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**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-302**

State of Minnesota,
Respondent,

vs.

Kathleen Mary Fila,
Appellant.

**Filed April 6, 2010
Affirmed; motion denied
Hudson, Judge**

Isanti County District Court
File No. 30-CR-07-1291

Lori Swanson, Attorney General, Kimberly R. Parker, Assistant Attorney General,
St. Paul, Minnesota; and

Jeffrey Edblad, Isanti County Attorney, Cambridge, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, David E. Axelson, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Hudson, Judge; and
Johnson, Judge.

UNPUBLISHED OPINION

HUDSON, Judge

On appeal from her conviction of fifth-degree controlled-substance crime, appellant argues that her conviction must be reversed because she was arrested for a misdemeanor offense, which does not fit within an exception provided by Minn. R. Crim. P. 6.01. Because appellant's arrest complied with statutory requirements and Minn. R. Crim. P. 6.01, we affirm. We also deny appellant's motion to strike respondent's addendum.

FACTS

On September 17, 2007, an Isanti County deputy sheriff pulled over a vehicle coming from a known drug-activity area because it had a cracked windshield. The deputy approached the car and recognized the passenger, appellant Kathleen Fila, from an arrest a few months earlier for possession of hypodermic needles, methamphetamine, and mushrooms. As the deputy approached the vehicle, he noticed appellant making "furtive movements around the waist area and also to the floor area of the vehicle." Based on his prior experiences with appellant, he believed that she may have been hiding contraband or weapons. The deputy asked the driver to exit the vehicle and indicated to the driver that appellant had previously been arrested for a drug-related charge and that she may be hiding a weapon or contraband in the vehicle. While the deputy spoke to the driver outside of the vehicle, he observed appellant continue to duck to the floor area and lift objects. The driver stated that he did not really know appellant and consented to a search of the vehicle.

The deputy approached the vehicle and asked appellant to step outside. He noticed that appellant had track marks on her arm. His previous arrest of appellant dealt with syringes used to inject methamphetamine. The deputy saw a purse through the window, which appellant indicated belonged to her, with a syringe in plain view protruding from the top. The deputy also saw another syringe on the passenger seat where appellant had been sitting. The deputy then told appellant that she was being placed under arrest for possession of hypodermic needles. The deputy also testified that he arrested appellant for violating her conditions of release because “she didn’t have any reason to have hypodermic needles” and he believed that possessing no contraband was a condition of her release. The deputy then performed a minimal search of appellant and placed her in the back of the squad car.

Upon arrival at the Isanti County jail, the deputy noticed a syringe cap on the floor of the squad car. The deputy ordered appellant to open her hands, and she dropped another syringe, the contents of which later tested positive for methamphetamine. Appellant was then searched by a female officer at the station house, at which time more methamphetamine and another syringe were found.

Appellant was charged by complaint with one count of fifth-degree controlled-substance crime in violation of Minn. Stat. § 152.025, subd. 2(1) (2006), and one count of possession of a hypodermic needle in violation of Minn. Stat. § 151.40, subd. 1 (2006). At a contested omnibus hearing, appellant challenged the stop of the car and the resulting arrest and search. The district court ruled that the stop and arrest were lawful.

Appellant waived her right to a jury trial and submitted the matter to the court on stipulated facts pursuant to Minnesota Rules of Criminal Procedure 26.01, subd. 4 (also known as a *Lothenbach* procedure). The hypodermic-needle-possession charge was dismissed. The district court found appellant guilty of fifth-degree controlled-substance crime, stayed imposition of the sentence, and ordered appellant to serve 180 days in jail. This appeal follows.

D E C I S I O N

Appellant argues that her conviction must be reversed because there was no reasonable basis to arrest her for the misdemeanor offense of possession of a hypodermic needle. Appellant challenges only her arrest and does not challenge the initial stop or search of the vehicle. She argues that because she should not have been taken into custody, the evidence obtained thereafter must be suppressed. Appellant's motion to suppress the evidence against her was denied by the district court. "When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

If an officer has probable cause to arrest, a suspect may be searched incident to arrest. *State v. Varnado*, 582 N.W.2d 886, 892 (Minn. 1998). A search incident to arrest is valid only if the crime is one for which custodial arrest is authorized. *Id.* An officer may arrest a person for a "public offense," including a misdemeanor, if it is committed in the officer's presence. Minn. Stat. § 629.34, subd. 1(c)(1) (2006); *State v. Richmond*, 602 N.W.2d 647, 653 (Minn. App. 1999), *review denied* (Minn. Jan. 18, 2000). Additionally,

the Minnesota Rules of Criminal Procedure permit custodial arrest for misdemeanors only under certain conditions. The rules provide that an officer shall issue a citation to a person subject to lawful arrest for a misdemeanor, “unless it reasonably appears to the officer that arrest or detention is necessary to prevent bodily harm to the accused or another or further criminal conduct, or that there is a substantial likelihood that the accused will fail to respond to a citation.” Minn. R. Crim. P. 6.01, subd. 1(1)(a). This court has required that both Rule 6.01 and Minn. Stat. § 629.34 be satisfied for a custodial misdemeanor arrest to be lawful. *See, e.g., Richmond*, 602 N.W.2d at 653.

Here, appellant was initially arrested for the misdemeanor offense of possession of a hypodermic needle. *See* Minn. Stat. § 151.40, subd. 1 (2006) (prohibiting possession of hypodermic needles or syringes); Minn. Stat. § 151.29 (2006) (making violation of section 151.40 a misdemeanor). The arresting deputy saw a needle in plain view protruding from appellant’s purse and another on the passenger seat where appellant had been sitting, while appellant was in his presence. Thus, the statutory requirement enabling a misdemeanor arrest was satisfied because the possession offense occurred in the officer’s presence. *See* Minn. Stat. § 629.34, subd. 1(c)(1).

Under the analysis set forth in *Richmond*, the arrest must also comply with rule 6.01. Appellant argues that the rule was not satisfied because the deputy could have simply confiscated the needles and issued a citation, obviating the need for arrest. But when determining whether to issue a citation or arrest for a misdemeanor, “officers may take into account the defendant’s . . . references, past history of response to criminal process, and such facts as have a bearing on the likelihood of harmful or criminal

conduct.” Minn. R. Crim. P. 6, cmt. To arrest a person without a warrant, officers must be guided by their own observations and experience, and must reasonably believe that the suspect has committed a crime. *Richmond*, 602 N.W.2d at 652-53.

Here, the arresting deputy knew appellant from a previous arrest involving needles and methamphetamine and believed that appellant may be violating her conditions of release. The deputy testified that he arrested appellant for possessing the needle because “[h]aving no contraband is a condition of her release.” In addition, appellant was coming out of a known drug area at night after business hours, appeared nervous and fidgety, would not make eye contact, made movements that indicated that she was hiding something, possessed hypodermic needles, and had visible track marks on her arms.

Appellant cites cases in which this court has held that a misdemeanor arrest violated rule 6.01. *See, e.g., Varnado*, 582 N.W.2d at 893 (holding a search incident to arrest invalid when record lacked facts supporting a belief that suspect arrested for failure to produce a driver’s license posed a danger or would not respond to citation); *State v. Askerooth*, 681 N.W.2d 353, 371 (Minn. 2004) (holding that evidence must be suppressed when seizure exceeded permissible scope after traffic stop for failure to stop at a stop sign). But the cases cited by appellant involve arrests made after minor traffic violations. The supreme court has noted that minor traffic violations generally may not provide the basis for a search incident to probable cause to arrest. *State v. Burbach*, 706 N.W.2d 484, 489 n.2 (Minn. 2005); *see also Askerooth*, 681 N.W.2d at 365 (noting that custodial arrest for a minor traffic offense is generally not warranted). But here, although the vehicle was stopped for a cracked windshield, appellant was arrested for a drug-

related offense. The arresting deputy also had reason to believe that appellant was violating her conditions of release. Thus, it could reasonably appear to the deputy, based on his past experience with appellant, his observations of appellant at the scene, the presence of drug paraphernalia, and additional suspicious circumstances, that appellant would engage in further criminal conduct and not remain law-abiding if she were issued a citation instead of being arrested.

Finally, appellant also moves to strike respondent's addendum because she contends that the district court did not consider these documents in determining whether the evidence should be suppressed. The documents include an exhibit from the probable-cause hearing, a pretrial bail evaluation filed in the district court, documents contained in the state's submission regarding the *Lothenbach* trial, and documents relating to appellant's previous arrest, including her conditional release order and pretrial bail evaluation. Appellant acknowledges that the entire investigative file was submitted to the district court, but contends that it "was submitted only for the district court's consideration of the probable-cause challenge, not the suppression motion." Appellant's argument fails. It is well established that the record on appeal consists of the papers and exhibits filed in the district court, and the transcript of the proceedings. Minn. R. Civ. App. Proc. 110.01.

But because the arresting deputy's testimony alone is sufficient to affirm the district court's decision, we do not rely on any of the documents in respondent's addendum. We therefore deny appellant's motion to strike as moot. *See Drewitz v.*

Motorwerks, Inc., 728 N.W.2d 231, 233 n.2 (Minn. 2007) (stating that if the contested documents are not relied upon, a motion to strike may be denied as moot).

Affirmed; motion denied.