STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1648

State of Minnesota,
Respondent,

vs.

Corey Lynden Stone,
Appellant.

Filed November 28, 2022
Affirmed
Larkin, Judge

Mille Lacs County District Court
File No. 48-CR-20-1842

Keith Ellison, Attorney General, Lisa Lodin Peralta, Assistant Attorney General, St. Paul, Minnesota; and

Joe Walsh, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Reilly, Judge; and Florey, Judge.*

SYLLABUS

A group of unassembled shotgun parts can constitute a "firearm" within the meaning of Minn. Stat. § 609.165, subd. 1b(a) (2020), so long as it is possible to assemble the parts into a firearm as defined by caselaw.

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

OPINION

LARKIN, Judge

Appellant challenges his conviction for unlawful possession of a firearm, arguing as follows: (1) an unassembled shotgun lacking a stock bolt and stock bolt washer is not a "firearm," (2) the evidence was insufficient to prove that he possessed the alleged firearm, (3) the district court erred in admitting certain evidence, and (4) the prosecutor engaged in misconduct during closing argument. We affirm.

FACTS

Respondent State of Minnesota charged appellant Corey Lynden Stone with two counts of unlawful possession of a firearm after searching a vehicle and discovering a backpack containing parts for an unassembled shotgun. The charge against Stone was tried to a jury. Stone stipulated that he had been convicted of a crime of violence and was therefore ineligible to possess a firearm.

At trial, Investigator Michael Dieter testified that he and Investigator Bradley Gadbois were "driving past a known drug house" and observed a car and a minivan parked near the residence. Dieter saw a woman in the car injecting heroin. Dieter approached the woman, and Gadbois approached the minivan. There were three people in the minivan. Gadbois spoke to the driver, Z.R. Gadbois became suspicious based on Z.R.'s statements, searched Z.R., and found a baggie containing suspected drug residue. Gadbois next searched the minivan and discovered, between the second and third rows of seating, a blue Ozark Trail backpack.

Dieter was familiar with the "type" of backpack found in the minivan and noticed that the backpack's detachable "fanny pack" or "day pack" was not in the minivan. Dieter searched the backpack and found an unassembled shotgun with two barrels, along with a "prescription box" and a paystub, which were both made out to Stone.[1] Dieter was familiar with Stone, who was not present. Dieter testified that Z.R. told him the backpack belonged to "Coco." Dieter knew that Coco was Stone's nickname.

Later that day, police located Stone at a nearby park. Dieter went to the park and saw Stone with the Ozark Trail "blue day pack that attache[d] to the top of the hiking backpack" that the police found in Z.R.'s van, which contained the unassembled shotgun parts. Dieter requested a DNA sample from Stone, but Stone declined. Another officer photographed the blue day pack.

Dieter subsequently spoke to Z.R. who showed Dieter a text-message exchange on his phone with a person named Coco[2] and indicated that Coco had borrowed his van and "left the bag" in the minivan. Dieter testified that Z.R. told him that the backpack was not his and that he did not know it was in the minivan. Dieter also testified that Z.R. was not permitted to possess a firearm.

Dieter took photos of the text messages on Z.R.'s phone. The state offered the photos into evidence, and the district court admitted the photos over defense counsel's

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[1] Dieter testified that he found "a box, a prescription of some sort of . . . medicine, or it was a prescription with the name Corey Lynden Stone on it," and he identified the "prescription box" as an exhibit, which was admitted as evidence.

[2] The driver's phone listed the contact as "Coacoa." For consistency, we use "Coco" throughout this opinion.

foundation and hearsay objections. The relevant portion of the text messages was as follows:

> Coco, 6:07 a.m.: I'll call you later[;]
> Z.R., 6:08 a.m.: What do you mean later I need my van[;]
> Coco, 7:39 a.m.: We're out back walking from the trailer park[;]
> Coco, 10:22 a.m.: Where you go? My bike ain't even tied down[;]
> Coco, 11:11 a.m.: I hope u ain't tryna run off with all my sh-t like that homie[.] I[']m over here flipping out pissed off right now[.]

Dieter testified that the minivan had a mountain bike on its roof when he first saw it and that he believed that Coco's texts meant he had "more property" in the minivan.

A Bureau of Criminal Apprehension (BCA) report was submitted as evidence. The report stated that the BCA received the shotgun "disassembled" and that "the stock bolt and stock bolt washer . . . were not present." The BCA report further stated that the missing parts were taken from "a reference firearm" and were used to assemble the stock to the receiver. The shotgun was "test fired and found to be functional." The BCA was not able to determine if Stone's DNA was on the gun parts, and there were no latent fingerprints on the parts.

After the state rested, the defense moved for judgment of acquittal, arguing that the evidence permitted a reasonable inference that Z.R. put the gun in the backpack. The district court denied the motion. The jury found Stone guilty, and the district court entered judgment of conviction for unlawful possession of a firearm. The district court sentenced Stone to serve 39 months in prison. Stone appeals his conviction.

ISSUES

I. **Was the evidence sufficient to sustain the jury's determination that the group of unassembled shotgun parts constituted a firearm within the meaning of Minn. Stat. § 609.165, subd. 1b(a)?**

II. **Was the evidence sufficient to sustain the jury's determination that Stone constructively possessed the group of unassembled shotgun parts?**

III. **Did the district court's admission of photos of Z.R.'s text messages and Dieter's testimony regarding Z.R.'s statements constitute reversible error?**

IV. **Did the prosecutor engage in misconduct during closing argument?**

ANALYSIS

I.

Stone was convicted under Minn. Stat. § 609.165, subd. 1b(a), which prohibits a person "who has been convicted of a crime of violence" from possessing a "firearm." He contends that his conviction must be reversed because "an incomplete collection of disassembled component firearm parts is not a 'firearm' within the meaning of Minn. Stat. § 609.165, subd. 1b(a)." He frames his argument as a challenge to the sufficiency of the evidence to sustain his conviction and argues that the meaning of section 609.165, subdivision 1b(a), is intertwined with the issue of whether the state proved his guilt beyond a reasonable doubt.

If the meaning of a criminal statute is intertwined with the issue of whether the state proved that the defendant violated the statute, it is necessary to interpret the statute when evaluating an insufficiency-of-the-evidence claim. *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017). An appellate court reviews issues of statutory interpretation de novo. *Id*.

The term "firearm" is not defined under Minn. Stat. § 609.165, subd. 1b(a). Nor does the criminal code provide a general definition. *See* Minn. Stat. § 609.02 (2020). But the term has been defined and interpreted in caselaw. Most recently, in *State v. Glover*, the supreme court defined "firearm" in the context of Minn. Stat. § 624.713, subd. 1 (2018), which prohibits certain persons from possessing a firearm. 952 N.W.2d 190, 191-92 (Minn. 2020). The *Glover* court held that "a 'firearm' is an instrument designed for attack or defense that expels a projectile by the action or force of gunpowder, combustion, or some other explosive force." *Id.* at 191.

Although we are unaware of any precedential authority addressing unassembled firearms, caselaw does address inoperable firearms. In *LaMere v. State*, the supreme court held that a firearm that was temporarily inoperable because of a mechanical defect was nonetheless a "firearm" for purposes of Minn. Stat. § 609.02, subd. 6 (1971), which defines the term "dangerous weapon" to include "any firearm." 278 N.W.2d 552, 555-56 (Minn. 1979). The supreme court noted that such a weapon maintains its "apparent ability to inflict injury." *Id.* at 556.

Later, in *Gerdes v. State*, the supreme court held that for purposes of a conviction for possession of a short-barreled shotgun under Minn. Stat. § 609.67, subd. 2 (1980), "the operability of the weapon at the time of possession is immaterial." 319 N.W.2d 710, 710 (Minn. 1982). The supreme court reasoned that "[t]he statute only addresses the original design of the weapon and reflects a strong public policy to dissuade persons from possessing a certain class of dangerous weapons." *Id.* at 712.

In *State v. Knaeble*, this court held that a person could be convicted of unlawful possession of a firearm under Minn. Stat. § 609.165, subd. 1b(a), "without proof that the firearm was operable at the time of the possession." 652 N.W.2d 551, 552 (Minn. App. 2002), *rev. denied* (Minn. Jan. 21, 2003). *Knaeble* involved an antique shotgun with "hammer springs" that were broken or had been removed, though testimony indicated that "the firing pins on the gun were in place" and that "the gun could be fired if the hammer were manually struck with sufficient force." *Id.* at 553.

Stone does not dispute that the unassembled shotgun in this case was designed for attack or defense and to expel a projectile by action of an explosive force. *See Glover*, 952 N.W.2d at 191 (defining firearm). Instead, he argues that "[b]ecause the evidence did not establish that the disparate firearm components could be assembled into a firearm, the components found inside the backpack were not a firearm within the meaning of the statute."

Stone's focus on whether the shotgun components could be assembled into a firearm "for purposes of brandishing as a threat" is consistent with the reasoning in the caselaw above. In those cases, the appellate courts reasoned that an inoperable firearm could be used to threaten injury and to commit other crimes. For example, in *LaMere*, the supreme court reasoned:

> so long as a firearm has the apparent ability to inflict injury, the victim of an assault or robbery will respond in the same way whether or not the gun is loaded. An unloaded firearm has the same capacity to create fear and/or to cause people to comply with criminal demands as a loaded one.

278 N.W.2d at 556. In *Gerdes*, the supreme court indicated that possession of a short-barreled shotgun had been criminalized because of the impact of "merely displaying such a weapon." 319 N.W.2d at 712. And in *Knaeble*, this court reasoned that "[e]ven if the actual use of the firearm is not at issue, its potential use by display is sufficient under *Gerdes* to extend the statute's scope to inoperable weapons." 652 N.W.2d at 555.

The reasoning of those cases informs our decision here. We conclude that the potential use of an unassembled firearm is sufficient to bring such a firearm within the meaning of prohibited possession under Minn. Stat. § 609.165, subd. 1b(a), so long as it is possible to assemble the firearm. In so concluding, we note that we cannot write an exemption for unassembled firearms into Minn. Stat. § 609.165, subd. 1b(a). As this court explained in *Knaeble*:

> [A]ll statutory prohibitions directed at firearms are presumably based on the dangerousness of those weapons. An inoperable firearm, lacking the same element of danger as an operable weapon, logically could be exempted from all statutory prohibitions. The legislature, however, has not chosen to create such an exemption. This court cannot supply language that the legislature has chosen to omit or neglected to provide.

652 N.W.2d at 555; *see LaMere*, 278 N.W.2d at 557 (concluding that a temporarily inoperable firearm is nonetheless a "firearm").

Stone argues that "[a]n incomplete firearm that cannot be assembled into a firearm either for purposes of brandishing as a threat or to fire simply is not a firearm." That argument suggests that a constellation of firearm parts can never be assembled into a firearm if one or more of its parts is missing. We disagree. As this case demonstrates, it may be possible to obtain any missing part necessary to assemble a firearm. And as

caselaw makes clear, it is not necessary that the assembly results in an operational firearm. So long as the state proves, beyond a reasonable doubt, that it was possible to assemble the firearm parts into a firearm as defined by caselaw, an unlawful possession charge is viable.

Whether a particular constellation of parts constitutes a "firearm" is a question of fact. In *LaMere*, the supreme court explained that because the defendant did not admit that the gun at issue was a "dangerous weapon," the district court should have submitted that issue to the jury instead of instructing the jury that it was a "dangerous weapon" as a matter of law. 278 N.W.2d at 553, 557. The supreme court explained that "generally a [district] court should not instruct the jury that an uncontradicted fact exists when that fact constitutes an essential element of the offense." *Id.* at 557. Thus, the district court in *LaMere* "should have instructed the jury on the definition of 'dangerous weapon'" and "should have explained that a firearm may still be a 'firearm' even if it is unloaded or temporarily inoperable at the time it is used." *Id.*

Treating the firearm determination as a question of fact addresses Stone's concern that "at some point, a 'firearm' missing components clearly ceases to be a firearm." Stone argues that "it would be nonsensical to call a barrel only, even with a scope, a firearm." We agree. But the law does not require juries to dispense with common sense. Thus, instead of attempting to craft a rule of law that adequately addresses the plethora of fact patterns that could be presented in a case involving an unassembled firearm that is missing one or more parts, we leave it to the fact-finder to make the firearm determination, based on jury instructions that define "firearm" consistent with caselaw and explain that a group

of unassembled firearm parts can constitute a firearm, so long as it possible to assemble the firearm.

In this case, the district court instructed the jury that firearm "[m]eans a device, whether operable or inoperable, loaded or unloaded, designed to be used as a weapon from which can be expelled a projectile by the force of any explosion or force of combustion." In closing, defense counsel argued, "at what point [do] pieces of a firearm become a firearm? If it's . . . missing some pieces, is it still a firearm? That's for you to decide, but that's another reasonable doubt." The undisputed evidence showed that the BCA was able to assemble the shotgun components using a stock bolt and a stock bolt washer from another firearm. Thus, the evidence was sufficient to prove that the unassembled shotgun parts in this case constituted a firearm within the meaning of Minn. Stat. § 609.165, subd. 1b(a).

II.

Stone contends that the evidence was insufficient to support the jury's guilty verdict because "the circumstances proved did not eliminate the rational hypothesis that [he] was not in constructive possession of the firearm."

A finding of guilt can be based on direct or circumstantial evidence. Circumstantial evidence is "evidence from which the [fact-finder] 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). "In contrast, direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id.* (quotations omitted).

When considering a sufficiency challenge to a guilty verdict based on direct evidence, an appellate court carefully analyzes the record to determine whether the evidence, viewed in the light most favorable to the conviction, was sufficient to permit the fact-finder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). The appellate court assumes that the fact-finder believed the state's witnesses and disbelieved any contrary evidence. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998). The appellate court defers to the fact-finder's credibility determinations and will not reweigh the evidence on appeal. *State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009); *State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002). An appellate court will not disturb a guilty verdict if the fact-finder, acting with due regard for the presumption of innocence and requirement of proof beyond a reasonable doubt, could reasonably have concluded that the state proved the defendant's guilt. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

However, if the state relied on circumstantial evidence to prove an element of an offense, an appellate court applies a heightened standard of review. *See Harris*, 895 N.W.2d at 601-03 (discussing circumstantial-evidence standard); *State v. Al-Naseer*, 788 N.W.2d 469, 471 (Minn. 2010) (stating that "the heightened scrutiny applies to any disputed element of the conviction that is based on circumstantial evidence"). Under the circumstantial-evidence standard of review, an appellate court first determines the circumstances proved, disregarding evidence that is inconsistent with the verdict. *Harris*, 895 N.W.2d at 600-01. Next, the appellate court must "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational

hypothesis other than guilt." *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). The appellate court does not defer to the fact-finder's choice between reasonable inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). But an appellate court will not reverse a conviction based on circumstantial evidence unless there is a reasonable inference other than guilt. *Loving*, 891 N.W.2d at 643.

Stone was convicted under Minn. Stat. § 609.165, subd. 1b(a), which criminalizes possession of a firearm by a person "who has been convicted of a crime of violence." Stone argues that the evidence was insufficient to prove possession. Possession may be actual or constructive. *State v. Loyd*, 321 N.W.2d 901, 902 (Minn. 1982). "Actual possession, also referred to as physical possession, involves direct physical control." *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted). Unlike actual possession, proof of constructive possession "permits a conviction where the state cannot prove actual possession, but the inference is strong that the defendant physically possessed the item at one time and did not abandon his possessory interest in it." *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *rev. denied* (Minn. Jan. 16, 2001). The state alleged constructive possession in this case.

To establish constructive possession the state must prove the defendant "consciously exercised dominion and control over [the firearm]." *State v. Willis*, 320 N.W.2d 726, 728-29 (Minn. 1982). To do so, the state must prove either that the item was found in a place under the defendant's exclusive control to which other people did not normally have access or that the item was found in a place to which others had access and there is a strong probability, inferable from the evidence, that the defendant was

consciously exercising dominion and control over the item. *State v. Florine*, 226 N.W.2d 609, 611 (Minn. 1975).

Because the state relied on circumstantial evidence to prove that Stone constructively possessed the firearm, we apply the circumstantial-evidence standard of review. The circumstances proved are as follows. During the search of the minivan, an unassembled shotgun was found in a blue Ozark Trail backpack, which also contained Stone's prescription box and his paystub. The backpack was found in the back of the minivan between the second- and third-row seats. The police did not report seeing any furtive movements as they approached the minivan, despite being within "20 feet" of it. The minivan's occupants were merely "watching" the investigators' "activities" and "movements." The minivan's driver, Z.R., told an investigator that Coco had borrowed the van and that the backpack belonged to Coco. The investigator knew that Coco was Stone's nickname. Z.R. showed the investigator text messages from Coco that corroborated Z.R.'s statement that he had loaned Coco his van and indicated that Coco had property in the van. Later that day, police located Stone in a nearby park, and Stone had the Ozark Trail "blue day pack that attache[d] to the top of the hiking backpack" that contained the unassembled shotgun parts.

The circumstances proved are consistent with Stone's guilt. That is, the circumstances proved are consistent with an inference that Stone consciously exercised dominion and control over the backpack and its contents. Indeed, Stone concedes that the circumstances shown in this case may be consistent with an inference of guilt.

We next consider whether the circumstances proved support a reasonable inference other than guilt. Stone argues that "one of the passengers who had access to the backpack used it to stash the firearm components, unbeknownst to Stone." But the investigators did not report seeing any furtive movements within the van as they approached it. And none of the circumstances proved suggests that one of the passengers placed the shotgun parts in the backpack.

An alternative hypothesis to guilt may not be based on "mere conjecture." *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). Possibilities of innocence do not require reversal "so long as the evidence taken as a whole makes such theories seem unreasonable." *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002) (quotation omitted). Stone's hypothesis that someone in the minivan stashed the shotgun components in his backpack is based on mere conjecture. Because the circumstances proved do not support a reasonable inference other than guilt, the evidence was sufficient to sustain the jury's guilty verdict.

III.

Stone contends that the district court erred by admitting photographs of Z.R.'s text messages with Coco without proper foundation. Stone also contends that the district court erred by allowing Dieter to testify about Z.R.'s out-of-court statements regarding Coco's connection to the backpack.

We review rulings regarding the admissibility of evidence for an abuse of discretion. *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003). On appeal, a party claiming error must establish that the district court abused its discretion and that the party was prejudiced by the error. *State v. Nunn*, 561 N.W.2d 902, 907 (Minn. 1997). An abuse of discretion occurs

when a district court's decision is based on an incorrect view of the law or is against logic and the facts in the record. *State v. Vangrevenhof*, 941 N.W.2d 730, 736 (Minn. 2020).

Photographs of the Text Messages

Authentication of evidence in civil and criminal trials is governed by rule 901 of the Minnesota Rules of Evidence. Minn. R. Evid. 1101(a) (applying rules of evidence to all Minnesota court proceedings); Minn. R. Evid. 901 (stating requirements for authentication and identification). The evidentiary requirement for authentication as a condition precedent to admissibility is met only if the evidence is "sufficient to support a finding that the matter in question is what its proponent claims." Minn. R. Evid. 901(a). Authentication may occur via testimony of a witness with knowledge "that a matter is what it is claimed to be." Minn. R. Evid. 901(b)(1).

Dieter testified that he took photos of text messages on Z.R.'s phone and recognized the photos offered into evidence as the photos that he took. That testimony was sufficient to establish that the photos in question were what the state claimed them to be. Stone argues that the state "did not offer any foundation to establish the identity of the contact labeled [Coco] or to link the contact to a phone registered to or used by Stone." The district court overruled that objection, explaining that the defense was making a "weight" and not an "admissibility" argument. We agree. "Except when foundation and probative value are entirely absent, they bear on the weight of the evidence rather than its admissibility." *State v. Coy*, 200 N.W.2d 40, 44 (Minn. 1972). Thus, the district court did not abuse its discretion by reasoning that Stone's objection went to the weight of the evidence, and not its admissibility.

Moreover, to obtain relief on appeal, Stone must show "a reasonable possibility that the alleged error substantially affected the verdict." *State v. Williams*, 908 N.W.2d 362, 365 (Minn. 2018) (quotation omitted). In making such a determination, an appellate court considers "whether the district court provided the jury a cautionary instruction, whether the [s]tate dwelled on the evidence in closing argument, and whether the evidence of guilt was strong." *Id.* at 365-66 (quotation omitted). Although the state discussed the photos of the text messages during closing argument, there was stronger evidence connecting Stone to the backpack. First, the backpack contained Stone's prescription box and paystub, along with the unassembled shotgun parts. Second, the day pack that attached to the backpack was discovered in Stone's possession not long after or far from the discovery of the backpack containing the unassembled shotgun parts. On this record, we are satisfied that there is no reasonable possibility that the photos substantially affected the verdict.

Z.R.'s Statements to Dieter

Stone also assigns error to the admission of Z.R.'s statements to investigator Dieter, arguing that they were inadmissible hearsay. *See* Minn. R. Evid. 801(c) (stating that "hearsay" is an out-of-court statement offered to prove the truth of the matter asserted). Dieter testified that Z.R. told him that Coco had borrowed the van, that Coco was the person who left the backpack in the van, that the backpack was not his, and that he did not know the firearm was in the van. Stone did not object to those statements during trial.

Generally, a party must object to an alleged evidentiary error to preserve the issue for appellate review. *Van Buren v. State*, 556 N.W.2d 548, 551 (Minn. 1996). An appellate court normally does not review errors that were not preserved for appeal. *See State v.*

Griller, 583 N.W.2d 736, 740 (Minn. 1998) (stating that the court had "discretion" to review unobjected-to jury instructions). But an appellate court may elect to review an unobjected-to error under the plain-error standard. *State v. Manthey*, 711 N.W.2d 498, 504 (Minn. 2006). Under that standard, a defendant must show: (1) error, (2) that was plain, and (3) that affected his substantial rights. *Id.* If those three conditions are satisfied, we then determine "whether it is necessary to address the error to ensure the fairness and integrity of judicial proceedings." *Id.*

"An error is plain if it was clear or obvious," which is usually established if the error contravenes case law, a rule, or a standard of conduct. *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted). To establish that an error affected the defendant's substantial rights, the defendant has the "heavy burden" of proving a reasonable likelihood that the error had a significant effect on the verdict. *State v. Sontoya*, 788 N.W.2d 868, 872 (Minn. 2010) (quotations omitted). As to the fourth prong, "an appellate court may correct the error *only* when it seriously affects the fairness, integrity, or public reputation of judicial proceedings." *Pulczinski v. State*, 972 N.W.2d 347, 356 (Minn. 2022).

The supreme court has indicated a hesitancy to deem the admission of hearsay plain error. As noted in *Manthey*:

> The number and variety of exceptions to the hearsay exclusion make objections to such testimony particularly important to the creation of a record of the [district] court's decision-making process in either admitting or excluding a given statement. The complexity and subtlety of the operation of the hearsay rule and its exceptions make it particularly important that a full discussion of admissibility be conducted at trial.

711 N.W.2d at 504.

In this case, we need not decide whether the admission of the alleged hearsay constituted plain error because Stone has not met his "heavy burden" under the third prong of the plain-error test to show that the alleged error affected his substantial rights. *See State v. Brown*, 815 N.W.2d 609, 620 (Minn. 2012) (stating that a reviewing court need not consider all prongs of the plain-error test if any one prong is not satisfied).

"When considering whether an error affected a defendant's substantial rights within the context of the plain-error rule, we consider the strength of the evidence against the defendant, the pervasiveness of the improper suggestions, and whether the defendant had an opportunity to (or made efforts to) rebut the improper suggestions." *State v. Fraga*, 898 N.W.2d 263 (Minn. 2017) (quotation omitted). Even though the alleged hearsay evidence suggested that Stone had access to the minivan and that the backpack belonged to Stone, stronger evidence connected Stone to the backpack. Specifically, the backpack contained Stone's prescription box and paystub, and Stone was found in possession of the day-pack portion of the backpack not long after or far from the discovery of the backpack.

In addition, the defense made an effort to rebut the evidence. For example, in closing the defense argued that the driver was "also ineligible to have firearms" and therefore had reason to "divert the blame away from him[self]." The defense also argued that although it was "very likely" that Stone had used the backpack "at some point in the past," there was "no evidence that he was using it on that day and that that firearm belonged to him."

Given the presence of Stone's prescription box and paystub in the backpack that contained the shotgun parts and Stone's possession of the detachable portion of that

backpack, we are satisfied that there is no reasonable likelihood that the admission of the alleged hearsay statements had a significant effect on the verdict. Thus, Stone has not established that he is entitled to relief under the plain-error standard.

IV.

Stone contends that the prosecutor engaged in misconduct during closing argument by misstating the law regarding constructive possession. Stone did not object to the alleged misconduct during trial.

We review unobjected-to prosecutorial misconduct under a modified plain-error standard. *Ramey*, 721 N.W.2d at 302. That standard requires a defendant to establish that the prosecutor's misconduct constituted an error that was plain. *Id.* If the defendant meets that burden, the burden shifts to the state to demonstrate that the error did not affect the defendant's substantial rights. *Id.* If the state does not meet its burden, we then assess whether we should address the error to ensure fairness and the integrity of the judicial proceedings. *State v. Davis*, 735 N.W.2d 674, 682 (Minn. 2007); *see Pulczinski*, 972 N.W.2d at 356 ("[A]n appellate court may correct the error *only* when it seriously affects the fairness, integrity, or public reputation of judicial proceedings.").

It is improper for a prosecutor to misstate the law during closing arguments. *State v. Strommen*, 648 N.W.2d 681, 689 (Minn. 2002). Stone argues that the prosecutor misstated the law of constructive possession during closing argument as follows:

> The last part is if found in a place to which others had access he knowingly exercised dominion and control of the firearm at the time it was found. Is that at the exact time it was found? Is it that morning? That's for you to decide. Did he knowingly exercise dominion and control over that?

. . . .

> I would submit to you the [s]tate doesn't need to prove that the seconds match up, even that the minutes match up, just that at the time that event -- that gun was found, during that morning, he was exercising dominion and control and it didn't stop after they had gotten the gun or sometime between that.

Stone argues that "dominion and control must be over the item *at the time it was found and up to the time of the appellant's arrest*, not at some point in time that the jury may decide." (Emphasis added.) Stone therefore asserts that the prosecutor's statements during closing argument constituted error that was plain. Stone relies on two cases as support: *Florine*, 226 N.W.2d at 609, and *Harris*, 895 N.W.2d at 592.

In *Florine*, a constructive possession case involving drugs found in an abandoned vehicle, the supreme court stated:

> The purpose of the constructive-possession doctrine is to include within the possession statute those cases where the state cannot prove actual or physical possession at the time of arrest but where the inference is strong that the defendant at one time physically possessed the substance and did not abandon his possessory interest in the substance but rather continued to exercise dominion and control over it up to the time of the arrest.

226 N.W.2d at 610.

In *Harris*, a case involving unlawful constructive possession of a firearm, the supreme court stated that "if police found the item in a place to which others had access, the [s]tate must show that there is a strong probability (inferable from other evidence) that at the time the defendant was consciously or knowingly exercising dominion and control over it." 895 N.W.2d at 601.

Stone argues that *Florine* and *Harris* set forth a "clear command" that "the dominion and control must be over the item at the time it was found and up to the time of the [defendant's] arrest." Stone therefore asserts that the prosecutor's statements regarding the necessary proof of dominion and control were plainly erroneous. Although Stone's argument finds some support in the language from *Florine* and *Harris*, for the reasons that follow we are not persuaded that the prosecutor's remarks constituted error that was plain.

In this case, the district court instructed the jury that an exercise of dominion and control had to exist at the time the item was found:

> A . . . person is in constructive possession of a firearm not found on their person if it was found in a place under the person's exclusive control to which other people did not normally have access or if found in a place to which others had access, *he knowingly exercised dominion and control over the firearm at the time the firearm was found*.

(Emphasis added.) Stone "concedes that the district court gave the jurors the correct instruction," even though that instruction is *inconsistent* with Stone's assertion the state must prove an uninterrupted exercise of dominion and control between the time the item was found and the time of the alleged possessor's arrest. Stone's inconsistent positions show that the relevant aspect of constructive possession is not as clear and obvious as Stone suggests. Thus, we are not persuaded that the prosecutor's statements regarding constructive possession constituted error that was plain. Stone is therefore not entitled to relief on his prosecutorial-misconduct claim.

DECISION

In this case, the evidence was sufficient to prove that the unassembled shotgun parts, which lacked only a stock bolt and stock bolt washer, constituted a "firearm" within the meaning of Minn. Stat. § 609.165, subd. 1b(a). The evidence was also sufficient to prove Stone's constructive possession of that firearm. Because Stone has not otherwise established a basis for relief from this court, we affirm.

Affirmed.