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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1131**

State of Minnesota,
Respondent,

vs.

Calvin Coolidge Reavers,
Appellant.

**Filed July 7, 2025
Affirmed in part, reversed in part, and remanded
Ede, Judge**

Olmsted County District Court
File No. 55-CR-21-140

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

Mark A. Ostrem, Olmsted County Attorney, and James E. Haase, Senior Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Ede, Judge; and Bond, Judge.

NONPRECEDENTIAL OPINION

EDE, Judge

In this direct appeal from judgments of conviction for first-degree sale of methamphetamine and first-degree possession of methamphetamine, appellant argues that the district court erred in denying his motion to suppress evidence seized via a search warrant for his home because the warrant was unsupported by probable cause. Appellant

also contends that the trial evidence is insufficient to establish his guilt because it does not prove that he possessed methamphetamine. Because we conclude that the district court did not err in denying appellant’s motion to suppress evidence and that the evidence is sufficient to sustain both convictions, we affirm in part. But because we also conclude that the district court erroneously convicted appellant of two offenses—one of which is a lesser included of the other—that are defined in different subdivisions of the same statute and arose from a single act, we reverse in part and remand.

FACTS

Respondent State of Minnesota charged appellant Calvin Coolidge Reavers with first-degree sale of methamphetamine, in violation of Minnesota Statutes section 152.021, subdivision 1(1) (2020) (Count I), and first-degree possession of methamphetamine, in violation of Minnesota Statutes section 152.021, subdivision 2(a)(1) (2020) (Count II). The charges arose from evidence recovered as a result of a search warrant that law enforcement executed at a residence where Reavers was staying on January 6, 2021.

Consistent with binding precedent, the following factual recitation begins by summarizing the information set forth in the search-warrant affidavit¹ before turning to an overview of the trial evidence, presented in the light most favorable to and consistent with the jury’s verdicts.²

¹ See *State v. Wiggins*, 4 N.W.3d 138, 145 (Minn. 2024); *State v. Souto*, 578 N.W.2d 744, 747 (Minn. 1998).

² See *State v. Segura*, 2 N.W.3d 142, 155 (Minn. 2024); *State v. Gilleylen*, 993 N.W.2d 266, 275 (Minn. 2023).

Search-Warrant Affidavit

In August 2020, an officer with the Rochester Police Department was approached by an individual (the ex-resident) who had lived at a residence in Rochester (the residence) for three weeks before moving out. The ex-resident told the officer that a person named K.M.L. was selling ounces of crack cocaine that he kept in his basement bedroom at the residence. Moreover, the ex-resident said that a woman with the first initial B. was selling a controlled substance called “K2” out of the residence and was keeping the money in her bra. And the ex-resident expressed concern about the welfare of an elderly woman with the first initial D., who also lived at the residence.³

Following the ex-resident’s August 2020 report to the officer, an investigator with the Rochester Police Department (the investigator) began conducting surveillance on the residence, during which he observed “short-term vehicle and foot traffic” that he knew “from [his] training and experience . . . [was] indicative of illegal controlled substance sales.” The investigator “also recognized several people come and go from this residence [who] have a history of controlled substance crimes and weapons charges.”

While surveilling the residence, the investigator observed Reavers several times. Rochester Police Department records showed that Reavers listed the address of the residence as his own. At the time of this investigation, Reavers was on probation. The investigator was familiar with Reavers because of a 2017 investigation in which another law enforcement officer had located pistol ammunition and 10.3 grams of

³ The ex-resident provided the officer with B.’s and D.’s full first names.

methamphetamine divided into separate smaller packages for sales in Reavers's pocket. At that time, a handgun was also discovered in the armrest of a vehicle that Reavers had been driving.

The investigator's surveillance of the residence also resulted in his observation of a specific vehicle at the address, dozens of times. The vehicle was registered to K.A.R. and was often driven by C.L.P., who was K.A.R.'s long-term boyfriend. C.L.P. had an extensive criminal history, including a conviction for second-degree murder. While speaking with multiple confidential reliable informants, law enforcement learned that, at the time of the search-warrant affidavit, C.L.P. was selling controlled substances and was in possession of at least one firearm. During the execution of a search warrant in August 2020, officers located methamphetamine and three firearms in the bedroom of K.A.R. and C.L.P.'s apartment.⁴ Officers also located another firearm inside C.L.P.'s vehicle. On December 21, 2020, law enforcement arrested K.A.R. and C.L.P., and they were charged with first-degree sales of methamphetamine.

On December 19, 2020, the investigator witnessed a person named A.D.L. in the driveway of the residence. The investigator was familiar with A.D.L. because he was the primary suspect in a shooting that had occurred in July 2020. After the investigator observed A.D.L. drive away from the residence, law enforcement conducted a traffic stop and located drug paraphernalia and suspected K2 in the vehicle that A.D.L. had been driving. A.D.L. lied about where he was coming from and was in possession of \$2,100 in

⁴ It appears from the search-warrant affidavit that K.A.R. and C.L.P.'s apartment is located at an address different from that of the residence.

cash, although he claimed that the amount was a “lump sum” payment from the state of Wisconsin for unemployment.

That same day, the investigator spoke with two concerned citizens, both of whom were known to the investigator and who lived in the same neighborhood as the residence.

The first concerned citizen told the investigator that the residence constantly had short-term traffic that came and went from the address at all hours of the day and night. Because the first concerned citizen believed that there was illegal activity going on at the house, they expressed fear for their safety.

The second concerned citizen also described witnessing continuous short-term traffic coming and going from the residence at all hours of the day and night, including people walking into the residence with backpacks, staying for a brief time, and then leaving. According to the second concerned citizen, people were always going in and out of a vehicle that was permanently parked in the driveway of the residence, which led the second concerned citizen to believe that the vehicle may have been used to store items. And the second concerned citizen believed that there was illegal drug activity occurring at the residence.

During his December 19, 2020 conversation with the second concerned citizen, the investigator learned that the owner of the residence was D.J.M., a person with the same first name as the elderly woman about whom the ex-resident had expressed concern in her August 2020 report to law enforcement. The investigator learned that D.J.M. had health problems and that a “family friend” named B.G.W.—a person with the same first name as the woman the ex-resident had said was selling K2 out of the residence—had moved in to

care for D.J.M. The second concerned citizen believed that B.G.W. was inviting people into the residence and was the cause of the problems that they had observed. The investigator determined that B.G.W.’s listed address was the same as that of the residence, that B.G.W. was convicted in 2016 of second-degree sales of a controlled substance, and that B.G.W. was still on probation.

On January 3, 2021, both concerned citizens contacted the investigator and expressed frustration “because the amount of traffic coming and going from [the residence] ha[d] only gotten worse since [the investigator had] last spoke[n] to them.”⁵

On January 4, 2021, the investigator applied for a warrant to search the residence—including its garage, outbuildings, curtilage, and any vehicles on the property—as well as the persons of Reavers and B.G.W. Based on the above-described information, the investigator asserted in the search-warrant affidavit that he had “good reason to believe that the residence . . . [was] being used to store and distribute controlled substances” and that “Reavers . . . and [B.G.W. were] the primary suspects of [that] illegal activity.” The district court determined that probable cause supported the search warrant and signed it the same day.

Pretrial Proceedings and Trial Evidence

On January 6, 2021, law enforcement conducted surveillance of the residence to prepare for execution of the search warrant. A sergeant with the Rochester Police

⁵ Although the search-warrant affidavit states that the date of this communication between the concerned citizens and the investigator was “01/03/2020,” the context in which this contact is described in the affidavit makes clear that the reference to the year 2020 was a typographical error and that the conversation occurred on January 3, 2021.

Department (the sergeant) observed Reavers and a woman later identified as S.B. arrive in a vehicle and park. Reavers exited the passenger side of the vehicle, removed two backpacks and two small items from the trunk, and went into the residence. One of the backpacks was black with grey accents and the other was a “Puma-styled bag.” The two smaller objects were “wallet-sized items.”

When police executed the search warrant, D.J.M., B.G.W., K.A.R., S.B., and Reavers were at the residence. The investigator and an officer knocked on the front door and asked to speak to D.J.M. about trash on the driveway.⁶ B.G.W. answered the door and let law enforcement into the residence, claiming that she had just woken up and was not feeling well. She did not move any items inside the residence before answering the door and allowing the officers inside. Upstairs, the investigator and officer found D.J.M. at her desk; they told her and B.G.W. that they were there to execute a search warrant. Police then found S.B. and Reavers together in an upstairs bathroom, K.A.R. in the basement, and large amounts of methamphetamine, drug paraphernalia, and illegal firearms in the downstairs bedrooms.

Upon leaving the upstairs bathroom, Reavers told officers that he lived at the residence and that he was staying in the northwest upstairs bedroom. At the time that law enforcement executed the search warrant, no one was in Reavers’s bedroom. Upon

⁶ Because the residence “had had complaints that piles and piles of trash were in the driveway,” and because “it was still like that [on the] day” that law enforcement executed the search warrant, the investigator used the trash as an “excuse to make contact and not alert anybody” to the search warrant. The goal of this tactic was to avoid any harm coming to D.J.M.—given her age—and to preserve evidence.

searching Reavers's bedroom, the sergeant found the two backpacks that he had seen Reavers bringing into the residence from the vehicle in which Reavers had arrived. The sergeant searched the black-and-grey backpack and found "a small Coach wallet-sized item that contained methamphetamine and some packaging." The item held neither personal effects nor identification, nor did it appear to be used as a wallet. Inside Reavers's bedroom, the sergeant also found drug paraphernalia, a digital scale, a pie plate containing methamphetamine residue, and packaging material consisting of small Ziploc bags. The largest bag of methamphetamine found inside the wallet-sized item in the black-and-grey backpack weighed about two ounces; two smaller packages inside the wallet-sized item weighed "roughly" 3.5 grams each, an amount known to "a typical user" as an "8-ball," indicating that the methamphetamine was packaged for sales.⁷ Several officers testified at trial that, in their experience, a person in possession of the combination of items found in Reavers's bedroom—including more than 50 grams of methamphetamine—was likely involved in illegal drug sales.

After he was charged by the state, Reavers filed a pretrial motion seeking suppression of evidence and dismissal of the complaint. In support of his motion, Reavers argued that the search warrant lacked probable cause. The district court denied Reavers's motion.

⁷ The Minnesota Bureau of Criminal Apprehension Forensic Science Laboratory analyzed two out of three items recovered from the wallet-sized item in the black-and-grey backpack and determined that their weights were 50.971 and 0.644 grams, respectively, plus-or-minus 0.005 gram. Both contained methamphetamine.

After a two-day trial at which the foregoing evidence was adduced, a jury found Reavers guilty of both charged counts. At sentencing, the district court adjudicated Reavers guilty of Count I (first-degree sale of methamphetamine) and committed Reavers to the custody of the Minnesota Commissioner of Corrections for 107 months. As to Count II (first-degree possession of methamphetamine), after initially stating that it needed “to dismiss that companion charge,” the district court decided that Count II would “remain[] convicted, but no sentence [would be] imposed because [Reavers] was convicted by a jury.” The district court’s sentencing order and warrant of commitment reflect that the court convicted Reavers of both Counts I and II but only imposed a sentence on Count I.

This appeal follows.

DECISION

I. The district court did not err in denying Reavers’s motion to suppress evidence because the search warrant is supported by probable cause.

Reavers argues that the district court erred in denying his motion to suppress evidence because the search warrant was unsupported by probable cause. The state counters that, based on the totality of the circumstances, the district court had probable cause to issue the search warrant. We agree with the state.

A. Applicable Law and Standard of Review

“The United States and Minnesota Constitutions grant the right of people ‘to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.’” *Wiggins*, 4 N.W.3d at 145 (quoting U.S. Const. amend. IV; Minn. Const. art. I, § 10). “Before searching a residence, police usually must obtain a valid warrant issued by

a neutral and detached magistrate.” *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014) (citing *State v. Harris*, 589 N.W.2d 782, 787 (Minn. 1999)). “And a valid warrant must be supported by probable cause.” *Id.*; see also U.S. Const. amend. IV; Minn. Const. art. I, § 10; Minn. Stat. § 626.08 (2024). “If a search warrant is not supported by probable cause, then it is unreasonable.” *Wiggins*, 4 N.W.3d at 145.

“Probable cause exists if the judge issuing a warrant determines that ‘there is a fair probability that contraband or evidence of a crime will be found.’” *Yarbrough*, 841 N.W.2d at 622 (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)); see also *Wiggins*, 4 N.W.3d at 145 (explaining that “[p]robable cause requires a fair probability that contraband or evidence of a crime will be found in a particular place” (quotation omitted)). “The issuing judge’s task is to make a practical, common-sense decision.” *Yarbrough*, 841 N.W.2d at 622. More specifically, issuing judges apply a totality-of-the-circumstances test by “mak[ing] a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before [them], including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Wiggins*, 4 N.W.3d at 145 (quotation omitted). “Elements bearing on this probability include information linking the crime to the place to be searched and the freshness of the information[,]” as well as “[t]he reliability of the source of the information.” *Souto*, 578 N.W.2d at 747.

Thus, “[p]robable cause not only requires that the evidence sought likely exists, but also that there is a fair probability that the evidence will be found at the specific site to be searched.” *Yarbrough*, 841 N.W.2d at 622 (citing *State v. Gail*, 713 N.W.2d 851, 858

(Minn. 2006)). In other words, the state must establish a sufficient “nexus” between the evidence it seeks and the area subject to search. *Id.* But “direct observation of evidence of a crime at the place to be searched is not required.” *Id.* (citing *Harris*, 589 N.W.2d at 788–89). Instead, “[a] nexus may be inferred from the totality of the circumstances.” *Id.* at 622–23 (footnote omitted) (citing *Harris*, 589 N.W.2d at 790–91; *State v. Wiley*, 205 N.W.2d 667, 673 (Minn. 1973)).

“When reviewing a pretrial order on a motion to suppress, [appellate courts] ‘review the district court’s factual findings under [a] clearly erroneous standard . . . [and] review the district court’s legal determinations . . . de novo.’” *State v. Brown*, 932 N.W.2d 283, 289 (Minn. 2019) (quoting *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012) (explaining that appellate courts “review the district court’s legal determinations, including a determination of probable cause, de novo”)). “Appellate courts give great deference to the factual findings of the court issuing a warrant and will reverse ‘only if clearly erroneous.’” *State v. Rochefort*, 631 N.W.2d 802, 804 (Minn. 2001) (citing *State v. Bradford*, 618 N.W.2d 782 (Minn. 2000)); *see also Souto*, 578 N.W.2d at 747 (explaining that appellate courts’ “review of a district court’s probable cause determination is limited, with great deference afforded to the issuing court”).

In particular, appellate courts “review only the warrant application and supporting affidavits to determine if the issuing judge had a substantial basis for concluding that probable cause existed,” which “requires application of the totality of the circumstances test.” *Wiggins*, 4 N.W.3d at 145 (quotation omitted); *see also Souto*, 578 N.W.2d at 747 (explaining that an appellate court’s “task . . . is to ensure that the issuing judge had a

substantial basis for concluding that probable cause existed” and that its “consideration is limited to the information presented in the affidavit, rather than to the information actually possessed by the police” (quotation and citation omitted)). “When [appellate courts] perform a totality of the circumstances analysis on a warrant application, [they] defer to the issuing magistrate, recognizing that doubtful or marginal cases should be largely determined by the preference to be accorded to warrants.” *Wiggins*, 4 N.W.3d at 145–46 (quotation omitted).

B. The search-warrant affidavit established a fair probability that contraband or evidence of a crime would be found in the residence.

Applying the totality-of-the-circumstances test to the search-warrant affidavit before us, we conclude that the district court did not err in denying Reavers’s motion to suppress evidence because the issuing judge had a substantial basis for concluding that probable cause existed. *See id.* at 145.

The totality of the circumstances establishing probable cause for the January 4, 2021 search warrant includes:

- The August 2020 report by the ex-resident who had lived at the residence for three weeks that K.M.L. was selling ounces of crack cocaine that he kept in his basement bedroom at the residence, that B. was selling K2 out of the residence and was keeping the money in her bra, and that the welfare of an elderly woman named D., who also lived at the residence, was at risk;
- The investigator’s subsequent surveillance of the residence and observations of short-term vehicle and foot traffic—including people the investigator recognized as having a history of controlled substance crimes and weapons charges—that was “indicative of illegal controlled substance sales”;
- The investigator’s observation of Reavers at the residence on several occasions, as well as police records showing that Reavers listed the address of the residence as his own;

- Reavers’s status on probation and his past involvement in a 2017 investigation in which another law enforcement officer had located pistol ammunition and 10.3 grams of methamphetamine packaged for sales in Reavers’s pocket, and a handgun in a vehicle that Reavers had been driving;
- The investigator’s observation of K.A.R.’s vehicle at the residence dozens of times, often driven by K.A.R.’s long-term boyfriend C.L.P.;
- C.L.P.’s extensive criminal history, including a conviction for second-degree murder, and information from multiple confidential reliable informants that, at the time of the search-warrant affidavit, C.L.P. was selling controlled substances and was in possession of at least one firearm;
- The August 2020 warranted search of K.A.R. and C.L.P.’s apartment, which led to the seizure methamphetamine and three firearms from their bedroom and another firearm inside C.L.P.’s vehicle;
- The December 21, 2020 arrest of K.A.R. and C.L.P., and their first-degree sales of methamphetamine charges;
- The December 19, 2020 vehicle stop of A.D.L.—the primary suspect in a shooting that had occurred in July 2020—after A.D.L. was seen leaving the driveway of the residence, which yielded drug paraphernalia, suspected K2, and \$2,100 in cash, as well as A.D.L.’s lie about where he had come from and his claim that the money was a “lump sum” payment from the state of Wisconsin for unemployment;
- The two December 19, 2020 concerned citizen reports about the constant short-term traffic at the residence during all hours of the day and night, the vehicle permanently parked in the driveway that appeared to be used to store items because of its frequent access, and their shared belief—based on their observations—that illegal drug activity was occurring at the residence;
- The investigator’s corroboration of the ex-resident’s August 2020 report about B. and D. based on the second concerned citizen’s December 19, 2020 disclosure that the owner of the residence was D.J.M., that D.J.M. had health problems, and that B.G.W. had moved in to care for D.J.M., but may have been inviting people into the residence and causing the problems that the two concerned citizens had observed;

- The investigator’s determination that B.G.W.’s listed address was the same as that of the residence, that B.G.W. was convicted in 2016 of second-degree sales of a controlled substance, and that B.G.W. was still on probation; and
- The January 3, 2021 reports by both concerned citizens that “the amount of traffic coming and going from [the residence] ha[d] only gotten worse since [the investigator had] last spoke[n] to them.”

We are mindful of Minnesota Supreme Court precedent holding that, to establish a sufficient nexus between drug evidence and a person’s residence, a search-warrant affidavit must show that the person is more than a casual user of drugs and must contain timely information that the person has possessed or used drugs at their residence. *See Souto*, 578 N.W.2d at 748–49. But the supreme court has also acknowledged that, “under certain circumstances, it may be permissible for a magistrate to infer that drugs would be found in the home of a ‘drug wholesaler.’” *Harris*, 589 N.W.2d at 789 (quoting *Souto*, 578 N.W.2d at 748) (citing *Novak v. State*, 349 N.W.2d 830, 832 (Minn. 1984)).

Here, even though “direct observation of [drug sales] evidence . . . at the [residence was] not required” to establish a sufficient nexus, *Yarbrough*, 841 N.W.2d at 622, the search-warrant affidavit did, in fact, include information about the December 19, 2020 vehicle stop of A.D.L. after he left the residence with drug paraphernalia, suspected K2, and cash in his possession. And given the detailed nature of the investigation described in the search-warrant affidavit—all of which points toward wholesale drug sales at the residence and establishes that Reavers lived at and frequented the address—we are satisfied that the affidavit adequately presented circumstances from which the issuing judge could infer that drugs would be found in the residence. *See Harris*, 589 N.W.2d at 789. This is especially so given our deference to the issuing magistrate and our “recogni[tion] that

doubtful or marginal cases should be largely determined by the preference to be accorded to warrants.” *Wiggins*, 4 N.W.3d at 145–46 (quotation omitted).

Given all the circumstances set forth in the search-warrant affidavit—including the veracity and basis of knowledge of persons supplying hearsay information—we conclude that the issuing judge made a practical, common-sense decision that there was a fair probability that contraband or evidence of a crime would be found in the residence. *See Wiggins*, 4 N.W.3d at 145. Thus, the district court did not err in determining that the warrant was supported by probable cause and properly denied Reavers’s motion to suppress evidence. *See id.*

II. There is sufficient trial evidence to sustain Reavers’s convictions.

Reavers contends that the evidence adduced at trial is inadequate to prove his guilt because the record is insufficient to establish that he possessed methamphetamine.⁸ The state counters that, applying the circumstantial evidence standard of review, the circumstances proved are consistent with Reavers’s constructive possession of methamphetamine and inconsistent with any rational hypothesis other than guilt. The state’s argument is convincing.

⁸ Reavers’s appellate brief does not specify whether he is challenging the sufficiency of the evidence supporting Count I (first-degree sale of methamphetamine), Count II (first-degree possession of methamphetamine), or both counts. Instead, Reavers focuses his contentions on whether there is sufficient proof of methamphetamine possession and asks that his “conviction”—singular—be reversed. As further explained below, Reavers’s convictions of both Count I and Count II required the state to prove that he possessed methamphetamine. *See* Minn. Stat. § 152.021, subds. 1(1), 2(a)(1). We therefore broadly construe and analyze Reavers’s sufficiency-of-the-evidence challenge as relating to both Count I and Count II.

A. Applicable Law and Standard of Review

To convict Reavers of Count I (first-degree sale of methamphetamine), the state needed to prove that, “on one or more occasions within a 90-day period,” Reavers “unlawfully [sold] one or more mixtures of a total weight of 17 grams or more containing cocaine or methamphetamine.” Minn. Stat. § 152.021, subd. 1(1). As relevant here, to “[s]ell” for purposes of the offense charged in Count I includes “to possess with intent to” “sell, give away, barter, deliver, exchange, distribute or dispose of to another, or to manufacture.” Minn. Stat. § 152.01, subd. 15a (2020). To convict Reavers of Count II (first-degree possession of methamphetamine), the state was required to prove that Reavers “unlawfully possesse[d] one or more mixtures of a total weight of 50 grams or more containing cocaine or methamphetamine.” Minn. Stat. § 152.021, subd. 2(a)(1).

“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. *State v. Florine*, 226 N.W.2d 609, 610 (Minn. 1975). And constructive possession may be proved by showing either 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 “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 [the contraband].” *Harris*, 895 N.W.2d at 601. “[T]wo or more people can constructively possess an item jointly.” *Id.* at 603 n.9.

When analyzing a sufficiency-of-the-evidence claim, the “relevant standard of review depends on whether the factfinder . . . reached its conclusion of law based on direct

or circumstantial evidence.” *State v. Petersen*, 910 N.W.2d 1, 6 (Minn. 2018). Direct evidence is “evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Harris*, 895 N.W.2d at 599 (quotation omitted). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *Id.* (quotation omitted).

In “reviewing the sufficiency of direct evidence, [appellate courts] painstakingly review the record to determine whether that evidence, viewed in the light most favorable to the verdict, was sufficient to permit the jurors to reach the verdict that they did.” *Segura*, 2 N.W.3d at 155 (quotation omitted). But “[w]hen the direct evidence of guilt on a particular element is not alone sufficient to sustain the verdict, . . . [appellate courts] apply a heightened two-step standard . . . called the circumstantial-evidence standard of review.” *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017).

This “two-step process” requires appellate courts to first identify the circumstances proved. *Gilleylen*, 993 N.W.2d at 275. At this step, appellate courts “winnow down the evidence presented at trial to a subset of facts that is consistent with the jury’s verdict and disregard evidence that is inconsistent with the jury’s verdict.” *Id.* (quotation omitted). Second, appellate courts must analyze “whether the circumstances proved are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* (quotations omitted). But appellate courts “do not set aside verdicts based on speculation.” *State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010). And appellate courts “view[the circumstances proved] as a whole and not as discrete, isolated facts.” *State v. Smith*, 9 N.W.3d 543, 565 (Minn. 2024).

“In a joint constructive possession case, the circumstances proved need not support a reasonable inference that the defendant actually possessed the item.” *Harris*, 895 N.W.2d at 603 n.9. “Instead, the circumstances proved must support a reasonable inference that the defendant, singly or jointly, was at the time consciously exercising dominion and control over the item.” *Id.* And “[t]he circumstances proved . . . would have to be inconsistent with a reasonable inference that the defendant, singly or jointly, was not consciously exercising dominion and control over the item at the time in question.” *Id.*

B. The circumstances proved are consistent with Reavers’s constructive possession of methamphetamine and inconsistent with any rational hypothesis other than guilt.

Because law enforcement did not find any contraband on Reavers’s person, the state was required to prove that Reavers constructively possessed methamphetamine. And because there is no direct evidence proving that Reavers constructively possessed methamphetamine, we apply the circumstantial-evidence standard of review, *see Loving*, 891 N.W.2d at 643, beginning with an identification of the following circumstances proved:

- The investigator conducted surveillance of the residence because of his suspicions that illegal drug-related activities were occurring there;
- Throughout his surveillance, the investigator observed several individuals—including Reavers—coming and going from the residence for short periods of time;
- On January 6, 2021, before law enforcement executed the search warrant, the sergeant conducted surveillance of the residence and saw Reavers arrive in a vehicle driven by S.B.;

- The sergeant watched Reavers exit the vehicle and retrieve two backpacks from the trunk—including one that was black-and-grey—and two wallet-sized items, all of which Reavers carried into the residence;
- B.G.W. did not move any items inside the residence before answering the door and allowing officers inside;
- After they entered the residence, law enforcement found Reavers and S.B. in the upstairs bathroom;
- Reavers told the officers that he lived at the residence and that he stayed in the northwest upstairs bedroom;
- At the time of the search, no one was in Reavers’s bedroom;
- Inside Reavers’s bedroom, the sergeant located the black-and-grey backpack that he had seen Reavers carry into the residence from the vehicle in which Reavers had arrived;
- Within the black-and-grey backpack, the sergeant discovered a small Coach wallet-sized item that contained over 50 grams of methamphetamine, including two smaller packages that weighed “roughly” 3.5 grams each, an amount known to “a typical user” as an “8-ball,” indicating that the methamphetamine was packaged for sales;
- Inside Reavers’s bedroom, the sergeant also found drug paraphernalia, a digital scale, a pie plate containing methamphetamine residue, and packaging material consisting of small Ziploc bags; and
- Several officers testified at trial that, in their experience, a person in possession of the combination of items found in Reavers’s bedroom—including more than 50 grams of methamphetamine—was likely involved in illegal drug sales.

At the second step of the circumstantial-evidence test, we conclude that the circumstances proved are consistent with the hypothesis that Reavers constructively possessed the methamphetamine at the time of the search, and inconsistent with any rational hypothesis other than guilt. *Gilleylen*, 993 N.W.2d at 275. Reavers acknowledges

that the circumstances proved support a rational hypothesis that he possessed the methamphetamine. Yet he maintains that the circumstances proved are also consistent with a rational hypothesis that another person with access to the backpack actually possessed the methamphetamine. We respectfully disagree.

This is because “two or more people can constructively possess an item jointly.” *Harris*, 895 N.W.2d at 603 n.9. And although “the circumstances proved must support a reasonable inference that the defendant . . . was at the time consciously exercising dominion and control over the item,” the defendant may have done so “singly *or jointly*.” *Id.* (emphasis added). Even if others had accessed Reavers’s room at some point—a hypothesis that impermissibly seeks to set aside the verdicts based on speculation, *see Al-Naseer*, 788 N.W.2d at 480—the circumstances proved still support only a reasonable inference that Reavers jointly exercised dominion and control over the black-and-grey backpack containing the wallet-sized item that held more than 50 grams of methamphetamine, *Harris*, 895 N.W.2d at 603 n.9. Thus, the circumstances proved are consistent with the rational hypothesis that Reavers is guilty of both counts, regardless of whether he possessed the methamphetamine jointly or singly.

We similarly reject Reavers’s argument that the facts before us are analogous to *Harris*. In that case, the defendant was convicted of constructively possessing a firearm found in the sunroof of the car he was driving, although the officer who searched the car did not immediately see the firearm and the defendant made no suspicious movements toward its location. *Harris*, 895 N.W.2d at 602–03. At the time of the charged incident, there were two passengers in the car with the defendant, who did not own the car. *Id.* And

forensic testing of the gun could not exclude around 25% of the population as sources of genetic material found on the gun. *Id.* The Minnesota Supreme Court reversed the defendant's conviction because the circumstances proved did not foreclose a reasonable inference that the defendant was unaware that the firearm was in the car. *Id.*

Although Reavers compares this matter to *Harris* by highlighting the potential access of four other adults to his bedroom and the lack of forensic evidence linking him to the methamphetamine, *Harris* is distinguishable. In *Harris*, the two other passengers in the car were within the immediate proximity of the firearm when it was found. *Id.* at 602. Not so, here—at the time of the search, no one was in Reavers's bedroom. And even though the state did not present forensic evidence tying Reavers to the methamphetamine, the state did not have to produce such evidence, and the jury was free to accept or reject the evidence the state did offer.

Indeed, the record includes evidence that links Reavers to the methamphetamine: the sergeant's testimony that he saw Reavers carry the black-and-grey backpack and two wallet-sized items into the residence, and the sergeant's subsequent discovery of the small Coach wallet-sized item containing over 50 grams of methamphetamine, which was located within the black-and-grey backpack, inside Reavers's bedroom. These facts amply distinguish the case at hand from *Harris*, in which the defendant was never observed moving toward the firearm in the sunroof, which even the officer who searched the car did not immediately see. *Id.* at 603. Viewing the circumstances proved “as a whole and not as discrete, isolated facts,” *Smith*, 9 N.W.3d at 565, we conclude that the circumstances

proved are “inconsistent with any rational hypothesis other than guilt.” *Gilleylen*, 993 N.W.2d at 275 (quotations omitted).

III. The district court erred by convicting Reavers of both counts.

Neither party has argued that the district court erred in convicting Reavers of both Count I (first-degree sale of methamphetamine) and Count II (first-degree possession of methamphetamine). But “it is the responsibility of appellate courts to decide cases in accordance with law.” *State v. Hannuksela*, 452 N.W.2d 668, 673–74 n.7 (Minn. 1990) (considering the applicability of a common-law doctrine “notwithstanding that the parties failed to raise or discuss the issue in their briefs or at oral argument”); *see also* Minn. R. Crim. P. 28.02, subd. 11 (“On appeal from a judgment, the court may review any order or ruling of the district court or any other matter, as the interests of justice may require.”); *State v. Cruz*, 997 N.W.2d 537, 556 (Minn. 2023) (“consider[ing] an issue not raised on appeal”—the district court’s entry of “convictions for both first-degree felony murder and second-degree intentional murder after the jury returned . . . guilty verdicts”—and “remanding to the district court to vacate the second-degree intentional murder conviction but otherwise leave the guilty verdicts in place” because, “[u]nder Minn. Stat. § 609.04, subd. 1 (2022), a defendant ‘may be convicted of either the crime charged or an included offense, but not both’”).

A. Applicable Law and Standard of Review

Minnesota Statutes section 609.04, subdivision 1 (2020), provides that, “[u]pon prosecution for a crime, the actor may be convicted of either the crime charged or an included offense, but not both.” “Minnesota appellate courts have consistently construed

section 609.04 to bar multiple convictions for the same offense stemming from a single act.” *State v. Williams*, 3 N.W.3d 68, 79 (Minn. App. 2024) (citing *Cruz*, 997 N.W.2d at 556; *State v. Holmes*, 778 N.W.2d 336, 340 (Minn. 2010) (“This statute ‘generally forbids two convictions of the same offense . . . on the basis of the same conduct.’” (quoting *State v. Haase*, 341 N.W.2d 879, 881 (Minn. 1984))); *State v. Spears*, 560 N.W.2d 723, 726–27 (Minn. App. 1997) (vacating three of six convictions of first-degree criminal sexual conduct where convictions were based on three distinct acts), *rev. denied* (Minn. May 28, 1997)), *rev. denied* (Minn. Apr. 16, 2024). Indeed, the Minnesota Supreme Court has interpreted the statute as providing that “a defendant may not be convicted of two counts . . . (different sections of the [criminal] statute or different subsections) on the basis of the same act or unitary course of conduct.” *State v. Folley*, 438 N.W.2d 372, 373 (Minn. 1989). And the supreme court has explained that “[a] lesser offense is necessarily included in a greater offense if it is impossible to commit the latter without also committing the former.” *State v. Roden*, 384 N.W.2d 456, 457 (Minn. 1986). Because it is a legal question, we exercise de novo review in considering whether a conviction violates subdivision 1 of section 609.04. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

B. The district court erred by convicting Reavers of both counts, in violation Minnesota Statutes section 609.04, subdivision 1.

Here, the transcript of the sentencing hearing, as well as the sentencing order and warrant of commitment, reflect that the district court formally convicted Reavers of both Count I (first-degree sale of methamphetamine) and Count II (first-degree possession of methamphetamine). Even considering the district court’s initial inclination to dismiss

Count II, the sentencing order and warrant of commitment are conclusive evidence that the court convicted Reavers of both counts. *See Spann v. State*, 740 N.W.2d 570, 573 (Minn. 2007) (explaining that appellate courts “may also look to the official judgment of conviction in the district court file as conclusive evidence of whether an offense has been formally adjudicated” (quotation omitted)).

Given the specific facts adduced at trial, the state could not prove that Reavers committed first-degree sale of methamphetamine on January 6, 2021, without also proving that Reavers committed first-degree possession of methamphetamine on that date. Based on the nature of the evidence here, the state needed to prove that Reavers possessed methamphetamine before it could prove that he possessed methamphetamine with the intent to sell it. *See State v. Berstch*, 707 N.W.2d 660, 666 (Minn. 2006) (holding that possession of pornography can be an included offense of dissemination of pornography); *see also State v. Thibeau*, No. A18-1156, 2019 WL 2167713, at *2–3 (Minn. App. May 20, 2019) (nonprecedential but persuasive opinion reversing a conviction of first-degree possession of a controlled substance and remanding for the district court to vacate that conviction because “the district court violated Minn. Stat. § 609.04, subd. 1, by entering convictions for both [first-degree sale of a controlled substance and first-degree possession of a controlled substance] when appellant’s possession offense [was] a lesser-included offense to her sale offense”).⁹ *Cf. State v. Traxler*, 583 N.W.2d 556, 562 (Minn. 1998)

⁹ *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (“Nonprecedential opinions . . . are not binding authority except as law of the case, *res judicata* or collateral estoppel, but nonprecedential opinions may be cited as persuasive authority.”).

(reversing conviction for first-degree sale on sufficiency grounds and remanding for resentencing on a lesser-included offense of fifth-degree possession of methamphetamine).

Moreover, the state charged Reavers based on a single act with two separate first-degree-controlled-substance offenses under different sections of Minnesota Statutes section 152.021. Because the two first-degree-controlled-substance crimes are defined in different subdivisions of the same statute, because the charges arise from a single act, and because Count II is a lesser-included offense of Count I, the district court erred by entering judgments of conviction for both counts, in violation of Minnesota Statutes section 609.04, subdivision 1. *See Folley*, 438 N.W.2d at 373; *Williams*, 3 N.W.3d at 79; *Thibeau*, 2019 WL 2167713, at *2–3.

In sum, the district court did not err in denying Reavers’s motion to suppress evidence because the search warrant was supported by probable cause. And the trial evidence is sufficient to support Reavers’s convictions of Count I (first-degree sale of methamphetamine) and Count II (first-degree possession of methamphetamine) because the circumstances proved are consistent with Reavers’s constructive possession of methamphetamine and inconsistent with any rational hypothesis other than guilt. We therefore affirm in part on the above grounds. But because the district court erred in convicting Reavers of two offenses—one of which is a lesser included of the other—that are defined in different subdivisions of the same statute and arose from a single act, we reverse in part. We remand with instructions for the district court to vacate the conviction on Count II, leaving the district court’s finding of guilt for that offense, as well as the formal adjudication and imposition of sentence on Count I, intact. *See State v. LaTourelle*,

343 N.W.2d 277, 284 (Minn. 1984) (holding “that the proper procedure to be followed by the [district] court when the defendant is convicted on more than one charge for the same act is for the court to adjudicate formally and impose sentence on one count only,” leaving the remaining count without formal adjudication).

Affirmed in part, reversed in part, and remanded.