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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-1127**

State of Minnesota,  
Respondent,

vs.

Kurt Robert Jenson,  
Appellant.

**Filed June 9, 2009  
Affirmed  
Bjorkman, Judge**

Pine County District Court  
File No. 58-CR-07-500

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Lawrence Hammerling, Chief Appellate Public Defender, Benjamin J. Butler, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and  
Bjorkman, Judge.

## **UNPUBLISHED OPINION**

**BJORKMAN**, Judge

Appellant challenges his conviction of second-degree controlled-substance crime, arguing that the district court erred in determining that there was probable cause to arrest him for receiving stolen property and that the search of his person incident to his arrest was therefore invalid. We affirm.

### **FACTS**

On May 28, 2007, Trooper Matthew Heaton of the Minnesota State Patrol observed an unoccupied all-terrain vehicle (ATV) parked against the guardrail on a state highway in Pine County. Stopping to investigate, he checked the registration on the ATV and learned it was “not on file.” He then checked the ATV’s vehicle identification number (VIN) and learned the ATV had been reported stolen from a North Mankato dealership.

A pickup truck carrying two men and pulling a trailer arrived on the scene. The passenger, later identified as appellant Kurt Jenson, said the ATV belonged to him and produced a registration card. Trooper Heaton compared the information on the registration card to the license number and VIN on the ATV; the license numbers matched, but the VINs did not. The mismatched VINs led Trooper Heaton to believe, based on his experience, that the ATV was stolen.

Trooper Heaton advised appellant that the ATV had been reported stolen. Appellant said he was unaware of that and stated that he had purchased the vehicle about two years earlier for \$1,100. Trooper Heaton responded that the price seemed low.

Trooper Heaton also noted that the model years did not match up: the registration card appellant produced reflected a 2001 model, but the VIN reflected a 2005 model.

After placing appellant under arrest, Trooper Heaton performed a search incident to arrest that yielded a small package containing methamphetamine. A subsequent search at the Pine County jail uncovered more methamphetamine and marijuana.

Appellant was charged with receiving stolen property and three controlled-substance crimes. The district court denied appellant's motion to suppress the evidence obtained from the search. After a *Lothenbach* proceeding, appellant was convicted of one second-degree controlled-substance crime in violation of Minn. Stat. § 152.022, subd. 2(1) (2006).<sup>1</sup> This appeal follows.

## DECISION

On appeal from a district court's determination of whether probable cause supports an arrest, we review the findings of fact for clear error, but the ultimate determination is a legal question, which we review de novo. *State v. Horner*, 617 N.W.2d 789, 795 (Minn. 2000).

The United States and Minnesota Constitutions protect citizens from “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. 1, § 10. But if they have probable cause, police officers may arrest a felony suspect without a warrant in any public place. *State v. Walker*, 584 N.W.2d 763, 766 (Minn. 1998). And if an arrest is valid, the police may conduct a warrantless search of the arrestee as an incident of the arrest. *Id.*

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<sup>1</sup> The state dismissed the other counts.

Probable cause exists when the facts “indicate that a person of ordinary care and prudence [would] entertain an honest and strong suspicion that a crime has been committed.” *State v. Olson*, 634 N.W.2d 224, 228 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001) (alteration in original) (quotation omitted). “The fact that there might have been an innocent explanation . . . does not demonstrate that the officers could not reasonably believe” that a crime has been committed. *State v. Hawkins*, 622 N.W.2d 576, 580 (Minn. App. 2001). In evaluating whether probable cause exists, a court looks at “objective facts” and considers the totality of the circumstances. *Olson*, 634 N.W.2d at 228.

The crime of receiving stolen property has three non-venue elements: (1) the property was stolen; (2) the defendant received, possessed, transferred, bought, or concealed the property; and (3) the defendant knew or had reason to know the property was stolen. Minn. Stat. § 609.53, subd. 1 (2006); 10 *Minnesota Practice*, CRIMJIG 16.48 (2006). Appellant argues that Trooper Heaton did not have probable cause to believe that appellant knew or had reason to know that the ATV was stolen.<sup>2</sup> We disagree.

The totality of the circumstances demonstrates Trooper Heaton had a reasonable, strong, and honest suspicion that appellant knew or had reason to know that the ATV he claimed to own was, in fact, stolen property. The district court cited four pieces of information supporting Trooper Heaton’s probable-cause assessment: the inconsistent

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<sup>2</sup> Appellant does not challenge probable cause with respect to the other elements of the offense.

VINs, the “not on file” registration, the inconsistency between the model year on the registration card and the model year of the ATV, and the low price appellant admittedly paid for what appeared to be a relatively new ATV. On these facts, Trooper Heaton was justified in suspecting that appellant knew the ATV was stolen and placing him under arrest.

Appellant challenges the district court’s probable-cause determination on essentially two grounds. First, he argues that Officer Heaton knew several facts that should have dispelled any suspicion he may otherwise have that appellant knew or should have known the ATV was stolen. Appellant asserts that a reasonable person who knew an item was stolen would not stop to talk to an investigating police officer or claim the item as his own.

Along this same line, appellant argues that a person who knows an ATV is stolen would not register it in his own name. But Trooper Heaton testified that he has seen other stolen vehicles registered using false information. And the fact that appellant named the purported seller, a fact Trooper Heaton could not confirm while at the scene, does not dispel the strong, continuing suspicion that a person in possession who lacks evidence of ownership knows that an ATV is stolen and does not legally belong to him.

Moreover, the distance between North Mankato, where the ATV was stolen, and Pine County, where Trooper Heaton found it, is not dispositive. The bulk of ATV riding occurs in northern Minnesota. *See* Minn. Stat. §§ 84.92, subd. 1a, .928, subd. 1(h) (2008) (prohibiting ATV operation within the public right-of-way in southern and central Minnesota from April 1 to August 1); Minn. Dep’t of Natural Res., *Study of Off-Highway*

*Vehicle Trails* 14 (2005) (displaying ATV trail opportunities). We conclude these other facts within Officer Heaton's knowledge are not inconsistent with his assessment of probable cause that appellant knew that the ATV in his possession was stolen.

Nor do we find appellant's second argument, regarding Trooper Heaton's general operating procedures, persuasive. When testifying about appellant's statement that he had additional paperwork on the ATV, but not with him at the scene, Trooper Heaton acknowledged that it is often difficult to corroborate a suspect's statements:

Normally, there is not enough evidence at a scene to determine whether or not what the person is telling you is accurate. I generally would arrest a person on the probable cause that he is in possession of a stolen item, and if any followup needs to be done, it will have to be done after he gets booked into the jail.

Appellant seizes on this testimony as evidence that Trooper Heaton follows an "arrest first, investigate later" approach in cases such as this. We disagree. Trooper Heaton's testimony, considered as a whole, supports the district court's findings. And even if Trooper Heaton's probable-cause determination were based on an improper procedure, it would not change the fact that probable cause is an objective standard. *See State v. Perkins*, 582 N.W.2d 876, 878 (Minn. 1998) (stating that if the objective standard is met, even an officer's improper motive will not result in suppression).

Based on the totality of the circumstances, the district court did not err in determining that Trooper Heaton had probable cause to arrest appellant for receiving

stolen property. Therefore, the search of appellant's person incident to the arrest was valid.

**Affirmed.**