

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0463**

State of Minnesota,
Respondent,

vs.

Resa Lynn Gauthier,
Appellant.

**Filed March 22, 2021
Reversed and remanded
Reilly, Judge**

Crow Wing County District Court
File No. 18-CR-17-3966

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Donald F. Ryan, Crow Wing County Attorney, Stephanie Shook, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reilly, Presiding Judge; Florey, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

REILLY, Judge

After a deputy responded to a call reporting that appellant was sleeping in her vehicle, he searched her purse and discovered methamphetamine. The state charged appellant with first-degree possession of methamphetamine. Appellant moved to suppress

the evidence found in the search of her purse. The district court denied her motion. After a trial on stipulated facts, the district court found appellant guilty. In this appeal, she challenges the district court's denial of her motion to suppress on the ground that the warrantless search of her purse was not a valid protective weapons search. We agree, and reverse and remand.

FACTS

On a September morning in 2017, a deputy responded to a call from a Holiday gas station clerk in Garrison, Minnesota, reporting that a vehicle had been parked at a gas pump a long time with a person either sleeping or passed out inside. When the deputy arrived at the gas station, he pulled up behind the vehicle and activated his squad car video. The deputy performed a cursory search of the vehicle and did not notice any weapons or contraband in the vehicle, but he did notice appellant Resa Lynn Gauthier sitting in the driver's seat with her seatbelt on.

Appellant was "kind of slumped to the side" and "appeared to be sleeping," but the deputy could not definitively tell whether she was passed out, sleeping, or dead. The deputy "checked the doors of the vehicle" and found that they were locked, so he knocked on the driver's window and appellant woke up. Appellant rolled down the driver's window halfway and after the deputy again asked her to unlock the vehicle doors, she immediately complied. The deputy opened the door and began questioning appellant.

Appellant at first appeared confused and did not know what city she was in. As the deputy continued to question appellant, however, she became more coherent and told him she came "up here" to attend her uncle's funeral service and was headed to "Garrison Motel

Inn and Suites.” The deputy told appellant that “most people don’t sleep at a gas pump” and she explained that she has “a bad heart,” was at the casino all night, and stayed there too long.

The deputy testified that he did not know if appellant’s confusion was from “drugs or alcohol use, or if it was just because she was sleeping and had just woken up.” When the deputy asked appellant if she had been using any drugs or alcohol, she stated that she had not. But he directed appellant to step outside of the vehicle and asked to see her arms to check for needle marks. Appellant showed the deputy her arms, which were free of needle marks. The deputy then observed that appellant had “bloodshot, watery eyes,” but again, did not know if appellant’s eyes were irritated “from sleeping or any other drug use or alcohol use.” The deputy told appellant that her eyes seemed a little bloodshot and she told him that her eyes were red because she was tired and has cardiomyopathy. The deputy stated that he could not smell any alcohol on appellant, but asked her to take a preliminary breath test (PBT) “just to cover that base.” Appellant cooperated and her PBT came back negative.

After administering the PBT test, the deputy told appellant she could light the cigarette she was holding. While peering into the vehicle, the deputy asked appellant if she also used a vaporizer to smoke and then corrected himself after realizing that the object he believed was a vaporizer was a butane lighter. The deputy testified that he thought that appellant having a butane lighter “seemed kind of odd for a female.” Appellant told the deputy she used the butane lighter to smoke. The deputy opened the vehicle door, reached inside, and removed the butane lighter. He reached inside the vehicle for a second time,

removed an unidentifiable object, and then reached in for a third time to search the vehicle. After he finished searching the vehicle, the deputy asked appellant if there were any drugs in it and she told him no.

The deputy then reached inside the vehicle for the fourth time, removed appellant's purse from the vehicle, handed it to her commenting that the purse was heavy, and asked appellant to get her ID out. Appellant dug through her purse and placed an item, later identified as a digital scale, in her pant pocket. While appellant dug through her purse, the deputy asked her, "What do you have in there? Change?" The deputy then peered into the purse and asked appellant if she had any weapons in it. Appellant told the deputy she did not, but he took appellant's purse away from her and told appellant that he was "gonna reach in there and make sure."

The deputy placed the purse on the driver's seat of the vehicle and explained that he was searching it because appellant's purse was "very, very, very heavy" and that when a purse is that heavy, he is "going to check it out." The deputy testified that he "look[ed] inside of [appellant's] purse to look for her driver's license, or [to] see if there was any weapons in the purse." He searched appellant's purse for nearly two minutes and commented on its contents such as "you've got a lot of cell phones." He also discovered a baggie containing methamphetamine and put appellant under arrest. The deputy did not ask appellant her name until after he arrested her and placed her in the backseat of his squad car.

The state charged appellant with first-degree possession of methamphetamine, Minn. Stat. § 152.021, subd. 2(a)(1) (2016). Appellant moved to suppress the evidence

and to dismiss the complaint for lack of probable cause. After a contested omnibus hearing, the district court denied appellant's motion to suppress and to dismiss. The district court found that the warrantless search of appellant's purse was a constitutionally valid protective weapons search. Appellant later waived her right to a jury trial and proceeded with a trial on stipulated facts. The district court found appellant guilty and sentenced her to 98 months in prison. This appeal followed.

DECISION

Appellant argues that the district court erred by denying her motion to suppress evidence because the warrantless search of her purse was not a valid protective weapons search under *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968). We review de novo whether reasonable suspicion justifies a search. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). When reviewing the legality of a search, "an appellate court will not reverse the [district] court's findings unless clearly erroneous or contrary to law." *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997).

The United States and Minnesota Constitutions guarantee an individual's right to be free from unreasonable searches. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A search conducted without a warrant is presumptively unreasonable unless the state proves that an exception to the warrant requirement applies. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). Here, the deputy did not have a warrant to search appellant's purse. For the search to be constitutional, therefore, it "must fall within one of the well-delineated exceptions to the warrant requirement." *State v. Munson*, 594 N.W.2d 128, 135 (Minn.

1999). The district court found that the deputy “performed a permissible protective weapons search of [appellant’s] purse.”

Under *Terry*, police may temporarily detain a person for investigatory purposes when an officer has a reasonable, articulable suspicion that the person has engaged in criminal activity. *Terry*, 392 U.S. at 19-21, 88 S. Ct. at 1878-80. While detaining a person for investigatory purposes, officers may “protect themselves and other[s]” by “tak[ing] necessary measures to determine whether the person is . . . carrying a weapon” when the officer has a justified belief that the person the officer is investigating “is armed and presently dangerous.” *Id.* at 24, 88 S. Ct. at 1881. “[I]n determining whether the officer acted reasonably in such circumstances, due weight must be given . . . to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.” *Id.* at 27, 88 S. Ct. at 1883. Officers need not be certain that the person is armed; “the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” *Id.*

An officer’s belief that a suspect might be armed and dangerous, however, must rest on more than an “unparticularized suspicion or ‘hunch.’” *Id.* Thus, an officer “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts,” reasonably warrant the protective weapons search. *Id.* at 21, 88 S. Ct. at 1880. When an officer has a reasonable suspicion that the suspect is armed and dangerous, the officer may conduct “a carefully limited frisk for weapons.” *State v. Dickerson*, 481 N.W.2d 840, 846 (Minn. 1992) (citing *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884), *aff’d*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

“The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence.” *Minnesota v. Dickerson*, 508 U.S. 336, 373, 113 S. Ct. 2130, 2136 (1993) (quotation omitted). A protective search thus must be strictly limited to “those areas in which a weapon may be placed or hidden.” *Flowers*, 734 N.W.2d at 253 (quotation omitted); *see also Dickerson*, 508 U.S. at 373, 113 S. Ct. at 2136 (stating that a protective search “must be strictly limited to that which is necessary for the discovery of weapons” (citation omitted)). “If the protective search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under *Terry* and its fruits will be suppressed.” *Dickerson*, 508 U.S. at 373, 113 S. Ct. at 2136.

Here, the district court held that while the deputy “had no direct evidence to believe that [appellant] was armed and dangerous,” he did not search appellant’s purse “based on groundless speculation” and therefore, he performed a permissible protective weapons search. We disagree. Nothing in the deputy’s testimony or our review of the squad car footage reveals that he had a particularized basis to suspect appellant may have had weapons warranting a search of her purse.

The deputy responded to a call of a person sleeping in her car at a gas station. There was no sign that appellant would likely be armed and dangerous. This court has concluded that, absent additional suspicious circumstances, a frisk for weapons is improper during a routine stop for a minor traffic violation. *In re Welfare of M.D.B.*, 601 N.W.2d 214, 216 (Minn. App. 1999). Here appellant did not commit a traffic violation—she fell asleep in her vehicle—and the circumstances surrounding the deputy’s investigation were nonthreatening. The deputy testified that appellant fully cooperated with his requests.

Appellant did not make any furtive or evasive movements towards a place where a weapon could be concealed. *See State v. Eggersgluess*, 483 N.W.2d 94, 97 (Minn. 1992) (stating that sudden or furtive movement towards a place where a weapon could be concealed may justify a search). Before arresting appellant, the deputy had no reason to believe that she had any criminal history.

And even if appellant had a weapon in her purse, after she complied with the deputy's direction to get out of her car, the purse was in her vehicle and beyond the area of her immediate control. When a purse is not within the immediate control of a suspect, police cannot search it for weapons. *State v. Wynne*, 552 N.W.2d 218, 222 (Minn. 1996). Appellant did not gain control of her purse until the deputy removed it from the vehicle and handed it to her. The deputy himself thus created any imagined threat that the contents of the purse posed to him. The deputy cannot remedy a "self-generated dangerous situation" by invading appellant's privacy. *Id.* Simply put, no specific facts here establish a reasonable suspicion that appellant was armed and dangerous.

Even if we concluded that the deputy had a reasonable belief that appellant was armed and dangerous, the deputy failed to frisk appellant or her purse before conducting his search. Under Minnesota caselaw and *Terry*, an officer may not search a suspect unless the officer first performs a strictly limited frisk. *See State v. Richmond*, 602 N.W.2d 647, 652 (Minn. App. 1997) (holding that a search exceeded the scope of that authorized by *Terry* when the officer failed to pat-search the defendant's pocket before he reached into the pocket); *State v. Crook*, 485 N.W.2d 726, 729 (Minn. App. 1992) (concluding that "the removal of appellant's cap from his head as an alternative to a pat search of the cap went

beyond a *Terry* reasonable protective weapons search”), *review denied* (Minn. Aug. 4, 1992). And “with respect to a police search, a shoulder purse is so closely associated with the person that it is identified with and included within the concept of one’s person.” *Wynne*, 552 N.W.2d at 220 (quotation omitted). Under *Terry*, moreover, a protective weapons search must be strictly limited to the areas a weapon may be hidden. 392 U.S. at 29, 88 S. Ct. at 1884. The deputy did not strictly limit his search. Instead, he searched through all of appellant’s purse for nearly two minutes.

Because the deputy did not have a reasonable suspicion that appellant was armed and dangerous and because he exceeded his authority under *Terry*, we conclude that the district court erred when it determined that the *Terry* protective weapons search exception to the Fourth Amendment warrant requirement authorized the deputy to search appellant’s purse. We reverse and remand for further proceedings consistent with this opinion.

Appellant also argues that because the district court incorrectly calculated her criminal history score and thus imposed an incorrect sentence, this court must remand her case for resentencing. Having determined that the district court erred when it found that the deputy’s warrantless search of appellant’s purse was a valid protective weapons search under *Terry*, we need not reach this issue.

Reversed and remanded.