STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1429

State of Minnesota,
Appellant,

vs.

Nathan David Hunter,
Respondent.

Filed April 27, 2020
Reversed and remanded
Johnson, Judge

Scott County District Court
File No. 70-CR-19-287

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

Ronald Hocevar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney, Shakopee, Minnesota (for appellant)

Mark D. Nyvold, Fridley, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Slieter, Judge; and John P. Smith, Judge.*

*Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

JOHNSON, Judge

Police officers found marijuana and marijuana paraphernalia in Nathan David Hunter's car. He is charged with fifth-degree possession of a controlled substance, driving after revocation, and possession of drug paraphernalia. The district court suppressed the evidence of the items found in his car on the grounds that the officers did not have a search warrant and that no exception to the warrant requirement applies. The state appeals. We conclude that the automobile exception applies and justifies the search of Hunter's car. Therefore, we reverse the district court's suppression order and remand for further pre-trial proceedings and trial.

FACTS

On January 3, 2019, the Isanti County Sheriff's Office received a report that Hunter might be suicidal and that his whereabouts were unknown. Based on the location of Hunter's cellphone, the sheriff's office determined that he was in Scott County and contacted law-enforcement officers in the vicinity. Officer Weckman of the Belle Plaine Police Department located Hunter's car and performed a traffic stop after he saw it swerve over the fog line. After inquiring into Hunter's well-being, Officer Weckman asked Hunter to exit the vehicle. As Hunter exited the vehicle, Officer Weckman detected a "slight odor of marijuana . . . coming from the vehicle." Officer Weckman frisked Hunter and found a knife in his pocket. Officer Weckman and other officers discovered that Hunter's driver's license had been revoked and that he did not have proof of insurance. Officers initially

suspected Hunter of driving while impaired, but field sobriety tests did not indicate any impairment.

The officers decided to search Hunter's car for two reasons: the odor of marijuana and the need for the vehicle to be towed from the scene. Officers found a small amount of marijuana and a pipe in the center console of the car. Officers also found a black plastic case in the trunk. Officer Weckman asked Hunter what was in the case, which was locked; Hunter said that it contained glass drug pipes. Hunter told the officers that the key for the case was on the key chain with the car key. Police opened the case and found glass jars and plastic bags containing marijuana as well as other items of marijuana paraphernalia. After being transported to the police station, Hunter was given a *Miranda* warning and declined to speak further with the officers.

The state charged Hunter with fifth-degree possession of a controlled substance, in violation of Minn. Stat. § 152.025, subd. 2(1) (2018); driving after revocation of a driver's license, in violation of Minn. Stat. § 171.24, subd. 2 (2018); and possession of drug paraphernalia, in violation of Minn. Stat. § 152.092(a) (2018).

In April 2019, Hunter moved to suppress evidence and dismiss the charges. One month later, Hunter filed an amended notice of motion that identified six arguments, including the argument that "the officers conducted an illegal search of the Defendant's vehicle and possessions." The district court conducted an omnibus hearing in June 2019. The parties stipulated to the admission of a packet of exhibits, which consists principally of 15 pages of reports prepared by law-enforcement officers. Neither party called any

witnesses. The parties agreed to a briefing schedule that required Hunter and the state to file memoranda of law sequentially.

Hunter made four arguments in his memorandum of law: (1) the Isanti County Sheriff's Office violated his Fourth Amendment rights by using information from his cellphone to locate him, (2) the Belle Plaine officers violated his Fourth Amendment rights by removing him from his car and frisking him, (3) the Belle Plaine officers unreasonably expanded the scope of the traffic stop by conducting field sobriety tests, and (4) the Belle Plaine officers violated his *Miranda* rights by interrogating him at the scene of the traffic stop. Hunter did not directly challenge the search of his car. The state filed a responsive memorandum of law in which it relied on, among other things, three exceptions to the Fourth Amendment's warrant requirement: the motor-vehicle exception (also known as the automobile exception), the inventory-search exception, and the inevitable-discovery doctrine.

In September 2019, the district court granted Hunter's motion to suppress. The district court rejected Hunter's first, second, and third arguments but found merit in Hunter's fourth argument and concluded that the Belle Plaine officers violated Hunter's *Miranda* rights. Consequently, the district court suppressed the statements that Hunter made after Officer Weckman asked him what was inside the locked black case.

The district court considered and rejected the state's arguments concerning the three exceptions to the warrant requirement. The district court first reasoned that the inventory-search exception does not apply because the state did not submit evidence of the Belle Plaine Police Department's inventory-search policy. The district court next noted Officer

Weckman's report, which states, "Based on Hunter's vehicle [e]mitting the odor of marijuana and it posing a hazard parked on the highway, a search of the vehicle was performed." But the district court reasoned that "the automobile exception does not apply . . . because the officers purportedly conducted an inventory search of the vehicle" and because there was only a "slight smell of marijuana [emanating] from the vehicle" and the caselaw "generally require[s] more than just a smell." The district court finally reasoned that the inevitable-discovery exception does not apply because neither the automobile exception nor the inventory-search exception apply. The district court suppressed all of the physical evidence that was found in Hunter's vehicle. The district court also dismissed counts 1 and 3 of the complaint. The state appeals.

D E C I S I O N

The state argues that the district court erred by granting Hunter's motion to suppress evidence. The state challenges only the suppression of the physical evidence; the state does not challenge the suppression of Hunter's statements. The state's arguments are focused on the district court's rejection of its argument concerning the automobile exception to the warrant requirement.

As a threshold matter, we note that the parties agree that the state may obtain immediate appellate review of the district court's suppression ruling because the critical-impact requirement is satisfied. *See* Minn. R. Crim. P. 28.04, subd. 2; *State v. Lugo*, 887 N.W.2d 476, 481-86 (Minn. 2016); *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005) *State v. Webber*, 262 N.W.2d 157, 159 (Minn. 1977). We agree as well.

There is a narrow difference between the parties' respective positions on appeal. The state first argues that the district court erred by reasoning that "the automobile exception does not apply . . . because the officers purportedly conducted an inventory search of the vehicle." The state contends that the presence of one exception is sufficient, that the absence of an exception does not foreclose the presence of a different exception, and that the Belle Plaine officers had two reasons to conduct a search: probable cause that marijuana was inside the car and the need for an inventory search. In his responsive brief, Hunter agrees, stating that the pursuit of one exception to the warrant requirement "does not mean that a search cannot also be justified under another." We agree with both parties.

The state next argues that the district court erred by reasoning that the automobile exception does not apply because there was only a "slight smell of marijuana [emanating] from the vehicle" and that the caselaw "generally require[s] more than just a smell." The state cites a number of opinions in which the appellate courts of Minnesota and other jurisdictions have concluded that the odor of marijuana is sufficient to justify the search of a vehicle. In his responsive brief, Hunter again agrees, stating that "the police do not have to see marijuana for the automobile exception to apply." Again, we agree with the parties. "[T]he detection of odors alone, which trained police officers can identify as being illicit, constitutes probable cause to search automobiles for further evidence of crime." *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. App. 1984); *see also State v. Schultz*, 271 N.W.2d 836, 837 (Minn. 1978); *State v. Hodgman*, 257 N.W.2d 313, 315 (Minn. 1977). Furthermore, under the automobile exception to the warrant requirement, "the police may search a car without a warrant, including closed containers in that car, if there is probable

cause to believe the search will result in a discovery of evidence or contraband." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (quotation omitted). The probable-cause standard is satisfied if "there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Gail*, 713 N.W.2d 851, 858 (Minn. 2006) (quotation omitted).

Hunter, however, does not agree with the state that the district court's suppression order must be reversed outright. Rather, he argues that the evidentiary record needs to be more fully developed because there is doubt as to whether the officers actually detected an odor of marijuana. He notes that there is no mention of a marijuana odor in Officer Urban's written report or in any of the oral conversations recorded by the officers' body-worn video-cameras. He contends that there is "an unresolved credibility issue, which if determined in Hunter's favor precludes the automobile exception's applicability." He contends further that this court should remand for an additional evidentiary hearing and additional fact-finding on the question whether there was an odor of marijuana emanating from Hunter's vehicle when Officer Weckman asked Hunter to exit the car. In support of this contention, he cites *State v. Licari*, 659 N.W.2d 243, 255-56 (Minn. 2003), and *State v. Weekes*, 250 N.W.2d 590, 595 (Minn. 1977), for the proposition that a remand is appropriate to allow for further proceedings. In its reply brief, the state argues, in part, that the relevant factual issues were presented to and resolved by the district court.

Our review of the district court record reveals that the presence or absence of a marijuana odor is a factual issue for which both parties had a full opportunity to present evidence and argument. The parties agreed to the introduction of Officer Weckman's

written report, which states, "The slight odor of marijuana was observed coming from the vehicle, recognized based on my training and experience." Hunter and his attorney presumably were fully aware of Officer Weckman's written report and, thus, could have challenged any part of it. For example, Hunter could have called Officer Weckman as a witness at the suppression hearing and cross-examined him with the goal of eliciting contrary testimony or undermining the credibility of his written report. But Hunter did not do so. He and his attorney elected to not introduce any oral testimony at the suppression hearing and to argue for suppression based on a factual record that consisted primarily of three reports written by law-enforcement officers and three video-recordings of the traffic stop.[1]

In *Licari*, the supreme court stated generally that "a case will not be remanded for more definite findings when it is clear that the district court considered and decided the fact issue in question." 659 N.W.2d at 255. In that case, which was a direct appeal from a conviction of second-degree murder, the district court had not reached multiple factual issues that the supreme court deemed relevant to the parties' Fourth Amendment arguments. *Id.* at 246, 255-56. The district court had not done so because the parties had not presented the evidence that was necessary to resolve those factual issues. *Id.* at 250-52, 254-55. Accordingly, the supreme court considered whether it was appropriate to remand

[1]We note that the memorandum of law that Hunter submitted after the hearing did not directly challenge the Belle Plaine officers' search of his car. It appears that the state argued three exceptions to the warrant requirement as alternative grounds for rejecting Hunter's first argument, which challenged the use of information concerning the location of his cellphone. Arguably, the district court, after rejecting Hunter's first argument, had no need to consider any of the three warrant exceptions asserted by the state.

for further development of the factual record and ultimately decided to do so. *Id.* at 256. In this case, however, the district court *did* consider and decide the factual issue for which Hunter seeks a remand. The district court stated that "Officer Weckman smelled a slight odor of marijuana coming from [Hunter's] vehicle." This statement is supported by evidence in the record of the suppression motion. This case is distinguishable from *Licari* because the record contains evidence relevant to the factual issue challenged on appeal and the district court considered and resolved that factual issue.

Similarly, in *Weekes*, which was a direct appeal from a conviction of first-degree manslaughter, the supreme court considered the defendant's argument that his *Miranda* rights had been violated. 250 N.W.2d at 592-95. The United States Supreme Court had issued an opinion in the interval between the trial and the appellate decision. *Id.* at 592, 594-95. The supreme court observed that "the question of whether defendant's statements were admissible . . . was not expressly presented or decided by the trial court." *Id.* at 595. Accordingly, the supreme court considered whether it was appropriate to remand for further development of the factual record and ultimately decided to do so. *Id.* This case is distinguishable from *Weekes* for the same reasons stated above and because Hunter's arguments are not based on any change in the applicable caselaw.

To conclude, Hunter had an opportunity to introduce evidence at the suppression hearing challenging the existence of an odor of marijuana. The district court considered the evidence in the record and decided the issue based on Officer Weckman's written report, which states that there was an odor of marijuana emanating from Hunter's vehicle. Thus, Hunter is not entitled to a remand for an additional suppression hearing, additional

development of the factual record related to the suppression motion, or additional fact-finding on the motion.

In sum, the district court erred by rejecting the state's argument that the search of Hunter's car is justified by the automobile exception to the Fourth Amendment's warrant requirement. Based on the evidentiary record and the district court's statement that Officer Weckman detected the odor of marijuana coming from Hunter's car, the district court should have concluded that the Belle Plaine officers had probable cause to search Hunter's car. Therefore, the district court's suppression order is reversed insofar as it suppressed the physical evidence arising from the traffic stop. The case is remanded to the district court for further proceedings that are consistent with this opinion.

Reversed and remanded.