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SUPREME COURT

20030220

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

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NOV 14 2003

State of North Dakota,
Appellee,

v.

Monty Ray Sabinash,
Appellant.

)
) Supreme Court Nos.
) 20030219 & 20030220
)
) Stutsman County Nos.
) 02-K-1042 & 02-K-1043
)
)

STATE OF NORTH DAKOTA

APPELLEE'S BRIEF

The Appellant Appeals the Order Denying
Motion to Suppress Dated September 22, 2003
and the Judgment Dated July 22, 2003
by the Honorable John T. Paulson
District Court, Stutsman County
Southeast Judicial District

APPELLEE'S ATTORNEY
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ISSUES PRESENTED

1. Whether the factual determinations in the trial court's order denying the motion to suppress were against the manifest weight of the evidence.
2. Whether the facts as found by the trial court are sufficient to show that Detective Gross had probable cause to arrest defendant Monty Sabinash for giving false information to a law enforcement officer as a matter of law.

**STATEMENT OF THE CASE
AND
STATEMENT OF FACTS**

1. The State will join in defendant's Statement of the Case.
2. The State submits the following Statement of Facts:

Detective Leroy Gross received a complaint of vandalism on Second Street NW in Jamestown on October 14, 2002. The victim told Detective Gross that she had seen a man in a black Firebird automobile directly below her apartment window the night before, and had heard the car door opening and closing repeatedly during the night. The Firebird was still parked in the same location. (Appendix, pp. 15-18).

Detective Gross then went down to investigate the car. As he approached the vehicle, defendant Monty Sabinash and a companion, Daniel Hofmann, were approaching from the opposite (north) side of the street. (App., pp. 18-21). Gross recognized the defendant from previous incidents, but could not recall his name. (App., pp. 19-21). Detective Gross told both men he was a police officer and that he was investigating the vandalism complaint (App., pp. 56-57). Mr. Hofmann said he owned the car but had lost the keys the night before; he opened the driver's door and sat down, while Mr. Sabinash stood next to Gross beside the car. When asked if he had been in the car the night before, Hofmann hesitated and looked at Sabinash. Gross testified that Hofmann and Sabinash exchanged glances throughout his questioning, causing Gross to suspect that the men had knowledge of the vandalism and that the defendant might have been involved; the detective therefore asked Mr. Sabinash to identify himself. (App., pp. 20-22; pp. 94-98).

The defendant did not respond and began walking away. Detective Gross stepped in front of him and repeated the question. to which Mr. Sabinash replied “Jim Johnson.” Gross then stopped the defendant and asked for identification because, based on his previous encounters, he believed that “Jim Johnson” was a false name. An identification card in the defendant’s wallet confirmed that his name was Monty Sabinash; Detective Gross placed him under arrest for providing false information to a police officer in violation of Century Code section 12.1-11-03(1). (App., pp. 22-24; pp. 98-104). During the search incident to the arrest. Gross found a plastic baggie containing approximately 3/4 of a gram of methamphetamine and a glass pipe and plastic pen barrel which had been used to smoke “meth” (as confirmed by laboratory testing of the residue on the objects). (App., pp. 22-26; pp. 62-64; p. 104).

LAW AND ARGUMENT

I. The Trial Court's Factual Findings are Supported by Sufficient Competent Evidence

The disposition of a motion to suppress evidence is reviewed under this standard:

“[T]he trial court’s disposition of a motion to suppress will not be reversed if, after conflicts in the testimony are resolved in favor of affirmance, there is sufficient competent evidence fairly capable of supporting the trial court’s determination.” State v. Everson, 474 N.W.2d 695, 704 (N.D. 1991). “[B]ecause the trial court is in a superior position to judge credibility and weight, [the Supreme Court] shows great deference” to its resolution of factual questions, which are reversed “only if . . . contrary to the manifest weight of the evidence.” State v. Pickar, 453 N.W.2d 783, 785 (N.D. 1990).

By these standards, the factual findings in the trial judge’s order denying the defendant’s motion to suppress (App., p. 129) clearly must be upheld. Detective Gross testified he told both of the men that approached him he was a police officer investigating a vandalism complaint: that witnesses said there was unusual activity involving the black Firebird the previous night; that defendant Sabinash and his friend exchanged glances that led Gross to suspect they had knowledge of the vandalism: that he (Gross) had seen the defendant before and believed the name given by Mr. Sabinash (“Jim Johnson”) was false. Detective Gross was the only witness at both the preliminary hearing and the hearing on the motion to suppress, and was extensively cross-examined by two different defense attorneys; given its “superior position to judge [the] credibility and weight” of the detective’s testimony (Pickar, *supra*), the trial court’s decision to accept that testimony as truthful cannot be disturbed on this appeal.

II. The Totality of the Circumstances as Found by the Trial Court Constituted Probable Cause to Arrest the Defendant as a Matter of Law.

The only possible ground for reversal of the trial court is that its factual findings do not constitute probable cause to arrest as a matter of law. The appellant correctly states the standard for review of the legal conclusion that the totality of the circumstances known to Detective Gross constituted probable cause to arrest the defendant for violating Section 12.1-11-03. (See appellant's brief at pp. 6-7). At the preliminary hearing, the detective conceded he did not have reasonable suspicion or cause to detain Mr. Sabinash in the vandalism investigation, and thus the defendant was free to leave the scene without answering Gross's questions. (App., p. 39). Mr. Sabinash was not free, however, to give a false name, which may have impeded the ability to identify and/or find him if the detective's vandalism investigation subsequently pointed in the defendant's direction.

Gross's lengthy experience as a police officer and detective must be given weight in assessing his conclusion that he had probable cause to arrest Mr. Sabinash for giving false information to a law enforcement officer. City of Fargo v. Ovind, 1998 N.D. 69 ¶9, 575 N.W.2d 901 (N.D. 1998). The defendant clearly had given him false information ("Jim Johnson"), and there can be no reasonable doubt the defendant knew it was false. Gross thus had authority to arrest Sabinash for committing a misdemeanor in his presence if the totality of the circumstances "reasonably indicated" [N.D.C.C. §29-06-15(1)(a)] the false identification "may interfere" with the vandalism investigation. N.D.C.C. §12.1-11-03. Even though Gross had to make these decisions on a split-second basis (App., p. 59), it is clear in retrospect that a person of reasonable caution, knowing what the detective knew

and having the same experience and training, would agree with his conclusion that he had probable cause to arrest. City of Fargo v. Egeberg, 2000 N.D. 159, ¶8. 615 N.W.2d 542 (N.D. 2000). “It is not necessary that the officer possess knowledge of facts sufficient to establish guilt: all that is necessary is knowledge that would furnish . . . reasonable grounds for believing a violation has occurred.” State v. Hensel, 417 N.W.2d 849, 852 (N.D. 1988).

III. The Evidence at Issue was Properly Seized During the Course of a Lawful Search Incident to a Valid Arrest

The actual evidence at issue in this matter is 3/4 of a gram of methamphetamine and some “meth” paraphernalia found in the defendant’s clothing during the search incident to his arrest for giving false information to Detective Gross. The defendant has implicitly conceded both in the trial court and on this appeal that seizure of this evidence was lawful if the initial arrest was valid. Therefore, the State submits the evidence was properly held to be admissible and the judgment(s) entered pursuant to Mr. Sabinash’s conditional pleas of guilty to charges of possession of a controlled substance and possession of drug paraphernalia should be affirmed.

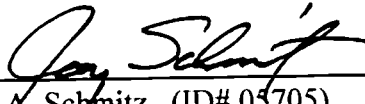
CONCLUSION

For the foregoing reasons, plaintiff and appellee State of North Dakota respectfully submits that (1) the trial court properly determined Detective Gross had probable cause to arrest defendant Monty Ray Sabinash for the offense of giving false information to a law enforcement officer; and (2) the motion to suppress was properly denied because the evidence at issue was discovered during the course of a valid search incident to

defendant's lawful arrest for giving false information to a law enforcement officer. The State therefore respectfully requests that the Court affirm the trial court's order denying the motion to suppress and judgment(s) of conviction in this matter.

RESPECTFULLY SUBMITTED this 14th day of November, 2003.

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