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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0588**

State of Minnesota,
Respondent,

vs.

Robert Joseph Clement, Jr.,
Appellant

**Filed March 5, 2018
Affirmed
Worke, Judge**

St. Louis County District Court
File No. 69DU-CR-15-3372

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

Mark S. Rubin, St. Louis County Attorney, Jonathan D. Holets, Assistant County Attorney,
Duluth, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Allison Lange Garrison, Special Assistant Public Defender, Norton Rose Fulbright US
LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Worke, Judge; and Rodenberg,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant challenges his controlled-substance-crime conviction, arguing that the district court erred by applying the emergency and automobile exceptions to the warrantless search of his vehicle. We affirm.

FACTS

On September 19, 2015, police officers were dispatched to an alley on a report of a “suspicious occupied vehicle” with an interior light on that had been parked for several hours where it had “no reason” to be.

Officer Thamm approached the driver’s side of the vehicle and found appellant Robert Joseph Clement, Jr. “unresponsive” in the driver’s seat holding a cell phone. Clement was “slumped over, either texting on his phone or unconscious.” Clement had a “small box with visible drug paraphernalia” on his lap. Officer Thamm knows that it is common that narcotics users keep their supplies in a box where illegal items are kept secure and easily concealed. Believing this was a possible overdose, Officer Thamm opened the door to check on Clement. Clement woke up and tried to pull the box away. Officer Thamm grabbed the box and set it aside.

Officer Saburn watched Officer Thamm place the box outside of the vehicle and “recognized right away that this is a type of box that drug users commonly used to transport their drugs and scales, packaging, etc.” Officer Saburn approached the passenger side of the vehicle and “could see a small baggie containing a crystal-like substance next to [Clement]’s right leg.” In the box, officers found: two digital scales and multiple baggies,

packages of a white crystalline substance that field tested positive for methamphetamine, containers of suspected marijuana that field tested positive, and 14 pills—13 Schedule II narcotic drugs and one Schedule IV narcotic drug.

Clement was charged with two counts of controlled-substance crime. Clement moved to suppress the evidence found during the search of his vehicle. The district court denied Clement's motion, concluding that the emergency and automobile exceptions to the warrant requirement justified the search. Clement stipulated to the state's case to obtain appellate review of the district court's pretrial ruling, pursuant to Minn. R. Crim. P. 26.01, subd. 4. The district court found Clement guilty of one count of third-degree controlled-substance crime and sentenced him to 39 months in prison. This appeal followed.

D E C I S I O N

Pretrial ruling

Clement argues that the district court improperly denied his motion to suppress evidence obtained from the search.

The matter was submitted to the district court on stipulated evidence. See Minn. R. Crim. P. 26.01, subd. 4. The parties acknowledged that the district court's pretrial ruling on the suppression motion was dispositive of the case or made a contested trial unnecessary. See *id.* Appellate review is limited to the dispositive pretrial issue. *Id.*, subd. 4(f). When reviewing a district court's pretrial order on a motion to suppress evidence when the facts are undisputed, we determine, "as a matter of law, whether the evidence need be suppressed." *State v. Sterling*, 782 N.W.2d 579, 581 (Minn. App. 2010)

(quoting *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009)) (applying de novo review of pretrial order pursuant to Minn. R. Crim. P. 26.01, subd. 4).

The United States and Minnesota Constitutions guarantee people the right to be free from unreasonable searches. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search is generally unreasonable unless it falls within a recognized exception to the warrant requirement. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). If a warrantless search does not fall within an exception, evidence collected from the search must be suppressed. *State v. Craig*, 807 N.W.2d 453, 464 (Minn. App. 2011), *aff'd*, 826 N.W.2d 789 (Minn. 2013). The state bears the burden of establishing that an exception to the warrant requirement applies. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). The district court determined that the emergency and automobile exceptions applied here.

Emergency exception

An exception to the protections against warrantless searches exists for emergency situations. *State v. Lopez*, 698 N.W.2d 18, 23 (Minn. App. 2005). There is a two-part test to determine whether the emergency exception applies: “(1) is the officer motivated by the need to render aid or assistance; and (2) under the circumstances, would a reasonable person believe that an emergency existed.” *Id.*; see also *State v. Lemieux*, 726 N.W.2d 783, 788 (Minn. 2007) (stating that two principles must be kept in mind when applying the emergency exception: the state bears the burden to demonstrate that police conduct was justified and the reasonableness of an officer’s belief that an emergency existed is judged from an objective standard).

“Generally an officer responding to a call to investigate someone unconscious or sleeping in a vehicle is justified in investigating the welfare of that individual.” *Lopez*, 698 N.W.2d at 23; *see State v. Volkman*, 675 N.W.2d 337, 341 (Minn. App. 2004) (stating that initial investigation “of a motorist slumped over his steering wheel was clearly lawful”). “As part of this investigation the officer must be permitted to make contact with the individual and ensure that the individual does not require additional medical assistance.” *Lopez*, 698 N.W.2d at 23.

Here, Officer Thamm found Clement “unresponsive” and “slumped over,” in the driver’s seat possibly “texting on his phone or unconscious.” Clement had a small box with visible drug paraphernalia on his lap. Officer Thamm knows that narcotics users commonly keep their supplies in this type of box. Officer Thamm believed this was “possibly . . . an overdose,” and opened the door to check on Clement.

Applying the two-part test, Officer Thamm was motivated by the need to render aid because he believed that Clement, unresponsive and holding a box of drug paraphernalia, possibly overdosed. And under the circumstances—the report of the suspicious vehicle parked for several hours where it had no reason to be and the discovery of Clement “slumped over” and “unresponsive” in the vehicle holding a box of drug paraphernalia—a reasonable person would believe that an emergency existed. Therefore, the district court did not err in determining that the emergency exception to the warrant requirement applied.

Automobile exception

Under the automobile exception, police may search a vehicle without a warrant if police have “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) (quotation omitted). “Probable cause to search exists when there are facts and circumstances sufficient to warrant a reasonably prudent [person] to believe that the vehicle contains contraband.” *State v. Johnson*, 277 N.W.2d 346, 349 (Minn. 1979).

Probable cause is an objective inquiry dependent upon the totality of the circumstances. *Lester*, 874 N.W.2d at 771. The totality of the circumstances includes “reasonable inferences that police officers draw from facts, based on their training and experience, because police officers may interpret circumstances differently than untrained persons.” *Id.* Appellate courts give due weight to the reasonable inferences drawn by police and to district court findings that these inferences were reasonable. *Ornelas v. United States*, 517 U.S. 690, 699-700, 116 S. Ct. 1657, 1663 (1996).

Here, while investigating the report of a suspicious vehicle, officers found Clement in the vehicle holding a small box of visible drug paraphernalia. Officer Saburn looked through the passenger-side window and saw a small baggie containing a crystal-like substance next to Clement’s right leg. *See State v. Riley*, 667 N.W.2d 153, 156 (Minn. App. 2003) (stating that “a police officer, while standing in a place in which he has a right to be, next to an automobile which he has not stopped,” may look through the window “and observe anything in plain view”), *review denied* (Minn. Oct. 21, 2003). Probable cause existed to search Clement’s vehicle because the “facts and circumstances [were] sufficient to warrant a reasonably prudent [person] to believe that the vehicle contain[ed] contraband.” *See Johnson*, 277 N.W.2d at 349. The district court did not err in concluding that the automobile exception applied.

Sentence

In his pro se supplemental brief, Clement challenges his sentence. This issue is not related to the pretrial issue preserved during Clement's stipulated-evidence proceeding. As stated above, under rule 26.01, subdivision 4, "appellate review will be of the pretrial issue." Minn. R. Crim. P. 26.01, subd. 4(f). Thus, Clement is not entitled to appellate review of his pro se argument. *See Ortega*, 770 N.W.2d at 149 (stating that because the defendant stipulated to the evidence against him, review was limited to the pretrial order denying the motion to suppress).

Affirmed.