STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1295

State of Minnesota,
Respondent,

vs.

Shoulwin Melbrook Davis,
Appellant.

Filed August 28, 2023
Affirmed
Bryan, Judge

Hennepin County District Court
File No. 27-CR-22-4889

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

Mary F. Moriarty, Hennepin County Attorney, Peter R. Marker, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Steven P. Russett, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Smith, Tracy M., Judge; and Klaphake, Judge.*

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

NONPRECEDENTIAL OPINION

BRYAN, Judge

In this direct appeal from a conviction for unlawful possession of a firearm, appellant argues that the district court erred by denying his motion to suppress evidence. Appellant challenges the district court's determinations regarding whether the initial investigating officer had reasonable, articulable suspicion to conduct an investigatory seizure and whether the officers who conducted a search of appellant's vehicle had probable cause to do so. We affirm.

FACTS

Respondent State of Minnesota charged appellant Shoulwin Melbrook Davis with unlawful possession of a firearm in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2020). Davis moved to suppress the firearm, and the district court held an evidentiary hearing. At the hearing, the state called the officers involved as witnesses and introduced footage from their body cameras. The following facts were established at the hearing and are uncontested on appeal.

On March 14, 2022, Officer Jack Loughrey was on patrol for the Bloomington Police Department. Loughrey testified that the parking lot he was patrolling—where the incident occurred—had a history of service calls involving stolen vehicles, drug activity, and domestic disturbances, among other crimes. Loughrey testified that he saw a vehicle drive into the parking lot with the front license plate hanging by one bolt and skewed. Loughrey testified that this was significant because "it's a state statute that a license plate

needs to be properly bolted and—horizontal[]"[1] and "[b]ased on [his] training and experience [he] kn[ew] that stolen vehicles are often—will often have their license plates tampered with to try to avoid detection by law enforcement." Loughrey stated that he observed the vehicle park and saw that the vehicle was occupied by two men. By looking up the vehicle's license plate in a law enforcement database, Loughrey learned that the vehicle's registered owner was a woman. Loughrey observed that the occupants sat in the vehicle for a one or two minutes without exiting. Loughrey testified he became suspicious based on this combination of facts, which are consistent with a suspicion that the vehicle could be stolen or that the two individuals could be engaging in illegal activity. A video recording entered into evidence shows that the vehicle was parked in the parking lot with space both in front of and behind the vehicle, should the driver wish to drive away.

Loughrey parked his squad vehicle at an angle roughly 15 feet behind the vehicle without activating his emergency lights. Loughrey approached the vehicle, twice motioning in a downward direction with his right hand. The driver, later identified as Davis, rolled down his window. Loughrey testified that as he began speaking with Davis, he immediately smelled the odor of marijuana coming from the vehicle. Loughrey pointed out that Davis's license plate was crooked. Davis acknowledged that and stated that he was planning to fix it. Loughrey also asked whether there was any marijuana in the vehicle, to which one of the occupants answered, "Yeah." Loughrey called for backup.

[1] Minnesota law requires that license plates be "securely fastened," "displayed horizontally," and "mounted in the upright position." Minn. Stat. § 169.79, subd. 7 (2020).

Bloomington Police Officer Leonard Nelson arrived and walked up to the driver's side of the vehicle. While Nelson stood next to Davis's vehicle, he saw Davis move a pill bottle from his sweatshirt into his pants. Nelson then saw Davis reach somewhere in the vehicle and observed the butt of a handgun being moved within the vehicle. Nelson called out to dispatch that they needed additional officers and drew his service weapon. Officers Loughrey, Nelson and a third officer who arrived on scene then ordered Davis out of the SUV, handcuffed him, and searched him, finding the pill bottle in his pants. The officers subsequently searched the interior of the vehicle and recovered a firearm as well as approximately 3.5 grams of marijuana. Davis was arrested after dispatch notified Loughrey that Davis was a felon and ineligible to possess a firearm.

The district court denied Davis's suppression motion. The district court first determined that "the improperly attached license plate was enough to justify an investigatory stop." The district court also determined that the investigatory detention did not occur when Loughrey initially approached the vehicle and began interacting with Davis, but instead began at the moment that "Loughrey asked for [Davis's] identification." The district court further determined that the detention was justified at this moment by both the "faulty license plate" and Loughrey's detection of the marijuana odor. Finally, the district court determined that the odor of marijuana, together with Nelson's observation of the pill bottle and the handgun, provided sufficient probable cause to search the vehicle.

Davis stipulated to the prosecution's case under Minnesota Rule of Criminal Procedure 26.01, subdivision 4, preserving his right to appeal the district court's dispositive

suppression ruling. The district court found Davis guilty and sentenced him to prison for 60 months. This appeal follows.

DECISION

Davis challenges the denial of the motion to suppress evidence, arguing that Loughrey lacked reasonable, articulable suspicion of criminal activity to justify his seizure of Davis, and that the officers lacked probable cause to search the vehicle. We conclude that Loughrey's observations provided a sufficient basis for the investigatory seizure and that the officers had ample probable cause to justify searching the vehicle.

The United States and Minnesota Constitutions prohibit "unreasonable searches and seizures" by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, evidence obtained during an unconstitutional search or seizure must be suppressed. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). The detention of an individual during a traffic stop by police, even for a brief period and for a limited purpose, is a seizure. *See Whren v. United States*, 517 U.S. 806, 809-10 (1996); *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003). The Minnesota Supreme Court has held that a search or seizure during a traffic stop must satisfy the principles and framework of *Terry v. Ohio*, 392 U.S. 1 (1968). *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004). Under this framework, a police officer may "temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity." *Diede*, 795 N.W.2d at 842 (quotation omitted). "Reasonable suspicion must be based on specific, articulable facts that allow the [police] officer to . . . articulate . . . a particularized and objective basis for suspecting the seized person of criminal activity." *Id.* at 842-43 (quotations omitted).

When reviewing a district court's pretrial order on a motion to suppress evidence, this court reviews the district court's factual findings for clear error and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). We address the basis for the investigatory seizure first before proceeding to consider Davis's arguments regarding the constitutionality of the vehicle search.

Davis contends that the officer lacked reasonable, articulable suspicion to conduct the investigatory detention.[2] We disagree for two reasons. First, Davis's argument conflicts with well-established case law concerning whether a police officer needs to articulate reasonable suspicion when the officer approaches a vehicle that is already stopped. The district court concluded that Loughrey did not need to suspect Davis of anything when he parked the squad car and approached. *See State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980)), *rev. denied* (Minn. May 24, 1989), *cited in Klotz v. Comm'r of Pub. Safety*, 437 N.W.2d 663, 665 (Minn. App. 1989) ("It is not a seizure for an officer simply to approach and talk to a person standing in a public place or to a driver seated in an already stopped car."); *see also State v. Harris*, 590 N.W.2d 90, 98-99 (Minn. 1999) ("A person generally is not seized merely because a police officer approaches him in a public place or in a parked car and begins to ask questions."); *State v. Reese*, 388 N.W.2d 421, 422-23 (Minn. App. 1986) (reversing suppression of evidence on the basis that, pursuant to *Vohnoutka*, "[i]n the cases involving already stopped vehicles, it is not

[2] Davis does not argue that Loughrey lacked reasonable, articulable suspicion after Loughrey detected the odor of marijuana. Rather, Davis argues that the investigatory seizure occurred when Loughrey parked the squad car and approached Davis's vehicle and that Loughrey lacked a sufficient basis to conduct the investigatory seizure at that time.

necessary that an officer suspect criminal activity but he may arrest a driver and seize contraband if he views it in plain sight in the vehicle."), *rev. denied* (Minn. Aug. 13, 1986). Davis makes no attempt to distinguish or discuss *Vohnoutka*, which remains binding precedent. We agree with the district court that Loughrey needed no suspicion to park the squad car and approach Davis's vehicle.

Second, even assuming that *Vohnoutka* did not apply, Loughrey had a sufficient basis to conduct an investigatory detention when he parked near and approached Davis's vehicle based on his observation of a traffic violation. The reasonable suspicion standard is met "when an officer observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). As noted above, license plates must be "securely fastened," "displayed horizontally," and "mounted in the upright position." Minn. Stat. § 169.79, subd. 7. "When an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle." *State v. Gibson*, 945 N.W.2d 855, 857 (Minn. 2020) (quotation omitted); *see also State v. Pleas*, 329 N.W.2d 329, 332-33 (Minn. 1983) (upholding denial of suppression motion because the investigating officer observed minor traffic violations, including a broken windshield, a missing front license plate, and a rear plate that was attached upside down); *State v. Barber*, 241 N.W.2d 476-77 (Minn. 1976) (upholding denial of suppression motion because the investigating officer observed that the license plate was wired on rather than bolted on).

The district court found, and the record supports, that Loughrey approached Davis's vehicle because it had a skewed front license plate.[3] Loughrey further testified that, based on his experience, the skewed license plate suggested that the vehicle may have been stolen. Loughrey also explained that he was patrolling what he knew to be a "high-crime area," and he was personally aware of prior calls about "stolen vehicles," and other crimes taking place in this parking lot.[4] The district court implicitly credited this testimony, and we defer to that credibility determination. *Dickerson,* 481 N.W.2d at 843. Based on these observations, Loughrey had sufficient reasonable articulable suspicion of a traffic violation to conduct an investigatory detention.

Davis also challenges the district court's determination that the officers had a sufficient basis to search the vehicle. Although reasonable suspicion may support a traffic stop, "[a] search of a vehicle without a warrant is justified if there is probable cause to suspect that the vehicle is carrying contraband or illegal merchandise." *State v. Thiel*, 846 N.W.2d 605, 611 (Minn. App. 2014), *rev. denied* (Minn. Aug. 5, 2014). "Probable cause exists when the totality of the facts and circumstances known would lead a reasonable

---

[3] To the extent that portions of Davis's brief argue that the stated traffic violation was a pretext for a traffic stop based on Davis's race, we note that Davis did not make this specific argument before the district court. We decline to address whether the record includes any evidence that Loughrey's stated reason for the traffic stop was actually a pretext for race. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting that appellate court generally will not consider matters not argued to and considered by the district court).

[4] While mere presence in a high-crime area is insufficient to justify a stop, *State v. Varnado*, 582 N.W.2d 886, 890 (Minn. 1998), courts may consider a person's presence in a high-crime area to contextualize other evidence, *see State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (contextualizing suspect's behavior by considering his departure from a building with a history of drug activity) (Minn. 1992), *aff'd,* 508 U.S. 366 (1993).

officer to entertain an honest and strong suspicion that the suspect has committed a crime." *See Thiel*, 846 N.W.2d at 610 (quotation omitted). When reviewing a pretrial order on a motion to suppress where the facts are not in dispute, appellate courts review the probable cause determination de novo. *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016).

We conclude that the officers had sufficient probable cause to search the vehicle based on the following undisputed facts. Nelson observed Davis moving a handgun inside the car, which would normally justify the ensuing vehicle search. *See State v. Willis*, 320 N.W.2d 726, 727-28 (Minn. 1982) (stating that a police officer's observation of "part of a handgun" in open view gave the officer probable cause to search a vehicle). In addition, Nelson observed Davis trying to conceal a pill bottle. *See State v. Hodgman*, 257 N.W.2d 313, 314 (Minn. 1977) (stating an officer's observation of "a plastic pill bottle" and knowledge that "this is how people carry narcotics" supported finding of probable cause to search vehicle); *see also State v. Bigelow*, 451 N.W.2d 311, 312-13 (Minn. 1990) ("[T]he lawful discovery of drugs or other contraband in a motor vehicle gives the police probable cause to believe that a further search of the vehicle might result in the discovery of more drugs or other contraband."). Loughrey also observed the odor of marijuana emanating from inside the vehicle. *See Thiel*, 846 N.W.2d 605 at 611 ("The discovery of marijuana in a car gives law enforcement probable cause to search for more anywhere in the car where one might reasonably expect to find marijuana."). Based on these observations, we conclude that a reasonable officer would have an honest and strong suspicion that the vehicle contained contraband or evidence of criminal activity.

Davis tries to persuade us otherwise by arguing that the odor of marijuana alone cannot provide probable cause to search a vehicle given recent changes to the legality of hemp. Specifically, Davis contends that the officers lacked probable cause to search the vehicle because they had no way of knowing whether the odor was from an unlawful quantity of marijuana.[5] This court must apply precedential authority, however, *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010), *rev. denied* (Minn. Sept. 21, 2010), and *Thiel*, 846 N.W.2d at 611, remains binding. Moreover, in this case, the search was not justified by the odor of marijuana alone, but also by the observation of the firearm and pill bottle. Because the officers had probable cause to search the vehicle at the time of the search, the district court properly denied Davis's motion to suppress.

Affirmed.

[5] We also note that "the test is not whether the residual amounts of marijuana are criminal" but "whether those amounts support a reasonable expectation that more marijuana or other evidence of criminal activity will be found." *State v. McGrath*, 706 N.W.2d 532, 544 (Minn. App. 2005), *rev. denied* (Minn. Feb. 22, 2006).