

*This opinion is nonprecedential except as provided by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
A25-1520**

State of Minnesota,
Respondent,

vs.

Sylvester Antione Townsend,
Appellant.

**Filed August 10, 2026
Affirmed in part, reversed in part, and remanded
Smith, Tracy M., Judge**

Ramsey County District Court
File No. 62-CR-23-5396

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

John Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ede, Presiding Judge; Smith, Tracy M., Judge; and
Beane, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from the judgments of conviction for unlawful possession of a
firearm and ammunition, appellant Sylvester Antione Townsend argues that (1) the
evidence was insufficient to prove beyond a reasonable doubt that he was the person whom

police identified as “Shooter #2” in a shooting incident and (2) the district court erred by adjudicating him guilty of both unlawfully possessing a firearm and unlawfully possessing ammunition when Townsend was found guilty of having possessed only a single loaded firearm. We affirm in part, reverse in part, and remand.

FACTS

The following recitation of the facts is derived from the district court’s findings of fact, conclusions of law, and order following Townsend’s bench trial as well as the evidence submitted in the trial.

On July 29, 2023, at around 1:45 a.m., officers responded to a complaint related to a nightclub at an address on Rice Street in Saint Paul. One officer’s body-worn camera (BWC) video recorded “a Black man with glasses, a beard, a baseball-style cap with two lighter front panels and a patch on the front, gold necklace, dark shirt with a muted and swirling design on it, loose denim jeans that ended just below the knee, white socks and dark shoes.” BWC footage also captured a “distinctive red van” that was parked on the street near the nightclub. It had “darkened windows, and two stripes running horizontally just below the windows, a thicker stripe on top and thinner stripe immediately beneath the thicker stripe.” “The same van was parked in the same place leading up to” the following incident.

At around 3:45 a.m. that same morning, surveillance cameras captured a man—wearing all the same clothing and accessories as the man who was observed earlier—walking in the same location. He pulled out a dark object and held it “like one would hold a firearm.” This man was later identified as “Shooter #2” by the police. On the surveillance

video, Shooter #2 then turned the corner and crossed the street with another person, later referred to as “Shooter #1.” Around 3:50 a.m., Shooter #2, standing in the doorway of a building, raised a dark object, and several flashes emitted from the object, corresponding with the sound of gunshots. Shooter #2 then ran back along the sidewalk, unlocked and opened the front passenger door of the above-described van, and then continued running along the sidewalk and out of view.

Ten seconds later, Shooter #2 came back into view along with four other men, all running toward the van. Shooter #2 approached the van from behind, running into the street and out of the surveillance camera’s view; the video does not show whether he entered the van from the driver’s side. The four other men entered the van through the doors on the passenger’s side, and the van drove away. Officers responding to the gunfire were told that suspects left in a red Dodge Ram van with the license plate XXXXXX.¹ The van was not registered to Townsend.

From still photos of the surveillance video, officers identified Shooter #1 as J.T. They learned that J.T. had a brother—Townsend—and obtained a driver’s license photo of Townsend. Officers compared Townsend’s driver’s license photo with a social media post on an account with first and middle names similar to Townsend’s. Officers also compared the driver’s license photo with the BWC footage and the surveillance video to identify Townsend as the suspected Shooter #2.

¹ We anonymize the license plate number by referring to it as XXXXXX.

Following the July 29 incident, officers observed a red Dodge Ram van with the license plate XXXXXX multiple times outside an address on DeSoto Street in Saint Paul.

On September 13, 2023, police arrested Townsend at the DeSoto Street address and recovered several key pieces of evidence. First, the red Dodge Ram van with the license plate XXXXXX was parked at the DeSoto Street address. Officers also found a cellphone in Townsend's possession (the phone). The phone belonged to M.T., who has an unknown relationship to Townsend. The phone contained a "selfie" photograph, taken three days before the July 29 incident, depicting Townsend and a red van consistent with the description of the van used by the suspects. And finally, officers found a receipt in the van listing Townsend's name and the number of the recovered phone.

After Townsend's arrest, officers interviewed Townsend. During the interview, Townsend admitted that he drives a red van. An officer also showed Townsend a still shot of Shooter #2 extracted from the BWC footage taken during the 1:45 a.m. police response. Townsend said the person "looks like Reggie" but did not disagree when the officer said that it was Townsend in the photo. The officer then showed him a still shot from around the time of the shooting, telling him that the photo was also of him. Townsend denied that that photo was of him. Townsend then compared the two photos and denied that he was pictured in them.

Officers used cell-tower mapping to track the phone's location around the time of the incident on July 29. Several hours before the shooting, the phone was at the DeSoto Street address. Then, between 1:45 a.m. (the initial police response) and 3:50 a.m. (the

shooting), the phone was at the nightclub address on Rice Street. The phone was back at the DeSoto Street address by 5:23 a.m.

Townsend was charged with one count of possessing a firearm as an ineligible person and one count of possessing ammunition as an ineligible person, both under Minnesota Statutes section 624.713, subdivision 1(2) (2022). After the bench trial, the district court filed its findings of fact, conclusions of law, and order. The district court found that Townsend's facial features, as observed in court, were "consistent with" the BWC videos, still shots from BWC and surveillance videos, the selfie photo, and video from the police interview. It ultimately determined that Townsend was Shooter #2 and found him guilty of both counts. The district court then filed a warrant of commitment, sentencing Townsend on only one count but convicting him of both counts.

This appeal follows.

DECISION

First, Townsend challenges his convictions of possessing a firearm or ammunition as an ineligible person because the evidence is insufficient to prove that he was Shooter #2 and therefore in possession of a gun or ammunition. Second, he argues in the alternative that the district court erred by entering convictions for two offenses arising from the same conduct. We address each issue in turn.

I. The evidence was sufficient to prove that Townsend was Shooter #2.

When a conviction rests on circumstantial evidence alone, courts apply the circumstantial-evidence standard of review. *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026). Circumstantial evidence is "evidence from which the factfinder can infer whether

the facts in dispute existed or did not exist.” *State v. Jones*, 4 N.W.3d 495, 501 (Minn. 2024) (quotation omitted). Because Townsend’s identity as Shooter #2 requires an inference from the state’s evidence, we agree with the parties that the circumstantial-evidence standard of review applies.

The circumstantial-evidence standard has two steps. *Firkus*, 31 N.W.3d at 478. First, the appellate court must “‘winnow down the evidence presented at trial by resolving all questions of fact in favor of the . . . verdict,’ which results in ‘a subset of facts that constitute the circumstances proved.’” *Id.* (quoting *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017)). When, as here, the case was tried to the district court, we determine the circumstances proved in a manner that “protect[s] the district court’s unique position to determine the credibility of the witnesses and weigh the evidence before it.” *Id.* at 482. Second, the appellate court considers “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.* (quoting *State v. Smith*, 9 N.W.3d 543, 565 (Minn. 2024)) (other quotation omitted). At the second step, no deference is given to the inferences drawn by the factfinder. *Id.* at 483.

The circumstantial-evidence standard is applied on an element-by-element basis. *State v. Horst*, 880 N.W.2d 24, 39-40 (Minn. 2016); *see also Firkus*, 31 N.W.3d at 478 (discussing the standard in terms of particular elements). The only element challenged by Townsend here is identity—in other words, whether he was Shooter #2.

Step One

Beginning with the first step, the circumstances proved regarding the identity of Shooter #2 are the following:

- On July 29, 2023, at 1:45 a.m., officers responded to a complaint related to a nightclub at a Rice Street address in St. Paul.
- BWC video captured “a Black man with glasses, a beard, a baseball-style cap with two lighter front panels and a patch on the front, gold necklace, dark shirt with a muted and swirling design on it, loose denim jeans that ended just below the knee, white socks and dark shoes.”
- BWC video also captured a “distinctive red van” at the Rice Street address. The van had “darkened windows, and two stripes running horizontally just below the windows, a thicker stripe on top and thinner stripe immediately beneath the thicker stripe.”
- At around 3:45 a.m., the van was parked in the same place.
- Also at that time, surveillance video captured a male walking near the Rice Street address, “wearing a chain necklace, dark T-shirt, loose denim jeans that end just below the knee, a cap with a white/reflective panel in the front and white socks.” Officers later identified the male as “Shooter #2.”
- While walking, Shooter #2 “pull[ed] a dark object from behind him and h[eld] it like one would hold a firearm.”
- Shooter #2 crossed the street and stood in the alcove of a building.

- Shooter #2 “raise[d] a dark object, and several flashes coincide[d] with the sound of shots being fired from that alcove.”

- Shooter #2 ran back across the street and unlocked the same van seen earlier, leaving the van with the front passenger door open.

- Shooter #2 then continued down the sidewalk and shortly thereafter returned to the van with four other men. Shooter #2 approached the van from the street and then disappeared behind the van.

- The other four men entered the van from the passenger side, and the van drove off.

- Officers were notified that suspects were in a red Dodge Ram van with the license plate XXXXXX.

- Officers eventually identified Shooter #1 as J.T.

- Officers learned that J.T. had a brother, whom they ultimately identified as Townsend. They obtained a driver’s license photo of Townsend and compared it with still photos from the video of the night of the July 29 incident.

- Following the shooting, officers saw a red Dodge Ram van with the license plate XXXXXX multiple times at an address on DeSoto Street in St. Paul.

- Townsend was arrested on September 13, 2023, at the DeSoto Street address.

- The red van was present at the DeSoto address.

- In a police interview, Townsend was shown a still shot of BWC video depicting a man seen at the Rice Street address at around 1:45 a.m. on July 29 (Exhibit 111).

Townsend at first did not dispute the officer's statement that he was the man pictured in the photo. The officer then showed Townsend an image from surveillance video of Shooter #2 at around 3:45 a.m. that day. After comparing the two photos, Townsend repeatedly denied that he was the person in the photos.

- In the interview, Townsend admitted that he drives a red van.
- Townsend had a cellphone on him when he was arrested.
- A receipt dated August 4, 2023 (less than a week after the July 29 incident) was found in the van, listing Townsend's name and the number of the phone that was found in his possession.
- The phone contained a selfie photograph that was taken on July 26, 2023, and depicts Townsend and a red van.
- Cell-tower mapping placed the phone at the DeSoto Street address several hours before the shooting, at the Rice Street address between 1:45 a.m. and 3:50 a.m. on July 29, 2023, and back at the DeSoto Street address by 5:23 a.m. on that day.
- Townsend's facial features, as found by the district court, were "consistent with" the BWC videos, still shots from videos, video from the police interview, and the selfie photo on the phone.

In his identification of the circumstances proved, Townsend challenges two of the district court's findings: first, that, during the police interview, Townsend "did not dispute that it was him when an officer identified the person in [Exhibit 111] as [Townsend]," and second, that the selfie photo on the phone is consistent with Townsend's appearance. He

argues that those findings should not be included in the circumstances proved because they are not supported by the evidence. In determining the circumstances proved, we are required to winnow down the evidence presented at trial by resolving all questions of fact in favor of the verdict to protect the fact-finder's unique position to weigh the evidence before it. *Firkus*, 31 N.W.3d at 478. Doing so here, we conclude that the circumstances proved include that Townsend initially did not dispute that he was the person pictured in Exhibit 111 and that the selfie photo is consistent with Townsend's appearance.

Step Two

We now turn to step two—the examination of the reasonable inferences that can be drawn from the circumstances proved. Townsend states that he does not concede that the circumstances proved are consistent with the reasonable inference that he was Shooter #2, but he acknowledges that the inference “may be reasonable.” We conclude that the inference is, in fact, reasonable. Townsend is connected to Shooter #2 through his physical resemblance to Shooter #2 as demonstrated in the BWC footage during the 1:45 a.m. police response to the nightclub and the photo of Shooter #2 with identical clothing during the later shooting, his possession of the red van matching the one present at the July 29 incident, and his possession of the cell phone tracked to the location of the incident. The selfie photograph recovered from the phone depicts Townsend with the red van three days before the incident. Additionally, the receipt recovered from Townsend's van listed his name and the number of the cell phone that was found in his possession. Viewing all these circumstances together, we conclude that they are consistent with a reasonable inference that Townsend is Shooter #2.

Townsend contends, however, that the circumstances proved do not exclude the reasonable hypothesis that Townsend was not Shooter #2. He makes six arguments in support of this alternative hypothesis. We find none of them persuasive.

First, Townsend notes that no one, including the responding officers, identified Townsend as being at the shooting. But the district court found that Townsend's appearance at trial was consistent with images of Shooter #2 from the shooting. Townsend does not challenge this finding, and, even if he did, we must resolve this question of fact in favor of the verdict. *Firkus*, 31 N.W.3d at 478.

Second, Townsend argues that the surveillance video of the shooting does not show Shooter #2's face. But other videos do, including the BWC video from the 1:45 a.m. response and two other surveillance videos leading up to the shooting. And, again, the district court found that Townsend's appearance at trial was consistent with images of Shooter #2.

Third, Townsend points out that he did not own the red van. But ownership of the van is irrelevant considering the evidence showing that Townsend controlled and used the van. The red van found at the scene of Townsend's arrest matched the BWC and surveillance videos from the July 29 incident. The license plate matched the one associated with the suspects of the shooting. Townsend admitted to driving a red van. There was a receipt in the van listing Townsend's name and the number of the phone he possessed. And the selfie photo from the phone depicts Townsend with the red van. Given the totality of the circumstances proved, the fact that Townsend did not legally own the van does not create a reasonable hypothesis that he was not Shooter #2.

Fourth, Townsend argues that the van is not necessarily linked to Shooter #2 because the surveillance video shows that other men got in the van but not Shooter #2. BWC video shows the red van near the Rice Street address at around 1:45 a.m. when Shooter #2 was there. Surveillance video also shows Shooter #2 walk up to the van after the 3:50 a.m. shooting, unlock the front passenger door, leave it open, and go away and immediately return with four other men. The four other men entered from the passenger side while Townsend went around the van to the other side. While the surveillance video does not capture whether Shooter #2 entered the van, Shooter #2 did disappear around the driver's side of the van moments before it drove off. And there were reports that suspects left in a red Dodge Ram van. Regardless of whether Shooter #2 was in the van when it was driven away, the evidence shows that Shooter #2 exercised some control over the van and was connected to it in some way.

Fifth, Townsend argues that no one can know who was using the phone on July 29 because officers established only that Townsend had the phone three days before and six weeks after the incident. He also notes that the phone is owned by someone else, not Townsend. Three days before the July 29 incident, Townsend used the phone to take a selfie photo of himself and the van. The phone was also tracked to Townsend's home several hours before the shooting. It was then tracked to the Rice Street address between the time of the initial nightclub call and the time of the shooting. Finally, it was tracked back to Townsend's home a few hours after the shooting. The number for the phone was listed along with Townsend's name on a receipt issued six days after the incident. Based

on all the circumstances proved, it is unreasonable to infer that M.T. or anyone other than Townsend possessed the phone on July 29.

Finally, Townsend notes that the phone-location analysis could only pinpoint a location within 78 meters, therefore the phone could have been at a location near the Rice Street address, rather than at the shooting. While it is possible that the person carrying the phone could have been somewhere within 78 meters of the Rice Street address, rather than at the shooting, again, this inference is not reasonable when viewed in the context of the rest of the evidence.

The ultimate question under step two is “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.’” *Firkus*, 31 N.W.3d at 478 (quoting *Smith*, 9 N.W.3d at 565). Here, viewing all the circumstances proved as a whole, they support only one reasonable hypothesis—that Townsend was Shooter #2. Townsend’s appearance was consistent with Shooter #2, he had the same red van as Shooter #2, and he had a phone tracked to the shooting. Additionally, the selfie photo and the receipt connect Townsend to the van and the phone. No reasonable inference other than that Townsend was Shooter #2 can be drawn from these circumstances proved.

The evidence is therefore sufficient to support Townsend’s convictions.

II. The district court erred by entering convictions on both counts.

Townsend argues that the district court erred by entering convictions on both the first count for unlawful possession of a firearm and the second count for unlawful

possession of ammunition because they both arose from the same act. The state agrees that the district court erred by entering convictions on both counts. We, too, agree.

Whether a district court erred by entering multiple convictions is a question of law reviewed de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012). Under Minnesota law, a criminal defendant “may be convicted of either the crime charged or an included offense, but not both.” Minn. Stat. § 609.04, subd. 1 (2024). “[W]hen the defendant is convicted on more than one charge for the same act” the district court should “adjudicate formally and impose sentence on one count only.” *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984). Claims of multiple convictions cannot be waived by failing to raise the issue at sentencing. *Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007).

Here, Townsend was convicted of one count of unlawful possession of a firearm and one count of unlawful possession of ammunition, both under Minnesota Statutes section 624.713, subdivision 1(2). In *State v. Nowels*, we held that a person cannot be convicted of both possession of a firearm and possession of ammunition when the offenses arose from the same course of conduct. 941 N.W.2d 430, 442 n.8 (Minn. App. 2020), *rev. denied* (Minn. June 16, 2020). Townsend’s convictions arose out of one course of conduct—his possession of a single loaded firearm. Accordingly, we reverse and remand for the district court to correct the warrant of commitment to vacate the conviction for one of the two counts.

Affirmed in part, reversed in part, and remanded.