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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0114**

State of Minnesota,
Appellant,

vs.

Nathan William Quast,
Respondent.

**Filed June 4, 2018
Affirmed
Rodenberg, Judge**

Rice County District Court
File No. 66-CR-17-1551

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

John Fossum, Rice County Attorney, Terence Swihart, Assistant County Attorney,
Faribault, Minnesota (for appellant)

Mark D. Nyvold, Fridley, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Cleary, Chief Judge; and
Rodenberg, Judge.

UNPUBLISHED OPINION

RODENBERG, Judge

The state appeals from the district court's order granting respondent Nathan William Quast's motion to suppress evidence and respondent's derivative motion to dismiss the controlled-substance charges. The district court concluded that the automobile exception

to the Fourth Amendment's warrant requirement did not permit the warrantless search of the backpack in respondent's car, in which police found methamphetamine and oxycodone pills. We affirm.

FACTS

Fairbault Police Officers Tollefson and Alexander responded to a report of shoplifting at a gas station and convenience store on June 22, 2017. Officer Tollefson spoke with a store employee who told her that a woman, later identified as E.W., who was then standing by a white car outside the store, took items from the store and put them in her purse without paying for them.

Officer Alexander spoke to E.W. and to respondent, her companion, in the parking lot, while Officer Tollefson spoke to the store employee. Officer Alexander told E.W. that they were responding to a theft report and that she was a suspect. He asked her if she had any items that she wanted to return. E.W. said that she did, and asked if she could get them from the nearby car, which was later determined to belong to respondent. E.W. went to the front seat of the car and retrieved a Gatorade, a Red Bull, and a Monster energy drink. Officer Alexander placed these items on the hood of the car as E.W. produced them.

Officer Alexander asked E.W. if those three beverages were the only stolen items. E.W. said that she thought so. But the employee informed Officer Tollefson that there were still some unrecovered items. One bottle of Gatorade and some small Rain-X packages were still missing. Officer Alexander suspected that the remaining stolen items were still inside the car. He asked Officer Gramling, who had just arrived on-scene, to search the car for the other items.

Officer Gramling testified at the evidentiary hearing that he found E.W.'s purse on the driver's seat of the car. Officer Gramling searched the purse and found a second bottle of Gatorade and multiple packets of Rain-X wipes. Officer Gramling paused his search and reported these discoveries to Officer Alexander. Officer Alexander then asked Officer Gramling to continue searching the car. During this time, Officer Gramling believed that police were still waiting to hear from the gas station staff regarding what items were missing. Staff at the store were looking at surveillance footage and checking store inventory. Officer Gramling "never knew for sure exactly all the items that were taken, and [he] didn't know if [police] recovered all of them either."

In response to Officer Alexander's request, Officer Gramling then went to the car a second time. He searched the area around the driver's seat. He found an open bottle of Malibu rum, a broken glass pipe with burnt marijuana residue, and several knives and other tools that he believed could be used for thefts and burglaries. These items were "on the floor underneath what would be kind of a middle seat." Officer Gramling also searched a zipped backpack which he believed "was of sufficient size that it could contain items from the store." Inside the backpack, he found prescription bottles bearing respondent's name and a pouch containing items consistent with drug use. The officers then arrested respondent. Officer Gramling testified that he only searched areas where he believed stolen store items could be located and that the primary reason he continued to search was because he "found items and tools in the vehicle that are consistent with burglaries and thefts." He stated, "When we're investigating a theft and I find tools that are used for thefts, if there's other information that support[s] the theft in general, we would continue a search." The

contents of the backpack were later determined to include methamphetamine and some oxycodone pills.

The state charged respondent with two counts of fifth-degree controlled-substance possession. Respondent moved to suppress the drug evidence obtained from the search of the backpack in his vehicle and, derivatively, for dismissal of the complaint. After hearing testimony from the officers at an evidentiary hearing, the district court granted respondent's motion to suppress and dismissed the complaint.

This appeal followed.

D E C I S I O N

I. The district court's suppression order has a critical impact on the prosecution.

The state "may appeal as of right" to this court "in any case, from any pretrial order." Minn. R. Crim P. 28.04, subd. 1(1). "When the state appeals from a pretrial order dismissing a criminal charge, this court will reverse only if the state clearly and unequivocally demonstrates that the district court erred and that the error, unless reversed, will have a critical impact on the outcome of the prosecution." *State v. Gradishar*, 765 N.W.2d 901, 902 (Minn. App. 2009) (quotation omitted). "Critical impact is a threshold showing that must be made in order for an appellate court to have jurisdiction." *Id.* The critical-impact test is satisfied when the district court's order "bars further prosecution of a defendant." *Id.* The district court dismissed the complaint against respondent after suppressing the drug evidence found in the car. Therefore, the critical-impact test is met, permitting the state's appeal.

II. The district court did not err in determining that the warrantless search of the backpack in respondent's car was unlawful.

The state argues that Officer Gramling's search of the car and of respondent's backpack located inside the car were lawful under the automobile exception to the warrant requirement.¹

When reviewing a pretrial order suppressing evidence, we “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. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012) (quoting *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999)). “We review the district court's findings of fact under a clearly erroneous standard, but we review its legal determinations de novo.” *Id.* We defer to the district court's credibility determinations. *Id.*

“Warrantless searches are per se unreasonable under the fourth amendment unless the search falls within one of several specific exceptions.” *State v. Search*, 472 N.W.2d 850, 852 (Minn. 1991). The automobile exception permits law enforcement to “search a vehicle without a warrant, including any closed containers within the vehicle, if [officers] have probable cause to believe the search will result in a discovery of evidence or contraband.” *Id.* (citing *United States v. Ross*, 456 U.S. 798, 824, 102 S. Ct. 2157, 2172 (1982)).

¹ There is no dispute that Officer Gramling validly searched E.W.'s purse. Additionally, the parties agree that the resolution of whether the automobile exception to the warrant requirement applies to the second search controls the outcome on appeal.

We review a district court's probable-cause determination de novo and its findings of fact for clear error. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). Probable cause to search a vehicle exists when "there is a fair probability that contraband or evidence of a crime will be found in" that vehicle. *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). Probable cause is an objective inquiry, dependent upon the totality of the circumstances. *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). 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.* We give due weight to the reasonable inferences drawn by the police and to the district court's findings concerning the reasonableness of these inferences. *Ornelas v. United States*, 517 U.S. 690, 699-700, 116 S. Ct. 1657, 1663 (1996).

Here, the district court found the following facts concerning what occurred after E.W., in response to questioning by Officer Alexander, produced one Gatorade, one Red Bull, and one Monster energy drink:

Officer Tollefson spoke with [the employee], who reported what the missing items were. The missing items included two blue Gatorades, one Red Bull, one Monster Energy Drink, and multiple packages of Rain X glass wipes. Officer Tollefson then relayed to Officers Alexander and Gramling that there were still missing items. Officer Gramling testified that he had probable cause to believe there was additional stolen property in [E.W.]'s purse, which was located on the front driver's seat. Upon conducting the search of the purse, Officer Gramling found multiple Rain X wipe packages and the other blue Gatorade. Officer Gramling testified that Officer Alexander then asked him to continue searching for additional stolen property.

The district court concluded that Officer Gramling lacked probable cause to continue searching the vehicle after he seized the items in E.W.'s purse because, at that point, "All the missing items were accounted for, thereby terminating any probable cause law enforcement had to continue the search." In other words, the district court determined that, once all missing items had been recovered, the officers had no probable cause to believe that further evidence of crime would be found in the car.

The state argues that the district court incorrectly applied *California v. Acevedo*, 500 U.S. 565, 111 S. Ct. 1982 (1991). The state quarrels with the district court's statement that "[l]aw enforcement may search a container within a vehicle when there is probable cause to believe there is evidence within that container, however, that authority to search does not expand to the entire vehicle." The state is correct that the Supreme Court in *Acevedo* reaffirmed its prior *Ross* holding that:

The scope of a warrantless search of an automobile . . . is not defined by the nature of the container in which the contraband is secreted. Rather, it is defined by the object of the search and the places in which there is probable cause to believe that it may be found.

Acevedo, 500 U.S. at 579-80, 111 S. Ct. at 1991 (alteration in original) (quoting *Ross*, 456 U.S. at 824, 102 S. Ct. at 2172). The Supreme Court concluded that the automobile exception allows police to "search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained." *Id.* at 580, 111 S. Ct. at 1991.

At oral argument, the state relied on *State v. Schinzing*, 342 N.W.2d 105 (Minn. 1983), for the proposition that, once an officer finds evidence or contraband in a vehicle,

the officer may then continue searching the vehicle to look for additional evidence or contraband. But the supreme court in *Schinzin* stated that “ordinarily probable cause to search a vehicle will constitute probable cause to search the entire vehicle with at least some intensity,” but “this is not inevitably the case.” 342 N.W.2d at 110 (emphasis omitted) (quoting 2 W. LaFave, Search and Seizure § 7.2 at 533 (1978)). Rather, “police officers ‘may conduct a search of a vehicle that is as thorough as a magistrate could authorize in a warrant particularly describing the place to be searched.’” *Id.* (quoting *Ross*, 456 U.S. at 800, 102 S. Ct. at 2159 (internal quotations omitted)). In *Ross*, the United States Supreme Court stated that:

When a legitimate search is under way, and when its purpose and its limits have been precisely defined, nice distinctions between . . . glove compartments, upholstered seats, trunks, and wrapped packages, in the case of a vehicle, must give way to the interest in the prompt and efficient completion of the task at hand.

Ross, 456 U.S. at 821, 102 S. Ct. at 2171. But “this does not mean that any time police have probable cause, they are justified in searching the entire vehicle.” *Schinzin*, 342 N.W.2d at 111.

In *Acevedo*, the Supreme Court reaffirmed the principle that “[p]robable cause to believe that a container placed in the trunk of a [vehicle] contains contraband or evidence does not justify a search of the entire [vehicle].” 500 U.S. at 580, 111 S. Ct. at 1991. It stated that probable cause to believe that a paper bag in the trunk of a car contained marijuana, justified a search of that bag. But, because the record contained no facts supporting probable cause to believe that contraband was hidden in other parts of the car, the officers could not search the entire car without a warrant. *Id.* Under *Acevedo*, the

automobile exception allows police to search a car and containers within it when there is probable cause to believe that evidence or contraband will be found, but the search is limited in scope by where and to what the probable cause extends. *Id.* If law enforcement has probable cause to believe that evidence or contraband will be found in a specific container within a car, a warrantless search of that container is permitted, but the scope of the search does not necessarily extend to other containers or to the entire vehicle. *See id.*

Here, the district court correctly applied well-established constitutional law. The district court found that the police had probable cause to search only E.W.'s purse, but not the entire car, for the specific items stolen from the convenience store. The district court explained that "law enforcement had probable cause to believe there was stolen property in the purse based on the statements made by the employee, statements by [E.W.], and that she had already produced some of the stolen property." The district court found probable cause to believe that the stolen property was in E.W.'s purse, limiting the scope of their search to that location; implicit in the district court's order is a determination that there was not probable cause to search the car itself, precluding a search of any other containers within the car.

On this record, the district court properly concluded that the officers had probable cause to believe that the stolen items would be found in E.W.'s purse. The district court found as fact that the police officers responded to a shoplifting call, saw E.W. and a car, both of which had been described in the call, and respondent came out of the gas station while the officers were talking to E.W. The store employee said that she watched E.W. place into her purse some items from the store including two blue Gatorades, one Red Bull

drink, one Monster energy drink, and packages of Rain-X glass wipes. She left without paying for those items. Meanwhile, Officer Alexander asked E.W. if she wanted to return any stolen merchandise. E.W. said that she did, said that the items were in her vehicle. She retrieved one Gatorade, one Red Bull, and one Monster drink. Because a few items remained unrecovered, Officer Gramling searched the purse and found a Gatorade and multiple packages of Rain-X glass wipes. Officer Alexander then told Officer Gramling to keep searching the car, and a number of items linked to controlled substances were eventually discovered in respondent's backpack. These findings of fact are supported by the record.

The state also argues that probable cause extended to the full car and its containers because Officer Alexander did not know whether E.W. produced the initial stolen items from her purse or from somewhere else in the car.

Regardless of whether the officers had probable cause to search the vehicle when they arrived, the district court determined that they lacked probable cause to continue searching the vehicle after Officer Gramling found the second Gatorade and Rain-X wipes because, at that time, "All the missing items were accounted for, thereby terminating any probable cause law enforcement had to continue the search." The state does not dispute that all of the items reported missing from the store were recovered after Officer Gramling searched E.W.'s purse.² Officer Gramling testified that, after he told Officer Alexander

² At oral argument, the state contended that the specific number of Rain-X wipes that E.W. had stolen was unknown, and the police therefore had a basis for believing that there might still be unrecovered stolen merchandise in respondent's car. First, this was not argued to the district court. See *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that appellate courts generally will not consider matters not argued to and considered by the

about the items he had found in the purse, Officer Alexander asked him to continue searching the car. While “looking around the immediate area of the driver’s seat,” Officer Gramling discovered an open alcohol container and the controlled substances in respondent’s backpack.

The state cites to *State v. Armstrong*, 291 N.W.2d 918 (Minn. 1980), and *State v. Schultz*, 271 N.W.2d 836 (Minn. 1978), for the proposition that an officer’s discovery of some contraband in a car provides probable cause to search for more contraband. It is true that “[t]he discovery of marijuana in a car gives law enforcement probable cause to search for more anywhere in the car where one might reasonably expect to find marijuana.” *State v. Thiel*, 846 N.W.2d 605, 611 (Minn. App. 2014) (citing *Schinzing*, 342 N.W.2d at 110), review denied (Minn. Aug. 5, 2014). Even the officer’s detection of an odor of marijuana from a car can provide probable cause to search the entire car for marijuana. See *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. App. 1984). Minnesota case law authorizes a broad search of a vehicle when law enforcement has probable cause to believe that there are drugs in it.

But *Armstrong*, *Schultz*, *Thiel*, and *Pierce* do not apply here. Those cases discuss searches for marijuana, which law enforcement is trained to detect. In *Thiel*, we stated that, even when a suspect provides law enforcement with some evidence of marijuana and denies the presence of other marijuana or contraband in the car, law enforcement is “not obligated to believe [the suspect]’s assertion that there [is] no more marijuana in the

district court). More importantly, there is no testimony in the record to support that police were motivated by this uncertainty concerning the precise number of Rain-X packets when Officer Gramling returned to search the car and its contents a second time.

vehicle.” 846 N.W.2d at 611. But cases involving searches of vehicles for marijuana seem always to involve unknown amounts of the drug, and seem never to involve police knowing for certain how much marijuana is in a car they are searching. Here, however, the officers were looking for a finite number of specifically identified items that were taken from the store. The legitimate object of their search was those items. Once those items were recovered, which the district court found they had been, the officers had no probable cause to believe that there would be further evidence or contraband in the vehicle. And, unlike *Thiel*, the officers here had been told by a disinterested third party that all stolen items had been recovered after Officer Gramling searched E.W.’s purse. *See id.*

Officer Gramling’s lack of personal knowledge of what was stolen makes no difference. The gas station employee told at least Officer Tollefson the specific items that were missing. “[T]he officer who conducts the search is imputed with knowledge of all facts known by the other officers involved in the investigation, as long as the officers have some degree of communication.” *State v. Lemieux*, 726 N.W.2d 783, 789 (Minn. 2007).³ The officers here acted in concert and spoke to one another. After all of the stolen items had been recovered, there was no further probable cause to believe that there would be other contraband or evidence in the car. While Officer Gramling testified that he was not told what items were missing, “[a]ctual communication of information to the officer conducting the search is unnecessary.” *Id.*

³ The supreme court stated this rule in assessing the reasonableness of an emergency-aid search, but it applies with equal force in other law-enforcement scenarios. *See, e.g., State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997) (using this collective-knowledge approach when reviewing a warrantless arrest); *State v. Conaway*, 319 N.W.2d 35, 40 (Minn. 1982) (same).

This is not a case where the suspects or the car had been reported as being involved in other thefts or robberies, nor is it a case where the officers smelled marijuana or had probable cause to believe that there were other drugs in the car. Instead, police were called about a person who had stolen a finite number of specified items, which the officers recovered. On these facts, the district court did not err in determining that the automobile exception does not apply to the continued search of the car, once Officer Gramling recovered all of the stolen items. Had police, after recovery of the stolen items, applied to a magistrate for a search warrant to continue searching, there would not have been probable cause to support its issuance. *See Schinzing*, 342 N.W.2d at 110 (quoting *Ross*, 456 U.S. at 800, 102 S. Ct. at 2159) (stating that a warrantless search under the automobile exception may only be as extensive as one that a magistrate could authorize in a warrant).

III. The district court did not err in suppressing the evidence obtained from the car and respondent's backpack.

Evidence discovered by an illegal search must be suppressed under the fruit-of-the-poisonous-tree doctrine “unless the state can show that the subsequently obtained evidence has been purged of the primary taint.” *State v. deLottinville*, 877 N.W.2d 199, 202 (Minn. App. 2016) (internal quotations and citations omitted), *aff'd*, 890 N.W.2d 116 (Minn. 2017). In determining whether the evidence is fruit of the poisonous tree, courts consider: “(1) the purpose and flagrancy of the misconduct; (2) the presence of intervening circumstances; (3) whether it is likely that the evidence would have been obtained in the absence of the illegality; and (4) the temporal proximity of the illegality and the evidence alleged to be the fruit of the illegality.” *State v. Olson*, 634 N.W.2d 224, 229 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001).

The district court thoroughly addressed each of these factors in its order and memorandum. It determined that the evidence of methamphetamine, oxycodone, and drug paraphernalia was fruit of the poisonous tree and therefore inadmissible. The state does not challenge the district court's analysis of these factors, and argues only that the search of the entire car was lawful. But, because no warrant or exception to the warrant requirement justified the search of the car and backpack, all evidence seized from that search must be suppressed.

IV. The district court did not err in dismissing the charges against respondent.

The district court found that, without the drug evidence from respondent's backpack, no probable cause supports the two charges of fifth-degree controlled substance possession, and it therefore dismissed the complaint. The state concedes in its brief that it cannot prove the charges without the drug evidence. Because that evidence was properly suppressed, the district court did not err when it dismissed the complaint against respondent.

Affirmed.