

*This opinion is nonprecedential except as provided by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
A23-1786**

State of Minnesota,
Respondent,

vs.

James Jeffrey Bacon,
Appellant.

**Filed December 2, 2024
Affirmed in part, reversed in part, and remanded
Slieter, Judge**

Scott County District Court
File No. 70-CR-20-13924

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

Ronald Hocesvar, Scott County Attorney, Elisabeth M. Johnson, Assistant County Attorney, Shakopee, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jiaqi Li, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Reyes, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

SLIETER, Judge

In this direct appeal from the judgment of conviction of first- and second-degree controlled-substance possession, appellant argues that (1) the district court erred by denying his motion to suppress evidence because the officer lacked reasonable, articulable

suspicion of criminal activity to expand the traffic stop; and (2) the evidence offered at trial is insufficient to prove that he constructively possessed the controlled substances found by police in searching his vehicle. In the alternative, appellant argues that the district court erred by imposing sentences arising from a single behavioral incident.

The district court properly denied appellant's motion to suppress the evidence found during the vehicle search, and the evidence at trial was sufficient to prove he constructively possessed the controlled substances. However, because the two offenses arose from a single behavioral incident, the district court erred by imposing two sentences. Therefore, we affirm in part, reverse in part, and remand with instructions to vacate the second sentence.

FACTS

In October 2020, respondent State of Minnesota charged appellant James Jeffrey Bacon with first-degree possession of controlled substance (methamphetamine) in violation of Minn. Stat. § 152.021, subd. 2(a)(1) (2020); and second-degree possession of controlled substance (heroin) in violation of Minn. Stat. § 152.022, subd. 2(a)(3) (2020). The charges stem from a traffic stop and subsequent search of the car Bacon was driving. The following facts derive, as relevant to the issues raised by Bacon, from either the omnibus hearing or the jury trial.

In the early morning hours on September 15, 2020, an officer observed a car cross the fog line on Highway 169 twice and initiated a traffic stop.

After approaching the vehicle's driver side, the officer obtained identification from the driver and passenger. The officer learned that Bacon was the driver of the vehicle and

learned the identity of the passenger. While visiting with Bacon, the officer observed indicia of impairment. The officer testified that Bacon's speech was slurred, that his eyes were bloodshot, and that "his pupils [were] not responding to the light properly."

The officer also noticed a bulge in Bacon's pants pocket. The officer asked what was in Bacon's pocket, and Bacon retrieved a lighter. The officer asked what else was in his pocket, and Bacon eventually produced a wrapper. The officer, however, did not believe that Bacon was being truthful because the bulge in his pocket disappeared after he produced the wrapper.

The officer asked Bacon if he had had anything to drink, to which Bacon responded, "no." The officer then asked Bacon to step out of the vehicle to perform a field sobriety test. The officer testified that, as Bacon was stepping out of the vehicle, he observed a "methamphetamine bubble pipe" between the driver's seat and door. Upon completion of the field sobriety tests, the officer retrieved the pipe and field tested it as positive for methamphetamine. The officer then searched the vehicle and found methamphetamine under a purse on the passenger seat and heroin in a container located in the center console.

The district court determined that the expansion of the traffic stop was supported by a reasonable, articulable suspicion of driving while impaired and controlled-substance possession and, therefore, denied Bacon's motion to suppress the evidence.

During the jury trial, the state—in addition to the testimony of the officers and a BCA analyst—presented Bacon's *Mirandized* statement, which included his admission that "[the] drugs you found were mine in the vehicle . . . all the stuff you found in the vehicle

is mine.”¹ Bacon also admitted that he grabbed the methamphetamine from the floor and gave it to the passenger, stating “hey stash my sh-t in your purse real quick.”

The BCA analyst testified as to the weight of the controlled substances. She testified that the methamphetamine mixture weighed just over 166 grams and the heroin weighed just over 13 grams. The jury found Bacon guilty of first-degree controlled-substance possession (methamphetamine) and second-degree controlled-substance possession (heroin). The district court sentenced Bacon to 140 months’ imprisonment for first-degree controlled-substance possession and to a concurrent 129 months’ imprisonment for second-degree controlled-substance possession.

DECISION

I. The district court properly denied Bacon’s suppression motion.

When facts are not in dispute, an appellate court reviews a pretrial order on a motion to suppress evidence *de novo* and determines whether the police articulated an adequate basis for the search or seizure at issue. *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011). An officer may conduct a limited, investigatory stop without a warrant if the officer has “reasonable, articulable suspicion” of criminal activity. *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021). But each subsequent intrusion must be “tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent

¹ “Statements stemming from custodial interrogation are inadmissible unless the suspect ‘voluntarily, knowingly and intelligently’ waives these rights” after being informed of his *Miranda* rights. *State v. Ortega*, 798 N.W.2d 59, 67 (Minn. 2011) (quoting *Miranda v. Arizona*, 384 U.S. 436 (1966)).

probable cause, or (3) reasonableness, as defined in *Terry*.” *Id.* (quotation omitted).²

When determining whether an officer has reasonable, articulable suspicion of criminal activity supporting the search or seizure, we consider the totality of the circumstances. *Id.*

Bacon does not challenge the initial stop but, rather, contests the expansion of the stop to include a controlled-substance investigation. Bacon argues that the officer lacked the requisite reasonable, articulable suspicion of criminal activity to justify the expansion of the stop in this manner. We are not persuaded.

The officer stopped Bacon’s vehicle for a traffic violation. The officer observed indicia of impairment including slurred speech, bloodshot eyes, and “his pupils not responding to the light properly.” This information, as well as the observed driving conduct, provided the officer with reasonable, articulable suspicion of criminal activity sufficient to ask Bacon to complete a field sobriety test. *See State v. Lugo*, 887 N.W.2d 476, 488 (Minn. 2016) (reiterating that, when forming reasonable, articulable suspicion, an officer may “draw inferences and deductions that might well elude an untrained person,” though it requires more than an unarticulated hunch)(quotations omitted); *see State v. Klamar*, 823 N.W.2d 687, 696 (Minn. App. 2012) (stating that an odor of alcohol emanating from defendant and bloodshot and watery eyes were indicia of intoxication which “reasonably justified further intrusion”).

² “Reasonable suspicion must be ‘particularized’ and based on ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *Taylor*, 965 N.W.2d at 752 (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)).

Because expansion of the stop was legally justified, the district court properly denied Bacon's motion to suppress the evidence of the controlled substances obtained from the search of the car.

II. The trial evidence sufficiently proved that Bacon constructively possessed the controlled substances.

In a criminal trial, due process requires that the state prove each element of a charged offense beyond a reasonable doubt. *State v. Beganovic*, 991 N.W.2d 638, 654 (Minn. 2023). To be guilty of first-degree possession of a controlled substance, the state was required to prove that Bacon possessed a mixture of 50 or more grams of methamphetamine. Minn. Stat. § 152.021, subd. 2(a)(1). To be guilty of second-degree possession of a controlled substance, the state was required to prove that Bacon unlawfully possessed a mixture of six or more grams that contained heroin. Minn. Stat. § 152.022, subd. 2(a)(3).

Bacon argues that the evidence is insufficient to prove beyond a reasonable doubt that he constructively possessed the methamphetamine and heroin discovered in the car, that was owned by the passenger.

When considering a sufficiency-of-the-evidence challenge, we 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). We assume that the jury disbelieved any testimony that conflicts with the verdict. *State v. Balandin*, 944 N.W.2d 204, 213 (Minn. 2020). And we will not overturn a conviction if the jury could have

reasonably found the defendant guilty, giving due regard to the presumption of innocence and the burden of proof beyond a reasonable doubt. *State v. Griffin*, 887 N.W.2d 257, 263 (Minn. 2016).

The state was required to prove that Bacon possessed the drugs. “Possession may be proved through evidence of actual or constructive possession.” *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Actual possession is proved by showing an individual physically possessed an item. *See State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). Constructive possession may be proved in two ways: (1) by showing that “the police found the [contraband] in a place under the defendant’s exclusive control to which other people normally did not have access” or (2) by showing that there is a strong probability that, at the time, the defendant was consciously exercising dominion and control over the contraband. *Harris*, 895 N.W.2d at 601. “[P]roximity is an important consideration in assessing constructive possession.” *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *rev. denied* (Minn. Jan. 16, 2001).

The parties disagree as to the proper standard of review we must apply to Bacon’s sufficiency-of-the-evidence claim. Bacon argues that this court should review it under the circumstantial-evidence standard because the controlled substances were not found in his actual possession. The state claims that the direct-evidence standard applies because Bacon admitted the controlled substances found in the car were his.

We need not resolve this dispute because, even if we apply the heightened standard of review, the evidence sufficiently proves that Bacon constructively possessed the contraband.

When proof of an offense, or any element of that offense, is based on circumstantial evidence, we apply a heightened standard of review to determine whether the evidence is sufficient. *State v. Loveless*, 987 N.W.2d 224, 247 (Minn. 2023). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted). The circumstantial-evidence standard of review involves two steps. *State v. Westrom*, 6 N.W.3d 145, 158 (Minn. 2024). First, we identify the “circumstances proved, winnowing down the evidence presented at trial to a subset of facts consistent with the jury’s verdict.” *Id.* During this step, we “disregard evidence inconsistent with the verdict.” *Id.* Second, we “independently examine the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole.” *Id.* at 158-59. “To sustain [a] conviction, the circumstances proved, when viewed as a whole, must be 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.

The circumstances proved as consistent with the verdict are as follows:

- Bacon was driving the vehicle in which the controlled substances were found;
- The methamphetamine was found underneath a purse on the passenger seat;
- The heroin was found in the center console of the car;
- The methamphetamine and heroin were within reach of Bacon;
- Bacon admitted the drugs in the car belonged to him;

- Bacon admitted that when the officer signaled for him to pull over that he grabbed the methamphetamine from the floor and told the passenger to “stash” it in her purse; and
- The BCA testified that the mixture containing methamphetamine weighed just over 166 grams and the heroin weighed just over 13 grams.

These circumstances proved are consistent with the jury’s verdict. We next turn to the second step of our analysis to determine whether the circumstances proved are inconsistent with any rational hypothesis except that of guilt. Bacon claims that the circumstances proved are consistent with a rational inference other than guilt but he does not identify from this record any such rational inference, and we find none. When applying the circumstantial-evidence standard of review, “alternative hypotheses to guilt may not be based on ‘mere conjecture.’” *State v. Olson*, 982 N.W.2d 491, 499 (Minn. App. 2022) (quoting *State v. Tscheu*, 758 N.W.2d 849, 858 (Minn. 2008)). The methamphetamine was discovered under a purse on the passenger side to which Bacon had access. Bacon admitted to grabbing it from the floor below his seat and giving it to the passenger. *See Harris*, 895 N.W.2d at 601 (noting that constructive possession may be shown by demonstrating the defendant’s knowing exercise of dominion or control over the contraband). The heroin that was found in a container in the center console was also accessible to Bacon. *See Smith*, 619 N.W.2d at 770 (noting proximity is an important factor when considering constructive possession). There is no rational hypothesis other than guilt.

Bacon’s admission that the controlled substances were his demonstrates that “at the time . . . [he] was consciously or knowingly exercising dominion and control over it.”

Harris, 895 N.W.2d at 601. This admission, when considered with the other circumstances proved, form a complete chain that leads directly to his guilt and excludes beyond a reasonable doubt any reasonable inference other than guilt. *See State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002). Accordingly, there was sufficient evidence to support the jury’s verdict.

III. The district court erred by sentencing Bacon on second-degree possession of a controlled substance because the offenses arose from a single behavioral incident.

“If a person’s conduct constitutes more than one offense . . . , the person may be punished for only one of the offenses.” Minn. Stat. § 609.035 (2020). As a result, multiple sentences for multiple offenses committed as part of the same behavioral incident are prohibited. *State v. Barthman*, 938 N.W.2d 257, 265-66 (Minn. 2020). “Whether a defendant’s offenses occurred as part of a single course of conduct is a mixed question of law and fact.” *State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014). Appellate courts review the district court’s findings of fact under a clearly erroneous standard and its application of the law to those facts *de novo*. *Id.* “To determine whether two or more offenses were committed during a single behavioral incident, appellate courts examine two factors: (1) whether the offenses occurred at substantially the same time and place, and (2) whether the conduct was motivated by an effort to obtain a single criminal objective.” *Barthman*, 938 N.W.2d at 265-66 (quotation omitted). When a district court imposes multiple sentences, “[t]he State bears the burden of proving, by a preponderance of the evidence, that a defendant’s offenses were not part of a single behavioral incident.” *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016).

Bacon's convictions arise out of a single vehicle search and his possession of controlled substances on September 15, 2020, and were motivated by the single criminal objective of possessing those controlled substances.

Nevertheless, the state argues that imposing two sentences is proper because the amount of methamphetamine possessed in the first-degree controlled-substance count is indicative of Bacon's intent to sell and, thus, it was not part of the same behavioral incident as the second-degree controlled-substance count.³ But, the state did not charge Bacon with controlled-substance sale. We, therefore, reverse the sentence imposed for second-degree controlled-substance possession and remand to the district court with instructions to vacate that sentence.

Affirmed in part, reversed in part, and remanded.

³ The state argues that, if Bacon's sentence is reversed and remanded, it should be allowed to further develop the record on remand. However, the state provides no legal authority for such a remedy, and we are aware of none. In contrast, when a sentence is challenged for the first time on direct appeal due to an incorrect criminal-history score, legal authority provides for such a remand. *See State v. Outlaw*, 748 N.W.2d 349, 356 (Minn. App. 2008) (permitting the state to further develop the sentencing record to determine whether the out-of-state convictions qualify as felonies).