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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1267**

State of Minnesota,
Respondent,

vs.

Troy William Hinds,
Appellant.

**Filed July 1, 2019
Reversed
Rodenberg, Judge**

Nobles County District Court
File No. 53-CR-17-705

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

Kathleen A. Kusz, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant Nobles County Attorney, Slayton, Minnesota (for
respondent)

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

Considered and decided by Bjorkman, Presiding Judge; Rodenberg, Judge; and
Reyes, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

In this direct appeal, appellant Troy Hinds argues that his convictions for fifth-degree controlled substance crime and possession of drug paraphernalia must be reversed because the evidence is insufficient to prove that he knowingly possessed the methamphetamine and pipe found in a minivan in which he was one of two backseat passengers. We reverse.

FACTS

At around 1:45 a.m. on August 14, 2017, Officer Jacob Refsland was on patrol in Worthington. While stopped at a traffic light, Officer Refsland noticed the minivan in front of him had multiple items attached to the front windshield obstructing the driver's view and the passengers in the rear seat started making a significant amount of movement.

When the traffic light turned green, Officer Refsland followed the minivan for about a minute before activating his emergency lights as the vehicles passed through a construction zone. The driver of the minivan passed an intersection and several entrances into business parking lots on the right-hand side of the street. The driver then turned left onto a street that was not under construction, and then made another left turn into a parking lot. Officer Refsland believed the driver of the minivan took longer to stop than the typical motorist.

Once the minivan came to a stop in the parking lot, Officer Refsland approached the passenger's side of the minivan. He saw four people in the minivan: the driver (H.R.), the front passenger (P.D.), a backseat passenger on the left side (appellant), and a backseat

passenger on the right side (“Johnny”). Officer Refsland recognized both appellant and “Johnny” from prior contacts and greeted them. They were slumped in their seats, did not respond, and only stared straight ahead. Neither of them was wearing a seatbelt. As Officer Refsland talked with H.R., she provided a changing and inconsistent story about where she joined the group and who was driving at that time. H.R.’s version of events did not account for why she and the passengers were now in Worthington or why appellant and P.D. were in the vehicle. Officer Refsland then returned to his squad car to run “license and vehicle checks” before returning to the minivan and asking H.R. for permission to search the vehicle. H.R. did not consent to the vehicle being searched.

At some point during Officer Refsland’s license and vehicle checks, Officer Riley and his canine unit came to provide backup, as did another officer. Officer Refsland asked Officer Riley to conduct a canine sweep of the vehicle and began removing the three passengers from the vehicle. Both back-seat passengers got out on the driver’s side of the vehicle. In this process, Officer Refsland found a machete next to the driver’s seat. The door opening to the passenger area of the car was left open, and both H.R. and “Johnny” requested that officers close the door but the door was left open. During the sweep, the dog alerted, indicating that an odor of narcotics was coming from the front of the car, near the bumper and engine compartment. No narcotics were found in that area, but it appeared that someone had recently tampered with that area.

Officer Refsland began searching the rest of the minivan. In the backseat passenger area, Officer Refsland opened, by way of a hinge, the side armrest compartment directly next to where appellant had been seated. In that compartment, Officer Refsland discovered

a resealable bag which contained folded up cellophane with a crystalline substance. Officer Refsland then opened the armrest compartment where “Johnny” had been seated and found a blue glass pipe with “a bulbous end.” Both the crystalline substance and the pipe field-tested positive for methamphetamine. Testing from the Bureau of Criminal Apprehension later confirmed the crystalline substance discovered near appellant was approximately 0.2 grams of methamphetamine.

Appellant and “Johnny” were arrested, and appellant was later placed in Officer Riley’s car. While appellant was in the car, Officer Riley formed the opinion that appellant was under the influence of methamphetamine due to his “dilated pupils,” abnormal sweating, and “extremely restless and extremely fidgety hands.” Officer Riley and appellant then had the following exchange:

RILEY: Yeah. *Well Troy I can tell that you’re high right now, so.*

APPELLANT: *Okay, if that’s the case, I haven’t had nothing on me.* I had just gotten picked up. . . .

. . . .

RILEY: You on the phone Troy or . . . ?

APPELLANT: No, I’m just talking about it. I’m just saying I’m f-----g, f----d. Not doing nothing. I’m not doing nothing. *Okay, I might be high but I didn’t have no f-----g s--t on me.* I didn’t have nothing. I was getting a ride to go, ugh. This is un-f-----g believable. Can you like, like tell me what it was that they found?

RILEY: What?

APPELLANT: Pipes? Bag? What?

Appellant was charged with fifth-degree possession (methamphetamine) under Minn. Stat. § 152.025, subd. 2(1) (2016), (count I), and possession of drug paraphernalia under Minn. Stat. § 152.092(a) (2016) (count II), for the contraband discovered in both armrests.

Before trial, appellant stipulated that he had a prior controlled-substance conviction, which meant that count I was a felony. *See* Minn. Stat. § 152.025, subd. 4 (2016). At trial, the state produced testimony from Officers Refsland and Riley and the squad car videos. Appellant moved for a judgment of acquittal at the close of the state's case, arguing that there were reasonable alternative explanations, besides appellant's guilt, based on the evidence produced at trial. The district court denied the motion.

Appellant did not testify at trial, but H.R. testified that appellant had only been in the car for two minutes before Officer Refsland pulled them over. In closing, the state argued that appellant had joint, constructive possession of the methamphetamine and the pipe with "Johnny," because the meth was discovered in the armrest nearest to appellant, who admitted to being high, and the pipe was necessary to use the meth.

The jury found appellant guilty of both counts. The district court sentenced appellant to 15 months stayed on count I, and did not sentence appellant on count II.

This appeal followed.

D E C I S I O N

On appeal, appellant argues only that the evidence presented at trial was insufficient to find him guilty of fifth-degree possession and possession of paraphernalia. Specifically, appellant contends that there was insufficient evidence to prove beyond a reasonable doubt that he had constructive possession of the methamphetamine and pipe, or that such

possession was knowing. He argues that there are reasonable, alternative inferences besides appellant's guilt. The state argues that, although its case was circumstantial, the evidence produced at trial is consistent with appellant's guilt and inconsistent with any alternative, rational hypothesis.

Constructive possession can be proved through circumstantial evidence. See *State v. Sam*, 859 N.W.2d 2d 825, 832-33 (Minn. App. 2015). When reviewing a challenge to the sufficiency of the evidence, an appellate court reviews the evidence in the light most favorable to the verdict and determines whether the facts and inferences drawn from them would permit a jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt. *State v. Salyers*, 858 N.W.2d 156, 160 (Minn. 2015). Convictions based on circumstantial evidence require "heightened scrutiny." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). Reviewing courts apply a two-step test when an appellant is convicted on circumstantial evidence. *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). First, the reviewing court must "winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury's verdict, resulting in a subset of facts that constitute the circumstances proved." *Id.* (quotation omitted). Next, the reviewing court must consider "whether a reasonable inference inconsistent with guilt can be drawn from the circumstances proved." *Id.* Appellate courts do not defer to the jury's choice between reasonable, alternative inferences. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013).

To prove fifth-degree possession, the state is required to prove that appellant knowingly possessed the methamphetamine discovered in the minivan. See Minn. Stat. § 152.025, subd. 2(1). Similarly, to prove possession of paraphernalia, the state must prove

that appellant knowingly possessed drug paraphernalia. *See* Minn. Stat. § 152.092(a). As the supreme court explained:

A defendant may possess an item jointly with another person. Possession may be proved through evidence of actual or constructive possession. There are two methods by which the State may prove constructive possession. The State may show that the police found the item in a place under the defendant's exclusive control to which other people normally did not have access. Alternatively, if police found the item in a place to which others had access, the State 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.

Harris, 895 N.W.2d at 601 (citations omitted).

Turning to the first step of the analysis, we must look at all of the circumstances proved as a whole that are consistent with the jury's guilty verdict. *See Silvernail*, 831 N.W.2d at 598-99. The circumstances proved at trial include that (1) around 1:00 a.m. on August 14, 2017, H.R. and "Johnny" drove from Iowa to Worthington in a minivan; (2) at some point before 1:45 a.m., they picked up P.D. and appellant; (3) appellant and "Johnny" were seated in the backseat; (4) Officer Refsland observed "a significant amount of movement" by the backseat passengers before the traffic stop; (5) after Officer Refsland activated his squad's emergency lights, the minivan continued to drive "for a slightly longer amount of time" than what Officer Refsland considered typical; (6) Officer Refsland noticed that appellant and "Johnny" were "slouched down" in the backseat, staring straight ahead, and did not make eye contact with Officer Refsland; (7) Officer Refsland knew both appellant and "Johnny" from prior contacts; (8) Officer Refsland believed there was reasonable suspicion to conduct a canine sweep and had all occupants exit the minivan;

(9) before the canine-sniff was conducted, “Johnny” and H.R. asked Officer Refsland to close the minivan’s passenger door; (10) the canine alerted at the front left quarter panel; (11) officers searched the minivan’s interior and found methamphetamine concealed in the armrest of the seat in which appellant had been sitting and a pipe concealed in the armrest of the seat in which “Johnny” had been sitting; and (12) after appellant was arrested, and while in the backseat of a squad car, he admitted that he was high.

At oral argument, the state conceded that appellant entered the minivan last; we decline to accept the state’s concession as one of the circumstances proved. At trial, evidence that appellant had been the last person to enter the minivan came from H.R.’s testimony and a squad car video in which appellant stated he had just gotten picked up. However, the jury was free to disbelieve H.R.’s testimony and appellant’s protestations.

The next step of the analysis is to determine whether, based on the circumstances proved, the events are “consistent with a reasonable inference that the accused is guilty and inconsistent with *any* rational hypothesis except that of guilt.” *Harris*, 895 N.W.2d at 601 (emphasis added). As we explained in *Sam*, “when the state’s case is based largely, or entirely, on circumstantial evidence, there is sufficient evidence to sustain a conviction if and only if no other reasonable, rational inferences exist that are inconsistent with guilt.” 859 N.W.2d at 831 (quotation omitted).

Appellant argues that the circumstances proved do “not preclude the reasonable inference that [appellant] did not know the methamphetamine and pipe were in the minivan.” The state argues that “[t]he circumstances proved here are consistent with just one rational inference: that [a]ppellant and [“Johnny”] jointly possessed the

methamphetamine and pipe found in the backseat of the minivan.” The state contends that any other inferences are inconsistent with the backseat movement prior to the stop, the behavior of appellant and “Johnny” during the stop, appellant’s taciturn admissions to being high at the time of his arrest, and the locations of the methamphetamine and pipe.

We are unable to meaningfully distinguish this case from *Harris*. “When viewed as a whole, the circumstances proved do not preclude a reasonable inference that [appellant] did not know the [contraband] was in the car.” *Harris*, 895 N.W.2d at 602. Like *Harris*, appellant did not own the car and both items of contraband were not visible to either the occupants of the vehicle or to the officers until they opened the armrests. *See id.* at 602-03. There is no record evidence that the armrests were open at any time while appellant was in the minivan, and Officer Refsland did not testify that appellant made any movements toward the armrest or that his movements were in any way indicative of putting things into the armrest. *Cf. Sam*, 859 N.W.2d at 828. Although appellant essentially conceded to Officer Riley that he was high, the record contains nothing concerning when or where appellant used methamphetamine. The record also contains no testimony or other evidence that there was any odor or other indication of recent use of methamphetamine in the minivan. Apart from mere proximity to the methamphetamine in the armrest, no evidence suggests appellant’s ownership or control of the methamphetamine or pipe. *See id.* at 835. The car was owned by a third-party, none of appellant’s personal items were found in the armrest, appellant expressly disclaimed ownership of any contraband, and no testimony was produced that linked appellant to possession of either the methamphetamine or pipe. *See Harris*, 895 N.W.2d at 603.

The circumstances proved at trial were limited to that appellant was in a minivan in which methamphetamine and methamphetamine paraphernalia were found, and the methamphetamine was in a compartment near where appellant was seated. These circumstances do not, however, exclude a reasonable inference that the methamphetamine and pipe were in the minivan before appellant entered and that he did not know those items were there. *See id.* at 602-03.

Reversed.