

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2039**

State of Minnesota,
Respondent,

vs.

Candace Nichols,
Appellant.

**Filed February 5, 2008
Affirmed
Lansing, Judge**

Faribault County District Court
File No. CR-05-592

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Brian D. Roverud, Faribault County Attorney, 412 North Nicollet, P.O. Box 5, Blue Earth, MN 56013 (for respondent)

John Stuart, State Public Defender, Susan Andrews, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Dietzen, Presiding Judge; Lansing, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

LANSING, Judge

The district court denied Candace Nichols's pretrial motion to suppress methamphetamine discovered on her person during a search incident to arrest. Nichols waived her right to a jury trial and, preserving her Fourth Amendment issue for appeal, submitted the case to the district court on stipulated facts, consistent with the procedures outlined in *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). Following a determination of guilt on the charge of fifth-degree possession of a controlled substance, Nichols challenges the constitutional validity of the search that produced the methamphetamine. Because we conclude that Nichols's arrest was supported by probable cause, we affirm.

FACTS

The Winnebago police and Faribault sheriff's office responded to a request for assistance from the minister of a Winnebago church in November 2005. The officers were told that an "unwelcome individual" "was not leaving" despite "the minister's request." The minister reported that Candace Nichols was in the church and was threatening a group of elderly parishioners who were participating in a sewing circle. The minister said that Nichols had been swinging coat hangers at the group of five to six women who feared for their safety and who had taken refuge in a room where they were able to lock all of the doors. Several officers searched the church and were unable to find Nichols but discovered an open door that was usually locked shut. The officers extended their search to the surrounding area.

One of the officers saw a person matching Nichols's description walking in an alley near the church. He got out of his vehicle and ordered the person to stop. The person turned toward the officer, and he recognized her as Candace Nichols. When Nichols did not comply with the officer's repeated orders to stop or to take her hands out of her front pockets, he used a Taser device to stun her. An assisting officer arrived, handcuffed Nichols, and told her she was under arrest for burglary. When the arresting officer searched Nichols, he found a modified light bulb with white residue, more than \$1,000 in cash, and a small amount of a white powdery substance in a plastic bag. In a field evaluation the substance tested positive for methamphetamine.

Nichols was charged with fifth-degree possession of a controlled substance, third-degree burglary, and fifth-degree assault. The state dismissed the burglary charge at the omnibus hearing after confirming that Nichols had a key to the church and had permission to be inside the church before the incident. Following the omnibus hearing the district court issued an order denying Nichols's suppression motion, finding that the officers had probable cause to arrest Nichols and that the search incident to the arrest was valid. Nichols personally waived her right to a jury trial, stipulated to the facts in the district court's omnibus order, and submitted the case to the district court under *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980). As part of the agreement to submit the case on stipulated facts, the state dismissed the assault charge.

The district court found Nichols guilty of fifth-degree possession of a controlled substance in violation of Minn. Stat. § 152.025, subd. 2(1) (2004). Nichols appeals from

the conviction contending that, because police did not have probable cause to arrest her, the drugs seized in the search incident to her arrest must be suppressed.

DECISION

The state and federal constitutions prohibit “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Warrantless searches are per se unreasonable, subject to a few “specifically established and well-delineated exceptions.” *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967). A warrantless search is reasonable if it is made incident to a valid arrest. *State v. Walker*, 584 N.W.2d 763, 766 (Minn. 1998). But an arrest is invalid and the warrantless search is unreasonable if the arrest is not based on probable cause. *Cf. In re Welfare of G.M.*, 560 N.W.2d 687, 695 (Minn. 1997) (stating that officer who has probable cause to arrest may conduct search incident to arrest). If a search is found to be unreasonable, any evidence seized during the search must be suppressed. *Walker*, 584 N.W.2d at 766. We review de novo the determination of “probable cause as it relates to warrantless searches.” *G.M.*, 560 N.W.2d at 690.

Probable cause to arrest exists when police could reasonably believe that the person arrested has committed a crime. *Id.* at 695. The probable-cause-to-arrest test requires an objective consideration of the facts and the circumstances to decide if “a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed.” *Id.*

The district court found that, at the time of arrest, police had probable cause to believe a burglary had been committed. Burglary is the entry of a building without

consent and with intent to commit a crime within the building, or the entry of a building without consent and commission of a crime within the building. Minn. Stat. § 609.582 (2004).

The combination of facts that formed a basis for the officer's reasonable suspicion that Nichols had committed a burglary included all of the facts that were available to the arresting officer at the time he ordered Nichols to stop: the initial call for assistance reporting an individual "acting strange" in a church and refusing to leave despite the minister's request; the minister's knowledge of Nichols and identification of the individual as Candace Nichols; the minister's description of Nichols's appearance; the minister's report that Nichols swung coat hangers at a group of elderly women in the church and that the women, fearing for their safety, sought refuge in a secured room; and the minister's request for assistance in removing Nichols from the church. The officer located Nichols in an alley near the church and she matched the description given by the minister. The officer was also personally familiar with Nichols and knew that she had a history of assaultive behavior. These facts adequately support the officer's formation of a strong suspicion that a crime had been committed and that Nichols committed it.

Nichols argues that the facts do not support a finding of probable cause for arrest because she initially had permission to be in the church and nothing in the record indicates that this permission was revoked. She argues that there was no basis for the police to suspect she had committed burglary because burglary requires entry without consent. *See* Minn. Stat. § 609.582. For two reasons we reject Nichols's argument.

First, at the time of arrest, the officer's knowledge was limited to the information that he and the other officers received from the minister through the dispatch and at the church. Because the minister asked the police to remove Nichols from the church, the officers had an objectively reasonable basis for believing that Nichols entered the church without consent. "The fact that it later turns out that officers were wrong [in their assessment] does not mean that they did not have probable cause at the time they made their assessment." *State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982).

Second, even if Nichols initially had permission to enter the church, she stipulated to the district court's finding that she refused to leave despite the minister's request, and her refusal to leave constitutes entry without consent. *See State v. Totimech*, 433 N.W.2d 921, 924 (Minn. App. 1988) (finding that person who refuses to comply with repeated requests of person in lawful possession to leave building has entered building without consent), *review denied* (Minn. Feb. 22, 1989). For purpose of establishing the elements of a burglary, entering a building without consent includes "remain[ing] within a building without the consent of the person in lawful possession." Minn. Stat. § 609.581, subd. 4(c) (2004). It is not disputed that the minister who asked Nichols to leave was in lawful possession of the building, and the district court found that "any consent that [Nichols] may have had to be in the church building was expressly revoked" by the minister.

Furthermore, even if the police had not had probable cause to believe burglary had been committed, they had probable cause to believe that either assault or disorderly conduct had been committed. *Cf. State v. Giebenhain*, 374 N.W.2d 573, 575 (Minn. App. 1985) (upholding convictions for driving under influence, careless driving, open bottle,

possession of marijuana, violating driver's license restriction, and possessing drug paraphernalia when officers had reasonable suspicion of different crime, namely burglary).

On the facts presented we agree with the district court that the totality of the circumstances provided probable cause for the officer to believe that a crime had been committed. The district court did not err in denying the motion to suppress the evidence as a result of a search incident to a valid arrest. We, therefore, affirm Nichols's conviction for fifth-degree possession of a controlled substance.

Affirmed.