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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1214**

State of Minnesota,
Respondent,

vs.

Morgan Robert Nehring,
Appellant.

**Filed May 4, 2020
Affirmed
Hooten, Judge**

Wright County District Court
File No. 86-CR-18-6099

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Thomas Kelly, Wright County Attorney, Buffalo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Connolly, Judge; and Hooten, Judge.

UNPUBLISHED OPINION

HOOTEN, Judge

In this direct appeal from the judgment of conviction for unlawfully possessing a firearm, appellant argues that the district court erred in determining that police had

probable cause to search his car because their suspicion was based on items found in the physical possession of a passenger who had already been removed from the car prior to the search. We affirm.

FACTS

In November 2018, officers with the Annandale Police Department and deputies with the Wright County Sheriff's Office executed a search warrant at a residence in Annandale. Law enforcement had reason to believe that individuals in the residence were involved in drug-related activities. The search warrant permitted law enforcement to search the residence and Shawn Daniel Sturman., an individual who was the target of the search warrant.

As the officers and deputies were completing their search of the residence, Chief Jeffrey Herr stood outside of the residence and observed a Cadillac SRX, seen parked at the residence earlier that day while surveilling the residence, slowly approach the residence and then accelerate past it. Chief Herr and another officer, Officer Peterson, got into a squad car and followed the vehicle, eventually finding it parked further down the street from the residence. Officers observed the driver of the vehicle, later identified as appellant Morgan Robert Nehring, exiting the driver-side of the vehicle, while a passenger, later identified as Sturman, remained sitting in the vehicle. Officers identified the passenger from a photograph attached to the search warrant.

Officer Peterson approached the passenger side of the vehicle to speak with Sturman. As Sturman exited the vehicle, Officer Peterson observed a firearm in his waistband. He removed the firearm and conducted a search of Sturman's person. During

the search, Officer Peterson found “a plastic baggie [that] later tested to be positive for methamphetamines,” a fixed-bladed knife, a face mask, latex gloves, and a plastic baggie with marijuana residue.

Chief Herr dealt primarily with Nehring during the traffic stop. Chief Herr asked Nehring why he did not stop the vehicle at the residence, and Nehring stated that Sturman told him to continue driving. Nehring also stated that he did not know that Sturman had a firearm on him. He informed Chief Herr that he was on parole and could not have any firearms in his possession. He stated that if he had known that Sturman had a firearm, he would not have allowed Sturman into his vehicle.

Officers arrested Sturman and searched the vehicle after discovering the firearm and methamphetamine on Sturman’s person. During the search, officers found a firearm under the driver-side front seat. Following the search, the state charged Nehring with possession of a firearm by an ineligible person under Minn. Stat. § 624.713, subd. 1(2) (2018).

Nehring moved to suppress the firearm found in the vehicle on the grounds that officers did not have probable cause to search the vehicle. The district court held an omnibus hearing on the issue in December 2019 and denied Nehring’s motion on the grounds that the search was permissible under the automobile exception. Following a two-day bench trial, the district court found Nehring guilty and sentenced him to 60 months in prison. Nehring appeals.

D E C I S I O N

When reviewing a pretrial order on a motion to suppress evidence, we review the district court’s factual findings for clear error. *State v. Milton*, 821 N.W.2d 789, 798 (Minn.

2012). We review the district court’s legal determinations, including a determination of probable cause, de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). We independently determine, as a matter of law, “whether the police articulated an adequate basis for the search at issue” and thus whether the evidence against appellant must be suppressed. *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011).

I. The district court did not err when it determined that there was probable cause sufficient to support a warrantless search of Nehring’s vehicle.

Nehring argues that the district court erred when it denied his motion to suppress because the police did not have probable cause to conduct a warrantless search of his vehicle.

The United States and Minnesota Constitutions guarantee the right of the people to be free from “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. A search conducted without a warrant is generally per se unreasonable unless it satisfies “one of the well-delineated exceptions to the warrant requirement.” *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). The district court determined that no warrant authorized the search of Nehring’s vehicle. Therefore, unless an exception to the warrant requirement applies, the search of the vehicle was unconstitutional. *See State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). It is the state’s burden to demonstrate that an exception to the warrant requirement applies in a particular case. *Id.*

The automobile exception is an exception to the warrant requirement. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). “Under the automobile exception to the warrant requirement, police may search a vehicle without a warrant, including any closed

containers within the vehicle, if they have probable cause to believe the search will result in [the] discovery of evidence or contraband.” *State v. Search*, 472 N.W.2d 850, 852 (Minn. 1991). “Probable cause is an objective inquiry that depends on the totality of the circumstances in each case.” *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). “[T]he totality of 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.* “Therefore, an appellate court must give due weight to reasonable inferences drawn by police officers and to a district court’s finding that the officer was credible and the inference was reasonable.” *Id.* (quotations omitted).

The district court concluded that there was probable cause to sustain a search of the vehicle because, following the discovery of drugs and other paraphernalia¹ on Sturman’s person, it was reasonable for officers to assume that other evidence of contraband would be found in the vehicle. We agree. The record establishes that the vehicle that was searched was observed by officers parked at a home police suspected was involved in drug-related activities. Police also observed the vehicle suspiciously driving by the home while officers were searching pursuant to a search warrant. After officers pulled over the vehicle, they discovered that the passenger was an individual listed on the search warrant. Pursuant

¹ Nehring argues that the district court’s finding that officers found other “paraphernalia” on Sturman’s person was clearly erroneous because the state did not supply testimony to support this finding. Because we do not rely on the district court’s finding concerning paraphernalia to provide a basis for probable cause for the search, we do not address whether this finding was erroneous.

to the search warrant, officers searched the passenger and found a firearm and methamphetamine. The combination of these facts is sufficient to support the determination that officers had probable cause to believe that a search of the vehicle may reveal additional drugs or firearms. See *State v. Bigelow*, 451 N.W.2d 311, 311 (Minn. 1990) (holding that 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”).²

Nehring argues that there was insufficient probable cause to sustain a search of the vehicle for two reasons: (1) there is no evidence in the record to establish that he was aware that Sturman had a firearm and drugs on his person; and (2) nothing in the record establishes a connection between him and Sturman’s possession of contraband. Both arguments fail. In order to sustain a search under the automobile exception, the state must establish that officers had probable cause to believe the search of the vehicle would result

² Nehring cites three cases to support his position that officers did not have probable cause to search his vehicle: *Flowers*, 734 N.W.2d at 248–51; *State v. Dineen*, 296 N.W.2d 421, 422 (Minn. 1980); and *Lester*, 874 N.W.2d at 772. However, in each of these cases, police had to rely on the totality of the circumstances to establish probable cause. See *Lester*, 874 N.W.2d at 772 (determining that an informant’s tip and police officer’s corroboration of the informant’s tip supported a finding of probable cause); see also *Flowers*, 734 N.W.2d at 248–51 (finding that a defendant’s furtive motives and his failure to stop a vehicle, along with other factors, did not establish probable cause); *Dineen*, 296 N.W.2d at 422 (holding that “furtive movement, reaching into the back seat,” and the defendant’s refusal to comply with the officer’s request to remove a coat from the back seat were insufficient to sustain probable cause to search a vehicle). In this case, officers found methamphetamine on Sturman’s person and this alone can support a finding of probable cause. See *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. App. 1984) (“It has long been held that the detection of odors alone . . . constitutes probable cause to search automobiles for further evidence of crime.”).

in the discovery of evidence or contraband. *Flowers*, 734 N.W.2d at 250. Simply put, the state was not required to establish a nexus between the contraband found on Sturman's person and Nehring, or even Nehring's knowledge of the contraband. See *Zurcher v. Stanford Daily*, 436 U.S. 547, 556, 98 S. Ct. 1970, 1976–77 (1978) (“The critical element in a reasonable search is not that the owner of the property is suspected of crime but that there is reasonable cause to believe that the ‘specific things’ to be searched for and seized are located on the property to which entry is sought.”). Rather, all the state had to establish was that there was probable cause to believe Nehring's vehicle contained contraband. See *Flowers*, 734 N.W.2d at 248 (noting that when “probable cause exists to believe that a vehicle contains contraband, the Fourth Amendment permits the police to search the vehicle without a warrant”). We hold that, based on contraband found on Nehring's passenger, the state established “facts and circumstances sufficient to warrant a reasonably prudent [person] to believe that [the vehicle] contain[ed] contraband.” *State v. Johnson*, 277 N.W.2d 346, 349 (Minn. 1979). Therefore, the warrantless search was justified by the automobile exception.

II. The search of Nehring's vehicle was a valid search incident to an arrest.

In its responsive brief, the state asserts, for the first time on appeal, that the search-incident-to-arrest exception to the warrant requirement also provided officers with the requisite basis to search Nehring's vehicle. Generally, a party's failure to raise an issue not argued or considered by the district court precludes our consideration of the issue. See *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (noting that a failure to raise an issue precludes its litigation on appeal). But the supreme court has held that a respondent may

raise a previously unraised argument on appeal when the argument supported the district court's decision and "there are sufficient facts in the record for the appellate court to consider the alternative theories, there is legal support for the arguments, and the alternative grounds would not expand the relief previously granted." *State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003). We conclude that the state has met the requirements to permit this court to consider its alternative argument that the warrantless search of the vehicle was justified by the search-incident-to-arrest exception.

As we have already indicated, a search conducted without a warrant is generally per se unreasonable unless it satisfies "one of the well-delineated exceptions to the warrant requirement." *Munson*, 594 N.W.2d at 135. One such exception is a search incident to a lawful arrest. *Arizona v. Gant*, 556 U.S. 332, 338, 129 S. Ct. 1710, 1716 (2009). "Under this exception, the police are authorized to conduct a full search of the person who has been lawfully arrested." *State v. Bernard*, 859 N.W.2d 762, 767 (Minn. 2015) (quotation omitted). Police may also search a vehicle "when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle." *Gant*, 556 U.S. at 343, 129 S. Ct. at 1719 (quotation omitted). "A search incident to arrest is valid by itself and" requires no further justification. *State v. Varnado*, 582 N.W.2d 886, 892 (Minn. 1998).

We conclude that the search of Nehring's vehicle was justified under the search-incident-to-arrest exception to the warrant requirement. Here, police approached a vehicle parked on the street after it drove suspiciously past a residence that officers were searching as part of a drug investigation. Officers identified Sturman, an individual identified on the search warrant, as a passenger. As Sturman exited the vehicle, officers observed a firearm

in Sturman's waistband and found "a plastic baggie [that] later tested positive for methamphetamines" after a search of Sturman's person. Police arrested Sturman and searched the vehicle. Because officers found a firearm and drugs on Sturman's person, it was reasonable to assume that evidence related to firearms and drugs would be found in the vehicle. *See Bigelow*, 451 N.W.2d at 312–13. The search of the vehicle was therefore permissible under the search-incident-to-arrest exception to the warrant requirement.

We conclude that, because officers had probable cause to search the vehicle under both the automobile exception and the search-incident-to-arrest exception, the district court did not err when it denied Nehring's motion to suppress.

Affirmed.