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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0043**

State of Minnesota,
Respondent,

vs.

Robert Darrell Boettcher,
Appellant.

**Filed January 16, 2018
Affirmed
Stauber, Judge***

Meeker County District Court
File No. 47-CR-16-189

Lori Swanson, Attorney General, Michael Everson, Assistant Attorney General, St. Paul, Minnesota; and

Brandi Schiefelbein, Meeker County Attorney, Litchfield, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sarah Hewitt, Special Assistant Public Defender, St. Paul, Minnesota; and

Liz Kramer, Special Assistant Public Defender, Aalok K. Sharma, Special Assistant Public Defender, Stinson Leonard Street LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Schellhas, Judge; and
Stauber, Judge.

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

UNPUBLISHED OPINION

STAUBER, Judge

Appellant argues that the district court erred by not suppressing evidence from an unlawful search and there is insufficient evidence to support his conviction of possession of a controlled substance. We affirm.

FACTS

In the early morning hours of March 9, 2016, appellant Robert Darrell Boettcher was driving a Ford Taurus when he was stopped by a trooper for speeding. The trooper smelled burnt marijuana and informed appellant that he was going to conduct a search. Appellant then consented to a search of the passenger area. Under the driver's seat, the trooper discovered a digital scale with a white powder residue. The trooper expanded the search to the trunk and discovered over 14 grams of methamphetamine.

Appellant was charged with second-degree possession of a controlled substance and driving after revocation. He moved to suppress the evidence, arguing that it was obtained after an unlawful search. The district court denied appellant's motion, concluding both that appellant had consented to the search and that the smell of marijuana provided probable cause for the search.

In August 2016, a court trial was held. The trooper testified that appellant was "moving from side to side" and "tapping on the brake lights" after being stopped. No one else was in the vehicle. The trooper smelled marijuana and observed multiple air fresheners in the vehicle. The trooper asked appellant to "step out of the vehicle for a vehicle search." Appellant then told the trooper that he could search the front of the car. The trooper

discovered the scale with powder residue under the front seat, expanded his search to the trunk, and discovered the methamphetamine. According to the trooper, appellant became “very nervous” when the trunk was opened.

Appellant testified that the Taurus was his girlfriend K.N.’s vehicle. It was purchased on March 7 from a private party through Craigslist. The vehicle was then taken to the residence of T.H., the wife of appellant’s cousin, so that a stereo could be installed by an acquaintance named “John.” After the car was picked up from T.H.’s residence, it broke down. Appellant was able to fix it, and he was pulled over sometime thereafter.

On cross-examination, appellant admitted that he had passed a note to K.N. while in jail. The note referred to K.N. getting charged \$250 by T.H. because appellant got “popped with 15.6 grams” of methamphetamine, and that would be “\$450” that appellant owed T.H. “that should have been chalked up to the game.”

A search of appellant’s phone was conducted, and an investigator testified about its contents. On March 1, 2016, appellant texted about possessing a Ford Taurus. In a message from March 4, 2016, appellant stated that “I left my dope up there” and “Can u please bring it down here with my scale.” In messages from March 6 and 8 of 2016, appellant discussed “dope” and someone coming “to buy a half zip.” The investigator testified that a half zip is half an ounce, which is about 14 grams.

T.H. testified that there were a few occasions when appellant and K.N. came to her house in the Ford Taurus. T.H. testified that, on March 7 or 8, appellant had a stereo put into the car, and the work was done by John. According to T.H., John left a bag in the car, so T.H. texted K.N. Evidence was admitted without objection indicating that T.H. sent

K.N. a text message at 11:57 p.m. on March 8, 2016, stating “You guys need to come back here!!! John forgot all his sh-t in the trunk!!!” However, the district court ultimately concluded that the text lacked reliability and constituted inadmissible hearsay.

Following the court trial, appellant was convicted of second-degree possession of a controlled substance and driving after revocation. Appellant was sentenced to 111 months in prison for the second-degree possession conviction. This appeal followed.

D E C I S I O N

I.

Appellant first argues that the district court erred by not suppressing the controlled-substance evidence. He contends that the trooper lacked probable cause to search the vehicle and that his consent was coerced. Because the issue of probable cause is determinative, we address only that issue. In reviewing the district court’s order denying appellant’s motion to suppress, we review the findings of fact for clear error and the legal conclusions de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

The United States and Minnesota Constitutions prohibit unreasonable searches. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search is generally unreasonable unless it falls under one of the recognized exceptions to the warrant requirement. *Ortega*, 770 N.W.2d at 149. “When probable cause exists to believe that a vehicle contains contraband, the Fourth Amendment permits the police to search the vehicle without a warrant.” *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). “This type of search is allowed under the automobile exception to the warrant requirement.” *Id.*

The smell of marijuana can provide probable cause for a vehicle search. *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. App. 1984) (“It has long been held that the detection of odors alone, which trained officers can identify as being illicit, constitutes probable cause to search automobiles for further evidence of crime.”). The district court found that the trooper detected a “strong odor of burnt marijuana,” a scent that he was able to identify based on his prior training and experience.

Appellant asserts that the trooper’s testimony is not credible. The credibility of a witness is a determination for the factfinder. *DeMars v. State*, 352 N.W.2d 13, 16 (Minn. 1984). This court will not disturb a district court’s credibility determinations unless there is a showing of clear error. *State v. Eakins*, 720 N.W.2d 597, 604 (Minn. App. 2006). Although no marijuana was recovered, appellant may have smoked marijuana and either discarded his paraphernalia or ingested his marijuana cigarette. As appellant himself testified, if he wanted to hide any contraband, he would hide it in the front of his pants because “it’s easier to consume.” The district court did not err in finding that the trooper smelled burnt marijuana.

There was probable cause to search the passenger compartment for marijuana. This search led to discovery, under the front seat, of the scale with a white powder residue. “[T]he scope of a warrantless search of an automobile is defined by the object of the search and the places in which there is probable cause to believe that it may be found.” *State v. Schinzing*, 342 N.W.2d 105, 109 (Minn. 1983) (quotation omitted). After discovering the scale, the trooper had probable cause to search the trunk for controlled substances. The district court therefore did not err by refusing to suppress the evidence because the search

was conducted under a valid exception to the warrant requirement—the automobile exception.

II.

Appellant next argues that the evidence was insufficient to support his conviction of possession of a controlled substance. In considering his claim, we conduct “a painstaking analysis of the record to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the [factfinder] to reach the verdict.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). We assume that the factfinder “believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). The verdict will not be disturbed if the factfinder, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that appellant is guilty of the charged offense. *Bernhardt v. State*, 684 N.W.2d 465, 476-77 (Minn. 2004).

Appellant was convicted of second-degree possession of a controlled substance, a violation of Minn. Stat. § 152.022, subd. 2(a)(1) (2014), which criminalizes possession of “one or more mixtures of a total weight of six grams or more containing cocaine, heroin, or methamphetamine.” Possession of contraband “may be proved through actual or constructive possession.” *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). There is no evidence that appellant had actual possession of the methamphetamine, so we must look to constructive possession. Establishing constructive possession requires either “proof that the item was in a place under the defendant’s exclusive control to which other people did not normally have access” or “proof of a strong probability that the defendant was at the

time consciously exercising dominion and control over it, even if the item was in a place to which others had access.” *State v. Barker*, 888 N.W.2d 348, 353-54 (Minn. App. 2016) (quotations omitted). Appellant must have knowingly possessed the methamphetamine. *See State v. Florine*, 303 Minn. 103, 104, 226 N.W.2d 609, 610 (Minn. 1975) (stating that there must be conscious possession of a controlled substance and actual knowledge of its nature).

Under the circumstantial-evidence standard, which is applicable in this instance, we review the evidence using a two-step analysis: first, we identify the circumstances proved, deferring “to the jury’s acceptance of the proof of these circumstances and rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate.” *State v. Robertson*, 884 N.W.2d 864, 871 (Minn. 2016) (quotations omitted). Second, we “independently examine the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt.” *Id.* (quotations omitted). “In order to sustain a conviction based on circumstantial evidence, the reasonable inferences that can be drawn from the circumstances proved as a whole must be consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* (quotation omitted). We must view not only the circumstances proved as a whole, but also must consider the inferences drawn therefrom as a whole. *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017).

The circumstances proved are that appellant was driving, and no one else was in the car. *See* Minn. Stat. § 152.028, subd. 2 (2014) (permitting an inference of a driver’s knowing possession of a controlled substance found in an automobile). A scale with white

powder was discovered under the front seat. Around a half ounce of methamphetamine was discovered in the trunk. Appellant became nervous when the trooper opened the trunk. Appellant previously sent text messages referring to dope and a scale, and he sent other messages suggesting that he owned a Ford Taurus. Appellant wrote a note to K.N. while in jail stating that K.N. should not pay \$250 for a debt that appellant owed because of the confiscated methamphetamine. These circumstances are consistent with appellant's guilt.

Appellant argues that the circumstances allow for the reasonable inference that a third party placed the methamphetamine in the trunk. In determining the circumstances proved, we defer to the factfinder's "rejection of evidence in the record that conflicted with the circumstances proved by the [s]tate." *Robertson*, 884 N.W.2d at 871 (quotations omitted). The district court expressly rejected appellant's alternative-perpetrator theory, a conclusion based on numerous credibility determinations. The circumstances proved do not support a rational alternative hypothesis. Moreover, speculation is not enough to support a proposed alternative hypothesis. *State v. Al-Naseer*, 788 N.W.2d 469, 480 (Minn. 2010).

The evidence in this case constitutes proof of a strong probability that appellant was consciously exercising dominion and control over the methamphetamine found in the trunk. *Barker*, 888 N.W.2d at 353-54. Viewing the evidence in the light most favorable to the conviction, the district court could have reasonably concluded, beyond a reasonable doubt, that appellant was guilty of the charged offense.

Affirmed.