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**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2084**

State of Minnesota,
Respondent,

vs.

Benjamin Taylor Helberg,
Appellant.

**Filed October 15, 2012
Affirmed
Ross, Judge**

Ramsey County District Court
File No. 62-CR-10-1578

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

John J. Choi, Ramsey County Attorney, Kaarin Long, Assistant County Attorney,
Lawrence M. Schultz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Carson J. Heefner, Heefner Nelson Law, P.A., St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Ross, Judge; and
Schellhas, Judge.

UNPUBLISHED OPINION

ROSS, Judge

Benjamin Helberg was arrested by St. Paul police while standing next to his truck
after the officers saw a small baggy containing what they thought to be

methamphetamine on the seat and Helberg repeatedly moved his hands toward his coat pocket after being told not to. Officers then found a second baggy of methamphetamine in Helberg's coat pocket. Appealing his conviction of fifth-degree possession of methamphetamine, Helberg argues that the district court erroneously failed to suppress the evidence. Because the officers' search of Helberg was incident to a lawful arrest based on probable cause, we affirm.

FACTS

In February 2010, Officers Joseph Reginek and Mike Dunaski of the St. Paul Police Department were on routine patrol on the east side of St. Paul in a marked squad car. They drove through the alley behind a Nebraska Avenue house that Officer Reginek knew to be a drug house with a resident who is a known drug user. They found a red truck to be blocking the alley. The officers walked up to a man, Benjamin Helberg, who was standing beside the open driver's door. Another individual, whom Officer Reginek recognized as a drug user, was standing at the rear of the truck.

When Officer Reginek was about five feet from Helberg, Helberg turned around, saw the officer, and abruptly turned toward the interior of the truck. Officer Reginek found Helberg's reaction suspicious.

The officers asked Helberg who owned the truck and why it was parked in the middle of the alley. Helberg stated that it was his truck. Officer Reginek's suspicion increased when Helberg turned away from him during the conversation. Officer Reginek saw the bench seat inside the truck, and on it he noticed a baggy that contained what appeared to be methamphetamine.

While Officer Reginek was talking to Helberg, Helberg put both of his hands into his jacket pockets. Concerned that Helberg might have a weapon, Officer Reginek directed Helberg to remove his hands from his pockets. Helberg at first complied, but only momentarily. Helberg moved his hand toward his pocket, and the officer again directed him not to place his hand in his pocket. After Helberg moved his hand toward his pocket a the third time, Officer Reginek placed Helberg under arrest for possession of a controlled substance.

After arresting Helberg, Officer Reginek searched his jacket and found a baggy of .94 grams of methamphetamine. The baggy in the truck tested positive for trace amounts of methamphetamine.

The state charged Helberg with one count of fifth-degree possession of methamphetamine. Helberg moved the district court to suppress evidence of the methamphetamine because he argued the search and seizure were illegal. The district court denied Helberg's motion, concluding that the search was incident to Helberg's arrest and the arrest was based on probable cause.

A jury found Helberg guilty. Helberg appeals his conviction.

DECISION

Helberg argues that the district court erred by denying his motion to suppress the evidence of methamphetamine found after his arrest. On appeal from a district court's denial of a pretrial motion to suppress evidence, we review its factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

The United States and Minnesota Constitutions guarantee the right of the people to be secure in their persons against “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches and seizures are unreasonable unless they fall within an exception to the warrant requirement. *State v. Olson*, 634 N.W.2d 224, 228 (Minn. App. 2001). One exception to the warrant requirement is a search incident to a valid arrest. *Id.* (quoting *State v. Walker*, 584 N.W.2d 763, 766 (Minn. 1998)). An arrest is valid if police have probable cause. *Id.* Probable cause exists if a reasonable police officer would believe that the person committed a crime based on officer observation, inferences, and police experience. *State v. Hardy*, 577 N.W.2d 212, 216 (Minn. 1998) (citation omitted). Probable cause is an objective standard assessed based on the totality of the circumstances. *Olson*, 634 N.W.2d at 228.

Helberg contends that the police officers lacked probable cause to believe that the baggy in his truck contained contraband, rendering his arrest invalid. Officer Reginek testified that based on his 10-year experience as a police officer, little baggies frequently contain drugs. And in this case, he believed that the baggy contained methamphetamine because of its cloudy appearance. The truck was parked behind an address known by police to be a drug house occupied by a resident who uses methamphetamine, and the other individual standing near the truck was also a known methamphetamine user. Helberg engaged in objectively suspicious behavior in several respects. When both officers were approaching him, he turned and saw one of them but quickly turned away. And after the officers engaged Helberg in conversation, he placed his hand in or near his

pocket three times after twice being told not to. In totality, we agree that the officers had probable cause to believe that Helberg possessed drugs.

This is a close case; probable cause exists, barely. Although suspicious gestures may support probable cause, *State v. Munoz*, 385 N.W.2d 373, 376 (Minn. App. 1986), suspicious movements by themselves do not establish probable cause. *See State v. Dineen*, 296 N.W.2d 421, 422 (Minn. 1980) (holding that driver reaching into backseat of his car did not amount to probable cause); *State v. Gallagher*, 275 N.W.2d 803, 807–08 (Minn. 1979) (holding that suspicious movements of a driver and his passenger did not alone support a finding of probable cause, but the officer’s additional observation that both the driver’s and the passenger’s eyes were wide and glassy and his experience that it indicated substance use supported probable cause to search a paper bag); *Munoz*, 385 N.W.2d at 376–77 (holding that driver’s suspicious movement along with a tip that he was carrying and selling drugs and officer knowledge he has sold and used drugs, had prior felony convictions, and was known to carry guns, supported probable cause). There must something more, such as a tip or the observance of guns or drugs. *See id.*, *see also State v. Flowers*, 734 N.W.2d 239, 248–49 (Minn. 2007) (holding that more than furtive movements is necessary to support a finding of probable cause such as a tip or the observance of drugs or guns). But here, there was more than just Helberg’s suspicious movements. The bag appeared to the veteran officer to contain methamphetamine, and the orientation of the truck to the drug house added context to Helberg’s suspicious behavior. The district court did not err by not suppressing the evidence.

Affirmed.