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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1332

State of Minnesota,
Respondent,

vs.

Andrew Erik Heiderscheid,
Appellant.

Filed June 24, 2019
Affirmed
Bratvold, Judge

Dakota County District Court
File No. 19HA-CR-17-4187

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

James C. Backstrom, Dakota County Attorney, Charles C. Cremens, Assistant County Attorney, Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Caitlinrose H. Fisher, Special Assistant Public Defender, Greene Espel PLLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Rodenberg, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

On appeal from a judgment of conviction of fifth-degree controlled-substance possession, appellant challenges the district court's denial of his pretrial suppression motion, arguing that the police "unlawfully stopped, arrested, and searched" him and his van. Appellant also argues that the district court abused its discretion by sentencing him using a "miscalculated" criminal-history score. Because the district court did not err by denying appellant's pretrial motion to suppress and because the district court correctly calculated appellant's criminal-history score, we affirm.

FACTS

The following evidence was presented at the omnibus hearing. On October 9, 2017, at around 12:15 p.m., Officer Mandel and Lieutenant Sturgeon were separately dispatched to a home on Waterloo Avenue in West St. Paul in response to a 911 call. Dispatch told the officers that a woman had "called 911 from [her] residence and reported that her brother personally observed a male stranger with a gun inside their garage." As Mandel drove to the home, he received an update and learned that the 911 caller had left the home, "drove her vehicle around the block and personally observed" the male in the garage. The 911 caller also reported that the male had left the Waterloo Avenue garage in a red minivan; the 911 caller also described the male. A person on the street near the Waterloo Avenue home "flagged [Mandel] down" and told him that he was "following the vehicle" and pointed "towards a red minivan that was driving in the opposite direction . . . turning into

a nearby apartment complex." Mandel matched the minivan and driver to the 911 caller's description.

Mandel then "initiated a traffic stop on the red minivan approximately one block away from" the Waterloo Avenue home. The driver stopped the red minivan and put "both his hands out the window" and said "that he was the victim of a crime." Mandel exited his squad car, with his "service weapon drawn and pointed at [the driver], and [] ordered him to the ground." Sturgeon arrived at the scene, assisted the driver to his feet, and placed him in handcuffs. Mandel testified that, as the driver got up, he "started talking about what happened" at the Waterloo Avenue house.

Once the driver was in handcuffs, Mandel "started searching him for a weapon," and found in his front coat pocket a glass "bubble" pipe of the type "commonly used to smoke methamphetamine," but did not find a weapon. Mandel identified the driver as appellant Andrew Erik Heiderscheid.[1] Sturgeon "immediately realized he [was] familiar with [Heiderscheid] from past law-enforcement contacts" and he "was confident [Heiderscheid] is ineligible to possess a gun." Mandel then placed Heiderscheid in the squad car and brought him to the police station.

About the same time that Mandel detained Heiderscheid in the squad car, Sturgeon received information from other officers who had responded to the Waterloo Avenue home. These officers interviewed the 911 caller and her brother, who were "very adamant that

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[1] The district court found the record "does not disclose" how Mandel identified Heiderscheid. While Mandel found Heiderscheid's wallet during the pat-down search, he did not testify that he found any identification.

[Heiderscheid] had a chrome-colored revolver." Based on these additional details, and because officers did not find a revolver or other gun on Heiderscheid's person, Sturgeon searched Heiderscheid's red minivan. Sturgeon found "a digital scale with some white residue on it and . . . a bag with suspected methamphetamine" underneath the front passenger seat, where a gun could be hidden. Sturgeon did not find a firearm.

The state charged Heiderscheid with controlled-substance crime in the fifth degree (possession), under Minn. Stat. § 152.025, subd. 2(1) (2016). Heiderscheid filed motions to suppress the evidence obtained during the search of his person and the red minivan. Heiderscheid argued that the case should be dismissed because "the [s]tate's evidence was the fruit of an unlawful stop, arrest, and search."

The district court denied Heiderscheid's motions to suppress in a written order. First, the court found the officers' testimony credible. Next, the district court concluded that the stop of the vehicle was constitutional because Mandel "was entitled to presume that the [911 caller's] report was reliable" given the caller's observations and descriptions, and because Mandel corroborated the caller's information and observed the red minivan near the Waterloo Avenue home. The district court also determined that Heiderscheid's arrest and the officers' searches of his person and minivan were lawful. The district court used both probable-cause and *Terry*-stop caselaw to support its reasoning. The district court found that Mandel "lawfully conducted" a pat-down search of Heiderscheid's person after handcuffing him because Mandel reasonably believed that Heiderscheid "was armed and dangerous." The court also stated that probable cause for a felony crime "was established by the Officer's knowledge of the [911 caller's] reliable report . . . of a male stranger with

a gun inside her garage [who] later fled the scene in a particularly-described vehicle." From this report, the district court concluded that the officers "could reasonably infer that the male suspect entered the garage without consent and brandished a gun therein, thereby committing any number of felony crimes including an attempted first or second degree burglary." The district court also concluded that the officers had probable cause to arrest Heiderscheid for "possession of a gun while ineligible." Accordingly, the district court concluded that the officers lawfully arrested Heiderscheid, and "search[ed] his person incident to his arrest." Finally, the district court concluded that the totality of the circumstances demonstrated that the search of Heiderscheid's minivan was lawful because officers "had probable cause to believe that a gun was concealed in [Heiderscheid's] vehicle." Thus, the district court found that the "evidence seized . . . [was] admissible at trial."

The parties agreed that the omnibus order was dispositive of the case, and stipulated to facts to preserve the suppression issue for appellate review under Minn. R. Crim. P. 26.01, subd. 4. Based on the stipulated facts, the district court found Heiderscheid guilty of fifth-degree controlled-substance possession, and scheduled a sentencing hearing. The district court also ordered a presentence investigation (PSI). The PSI report stated that the sentencing guidelines recommended a presumptive commitment of 21 months for Heiderscheid's conviction. The PSI report recommended, however, that the district court stay adjudication of Heiderscheid's conviction and place him on supervised probation.

At sentencing, the district court noted that Heiderscheid had new pending charges and was not "a good candidate" for a stay of adjudication. The district court then imposed an executed sentence of 18 months. Heiderscheid appeals.

D E C I S I O N

I. The district court did not err by determining that law enforcement lawfully stopped, arrested, and searched Heiderscheid, his person, and his minivan.

When reviewing a pretrial order on a motion to suppress, this court reviews the district court's factual findings for clear error, and the district court's legal determinations, including a determination of probable cause, de novo. *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012).

Before we begin our analysis, we preliminarily consider what is the relevant record in our review of the district court's suppression order. When reviewing a district court's pretrial suppression ruling under Minn. R. Crim. P. 26.01, subd. 4, we limit our review to the evidence before the district court when it decided the pretrial issue. *See* Minn. R. Crim. P. 26.01, subd. 4 (providing that the "appellate review will be of the pretrial issue"). For example, Heiderscheid's brief to this court cites to and relies heavily upon police reports that described the relationship between Heiderscheid and the 911 caller's brother. But the police reports were not submitted to the district court when it ruled on Heiderscheid's motion to suppress and were not offered into evidence until the stipulated-facts trial. In our analysis of the district court's suppression order, we do not consider these police reports, or any other evidence not submitted at the time of the omnibus hearing.

Heiderscheid argues that "the district court erred by concluding that three separate intrusions into [his] autonomy and privacy complied with the Fourth Amendment." First, he argues that the officers "lacked reasonable articulable suspicion that [] Heiderscheid had engaged in criminal conduct at the time of the traffic stop." Second, Heiderscheid contends that police lacked probable cause to arrest him without a warrant. Third, Heiderscheid objects to the search of his person and of his vehicle. Each of Heiderscheid's arguments is addressed below.

A. Reasonable, articulable suspicion

Both the United States and Minnesota Constitutions guarantee the right to be free from unreasonable searches and seizures. *See* U.S. Const. amend. IV; Minn. Const. art. I, § 10. The United States Supreme Court has determined that the "[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of this provision." *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 1772 (1996) (citations omitted).When making an investigatory stop of a vehicle, a police officer must have specific and articulable facts that establish "reasonable suspicion of a motor vehicle violation or criminal activity." *State v. Duesterhoeft*, 311 N.W.2d 866, 867 (Minn. 1981) (quotation omitted). An officer must also "have a particularized and objective basis" to suspect that the person is engaged in criminal activity. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (quotation omitted). But an officer need not "detect an actual violation of the law." *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001).

The factual basis necessary to support an investigatory stop may arise from the personal observations of the police officer or from information provided by another person. *See State v. Cavegn*, 294 N.W.2d 717, 721 (Minn. 1980). An informant's tip may support an investigative stop if the tip "has sufficient indicia of reliability." *Id.* A known citizen informant is presumptively reliable because the police have her identity and may follow up. *State v. Davis*, 732 N.W.2d 173, 183 (Minn. 2007). Corroboration of even minor details from an informant "lend credence" to the informant's reliability. *See State v. Wiley*, 366 N.W.2d 265, 269 (Minn. 1985). When examining the sufficiency of an informant's tip to provide reasonable, articulable suspicion for a stop, this court examines two factors: (1) whether the informant's identity is known, and (2) the informant's basis of knowledge. *See Rose v. Comm'r of Pub. Safety*, 637 N.W.2d 326, 328 (Minn. App. 2001), *review denied* (Minn. Mar. 19, 2002). "Neither factor is separately dispositive," and this court considers the "totality of the circumstances" when deciding "whether the officer had a reasonable suspicion of criminal activity at the time of the stop." *Id.*

Heiderscheid argues that the district court erred in determining that the "911 caller provided the officers with an objective and particularized basis for the stop" because the court's conclusion was "based on clearly erroneous facts and misapplication of the law." Whether reasonable suspicion exists to support a traffic stop is a mixed question of fact and law. *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016). This court reviews the district court's findings of fact for clear error, but reviews whether those findings support reasonable suspicion de novo. *Id.*

The district court determined that an "identifiable, concerned citizen called 911 and provided information indicating that . . . her brother personally observed a man with a gun inside their garage." The record supports this determination. Mandel testified that the caller stated that she did not know the suspect.[2] The 911 caller identified herself to law enforcement and provided her address, date of birth, phone number, and a description of the incident. The 911 caller also reported that she personally observed the suspect standing near the garage after she left her home. The 911 caller described the suspect, and stated that he left in a red minivan. Mandel testified that he received the 911 caller's information from dispatch in an initial phone call and then an update before he stopped Heiderscheid.

The district court also concluded that the 911 caller's statements were corroborated by Mandel when he responded to the 911 call. *See Wiley*, 366 N.W.2d at 269 (an informant's tip's reliability is enhanced by corroboration of the information supplied). The record supports this conclusion. As Mandel neared the Waterloo Avenue home, he was

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[2] The district court found that the 911 caller said that the suspect was not known to anyone at the residence. Heiderscheid argues that this finding is clearly erroneous because police reports state that the 911 caller's brother knew Heiderscheid and had spent time with him at the Waterloo Avenue home that morning. As discussed above, the police reports were not submitted at the omnibus hearing and, therefore, we do not consider them in this appeal. The record at the omnibus hearing establishes that the 911 caller told dispatch that the suspect was a stranger and that dispatch relayed this information to Mandel and Sturgeon. Thus, at the time of the stop, the police only knew that the 911 caller had identified the suspect as a stranger with a gun. And only the objective facts known to law enforcement at the time of the stop are relevant to determine whether reasonable, articulable suspicion supported the stop. *See State v. Vereb*, 643 N.W.2d 342, 348 (Minn. App. 2002) ("[A] court must look to the information that police took into consideration when making the arrest, not what they uncovered thereafter."). Thus, we conclude that the district court's finding that Heiderscheid was not known to anyone at the residence is supported by the omnibus record and not clearly erroneous.

"flagged" down by a person on the street, who said he was "following the vehicle" and pointed Mandel "towards a red minivan that was driving in the opposite direction . . . turning into a nearby apartment complex." Mandel saw the red minivan, and determined that the vehicle and suspect "matched the [911 caller's] description."

Still, Heiderscheid contends that the traffic stop was unlawful, claiming that the 911 caller's tip did not provide reasonable suspicion because "it is not illegal to possess a gun." But reasonable suspicion is a low bar. *See State v. Dalos*, 635 N.W.2d 94, 95 (Minn. App. 2001) (providing that the factual basis necessary to maintain a routine traffic stop is minimal). As stated, the 911 caller provided reliable information that a man she did not know was in her garage and had a gun. Thus, we agree with the district court that it was reasonable for Mandel to suspect that Heiderscheid had "committed any number of violent felony crimes."

Minnesota caselaw supports our conclusion. Specifically, in *State v. Timberlake*, the supreme court upheld a traffic stop when a concerned citizen called the police and reported that he had seen a passenger in possession of a gun while at a gas station and the passenger's car had driven away. 744 N.W.2d 390, 392, 397 (Minn. 2008). Law enforcement located the car, conducted a traffic stop, removed the two occupants, and found a gun. *Id.* at 392. In *Timberlake*, the appellant argued that possession of a gun was not a crime, and thus, the tip did not support reasonable suspicion for a traffic stop. *Id.* at 394. The supreme court disagreed and held that "police had a reasonable, articulable suspicion that [appellant] was engaged in criminal activity based on the reliable informant's report that [appellant] was carrying a gun in a motor vehicle." *Id.* at 394-97 (reasoning that lacking a gun permit is not

an element of the crime of carrying a gun in a public place; rather, having a permit is an exception to the crime of illegally carrying a gun). Here, the officers received a known citizen's report that an unknown male was in the caller's garage with a gun and had left in his minivan. Accordingly, under *Timberlake*, the officers had reasonable, articulable suspicion to stop Heiderscheid.[3]

B. Search of Heiderscheid's person

Heiderscheid also objects to his initial detention and the search of his person. Under *Terry*, the "police may stop and frisk a person when (1) they have a reasonable, articulable suspicion that a suspect might be engaged in criminal activity and (2) the officer reasonably believes the suspect might be armed and dangerous."[4] *State v. Flowers*, 734 N.W.2d 239, 250 (Minn. 2007) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968)) (other

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[3] Heiderscheid contends *Timberlake* "is inapposite here" because the 911 caller did not personally see him with the gun, and therefore, *Timberlake* is distinguishable. *See Rose*, 637 N.W.2d at 327-28. We are not persuaded. The record establishes that the 911 caller told dispatch that her brother said Heiderscheid had a gun in the garage. The 911 caller also conveyed to dispatch that she saw Heiderscheid in the garage and then saw him leave in a red minivan. This is sufficiently similar to *Timberlake*. Minnesota caselaw does not require that an informant personally observe criminal activity. *Rose* only requires that an informant indicate the basis of knowledge that the suspect is engaging in illegal behavior. *Id.* Here, the 911 caller stated the basis of her knowledge about the suspect; moreover, police corroborated much of the 911 caller's information. Heiderscheid also argues that *Timberlake*'s "holding is erroneous." But this court is bound by supreme court precedent and must apply *Timberlake* here. *See State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (this court is "bound by supreme court precedent and the published opinions of the court of appeals"), *review denied* (Minn. Sept. 21, 2010).

[4] As stated above, the district court analyzed the search of Heiderscheid's person under both *Terry*-stop and search-subsequent-to-arrest doctrines. We focus our analysis of the search of Heiderscheid's person on the *Terry* doctrine, and of the expansion of the search based on the information received by the officers during their investigation.

citation omitted). "The officer need not be absolutely certain that the individual 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." *Terry*, 392 U.S. at 27, 88 S. Ct. at 1883. Because of their special training, police officers are permitted to make inferences and deductions that might elude an untrained person when articulating suspicion to detain and search. *See Flowers*, 734 N.W.2d at 251-52. An officer with the requisite suspicion may "conduct a *carefully limited search* of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him." *Id.* at 253 (quotation omitted).

In this case, the district court concluded that officers had a "reasonable belief" that Heiderscheid was "armed and dangerous" and, thus, were justified in pat-searching him for weapons. This conclusion is supported by the record evidence. Dispatch advised officers that a 911 caller reported that "an unknown male with a gun [was] inside [her] garage," stated the male left in a "specific vehicle," a red minivan, and described the male. Mandel, who was alone at the time, located the minivan and "initiated a traffic stop on the red minivan approximately one block away from the [911 caller's] residence." The driver stopped his car and put "both his hands out the window" and said "that he was the victim of a crime." Mandel exited his squad car, with his "service weapon drawn and pointed at [the driver], and [] ordered him to the ground."

Sturgeon testified that, when he arrived at the scene, Heiderscheid was lying on the ground. As Heiderscheid stood up, he "started talking about what happened at the house," which the district court determined "enhanced the already-existing" belief that Heiderscheid was the male identified by the 911 caller. In addition, Sturgeon testified that,

because the 911 caller stated that Heiderscheid had a "firearm," he "placed handcuffs on the suspect to secure him" for "officer safety."

Once Heiderscheid was in handcuffs, the officers "started searching him for a weapon," and found a glass "bubble" pipe of the type "commonly used to smoke methamphetamine" in his front pocket. An officer who possesses the requisite suspicion may conduct a limited search of "such persons in an attempt to discover weapons which might be used to assault him." *See Flowers*, 734 N.W.2d at 253 (quotation omitted). Based on the record evidence, we conclude that the district court did not err in finding that the officers had reasonable suspicion that Heiderscheid was armed and dangerous, which justified a pat-down frisk for weapons.[5]

C. Probable cause to arrest

Next, Heiderscheid argues that, even if the officers had grounds to stop and detain him, "the officers exceeded the permissible bounds of that seizure" by arresting him. Under Minnesota law, a peace officer may make a warrantless arrest when a "felony has in fact been committed and the officer has reasonable cause for believing the person arrested to have committed it." Minn. Stat. § 629.34, subd. 1(c)(3) (2018); *see also State v. Sorenson*, 134 N.W.2d 115, 122 (Minn. 1965). Reasonable or probable cause exists where "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) (quotation

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[5] Heiderscheid appears to argue that the wallet should have been suppressed because Mandel found it after he concluded that Heiderscheid "was not armed." We do not have to decide this issue because the district court found that Mandel identified Heiderscheid, and specifically found that his testimony did not link the identification to the wallet.

omitted); *see also State v. Merrill*, 274 N.W.2d 99, 108 (Minn. 1978) (stating that the "reasonable cause" statutory requirement is synonymous with the "probable cause" constitutional requirement). Probable cause is "something more than a mere suspicion and something less than evidence that would sustain a conviction."[6] *State v. Evans*, 373 N.W.2d 836, 838 (Minn. App. 1985), *review denied* (Minn. Nov. 1, 1985).

A district court must determine, by "looking at the facts and circumstances of the particular case, . . . whether an officer in the particular circumstances, conditioned by his own observations and information, and guided by the whole of his police experience, reasonably could have believed that a crime had been committed by the person to be arrested." *Merrill*, 274 N.W.2d at 108 (quotation omitted). On appeal from a district court's finding that police had probable cause to arrest, this court reviews findings of fact for clear error, giving due weight to inferences drawn from those facts by the district court. *State v. Lee*, 585 N.W.2d 378, 382-83 (Minn. 1998). Findings of fact are clearly erroneous only if we are "left with the definite and firm conviction that a mistake has been made." *State v.*

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[6] As a preliminary matter, Heiderscheid argues that section 629.34's language that a felony "has in fact been committed" is a "higher threshold" than probable cause to arrest. Heiderscheid contends that this language requires that the "arresting officer . . . have knowledge of and be able to identify a specific felony that has occurred, rather than be able to hypothesize that one may have occurred." But Heiderscheid does not cite any legal authority to support his argument, and caselaw does not support his position. *See, e.g.*, *State v. Walker*, 584 N.W.2d 763, 766 (Minn. 1998) ("Police officers may arrest a felony suspect without an arrest warrant in any public place, including outside a dwelling, provided they have probable cause."). And, in any case, the officers' inability to name a specific criminal offense committed by an appellant is not grounds for reversal. *See Johnson*, 314 N.W.2d at 230 ("The fact that it later turns out that the officers were wrong does not mean that they did not have probable cause at the time they made their assessment."). Thus, we follow well-established precedent that law enforcement needed probable cause to arrest Heiderscheid.

Gomez, 721 N.W.2d 871, 883 (Minn. 2006) (quotation omitted). This court reviews whether probable cause existed de novo. *Lee*, 585 N.W.2d at 382-83.

Here, the district court found that, "upon Lt. Sturgeon's learning [Heiderscheid's] identity, he immediately realized he is familiar with [Heiderscheid] from past law-enforcement contacts and, based on those contacts, Lt. Sturgeon knew [Heiderscheid] is ineligible to possess a gun." Specifically, the district court concluded that the officers had "probable cause to arrest [Heiderscheid] for possession of a gun while ineligible."[7] We agree.

First, as discussed above, the record supports the district court's factual finding that the 911 caller told dispatch, which passed the information on to Mandel and Sturgeon, that Heiderscheid possessed a gun. Second, Mandel and Sturgeon were justified in searching Heiderscheid's person for weapons. After the pat-down search concluded, Mandel identified the driver as Heiderscheid and received new information when Sturgeon

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[7] We recognize that the district court found probable cause for an arrest existed "at the time the traffic stop was initiated." We do not find it necessary to review this determination because the traffic stop was a lawful investigatory stop and the search of Heiderscheid's person was also lawful as a search for weapons. *See Flowers*, 734 N.W.2d at 251-53 (concluding there was a basis for a *Terry* stop and search for weapons). We also note that Mandel testified that Heiderscheid was arrested at the moment that Mandel and Sturgeon handcuffed him because he was not "free to leave." Our caselaw provides that a defendant is not arrested simply because he is handcuffed or briefly detained. *See State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999) (holding that frisking, handcuffing, and placing multiple individuals in the rear of squad cars was not an arrest, and were "reasonable steps taken by the officers to safely conduct their investigation"). For the reasons we have already discussed, Mandel reasonably believed that Heiderscheid was armed, and handcuffing him while the police investigated further does not "transform an investigatory detention into an arrest," despite Mandel's omnibus testimony otherwise. *See id.*

"immediately realized he [was] familiar with [Heiderscheid] from past law-enforcement contacts" and he "was confident [Heiderscheid] is ineligible to possess a gun."

Based on the 911 caller's information, Mandel and Sturgeon's credible testimony about when they identified Heiderscheid, and Sturgeon's confidence that Heiderscheid was ineligible to possess a firearm, the district court correctly concluded that the officers had probable cause to arrest Heiderscheid for ineligible firearm possession. *See Johnson*, 314 N.W.2d at 230 (providing that probable cause exists where "a person of ordinary care and prudence [would] entertain an honest and strong suspicion that a crime has been committed"); *see also Merrill*, 274 N.W.2d at 108 (providing that the district court must determine "whether an officer in the particular circumstances, conditioned by his own observations and information, and guided by the whole of his police experience, reasonably could have believed that a crime had been committed by the person to be arrested"). Accordingly, we conclude that officers had the requisite probable cause to arrest Heiderscheid.

D. Search of Heiderscheid's vehicle

Heiderscheid objects to the search of his minivan. The district court concluded that the minivan search was lawful because officers had probable cause that a gun was "concealed in [Heiderscheid's] vehicle" and the automobile exception to the warrant requirement applied. On appeal, Heiderscheid argues that the officers lacked probable cause, and therefore, the exception did not apply.

"Generally, warrantless searches are per se unreasonable." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Yet, under the automobile exception to the warrant

requirement, a warrantless search of a vehicle is justified when an officer has probable cause to believe that the vehicle contains contraband or evidence of a crime. *See Flowers*, 734 N.W.2d at 248. "Probable cause is an objective inquiry that depends on the totality of the circumstances in each case." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). "[T]he totality of the circumstances includes reasonable inferences that police officers draw from facts, based on their training and experience, because police officers may interpret circumstances differently than untrained persons." *Id.* "Therefore, an appellate court must give due weight to reasonable inferences drawn by police officers and to a district court's finding that the officer was credible and the inference was reasonable." *Id.* (quotations omitted).

The district court determined that "probable cause existed to believe [Heiderscheid's] vehicle contained evidence of a crime" and we conclude that the record supports this conclusion. We have already summarized the information from the 911 caller, which led Mandel to locate the red minivan and determine that the vehicle and the driver "matched the concerned citizen's description."

At about the same time that Mandel arrested Heiderscheid and placed him in the squad car, Sturgeon received more detailed information from "[w]itnesses at the concerned citizen's residence." Sturgeon testified that other police officers went to the Waterloo Avenue home and interviewed the 911 caller, her brother, and other witnesses there. The 911 caller and her brother were "adamant that the suspect had a chrome-colored revolver." "Based on this information," and the fact that Heiderscheid did not have a gun on his person, Sturgeon searched the minivan, specifically underneath the front passenger seat,

where a person might "hide a chrome revolver." While doing so, officers found drugs, but no revolver. Accordingly, the district court did not err in determining that officers had probable cause to believe that the minivan contained the gun described by the 911 caller and the search of the minivan was valid under the automobile exception. *See Flowers*, 734 N.W.2d at 248; *State v. Craig*, 807 N.W.2d 453, 464-66 (Minn. App. 2011), *aff'd*, 826 N.W.2d 789 (Minn. 2013).

In sum, the district court properly denied Heiderscheid's motion to suppress and we affirm.

II. The district court did not abuse its discretion in calculating Heiderscheid's criminal-history score.

Interpretation of the sentencing guidelines is subject to de novo review. *State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018). But this court reviews the district court's determination of a defendant's criminal-history score for an abuse of discretion. *State v. Drljic*, 876 N.W.2d 350, 353 (Minn. App. 2016). An illegal sentence includes one that is based on an incorrect criminal-history score. *State v. Outlaw*, 748 N.W.2d 349, 355-56 (Minn. App. 2008), *review denied* (Minn. July 15, 2008). "The State bears the burden of proof at sentencing to show that a prior conviction qualifies for inclusion within the criminal-history score." *Williams v. State*, 910 N.W.2d 736, 740 (Minn. 2018)

Heiderscheid objects to his sentence and argues that the district court erred in calculating his criminal-history score. The district court imposed an executed guidelines sentence of 18 months based on a criminal-history score of six. Heiderscheid's criminal-history score was based on the following: one point for a terroristic-threats

conviction in 2013; one point for a stalking conviction in 2013 (pattern of conduct); one point for a domestic-abuse no-contact order (DANCO) violation in 2014; one point for a DANCO violation in 2015; one point for a DANCO violation in 2015; and one misdemeanor point for four misdemeanor offenses. The misdemeanor point was based on four gross misdemeanors: (1) terroristic threats, (2) fleeing a police officer in a motor vehicle, (3) domestic assault (subsequent violation); and (4) domestic assault (subsequent violation).

Heiderscheid argues that the two domestic-assault gross-misdemeanor convictions "could not, as a matter of law, count toward [his] criminal-history score because they were necessary to enhance the first [DANCO] violation to a felony." Heiderscheid claims that the first DANCO violation normally would have been a misdemeanor, but because it took place "within ten years of the first of two or more previous qualified domestic violence-related offense convictions" it was enhanced to a felony. *See* Minn. Stat. § 629.75, subd. 2(d)(1) (2018). Thus, he argues that the district court erred in allowing the domestic-abuse gross-misdemeanor convictions to separately count toward his criminal-history score.

But, as pointed out by the state, Heiderscheid's conviction of fifth-degree controlled-substance crime is not enhanced by the prior gross-misdemeanor domestic-assault convictions. Under the Minnesota Sentencing Guidelines, "misdemeanor and gross misdemeanor offenses used to enhance the current offense must be used in calculating the offender's criminal history score on future offenses that are not enhanced felonies. Prior felony offenses used for enhancement must always be used in calculating

the offender's criminal history score." Minn. Sent. Guidelines 2.B.6.b (2017). This guideline provides that prior misdemeanor offenses must be used to enhance a current offense that is not an enhanced felony, such as fifth-degree controlled-substance crime. *Id.*

We conclude that Heiderscheid's sentence was calculated based on the correct criminal-history score. Thus, the district court did not abuse its discretion at sentencing.

Affirmed.