STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0038

State of Minnesota,
Respondent,

vs.

Jennifer Tasha Stiel,
Appellant.

Filed December 16, 2019
Reversed
Jesson, Judge

Hennepin County District Court
File No. 27-CR-17-29812

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Rodenberg, Judge; and Jesson, Judge.

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

JESSON, Judge

After appellant Jennifer Tasha Stiel asked an officer to retrieve her purse from a car being impounded by police, the officer searched Stiel's purse and found methamphetamine.

Stiel filed a motion to suppress the drugs, alleging that the officer's warrantless search of her purse was unconstitutional. Because we conclude that no exception to the warrant requirement applies, and as a result, that the district court erroneously denied her motion, we reverse.

FACTS

While on patrol, an Edina police officer noticed a car drive by with a crack in the front windshield. The officer ran the car's license plate and discovered that the registered owner had an active misdemeanor warrant. After comparing the owner's description with the driver of the car, the officer concluded that the driver could be the car's owner. The officer pulled the car over and asked the driver for her license and proof of insurance. The driver told the officer that she did not have a driver's license and gave him her state-issued identification card, which identified her as appellant Jennifer Tasha Stiel. Stiel explained to the officer that the car belonged to her friend and gave the officer an expired insurance card that was in the car.

The officer ran a license check on Stiel and learned that she had an active misdemeanor warrant in another county related to driving after revocation. According to the officer, in Edina, a police officer can give someone with an outstanding misdemeanor warrant the option to pay cash bail to the officer at the scene rather than being taken into custody. Pursuant to this policy, the officer testified that he returned to the car, asked Stiel to step out of the vehicle, and presented her with these options to resolve her warrant. Stiel elected to pay the cash bail, called her mother to bring her the money, and told the officer that her mother was on her way.

During this time, the officer decided to tow the car because the registered owner was not present, and the car did not have valid insurance. Stiel asked the officer to get her purse, which was still in the car. The officer retrieved it, but before giving the purse to Stiel, the officer searched it "incident to arrest." According to the officer, Stiel "would have been, technically under arrest for the warrant and [he] was going to tow the vehicle," so he needed to search the purse to check for any weapons. At the bottom of Stiel's purse, the officer found a plastic bag containing a "white crystalline" substance that the officer believed was methamphetamine. Subsequently, the officer told Stiel she was under arrest for possession of a controlled substance, handcuffed her, and asked her to sit on the curb.

Another police officer arrived, and that officer watched Stiel while the first officer completed an inventory search of the car. While monitoring Stiel, the second officer observed a plastic baggie sticking out of Stiel's bra, and Stiel told the officer that the bag contained methamphetamine. The officers called for a female officer, and once she arrived, she removed the plastic baggie from Stiel's bra. The substances found in Stiel's purse and bra tested positive as methamphetamine, weighing 16.182 grams.

The state charged Stiel with one count of third-degree possession of a controlled substance. Before trial, Stiel filed a motion to suppress the methamphetamine on the basis that both the stop and the search of her purse were illegal. At a hearing on the motion, the state presented testimony from the officer who stopped Stiel and searched her purse. The officer testified about the stop and search, as described above. In his testimony, the officer clarified that at the time he searched Stiel's purse, she had been fully cooperative, and she had not exhibited any behaviors that led the officer to believe he was in danger. He also

explained that he told Stiel that paying the cash bail would satisfy the warrant and she would not be transported to jail. The officer testified that "typically they are under arrest until they are able to obtain bail money" but noted that after discovering the drugs, Stiel "was now in custodial arrest." Further, he stated that he did not handcuff Stiel until after he searched her purse.

The district court denied Stiel's motion to suppress. In doing so, the district court concluded that the officer had a basis to stop Stiel and that it was reasonable for the officer to search Stiel's purse based on officer safety concerns. Alternatively, the district court determined that impoundment of the vehicle was reasonable because the vehicle did not have valid insurance, and as a result, could not be driven lawfully. The district court therefore concluded that the purse would have been searched inevitably as part of the inventory search.

After the denial of her motion to suppress, Stiel waived her right to a jury trial and stipulated to the state's case pursuant to rule 26.01, subdivision 4 of the Minnesota Rules of Criminal Procedure, preserving her right to appeal the suppression ruling. The district court found Stiel guilty of third-degree possession of a controlled substance and sentenced her to 49 months in prison. Stiel appeals.

D E C I S I O N

Stiel challenges the denial of her motion to suppress the methamphetamine. Specifically, Stiel argues that no exception to the warrant requirement allowed the officer's warrantless search of her purse. When evaluating a district court's pretrial order on a

motion to suppress, we review factual findings for clear error and legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "In general, warrantless searches and seizures are unreasonable in the absence of a legally recognized exception to the warrant requirement." *State v. Horst*, 880 N.W.2d 24, 33 (Minn. 2016). Here, police did not have a warrant authorizing the search of Stiel's purse. Therefore, unless an exception to the warrant requirement applies, the search of Stiel's purse was unconstitutional. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). And it is the state's burden to demonstrate that an exception to the warrant requirement applies in a particular case. *Id.*

Here, the state contends that three exceptions to the warrant requirement justified the officer's search of Stiel's purse: (1) the "stop-and-frisk" exception stemming from *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968), (2) the search-incident-to-arrest exception, and (3) the doctrine of inevitable discovery. We review each exception in turn.

The Terry Exception

The state first argues that the *Terry* exception to the warrant requirement applies here. The *Terry* exception permits police to "stop and frisk a person when (1) they have a reasonable, articulable suspicion that a suspect might be engaged in criminal activity and (2) the officer reasonably believes the suspect might be armed and dangerous." *State v. Dickerson*, 481 N.W.2d 840, 843 (1992) (citing *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993). When determining whether reasonable,

articulable suspicion exists, we consider the totality of the circumstances, including that police officers' specialized training may allow them to make inferences or deductions that might elude an untrained person. *State v. Flowers*, 734 N.W.2d 239, 251-52 (Minn. 2007).

Here, the district court concluded that the search of Stiel's purse was reasonable based on officer safety concerns. In reaching this conclusion, the district court stated that "[e]ven during a routine stop, it is not reasonable that an officer would provide a detained person with a purse without searching it first for weapons and contraband."

But the district court did not point to any specific facts that would provide the officer with reasonable, articulable suspicion that Stiel was armed or dangerous. Nothing in the officer's testimony indicates that he had a particularized basis to suspect that Stiel may have weapons warranting a search of her purse. In fact, the officer acknowledged that she was cooperative and provided him with the information that he requested. Further, when asked on cross-examination if he had any reason to consider Stiel a danger to his safety, the officer indicated that Stiel "had not exhibited any behaviors." Finally, the officer stopped Stiel for an equipment violation and then learned she had a warrant for driving after license revocation—both of which are nonviolent offenses. None of these facts give rise to the reasonable, articulable suspicion required for the *Terry* exception to apply.

Our analysis is bolstered by *State v. Varnado*, 582 N.W.2d 886 (Minn. 1998). In *Varnado*, officers stopped a driver for a cracked windshield and asked for her driver's license. 582 N.W.2d at 888. The driver said she did not have it, and officers frisked her and placed her in the back of a police car. *Id.* During the frisk, officers discovered drugs. *Id.* at 889. The Minnesota Supreme Court concluded that officers had no reason to believe

that the driver was armed or dangerous, noting the "innocuous nature" of the stop, that the driver cooperated with officers and "did not make any furtive or evasive movements," and that officers had no reason to believe the driver had a criminal history. *Id.* at 890.

Several similarities are present here. The officer stopped Stiel for a cracked windshield and the car owner's outstanding misdemeanor warrant. Stiel cooperated with the officer, and the officer testified that Stiel did not behave in a way that made him believe he was in danger. Although the state points to some factual differences—including that Stiel did have a criminal history, an outstanding warrant, and that the officer was alone with Stiel—none of these factors gave the officer a particularized basis to suspect Stiel was armed or dangerous. Accordingly, the *Terry* exception to the warrant requirement does not provide a basis for the search of Stiel's purse.

Search Incident to Arrest

Next the state argues that the search of Stiel's purse was a valid search incident to arrest. "A search incident to a lawful arrest is a well-recognized exception to the warrant requirement under the Fourth Amendment." *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015), *aff'd sub nom. Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016). The purpose of the exception is twofold: to prevent the destruction of evidence and to remove "any weapons the arrestee might use to resist arrest or flee." *Ture*, 632 N.W.2d at 628. Under this exception, an arresting officer may search both "(1) the arrestee's person, and (2) the area within the arrestee's immediate control." *State v. Bradley*, 908 N.W.2d 366, 369 (Minn. App. 2018). And the scope of a search incident to arrest is very broad,

permissibly including "pockets, containers, and even the passenger compartment of automobiles." *Varnado*, 582 N.W.2d at 893.

The essential question for our search-incident-to-arrest analysis is at what point was Stiel arrested. "[T]here is a fine line between an arrest and an investigatory detention." *State v. O'Neill*, 216 N.W.2d 822, 827 (Minn. 1974). And it is not always clear exactly when an arrest occurs. *Id.* "The ultimate test to be used in determining whether a suspect was under arrest is whether a reasonable person would have concluded, under the circumstances, that he was under arrest and not free to go." *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984).

Here, the officer discovered that Stiel had an active warrant for driving after revocation. He informed Stiel about the warrant and asked her to step out of the vehicle. At that point, the officer informed Stiel of the policy allowing her to pay cash bail to satisfy the warrant. He permitted Stiel to call her mother, and Stiel informed the officer that her mother was on the way. Although the officer testified that Stiel "would have been, technically under arrest" based on the warrant, nothing in the record indicates that the officer told Stiel she was under arrest, handcuffed her, or placed her in the squad car before finding the drugs in her purse. *See State v. Lohnes*, 344 N.W.2d 605, 610 (Minn. 1984) (concluding that suspect was arrested when placed into squad car, left there for three to four hours, handcuffed, and accompanied by police in all of his movements). Based on these facts, a reasonable person in Stiel's position would not believe they were under arrest until she failed to pay the cash bail to the officer. *See Vivier v. Comm'r of Public Safety*, 406 N.W.2d 587, 589 (Minn. App. 1987) (opening a car door did not constitute an arrest).

Accordingly, we conclude that Stiel was not arrested until after the officer found the drugs in her purse, handcuffed her, and told her she was under arrest.

Still, the state contends that Stiel was under arrest until the warrant was sufficiently addressed, either by posting cash bail or by booking her in jail. But in the officer's testimony, he acknowledged that the discovery of the drugs "technically changed the status of her arrest situation," meaning that "she was no longer able to post bail on the side of the road . . . she was *now* in custodial arrest." This testimony suggests that before the discovery of the drugs, Stiel was not yet arrested. Further, the officer never testified that he indicated to Stiel that she was under arrest until the warrant was satisfied. Regardless of whether the officer knew or thought that Stiel "would have been, technically under arrest," the test for whether an individual is arrested involves "whether *a reasonable person* would have concluded, under the circumstances, that he was under arrest and not free to go." *Beckman*, 354 N.W.2d at 436 (emphasis added). And it is not clear that a reasonable person in Stiel's position would have believed they were under arrest when the officer searched Stiel's purse. Further, it is the state's burden to establish that this exception to the warrant requirement applies. *Ture*, 632 N.W.2d at 627. And here, the state failed to demonstrate that Stiel was under arrest before the officer searched her purse. Accordingly, the search-incident-to-arrest exception does not apply.

Inevitable Discovery

Finally, the state contends that if we conclude that neither *Terry* nor the search-incident-to-arrest exception permitted the officer's search of Stiel's purse, the methamphetamine is still admissible under the doctrine of inevitable discovery. According

to the state, if the officer did not give Stiel her purse, it would have been in the car and subject to the inventory search conducted before the car was impounded.

In cases where a search violated the warrant requirement, seized evidence can still be admissible "[i]f the state can establish by a preponderance of the evidence that the fruits of a challenged search ultimately or inevitably would have been discovered by lawful means . . . ." *State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (quotation omitted). And the doctrine of inevitable discovery does not involve "speculative elements" but instead "focuses on demonstrated historical facts capable of ready verification or impeachment." *Id.*

Here, discovery of the drugs was not inevitable because leaving the purse in the car was not inevitable. The facts here refute the state's argument to the contrary. Stiel asked the officer to retrieve her purse. And the officer gave it to her. For this reason, we conclude that the state failed to demonstrate that Stiel's purse would have been searched inevitably pursuant to an inventory search.

In sum, the state has not met its burden of demonstrating that an exception to the warrant requirement justified the officer's warrantless search of Stiel's purse. *Ture*, 632 N.W.2d at 627. As a result, the officer's search of Stiel's purse was illegal. Accordingly, the district court erred in denying Stiel's motion to suppress.

Reversed.