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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0169**

State of Minnesota,
Respondent,

vs.

Darcy Wayne Christianson,
Appellant.

**Filed September 18, 2023
Affirmed
Cochran, Judge**

Becker County District Court
File No. 03-CR-20-1539

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Brian W. McDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

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

Considered and decided by Cochran, Presiding Judge; Bjorkman, Judge; and
Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant was convicted of first-degree possession of a controlled substance based on evidence recovered from a warrantless search of his vehicle. In a prior decision, we reviewed the district court's denial of appellant's motion to suppress the evidence. We concluded that the district court erred when it determined that the search was lawful under the automobile exception to the warrant requirement. But we remanded the matter to the district court to make additional findings and a determination as to whether the warrantless search was justified as a valid search incident to a lawful arrest—an alternative argument raised by respondent at the contested omnibus hearing.

On remand, the district court made additional findings and determined that the search of appellant's vehicle was a valid search incident to appellant's lawful arrest for driving while impaired (DWI). Appellant now challenges that determination. Because we conclude that the district court did not err by determining that the search of appellant's vehicle was justified as a search incident to his lawful arrest for DWI, we affirm.

FACTS

Respondent State of Minnesota charged appellant Darcy Wayne Christianson with first-degree possession of a controlled substance after a sheriff's deputy found more than 50 grams of methamphetamine in the center console of Christianson's truck following a traffic stop and a K-9 search of the vehicle. Christianson moved to suppress the evidence, arguing that it was obtained through an unlawful, warrantless search that did not fall within a recognized exception to the warrant requirement. At Christianson's contested omnibus

hearing, the district court heard testimony from the deputy who conducted the stop and search of Christianson's vehicle and admitted a video recording from the deputy's body-worn camera into evidence.

The evidence presented at the contested omnibus hearing established the following undisputed facts. Late on the evening of August 5, 2020, the sheriff's deputy initiated a traffic stop of a vehicle registered to Christianson after determining that Christianson's license was canceled as inimical to public safety. The deputy approached the vehicle and saw an open beer in a cupholder located in front of the center console between Christianson, who was driving, and a female passenger. The deputy testified that he could smell the odor of alcohol coming from the vehicle. Christianson admitted to the deputy that he had consumed one beer. Christianson denied having "anything illegal" in the vehicle or any other open containers. He admitted to using methamphetamine a few days earlier.

The deputy also instructed Christianson to perform field sobriety tests. First, the deputy instructed Christianson to follow the deputy's moving finger with his eyes without moving his head. Next, the deputy instructed Christianson to perform the modified Romberg test, which requires the driver to estimate the passage of 30 seconds. An estimate that is within five seconds of the actual 30-second mark is considered acceptable. Christianson estimated the passage of 30 seconds at the 23-second mark. Based on this result, the deputy testified that he believed Christianson was under the influence of a controlled substance because a drug like methamphetamine can "speed up the estimation of 30 seconds." The deputy then placed Christianson under arrest for DWI and for driving with a canceled license and secured him in the back of a squad car. While the deputy was

with Christianson, a state trooper spoke with the passenger. The trooper had the passenger exit the vehicle and found a small amount of marijuana and paraphernalia on her.

The deputy and trooper conferred and agreed that the circumstances raised enough suspicion to justify a search by a K-9 unit. The deputy returned to his squad car to get his K-9 partner, a dog trained to detect the presence of illegal drugs. The dog jumped into the driver's seat of the truck and alerted to the presence of illegal drugs inside the vehicle. The deputy returned the dog to the squad car and the officers began to search the interior of the vehicle themselves. In the center console between the front seats, the deputy found a plastic bag containing a substance that field-tested positive for methamphetamine.

After the hearing, the parties filed briefs summarizing the facts and their legal arguments. Christianson argued that the evidence obtained from the search of the vehicle should be suppressed because law enforcement did not secure a warrant prior to the search and no exception to the warrant requirement applied. The state argued that the district court should deny the motion to suppress because two exceptions to the warrant requirement applied: the automobile exception and the search-incident-to-arrest exception.

The district court denied Christianson's motion to suppress. In its order, the district court concluded that the warrantless search of the vehicle was lawful under the automobile exception to the warrant requirement. The district court did not address the state's alternative argument that the search was lawful under the search-incident-to-arrest exception to the warrant requirement.

The matter proceeded to a jury trial. The jury found Christianson guilty of first-degree possession of a controlled substance. The district court sentenced Christianson to 110 months in prison with credit for time served.

First Appeal

Christianson appealed his conviction, arguing that the district court erred by denying his motion to suppress because the deputy did not have probable cause to search the center console of his truck for illegal drugs without a warrant. We concluded that the district court's findings did not support its conclusion that the automobile exception applied. *State v. Christianson*, No. A21-1138, 2022 WL 3149262, at *2 (Minn. App. Aug. 8, 2022) (*Christianson I*). But we noted that the district court had not addressed whether, in the alternative, the search-incident-to-arrest exception applied as argued by the state. *Id.* at *4. Therefore, we reversed and remanded the matter to the district court with instructions to make additional findings based on the existing record “regarding whether the warrantless search was justified as incident to a lawful arrest.” *Id.* at *4-5.

Order on Remand

After a hearing on remand, the district court issued an order concluding that the evidence seized from Christianson's truck was admissible because the search of the center console of the truck was a valid search incident to a lawful arrest. In its order on remand, which included more extensive factual findings than the original order, the district court explained that the deputy had probable cause to arrest Christianson for DWI based on multiple indicators of impairment: Christianson's failure of the modified Romberg test, the odor of alcohol coming from the truck, the open alcohol container in the cupholder near

the center console, and Christianson's admitted use of methamphetamine a few days prior. The district court further explained that this probable-cause determination justified the search of the center console as a search incident to arrest.

Christianson appeals.

DECISION

The United States and Minnesota Constitutions protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search is presumptively unreasonable unless it falls within one of the recognized exceptions to the warrant requirement. *State v. Barrow*, 989 N.W.2d 682, 685 (Minn. 2023). "The [s]tate bears the burden of proving any exception." *State v. Milton*, 821 N.W.2d 789, 799 (Minn. 2012). And generally, evidence obtained during an unconstitutional search or seizure must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007).

One well-recognized exception to the warrant requirement is a search incident to arrest, which allows police to search a person who has been lawfully arrested and "the area within his or her immediate control to remove weapons and to seize evidence." *State v. Bernard*, 859 N.W.2d 762, 769 (Minn. 2015), *aff'd sub nom. Birchfield v. North Dakota*, 136 S. Ct. 2160 (2016). There are two possible justifications for a search of a vehicle incident to a lawful arrest: (1) "if the arrestee is within reaching distance of the passenger compartment at the time of the search," *or* (2) if "it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Arizona v. Gant*, 556 U.S. 332, 351 (2009). An arrest must be supported by probable cause to be considered lawful. *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011).

Probable cause to arrest a suspect without a warrant exists “when a person of ordinary care and prudence, viewing the totality of the circumstances objectively, would entertain an honest and strong suspicion” that the suspect has committed a crime. *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009). “[T]he totality of the circumstances includes reasonable inferences that police officers draw from facts, based on their training and experience.” *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). And “[t]he quantum of proof required for a finding of probable cause is more than mere suspicion but less than the evidence necessary for conviction.” *State v. Onyelobi*, 879 N.W.2d 334, 343 (Minn. 2016) (quotation omitted).

Here, the district court concluded that the deputy’s search of Christianson’s truck was a valid search incident to his lawful arrest for DWI. The district court determined that the deputy had probable cause to arrest Christianson for DWI prior to the search of the vehicle based on the following circumstances: Christianson’s failure of the modified Romberg test, the odor of alcohol coming from the truck, the open alcohol container near the center console, and Christianson’s admitted use of methamphetamine a few days prior. The district court explained that its probable-cause determination justified the search of the center console because it was reasonable for the deputy to believe that evidence relevant to the crime of DWI might be found there. And the district court concluded that the search was limited in scope to evidence related to the DWI crime.

On appeal, Christianson argues that the search-incident-to-arrest exception does not apply because the deputy did not have probable cause to arrest Christianson for DWI. In reviewing a district court’s pretrial order on a motion to suppress evidence, we review the

district court's factual findings for clear error and its legal conclusions de novo. *Milton*, 821 N.W.2d at 798. And we review a district court's probable-cause determination de novo, giving due weight to the inferences made by police officers and to a district court's finding that such inferences were reasonable. *Lester*, 874 N.W.2d at 771.

Christianson argues that the district court erred in its probable-cause determination by improperly “conflating and combining” the factors relevant to driving while under the influence of alcohol with those relevant to driving while under the influence of a controlled substance. He asserts that because the indicia of alcohol impairment do not necessarily overlap with the indicia of controlled-substance use, observing indicia of one type of impairment is not necessarily relevant to a probable-cause determination for the other type of impairment. Based on that logic, Christianson argues that the facts and circumstances available to the deputy at the time of his DWI arrest were not sufficient to establish probable cause to arrest him for driving while under the influence of *either* alcohol *or* a controlled substance. We are not persuaded.

Christianson's argument fails to recognize that Minnesota law criminalizes driving under the influence of a *combination* of alcohol and one or more controlled substances. Minnesota law provides that a person has committed the crime of DWI if they drive a motor vehicle while under the influence of alcohol, a controlled substance, *or* “a combination” of both. Minn. Stat. § 169A.20, subd. 1(1)-(2), (4) (2020). Because DWI is statutorily defined to include driving while under the influence of a *combination* of alcohol and a controlled substance, we conclude that the district court appropriately considered factors relevant to Christianson's possible consumption of both alcohol and controlled substances

in its analysis. The district court did not improperly conflate the relevant impairment factors in making its probable-cause determination.

Further, we conclude that the deputy had probable cause to arrest Christianson for DWI prior to the search of his vehicle. “Probable cause to arrest a person for DWI exists when the facts and circumstances available at the time of arrest reasonably warrant a prudent and cautious officer to believe that an individual was driving while under the influence.” *Reeves v. Comm’r of Pub. Safety*, 751 N.W.2d 117, 120 (Minn. App. 2008). This “determination is based on the totality of the circumstances.” *Id.* “[O]ne objective indication of intoxication” is sufficient “to constitute probable cause to believe a person is under the influence.” *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004) (quotation omitted). Further, because consuming even a small amount of alcohol or a controlled substance can adversely affect a driver’s judgment without causing noticeable outward signs of intoxication, there is no bright-line rule that an officer must observe *any* physical indicia of intoxication to establish probable cause. *State v. Taylor*, 965 N.W.2d 747, 758 (Minn. 2021).

Here, the totality of the facts and circumstances apparent at the time of Christianson’s arrest reasonably warranted an objective belief that Christianson was driving while under the influence of alcohol and/or a controlled substance. *See Reeves*, 751 N.W.2d at 120. The deputy could smell the odor of alcohol coming from the vehicle and observed an open container of alcohol in the cupholder of the center console. *See Kier*, 678 N.W.2d at 678 (noting that the odor of alcohol is a common sign of intoxication). Christianson also admitted that he had consumed a beer earlier that evening. *See*

Otto v. Comm’r of Pub. Safety, 924 N.W.2d 658, 662 (Minn. App. 2019) (explaining that “[a]n admission of drinking, coupled with other indicators of intoxication, is generally sufficient” to establish probable cause). And Christianson’s failure of the modified Romberg test was a sign of possible impairment by something other than alcohol. *See id.* (considering deficient performance on field sobriety tests to be a factor supporting probable cause for a DWI arrest). Also, the deputy was not obligated to believe Christianson’s assertion that he had consumed drugs only several days prior rather than more recently. *See State v. Thiel*, 846 N.W.2d 605, 611 (Minn. App. 2014) (explaining that a state trooper was not obligated to believe a driver’s assertion that there was no marijuana in his vehicle), *rev. denied* (Minn. Aug. 5, 2014). Considering the totality of these circumstances, we conclude that a reasonable person would have had “an honest and strong suspicion” that Christianson was driving while impaired, in violation of Minn. Stat. § 169A.20, subd. 1 (2020). *See Ortega*, 770 N.W.2d at 150. Therefore, the district court did not err in its probable-cause determination.

We are not persuaded otherwise by Christianson’s argument that we must infer a lack of probable cause for his DWI arrest because the deputy did not test Christianson’s breath, blood, or urine, and the state did not ultimately charge Christianson with DWI. Only “the facts and circumstances available [to the arresting officer] at the time of arrest” are relevant to the probable-cause determination. *Reeves*, 751 N.W.2d at 120. And the crime of arrest that supports the probable-cause determination need not be the crime for which a defendant was formally charged. *See State v. Varnado*, 582 N.W.2d 886, 893 (Minn. 1998) (explaining that “an arrest for a crime other than the one that provided the

basis” for a search does not invalidate the search). Therefore, Christianson’s argument does not change our assessment that the totality of the circumstances established probable cause to arrest him for DWI.

Because we conclude that the deputy had probable cause to arrest Christianson for DWI, we further conclude that the search of Christianson’s vehicle, including the center console, was a valid search incident to a lawful arrest. As noted above, police may conduct a warrantless search of a vehicle recently occupied by a person who has been lawfully arrested “when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.” *Gant*, 556 U.S. at 335. Thus, police were permitted to search Christianson’s vehicle based on the reasonable belief that it could contain evidence of the crime of DWI—alcohol, controlled substances, or both. The district court noted in its findings on remand that the center console of Christianson’s truck seemed “large enough to hold additional containers of alcohol”—evidence of the crime of DWI. The record supports the district court’s finding. Therefore, we conclude that the search of the center console was a valid search incident to Christianson’s lawful arrest for DWI.

To convince us otherwise, Christianson argues that even if the deputy had probable cause to arrest him for DWI based on suspicion of alcohol impairment, the search of his vehicle by a K-9 unit trained to detect illegal drugs was still invalid. Christianson bases his argument on our opinion in *Christianson I*. In that opinion, we concluded that the district court erred when it determined that the search of Christianson’s vehicle by a drug-sniffing K-9 unit was justified under the automobile exception. *Christianson I*, 2022 WL 3149262, at *3. We reached that conclusion “[b]ecause searches under the automobile

exception are defined by the object of the search,” and the district court originally identified the open alcohol container *alone* as a basis for the vehicle search. *Id.* at *4. We also noted that there was no evidence in the record that the K-9 unit could detect the odor of alcohol or the presence of containers of alcohol. *Id.* And searches using a K-9 unit are generally justified only when there is suspicion of drug-related criminal activity. *Id.* Accordingly, we concluded that the district court did not make sufficient findings to justify the K-9 search under the automobile exception. *Id.* Christianson argues that “the district court made the exact same error” on remand. We disagree.

The current appeal concerns the district court’s order on remand addressing the search-incident-to-arrest exception, not the automobile exception. That distinction is meaningful. A search incident to arrest is “very broad in scope” and “may include pockets, containers, and even the passenger compartment of automobiles.” *Varnado*, 582 N.W.2d at 893. Moreover, the district court made a number of factual findings in its order following remand that demonstrate that the deputy had reason to believe the vehicle contained evidence relevant to the crime of driving under the influence of alcohol and/or controlled substances. Those findings include the fact that Christianson failed the modified Romberg test, Christianson’s admission that he had used drugs a few days prior, the odor of alcohol coming from the vehicle, and the open container of alcohol in the cupholder near the center console. Thus, the facts and circumstances found by the district court on remand support the search of the vehicle for alcohol and/or controlled substances under the search-incident-to-arrest exception. *See Gant*, 556 U.S. at 335. Consequently, we

conclude that the search of Christianson's vehicle following his DWI arrest was valid under the search-incident-to-arrest exception, regardless of the use of the K-9 unit.

In sum, we conclude that the deputy had probable cause to arrest Christianson for DWI. We further conclude that the deputy's search of Christianson's vehicle was a valid search incident to a lawful arrest. Therefore, the district court did not err by denying Christianson's motion to suppress on remand.

Affirmed.