STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0068

State of Minnesota,
Respondent,

vs.

Courtney James Allinder,
Appellant.

Filed February 10, 2009
Affirmed
Kalitowski, Judge

Kandiyohi County District Court
File No. 34-CR-06-2469

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

Boyd Beccue, Kandiyohi County Attorney, 415 Southwest Sixth Street, P.O. Box 1126, Willmar, MN 56201 (for respondent)

Todd V. Peterson, 16 Ninth Avenue North, St. Cloud, MN 56303 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Kalitowski, Judge; and Stoneburner, Judge.

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

KALITOWSKI, Judge

Appellant Courtney James Allinder challenges his convictions and sentence, contending that the warrantless searches of his vehicle and backpack were illegal and

consequently, the district court erred in denying his motion to suppress the evidence obtained from the searches. Because we conclude that the searches of appellant's vehicle and backpack were lawful pursuant to the automobile exception to the warrant requirement, we affirm.

D E C I S I O N

On December 18, 2006, appellant was charged with fifth-degree controlled substance offense for possessing 817 grams or more of marijuana in violation of Minn. Stat. § 152.025, subds. 2(1) and 3(a) (2006), and one count of possession of drug paraphernalia, in violation of Minn. Stat. § 152.092 (2006). At his pretrial omnibus hearing, appellant argued that the warrantless searches of his vehicle and backpack were illegal and consequently, the evidence obtained from the searches—marijuana and drug paraphernalia—should be suppressed. The district court denied appellant's motion to suppress, concluding that although appellant did not consent to the searches, (1) appellant's vehicle was lawfully stopped; (2) the searches of appellant's vehicle and backpack were incident to a lawful arrest; and (3) the warrantless search of appellant's vehicle was lawful pursuant to the automobile exception to the warrant requirement. Appellant waived his right to a jury trial and agreed to a stipulated facts trial. After the district court found appellant guilty of both counts, appellant brought this appeal, arguing that the district court erred in denying his motion to suppress.

"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). We review de novo whether a search or seizure is justified by reasonable suspicion or probable cause. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). And we review the district court's findings of fact for clear error. *Id.*

Before examining the search and seizure of the contraband, we must analyze the stop that led to its discovery. *In re Welfare G.M.*, 560 N.W.2d 687, 690 (Minn. 1995); *State v. Schinzing*, 342 N.W.2d 105, 109 (Minn. 1983). "A brief investigatory stop requires only reasonable suspicion of criminal activity, rather than probable cause." *State v. Martinson*, 581 N.W.2d 846, 850 (Minn. 1998) (citations omitted). And in determining whether the stop was lawful, the court must consider the totality of the circumstances. *Engwer v. Comm'r of Pub. Safety*, 383 N.W.2d 418, 419 (Minn. App. 1986).

The Warrantless Search

Before stopping the vehicle driven by appellant, a Kandiyohi County sheriff's deputy determined by radar that the vehicle was traveling in excess of the speed limit and saw that the vehicle was missing its front license plate. Because the deputy observed two violations of Minnesota traffic laws, we conclude that there was a valid, objective basis for stopping appellant's vehicle, and that the stop was lawfully based on reasonable suspicion of criminal activity.

As the deputy approached the passenger side of the vehicle, he noticed an "extremely strong pungent odor of burnt marijuana coming from the vehicle's interior." The deputy also noticed that appellant's eyes appeared "a little glazed over and had some marked reddening, which is common with cannabis use." The deputy asked appellant

what was causing the odor and how much marijuana was in the vehicle. Appellant admitted that he had smoked marijuana while driving and that he had a marijuana pipe in his pocket. The deputy then asked appellant to exit the vehicle and conducted a patdown search of appellant's person and removed a marijuana pipe from his jacket pocket. The record indicates that the bowl of the pipe contained a small amount of burnt marijuana and that after the patdown search the deputy placed appellant in the back seat of his squad car.

The deputy conducted a warrantless search of the vehicle. He did not discover any contraband around the driver's seat and area, but noticed a backpack behind the front right passenger seat that was within the driver's reach. The deputy stated that while searching the vehicle he smelled unburned, fresh marijuana in the vehicle. The deputy picked up the backpack, squeezed it, and a puff of air escaped causing him to notice a strong odor of unburned, fresh marijuana emanating from within the backpack. He also noticed that the backpack was soft and that when he manipulated it, he felt something inside of it. After making these initial observations of the backpack, the deputy opened a small compartment on its front side. In the creases of the compartment he saw green plant-like material that appeared to be marijuana. The deputy then opened the larger compartment of the backpack and discovered three plastic bags, two of which were vacuum sealed, that appeared to contain a large quantity of marijuana. A pair of scissors and a digital scale were also found in the backpack. The deputy placed the backpack on the hood of his squad car, informed appellant that he was under arrest, and handcuffed him.

Automobile Exception

The Supreme Court developed the automobile exception to the warrant requirement based on the exigent character of evidence in a vehicle and a person's reduced expectation of privacy in a vehicle. *California v. Carney*, 471 U.S. 386, 392-94, 105 S. Ct. 2066, 2070-71 (1985), *cited in State v. Bauman*, 586 N.W.2d 416, 422 (Minn. App. 1998), *review denied* (Minn. Jan. 27, 1999). An officer has authority to search a vehicle without a warrant under the automobile exception if that officer has probable cause to believe the search will produce evidence of a crime or contraband. *Maryland v. Dyson*, 527 U.S. 465, 467, 119 S. Ct. 2013, 2014 (1999) (concluding that a finding of probable cause "alone satisfies the automobile exception to the Fourth Amendment's warrant requirement"); *California v. Acevedo*, 500 U.S. 565, 580-81, 111 S. Ct. 1982, 1991 (1991) (stating that the police "may search without a warrant if their search is supported by probable cause"); *State v. Bigelow*, 451 N.W.2d 311, 311 (Minn. 1990) (holding that if police have probable cause to search a motor vehicle for drugs or other contraband, they may "search every part of the vehicle and its contents that may conceal the object of the search"); *State v. Nace*, 404 N.W.2d 357, 361 (Minn. App. 1987), *review denied* (Minn. June 25, 1987) (ruling that under the automobile exception, due to a lower expectation of privacy in vehicle, an officer needs only probable cause to believe a vehicle contains contraband in order to search).

Probable cause is defined as "some showing by evidence which fairly and reasonably tends to show the existence of the facts alleged." *State v. Lopez*, 631 N.W.2d 810, 814 (Minn. App. 2001) (quoting *State v. Pederson-Maxwell*, 619 N.W.2d 777, 781

(Minn. App. 2000)). Generally, an officer will rely on a combination of discrete facts to determine probable cause and whether these facts are sufficient must be analyzed on a case-by-case basis. *State v. Flowers*, 734 N.W.2d 239, 248-50 (Minn. 2007) (discussing such probable cause factors as furtive gestures, time and place of search, officer's observations of suspect's "wide" and "glassy" eyes, tips from an informant, an officer's personal knowledge of suspect's criminal history, and an officer's sight or smell of drugs or alcohol in or around the vehicle). The detection of illicit odors alone by trained police officers constitutes probable cause to search automobiles for further evidence of crime. *State v. Wicklund*, 295 Minn. 403, 205 N.W.2d 509 (1973); *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. App. 1984) (citing *City of St. Paul v. Moody*, 309 Minn. 104, 244 N.W.2d 43 (1976)).

The Minnesota Supreme Court ruled in *State v. Bigelow* that

> (a) the lawful discovery of drugs or other contraband in a motor vehicle gives the police probable cause to believe that a further search of the vehicle might result in the discovery of more drugs or other contraband and (b) if probable cause justifies a search of a vehicle for more drugs or other contraband, it justifies a search of every part of the vehicle and its contents that may conceal the object of the search.

451 N.W.2d at 312-13 (relying on *United States v. Ross*, 456 U.S. at 825, 102 S. Ct. at 2173; *Schinzing*, 342 N.W.2d at 110-11).

Here, the record indicates that (1) the deputy detected a strong smell of burnt marijuana coming from appellant's vehicle; (2) the deputy noticed that appellant's eyes were glazed over and had marked reddening; (3) appellant admitted that he was smoking marijuana while driving; and (4) the deputy found a marijuana pipe with a small amount

of marijuana on appellant's person during a patdown search. The combination of these discrete facts supports the determination that the deputy had probable cause to believe that a further search of the vehicle may reveal additional evidence of a crime or contraband. *See Flowers*, 734 N.W.2d at 248-50; *Bigelow*, 451 N.W.2d at 312-13; *Pierce*, 347 N.W.2d at 833.

Because the deputy had probable cause to search appellant's vehicle for additional drugs or contraband, this probable cause also justified the search of every part of, and the contents within, the vehicle that might conceal the object–drugs–of the deputy's search. *See Ross*, 456 U.S. at 825, 102 S. Ct. at 2173; *Bigelow*, 451 N.W.2d at 312-13. We conclude that based on (1) the discovery of a marijuana pipe on appellant's person; (2) appellant's admission that he had smoked marijuana while driving his vehicle; (3) the deputy's observation of a continuing smell of unburned, fresh marijuana in the vehicle; and (4) the fact that the backpack was within the driver's reach, and was emitting a strong odor of unburned, fresh marijuana, the deputy had probable cause to believe that the backpack contained drugs or other contraband. Therefore, we conclude that the backpack search was lawful pursuant to both federal and state caselaw under the automobile exception to the warrant requirement, and the district court did not err in denying appellant's motion to suppress.

Appellant argues that the United States Supreme Court wrongly decided the case of *United States v. Ross*, and therefore, *Ross* does not apply in Minnesota because the state constitution is more protective of individual rights than the federal Constitution. But both the Minnesota Supreme Court and the Minnesota Court of Appeals have

explicitly adopted the *Ross* rule. *See Bigelow*, 451 N.W.2d at 312-13; *State v. Studdard*, 352 N.W.2d 413, 415 (Minn. 1984); *Schinzing*, 342 N.W.2d at 110-11; *State v. Schuette*, 423 N.W.2d 104, 106 (Minn. App. 1988); *State v. Nace*, 404 N.W.2d at 361. Moreover, this court is not the appropriate court to construe a provision of the Minnesota Constitution more expansively than the United States Supreme Court has construed its federal counterpart. *State v. Berge*, 464 N.W.2d 595, 596-97 (Minn. App. 1991), *aff'd mem.*, 474 N.W.2d 828 (Minn. 1991). Nor is it the province of this court to make a dramatic change in the interpretation of the Minnesota Constitution where the supreme court has not done so. *Minnesota State Patrol Troopers Ass'n ex rel. Pince v. State Dep't of Pub. Safety*, 437 N.W.2d 670, 676 (Minn. App. 1989) (quotation omitted).

Appellant also challenges the district court's determination that the search was valid under the search incident to arrest exception to the warrant requirement. Because we conclude that the search was lawful under the automobile exception, we decline to address both this issue and the state's alternative argument that appellant consented to the search.

Affirmed.