

*This opinion is nonprecedential except as provided by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
A23-0223**

State of Minnesota,
Respondent,

vs.

Antonio Barrera,
Appellant.

**Filed February 12, 2024
Affirmed
Smith, Tracy M., Judge**

Stearns County District Court
File No. 73-CR-20-8137

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

Janelle P. Kendall, Stearns County Attorney, River D. Thelen, Assistant County Attorney,
St. Cloud, Minnesota (for respondent)

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

Considered and decided by Gaïtas, Presiding Judge; Smith, Tracy M., Judge; and
Wheelock, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from a final judgment of conviction following a court trial, appellant Antonio Barrera argues that his conviction for aggravated first-degree controlled-substance crime must be reversed because respondent State of Minnesota failed to prove that he

possessed a firearm that was within his immediate reach. He asks that the matter be remanded to the district court for entry of judgment of conviction on a lesser-included offense and resentencing. Because the evidence is sufficient to prove that Barrera constructively possessed the gun and that it was within his immediate reach, we affirm.

FACTS

The following facts are taken from the district court's findings of fact and related evidence at trial.

On December 16, 2020, at approximately midnight, a woman entered the Sauk Centre Police Department and told officers that a white pickup truck had been following her and her passenger. The woman and her passenger told officers that the occupants of the truck pointed a shotgun at them. When asked if she knew who the occupants were, the woman said, "I think his name is Rodolfo. I don't know the last name."

One of the officers at the station, Officer Von Wahlde, left in his squad car to look for the truck. Once he spotted the truck, he began to follow it, waiting for other units to join and help initiate a traffic stop. Officer Von Wahlde ran the license plates and discovered that the truck was registered to Barrera. The truck was driving fifteen miles per hour below the speed limit and alternately crossing over the fog line and the center line.

Several law-enforcement officers responded to the incident and converged where the truck was traveling. Upon stopping the truck, one officer, Deputy Mayers, gave commands for the truck's driver to exit the vehicle. The driver complied immediately, was handcuffed, and was placed in a squad car. The driver, who was subsequently identified as

Barrera, told officers that he had a passenger, later identified as R.R. (first name, “Rodolfo”), in the truck.

Another officer, Deputy Ringness, who was on duty with his trainee, also responded to the area. As they were arriving, the truck was traveling in the direction of Deputy Ringness’s squad car. Deputy Ringness could see clearly through the front windshield of the truck. When the truck was stopped, he decided that he and his trainee should move their squad car because he did not want it to be in front of the truck during the stop. After moving the car, Deputy Ringness and his trainee exited their squad car and moved into a ditch, behind some trees.

Deputy Ringness watched the occupants of the truck with his rifle drawn to ensure that no one grabbed a weapon. After Barrera left the truck, Deputy Ringness had a clear view into the passenger compartment. He estimated that it took 30 to 60 seconds after leaving the squad car for him to have a clear view of the passenger compartment. He observed that the passenger, R.R., sat “very calm and still” and that R.R. did not reach into the center console or the back seat or under the driver’s seat.

Deputy Ringness directed R.R. to exit the vehicle. Once R.R. was outside of the vehicle, the officers secured R.R. in a separate squad car from Barrera. Officer Von Wahlde estimated that one-and-a-half minutes elapsed between when Barrera exited the truck and when R.R. exited the truck.

Another officer, Deputy Younkin, conducted a driving-while-intoxicated (DWI) investigation and observed Barrera exhibit several signs of impairment. While searching Barrera’s person incident to his arrest, Deputy Younkin found a permit to carry a handgun.

Officer Von Wahlde assisted Deputy Mayers in searching the truck. Officer Von Wahlde found live .40-caliber ammunition on the floorboard, between the seats in the front of the truck, and Deputy Mayers observed two live rounds of .40-caliber handgun ammunition on the front, driver's side floorboard. Deputy Mayers also found a small black pouch tucked under the driver's seat, which contained several plastic bags of suspected methamphetamine, pills, and drug paraphernalia. Officer Von Wahlde found two blue plastic tote bins, resembling ammunition carriers, on the rear floorboard between the driver and passenger seats. He opened the totes and observed that they were filled with a white, crystal substance that he believed to be methamphetamine. The substance in the tote bins was not tested.

Deputy Mayer searched the front of the vehicle, including the center console. The console was closed, and, when he went to open it, he could see ammunition in the latch to lift the armrest on the console. Deputy Mayers testified that, to open the console, he flipped up the armrest, which revealed a seat bench, and then he flipped up that seat bench to reveal the bottom compartment. Deputy Mayers searched the bottom compartment and found a handgun, a holster, approximately \$1,000 in cash, an empty extended magazine, and a plastic bag of suspected methamphetamine. The firearm was a .40-caliber handgun, with its barrel pointing toward the passenger side and the handle pointing toward the driver. The contents of a plastic bag found in the black pouch and the plastic bag in the bottom compartment were later tested and confirmed to be methamphetamine totaling 122.87 grams.

At the police department, Officer Von Wahlde interviewed Barrera after he was given a Miranda warning. Barrera explained that he had been with R.R. at a gas station and was vacuuming out his truck while R.R. spoke with some people behind the truck. Barrera said that he did not hear the conversation. The people that R.R. was speaking to then left in their vehicle, and R.R. told Barrera to follow them. Barrera and R.R. got into the truck, and Barrera sped to catch up with the other vehicle. Officer Von Wahlde asked, “At what time did [R.R.] grab the gun?” and Barrera answered, “I have no clue.” Barrera later said, “The gun was never drawn.”

DNA testing on the firearm revealed that there was insufficient genetic information collected to develop a profile based on the DNA.

Barrera was initially charged with two counts: first-degree aggravated controlled-substance crime (possession of a firearm) in violation of Minnesota Statutes section 152.021, subdivision 2b(1) (2020), and DWI for operating a motor vehicle under the influence of a controlled substance in violation of Minnesota Statutes section 169A.20, subdivision 1(2) (2020). Later, the state amended the complaint by adding two counts: first-degree controlled-substance possession in violation of Minnesota Statutes section 152.021, subdivision 2(a)(1) (2020), and DWI for operating a motor vehicle while the body contains any amount of schedule I or II controlled substances, in violation of Minnesota Statutes section 169A.20, subdivision 1(7) (2020).

After a bench trial, the district court found Barrera guilty of all counts. The district court sentenced Barrera to 86 months in prison for the first-degree aggravated controlled-substance crime, finding that it lacked discretion to grant a dispositional departure, and to

a concurrent 91 days on the second DWI count. The district court did not adjudicate the remaining counts.

Barrera appeals.

DECISION

Due process requires the state to prove every element of the charged crime beyond a reasonable doubt. *State v. Culver*, 941 N.W.2d 134, 142 (Minn. 2020). The statute under which Barrera was convicted provides in relevant part:

A person is guilty of aggravated controlled substance crime in the first degree if the person violates . . . subdivision 2, paragraph (a), clause (1) . . . and the person or an accomplice sells or possesses 100 or more grams or 500 or more dosage units of a mixture containing the controlled substance at issue and:

(1) the person . . . possesses on their person or within immediate reach . . . a firearm.

Minn. Stat. § 152.021, subd. 2b (2020).

The only dispute on appeal is whether the state proved beyond a reasonable doubt that Barrera possessed a firearm within his immediate reach. When evaluating the sufficiency of the evidence, appellate courts carefully review the record to determine “whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016) (quotation omitted). The reviewing court assumes that “the fact-finder disbelieved any evidence that conflicted with the verdict.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). The reviewing court will not overturn a conviction if the fact-finder could have reasonably found the defendant guilty, giving due regard to the

presumption of innocence and the burden of proving an offense beyond a reasonable doubt. *See id.* “[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).

On appeal, Barrera makes two distinct challenges: (1) the state did not provide sufficient evidence to prove that he possessed the firearm and (2) the state did not provide sufficient evidence to prove that the firearm was within Barrera’s immediate reach. We address each challenge in turn.

Possession of the Gun

Barrera argues that the evidence presented at trial was insufficient to prove that he constructively possessed the firearm. Possession can be either actual or constructive. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Constructive possession may be proved in two ways. *Id.* The state may show that the item was found in a place that was under the defendant’s exclusive control to which other people normally do not have access. *Id.* Alternatively, if the item was found “in a place to which others had access, the State must show that there is a strong probability . . . that at the time the defendant was consciously or knowingly exercising dominion and control over it.” *Id.* A defendant may possess an item jointly with another person. *Id.*

There is no direct evidence that Barrera possessed the firearm, only circumstantial evidence. Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* at 599 (quotation omitted). “[C]ircumstantial evidence always requires an inferential step to prove a fact that is not

required with direct evidence.” *Id.* “When the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict,” appellate courts apply the circumstantial-evidence standard of review. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

Under the circumstantial-evidence standard of review, appellate courts first determine the circumstances proved. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). At this step, the reviewing court defers to “the [fact-finder]’s acceptance of the proof of these circumstances” and “assume[s] that the [fact-finder] believed the State’s witnesses and disbelieved the defense witnesses.” *Id.* at 598-99 (quotations omitted).

Second, the reviewing court determines whether the circumstances proved, when viewed “as a whole,” are “consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *Id.* at 599 (quotation omitted). At this step, appellate courts do not defer to the fact-finder’s choice between reasonable inferences. *Id.* “Circumstantial evidence must form 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.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). If it does not, the conviction must be reversed. *See id.* at 475.

The following circumstances were proved by the state:

- (1) Barrera was the driver and registered owner of the vehicle;
- (2) R.R. was the passenger;
- (2) there was live .40-caliber handgun ammunition on the front floorboards of Barrera’s vehicle;

- (3) two rounds of live ammunition were found on the floor where Barrera's feet would have been while he drove;
- (4) a .40-caliber handgun was located in the bottom compartment of the truck's center console;
- (5) there were two live rounds of ammunition in the latch used to lift the armrest on the middle console;
- (6) the firearm was oriented with the handgrip toward the driver and the barrel toward the passenger;
- (7) the compartment also contained approximately \$1,000 in cash, an extended magazine, and a plastic bag of methamphetamine;
- (8) two blue plastic tote bins, resembling ammunition carriers, that contained a substance the officers believed to be methamphetamine were found on the rear floorboard between the driver and passenger seats;
- (9) the back seats were filled with household goods;
- (10) law enforcement located a permit to carry a handgun in Barrera's wallet;
- (11) except for a period of approximately 30 to 60 seconds, Deputy Ringness was able to see R.R. as he sat in the passenger compartment during the traffic stop;
- (12) R.R. remained calm and still during the stop and was not observed manipulating anything in the vehicle;
- (13) Barrera acknowledged the presence of a firearm in the vehicle when he told an officer, "The gun was never drawn;"
- (14) Barrera told law enforcement that, before the stop, he had been with R.R. at a gas station and was vacuuming out his truck while R.R. spoke to some people behind the truck; and
- (15) when the people R.R. was speaking with left, R.R. told Barrera to follow them, and Barrera sped to catch up with the car.

Barrera does not dispute that the circumstances proved by the state are consistent with guilt on the element of constructive possession of the gun. Rather, he argues only that these circumstances “also support a reasonable inference that [R.R.] alone exerted dominion and control over the firearm.” We disagree.

The only reasonable inference from the circumstances proved is that Barrera knowingly exercised dominion and control over the gun. The firearm was found in the truck’s center console, which was next to Barrera, and the handle was oriented toward him while the barrel was pointed toward R.R. While proximity is not determinative of constructive possession, it is an important consideration. *State v. Sam*, 859 N.W.2d 825, 834 (Minn. App. 2015). And “[e]ase of access is . . . [another] factor relevant to establishing constructive possession.” *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). Barrera’s proximity to the firearm and its orientation in a way that would allow him to more easily grasp it suggest that he had constructive possession of it.

Barrera was the owner and driver of the truck. He should have been aware of the contents of the vehicle; not only was there live .40-caliber ammunition—compatible with the firearm—on the driver’s side floor, but he was also vacuuming the truck before chasing after the people from the gas station. Also, he indicated that he knew the firearm was present in the truck when he told law enforcement officers, “The gun was never drawn.” Barrera also had a handgun permit on his person while R.R. did not.

Moreover, there were significant quantities of a substance that officers suspected was methamphetamine in the backseat of Barrera’s truck as well as confirmed methamphetamine in a plastic bag in the compartment with the firearm and in the pouch

found under the driver seat. There was also \$1,000 cash in the compartment with the firearm. An officer testified that individuals often carry firearms when they have large amounts of money and controlled substances to protect against robbery. These circumstances suggest that Barrera had constructive possession of the firearm as part of his involvement in the distribution of methamphetamine.

Finally, while law enforcement officers did not have their sights on R.R. before the stop and for approximately 30 to 60 seconds during the stop, when officers did observe R.R., he did not make any movements suggesting that he stashed the firearm in the console unbeknownst to Barrera.

The circumstances proved here distinguish this case from the two cases relied upon by Barrera. In *Harris*, the supreme court reversed the appellant's conviction for unlawful possession of a firearm, concluding that the circumstances proved permitted the reasonable inference that Harris did not know the firearm was in the car. 895 N.W.2d at 603. But Harris was driving a car that he did not own, accompanied by front and rear passengers, and the firearm was not immediately visible but rather was hidden slightly behind the driver in a space between the headliner and the roof of the car. *Id.* In *Sam*, this court reversed the appellant's conviction for possessing a controlled substance, concluding that the circumstances proved permitted the reasonable inferences that the methamphetamine found in the glove compartment in front of the passenger's seat was placed there either before Sam borrowed the car or by the passenger in the car. 859 N.W.2d at 835-36. Sam was not the owner of the car, and the passenger—unlike Sam—had methamphetamine on

his person and was also observed making movements toward the center of the car. *Id.* at 834.

Here, there is no reasonable theory that Barrera did not constructively possess the firearm given his proximity to the firearm, the control he exercised over his truck, his knowledge of its contents, his statement indicating knowledge of the gun’s presence, his involvement in the transportation of methamphetamine, and the absence of any evidence of movements by R.R. in the truck. As a result, sufficient evidence supports the district court’s finding that Barrera possessed the handgun.

Gun Within Immediate Reach

Barrera next argues that, under the plain language of Minnesota Statutes section 152.021, subdivision 2b(1), the state failed to prove that the firearm was within his “immediate reach” because the process to access the firearm required Barrera to take two steps—lifting up the armrest and then lifting up the seat.

Barrera’s challenge first requires us to interpret the meaning of “within immediate reach.” A question of statutory interpretation is reviewed de novo. *State v. Vasko*, 889 N.W.2d 551, 556 (Minn. 2017).

The statute does not provide a definition of “within immediate reach.” Both Barrera and the state turn to dictionary definitions. *See State v. Thonesavanh*, 904 N.W.2d 432, 436 (Minn. 2017) (looking to dictionary definitions to determine ordinary meaning of terms not defined by statute). Barrera, citing definitions of the word “immediate” in *The American Heritage Dictionary* and *Black’s Law Dictionary*, argues that the phrase “within immediate reach” means that the firearm “can be possessed immediately and without delay.” *See The*

American Heritage Dictionary of the English Language 878 (5th ed. 2018) (defining “immediate” as “[o]ccuring at once; happening without delay”); *Black’s Law Dictionary* 897 (11th ed. 2019) (defining “immediate” as “[o]ccuring without delay; instant”). The state cites *The American Heritage Dictionary* definition of “immediate” cited by Barrera as well as additional meanings of the word included in that dictionary and argues that the evidence is sufficient under any of the meanings. See *American Heritage, supra*, at 878 (defining “immediate” as “occurring at once; happening without delay”; “of or near the present time”; “of or relating to the present time and place; current”; “close at hand; near”).

In a nonprecedential but persuasive opinion issued after the parties’ briefs were filed in this case, we concluded that “immediate reach” under Minnesota Statutes section 152.021, subdivision 2b(1), “requires the state to prove that a firearm is accessible by touching because the defendant’s access is ‘without delay’ and ‘close at hand.’” *State v. Moore*, No. A22-1570, 2023 WL 6799617, at *5 (Minn. App. Oct. 16, 2023), *rev. granted* (Minn. Jan. 16, 2024).¹ Given the parties’ arguments and in light of the consistent meaning of “immediate” that we applied in *Moore*, we conclude that the question here is whether the evidence is sufficient to prove that Barrera had access to a close-at-hand firearm without delay.

Whether the firearm was within Barrera’s immediate reach was an element proved by direct evidence. “[D]irect evidence is evidence that is based on personal knowledge or

¹ See Minn. R. Civ. App. P. 136.01, subd. 1(c) (“Nonprecedential opinions and order opinions are not binding authority except as law of the case, *res judicata* or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.”).

observation and that, if true, proves a fact without inference or presumption.” *Harris*, 895 N.W.2d at 599 (quotation and alteration omitted). When an element of an offense is supported by direct evidence, an appellate court’s review is limited to “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient to permit the [fact-finders] to reach the verdict which they did.” *Horst*, 880 N.W.2d at 40 (quotation omitted). The appellate court must assume “the [fact-finder] believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). “[A] conviction may be based on a single person’s testimony.” *State v. Cao*, 788 N.W.2d 710, 717 (Minn. 2010).

Here, the evidence included testimony from Deputy Mayer that, at the time of the arrest, the firearm was located in the bottom compartment of the center console next to Barrera’s seat. He also testified that the handle was oriented toward Barrera and that the gun was not found beneath any other belongings in the compartment. Finally, he testified that the firearm was accessible by simply lifting the armrest and then lifting the seat bench to reveal the compartment.

Deputy Mayer’s testimony was sufficient direct evidence that the firearm was within Barrera’s immediate reach. Because Barrera was in the driver’s seat, next to the console compartment with the firearm, and the firearm was accessible by simply lifting the armrest and the seat bench, we conclude that the firearm was “close at hand” and accessible “without delay.” We are not persuaded by Barrera’s argument that, because there were two intervening steps to access the firearm, the state necessarily failed to prove that the firearm was within Barrera’s immediate reach.

Because the state proved beyond a reasonable doubt that Barrera possessed the handgun and that it was within his immediate reach, the evidence is sufficient to sustain Barrera's conviction for aggravated first-degree controlled-substance crime.

Affirmed.