**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A16-1193**

State of Minnesota,
Respondent,

vs.

Abel Ricardo Mendoza, III,
Appellant.

**Filed June 12, 2017**
**Affirmed**
**Worke, Judge**

Kandiyohi County District Court
File No. 34-CR-15-995

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

Shane D. Baker, Kandiyohi County Attorney, Stephen J. Wentzell, Assistant County Attorney, Willmar, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Ross, Judge; and Kirk, Judge.

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

**WORKE**, Judge

Appellant challenges his conviction for second-degree possession of a controlled substance, arguing that the district court erred by denying his motion to suppress methamphetamine found when police searched his purse. Appellant also argues that he is

entitled to be resentenced under changes to controlled-substance statutes that went into effect after he was sentenced. We affirm.

## FACTS

Law enforcement agents of the Drug and Gang Task Force (DGTF), working with a confidential informant (CI), arranged a controlled buy of methamphetamine at Emilio Ozornia's home. Ozornia took the CI into his bedroom and locked the door. Although the CI was ultimately unable to purchase methamphetamine, the CI observed methamphetamine and methamphetamine paraphernalia in the bedroom. Based on this information, police obtained a search warrant for the home.

On November 4, 2015, before executing the warrant, police observed appellant Abel Ricardo Mendoza III in a car outside of Ozornia's home. Ozornia approached the car and spoke with Mendoza. As Mendoza exited the car and entered the house with Ozornia, he carried a silver and black purse.

Soon after Ozornia and Mendoza entered the home, police executed the warrant. A DGTF agent went to Ozornia's bedroom, announced his presence, and attempted to enter the room. The door was locked. When no one unlocked the door, the agent kicked it open. Ozornia and Mendoza were both in the room. The silver and black purse was on the bed and Mendoza's hands were on top of it. The agent ordered the men to put their hands up, and they complied.

Both men were handcuffed and pat searched for weapons. While pat searching Mendoza, the agent felt what he believed to be a large amount of cash. He also felt what he believed was a device for smoking marijuana and a pill bottle that he believed contained

a controlled substance. He retrieved the pill bottle; it contained synthetic marijuana. The men were then taken outside and placed in the back of squad cars. DGTF Agent Robert Braness recognized Mendoza from prior contacts and knew that Mendoza had multiple drug convictions and was a suspected gang member.

After Mendoza and Ozornia were secured in the squad cars, police searched the silver and black purse and the bedroom. An agent found a baggie containing 8.478 grams of methamphetamine inside the purse. The agent also found a baggie full of what he believed to be a large amount of methamphetamine in plain view on the bedroom floor only a few feet from where Mendoza and Ozornia had been standing. After these items were found, Mendoza and Ozornia were arrested and taken to jail.

Mendoza was charged with second-degree sale of a controlled substance and second-degree possession of a controlled substance. The charges related to the methamphetamine in the purse. Mendoza moved to suppress the methamphetamine as the fruit of an illegal search. At an omnibus hearing, Agent Braness, who was the agent in charge of executing the warrant, testified that even if the purse had not been searched, Mendoza would have been arrested for possession of the methamphetamine found in plain view on the bedroom floor. He also testified that, as Mendoza's property, the purse would have been brought with Mendoza to jail. He testified that the jail has a policy of searching all inmates and their property. The search allows the property to be inventoried and stored until the inmate is released.

The district court denied Mendoza's motion. The district court concluded that, while the warrant to search Ozornia's house could not justify the search of Mendoza's

purse, the search was lawful as a search incident to Mendoza's arrest for the methamphetamine found on the bedroom floor. The district court also determined that, had the purse not been searched at the house, the methamphetamine in the purse would inevitably have been discovered during an inventory search of the purse at the jail.

Mendoza agreed to stipulate to the state's case to obtain review of the pretrial ruling. *See* Minn. R. Crim. P. 26.01, subd. 4. The state dismissed the sale count and the possession count was submitted to the district court based on the testimony and exhibits received at the omnibus hearing as well as a Bureau of Criminal Apprehension (BCA) report on the substances. The district court found Mendoza guilty of second-degree possession of a controlled substance for the methamphetamine found inside the purse. The district court sentenced Mendoza to 75 months in prison, which was at the bottom of the presumptive sentencing range. This appeal followed.

## D E C I S I O N

### *Suppression*

Mendoza argues that the district court erred by denying his motion to suppress the drugs found in his purse. When reviewing a pretrial order on a motion to suppress evidence, this court reviews the district court's factual findings for clear error. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). But this court reviews de novo whether the district court's factual findings support its decision. *Id.* Mendoza claims that the district court erred in its application of both the search-incident-to-arrest doctrine and the inevitable-discovery doctrine. We first address the inevitable-discovery doctrine.

The United States and Minnesota Constitutions protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. 1, § 10; *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). Generally, warrantless searches are "per se unreasonable." *Ture*, 632 N.W.2d at 627. In this case, the district court determined, and the state concedes, that the warrant to search Ozornia's home did not entitle police to search Mendoza's purse. *See State v. Wynne*, 552 N.W.2d 218, 220 (Minn. 1996) (concluding that "a shoulder purse is so closely associated with the person" that it does not fall within the ambit of a warrant authorizing the search of a premises (quotation omitted)). Accordingly, "unless one of the well-delineated exceptions to the warrant requirement applies," the search of Mendoza's purse was unconstitutional. *Ture*, 632 N.W.2d at 627 (quotation omitted). "The state bears the burden of establishing an exception to the warrant requirement." *Id.*

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." *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (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 must establish 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.

Minnesota caselaw recognizes that the inevitable-discovery doctrine may be based on the inevitability of an inventory search in cases in which a person is arrested and taken to jail for booking. *State v. Rodewald*, 376 N.W.2d 416, 418, 422 (Minn. 1985); *Geer v. State*, 406 N.W.2d 34, 36 (Minn. App. 1987), *review denied* (Minn. July 15, 1987). Police officers may conduct an inventory search "whenever an arrestee is to be jailed, . . . as part of a standardized procedure," and, in doing so, "may examine 'all [] the items removed from the arrestee's person or possession.'" *Rodewald*, 376 N.W.2d at 420 (quoting *Illinois v. Lafayette*, 462 U.S. 640, 646, 103 S. Ct. 2605, 2609 (1983)).

The district court determined that if the purse had not been searched at the scene, Mendoza would have been arrested for possession of the methamphetamine found in plain view on the bedroom floor. The purse would have been taken with him to jail and subjected to a lawful inventory search. Because the methamphetamine in the purse would inevitably have been found during this search, the district court concluded that the methamphetamine in the purse was admissible. We agree.

When police executed the warrant, they found Mendoza and Ozornia in the bedroom with the door locked, as it had been during the attempted controlled buy. Neither Ozornia nor Mendoza opened the door when police announced their presence. The methamphetamine on the floor was found in plain view only a few feet from where Mendoza was standing. Multiple agents testified that it was very unusual for a large amount of methamphetamine to be out in plain view. Mendoza also had a large amount of

cash on his person, and police knew that Mendoza had drug convictions and was a suspected gang member. All of these facts provided probable cause that Mendoza, either exclusively or jointly with Ozornia, constructively possessed the methamphetamine found on the floor. *See In re Welfare of G.M.*, 560 N.W.2d 687, 695 (Minn. 1997) (stating that probable cause to arrest exists when the "objective facts are such that under the circumstances, a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed"); *State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975) (outlining requirements of constructive possession); *State v. Dickey*, 827 N.W.2d 792, 796 (Minn. App. 2013) ("A person may constructively possess contraband jointly with another person." (quotation omitted)). In addition, Agent Braness testified that if the purse had not been searched, Mendoza would have been arrested for possession of the methamphetamine found on the floor.

The next question is whether the state established that the purse could have and would have been taken with Mendoza to jail. Most caselaw dealing with inventory searches involves vehicles. In that context, the supreme court has recognized a "caretaking authority to impound a vehicle to protect the defendant's property from theft and police from claims arising therefrom." *State v. Rohde*, 852 N.W.2d 260, 265 (Minn. 2014) (quotations omitted). Courts give "deference 'to police caretaking *procedures* designed to secure and protect vehicles and their contents within police custody.'" *State v. Holmes*, 569 N.W.2d 181, 186-87 (Minn. 1997) (quoting *Colorado v. Bertine*, 479 U.S. 367, 372, 107 S. Ct. 738, 741 (1987)). The key question is the "reasonableness" of the inventory search, which is determined by asking "whether police carried out the search in accordance

with standard *procedures* in the local police department." *Id.* at 187. Moreover, even if less intrusive means exist for protecting property, the Fourth Amendment does not require such means. *Lafayette*, 462 U.S. at 647-48, 103 S. Ct. at 2610.

Police could have and would have taken the purse with Mendoza to jail pursuant to their caretaking authority. Agent Braness testified that the purse would have been taken with Mendoza to jail because, as a matter of course, "[p]roperty of individuals that are arrested are brought to the jail." Given the context of Mendoza's presence in the house, it also would have been reasonable for the agents to take the purse with Mendoza to jail in order to protect it and make it available to Mendoza upon his release. Police saw Mendoza carry the purse from the car into the home, and Mendoza had his hands on the purse when police entered the bedroom. The purse belonged to Mendoza, and there is no indication that Mendoza lived in the house or had any significant connection to the house. In addition, the only person that Mendoza seemed to know in the house, Ozornia, was also arrested.

Finally, there is a policy that would have resulted in the purse being searched at the jail. Agent Braness testified that the jail has a standard policy of searching and inventorying all inmate property. His testimony is consistent with state law that requires all jails to have a standardized procedure for processing arrestees, which must include "a search of the inmate and the inmate's possessions" and the "inventory and storage of the inmate's personal property." Minn. R. 2911.2525, subp. 1(C), (D) (2015).

The state established by a preponderance of the evidence that the methamphetamine in the purse inevitably would have been discovered during a lawful inventory search. The district court did not err by denying Mendoza's motion to suppress on this ground. Because

we conclude that the methamphetamine is admissible under the inevitable-discovery doctrine, we need not address Mendoza's challenge to the district court's application of the search-incident-to-arrest doctrine.

***Sentencing***

When Mendoza committed his offense in November 2015, possession of 8.478 grams of methamphetamine was a second-degree controlled substance crime carrying a statutory maximum sentence of 40 years and, for a person with Mendoza's criminal-history score, a presumptive sentencing range of 75 to 105 months. Minn. Stat. § 152.022, subds. 2(a)(1), 3(b) (2014); Minn. Sent. Guidelines 4.A (2014). In May 2016, the legislature enacted and the governor signed the 2016 Minnesota drug sentencing reform act. 2016 Minn. Laws ch. 160, §§ 1-22, at 576-92. Among other things, the act raised threshold weights for first-, second-, and third-degree controlled substance crimes. *Id.*, §§ 3-5, at 577-82. As a result, if Mendoza committed his crime today, he would presumably be convicted of fifth-degree possession of a controlled substance with a statutory maximum sentence of five years and a presumptive stayed sentence of 17 months in prison. *See* Minn. Stat. § 152.025, subds. 2(1), 4(b) (2016); Minn. Sent. Guidelines 4.C (2016). Mendoza argues that his conviction must be reduced to fifth-degree possession of a controlled substance and that he must be resentenced under current law.

As a general rule, "[n]o law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21 (2016). When a law is amended, "the new provisions shall be construed as effective only from the date when the amendment became effective." Minn. Stat. § 645.31 (2016). Accordingly, for a statute to

be applied to conduct committed before its effective date, the legislature must provide clear evidence that it intended that application, "such as mention of the word 'retroactive.'" *State v. Traczyk*, 421 N.W.2d 299, 300 (Minn. 1988) (quotation omitted). "The retroactivity of a statute is a matter of statutory interpretation, which we review de novo." *State v. Basal*, 763 N.W.2d 328, 335 (Minn. App. 2009).

Mendoza's argument centers on *State v. Coolidge*, which outlines an exception to the general rule stated above. 282 N.W.2d 511, 514-15 (Minn. 1979). *Coolidge* states that when a "criminal law in effect is repealed, absent a savings clause, all prosecutions are barred where not reduced to a final judgment." *Id.* at 514. It also states that "a statute mitigating punishment is applied to acts committed before its effective date, as long as no final judgment has been reached." *Id.* The rationale for this rule is that "the legislature has manifested its belief that the prior punishment is too severe and a lighter sentence is sufficient." *Id.* Coolidge was convicted of sodomy. *Id.* at 512. After he was convicted but before his conviction became final,[1] the legislature repealed the sodomy statute and reduced the maximum punishment for the criminal act Coolidge committed from ten years to one year. *Id.* at 512, 514-15. The supreme court determined that Coolidge "should have been sentenced under the present law." *Id.* at 515. As Coolidge had already served over two years in prison, the supreme court reduced his sentence to time served. *Id.*

[1] A case is pending and not final "until such time as the availability of direct appeal has been exhausted, the time for a petition for certiorari has elapsed or a petition for certiorari with the United States Supreme Court has been filed and finally denied." *State v. Losh*, 721 N.W.2d 886, 893-94 (Minn. 2006) (quotation omitted).

*Coolidge*, however, was clarified by *State v. Edstrom*. 326 N.W.2d 10, 10 (Minn. 1982). In *Edstrom*, the supreme court explained that *Coolidge's* common-law rule applies only "absent a contrary statement of intent by the legislature." *Id.* Because "the legislature ha[d] clearly indicated its intent" that the new statute "have no effect on crimes committed before the effective date of the act," the supreme court refused to apply a statute enacted after Edstrom's crime that would have reduced his sentence. *Id.* The conduct underlying Edstrom's conviction occurred in March 1975, and the effective date of the act was August 1, 1975. *Id.* The new statute provided, "Except for section 8 of this act, crimes committed prior to the effective date of this act are not affected by its provisions." 1975 Minn. Laws ch. 374, § 12, at 1251.

We have addressed *Coolidge* and *Edstrom* in two published opinions. In *State v. McDonnell*, we determined that *Coolidge's* common-law rule did not apply because the legislature clearly indicated its intent that a statutory amendment not apply to crimes committed before the amendment's effective date. 686 N.W.2d 841, 846 (Minn. App. 2004), *review denied* (Minn. Nov. 16, 2004). The legislature 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, at 1446). In *Basal*, we also determined that *Coolidge* did not apply. 763 N.W.2d at 336. The legislature expressly provided that the relevant amendment "would become effective on January 1, 2008." *Id.* (citing 2007 Minn. Laws ch. 147, art. 2, § 64, at 1901). We concluded that "[b]ecause the legislature provided for a specific effective date . . . , the legislature did not intend for the amendment to apply to conduct occurring before the effective date." *Id.*

Mendoza claims that he is entitled to have his conviction reduced and to be resentenced for fifth-degree possession of a controlled substance under *Coolidge* because his conviction was not final at the time the act took effect. We disagree. In amending the threshold weights in the second- and third-degree controlled-substance statutes to exceed the 8.478 grams of methamphetamine Mendoza possessed, the legislature clearly indicated that it did not intend to apply the amendments to conduct occurring before the effective date. *See Edstrom*, 326 N.W.2d at 10. As to both statutes, the act provides, "This section is effective August 1, 2016, and applies to crimes committed on or after that date." 2016 Minn. Laws ch. 160, §§ 4-5, at 581-83. The legislature used identical effective-date language in amending the first-, fourth-, and fifth-degree controlled-substance statutes. *Id.*, §§ 3, 6-7, at 579, 584-85. Because Mendoza committed his offense in November 2015, he is not entitled to application of the amendments.

Mendoza argues that to prevent the amendments from being applied to non-final cases, the legislature needed to use more specific language, like that used in the statute at issue in *Edstrom*. In the *Edstrom* statute, the legislature provided that "crimes committed prior to the effective date of this act are not affected by its provisions." 1975 Minn. Laws ch. 374, § 12, at 1251. The effective-date provisions at issue here use different language to accomplish the same result. Moreover, the language of the effective-date provisions at issue here is virtually identical to the effective-date provision at issue in *McDonnell*. *Compare* 2016 Minn. Laws ch. 160, §§ 4-5, at 581-83 *with* 686 N.W.2d at 846 (quoting 2003 Minn. Laws 1st Spec. Sess. ch. 2, art. 9, § 1, at 1446). The language is also more specific and clearer than the effective-date provision involved in *Basal*, which said only

that the act would be effective on a specific date. *See* 763 N.W.2d at 336 (citing 2007 Minn. Laws ch. 147, art. 2, § 64, at 1901). In both *McDonnell* and *Basal*, we determined that the amendments applied only to crimes committed on or after the effective date. *Id.*; *McDonnell*, 686 N.W.2d at 846.

The legislature clearly indicated its intent to apply the amendments to the controlled-substance-crime statutes only to crimes committed on or after August 1, 2016. Mendoza committed his crime well before that date and is not entitled to have his conviction reduced from second- to fifth-degree possession of a controlled substance.

**Affirmed.**