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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1145**

State of Minnesota,
Respondent,

vs.

Christopher Paul Mattson,
Appellant.

**Filed May 13, 2019
Affirmed in part, reversed in part, and remanded
Cleary, Chief Judge**

Polk County District Court
File No. 60-CR-16-861

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Greg Widseth, Polk County Attorney, Scott A. Buhler, Assistant County Attorney,
Crookston, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Ross, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

CLEARY, Chief Judge

In this direct appeal from the judgment of conviction, appellant Christopher Paul Mattson challenges the sufficiency of the evidence supporting his conviction for fifth-degree possession of a controlled substance. Mattson also argues, for the first time on

appeal, that the condition of his pretrial release that subjected him to searches of his residence predicated upon reasonable suspicion is unconstitutional. In the alternative, he asserts that officers lacked reasonable, articulable suspicion to search his residence. Because the evidence was sufficient to prove that Mattson constructively possessed methamphetamine, we affirm in part. But because the district court erred in relying on evidence not in the record in determining that officers had a reasonable, articulable suspicion that Mattson violated a condition of his release, we reverse in part and remand.

FACTS

On May 17, 2016, the Crookston Police Department received a report of “concerning activity” at Mattson’s residence. Mattson’s neighbor informed the police that she observed two women approach Mattson’s house and knock on the doors and windows for about 15 minutes. Mattson then arrived home on a bicycle and briefly went inside with one of the women before they left. Crookston police relayed this information to the drug task force.

Upon receiving this information, the drug task force developed a plan to conduct surveillance on Mattson’s residence. The officers reviewed Mattson’s conditions of pretrial release in two pending cases for fifth-degree controlled substance crimes, including the condition that he is subject to “~~random~~ searches of his/her person, possessions, residence(s), and/or motor vehicle(s) by a peace officer or probation officer, with ~~or~~ ~~without probable cause~~ *reasonable suspicion*, to ensure compliance with these conditions

of release.”¹ The officers received reports from other drug-task-force officers that Mattson had approached a house in an area frequented by two people with histories of drug use, reached into the mailbox, took something, and left. Another officer also informed the surveillance team that Mattson had been linked to a check-forgery case.

While drug-task-force officers watched Mattson’s residence the next day, an officer observed Mattson smoking on the front porch. The officers decided to approach the house to speak with Mattson. After Mattson went back inside the house, Officer Nathan Nelson knocked on the door for a few minutes and testified that he could hear someone inside. After several minutes lapsed, Officer Nelson drew his weapon, hiding it behind the back of his leg. Officer Aessio Schrage testified that because “[n]o one was answering, we hear movement, we’re investigating meth, and people who are using meth can be unpredictable,” he ran back to his vehicle to get his bulletproof vest.

Mattson came to the front door and opened the curtains to speak with the officers through a window. Officer Nelson told Mattson that he wanted to visit with him, and that the drug task force was going to search his residence. Mattson refused to open the door. Officer Schrage testified that Mattson became increasingly agitated throughout the encounter and screamed at the officers for trespassing. After moving in front of Officer Nelson, Officer Schrage drew his gun, pointed it at Mattson, and instructed him to open the door and show his hands. Mattson moved to a picture window and ripped open the

¹ The issuing judge who set Mattson’s conditions of release removed the stricken language and replaced it with the italicized language.

curtains so that the officers could see that he did not have any weapons. Officer Schrage holstered his weapon.

Following a disagreement about his conditions of release, Mattson permitted Officer Schrage to enter the house. Officers conducted a search of Mattson's residence and discovered a pink straw containing a white, powdery residue, a broken pen tube with white, powdery residue, a piece of tinfoil with burnt, black residue, and two yellow pills in the garbage pile in his garage. The residue on the pink straw tested positive for methamphetamine; the residue on the broken pen tube tested inconclusive for the presence of methamphetamine. Mattson consented to a urine test, and it was positive for methamphetamine, amphetamine, and THC.

The state charged Mattson with fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2014). Mattson moved to suppress the evidence obtained from the warrantless search of his residence, contending that the officers lacked reasonable suspicion to believe that he violated a condition of his release. The district court denied the motion, finding that the officers had reasonable suspicion that Mattson violated the term of his conditional release that prohibited him from the use or possession of controlled substances.

At trial, the parties stipulated that law enforcement had a valid basis to search Mattson's residence. A jury found Mattson guilty of fifth-degree possession of methamphetamine, and the district court sentenced him to a 15-month term of imprisonment, staying execution of that sentence for 5 years. This appeal follows.

DECISION

I. The evidence was sufficient to support Mattson's conviction for fifth-degree possession of a controlled substance.

Mattson argues that the evidence produced at trial was insufficient to prove that he committed fifth-degree possession of a controlled substance. When reviewing the sufficiency of the evidence, this court conducts “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 verdict. *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012) (quotation omitted). We assume that “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). “[W]e will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense.” *Ortega*, 813 N.W.2d at 100.

The fifth-degree possession statute under which Mattson was tried required the state to prove that he unlawfully possessed a “controlled substance classified in Schedule I, II, III, or IV, except a small amount of marijuana.” Minn. Stat. § 152.025, subd. 2(a)(1). Possession may be proved through actual or constructive possession. *State v. Salyers*, 858 N.W.2d 156, 159 (Minn. 2015). “Actual possession, also referred to as physical possession, involves ‘direct physical control.’” *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016) (quoting *Jacobson v. Aetna Cas. & Sur. Co.*, 46 N.W.2d 868, 871

(Minn. 1951)). The purpose of the constructive-possession doctrine is to establish possession in

those cases where the state cannot prove actual or physical possession at the time of arrest but where the inference is strong that the defendant at one time physically possessed the [item] and did not abandon his possessory interest in the [item] but rather continued to exercise dominion and control over it up to the time of the arrest.

State v. Florine, 226 N.W.2d 609, 610 (Minn. 1975).

Mattson contends that the evidence was insufficient to prove that he constructively possessed the methamphetamine found in his garage because two receipts belonging to K.B. were found near the methamphetamine and drug paraphernalia. To establish constructive possession, the state must show either (1) the prohibited item was found “in a place under [the] defendant’s exclusive control to which other people did not normally have access” or (2) if police found the prohibited item “in a place to which others had access, there is a strong probability (inferable from other evidence) that [the] defendant was at the time consciously exercising dominion and control over it.” *Id.* at 611.

When the conviction is based on an inference, the circumstantial-evidence standard applies, and this court conducts a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017). First, the court identifies the circumstances proved at trial, disregarding evidence that is not consistent with the jury’s verdict. *Id.* Second, the court considers the reasonable inferences that can be drawn from the circumstances proved. *Id.* The court gives no deference to the jury’s determination of guilt at this second step. *Id.* The evidence is sufficient if the circumstances proved, viewed as a whole, are “consistent with a

reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* But speculation alone is not enough to support a hypothesis consistent with innocence. *State v. Schnagl*, 907 N.W.2d 188, 197 (Minn. App. 2017), *review denied* (Minn. Feb. 28, 2018).

Viewing the evidence pertaining to possession in the light most favorable to the conviction, the circumstances proved are as follows: (1) Mattson occupied the house searched by drug-task-force officers; (2) Mattson was alone in the house during the search; (3) no other person had recently lived or stayed with Mattson in the house; (4) drug-task-force officers discovered a pink straw and other items of drug paraphernalia in a trash heap in Mattson’s garage; (5) the residue on the pink straw tested positive for a trace amount of methamphetamine; and (6) Mattson consented to a urine test, which tested positive for methamphetamine.

The second step of our analysis is to determine whether the circumstances proved are “consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Harris*, 895 N.W.2d at 601. Mattson argues that it is “reasonable to conclude on these facts that [K.B.] came to [Mattson’s] home and disposed of her refuse in [Mattson’s] substantial trash heap without [Mattson] ever exercising dominion over any of it.” But the circumstances proved preclude any reasonable inference that K.B. was recently in Mattson’s home and disposed of her methamphetamine and drug paraphernalia, alongside her two receipts, in Mattson’s garbage pile. First, drug-task-force officers found methamphetamine and drug paraphernalia in Mattson’s garbage area inside his garage. Second, although officers found K.B.’s receipts near the items of

drug paraphernalia, the officers testified that no one else was in the residence when they conducted surveillance and executed the search. Third, Mattson informed the officers that K.B. was a “friend of a friend,” and that no one else had been living or staying with him recently. Nothing in the record supports Mattson’s claim that K.B. was previously in his home or that she ever possessed the methamphetamine in question.

In sum, the circumstances proved do not support a rational inference inconsistent with guilt. The evidence is sufficient to prove that Mattson exercised dominion and control over, and was therefore in constructive possession of, the methamphetamine found in the garbage pile inside his garage.

II. The district court erred in relying on evidence not in the record in determining that the officers had reasonable, articulable suspicion that Mattson violated a condition of his release.

Mattson argues that his conviction must be reversed because the district court erred in denying his motion to suppress evidence seized in the warrantless search of his residence. Mattson asserts that the district court’s finding that the officers had reasonable suspicion that he violated a condition of his release to justify the search is based on facts not in the record and is therefore clearly erroneous. Reasonable suspicion requires specific, articulable facts that, taken together with rational inferences from the facts, reasonably warrant the intrusion at issue. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). The showing required is not high, but it requires “more than an unarticulated hunch” and the ability of an officer “to point to something that objectively supports the suspicion at issue.” *Id.* (quotation omitted). In determining whether reasonable suspicion exists, we weigh the totality of the circumstances, which may include otherwise innocent factors. *State v.*

Martinson, 581 N.W.2d 846, 852 (Minn. 1998). “When reviewing a district court’s pretrial order on a motion to suppress evidence, we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted).

Here, the district court considered motions in Mattson’s two other pending charges for fifth-degree controlled substance crimes before hearing testimony on his suppression motion in this case. In determining that the officers had reasonable, articulable suspicion that Mattson violated a condition of his release justifying the warrantless search, the district court identified four facts to support its determination: (1) the officers knew that a neighbor reported short-term traffic at Mattson’s residence; (2) the officers knew that Mattson had been seen taking something out of a mailbox “at a location frequented by others involved with controlled substances”; (3) the officers knew that Mattson was allegedly in constructive possession of controlled-substance paraphernalia and that he tested positive for methamphetamine; and (4) the officers knew that two weeks before this incident, Mattson allegedly violated his conditions of release when he purchased, tested positive for, and was capable of selling methamphetamine. The district court found that none of these facts alone amounted to reasonable suspicion. But taken together, the district court found that these facts established reasonable, articulable suspicion that Mattson violated the condition of his release that prohibited him from the use or possession of controlled substances.

Mattson asserts that the latter two facts are not in the record, and the former two facts, taken together, do not support a finding of reasonable suspicion. A suppression

ruling must be made “[u]pon the record of the evidence elicited” at the suppression hearing. *State ex rel. Rasmussen v. Tahash*, 141 N.W.2d 3, 13 (Minn. 1965). The only mention of Mattson’s two separate charges during this suppression hearing occurred when the state introduced his conditions of release into evidence. But the pre-printed-conditions-of-release forms admitted into evidence do not reveal that Mattson faced two separate charges for fifth-degree possession of a controlled substance, only that he was subject to certain conditions of release. Additionally, none of the officers testified about their knowledge of Mattson’s other charges. Nothing in the record supports the district court’s findings that the officers knew that Mattson constructively possessed controlled substance paraphernalia and tested positive for methamphetamine, or that he violated conditions of his release for purchasing and using methamphetamine. These findings are clearly erroneous.

Because the district court erred in relying on evidence not in the record, we remand for the district court to consider—“[u]pon the record of the evidence elicited” at the suppression hearing—whether officers had a reasonable, articulable suspicion that Mattson violated a condition of his release. *Id.*

III. Mattson waived the argument that a warrantless search of a pretrial releasee’s residence violates the Fourth Amendment unless it is predicated on probable cause.

Lastly, Mattson argues that the condition of his pretrial release that subjected his residence to warrantless searches based on reasonable suspicion is unconstitutional. While Mattson admits that he “did not specifically challenge at the district court the level of suspicion required to support a warrantless search of his home under the conditions of his pretrial release,” he asks this court to consider the merits in the interests of justice.

Generally, we do not “consider issues raised for the first time on appeal, even when those issues are constitutional questions.” *State v. Williams*, 794 N.W.2d 867, 874 (Minn. 2011). “But we may choose to address constitutional and other issues that were not raised at the district court, when the interests of justice require their consideration and when doing so would not work an unfair surprise on a party.” *Id.* (citing *State v. Henderson*, 706 N.W.2d 758, 759 (Minn. 2005)); *see also* Minn. R. Crim. P. 28.02, subd. 11. The interests-of-justice requirement is satisfied if the appellant (a) is relying on a “rule of law that was unknown at the time of trial,” and (b) has identified a “fundamental unfairness to the defendant [that] needs to be addressed.” *State v. Borg*, 806 N.W.2d 535, 547 (Minn. 2011) (alteration in original) (quotation omitted). For example, in *Henderson*, the appellant argued that his sentence imposed under the career-offender statute violated his Sixth Amendment right to a jury trial under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004). 706 N.W.2d at 759. Because *Blakely* was decided after the appellant’s case was submitted to the court of appeals, the supreme court exercised its discretion to address the issue, reversed, and remanded for sentencing. *Id.* at 759-60, 763.

Here, unlike *Henderson*, there is no rule of law that was unknown at the time of trial. Instead, Mattson urges this court to address the level of suspicion necessary to justify a search of a pretrial releasee’s residence—an issue of first impression. In the context of a warrantless probation search, the Minnesota Supreme Court has determined that no more than reasonable suspicion is needed to search a probationer’s residence. *State v. Anderson*, 733 N.W.2d 128, 140 (Minn. 2007). Similarly, this court has determined that the search of a parolee’s home requires only reasonable suspicion. *State v. Heaton*, 812 N.W.2d 904,

909 (Minn. App. 2012), *review denied* (Minn. July 17, 2012). But the privacy and governmental interests, as outlined in the cases of a probationer and a parolee, may differ in the context of the search of a pretrial releasee. *See, e.g. Samson v. California*, 547 U.S. 843, 850, 126 S. Ct. 2193, 2198 (2006) (“On this continuum [of state-imposed punishments], parolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment.”). Because there is no “rule of law that was unknown at the time of trial,” the interests of justice do not require us to address the issue that Mattson failed to raise at the district court. *Borg*, 806 N.W.2d at 547.

Moreover, in Mattson’s letter brief filed in support of his motion to suppress at the district court, Mattson conceded that it was “undisputed that [Mattson] was subject to testing and searching if officers possessed reasonable suspicion to suspect he was violating a condition of his release.” He further stated that “the only two legitimate issues are whether officers had a reasonable suspicion to subject [Mattson] to a search of his residence and drug testing, and whether the manner in which they carried this search out was reasonable.” Not only did Mattson forfeit his Fourth Amendment argument by failing to raise it below, but he also affirmatively waived it by conceding at the district court that his residence was subject to search upon reasonable suspicion.² Nothing prevented Mattson

² In *State v. Beaulieu*, the supreme court distinguished waiver and forfeiture. 859 N.W.2d 275, 278 n.3 (Minn. 2015). The court explained that “waiver is the intentional relinquishment or abandonment of a known right,” while “forfeiture is the failure to make the timely assertion of a right.” *Id.* (quoting *United States v. Olano*, 507 U.S. 725, 733, 113 S. Ct. 1770, 1777 (1993) (involving question of whether presence of alternate jurors during jury deliberations was an error the appellate court was permitted to correct despite a failure to timely object)).

from asserting in the district court a claim that the search condition of his release violates the Fourth Amendment. And by framing the “two legitimate issues” presented in his suppression motion to the district court, Mattson failed to put the state or the district court on notice that he was challenging the constitutionality of the condition of his release. The state therefore was unable to present responsive arguments or evidence, a relevant factual record was not developed, and the district court did not issue any findings or conclusions on point. Mattson affirmatively waived his argument that the condition of his release that subjected his residence to searches upon reasonable suspicion violates the Fourth Amendment, and we decline to consider it. On remand, the record will not be opened to address Mattson’s claim that he failed to raise at the district court.

Affirmed in part, reversed in part, and remanded.