STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1908

State of Minnesota,
Appellant,

vs.

Tiffany Renee Browder,
Respondent.

Filed June 15, 2020
Reversed and remanded
Florey, Judge

Hennepin County District Court
File No. 27-CR-19-6366

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

Paul D. Baertschi, Tallen & Baertschi, Assistant Maple Grove Prosecuting Attorney, Minneapolis, Minnesota (for appellant)

Mary F. Moriarty, Hennepin County Chief Public Defender, David W. Merchant, Assistant Public Defender, Minneapolis, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Larkin, Judge.

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

FLOREY, Judge

The state seeks review of a pretrial order granting the defendant's motion to suppress certain evidence on the ground that it was obtained by an unreasonable

warrantless search. The state contends that the district court only considered one exception to the warrant requirement and that the relevant caselaw indicates that the search was permissible under another rationale. We reverse and remand.

FACTS

In the late evening of March 17, 2019, Maple Grove police officer Brandon Gross stopped a vehicle driven by respondent Tiffany Browder after learning that the driving privileges of the registered owner who turned out to be a passenger in the vehicle had been revoked. When Officer Gross approached the driver's side of the vehicle, he noted the odor of marijuana. After Browder produced a temporary driver's license, Officer Gross conducted a computerized check and learned that her driving privileges had been suspended. Officer Gross called for the assistance of another officer.

After arresting Browder and having the passenger exit the vehicle, Officer Gross searched the vehicle and found two small containers of marijuana in a purse. Browder was then transported to the Maple Grove Police Department, where a further search of her purse revealed a prescription bottle containing, in relevant part, a substance that tested positive for .18 grams of Ecstasy. Browder was charged with driving after cancellation-inimical to public safety, possession of a small amount of marijuana, and fifth-degree possession of a controlled substance.

Browder moved to suppress the marijuana and Ecstasy as evidence on the grounds that they were unlawfully seized. The district court granted Browder's motion, finding that the search-incident-to-arrest exception to the Fourth Amendment warrant requirement did

not apply and that the search of the purse inside the vehicle was therefore unlawful. The state sought review of the district court's order.

D E C I S I O N

"When reviewing a pretrial order on a motion to suppress, we review the district court's factual findings under our clearly erroneous standard . . . [and w]e 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; Minn. Const. art. I, § 10. A warrantless search is unreasonable unless an officer conducts it pursuant to an exception to the warrant requirement. *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003). The state bears the burden of proving such an exception. *Id.*

Here, the state argues not that the district court erred in its analysis of the search-incident-to-arrest exception, but that it erred in only considering that exception when (1) this case does not pose a search-incident-to-arrest question and (2) an analysis of the proper issue—the automobile exception—reveals that Officer Gross's search was constitutionally justified. Specifically, the state contends that the issue presented by Browder's motion is whether the odor of marijuana from a vehicle supplies probable cause to search the passenger compartment and containers therein for evidence of a crime. We agree with the state's assessment of the issue. The officer's testimony makes clear that he conducted the search because he smelled the odor of an illegal substance—not because he

had placed Browder under arrest. The relevant exception to the warrant requirement, then, is the "automobile" or "motor-vehicle" exception. *See State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999) ("Under this 'motor vehicle exception,' the police may search an automobile without a warrant if they have 'probable cause for believing that [the] vehicles are carrying contraband or illegal merchandise.'" (quoting *Carroll v. United States*, 267 U.S. 132, 154, 45 S. Ct. 280, 285 (1925))).

The motor-vehicle exception permits a police officer to search an automobile 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). Assessing probable cause to search requires an objective consideration of the totality of the circumstances to determine whether the facts would be sufficient to justify a person "of reasonable prudence in the belief that contraband or evidence of a crime will be found" in the place searched. *State v. Lee*, 585 N.W.2d 378, 382 (Minn. 1998). Stated another way, an officer has probable cause to search when there is a "fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985). "If probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." *United States v. Ross*, 456 U.S. 798, 825, 102 S. Ct. 2157, 2173 (1982); *accord Munson*, 594 N.W.2d at 138.

"It 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." *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. App. 1984) (citing

St. Paul v. Moody, 224 N.W.2d 43, 44 (Minn. 1976)). Odor, including that of marijuana, has been held to supply sufficient probable cause to search a vehicle. *Id.* ("It 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."); *State v. Hodgman*, 257 N.W.2d 313, 314 (Minn. 1977) (marijuana); *Moody*, 224 N.W.2d at 44 (paint fumes). Here, the district court held that the initial stop and request for Browder's driver's license was legitimate and found that "Officer Gross immediately observed that the interior of the [vehicle] smelled of marijuana" upon approaching. We conclude that the immediate odor of an illegal substance was sufficient to supply Officer Gross with independent probable cause to believe that the vehicle contained evidence of criminal activity and that the subsequent search therefore did not violate Browder's Fourth Amendment right against unreasonable search and seizure. We therefore reverse and remand for further proceedings consistent with this opinion.

Reversed and remanded.