

*This opinion is nonprecedential except as provided by  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  
A20-1415**

State of Minnesota,  
Respondent,

vs.

Abdirahman Jama Ali,  
Appellant.

**Filed August 2, 2021  
Affirmed  
Slieter, Judge**

Stearns County District Court  
File No. 73-CR-18-10768

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

Janelle P. Kendall, Stearns County Attorney, Kyle R. Triggs, Assistant County Attorney,  
St. Cloud, Minnesota (for respondent)

Karen Venice Bryan, KB Law, PLLC, Minnetonka, Minnesota (for appellant)

Considered and decided by Slieter, Presiding Judge; Reilly, Judge; and Bryan,  
Judge.

**NONPRECEDENTIAL OPINION**

**SLIETER**, Judge

In this direct appeal from final judgment, appellant argues that his conviction of fifth-degree controlled-substance crime must be reversed because there is insufficient circumstantial evidence that he possessed the controlled substance. Because the evidence

was sufficient to establish that appellant constructively possessed the controlled substance, we affirm.

## **FACTS**

Respondent State of Minnesota charged appellant Abdirahman Jama Ali with one count of fifth-degree possession of a controlled substance, in violation of Minn. Stat. § 152.025, subd. 2(1) (2016). The following facts derive from the court trial.

In June 2018, a Melrose police officer was on patrol on I-94 when his speed radar showed a vehicle traveling 93 miles per hour in a 70-mile-per-hour zone. The officer activated the squad vehicle's emergency lights and the driver eventually drove the vehicle to the side of the road and stopped.

The officer approached the vehicle and identified the driver as Ali. The officer asked Ali for his driver's license and proof of insurance, at which point Ali told the officer he was borrowing the vehicle from a friend to visit his wife who was at a hospital in Fargo soon to give birth to their child. The officer observed a green leafy substance on Ali's pants in his groin area and on the driver's seat and floor below the driver's seat. The officer observed that Ali appeared nervous and his hands were shaking.

Ali then stepped out of the vehicle upon the officer's request. The officer observed that Ali appeared to have something in his mouth. He asked Ali to open his mouth but Ali refused. The officer then placed Ali in the back of his squad and Ali told the officer multiple times that he did not want him to search the vehicle. While sitting in the back of the squad car Ali stuck his foot out to prevent the door of the squad car from closing on

him. Upon arrival of another officer to assist, the officer was able to close the door and then search the vehicle.

The officer found a “black plastic bag” with three plastic “sandwich-size” baggies inside, each of which contained a leafy green substance, located on the floor behind the driver’s seat of the vehicle. The officer sent the substance to the BCA for testing, which confirmed that it was cathinone, a controlled substance commonly known as khat. The officer testified that in his training and experience khat is “chewed” by the user.

The district court judge found Ali guilty of the fifth-degree controlled substance offense. At sentencing, the district court stayed adjudication and placed Ali on probation for five years. This appeal follows.

### **DECISION**

“A conviction based on circumstantial evidence warrants particular scrutiny.” *State v. Bolstad*, 686 N.W.2d 531, 539 (Minn. 2004). Appellate courts must apply a two-step analysis when reviewing the sufficiency of circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, the reviewing court must identify the circumstances proved and “construe conflicting evidence in the light most favorable to the verdict.” *Id.* at 598-99 (quotation omitted). In doing so, the reviewing court must defer “to the [finder of fact’s] acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the State.” *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010) (quotation omitted). Second, the reviewing court must “determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether

the inferences that point to guilt are reasonable.” *Silvernail*, 831 N.W.2d at 599 (quotations omitted). To be sufficient, the state’s evidence must establish that “the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt.” *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2008) (quotations omitted). The circumstances proved 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).

To be found guilty of fifth-degree controlled substance possession, the state needed to prove beyond a reasonable doubt that Ali “unlawfully possesse[d] one or more mixtures containing a controlled substance classified in Schedule I, II, III, or IV.” Minn. Stat. § 152.025, subd. 2 (2016). To establish unlawful possession of a controlled substance, “the state must prove that defendant consciously possessed, either physically or constructively, the substance and that defendant had actual knowledge of the nature of the substance.” *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). Physical possession involves “direct physical control.” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted). The parties agree, as do we, that Ali’s guilt was based on a theory of constructive possession of the khat found in the vehicle.

Constructive possession may be established either (1) by proof that the item was in a place under the defendant’s “exclusive control to which other people did not normally have access,” or (2) by proof of a “strong probability” that the “defendant was at the time consciously exercising dominion and control over it,” even if the item was in a place to

which others had access. *Id.* at 353-54 (quoting *Florine*, 226 N.W.2d at 611). Because the khat was found in a borrowed vehicle owned by Ali's friend, it was located in a place accessible to others, so we must review whether the circumstantial evidence was sufficient to establish that Ali consciously exercised dominion and control over the khat in the baggies at the time of the stop.

Ali argues that the circumstantial evidence was insufficient to support a finding of guilt because the circumstances proved allow for the rational hypothesis that another person possessed the khat found in the baggies behind the driver's seat of the vehicle.<sup>1</sup>

### ***Circumstances Proved***

The following circumstances were proved at trial, and are consistent with the finding of Ali's guilt:

- A Melrose city police officer initiated a traffic stop of a vehicle on I-94 in the city of Melrose, Stearns County, Minnesota.
- The officer identified Ali as the vehicle's driver and confirmed that the vehicle belonged to Ali's friend.
- While speaking with Ali through the driver-side window, the officer observed a leafy green substance in the groin area of Ali's pants and on the seat and front floor of the vehicle.
- The officer observed that Ali appeared to be nervous.

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<sup>1</sup> Ali also argues for the first time on appeal that law enforcement "unlawfully expanded the traffic stop of the vehicle Mr. Ali was driving to a warrantless, no-consent unlawful search." Because "[a] reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it," *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted), this issue is not properly before our court and thus not addressed.

- The officer observed that Ali appeared to be chewing something in his mouth. Ali refused to open his mouth or tell the officer what was in his mouth.
- The officer searched the vehicle and found three clear plastic baggies inside of a larger bag on the floorboard behind the driver's seat.
- The baggies contained a leafy green substance that the BCA tested and confirmed was khat, a schedule I controlled substance in Minnesota.
- The officer testified that, in his training and experience, khat is typically chewed.

### ***No Rational Hypothesis Other Than Guilt***

Ali acknowledges that khat is a controlled substance that is illegal to possess in Minnesota and that khat was found in the vehicle he was driving. He asserts, however, that the district court should have determined from the circumstances proved that he did not exercise dominion and control over the khat because it was not his vehicle. We disagree.

First, the officer observed a green leafy substance resembling khat on Ali's pants in his groin area and on the driver's seat and floor where Ali was sitting. Second, the officer observed that Ali appeared "nervous." Third, the officer observed Ali "chewing" on something during the stop, Ali refused to open his mouth, and the officer testified that khat is "chewed." These circumstances suggest that the khat belonged to Ali and does not support a rational hypothesis that it belonged to someone else. *Silvernail*, 831 N.W.2d at 599.

In sum, the circumstances proved are consistent with the district court's conclusion that Ali possessed the khat in the baggies, and inconsistent with any rational hypothesis other than Ali's guilt.

**Affirmed.**