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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-980**

State of Minnesota,
Respondent,

vs.

Robert Lee Griffin,
Appellant.

**Filed May 23, 2011
Affirmed
Kalitowski, Judge**

Hennepin County District Court
File No. 27-CR-09-35618

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

Michael O. Freeman, Hennepin County Attorney, Paul R. Scoggin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Appellant Robert Lee Griffin challenges his conviction of possession of a firearm by an ineligible person, arguing that the district court erred by denying his motion to suppress the fruits of the search of his vehicle. We affirm.

DECISION

“When reviewing a pretrial order on a motion to suppress evidence, we may independently review the facts and determine whether, as a matter of law, the district court erred in suppressing or not suppressing the evidence.” *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004).

A shooting occurred outside a Brooklyn Center gas station at 12:46 a.m. on July 10, 2009. Shortly thereafter, police arrived at the gas station. A detective spoke with a gas-station employee who witnessed the shooting. The employee identified the shooter as a man who appeared on the gas station’s internal surveillance video approximately 20 or 30 minutes before the shooting. The video provided a clear image of the shooter’s face; according to the detective, the image quality was the best he had seen in 18 years as a peace officer.

The detective consulted with his colleagues and learned that on July 6, 2009, Brooklyn Center police had investigated a report of narcotics dealing at the gas station. As part of this investigation, police stopped a black Oldsmobile Alero (the Alero). Appellant was the driver.

The detective compared appellant's prior booking photograph to the surveillance image of the man whom the gas-station employee had identified as the shooter. The detective concluded that appellant and the shooter are the same person. He also concluded that the shooter's vehicle—visible in the gas station's external surveillance video—is the “same style vehicle” as the Alero.

Police located the Alero at a Brooklyn Center apartment building and placed it under surveillance. Several hours after the shooting, appellant entered the Alero and began to drive away. Police stopped the car and arrested appellant. They searched the car and found, among other things, a handgun.

Appellant was charged with one count of possession of a firearm by an ineligible person, two counts of drive-by shooting, and one count of second-degree assault. After a *Rasmussen* hearing, the district court denied appellant's motion to suppress the evidence found in the Alero. The parties agreed to submit the firearm charge to the district court for a trial on stipulated facts. The district court found appellant guilty and sentenced him to a prison term of 60 months. The state dismissed the remaining charges.

Warrantless arrest

Appellant argues that the police lacked probable cause to arrest him. We disagree.

A police officer may make a warrantless arrest when a felony has been committed and the officer has probable cause to believe that the suspect committed the felony. Minn. Stat. § 629.34, subd. 1(c)(3) (2008); *State v. Sorenson*, 270 Minn. 186, 196, 134 N.W.2d 115, 122 (1965). Probable cause exists when a “person of ordinary care and prudence, viewing the totality of circumstances objectively, would entertain an honest

and strong suspicion that a specific individual has committed a crime.” *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009) (emphasis omitted). Probable cause is “something more than a mere suspicion and something less than evidence that would sustain a conviction.” *State v. Evans*, 373 N.W.2d 836, 838 (Minn. App. 1985), *review denied* (Minn. Nov. 1, 1985).

On appeal from a district court’s finding that a police officer had probable cause to arrest, we review findings of fact for clear error, giving due weight to inferences drawn from those facts by the district court. *State v. Lee*, 585 N.W.2d 378, 382-83 (Minn. 1998). Findings of fact are clearly erroneous only if we are left with the “definite and firm conviction that a mistake has been made.” *State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006) (quotation omitted). We review whether probable cause existed de novo. *Lee*, 585 N.W.2d at 383.

Appellant challenges the district court’s finding that the Alero “matched” the shooter’s vehicle. But the detective testified that the shooter’s vehicle is the “same style” as the Alero. And no evidence contradicts the detective’s testimony. Thus, the finding is not clearly erroneous.

Appellant also challenges the detective’s conclusion that appellant was the shooter, arguing that the detective did not witness the shooting and no witness to the shooting was shown appellant’s booking photograph. But in determining whether a warrantless arrest was supported by probable cause, a court is permitted to consider the reasonable inferences that a police officer can make from the facts available to him or her. *State v. Vereb*, 643 N.W.2d 342, 348-49 (Minn. App. 2002) (concluding that

warrantless arrest was supported by probable cause where police could reasonably infer from the evidence that appellant was involved in criminal conspiracy); *see also State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998) (“Reasonable inferences are part of the process of establishing probable cause.”).

Here, a witness identified the shooter as a man who appeared on the gas station’s internal surveillance video. A detective compared a high-quality surveillance image of the identified shooter’s face with a booking photograph of appellant. And appellant was known by police to drive the “same style” vehicle as the one driven by the shooter. On this record, the detective reasonably inferred that there was a strong probability that appellant was the shooter. *See State v. Daby*, 359 N.W.2d 730, 733-34 (Minn. App. 1984) (concluding that arrest was supported by probable cause where, among other things, a composite drawing of the victim’s assailant “showed individual features remarkably similar to appellant’s”). Consequently, the district court did not err by concluding that probable cause supported the warrantless arrest of appellant.

Warrantless search

Appellant also argues that the search of the Alero was illegal. We disagree.

This court reviews the legality of a warrantless search de novo. *State v. Olson*, 634 N.W.2d 224, 228 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). Police may search a vehicle without a warrant if they have probable cause to believe that the vehicle has been used as an instrumentality of a crime. *See State v. DeWald*, 463 N.W.2d 741, 748 (Minn. 1990) (concluding that warrantless search of defendant’s vehicle was justified by probable cause where defendant’s vehicle matched the description of a car

seen leaving the scene of a murder and where other evidence linked appellant to the crime); *State v. Kohuth*, 287 Minn. 520, 521, 176 N.W.2d 872, 873 (1970) (concluding that search of vehicle was valid because vehicle, which victim identified as having been used in the robbery, was an instrumentality of the crime).

As discussed above, the police had probable cause to believe that appellant was the shooter. Police also knew that appellant had been driving the Alero four days before the shooting and that the shooter's vehicle is "the same style" as the Alero. From these circumstances, police could conclude that the shooter had driven the Alero to and from the gas station. Thus, the warrantless search was justified by the police having probable cause to believe that the Alero was an instrumentality of the crime, and we need not address whether the search was also valid as a search incident to appellant's arrest. *See State v. Kyles*, 257 N.W.2d 378, 380 (Minn. 1977) (declining to reach issue of whether search of vehicle was made incident to an arrest for burglary where police had probable cause to believe that the defendant had used the vehicle to flee the scene of the crime).

Affirmed.