IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	No. 66866-8-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
SCOTT A. MEEDS,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: July 23, 2012
	)	

Ellington, J. — Scott Meeds got out of a car that smelled of burnt or burning methamphetamine and told a police officer that he had a "dope pipe" and "a little dope." The officer then arrested Meeds. We conclude that the circumstances established probable cause to arrest and that the subsequent search of Meeds incident to the arrest was also lawful. Accordingly, we affirm Meeds' conviction for one count of possession of methamphetamine.

FACTS

The State charged Meeds with one count of possession of methamphetamine. Prior to trial, he moved to suppress the evidence seized incident to his arrest. The trial court's findings of fact, entered after the CrR 3.5/3.6 hearing, are unchallenged on appeal and establish the following sequence of events.[1]

At 8:40 p.m. on June 29, 2009, Snohomish County Sheriff's Deputy James

Hager stopped a car in rural Snohomish County for expired license tabs. As Hager approached the car, he recognized the smell of burnt or burning methamphetamine, but could not tell whether the odor was associated with the driver or the passenger.

Hager recognized Meeds, who was sitting in the front passenger seat. From prior encounters, Hager knew that Meeds was aggressive and antagonistic with police officers and was known to carry weapons such as "knives, swords, etc."[2] In their previous encounter, Meeds had become "physically combative"[3] with Hager.

Hager called for backup, and Deputy Daniel Johnson arrived a short time later. Hager advised Johnson about Meeds' prior history with law enforcement. Hager then proceeded to arrest the driver for failing to transfer the vehicle's title. During the arrest, the driver admitted that she was carrying methamphetamine in her bra.

While Hager was arresting the driver, Johnson approached Meeds, who was holding a cell phone in one hand and had his other hand in his pocket. Concerned because Meeds was "fidgeting around,"[4] Johnson asked him to get out of the car for a pat down. During the pat down, Johnson felt a hard cylindrical object that he immediately recognized as a pipe and a second hard round object about the size of a tennis ball.

Meeds admitted that the pipe was a "dope pipe" and that the other hard object

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[1] See State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003) (unchallenged findings entered after a suppression hearing are verities on appeal).

[2] Clerk's Papers at 84 (Finding of Fact 5).

[3] Id. (Finding of Fact 7).

[4] Report of Proceedings (Apr. 1, 2010) at 23.

was a rock.[5] When asked whether he had anything else illegal, Meeds said he had "a little dope."[6] At this point, Johnson placed Meeds under arrest for possession of drug paraphernalia. During a search of Meeds incident to the arrest, Johnson found a chap stick containing crystals that tested positive for methamphetamine.

The trial court denied Meeds' motion to suppress, concluding that his removal from the vehicle and the subsequent pat down were lawful. Meeds then waived his right to a jury trial and, based on stipulated evidence, the trial court found him guilty as charged. The court imposed a prison-based drug offender sentencing alternative.

DISCUSSION

In his motion to suppress, Meeds argued that his removal from the car and the subsequent pat down for weapons were invalid. The trial court rejected those claims, a determination that Meeds does not challenge on appeal. Rather, Meeds contends, apparently for the first time, that because the facts did not establish probable cause to arrest him for possession of drug paraphernalia under RCW 69.50.412, the subsequent search incident to the arrest was unlawful.[7] But even if we assume that this issue was properly preserved, the trial court's undisputed findings clearly establish probable cause to arrest.

Under the Fourth Amendment and article I, section 7 of the Washington

[5] Id. at 24.

[6] Id. at 25.

[7] See State v. Garbaccio, 151 Wn. App. 716, 731 n.6, 214 P.3d 168 (2009) (declining to consider suppression issue not raised or addressed as part of the suppression motion in the trial court).

Constitution, a warrantless arrest must be based on probable cause.[8] Where, as here, the apparent offense involves a misdemeanor, a warrantless arrest must be based on commission of the offense in the officer's presence.[9] Probable cause exists "where the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed."[10] When officers stop a vehicle with multiple occupants, individualized probable cause must support the arrest of each occupant.[11] Whether probable cause exists is a question of law that we review de novo.[12]

Meeds correctly notes that mere possession of drug paraphernalia is not a crime in Washington.[13] For possession of drug paraphernalia to be a crime under RCW 69.50.412, the defendant must, among other things, (1) "use drug paraphernalia" for ingesting or inhaling a controlled substance, or (2) deliver or possess with intent to deliver drug paraphernalia, knowing that it will be used to ingest or inhale a controlled substance.[14] Accordingly, under RCW 69.50.412, the State must prove not only that

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[8] State v. Bonds, 98 Wn.2d 1, 8-9, 653 P.2d 1024 (1982).

[9] See RCW 10.31.100; State v. O'Neill, 148 Wn.2d 564, 584 n.8, 62 P.3d 489 (2003).

[10] State v. Terrovona, 105 Wn.2d 632, 643, 716 P.2d 295 (1986).

[11] State v. Grande, 164 Wn.2d 135, 138, 187 P.3d 248 (2008) (odor of marijuana emanating from vehicle does not, without more, establish probable cause to arrest all occupants).

[12] State v. Chamberlin, 161 Wn.2d 30, 40–41, 162 P.3d 389 (2007).

[13] State v. George, 146 Wn. App. 906, 918, 193 P.3d 693 (2008); see also State v. Neeley, 113 Wn. App. 100, 107, 52 P.3d 539 (2002).

[14] RCW 69.50.412(1), (2).

the defendant possessed drug paraphernalia, but also that "he used it in a drug-related activity."[15]

Meeds contends that at the time of his arrest, the officers did not see him ingest drugs or otherwise use the pipe for any purpose. He further maintains that the odor of burnt methamphetamine emanating from the car did not raise an individualized suspicion because Deputy Hager could not associate the odor with either occupant.[16] He argues that the officers therefore lacked probable cause to arrest.

But whether Meeds violated RCW 69.50.412 is not controlling under the facts of this case. The undisputed evidence established that after getting out of a car that smelled of burnt methamphetamine, Meeds admitted to Deputy Johnson that he possessed both a "dope pipe" and "a little dope." These admissions established probable cause to arrest Meeds for both possession of a controlled substance and a violation of Snohomish County Code (SCC) 10.48.020, which prohibits possession of drug paraphernalia "with intent to use" a controlled substance.[17] SCC 10.48.020 does not conflict with and is not preempted by RCW 69.50.412.[18] Meeds' possession of both a "dope pipe" and "a little dope" supports a reasonable inference that he intended to

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[15] George, 146 Wn. App. at 919.

[16] See Grande, 164 Wn.2d 138.

[17] SCC 10.48.020 provides, "It is unlawful for any person to use, or to possess with intent to use, any item of drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act. Any person who violates this section is guilty of a misdemeanor."

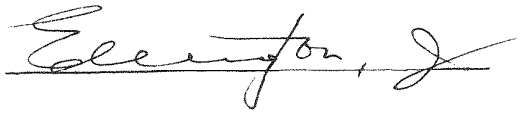
[18] State v. Fisher, 132 Wn. App. 26, 30-32, 130 P.3d 382 (2006).

use the controlled substance.

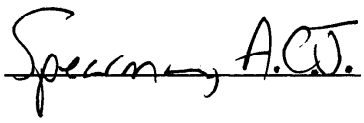
The fact that Deputy Johnson may have relied on a different offense when arresting Meeds does not undermine the validity of an arrest otherwise supported by probable cause. "[A]n arrest supported by probable cause is not made unlawful by an officer's subjective reliance on, or verbal announcement of, an offense different from the one for which probable cause exists."[19]

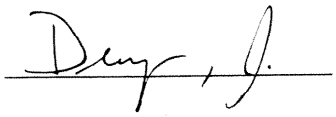
Because probable cause support Meeds' arrest, the subsequent search incident to the arrest was lawful.

Affirmed.



WE CONCUR:





[19] State v. Huff, 64 Wn. App. 641, 646, 826 P.2d 698 (1992).