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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-1572**

State of Minnesota,
Respondent,

vs.

Mark Andrew Huyber,
Appellant.

**Filed August 24, 2026
Affirmed
Reyes, Judge**

Olmsted County District Court
File No. 55-CR-23-4572

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

Michael T. Walters, Olmsted County Attorney, James E. Haase, Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Reyes, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

In this direct appeal from his conviction of second-degree possession of a controlled substance, appellant contends that (1) the district court erred by denying his motion to suppress evidence obtained during a vehicle search; (2) the prosecutor committed

misconduct; (3) appellant received ineffective assistance of trial counsel; and (4) the state presented insufficient evidence to sustain the jury's finding of guilt. We affirm.

FACTS

Appellant Mark Andrew Huyber's conviction arises from a 3:00 a.m. encounter with law enforcement and the subsequent discovery of methamphetamine in appellant's vehicle.

While on routine patrol on the night shift, Officers E. and H. observed a truck "in the central part of [a residential] parking lot," that had "a male that was slumped over at the wheel." The two officers approached the truck and, as they approached, the driver's "head had come up" and Officer E. saw that the driver, later identified as appellant, was awake.

Officer H. approached the driver side of the truck while Officer E. approached the passenger side. Another person (the passenger) stood outside the truck's passenger side with the door open. Officer E. later described the passenger's behavior as "just standing," and "[n]othing too notable."

While Officer H. spoke to appellant, Officer E. saw "in the passenger front door, in the cubby on the side, . . . a piece of tinfoil with burnt residue on it, approximately two and a half inches by an inch." Based on his training and experience, Officer E. perceived the tinfoil to be drug paraphernalia associated with fentanyl. The officers then initiated a vehicle search and found other paraphernalia and suspected controlled substances throughout the truck. As relevant here, they located "a clear crystalized rock substance" inside of an ice cream container on which appellant's last name was written. The

container's contents were later identified as 25 grams of a substance containing methamphetamine. That container was in a black backpack in the truck's bed.

Based on the methamphetamine found in the ice cream container, respondent State of Minnesota charged appellant with second-degree possession of a controlled substance in violation of Minnesota Statutes section 152.022, subdivision 2(a)(1) (2022).

Appellant filed a motion to suppress the evidence resulting from the vehicle search and to dismiss the criminal complaint. In the motion, appellant stated that the officers illegally seized him and illegally searched his truck. But at an omnibus hearing and in subsequent briefing, appellant challenged only the search and did not argue that officers unlawfully seized him.

The district court denied appellant's motion. It determined that officers needed, and had, probable cause to search appellant's truck. The order did not discuss whether officers unlawfully seized appellant.

The district court held a two-day jury trial. The state presented testimony from Officer E., Officer H., other law-enforcement officials that arrived at the scene of the vehicle search, a forensic scientist, and the passenger. Appellant presented testimony from D.H., whose name was listed on mail found in the search of appellant's truck. The district court also admitted into evidence photographs taken by officers and footage from officers' body-worn cameras.

The jury found appellant guilty. The district court imposed a presumptive sentence of 111 months with credit of 723 days for time served.

This appeal follows.

DECISION

Appellant argues that (1) the district court erred by denying his pretrial motion to suppress evidence; (2) the prosecutor engaged in misconduct at trial; (3) appellant received ineffective assistance of trial counsel; and (4) the state presented insufficient evidence to sustain the jury's finding of guilt. We address each issue in turn.

I. The district court did not err by denying appellant's pretrial motion to suppress evidence.

Appellant argues that the district court erred by denying his pretrial motion to suppress evidence obtained from the vehicle search because (A) officers unconstitutionally seized him prior to the search and (B) officers did not have probable cause to search his vehicle. We address the seizure argument first and then analyze the vehicle-search argument.

A. Appellant forfeited his seizure argument, and we decline to consider it.

Appellant argues that officers unconstitutionally seized him before observing the tinfoil and conducting the vehicle search. We decline to consider this argument.

"A reviewing court must generally consider only those issues that the record shows were presented [to] and considered by the [district] court." *Steward v. State*, 950 N.W.2d 750, 756 (Minn. 2020) (quotation omitted). "[A] right is forfeited when not timely asserted" *State v. Bursch*, 905 N.W.2d 884, 889 n.1 (Minn. App. 2017).

Appellant mentioned seizure only once to the district court, in one sentence in his pretrial motion. But at the resulting omnibus hearing, appellant did not provide legal argument or authority on the issue. The district court could not, and did not, consider

whether an unlawful seizure occurred. *See State v. Brunes*, 373 N.W.2d 381, 386 (Minn. App. 1985) (“A motion to suppress based on objections to [a] . . . search must be raised at the omnibus hearing. This is necessary to give the State the opportunity to present evidence to refute appellant’s claims.”), *rev. denied* (Minn. Oct. 11, 1985). Appellant therefore forfeited the issue.

Appellate courts may nonetheless consider a forfeited issue “when the interests of justice require” and when “doing so would not unfairly surprise a party to the appeal.” *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). When the district court considered appellant’s pretrial motion, it had an insufficient record to review because appellant failed to brief the seizure issue. *Cf. State v. Soyke*, 585 N.W.2d 418, 420 (Minn. App. 1998) (“But because the record is fully developed and the issue fully briefed, we will extend discretionary review.”). At that time, the entirety of the evidence presented related to this issue consisted of approximately two transcript pages of testimony from Officer E. We conclude that consideration of appellant’s forfeited seizure argument would result in unfair surprise to the state. We therefore decline to consider this forfeited issue.

B. The district court did not err by determining that probable cause supported the vehicle search.

Appellant next argues that, “[b]ecause a piece of tinfoil with a burnt residue does not establish probable cause of criminal activity,” the district court erred by determining that probable cause supported the vehicle search. We disagree.¹

¹ The state argues that the district court erred by declining to apply the lower reasonable-suspicion standard to the search. Because we conclude that the higher probable-cause standard is satisfied, we decline to address the state’s argument. *Cf. State v. Timberlake*,

“When reviewing a district court’s pretrial order on a motion to suppress evidence, [appellate courts] review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011) (quotation omitted). “Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred.” *Id.* at 846-47. This court’s review is limited to the evidence presented to the district court when it undertook the probable-cause inquiry. *See, e.g., State v. Johnson*, 15 N.W.3d 843, 852-53 (Minn. App. 2024) (basing probable-cause conclusion on “factual findings set forth in the district court’s memorandum and order denying [a] motion to suppress”), *rev. denied* (Minn. Apr. 15, 2025).

“The United States and Minnesota Constitutions protect individuals against unreasonable searches and seizures.” *State v. Douglas*, 29 N.W.3d 187, 191 (Minn. 2025). Warrantless searches “are per se unreasonable unless one of the well-delineated exceptions to the warrant requirement applies.” *Johnson*, 15 N.W.3d at 851 (quotation omitted). “One of these well-delineated exceptions, the automobile exception, permits police to search a car without a warrant, including closed containers in that car, if there is probable cause to believe the search will result in a discovery of evidence or contraband.” *Id.* (quotation omitted). The state bears the burden to prove that probable cause supported the search or that an exception to the warrant requirement applied. *State v. Flowers*, 734 N.W.2d 239,

744 N.W.2d 390, 393 (Minn. 2008) (explaining that reasonable-suspicion standard “is less demanding than probable cause”).

249 (Minn. 2007) (discussing probable cause); *Douglas* 29 N.W.3d at 191 (discussing exceptions).

“Probable cause exists when there are facts and circumstances sufficient to warrant a reasonably prudent person to believe that the vehicle contains contraband.” *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (quotation omitted). This inquiry is objective and “depends on the totality of the circumstances,” rather than on “merely . . . the subjective good faith of the police officers.” *Id.*; *State v. Torgerson*, 995 N.W.2d 164, 169 (Minn. 2023) (quotation omitted). Probable cause may arise from noncriminal behavior because “probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity, the significant fact being not whether particular conduct is ‘innocent’ or ‘guilty,’ but the *degree of suspicion* that attaches to particular types of noncriminal acts.” *State v. Holiday*, 749 N.W.2d 833, 843 (Minn. App. 2008) (emphasis added) (quotation omitted). The probable-cause inquiry also “give[s] due weight” to “reasonable inferences that police officers draw from facts, based on their training and experience,” as well as “a district court’s finding that [an] officer was credible and the inference was reasonable.” *Lester*, 874 N.W.2d at 771 (quotations omitted).

Appellant frames the district court’s probable-cause determination as based on the observation of the tinfoil only. But the district court’s order lists several circumstances, including: (1) appellant was “slumped over the steering wheel of a parked vehicle”; (2) the officers were “on overnight patrol”; (3) Officer E. “noted no concerns with the passenger’s general demeanor”; and (4) when Officer H. announced that the officers were leaving, Officer E. “noticed a *small* piece of tinfoil with *burnt residue* . . . in the passenger-side

cubby that *he identified as drug paraphernalia.*” (Emphasis added.) Because the district court identified several circumstances in its order, appellant’s reliance on cases in which officers provided only one justification for a search is unavailing. *See, e.g., Torgerson*, 995 N.W.2d at 174-75 (concluding that officers lacked probable cause to search vehicle when “officers relied solely on the medium-strength odor of” cannabis).

The degree of suspicion that attaches to the presence of the tinfoil in appellant’s truck is increased by its small size and the burnt residue. *See Holiday*, 749 N.W.2d at 843. We also “give due weight” to the district court implicitly finding Officer E. to be credible and his inference that the tinfoil was drug paraphernalia to be reasonable. *See Lester*, 874 N.W.2d at 771 (quotation omitted). Based on the totality of the circumstances, we conclude that the district court did not err by determining that officers had probable cause to search appellant’s vehicle.

II. The prosecutor’s statements during opening and closing arguments do not constitute error that is plain.

Appellant argues that “[t]he prosecutor engaged in reversible misconduct in his opening statement and closing argument by” (1) “reducing the state’s burden of proof”; (2) “ignoring the presumption of innocence”; and (3) “asking the jury to disregard certain elements of the offense.” Appellant’s arguments are unavailing.

Appellant concedes that he did not object to the alleged prosecutorial misconduct at trial. We therefore apply the modified plain-error test, which requires appellant to show that “the misconduct constitutes (1) error, (2) that was plain.” *State v. Westrom*, 6 N.W.3d 145, 157 (Minn. 2024) (quotation omitted).

“An error is plain if it was clear or obvious,” usually when “the error contravenes [caselaw], a rule, or a standard of conduct.” *State v. Ramey*, 721 N.W.2d 294, 302 (Minn. 2006) (quotation omitted). “If the defendant establishes error that is plain, the burden then shifts to the State to demonstrate that the error did not affect the defendant’s substantial rights.” *State v. Fravel*, 34 N.W.3d 309, 328 (Minn. 2026) (quotation omitted). If the state fails to carry that burden, the reviewing court “determine[s] whether the error should be addressed to ensure fairness and the integrity of the judicial proceedings.” *Westrom*, 6 N.W.3d at 157 (quotation omitted). However, if a defendant fails to establish error that is plain, the reviewing court need not engage in the rest of the modified-plain-error test. *See Montanaro v. State*, 802 N.W.2d 726, 732 (Minn. 2011).

Appellate courts “view the prosecutor’s statements as a whole, rather than just selective phrases or remarks that may be taken out of context.” *State v. Waiters*, 929 N.W.2d 895, 901 (Minn. 2019) (quotation omitted). “[T]he prosecutor may present to the jury all legitimate arguments on the evidence, analyze and explain the evidence, and present all proper inferences to be drawn from the evidence.” *State v. Roman Nose*, 667 N.W.2d 386, 402 (Minn. 2003). But they cannot materially and explicitly misstate the law, including the burden of proof. *Fravel*, 34 N.W.3d at 330.

Here, the district court instructed the jury that “[p]roof beyond a reasonable doubt is proof as ordinary prudent people would act upon in their most important affairs.” Prosecutors may “explain abstract legal phrases in terms that an average juror could understand and apply.” *State v. Nowels*, 941 N.W.2d 430, 438 (Minn. App. 2020), *rev. denied* (Minn. June 16, 2020).

First, appellant argues that the prosecutor “reduc[ed] the reasonable doubt standard.” Appellant challenges the fact that the prosecutor told the jury that they have applied the reasonable-doubt standard in their lives to “important decisions,” such as whether to buy a house or accept a particular job. We conclude that this illustration and plain-language description of the state’s burden of proof is not prosecutorial misconduct. *See id.*

Second, appellant argues that the prosecutor’s opening argument “conveyed that [appellant] was not presumed innocent.” Appellant identifies two of the prosecutor’s statements that are relevant to this argument: (1) “[T]his is a case about the defendant possessing nearly an ounce of methamphetamine in an ice cream container bearing his last name in his truck,” and (2) “all of us are here because on June 28th, 2023, in the early morning hours, the defendant possessed approximately and just over 25 grams of methamphetamine in an ice cream container bearing his name.”

These statements do not mention or reference the presumption of innocence and cannot reasonably be construed as indicating that the jury need not enter deliberations with the presumption that appellant is innocent. *See, e.g., Moore v. State*, 945 N.W.2d 421, 433-34 (Minn. App. 2020) (holding that prosecutor’s closing-argument statement that defendant was “no longer entitled to that presumption” constituted plain error), *rev. denied* (Minn. Aug. 11, 2020). We conclude that the prosecutor acted permissibly when he asserted that the state would meet its burden to prove appellant’s guilt beyond a reasonable doubt. *Cf. State v. Young*, 710 N.W.2d 272, 280-81 (Minn. 2006) (concluding closing-argument statement that defendant was “no long[er] an innocent man” constituted

argument that state produced sufficient evidence to overcome presumption of innocence, not prosecutorial misconduct).

Third, appellant argues that the prosecutor “misled the jury” with respect to two elements of the offense charged: (1) knowledge of possession of the controlled substance and (2) no legal right to possess the controlled substance. *See* Minn. Stat. § 152.022, subd. 2(a)(1); *see also* Minn. Stat. § 152.021, subd. 20 (2022) (defining “[u]nlawfully”). During closing arguments, the prosecutor explained that the knowledge element protected, for example, an individual who puts on someone else’s coat which happens to have a controlled substance in the pocket. To argue that the state met its burden of proof on this element, the prosecutor distinguished this hypothetical unknowing person from appellant: “This is not a case of some mistake or not realizing what it was. The nature of the substance makes that plain and obvious, and this was something that [appellant] took care of, putting it away in the bed of his truck, even in a container that bore his name.” The prosecutor then explained that the legal-right element protected, for example, the law-enforcement officers that collected the substance from appellant’s truck. The prosecutor distinguished the officers in his example from appellant, explaining, “This was a civilian electrician possessing methamphetamine, 25 or more grams of it. This is a case where this has been proven beyond a reasonable doubt” We conclude that the prosecutor’s statements regarding the elements of the offense constitute permissible (1) assertions “that the state had produced sufficient evidence of [the defendant’s] guilt to overcome the presumption of innocence,” *Young*, 710 N.W.2d at 280-81, and (2) explanations of law using plain language and illustrations, *see Nowels*, 941 N.W.2d at 438.

Because appellant failed to establish error that is plain, appellant's prosecutorial-misconduct argument fails, and we need not address the remaining steps of the modified-plain-error test. *See Montanaro*, 802 N.W.2d at 732.

III. We decline to reach the merits of appellant's ineffective-assistance-of-counsel claim on direct appeal.

As an alternative to his forfeited seizure argument, appellant raises an ineffective-assistance-of-counsel argument based on trial counsel's failure to raise the seizure issue adequately and, it appears, several of counsel's decisions about which evidence to present at trial. We decline to reach the merits of this argument.

"Generally, an ineffective assistance of counsel claim should be raised in a postconviction petition for relief, rather than on direct appeal." *State v. Gustafson*, 610 N.W.2d 314, 321 (Minn. 2000). This court may nonetheless consider the claim on direct appeal if the record is "sufficient to allow proper review." *Voorhees v. State*, 627 N.W.2d 642, 649 (Minn. 2001). The record here lacks evidence related to the decisions of trial counsel with which appellant takes issue. We therefore decline to consider this claim on direct appeal. However, we preserve appellant's right to pursue an ineffective-assistance-of-counsel claim in a postconviction proceeding subject to the requirements and standards prescribed by law. *See, e.g., State v. Jackson*, 726 N.W.2d 454, 463 (Minn. 2007) (denying ineffective-assistance-of-counsel claims "without prejudice to [the appellant's] right to raise them in a postconviction proceeding").

IV. The state presented sufficient evidence to sustain the jury’s finding of guilt.

In a pro se supplemental brief, appellant argues that the state presented insufficient evidence on the possession element of his conviction to sustain the jury’s finding of guilt. We are not persuaded.

To obtain a conviction of “unlawful possession of a controlled substance, the state must prove that [the] defendant consciously possessed [the substance], either physically or constructively.” *State v. Lyons*, 997 N.W.2d 771, 776 (Minn. App. 2023) (quotation omitted), *rev. denied* (Minn. Feb. 28, 2024). The state may establish constructive possession by showing “that the prohibited item was found in a place under [the] defendant’s exclusive control to which other people did not normally have access.” *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015) (quotation omitted). But “if the prohibited item was found in a place to which others had access,” the state must show that “there is a strong probability (inferable from other evidence) that defendant was at the time consciously exercising dominion and control over it.” *Id.* (quotation omitted).

“When an appellant challenges the sufficiency of the evidence, [appellate courts] review the evidence to determine whether, given the facts in the record and the legitimate inferences that can be drawn from those facts, a jury could reasonably conclude that the defendant was guilty of the offense charged.” *State v. Smith*, 9 N.W.3d 543, 564-65 (Minn. 2024) (quotation omitted).

Both parties assume that the circumstantial-evidence standard applies here. We agree because the evidence presented by the state requires “an inferential step” to find that appellant possessed the substance. *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017);

see also id. (defining “circumstantial evidence as evidence from which the factfinder can infer whether the facts in dispute existed” (quotation omitted)).

The first step of the circumstantial-evidence analysis “requires [appellate courts] to winnow down the evidence presented at trial by resolving all questions of fact in favor of the jury’s verdict, which results in a subset of facts that constitute the circumstances proved.” *State v. Firkus*, 31 N.W.3d 468, 478 (Minn. 2026) (quotations omitted). Appellate courts defer to the jury’s assessment of the credibility of evidence as well as its weighing of evidence. *Id.* at 479.

During this first step, appellate courts “consider only those circumstances that are consistent with the verdict” and “assume the jury believed the state’s witnesses and disbelieved contrary evidence.” *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013); *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010) (quotation omitted). “The phrase ‘circumstances proved’ does not mean every circumstance as to which there may be some testimony in the case; rather, it refers only to those circumstances as the jury finds proved by the evidence.” *State v. Tschau*, 758 N.W.2d 849, 857-58 (Minn. 2008) (quotations omitted). An inference is not a circumstance proved. *Firkus*, 31 N.W.3d at 483.

Here, as relevant to the possession element, the circumstances proved include:

- Two officers testified that, around 3:00 a.m. on June 28, 2023, they observed an individual later identified as appellant slumped over the wheel of a truck in a residential parking lot. The officers also observed a passenger standing nearby.
- The officers approached the vehicle and, after Officer E. “observed a piece of burnt tinfoil” in the passenger door, they searched the vehicle.

- The officers opened the bed of the truck and found a black backpack near the opening.
- The black backpack contained mail addressed to D.H., a testifying witness and acquaintance of appellant. The two met when D.H. and appellant were moving another person's belongings out of D.H.'s house sometime after June 14, 2023.
- The black backpack also contained an ice cream container on which appellant's last name was written. In the container was a substance that a forensic scientist later confirmed to be 25 grams of a mixture containing methamphetamine.
- Both the passenger and D.H. testified that they did not know anything about the black backpack, the ice cream container, or the contents of the ice cream container.
- Officer H. testified that, during an interview with the passenger, he saw text messages on the passenger's cell phone that appellant sent to the passenger within 24 hours prior to the search. In one message, appellant "was talking about trading MJ for blues." Officer H. testified that, based on his training and experience, he understood "MJ" to be "marijuana" and "blues" to be "M-30 pills which are often counterfeit . . . Oxycodone pills which contain Fentanyl."
- The black backpack also contained cannabis and "other THC products."
- The passenger told officers that she had a small amount of methamphetamine in her bag, which was in the cab of the truck with her. The passenger pleaded guilty to a criminal charge associated with that methamphetamine.
- One officer testified that, during the search, appellant explained that he had purchased the truck one or two days prior.

Turning to the second step of the circumstantial-evidence analysis, appellate courts “consider whether the reasonable inferences that can be drawn from the circumstances proved, when viewed as a whole and not as discrete, isolated facts, are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt.” *Id.* at 483. “At this step, [appellate courts] do not defer to the fact-finder; instead, we independently assess the reasonableness of the inferences of guilt and not guilt. . . . In no case will we reverse a conviction based on mere conjecture.” *Id.* at 484 (quotation omitted).

Appellant argues that the methamphetamine could have belonged to the passenger, creating a reasonable inference of appellant’s innocence. We conclude that the circumstances proved do not support that alternative hypothesis. The evidence, viewed as a whole, makes the theory that appellant did not knowingly possess the methamphetamine unreasonable. *See Fravel*, 34 N.W.3d at 334 (“Possibilities of innocence do not require reversal of a jury verdict so long as the [circumstances proved] taken as a whole makes such theories seem unreasonable.” (quotation omitted)).

The only reasonable inference that can be drawn from the circumstances proved is that appellant possessed the black backpack, found in the back of his recently purchased truck, and the methamphetamine that was in a container with his name on it. Appellant is the common thread connecting all contents of the black backpack.

We conclude that the circumstantial evidence presented by the state at trial is sufficient to sustain the jury's finding of guilt for second-degree possession of a controlled substance.

Affirmed.