

*This opinion is nonprecedential except as provided by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
A21-0334**

State of Minnesota,
Respondent,

vs.

Stephen Wayne Howard,
Appellant.

**Filed January 3, 2022
Affirmed
Worke, Judge**

Beltrami County District Court
File No. 04-CR-20-1412

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

David Hanson, Beltrami County Attorney, Wesley Van Ert, Assistant County Attorney,
Bemidji, 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 Florey, Presiding Judge; Worke, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his first-degree controlled-substance-crime conviction,
arguing that the state failed to prove that he possessed the controlled substance. We affirm.

FACTS

In the evening of May 18, 2020, an individual called the police to report that a male in a vehicle at a store parking lot appeared to have overdosed. The caller reported observing drug paraphernalia in the vehicle.

A responding officer saw the male slumped over in the driver's seat. The officer recognized him from previous law-enforcement encounters as appellant Stephen Wayne Howard. The officer knocked on the window and Howard woke up. The officer noticed "tin foil on the center console and also a micro-baggie with . . . a white substance on it." The officer observed that Howard's eyes were bloodshot and glassy, his pupils were constricted, and his eyelids were droopy. Howard's speech was accelerated, and he was having a difficult time keeping his arms and hands still. Howard told the officer that he was cold, but the officer observed that Howard was sweating. Based on these observations, the officer believed that Howard was under the influence of a controlled substance.

The officer told Howard that he saw the tin foil on the center console, and Howard "threw the vehicle into drive, rapidly accelerated causing the tires to break loose and squeal, and sped away." Officers pursued Howard as he sped through town, ran red lights, and nearly struck a group of pedestrians before reaching an obstruction in a backyard.

Howard exited his vehicle and officers secured him. Officers searched Howard and found \$2,000 in one of his pockets. Howard stated something to the effect of "I'm so doped out lately. I don't even know what I'm f'ing doing." Howard was transported to jail where he refused chemical testing.

Officers searched the vehicle and found heroin in several areas. Between the driver's seat and center console officers found a baggie containing a brown granular substance. On the "floor by Mr. Howard's feet in the driver's seat" officers found a Pringles can with a hidden compartment that held a sandwich bag containing a brown granular substance that weighed 30 grams. In the backseat officers found an Arizona Tea can with a hidden compartment that held a substance that weighed 37.582 grams. Officers also found a baggie containing a rock-like substance, a baggie containing a brown granular substance, a tinfoil bindle containing a white powdery substance, and pipes for inhaling a controlled substance. Officers found tinfoil and a pen cut in half, which can be drug paraphernalia, inside a purse found in the trunk. The substance found in the Arizona Tea can was submitted for analysis and tested positive for containing heroin.

Howard was charged with first-degree possession of 25 grams or more of heroin, fleeing a peace officer, and refusal to submit to a chemical test. *See* Minn. Stat. §§ 152.021, subd. 2(a)(3); 609.487, subd. 3; 169A.25, subd. 1(b) (2018). A jury found Howard guilty as charged. The district court sentenced Howard to 75 months in prison. This appeal followed.

DECISION

Howard argues that the evidence is insufficient to support his controlled-substance-crime conviction. In reviewing this claim, we analyze the record to determine whether the evidence, viewed in the light most favorable to the conviction, is sufficient to allow the jury to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989).

The jury found Howard guilty of first-degree possession of 25 grams or more of heroin. *See* Minn. Stat. § 152.021, subd. 2(a)(3). Howard argues that the state failed to prove that he possessed the controlled substance because other individuals had access to the vehicle in which it was found.

To establish possession of a controlled substance, “the state must prove that [the] defendant consciously possessed, either physically or constructively, the substance and that [the] 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). Constructive possession applies when there exists a strong inference that the defendant, although not in direct physical control of the controlled substance, “at one time physically possessed the substance and did not abandon his possessory interest in [it].” *Florine*, 226 N.W.2d at 610. Constructive possession applies here because the controlled substance was found in a hidden compartment in a beverage can found in the back of the vehicle.

Constructive possession may be established 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 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.” *Barker*, 888 N.W.2d at 353-54 (quotation omitted). The defendant’s proximity to an item is a relevant factor in establishing constructive possession. *State v. Sam*, 859

N.W.2d 825, 834 (Minn. App. 2015). “A defendant may possess an item jointly with another person.” *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017).

To prove Howard’s constructive possession, the state used circumstantial evidence. Circumstantial evidence is “evidence from which the [jury] can infer whether the facts in dispute existed.” *Id.* at 599 (quotation omitted). “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. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002).

We apply a heightened standard of review when presented with a challenge to the circumstantial evidence supporting a conviction. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). This review requires application of a two-step test. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). First, we identify the circumstances proved. *State v. Andersen*, 784 N.W.2d 320, 329 (Minn. 2010). In doing so, we defer “to the jury’s acceptance of the proof of these circumstances” and its rejection of evidence that conflicted with these circumstances. *Id.* Second, we examine “the reasonableness of all inferences that might be drawn from the circumstances proved,” including “inferences consistent with a hypothesis other than guilt.” *Id.* (quotation omitted). During this independent examination, we do not defer to the jury’s choice among reasonable inferences. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

The circumstances proved include: (1) a citizen reported a possible overdose; (2) Howard was found slumped over in the driver’s seat; (3) an officer recognized Howard from previous encounters; (4) Howard exhibited signs of controlled-substance use;

(5) Howard fled when an officer told Howard that he noticed tinfoil and a white substance on the center console; (6) once stopped Howard stated that he was “so doped out lately”; (7) officers found \$2,000 on Howard; (8) officers found controlled substances and drug paraphernalia in the vehicle; (9) officers found a Pringles can on the floor in the driver’s seat that had a suspected controlled substance in a hidden compartment; (10) officers found an Arizona Tea can in the backseat that had heroin in a hidden compartment; (11) Howard was the only person in the vehicle; (12) although Howard was not the registered owner of the vehicle, an officer had prior contacts with Howard in the vehicle; and (13) Howard previously stated that the vehicle “was his or he owned the car.” These circumstances proved establish that Howard constructively possessed the heroin in the Arizona Tea can.

Howard argues that the circumstances proved do not rule out the hypothesis that he did not possess the heroin because the Arizona Tea can was not found in plain sight or in an area within his reach. He also claims that there was no forensic evidence connecting him to the Arizona Tea can. But the evidence does not support a conclusion that the Arizona Tea can was not found in plain sight. An officer’s body camera footage shows that the officer found the Arizona Tea can in the backseat among many items—it may have been covered by another item, but it was not hidden. And the smaller size of the vehicle does not eliminate the possibility that the Arizona Tea can was within Howard’s reach from the driver’s seat. Even though there is no forensic evidence showing that Howard handled the Arizona Tea can, he was the sole occupant of the vehicle, and possession can be joint. Howard suggests that the Arizona Tea can could have been found in a purse, but the purse was found in the trunk, and the Arizona Tea can was found in the backseat. While an

officer did search a tote bag that was in the backseat, it does not appear from the officer's body camera footage that the Arizona Tea can was removed from the tote bag.

Even if it was possible that the Arizona Tea can belonged to someone else, “possibilities of innocence do not require reversal of a jury verdict so long as the evidence taken as a whole makes such theories seem unreasonable.” *State v. Stein*, 776 N.W.2d 709, 719 (Minn. 2010) (quotation omitted). The evidence here, especially the fact that Howard was the sole occupant of the vehicle and the Arizona Tea can and the Pringles can, which was found on the floor in the driver's seat area, had similar hidden compartments containing controlled substances, show that Howard, jointly or exclusively, constructively possessed the controlled substance.

Affirmed.