STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0362

State of Minnesota,
Respondent,

vs.

Tommy Lee Kyles,
Appellant.

Filed February 3, 2014
Affirmed
Stoneburner, Judge

Hennepin County District Court
File No. 27CR128455

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

Michael O. Freeman, Hennepin County Attorney, Linda K. Jenny, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Young Middlebrook, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Stoneburner, Judge; and Hudson, Judge.

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

STONEBURNER, Judge

Appellant challenges his conviction of fifth-degree possession of cocaine, in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2010), arguing that (1) the district court

erred by denying his pretrial motion to suppress evidence of drugs found on the backseat of an automobile from which he had been removed and (2) the evidence of his constructive possession of those drugs is insufficient to support his conviction. Because the district court did not err by denying the motion to suppress, and the evidence is sufficient to support the conviction, we affirm.

FACTS

On a March night in 2012, two Minneapolis police officers on patrol observed a vehicle make an illegal turn. The officers activated the squad-car lights to stop the vehicle. Before the vehicle stopped, the officers observed something wrapped in plastic being thrown out of the front passenger window. Two other officers arrived at the scene almost immediately and one went to look for the item that was thrown from the window.

One of the original officers approached the driver's side of the stopped vehicle and the other approached the passenger's side. There were four people in the vehicle. Appellant Tommy Lee Kyles was in the backseat behind the driver. The officer who was speaking to the driver saw Kyles shifting his body back and forth and moving his hands under his body as if to hide or retrieve something. The officer told Kyles to display his hands, and Kyles initially complied. But Kyles then resumed shifting his body and putting his hands under his body. When Kyles failed to immediately respond to a second command to display his hands, the officer grabbed his arm and pulled Kyles out of the vehicle. The officer handcuffed Kyles, pat-searched him, and placed him in the back of a squad car. The other occupants of the vehicle were under constant observation by the other officers until they were all handcuffed and placed in the squad cars.

The item that had been thrown from the vehicle prior to the stop was discovered to be a crack pipe, and the vehicle was searched. The officer who had removed Kyles from the vehicle searched the vehicle and found a small plastic baggie containing crack cocaine in plain view on the seat where Kyles had been sitting.[1] Kyles was charged with fifth-degree possession of cocaine, in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2010). Kyles moved to suppress all evidence found during the search of the vehicle, arguing that the stop of the vehicle, expansion of the stop, his arrest, and search of the vehicle were all illegal. The district court denied Kyles's motion to suppress. After a bench trial, the district court found Kyles guilty of the charged offense. This appeal followed.

D E C I S I O N

I. The district court did not err by denying Kyles's motion to suppress.

When reviewing a pretrial order on a motion to suppress evidence, we examine the district court's factual findings under a clearly erroneous standard and the district court's legal determinations, including a determination of probable cause, de novo. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012).

The United States Constitution guarantees an individual's right to be free from unreasonable searches and seizures. U.S. Const. amend. IV. Generally, warrantless searches "are per se unreasonable under the Fourth Amendment--subject only to a few

[1] During the search, the officers also discovered a suitcase in the trunk of the vehicle, which contained 25.9 grams of crack cocaine. Based on documents found in the suitcase, the backseat passenger who had been seated next to Kyles was charged with possession of the drugs found in the suitcase.

specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967). And generally, evidence that is unconstitutionally seized must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007).

Based on the officers' testimony, the district court found that the driver of the vehicle made an illegal turn, creating an objective basis for the stop. On appeal, Kyles concedes the legality of the stop. We agree. *See State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (stating that a traffic-law violation, however insignificant, ordinarily provides an objective basis for stopping a vehicle).

Kyles also concedes on appeal that his rights were not violated by the request that all passengers exit the vehicle. We agree. Because the "danger to an officer from a traffic stop is likely to be greater when there are passengers . . . an officer making a traffic stop may order passengers to get out of the car pending completion of the stop." *Maryland v. Wilson*, 519 U.S. 408, 414-15, 117 S. Ct. 882, 886 (1997); *State v. Ortega*, 770 N.W.2d 145, 152 (Minn. 2009) (holding that the greater protection afforded under Article I, section 10 of the Minnesota Constitution does not require that police have an individualized basis for ordering a passenger to get out of a lawfully stopped vehicle).

But Kyles argues that his rights were violated by the officer pulling him out of the vehicle, cuffing him, searching him, and placing him in the back of a squad car, asserting that "this physical and painful intrusion outweighed the state's interest." We disagree. For a search or seizure "[t]o be reasonable, the basis must satisfy an objective test: 'would the facts available to the officer at the moment of the seizure warrant a man of reasonable caution in the belief that the action taken was appropriate.'" *State v.*

Askerooth, 681 N.W.2d 353, 364 (Minn. 2004) (omission in original) (quoting *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968)). [T]he use of reasonable force is almost invariably justified in cases involving persons suspected of being armed," *State v. Balenger*, 667 N.W.2d 133, 140 (Minn. App. 2003), *review denied* (Minn. Oct. 21, 2003), and officer safety offers a compelling and weighty justification, *Wilson*, 519 U.S. at 415, 117 S. Ct. at 886.

The record demonstrates that the officer observed Kyles "shifting his body rapidly," "shuffling" his hands, and "shuffling something under the seat or to the side of his seat," and was concerned that Kyles could have been "reaching for a gun or a knife." The officer directed Kyles to display his hands. Kyles initially complied but then returned to the activity that concerned the officer. When Kyles hesitated to comply with additional orders to display his hands, the officer grabbed Kyles's left arm, pulled him out of the vehicle, handcuffed and pat-searched him, and secured him in the squad car. The record supports the officer's removing Kyles from the vehicle, patting him down for weapons, and securing him to address officer-safety concerns created by Kyles's actions.

The district court did not credit Kyles's assertion that he was only trying to respond to a demand from another officer to retrieve his identification from his back pocket. The district court credited the testimony of the officers that Kyles's movements directly contravened their explicit instructions. We defer to the district court's credibility determinations, which, in this case, are supported by the squad-car video. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

Kyles argues that the squad-car video does not support the claim that the officers found the crack cocaine in plain view because the video shows that officers searched the back seat for 40 seconds before removing the bag of crack cocaine. But the squad-car video does not show the interior of the vehicle, and the fact that officers searched the back area of the vehicle for 40 seconds before removing the bag does not disprove that they found the crack cocaine in plain view. Because we defer to the district court's credibility determinations, the district court's finding that the drugs found were in plain view is not clearly erroneous. Accordingly, the district court did not err in denying Kyles's motion to suppress.

II. The circumstantial evidence is sufficient to support the finding that Kyles constructively possessed the drugs found on his seat in the vehicle.

Kyles's conviction is based, in part, on circumstantial evidence that he physically possessed the bag of crack cocaine that was found on his seat in the vehicle. Kyles argues that there is insufficient evidence to prove, beyond a reasonable doubt, that he constructively possessed the drugs found in the backseat because the record supports equally reasonable inferences that another passenger possessed the drugs and placed them on the seat where Kyles had been sitting after Kyles was removed from the vehicle. We disagree.

In assessing a claim that circumstantial evidence is insufficient to support a conviction, "we review the evidence to determine whether the facts in the record and the legitimate inferences drawn from them would permit the [fact-finder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which

he was convicted." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quotation omitted). "[W]e first identify the circumstances proved." *State v. Hanson*, 800 N.W.2d 618, 622 (Minn. 2011). We defer to the fact-finder's acceptance of the proof of these circumstances as well as to its rejection of evidence in the record in conflict with the circumstances proved by the state. *Id.* The district court is generally "in the best position to weigh the credibility of the evidence and . . . determine which witnesses to believe and how much weight to give their testimony." *Id.* (quotation omitted). We then "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt." *Id.* (quotation omitted). No deference is given to the fact-finder's choice between reasonable inferences. *Id.* "Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *Al-Naseer*, 788 N.W.2d at 473 (quotation omitted). "In assessing the inferences drawn from the circumstances proved, the inquiry is not simply whether the inferences leading to guilt are reasonable. Although that must be true in order to convict, it must also be true that there are no other reasonable, rational inferences that are inconsistent with guilt." *State v. Stein*, 776 N.W.2d 709, 716 (Minn. 2010).

The circumstances proved at trial that relate to Kyles's possession of the drugs are: (1) at the time of the stop, an officer observed actions by Kyles consistent with his attempting to place or retrieve something under his body or seat; (2) Kyles continued these actions even after being ordered to show his hands; (3) after Kyles was removed

from the vehicle, a bag containing crack cocaine was in plain view on the seat from which Kyles had been removed; and (4) all occupants of the vehicle were under constant observation of police officers after the vehicle was stopped. *See State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975) (holding that when police found illegal drugs in a place to which others had access, there was a strong probability, inferable from other evidence, that defendant constructively possessed the drugs).

Kyles contends that the squad-car video shows that no officer was watching the remaining backseat passenger for three seconds after Kyles was removed from the vehicle and that no officer was supervising the occupants of the front seat for 33 seconds. Kyles argues that another passenger could have placed the drugs on his seat during these gaps in observation. But the district court rejected Kyles's arguments about what the video shows based on its own second-by-second analysis of the squad-car video and the testimony of the officers. The district court concluded that (1) one of the officers stood by the passenger side of the vehicle at all relevant times and observed all of the other occupants and (2) throughout the relevant portions of the stop, the passenger seated next to Kyles had his hands raised outside the rear passenger's door at the officer's direction and could not have put the drugs on Kyles's seat.

"An alternative theory does not justify a new trial if that theory is not plausible or supported by the evidence," and a conviction based on circumstantial evidence will not be overturned on the basis of mere conjecture. *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998). "[P]ossibilities of innocence do not require reversal . . . so long as the evidence taken as a whole makes such theories seem unreasonable." *State v. Taylor*, 650

N.W.2d 190, 206 (Minn. 2002) (quotations omitted). Here, the district court carefully and methodically ruled out the possibility "that anyone else in the vehicle placed the drugs on the seat after [Kyles] was removed from the vehicle." The only rational inference is that Kyles possessed the drugs prior to being removed from the vehicle.

Affirmed.