STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0919

State of Minnesota,
Respondent,

vs.

Gilbert Miller, Jr.,
Appellant.

Filed June 22, 2020
Affirmed
Segal, Chief Judge

Clay County District Court
File No. 14-CR-18-2221

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

Brian J. Melton, Clay County Attorney, Michael D. Leeser, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa Sheridan, Assistant State Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Segal, Chief Judge; and Bratvold, Judge.

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

SEGAL, Chief Judge

Appellant challenges his convictions of two counts of first-degree controlled-substance crime, arguing that the district court erred by denying his pretrial motion to

suppress the evidence discovered during a search of appellant's backpack. In a pro se supplemental brief, appellant also raises issues of prosecutorial misconduct and challenges the district court's evidentiary rulings. We affirm.

FACTS

On June 4, 2018, members of the Metro Streets Crime Unit were conducting surveillance at a house in a neighborhood that was experiencing increased drug-related activity. At approximately 2:00 p.m., West Fargo Police Officer Ben Nechiporenko observed a female driver park a Ford Explorer in the driveway of the house that was under surveillance. He saw a male passenger carrying a backpack get out of the car, enter the house and then return to the car with the backpack a few minutes later. Officer Nechiporenko ran the license plate of the Ford Explorer and discovered it was owned by a female driver who had recently been involved in a traffic stop. A male passenger had been arrested during that stop. By looking at the booking photo from the prior arrest, Officer Nechiporenko was able to identify the male passenger in the Ford Explorer as appellant Gilbert Miller, Jr., and learned that Miller had a warrant out for his arrest.

Officer Nechiporenko relayed the information to Moorhead Police Detective Nicholas Wiedenmeyer and Clay County Sheriff's Deputy Kyle Diekmann. The officers followed the Ford Explorer as it was driven away by the female driver with Miller in the passenger seat. The officers initiated a traffic stop and Detective Wiedenmeyer approached the passenger side of the vehicle. He identified the passenger as Miller based on the booking photograph he had just viewed. Detective Wiedenmeyer attempted to verify

Miller's identity, but Miller told him that he did not have identification with him and refused to provide his name.

Detective Wiedenmeyer informed Miller that he believed he was Gilbert Miller and that there was a warrant out for his arrest. He asked Miller to step out of the vehicle but Miller refused to cooperate. During the interaction, Miller was "extremely fidgety" and nervous. The backpack Miller had been carrying earlier was in between his legs and he would touch the backpack "every once in a while." Detective Wiedenmeyer then informed Miller that he was under arrest. Miller eventually got out of the car, but left his backpack inside. Detective Wiedenmeyer called for the K-9 unit to conduct a sniff test, and the dog alerted on the vehicle. The backpack was searched and over 80 grams of methamphetamine were found.

Respondent State of Minnesota charged Miller with first-degree controlled-substance crime (sale) under Minn. Stat. § 152.021, subd. 1(1) (2016), and first-degree controlled-substance crime (possession) under Minn. Stat. § 152.021, subd. 2(a)(1) (2016). On a pretrial motion, Miller moved to suppress the evidence found during the traffic stop. He argued that the officers impermissibly expanded the scope and duration of the initial traffic stop and did not have a basis to conduct the K-9 sniff test or to search his backpack. Following a hearing, the district court denied the motion on the grounds that the search of the backpack was a valid search incident to arrest.[1] On December 10-12, 2018, the district court held a jury trial. The jury found Miller guilty on both counts. The district court

[1] The district court did not address the legality of the K-9 sniff test and Miller has not raised this issue on appeal.

sentenced Miller to 75 months in prison for first-degree controlled-substance crime (sale), stayed execution of sentence, and placed Miller on probation for 15 years. This appeal follows.

D E C I S I O N

I. The district court did not err by denying the motion to suppress.

When reviewing a pretrial order on a motion to suppress evidence, we independently review the facts and determine, as a matter of law, whether the district court erred in denying the motion. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). When the facts are not in dispute, the court's review is de novo, and we must determine whether the police articulated an adequate basis for the search or seizure. *Id.*

The United States and Minnesota Constitutions guarantee individuals the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search is reasonable only if it falls within an exception to the warrant requirement. *State v. Stavish*, 868 N.W.2d 670, 675 (Minn. 2015). "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). Under this exception, the arresting officer may search (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). The two searches are "fundamentally distinct." *Id.* at 370.

Here, the district court denied the motion to suppress after determining that the backpack was "immediately associated" with Miller at the time of the arrest and therefore

could be searched as part of Miller's person. The district court relied on this court's decision in *Bradley* in making this determination. In that case, Bradley was carrying a purse when she was detained by a store investigator on suspicion of shoplifting. *Id.* at 368. The store investigator handcuffed Bradley, took her purse, and contacted law enforcement, who subsequently searched the purse and found narcotics. *Id.* Bradley argued that the search of her purse could not be justified as a search incident to arrest because by the time law enforcement arrived she was no longer in possession of the purse, and therefore it was not immediately associated with her. *Id.* at 369. This court disagreed and explained that a "search of the arrestee's person encompasses personal property . . . immediately associated with the person of the arrestee. Generally, a shoulder purse is so closely associated with the person that it is identified with and included within the concept of one's person." *Id.* at 370 (quotations and citation omitted). Relying on the fact that Bradley was in possession of the purse at the time she was detained by the store investigator and that this was known by the officer, the court concluded that the purse remained immediately associated with her even after it was taken by the store investigator. *Id.* at 371. The search of the purse thus constituted a lawful search incident to arrest.

Miller argues that *Bradley* is distinguishable because "although the backpack was near [him] when the police detained him, he was not physically possessing it on his person when he was detained." He argues that this distinction makes this case more similar to *State v. Molnau*. 904 N.W.2d 449 (Minn. 2017). In *Molnau*, the police discovered an unattended purse on a kitchen table while they were executing a search warrant at a home. *Id.* at 451. The purse belonged to Molnau, who was a guest at the home and in a different

room when the officers discovered the purse. *Id.* The officers searched the purse and discovered narcotics and Molnau's identification. *Id.* Molnau was arrested and subsequently moved to suppress the evidence found in her purse, arguing that the search violated her constitutional right to be free from unreasonable searches. *Id.* The supreme court determined that because "the purse was not in Molnau's possession when police searched it . . . the search did not involve a search of Molnau herself." *Id.* at 452.

Miller argues that, based on *Molnau*, the backpack was not immediately associated with him because he was not in physical possession of the backpack at the time he was arrested. We disagree. Like the appellant in *Bradley*, Miller was previously seen in physical possession of the backpack. As the district court observed, Miller was seen carrying the backpack when he arrived at the house under surveillance. When he exited the house and returned to the vehicle, he was still carrying the backpack. During the traffic stop, the backpack was at Miller's feet and he touched it several times while speaking with Detective Wiedenmeyer. The officers therefore had reason to know the backpack was associated with Miller, and it remained physically touching his person during the traffic stop. These facts are easily distinguishable from those in *Molnau* in which the purse was in a separate room and the officers had no reason to know the purse was associated with Molnau until after they searched it. On this record, we conclude that the district court did not err in determining that the backpack was immediately associated with Miller and fell

within the scope of a valid search incident to arrest. The district court therefore did not err in denying the motion to suppress.[2]

II. Miller's pro se arguments do not entitle him to relief.

In a pro se supplemental brief, Miller raises issues of prosecutorial misconduct and challenges the district court's evidentiary rulings. Miller argues that the prosecutor committed misconduct by inaccurately representing to the district court that law enforcement discovered a scale on Miller's person after his arrest. Miller argues that this was done in an attempt to convince the district court that law enforcement had reasonable suspicion or probable cause to search him. But as discussed above, the district court did not reach the issue of whether there was reasonable, articulable suspicion to conduct a K-9 sniff or if the resulting alert established probable cause to search the vehicle. The district court determined that Miller could be arrested based on the open warrant, and Miller acknowledges that he had an open arrest warrant at the time. The statement was not repeated to the jury, and did not prejudice Miller. Any error was therefore harmless and does not entitle Miller to relief. *State v. Hall*, 764 N.W.2d 837, 847 (Minn. 2009).

Miller's remaining arguments contain general assertions of error that are not supported by legal argument or authority. He argues that the district court improperly limited the scope of cross-examination, permitted hearsay testimony, and that his due-

[2] The state also argues that the search was justified because the officer had reasonable, articulable suspicion to conduct a K-9 sniff, and the resulting alert from the dog gave the officers probable cause to search the vehicle. The district court did not make findings or otherwise address these arguments. Because we conclude that the search of the backpack was a valid search incident to arrest, we decline to address these arguments on this appeal.

process rights were violated. An assignment of error based on "mere assertion" and "not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection." *State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006) (quotation omitted), *aff'd*, 728 N.W.2d 243 (Minn. 2007). Here, prejudicial error is not obvious on mere inspection. Miller does not explain how the alleged errors prejudiced him and significantly impacted the jury's verdict. His allegation that his due-process rights were violated is based on the fact that his defense counsel's objections were frequently overruled, but he does not explain how the district court's rulings were improper. Because prejudicial error is not obvious, Miller is not entitled to relief on these arguments.

Affirmed.