NOT DESIGNATED FOR PUBLICATION

No. 126,350

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

BRIAN BECK,
Appellant.

MEMORANDUM OPINION

Appeal from Geary District Court; COURTNEY D. BOEHM, judge. Oral argument held on April 9, 2024. Opinion filed April 26, 2024. Affirmed.

Kasper Schirer, of Kansas Appellate Defender Office, for appellant.

Ethan C. Zipf-Sigler, assistant solicitor general, and *Kris W. Kobach*, attorney general, for appellee.

Before HILL, P.J., SCHROEDER, J., and MARY E. CHRISTOPHER, S.J.

PER CURIAM: After Brian Beck was stopped due to a license plate violation, a search of his car turned up almost a kilogram of methamphetamine. Following a jury trial, Beck was convicted of one count each of possession of methamphetamine with the intent to distribute, no drug tax stamp, and interference with law enforcement. Beck now appeals his convictions, arguing: (1) The district court erred in denying his motion to suppress evidence obtained in the search of his car; (2) the district court erred in instructing the jury that it could infer he intended to distribute the methamphetamine based upon the amount of methamphetamine in his possession; (3) the district court

abused its discretion in overruling his objection to an officer's testimony about the average dose of methamphetamine; and (4) cumulative error denied him a fair trial. While Beck is correct that the district court erred in instructing the jury that it could infer he intended to distribute methamphetamine based upon the amount of methamphetamine in his possession, that error was harmless. Beck's remaining claims lack persuasion and his convictions therefore are affirmed.

FACTUAL AND PROCEDURAL HISTORY

Traffic Stop and Car Search

The following facts underlying this appeal are undisputed. On March 2, 2021, Geary County Sheriff's Office Deputy Bradley Rose witnessed Beck driving eastbound on Interstate 70 in Geary County. As Beck drove past him, Deputy Rose observed that the license plate frame on Beck's car was obstructing his view of the license plate to the extent Deputy Rose could not read the name of the issuing state. Deputy Rose testified, "There was a thick portion on the top part of the license plate frame that covered the state name and also the writing on the bottom of the tag." Even when he pulled alongside of Beck's vehicle, Deputy Rose was unable to read the name of the state on the license plate. After stopping Beck, but before exiting his patrol car, Deputy Rose called in Beck's license plate as an Illinois plate "based on the design on the tag."

Deputy Rose determined that this violated K.S.A. 2020 Supp. 8-133(c) and therefore initiated a traffic stop. See K.S.A. 2020 Supp. 8-133(c) ("Every license plate shall at all times be securely fastened to the vehicle . . . in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible."). Deputy Rose did not observe Beck commit any other traffic violations. Deputy Rose then walked to the passenger side of Beck's car, explained the reason for the stop, and asked him for his driver's license and proof of insurance. While

speaking with Deputy Rose, Beck appeared extremely nervous, even after being informed that he was only going to receive a warning. Beck's hands were shaking heavily and he was breathing deeply. Deputy Rose asked Beck about his travels, and Beck responded that he was coming from Springfield, Illinois, on his way to Oak Grove, Illinois. Beck's answer aroused further suspicion because, of course, no reasonable path from Springfield, Illinois, to Oak Grove, Illinois, passes through any part of Kansas. Upon further questioning from Deputy Rose, Beck stated that he was actually on his way to Oak Grove, Missouri. Deputy Rose asked Beck if he knew where he was, and Beck responded that he was in Kansas. Deputy Rose explained to Beck that Kansas was not on the way to Oak Grove, Missouri, and Beck claimed he had gotten lost. Deputy Rose then requested Geary County Sheriff's Office Deputy Justin Stopper come to the scene with his canine partner, Nova, to perform a dog sniff on Beck's car.

Deputy Rose eventually asked Beck to come back to his patrol car where Deputy Rose would write him a warning for the obstructed license plate. Once Deputy Stopper arrived with Nova, Beck informed Deputy Rose that they were free to search his vehicle if they wanted to. Deputy Rose nevertheless wanted Deputy Stopper to run Nova around the car. Nova then alerted to the odor of drugs, so Deputy Rose informed Beck that they were going to search his car. Another deputy with the Geary County Sheriff's Office—Deputy James Garcia—also responded to the scene at this time to assist the other officers.

While the deputies were searching Beck's car, Beck ran to the driver's side door and attempted to start the car and drive away. Deputy Stopper held the gear shift in park and engaged the emergency brake so Beck could not drive away while Deputies Rose and Garcia tried to extract and restrain Beck. Over the next several minutes, Beck resisted the deputies' attempts to restrain him. At one point, Deputy Rose tased Beck, who then reached around and grabbed ahold of Deputy Garcia's firearm. Beck also grabbed ahold of Deputy Garcia's upholstery tool, a screwdriver-like tool that could potentially be used

as a weapon. The three deputies were eventually able to restrain Beck in handcuffs and resume their search of his car.

While searching the back seat of Beck's car, the deputies discovered two heat-sealed bags of methamphetamine wrapped in a white t-shirt inside of a satchel. The total weight of the two bags of methamphetamine was 0.9675 kilograms (or 2.13 pounds). The deputies did not discover any drug paraphernalia consistent with personal drug use in Beck's car. The officers also did not find drug paraphernalia commonly associated with distribution—e.g., scales, extra baggies, ledgers, etc.—in Beck's car. Deputy Rose also searched a phone recovered from Beck's car. Following Beck's arrest, Deputy Rose took three photographs of Beck's car.

Beck was subsequently charged with one count each of possession of methamphetamine with the intent to distribute, no drug tax stamp, and interference with law enforcement. At the preliminary hearing, the district court found probable cause to bind Beck over for arraignment on all three counts. Beck subsequently pleaded not guilty and proceeded to trial.

Motion to Suppress

Prior to trial, Beck filed a motion to suppress the evidence obtained during the traffic stop. Beck argued that Deputy Rose lacked the requisite reasonable suspicion to conduct the traffic stop which ultimately led to the discovery of the methamphetamine because, although his license plate was partially obstructed, according to Beck, this did not violate K.S.A. 2020 Supp. 8-133(c):

> "Here, Mr. Beck's license plate was in a place and position to be clearly visible. While the state name was obstructed by what appeared to be a standard car dealership bracket, the name was only partially obstructed, and Deputy Rose was able to recognize

> that the license plate was from Illinois. Deputy Rose exercised willful blindness in stopping Mr. Beck, as Deputy Rose was able to clearly read the license plate number and recognized the plate as an Illinois plate. The purpose of K.S.A. 8-133 was met, as Deputy Rose was able to read the plate number and identify the state. Therefore, Deputy Rose lacked reasonable suspicion to stop and detain Mr. Beck. Further, once Deputy Rose confirmed the plate was indeed from Illinois, he should have released Mr. Beck from further detention."

Therefore, Beck argued the stop "was invalid at its inception because Deputy Rose did not have reasonable suspicion to initiate or continue the stop once he realized the plate was from Illinois. Any evidence obtained subsequent to the invalid stop or illegal detention is 'fruit of the poisonous tree' and therefore must be suppressed." Beck also contended that K.S.A. 2020 Supp. 8-133(c) was unconstitutionally vague.

In its response, the State argued that Deputy Rose did, in fact, possess "reasonable and articulable suspicion that the defendant's rear license plate violated K.S.A. 8-133. Even if Lt. Rose was mistaken, it was reasonable under the facts." The State further contended that K.S.A. 2020 Supp. 8-133(c) was not unconstitutionally vague.

The district court subsequently conducted a hearing on Beck's motion to suppress at which Deputy Rose testified. At the hearing, Deputy Rose testified that he stopped Beck because he "could see that [Beck's car] had a license plate bracket on the back of the vehicle that obscured the state name, so I caught up with the vehicle. I could still see that the state name on the tag was obstructed and that's the reason why I stopped him." Deputy Rose further testified that "[t]here was a thick portion on the top part of the license plate frame that covered the state name and also the writing on the bottom of the tag." The State asked Deputy Rose, "And where you were positioned, both when you first saw it when you were stationary and then again when you pulled alongside of it, were you able to read the name of the state?" Deputy Rose answered, "No. I could see that

there were some lettering just underneath of it, but I couldn't read the state name." Deputy Rose later had this exchange with the State:

"Q. Okay. And when you make a traffic stop, sir, do you call in the vehicle tag?

"A. Yes, I did.

"Q. Did you do so in this case?

"A. Yes, I did.

"Q. And when you called it in were you able to identify the state?

"A. When I pulled up right behind it I could see, based on the design on the tag, that it was an Illinois tag, so I did call it in as an Illinois tag.

"Q. Okay. And when you pulled in behind it, approximately how far were you?

"A. From my seat to the tag, maybe 20 feet, I suppose.

"Q. Okay. And when you were following it and to the point where you pulled up along side of it, what was your—what was the estimated distance?

"A. I don't know, maybe 30 or 40 feet maybe when I was beside it and off and back a little bit, I guess.

"Q. Okay. And, sir, at any time prior to you making the traffic stop were you able to clearly read the name of the state?

"A. No, sir.

"Q. Okay. And even after you pulled up—I'm sorry, after you conducted the traffic stop you were only able to identify the state of the tag based on the design of it, not the actual name?

"A. Correct."

The three photographs of Beck's car taken by Deputy Rose—which depict the car's front and back license plates—were admitted into evidence at the hearing and available to this court in the record on appeal. After the photographs were viewed and admitted into evidence, Deputy Rose had another exchange with the State:

"Q. And, sir, would any of the pictures that you observed they all block the (inaudible) of the state?

"A. Yes, sir.

"Q. To the point where you couldn't read the state name clearly?

"A. Not clearly, no.

"Q. Okay. And the only way you were able to identify the state tag was based on the design of the tag, not by the name of it?

"A. Correct, when I pulled up behind it.

"Q. Okay. And when you pulled up behind it I believe your testimony was you were how many feet?

"A. When I came to a stop maybe 20 feet I think maybe, I believe, yes.

"Q. Okay. Needless to say that that 20 feet would not be a safe following distance at highway speeds?

"A. That's correct."

At the conclusion of the hearing, the district court took the matter under advisement. The district court subsequently issued a written order denying the motion, reasoning:

"The Kansas Court of Appeals has held that a license plate, or temporary tag, must be clearly legible by an officer at a safe following distance. Further, the Kansas Court of Appeals has held that the provisions of K.S.A. 8-133 apply to out of state registered vehicles.

"Lt. Rose testified that he could not read the name of the issuing state on the Defendant's license plate because of a plate bracket that was obstructing the state name at the top of the plate and any writing at the bottom of the plate. Therefore, it was not clearly legible. Law enforcement had reasonable and articulable suspicion to conduct the traffic stop.

"The Defense argues that K.S.A. 8-133 is unconstitutionally vague because it fails to give adequate warning as to the prescribed conduct. They submit that K.S.A. 8-133 neither specifies what constitutes 'foreign material' nor defines 'clearly legible.' Statutes are presumed to be valid. The Court finds that the language in K.S.A. 8-133 conveys a sufficiently definite warning as to the conduct prescribed when measured by common understanding and practice. The clear language of K.S.A. 8-133 specifies that all license plates must be clearly legible. The Court finds that K.S.A. 8-133 is not unconstitutionally vague.

> "Therefore, based on the above, the Court denies the Defendant's Motion to Suppress."

Trial

At trial, Beck renewed the objection asserted in his motion to suppress the evidence obtained in the search of his car. Beck's attorney asked Deputy Rose, "When you pulled in behind Mr. Beck, you could read then that the state on the license plate was Illinois; is that correct?" Deputy Rose answered, "Based on the design on the tag I believed it was Illinois, yes, and that's how I called it in was as an Illinois tag." When asked by the State why he did not find paraphernalia commonly associated with drug distribution in Beck's car, Deputy Rose testified:

> "When people are traveling across country they're not really distributing while they're traveling across country. So once they get back to their home base that's where it would be distributed, where the scales or extra baggies would be, not during the travel of where they picked up the large quantity and taking it back to their home base."

The State further asked Deputy Rose, "So those types of drug paraphernalia—scales, baggies, things of that nature—those would be things found in, say, like the defendant's residence?" Deputy Rose answered, "If that's where it's being distributed from, yes, sir." The State also asked Deputy Rose if the lack of evidence yielded from his search of the phone recovered from Beck's car changed his mind about whether Beck possessed the methamphetamine with an intent to distribute it, and Deputy Rose responded that it did not because "with the large quantity, going across country, it still showed me that it was intended for distribution."

Deputy Rose testified that, based upon his experience and training, the bags of methamphetamine recovered from Beck's car were consistent with an intent to distribute. Beck's attorney asked Deputy Rose, "So you're basing your opinion solely on your

training and experience as to the quantity involved here?" Deputy Rose responded, "Yes, ma'am."

Upon the State's redirect examination of Deputy Rose, the following exchange occurred:

"Q. Okay. And you also had indicated that as part of a detective for Pottawatomie County you also partook in controlled buys and purchasing drugs undercover?

"A. Yes, sir.

"Q. And are you familiar with how much a person would use as far as methamphetamine?

"A. Yes, sir.

"Q. And what is that, sir?

"A. It's often anywhere from like a tenth of a gram to a third of a gram is what a common dose, I guess you would call it, depending on whether you're a low user or maybe a high user. So in milligrams it would be anywhere from 5 to 10 on the low end, 10 to 30 on the medium, and maybe 30 to 60 milligrams on a high end.

"Q. Okay. So how many dosages units would there be in State's Exhibit Number 2?

"[Beck's Attorney]: Objection, Your Honor; speculation. It's based on speculation and inference of what a user in his training and experience would use and then it's speculation as to how much that would actually be used and they're trying to relate that to Mr. Beck where they have nothing tying how much Mr. Beck was using and how much he would use at a time, Your Honor.

"[Prosecutor]: And, Your Honor, I believe the State's laid enough foundation as to that, so . . .

"THE COURT: Okay. The Court's going to overrule the objection at this time.

. . . .

"Q. [Prosecutor:] So the question was how many dosage units would there be in State's Exhibit Number 2?

"A. [Deputy Rose:] It was just shy of one thousand grams. So if I call it one thousand grams and used 50 milligrams each time, I think that comes out to like 20,000 dosage units.

"Q. And approximately how much time would it take an average user to use 20,000 dosage units?

"A. Well, I guess it would depend on how many times a day he might use it. I think when I did the math if you use it once a day, it would take like 54 years; if you used three times a day, it might be 18 years.

"Q. And, sir, when people who are addicted to drugs buy drugs, do they buy what they're—what they will use immediately or do they buy it in bulk and store it?

"A. What they use immediately. The most common size being sold is one gram increments is what—the most common size being sold on the street is one gram.

"Q. And that is for a user?

"A. Yes, sir.

"Q. Okay.

"A. Oftentimes it would go up to what they call an eight ball, which is three-and-a-half grams. The user might buy three-and-a-half grams, get him by a little bit longer.

"Q. And in your training and experience, especially dealing with people involved with ingesting methamphetamine, have you ever come across a user who stockpiled meth so that they had enough meth for 18 years?

"A. No, sir."

The State likewise asked Deputy Stopper, "[B]ased on your training and experience, sir, would the amount of methamphetamine found in the defendant's vehicle be consistent with methamphetamine possessed for the intent to distribute or for personal use?" Deputy Stopper answered, "Absolutely with intent to distribute." The State further asked Deputy Stopper, "Is it common to find a large amount of drugs as this in conjunction with baggies and scales inside a vehicle that is traveling across country?" Deputy Stopper replied that it was not because "generally it's being transported, it's not being broken down until it gets to another location, its destination. So it really wouldn't—you wouldn't need to have that stuff in the vehicle. You're just simply transporting it from one place to another and then it gets broken down at another location."

During the jury instruction conference, both parties objected to the district court's use of instruction 11:

"THE COURT: Okay. And then Instruction 11 is the inference instruction. So I looked at that case—and so I'm only going to deal with actual law now. I understand there might be a House Bill and there may be some discussion in Topeka, but we've got to deal with what the law is as of today.

"So in *Holder* they did do what the Court is—had planned on doing which is using the PIK. Which *Holder* almost made it seem like the district court should not have deviated from the statute and should not have used the PIK. But my inclination is to use the PIK, not use the language in the statute.

"So that would be Instruction Number 11. Do you have any objection to Instruction Number 11?

"[Prosecutor]: Judge, the State does have an objection because I believe in *Holder* that the main problem there was that the PIK instruction changed it from the statutory presumption to the inference. And so I think the Kansas Supreme Court, what they were saying was the instruction as it was written did not accurately reflect what the law is pursuant to the statute.

"So I believe if the Court were to strike the language beginning with the third sentence. It says, 'You may accept or reject it and determine whether the State has met its burden,' and then leave the rest, I believe that would suffice and that would be accurate to the statute.

"THE COURT: Ms. French?

"[Beck's Attorney]: And, Your Honor, at this point we're going to object to this instruction in its entirety. *Holder* does mention that they did not get to the merits of whether or not the rebuttable presumption in the statute itself would be unconstitutional. And, Your Honor, that rebuttable presumption, if they find that unconstitutional, that would go to Mr. Beck's favor if he is found guilty; however, then there's error in the jury instructions.

"Mr. Cruz has been free to say and to make points and to bring out inferences and opinions all through the trial, Your Honor. And you have already instructed the jury that they can weigh all evidence presented and give credibility and weight to whatever they choose to. This serves to point one piece of that out without—and giving more deference to it than it does to the rest of the evidence. And, Your Honor, that—that would go toward not being fair.

"As I said, Mr. Cruz has been able to bring it up. He's been able to infer what he's wanted to infer. He's been able to get training and experience in. He's been able to get all of that in and so we would ask that this instruction not be given and that the instruction that's given is simply the weight of the evidence in its entirety can be considered. And Mr. Cruz does have closing as well and there is nothing that says he cannot refer to an inference in closing as well. And I just don't think it's appropriate that it be in the PIK.

"THE COURT: Okay.

"[Beck's Attorney]: Or in the jury instructions, I'm sorry, I worded that wrong.

"THE COURT: I was going to say it is in the PIK.

"[Beck's Attorney]: I'm sorry—

"THE COURT: Which the Court is to rely on. So, Mr. Cruz, you're wanting the Court to modify the PIK and take out the third sentence 'you may accept or reject'?

"[Prosecutor]: Yes, Your Honor, because I'm reading here in *Holder* and it's—it's like the third point on that on the back page. It says, 'It's considered whether the statute's rebuttable presumption of intent to distribute is fairly and accurately reflected by PIK Crim. 4th 57.022. Permissive inference that the jury may accept or reject requires some brief background.'

"So that's the language that the Kansas Supreme Court didn't write because that changed it from a rebuttable presumption to—to a permissive inference. And *Holder* even says those are two completely different things.

"So that's why I think that that language, beings that third sentence, once that's removed that still complies with the statute and that last sentence shows that, you know, the burden is still on the State.

"THE COURT: Okay. Anything final, Ms. French?

"[Beck's Attorney]: And, Your Honor, if the PIK—if this PIK instruction is going to be included in the jury instructions, at least with the instruction you may accept or reject it in determining whether the State has met the burden of proving the intent of the defendant, at least tells the jury that they don't have to. It's an inference. They can give it the weight that they choose to give it, not give it extra weight.

"THE COURT: Okay. Okay. Anything else from anybody?

"[Prosecutor]: No, Judge.

"THE COURT: Okay. What I'm going to do, I'm going to use the PIK as written. So overrule both sides' objections. Note both sides are objecting to this instruction. The Court will use Instruction Number 11 as currently written."

The district court overruled both parties' objections and read the instruction as follows:

> "Instruction Number 11. If you find the defendant possessed 3.5 grams or more of methamphetamine, you may infer that the defendant possessed with the intent to distribute. You may consider the inference along with all the other evidence in the case. You may accept or reject it in determining whether the State has met the burden of proving the intent of the defendant. This burden never shifts to the defendant."

The jury ultimately returned a guilty verdict on all three counts. The district court sentenced Beck to a 146-month prison term. Beck timely appealed.

ANALYSIS

I. *Did the district court err in denying Beck's motion to suppress?*

Beck argues the district court erred in denying his motion to suppress for two reasons. First, Beck argues he did not violate K.S.A. 2020 Supp. 8-133(c) and, therefore, Deputy Rose did not possess the reasonable and articulable suspicion necessary to initiate the traffic stop. Second, Beck argues the interpretation of K.S.A. 2020 Supp. 8-133(c), under which the district court found the traffic stop valid, is unconstitutionally vague. Beck only challenges the district court's determination that the initial basis for the traffic stop was valid. Beck does not assert other constitutional infirmities against the search of his car.

Standard of Review and Governing Law

> "The standard of review for a district court's decision on a motion to suppress has two parts. The appellate court reviews the district court's factual findings to determine

> whether they are supported by substantial competent evidence. But the court's ultimate legal conclusion is reviewed using a de novo standard. The appellate court does not reweigh the evidence or assess the credibility of witnesses. When the facts supporting the district court's decision on a motion to suppress are not disputed, the ultimate question of whether to suppress is a question of law over which the appellate court exercises unlimited review. [Citations omitted.]" *State v. Hanke*, 307 Kan. 823, 827, 415 P.3d 966 (2018).

"The parties do not dispute the material facts, so our suppression question is only one of law. And the burden is upon the State to establish the lawfulness of the warrantless search and seizure." 307 Kan. at 827.

This court exercises unlimited review over questions of statutory interpretation. *State v. Pepper*, 317 Kan. 770, 777, 539 P.3d 203 (2023).

> "The most fundamental rule of statutory construction is that the intent of the Legislature governs if that intent can be ascertained. In ascertaining this intent, a court begins with the plain language of the statute, giving common words their ordinary meaning. When a statute is plain and unambiguous, a court should not speculate about the legislative intent behind that clear language, and it should refrain from reading something into the statute that is not readily found in its words. But if a statute's language is ambiguous, a court may consult canons of construction to resolve the ambiguity." *State v. Eckert*, 317 Kan. 21, Syl. ¶ 6, 522 P.3d 796 (2023).

K.S.A. 2020 Supp. 8-133(c) provides, in pertinent part, "Every license plate shall at all times be securely fastened to the vehicle . . . in a place and position to be clearly visible, and shall be maintained free from foreign materials and in a condition to be clearly legible."

"A traffic violation provides an objectively valid reason for conducting a traffic stop." *State v. Coleman*, 292 Kan. 813, Syl. ¶ 6, 257 P.3d 320 (2011). A law enforcement

officer may properly request that a driver get out of his or her vehicle when the vehicle has been stopped for a traffic violation. See *Pennsylvania v. Mimms*, 434 U.S. 106, 111, 98 S. Ct. 330, 54 L. Ed. 2d 331 (1977).

Discussion

In determining that Beck violated K.S.A. 2020 Supp. 8-133(c) (and, therefore, that Deputy Rose could initiate a traffic stop for that reason), the district court stated, "The Kansas Court of Appeals has held that a license plate, or temporary tag, must be clearly legible by an officer at a safe following distance." It is true that a previous panel of this court has interpreted "clearly legible," as the term is used in K.S.A. 8-133(c), in this manner. See *State v. Moss*, No. 122,775, 2020 WL 7086182, at *4 (Kan. App. 2020) (unpublished opinion) ("'Clearly legible,' as that term is used in K.S.A. 2019 Supp. 8-133, means visible to a law enforcement officer following at a safe distance.").

Beck challenges this interpretation of the statute as unconstitutional on the basis that it "add[s] language to K.S.A. 8-133(c) which is simply not there." He "is not arguing on appeal that K.S.A. 8-133(c)—as written—is unconstitutional." Rather, Beck is arguing that the *Moss* panel's interpretation of what the statute requires is unconstitutionally vague. In addition, Beck essentially argues that his license plate was legible because Deputy Rose was able to discern that it was an Illinois plate when he called it in. "The tag was legible," Beck argues, "just not from the distance that the officer and the court expected the tag to be legible from."

The State argues a reasonable way to interpret the language of K.S.A. 2020 Supp. 8-133(c) is to focus on its purpose, which is to allow both citizens and law enforcement officers to be able to easily identify vehicles. The State maintains that to adopt Beck's interpretation of "clearly legible" would render the statute meaningless.

A reading of the statute makes plain the purpose of requiring the clear display of a license plate: to make it so citizens and law enforcement officers can easily identify vehicles. "Law enforcement officials frequently must determine from tag numbers whether a vehicle is stolen; whether it is properly registered; or whether its occupant is suspected of a crime, is the subject of a warrant, or is thought to be armed." *State v. Hayes*, 8 Kan. App. 2d 531, 533, 660 P.2d 1387 (1983).

The statutory language of K.S.A. 2020 Supp. 8-133(c) contains several requirements. It requires every license plate must be "securely fastened to the vehicle" and must be "in a place and position to be clearly visible." The license plate also must be "clearly legible." A general definition of "visible" is discernable by sight. See Black's Law Dictionary 1183 (11th ed. 2019). "Legible" is defined to mean "can be read or deciphered easily." Webster's New World College Dictionary 832 (5th ed. 2018).

Beck's desired interpretation of the statute ignores the two requirements in the statute's text: "*clearly visible*" and "*clearly legible*." (Emphases added.) K.S.A. 2020 Supp. 8-133(c). Beck concedes his license plate was partially obstructed by the license plate bracket. The photographs of Beck's car admitted into evidence at the hearing on his motion to suppress reveal this. Beck's license plate frame covered the entire top half of the state name on his license plate. The district court did not even need to rely upon the *Moss* panel's interpretation of the statute to uphold the constitutionality of the initial traffic stop because Beck's license plate was neither clearly visible nor clearly legible even from 2 feet away. If half of a word is covered, it is not clearly visible and clearly legible, no matter how close you get to it. The fact that an observer might eventually be able to discern the half-covered state name by deciphering other clues on the license plate does not mean it is "clearly visible" and "clearly legible."

Deputy Rose's testimony at the hearing on Beck's motion further supports a determination that Beck's license plate was not clearly legible at any distance. Deputy

Rose testified that he was *never* able to identify the issuing state of Beck's license plate by reading the state name, even after he stopped Beck and pulled in behind him. Deputy Rose was only able to discern the issuing state of Beck's license plate by looking at the design of the plate.

The plain and unambiguous language of the statute prohibits covering half of the state name on a license plate, regardless of its legibility from a given distance. Therefore, contrary to Beck's alternative assertion, his license plate violated K.S.A. 2020 Supp. 8-133(c), and Deputy Rose therefore had an objectively valid reason to initiate the traffic stop which ultimately led to the search of Beck's car. That is sufficient to reject Beck's challenge to the district court's denial of his motion to suppress.

Because this court affirms the district court's denial of Beck's motion on grounds of statutory interpretation, the constitutional challenge framed by Beck is not directly implicated and we decline to reach that issue. See *Butler v. Shawnee Mission School District Board of Education*, 314 Kan. 553, 554, 502 P.3d 89 (2022) (explaining that the doctrine of constitutional avoidance "strongly counsels against courts deciding a case on a constitutional question if it can be resolved in some other fashion"); *Gannon v. State*, 302 Kan. 739, 744, 357 P.3d 873 (2015) ("'If a trial court reaches the right result, its decision will be upheld even though the trial court relied upon the wrong ground or assigned erroneous reasons for its decision.'").

II. *Did the district court err in instructing the jury that it could infer Beck intended to distribute methamphetamine based upon the amount he had in his possession?*

Both parties argue the district court erred in instructing the jury that it could infer Beck intended to distribute methamphetamine based upon the amount in his possession because the instruction was legally inappropriate. The parties disagree, however, on whether the district court's instructional error was harmless and, therefore, reversible.

Standard of Review and Governing Law

> "The multi-step process for reviewing instructional errors is well-known: First, the court decides whether the issue was properly preserved below. Second, the court considers whether the instruction was legally and factually appropriate. Third, upon a finding of error, the court determines whether that error is reversible. Whether the instructional error was preserved will affect the reversibility inquiry in the third step of this analysis. [Citations omitted.]" *State v. Couch*, 317 Kan. 566, 589, 533 P.3d 630 (2023).

This court exercises unlimited review over "the legal and factual appropriateness of the instruction sought." *State v. Love*, 305 Kan. 716, 736, 387 P.3d 820 (2017).

Discussion

Beck properly preserved his claim of instructional error for this court's review. He objected to the instruction prior to trial and again during the jury instruction conference. Because Beck properly preserved the issue for appeal, "any error is reversible only if this court determines that the error was not harmless." *State v. Holley*, 313 Kan. 249, 254, 485 P.3d 614 (2021).

The Kansas Supreme Court has repeatedly rejected the instruction the district court gave as legally inappropriate. See, e.g., *State v. Crudo*, 318 Kan. 32, 42, 541 P.3d 67 (2024) ("We have held that because K.S.A. 2022 Supp. 21-5705[e] actually creates a rebuttable presumption rather than a permissive inference, it is error to give the PIK Crim. 4th 57.022 instruction."); *State v. Bentley*, 317 Kan. 222, Syl. ¶ 5, 526 P.3d 1060 (2023) ("An instruction permitting the jury to infer a defendant intended to distribute drugs based on a certain amount of drugs in the defendant's possession is not legally appropriate because it does not reflect the mandatory rebuttable presumption in K.S.A.

2022 Supp. 21-5705[e]."); *State v. Strong*, 317 Kan. 197, 202, 527 P.3d 548 (2023); *State v. Slusser*, 317 Kan. 174, 182, 527 P.3d 565 (2023); *State v. Martinez*, 317 Kan. 151, 162-63, 527 P.3d 531 (2023); *State v. Valdez*, 316 Kan. 1, 8-9, 512 P.3d 1125 (2022); *State v. Holder*, 314 Kan. 799, Syl. ¶ 4, 502 P.3d 1039 (2022) ("PIK Crim. 4th 57.022 [2013 Supp.] provides a jury instruction with a permissive inference the jury may accept or reject about a defendant's possession with intent to distribute when that defendant is found to possess specific quantities of a controlled substance. This permissive instruction does not fairly and accurately reflect the statutory rebuttable presumption specified in K.S.A. 2020 Supp. 21-5705[e]."). The district court therefore erred in instructing the jury that it could infer Beck intended to distribute methamphetamine based upon the amount in his possession because the instruction was legally inappropriate.

However, that error is only reversible if this court determines that the error was not harmless. Because Beck "properly preserved his objection to the use of PIK Crim. 4th 57.022, we apply the constitutional harmless error standard." *Crudo*, 318 Kan. at 42. Under the constitutional harmless error standard, as defined in *Chapman v. California*, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967), this court must be convinced beyond a reasonable doubt that the error complained of did not affect the outcome of the trial in light of the entire record—that is, that there is no reasonable possibility the error affected the jury's verdict of guilt. *Crudo*, 318 Kan. at 42.

The instructional error in this case was harmless. Beck was in possession of nearly a *kilogram* of methamphetamine. Deputy Rose testified that, in his experience, it would take an individual user anywhere from 18 to 54 years to personally use that much methamphetamine. Deputy Rose further testified that he had never encountered a drug user that stockpiled that much methamphetamine for personal use. And Deputy Stopper testified that the average street price for methamphetamine is $50 to $75 per gram. Even at the lower price of $50 per gram, the amount of methamphetamine of which Beck was in possession would be worth $48,375. In *Valdez*, the Kansas Supreme Court found that

possession of methamphetamine in excess of the minimum 3.5 grams necessary to trigger the rebuttable presumption in K.S.A. 21-5705(e)(2) is evidence of intent to distribute. 316 Kan. at 10; see *Holder*, 314 Kan. at 806 ("In this context, a defendant's possession of a large quantity of narcotics certainly may support an inference that the defendant intended to distribute the narcotic.").

Based upon the evidence presented at trial, this court is convinced beyond a reasonable doubt that the jury would have found Beck had an intent to distribute even absent the erroneous instruction. The error was therefore harmless and does not warrant reversal.

III. *Did the district court abuse its discretion in overruling Beck's objection to Deputy Rose's testimony about the average dose of methamphetamine?*

Beck argues that "[t]he district court committed reversible error by admitting speculative and internally inconsistent law enforcement opinion evidence about how long the methamphetamine discovered in the car could support an individual's personal use."

Standard of Review and Governing Law

> "The admission of evidence lies within the sound discretion of the trial court. An appellate court's standard of review regarding a trial court's admission of evidence, subject to exclusionary rules, is abuse of discretion. Judicial discretion is abused when judicial action is arbitrary, fanciful, or unreasonable. If reasonable persons could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion. One who asserts that the court abused its discretion bears the burden of showing such abuse of discretion." *State v. Holmes*, 278 Kan. 603, Syl. ¶ 10, 102 P.3d 406 (2004).

"A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless there

appears of record objection to the evidence timely interposed and so stated as to make clear the specific ground of objection." K.S.A. 60-404; see *State v. Scheetz*, 318 Kan. 48, Syl. ¶ 1, 541 P.3d 79 (2024) ("The contemporaneous objection rule under K.S.A. 60-404 requires a party to make a timely and specific objection at trial to preserve an evidentiary challenge for appellate review."); *State v. Jordan*, 317 Kan. 628, 647, 537 P.3d 443 (2023) ("K.S.A. 60-404 requires a party to make a timely and specific objection to the evidence at trial to preserve the issue for appellate review."). "The contemporaneous objection rule is not satisfied by objecting on one ground at trial and arguing another ground on appeal because it would undercut the statute's purpose." *State v. Garcia-Garcia*, 309 Kan. 801, 810, 441 P.3d 52 (2019); see *State v. Richmond*, 289 Kan. 419, 429, 212 P.3d 165 (2009) ("[T]he trial court must be provided the *specific objection* so it may consider as fully as possible whether the evidence should be admitted and therefore reduce the chances of reversible error." [Emphasis added.]). "The statute has the practical effect of confining a party's appellate arguments to the grounds presented to the district court." *Scheetz*, 318 Kan. 48, Syl. ¶ 1.

"Speculative evidence is inadmissible, and a trial court has the responsibility of ensuring that speculative evidence does not reach the jury." *State v. Seacat*, 303 Kan. 622, Syl. ¶ 3, 366 P.3d 208 (2016); *State v. Hunt*, No. 117,413, 2018 WL 4655959, at *4 (Kan. App. 2018) (unpublished opinion) ("Speculative evidence, which lacks foundation, is inadmissible.").

Discussion

The objection at issue occurred in the following exchange at trial:

"Q. [Prosecutor:] Okay. And you also had indicated that as part of a detective for Pottawatomie County you also partook in controlled buys and purchasing drugs undercover?

"A. [Deputy Rose:] Yes, sir.

"Q. And are you familiar with how much a person would use as far as methamphetamine?

"A. Yes, sir.

"Q. And what is that, sir?

"A. It's often anywhere from like a tenth of a gram to a third of a gram is what a common dose, I guess you would call it, depending on whether you're a low user or maybe a high user. So in milligrams it would be anywhere from 5 to 10 on the low end, 10 to 30 on the medium, and maybe 30 to 60 milligrams on a high end.

"Q. Okay. So how many dosages units would there be in State's Exhibit Number 2?

"[Beck's Attorney]: *Objection, Your Honor; speculation. It's based on speculation and inference of what a user in his training and experience would use and then it's speculation as to how much that would actually be used and they're trying to relate that to Mr. Beck where they have nothing tying how much Mr. Beck was using and how much he would use at a time, Your Honor.*

"[Prosecutor]: And, Your Honor, I believe the State's laid enough foundation as to that, so . . .

"THE COURT: Okay. The Court's going to overrule the objection at this time." (Emphasis added.)

In his contemporaneous objection, Beck *only* challenged Deputy Rose's testimony as speculative. The district court never had a chance to rule on the other arguments Beck makes against the admission of Deputy Rose's testimony in his appellate brief. This court therefore only addresses the grounds of the specific objection Beck lodged below, i.e., whether Deputy Rose's challenged testimony was speculative. See *Garcia-Garcia*, 309 Kan. at 810-11.

Deputy Rose's testimony was not speculative. He was offering his opinion, based upon his experience and professional training as a law enforcement officer with experience in drug crimes (the foundation of which was established in his testimony), as to the average dose of methamphetamine. Deputy Rose was not asked to speculate about how much methamphetamine Beck consumes or what Beck's average methamphetamine

dose might be. The fact that Deputy Rose's testimony contained mathematical inconsistencies (which Beck did not raise in his contemporaneous objection) may well have rendered his testimony less credible, but that is a determination for the fact-finder to make.

We conclude Beck has failed to carry his burden of showing the district court abused its discretion in overruling his objection. Thus, we find the district court did not err in overruling the objection.

IV. *Was Beck deprived of his constitutional right to a fair trial because of cumulative errors?*

Finally, Beck argues cumulative error denied him a fair trial. The cumulative error rule does not apply if there is only a single error. *State v. Gallegos*, 313 Kan. 262, 277, 485 P.3d 622 (2021). As Beck has established only one error (which was harmless), this rule is inapplicable.

For the reasons stated, we conclude Beck's convictions should be affirmed.

Affirmed.