

# Minnesota Supreme Court Decisions - Highlights from 2011

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**Search and Seizure: Reasonable Suspicion**

**Search and Seizure: Voluntary Consent**

**Search and Seizure: Inevitable Discovery**

*State v. Diede*, 795 N.W.2d 836

Case #A09-1120

Justice Meyer

Justice Dietzen dissenting, joined by Chief Justice Gildea and Justice Stras

Filed March 30, 2011

Erika Diede was charged with fifth-degree possession of a controlled substance as the result of a search and seizure conducted after the police arrested the passenger in the truck she was driving. Diede moved to suppress evidence of possession of methamphetamine, the district court denied the motion, and held a trial on stipulated facts, and found Diede guilty of fifth-degree possession. The district court ruled that the officers had reasonable and articulable suspicion that Diede was engaged in criminal activity because the passenger was being taken into custody for previous sale of controlled substances, because when the passenger got out of the truck the officers saw him toss something back in, because Diede remained in the truck, and because Diede later seemed nervous when questioned and denied the passenger had tossed anything back in the truck.

**HELD:** (1) “Mere proximity to, or association with, a person who may have previously engaged in criminal activity is not enough to support reasonable suspicion of possession of a controlled substance.” Here, the record does not indicate that any of the officers saw Diede reach for anything while she was in the truck or remove anything from the truck left by the passenger. The factors the district court identified did not justify seizing Diede to investigate whether she was engaged in drug-related activity. Nor did the fact the truck had mismatched license plates, which may have supported a reasonable suspicion that the truck was stolen, support a search for drugs. (2) Diede’s decision to open her cigarette package was not voluntary. “At the time Diede opened her cigarette package, she had been seized, was subject to a show of police force, had received repeated requests to open the package, and had already refused consent to search the package.” The district court erred in finding that Diede voluntarily consented to the search of her cigarette package. (3) The state contends that if the police had not illegally searched Diede’s cigarette package, they could have arrested her and found the contents of the package. However, the state may not show inevitable discovery by claiming that if had not search illegally, it would have done so legally.

The court **reversed** the appellate decision **affirming** the district court.