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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-2096**

State of Minnesota,
Respondent,

vs.

Brandon Michael Wilson,
Appellant.

**Filed November 25, 2019
Affirmed
Klaphake, Judge***

Hennepin County District Court
File No. 27-CR-18-6296

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County
Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and
Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Brandon Michael Wilson challenges his conviction for being an ineligible person in possession of ammunition under Minn. Stat. § 624.713, subd. 1(2) (2016). Appellant argues there was insufficient evidence that he constructively possessed the ammunition and alleges multiple prosecutorial errors in his pro se supplemental brief. Because the evidence was sufficient to support the jury's verdict, and the issues raised in appellant's pro se supplemental brief do not warrant relief, we affirm.

DECISION

We review sufficiency of circumstantial evidence to support a conviction with "heightened scrutiny." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). To preserve the jury's credibility determinations, we "winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury's verdict." *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). A conviction must be reversed "[i]f a reasonable inference other than guilt exists." *State v. Petersen*, 910 N.W.2d 1, 7 (Minn. 2018). But we will uphold a conviction if the circumstantial evidence creates "a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *Id.*

Appellant contends he never possessed the ammunition. A defendant's possession of ammunition can be established in two ways: actual or constructive. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). The state needed to prove constructive possession because no witness observed appellant in actual possession of the ammunition. *See id.* Constructive

possession requires the state to demonstrate that the prohibited item was found “in a place under defendant’s exclusive control to which other people did not normally have access” or, if others had access, “there is a strong probability (inferable from other evidence) that defendant was at the time consciously exercising dominion and control over it.” *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975).

The evidence establishes these facts: 1) on March 11, 2018, appellant was driving a vehicle owned by a friend; 2) there was an individual seated in the passenger’s seat; 3) Officer Schoenhard observed appellant run a red light and hit a curb; 4) appellant continued to drive a few blocks after Officer Schoenhard initiated his lights and sirens; 5) officers observed “a lot of movement and some of it was of quick” within the vehicle that “seemed . . . out of place for a traffic stop”; 6) Officer Schoenhard observed appellant hunching forward in the front seat; 7) officers observed a firearm with an extended magazine partially sticking out from under the driver’s seat; 8) the firearm had an extended magazine that protruded from the firearm’s base; 9) the firearm was not reported stolen and did not register to appellant, the passenger, or the vehicle owner; 10) one piece of the vehicle owner’s mail was found in the vehicle; 11) no fingerprints fit for comparison were found on the firearm or ammunition; 12) no DNA sample from the firearm was suitable for analysis; 13) a DNA sample from the ammunition contained a mixture of DNA from at least three individuals; 14) appellant’s DNA could not be excluded from the mixture; and 15) the DNA sample from the ammunition excluded 99.9992 percent of the general population from the mixture.

Having identified the circumstances proved, we now consider whether the circumstances proved support a reasonable hypothesis inconsistent with guilt. *See Peterson*, 910 N.W.2d at 7. Appellant argues there are two reasonable inferences inconsistent with guilt: the firearm and ammunition were placed in the vehicle before appellant borrowed it, or the passenger placed the firearm and ammunition in the vehicle without appellant's knowledge. These inferences are not reasonable. Appellant delayed pulling over and was observed moving in the vehicle, including hunching forward in the driver's seat; the firearm was found in plain sight under the driver's seat; and appellant's DNA from the ammunition could not be excluded when 99.9992% of the general population could be excluded. We reject appellant's argument that the DNA could have transferred from his feet while driving because there is no record evidence to support this argument.

Appellant relies on *State v. Sam*, but *Sam* is distinguishable from this case. 859 N.W.2d 825 (Minn. App. 2015). In *Sam*, this court reversed the conviction because it determined that the inferences that the methamphetamine was already in the vehicle or that the passenger placed it in the vehicle were reasonable inferences inconsistent with guilt. *Id.* at 835. Here, the record evidence establishes the ammunition, which almost certainly contained appellant's DNA, was in a magazine in plain sight under the driver's seat where appellant was consciously exercising dominion and control over it. *Florine*, 226 N.W.2d at 611.

Appellant's pro se supplemental brief reiterates the insufficient evidence argument and contends he was deprived of his right to a fair trial by a vindictive prosecutor.

“Arguments are forfeited if they are presented in a summary and conclusory form, do not cite to applicable law, and fail to analyze the law when claiming that errors of law occurred.” *State v. Bursch*, 905 N.W.2d 884, 889 (Minn. App. 2017). Appellant’s argument that the jury had to first find him guilty of possessing a firearm before it could find him guilty of possessing the ammunition is forfeited because appellant does not provide legal citations or record cites in support of this argument. Additionally, the argument is meritless because the charging statute requires proof of possession of either a firearm or ammunition, but not both. *See* Minn. Stat. § 624.713, subd. 1 (2016).

Appellant argues he was denied a fair trial because the prosecutor 1) falsely accused him of having prior felony convictions; 2) wrongly charged him with possession of a firearm when the prosecutor knew that appellant’s DNA was not on the firearm; and 3) trying appellant for driving while impaired along with the possession of firearm and ammunition prejudiced his “DWI trial.”

Appellant stipulated to being an ineligible person and waived his right to testify. At trial, appellant reversed his waiver and testified. He was informed that the state would be free to introduce his prior felony convictions. When appellant was asked on cross-examination whether he had been convicted of a felony, it was appellant who exposed the details to the jury, not the prosecutor. Appellant argues he was wrongly charged with possession of a firearm because his “DNA fingerprint[s]” were not on it and this false accusation prejudiced his “DWI trial.” However, there is no DNA or fingerprint requirement to charge appellant and “a prosecutor has broad discretion in the exercise of

the charging function.” *State v. Foss*, 556 N.W.2d 540, 540 (Minn. 1996). We conclude appellant’s arguments do not amount to prosecutorial error.

Because the evidence was sufficient to support appellant’s conviction and none of the issues raised in appellant’s pro se brief warrant relief, we affirm.

Affirmed.