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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0537**

State of Minnesota,
Respondent,

vs.

Michael Raymond Burke,
Appellant.

**Filed February 5, 2018
Affirmed
Reyes, Judge**

St. Louis County District Court
File No. 69VI-CR-15-1124

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark S. Rubin, St. Louis County Attorney, Bonnie A. Thayer, Assistant County Attorney,
Virginia, Minnesota (for respondent)

Melissa Sheridan, Special Assistant Public Defender, Eagan, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Halbrooks, Judge; and
Reyes, Judge.

UNPUBLISHED OPINION

REYES, Judge

On appeal from a contested omnibus hearing, appellant argues that the district court
erred in denying his motion to suppress drug evidence. We affirm.

FACTS

On July 16, 2017, an officer with the East Range Police Department pulled over a vehicle for turning without a signal. After stopping the vehicle, the officer approached the driver's side and identified the driver as appellant Michael Burke and the passenger as C.H.

As the officer talked to appellant through the rolled-down window, he could detect a strong odor of marijuana coming from the vehicle but could not identify the exact source. He returned to his squad car, ran appellant's license, and called for backup. After confirming that appellant's license was valid, the officer approached the vehicle to discuss the odor of marijuana.

When confronted about the marijuana odor, appellant started to show clear signs of nervousness, including hand tremors and dry mouth. The officer continued questioning appellant, who eventually handed a baggie of marijuana over to him. The officer asked whether appellant had anything else in his possession, and appellant replied that he had knives, a marijuana pipe, and other items on his person. The officer then asked appellant to step out of the vehicle and conducted a pat-search. He found several pouches inside appellant's jacket pockets. One contained the marijuana pipe. Another pouch contained a baggie, and although the officer did not look closely, he could see a white powdery substance inside it. The officer also found another baggie in the eye pocket of appellant's jeans, where he found trace evidence of what he suspected to be methamphetamine. The officer handcuffed appellant and sat him on the curb. The officer field-tested and confirmed that the substances found in the two baggies was methamphetamine. He arrested

and transported appellant and C.H., who was also in possession of methamphetamine, to the East Range Police Department.

The state charged appellant with one count of fifth-degree controlled-substance crime in violation of Minn. Stat. § 152.025, subd. 2(a)(1). Appellant filed a motion to suppress the methamphetamine in a contested omnibus hearing, arguing that the police conducted an illegal search. After the district court denied appellant's motion, he waived his right to a jury trial and stipulated to the prosecutor's case to preserve the pretrial issues for appellate review pursuant to Minn. R. Crim. P. 26.01, subd. 4. The district court found appellant guilty as charged and sentenced him to a stayed term of one year and one day. This appeal follows.

D E C I S I O N

I. The district court did not err when it denied appellant's motion to suppress the methamphetamine because the officer did not improperly expand the scope of the stop.

Appellate courts review de novo whether law enforcement possessed reasonable suspicion to justify a search. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). We independently review the facts and determine, as a matter of law, whether the district court erred in denying appellant's motion to suppress. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court's factual findings for clear error, but when the facts are undisputed, our review is entirely de novo. *Burbach*, 706 N.W.2d at 487.

A. The officer’s investigation of the marijuana odor was not an unlawful expansion of the scope of the traffic stop.

Appellant argues that the officer impermissibly expanded the scope of the traffic stop when he investigated the marijuana odor.¹ We disagree.

Both the United States and Minnesota Constitutions protect individuals against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, §10. “A search conducted without a warrant issued upon probable cause is generally unreasonable.” *State v. Flowers*, 734 N.W. 2d 239, 248 (Minn. 2007). In some instances, however, a police officer may conduct an investigatory *Terry* stop without a warrant when the officer has reasonable suspicion that a person is engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968). Reasonable suspicion must be “based on specific, articulable facts” that allow the officer to “be able to articulate at the omnibus hearing that he or she had a particularized and objective basis for suspecting the seized person of criminal activity.” *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). The reasonable-suspicion standard is not high, *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011), and “an actual violation is not necessary.” *State v. Haataja*, 611 N.W.2d 353, 354 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). However, a stop that is the product of “mere

¹ Appellant asserts that the pat-frisk search of his person was also an error. However, he did not address this error in his briefing and failed to provide legal arguments to support this assertion. Where an appellant asserts an error, but fails to address the error in his appellate brief, the issue is deemed waived. *State v. Butcher*, 563 N.W. 2d 776, 780 (Minn. 1997). *See also Balder v. Haley*, 399 N.W.2d 77, 80 (Minn. 1987). Therefore, we decline to review the district court’s determination that the pat-frisk search of appellant was valid under the search-incident-to-arrest exception.

whim, caprice or idle curiosity” is impermissible. *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996).

The *Terry* principles provide justification for traffic stops even when a minor law has been violated. *State v. Askerooth*, 681 N.W.2d 353, 362-63 (Minn. 2004). However, once the original reasonable suspicion that justified the traffic stop has been dispelled, the officer may not continue to detain a person unless the officer has additional reasonable suspicion of criminal activity. *State v. Doren*, 654 N.W.2d 137, 141 (Minn. App. 2002), *review denied* (Minn. Feb. 26, 2003). Thus, every incremental intrusion during a traffic stop must be strictly tied to and justified by one of the following: (1) the original legitimate purpose of the stop; (2) independent probable cause; or (3) reasonable suspicion, as defined in *Terry*. *Askerooth*, 681 N.W.2d at 365. Reasonable, articulable suspicion exists “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.” *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997).

Here, the officer smelled marijuana and, based on his experience, he thought appellant may have been in possession of a criminal amount of marijuana. This reasonable suspicion satisfies the requirements of *Terry*.

Appellant argues that the odor of marijuana alone cannot guarantee appellant’s possession of criminal amount of marijuana, or that he was in possession of any marijuana at all. This argument lacks merit. An actual violation or the honest, strong suspicion required for probable cause is not necessary to have a lawful investigatory *Terry* stop, which merely requires a reasonable suspicion that criminal activity is afoot. *Id.*

II. Appellant's pro se claims lack merit.

In his pro se brief, appellant appears to challenge the officer's credibility by arguing that the street where the officer was patrolling would not have allowed him to see appellant turning without a signal and that the officer could not have smelled marijuana because it was tightly wrapped in his pockets. We are not persuaded.

On appeal, pro se claims that are unsupported by either arguments or citations to legal authority are deemed waived. *State v. Bartylla*, 755 N.W.2d 8, 22 (Minn. 2008). Appellant thus waives his pro se arguments because he does neither. *See id.*

However, even if we were to review appellant's claims, they are not meritorious. The credibility of a witness is a question for the finder of fact. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366, 113 S. Ct. 2130 (1993). We will reverse the district court's factual findings when they are clearly erroneous. *Burbach*, 706 N.W.2d at 487. A finding of fact is clearly erroneous if, after careful review of the record, we "reach[] the firm conviction that a mistake was made." *State v. Kvam*, 336 N.W.2d 525, 529 (Minn. 1983). Here, nothing in the record indicates that the district court made a mistake in assessing the credibility of the officer. Therefore, we defer to the district court's findings of fact.

Affirmed.