

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0726**

State of Minnesota,
Respondent,

vs.

Brett Rodney Sanko,
Appellant.

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

Carlton County District Court
File No. 09-CR-23-163

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Jeffrey L.H. Boucher, Carlton County Attorney, Carlton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bond, Judge; and Cleary, Judge.*

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

NONPRECEDENTIAL OPINION

BOND, Judge

Appellant challenges his convictions for possession of pornographic works involving a minor by a registered predatory offender, arguing that the evidence is insufficient to prove that (1) the pornographic works depicted real minors, (2) appellant knew or had reason to know the content and character of the pornographic works, and (3) appellant was a registered predatory offender at the time of the offense. We affirm.

FACTS

In January 2023, the state charged appellant Brett Rodney Sanko with four counts of possession of a pornographic work¹ involving a minor by a registered predatory offender in violation of Minn. Stat. § 617.247, subd. 4(b)(2) (Supp. 2021). Sanko waived his right to a jury trial and the matter proceeded to a stipulated-facts court trial under Minn. R. Crim. P. 26.01, subd. 3. The following summarizes the stipulated facts submitted at trial and the district court’s factual findings.

In February 2022, Sanko was on conditional release and under supervision by the Minnesota Department of Corrections (DOC) as a “level 3 predatory offender.” Sanko was convicted in 2012, and again in 2015, for possessing pornographic works involving minors. In 2016, Sanko was convicted of five counts of possession of pornographic works

¹ In 2025, the legislature amended Minn. Stat. § 617.247 and changed the phrase “pornographic work” to “child sexual abuse material.” 2025 Minn. Laws ch. 35, art. 5, § 21, at 704.

involving minors by a predatory offender. On the date of the alleged offense, February 1, 2022, Sanko was required by law to register as a predatory offender.

That day, Sanko's supervising agent went to Sanko's home to conduct a compliance check. As the agent approached the house, he saw Sanko sitting on a couch near a window looking at a tablet. When the agent tapped on the window to get Sanko's attention, Sanko appeared startled and threw the tablet on the floor. The agent entered Sanko's home, retrieved the tablet, and saw two active browser tabs displaying pornographic images, some of which appeared to depict minors. Sanko admitted that he was the owner and user of the tablet and that the tablet was new when he got it. Sanko denied that the tablet contained pornography but admitted that it "may" contain images of naked minors.

The Minnesota Bureau of Criminal Apprehension (BCA) extracted several files from the tablet. Relevant here, item 58, which corresponds to count three, depicts two naked prepubescent males lying next to each other with one holding the other's penis, with the captions "It's fun holding on to your penis" and "I think it's fun too." Item 70, which corresponds to count four, is a 27-minute video in German titled, "Puberty Sexual Education for Boys and Girls." The video displays minors' genitals and depicts minors engaging in sexual acts. The BCA sent the extracted files to the National Center for Missing and Exploited Children (NCMEC), which concluded that the images in the extracted files did not match any identified victims in the NCMEC database.

The district court found Sanko guilty of counts three and four.² The district court “conducted a careful observation” of items 58 and 70, “scrutinized the features and appearances” of the individuals depicted, and determined that the minors depicted were real, not images generated by artificial intelligence (AI). The district court further determined that, based on the content of items 58 and 70 and Sanko’s status as “a registered predatory offender who has been convicted on three separate prior occasions for the same conduct charged in the present matter,” Sanko knew or had reason to know the content and character of the pornographic works. The district court adjudicated Sanko guilty of counts three and four and sentenced him to concurrent 102-month sentences on each count.

Sanko appeals.

DECISION

Due process requires the state to prove each element of a crime beyond a reasonable doubt. *State v. Beganovic*, 991 N.W.2d 638, 654 (Minn. 2023); *see* U.S. Const. amend. XIV; Minn. Const. art. I, § 7. To convict Sanko of possession of pornographic works involving a minor by a registered predatory offender, the state was required to prove that Sanko: (1) “possesse[d] a pornographic work”; (2) knew or had reason to know the “content and character” of the pornographic work; and (3) was a “registered predatory offender under [Minnesota Statutes] section 243.166” at the time of the charged offense. Minn. Stat. § 617.247, subd. 4(a), (b)(2) (Supp. 2021). A “pornographic work,” as relevant here, means “an original or reproduction of a picture, film, photograph, negative, slide,

² The district court acquitted Sanko of counts one and two.

videotape, videodisc, or drawing of a sexual performance involving a minor.” Minn. Stat. § 617.246, subd. 1(f)(1) (Supp. 2021). The state must also prove that the minors depicted in the works are neither “computer-generated nor simulated” but are “real children.”³ *State v. Fingal*, 666 N.W.2d 420, 425 (Minn. App. 2003), *rev. denied* (Minn. Oct. 21, 2003); *see State v. Cannady*, 727 N.W.2d 403, 407 (Minn. 2007) (stating that the state must prove beyond a reasonable doubt “that the person or persons in the pornographic work are minors”).

Sanko challenges the sufficiency of the evidence for his convictions. We begin with the standard of review, which is partially disputed by the parties. Appellate courts “use the same standard of review in bench trials and in jury trials in evaluating the sufficiency of the evidence.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011). “The relevant standard of review depends on whether the factfinder (the district court here) reached its conclusion of law based on direct or circumstantial evidence.” *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018). Direct evidence is based on personal knowledge or observation that proves a fact without any inference or presumption, while circumstantial evidence requires an inferential step to prove a fact. *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017).

³ The 2025 statutory changes amended Minnesota Statutes sections 617.246 and 617.247 to prohibit the possession of materials that depict “an individual indistinguishable from an actual minor created by the use of generative artificial intelligence or other computer technology capable of processing and interpreting specific data inputs, commonly referred to as prompts, to create a visual depiction of the individual engaging in sexual conduct and is obscene.” 2025 Minn. Laws ch. 35, arts. 4, § 12, at 685; 5, § 21, at 704. Because the revised statute only applies to crimes committed on or after August 1, 2025, it does not apply here.

Under the direct-evidence standard of review, appellate courts “carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016) (quotation omitted). We view the evidence in the light most favorable to the verdict and assume the factfinder believed the state’s witnesses and disbelieved contrary evidence. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014).

Under the two-step circumstantial-evidence standard of review, we first identify the circumstances proved. *Harris*, 895 N.W.2d at 601. In doing so, we “‘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.’” *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026) (quoting *Harris*, 895 N.W.2d at 600). Identifying the circumstances proved in this manner “protects the well-established legal principle that the [factfinder] is in a unique position to determine the credibility of the witnesses and weigh the evidence before it.” *Id.* at 479 (quotation omitted). We do not re-weigh the evidence or “sit . . . as a 13th juror.” *Id.* (quoting *State v. Reek*, 942 N.W.2d 148, 166 (Minn. 2020)).

At the second step, we 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.* at 478 (quoting *State v. Smith*, 9 N.W.3d 543, 565 (Minn. 2024)). At this stage, we independently review the reasonableness of

inferences and do not defer to the factfinder. *Id.* at 483 (citing *State v. Isaac*, 9 N.W.3d 812, 818 (Minn. 2024)). We will not reverse a conviction “based on mere conjecture.” *Id.* (quoting *State v. Tscheu*, 758 N.W.2d 849, 861 (Minn. 2008)). However, “[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 we must reverse.’” *Id.* (quoting *Isaac*, 9 N.W.3d at 818).

Turning to the merits, Sanko challenges the sufficiency of the evidence on three elements: whether the minors depicted in the pornographic works depicted were real people, whether he knew or should have known the content and character of the pornographic works, and whether he was a registered predatory offender at the time of the offense. We address each argument in turn.

Real Minors

Sanko argues that the state failed to prove that the minors depicted in the pornographic works are real people. *See* Minn. Stat. §§ 617.247, subd. 4(b)(2), .246, subd. 1(f) (Supp. 2021); *Fingal*, 666 N.W.2d at 425. The parties dispute the standard that applies to our review of the evidence proving the “real minors” element. Sanko argues that we should apply the circumstantial-evidence standard of review while the state contends that the direct-evidence standard of review applies. We assume without deciding that the state relied on circumstantial evidence to prove that the minors depicted in the pornographic works were real and accordingly we will apply the circumstantial-evidence standard of review.

Winnowing down the stipulated evidence presented at trial by resolving all questions of fact in favor of the factfinder's verdict, *see Firkus*, 31 N.W.3d at 484, the circumstances proved relevant to whether the minors depicted in items 58 and 70 are real are as follows. Sanko admitted to law enforcement that his tablet "may" contain images of "children without their clothes on." Item 58 depicts two naked minor males engaged in sexual conduct. Item 70, the video, depicts children in sexually explicit and vulnerable situations. Based on physical features and appearances, the district court, sitting as factfinder, found that the minors looked real.⁴ None of the minors depicted in the pornographic works matched any identified victims in the NCMEC database.

Having identified the circumstances proved, we now 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 [Sanko] is guilty and inconsistent with any rational hypothesis other than guilt." *Firkus*, 31 N.W.3d at 483. Sanko does not appear to dispute that it is reasonable to infer from the circumstances proved that the minors depicted in the pornographic works were real. But

⁴ Sanko agrees that, because the district court scrutinized the appearance and features of the minors and determined that the state proved beyond a reasonable doubt that the minors are real people, it is a circumstance proved that the minors "look real." *See Firkus*, 31 N.W.3d at 482 (recognizing that, after a court trial, the first step of circumstantial-evidence test "protect[s] the district court's unique position to determine the credibility of the witnesses and weigh the evidence before it"). We do not include the district court's ultimate conclusion that the minors depicted in items 58 and 70 were real people in our circumstances proved because that conclusion rests on an inference and "an inference should never be included in the first step of the circumstantial-evidence test." *Id.* at 483.

he argues that the circumstances proved are also consistent with a reasonable inference of innocence; namely, that the images are AI-generated, not images of real children.

Relying on a law-review article, Sanko contends that technological advancements in generative AI make it nearly impossible to distinguish between depictions of real children and those that are computer-generated images. *See* Claire Morneau Andresen, *Artificially Generated, Genuinely Harmful: Prosecuting AI-Generated Child Sexual Abuse*, 47 Univ. Haw. L. Rev. 422, 431 (2025). We appreciate that “[r]apid advancements in technology” may create “substantial challenges for prosecuting AI-generated” child sexual abuse material cases, *id.* at 475, but we may not reverse a conviction “based on mere conjecture,” *Firkus*, 31 N.W.3d at 483 (quotation omitted). On this record, Sanko’s alternative hypothesis—that the minors were not real people—is not reasonable. *See State v. Johnson*, 995 N.W.2d 155, 163 (Minn. 2023) (stating that a “theoretically possible” alternative hypothesis is not reasonable if it had no factual support in the record); *Tscheu*, 758 N.W.2d at 858 (explaining that, to successfully challenge a conviction that rests on circumstantial evidence, a defendant “must . . . point to evidence in the record that is consistent with a rational theory other than guilt”).

Sanko argues that the circumstance proved that the minors depicted in items 58 and 70 were not found in NCMEC’s database of known children supports an alternative reasonable hypothesis that the minors are not real people. But when determining the reasonableness of inferences, “we view the circumstances proved as a whole, not as discrete, isolated facts.” *Firkus*, 31 N.W.3d at 484. Sanko’s alternative hypothesis is not reasonable considering the circumstances proved as a whole, which include Sanko’s

admission that the tablet he was viewing may contain images of naked minors and the factfinder's determination that the minors appeared real based on their appearance and features.⁵ Because the circumstances proved are consistent with the rational hypothesis that the minors depicted in items 58 and 70 are real children and inconsistent with any rational hypothesis other than guilt, the state presented sufficient evidence to prove that the minors in the pornographic works are real.

Content and Character

Sanko challenges the sufficiency of the evidence on a second element, arguing that the state failed to prove that Sanko possessed items 58 and 70 “knowing or with reason to know [their] content and character.” Minn. Stat. § 617.247, subd. 4(a). Here again, the parties disagree on the standard of review: Sanko argues that the circumstantial-evidence standard of review applies and the state urges us to apply the direct-evidence standard of review.

“The terms content and character refer to the nature of the pornographic work, the definition of which requires that individuals depicted in the work are minors.” *State v. Mauer*, 741 N.W.2d 107, 111 (Minn. 2007) (quotations omitted). “[A] possessor of child pornography has reason to know that a pornographic work involves a minor where the possessor is subjectively aware of a substantial and unjustifiable risk that the work involves a minor.” *Id.* at 115 (quotations omitted). “Proof of either actual knowledge or reason to

⁵ Sanko also notes the absence of any expert testimony establishing that the minors depicted were “real.” But “the absence of evidence in the record regarding a certain circumstance does not constitute a circumstance proved.” *State v. German*, 929 N.W.2d 466, 473-74 (Minn. App. 2019).

know that a pornographic work involves a minor may . . . be made by circumstantial evidence.” *Id.* Because a defendant’s state of mind is “generally proved circumstantially—by drawing inferences from the defendant’s words and actions in light of the totality of the circumstances,” we agree with Sanko that the circumstantial-evidence standard of review applies to our review of the evidence proving the “content and character” element. *State v. Clark*, 739 N.W.2d 412, 422 (Minn. 2007) (quotation omitted); *see State v. Whitcomb*, 31 N.W.3d 552, 565 (Minn. App. 2026) (analyzing sufficiency of the evidence of “content and character” element under the circumstantial-evidence standard of review).

The circumstances proved that Sanko knew or had reason to know the content and character of the pornographic works are as follows. Sanko was convicted of possessing pornographic works involving minors in 2012 and 2015 and of possessing pornographic works involving minors by a predatory offender in 2016. On February 1, 2022, Sanko was on conditional release from the DOC as a “level 3 predatory offender.” When Sanko’s supervising agent saw Sanko viewing suspected pornography on a tablet and tapped on the window, Sanko appeared startled and threw the tablet onto the floor. When the agent opened the active browser tabs on the tablet, there were pornographic images, some of which appeared to display minors. Sanko was the sole owner and user of the tablet and he admitted that the tablet may contain images of naked minors. The BCA extracted multiple files from the tablet depicting sexually explicit images and a video of naked minors engaged in sexual conduct.

Moving to the second step, we 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 [Sanko] is guilty and inconsistent with any rational hypothesis other than guilt.” *Firkus*, 31 N.W.3d at 483. Sanko acknowledges that “it would indeed be reasonable, given his prior convictions, to infer that Sanko would know there was a substantial and unjustified risk that the acts depicted . . . constituted child pornography.” But he maintains that the circumstances proved do not eliminate the reasonable inference that Sanko had not viewed items 58 and 70 and he was therefore unaware that they contained pornographic works involving children. Sanko’s argument is unavailing.

In a precedential opinion issued after the briefing in this case, we rejected the argument that the state must show that a defendant had actually viewed the pornographic works in order to prove that the defendant knew or had reason to know the content and character of the works. *See Whitcomb*, 31 N.W.3d at 565 n.8. Thus, the state needed to prove only that Sanko possessed items 58 and 70 and knew or had reason to know they were pornographic works involving minors. We conclude that the only rational hypothesis from the circumstances proved—including Sanko’s multiple prior convictions for possessing child pornography, Sanko’s admission that he owned the tablet and that it may contain images of naked children, the supervising agent’s observation of Sanko using the tablet shortly before discovering child pornography on an active internet browser tab on the tablet, and Sanko’s flustered reaction to the supervising agent’s observation of him using the tablet—is that Sanko was “subjectively aware of a substantial and unjustifiable risk that the work involves a minor.” *Mauer*, 741 N.W.2d at 112 n.4.

Because the circumstances proved are consistent with the rational hypothesis that Sanko knew or should have known the content and character of the pornographic works and are inconsistent with any rational hypothesis other than guilt, the state's evidence was sufficient to prove the "content and character" element.

Predatory Offender

Lastly, Sanko argues that his 102-month sentence must be reduced to 60 months because the state failed to prove that he was a registered predatory offender at the time of the charged conduct. *See* Minn. Stat. § 617.247, subd. 4(b)(2). The parties appear to apply the direct-evidence standard of review to the sufficiency of the evidence that Sanko was a registered predatory offender. We agree that the direct-evidence standard of review applies.

The statutory maximum sentence for possession of a pornographic work increases from five to ten years if "the violation occurs when the person is a registered predatory offender under section 243.166." *Id.* A person "shall" register as a predatory offender under section 243.166 if they were convicted of "possessing pornographic work involving a minor in violation of section 617.247." Minn. Stat. § 243.166, subd. 1b(a)(2)(vii) (Supp. 2021). Thus, to convict Sanko under the subdivision that authorizes a ten-year maximum sentence, the state was required to prove beyond a reasonable doubt that Sanko was a registered predatory offender at the time of the offense. *See State v. Crawford*, 13 N.W.3d 693, 701 (Minn. App. 2024) ("[O]ther than the fact of a prior conviction, any fact that

increases the penalty for a crime beyond the statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” (quotation omitted)).⁶

Sanko acknowledges the stipulated evidence showing that he was required to register as a level 3 predatory offender and that he had a prior conviction for possession of pornographic works by a registered predatory offender. But he maintains that this evidence fails to prove that he *actually was registered* as a predatory offender on February 1, 2022, the date of the offense. We disagree.

The stipulated evidence established that Sanko had a 2016 conviction for possession of pornographic works as a predatory offender. On February 1, 2022, Sanko “was required to register as a predatory offender,” was on conditional release and under supervision by the DOC as a “level 3 predatory offender,” and was visited at home by his supervising agent for the purposes of conducting a “compliance check.” Viewed in the light most favorable to the verdict, this evidence is sufficient to prove that Sanko was a registered predatory offender on February 1. *See* Minn. Stat. § 617.247, subd. 4(b)(2). Therefore, Sanko is not entitled to a sentence reduction to 60 months.

Affirmed.

⁶ We reject the state’s argument that Sanko “expressly stipulated to this element.” While Sanko agreed to a court trial based on stipulated evidence and the district court’s memorandum notes that “the parties agreed . . . [Sanko] was a registered predatory offender at the time” of the charged conduct, Sanko did not waive his right to a trial on this element. The state therefore had the burden of proving this sentence-enhancing element beyond a reasonable doubt.