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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1361**

State of Minnesota,
Respondent,

vs.

Jeremy Palmer Lynne,
Appellant.

**Filed April 22, 2013
Affirmed
Kirk, Judge**

Chippewa County District Court
File No. 12-CR-11-716

Lori Swanson, Attorney General, Karen B. Andrews, Assistant Attorney General, St. Paul, Minnesota; and

David M. Gilbertson, Chippewa County Attorney, Montevideo, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Charles F. Clippert, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Johnson, Chief Judge; and Stoneburner, Judge.

UNPUBLISHED OPINION

KIRK, Judge

On appeal from his conviction of a fifth-degree controlled substance crime, appellant Jeremy Palmer Lynne challenges the district court's denial of his motion to suppress evidence of his drug possession. Because we conclude that police officers did not exceed the scope of the search warrant, we affirm.

FACTS

On September 22, 2011, law enforcement officers from the Montevideo Police Department, Kandiyohi County Sheriff's Office, and Meeker County Sheriff's Office executed a search warrant at a residence in Montevideo. Some of the members of the team of officers executing the warrant worked for the Cooperative Enforcement Effort (CEE-VI) Drug Task Force (DTF), a multijurisdictional drug investigation unit.

According to the search warrant's supporting affidavit, a manager of a bar in Montevideo suspected that the bar's credit card had been stolen and used to make unauthorized purchases. As the manager investigated further, she learned that the payments were made to internet merchants and cell phone companies with which the bar had no accounts. Police traced the purchases to the home of J.W., where she lives with her children and appellant, her boyfriend.

The search warrant authorized officers to enter the residence and detached garage and seize "Records, Receipts, Invoices, Packing Slips, Shipping Boxes and Materials related to" the unauthorized purchases made between July 5 and August 1, 2011. The

warrant also authorized seizure of merchandise and handwritten notes with the stolen credit card number.

The team of officers executing the warrant divided their efforts, with some focusing on the search of the house and others on the search of the garage. The DTF agents were charged with searching the garage. When the agents entered the garage, they encountered appellant. Agent Ross Ardoff secured appellant and brought him outside while Agent Don Schmidt continued the search of the garage.

Approximately 30 seconds after appellant was secured, Agent Schmidt emerged from the garage and indicated that he had discovered methamphetamine bindles inside a cigarette pack.

Agent Schmidt testified during an omnibus hearing that, after appellant was taken out of the garage, he noticed a tool box in the southeast corner “that showed packaging material, digital scales, stuff that we commonly find with trafficking or sales of narcotics.” Within two-and-a-half feet of the packaging material and scales, Agent Schmidt observed a cigarette pack lying on a workbench, either in or near an upturned baseball cap. When asked why he looked inside the cigarette pack, Agent Schmidt responded: “We’re looking for receipts. Receipts are actually small, can be hidden easier than narcotics. I would believe receipts would be pretty much anywhere.”

Upon Agent Schmidt’s discovery, officers suspended execution of the search warrant, pat searched appellant (who was discovered to have a methamphetamine pipe in his pocket), and applied for a second warrant to search the premises for drugs. The

search ultimately led to the discovery of methamphetamine, paraphernalia, and legend drugs both in the garage and the house.

Appellant was charged with numerous offenses, including a charge of controlled substance crime in the fifth degree in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2010). Appellant moved to suppress the drug evidence. Following an omnibus hearing at which the district court heard testimony from several police officers involved in the search, the court denied appellant's suppression motion. Appellant waived his right to a jury trial and agreed to proceed under Minn. R. Crim. P. 26.01, subd. 4. The district court found appellant guilty of a controlled substance crime in the fifth degree and sentenced him to a one-year, one-day sentence suspended for five years, and staggered probationary jail time of six months in local confinement. This appeal follows.

D E C I S I O N

Following a stipulated-facts proceeding under Minn. R. Crim. P. 26.01, subd. 4, this court's review is limited to the question of whether the district court properly denied appellant's pretrial motion to suppress evidence. *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).

Appellant argues that the district court erred in denying his motion to suppress the drug evidence uncovered during the execution of the search warrants. He contends that Agent Schmidt's search of his cigarette pack unreasonably exceeded the scope of the first search warrant. As a result, argues appellant, the evidence that provided probable cause

for the issuance of the second warrant was tainted and all drug evidence arising from the warrants ought to be suppressed. The state argues that it was reasonable for Agent Schmidt to believe that receipts, credit card numbers, or other items authorized by the warrant could be hidden inside the cigarette pack.

The test of whether a search has exceeded the scope of its warrant is one of reasonableness. *State v. Soua Thao Yang*, 352 N.W.2d 127, 129 (Minn. App. 1984). To determine whether the conduct of an officer executing a search warrant was reasonable, this court looks at the totality of the circumstances. *State v. Thisius*, 281 N.W.2d 645, 645-46 (Minn. 1978). Items not listed on a search warrant may be properly seized if the seizure falls within a particular exception to the warrant requirement. *State v. Streit*, 258 N.W.2d 768, 772 (Minn. 1977). Under the “plain view” exception, police are authorized to seize an object they believe to be related to a crime provided: “(1) the police are legitimately in the position from which they view the object; (2) they have a lawful right of access to the object; and (3) the object’s incriminating nature is immediately apparent.” *State v. Zanter*, 535 N.W.2d 624, 631 (Minn. 1995) (quotation omitted). The parties do not contest that the incriminating nature of the methamphetamine bindles was apparent. Instead, appellant argues that Agent Schmidt did not have a lawful right to open the cigarette pack in which the methamphetamine was stored.

“Generally, any container situated within a residence that is the subject of a validly-issued warrant may be searched if it is reasonable to believe that the container could conceal items of the kind portrayed in the warrant.” *State v. Wills*, 524 N.W.2d 507, 509 (Minn. App. 1994), *review denied* (Minn. Feb. 14, 1995).

Items listed on the search warrant such as receipts and handwritten credit card numbers could reasonably be hidden in the cigarette pack. Because the cigarette pack was located within the allowable search area and because that container reasonably could have contained the items Agent Schmidt was searching for, his search did not exceed the scope of the warrant when he discovered the methamphetamine bindles inside the cigarette pack. The district court properly concluded that the search did not exceed the scope of the warrant.

Appellant also argues that the district court improperly adopted the subjective opinions of Agent Schmidt in place of the district court's own judgment as to the reasonableness of Agent Schmidt's actions. The subjective intentions of a police officer "play no role in ordinary, probable-cause Fourth Amendment analysis." *Ohio v. Robinette*, 519 U.S. 33, 38, 117 S. Ct. 417, 421 (1996) (quotation omitted). In its findings of fact following the omnibus hearing, the district court noted Agent Schmidt's testimony that receipts and credit card numbers are small items that could be hidden in a cigarette pack, and "accept[ed] this testimony." In its memorandum of law, the district court observed that receipts, credit card numbers, and handwritten notes "are the type of items that could as easily be hidden in a cigarette package as the methamphetamine that was actually found." While the language in the district court's order suggests that it considered the subjective intentions described by Agent Schmidt, the district court's legal conclusions are its independent, objective assessment of the circumstances, not a wholesale adoption of the views of Agent Schmidt.

Affirmed.