

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1512**

State of Minnesota,
Respondent,

vs.

James Dean Olson, II,
Appellant.

**Filed August 7, 2023
Reversed
Bjorkman, Judge**

Aitkin County District Court
File No. 01-CR-21-121

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Jim Ratz, Aitkin County Attorney, Aitkin, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer Workman Jesness,
Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Ross, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his convictions for fifth-degree drug possession and introducing contraband into a jail, arguing that (1) the district court erred in denying his motion to suppress evidence because his mere presence in a vehicle containing a controlled

substance did not establish probable cause to arrest him and (2) the evidence was insufficient to prove that he knowingly introduced contraband into a jail. Because law-enforcement officers did not have probable cause to arrest appellant, we reverse.

FACTS

On February 2, 2021, at approximately 11:00 p.m., two officers from the Aitkin Police Department stopped a car with three occupants after observing suspicious driving conduct. One officer approached the driver's side of the car while the other approached the passenger side, where appellant James Dean Olson, II was sitting in the front seat.

When asked for her driver's license and proof of insurance, the driver reached into the glove box and took out a small wallet-like bag. After opening and looking through the wallet and placing it in her lap, she told the officers that she did not know where her license and insurance card were. One officer asked if they were in the wallet; she said it was not her wallet and put it back in the glove box. When the other officer asked her why she had somebody else's wallet, she replied that it was just a coin purse and she thought her insurance card was inside, adding, "Why would I have somebody else's wallet?" While this conversation was taking place, one of the officers smelled burnt marijuana coming from the car.

The officers returned to their squad car, ran the driver's information, and confirmed that she had a valid driver's license. The record check also revealed that the driver had an outstanding arrest warrant.

After returning to the stopped car, the officers asked the driver to get out so they could talk to her about her warrant and the marijuana smell. They asked if they could

search the car, and she said no. During this interaction, one officer observed that the driver's "eyes were bloodshot, her pupils were unusually dilated given the lighting conditions, and she was clenching her jaw," which he identified as signs of recent stimulant usage. The officer asked Olson to get out of the car. Olson denied knowledge of any marijuana odor and the officers did not note any signs of recent drug use by him. The officers then asked the rear passenger to get out of the car; he too denied knowledge of the marijuana odor.

Based on the marijuana odor, one officer searched the car while the other officer spoke with the three occupants. The officer conducting the search found a torch, one dose of Narcan, and a digital scale inside the center console. He also opened the glove box and retrieved the wallet-like bag. Inside the wallet were syringes, a glass smoking device, a spoon, and several small baggies, one of which contained a white crystal residue that the officer suspected was methamphetamine. The officers arrested the driver and Olson for possession of a controlled substance and transported them to the Aitkin County jail.

As Olson walked into the jail, a straw containing methamphetamine residue fell from his person. When jail staff searched him, they found another torch and a small bag of methamphetamine in his jacket pocket. Olson was charged with (1) fifth-degree possession of a controlled substance—methamphetamine; (2) gross-misdemeanor introducing contraband into a jail; and (3) petty misdemeanor possession of drug paraphernalia. All three counts related to the items found at the jail.

Olson moved to suppress the drug evidence on the basis that the officers did not have probable cause to arrest him and moved to dismiss the second charge because the

state could not prove he intentionally introduced contraband into the jail. The district court denied the motions, concluding the officers had probable cause to arrest Olson for constructive possession of a controlled substance. Following a stipulated-evidence trial, the district court found Olson guilty of all three offenses.

Olson appeals.¹

DECISION

Olson first challenges the district court's determination that the officers had probable cause to arrest him for constructive possession of the methamphetamine. Where, as here, the relevant facts are not in dispute, we review a pretrial suppression order de novo and determine whether the police articulated an adequate basis for the search or seizure at issue. *State v. Onyelobi*, 879 N.W.2d 334, 342-43 (Minn. 2016).

A seizure by warrantless arrest must be supported by probable cause. *Id.* at 343. Probable cause exists “when 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.” *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009). The crime “must be a crime for which a custodial arrest is authorized.” *State v. Varnado*, 582 N.W.2d 886, 892 (Minn. 1998) (emphasis omitted). A person's mere proximity to criminal activity does not—in and of itself—establish probable cause to arrest. *Ortega*, 770 N.W.2d at 150 (citing *Ybarra v. Illinois*, 444 U.S. 85, 90-92 (1979)).

¹ The state did not file a brief in this matter, but we consider the appeal on its merits pursuant to Minn. R. Civ. App. P. 142.03.

It is a crime to possess methamphetamine. Minn. Stat. § 152.025, subd. 2 (2020). The state may prove such possession “through evidence of actual or constructive possession.” *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). Actual possession exists when a person has “direct physical control” over a controlled substance. *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quotation omitted). Constructive possession exists when the police find the controlled substance (1) “in a place under [the] defendant’s exclusive control to which other people did not normally have access,” or (2) in a place to which others have access, but “there is a strong probability (inferable from other evidence) that [the] defendant was at the time consciously exercising dominion and control over it.” *Onyelobi*, 879 N.W.2d at 343 (quotation omitted).

A defendant may constructively possess a controlled substance jointly with another person. *Ortega*, 770 N.W.2d at 150. While the defendant’s proximity to the controlled substance is an important factor in establishing constructive possession, *State v. Smith*, 619 N.W.2d 766, 770 (Minn. App. 2000), *rev. denied* (Minn. Jan. 16, 2001), the defendant must exercise dominion and control over the substance itself, not merely the area in which it was located, *State v. Hunter*, 857 N.W.2d 537, 542-43 (Minn. App. 2014). Other evidence must link the defendant to the controlled substance to establish constructive possession. *State v. Albino*, 384 N.W.2d 525, 527-28 (Minn. App. 1986).

Olson argues that we must reverse his convictions for the same reasons we did so in *Albino*. This argument has merit. Like Olson, Albino was a passenger in a vehicle that was stopped late at night for a traffic violation. *Id.* at 526. The driver was arrested on an outstanding warrant, and an inventory search of the pickup revealed drugs inside a camera

case that was found on the floor of the truck against the center of the bench seat. *Id.* Albino was arrested for constructive possession of the drugs in the vehicle and brought to the county jail, where officers discovered methamphetamine in her jacket pocket. *Id.* We reversed Albino's conviction, noting the lack of evidence linking Albino to the drugs other than her proximity to the camera case:

The record in the present case does not evidence any strong circumstances that would point to Albino's guilt. She did not flee the scene, she was never observed making any furtive movements or trying to hide the camera case, nor did she claim any ownership or control over the vehicle. When she knew the truck was going to be impounded she made no effort to maintain control over it. Finally, the drugs were in a closed case. Under these facts, the police officers had no probable cause to believe that Albino was in constructive possession of the drugs found in the camera case.

Id. at 528.

Olson's contention that the officers lacked probable cause to arrest him finds further support in *State v. Slifka*, 256 N.W.2d 90 (Minn. 1977). In *Slifka*, officers stopped the car in which Slifka was the front-seat passenger for an equipment violation. 256 N.W.2d at 90. Upon observing a six pack of beer and an open bottle between the driver and Slifka, officers removed the occupants from the car and searched it. *Id.* at 90-91. After finding marijuana in the glove box, the officers arrested both occupants. *Id.* at 91. Our supreme court affirmed the district court's suppression order, reasoning:

The officers arguably had reasonable cause to believe that the driver constructively possessed the marijuana because the car was his and he was in control of the car. . . . The situation with respect to [Slifka] is different. The officers did not have probable cause to believe that he was guilty of constructive possession of marijuana, and they could not

justify arresting or searching him as an incident thereof on the basis of his mere presence in the vehicle.

Id.

As in *Albino* and *Slifka*, the record here lacks evidence linking Olson to the methamphetamine other than his proximity to the glove box in which it was found. Olson did not own or exercise control over the car, and the methamphetamine and paraphernalia were in closed compartments. Olson did not flee the scene, did not make furtive movements, did not touch—let alone attempt to hide—the wallet the driver retrieved from the glove box and held in her lap, gave no indication that he knew what was in the wallet or the center console, and exhibited no indicia of stimulant use. On this record, we conclude that the officers did not have probable cause to arrest Olson for constructive possession of the controlled substance in the car.

Because we conclude that Olson's arrest was impermissible, we need not address his argument that the evidence was not sufficient to support his conviction for introducing contraband into the jail. Absent a valid arrest, Olson was not subject to being detained and all evidence obtained from him at the scene and at the jail must be suppressed. *See Albino*, 384 N.W.2d at 528 (citing *Slifka*, 256 N.W.2d at 91).

Reversed.