

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

NATHAN C. FEASEL,

Appellant.

No. 39940-7-II

UNPUBLISHED OPINION

Johanson, J. — Nathan C. Feasel appeals his conviction for unlawful possession of a controlled substance—methamphetamine. He challenges the vehicle search that led to the discovery of the drugs under *Arizona v. Gant*, ___ U.S. ___, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009). We affirm.

FACTS

Washington State Patrol Trooper Matthew Wood was patrolling State Highway 101 when he saw a maroon Oldsmobile approaching him in the oncoming traffic lane. The driver appeared not to be wearing his seatbelt, so Trooper Wood turned around, followed the car and entered its license plate into his computer. Trooper Wood continued to follow the car into a gas station and

parked in an adjacent stall. At this point, Trooper Wood could see that the driver was wearing a seatbelt, so he left the scene.

Trooper Wood was continuing to patrol when he received information back from dispatch that the car's registered owner, Nathan Feasel, had a suspended driver's license. Trooper Wood read Feasel's physical description, which matched the individual driving the car.

Trooper Wood made his way back to the gas station and saw the same maroon car turn onto a side road off Highway 101. Trooper Wood followed the car to make contact, but it accelerated to a high rate of speed. As Trooper Wood tried to catch up, he saw the car make a quick left turn onto a long driveway without signaling. Trooper Wood followed the car into the driveway, activated his emergency lights, and saw the driver furtively reaching around the passenger seat area.

The car parked near a residence. Trooper Wood approached the residence and noticed several people outside; upon seeing Trooper Wood, they all ran inside, closing the doors and drapes. The surrounding area was heavily wooded and was not visible from the main road.

The driver left the car and was hurrying toward the residence when Trooper Wood called out, "Hey Nathan." Clerk's Papers at 24. The driver stopped and admitted his name was Nathan Feasel. Trooper Wood arrested Feasel for third degree driving with a suspended license.

Trooper Wood secured Feasel in his patrol vehicle and called for backup because he felt the area was unsafe. After securing Feasel, Trooper Wood noticed a young child in Feasel's car. The child was Feasel's six-year-old son, B.D.; Trooper Wood had B.D. exit the car and allowed him to talk to his father through the patrol vehicle window.

While Trooper Wood was waiting for backup, he noticed that Feasel's pupils were dilated and that his eyes were bloodshot. Feasel's speech was rapid, and he appeared to have a burn mark on his upper lip. Trooper Wood believed Feasel to be under the influence of stimulants and asked Feasel when he last smoked methamphetamine; Feasel responded, "[A] long time ago." Report of Proceedings at 29.

Trooper Wood is a trained and certified drug recognition expert and narcotics-detecting-K9 handler. His assigned K9 is Dilly, who was with him during this stop. Trooper Wood uses Dilly only when he has an articulable suspicion that illegal drugs may be present. Because Trooper Wood suspected that Feasel was under the influence of stimulants, Trooper Wood deployed Dilly to search the interior of Feasel's car. Trooper Wood found methamphetamine and a glass smoking device between the seats.

Trooper Wood took Feasel to jail and performed sobriety tests on him. Feasel performed poorly on the tests. Trooper Wood concluded that he was under the influence of drugs, read him his rights, and arrested him for driving under the influence of drugs. Trooper Wood obtained a blood sample, which revealed the presence of methamphetamine.

Feasel was charged with unlawful possession of a controlled substance—methamphetamine. The trial court denied his motion to suppress evidence under *Gant* and convicted him at a bench trial.

ANALYSIS

The question is whether the trial court properly denied Feasel's motion to suppress evidence that Trooper Wood seized from Feasel's car in a search incident to his arrest. Feasel argues that Trooper Wood's search was unconstitutional under *Gant*. He does not challenge the search under the Washington Constitution.

The Fourth Amendment provides, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." "A warrantless search is per se unreasonable, valid only if it is shown that the 'exigencies of the situation made that course imperative.'" *State v. Valdez*, 167 Wn.2d 761, 768, 224 P.3d 751 (2009) (quoting *Chimel v. California*, 395 U.S. 752, 761, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969)).

"It is reasonable under the Fourth Amendment for the officer to conduct a warrantless search incident to arrest to gain control over the weapon or destroyable evidence of the offense prompting the arrest when those risks are present." *Valdez*, 167 Wn.2d at 769 (citing *Chimel*, 395 U.S. at 763). The scope of this search must be narrowly tailored to promote officer safety and to preserve evidence of the crime prompting the arrest. *Valdez*, 167 Wn.2d at 769.

Independent of the officer safety and preservation of evidence rationale, the Supreme Court reasoned that "circumstances unique to the vehicle context" justify a warrantless search of the vehicle when there is "reason[] to believe evidence relevant to the crime of arrest might be

found in the vehicle.” *Gant*, 129 S. Ct. at 1719 (quoting *Thornton v. United States*, 541 U.S. 615, 632, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004)). “Such a search is justified under the Fourth Amendment because there is a reduced expectation of privacy in an automobile and that expectation is outweighed by law enforcement needs heightened by the difficulties arising from an automobile’s mobility.” *Valdez*, 167 Wn.2d at 771.

The State argues that Trooper Wood arrested Feasel for driving under the influence of drugs or alcohol. This turns on whether Trooper Wood had probable cause to arrest Feasel for driving under the influence. *See, e.g., State v. Huff*, 64 Wn. App. 641, 646, 826 P.2d 698, *review denied*, 119 Wn.2d 1007 (1992).

Probable cause “boils down, in criminal situations, to a simple determination of whether the relevant official, police or judicial, could reasonably believe that the person to be arrested has committed a crime.” *State v. Klinker*, 85 Wn.2d 509, 521, 537 P.2d 268 (1975). Probable cause is not knowledge of evidence sufficient to establish guilt beyond a reasonable doubt but, rather, is “reasonable grounds for suspicion coupled with evidence of circumstances to convince a cautious or disinterested person that the accused is guilty.” *State v. Bellows*, 72 Wn.2d 264, 266, 432 P.2d 654 (1967). We determine whether an arresting officer’s belief was reasonable after considering all the facts within the officer’s knowledge at the time of the arrest as well as the officer’s special expertise and experience. *State v. Fricks*, 91 Wn.2d 391, 398, 588 P.2d 1328 (1979).

The evidence in the record supports a finding that Trooper Wood had sufficient probable cause to arrest Feasel for driving under the influence, which he developed during his encounter with Feasel. In an apparent effort to evade Trooper Wood, Feasel was driving erratically and was

furtively reaching toward the passenger compartment. When Trooper Wood pulled up behind Feasel's car, Feasel quickly exited and hurriedly walked toward the residence. Feasel left his six-year-old son in the back of his car. Upon contact, Trooper Wood, who is a trained drug recognition expert, noticed that Feasel was exhibiting physical signs consistent with drug use. Feasel's pupils were dilated, his eyes were bloodshot, his speech was rapid, and he appeared to have a burn mark on his upper lip. Feasel also admitted that he had used methamphetamine before.

These facts and circumstances were sufficient to establish probable cause to arrest Feasel for driving under the influence. Objective facts and circumstances determine the validity of an arrest. *Huff*, 64 Wn. App. at 646. “[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.” *Huff*, 64 Wn. App. at 646. Thus, despite Trooper Wood's initial reason for arresting Feasel for driving with a suspended license, we hold that Trooper Wood developed an objective basis during the stop to also arrest Feasel for driving under the influence of drugs.

Under *Gant*, the question is whether Trooper Wood had “reason[] to believe evidence relevant to the crime of arrest might be found in the vehicle.” *Gant*, 129 S. Ct. at 1719 (quoting *Thornton*, 541 U.S. at 632). Based on our holding that Trooper Wood had an objective basis to arrest Feasel for driving under the influence of drugs, Trooper Wood also had reason to believe evidence relevant to the crime of arrest might be found in the vehicle. *Gant*, 129 S. Ct. at 1719. In Trooper Wood's training and experience, officers often find evidence of the driver's

impairment in the car. Prior to and during the encounter, Feasel exhibited signs that he was under the influence of drugs. We hold that an officer in Trooper Wood's situation would have reason to believe that evidence relating to driving under the influence would be found in Feasel's vehicle. Therefore, the search was valid under *Gant*. Because the search was valid, Feasel's argument that the record contains insufficient evidence to sustain his conviction fails.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Johanson, J.

We concur:

Hunt, J.

Penoyar, C.J.