STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0187

State of Minnesota,
Respondent,

vs.

Jordan Janine Johnson,
Appellant.

Filed December 20, 2021
Affirmed
Florey, Judge

Cass County District Court
File No. 11-CR-19-1110

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Benjamin T. Lindstrom, Cass County Attorney, Walker, Minnesota (for respondent)

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

Thomas Johnson, Gabrielle L. Kiefer, Sheila S. Niaz, Special Assistant Public Defenders, Merchant & Gould, P.C., Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Florey, Judge; and John Smith, Judge.*

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

NONPRECEDENTIAL OPINION

In this direct appeal from the judgment of conviction for fifth-degree possession of a controlled substance, appellant argues that the district court erred in denying her motion to suppress evidence because the observation of a cut straw on the floor of the vehicle did not give police sufficient probable cause to conduct a warrantless search of the vehicle. We affirm.

FACTS

On July 7, 2019, an officer responded to an incident at a casino. A casino security guard told the officer that there was someone in a vehicle outside the casino who had "trespassed" despite being "warned four times" to stop trespassing. The officer made contact with appellant Jordan Janine Johnson who was sitting in the front passenger seat of the vehicle.

The officer asked Johnson to step out of the vehicle to issue her a citation. When Johnson opened the door to exit the vehicle, the officer "pretty much immediately" observed "a cut orange straw which is usually consistent with narcotic use" on the floor of the vehicle directly underneath the seat on which Johnson had been sitting. The officer observed that one end of the straw was melted and crimped, and the other was "cut off at an angle." The officer testified that, based on his training and experience, people often use straws with those characteristics to "snort narcotics." The officer further testified that he had tested similarly modified straws in the past, and they tested positive for illicit drugs, usually methamphetamine. The officer then seized the straw and observed that "inside it there was a white powdery substance or crystalline maybe, very small granules."

Based on his observations, the officer conducted a search of the vehicle and its contents, which included a backpack and a purse that belonged to Johnson. The officer found multiple microbaggies containing residue that he believed to be a controlled substance inside of Johnson's backpack, and an additional microbaggie with similar contents inside of Johnson's purse. The officer performed a drug test of the straw, which tested positive for the presence of methamphetamine, but he did not remember if he performed the test before or after he conducted the vehicle search.

Johnson moved to suppress all evidence seized, alleging the searches of the vehicle and of her property were unconstitutional. The district court denied Johnson's motion, finding that even though the officer did not have a search warrant, two exceptions to the warrant requirement applied: the plain-view exception and the automobile exception. Johnson waived her jury-trial rights and agreed to a determination of her guilt based on stipulated facts. The district court found Johnson guilty. Johnson now appeals the district court's denial of her motion to suppress.

DECISION

Johnson argues that the warrantless search of the car and her possessions violated the Fourth Amendment and the Minnesota Constitution. We disagree.

The United States Constitution and the Minnesota Constitution protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches by government actors are unreasonable unless an exception to the warrant requirement applies. *State v. Metz*, 422 N.W.2d 754, 756 (Minn. App. 1998). In reviewing whether there existed a valid exception to the warrant requirement justifying a

warrantless search or seizure, we review the district court's factual findings for clear error and its legal conclusions de novo. *State v. Stavish*, 868 N.W.2d 670, 677 (Minn. 2015).

Here, the district court found two exceptions to the warrant requirement were satisfied by the facts and circumstances of this case: the plain-view exception and the automobile exception. We will analyze each in turn.

Plain-View Exception

"Under the plain-view doctrine, the police may, without a warrant, seize an object they believe to be the fruit or instrumentality of a crime as long as three criteria are met: (1) [the] police are legitimately in the position from which they view the object; (2) they have a lawful right of access to the object; and (3) the object's incriminating nature is immediately apparent." *State v. Milton*, 821 N.W.2d 789, 799 (Minn. 2012) (quotation omitted). To satisfy the third criteria, an officer "must have probable cause to believe the item or object is contraband." *Id.* at 801 (quotation omitted). The plain-view exception does not justify a warrantless seizure if the "police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object." *In re Welfare of G.M.*, 560 N.W.2d 687, 693 (quotation omitted).

"Probable cause exists where 'the facts available to the officer would warrant a [person] of reasonable caution in the belief that certain items may be contraband or stolen property or useful as evidence of crime.'" *State v. DeWald*, 463 N.W.2d 741, 747 (Minn. 1990) (quoting *Texas v. Brown*, 460 U.S. 730, 742 (1983). Additionally, an officer may consider reasonable inferences drawn from the facts "based on [his] training and experience, because police officers may interpret circumstances differently than untrained

persons." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). *See State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011); *State v. Harris*, 590 N.W.2d 90, 99 (Minn. 1999). Therefore, appellate courts "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*, 877 N.W.2d at 771 (quoting *Ornelas v. United States*, 517 U.S. 690, 699-700 (1996)).

Johnson challenges the district court's analysis of the third criteria, arguing that the officer lacked probable cause to believe the cut straw was contraband because the straw's incriminating nature could not have been immediately apparent to the officer. However, the district court found that the officer credibly testified that when Johnson exited the vehicle so that the officer could issue her a citation, the incriminating nature of the straw was "immediately apparent" to him. *See State v. Miles*, 585 N.W.2d 368, 373 (Minn. 1998) (explaining that appellate courts defer to the factfinder's determinations regarding the weight and credibility of individual witnesses). Based upon our independent review of the record, this finding was not clearly erroneous. *See Stavish*, 868 N.W.2d at 677.

In *Texas v. Brown*, the United States Supreme Court considered whether an officer had probable cause and the plain-view exception applied to an officer's seizure of contraband based on his observation of an object with multiple lawful uses: a party balloon. 460 U.S. at 730. There, while speaking with a driver during a traffic stop, an officer observed an opaque, green party balloon knotted about one inch from the tip inside the vehicle. *Id.* at 733. The officer had previous experience with drug arrests and was aware

that narcotics were frequently packaged in balloons like the one he observed. *Id.* at 734. Based on this knowledge, the officer searched the vehicle and seized the balloon. *Id*.

The Supreme Court held that the plain-view exception applied because the officer had probable cause to believe that the balloon contained an illicit substance based upon the officer's awareness that, in his training and experience, balloons tied in that manner were frequently used to carry narcotics. *Id.* at 743. The Supreme Court explained that "[t]he fact that [the officer] could not see through the opaque fabric of the balloon is all but irrelevant: the distinctive character of the balloon itself spoke volumes as to its contents particularly to the trained eye of the officer." *Id.* at 743.

The facts of *Brown* are like the facts of the case at hand. First, the officer here observed an orange straw on the floor of the vehicle, which, like a green balloon, has multiple uses aside from narcotic use. The officer "almost immediately" observed that the orange straw, like the green balloon, had been modified by being cut and with one end melted and crimped. Like the officer in *Brown*, based upon his training and experience, the officer was aware that narcotic users use similarly modified straws for snorting narcotics, and he had conducted testing of similar straws in the past that were positive for narcotics. As in *Brown*, the fact that the officer here could not see into the straw was "all but irrelevant" because the "distinctive character of [the straw] itself spoke volumes as to its contents." *Id.* at 743. Thus, the officer here also had probable cause to believe that the orange cut straw contained contraband or was useful as evidence of a crime based upon his training and experience that cut straws are often used to ingest narcotics and test positive for the presence of narcotics.

Because the officer was "legitimately in the position from which [he] viewed the [cut straw]," he had lawful access to it, and the cut straw's "incriminating nature [was] immediately apparent" to his trained eye, the seizure of the modified straw satisfies the plain-view exception to the warrant requirement. *Milton*, 821 N.W.2d at 802.

Automobile Exception

Johnson next argues that the automobile exception to the warrant requirement does not apply to the facts of her case. Under the "automobile exception," "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." *Lester*, 874 N.W.2d at 771 (quotation omitted). We must "afford due weight to the inferences of [the officer] that were credited by the district court in its determination of probable cause." *Id*. at 772.

Here, review of the record supports the district court's finding that the officer had probable cause to believe that the vehicle could contain contraband after observing the modified straw. Furthermore, after the officer lawfully seized the modified straw and observed that it contained "a white powdery substance," he had probable cause to believe the vehicle could contain contraband. Based on the totality of the circumstances, including the officer's observations and with due weight given to reasonable inferences drawn from training and experiences, we determine that there was probable cause to believe that Johnson's car contained contraband.

Because the search of the vehicle was lawful, we hold that the district court properly denied Johnson's motion to suppress.

Affirmed.