STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1458

State of Minnesota,
Respondent,

vs.

Luis Antonio Pimentel,
Appellant.

Filed June 26, 2017
Affirmed
Johnson, Judge

Hennepin County District Court
File No. 27-CR-15-30450

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

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

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

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Reilly, Judge.

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

JOHNSON, Judge

A Hennepin County judge found Luis Antonio Pimentel guilty of a second-degree controlled-substance crime based on evidence that methamphetamine was found in a

pocket of his jacket. Pimentel challenges the district court's denial of his motion to suppress the evidence of the methamphetamine and also challenges the length of his sentence. We conclude that the district court did not err by relying on the inevitable-discovery doctrine in denying Pimentel's motion to suppress. We also conclude that the district court did not err by sentencing Pimentel without applying the 2016 Minnesota Drug Sentencing Reform Act. Therefore, we affirm.

FACTS

On October 23, 2015, Officer Werner of the Minneapolis Police Department was investigating a tip from an informant who had helped the police department recover narcotics or firearms on approximately six to ten prior occasions. On this occasion, the informant said that a sale of a large quantity of methamphetamine was going to occur at a particular intersection in south Minneapolis. The informant described one party to the transaction as a man named Luis, who would be driving a silver minivan with a particular license plate.

Officer Werner conducted surveillance near the intersection in an unmarked police car. He saw a silver minivan with a license plate that matched the license plate described by the informant. The silver minivan circled the block and parked along the curb near the corner of the intersection. A red SUV arrived and stopped alongside the silver minivan. After the drivers of the two vehicles made contact with each other, the red SUV parked along the curb near the silver minivan. The driver of the silver minivan exited his vehicle and entered the back seat of the red SUV.

Officer Werner communicated by radio with nearby officers and directed them to approach the red SUV and seize its occupants. Officer Lepinski responded to the call and pulled up behind the red SUV. As the officer did so, Pimentel exited the red SUV and began to walk away. Officer Lepinski instructed Pimentel to stop and lie on the ground. Pimentel did not immediately comply.

Officer Lepinski apprehended Pimentel and handcuffed him. When performing a pat-search, the officer felt a hard object in an inner pocket of Pimentel's jacket. Officer Lepinski could not identify the object. Pimentel said that it was a pack of cigarettes, but Officer Lepinski did not find that explanation to be credible, so he removed the item from Pimentel's pocket. The hard object was a small scale, which was inside a bag, along with a smaller plastic bag containing approximately 15 grams of methamphetamine.

Meanwhile, other officers searched the red SUV. Officer Werner found 460 grams of methamphetamine inside a Tupperware container that was inside a shopping bag on the floor of the back seat. The officers arrested Pimentel and the two other persons who had been inside the red SUV.

In October 2015, the state charged Pimentel with first-degree controlled-substance crime, in violation of Minn. Stat. § 152.021, subd. 1(1) (2014), based on an allegation that he intended to sell methamphetamine. The state later amended the complaint to include a charge of second-degree controlled-substance crime, in violation of Minn. Stat. § 152.022, subd. 2(1) (2014), based on an allegation that he possessed methamphetamine.

In November 2015, Pimentel moved to suppress the evidence of the methamphetamine that was found in the pocket of his jacket. The district court conducted

an evidentiary hearing at which Officer Werner and Officer Lepinski testified for the state and Pimentel testified for the defense. Pimentel argued that the search of his person was unlawful because it exceeded the scope of an investigatory stop and because the state did not have probable cause to search or arrest him.

Two days after the hearing, the district court issued an order in which it denied Pimentel's motion to suppress. The district court agreed with Pimentel that Officer Lepinski exceeded the scope of a reasonable pat-search by removing an item from Pimentel's pocket without believing that it was contraband. But the district court reasoned that the methamphetamine in the pocket of Pimentel's jacket is nonetheless admissible under the inevitable-discovery doctrine.

The following day, Pimentel waived his right to a jury trial, and the case was tried to the court. Pimentel conceded guilt on the second-degree possession charge but contested the first-degree intent-to-sell charge. The district found Pimentel guilty of possession but not guilty of intent to sell. The district court imposed a sentence of 48 months of imprisonment but stayed execution of the sentence. Pimentel appeals.

D E C I S I O N

I. Motion to Suppress

Pimentel argues that the district court erred by relying on the inevitable-discovery doctrine in denying his motion to suppress evidence.

The Fourth Amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures" and states that "no Warrants shall issue, but upon probable cause,

supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Const. amend. IV; *see also* Minn. Const. art. I, § 10. A warrantless search of a person is presumed to be a violation of the Fourth Amendment, which would require any evidence obtained in the search to be excluded from trial. *See State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003). But evidence discovered in a warrantless search may nonetheless be admissible if the search falls within a recognized exception to the Fourth Amendment's warrant requirement or to the exclusionary rule. *See id.*

One such exception is the inevitable-discovery doctrine. *See id.* at 254. If "the fruits of a challenged search 'ultimately or inevitably would have been discovered by lawful means,' then the seized evidence is admissible even if the search violated the warrant requirement." *Id.* (quoting *Nix v. Williams*, 467 U.S. 431, 444, 104 S. Ct. 2501, 2509 (1984)). The United States Supreme Court adopted the inevitable-discovery doctrine as an exception to the exclusionary rule to ensure that the "exclusion of evidence that would inevitably have been discovered" does not "put the government in a worse position, because the police would have obtained that evidence if no misconduct had taken place." *Nix*, 467 U.S. at 444, 104 S. Ct. at 2509. The state bears the burden of establishing the exception by a preponderance of the evidence. *Licari*, 659 N.W.2d at 254. The state may not rely on speculation but, rather, must base the exception "on demonstrated historical facts capable of ready verification or impeachment." *Nix*, 467 U.S. at 444 n.5, 104 S. Ct. at 2509 n.5. This court applies a clear-error standard of review to findings of fact relevant

to the inevitable-discovery doctrine and a *de novo* standard of review to the legal analysis based on those facts. *State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011).

In this case, the district court reasoned that the officers had probable cause to arrest Pimentel and the two other occupants of the red SUV based on the methamphetamine found in the back seat, would have arrested Pimentel on that basis, and would have discovered the methamphetamine in Pimentel's jacket pocket when conducting a search incident to arrest. Pimentel challenges the district court's reasoning by citing *State v. Ortega*, 770 N.W.2d 145 (Minn. 2009), for the proposition that the officers must have probable cause that *he in particular* was engaged in criminal activity. *See id.* at 150. Pimentel argues that the facts available to the officers did not demonstrate that he had committed a crime because the drugs found inside the red SUV were not found in the place where he had been sitting and because he did not carry them into or out of the red SUV.

Pimentel's argument emphasizes caselaw that is concerned with the sufficiency of evidence at trial, which requires proof beyond a reasonable doubt. *See State v. Florine*, 303 Minn. 103, 104-05, 226 N.W.2d 609, 610-11 (1975). But an arrest requires only probable cause. *Ortega*, 770 N.W.2d at 150. Probable cause to arrest exists if a "person of ordinary care and prudence, viewing the totality of circumstances objectively, would entertain an honest and strong suspicion that a specific individual has committed a crime." *Id.* at 150 (emphasis omitted).

The district court's determination that the officers had probable cause to arrest all of the occupants of the red SUV is based on multiple sources of information. First, the officers were investigating a tip from an informant who had provided reliable information

in the past. Second, the silver minivan specifically identified by the informant appeared at the place designated by the informant, which corroborated his tip. Third, the driver of the silver minivan behaved suspiciously and in a manner consistent with a drug transaction when he made contact with the driver of the red SUV and then entered that vehicle. Fourth, and most importantly, officers found a large quantity of methamphetamine in the back seat of the red SUV in a Tupperware container that was in plain view.

These facts naturally would cause a "person of ordinary care and prudence, viewing the totality of circumstances objectively, [to] entertain an honest and strong suspicion that" each person in the red SUV was committing a crime. *See id.* In a similar case in which three persons occupied a vehicle in which cocaine was found, the United States Supreme Court stated, "We think it an entirely reasonable inference from these facts that any or all three of the occupants had knowledge of, and exercised dominion and control over, the cocaine" such that officers could arrest any one of the occupants. *Maryland v. Pringle*, 540 U.S. 366, 371-72, 124 S. Ct. 795, 800 (2003). Similarly, in *Ortega*, the Minnesota Supreme Court stated that, for purposes of probable cause, "contraband that is in plain view in a motor vehicle supports a rational inference that all the vehicle occupants were aware of the contraband and had the ability and intent to exercise dominion and control over the contraband." 770 N.W.2d at 150 (citing *County Court of Ulster County v. Allen*, 442 U.S. 140, 164-65, 99 S. Ct. 2213, 2228-29 (1979)). In the present case, the inference of criminal activity by Pimentel is even stronger than in *Pringle* and *Ortega* because officers had received a reliable tip that his vehicle would arrive at that particular place for the purpose of engaging in a drug transaction and because Pimentel behaved in a manner consistent

with the tip. The cases cited by Pimentel for a contrary conclusion arise from facts that are meaningfully different and, thus, distinguishable.

Accordingly, after the officers discovered a large quantity of methamphetamine in the red SUV, the officers had probable cause to arrest Pimentel for engaging in a controlled-substance crime. *See id.* If the officers had arrested Pimentel for that reason, the officers would have been justified in conducting a search incident to arrest. *Id.*; *State v. Robb*, 605 N.W.2d 96, 100 (Minn. 2000). The district court did not clearly err by finding that the officers would have arrested Pimentel and would have discovered the methamphetamine in his jacket pocket while conducting a search incident to arrest. Thus, the district court did not err by denying Pimentel's motion to suppress based on the inevitable-discovery doctrine.

II. Drug Sentencing Reform Act

Pimentel argues in the alternative that he should be resentenced pursuant to the 2016 Minnesota Drug Sentencing Reform Act (MDSRA), which became effective August 1, 2016. He does not argue that the district court erred at the time of sentencing, in June 2016. In fact, he did not ask the district court to apply the new statute. Nonetheless, he asks this court to remand the case to the district court for resentencing.

Pimentel was convicted of and sentenced for a second-degree controlled-substance crime. *See* Minn. Stat. § 152.022, subd. 2(1) (2014). In 2016, the legislature amended the statutes governing controlled-substance crimes by, among other things, increasing the threshold quantities associated with each degree, thereby reducing the degrees of the offenses associated with some quantities of controlled substances. *See* 2016 Minn. Laws,

ch. 160, §§ 3-7, at 577-85; *see also* Minn. Stat. §§ 152.021-.025 (2016). Pimentel asserts that his conduct would be only a third-degree controlled-substance crime under the MDSRA. *See* Minn. Stat. § 152.023, subd. 2(a)(1). The presumptive guidelines sentence for third-degree controlled-substance crime is 21 months. Minn. Sent. Guidelines 4.C (2016).

Section 5 of the MDSRA, which amends section 152.023 of the Minnesota Statutes, states, "This section is effective August 1, 2016, and applies to crimes committed on or after that date." 2016 Minn. Laws, ch. 160, § 5, at 581-82. Notwithstanding this language, Pimentel argues that the MDSRA applies to his offense, which was committed in October 2015. This court applies a *de novo* standard of review to the question whether the statute applies. *State v. Basal*, 763 N.W.2d 328, 335 (Minn. App. 2009).

Pimentel cites *State v. Coolidge*, 282 N.W.2d 511 (Minn. 1979), in support of his argument. In *Coolidge*, the defendant was convicted of committing sodomy against a 16-year-old child and was sentenced to ten years of imprisonment. *Id.* at 512. After his offending conduct, the legislature amended the relevant statutes by reducing the maximum punishment for his act to one year of imprisonment. *Id.* at 514. The supreme court concluded that Coolidge was entitled to the benefit of the statutory amendments. *Id.* However, in *Edstrom v. State*, 326 N.W.2d 10 (Minn. 1982), the supreme court clarified that *Coolidge* does not apply if it is contrary to the legislature's intent:

> In *Coolidge*, we ruled that a statute mitigating punishment is to be applied to acts committed before its effective date, as long as no final judgment has been reached, at least absent a contrary statement of intent by the legislature. In this case the legislature has clearly indicated its intent that the criminal

> sexual conduct statutes have no effect on crimes committed before the effective date of the act, August 1, 1975.

Id. at 10.

In *State v. McDonnell*, 686 N.W.2d 841 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004), this court considered an argument that a statutory amendment should apply to an offense that was committed before the effective date of the amendment. *Id.* at 846. The session law in that case provided that the amendment "is effective August 1, 2003, and applies to violations committed on or after that date." *Id.* (quoting 2003 Minn. Laws 1st Spec. Sess. ch. 2, art. 9, § 1). We reasoned that *Coolidge* did not apply because the legislature had clearly stated that the statutory amendment does not apply to crimes committed before the amendment's effective date. *Id.* at 845-46. Accordingly, we concluded that the statutory amendment did not apply. *Id.* at 846.

The language of the MDSRA is unambiguous with respect to the effective date of the act. It provides that, with respect to section 5, the MDSRA "is effective August 1, 2016, and applies to crimes committed on or after that date." 2016 Minn. Laws ch. 160, § 5, at 582. This language is practically identical to the language of the session law in *McDonnell*. *See* 686 N.W.2d at 846. For the same reasons we expressed in *McDonnell*, the statutory amendments of the MDSRA do not apply to Pimentel's conviction of second-degree controlled substance crime.

Thus, Pimentel is not entitled to be resentenced under the MDSRA.

Affirmed.