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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-2235**

State of Minnesota,  
Respondent,

vs.

Michele Joy Therriault,  
Appellant.

**Filed November 24, 2009  
Affirmed  
Harten, Judge\***

Pine County District Court  
File No. 58-CR-07-631

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

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Considered and decided by Schellhas, Presiding Judge; Larkin, Judge; and Harten, Judge.

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

## **UNPUBLISHED OPINION**

**HARTEN**, Judge

Appellant challenges her conviction for fifth-degree possession of methamphetamine, arguing that evidence should have been suppressed as the product of a warrantless search and was otherwise insufficient to convict her. Because the evidence was lawfully seized under the plain-view exception to the warrant requirement and was sufficient to uphold the conviction, we affirm.

### **FACTS**

In July 2007, appellant Michele Therriault was a front-seat passenger in a truck that the police stopped for a cracked windshield. The police officer recognized appellant and the truck's driver from previous contacts. After determining that neither had current driving privileges, the officer asked appellant to get out of the truck. A small object fell to the ground. As the officer bent to retrieve it, he saw a cigarette pack containing one cigarette and a plastic bag on the truck floorboard just inside the passenger door. From his training and experience, the officer believed that the cigarette pack contained contraband. The plastic bag contained small crystals. Appellant said the bag was not hers. The crystals were found to be methamphetamine.

After placing appellant in the squad car and finding that there were outstanding warrants for the arrest of both the driver and appellant, the officer searched the truck. He found a container with a cut-off straw and two plastic bags of crystals in the center console and a plastic bag containing a green, leafy substance inside appellant's purse on

the floor on the passenger side. The crystals also were found to be methamphetamine; the leafy substance was marijuana.

Appellant moved unsuccessfully for the suppression of the methamphetamine, arguing that it was the product of an unlawful search. She then waived her right to a jury trial and agreed to a bench trial on stipulated facts. The district court found her guilty as charged but stayed adjudication on condition that appellant successfully serve five years' probation.

Appellant challenges her conviction, arguing that the district court erred in not suppressing the evidence of the warrantless search and that the evidence was insufficient to find her guilty.

## **D E C I S I O N**

### **1.     Suppression of Evidence**

“When reviewing pretrial orders on motions to suppress evidence, [appellate courts] may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). The state bears the burden of showing that a warrantless search or seizure fell within one of the exceptions to the warrant requirement. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). This court is bound by the district court's findings of fact unless they are clearly erroneous. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

Appellant argues that the methamphetamine was discovered as the result of an illegal, warrantless search. But the bag containing methamphetamine was in the officer's

plain view as he approached and opened the passenger door for appellant to exit.<sup>1</sup> An officer is justified in opening an item in plain view if it is immediately apparent that the item contains contraband. *State v. Alesso*, 328 N.W.2d 685, 689 (Minn. 1982).

*Alesso* found no violation of the search warrant requirement when an officer seized from a defendant's pocket "a small transparent plastic bag containing a small package made from folding a piece of paper from a cigarette package" that "[the officer] was not sure . . . contained contraband when he opened it, but . . . apparently suspected that it did" and the package contained cocaine. *Id.* at 686-87; *see also State v. Munoz*, 385 N.W.2d 373, 376-77 (Minn. App. 1986) (officer who "observed glassine envelopes in plain view on the passenger side front floor mat" and "was familiar with such containers as being commonly used to market controlled substances" reasonably concluded that "controlled substances might be present"). Similarly, the officer here suspected the plastic bag protruding from the cigarette package contained contraband; he was justified in seizing it from the car floor.<sup>2</sup>

Appellant relies on *In re Welfare of G.M.*, 560 N.W.2d 687, 694 (Minn. 1997) (plain view doctrine did not apply when pouch was in plain view but officer's probable cause to believe pouch contained contraband came not from pouch but from informant's

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<sup>1</sup> The district court also relied on three alternative exceptions to the warrant requirement: expanded scope of the search; search incident to arrest; and inventory search. Because we conclude that the plain view doctrine provided ample support for the denial of the motion to suppress, we do not address these alternatives.

<sup>2</sup> Appellant also argues that the plain-view exception does not apply because "[the] truck . . . had been stopped for reasons having nothing to do with drugs." But the officers in *Alesso* also approached the vehicle for reasons having nothing to do with drugs: it was illegally parked. *Id.* at 686.

tip and defendant's evasive answers). Appellant's reliance on *G.M.* is misplaced because that case is distinguishable: here, the officer's probable cause to believe the plastic bag inside the cigarette pack contained contraband came from his own training and experience, as in *Alesso* and *Munoz*.

## **2. Sufficiency of the Evidence**

In considering a claim of insufficient evidence, our review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the factfinder to reach its verdict. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989).

Appellant's conviction was based on her constructive possession of the methamphetamine.

Constructive possession may be proven by showing that (a) the police found the item in a place under the defendant's exclusive control to which other people did not have access, or (b) that, if the police found the item in a place to which others had access, there is a strong probability, inferable from the evidence, that the defendant was consciously exercising dominion and control over the item at the time.

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Proximity is an important consideration in assessing constructive possession. Moreover, constructive possession need not be exclusive, but may be shared.

*State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *review denied* (Minn. 16 Jan. 2001).

The officer who arrested appellant testified that, "I got [appellant] out of the vehicle to bring her back [to the squad car] and talk to her . . . I saw the cigarette pack and I asked her about it and she said 'that none if it was hers.' . . . I [then] went back and

searched the vehicle.” He was asked, “[A]t that time you looked in this cigarette pack?”, and answered, “I actually picked up the cigarette pack and looked at it, yeah . . . There was a plastic baggy inside with small white crystals.” When asked where the cigarette pack was, he answered, “It was on the passenger floorboard . . . closer to where your right foot would be resting . . . if you were the passenger in the front seat.”

Thus, methamphetamine was found in a plastic bag in a cigarette pack located near appellant’s foot on the right side of the passenger floorboard. No one other than appellant was in the truck when it was discovered; no one else then had access to it, and it was close to appellant. The legitimate inference from the location of the methamphetamine on the floorboard was that appellant was in shared, if not sole, possession of it.<sup>3</sup> Appellant relies on *State v. Albino*, 384 N.W.2d 525 (Minn. App. 1986) to argue that her presence in the vehicle where methamphetamine was later found does not support a finding of constructive possession. But *Albino* is distinguishable: it concerned whether the police had “probable cause to arrest [the defendant] for constructive possession of the drugs found in the camera case in the truck in which she was a passenger.” *Id.* at 527. In *Albino*, the defendant had accepted a ride home from work with a friend. *Id.* at 526. When the friend’s vehicle was stopped for a broken taillight, it was discovered that he did not have a valid license and that there was a warrant for his arrest. *Id.* The defendant said she would walk home and left the scene. *Id.* When the officer found suspected drugs inside a camera case in the vehicle against

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<sup>3</sup> A review of the videotape of the officer’s arrest of appellant supports this inference: appellant said something like, “[I]t’s not mine,” as soon as the officer picked up the bag.

the center of the seat, the defendant was pursued, handcuffed, brought back to the squad car, and questioned about the camera case and the drugs; she did not respond. *Id.* We reversed on the ground that the police did not have probable cause to arrest her for constructive possession of the drugs inside the camera bag. *Id.* at 528.

Here, the controlled substance was not hidden in a leather case but in a plastic bag protruding from a cigarette pack that was next to appellant's right foot in plain sight of the officer, and appellant immediately denied possession of it. Based upon his experience with drugs in plastic bags within cigarette packs, the officer examined and seized the cigarette pack. The court weighed the evidence and found appellant guilty as charged.

The district court did not err in denying the motion to suppress the evidence, and the evidence was sufficient to support appellant's conviction.

**Affirmed.**