STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0713

State of Minnesota,
Respondent,

vs.

David Joshua John Skotte,
Appellant.

Filed March 2, 2020
Affirmed
Rodenberg, Judge

Hennepin County District Court
File No. 27-CR-17-32204

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

Michael O. Freeman, Hennepin County Attorney, Nicole Cornale, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Abigail H. Rankin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Jesson, Judge; and Smith, Tracy M., Judge.

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

RODENBERG, Judge

Appellant David Joshua John Skotte appeals after a court trial under Minn. R. Crim. P. 26.01, subd. 4, at which he was convicted of ineligible person in possession of a firearm

and giving a peace officer a false name. Appellant argues that the district court erroneously denied his motion to suppress evidence. We affirm.

FACTS

The state charged appellant with one count of ineligible person in possession of a firearm and one count of giving a false name to a peace officer. Appellant moved to suppress a firearm that police seized from his vehicle.[1] The district court denied his suppression motion after a two-part evidentiary hearing and post-hearing written arguments.

Officer Neitzel and Sergeant Wilson testified at the evidentiary hearing concerning the events that unfolded after Officer Neitzel conducted a traffic stop of appellant's vehicle. Officer Neitzel testified that, when he asked appellant for identification, appellant stated that he did not have any. Appellant said that his name was Blake Lee ******[2] and that his birthday was July 11, 1994. Officer Neitzel testified that he smelled burnt marijuana coming from the vehicle as he spoke with appellant.

When Officer Neitzel entered the name Blake Lee ****** into his squad car's computer, it retrieved a driver's license photo of that person. Officer Neitzel testified that the person in the driver's license photo did not look like appellant. Sergeant Wilson testified that he then had appellant get out of his vehicle, compared appellant to the driver's license photo for Blake Lee ******, and determined that the person depicted in the photo

[1] Methamphetamine was also seized but did not form the basis of any conviction.

[2] Appellant used the actual legal name of a person, but we refrain from including that full name here.

was not appellant. Appellant eventually gave Officer Neitzel and Sergeant Wilson his real name and revealed that he had used a false name because he had an active arrest warrant for a first-degree drug case. Officer Neitzel and Sergeant Wilson confirmed that the arrest warrant was active, and they arrested him.

Officer Neitzel testified that, "[d]ue to the smell of marijuana in the vehicle," the officers decided to "do a probable cause search on the vehicle." Officer Neitzel further testified that the search was based on appellant's "history and the smell of marijuana." Sergeant Wilson similarly testified that the officers searched appellant's vehicle because Officer Neitzel had smelled burnt marijuana coming from the vehicle. Sergeant Wilson testified that he found a nine-millimeter handgun while searching the trunk of appellant's vehicle. No marijuana was found in the vehicle.

The district court denied appellant's motion to suppress, because the officers performed a lawful vehicle search based on probable cause. The parties agreed to a court trial under Minn. R. Crim. P. 26.01, subd. 4. Appellant stipulated to the state's case in order to obtain review of the district court's denial of his motion to suppress. The district court found appellant guilty on both counts and sentenced him to 63 months in prison.

This appeal followed, challenging only the district court's denial of appellant's suppression motion.

D E C I S I O N

Appellant argues that the district court erred by denying his motion to suppress the gun seized from his vehicle because the evidence was obtained as the result of an illegal search.

"When facts are not in dispute, . . . [appellate courts] review a pretrial order on a motion to suppress de novo and determine whether the police articulated an adequate basis for the search or seizure at issue." *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011) (quotation omitted). We "independently determine[], as a matter of law, whether the evidence against appellant must be suppressed." *State v. Marsh*, 931 N.W.2d 825, 829 (Minn. App. 2019). When an appellant stipulates to the evidence against him pursuant to Minn. R. Crim. P. 26.01, subd. 4, appellate "review is further limited to the pretrial order that denied [the appellant]'s motion to suppress." *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

Both the United States and Minnesota Constitutions give individuals the right to be free from "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. The Minnesota Constitution further requires that the principles of *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968), apply to traffic stops. *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). "[E]ach incremental intrusion during a traffic stop [must] be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*." *Id.* at 365.

"Warrantless searches are generally unreasonable unless they fall within a recognized warrant exception." *Ortega*, 770 N.W.2d at 149. The "automobile exception" allows police to "search a car without a warrant, including closed containers in that car, if there is probable cause to believe that the search will result in a discovery of evidence or contraband." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (citation and quotation omitted). "Probable cause exists when 'there are facts and circumstances sufficient to

warrant a reasonably prudent [person] to believe that the vehicle contains contraband.'" *Lester*, 874 N.W.2d at 771 (quoting *State v. Johnson*, 277 N.W.2d 346, 349 (Minn. 1979)). "The U.S. Supreme Court has held that '[i]f probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search.'" *State v. Munson*, 594 N.W.2d 128, 138 (Minn. 1999) (quoting *United States v. Ross*, 456 U.S. 798, 825, 102 S. Ct. 2157, 2157 (1982)). "It has long been held that the detection of odors alone, which trained police officers can identify as being illicit, constitutes probable cause to search automobiles for further evidence of crime." *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. App. 1984). One such odor is that of burnt marijuana. *State v. Hodgman*, 257 N.W.2d 313, 315 (Minn. 1977).

Officer Neitzel testified that he smelled burnt marijuana coming from appellant's vehicle. Both officers testified that they searched appellant's vehicle based on that odor. The district court, in its order denying appellant's motion to suppress, credited Officer Neitzel's testimony that he smelled burnt marijuana coming from appellant's vehicle.

Appellant's argument focuses on the fact that no marijuana was found during the vehicle search, which calls into question whether Officer Neitzel smelled burnt marijuana. But whether the officer smelled burnt marijuana is a fact question. Appellate courts defer to a district court's credibility determination on questions of fact and review those findings under a clearly erroneous standard. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (citation omitted). There is record evidence supporting the district court's factual finding, and we therefore defer to it because it is not clearly erroneous.

The smell of burnt marijuana is sufficient probable cause to justify a vehicle search. *Hodgman*, 257 N.W.2d at 315. After smelling burnt marijuana, Officer Neitzel and Sergeant Wilson had probable cause to search appellant's vehicle under the automobile exception to the warrant requirement. The district court did not err in denying appellant's suppression motion.

Affirmed.