STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1446

State of Minnesota,
Respondent,

vs.

Jordan Michael Norring,
Appellant.

Filed August 11, 2009
Affirmed
Klaphake, Judge

Chisago County District Court
File No. 13-CR-07-2449

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

Jason T. Grussendorf, Assistant County Attorney, Chisago County Government Center, 313 N. Main Street, Room 373, Center City, MN 55012 (for respondent)

Marie L. Wolf, Interim Chief Appellate Public Defender, Lydia M. Villalva Lijo, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Klaphake, Presiding Judge; Stauber, Judge; and Muehlberg, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

KLAPHAKE, Judge

Appellant Jordan Norring was convicted by a jury of one count of first-degree controlled substance crime under Minn. Stat. § 152.021, subd. 1(1) (2006) (possession of methamphetamine with intent to sell) and one count of second-degree controlled substance crime under Minn. Stat. § 152.022, subd. 2(1) (2006) (possession of methamphetamine). Appellant challenges a district court order denying his pretrial suppression motion, claiming that police illegally seized the methamphetamine and drug paraphernalia from under the hood of his vehicle without probable cause. He also claims that the controlled substance conviction based on his intent to sell methamphetamine should be vacated because the evidence was insufficient to prove his intent to sell. We affirm because (1) the record shows that police had probable cause to search under the hood of appellant's vehicle; and (2) our review of the record shows that the evidence of intent to sell was sufficient to find appellant guilty of first-degree controlled substance crime for the sale of methamphetamine.

D E C I S I O N

1. Legal Basis for Search of Vehicle

The U.S. Const. amend. IV and Minn. Const. art. I, § 10, protect citizens from unreasonable searches and seizures. An investigative traffic stop is a seizure to which these constitutional provisions apply, *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004), and police may make a traffic stop if they have a reasonable and articulable suspicion that a person is engaged in criminal activity. *State v. Britton*, 604 N.W.2d 84,

87 (Minn. 2000). Appellant does not challenge the legality of his stop or arrest; rather, he claims that the search under the hood of his vehicle exceeded the scope of the search allowed by law.

A search of a vehicle incident to an occupant's arrest permits law enforcement officials to preserve evidence and remove weapons that could be a threat to officers' safety. *State v. Ture*, 632 N.W.2d 621, 628 (Minn. 2001). But the district court here found that the warrantless search of appellant's vehicle exceeded the permissible scope of a search incident to arrest because it encompassed an area greater than that of the area in appellant's immediate control—the passenger area. This determination is correct. *See Arizona v. Gant*, 129 S. Ct. 1710, 1723-24 (2009) (permitting police search of passenger compartment of vehicle incident to occupant's arrest "only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest").

A broader search may be conducted under the automobile exception to the warrant requirement, however. *California v. Carney*, 471 U.S. 386, 392-94, 105 S. Ct. 2066, 2071-72 (1985); *State v. Bauman*, 586 N.W.2d 416, 422 (Minn. App. 1998), *review denied* (Minn. Jan. 27, 1999). A warrantless search of a vehicle under this exception must be supported by probable cause, which exists if there is a substantial basis, in light of the totality of the circumstances, to conclude "that contraband or evidence of a crime will be found in a particular place." *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted); *see California v. Acevedo*, 500 U.S. 565, 579, 111 S. Ct. 1982, 1991 (1991) (stating that police may conduct search of vehicle "without a warrant if their

search is supported by probable cause"). This court reviews probable cause determinations de novo, *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997), and reviews a district court's factual determinations for clear error. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

While concluding that the search under the hood of the vehicle was impermissible as a search incident to appellant's arrest, the district court ruled that, based on the totality of the circumstances, probable cause existed to support the search under the automobile exception. This determination is also correct. The record, including the district court's findings, shows that (1) the responding officer, Officer John Pego, received a reliable tip that appellant may have stolen a vehicle; (2) the tipster saw the driver of the vehicle open and close the front hood of the vehicle; (3) Pego quickly arrived at the scene and saw appellant and his passenger exactly as described by the tipster; (4) based on his training and experience, Officer Pego knows that drug users hide drugs under the hoods of their vehicles; (5) appellant exhibited behavior strongly suggestive of his being under the influence of methamphetamine; (6) appellant exhibited evasive behavior, including initially attempting to walk away from Officer Pego; (7) Officer Pego verified that appellant was not the owner of the vehicle and that he was subject to a valid arrest warrant; and (8) the presence of an apparatus used to supply falsely "clean" urine samples in the back seat of the vehicle suggested to Officer Pego that appellant was likely to attempt to conceal criminal activity. These facts, taken together, provided police with a reasonable basis for searching under the hood of appellant's vehicle for evidence of drug

activity. We therefore affirm the district court's order declining to suppress the evidence obtained from the search of appellant's vehicle.

2. Sufficiency of the Evidence of Intent to Sell a Controlled Substance

"The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires the state, in a criminal case, to prove beyond a reasonable doubt every fact necessary to constitute the crime with which the defendant is charged." *State v. Otterstad*, 734 N.W.2d 642, 645 (Minn. 2007). Review on a claim of insufficient evidence is limited; this court reviews the evidence to determine whether the jury could reasonably have found the defendant guilty of the charged offense. *State v. Vick*, 632 N.W.2d 676, 690 (Minn. 2001). "A defendant bears a heavy burden to overturn a jury verdict." *Id.* This court views the evidence in a light most favorable to the verdict and resolves all inconsistencies in the evidence in favor of the verdict. *State v. Bergeron*, 452 N.W.2d 918, 924 (Minn. 1990). This court also assumes that the jury believed the state's witnesses and disbelieved evidence to the contrary. *State v. Pierson*, 530 N.W.2d 784, 787 (Minn. 1995).

Minn. Stat. § 152.021, subd. 1(1), defines as a first-degree controlled substance offense the conduct of a person who "sells one or more mixtures of a total weight of ten grams or more containing cocaine, heroin, or methamphetamine[.]" The statute includes within the definition of "sell" "possess[ion] with intent to" sell. Minn. Stat. § 152.01, subd. 15a (2006). Appellant claims that the evidence was insufficient to show his possession of the methamphetamine with intent to sell it.

Although the state could not prove that appellant actually possessed the methamphetamine, the state could prove his constructive possession by showing either that a controlled substance was found in an area under appellant's exclusive control or that appellant exercised dominion and control over the area in which the methamphetamine was found. *See State v. Denison*, 607 N.W.2d 796, 800 (Minn. App. 2000), *review denied* (Minn. June 13, 2000); *see also State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975) (setting forth actual and constructive possession doctrines with regard to weapons). A person may constructively possess a controlled substance alone or with others. *Denison*, 607 N.W.2d at 799. While the evidence was circumstantial, the jury could draw strong inferences that appellant possessed methamphetamine. *See State v. Breaux*, 620 N.W.2d 326, 334 (Minn. App. 2002) (allowing constructive possession to be proved by strong showing that defendant consciously exercised dominion and control over controlled substance); *see also State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999) ("circumstantial evidence is entitled to the same weight as direct evidence").

The following facts support the jury's verdict that appellant had possession of the methamphetamine: (1) a reliable informant stated that he saw the driver of the vehicle open and reach under the hood of the vehicle; (2) Officer Pego, who was "pretty close" to the gas station at which the vehicle was located, arrived at the scene soon after, discovered the scene exactly as the informant had described it, and observed appellant standing on the driver's side of the vehicle with the door open; (3) appellant got into the vehicle, sitting in the driver's seat, and immediately exited the vehicle; (4) appellant

claimed that he owned the vehicle; and (5) of the two vehicle occupants, only appellant exhibited any signs of being under the influence of a controlled substance.

Further, the record includes sufficient evidence to satisfy the element of intent to sell. In *State v. Heath*, 685 N.W.2d 48, 57 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004), this court concluded that evidence of intent to sell was sufficient when drugs, packaging materials, and a scale were found by officers at the scene, and drugs were found on a co-conspirator's person. Appellant argues that the evidence here is inconsistent with a finding of guilt because it suggested only that he possessed methamphetamine for personal use. We disagree. The evidence of intent to sell includes: (1) the 11.9 grams of methamphetamine was many times greater than the amount typically used by an individual (.25 grams) or the amount typically bought during a sale (1.75 grams); (2) the cache in appellant's vehicle included a scale; and (3) although appellant did not have a job, he possessed a quantity of drugs with a street value of $1,200 to $1,500. This evidence is sufficient to support appellant's conviction on the first-degree controlled substance offense of possession with intent to sell.

Affirmed.