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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1749**

State of Minnesota,
Respondent,

vs.

Devon Maurice Goode,
Appellant.

**Filed November 6, 2017
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-14-33065

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant Devon Goode was convicted of fifth-degree controlled-substance crime after an officer discovered cocaine in his car following a traffic stop. On appeal, Goode

argues that (1) the district court abused its discretion when it denied his motion to exclude testimony regarding the odor of marijuana that the officer smelled when he executed the traffic stop and (2) the evidence is insufficient to prove that he knowingly possessed the cocaine. Because the district court did not abuse its discretion in admitting the marijuana-odor evidence to provide context for the officer's search of the vehicle, and because the circumstantial evidence precludes any reasonable hypothesis other than Goode's guilt, we affirm.

FACTS

On November 3, 2014, Goode was stopped by a Brooklyn Park police officer because his car's license-plate light was out. The officer thought Goode took longer than necessary to pull over after he activated his lights and signaled Goode to pull over. As the officer approached the stopped car, he observed Goode, who was the sole occupant, quickly move the upper portion of his body towards the passenger side of the car in a manner the officer believed was inconsistent with a person reaching for documents.

The officer smelled marijuana when Goode rolled down his window and, based on this odor, asked Goode to step out of the car and eventually searched it. During the search, a small plastic bag containing a substance later determined to be cocaine was found between the far side of the front passenger seat and side door. Goode, one of two registered owners of the car, was arrested. The bag was not tested for DNA or fingerprints.

Before trial, Goode's attorney filed a motion in limine seeking to exclude any testimony regarding the odor of marijuana. The district court denied this motion, concluding that the odor provided necessary context for the search of the car. The jury

found Goode guilty of fifth-degree controlled-substance crime, and the district court sentenced him to a stayed 13-month sentence.

Goode appeals.

DECISION

I. The district court did not abuse its discretion in ruling that the state could introduce evidence that the officer smelled marijuana.

Goode challenges the district court's decision to permit the officer's testimony that Goode and his car smelled of marijuana, contending that the evidence is irrelevant and highly prejudicial. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed absent a clear abuse of discretion. On appeal, the appellant has the burden of establishing that the [district] court abused its discretion and that appellant was thereby prejudiced." *State v. Amos*, 658 N.W.2d 201, 203 (Minn. 2003) (citation omitted). This court will only reverse a district court's ruling on the admission of evidence where the error substantially influenced the jury's decision. *State v. Yang*, 774 N.W.2d 539, 554 (Minn. 2009).

Goode argues that the marijuana-odor evidence should have been excluded as inadmissible bad-acts evidence under Minn. R. Evid. 404(b). Under that rule, evidence of other crimes or bad acts is inadmissible to prove the character of a person in order to show the person acted in conformity with that character. Minn. R. Evid. 404(b); *State v. Spreigl*, 272 Minn. 488, 490, 139 N.W.2d 167, 169 (1965). In his motion in limine, however, Goode did not assert an objection under rule 404(b) or *Spreigl*, and he does not now challenge the district court's admission of the evidence as plain error under that law. *See*

State v. Guzman, 892 N.W.2d 801, 813-14 (Minn. 2017) (holding that plain-error analysis applies when appellant’s arguments on appeal regarding admission of evidence were not apparent from the context of the objection actually made at trial). But, in any event, the state did not offer evidence of a bad act by Goode to prove his character or to prove some other fact regarding the charged offense under rule 404(b). Rather, the state offered evidence of the marijuana odor on Goode’s person and in the car as information explaining why the officer initiated a search of the car after stopping the car for a routine traffic stop.

Nevertheless, as Goode argued in his motion in limine, the evidence may be inadmissible if (1) it is it is not relevant or (2) its probative value is substantially outweighed by the danger of unfair prejudice. Minn. R. Evid. 401, 402, 403.

Goode argues that the marijuana-odor evidence is not relevant because it does not relate to any element of the charged offense of possession of cocaine, because the legality of the search was not at issue, and because he did not put his character at issue in the trial. See Minn. R. Evid. 404(a)(1) (permitting state to offer evidence of an accused’s character to rebut character evidence offered by accused). The marijuana-odor evidence, however, has other relevance. “[E]vidence is generally admissible to give jurors the context for an investigation.” *State v. Ali*, 855 N.W.2d 235, 249 (Minn. 2014).

In *State v. Griller*, in which the defendant was convicted of murder, the supreme court held that the district court did not abuse its discretion in admitting testimony regarding a letter sent to the police department that triggered the investigation or the content of police interviews with neighbors, even though the evidence contained negative information about the defendant, because the evidence “provided the jury with the context

necessary to explain how the investigation against [the defendant] began and why the police were excavating [his] backyard.” 583 N.W.2d 736, 743 (Minn. 1998). Similarly, in *State v. Czech*, the supreme court affirmed admission of a tape recording of an undercover investigation in which the defendant referenced his involvement in other bad acts because this evidence showed “the context of the conversation.” 343 N.W.2d 854, 856 (Minn. 1984).

Similar to these cases, here the officer’s testimony regarding the odor of marijuana explained how the investigation transpired and why the search of Goode’s car was appropriate. Absent this testimony, it may have appeared that the officer unreasonably ordered Goode out of his car and searched it in response to a nonfunctioning license-plate light. Thus, the officer’s testimony “provided the jury with the context necessary to explain” how the search began. *Griller*, 583 N.W.2d at 743.

Goode cites to *State v. Strommen*, 648 N.W.2d 681 (Minn. 2002), in support of his argument that the evidence should have been excluded as irrelevant. In *Strommen*, the court concluded that, in a robbery case, evidence of the defendant’s past acts of kicking in doors and killing a person was not relevant because it was pertinent only to showing his accomplice’s motive, which was not relevant to determining the defendant’s guilt. 648 N.W.2d at 687. *Strommen*, however, did not involve the relevance of evidence introduced to explain the context of an investigation. And, under the caselaw discussed above, the marijuana-odor evidence is relevant to explain the officer’s expansion of the investigation beyond the license-plate-light violation. See, e.g., *Griller*, 583 N.W.2d at 743.

Goode argues that even if the marijuana-odor evidence is relevant, it should still have been excluded under Minn. R. Evid. 403 because its prejudicial effect substantially outweighs its probative value. Goode asserts that the officer's testimony was highly prejudicial because it may have motivated the jury to find him guilty of possessing cocaine in order to punish him for his other bad acts (marijuana use and driving under the influence). Again, Goode relies on *Strommen*, where the supreme court concluded that the testimony of the defendant's past criminal acts of kicking in doors and killing a person was highly prejudicial and should have been excluded under rule 403. 648 N.W.2d at 687.

The marijuana-odor evidence here is not comparably prejudicial. Not only is potential marijuana use not nearly as serious as the violence testified to in *Strommen*, but the state introduced no evidence that Goode was under the influence of marijuana while driving. In addition, the state's use of the evidence was limited to the narrow purpose of explaining the officer's search of the car. The odor evidence was referenced three times during the trial—during opening statements, in the officer's testimony, and during closing arguments—and in each instance, the reference was directed at what led the officer to initiate the search. Given these circumstances, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. Minn. R. Evid. 403; *see also Griller*, 583 N.W.2d at 743; *Czech*, 343 N.W.2d at 856.

We conclude that the district court did not abuse its discretion in permitting the officer to testify regarding the marijuana odor to provide context for the investigation. Because the court did not abuse its discretion, we need not consider whether Goode was prejudiced by the admission of the evidence.

II. Sufficient evidence supports Goode's conviction of fifth-degree controlled-substance crime.

Goode argues that the circumstantial evidence presented at trial was insufficient to support his conviction because the state failed to prove that he knowingly possessed the cocaine recovered from between the passenger seat and the door of the car he was driving and co-owned.

When reviewing the sufficiency of the evidence, we undertake “a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, was sufficient” to support the conviction. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). “[W]e determine whether the legitimate inferences drawn from the facts in the record would reasonably support the jury’s conclusion that the defendant was guilty beyond a reasonable doubt.” *State v. Pratt*, 813 N.W.2d 868, 874 (Minn. 2012). “We give due regard to the defendant’s presumption of innocence and the [s]tate’s burden of proof, and will uphold the verdict if the jury could reasonably have found the defendant guilty.” *Id.*

To support a conviction of fifth-degree controlled-substance crime, the state was required to prove that Goode unlawfully possessed one or more mixtures of cocaine. Minn. Stat. § 152.025, subd. 2(a)(1) (2014). “[T]he state must prove that [the] defendant consciously possessed . . . the substance and that [the] defendant had actual knowledge of the nature of the substance.” *State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (1975).

When, as here, a controlled substance is not found on the defendant's person, the state must prove the defendant constructively possessed it by showing (1) that the controlled substance was in a place under the defendant's exclusive control or (2) that there is a strong probability that the defendant was, at the time of discovery, consciously exercising dominion and control over the substance. *Id.* at 105, 226 N.W.2d at 611. In the case of a controlled substance found in a car, if the driver does not have exclusive possession of the car, it cannot be automatically inferred that controlled substances found in the car belonged to the driver. *State v. Sam*, 859 N.W.2d 825, 834 (Minn. App. 2015).

Knowing possession is typically proved through circumstantial evidence. *State v. Ali*, 775 N.W.2d 914, 919 (Minn. App. 2009), *review denied* (Minn. Feb. 16, 2010). We apply a two-step analysis when reviewing a conviction supported by circumstantial evidence. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). As a first step, we identify the circumstances proved, which are the circumstances supporting the jury's verdict. *Id.* at 598-99. "The second step is to determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis except that of guilt." *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014) (quotations omitted). If the reasonable inferences are consistent with guilt, a defendant must point to evidence in the record that is consistent with a rational hypothesis other than guilt. *State v. Taylor*, 650 N.W.2d 190, 206 (Minn. 2002).

The circumstances proved here include the following: (1) the car Goode was driving on November 3, 2014, did not have a functioning license-plate light; (2) the officer activated his lights to initiate a traffic stop; (3) Goode quickly signaled to move to the side

of the road but took longer than necessary to pull over; (4) as the officer approached the car, Goode made a short, quick movement towards the passenger side of the car; (4) although there were several items on the ledge under the rear window of the car, Goode's movement was visible through the rear window of the car; (5) based on the officer's experience, the movement he observed was too quick to be consistent with retrieving documents; (6) Goode was the sole occupant of the car and was one of two registered owners; (7) a single packaged rock of cocaine was found on the far side of the passenger seat; (8) Goode is about six feet tall and the cocaine was found approximately three feet away from him; and (9) the cocaine was located on the floor between the passenger seat and the passenger door, almost but not quite entirely under the seat.

We next consider whether these circumstances are consistent with Goode's guilt and inconsistent with any rational hypothesis except his guilt. *Silvernail*, 831 N.W.2d at 599. "Circumstantial evidence must form a complete chain that, in view of the evidence as a whole, leads so directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *Taylor*, 650 N.W.2d at 206.

Goode acknowledges that the circumstances proved lead to a reasonable inference that he knowingly possessed and discarded the cocaine. But he argues that the circumstances proved are also consistent with an alternative hypothesis—namely, that someone else left the cocaine in the car at some point prior to his arrest. Goode suggests that this could have been a co-owner, passenger, or previous owner. He also argues that the movements the officer observed could have been related to some other non-drug-related

purpose, even if the jury agreed that they were inconsistent with reaching for a license or insurance information.

In general, this court will not overturn a conviction based on circumstantial evidence “on the basis of mere conjecture.” *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) (quoting *State v. Lahue*, 585 N.W.2d 785, 789 (Minn. 1998)). Goode’s speculation that someone else could have left the cocaine in his car does not offer a reasonable alternative inference based on the circumstances proved. There is no evidence in the record that anyone else was in Goode’s car prior to his arrest, or that another person had cocaine and left it in the car without Goode’s knowledge.

On this record, we conclude that the reasonable inferences drawn from the circumstances proved are only consistent with Goode’s guilt. There is no evidence that Goode had a license or insurance information stored in the passenger side of the car, nor evidence of anything else that he might reasonably have been reaching for to alternatively explain his movements. Even disregarding the officer’s testimony that Goode took longer than necessary to pull over and that his movements were inconsistent with retrieving documents, the location of the cocaine, wedged almost completely but not quite entirely under the passenger seat, is reasonably consistent only with the inference that Goode placed it there in a hurry, rather than someone else purposefully hiding it, or the cocaine accidentally falling out of another passenger’s pocket or bag. Goode’s tall height and the distance that the cocaine was found away from him also support this inference, as do his quick, short movements to the right side of the car as the officer approached. Because Goode’s arguments rely solely on conjecture and there is no evidence in the record for a

reasonable jury to infer that someone else had been in the car prior to Goode's arrest, let alone that they left cocaine in there without his knowledge, the circumstantial evidence leads directly and exclusively to Goode's guilt.

Affirmed.