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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-333**

State of Minnesota,
Respondent,

vs.

Terry Virgil Erickson,
Appellant.

**Filed April 13, 2010
Affirmed
Randall, Judge***

Pine County District Court
File No. 58-CR-06-670

Lori Swanson, Attorney General, Kimberly R. Parker, Assistant Attorney General, St. Paul, Minnesota; and

John K. Carlson, Pine County Attorney, Pine City, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Stauber, Judge; and
Randall, Judge.*

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

UNPUBLISHED OPINION

RANDALL, Judge

Police stopped Terry Erickson after he left a hotel room where they suspected methamphetamines had recently been made or consumed. On the morning Erickson was due to check out, hotel staff saw Erickson's companion surreptitiously bring a propane torch into their room. Erickson and his friend also asked for extra towels and a bed sheet and requested a checkout time extension. Police stopped Erickson and found methamphetamine on his person. He was charged with possessing a controlled substance and was convicted after the district court denied his motion to suppress the methamphetamine.

Erickson appeals from his conviction, arguing that the methamphetamine should have been suppressed because it resulted from an unconstitutional seizure of his person. Erickson argues that police had no right to stop him because the facts known to them did not support a reasonable suspicion that he was engaged in criminal activity. We acknowledge that the state's case is not a strong one. But because we conclude that the totality of the circumstances justified a reasonable suspicion that Erickson was engaged in an ongoing criminal enterprise involving the making or use of methamphetamine, we affirm.

FACTS

On the morning of May 19, 2006, Brian Winter and appellant Terry Erickson were due to check out of their hotel room at Grand Casino Hinckley. Before checkout time, hotel staff saw Winter remove a small propane torch from his car, wrap it up, and take it

to their room. Winter and Erickson also asked the staff for extra towels and a bed sheet and requested that their checkout time be extended from 11 a.m. to 12 noon. Suspicious, the staff notified police.

Investigator Scott Grice arrived at the casino and was informed of the foregoing events. Based on his experience and training, Investigator Grice believed that Winter and Erickson's conduct was consistent with controlled substance ingestion or manufacture. Shortly after noon, the investigator encountered Winter at a slot machine in the casino's gaming area. He observed that Winter was holding a large, protruding object under his jacket. It turned out to be the propane torch that staff had seen Winter carry up to his hotel room that morning.

Hotel surveillance notified Investigator Grice that Erickson was walking past his location. The investigator stopped Erickson and brought him and Winter to the hotel's interrogation room. Erickson gave Investigator Grice permission to search him, and the investigator discovered a plastic baggie in Erickson's wallet containing a glass-like substance that field-tested positive for methamphetamine.

Erickson was placed under arrest and charged with possession of methamphetamine, a fifth-degree controlled substance crime. He sought to suppress the methamphetamine found on his person, arguing that Investigator Grice had lacked a reasonable, articulable suspicion of criminal activity to stop him. The district court denied Erickson's suppression motion, concluding that the totality of the circumstances had justified Investigator Grice in suspecting that Erickson was involved in ongoing

criminal activity. The case went to trial on stipulated facts, and the district court found Erickson guilty as charged.

Erickson appeals the district court's denial of his suppression motion.

D E C I S I O N

Erickson challenges the district court's denial of his motion to suppress the methamphetamine found on his person. "When reviewing pretrial orders on motions to suppress evidence, [an appellate court] may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Erickson argues that the methamphetamine should have been suppressed because its discovery resulted from an unconstitutional seizure of his person. "Generally, evidence seized in violation of the constitution must be suppressed." *State v. Jackson*, 742 N.W.2d 163, 177–78 (Minn. 2007). And although Erickson consented to the search that uncovered the methamphetamine, the methamphetamine must still be suppressed if a prior unconstitutional seizure tainted Erickson's consent. *See Florida v. Royer*, 460 U.S. 491, 507–08, 103 S. Ct. 1319, 1329 (1983) (holding defendant's consent to search of his luggage tainted by prior illegal seizure of his person). For the reasons that follow, we conclude that Investigator Grice's seizure of Erickson was lawful, and we therefore do not reach the issue of whether the seizure tainted Erickson's consent to the search.

The United States and Minnesota constitutions prohibit the "unreasonable" seizure of a person. U.S. Const. amend. IV; Minn. Const. art I, § 10. Brief investigatory stops, such as the one at issue here, are reasonable if police had a "particularized and objective

basis for suspecting the particular person stopped of criminal activity.” *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003) (quotation omitted). To determine whether police had reasonable suspicion of criminal activity, we examine the totality of the circumstances surrounding the stop, recognizing that the police can draw inferences that are beyond the experience and training of ordinary citizens. *State v. Flowers*, 734 N.W.2d 239, 251–52 (Minn. 2007). This court reviews de novo the district court’s determination of whether a seizure was justified by reasonable suspicion. *State v. Lee*, 585 N.W.2d 378, 382–83 (Minn. 1998).

The circumstances known to Investigator Grice when he stopped Erickson in the casino’s gaming area provided him with an objectively reasonable basis to suspect Erickson of being involved in making or consuming a controlled substance. Investigator Grice knew that Winter, Erickson’s companion, had surreptitiously brought a propane torch to the hotel room and then onto the casino floor. The investigator knew that propane torches are often used to make and consume controlled substances. He knew that Winter and Erickson had asked for a later checkout time and had requested extra towels and a sheet before checkout. The investigator knew that wet towels and sheets can be used to line the bottom of a door to hide the smell of the cooking of methamphetamine. Investigator Grice knew that Winter had had previous contacts with police involving controlled substances. And finally, the investigator knew that Erickson had been in the hotel room with Winter prior to checkout. These facts together support a reasonable suspicion that Erickson was engaged in criminal activity.

Erickson disagrees. He argues that there was nothing criminal about Winter's retrieving the propane torch from the vehicle, taking it to his room, and having it on his person while playing the casino's slot machines. No one in the hotel saw Winter do anything suspicious or illegal with the torch or observed any fumes consistent with the manufacture of methamphetamine, Erickson contends. Nor was there anything unusual about asking for a checkout time extension. But while any of Winter's and Erickson's actions might have appeared innocent in isolation, in combination they were suspicious enough to prompt hotel staff to contact police. And Investigator Grice was then entitled to draw inferences from Winter's possession of a torch and the two men's request for extra linens that an ordinary citizen might not have been able to draw. *See Flowers*, 734 N.W.2d at 251–52.

Erickson also argues that Investigator Grice had no information that Erickson himself was engaged in any suspicious behavior: the only reason Grice seized Erickson was because he came from the same hotel room as Winter. A person's proximity to another who is suspected of criminal activity may not alone be sufficient to establish reasonable suspicion. *See State v. Ingram*, 570 N.W.2d 173, 177-78 (Minn. App. 1997) (holding that defendant's speaking with person suspected of criminal activity was not sufficient to establish reasonable suspicion to pat-search defendant), *review denied* (Minn. Dec. 22, 1997). But police may draw inferences from circumstantial evidence to develop reasonable suspicion. *See State v. Pike*, 551 N.W.2d 919, 922 (Minn. 1996) (concluding that reasonable suspicion existed to stop an unidentified driver when police knew that the vehicle's owner's license was suspended, because "it is rational for [police]

to infer that the owner of the vehicle is the current operator”); *see also State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009) (holding that when evidence indicates to police that a vehicle’s occupants are engaged in a “common criminal enterprise,” police may have probable cause to arrest a passenger in the vehicle).

Here, the circumstantial evidence that Erickson was involved in an ongoing criminal enterprise with Winter was sufficient to clear the low bar set by the reasonable suspicion standard. Grice’s suspicion was reasonable. His stopping Erickson did not violate Erickson’s constitutional rights. The district court properly refused to suppress the methamphetamine that resulted from the stop and ensuing consensual search.

Affirmed.