STATE OF MINNESOTA

IN SUPREME COURT

A21-0776

Court of Appeals

Hudson, J.
Concurring, Chutich, Thissen, JJ.

State of Minnesota,

Respondent,

vs.

Filed: May 3, 2023
Office of Appellate Courts

Amber Kay Barrow,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Janelle P. Kendall, Stearns County Attorney, River D. Thelen, Assistant County Attorney, Saint Cloud, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, Saint Paul, Minnesota, for appellant.

Teresa Nelson, American Civil Liberties Union of Minnesota, Minneapolis, Minnesota; and

Elizabeth G. Bentley, Civil Rights Appellate Clinic, University of Minnesota Law School, Minneapolis, Minnesota, for amici curiae American Civil Liberties Union Foundation and American Civil Liberties Union of Minnesota.

S Y L L A B U S

The warrantless search of defendant's purse was lawful under the automobile exception to the Fourth Amendment's warrant requirement because there was probable cause to believe that the car contained a controlled substance, and the purse was a container within that car.

Affirmed.

O P I N I O N

HUDSON, Justice.

Appellant Amber Kay Barrow was a passenger in a car searched by law enforcement without a warrant. As she left the car, Barrow removed her purse from the car, but an officer directed her to leave the purse on the car. The officer searched Barrow's purse and discovered a controlled substance in the purse.

On appeal from her conviction of fifth-degree possession of a controlled substance, Barrow argues that the automobile exception did not authorize the warrantless search of her purse. Barrow does not contest that there was probable cause to believe there were controlled substances in the car and that controlled substances would fit in her purse. Instead, she argues that the search was not authorized under the automobile exception because the purse was an extension of her person, not a container within the car. Both the district court and the court of appeals disagreed with Barrow's argument.

We conclude that the search of Barrow's purse was constitutional under the federal automobile exception. We therefore affirm the decision of the court of appeals.

FACTS

On March 18, 2018, Barrow was the only passenger in a car driving on Interstate 94 near Avon. After observing lane change violations, an officer with the Avon Police Department pulled over the car. The officer approached the car and began speaking with the driver and Barrow. The officer said that he smelled marijuana in the car and asked if there was any in the car. Both denied possessing marijuana, and Barrow stated that they had left a house where others were smoking marijuana.

The officer asked the driver and Barrow to leave the car. After Barrow stepped out of the car, she immediately reached back inside and grabbed her purse. As Barrow began walking to the rear of the car with her purse, the officer directed Barrow to leave her purse on the car; Barrow placed her purse on the trunk of the car. The driver and Barrow then stood in front of the squad car.

The officer placed Barrow's purse back inside the vehicle and began to search the purse. Inside the purse, the officer found four pills of Clonazepam, a controlled substance. Barrow did not have a prescription for Clonazepam.

Barrow was charged with fifth-degree possession of a controlled substance, Minn. Stat. § 152.025, subds. 2(1), 4(b) (2022). Barrow moved to suppress the evidence obtained from the purse search, arguing that the automobile exception to the Fourth Amendment's search warrant requirement did not apply because the purse was an extension of Barrow's person, not a container within the car. The State countered that the purse was a container within the car at the time probable cause to search the car arose, and

thus the automobile exception applied. The district court agreed with the State and denied Barrow's motion.

Barrow waived her right to a jury trial and other trial rights and stipulated to the prosecution's evidence pursuant to Minn. R. Crim. P. 26.01, subd. 4, for the purpose of obtaining appellate review of the purse search issue. The district court found Barrow guilty as charged and sentenced her to 12 months and 1 day in prison, stayed for 5 years.

The court of appeals affirmed Barrow's conviction, holding that the automobile exception to the Fourth Amendment's search warrant requirement applied to the warrantless search of Barrow's purse. *State v. Barrow*, No. A21-0776, 2022 WL 1531463, at *2–3 (Minn. App. May 16, 2022).

We granted Barrow's petition for review to determine whether the automobile exception applies to the warrantless search of Barrow's purse.

ANALYSIS

Barrow contends that the district court erred in denying her motion to suppress because the search of her purse was unconstitutional under the Fourth Amendment to the United States Constitution.[1] When reviewing a district court's pretrial order on a motion

[1] Amici urge us to interpret Article I, Section 10 of the Minnesota Constitution more broadly than the Fourth Amendment and to hold that the search of Barrow's purse was independently unconstitutional under the Minnesota Constitution. But Barrow herself does not make this argument. Because we "generally do not decide issues raised only by an amicus," we express no opinion on the constitutionality of the search of Barrow's purse under the Minnesota Constitution. *Harstad v. City of Woodbury*, 916 N.W.2d 540, 545 n.7 (Minn. 2018).

to suppress evidence, we review the district court's legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

The United States Constitution protects against "unreasonable searches and seizures." U.S. Const. amend. IV. A search conducted without a warrant is unreasonable unless it satisfies "one of the well-delineated exceptions to the warrant requirement." *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999).

One exception to the Fourth Amendment's search warrant requirement is the automobile exception. Under the automobile exception, 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) (citation omitted) (internal quotation marks omitted). The container must be able to "conceal the object of the search." *United States v. Ross*, 456 U.S. 798, 825 (1982). However, the automobile exception does not allow police to conduct a warrantless search of persons inside the car. *United States v. Di Re*, 332 U.S. 581, 587 (1948).

The United States Supreme Court has examined the application of the automobile exception to the search of a purse. In *Wyoming v. Houghton*, 526 U.S. 295, 298, 300 (1999), an officer conducting a traffic stop had probable cause to believe there was a controlled substance in the stopped car. The officer thus ordered the occupants out of the car and began searching the car pursuant to the automobile exception. *Id.* at 298. The officer found a purse in the backseat, in which the officer discovered a controlled substance.

Id. The purse belonged to a passenger of the car, who was charged with possession of a controlled substance. *Id.*

The Court held that the search of the purse was valid under the automobile exception. *Id.* at 307. The automobile exception, the Court explained, allows for the search of "*all* containers within a car, without qualification as to ownership." *Id.* at 301. Moreover, the Court observed that "[p]assengers, no less than drivers, possess a reduced expectation of privacy with regard to the property that they transport in cars," and that a search of "an item of personal property found in a car" is much less intrusive than the search of a person. *Id.* at 303. As a result, a passenger's privacy expectations are "considerably diminished." *Id.* at 304. Moreover, the Court reasoned that a "passenger's property" carve-out to the automobile exception would dramatically impair the government's "substantial" interest in "the ability to find and seize contraband and evidence of crime." *Id.* at 304–05. Thus, the Court concluded that the "balancing of the relative interests weighs decidedly in favor of allowing searches of a passenger's belongings." *Id.* at 303.

Justice Breyer joined the Court's opinion, but added in a concurrence:

> Less obviously, but in my view also important, is the fact that the container here at issue, a woman's purse, was found at a considerable distance from its owner, who did not claim ownership until the officer discovered her identification while looking through it. Purses are special containers. They are repositories of especially personal items that people generally like to keep with them at all times. So I am tempted to say that a search of a purse involves an intrusion so similar to a search of one's person that the same rule should govern both. However, given this Court's prior cases, I cannot argue that the fact that the container was a purse *automatically* makes a legal difference, for the Court has warned against trying to make that kind of distinction. But I can say that it would matter if a woman's purse,

> like a man's billfold, were attached to her person. It might then amount to a kind of "outer clothing," which under the Court's cases would properly receive increased protection. In this case, the purse was separate from the person, and no one has claimed that, under those circumstances, the type of container makes a difference. For that reason, I join the Court's opinion.

Id. at 308 (Breyer, J., concurring) (citations omitted).

We have not previously considered the application of the automobile exception to the search of a purse, but we have examined the search of a purse in the context of a premises warrant. In *State v. Wynne*, 552 N.W.2d 218, 219 (Minn. 1996), the defendant arrived at her home to find officers searching the home pursuant to a premises warrant. The warrant did not authorize the search of the defendant's person. *Id.* Upon arriving, the defendant was met by officers, who took her purse into the house and searched it. *Id.* The purse contained illegal drugs. *Id.*

We concluded that the purse fell outside the scope of the premises warrant because it was not "lying about" the home. *Id.* at 220. " '[A] search of clothing currently worn,' " we explained, " 'is plainly within the ambit of a personal search and outside the scope of a warrant to search the premises.' " *Id.* (quoting *United States v. Micheli*, 487 F.2d 429, 431 (1st Cir. 1973)). We further noted that "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.* (alteration in original) (quoting *United States v. Graham*, 638 F.2d 1111, 1114 (7th Cir. 1981)). Therefore, we determined that "the search of [the defendant's] purse constituted a

search of her person" and was unconstitutional under the Fourth Amendment.[2] *Id.* at 220, 223.

Relying on our decision in *Wynne* and Justice Breyer's concurrence in *Houghton*, Barrow argues that the search of her purse pursuant to the automobile exception was akin to a search of her person, and was therefore unconstitutional under *Di Re*'s holding that the automobile exception does not allow police to conduct a warrantless search of persons inside the car.

We are not persuaded. *Wynne* is readily distinguishable, as that case involved the search of a home pursuant to a warrant, not the search of an automobile. *See* 552 N.W.2d at 220 (recognizing that the automobile exception did not apply because the search involved a warrant to search the premises). This distinction is material: unlike a home, where a person's privacy expectations "are most heightened," *State v. Carter*, 697 N.W.2d 199, 208 (Minn. 2005), the Supreme Court has explained that a passenger's privacy expectations in a car are "considerably diminished," *Houghton*, 526 U.S. at 304. Additionally, the Supreme Court has observed that the governmental interest in effective law enforcement is "substantial" with cars, as the "ready mobility of an automobile creates a risk that the evidence or contraband will be permanently lost while a warrant is obtained." *Id.* (citation omitted) (internal quotation marks omitted).

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[2] In *State v. Molnau*, 904 N.W.2d 449, 452–53 (Minn. 2017), we clarified that in the context of a premises search, the search of an unattended purse on the premises is not a search of one's person.

Simply put, while "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears," *Coolidge v. New Hampshire*, 403 U.S. 443, 461–62 (1971), automobiles *are* categorically different under controlling Fourth Amendment precedent, *see Ross*, 456 U.S. at 823 (recognizing that the "protection afforded by the [Fourth] Amendment varies in different settings"). Indeed, Barrow's position, articulated by Justice Breyer's *Houghton* concurrence, cannot be squared with the Supreme Court's holding in *Ross*, which disapproved of distinguishing between containers "worthy" and "unworthy" of Fourth Amendment protection and explained that the automobile exception "applies equally to all containers" in which there is probable cause to believe that the object of the search may be found. *Ross*, 456 U.S. at 822. Elevating a single type of container—a purse—to the status of one's "person" would circumvent *Ross*'s holding and start us down a path of delineating "worthy" and "unworthy" containers in the context of automobile searches.

In fact, the Supreme Court has gone down that path but has since repudiated it. In *Arkansas v. Sanders*, 442 U.S. 753, 763 (1979), the Court examined the search of personal luggage under the automobile exception. In language reminiscent of Justice Breyer's *Houghton* concurrence, the Court explained that the luggage could not be searched pursuant to the automobile exception because "luggage is a common repository for one's personal effects, and therefore is inevitably associated with the expectation of privacy." *Sanders*, 442 U.S. at 762, 766. Similarly, in *United States v. Chadwick*, 433 U.S. 1, 13 (1977), the Supreme Court held that a locked luggage trunk could not be searched pursuant

to the automobile exception because "luggage is intended as a repository of personal effects."

However, these cases predated *Ross*, and in *California v. Acevedo*, 500 U.S. 565, 579 (1991), the Court acknowledged that *Ross* "explicitly undermined" the automobile search rules articulated in *Sanders* and *Chadwick*. Therefore, the Court overruled *Sanders* and *Chadwick* and eliminated "the dual regimes for automobile searches that uncover containers" in favor of *Ross*'s "one clear-cut rule." *Id.* The Supreme Court's repudiation of shielding "common repositor[ies] for one's personal effects," *Sanders*, 442 U.S. at 762, from a search under the automobile exception confirms that Barrow's analogous argument should be rejected.

Not only is Barrow's argument inconsistent with controlling case law on the automobile exception, but Barrow's approach would also fail to provide a "workable accommodation between the needs of law enforcement and the interests protected by the Fourth Amendment." *Oliver v. United States*, 466 U.S. 170, 181 (1984). Barrow and amici's definitions of a "purse" would sweep much more broadly than the handbag Barrow was carrying. Barrow defines a purse as "a bag used to contain personal effects and closely carried, regardless of the gender of its wearer or the style of the bag." Amici echo Justice Breyer's definition of a purse as a "repositor[y] of especially personal items that people generally like to keep with them at all times." *Houghton*, 526 U.S. at 308 (Breyer, J., concurring). But under either definition, many bags could be considered "purses," such as backpacks, fanny packs, briefcases, and duffle bags.

Barrow offers no discernable, workable distinction between the quintessential purse and bags that we have considered to be searchable "containers" under the automobile exception. *See State v. Search*, 472 N.W.2d 850, 853 (Minn. 1991) (upholding the warrantless search of a duffle bag under the automobile exception); *State v. Ludtke*, 306 N.W.2d 111, 112–14 (Minn. 1981) (upholding the warrantless search of a satchel located in a car, although under a pre-*Ross* legal framework). Instead, Barrow's rule would have the legality of a search turn on something the Supreme Court disfavors: a "highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions."[3] *Oliver*, 466 U.S. at 181 (citation omitted) (internal quotation marks omitted); *see also Lange v. California*, 594 U.S. ___, 141 S. Ct. 2011, 2033 (2021) (explaining that under the Fourth Amendment, the Court gives "great weight to the essential interest in readily administrable rules" (citation omitted) (internal quotation marks omitted)).

Finally, Barrow contends that allowing searches of worn purses under the automobile exception would cause gender inequality in application of the Fourth Amendment because women disproportionately wear purses. As an initial matter, Barrow does not explain how this argument is legally relevant under the Fourth Amendment. But

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[3] Barrow also points to search-incident-to-arrest cases to inform our analysis. But exceptions to the Fourth Amendment's warrant requirement are " 'jealously and carefully drawn' " and "based on particular exigencies of a situation." *State v. Robb*, 605 N.W.2d 96, 100 (Minn. 2000) (quoting *Coolidge*, 403 U.S. at 455). As the Supreme Court has recognized, the search-incident-to-arrest exception and the automobile exception are based on "wholly different" policy justifications. *See Chambers v. Maroney*, 399 U.S. 42, 49 (1970). We therefore decline Barrow's invitation to graft search-incident-to-arrest jurisprudence onto our automobile exception case law.

even assuming that her argument is somehow relevant to our Fourth Amendment analysis, Barrow's argument misses the mark because, as described above, her definition of a "purse" would extend to bags commonly worn by men and women, including backpacks, fanny packs, briefcases, and duffle bags. Her argument, therefore, does not eliminate the gender inequality she perceives would exist if "purses" were not treated like one's person for purposes of the automobile exception.

Therefore, applying our holding to the facts here, we conclude that the warrantless search of Barrow's purse was constitutional. Barrow does not contest that the officer had probable cause to believe contraband or evidence of a crime was in the car when the officer smelled the odor of marijuana in the car. At that point, the officer was authorized to conduct a warrantless search of the car and any closed containers within the car that could contain the object of the search (here, marijuana). *See Houghton*, 526 U.S. at 307; *Lester*, 874 N.W.2d at 771. Because Barrow's purse is a container that was inside the car at the time probable cause arose, and her purse could contain marijuana, the officer was permitted to search the purse under the automobile exception. *See Lester*, 874 N.W.2d at 771.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

C O N C U R R E N C E

CHUTICH, Justice (concurring).

I agree with the court that, under the federal constitution, the warrantless search of Barrow's purse was lawful, and the decision of the court of appeals should be affirmed. I write separately, however, to note that the outcome may have been different had appellant Amber Kay Barrow raised an independent state constitutional claim. I believe that Article I, Section 10, of the Minnesota Constitution may afford passengers like Barrow greater search and seizure protections than currently provided under federal constitutional precedent, especially when considering the application of the automobile exception.

Over the past half century, federal and state jurisprudence has made clear that the federal constitution acts as a floor—not a ceiling—when it comes to protecting individual rights. *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 81 (1980) (recognizing that it is well within the "authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution"); *City of Golden Valley v. Wiebesick*, 899 N.W.2d 152, 157 (Minn. 2017) (noting that "we may interpret the Minnesota Constitution to provide greater protection to individuals than the United States Constitution"). During this same time, many practitioners and jurists alike have encouraged state courts to do just that—expand protections for people under state constitutional law. *See generally* William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489 (1977).

State supreme courts have responded to that call. Nationwide, by the turn of the century, state supreme courts had decided "hundreds of cases in which they interpret the state constitution to provide more generous protection for individual liberties than similar provisions of the U.S. Constitution." James A. Gardner, *State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions*, 91 Geo. L.J. 1003, 1032–33 (2003).

In this case, the court accurately explains how controlling Fourth Amendment precedent requires us to affirm Barrow's conviction. For the following reasons, I am not sure that the result would be the same under the Minnesota Constitution.

The creeping expansion of the automobile exception, illustrated by the Supreme Court precedents of *United States v. Ross*, 456 U.S. 798 (1982), *California v. Acevedo*, 500 U.S. 565 (1991), and *Wyoming v. Houghton*, 526 U.S. 295 (1999), has been the subject of much scholarly criticism. *See, e.g.*, Martin R. Gardner, *Searches and Seizures of Automobiles and Their Contents: Fourth Amendment Considerations in a Post–*Ross *World*, 62 Neb. L. Rev. 1, 35 (1983) (explaining that *Ross* "appears to have created a new probable cause exemption to the warrant rule without providing satisfactory justification for abandoning the preference for warrants"); Carol A. Chase, *Privacy Takes a Back Seat: Putting the Automobile Exception Back on Track After Several Wrong Turns*, 41 B.C. L. Rev. 71, 101 (1999) (concluding that the expansion of the automobile exception has "left a gaping hole in the rights protected under the Fourth Amendment"); 3 Wayne R. LaFave, *Search And Seizure: A Treatise on the Fourth Amendment* § 7.2(d) (6th ed. 2020)

(suggesting that the Supreme Court's expansion of the automobile exception manifests "considerable ambivalence about the warrant requirement").

Given our consistent recognition that warrantless searches are "presumptively unreasonable," *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011) (citation omitted) (internal quotation marks omitted), the devaluing of the warrant requirement by *Ross* may justify us interpreting the Minnesota Constitution more broadly in this specific context. *See Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005) (explaining that we will apply the state constitution when "the Supreme Court has retrenched on Bill of Rights issues, or if we determine that federal precedent does not adequately protect our citizens' basic rights and liberties").

The particular facts of this case reveal further excesses of the automobile exception. Barrow was neither a driver nor an owner of the car. In fact, the record does not reflect what relationship, if any, Barrow had with the driver. The Supreme Court has held that there is no "passenger's property" exclusion from the federal automobile exception, largely because a passenger "will often be engaged in a common enterprise with the driver." *Houghton*, 526 U.S. at 304–05. But that reasoning is dubious. *See* LaFave, *supra*, § 7.2(d) (noting that the Court cited "not a whit of empirical evidence" for its common enterprise assumption); Daniel J. Hewitt, *Don't Accept Rides From Strangers: The Supreme Court Hastens the Demise of Passenger Privacy in American Automobiles*, 90 J. Crim. L. & Criminology 875, 902 (2000) ("Without any foundation for its assertion, the Court abandoned the proposition that Sandra Houghton deserved any status as an individual in that car."). Like the dissent in *Houghton*, I am not persuaded "that the mere spatial

association between a passenger and a driver provides an acceptable basis for presuming that they are partners in crime." *Houghton*, 526 U.S. at 310 (Stevens, J., dissenting).

Moreover, the invasion of Barrow's reasonable privacy expectations was not slight. Purses are "repositories of especially personal items that people generally like to keep with them at all times." *Id.* at 308 (Breyer, J., concurring). We recognized as much in *State v. Wynne*, when we concluded that a held purse is "so closely associated with the person that [it is] identified with and included within the concept of one's person."[4] 552 N.W.2d 218, 220 (Minn. 1996) (alteration in original) (citation omitted) (internal quotation marks omitted). It seems to me that before such a severe invasion of a passenger's legitimate privacy interests occurs, there must be some individualized, articulable suspicion to believe that the passenger was involved in criminal activity.[5]

If we placed constraints on the automobile exception under our state constitution, we would not be the first court to do so. Other state courts have recognized that the automobile exception under federal law does not sufficiently protect the privacy interests underpinning the Fourth Amendment. Invoking their state constitutions, some state courts

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[4] Here, when no one disputes that the purse was Barrow's and the record shows that the purse was within her reach in the car, I would conclude that the purse was closely associated with her.

[5] It is true, as the court notes, that the Supreme Court has expressed its preference for "readily administrable rules" in the Fourth Amendment context. *Lange v. California*, 594 U.S. ___, 141 S. Ct. 2011, 2033 (2021) (citation omitted) (internal quotation marks omitted). But the Supreme Court has also " 'consistently eschewed bright-line rules' " in examining reasonableness under the Fourth Amendment. *State v. Lemert*, 843 N.W.2d 227, 232–33 (Minn. 2014) (quoting *Ohio v. Robinette*, 519 U.S. 33, 39 (1996)). We should heed the latter principle in analyzing automobile exception claims involving passengers under Article I, Section 10, of the Minnesota Constitution.

have required an additional showing of exigent circumstances to trigger the automobile exception. *See*, *e.g.*, *Commonwealth v. Alexander*, 243 A.3d 177, 207 (Pa. 2020); *State v. Bauder*, 924 A.2d 38, 50 (Vt. 2007); *State v. Gomez*, 932 P.2d 1, 12 (N.M. 1997). Other states have interpreted their state constitutions to place other limits on the federal automobile exception. *See*, *e.g.*, *State v. Cora*, 167 A.3d 633, 642 (N.H. 2017) (permitting a search under the automobile exception only when "the police have probable cause to believe that a *plainly visible* item in the vehicle is contraband" (emphasis added)); *State v. Tibbles*, 236 P.3d 885, 887–88 (Wash. 2010) (holding that probable cause must be coupled with a specific warrant exception, like plain view or exigent circumstances, to justify a warrantless search of an automobile); *State v. Elison*, 14 P.3d 456, 470–71 (Mont. 2000) (same). The conclusions of our sister states may properly inform whether we have a principled basis to construe Article I, Section 10, more broadly than the Fourth Amendment. *See Friedman v. Comm'r of Pub. Safety*, 473 N.W.2d 828, 831 & n.3 (Minn. 1991) (reviewing other states' expansions of the right to counsel under state constitutions to determine if we should do the same).

We have recognized that our state constitution is more sensitive to privacy intrusions concerning automobiles and their occupants than the federal constitution. For example, in *Michigan Department of State Police v. Sitz*, 496 U.S. 444, 447 (1990), the Supreme Court held that a system of temporary driver sobriety checkpoints did not violate

the Fourth Amendment. But in *Ascher v. Commissioner of Public Safety*, 519 N.W.2d 183, 186–87 (Minn. 1994), we explained that *Sitz* inadequately balanced the state's interests and individual privacy interests. We therefore required a greater showing under our state constitution before Minnesota drivers could be stopped and investigated: drivers could not be stopped uniformly at temporary sobriety checkpoints, but only when officers had an "objective individualized articulable suspicion of criminal wrongdoing." *Id.* at 187.

Similarly, in *Atwater v. City of Lago Vista*, 532 U.S. 318, 354 (2001), the Supreme Court held that the Fourth Amendment does not forbid a warrantless arrest of a driver for a minor criminal offense. But in *State v. Askerooth*, 681 N.W.2d 353, 362–63 (Minn. 2004), we concluded that *Atwater*, like *Sitz*, inadequately balanced the state and individual privacy interests, particularly given that the "holding in *Atwater* may affect vast numbers of our residents in their interactions with the police on a daily basis." We therefore held that under the Minnesota Constitution, principles of reasonableness govern the scope and duration of a search or seizure for a minor traffic violation. *Id.* at 363.

In sum, our precedent, along with the informed views of scholars and other state courts, make me question whether the Minnesota Constitution allows the state to automatically examine a passenger's purse in a car without some additional showing. Ultimately, however, whether the broad automobile exception under federal law comports with the Minnesota Constitution, particularly as it pertains to the effects of passengers, must be decided in a case in which the issue is preserved and all parties have fully briefed and argued the state constitutional law question. Because the issue was neither raised nor

briefed by the parties in this case, I concur in the court's decision under the Fourth Amendment.

THISSEN, Justice (concurring).

I join in the concurrence of Justice Chutich.