

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1617**

State of Minnesota,
Respondent,

vs.

Andrew Joseph Haman,
Appellant.

**Filed January 4, 2021
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Steele County District Court
File No. 74-CR-18-752

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Zuri Balmakund, Assistant Attorneys General, St. Paul, Minnesota; and

Dan McIntosh, Steele County Attorney, Owatonna, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

A state trooper stopped Andrew Haman for speeding and, suspecting that Haman possessed drugs, administered a dog sniff outside his car. The dog alerted, indicating drugs, and the trooper searched and found psilocybin mushrooms and cocaine inside the car.

Facing consequent drug-possession charges, Haman unsuccessfully asked the district court to suppress the evidence on the theory that the trooper lacked reasonable suspicion to administer the dog sniff. Because the circumstances gave the trooper reasonable suspicion, we affirm in part. But because our recent holding entitles Haman to benefit from an amendment to the sentencing guidelines, we reverse in part and remand for resentencing.

FACTS

State Trooper Douglass Rauenhorst stopped Andrew Haman's vehicle for speeding in April 2018. The trooper noticed that Haman had glassy and bloodshot eyes and appeared nervous, looking away. And the trooper saw onions on Haman's dashboard. A records check informed him that Haman had been previously convicted of drug possession and had three prior marijuana-related license revocations. The trooper administered field sobriety tests which Haman passed.

Trooper Rauenhorst asked Haman whether he had ever used marijuana, and Haman told him no. The trooper decided to administer a dog sniff around the outside of Haman's car, which he began within two minutes after he conducted the field sobriety tests. The dog sniffed intensely and began scratching at the driver's door, indicating narcotics. Trooper Rauenhorst therefore searched the inside of the car, and he found psilocybin mushrooms and cocaine in the center console.

The state charged Haman with first- and fifth-degree possession of a controlled substance under Minnesota Statutes section 152.021, subdivision 2(a)(5) (2016) and Minnesota Statutes section 152.025, subdivision 2(1) (2016). Haman moved to suppress evidence of the drugs found in his car, arguing that the trooper lacked reasonable suspicion

to expand the scope of the stop and to conduct the dog sniff. The district court denied the motion, and a jury found Haman guilty. The district court then denied Haman's motion for a downward dispositional departure and sentenced him to serve 85 months in prison.

Haman appeals.

DECISION

Haman challenges his convictions, arguing that the district court erred by denying his motion to suppress the evidence seized in the search. We review a district court's denial of a motion to suppress de novo, accepting the district court's factual findings unless they are clearly erroneous. *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007). Haman's challenge is unconvincing for the following reasons.

Haman's particular challenge, which is that Trooper Rauenhorst lacked a sufficient basis to expand the scope of the stop to include a dog sniff outside his car, arises from constitutional provisions limiting police activity. The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art I, § 10. Although a dog sniff around the exterior of a car is not a search requiring probable cause under these provisions, it is "intrusive to some degree." *State v. Wiegard*, 645 N.W.2d 125, 134 (Minn. 2002). A police officer therefore may conduct this sort of dog sniff during a routine traffic stop if, during the time needed to address the circumstances of the stop, he develops reasonable, articulable suspicion of drug-related activity. *Id.* at 136. Our de novo review therefore requires us to determine whether the trooper had that level of suspicion.

Trooper Rauenhorst did not need a high degree of suspicion to justify the dog sniff. Reasonable suspicion requires only some particular and objective basis for suspecting criminal activity. *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). We are satisfied that this level of suspicion existed here based on at least four circumstances. First, the trooper perceived Haman to be evasive and nervous, looking away from the trooper during the routine stop. Second, the trooper noticed onions resting on the car's dashboard, and the trooper was aware that drug-possessing drivers sometimes attempt to mask the smell of drugs using odorants. Third, the trooper learned that Haman had prior convictions for drug offenses and three marijuana-related license revocations. And fourth, the trooper had reason to believe that Haman lied to him, falsely denying that he had ever used marijuana. These circumstances meet the low threshold of reasonable suspicion, justifying the trooper's prompt, brief, drug-detection dog sniff around the outside of Haman's car.

Haman contests this conclusion on the notion that his successfully completed field sobriety tests ended any suspicion. The notion overlooks the police activity that Haman's appeal challenges, which is only the dog sniff. Before the test, Haman's bloodshot and watery eyes had led the trooper to suspect that Haman may have been driving under the influence of drugs or alcohol. Although Haman's successful field test diminished that suspicion, it did nothing to diminish the distinct suspicion that he possessed drugs inside his car. And it was the latter suspicion, not the former, that led to the sniff.

Haman attempts to undermine the conclusion that the trooper's suspicion was reasonable by contesting the underlying factual basis. We accept a district court's findings of fact where, as here, the record contains evidence supporting them. *See Asfaha v. State*,

665 N.W.2d 523, 526 (Minn. 2003). The facts that Haman says the trooper was not relying on are facts that the trooper said he was relying on. These include Haman's false denial of having previously used marijuana and Haman's record of drug possession. The testimony therefore supports the district court's factual findings.

Haman does correctly question whether the district court appropriately sentenced him using the right criminal-history score. Whether the district court properly calculated a defendant's criminal-history score is a question of law we review de novo. *See State v. Scovel*, 916 N.W.2d 550, 554 (Minn. 2018). The sentencing commission amended the sentencing guidelines effective August 1, 2019, before Haman's sentencing, so that a district court may now assign a custody-status point only if the offender was on probation at the time he committed the current offense. *See* Minn. Sent. Guidelines 2.B.2.a (Supp. 2019). Haman maintains that, because he was not on probation when he committed the current offense, he should benefit from the change in the sentencing guidelines. We have recently so held in *State v. Robinette*, 944 N.W.2d 242, 249–51 (Minn. App. 2020), *review granted in part* (Minn. June 30, 2020). We therefore reverse and remand for the district court to resentence Haman.

In a supplemental brief, Haman raises additional arguments that he did not raise in the district court. We generally do not consider arguments raised for the first time on appeal. *Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996). We therefore will not address these arguments on the merits.

Affirmed in part, reversed in part, and remanded.