20 feet from him.

drawer in the same room in which law enforcement had discovered Klingelhoets. Because both carpenters handled the firearm before law enforcement arrived, an officer obtained deoxyribonucleic acid (DNA) samples from each carpenter. Forensic analysis of the firearm later revealed the presence of three DNA profiles, including a mixture of both carpenters' DNA; Klingelhoets's DNA profile was excluded. Although it was missing a "[s]tock, trigger guard, [and] foregrip," the firearm "had a trigger mechanism, an action, and a barrel," which made it capable of firing. Law enforcement "dry fir[ed]" the firearm to confirm its capability to fire bullets. And a forensic scientist determined that the firearm was a fully functional "Remington Model 41 22 Short, 22 Long or 22 Long Rifle caliber rifle."

Trial

On the first day of trial, Klingelhoets requested that the district court add the following language to a pattern jury instruction on circumstantial evidence: "In order to return a verdict of guilty on the basis of circumstantial evidence, all circumstances proved must be consistent with that conclusion and inconsistent with any other rational conclusion." The district court denied Klingelhoets's request based on its determinations that it was not "the standard for a jury" and that the requested "heightened scrutiny [was] an applied standard for appeal."

After the state rested its case-in-chief, Klingelhoets moved for a judgment of acquittal as to all the charges. Citing *State v. Sam*, 859 N.W.2d 825 (Minn. App. 2015), Klingelhoets asserted that the district court was required to "apply the same standard [that] appellate courts use to review challenges to the sufficiency of evidence," that the charged

“counts [were] based on circumstantial evidence,” and that “there [were] several reasonable hypotheses other than guilt.”³ The district court denied Klingelhoets’s motion, reasoning that “the issue [was] whether or not there [was] sufficient evidence to go to the jury,” that “circumstantial evidence is not treated differently than direct evidence,” and that there was sufficient evidence of each charge for the jury’s consideration.

The jury found Klingelhoets guilty of all charges.

Sentencing

Prior to the sentencing hearing, the district court reviewed the presentence investigation report (PSI) and the sentencing worksheet. At the sentencing hearing, the district court stated that it considered these materials. The district court also explained that it had reviewed the PSI and the victim impact statement. Klingelhoets did not make a statement and the court did not invite him to allocute before it sentenced him.

The district court convicted Klingelhoets of all five offenses and imposed four concurrent, presumptive sentences under the Minnesota Sentencing Guidelines: 68 months’ imprisonment for first-degree burglary; 60 months’ imprisonment for unlawful possession of a firearm; 60 months’ imprisonment for unlawful possession of ammunition; and a stayed sentence of 19 months’ imprisonment for fifth-degree possession of a controlled substance. As to second-degree burglary, the district court did not impose a

³ “In *Sam*, the court of appeals held that district courts must apply the circumstantial-evidence test to motions for judgment of acquittal when the State’s case rests on circumstantial evidence.” *Firkus*, 31 N.W.3d at 491 (citing *Sam*, 859 N.W.2d at 831). “But unlike [Klingelhoets’s] motion[] for judgment of acquittal, which [was] made and decided before the verdict was returned, the motion in *Sam* was made after the jury returned a guilty verdict.” *Id.* (citing *Sam*, 859 N.W.2d at 821).

sentence because it determined that the charge was an included offense of first-degree burglary.

This appeal follows.

DECISION

Klingelhoets challenges his convictions and sentences on several grounds. He asserts: (1) that the district court erred in denying his motion for judgment of acquittal after the state rested its case-in-chief because the evidence was insufficient to prove that he constructively possessed the firearm, the backpack and its contents, and the other items that law enforcement found near him; (2) that the court erred in declining to provide his requested jury instruction on circumstantial evidence; (3) that the court committed a structural error by not inviting him to allocute at sentencing; and (4) that, if the court's failure to invite him to allocute was not a structural error, he is entitled to be resentenced after being provided an opportunity to do so.

As elaborated on below, we conclude that the district court did not err in denying Klingelhoets's motion for judgment of acquittal because, viewing the evidence in the light most favorable to the state, a jury could reasonably conclude that Klingelhoets was guilty. Moreover, we conclude that the court acted within its discretion in declining to provide Klingelhoets's requested jury instruction on circumstantial evidence. We also conclude that the court did not commit a structural error by failing to invite Klingelhoets to allocute at sentencing. And we conclude that the lack of allocution was a harmless error. We next address each of Klingelhoets's arguments in turn.

I. The district court did not err in denying Klingelhoets’s motion for judgment of acquittal.

In maintaining that “the district court erred in denying [his] motion for judgment of acquittal,” Klingelhoets contends that “there was insufficient circumstantial evidence” and “the circumstances proved were . . . consistent with a reasonable hypothesis other than that of guilt.” The state counters that the evidence was sufficient. We agree with the state, beginning with (A) a discussion of the applicable law and standard of review before turning to (B) our analysis of the district court’s decision to deny Klingelhoets’s motion for judgment of acquittal.

A. Applicable Law and Standard of Review

When he moved for judgment of acquittal, Klingelhoets relied on our decision in *Sam* and argued that the district court needed to “apply the same standard [that] appellate courts use to review challenges to the sufficiency of evidence.” On appeal, Klingelhoets and the state both assert that the circumstantial-evidence standard of review governs our analysis.⁴ Despite the parties’ agreement, the Minnesota Supreme Court’s decision in *Firkus* is controlling.

⁴ Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). When a *conviction* rests on circumstantial evidence, “[appellate courts] apply a two-step test to assess the sufficiency of the evidence.” *Firkus*, 31 N.W.3d at 478. First, appellate courts must “winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury’s verdict, which results in a subset of facts that constitute the circumstances proved.” *Id.* (quotations omitted). Second, appellate courts “consider whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* (quotation omitted). “During the second step, [appellate

“Upon the adoption of the Minnesota Rules of Criminal Procedure, motions for a judgment of acquittal replaced motions for a directed verdict, although substantively they are the same.” *Id.* at 491 (citing Minn. R. Crim. P. 26.03, subd. 17(1) (1976) (“Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place.”)); *see also State v. Slaughter*, 691 N.W.2d 70, 74 (Minn. 2005) (“A motion for acquittal is procedurally equivalent to a motion for a directed verdict.”). “A motion for a directed verdict presents the district court with a question of law.” *State v. McCormick*, 835 N.W.2d 498, 506 (Minn. App. 2013) (citing *M.W. Ettinger Transfer & Leasing Co. v. Schaper Mfg., Inc.*, 494 N.W.2d 29, 34 (Minn. 1992)), *rev. denied* (Minn. Oct. 15, 2013). “We review questions of law de novo and our review is not deferential.” *State v. Mattson-McCarty*, 30 N.W.3d 822, 827 (Minn. App. 2025) (quotations omitted), *rev. denied* (Minn. Mar. 18, 2026); *see also Firkus*, 31 N.W.3d at 493 (applying de novo review to a district court’s decision to deny “motions for judgment of acquittal [that] were made by [the appellant] and decided by the district court before a verdict was returned” and “conclud[ing] that the district court did not err in applying the sufficiency-of-the-evidence test for direct evidence when it denied the motions”).

A motion for judgment of acquittal “may be made at the close of the prosecution’s case, in which case a district court must rule on the motion and is prohibited from reserving

courts] do not defer to the factfinder but examine the reasonableness of the inferences” and, “[i]f the circumstances proved when viewed as a whole, support a reasonable inference that is inconsistent with guilt, the evidence is not sufficient to support the conviction and [appellate courts] must reverse.” *Id.* at 486 (quotations omitted). “But [appellate courts] will not reverse a conviction based on mere conjecture.” *Id.* (quotation omitted).

its ruling.” *Firkus*, 31 N.W.3d at 491 (citing Minn. R. Crim. P. 26.03, subds. 18(1)(a), 18(2)) (other citation omitted). “When a defendant moves for a judgment of acquittal at the close of the State’s evidence, the district court must hold the State to its burden.” *Id.* at 492 n.18. “The district court must rule and may not reserve its ruling until after the jury deliberates.” *Id.* (citing Minn. R. Crim. P. 26.03 subd. 18(2)). “That is because, given the presumption of innocence and the state’s burden to prove the offense, a defendant has no obligation to present any evidence and should not be put at risk of providing evidence that fills gaps in the state’s case.” *Id.* (quotation omitted); *see also State v. Nyonteh*, 24 N.W.3d 271, 283 (Minn. 2025) (“In a criminal proceeding, under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the State must prove every element of the offense beyond a reasonable doubt.” (quotation omitted)). “A defendant cannot be compelled to put on a case when the State has not met its burden.” *Firkus*, 31 N.W.3d at 492 n.18.

“Under . . . [Minnesota Rule of Criminal Procedure 26.03], a motion for a judgment of acquittal must be granted ‘if the evidence is insufficient to sustain a conviction.’” *Id.* at 492 (quoting Minn. R. Crim. P. 26.03, subd. 18(1)(a)). The Minnesota Supreme Court has “generally described that the test for granting a motion for a directed verdict is whether the evidence is sufficient to present a fact question for the jury’s determination, after viewing the evidence and all resulting inferences in favor of the state.” *Id.* (quotation omitted); *see also Allwine*, 994 N.W.2d at 537 (explaining that “[t]he test for granting a motion for acquittal is whether the evidence is sufficient to present a fact question for the jury’s determination” and that, in considering a district court’s decision on a motion for judgment

of acquittal, appellate courts “view all the evidence presented and draw any inferences in favor of the State” (quotation omitted)). “In determining whether to grant the motion, the district court does not consider the weight and credibility of the evidence.” *Allwine*, 994 N.W.2d at 537. And the supreme court has “stated that a ‘district court may only deny the motion when the evidence is sufficient to present *a factual question* for the jury.’” *Firkus*, 31 N.W.3d at 492 (alteration in original) (quoting *Allwine*, 994 N.W.2d at 537).

In *Firkus*, the appellant challenged the district court’s denial of his motions for judgment of acquittal, which the appellant made after the state rested its case and which the district court decided before the verdict was returned. *Id.* at 491. As Klingelhoets did in the district court, the appellant in *Firkus* cited *Sam*, 859 N.W.2d at 830, and “argue[d] [that] the district court should have applied the circumstantial-evidence standard that appellate courts use when reviewing the sufficiency of circumstantial evidence after a jury has returned a guilty verdict.” *Id.*

In rejecting the appellant’s argument, the supreme court observed that it had “not previously instructed district courts to apply the *appellate* standards for reviewing the sufficiency of the evidence after a verdict has been returned in considering motions for a judgment of acquittal during trial.” *Id.* at 492. The supreme court furthermore explained that it had “not [said] that the district court must use the two-step circumstantial-evidence test when deciding a motion for a judgment of acquittal in a circumstantial-evidence case.” *Id.* The supreme court held that “the standard proposed by [the appellant in *Firkus*], and adopted by the court of appeals in *Sam*, is unworkable for two reasons: first, the logical

impossibility of applying the test prior to a verdict; and second, the mandatory time restraints in the district court.” *Id.*

Thus, the supreme court

conclude[d] that when asked to rule on a motion for a judgment of acquittal before a verdict has been returned, a district court should view the evidence in the light most favorable to the State and determine whether a jury could reasonably conclude that the defendant was guilty—the general sufficiency-of-the-evidence standard, not the heightened circumstantial-evidence test—regardless of the type of evidence produced at trial.

Id. at 493 (footnote omitted). Applying this standard, the supreme court ruled that “the district court did not err in applying the sufficiency-of-the-evidence test for direct evidence when it denied the [appellant’s] motions [for judgment of acquittal].” *Id.* And the supreme court noted that, “[u]nder the direct-evidence standard, a court views the evidence and all resulting inferences in favor of the State and asks whether the evidence is sufficient to present a fact question for the jury’s determination, and, if so, whether a reasonable jury could find the defendant guilty beyond a reasonable doubt.” *Id.* at 477 n.5.

We now apply these principles in reviewing the district court’s decision to deny Klingelhoets’s motion for judgment of acquittal.⁵

⁵ We emphasize that, although he asserts that the circumstantial-evidence standard of review applies, Klingelhoets expressly frames his sufficiency-of-the-evidence argument throughout his appellate briefing as relating to the district court’s decision to deny his pre-verdict motion for judgment of acquittal, not in terms of the sufficiency of the evidence to sustain his convictions. For example, Klingelhoets describes this issue as: “Did the district court err in denying [Klingelhoets’s] motion for judgment of acquittal where there was insufficient circumstantial evidence of [his] constructive possession of the firearm, backpack, and the other items?” And in concluding both his opening and reply briefs, Klingelhoets maintains that this court “should reverse because the district court erred in denying [his] motion for judgment of acquittal.” The Minnesota Supreme Court has “long

B. Viewing the evidence in the light most favorable to the state, a jury could reasonably conclude that Klingelhoets was guilty of all charges, regardless of the type of evidence produced at trial.

To establish Klingelhoets's guilt of first-degree burglary under Minnesota Statutes section 609.582, subdivision 1(b), the prosecution was required to prove that he entered "a building without consent and with intent to commit a crime, or enter[ed] a building without consent and commit[ted] a crime while in the building" and that he possessed "a dangerous weapon" when he entered the building or at any time that he was in the building. Minn. Stat § 609.582, subd. 1(b); *see also State v. Jones*, 921 N.W.2d 774, 779 (Minn. App. 2018) (discussing the essential elements of first-degree burglary under Minnesota Statutes section 609.582, subd. 1(b) (2016)), *rev. denied* (Minn. Feb. 27, 2019). "'Dangerous weapon' means any firearm, whether loaded or unloaded" Minn. Stat. § 609.02, subd. 6 (2022).

As to second-degree burglary under Minnesota Statutes section 609.582, subdivision 2(a)(4), the state had to establish that Klingelhoets committed burglary while possessing a tool for the purpose of gaining access to money or property. *State v. Nixon*, 957 N.W.2d 131, 133, 134–35, 137 (Minn. App. 2021) (addressing a sufficiency-of-the-evidence challenge to a conviction under Minn. Stat. § 609.582, subd. 2(a)(4) (2016)); *see*

held that a party forfeits appellate review by failing to brief or argue an issue on appeal." *State v. Robinette*, 964 N.W.2d 143, 147 n.6 (Minn. 2021) (discussing "the axiomatic principle that issues not argued in the briefs are deemed waived on appeal" (quotation omitted)). Based on our careful review of the record, however, even if Klingelhoets had not forfeited a sufficiency-of-the-evidence challenge to his convictions and the circumstantial-evidence standard of review applied here, we would still affirm because the circumstances proved, when viewed as a whole, do not support a reasonable inference inconsistent with guilt as to each offense of which he was convicted. *See Firkus*, 31 N.W.3d at 484.

also Minn. Stat. § 609.582, subd. 2(a)(4) (“Whoever enters a building without consent and with intent to commit a crime, or enters a building without consent and commits a crime while in the building, . . . commits burglary in the second degree . . . if[,] . . . when entering or while in the building, the burglar possesses a tool to gain access to money or property.”).

To prove Klingelhoets guilty of unlawful possession of a firearm and unlawful possession of ammunition under Minnesota Statutes section 624.713, subdivision 1(2), the state was required to prove that he was “a person who ha[d] been convicted of . . . a crime of violence” and was therefore not “entitled to possess ammunition or a pistol or semiautomatic military-style assault weapon.” Minn. Stat. § 624.713, subd. 1(2); *see also Harris*, 895 N.W.2d at 601 (“To convict [the appellant] of possession of a firearm by an ineligible person, the State was required to prove in relevant part that he knowingly possessed the firearm.”).

And a “person is guilty of controlled substance crime in the fifth degree . . . if . . . the person unlawfully possesses one or more mixtures containing a controlled substance classified in Schedule . . . II,” Minn. Stat. § 152.025, subd. 2(1), which includes methamphetamine, Minn. Stat. § 152.02, subd. 3(d)(2) (2022). *See State v. Traxler*, 583 N.W.2d 556, 562 (Minn. 1998) (citing Minn. Stat. § 152.025, subd. 2(1) (1996), and explaining that the statute “provid[es] that an individual is guilty of a controlled substance crime in the fifth degree if the individual unlawfully possesses one or more mixtures containing methamphetamine”).

Klingelhoets’s arguments on appeal focus only on the sufficiency of the evidence proving that he constructively possessed the firearm, the backpack and its contents, and the

other items that law enforcement found near him. “Possession may be proved through evidence of actual or constructive possession.” *Harris*, 895 N.W.2d at 601. Constructive possession may be proved by showing that the item was found “in a place under [the] defendant’s exclusive control to which other people did not normally have access.” *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975). But if the item was found “in a place to which others had access,” the state must prove that “there is a strong probability (inferable from other evidence) that [the] defendant was at the time consciously exercising dominion and control over [the item].” *Id.*

The trial evidence adduced in the state’s case-in-chief, viewed in the light most favorable to the state, *see Firkus*, 31 N.W.3d at 493, established as follows.

D.J.’s surveillance camera triggered an alert that someone was trespassing in the building where the incident occurred. The camera captured an image showing a person in a hooded coat wearing a backpack going through boxes in the building. D.J., his brother, and his son arrived at the building after receiving the alert; they watched the exterior to see if a person exited but saw no one do so.

Law enforcement arrived ten minutes after D.J. and his family members, and they set up a perimeter around the building. A wooden door on the exterior wall of the building had been pried open. Law enforcement used a squad car loudspeaker system to announce their presence. Four officers and a police canine entered the building to locate the suspected trespasser. The officers found Klingelhoets in the building, on the floor next to a glass pipe containing methamphetamine, a lighter, and a wrench. Klingelhoets was arrested while wearing a hooded jacket, and he had gloves with a leather or rubber exterior on both hands.

The officers found a backpack around 20 feet from Klingelhoets, in plain view on the floor. Klingelhoets's clothing and the backpack were consistent with the image captured by the surveillance camera. Law enforcement found no other individuals in the building. The backpack contained 399 rounds of .22-caliber ammunition, a .22-caliber magazine, a container of gunpowder, a gun-cleaning kit, a screwdriver, and other tools. The officers located no other backpacks in the building. The next day, carpenters working in the building found a loaded, .22-caliber firearm and bullets in the drawer of a cabinet located a few feet from where Klingelhoets was hiding when he was apprehended.

Viewing this evidence in the light most favorable to the state, we conclude that a jury could reasonably conclude that Klingelhoets was guilty of all charges, regardless of the type of evidence produced at trial. *See Firkus*, 31 N.W.3d at 493. Put differently, “view[ing] the evidence and all resulting inferences in favor of the State,” the evidence adduced in the state’s case-in-chief was “sufficient to present a fact question for the jury’s determination, and . . . a reasonable jury could [have found] the defendant guilty beyond a reasonable doubt.” *Id.* at 477 n.5.

Without considering the weight and credibility of the evidence, the record established in the state’s case-in-chief was sufficient to present a factual question for the jury as to Klingelhoets’s constructive possession of the firearm, wrench, screwdriver, other tools, ammunition, and the methamphetamine in the glass pipe—all of the items the state needed to prove that Klingelhoets possessed to sustain his convictions of first-degree burglary, second-degree burglary, unlawful possession of a firearm, unlawful possession of ammunition, and fifth-degree possession of a controlled substance. *See id.* at 492; *see*

also Allwine, 994 N.W.2d at 537. The evidence showed that “there [was] a strong probability (inferable from other evidence) that [Klingelhoets] was at the time consciously exercising dominion and control over [the items].” *Florine*, 226 N.W.2d at 611.

Klingelhoets’s arguments that the circumstantial-evidence standard of review applies and that the circumstances proved are consistent with a reasonable hypothesis other than that of guilt are foreclosed by *Firkus*, 31 N.W.3d at 493. The district court properly decided Klingelhoets’s motion for judgment of acquittal at the close of the state’s case, before the verdict, and without reserving its ruling. *See Firkus*, 31 N.W.3d at 491, 492 n.18. Moreover, the district court appropriately held the state to its burden and correctly determined that the state had met that burden. *Id.* at 492 n.18. And as in *Firkus*, “the district court did not err in applying the sufficiency-of-the-evidence test for direct evidence when it denied [Klingelhoets’s] motion[.]” *Id.* at 493.

We therefore discern no error in the district court’s decision to deny Klingelhoets’s motion for judgment of acquittal.

II. The district court acted within its discretion in declining to provide Klingelhoets’s requested jury instruction on circumstantial evidence.

Klingelhoets contends that the district court abused its discretion when it declined to give the jury his requested instruction on circumstantial evidence. This argument is unavailing.

Appellate courts review “a district court’s refusal to give a requested jury instruction for abuse of discretion.” *State v. Fox*, 868 N.W.2d 206, 222 (Minn. 2015). “A district court has considerable latitude in selecting jury instructions and in selecting language for jury

instructions.” *Id.* (quotation omitted). “When the instructions read as a whole correctly state the law in language understandable to the jury, there is no reversible error.” *Id.* “But the district court errs when it gives instructions that confuse, mislead, or materially misstate the law.” *Id.* “A district court abuses its discretion if it fails to properly instruct the jury on all elements of the offense charged.” *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019) (quotation omitted). “Upon review, instructions are viewed in their entirety to determine whether they fairly and adequately explain the law of the case.” *State v. Peterson*, 673 N.W.2d 482, 486 (Minn. 2004).

The district court provided the jury with the following instructions on direct and circumstantial evidence:

A fact may be proven by either direct or circumstantial evidence, or by both. The law does not prefer one form of evidence over the other. A fact is proven by direct evidence when, for example, it is proven by witnesses who testify to what they saw, heard, or experienced, or by physical evidence of the fact itself. A fact is proven by circumstantial evidence when its existence can be reasonably inferred from other facts proven in the case.

This is the pattern jury instruction. *See 10 Minnesota Practice*, CRIMJIG 3.02 (2024).

Klingelhoets requested that the district court provide an additional instruction to the jury:

“In order to return a verdict of guilty on the basis of circumstantial evidence, all circumstances proved must be consistent with that conclusion and inconsistent with any other rational conclusion.” The district court denied Klingelhoets’s request based on its determinations that it was not “the standard for a jury” and that the requested “heightened scrutiny [was] an applied standard for appeal.”

“In *State v. Turnipseed*, 297 N.W.2d 308, 312 (Minn. 1980), [the Minnesota Supreme Court] stated that a district court’s jury instruction in a criminal case involving circumstantial evidence does not need to state that the circumstances proved must be ‘consistent with [the] conclusion [of guilt] and inconsistent with any other rational conclusion.’” *Fox*, 868 N.W.2d at 222. The supreme court “noted that such language is not a ‘mandatory’ instruction in circumstantial evidence cases” and “explained that tests for sufficiency of the evidence are conceptually distinct from jury instructions and ‘not every sufficiency of the evidence test should be read to the jury.’” *Id.* (quoting *Turnipseed*, 297 N.W.2d at 312).

In *Fox*, the supreme court rejected the appellant’s argument that—as Klingelhoets maintains, here—“the district court erred by declining to give [the appellant’s] requested jury instruction on circumstantial evidence,” to wit, “In order to return a verdict of guilty on the basis of circumstantial evidence, all circumstances proved must be consistent with that conclusion and inconsistent with any other rational conclusion.” *Id.* at 221–22 (quotation omitted). The supreme court reasoned that it had “followed *Turnipseed* in two relevant cases.” *Id.* at 222 (citing *State v. Stein*, 776 N.W.2d 709, 723 (Minn. 2010) (Meyer, J., concurring) (“Although we eventually abandoned the special jury instruction, *State v. Turnipseed*, 297 N.W.2d 308, 313 (Minn. 1980), we retained the traditional rational hypothesis review standard.”); *State v. Jones*, 516 N.W.2d 545, 548 n.4 (Minn. 1994) (holding that *Turnipseed* controlled and that the district court did not err in failing to give a rational-hypothesis jury instruction on circumstantial evidence)). And the supreme court observed that it “did not adopt the rule advocated by the concurrence” in *State v. Andersen*,

784 N.W.2d 320 (Minn. 2010)—which had “urged the [supreme] court to adopt a rule requiring district courts to provide a rational-hypothesis instruction to the jury in circumstantial evidence cases”—and that the supreme court has not overruled *Turnipseed*. *Id.* Accordingly, the supreme court concluded that “the district court did not materially misstate existing law by giving the pattern jury instructions on circumstantial evidence and direct evidence and not a ‘rational hypothesis’ instruction, like that proposed by [the appellant],” and the supreme court held that “the district court did not abuse its discretion when it declined to give [the appellant’s] proposed ‘rational hypothesis’ jury instruction on circumstantial evidence.” *Id.*

Turnipseed and its progeny—including *Fox*—remain good law, and “[t]he court of appeals is bound by supreme court precedent, as it has repeatedly acknowledged.” *See State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018). Consistent with this binding line of supreme court precedent, we conclude that the district court acted within its discretion in declining to provide Klingelhoets’s requested jury instruction on circumstantial evidence. *See Fox*, 868 N.W.2d at 222; *see also Peterson*, 673 N.W.2d at 486.

III. The district court did not commit a structural error by failing to invite Klingelhoets to allocute at sentencing.

Klingelhoets argues that “the district court committed [a] structural error when it failed to offer [him] the opportunity to allocute before it imposed a discretionary sentence.” This contention does not merit reversal.

“[S]tructural defects in the constitution of the trial mechanism defy analysis by harmless-error standards.” *State v. Duol*, 25 N.W.3d 135, 143 (Minn. 2025) (quotation

omitted). “Generally, if a defendant had counsel and was tried by an impartial adjudicator, there is a strong presumption that any other errors that may have occurred are subject to harmless-error analysis.” *Id.* (quotation omitted).

The United States Supreme Court has held that there is no right to allocution under the U.S. Constitution. *Hill v. United States*, 368 U.S. 424, 428 (1962). The Minnesota Supreme Court has likewise concluded “that the failure of a district court to ask a defendant represented by an attorney whether he has anything to say before imposing a sentence is not a fundamental defect which inherently results in a complete miscarriage of justice, nor an omission inconsistent with the rudimentary demands of fair procedure.” *Greer v. State*, 973 N.W.2d 918, 923 (Minn. 2022).

As a result, we conclude that the district court’s failure to invite Klingelhoets to allocute at sentencing is subject to harmless-error analysis and is not a structural error. *See* Minn. R. Crim. P. 31.01 (“Any error that does not affect substantial rights must be disregarded.”); *see also Greer*, 973 N.W.2d at 924 (holding that, even if the district court erred in concluding that the defendant’s right to allocution could not be raised in a motion to correct a sentence under Minnesota Rule of Criminal Procedure 27.03, subdivision 9, the alleged error was harmless because the defendant was not prejudiced).

IV. The lack of allocution was a harmless error.

Klingelhoets maintains that, should this court decline to reverse on the basis of a structural error, a remand for resentencing remains necessary so that he may allocute. In response, the state asserts that the lack of allocution was a harmless error and a remand for

sentencing is unwarranted because the district court reviewed Klingelhoets's PSI before sentencing. The state's argument is persuasive.

“Before pronouncing sentence, the [district] court must allow statements from . . . the prosecutor, victim, and defense counsel . . . [and] the defendant, personally.” Minn. R. Crim. P. 27.03, subd. 3; *see also State v. Young*, 610 N.W.2d 361, 363 (Minn. App. 2000) (“A defendant has a right to allocution before the court imposes sentence.”), *rev. denied* (Minn. July 25, 2000). That said, a district court's failure to invite a defendant to allocute is not always prejudicial. *See State ex rel. Krahn v. Tahash*, 144 N.W.2d 262, 262–63 (Minn. 1966) (holding that “failure to afford the accused an opportunity to speak on his own behalf does not require that the sentence be vacated if, by a [PSI], there is adequate assurance, as there was in this case, that the [district] court took into account the defendant's version of the events leading to his conviction and other background information which is normally considered in mitigation of the penalty”); *see also* Minn. R. Crim. P. 31.01.

Here, the district court heard from counsel for both parties before imposing sentence. Neither moved for a sentencing departure, and neither Klingelhoets nor his attorney asked that Klingelhoets be permitted to allocute. Most importantly, the district court noted several times during the sentencing hearing that it had reviewed the PSI. We are mindful that, in sentencing Klingelhoets, the district court did not articulate the specific aspects of the PSI that it considered. But we are satisfied by our review of the PSI that it provides Klingelhoets's “version of the events leading to his conviction and other

background information which is normally considered in mitigation of the penalty.” *Krahn*, 144 N.W.2d at 262–63.⁶

Thus, we conclude that the lack of allocution was a harmless error. *See id.*; *see also* Minn. R. Crim. P. 31.01.

Affirmed.

⁶ We note that the district court followed the recommendations set forth in the PSI in imposing the following sentences: 68 months’ imprisonment for first-degree burglary; 60 months’ imprisonment for unlawful possession of a firearm; and 60 months’ imprisonment for unlawful possession of ammunition. These sentences are consistent with the presumptive sentences under the Minnesota Sentencing Guidelines based on Klingelhoets’s criminal history score and the offense severity level of each crime. *See* Minn. Sent’g Guidelines 4.A. (Supp. 2023). And despite the PSI’s recommendation of a 24-month presumptive guidelines sentence for fifth-degree possession of a controlled substance, the district court stayed the execution of a shorter sentence—19 months’ imprisonment.