IN THE SUPREME COURT OF IOWA
Supreme Court No. 23-0055
Boone County No. FECR114749

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CLAYTON CURTIS BROWN,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR BOONE COUNTY
THE HONORABLE DEREK JOHNSON, JUDGE

APPELLEE'S BRIEF

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ROUTING STATEMENT

The State agrees this case should be transferred to the Iowa Court of Appeals. Appellant's Br. 11. It can be decided based on existing legal principles. Iowa R. App. P. 6.1101(3); *see State v. Carter*, 696 N.W.2d at 31, 34 (Iowa 2005); *State v. Maring*, 619 N.W.2d 393, 395 (Iowa 2000); *State v. Brown*, 397 N.W.2d at 699 (Iowa 1986).

STATEMENT OF THE CASE

Nature of the Case

Following his jury trial, Clayton Brown appeals his convictions for possession of a firearm as a felon in violation of Iowa Code section 274.26(1); aggravated eluding in violation of Iowa Code section 321.279(3); and driving while barred in violation of Iowa Code sections 321.560 and 321.561. He alleges the district court should have granted a mistrial and attacks the sufficiency of the evidence underlying the jury's adverse verdicts.

Course of Proceedings

The State accepts the Brown's course of proceedings as adequate and essentially correct. Appellant's Br. 11–14; Iowa R. App. P. 6.903(3).

Facts

On September 29, 2021, Officer Joseph Slight was on routine patrol in Boone, Iowa; he had a ride-along passenger in his marked service vehicle. Trial I 17:9–13; 19:3–20:2. Near 12:20 p.m. he observed a person driving a vehicle while not wearing a seatbelt; Slight identified the driver as Brown at trial. Trial I 20:3–18; 52:5–53:1. Slight initiated a traffic stop, at which point, the vehicle began making a series of turns through parking lots and streets. *See* Exh.30; Trial I 20:19–23:2; 40:7–41:25. As he stayed in contact with dispatch during this short pursuit, Slight described his belief that he was following "Casey Hay"—a person Slight knew to be wanted. Trial I 53:12–56:16; 65:3–7; 65:20–66:4.

Even though Slight had activated his lights and siren, the vehicle did not stop. Instead, once it reached another street "It squealed its tires and ran a stop sign and continued at a high rate of speed westbound." Trial I 23:3–7; 26:16–24. Slight estimated that the vehicle pulled away from him at speeds above 80 miles per hour. Trial I 23:8–25:22. Slight did not pursue due to his passenger. Trial I 25:23–26:15.

He kept patrolling for the vehicle and located it 40 minutes later parked, unlocked, and without a driver. Trial I 26:25–28:11; 45:19–24. He ran the vehicle through dispatch and discovered that it had not been reported stolen. Trial I 28:16–22. Randa Pedersen owned the vehicle; Brown was her boyfriend. Trial I 59:13–17; 61:4–16; 64:9–21. Slight collected more information about Brown, had the vehicle seized, and prepared a search warrant for the vehicle. Trial I 28:23–29:12 60:10–61:3; 64:22–65:2. Slight searched the vehicle pursuant to that warrant and found personal items that belonged to Brown, including his wallet and a belt. Trial I 29:13–30:2; 19–50:8. Slight found a gun under the driver's seat and matching ammunition in the center console and under the front passenger's seat. Trial I 30:3–31:21; 46:25–49:15. Also inside the vehicle was a cell phone with $100 cash inside the case. Trial I 51:11–17; Exh.27 (2/16/2022); Dkt. Nos. 55.

After the pursuit, Slight looked at Brown's driver's license photo and knew he was the individual who had eluded him. Trial I 64:22–65:14. Brown stipulated at trial that he was previously convicted of a felony and his driving privileges were barred due to his status as a habitual offender. Trial I 5:6–11.

ARGUMENT

I. The district court reasonably declined to order a mistrial in which the parties had agreed to stipulate that Brown was a felon.

Preservation of Error

The State does not contest error preservation on the question of whether the district court erred in ordering a mistrial. Brown immediately objected without identifying the basis, moved to strike, and later sought a sidebar in which he requested a mistrial because "I don't think my client can get a fair trial." Trial I 33:2–17. The district court denied his request. This ruling preserved error on the mistrial claim. *See State v. Gibb*, 303 N.W.2d 673, 678 (Iowa 1981).

While he did preserve his new trial challenge, Brown spends a portion of his brief discussing why the question and its answer were irrelevant, prejudicial, or violated the prohibition on bad acts evidence under Iowa Rules of Evidence 5.401, 5.403, and 5.404(b). Appellant's Br. 21–24. No evidentiary objection was presented to the district court and none was ruled on—no error on this argument was preserved. Trial I 31:22–36:9; *Crawford*, 972 N.W.2d at 198 ("When we speak of error preservation, all we mean is that a party has an obligation to raise an issue in the district court and obtain a decision on the issue so that an appellate court can review the merits of the

decision actually rendered."). Specific evidentiary objections are necessary so the trial court and this Court on appeal need not speculate whether the evidence is in fact subject to some infirmity the objection does not identify. *See State v. Taylor*, 310 N.W.2d 174, 177 (Iowa 1981); *see also State v. Mulvany*, 603 N.W.2d 630, 632 (Iowa Ct. App. 1999) (relevancy objection could not preserve error on a 5.404(b) claim on appeal). When a specific ground is not presented, it is deemed abandoned and error is not preserved. *Id.*; *State v. Sanborn*, 564 N.W.2d 813, 815 (Iowa 1997) ("A defendant may not rest an objection on one ground at trial, and rely on another for reversal on appeal."); *see also State v. Goodson*, 503 N.W.2d 395, 399 (Iowa 1993). As to the evidentiary portion of Brown's claim there is nothing for this Court to review.

Standard of Review

This Court reviews the lower court's denial of a motion for mistrial motion under the abuse of discretion standard. *State v. Plain*, 898 N.W.2d 801, 811 (Iowa 2017). Such an abuse of discretion occurs when the court exercises its discretion on grounds clearly untenable or clearly unreasonable. *Id.* And to be clear, this standard is more deferential in the context of a motion for a mistrial. *See State v.*

Brown, 397 N.W.2d 689, 699 (Iowa 1986). This is because trial judges "are present throughout the trial and are in a better position than the reviewing court to gauge the effect of the matter in question on the jury." *State v. Jirak*, 491 N.W.2d 794, 796 (Iowa Ct. App. 1992).

Merits

"[T]o show an abuse of discretion by the district court in denying a motion for mistrial, the defendant must show prejudice that prevented the defendant from having a fair trial." *State v. Tewes*, No. 20-0253, 2021 WL 1904693, at *5 (Iowa Ct. App. May 12, 2021) (citing *State v. Callender*, 444 N.W.2d 768, 770 (Iowa Ct. App. 1989)). This is a heavy burden Brown cannot overcome. *See Brown*, 397 N.W.2d at 699.

The parties agreed on a stipulation that Brown was a felon and that his driving privileges had been barred for being a "habitual offender." *See* Trial I 16:2–12; 4:10–6:9. During the State's direct examination of Officer Slight, the State asked:

> Q. You have the capability of understanding and finding out a person's criminal history?
>
> A. Yes.
>
> Q. Had you identified the defendant's name at the point that you did the search warrant?

> A. Yes.
>
> Q. And so why was the gun important or relevant to you through the course of this?
>
> A. Because there was convictions on his record that he should not—
>
> MR. MACRO: Objection, Judge. Move to strike.
>
> THE COURT: Sustained.
>
> Q. Let me clarify. From your check, did you learn that he had at least a prior felony?
>
> A. Yes.
>
> DEFENSE COUNSEL: Judge, I'd like to take a matter outside the presence of the jury.
>
> THE COURT: Very well.

Trial Tr. 31:22–32:16. During this sidebar without the jury, Brown pressed his case for why the trial should have been aborted:

> The parties have carefully crafted a stipulation to prevent this type of information from the—from the jury hearing. While one letter is important, they're supposed to know about one conviction and that's his felony. The officer clearly said "convictions." You can't unring that, Judge. So now every juror knows my client has a greater criminal record than what we agreed to or what they should know about. The only time they should know about his convictions is if he testifies and they fall under Rule 609. So I don't think we can unring this. I don't think my client can get a fair trial, and I believe a mistrial has to be declared.

Trial I 33:2–17. The district court denied the request:

> With that said, I'm not going to grant a mistrial. You have stipulated to basically two convictions. I don't believe the evidence was two felony convictions. I don't believe the witness testified to multiple felony convictions. I think he just said "convictions" plural.

Trial I 34:22–35:4. The district court's observations were correct.

That Brown had previously been convicted for his criminal behavior was inescapable. His prior felony conviction was the very basis for why it was illegal for him to possess a weapon. *See* Iowa Code § 724.26. The same was true of his barred driver's license—he was barred for being a *habitual* offender which necessarily suggests repeated violations. *See* Iowa Code §§ 321.561, 321.560, 321.555; Trial I 16:2–12; 32:5–9. The court read the stipulation into the record before the State's called its first witness. Trial I 16:2–15. Consistent with the stipulation, defense counsel agreed the State could introduce a certified abstract of his driving record which indicated his barred driving status as a "habitual offender." Trial I 38:12–16; Exh.29, Dkt. No. 57; Conf. App. 6–7. The jury's awareness of Brown's law violations was inescapable.

Given this context, the possibility of improper prejudice was minimal and any possible error harmless. The witness's allegedly

offending testimony was limited. It amounted to a single word, indeed letter. Trial I 33:2–17. The district court immediately sustained Brown's non-specific objection and motion to strike. *Id.* Assuming the witness's statement was somehow prejudicial, the district court's prompt intervention was enough to cure it.[1] *Brown*, 397 N.W.2d at 699 ("Generally, trial court's quick action in striking the improper response and cautioning the jury to disregard it, coupled, when necessary, with some type of general cautionary instruction, will prevent any prejudice."); *see also State v. Phanhnao*, No. 21-1406, 2022 WL 17481209, at *4–6 (Iowa Ct. App. Dec. 7, 2022) (district court did not abuse its discretion in denying motion for mistrial in felon-in-possession trial where witness stated he learned defendant's address from his parole officer and defendant had stipulated to being a felon).

And before deliberation, the district court instructed the jury that the presumption of innocence required it to "put aside all suspicion which might arise from the arrest, charges, or present situation of the defendant." *See* Jury Instr.4 (9/21/2022), Dkt. No.

[1] The district court offered Brown a cautionary instruction. Trial I 35:5–39:8. He declined. *Id.*

131; App. 8. It was instructed that the State had to carry the burden of proof beyond a reasonable doubt on every element of the charged offenses, based on evidence presented at trial. *See* Jury Instrs. 2, 4, 5, 7, 8, 12; Dkt. No. 131; App. 8, 9, 10, 11. A separate instruction told jurors to "evaluate the evidence carefully and avoid decisions based on generalizations, gut feelings, prejudices, sympathies, stereotypes, or biases." *See* Jury Instr.8 (9/21/2022), Dkt. No. 131; App. 10. And the jury was further instructed that objections, rulings on objections, and "testimony I told you to disregard" were not evidence. Jury Instr.5 (9/21/2022), Dkt. No. 131; App. 9. Taken together, these instructions would have further prevented jurors from using a single word "convictions" as a reason to assume Brown guilty—it was clear it was the State's burden to prove its case.

Given the context in which his trial took place, the minimal reference beyond what was already stipulated, the district court's prompt act of striking the testimony and giving time-tested jury instructions informing them what was and was not evidence, and Brown's decision not to request a cautionary instruction, he has not met his heavy burden to demonstrate the district court abused its

discretion when it declined his request for a mistrial. *See Brown*, 397 N.W.2d at 699. This Court should affirm.

II. The jury credited the officer's testimony he recognized Brown as the driver and sole occupant of the vehicle that eluded him. The vehicle he was inside contained his possessions, including a handgun. A substantial basis supported the jury's verdicts.

Preservation of Error

The State cannot contest error preservation. *Crawford*, 972 N.W.2d at 202.

Standard of Review

This Court's review is for errors at law. *State v. Nitcher*, 720 N.W.2d 547, 556 (Iowa 2006). When reviewing sufficiency claims, the appellate court will uphold the conviction "so long as there is substantial supporting evidence in the record." *State v. Spies*, 672 N.W.2d 792, 796 (Iowa 2003). In a bench trial, the court's written findings of fact have the effect of a special verdict and are binding on appeal where supported by substantial evidence. *State v. Fordyce*, 940 N.W.2d 419, 425 (Iowa 2020). In examining the record, it views the evidence in the light most favorable to the lower court's written verdict. *State v. Myers*, 924 N.W.2d 823, 827 (Iowa 2019). It also indulges every legitimate and reasonable inference that may be deduced. *State v. Petithory*, 702 N.W.2d 854, 856 (Iowa 2005).

Circumstantial evidence is as probative as direct. *State v. Meyers*, 799 N.W.2d 132, 138 (Iowa 2011). This Court does not reweigh credibility disputes, it was for the factfinder to weigh and credit each witnesses' testimony. *State v. Shanahan*, 712 N.W.2d 121, 135 (Iowa 2006). In cases of ambiguity within the record, any conflicts will be construed to uphold the verdict. *State v. Price*, 365 N.W.2d 632, 633 (Iowa Ct. App. 1985).

Merits

Brown advances two sufficiency challenges: the first is to all three of his convictions, and the second to his conviction for possession of a firearm as a felon. Each challenge fails. The State addresses each in the order he presents them.

A. The officer's testimony, the surrounding circumstances, and the reasonable inferences that followed all provided a substantial basis for the jury to conclude the State established Brown's identity.

Brown first attacks the State's proof that he was the driver of the vehicle. Appellant's Br. 30–34. The difficulty with this is that Officer Slight testified that he saw the driver of the vehicle that eluded him and that Brown was driving. Trial I 20:5–18; 65:8–14. During cross-examination, Slight explained why he had initially believed the

driver was a different person and how he came to identify Brown as the defendant. Trial I 54:3–18; 55:4–56:21; 63:7–65:7. The jury credited his identification and the evidence surrounding it—as was its prerogative. *State v. Sanford*, 814 N.W.2d 611, 615 (Iowa 2012); *see also State v. Shorter*, 893 N.W.2d 65, 74 (Iowa 2017).

But there was more. Once Slight located the car forty-minutes later, he secured it. Trial I 28:3–29:20; 44:5–18; 45:3–11. The vehicle was registered to Brown's significant other and populated with Brown's possessions—his wallet and belt contained his name. Trial I 46:5–50:8; 51:3–10; 59:13–17; 61:4–11; Exhs.8–12, 27; Dkt. Nos. 36–40, 55; Exh. App. 5–8 Conf. App. 4, 5. This evidence also supported concluding Slight had correctly identified Brown as the driver. *See Maring*, 619 N.W.2d at 395 (per curiam) (affirming over sufficiency challenge to identity where "At trial the trooper testified the defendant matched the description of the driver he saw fleeing from the vehicle" and "The vehicle was registered to the defendant, and the trooper found the defendant's wallet inside the car. The trooper visited the home of the defendant's mother and viewed a family photo. He picked out the defendant as the person who he believed had been driving the vehicle"); *see generally State v. Lahr*, No. 03-

1485, 2004 WL 1836258, at *2 (Iowa Ct. App. July 28, 2004) (although record "did not reflect that [witnesses] specifically pointed to defendant as the driver of the car," there was sufficient evidence to support conviction: "Apart from the disputed in-court identifications, additional evidence indicated defendant was the driver. He had scratches all over him, and there were woods between the place where the car was parked and defendant's house").

And Brown's identity as the driver was supported by natural inferences arising from the circumstances proved at trial. The car had not been reported stolen. Trial I 28:16–22. Were he the driver, he had multiple reasons to disregard Slight's order to pull over. As he stipulated, he was barred from driving. And as a felon, if he were arrested, there was a risk the firearm would be discovered and he would face additional charges. *See generally State v. Wilson*, 878 N.W.2d 203, 211, 215 (Iowa 2016) ("[T]he act of avoiding law enforcement after a crime has been committed may constitute circumstantial evidence of consciousness of guilt;" the weight and relevance of such evidence is for the jury to determine).

For his part, Brown offers the cases of *State v. Despenas*, No. 21-1775, 2023 WL 2396460 (Iowa Ct. App. Mar. 8, 2023) and

State v. Akers, No. 17-0577, 2018 WL 11826116 (Iowa Ct. App. Mar. 7, 2018). Appellant's Br. 32. Neither assist him. Each case was a challenge to a district court's suppression order—a distinct claim with a dissimilar standard of review. *Compare Despenas*, 2023 WL 2396460, at *1 ("In our de novo review, we find the dashboard video neither supports nor contradicts [the deputy's] testimony.") *and Akers*, 2018 WL 11826116, at *2 ("We give deference to the district court's credibility findings but are not bound by them. When it comes to viewing a video exhibit, we are 'equally as capable as the trial court', and when an officer's statements are contradicted by the video, 'we give them little weight in our de novo review of the evidence.'") (citation omitted), *3 *with State v. Ernst*, 954 N.W.2d 50, 54–55 (Iowa 2021).

Under the correct standard of review, there was a substantial basis to support the jury's finding Brown was the driver of the vehicle. This Court should defer to the jury's decision to credit Slight's identification and affirm each of Brown's convictions.

B. A substantial basis supported the jury's verdict that Brown was in possession of a firearm.

Next, Brown attacks the possession element of his felon in possession conviction. He alleges the State offered insufficient proof

he constructively possessed the gun found in the vehicle he was driving. Appellant's Br. 36–41. The record provides substantial evidence to support the jury's verdict.

Brown's jury was instructed "possession" included constructive possession and meant

> A person who, although not in actual possession, has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is in constructive possession of it. . . . "Dominion and control" means ownership or right to the firearm and the power or authority to manage, regulate or oversee its use.

Jury Instr.20 (9/21/2022), Dkt. No. 131; App. 13–14. It simultaneously cautioned the jury that "A person's mere presence at a place where a thing is found or proximity to the thing is not enough to support a conclusion that the person possessed the thing." *Id.*

When this instruction is considered alongside the record, this case fits neatly within Iowa's constructive possession caselaw. "The doctrine of constructive possession allows the defendant's possession of contraband to be inferred based on the location of the contraband and other circumstances." *State v. Thomas*, 847 N.W.2d 438, 443 (Iowa 2014). Direct or circumstantial evidence can provide proof of

the defendant's possession over an item. *State v. Vance*, 790 N.W.2d 775, 784 (Iowa 2010); Jury Instr. 6 (9/21/2022), Dkt. No. 131; App. 9–10. When the person is alone and in exclusive possession of premises in which contraband is located, a factfinder may infer the person was in possession of the contraband. *See State v. DeWitt*, 811 N.W.2d 460, 474 (Iowa 2012) (quoting *State v. Reeves*, 209 N.W.2d 18, 23 (Iowa 1973)). And when resolving constructive possession of contraband questions where multiple persons are present, the Iowa Supreme Court has said that additional proof of possession may be established by:

> (1) incriminating statements made by a person; (2) incriminating actions of the person upon the police's discovery of a [contraband] among or near the person's personal belongings; (3) the person's fingerprints on the packages containing the controlled substance; and (4) any other circumstances linking the person to the [contraband].

State v. Maxwell, 743 N.W.2d 185, 194 (Iowa 2008); *see also State v. Reed*, 875 N.W.2d 693, 705 (Iowa 2016) ("Although the doctrine of constructive possession evolved in drug-possession cases, we apply the same principles in firearm cases."). In *Atkinson*, the Iowa Supreme Court suggested that when the premises of discovered contraband is a vehicle with multiple individuals, the court should

consider whether (1) the contraband was in plain view; (2) was with the person's personal effects; (3) was found on the same side of the car or immediately next to the person; (4) was the person the owner of the vehicle; and (5) was there suspicious activity by the person. *State v. Atkinson*, 620 N.W.2d 1, 4 (Iowa 2000). Of course, these latter factors are less dispositive here because Brown was in exclusive possession of the vehicle when he encountered Officer Slight. Discussed below, Iowa courts have held these factors are neither dispositive nor exclusive. *Thomas*, 847 N.W.2d at 443; *DeWitt*, 811 N.W.2d at 475; *Maxwell*, 743 N.W.2d at 194. They simply serve as a guide for parties and courts determine whether sufficient evidence of constructive possession was established.

Although Brown argues they did not apply, examined in the light most favorable to the jury's verdict several of these factors weighed in the State's favor. Appellant's Br. 38–40. Slight did not testify that anyone else was within the vehicle, meaning at the time he saw him, Brown was in control of vehicle exclusively. *See DeWitt*, 811 N.W.2d at 474 ("[P]ossession may be inferred if the defendant is in exclusive possession of the premises in which the contraband was located."). Brown had access to the vehicle because of his significant

other. Trial I 59:13–17; 61:4–16; 64:9–65:14. Ultimately, the gun was discovered under the driver's seat, "tucked back a little bit just close enough to be able to grab." Trial I 47:15–23; Exhs.18–19 (2/16/2022), Dkt. Nos. 46–47; *Atkinson*, 620 N.W.2d at 4. Ammunition for the weapon was found on the floor of the front-passenger side and in the center console the driver could access; inside the cupholder next to that console was Brown's wallet. Trial I 30:12–25; 31:11–21; Exhs.5, 10, 12, 15–17, 25 (2/16/2022), Dkt. Nos. 33, 38, 40, 43–45, 53; Exh. App. 3, 7; Conf. App. 4; *State v. Atikinson*, 620 N.W.2d 1, 4 (Iowa 2000). Brown's belt was inside the vehicle. Trial I 49:19–51:10; Exh.26 (2/16/2022); Dkt. No. 54; Exh. App. 12. Materials were strewn across the passenger seat, again making it unlikely Brown had a passenger as he eluded police. Exh.9 (2/16/2022); Dkt. No. 37; Exh. App. 6. Abandoning his wallet within the vehicle and failure to lock the same when it contained other personal effects including a cell phone with $100 cash corroborated the inference he fled the vehicle without them because he was being pursued. *See* Exhs.6–9, 23, 27–28 (2/16/2022); Dkt. Nos. 34–37, 51, 55–56; Exh. App. 4–6, 11; Conf. App. 5; Exh. App. 3; Trial I 45:19–46:4.

And given the foregoing, the fourth *Maxwell* factor and fifth *Atkinson* factor weighed heavily in favor of the State—Brown's incriminating decision to elude police was an extremely relevant circumstance. "It is well-settled law that the act of avoiding law enforcement after a crime has been committed may constitute circumstantial evidence of consciousness of guilt that is probative of guilt itself." *Wilson*, 878 N.W.2d at 211; *State v. Haskins*, 316 N.W.2d 679, 681 (Iowa 1982) ("An inference of guilt may be drawn from flight for the purpose of avoiding or retarding prosecution."). A suspect's flight from a scene permits an inference of guilt of possession of drugs or possession of firearms, or both. *See generally Wilson*, 878 N.W.2d at 211. Iowa courts have repeatedly concluded that attempts at evasion and eluding can provide the critical evidence of guilty knowledge necessary to establish possession.

For example, in *State v. Thomas*, 847 N.W.2d 438 (Iowa 2014), police approached an apartment on an unrelated matter, and observed an individual inside the apartment "pull a marijuana blunt from his sweatshirt and begin smoking it." 847 N.W.2d at 440. The police entered the apartment complex and noted the apartment smelled of marijuana when the door was opened. *Id.* The police

determined they would seize the marijuana, "quickly knocked and announced themselves and entered the apartment." Six persons were inside and Henderson—the individual who officers observed with the blunt—and Thomas "quickly retreated from the front room to the bedroom in back" and closed the door behind them. *Id.* Police pursued but were at first unable to open the door because Thomas was holding it shut. *Id.* The officers eventually forced their way into the room, and behind the door that Thomas had been holding back "were two rows of neatly placed women's purses belonging to Norvell. On top of the purses, police found a clear plastic baggie that contained four individually wrapped bags of marijuana and four individually wrapped bags of crack cocaine." *Id.* at 441. Thomas provided false identification to the police upon questioning. *Id.*

On appeal, he asserted that insufficient evidence of possession was present to support his conviction. The Iowa Supreme Court disagreed. Based on the circumstantial evidence presented, a "reasonable jury could conclude beyond a reasonable doubt that he had been in possession of [the drugs] and dropped them from his person shortly before the police entered the room." *Id.* at 443. The court acknowledged Thomas did not have exclusive access to the

room where the drugs were found, but concluded sufficient evidence supported the conviction because the "drugs were found in close proximity to the defendant; the defendant had taken actions explainable most logically as an effort to get the drugs off his person; and when apprehended, the defendant made false statements and engaged in misdirection." *Id.* at 444.

Likewise in *DeWitt*, the Iowa Supreme Court recognized that accompanying circumstances, such as evasive behavior on the part of a defendant, could provide evidence of knowledge and dominion over contraband. *DeWitt*, 811 N.W.2d at 475. Police, relying on a confidential informant went to a Davenport Walmart on a tip that DeWitt would be selling marijuana. Police followed DeWitt inside and observed as he walked towards the south side of the store, then the north, observing that DeWitt "appeared to be looking . . . for somebody." *Id.* at 465–66. The officers present decided to confront DeWitt and "one or both of the officers took DeWitt by the arm." *Id.* When they did so, "DeWitt immediately resisted the confrontation by breaking free from their grasp as if he intended to run." *Id.* at 466. DeWitt was arrested, and afterward, marijuana was found in the car DeWitt drove to the Walmart. *Id.* at 466. DeWitt contended there was

insufficient evidence to support conviction, pointing out there were five other individuals besides him who had access to the vehicle because he borrowed the car. *Id.* at 475. He also pointed out

> that none of the "specific factors" from *Maxwell* are expressly met. He made no incriminating statements. He was not present when the police discovered the marijuana and he accordingly made no incriminating actions. DeWitt's fingerprints were not on the marijuana or its packaging. Additionally, the marijuana was located in the trunk of the car and not in plain view. The marijuana was not found with DeWitt's personal effects. Because the marijuana was found in the trunk of the car, it was not found on DeWitt's side of the car or immediately next to him. Finally, DeWitt does not own the vehicle; his father does.

Id. Yet the Iowa Supreme Court still found sufficient evidence to support conviction. It pointed out that—as is the case here—DeWitt frequently used the car and "was the most recent driver of the car." *Id.* at 475–76. DeWitt also engaged in "suspicious" activity; his "resistance of Detectives Morel and Westbay provides important evidence of conduct consistent with guilt." *Id.* at 476.

And just as this interaction began as Officer Slight's attempt to enforce Iowa's seatbelt requirement, in *State v. Carter*, police attempted to initiate a traffic stop of a vehicle for a similarly minor infraction—the vehicle's license plate had been placed between the

dashboard and the window rather than affixed to the front bumper. *State v. Carter*, 696 N.W.2d at 31, 34 (Iowa 2005). After activating their emergency lights, the car did not come to a stop, instead it evaded police. It turned onto another road, crossed three lanes of traffic, struck a curb, and barely missed a light pole. As the car was in motion, one of the officers observed the driver "making movements with his right hand all the way down to the floorboard, causing his head to go down so he could not see the road." *Id.* After the car came to its sudden stop, the driver—Carter—exited the vehicle, leaving the door open. *Id.* The officers noted he appeared nervous, and they believed they would need to give chase. *Id.* at 35. Carter gave officers a false name and indicated that the crash had occurred because the car had stalled, even though the engine was still running after the crash. *Id.* at 35, 40. Contraband was found hidden within the center console of the vehicle. On appeal, Carter challenged the sufficiency of the evidence supporting his conviction and the supreme court observed several of the *Webb* and *Atkinson* factors ran in his favor:

> the controlled substance itself was not in plain view, the controlled substance was found in the center console underneath an ashtray which did not contain any of Carter's personal effects, and the center console was close and equally accessible to the driver and the passenger.

> Moreover, although Carter was driving the Blazer, he was not the owner, and he denied knowledge of the controlled substance. Nor was there any evidence of fingerprints on the package, or that Carter was under the influence of a controlled substance, or that he had any drug paraphernalia on his person.

Id. at 40. But once again, the supreme court highlighted the importance of exploring the circumstances of the defendant's conduct:

> Carter engaged in suspicious activity before and after the stop. . . . Viewing all the evidence in the light most favorable to the State, we think the district court could reasonably infer that Carter was exhibiting a proprietary interest in the controlled substances by desperately trying to hide them while the police were pursuing him, resulting in his losing control of the Blazer.

Id. at 40-41. Other Iowa cases recognize juries can reasonably infer possession from a defendant's fabrication and evasive behavior. *See State v. Azure*, No. 20-1380, 2021 WL 4592723 (Iowa Ct. App. Oct. 6, 2021) (evidence of flight by eluding was circumstantial evidence of knowledge possession of stolen vehicle); *State v. Dawson*, No. 18-0862, 2019 WL 5792566, at *1, *4 (Iowa Ct. App. Nov. 6, 2019) ("When Dawson saw a police vehicle, he sped away. He ran stop signals. He fled on foot. And he hid from police for roughly thirty

minutes before he was discovered. . . . [A] jury could reasonably infer Dawson tried to evade police because he possessed the methamphetamine and knew it was contraband."); *State v. Proctor*, No. 18-0898, 2019 WL 2524268, at *2–3 (Iowa Ct. App. June 19, 2019); *State v. Campbell-Scott*, No. 16-0472, 2017 WL 512590, at *2 (Iowa Ct. App. Feb. 8, 2017); *State v. Konvalinka*, No. 11-0777, 2012 WL 1860352, at *5 (Iowa Ct. App. May 23, 2012) ("Konvalinka was the sole occupant of the vehicle. When Deputy Walter activated his lights and siren, Konvalinka sped away and attempted to evade him. As Konvalinka sped past Goodner, Goodner observed a small, white object about the size of a deck of cards being thrown from the vehicle. . . . [T]he jury could make the reasonable inference that Konvalinka exercised dominion and control over the methamphetamine when he threw it from his vehicle.").

Brown likens this case to *State v. Truesdell*, 679 N.W.2d 611, 618 (Iowa 2004) and states that because his flight could be explained by multiple reasons "it is sheer speculation to infer it was because of knowledge of the firearm." Appellant's Br. 40. This reliance is misplaced considering the Iowa Supreme Court's subsequent commentary on the case in *Ernst*:

> We also reject Ernst's reliance on *Truesdell* to argue that evidence susceptible to more than one inference is merely speculative and cannot support a conviction. . . . In reversing Truesdell's conviction for lack of sufficient evidence to support the intent-to-manufacture element, we stated that 'when two reasonable inferences can be drawn from a piece of evidence, we believe such evidence only gives rise to a suspicion, and, without additional evidence, is insufficient to support guilt.' Ernst argues this means the State must disprove all other reasonable inferences before inferences from circumstantial evidence may be used to prove an element of an offense. Ernst reads too much into this isolated sentence.

954 N.W.2d at 57–58. Brown having two reasons to flee police reinforces the incriminating inference—it does not follow that the existence of another incriminating reason automatically reduces the weight of another. Both supported the jury's findings.

Brown's decision to elude police was substantial evidence to support conviction, just as it was in *Thomas*, *Dewitt*, and *Carter*. His decision to avoid police and then separate himself from the vehicle suggested his knowledge contraband would be found inside. *See Thomas*, 847 N.W.2d at 443—44; *DeWitt*, 811 N.W.2d at 474–76 ("DeWitt's resistance of Detectives Morel and Westbay provides important evidence of conduct consistent with guilt."); *Carter*, 696 N.W.2d at 39-41. But there was more to support conviction than the

inference that arose from Brown's eluding. *See Ernst*, 954 N.W.2d at 58; *accord State v. Swanson*, No. 21-0694, 2022 WL 951106, at *2–3 (Iowa Ct. App. Mar. 30, 2022) (rejecting defendant's argument that evidence was "susceptible to two equally plausible explanations"). The firearm was found under his seat, bullets on the floor and in the console next to his wallet. His effects were found in the vehicle. He was alone when Slight saw him. Taken together, this record provided a substantial basis on which this jury could convict him for possessing a firearm. *See DeWitt*, 811 N.W.2d at 475 (rejecting DeWitt's argument that the lower court "erred by applying a 'catchall' factor to conclude the facts and circumstances of the case provided sufficient evidence of possession. . . . [A]s we have said before, the factors for determining constructive possession are not exclusive"). This Court should affirm.

CONCLUSION

The district court reasonably exercised its discretion not to terminate this trial based on a single reference to Brown having "convictions" where he already stipulated to being a felon and having his driving privileges barred for being a "habitual offender." Examining the evidence in the light most favorable to the State and

granting all legitimate inferences raised from that evidence, there was substantial evidence establish his identity as the perpetrator and the possessor of the handgun found in his vehicle. Respectfully, this Court should affirm.

REQUEST FOR NONORAL SUBMISSION

The State does not request oral submission. This case should be submitted without argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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