

*This opinion is nonprecedential except as provided by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
A22-0740**

State of Minnesota,
Respondent,

vs.

Lance George Iwen,
Appellant.

**Filed April 17, 2023
Affirmed
Wheelock, Judge**

Wright County District Court
File No. 86-CR-21-5809

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

Brian Lutes, Wright County Attorney, Buffalo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Paul J. Maravigli, Special Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Gaïtas, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges his conviction following a jury trial for one count of fifth-degree possession of a controlled substance, arguing that the evidence was insufficient

to prove beyond a reasonable doubt that he constructively possessed 3.873 grams of methamphetamine in his vehicle. Because the circumstances proved are consistent with the inference that appellant constructively possessed the methamphetamine and inconsistent with any other rational hypothesis, we affirm.

FACTS

In December 2021, a police officer stopped a Chevy Tahoe for a traffic violation near a highway entrance ramp in Clearwater. The officer identified the driver of the Tahoe as appellant Lance George Iwen. Police later identified the Tahoe's passenger as J.B. The officer saw a marijuana joint sitting atop a beverage can in a cupholder near the passenger seat and asked both Iwen and J.B. to exit the vehicle.

The officer searched the vehicle and found a black backpack in the middle of the rear bench seat with a wooden box containing what appeared to be marijuana, marijuana wax, pills, and hypodermic needles. The officer informed Iwen and J.B. that they were being detained while law enforcement continued to search the vehicle, at which point J.B. attempted to flee on foot but was apprehended with the assistance of additional officers. During the search, the officer found a small purse-like satchel with an insignia of the letter G (the G bag) sitting next to the backpack, toward the driver's side of the vehicle. The G bag contained a large amount of cash and a substance consistent with methamphetamine. The officers found cash totaling more than \$3,000, as well as a scale and three cell phones.

Respondent State of Minnesota charged Iwen with one count of fifth-degree controlled-substance possession pursuant to Minn. Stat. § 152.025, subd. 2(1) (2020). The district court held a jury trial over three days in March 2022. At trial, the state called the

officers who responded to the traffic stop. The first officer testified that the Tahoe attracted his attention because it was parked with the occupants inside it at multiple gas stations in the same area over the course of a few hours overnight, and because it had no front or rear license plates and no visible temporary license tag. He stated that after he drove past the parked Tahoe, it moved “deeper into the travel plaza lot where there is no exit, and where most of your general motoring public wouldn’t travel,” which he found suspicious. The officer testified that he pulled the vehicle over after it failed to come to a complete stop at a stop sign.

The officer testified about the contents of the black backpack found during the search of the vehicle, including the wooden box and a zippered container that appeared to contain THC oils and smoking paraphernalia. He stated that based on their size, the clothes in the backpack appeared to be J.B.’s. He determined that the backpack belonged to J.B. The officer also testified about the G bag, describing it as being situated on the back bench seat next to the backpack, but closer to the driver’s side and within Iwen’s reach. He testified that the G bag contained a small silicone container with what he believed to be methamphetamine inside, a smoking device he could not identify, and “a large wad” of cash, among other items. The officer testified that he searched the rear cargo area of the Tahoe as well as a toolbox and a suitcase believed to be Iwen’s and found no other contraband items. The jury viewed the state’s exhibits, including photographs the officer took of the Tahoe’s interior and the contents of the G bag and the zippered case from the backpack.

At trial, the state introduced excerpts of the officer's conversation with Iwen recorded by the officer's squad-car camera and an audio recording of Iwen's post-*Miranda*-warning statement to the officer. In the recordings, Iwen confirmed that the backpack was J.B.'s but could not describe it. He stated that J.B. "might have a jacket, clothes . . . stuff like that back there too." Iwen stated that a brown backpack, a black mesh bag, and a toolbox in the backseat were his. He gave vague answers about his travels in the area with J.B. and his activities at the gas stations. The officer testified that while he initially believed Iwen to be credible, his opinion changed over the course of their interaction.

Another officer who assisted at the scene of the traffic stop testified that he observed a butane torch lighter fall to the ground when Iwen exited the vehicle and that the lighter was of a type commonly associated with methamphetamine use. The officer stated he asked Iwen at the scene if he used the lighter to smoke the marijuana joint found in the vehicle, and Iwen affirmed that he did. The state also presented testimony from a third officer who assisted in counting out the cash found in the vehicle and a forensic scientist. The forensic scientist testified to the weight of the substance found in the silicone container in the G bag and determined that the substance was methamphetamine.

The state also presented evidence of a conciliation court claim Iwen filed, claiming that he was the owner of the Chevy Tahoe and \$3,498.91 in currency. The notarized claim statement, signed by Iwen, listed his criminal case as a "related file" and contained the statement, "I have not been convicted of said crime. The money was what I have left from my savings to use for first month and last month to get an [apartment] in this area."

Iwen did not testify, and the defense called no witnesses. Iwen moved for a judgment of acquittal based on insufficient evidence of Iwen's possession of the methamphetamine, and the district court denied the motion. The jury found Iwen guilty of fifth-degree controlled-substance possession.

Iwen appeals.

DECISION

Iwen argues that the state did not prove beyond a reasonable doubt that he constructively possessed the methamphetamine found in his Chevy Tahoe after a traffic stop. He claims that the circumstantial evidence presented to the jury was insufficient to support his conviction because the evidence supports a reasonable hypothesis other than Iwen's guilt—that Iwen's passenger, J.B., possessed the methamphetamine—and Iwen did not knowingly or consciously exercise dominion or control over the methamphetamine.

For the jury to find Iwen guilty of possession of a controlled substance, the state had to prove Iwen unlawfully possessed a classified controlled substance, in this case, methamphetamine. Minn. Stat. §§ 152.025, subd. 2(1); 152.02, subd. 3(d)(2) (2020). "Possession may be proved through evidence of actual or constructive possession." *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Constructive possession exists "where the inference is strong that the defendant at one time physically possessed" an item and "continued to exercise dominion and control over it up to the time of the arrest." *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015) (quoting *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975)). To establish constructive possession, the state must show that law enforcement found the item either (1) "in a place under the defendant's exclusive control

to which other people normally did not have access” or (2) in a place to which others had access, but other evidence allows the inference of “a strong probability . . . that at the time the defendant was consciously or knowingly exercising dominion and control over” the item.¹ *Harris*, 895 N.W.2d at 601.

In contrast with direct evidence, which is “based on personal knowledge or observation and . . . if true, proves a fact without inference or presumption,” the supreme court has defined circumstantial evidence as evidence from which the jury “can infer whether the facts in dispute existed or did not exist.” *Id.* at 599 (quotations omitted). “Thus, circumstantial evidence always requires an inferential step to prove a fact that is not required with direct evidence.” *Id.* (citing *State v. Silvernail*, 831 N.W.2d 594, 604 (Minn. 2013)). Although the parties differ in their assessment of the circumstances proved by the facts in the trial record, they agree that the state relied on circumstantial evidence to prove Iwen’s constructive possession of the methamphetamine found in his vehicle.

When an appellant challenges the sufficiency of the evidence, an appellate court generally will not overturn a guilty verdict if the jury, applying the presumption of innocence and the state’s burden to prove an offense beyond a reasonable doubt, “could reasonably have found the defendant guilty of the charged offense.” *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016). Our review therefore consists of “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most

¹ “[C]onstructive possession need not be exclusive, but may be shared.” *State v. Sam*, 859 N.W.2d 825, 834 (Minn. App. 2015) (quotation omitted). Because the state does not raise the issue of joint possession on appeal, we review the sufficiency of the evidence on the basis of nonjoint possession.

favorable to the conviction, was sufficient” to support the verdict. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). This standard of review applies when direct evidence alone is sufficient to support the jury’s verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). But when the state relies on circumstantial evidence to prove an element of an offense, we apply a heightened standard of review. *Id.*

Under the heightened circumstantial-evidence standard, we conduct a two-step analysis. *Silvernail*, 831 N.W.2d at 598. The first step is to identify the circumstances proved by the state. *Id.* To identify the circumstances proved, we defer to the jury’s acceptance of the state’s evidence, “construe conflicting evidence in the light most favorable to the verdict and assume that the jury believed the State’s witnesses and disbelieved the defense witnesses.” *Id.* at 598-99 (quotation omitted). We consider “only those circumstances that are consistent with the verdict . . . because the jury is in the best position to evaluate the credibility of the evidence even in cases based on circumstantial evidence.” *Id.* at 599 (citation omitted).

The second step requires us to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *Id.* In making this determination, we review the circumstances proved “not as isolated facts, but as a whole,” and independently examine the reasonableness of all inferences instead of deferring to the jury’s choice between reasonable inferences. *Id.* Even so, “inconsistencies in the state’s case or possibilities of innocence” do not require reversal so long as the evidence as a whole “makes such theories seem unreasonable.” *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008). Therefore, rather than relying on “mere conjecture,”

a defendant challenging the sufficiency of circumstantial evidence must point to evidence in the record “consistent with a rational theory other than guilt.” *Id.*

Applying the first step in the circumstantial-evidence analysis, we identify the circumstances proved by the state. *See Silvernail*, 831 N.W.2d at 598. Construing the evidence in the light most favorable to the conviction, our independent review of the evidence presented at trial shows that the state proved the following circumstances:

- Iwen was the owner and driver of the Chevy Tahoe when officers conducted the traffic stop.
- The Tahoe attracted the attention of a police officer because the vehicle, with the occupants inside, was moving between and parking at multiple gas stations in the same area over a few hours between late evening and early morning and did not have license plates or a visible temporary license tag.
- Iwen attempted to evade the officer after the officer drove by the parked Tahoe.
- A butane torch lighter of a type law enforcement associated with methamphetamine use fell to the ground when Iwen exited the vehicle from the driver’s seat, and Iwen stated that it was his.
- The officer searched a backpack located on the back seat and found a wooden box containing pills, hypodermic needles, and what appeared to be marijuana wax. The backpack also contained a zippered case with smoking devices for THC oils.
- The backpack contained XXXL-size clothing consistent with J.B.’s stature and inconsistent with Iwen’s stature.
- Iwen’s responses to the officer’s questions about the timeline for his and J.B.’s travels from the Moorhead area were unclear and inconsistent, including the time they left Moorhead, the time they arrived in Clearwater, and whether Iwen was putting fuel, transmission fluid, or oil into the Tahoe at the various gas stations.

- The G bag was found on the back seat next to the backpack, closer to the driver's side and within Iwen's reach.
- The G bag contained a "large wad" of approximately \$3,000 cash and a silicone container with a substance later determined to be 3.873 grams of methamphetamine.
- The G bag also contained an automobile title for an Audi vehicle naming neither Iwen nor J.B. as the owner, a smoking device, and a few stray dollar bills.
- In addition to the currency in the G bag that amounted to \$3002, a separate stack of currency was recovered from the Tahoe amounting to approximately \$400.
- Iwen filed a notarized conciliation court claim statement seeking to reclaim the Chevy Tahoe and \$3,498.91 in cash, identifying himself as the owner of that property and stating that he had not been convicted of the crime of controlled-substance possession and the cash was from his savings.
- The officer's search of the Tahoe revealed personal items including a toolbox and suitcase that were also searched, but no other contraband was found.

Next, we turn to the second step of the circumstantial-evidence analysis, in which we determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt. *See id.* at 599. The circumstances proved by the state are consistent with the jury's guilty verdict. Thus, we move on to determine whether the circumstances proved are inconsistent with any rational hypothesis other than guilt.

Iwen argues that "the evidence in this case is strongly suggestive" of the rational hypothesis that Iwen "did not know the methamphetamine was in the vehicle" and that

therefore, the methamphetamine in the G bag must have been J.B.'s. Iwen identifies the circumstances proved that he asserts support his argument. We address these in turn.

Iwen first addresses the G bag's placement on the back seat, suggesting that because it was next to J.B.'s backpack, the G bag was more likely J.B.'s than Iwen's. Iwen compares this fact to those in *State v. Cusick*, in which the proximity of cocaine to the defendant's wallet on the ground when other belongings were scattered elsewhere after a car accident was sufficient to establish that defendant constructively possessed the cocaine even though the car was not the defendant's and the owner of the car was a cocaine user. 387 N.W.2d 179, 181 (Minn. 1986). We are not persuaded that the G bag's proximity to J.B.'s backpack suggests that J.B. also owned the G bag, for two reasons: (1) of the two bags, the G bag was closest to Iwen's position in the driver's seat; and (2) J.B.'s backpack already contained both a box and a zippered pouch with drugs and paraphernalia. It is unlikely that J.B. would stow two of his containers of drugs in his backpack and leave a third container holding not only drugs, but a significant amount of cash, elsewhere. In this instance, the presence of the drugs in a separate container in the G bag, although proximate to J.B.'s backpack, supports ownership by someone other than J.B.

Iwen next argues that his attempt to claim \$3,498.91 through conciliation court, when \$3,002 was recovered from the G bag with the methamphetamine and approximately \$400 was found elsewhere in the Tahoe, does not support a reasonable inference that Iwen constructively possessed the methamphetamine in the G bag. Iwen's argument relies on two contentions: first, that the cash Iwen claimed may have been a different \$3,498.91 from

elsewhere in the Tahoe and did not include the \$3,002 from the G bag; and second, that the cash in the G bag could as easily have been J.B.'s.

At trial, the officer who searched the vehicle testified that he found \$3,000 “kind of balled up” in the G bag along with “a couple dollar bills.”² The officer further testified to searching the rest of the vehicle, including a toolbox and suitcase he believed to be Iwen's, and not finding any contraband. If the officer had found other cash in the Tahoe, particularly an additional \$3,498.91, outside of the G bag, it would have been noted in his testimony or elsewhere in the record.

Given the lack of evidence of any other cash located in the vehicle, Iwen's argument that his conciliation claim for \$3,498.91 represented cash other than that from the G bag containing methamphetamine is unconvincing, as is his argument that the cash in the G bag may have been J.B.'s. Rather than relying on “mere conjecture” to successfully challenge the sufficiency of the evidence presented, Iwen must instead point to evidence in the trial record based on the circumstances proved and consistent with a rational theory other than guilt. *See Tscheu*, 758 N.W.2d at 858; *State v. Ostrem*, 535 N.W.2d 916, 923 (Minn. 1995).

Iwen further argues that the presence of the car title, for a car other than the Chevy Tahoe, in the G bag “makes it more likely that the G bag belonged” to J.B. Iwen bases his argument on the lack of evidence connecting Iwen to the vehicle listed on the title. However, the trial record contains no evidence connecting J.B. to that vehicle, either. Thus,

² A second officer testified to assisting with counting the cash found in the Tahoe and stated that there were two piles—one in the amount of \$3,002 and another in the amount of approximately \$400. He testified that he did not remember whether both piles of money were originally located in the G bag.

the presence of the car title in the G bag neither supports nor undermines Iwen's hypothesis that the G bag, and therefore the methamphetamine, belonged to J.B.

Iwen encourages us to compare the facts in *Sam*, 859 N.W.2d at 828, and *Harris*, 895 N.W.2d at 597, to the facts here and conclude that J.B.'s attempt to flee the scene was a "suspicious movement" that makes J.B.'s ownership of the G bag a rational theory. He argues that those constructive-possession cases support his theory because they involved officers observing passengers who made suspicious movements. However, the courts in those cases did not rely on a passenger's suspicious or furtive behavior to determine that the circumstantial evidence did not support the defendant-driver's conviction for constructive possession. Rather, this court overturned the defendant's conviction in *Sam* because, "without more," the defendant's evasiveness and driving a vehicle with contraband inside was insufficient to eliminate all rational inferences inconsistent with the defendant's guilt on the basis that "no direct evidence tied appellant to possession of the contraband." 859 N.W.2d at 835-36. In contrast, Iwen claimed ownership of the cash in the G bag, which is evidence that ties him to ownership of the contents of the G bag, including the methamphetamine.

We recognize that some isolated circumstances proved in the state's evidence could support theories other than Iwen's knowing exercise of dominion and control over the methamphetamine. For example, although Iwen appeared to the officer to be driving evasively after the officer passed near the parked Tahoe in his squad car, this could have been because Iwen was smoking marijuana in the Tahoe. Similarly, although Iwen admitted that the butane lighter that fell from his lap—a type of lighter police testified to

associating with methamphetamine use—was his, he asserted that he was using the lighter to smoke marijuana, and there was a marijuana joint in plain view.

We do not review the circumstances proved in a piecemeal manner, however; we review the evidence as a whole. *Tscheu*, 758 N.W.2d at 858. And the theories Iwen offers are unreasonable in light of the totality of the circumstances, particularly the conciliation court claim for \$3,498 when \$3,002 was found in the G bag with the methamphetamine, approximately \$400 was found elsewhere in Iwen's Tahoe, and the record reveals no other similar amount of money having been found among Iwen's possessions. Because the circumstances proved by the state are consistent with the inference that Iwen constructively possessed the methamphetamine found in the G bag and are inconsistent with any rational hypothesis of innocence, we conclude that the state presented sufficient evidence to support the jury's verdict.

Affirmed.