IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
April 11, 2023 Session

STATE OF TENNESSEE v. ELEANOR GRACE HOFFMAN

Appeal from the Circuit Court for Warren County
No. 19-CR-2370 Larry B. Stanley, Jr., Judge

No. M2022-00357-CCA-R3-CD

The Appellant, Eleanor Grace Hoffman, filed a motion to suppress challenging the search of her purse during a traffic stop. The trial court denied the motion, and the Appellant was convicted as charged by a Warren County jury of simple possession of methamphetamine and possession of drug paraphernalia. The Appellant's application for judicial diversion was granted, and she was sentenced to two concurrent terms of eleven months and twenty-nine days suspended to supervised probation after service of ten days' imprisonment. A probation violation order was entered, and the Appellant conceded to violating the terms of probation before the trial court. The trial court revoked her probationary judicial diversion sentence, entered judgments of conviction for simple possession of methamphetamine and possession of drug paraphernalia, and ordered the Appellant to serve eleven months and twenty-nine days' imprisonment, with the possibility of furlough to an inpatient drug treatment facility after service of ninety days' imprisonment. On appeal, the Appellant challenges the trial court's denial of her motion to suppress. Alternatively, the Appellant argues that the trial court erred in revoking her diversionary probation and ordering service of her original sentence. After review, we affirm the trial court's denial of the motion to suppress and revocation of the Appellant's probation but remand for the trial court to make findings concerning the consequence imposed for the revocation.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part, Reversed in Part, Case Remanded

CAMILLE R. MCMULLEN, P.J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and MATTHEW J. WILSON, JJ., joined.

John P. Partin, District Public Defender; and Brennan M. Wingerter and Brian D. Wilson, Assistant District Public Defenders, for the Defendant-Appellant, Eleanor Grace Hoffman.

Jonathan Skrmetti, Attorney General and Reporter; Richard D. Douglas, Senior Assistant Attorney General; Lisa S. Zavogiannis, District Attorney General; and Matthew T. Colvard, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

This case arises from the April 14, 2019 traffic stop of the Appellant's vehicle and subsequent search of her purse. A warrants check indicated that the back seat passenger had an active warrant in another county. Drug paraphernalia was found in the back seat passenger's pocket during a search incident to his arrest. The officer informed the Appellant that he was going to search the vehicle, and the Appellant grabbed her purse and exited the vehicle. The officer instructed her to place her purse on the ground to be searched. The Appellant did not immediately comply, and a minor struggle over the purse ensued. During the struggle, a black digital scale slid out of the purse into view. A search of the purse revealed methamphetamine and drug paraphernalia.

Motion to Suppress. The Appellant filed a motion to suppress the evidence obtained from her purse, and the trial court conducted a hearing on March 24, 2021. In the motion, the Appellant argued that the search of her purse violated the Fourth and Fourteenth Amendments to the United States Constitution and article I, sections 7 and 8 of the Tennessee Constitution.

Lieutenant Ben Cantrell of the McMinnville Police Department testified as the sole witness for the State. On April 14, 2019, Lt. Cantrell was parked in his patrol unit when he noticed the Appellant's vehicle drive past with a wrinkled temporary registration that was difficult to read. Lt. Cantrell pursued the Appellant's vehicle and verified that the temporary registration had not expired. When asked if there was anything else suspicious about the Appellant's vehicle, Lt. Cantrell responded that the window tint on the rear windows appeared to be too dark. He agreed the suspected window tint violation was his reason for stopping the vehicle. Lt. Cantrell also saw the Appellant driving in a circle, and because of the time of night, he thought the Appellant's driving was "odd" and that she may have been trying to avoid his patrol unit. He later agreed, however, that driving in circles was not illegal and would not have provided a legal basis for the stop.

Lt. Cantrell initiated a stop of the Appellant's vehicle at approximately 11:20 p.m. He approached the driver's side window and told the Appellant that the reason for the stop was the suspected window tint violation. When he asked the Appellant where she was headed, she responded that "Mr. Perez was giving them bad directions to Arms Apartments." Evie Perez, the front seat passenger, then stated that they were "taking him home," but Lt. Cantrell did not notice another person in the vehicle at the time. After Perez looked toward the back seat, Lt. Cantrell shined his flash light in the back seat. Lt. Cantrell

observed someone hiding on the back floorboard underneath a jacket. Lt. Cantrell asked the back seat passenger, later identified as Ricky Scott, to exit the vehicle and detained him. Scott told Lt. Cantrell that he was looking for a personal item, but Lt. Cantrell stated it was obvious he was hiding.

Before the warrants check came back, Lt. Cantrell told the Appellant he "felt things were somewhat suspicious" because she was riding around in a circle and Scott was hiding in the back seat. Though Lt. Cantrell did not ask for consent to search the vehicle, the Appellant told him that he could. Scott stated that he was not on probation, and he did not have any warrants, but the warrants check revealed that he had an active violation of probation warrant out of Coffee County. During a subsequent search of Scott's person, Lt. Cantrell found a "cut straw" with white powdery residue in one of Scott's pockets. Lt. Cantrell stated that the cut straw was an indication of ingesting a drug through the nose. Lt. Cantrell informed the Appellant that he found drug paraphernalia on Scott's person and that he was going to do a search of the vehicle and its contents. The Appellant then yelled at Perez, which made Lt. Cantrell suspicious.

Lt. Cantrell testified that "when [the Appellant] exited the vehicle[,] [he] noticed she grabbed her purse and put it on her shoulder." Lt. Cantrell again informed the Appellant he was going to search the vehicle and its contents, which included her purse. Lt. Cantrell asked the Appellant to put her purse on the ground several times before she complied. Once her purse was on the ground, the Appellant began to go through the purse. Lt. Cantrell asked the Appellant to stop going through the purse and to take her hands out of it. Lt. Cantrell "went to grab the purse" and the Appellant also grabbed it. The Appellant "tried to pull [the purse] out of [Lt. Cantrell's] hand" and Lt. Cantrell "returned and pulled [the purse] out of [the Appellant's] hand." When Lt. Cantrell pulled the purse out of the Appellant's hands, "a set of digital scales [] fell out of the purse and onto the ground." After the scales fell out of the purse, the Appellant stated, "Just go ahead and find it." Lt. Cantrell found three to four grams of methamphetamine inside the purse. On redirect examination, Lt. Cantrell clarified that he found two grams of methamphetamine inside the purse.

Lt. Cantrell testified that he understood if he found contraband on an occupant of a vehicle, he had probable cause to search the vehicle and its contents "for any other illegal items." Lt. Cantrell agreed that finding drug paraphernalia on Scott indicated that there would likely be "more paraphernalia or drugs inside the vehicle[.]" On cross-examination, Lt. Cantrell clarified that he learned from his law enforcement training that if he finds contraband on a person in a vehicle, he could search the occupants of the vehicle and the vehicle itself.

Lt. Cantrell admitted that he had not reviewed his dash camera footage depicting the instant traffic stop prior to the hearing. The footage of the traffic stop was received as the only exhibit to the hearing, and the Appellant's counsel played portions of the footage in open court throughout Lt. Cantrell's cross-examination.

Lt. Cantrell clarified that once he retrieved the identification of all the occupants in the vehicle, he went back to his patrol unit and ran a check for warrants on all the occupants. Lt. Cantrell agreed that he checked the front and rear driver side windows with his tint meter. The rear driver side window tint was illegal, but Lt. Cantrell did not issue a traffic ticket for the window tint violation. Lt. Cantrell agreed that he told the Appellant he probably would not have stopped her if she had not been driving in circles. At this point in the traffic stop, dispatch alerted Lt. Cantrell that all subjects were clear except Scott. When asked if he was fearful or threatened by the Appellant or Perez during the traffic stop, Lt. Cantrell responded that he was not.

Lt. Cantrell searched Scott's belongings that he retrieved from his person. Lt. Cantrell agreed that he found a straw in Scott's pocket that he deemed contraband, but he did not take the straw into evidence for testing. Lt. Cantrell also agreed that Scott had a knife in his possession, but he could not recall the type of knife, and he did not remember that part of the traffic stop until he watched the footage in court. Lt. Cantrell asked Scott if he wanted to take the knife with him as property. Scott indicated that he wanted Perez to take the knife, and Lt. Cantrell handed the knife to Perez through the driver's side window. When asked why the Appellant and Perez were still seized at the traffic stop after the check for warrants was completed, Lt. Cantrell stated that once he got Scott "searched and completely taken care of," he was going to release them from the stop.

Lt. Cantrell agreed that the Appellant was carrying her purse when she exited the vehicle and that the footage depicted the Appellant exiting the vehicle and carrying her "purse over her arm." Once the Appellant was outside the vehicle, Lt. Cantrell told the Appellant he was also going to search her person and purse. The Appellant told Lt. Cantrell that he could not search her person, and Lt. Cantrell reaffirmed that he was going to search her person and purse. In his view, the Appellant had no ability to refuse the search.

Then, a struggle ensued between the Appellant and Lt. Cantrell over the Appellant's purse. Lt. Cantrell reiterated that he asked the Appellant to set the purse down and to step away from it because the Appellant continued to put her hands inside the purse. This entire exchange is not visually discernible in the footage because the Appellant and Lt. Cantrell were standing outside the frame of Lt. Cantrell's dash camera. Lt. Cantrell then called Officer Kell, a female officer, to perform a search of the Appellant, and she arrived within a couple minutes of his request.

The trial court made oral findings of fact on the record, accrediting the testimony of Lt. Cantrell. The trial court found that the Appellant gave Lt. Cantrell permission to search the vehicle, but the Appellant did not consent to a search of her person or purse. The trial court also noted that the Appellant exited the vehicle holding her purse. The trial court denied the motion to suppress by written order on May 12, 2021. The order detailed the trial court's factual findings and conclusions of law and provided, in relevant part, the following:

> 1. Lt. Cantrell, who was on routine patrol, had reasonable suspicion to stop the vehicle driven by [the Appellant] for a violation of the window tint law when he made the traffic stop of [the Appellant's] vehicle.
>
> 2. The notification by dispatch that there was an active outstanding arrest warrant for the back seat passenger gave Lt. Cantrell legal authority to search the back seat passenger incident to arrest.
>
> 3. The discovery of the cut straw with a powdery residue in the pants pocket of the back seat passenger gave Lt. Cantrell legal authority pursuant to probable cause and the automobile exception to the general search warrant requirement to search the entire vehicle, every occupant of the vehicle, and every container which had been within the vehicle.

Trial. The Appellant does not challenge the sufficiency of evidence on appeal, therefore, we will limit recitation of facts to the issues raised herein. The Appellant's one day jury trial was held on May 17, 2021. Lt. Cantrell was the sole witness at trial and testified consistently with his suppression hearing testimony. Additionally, Lt. Cantrell testified that after the digital scales fell out of the Appellant's purse, the Appellant told Lt. Cantrell to "go ahead and search it" and "to go ahead and find it." The Appellant told Lt. Cantrell that she had three or four grams of methamphetamine and a pipe in a purple pouch inside her purse. Lt. Cantrell found those items, along with a syringe, in her purse. The bag of methamphetamine, set of digital scales, glass pipe, and photograph of the syringe were admitted without objection. The yellow cut straw found on Scott was also introduced without objection. Lt. Cantrell admitted on cross-examination that his suppression hearing testimony that he disposed of the straw found in Scott's pocket was incorrect.

The Tennessee Bureau of Investigation crime lab report indicated that the substance recovered from the Appellant's purse was 1.35 grams of methamphetamine. The dash camera footage, depicting the traffic stop, was played for the jury and received as an exhibit. On cross-examination, Lt. Cantrell testified that when he found the cut straw in Scott's pocket, he did not have reason to believe that the Appellant nor Perez were violating

any law outside of the window tint violation, and he did not observe drugs or drug paraphernalia in the vehicle.

The Appellant renewed her motion to suppress and it was denied by the trial court. The jury convicted the Appellant as charged of simple possession of methamphetamine and possession of drug paraphernalia.

Sentencing. A sentencing hearing was held on June 9, 2021. The Appellant's background check indicated that she was eligible for judicial diversion. The Appellant requested a deferred sentence of eleven months and twenty-nine days suspended to probation. The State urged the trial court to decline judicial diversion because the Appellant "accepted zero responsibility for her actions" and "has yet to admit her guilt." The State requested the Appellant be sentenced to eleven months and twenty-nine days suspended to supervised probation after service of thirty days' imprisonment. The Appellant provided the following allocution statement:

> Well, as you can see, I have not been in trouble since that day and as the officer said during trial he didn't think I was under any influence at the time either and there have been other multiple cases where there was -- the same officer pulled over my car for that same exact reason because of the two weeks earlier and I just want to kindly ask that you look at the fact that I have not been in any trouble before or after that. The circumstances surrounding the entire pullover are still a little hazy. That's pretty much it.

The trial court granted the Appellant's request for judicial diversion and sentenced the Appellant to two concurrent terms of eleven months and twenty-nine days suspended to supervised probation after service of ten days in the Warren County Jail. As a condition of probation, the Appellant was ordered to undergo an alcohol and drug assessment and abide by its recommendations.

A violation of probation affidavit indicated that the Appellant failed to submit to a random drug screen on October 1, 2021. An amended violation of probation affidavit showed that the Appellant submitted to a random drug screen on November 19, 2021, and tested positive for methamphetamine and amphetamine. The Appellant admitted to her probation officer that she used methamphetamine on November 17, 2021. A probation revocation hearing was held on February 9, 2022, during which the Appellant admitted to violating the terms of her probation. After the State summarized the violation, the following exchange occurred:

> [Appellant's Counsel:] Your Honor, Ms. Hoffman would ask for a partial revocation in this case. Something along

	the lines of 30 days and then reinstate to supervised probation.
[State:]	Your Honor, the [S]tate would ask that she be sentenced to serve 11/29 and then possibly furloughed after 90 days for inpatient drug treatment.
[Trial Court:]	And this is not her first violation?
[State:]	Well, it's her first -- I mean, she didn't make it -- I don't think she made it a month on probation.
[The Appellant:]	That's incorrect. It was July of last year.
. . .	
[Appellant's Counsel:]	I believe her judicial diversion is still in effect and I think that's another issue, I guess, that the Court needs to address whether she will keep that or lose that. And if she loses that, I guess she would actually need to be resentenced and then, you know, the Court impose whatever sentence it feels is appropriate. Her request would be simply to be a partial revocation of 30 days and then reinstated to her diversion and her probation.
[Trial Court:]	I agree with the [S]tate. She will be revoked for the balance of her sentence. If she is able to get into a long-term treatment program, I would consider that after a period of 90-days[']incarceration. So[,] she will be sentenced to 11 months and 29 days to serve 90 days and her judicial diversion will be set aside.

The Appellant filed a motion for new trial alleging, in relevant part, that the trial court erred in denying the motion to suppress and in sentencing the Appellant. A hearing was held on May 11, 2022, and the trial court denied the motion. A probation revocation order and judgments of conviction were entered, reflecting the same. This timely appeal followed.

ANALYSIS

I. Motion to Suppress. On appeal, the Appellant argues that the trial court erred by failing to suppress the evidence found in her purse and her subsequent statements to police officers because the evidence was obtained as a result of an unconstitutional search. The Appellant claims that the automobile exception did not permit the warrantless search of her purse because she removed her purse from the car before the car was searched and her purse functioned as an extension of her person. The State responds that the automobile exception permitted the warrantless search of the Appellant's purse because it was a container in the car capable of concealing the object of the search when Lt. Cantrell developed probable cause to search the car. The Appellant's removal of her purse from the vehicle, therefore, "[did] not bring the purse beyond the scope of the automobile exception." The State also contends that the purse was not an extension of her person because "there is no proof that the [Appellant's] purse was attached to her person [] at the time [Lt.] Cantrell developed probable cause to search the vehicle and its containers." Upon review, we agree with the State.

When evaluating a trial court's ruling on a motion to suppress, this court may consider the proof presented at both the suppression hearing and at trial. State v. Williamson, 368 S.W.3d 468, 473 (Tenn. 2012) (citing State v. Henning, 975 S.W.2d 290, 297-99 (Tenn. 1998)). Suppression issues present mixed questions of law and fact. State v. Garcia, 123 S.W.3d 335, 342 (Tenn. 2003). A trial court's findings of fact must be upheld unless the evidence preponderates otherwise. State v. Williams, 185 S.W.3d 311, 314 (Tenn. 2006) (citing State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996)). In Odom, the Tennessee Supreme Court explained:

> Questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact. The party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence. So long as the greater weight of the evidence supports the trial court's findings, those findings shall be upheld.

928 S.W.2d at 23. This court, however, reviews a trial court's application of the law to the facts de novo. State v. Day, 263 S.W.3d 891, 900 (Tenn. 2008) (citing Williams, 185 S.W.3d at 315; State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997)).

The Fourth Amendment of the United States Constitution and article I, section 7 of the Tennessee Constitution protect against unreasonable searches and seizures. "[A]rticle

I, section 7 is identical in intent and purpose to the Fourth Amendment." State v. Reynolds, 504 S.W.3d 283, 312 (Tenn. 2016) (citing State v. McCormick, 494 S.W.3d 673, 683-84 (Tenn. 2016)). The Supreme Court has held that "the ultimate touchstone of the Fourth Amendment is 'reasonableness.'" Lange v. California, 141 S. Ct. 2011, 2017 (2021) (quoting Brigham City v. Stuart, 547 U.S. 398, 403 (2006)). "Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances." Ohio v. Robinette, 519 U.S. 33, 39 (1996).

"'[A] warrantless search or seizure is presumed unreasonable, and evidence discovered as a result thereof is subject to suppression, unless the State demonstrates that the search or seizure was conducted pursuant to one of the narrowly defined exceptions to the warrant requirement.'" State v. Crutcher, 989 S.W.2d 295, 299-300 (Tenn. 1999) (quoting State v. Bridges, 963 S.W.2d 487, 490 (Tenn. 1997)). At issue in this appeal is the automobile exception. See State v. Smith, 21 S.W.3d 251, 254 (Tenn. Crim. App. 1999). The automobile exception "permits an officer to search an automobile if the officer has probable cause to believe that the automobile contains contraband." State v. Saine, 297 S.W.3d 199, 207 (Tenn. 2009) (citing Carroll v. United States, 267 U.S. 132, 149 (1925)). Such a search is deemed reasonable because "individuals have a reduced expectation of privacy in their automobiles" and "it is often impractical for officers to obtain search warrants in light of the inherent mobility of automobiles." Id. (citing California v. Carney, 471 U.S. 386, 393 (1985)).

The scope of a warrantless search of an automobile based on probable cause "is no narrower—and no broader—than the scope of a search authorized by a warrant supported by probable cause. Only the prior approval of the magistrate is waived; the search otherwise is as the magistrate could authorize." United States v. Ross, 456 U.S. 798, 823 (1982). Therefore, a police officer who has probable cause to believe an automobile contains contraband may search all containers in the automobile that may conceal the object of the search. Id. at 821-22. The officer may not, however, search the occupants of the automobile. United States v. Di Re, 332 U.S. 581, 586-87 (1948). In Di Re, the Supreme Court held that it was "not convinced that a person, by mere presence in a suspected car, loses immunities from search of his person to which he would otherwise be entitled." Id. at 587.

The Supreme Court later clarified that the rule in Ross, however, applies "broadly to *all* containers within a car, without qualification as to ownership." Wyoming v. Houghton, 526 U.S. 295, 301 (1999) (emphasis in original). In other words, an officer with probable cause to search a car may search a passenger's personal belongings in the car without individualized probable cause, so long as the belongings are capable of concealing the object of the search. Id. at 302. Houghton involved a traffic stop during which the officer noticed a hypodermic syringe in the driver's shirt pocket. Id. at 297-98. When the

officer ordered the driver and his two passengers out of the car, one of the passengers left her purse on the backseat. Id. The officers searched the car pursuant to the automobile exception and found methamphetamine and drug paraphernalia in the passenger's purse. Id. The Wyoming Supreme Court held that the search of the purse was unconstitutional "because the officer 'knew or should have known that the purse did not belong to the driver, but to one of the passengers,' and because 'there was no probable cause to search the passengers' personal effects and no reason to believe that contraband had been placed within the purse.'" Id. at 299 (quoting Houghton v. State, 956 P.2d 363, 372 (Wyo. 1998)). The Supreme Court, however, reversed the decision and held that the search was constitutional. Id. at 307.

The Supreme Court reasoned that, though Ross did not explicitly address whether ownership of a container was relevant, "if the rule of law that Ross announced were limited to contents belonging to the driver, or contents other than those belonging to passengers, one would have expected that substantial limitation to be expressed[,]" or "to be apparent in the historical evidence that formed the basis for Ross's holding." Id. at 301-02. The Court further explained that the government's interest in effective law enforcement outweighed the personal-privacy interest at stake. Id. at 303-06. A passenger's privacy expectations are "considerably diminished" because the traumatic consequences associated with a body search "are not to be expected when the police examine an item of personal property found in a car." Id. at 303-04. The government's interests, however, are substantial because "[e]ffective law enforcement would be appreciably impaired without the ability to search a passenger's personal belongings when there is reason to believe contraband or evidence of criminal wrongdoing is hidden in the car." Id. at 304. The Court emphasized that "[a] criminal might be able to hide contraband in a passenger's belongings as readily as in other containers in the car…perhaps even surreptitiously, without the passenger's knowledge or permission." Id. at 305 (citing Rawlings v. Kentucky, 448 U.S. 98, 102 (1980)). The Court also warned of the practical implications of an exception for a passenger's property, stating:

> [O]nce a "passenger's property" exception to car searches became widely known, one would expect passenger-confederates to claim everything as their own. And one would anticipate a bog of litigation—in the form of both civil lawsuits and motions to suppress in criminal trials—involving such questions as whether the officer should have believed a passenger's claim of ownership, whether he should have inferred ownership from various objective factors, whether he had probable cause to believe that the passenger was a confederate, or to believe that the driver might have introduced the contraband into the package with or without the passenger's knowledge.

Id. at 305-06.

In the aftermath of Houghton, courts have grappled with its applicability when the passenger, instead of leaving their personal belonging in the car, takes it with them when they exit the car. Tennessee courts have not specifically addressed this issue.

The Appellant argues that Houghton's application is limited to personal belongings located in the car at the time the car is searched. She emphasizes Houghton's holding that "police officers with probable cause to search a car may inspect passengers' belongings *found in the car* that are capable of concealing the object of the search." Houghton, 526 U.S. at 307 (emphasis added). The Appellant also cites Justice Breyer's Houghton concurrence, in which he stated that "the rule applies only to containers found within automobiles." Id. at 308 (Breyer, J., concurring). Under the Appellant's interpretation of Houghton, the determination of whether the search of a personal belonging is within the scope of a search pursuant to the automobile exception hinges on where the personal belonging was located at the time the car was searched.

In support of this interpretation, the Appellant cites three cases in which other jurisdictions have suppressed evidence found in a passenger's personal belonging located outside of the car—Funkhouser, Sossaman, and Boyd. See State v. Funkhouser, 782 A.2d 387, 398 (Md. Ct. Spec. App. 2001); Sossamon v. State, 576 S.W.3d 520, 527 (Ark. Ct. App. 2019); State v. Boyd, 64 P.3d 419, 427 (Kan. 2003). None of these cases, however, involve a personal belonging removed from the car *after* an officer developed probable cause to believe the car contained contraband. In Funkhouser, the Maryland Court of Special Appeals suppressed cocaine found in a driver's fanny pack that was already outside of the car when a drug-sniffing dog alerted to possible drugs in the car. 782 A.2d at 394. Similarly, in Boyd, the Kansas Supreme Court suppressed cocaine found in a passenger's purse that would have been outside of the car when the officer developed probable cause to search the car had the officer not wrongfully ordered the passenger to leave her purse when she exited the car. 64 P.3d at 427. And the evidence suppressed in Sossaman was found in a driver's bag that was removed from the car after the officer received consent to search the car, not after the officer developed probable cause. 576 S.W.3d at 527.

The State points to other jurisdictions that have explicitly held that after an officer develops probable cause to search the car, a passenger cannot prevent the search of their personal belonging by removing it from the car. See State v. Rincon, 970 N.W.2d 275, 285 (Iowa 2022); State v. Furrillo, 362 P.3d 273, 276 (Or. Ct. App. 2015); State v. Lang, 942 N.W.2d 388, 400 (Neb. 2020). In these jurisdictions, the analysis hinges not on where the personal belonging was located when the car was actually searched, but where it was located when the officer developed probable cause to search the car. See Lang, 942 N.W.2d at 400 ("the location of the purse at the time it was searched does not change its character as a container that was inside the vehicle when officers developed probable cause

to search the vehicle"). In Furrillo, the Oregon Court of Appeals reasoned that "[o]nce the requirements for the automobile exception had been established, taking the backpack out of the [car] in an effort to avoid having it searched did not . . . remove the backpack from the purview of the search exception." 362 P.3d at 276. The Iowa Supreme Court similarly emphasized that permitting passengers to avoid the search of their personal belonging by removing it from the car after probable cause developed "would allow persons to frustrate a valid automobile search by removing objects from the vehicle." Rincon, 970 N.W.2d at 285.

Upon review, we find the reasoning in Rincon, Furrillo, and Lang to be persuasive. A search of a passenger's personal belonging is within the scope of a search pursuant to the automobile exception if it is in the car when the officer develops probable cause to search the car—regardless of whether it is later removed. To hold otherwise would create an exception that swallows the Houghton rule. A passenger could prevent the search of any containers containing contraband by claiming it as their own and taking it with them when they exit the car. Like the passenger's property exception explicitly rejected in Houghton, this exception would appreciably impair effective law enforcement and generate

> a bog of litigation . . . involving such questions as whether the officer should have believed a passenger's claim of ownership, whether he should have inferred ownership from various objective factors, whether he had probable cause to believe that the passenger was a confederate, or to believe that the driver might have introduced the contraband into the package with or without the passenger's knowledge.

See Houghton, 526 U.S. at 305-06.

In this case, the search of the Appellant's purse was constitutional because the purse was in the car when Lt. Cantrell developed probable cause to search the car. While the Appellant and her purse remained in the car, Lt. Cantrell conducted a search incident to Scott's arrest and found a cut straw with white powdery residue in his pocket. The Appellant does not contest that this drug paraphernalia provided Lt. Cantrell with probable cause to believe that the car contained contraband. Lt. Cantrell was therefore entitled to conduct a warrantless search of the car for drugs and additional drug paraphernalia under the automobile exception. The Appellant's purse was in the car when probable cause developed and was capable of concealing drugs or drug paraphernalia. Thus, Lt. Cantrell was also entitled to search the purse.

The difference between this case and Houghton is that the Appellant, rather than leaving her purse in the car when she exited, "grabbed her purse and put it on her shoulder." For the reasons stated above, we are not persuaded that the Appellant's removal of her

purse from the car after Lt. Cantrell developed probable cause to search the car removed it from the scope of the search. Therefore, the trial court correctly denied the motion to suppress the evidence found in the Appellant's purse.

The Appellant also argues that her purse was an extension of her person and therefore the search was an unconstitutional search of her person under Di Re. See 332 U.S. at 586-87. She cites to Justice Breyer's Houghton concurrence, in which he stated "[b]ut I can say that it would matter if a woman's purse, like a man's billfold, were attached to her person. It might then amount to a kind of 'outer clothing,' . . . which under the Court's cases would properly receive increased protection." 526 U.S. at 307 (Breyer, J., concurring). The State responds that the concurrence is not the law, and "there is no proof that the defendant's purse was attached to her person [] at the time [Lt.] Cantrell developed probable cause to search the vehicle and its containers." Because the trial court incorrectly held that "[t]he discovery of the cut straw . . . gave Lt. Cantrell legal authority . . . to search every occupant of the vehicle," it did not directly address whether the purse was an extension of the Appellant's person.

As discussed above, the relevant time at which to determine whether a passenger's personal belonging is within the scope of a search pursuant to the automobile exception is when probable cause to believe the car contains contraband develops. When Lt. Cantrell developed probable cause, the Appellant's purse was in the car and not attached to her person. Lt. Cantrell testified that "when [the Appellant] exited the vehicle[,] [he] noticed she grabbed her purse and put it on her shoulder." Though the Appellant is not visible in the dash camera footage before she steps out of the car, the trial court found Lt. Cantrell's testimony to be credible. Because the purse was not attached to the Appellant's person when Lt. Cantrell developed probable cause to search the car, we cannot conclude that the search of the purse was an unconstitutional search of the Appellant's person. Accordingly, the trial court's denial of the Appellant's motion to suppress the evidence found in her purse and her subsequent statements was proper.

II. Probation Revocation. The Appellant alternatively argues that the trial court failed to place sufficient findings on the record to support the revocation of her diversionary probation. The State responds that the record contains sufficient findings to justify the revocation. Upon review, we agree with the Appellant.

Appellate courts review a trial court's revocation of a defendant's probationary sentence under an abuse of discretion standard with a presumption of reasonableness, "so long as the trial court places sufficient findings and the reasons for its decisions as to the revocation and the consequence on the record." State v. Dagnan, 641 S.W.3d 751, 759 (Tenn. 2022). "It is not necessary for the trial court's findings to be particularly lengthy or detailed but only sufficient for the appellate court to conduct a meaningful review of the

revocation decision." Id. (citing State v. Bise, 380 S.W.3d 682, 705-06 (Tenn. 2012)). If the trial court failed to place its reasoning for a revocation decision on the record, the appellate court may remand the case to the trial court to make such findings, or, if the record is sufficient to do so, conduct a de novo review. Id. at 759 (citing State v. King, 432 S.W.3d 316, 327-28 (Tenn. 2014)).

When determining whether a violation of diversionary probation has occurred, "the trial could should follow the same procedures as those used for ordinary probation revocations." Alder v. State, 108 S.W.3d 263, 266 (Tenn. Crim. App. 2002) (citing State v. Johnson, 15 S.W.3d 515, 519 (Tenn. Crim. App. 1999)). Probation revocation involves "two distinct discretionary decisions, both of which must be reviewed and addressed on appeal." Dagnan, 641 S.W.3d at 753, 757-58. After finding by a preponderance of the evidence that a defendant violated the terms of their probation, a trial court "must determine (1) whether to revoke probation, and (2) the appropriate consequence to impose upon revocation." Id. at 753. Once the trial court decides to revoke a defendant's probation, it may: (1) order confinement; (2) order the sentence into execution as initially entered; (3) return the defendant to probation on modified conditions as necessary; or (4) extend the probationary period by up to two years. See State v. Hunter, 1 S.W.3d 643, 646-47 (Tenn. 1999); T.C.A §§ 40-35-308, -310, -311.

Although the trial court is not required to make lengthy findings on the record, we are unable to conclude that the record before us is sufficient for meaningful appellate review. The trial court did not make any factual findings on the record, nor did it provide any reasoning for the decisions to revoke the Appellant's diversionary probation and order eleven months and twenty-nine days' imprisonment. The record reflects that the trial court conducted a brief hearing, during which the Appellant conceded to violating the terms of her diversionary probation. The Appellant requested a partial revocation, with reinstatement of her probation after service of thirty days' imprisonment. The State recommended that the Appellant be sentenced to serve eleven months and twenty-nine days' imprisonment, with the possibility of furlough to an inpatient drug treatment facility after ninety days' imprisonment. The trial court asked whether this was the Appellant's first violation, and the State indicated that it was. The trial court then expressed its decision, as the Appellant correctly characterized, in one conclusory remark. The trial court's one question, "And this is not her first violation?" and ultimate decision to agree with the State's suggested consequence is not enough to facilitate meaningful appellate review. Therefore, the record is insufficient for a de novo review, and we remand for the trial court to articulate its reasoning for the consequence imposed on the record.

CONCLUSION

Based on the above reasoning and authority, we affirm the trial court's denial of the motion to suppress and revocation of the Appellant's probation but remand for the trial court to make findings concerning the consequence imposed for the revocation.

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CAMILLE R. MCMULLEN, PRESIDING JUDGE