STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0896

State of Minnesota,
Respondent,

vs.

Troy Vincent Gottwald,
Appellant.

Filed April 3, 2017
Affirmed
Jesson, Judge

Sherburne County District Court
File No. 71-CR-15-1032

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

Kathleen A. Heaney, Sherburne County Attorney, Kevin C. Lin, Assistant County Attorney, Elk River, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara J. Euteneuer, Special Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Jesson, Judge.

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

JESSON, Judge

Appellant Troy Vincent Gottwald seeks reversal of his conviction of second-degree possession of a controlled substance, which was discovered in a warrantless search of a car

he was driving. Because Gottwald had no reasonable expectation of privacy in a car that he was not authorized to drive, and because there is sufficient evidence to sustain his conviction, we affirm.

FACTS

S.K. is the registered owner of a 2001 GMC Yukon. In July 2015, she was Gottwald's girlfriend. The couple did not live together, but at times Gottwald spent nights at S.K.'s St. Cloud home, where she lived with her children. And Gottwald had a spare set of keys to the Yukon, although S.K. told him not to the drive the car because he did not have a valid driver's license.

On July 28, S.K. left for an overnight camping trip with her children, taking a different car. Gottwald wanted to drive the Yukon, but S.K. told him not to do so. But when S.K. arrived home the next day, the Yukon was gone. S.K. called the police to report it stolen, but the police told her that since it involved her boyfriend it was a "civil matter." Later that evening, S.K. again called the police to figure out why she could not report the Yukon as stolen. She emphasized that she did not give Gottwald permission to use the Yukon. While still on the phone, she told the officer that Gottwald had just pulled up to her house. The officer testified at trial that the S.K. "seemed really shaken, upset, [and] concerned." The officer became concerned that a "domestic" situation might occur, so he went to S.K.'s home and called for backup. As he drove, he learned from police dispatch that there was an active felony warrant for Gottwald's arrest because of a prior drug offense.

Upon arriving at the house, the officer saw the Yukon parked in the driveway. S.K. was in a different car parked behind the Yukon, and Gottwald was walking toward the home. Gottwald was cradling a large, sheathed knife and a black box. The officer told Gottwald to drop everything, but Gottwald dropped only the knife. Gottwald then walked to the rear driver-side door of the Yukon, deposited the box inside, and closed the door. At the direction of the officer, Gottwald then lay on the ground and was handcuffed. Gottwald was compliant, and the officer arrested him pursuant to the outstanding warrant.

The officer, who testified that he was concerned for his safety, then asked Gottwald if there was anyone else in the vehicle. Gottwald responded that he was unsure because people had been in and out of the car all day. The officer opened the rear driver-side door of the car to check. After confirming that the Yukon was empty, the officer observed that the black box was open, with a Q-tip, pipe, plastic bag, and scale inside. Based on his training and experience, the officer knew that these items were often found in drug investigations. He took photographs and then closed the door.

The Yukon was towed to the sheriff's office. Local police obtained a warrant to search the Yukon after conducting a successful dog sniff. The police found a small black bag in the center console, containing a glass pipe and a plastic bag that held 13.983 grams of methamphetamine. Attached to the black bag was a nametag with the name "Troy."

Before trial, Gottwald moved to suppress the evidence found in the Yukon. The district court denied Gottwald's motion after a contested omnibus hearing, finding that Gottwald did not have an expectation of privacy in the Yukon. After a jury trial, Gottwald

was convicted of second-degree possession of a controlled substance and sentenced to 96 months in prison. This appeal follows.

D E C I S I O N

Gottwald first claims that the officer violated his constitutional rights by opening the door of the Yukon without a warrant. When reviewing a pretrial order denying a motion to suppress evidence found as a result of a search, we independently review the facts and determine, as a matter of law, whether the district court erred. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). Gottwald further contends that the evidence was not sufficient to prove that he possessed the methamphetamine found in the Yukon. To evaluate this claim, we "carefully examine the record to determine whether the facts and legitimate inferences drawn from them would permit the jury to reasonably conclude that the defendant was guilty beyond a reasonable doubt of the offense of which he was convicted." *State v. Boldman*, 813 N.W.2d 102, 106 (Minn. 2012). Based upon our review, neither challenge prevails.

I. Because Gottwald lacked a reasonable expectation of privacy in the Yukon, the search did not violate the Fourth Amendment.

The United States and Minnesota Constitutions protect the "right of the people to be secure in their persons houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. 1, § 10. And a person has a legitimate expectation of privacy inside his or her vehicle. *State v. Goodrich*, 256 N.W.2d 507, 510 (Minn. 1977). But the Fourth Amendment protections against unreasonable searches and seizures are only triggered when an individual has a legitimate expectation of privacy in

the invaded space. *State v. Davis*, 732 N.W.2d 173, 178 (Minn. 2007). Because Gottwald's expectation of privacy in the Yukon was unreasonable, given his girlfriend's repeated demands that he not drive her car, his Fourth Amendment challenge to the search fails.

When determining whether a reasonable expectation of privacy exists, we use a two-step analysis. *In re Welfare of B.R.K.*, 658 N.W.2d 565, 571 (Minn. 2003). First, we consider whether the person "exhibited an actual subjective expectation of privacy" in the area searched. *Id.* Second, we evaluate whether that expectation is objectively reasonable. *Id.* The burden of demonstrating a reasonable expectation of privacy rests with the person asserting Fourth Amendment rights. *Davis*, 732 N.W.2d at 178. Whether an expectation of privacy is objectively reasonable is determined by examining the totality of the facts and circumstances of each case. *Rakas v. Illinois*, 439 U.S. 128, 152, 99 S. Ct. 421, 435 (1978) (Powell, J., concurring) (explaining that "no single factor invariably will be determinative").

Here, the parties do not dispute that Gottwald had a subjective expectation of privacy in the Yukon, thus establishing the first portion of the two-step test. The question before us is whether Gottwald's expectation of privacy is one that society is prepared to recognize as reasonable.

Gottwald argues that his expectation of privacy is reasonable, pointing to the facts that he lawfully possessed spare keys to the Yukon, had a history of using it, and kept personal items within it. He also highlights that the police initially would not accept S.K.'s request to report the Yukon stolen and told her that it was a civil matter. Finally, he contends that his situation is similar to the facts in *State v. Dixon*, which determined that a

person who possesses a borrowed vehicle has a reasonable expectation of privacy in that vehicle. 501 N.W.2d 442, 446-47 (Wis. 1993).

The district court rejected these arguments and denied Gottwald's motion to suppress the search, concluding that he did not have a legitimate expectation of privacy in the Yukon. We agree.

While an ownership interest in a vehicle is not required to assert the right to privacy, an individual's mere presence within a vehicle is not sufficient to confer a reasonable expectation of privacy. *Rakas*, 439 U.S. at 148-49, 99 S. Ct. at 433; *cf. State v. DeLottinville*, 890 N.W.2d 116, 120-21 (Minn. 2017) (concluding that a guest, who is subject to an arrest warrant, cannot assert the homeowner's right to privacy); *State v. McBride*, 666 N.W.2d 351, 361 (Minn. 2003) (legitimate expectation of privacy exists in a shared apartment); *B.R.K.*, 658 N.W.2d at 576 (holding that a short-term social guest has a privacy expectation in the host's home because the host consented to the guest's presence and shared his privacy interest with the guest). Even though Gottwald had spare keys to the Yukon, he did not own it or have permission to use it. The record also reveals that there were no facts before the district court at the suppression hearing to support Gottwald's claim that he frequently used the car.[1] Nor is this a "family-type situation" where multiple family members regularly drive a car owned by one member. S.K. and Gottwald were not living together. Finally, even if this court were to accept the reasoning in *Dixon* as persuasive, that case is distinguishable. Unlike the defendant in *Dixon*, who was given

[1] We note that, at trial, S.K. testified that Gottwald had never driven the Yukon before.

keys to a car and permission to drive it on multiple occasions so that he could wash it and replace its tires, Gottwald did not have permission to use the Yukon at all. *See* 501 N.W.2d at 444. In fact, S.K. called the police twice for assistance to regain possession of her car.[2]

Under these circumstances, we conclude that society would not be prepared to legitimize Gottwald's privacy expectation based on his one-time unlawful possession of the Yukon and the fact that he stored personal items in the car during that day. As the district court explained, Gottwald "presented little evidence with regard to his expectation of privacy in the GMC Yukon. [He] did not testify or present other evidence at the [contested] omnibus hearing that might suggest that he had a property or privacy interest in the vehicle." Because Gottwald has failed to demonstrate that he held an objectively reasonable privacy expectation in the Yukon, we conclude that the district court did not err by denying his motion to suppress.[3]

II. There was sufficient evidence to prove that Gottwald possessed the methamphetamine in the Yukon.

Gottwald next argues that the evidence was not sufficient to prove that he possessed the methamphetamine found in the Yukon. To evaluate this claim, we carefully examine whether the legitimate inferences drawn from the evidence would permit the jury to conclude that the defendant was guilty beyond a reasonable doubt. *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012).

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[2] While it is true that police did not initially accept a stolen car report, that determination is not evidence that Gottwald had permission to drive the car, which is a pivotal inquiry.

[3] Because Gottwald failed to demonstrate a reasonable privacy expectation in the Yukon, we need not address his argument that exigent circumstances did not justify opening the door of the Yukon.

For Gottwald to be convicted of second-degree possession of a controlled substance, the state was required to prove that he unlawfully possessed six grams or more of methamphetamine. *See* Minn. Stat. § 152.022, subd. 2(a)(1) (2014). Because Gottwald did not have physical possession of the methamphetamine at the time of his arrest, the state must prove that he had constructive possession of the substance. *See State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975). To do so, the state must prove:

> (a) that the police found the substance in a place under defendant's exclusive control to which other people did not normally have access, or (b) that, if police found it in a place to which others had access, there is a strong probability (inferable from other evidence) that defendant was at the time consciously exercising dominion and control over it.

State v. Porte, 832 N.W.2d 303, 308 (Minn. App. 2013) (quotation omitted). The item may be possessed by more than one person at a time, and proximity is an important factor. *Id.* Therefore, the jury could find Gottwald guilty if it found that Gottwald possessed the methamphetamine in a place where he had exclusive control or that he was consciously exercising control over the methamphetamine.

Under the circumstantial-evidence standard, we first identify the circumstances proved, deferring to the jury's acceptance of the state's evidence and rejection of conflicting evidence. *State v. Washington-Davis*, 881 N.W.2d 531, 543 (Minn. 2016). In doing so, we assume that "the jury resolved any factual disputes in a manner that is consistent with the jury's verdict." *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). Second, we examine the reasonableness of the inferences that can be drawn from the facts

proved to determine whether "the circumstances are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *Id.* (citations and quotations omitted).

The circumstances proved demonstrate that Gottwald took the Yukon sometime between July 28 and 29. S.K. testified that she had not driven the Yukon since the morning of July 28. Gottwald returned alone on the night of July 29. After police seized the vehicle and obtained a search warrant, police found a small bag containing the methamphetamine in the center console of the Yukon. Attached to the bag was a nametag with the name "Troy." Gottwald acknowledged that the nametag on the bag was his. Police saw him deposit a box containing drug paraphernalia into the Yukon after he was told to stop. S.K. denied ownership of any drugs or drug paraphernalia in the Yukon. When asked if "there was a chance that the meth in the center console was [his] and he just didn't realize it," Gottwald answered, "yes," and further explained that he believed he had sold the methamphetamine earlier. After a forensic test of the plastic bag containing the methamphetamine, there was a partial match to Gottwald's DNA.

Gottwald argues that the circumstances proved do not establish beyond a reasonable doubt that he was in possession of the methamphetamine found in Yukon. Gottwald points out that there is a reasonable inference that one of the numerous people who had access to the Yukon or S.K., who drove the car the previous day, possessed the drugs.

But the fact that others had access to the Yukon does not change the dearth of circumstances to support a reasonable inference that S.K. or anyone else was in possession of the methamphetamine. S.K. denied that she owned the methamphetamine. While there were others who had spare keys to the Yukon, Gottwald was the only person to drive the

Yukon immediately before it was seized and the methamphetamine was found. *See id.* (noting the importance of time and proximity when considering possession). Furthermore, Gottwald acknowledged that the nametag attached to the bag containing the methamphetamine belonged to him. And even if the methamphetamine belonged to someone else, it could be possessed by more than one person at once. *Porte*, 832 N.W.2d at 308. Based on the reasonable inferences on this record, we conclude that the circumstances are consistent with guilt and inconsistent with any other rational hypothesis.

Affirmed.