STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0118

State of Minnesota,
Respondent,

vs.

Jeremy James Heller,
Appellant.

Filed January 29, 2024
Reversed and remanded
Wheelock, Judge

Hennepin County District Court
File No. 27-CR-22-9269

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

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Smith, Tracy M., Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges his convictions for possession of a controlled substance and possession of a firearm and ammunition by a prohibited person, arguing that the district court erred by denying his motion to suppress evidence that police officers discovered

during a warrantless search of his bags because neither the automobile exception nor the exception for a search incident to arrest applied. We reverse and remand.

FACTS

On October 7, 2021, at 2:00 a.m., police officers responded to a 911 call about a domestic disturbance at an apartment in Bloomington; the caller identified appellant Jeremy James Heller as the suspect. The first officer to arrive at the apartment complex saw a car waiting in the parking lot with its lights on and approached the car. The car's driver rolled down his window, identified himself as J.H., and stated that he was waiting for Heller. The officer smelled marijuana coming from inside the car once J.H. opened the window. When the officer asked J.H. for his identification, J.H. showed the officer his driver's license as well as his permit to carry a firearm and confirmed that he had a firearm.

Two other officers arrived, and around the same time, Heller came out of the building and went to J.H.'s car. Heller had a gray backpack and a brown leather bag with him. Heller walked to the front passenger seat and put his bags in the car; J.H. then moved them to the back seat. The officers asked why someone inside called 911, and Heller stated that the woman inside was his girlfriend and they had an infant child together but he did not know why she called 911.

Two officers went into the apartment building to check on the 911 caller. The caller told the officers that she and her child were safe and nothing had happened but she did not want Heller in the apartment. One officer remained in the parking lot and watched Heller and J.H. While watching them from his squad car, the officer confirmed that J.H. owned the car, that his permit to carry was valid, and that Heller was on probation and was

prohibited from possessing a firearm. After a short time, the two officers who had gone inside the building returned to the parking lot and stated that everything was "all good."

The officers then decided to search J.H.'s car because the first officer on the scene had smelled marijuana when he initially approached the car, which was before Heller came out of the building. One officer asked J.H. to step out of the car and explained that the car smelled like marijuana, and two officers removed the firearm from the holster on J.H.'s body. Another officer went to the passenger side of the car, where Heller was sitting in the front seat. Heller remained calm and told the officer that he did not smoke marijuana. The officers then had Heller and J.H. stand next to the hood of the squad car while they searched J.H.'s car.

Two officers searched the front seats of J.H.'s car. One officer identified "residue" of marijuana on the floor of the car and observed a firearm mounted underneath the steering wheel on the driver's side of the center column. The officers then searched the back seat, and one officer opened the brown leather bag that Heller had carried out of the apartment building and placed in the car. Inside the bag, the officer found drug paraphernalia. At that point, the officers stopped searching and arrested J.H. and Heller. When the officers resumed searching J.H.'s car, they opened the gray backpack that Heller carried out of the apartment building and discovered a firearm, ammunition, and a white substance that later tested positive for methamphetamine.

The state charged Heller with possession of a firearm by a prohibited person, possession of ammunition by a prohibited person, and fifth-degree possession of a controlled substance based on the contraband the officers found in the gray backpack.

Heller moved to suppress the evidence as the fruit of an unlawful search, but the district court denied the motion because it determined that the totality of the circumstances, including the officers' inferences, provided the officers with reasonable suspicion to expand the stop and probable cause to search the car and its contents. After a five-day trial, a jury found Heller guilty of all three charges, and the district court sentenced him to 60 months in prison.

Heller appeals.

DECISION

Heller argues that the district court erred by denying his motion to suppress the evidence found in his bags because officers did not have probable cause to search his bags under any theory. First, he asserts that the officers had neither reasonable, articulable suspicion to detain him for further investigation after they cleared the 911 call nor probable cause to search his bags under the automobile exception to the warrant requirement because the officers searched the bags to find marijuana, but they had smelled marijuana odor coming from J.H.'s car before Heller approached the car. Second, he asserts that the officers lacked probable cause to arrest him for constructively possessing the firearm that was registered to J.H. and found in a car that J.H. owned, and thus searching his bags incident to arrest was unlawful.

The United States and Minnesota Constitutions prohibit "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. We review de novo the district court's legal determinations in a pretrial order on a motion to suppress evidence as the result of an unreasonable search or seizure. *State v. Barrow*, 989 N.W.2d 682, 684-85

(Minn. 2023). We must determine "whether the police articulated an adequate basis for the search or seizure at issue." *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2008). We address each of Heller's arguments in turn.

I. The officers did not have reasonable, articulable suspicion to detain Heller for investigation after the 911 call was cleared or probable cause to search Heller's bags pursuant to the automobile exception.

Heller argues that the officers did not have reasonable, articulable suspicion to detain him once they concluded their investigation of the 911 call and therefore did not have probable cause to search his bags. Specifically, he asserts that the officers did not have reasonable, articulable suspicion to investigate him for marijuana because the first officer smelled marijuana emanating from J.H.'s car *before* Heller emerged from the building and placed his bags in the car. And that because the officers did not have reasonable, articulable suspicion, the officers could not have developed probable cause to search his bags pursuant to the automobile exception. Moreover, if probable cause existed as to the car, it could not have attached to any containers that were not in the car when the suspicion arose, including Heller's bags, and therefore, the officers did not have probable cause to search his bags.

The state contends that the officers could search Heller's bags because the officers had reasonable, articulable suspicion to detain him for investigation and probable cause to search Heller's bags under the automobile exception based on the following circumstances: the officers responded to the 911 call, smelled marijuana, knew J.H. had firearms in the car, knew Heller was on probation, and observed that Heller appeared nervous. The state made the same arguments to the district court, which agreed that, under the totality of the

circumstances, the officers had probable cause to search Heller's bags pursuant to the automobile exception.

We review de novo whether an initial stop or investigation by an officer is lawful and supported by reasonable, articulable suspicion. *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). An officer may conduct a brief stop and investigation only if reasonable, articulable suspicion of criminal activity exists, meaning that the initial stop cannot be "the product of mere whim, caprice or idle curiosity." *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996). Rather, the officer must be able to point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). The facts must be objective and particular to the person under investigation. *State v. Harris*, 590 N.W.2d 90, 99 (Minn. 1999). "Mere proximity to, or association with, a person who may have previously engaged in criminal activity is not enough to support reasonable suspicion of [criminal activity]." *State v. Diede*, 795 N.W.2d 836, 844 (Minn. 2011). In determining whether police "had a particularized and objective basis for suspecting the particular persons stopped of criminal activity . . . the court should consider the totality of the circumstances and should remember that trained law-enforcement officers are permitted to make inferences and deductions that might well elude an untrained person." *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (quotations omitted). Moreover, an investigatory stop may last only as long as necessary to effectuate its purpose. *State v. Bell*, 557 N.W.2d 603, 606 (Minn. App. 1996), *rev. denied* (Minn. Mar. 18, 1997).

After receiving a 911 call about a domestic disturbance that identified Heller, the officers had sufficient facts to stop and investigate Heller related to the 911 call. The first officer to arrive saw a car in the parking lot, smelled marijuana coming from the car, and spoke with the driver, J.H., who explained that he was waiting for Heller. J.H. showed the officer his permit to carry a firearm and confirmed that he had a firearm on him. Heller came out of the building and sat halfway inside of J.H.'s car. Two additional officers arrived on the scene and went to check on the caller while the first officer remained to watch Heller and J.H. While watching Heller and J.H., the officer confirmed that J.H. owned the car and that his permit to carry was valid. Therefore, when the two officers returned to the parking lot and reported that the 911 caller was safe and that no criminal activity had taken place, any reasonable, articulable suspicion that Heller had engaged in criminal activity ceased to exist, and the officers could not continue detaining or investigating Heller without new specific, articulable facts.

We review de novo a district court's probable-cause determination as it relates to a warrantless search. *State v. Torgerson*, 995 N.W.2d 164, 168 (Minn. 2023). An officer may conduct a warrantless search of a vehicle if the officer develops "probable cause to believe the search will result in a discovery of evidence or contraband," which is "an objective inquiry," *id.* at 168-69 (quoting *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016)), that must be particularized and individualized to the suspect, *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005). However, the search must be limited to containers "inside the car at the time probable cause arose" that could contain "the object of the search." *Barrow*, 989 N.W.2d at 688.

Here, the officers did not have probable cause to search Heller's bags under the automobile exception. The first officer at the scene smelled marijuana coming from J.H.'s car *before* Heller approached the car, and no particular facts individualized to Heller arose during the officers' interaction with him to support an objective belief that searching his bags would produce contraband or evidence of a crime. At the time the officers expanded their investigation and searched the car, the only remaining concern was related to the smell of marijuana emanating from J.H.'s car that existed before Heller came out of the building. Because the officers no longer had reasonable, articulable suspicion to detain or investigate Heller and did not have probable cause to search his bags under the automobile exception, the district court erred by denying Heller's motion to suppress on this basis.

II. The officers did not have probable cause to arrest Heller for firearm possession and therefore did not have probable cause to conduct a search incident to arrest.

The district court also determined that the search of Heller's bags was lawful under the search-incident-to-arrest exception to the warrant requirement because it found there was probable cause to arrest him for constructive possession of the firearm located under the car's steering column during the initial search of the car. Heller argues that the officers lacked probable cause to arrest him because the firearm was registered to J.H. and was mounted in J.H.'s car and there was no evidence from which the officers could infer that Heller was exercising dominion and control over the firearm. Alternatively, Heller argues that if the officers did have probable cause to arrest him, the search of his bags exceeded the scope of the search incident to arrest.

To constitute probable cause for an arrest, the objective facts must be "such that under the circumstances 'a person of ordinary care and prudence would entertain an honest and strong suspicion' that a crime has been committed." *State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982) (quoting *State v. Carlson*, 267 N.W.2d 170, 173 (Minn. 1978)). If a person is lawfully arrested, then officers may conduct a search of the person and the area within the person's control incident to that arrest. *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015); *State v. Bradley*, 908 N.W.2d 366, 369 (Minn. App. 2018).

To commit the crime of possession of a firearm by a prohibited person, the person must knowingly possess the firearm and have actual or constructive possession of it. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017); *State v. Salyers*, 858 N.W.2d 156, 161 (Minn. 2015). The constructive-possession doctrine enables the state to prove possession when the "inference is strong that the defendant at one time physically possessed the [firearm] and did not abandon his possessory interest in the [firearm] but rather continued to exercise dominion and control over it up to the time of the arrest." *Salyers*, 858 N.W.2d at 159. A person constructively possesses a firearm if officers find a firearm "in a place under the defendant's exclusive control to which other people normally did not have access" or if "there is a strong probability (inferable from other evidence) that at the time the defendant was consciously or knowingly exercising dominion and control over it." *Harris*, 895 N.W.2d at 601. Mere proximity to a firearm is insufficient to prove constructive possession. *Id.*

In *State v. Florine*, the supreme court held that the defendant constructively possessed controlled substances found in an abandoned vehicle because officers found the

substances among a myriad of other items inside the vehicle that clearly belonged to the defendant—his wallet, identification, clothes, notebooks with his handwriting, mail and bills addressed to him, and bank receipts. 226 N.W.2d 609, 610-11 (Minn. 1975). The supreme court reasoned that although the officers discovered the substances in a vehicle that did not belong to the defendant, other items inside of the vehicle allowed the officers to develop a strong inference that the defendant constructively possessed the substances. *Id.* at 611. And in *State v. Porter*, we held that the defendant constructively possessed a firearm found in a residence because, although he was not listed as living at the residence, the defendant admitted to staying overnight four to five times per week and keeping personal items there and officers found the firearm inside the residence within five to eight feet of cocaine that the defendant admitted to possessing. 674 N.W.2d 424, 427 (Minn. App. 2004). The facts here are distinguishable from these cases.

Unlike the vehicle in *Florine*, J.H.'s car was not filled with personal property clearly belonging to Heller that would support an inference that other items in J.H.'s car also belonged to Heller. The only items in J.H.'s car that the officers identified as belonging to Heller were the bags that he placed in the car after he came out of the building and after the first officer smelled marijuana. And unlike in *Porter*, there is no evidence that Heller lived in or stored personal items in J.H.'s car such that officers could reasonably infer that other items in the car belonged to Heller. Instead, the facts in the record establish that the firearm was mounted underneath the steering wheel on the driver's side of J.H.'s car and that officers had verified both that the car was registered to J.H. and that J.H. had a valid permit to carry the firearm.

These facts do not support probable cause to believe that Heller constructively possessed the firearm mounted underneath the steering wheel on the driver's side of the center column in J.H.'s car. First, the district court did not make any findings, and we see no evidence in the record, to support that Heller knew about the firearm mounted underneath the steering wheel. A person cannot constructively possess an item that they do not know is present. *See Harris*, 895 N.W.2d at 601; *Salyers*, 858 N.W.2d at 161. Second, the record reflects that J.H.'s firearm was on *the driver's side* of the center column. Although someone seated in the front passenger compartment may have been able to remove the firearm, the firearm's location does not support an inference that Heller exercised dominion and control over it. And even if Heller could have accessed the firearm, our caselaw instructs that proximity alone does not automatically bring an item under a person's dominion and control. *Harris*, 895 N.W.2d at 601. Without more, the facts here do not support a strong inference that Heller constructively possessed the firearm mounted underneath the steering wheel on the driver's side of the center column.

Because the record lacks objective facts that would support an honest and strong suspicion that Heller unlawfully possessed J.H.'s firearm, the officers did not have probable cause to arrest Heller and thus had no basis to search Heller's bags incident to arrest. Because we conclude that the officers lacked probable cause to arrest Heller, we do not reach Heller's alternative argument that the search of his bags exceeded the permissible scope of a search incident to arrest.

In sum, because the officers did not have probable cause to search Heller's bags as part of an otherwise permissible search of J.H.'s car, and because the officers did not have

probable cause to arrest Heller for constructive possession of J.H.'s firearm, the district court erred by denying Heller's motion to suppress the evidence obtained during the search of his bags. We reverse the district court's order denying Heller's motion to suppress the evidence and remand for further proceedings.

Reversed and remanded.