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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0566**

State of Minnesota,
Respondent,

vs.

Michael Alan Kalberg,
Appellant.

**Filed April 3, 2017
Affirmed
Klaphake, Judge***

Meeker County District Court
File No. 47-CR-15-525

Lori Swanson, Attorney General, James B. Early, Assistant Attorney General, St. Paul,
Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Steven P. Aggergaard,
Special Assistant Public Defender, Bassford Remele, P.A., Minneapolis, Minnesota (for
appellant)

Considered and decided by Johnson, Presiding Judge; Peterson, Judge; and
Klaphake, Judge.

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

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant Michael Alan Kalberg challenges his convictions of possession of a firearm by an ineligible person, possession of a small amount of marijuana, and possession of drug paraphernalia, arguing the police officer did not have reasonable, articulable suspicion to expand the scope of the traffic stop and did not have probable cause to search his vehicle. He also argues he is entitled to a new trial. Because the police had reasonable suspicion to justify the expansion of the stop and probable cause to search the vehicle, and the district court did not abuse its discretion in denying the motion for a mistrial, we affirm.

DECISION

I. Motion to Suppress

Kalberg argues that the police did not have reasonable suspicion to expand the scope of the traffic stop after he was pulled over for speeding. When reviewing a district court's pretrial order on a motion to suppress evidence, we review 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). Deference must be given to the district court's credibility determinations. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. The scope of a traffic stop “must be strictly tied to and justified by the circumstances that rendered the initiation of the investigation permissible.” *State v. Wiegand*, 645 N.W.2d 125, 135

(Minn. 2002). We review questions of reasonable suspicion de novo, considering the totality of the circumstances in determining whether a stop is justified. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). An officer's suspicion cannot be based on a hunch; it must be objectively reasonable under the totality of the circumstances. *State v. Smith*, 814 N.W.2d 346, 351 (Minn. 2012). Evidence discovered during an invalid search must be suppressed. *State v. Askerooth*, 681 N.W.2d 353, 370 (Minn. 2004).

Kalberg does not contest the validity of the initial traffic stop for speeding. But he argues the district court erred in finding the expansion of the traffic stop and subsequent search of his vehicle were justified. Expansion of a traffic stop beyond its original purpose is permissible if an officer has reasonable, articulable suspicion of other criminal activity. *Wiegand*, 645 N.W.2d at 135. While speaking with Kalberg, Deputy Sebring detected a strong odor of marijuana emanating from the vehicle. We have long observed that the odor of marijuana provides an officer with probable cause to search a vehicle. *See State v. Schultz*, 271 N.W.2d 836, 837 (Minn. 1978) (stating that if an officer smelled marijuana before searching a vehicle then the search was justified under the automobile exception); *see also State v. Wicklund*, 295 Minn. 403, 405, 205 N.W.2d 509, 511 (1973) (observing a search was justified after two officers detected the odor of marijuana); *State v. Ortega*, 749 N.W.2d 851, 854 (Minn. App. 2008) (stating that the odor of marijuana has historically provided an officer with probable cause to search), *aff'd*, 770 N.W.2d 145 (Minn. 2009); *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. App. 1984) (“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.”).

On this record, the expansion of the initial traffic stop was justified by reasonable suspicion. The odor of marijuana emanating from the vehicle provided Deputy Sebring not only with reasonable suspicion to expand the scope of the traffic stop, but also probable cause to search the vehicle. The district court therefore did not err in denying Kalberg's motion to suppress the evidence of the firearm, marijuana, and drug paraphernalia discovered during the search of his vehicle.¹

II. Motion for Mistrial

Kalberg argues he is entitled to a new trial because the district court erred in denying his request for a mistrial. We review a district court's denial of a motion for a mistrial for an abuse of discretion. *State v. Jorgensen*, 660 N.W.2d 127, 133 (Minn. 2003). A mistrial should not be granted unless there is a reasonable probability that if the event prompting the mistrial motion had not occurred then the outcome would have been different. *State v. Manthey*, 711 N.W.2d 498, 506 (Minn. 2006). The state concedes that the district court erred in its initial instructions to the jury because it informed the jury that Kalberg had been convicted of a crime of violence despite the fact that Kalberg stipulated that he had been convicted of a crime of violence to keep the jury from hearing that information. But the state argues that the error was not so prejudicial as to require a new trial.

We conclude that the district court's error in referencing Kalberg's prior conviction for a crime of violence was harmless beyond a reasonable doubt. There is no reasonable

¹ Kalberg also challenges the district court's determinations that the search was justified because Kalberg consented to it, as a protective search for weapons, and under the inevitable-discovery doctrine. Because we conclude the search was supported by probable cause we need not address these claims.

probability that the outcome would have been different but-for the district court's error. The evidence against Kalberg is simply too strong. The firearm was discovered in Kalberg's vehicle and there was no one else in the vehicle at the time. In his statement to the police following his arrest, Kalberg stated that he had purchased the firearm off the streets approximately seven months ago, admitted it was not properly registered, and then acknowledged he was "probably not supposed to have it." When asked, "And you admit that that [firearm] was yours and you've had it for seven months or so now?" he responded, "Um, correct." The statement was played for the jury, who were also provided with transcripts, and admitted into evidence. Deputy Sebring similarly testified that Kalberg admitted to possessing the firearm and marijuana that were discovered in his vehicle. Because there is no reasonable probability that the outcome would have been different but-for the district court's reference to Kalberg's prior conviction for a crime of violence, the district court did not abuse its discretion in denying the motion for a mistrial. Kalberg is not entitled to a new trial.

Affirmed.