STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1112

State of Minnesota,
Respondent,

vs.

Cory Keithern Rucker,
Appellant.

Filed June 6, 2011
Affirmed
Halbrooks, Judge

Ramsey County District Court
File No. 62-CR-09-13745

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

John J. Choi, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Theodora Gaïtas, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Randall, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

HALBROOKS, Judge

Following his conviction of fifth-degree controlled-substance possession, appellant contends that the district court erred by denying his motion to suppress the drug evidence and that the evidence is insufficient to support the jury verdict. Because we conclude that the drug evidence was properly admitted and the jury verdict is supported by sufficient evidence, we affirm.

FACTS

On July 23, 2009, the St. Paul Police Department responded to a 911 call involving an allegation of domestic assault. When the police arrived at the home, appellant Cory Keithern Rucker was placed in a squad car while Officer Lynette Cherry spoke with M.K., the alleged victim.

Officer Cherry testified at the *Rasmussen* hearing that she stayed at the scene for about one and one-half hours. At one point during their conversation, M.K. brought Officer Cherry into one of the bedrooms and showed her a Hawaiian shirt that was in the closet. M.K. then took two bindles of cocaine out of the shirt pocket and handed them to Officer Cherry. M.K. told Officer Cherry that it was appellant's cocaine and that she believed he was selling it. Appellant was arrested and charged with domestic assault and possession of a controlled substance.

While in custody, appellant was interviewed by Sergeant Sylvia McPeak, who asked appellant about the "white, powdered substance" found in his shirt pocket. Appellant initially told her that he did not know what the substance was. But then,

according to Sergeant McPeak's testimony, appellant "told [her] that [the substance] was his, that that was his house and the item in the shirt pocket was his." Appellant suggested that M.K. had planted the drugs in his shirt pocket. Sergeant McPeak asked appellant, "Well, who bought it? Either you bought it or she bought it. Whose is it?" And, according to Sergeant McPeak, appellant "basically told [her] it was his."

Appellant moved to suppress the evidence of the cocaine, arguing that Officer Cherry's discovery of it was based on an unconstitutional, warrantless search of the house. The state contended that there was no search because M.K. had simply handed the cocaine to Officer Cherry without prompting or, alternatively, even if there was a search, it was based on M.K.'s valid consent.

The district court denied appellant's suppression motion. After the motion was denied but before the jury trial began, Officer Cherry informed the state that she remembered looking under the couch cushions in the living room at some point on the day of the incident—a detail that she did not recall during the *Rasmussen* hearing. Appellant asked the district court to reopen the *Rasmussen* hearing so that he could cross-examine Officer Cherry on this new recollection. The district court considered appellant's request, but declined to reopen the hearing because it concluded that Officer Cherry's delayed recollection did not affect her credibility and reiterated its finding that "there is significant and sufficient evidence of consent to search."

At trial, appellant testified that the drugs were not his and that he did not know the drugs were present in his house. He admitted that he had seen the drugs the night before the incident when a friend of M.K.'s took them out of her purse, but asserted that he told

M.K. that he would not allow drugs in his house and that she should get rid of them. Appellant testified that he believed M.K. had disposed of the drugs. While appellant admitted that he told Sergeant McPeak that the drugs were his, he claimed that he lied when he did so.

The jury found appellant guilty of fifth-degree controlled-substance possession and disorderly conduct but not guilty of misdemeanor domestic assault. At sentencing, the district court stayed adjudication of the controlled-substance conviction and imposed five years of probation and 60 days in jail. This appeal follows.

D E C I S I O N

I.

The first issue that appellant asserts is whether the district court erred by denying his motion to suppress evidence of the drugs. When a suppression order is challenged on appeal, we independently review the facts and the law to determine whether the district court erred by suppressing or refusing to suppress the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We apply a clearly erroneous standard to our review of the district court's findings of fact and a de novo standard to determinations of law. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006).

The Fourth Amendment to the United States Constitution and article I of the Minnesota Constitution prohibit the unreasonable search and seizure of "persons, houses, papers, and effects." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches are per se unreasonable, subject to limited exceptions. *State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). The state bears the burden of establishing the

applicability of an exception to the warrant requirement. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). Notably, a search is constitutionally permissible when conducted pursuant to valid consent. *Schneckloth v. Bustamonte*, 412 U.S. 218, 222, 93 S. Ct. 2041, 2045 (1973). The question in this appeal is whether M.K. validly consented to the search.

To justify a warrantless search based on consent, the state must prove that the consent was freely and voluntarily given. *State v. George*, 557 N.W.2d 575, 579 (Minn. 1997). "Consent must be received, not extracted." *State v. Dezso*, 512 N.W.2d 877, 880 (Minn. 1994). "'Voluntariness' is a question of fact and it varies with the facts of each case. The test is the totality of the circumstances." *Id*. Consent is voluntary if a "reasonable person would have felt free to decline the officer's requests or otherwise terminate the encounter." *Id.* (quotation omitted). A defendant's consent was held to be voluntary when police dealt with the defendant professionally and did not act in an intimidating fashion. *See State v. Smallwood*, 594 N.W.2d 144, 155 (Minn. 1999).

The district court determined that M.K.'s consent to the search was valid but did not specifically find that it was "voluntary." Appellant argues that even if there was sufficient evidence presented at the *Rasmussen* hearing to support a finding that M.K. consented to the search, this case must—at a minimum—be remanded because the district court did not make a specific finding that her consent was "voluntary." We disagree.

The parties' arguments at the *Rasmussen* hearing focused on the issue of whether M.K. consented to the search and whether her consent was voluntary or coerced. There is

nothing in the district court's findings to support appellant's implied assertion that the district court failed to understand these explicit arguments. Without any evidence to suggest a lack of understanding on the part of the district court, its finding that M.K.'s consent was "valid" encompasses the legal requirements that M.K.'s consent was freely and voluntarily given. Remand is therefore unnecessary.

Appellant also argues that the district court erred by finding that M.K. consented to the search because Officer Cherry's recollection of the interaction was vague and appellant's version of events made the issue of consent "ambiguous." The problem with appellant's argument is that the only ambiguity surrounding M.K.'s consent stems from appellant's testimony about a phone conversation that he had with M.K. while he was incarcerated. Appellant claimed that M.K. told him during that conversation that Officer Cherry said: "If there's anything in this house and we find it, you're going to jail, as well as him, and your kids are going into custody." But the district court specifically discounted appellant's self-serving testimony. Assessing the credibility of a witness and the weight to be given a witness's testimony is exclusively the province of the fact-finder. *State v. Bliss*, 457 N.W.2d 385, 390 (Minn. 1990). Without this alleged "threat," the circumstances surrounding M.K.'s consent to the search are not ambiguous.

Although Officer Cherry could not remember much detail about her conversation with M.K., her testimony at trial was that M.K. led Officer Cherry to the bedroom, showed her the Hawaiian shirt, and handed her the drugs. These circumstances support the district court's conclusion that M.K.'s consent was freely and voluntarily given.

Appellant also argues that the district court should have reopened the *Rasmussen* hearing after Officer Cherry remembered that she had, at one point, been looking under the couch cushions. This argument also fails. The district court had already concluded that Officer Cherry had conducted a search for Fourth Amendment purposes. How and where the officer was searching does not alter the testimony relating to the validity or invalidity of M.K.'s consent. We therefore affirm the district court's denial of appellant's motion to suppress the drug evidence.

II.

Appellant also argues that there is insufficient evidence to sustain the jury's guilty verdict finding that he possessed the cocaine. We analyze insufficient-evidence claims by determining whether a jury could reasonably find that the defendant was guilty based on the facts in the record and the legitimate inferences those facts present. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004). We assume that the jury believed the state's evidence and rejected contrary evidence. *State v. Brocks*, 587 N.W.2d 37, 42 (Minn. 1998).

To prove possession, the state needed to establish that appellant "consciously possessed [the cocaine], either physically or constructively." *State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975). "The purpose of the constructive-possession doctrine is to include within the possession statute those cases where the state cannot prove actual or physical possession." *Id*. "Where drugs are found in a place to which others have access, constructive possession is proved when there is a strong probability (inferable from other evidence) that defendant was at the time consciously exercising

dominion and control over them." *State v. Arnold*, 794 N.W.2d 397, 401 (Minn. App. 2011) (quotation omitted). To meet its burden, the state was required to introduce evidence from which the jury could have reasonably concluded that appellant exercised "dominion and control" over the drugs.

We conclude that the state met its burden. To show that appellant had control of the cocaine, the state introduced evidence that appellant told Sergeant McPeak the drugs belonged to him. Although appellant testified that he lied to Sergeant McPeak, the jury was entitled to disbelieve this testimony. *See id.* ("To the extent that . . . testimony conflicts with the state's evidence, we rely on the version pointing to guilt.") The state also introduced evidence that the closet in which the Hawaiian shirt was found contained men's clothing; that appellant lived in the house; and that M.K. told Officer Cherry that the drugs belonged to appellant. Based on this circumstantial evidence, appellant's admission, and M.K.'s incriminating statements to Officer Cherry, the jury could have reasonably concluded that appellant exercised control over the drugs. We therefore conclude that there was sufficient evidence to sustain the jury's verdict.

Affirmed.