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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2011**

State of Minnesota,
Respondent,

vs.

Tramaine P. Taylor,
Appellant.

**Filed April 1, 2008
Affirmed
Peterson, Judge**

Hennepin County District Court
File No. 06020239

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

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Considered and decided by Peterson, Presiding Judge; Shumaker, Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a conviction of fifth-degree controlled-substance offense, appellant argues that because his arrest was not supported by probable cause, the district

court erred in denying his motion to suppress the crack cocaine discovered during a search incident to the arrest. We affirm.

FACTS

In March 2006, while monitoring police video-surveillance cameras, Officer Timothy Callahan observed what he believed to be a hand-to-hand drug transaction between two men in an area of Minneapolis known for high drug activity. One of the men, who was later identified as appellant Tramaine Taylor, was wearing a brown jacket and a brown hat; the other man was wearing a blue jacket and a blue hat.

Callahan saw Taylor drop something into the hand of the man in the blue jacket, and with a “sweeping motion,” take something from the other man’s hand. Callahan had seen similar transactions in the past, and, based on his training and experience, believed that the men had made a narcotics sale. Because the object exchanged was very small, Callahan believed that it was crack cocaine.

Callahan informed Minneapolis Police Officer Michal Casey that he had observed a hand-to-hand narcotics transaction and that there was probable cause for an arrest. After watching the video recording, Casey arrested Taylor. Taylor was searched and found to possess crack cocaine. The other man was also arrested, and 13 baggies of marijuana were found in his possession.

Taylor was charged with possession, a fifth-degree controlled-substance crime. He moved to suppress the cocaine, arguing that the officers lacked probable cause to arrest him. At the hearing on the motion, Taylor testified that he purchased a cigarette from the other man for 25 cents, while waiting for a bus. Callahan testified that the

transaction did not appear to involve the purchase of a cigarette. Callahan also testified that he had seen Taylor earlier on a different corner, and that he saw Taylor engage in several other brief encounters throughout the day. After viewing the surveillance video, the district court determined that the officers had probable cause to arrest Taylor and that Taylor was lawfully searched incident to his arrest. In a July 7, 2006 order, the district court denied the motion to suppress.

The July 7 order incorrectly identified Taylor as the man wearing the blue jacket. An amended order identified Taylor as the man wearing the brown jacket. In the amended order, the district court found that the video recording “clearly shows a hand-to-hand transaction taking place,” and that although the recording shows Taylor holding a full-length cigarette shortly after the transaction, the transaction did not appear to be a cigarette purchase because the exchange was very quick and the man did not pull out a pack of cigarettes.

Following a bench trial on stipulated-facts, Taylor was found guilty. The district court stayed imposition of a felony sentence and placed Taylor on probation for three years, after which the conviction will be reduced to a misdemeanor. This appeal followed.

D E C I S I O N

Taylor argues that his arrest was not supported by probable cause and, therefore, the warrantless search was not a valid search incident to arrest. Taylor seeks reversal of the district court’s order denying suppression of the evidence.

This court reviews a pretrial order suppressing evidence by independently examining the facts to determine whether, as a matter of law, the district court erred in its decision. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). This court will not reverse the district court’s factual findings unless they are clearly erroneous. *State v. Hussong*, 739 N.W.2d 922, 925 (Minn. App. 2007).

When determining whether there was probable cause for arrest, this court “independently reviews the facts to determine the reasonableness of the conduct of police.” *State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997). But absent clear error, the district court’s finding that the officer had probable cause to arrest will not be disturbed. *State v. Camp*, 590 N.W.2d 115, 118 (Minn. 1999).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, searches without a warrant are unreasonable, except under “certain narrow exemptions.” *State v. Robb*, 605 N.W.2d 96, 100 (Minn. 2000). One exemption from the warrant requirement is that an officer may search “a person’s body and the area within his or her immediate control” if the search is “incident to a lawful arrest.” *Id.* (citing *Chimel v. California*, 395 U.S. 752, 763, 89 S. Ct. 2034, 2040 (1969)). This allows officers to remove any weapons and “prevents the arrestee from tampering with or destroying evidence or contraband.” *Id.*

Probable cause for arrest is assessed by considering the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 230-32, 103 S. Ct. 2317, 2328 (1983); *State v. Perkins*, 582 N.W.2d 876, 878 (Minn. 1998). Probable cause exists when the police “reasonably could have believed that a crime has been committed by the person to

be arrested.” *Riley*, 568 N.W.2d at 523 (quotations omitted); *see also State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982) (noting that probable cause exists if the objective facts indicate that “a person of ordinary care and prudence [would] entertain an honest and strong suspicion that a crime has been committed”).

The circumstances here are similar to those in *State v. Hawkins*, 622 N.W.2d 576 (Minn. App. 2001). In *Hawkins*, an officer saw the appellant riding a bike around an intersection while whistling and waving at approaching vehicles and saw the appellant engage in hand-to-hand transactions with other individuals in a manner that the officer concluded was consistent with a drug transaction and not with innocent behavior. *Id.* at 581. This court held that there was probable cause to arrest the appellant because these facts were sufficient to permit a prudent person to reasonably believe that the appellant had engaged in the sale of drugs. *Id.*

Taylor was seen engaging in a hand-to-hand transaction in an area known for drug sales.¹ Callahan testified that, based on his experience and training, the hand-to-hand exchange appeared to be a narcotics transaction. Callahan also saw Taylor loitering all morning at several corners, engaging in several brief encounters with others. The other encounters were similar to the encounter that lead to Taylor’s arrest, but Taylor’s back was toward the cameras, so the officer could not see whether an exchange took place.

¹ Although being in an area known for drug sales or criminal activity alone does not justify suspicion of a crime, it is one factor that may be considered in the totality of the circumstances. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (concluding that defendant’s evasive conduct, “combined with his departure from a building with a history of drug activity,” supported a *Terry* stop).

Taylor attempts to distinguish his circumstances from *Hawkins*, pointing out that the events in *Hawkins* occurred at night and involved a defendant who whistled and waved at passers-by. But these differences are not determinative. In both cases, officers saw hand-to-hand transactions consistent with drug sales. Under the totality of circumstances, the record shows that the officer reasonably could have believed that Taylor had committed a crime.

Taylor argues that the officer could not have reasonably believed that a crime was committed because he did not see what was exchanged and instead assumed that it was narcotics despite Taylor's testimony that it was a cigarette and the fact that Taylor was seen holding a cigarette shortly after the exchange. Taylor argues that the video recording supports his account. But the officer testified that he had witnessed exchanges of cigarettes many times and that it did not appear that such an exchange occurred in this instance. The officer noted that the white paper of a cigarette shows up very well on camera and that what he saw was not a cigarette. After viewing the video recording of the hand-to-hand exchange, the district court also found that it did not appear to be the exchange of a cigarette. The district court noted that the exchange was "very quick" and that no pack of cigarettes was pulled out. On this record, the district court's finding is not clearly erroneous. *See Hussong*, 739 N.W.2d at 925 (stating that district court's findings will not be reversed unless clearly erroneous).

Furthermore, an officer need not observe drugs or rule out all possible innocent explanations of the events observed before making an arrest. *See Hawkins*, 622 N.W.2d at 580 (stating that "[t]he fact that there might have been an innocent explanation for

Hawkins's conduct does not demonstrate that the officers could not reasonably believe that Hawkins had committed a crime.”).

Taylor also argues that the video recording contradicts the officer's testimony that the two men “split up fairly quickly,” which is consistent with drug trafficking between strangers, and his testimony that both men put their hands into their pockets immediately after the transaction. The district court has the discretion to draw its own conclusions and make factual findings from its independent review of a video recording. *State v. Shellito*, 594 N.W.2d 182, 186 (Minn. App. 1999). The district court independently viewed the video recording and in its order, it did not rely on either of the facts that Taylor disputes.²

The district court did not err by denying Taylor's motion to suppress the evidence obtained as a result of the search incident to Taylor's arrest.

Affirmed.

² The district court specifically found that the men did not separate immediately after the transaction. It made no finding about whether the men immediately put their hands in their pockets after the transaction.