

*This opinion is nonprecedential except as provided by  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  
A22-0516**

State of Minnesota,  
Respondent,

vs.

Paul David Trott,  
Appellant.

**Filed December 27, 2022  
Reversed  
Bjorkman, Judge**

Beltrami County District Court  
File No. 04-CR-21-1065

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

David Hanson, Beltrami County Attorney, Ashley Nelson, Bemidji, Minnesota (for respondent)

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

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Slieter, Judge.

**NONPRECEDENTIAL OPINION**

**BJORKMAN**, Judge

Appellant challenges the sufficiency of the evidence supporting his conviction for driving while impaired (DWI). Because the circumstances proved do not rule out a

reasonable inference that appellant ingested methamphetamine after he operated or was in physical control of his vehicle, we reverse.

## FACTS

On April 17, 2021, a Beltrami County Sheriff's Deputy was patrolling on a county highway. The deputy passed a Chevrolet Blazer turning onto the same highway, recognizing the driver. A records check confirmed the driver was appellant Paul Trott, and revealed that his driver's license was canceled and there was an active arrest warrant out of Hubbard County. The deputy followed Trott into the parking lot of a gas station and watched him and a passenger get out of the vehicle and enter the station, where Trott was out of the deputy's view. Some time later, Trott returned to the Blazer and sat in the driver's seat with the door open. The deputy turned on his body-worn camera, parked his vehicle behind the Blazer, and got out to speak with Trott.

As the deputy approached, Trott was using his cell phone; the Blazer's engine was not running. The deputy asked Trott who owned the vehicle, and Trott answered that he was in the process of buying it from the registered owner. The deputy then asked Trott to exit the Blazer and told him that he was under arrest on the Hubbard County warrant. During this interaction, the deputy observed that Trott was "a little bit fidgety," his eyes were "kind of bouncing around," and he "seemed a little confused." These observations caused the deputy to suspect Trott may be under the influence of "some illegal substance."<sup>1</sup>

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<sup>1</sup> The deputy later obtained a search warrant and corresponding blood sample from Trott, which tested positive for amphetamine and methamphetamine.

As they walked toward the patrol vehicle, the deputy asked Trott whether he had used any drugs recently; Trott denied doing so. The deputy administered four field sobriety tests, three of which revealed signs of impairment. Upon further questioning, Trott stated that he thought the last time he used drugs was “probably Monday” or “maybe Tuesday”—four or five days earlier. The deputy then placed Trott under arrest for the Hubbard County warrant, driving after cancellation—inimical to public safety, and DWI. Before placing Trott in the patrol vehicle, the deputy searched him, finding a wallet, charger, charging cords, a small metal cylinder with markings, and a tin of chewing tobacco. The keys to the Blazer were not found during this search.

While the deputy was talking with Trott, the passenger approached the Blazer and identified himself as G.S. The deputy told G.S. to wait in the Blazer. When the deputy returned to the Blazer, G.S. was sitting in the front passenger seat. The deputy told G.S. to leave because he was going to search and tow the Blazer. The deputy did not search G.S. before he left.

The deputy and another officer then searched the Blazer, finding a small plastic bag and several tin foil packets containing suspected controlled substances. The bag field-tested positive for methamphetamine. The keys to the Blazer were not found during this search.

Respondent State of Minnesota charged Trott with felony DWI under Minn. Stat. § 169A.24, subd. 1(2) (2020). The complaint referenced Minn. Stat. § 169A.20, subd. 1(7) (2020), which makes it a crime to drive, operate, or be in physical control of a motor vehicle while the person’s body contains any amount of a controlled substance. The complaint did

not allege any other driving offenses. Trott moved to suppress his statements to the deputy and the evidence found in the Blazer. After the district court denied the motion, Trott agreed to a stipulated-evidence trial under Minn. R. Crim. P. 26.01, subd. 3. The evidence included law-enforcement reports, lab reports, a medical personnel certificate, and the body-worn camera recording.

The district court found Trott guilty, specifically finding that Trott was “in physical control” of the Blazer because the deputy saw him driving, Trott was in the process of buying the vehicle, and Trott had returned to the driver’s seat when the deputy approached him. The court further found that Trott’s body contained methamphetamine at that time.<sup>2</sup>

Trott appeals.

### **DECISION**

In deciding a sufficiency-of-the-evidence challenge, we “view the evidence in a light most favorable to the verdict and assume the fact-finder disbelieved any testimony conflicting with that verdict.” *State v. Balandin*, 944 N.W.2d 204, 213 (Minn. 2020) (quotation omitted). We apply the same standard of review to court trials and jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

The elements of an offense may be proven by either direct or circumstantial evidence. “Direct evidence is evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.” *Bernhardt v. State*, 684

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<sup>2</sup> The state also charged Trott with gross misdemeanor fifth-degree possession of a controlled substance under Minn. Stat. § 152.025, subd. 2(1) (2020). The district court acquitted Trott on this charge.

N.W.2d 465, 477 n.11 (Minn. 2004) (quotation omitted). Circumstantial evidence is “evidence from which the factfinder can infer whether the facts in dispute existed or did not exist.” *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted).

In assessing the sufficiency of circumstantial evidence, we apply a two-part analysis. *State v. Al-Naseer*, 788 N.W.2d 469, 473-74 (Minn. 2010). First, we identify the circumstances proved, deferring to the fact-finder’s credibility determinations and weighing of the evidence. *Id.* at 473. Circumstances proved include evidence that supports the finding of guilt and uncontroverted testimony of a state witness that is “not necessarily contradictory to the verdict.” *State v. German*, 929 N.W.2d 466, 473 (Minn. App. 2019).

Second, we consider whether the circumstances proved are “consistent with guilt and inconsistent with any rational hypothesis except that of guilt, not simply whether the inferences that point to guilt are reasonable.” *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013) (quotations omitted). “Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt.” *State v. Stein*, 776 N.W.2d 709, 714 (Minn. 2010) (quotation omitted).

A person commits the DWI offense with which Trott was charged if they “drive, operate, or [are] in physical control of any motor vehicle . . . within this state . . . when . . . the person’s body contains any amount of a controlled substance listed in Schedule I or II, or its metabolite, other than marijuana or tetrahydrocannabinols.” Minn. Stat. § 169A.20, subd. 1(7). “Physical control” is broadly construed to include situations in which an impaired person is found “under circumstances where the car, without too much difficulty,

might again be started and become a source of danger to the operator, to others, or to property.” *State v. Starfield*, 481 N.W.2d 834, 837 (Minn. 1992). “[A] person is in physical control of a vehicle *if he has the means to initiate any movement of that vehicle*, and he is in close proximity to the operating controls of the vehicle.” *State v. Fleck*, 777 N.W.2d 233, 236 (Minn. 2010) (emphasis added). In concluding that evidence of physical control was sufficient, Minnesota appellate courts routinely consider the location of the vehicle’s keys. *See, e.g., id.* at 237 (sufficient evidence where keys were in center console); *Starfield*, 481 N.W.2d at 838 (sufficient evidence where keys were in defendant’s pocket); *State v. Woodward*, 408 N.W.2d 927, 928 (Minn. App. 1987) (sufficient evidence where keys were in the ignition).

The state proved the following circumstances: (1) Trott drove the Blazer on the day in question; (2) a record check revealed Trott had an outstanding arrest warrant; (3) Trott was in the process of buying the Blazer; (4) Trott drove to a gas station; (5) Trott and the passenger both exited the Blazer and entered the gas station; (6) Trott returned to the driver’s seat; (7) Trott appeared fidgety and confused when the deputy approached him; (8) three different sobriety tests revealed indicia of impairment; (9) small packets containing methamphetamine were found in the Blazer; and (10) Trott’s blood sample tested positive for methamphetamine.

Trott asserts that the evidence is insufficient to sustain his conviction because the circumstances proved support the rational inferences that he consumed methamphetamine while he was in the gas station and was not thereafter in physical control of the Blazer. This argument has merit.

The state presented uncontroverted evidence that Trott drove the Blazer, returned to the Blazer after he left the gas station, and had methamphetamine in his body at the time of his arrest. But the circumstances proved support reasonable inferences other than guilt. As to Trott's driving, the uncontroverted evidence shows that the deputy decided to initiate contact with Trott because of his license status and arrest warrant—not because of his driving conduct. The deputy did not interact with Trott until after he left the gas station. And the state offered no evidence as to how long Trott was in the station. As to Trott's connection to the Blazer after he left the gas station, the evidence shows he returned to the driver's seat, but left the door open and did not start the Blazer.<sup>3</sup> Deputies searched both Trott and the Blazer and did not find the key. The passenger was allowed to leave without being searched. In short, the circumstances proved do not establish a temporal link between Trott's driving and the presence of methamphetamine. And they are consistent with a reasonable inference that the passenger had the means to initiate movement of the Blazer—the key—and intended to drive it away from the gas station.

To convince us otherwise, the state asserts that Trott's admission to using an unspecified drug four or five days earlier, combined with the fact that his body contained methamphetamine at the time of the arrest, should end our analysis. We are not persuaded. The state did not present evidence regarding the length of time methamphetamine stays in a person's body. And the state misconstrues Trott's arguments as amounting to a post-driving consumption defense. This analysis fails for two reasons. First, this affirmative

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<sup>3</sup> Trott does not dispute that he was in close proximity to the Blazer's operating controls when the deputy approached him.

defense applies only to alcohol-related DWI offenses, and only arises after the state has proven its case “by a preponderance of the evidence.” Minn. Stat. § 169A.46, subd. 1 (2020).<sup>4</sup> Second, Trott did not raise this defense; he contends the state did not prove he had methamphetamine in his body while he was driving.

In sum, we conclude that the circumstantial evidence is insufficient to establish that Trott drove or was in physical control of the Blazer while his body contained methamphetamine. The circumstances proved support reasonable inferences that Trott ingested the methamphetamine while he was in the gas station and that he did not have the means to initiate any movement of the Blazer when he returned to it. Accordingly, Trott’s conviction for felony DWI must be reversed.

**Reversed.**

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<sup>4</sup> The statute explicitly lists the subdivisions of Minn. Stat. § 169A.20 (2020) to which it applies, none of which are subdivision 1, clause 7—the provision under which Trott was charged.