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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A09-1604**

State of Minnesota,  
Respondent,

vs.

Biniam Taib Ansera,  
Appellant.

**Filed September 7, 2010  
Affirmed  
Minge, Judge**

Ramsey County District Court  
File No. 62-CR-08-18002

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Lydia Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Johnson, Judge; and Collins,  
Judge.\*

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

## **UNPUBLISHED OPINION**

**MINGE**, Judge

Appellant challenges his conviction of fifth-degree controlled substance crime, arguing that the district court erred in ruling that the search of his car, including opening and searching behind a loose interior panel, was lawful. Because the search was of a motor vehicle and there was probable cause to believe there was contraband, we affirm.

### **FACTS**

While patrolling after dark, Officer Joe Ryan stopped a car because it had a nonworking license-plate light. As Ryan approached the car, the car's only occupant, appellant Biniam Ansera, opened his window. Ryan smelled a slight marijuana odor. After being asked, Ansera denied that there was any marijuana or contraband in the car. Ryan returned to his squad car and ran some checks on Ansera's driver's license. Ryan learned that Ansera had an outstanding DWI warrant and a suspended license. He arrested Ansera and placed him in the back of the squad car.

While Ryan was still at the scene of the stop, Officer Patrick Kolodge arrived. Ryan asked Kolodge to search Ansera's car. Kolodge noticed that the car had a strong odor of burnt and fresh marijuana. As Kolodge entered the vehicle, he noticed that a panel underneath the CD player was loose. Based on his training and experience and the marijuana odor, he believed that there was contraband behind the loose panel. Kolodge lifted the loose panel and discovered a white plastic bag containing individually packaged packets of what appeared to be marijuana. Testing revealed that there were 58.92 grams of marijuana in the car.

The state charged Ansera with two counts of fifth-degree controlled substance crime: marijuana possession with intent to sell and marijuana possession, Minn. Stat. § 152.025 (2008). Claiming that the search was illegal, Ansera moved to suppress the marijuana evidence. Following a hearing, the district court determined that the warrantless search was justified under three exceptions to the warrant requirement: search incident to arrest, inventory search, and automobile search. The district court denied the motion and set the matter for trial.

A jury found Ansera not guilty of possession with intent to sell but guilty of fifth-degree marijuana possession. This appeal followed.

### **DECISION**

The issue is whether the search of Ansera's car was legal. "When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009) (quotation omitted).

Both the U.S. Constitution (Fourth Amendment) and Minnesota Constitution (article I, section 10) prohibit unreasonable searches and seizures. Warrantless searches and seizures are generally considered unreasonable. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). To avoid suppression of the evidence acquired from a warrantless search, the state must show that an exception to the warrant requirement applies. *State v. Metz*, 422 N.W.2d 754, 756 (Minn. App. 1988). The district court found that the

warrantless search was justified under three exceptions: search incident to arrest, inventory search, and automobile search.

Police officers may search a car without a warrant if they have probable cause to believe the car contains contraband. *Maryland v. Dyson*, 527 U.S. 465, 467, 119 S. Ct. 2013, 2014 (1999); *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). Probable cause to search exists when, under the totality of the circumstances, “there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). Probable cause may be based on reasonable inferences from the circumstances. *See State v. Vereb*, 643 N.W.2d 342, 348-49 (Minn. App. 2002). Smelling an odor of marijuana provides officers with the probable cause necessary to search a car without a warrant under the automobile exception. *State v. Schultz*, 271 N.W.2d 836, 837 (Minn. 1978); *State v. Hodgman*, 257 N.W.2d 313, 315 (Minn. 1977). We review a probable-cause determination in warrantless searches de novo. *State v. Pederson-Maxwell*, 619 N.W.2d 777, 781 (Minn. App. 2000) (quotation omitted).

Here, Ryan smelled a slight odor of burnt marijuana coming from the car.<sup>1</sup> Kolodge smelled a strong odor of burnt and fresh marijuana when he opened the door of the car. Because both officers smelled marijuana, we conclude Kolodge had probable

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<sup>1</sup> Ansera points out that Ryan thought this slight odor suggested that Ansera had smoked marijuana or been with someone who smoked marijuana. But Ryan also testified that this slight odor could mean that there was a little bit of marijuana in the car. Keeping a small amount of marijuana—1.4 grams or more—in a car is a misdemeanor crime. Minn. Stat. § 152.027, subd. 3 (2008).

cause to believe the car contained contraband and could properly search it under the automobile exception.

But Ansera argues that even if the search was supported by probable cause, the opening of the loose car panel was unlawful because it exceeded the scope of a reasonable search. The scope of a search under the automobile exception “is defined by the object of the search and the places in which there is probable cause to believe [the object] may be found.” *State v. Gauster*, 752 N.W.2d 496, 508 (Minn. 2008) (alterations in original) (quoting *California v. Acevedo*, 500 U.S. 565, 579-80, 111 S. Ct. 1982, 1991 (1991)). Kolodge testified that as he entered the car, he noticed that the panel was loose. He further testified that based on his training and experience, he knew that contraband is often secreted in obscure locations in cars and that it is “consistent with the street level distribution of narcotics to hide things in paneling.” The odor of marijuana coming from the car, combined with the loose panel and what it indicated based on Kolodge’s training and experience, provided probable cause to extend the search to opening the loose panel and looking behind it. We conclude that Kolodge’s searching behind the loose panel was within the scope of a search justified under the automobile exception to the warrant requirement and affirm.

Having concluded the search was proper under the automobile exception, we do not consider Ansera’s remaining argument that the search was not justified as an inventory search or as a search incident to arrest.

**Affirmed.**

Dated: