STATE OF MINNESOTA
IN COURT OF APPEALS
A11-132

State of Minnesota,
Respondent,

vs.

Anthony Jackson,
Appellant.

Filed December 12, 2011
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CR-10-26648

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Alan J. Harris, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Connolly, Judge.

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

WORKE, Judge

Appellant challenges his third-degree controlled-substance-crime conviction arguing that the district court erred by denying his motion to suppress evidence discovered as a result of the search incident to his arrest. We affirm.

D E C I S I O N

Appellant Anthony Jackson was charged with third-degree controlled-substance crime. He moved to suppress the evidence found during the search incident to his arrest. The district court denied the motion. Following a stipulated-facts proceeding, the district court found appellant guilty as charged. This court's review following a stipulated-facts proceeding is limited to whether the district court properly denied appellant's suppression motion. *See* Minn. R. Crim. P. 26.01, subd. 4(f). "When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in . . . not suppressing [] the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Search

Appellant argues that the search conducted was an unreasonable, "sexually-intrusive search" of his buttocks. Appellant relies on *Bell v. Wolfish*, which involved a class-action suit brought by inmates challenging the constitutionality of several confinement conditions and practices at a federally operated short-term custodial facility. 441 U.S. 520, 520, 99 S. Ct. 1861, 1863-64 (1979). One of the challenges was to the requirement that inmates "expose their body cavities for visual inspection as a part of a

strip search conducted after every contact visit with a person from outside the institution." *Id.* at 558, 99 S. Ct. at 1884. The Supreme Court balanced "the need for the particular search against the invasion of personal rights that the search entails," including "the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted."[1] *Id.* at 559, 99 S. Ct. at 1884. The Supreme Court determined that these searches did not violate the Fourth Amendment prohibition against unreasonable searches, concluding that, under the circumstances, such searches were reasonable. *Id.* at 558, 99 S. Ct. at 1884.

Appellant was lawfully arrested; he does not challenge the legality of the arrest. If an officer has probable cause to arrest, a suspect may be searched incident to arrest. *State v. Varnado*, 582 N.W.2d 886, 892 (Minn. 1998). The police may search the arrestee's person and the area within the person's immediate control. *Chimel v. California*, 395 U.S. 752, 763, 89 S. Ct. 2034, 2040 (1969). The rationale behind the search-incident-to-arrest exception to the warrant requirement is to ensure officer safety by removing weapons and to prevent the destruction or concealment of evidence. *Id.*

The officer testified that he observed a woman approach appellant and another woman whom the officer recognized from a previous drug-related arrest. Appellant took a "lookout" stance as the known trafficker conducted what appeared to be a drug sale. The officer then observed a male hand appellant money. Appellant reached into the front of his pants, pulled out a plastic baggie, removed a small item from the baggie, and

[1] The state concedes that although *Bell* established the framework for determining the reasonableness of a body-cavity search in a penal institution, it may be instructive in evaluating the reasonableness of the search here.

handed it to the male. Appellant next met up with a known addict who gave appellant cash in exchange for an item from the same baggie.

The officer approached appellant, intending to arrest him for loitering and narcotics. The officer told appellant that he was under arrest and grabbed him by the arm. Appellant tensed up and pulled away, causing the officer to take appellant to the ground. The officer handcuffed appellant and began a search. The officer left briefly to retrieve gloves from his bike. When the officer returned, he noticed appellant stuff something down the back of his pants. The officer pulled appellant's hands out of his pants and felt something in the back area of appellant's pants. The officer extended the search through "the back of [appellant's] pants, the crack of his butt, and up through . . . the waistband." The officer felt a lump of rocks two-to-three inches down from appellant's belt in between appellant's buttocks. The officer did not intrude into appellant's anal cavity. Without using force, the officer was able to retrieve a plastic baggie containing ten small, individually-wrapped rocks of crack cocaine.

Appellant was searched incident to his arrest, and the officer testified that he observed appellant shove something down his pants; hence, it was necessary to search in appellant's pants to prevent the destruction or concealment of evidence. Additionally, the officer testified that he did not conduct a cavity search; the officer stated that the object was inches from appellant's belt and that he did not probe appellant's anal cavity. Appellant testified that the officer felt "the tip of the crack of [appellant's] buttocks with his hand," and that the officer "probed and touched [him] in the crack of [his] anus." But the district court found that appellant was not credible and that the officer's testimony

was credible. *See State v. Spanyard*, 358 N.W.2d 125, 127 (Minn. App. 1984) (stating that this court defers to the fact-finder's credibility determinations), *review denied* (Minn. Feb. 27, 1985). Thus, this search was reasonable and constitutional.

Pro Se Arguments

Appellant challenges only the credibility of the officer's testimony. The district court specifically found that the officer was credible. *See id.* Further, appellant's arguments are not supported by any legal argument and are waived for inadequate briefing. *See State v. Ouellette*, 740 N.W.2d 355, 361 (Minn. App. 2007) (stating that an assignment of error not supported by argument or authority is waived unless prejudicial error is obvious), *review denied* (Minn. Dec. 19, 2007).

Affirmed.