STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0203

State of Minnesota,
Respondent,

vs.

Ardana Jo Beaulieu,
Appellant.

Filed December 10, 2018
Affirmed
Connolly, Judge

Mille Lacs County District Court
File No. 48-CR-15-1651

Lori Swanson, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Joseph Walsh, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Ryan W. Marth, Andrew J. Crowder, Special Assistant Public Defenders, Robins Kaplan LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

Appellant challenges the district court's order denying her motion to suppress drug evidence arguing that the police officer's warrantless search of her purse was unconstitutional because (1) it was unreasonable and not supported by probable cause under the automobile exception to the Fourth Amendment, (2) the officer lacked probable cause to believe there was a felony amount of marijuana in the vehicle, and (3) police officers cannot search a purse in a car under the automobile exception. We affirm.

FACTS

In August 2015, appellant Ardana Jo Beaulieu and a friend were pulled over after a police officer observed appellant fail to make a complete stop at a stop sign. The officer approached appellant's car and saw two partially-empty bottles of alcohol in plain view behind the driver's seat. The officer asked appellant to step out of the car so he could remove the bottles and check for additional forms of alcohol. Appellant complied with the officer's request.

The officer proceeded to remove the two opened bottles of alcohol. As he did so, he saw another partially-empty bottle of alcohol. After removing the third bottle, the officer returned to the driver's side of the car to conduct a secondary search "to ensure . . . there were no other forms of alcohol in the vehicle." When the officer went back to the car, he detected a fairly strong odor of raw marijuana.

The officer then saw a cigarette pack on the driver's side floorboard. The officer opened it and found a leafy green substance he recognized as marijuana. The officer continued searching for alcohol and contraband after discovering the suspected marijuana.

The officer's search led him to appellant's purse, which was sitting on the vehicle's floorboard. The officer opened the purse and discovered another smaller purse inside. The smaller purse contained 19 bags of a crystal-like substance. The officer took a field sample of the substance and it tested positive for methamphetamine.

Appellant was arrested and charged with (1) second-degree possession of six grams or more of methamphetamine in violation of Minn. Stat. § 152.022, subd. (a)(1) (2014); and (2) third-degree possession of three grams or more of methamphetamine in violation of Minn. Stat. § 152.023, subd. 2(a)(1) (2014).

Prior to trial, appellant moved to suppress the methamphetamine found in her purse. The district court denied the motion to suppress at an omnibus hearing finding that the officer had probable cause to search the cigarette pack and the purse. The state then dismissed count one and appellant agreed to a stipulated-evidence court trial on count two pursuant to Minn. R. Crim. P. 26.01, subd. 4. The district court accepted the stipulation, found appellant guilty, and sentenced her.

Appellant filed a notice of appeal and challenges the district court's order denying the motion to suppress. Respondent additionally argues that appellant failed to raise certain arguments at district court and should not now be permitted to raise them on appeal.

D E C I S I O N

Appellant challenges the district court's denial of her motion to suppress arguing that the police officer lacked reasonable suspicion or probable cause to justify the search and seizure. "When reviewing a pretrial order on a motion to suppress, we review the district court's factual findings under our clearly erroneous standard and we review the district court's legal determinations, including a determination of probable cause, de novo." *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012) (citation omitted).

Both the United States and Minnesota Constitutions guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *accord* Minn. Const. art. I, § 10; *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003). The court has said that a warrantless seizure is "presumptively unreasonable unless one of a few specifically established and well-delineated exceptions applies." *Licari*, 659 N.W.2d at 250 (quotation omitted). Here, the officer seized 19 bags of methamphetamine without a warrant. Therefore, the seizure needs to satisfy an exception to the rule against warrantless searches and seizures to be admitted as evidence against appellant at trial. The state bears the burden of proving any exception. *Id.*

Appellant first argues that the police officer exceeded the scope of the traffic stop and unreasonably expanded it into a search for contraband. "An intrusion not closely related to the initial justification for the search or seizure is invalid under article I, section 10 unless there is independent probable cause or reasonableness to justify that particular intrusion." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). Appellant, however,

does not argue that the police officer lacked probable cause to remove the open containers of alcohol in her vehicle. Because it is not contested that the officer was permitted to remove the alcohol bottles observed in plain view, our inquiry will be limited to whether the police officer's detection of marijuana odor, while removing the open containers of alcohol, justified a finding of independent probable cause under an exception to the warrant requirement.

One exception to the warrant requirement is the "automobile exception," under which a police officer may search a vehicle without a warrant, including closed containers in that vehicle, if there is "probable cause to believe that the search will result in a discovery of evidence or contraband." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016), (quoting *State v. Search*, 472 N.W.2d 850, 852 (Minn. 1991)). "Probable cause is an objective inquiry that depends on the totality of the circumstances in each case." *Id.* "Probable cause to search exists when the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found." *State v. Lee*, 585 N.W.2d 378, 382 (Minn. 1998). "Therefore, an appellate court must give due weight to reasonable inferences drawn by police officers and to a district court's finding that the officer was credible and the inference was reasonable." *Lester*, 874 N.W.2d at 771 (quotation omitted).

Appellant contends that the officer's detection of raw marijuana odor, discovered on the secondary search, did not give him probable cause to search the vehicle for additional evidence of contraband. We disagree. There is published caselaw stating that the odor of marijuana coming from a vehicle establishes probable cause to search the

vehicle. *State v. Schultz*, 271 N.W.2d 836, 837 (Minn. 1978); *State v. Hodgman*, 257 N.W.2d 313, 315 (Minn. 1977). Appellant disputes this contention and relies on two cases for the proposition that police officers do not have probable cause to search a vehicle for marijuana based on odor alone.

Appellant first relies on *State v. Ortega*, 770 N.W.2d 145 (Minn. 2009). In *Ortega*, the supreme court indicated in a footnote "that probable cause to suspect that a person possesses a non-criminal amount of marijuana, in and of itself, does not trigger the search-incident-to-arrest exception to the warrant requirements of the Fourth Amendment." 770 N.W.2d at 149, n.2. Here, however, the officer did not conduct a search-incident-to-arrest of appellant on the basis that he discovered a non-criminal amount of marijuana. *Ortega* does not stand for the proposition that a police officer lacks probable cause to search a vehicle based on the smell of marijuana alone.

Appellant also relies on *State v. Koppi*, 798 N.W.2d 358 (Minn. 2011). In *Koppi*, the supreme court stated that a "slight odor of alcohol," does not necessarily give rise to a probable cause finding that a driver is impaired because in most driving under the influence of alcohol cases, "the suspect emits a moderate to strong odor of alcohol." 798 N.W.2d at 365. Appellant's reliance on *Koppi* is also misplaced. First, the issue in *Koppi* centered on the adequacy of jury instructions and concerned a conviction for test refusal, not the seizure of contraband.[1] Second, *Koppi* concerned a finding of probable cause to suspect a

[1] In *Koppi*, the court found that the jury instruction was erroneous and evaluated the evidence presented at trial to determine whether the error was harmless. 798 N.W.2d at 363-65. In doing so, the court stated that "the question is whether the evidence points so

person of driving while impaired and not the possession of marijuana. Finally, the officer here stated that the odor of raw marijuana was "fairly strong," and not "slight" like the odor the officer detected in *Koppi*.

The cases relied on by appellant fail to support the conclusion that the officer's detection of marijuana odor was insufficient to find probable cause. Moreover, we have found the opposite. In *State v. Pierce*, we stated that "[i]t has long been held that the detection of odors alone, which trained police officers can identify as being illicit, constitutes probable cause to search automobiles for further evidence of crime." 347 N.W.2d 829, 833 (Minn. App. 1984). Because we have held that odors alone can constitute probable cause, the officer had probable cause to search the vehicle for evidence of marijuana.

When probable cause exists, the scope of the warrantless search under the automobile exception extends to closed containers inside of the vehicle, and is "defined by the object of the search" and confined to "the places in which there is probable cause to believe [the object] may be found." *U. S. v. Ross*, 456 U.S. 798, 824, 102 S. Ct. 2157, 2172 (1982); *State v. Bigelow*, 451 N.W.2d 311, 313 (Minn. 1990).

Appellant nonetheless contends that when the officer found enough marijuana to rise to the level of a misdemeanor, he could not keep searching unless he had probable cause to believe there was a felony amount of marijuana in the car. *See* Minn. Stat. § 152.027, subd. 3 (2014); Minn. Stat. § 152.025, subd. 2(a)(1) (2014). Appellant argues

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overwhelmingly in favor of probable cause that we can say beyond a reasonable doubt that the instructional error had no significant impact on the verdict." *Id.* at 365.

that the officer was not justified in searching the small purse because the officer needed to find approximately 40 more grams of marijuana to increase the charge from a misdemeanor to a felony, and the purse was too small to contain that amount.

We disagree. Appellant has not provided any authority for the assertion that an officer may not continue his search for contraband under the automobile exception unless he has probable cause to believe that the vehicle he is searching contains a felony amount of marijuana. Appellant also failed to present this argument to the district court, and therefore, it was not considered. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that an appellate court will generally not consider matters not argued to and considered by the district court).

Appellant, additionally, argues that there is a heightened privacy interest around purses and that the police officer should not have been permitted to search the purse simply because it was left in the car. This issue was not argued by appellant below or addressed by the district court. *See Id.* (stating that an appellate court will generally not consider matters not argued to and considered by the district court). Appellant has also not provided authority for the proposition that an officer may not search a purse left in a car when there is probable cause to believe the vehicle contains contraband.[2] *See Bigelow*, 451 N.W.2d at 313 (holding that, if police have probable cause to search a motor vehicle for drugs or other

[2] Appellant does cite *U.S. v. Welch*, 4 F.3d 761, 764 (9th Cir. 1993), for the general proposition that individuals have high expectations of privacy around, and in, their purse. However, that case dealt with a consent search of a rental car, and the individual who owned the purse did not give consent to search the car. In addition, that case did not involve the automobile exception and there was not probable cause to believe the vehicle contained evidence of criminal activity.

contraband, they may search every part of the vehicle and its contents which may conceal the object of the search).

Because the officer had probable cause to search the vehicle for further evidence of marijuana, he was permitted to search appellant's purse located inside the car and was permitted to seize the methamphetamine found within.

Affirmed.