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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1624**

Anthony James Olgeirson, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed June 18, 2018
Affirmed
Schellhas, Judge**

Clay County District Court
File No. 14-CR-14-2791

Cathryn Middlebrook, Chief Appellate Public Defender, Charles Clippert, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Brian J. Melton, Clay County Attorney, Moorhead, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Schellhas, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the denial of his postconviction petition, arguing that his convictions of misdemeanor possession of stolen property and felony storing

methamphetamine paraphernalia in the presence of a child must be reversed because the state failed to prove his guilt beyond a reasonable doubt. We affirm.

FACTS

Law enforcement suspected J.R. of being involved in the distribution of methamphetamine in the Fargo-Moorhead area. As part of an investigation of J.R.'s involvement, Moorhead Police Department Detective Torgerson obtained a district court order to put a GPS tracking device on J.R.'s vehicle. On April 4, 2014, Detective Torgerson installed the GPS device on J.R.'s vehicle. But later, Detective Torgerson was unable to retrieve information from the device. Detective Torgerson therefore believed that the GPS device was malfunctioning, had been powered off, or something else had happened to the device.

On April 8, 2014, Detective Torgerson attempted to retrieve the GPS device from J.R.'s vehicle. When Detective Torgerson was unable to locate the device on J.R.'s vehicle or elsewhere in the neighborhood, he knocked on the door of J.R.'s residence to ask J.R. if he knew anything related to the GPS device. J.R. lived with appellant Anthony Olgeirson, whose wife answered the door and summoned J.R. to speak with Detective Torgerson. When J.R. appeared at the door, Detective Torgerson arrested him on an outstanding warrant and transported him to jail. Once there, Detective Torgerson asked J.R. about the missing GPS device, but J.R. denied having any knowledge of it. Detective Torgerson returned to the residence, spoke with Olgeirson about the GPS device, and Olgeirson told him that he would contact the detective if he learned anything about it.

On April 11, 2014, at 10:00 a.m., Detective Torgerson returned to Olgeirson's residence to execute a search warrant for the residence. Olgeirson, his wife, and their eight-year-old autistic daughter were at the residence, and Detective Torgerson informed Olgeirson that he was attempting to locate the missing GPS device. Olgeirson told Detective Torgerson that the GPS device was inside a backpack in a main-floor bedroom. Detective Torgerson retrieved the backpack and found the GPS device located in it, along with two empty clear baggies, a digital scale, and hypodermic syringes. The clear baggies contained a crystalline residue that field-tested for methamphetamine.

Respondent State of Minnesota charged Olgeirson with felony possession of stolen property and felony storing methamphetamine paraphernalia in the presence of a child. Following a bench trial, the district court found Olgeirson guilty of felony storing methamphetamine paraphernalia in the presence of a child, but because the state proved that the value of the GPS device was only \$498, the court concluded that it could find Olgeirson guilty of only a misdemeanor, not a felony, for possession of stolen property. The court sentenced Olgeirson to 23 months stayed for storing methamphetamine paraphernalia in the presence of a child and 90 days stayed for the misdemeanor conviction. Olgeirson did not file a direct appeal. In June 2017, he petitioned for postconviction relief, which the district court denied.

This appeal follows.

D E C I S I O N

An appellate court reviews a denial of a petition for postconviction relief for an abuse of discretion. *Taylor, II v. State*, 910 N.W.2d 35, 37–38 (Minn. 2018). “[An appellate

court] will not reverse the postconviction court unless it exercised its discretion in an arbitrary or capricious manner, based its ruling on an erroneous view of the law, or made clearly erroneous factual findings.” *Id.* at 38 (quotation omitted).

Olgeirson argues that his convictions of misdemeanor possession of stolen property and felony storing methamphetamine in the presence of a child are not supported by sufficient evidence, and that the postconviction court therefore erred by denying him relief. But Olgeirson did not order a transcript of the proceedings and does not challenge the evidence that supports the district court’s findings. Olgeirson instead contends that the evidence, as found by the district court, was insufficient to satisfy the elements of the crimes of which the court convicted him.

An appellate court examining a sufficiency-of-the-evidence challenge determines whether the evidence, viewed in a light most favorable to the verdict, was sufficient to allow the fact-finder to reach a guilty verdict. *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017). Whether particular conduct is encompassed by a criminal statute is an issue of statutory construction that this court reviews de novo. *State v. Tomlin*, 622 N.W.2d 546, 548 (Minn. 2001).

Misdemeanor possession of stolen property

The district court convicted Olgeirson of misdemeanor possession of stolen property under Minn. Stat. § 609.53, subd. 1 (2012). The elements of this offense are: (1) the defendant received, possessed, transferred, bought or concealed the property; (2) the property had been stolen; and (3) the defendant knew or had reason to know the property had been stolen or obtained by robbery. *Id.* Olgeirson argues that the “facts as found by the

district court do not establish that [he] possessed stolen property” because when “police voluntarily placed the GPS on [J.R.’s] car, . . . they gave up their right to possess the GPS tracker.” We disagree.

“Stolen property” means “[g]oods acquired by larceny, robbery, or theft.” *Black’s Law Dictionary* 1645 (10th ed. 2014). A person acquires property by theft if, among other things, the person “finds lost property and, knowing or having reasonable means of ascertaining the true owner, appropriates it to the finder’s own use or to that of another not entitled thereto without first having made reasonable effort to find the owner and offer and surrender the property to the owner.” Minn. Stat. § 609.52, subd. 2(6) (2012).

Here, the district court found that Olgeirson told police on April 11, 2014, that the GPS device was inside a backpack in a bedroom of his house, and a search of that backpack proved the accuracy of his statement. This finding establishes the first element, that Olgeirson possessed the property. As to the second element, the district court found that police obtained a court order to place a GPS device on J.R.’s vehicle, that police actually placed the device on J.R.’s vehicle, and that Detective Torgerson “only intended to install the device temporarily and did not intend to leave the device on the vehicle or give it away.” The district court further found that Detective Torgerson later attempted to retrieve the GPS device, and discovered that the device had been removed from J.R.’s vehicle. The district court also found that, according to Detective Torgerson, “GPS devices do not just fall off, but remain affixed to the vehicle through the use of magnets.”

The district court also found that after Detective Torgerson discovered that the device had been removed from J.R.’s vehicle, he questioned both J.R. and Olgeirson about

the device's whereabouts, and both denied having "any knowledge" of the GPS. This evidence establishes the third element, that Olgeirson knew or had reason to know the property had been stolen or obtained by robbery. *See* Minn. Stat. § 609.02, subd. 9(2) (2012) (stating that "[k]now" requires only that the actor believes that the specified fact exists"). Olgeirson argues that the record contains no evidence that explains how the GPS device "ended up in [his] possession," but his argument is unpersuasive. "It is well established that unexplained possession of stolen property within a reasonable time after a burglary or theft will in and of itself be sufficient to sustain a conviction." *State v. Bagley*, 286 Minn. 180, 188, 175 N.W.2d 448, 454 (1970).

The evidence supports the district court's findings, and the findings establish all three elements of Minn. Stat. § 609.53, subd. 1. The district court's findings, when viewed in the light most favorable to the verdict, are sufficient to establish that the GPS device was stolen. The evidence therefore was sufficient to sustain Olgeirson's conviction of possession of stolen property.

Felony storing methamphetamine paraphernalia in the presence of a child

Olgeirson argues that the evidence was insufficient to sustain his conviction of storing methamphetamine paraphernalia in the presence of a child in violation of Minn. Stat. § 152.137, subd. 2(a)(4) (2012). To sustain a conviction under this statute, the state needed to prove beyond a reasonable doubt that Olgeirson (1) knowingly stored any methamphetamine paraphernalia (2) in the presence of a child. *See id.* (listing elements of crime). Methamphetamine paraphernalia is defined as "all equipment, products, and materials of any kind that are used, intended for use, or designed for use in manufacturing,

injecting, ingesting, inhaling, or otherwise introducing methamphetamine into the human body.” *Id.*, subd. 1(d) (2012).

Olgeirson argues that the evidence was insufficient because the baggies discovered in his backpack “do not meet the definition of methamphetamine paraphernalia,” and the substance in the baggies was “never tested to determine if [it] was really methamphetamine.” But in addition to the baggies, Detective Torgerson discovered syringes in Olgeirson’s backpack. Syringes satisfy the definition of methamphetamine paraphernalia if they are used or intended to be used for injecting methamphetamine into the human body. *See* Minn. Stat. § 152.137, subd. 1(d) (defining methamphetamine paraphernalia as “equipment” that is intended for “injecting . . . methamphetamine into the human body”). Although the Minnesota Bureau of Criminal Apprehension did not test the substance in the baggies to confirm that it was methamphetamine, such a test was unnecessary because Olgeirson was not charged with possession of methamphetamine. Rather, the evidence must establish that Olgeirson used or intended to use the syringes to inject methamphetamine into a person’s body.

The district court found that the baggies contained a crystalline residue that field tested positive for methamphetamine, Olgeirson admitted that he is a methamphetamine addict, and the court found that J.R., a suspected methamphetamine dealer, resided with Olgeirson. Viewing the evidence in a light most favorable to the verdict, the district court’s findings establish, beyond any reasonable doubt, that Olgeirson was in possession of methamphetamine paraphernalia.

The district court also found that Detective Torgerson located Olgeirson's backpack in a main-floor bedroom, and that Olgeirson's eight-year-old daughter was present on the main floor when Detective Torgerson located the backpack. The district court's findings establish the second element of section 152.137, subdivision 2(a)(4). The court therefore properly concluded that the evidence was sufficient to convict Olgeirson of storing methamphetamine paraphernalia in the presence of a child under Minn. Stat. § 152.137, subd. 2(a)(4).

Affirmed.