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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1175**

State of Minnesota,
Respondent,

vs.

Raphael Phares Spencer,
Appellant.

**Filed August 2, 2021
Affirmed
Connolly, Judge**

Otter Tail County District Court
File No. 56-CR-19-1698

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

Michelle M. Eldien, Otter Tail County Attorney, Kathleen J. Schur, Assistant County Attorney, Fergus Falls, Minnesota (respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Connolly, Judge; and
Hooten, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from his conviction of first-degree driving while impaired (DWI)—test refusal, appellant argues that the district court erred by denying his motion to suppress evidence because (1) law enforcement did not have probable cause to arrest him for DWI, and (2) the search of his vehicle was an unlawful search incident to arrest. We affirm.

FACTS

On June 13, 2019, at approximately 5:30 p.m., Trooper Andrew Anderson observed the tires of a vehicle traveling in the opposite direction cross the centerline. Trooper Anderson turned around to catch the vehicle and “verified on [his] radar” that the vehicle was speeding. The trooper then activated his emergency lights to initiate a traffic stop.

The vehicle stopped in a storage-locker facility parking area. Trooper Anderson then identified the driver of the vehicle as appellant Raphael Spencer, whose driver’s license was suspended. Spencer was initially unable to provide proof of insurance, and did not know the full name of the owner of the vehicle he was driving. Trooper Anderson told Spencer to “hop out, we’ll figure it out.”

Trooper Anderson observed that the back windows of Spencer’s vehicle were “completely dark.”¹ He also observed a compound bow on the front passenger seat, as well as “a lot of property in the back of the vehicle.” Spencer told the trooper that the vehicle was full of shingles, tar paper, and a TV for his dad for Father’s Day. Spencer also told

¹ The trooper later discovered that the back windows had been painted black from the inside.

the trooper that he was taking the items to the storage-locker facility, but was unsure which storage locker was his. And Spencer stated that he could not find his key to the storage locker, but claimed that his father, who lived a short distance away, had an extra key.

Trooper Anderson suspected that Spencer had driven into the storage-locker facility parking area to avoid being stopped. He also observed indicia that caused him to suspect that Spencer was under the influence of controlled substances. Specifically, Trooper Anderson observed that Spencer was “constantly” moving his arms and touching his head, was very talkative, and was “moving around the vehicle constantly.” Trooper Anderson explained that Spencer kept “moving his body so to prevent me from seeing inside the front passenger compartment,” and that there were times when Spencer would mumble to the point where he could not understand Spencer. And the trooper observed Spencer to have an “unsteady gate,” and “was touching his vehicle a lot,” which Trooper Anderson suspected “could be for keeping his balance.”

After expressing his concern about the uncased compound bow on the front passenger seat, Trooper Anderson pat searched Spencer for his protection. He then had Spencer sit in the squad car “just for my safety and your safety” while he searched the vehicle. Trooper Anderson told Spencer that “you’re not under arrest,” but that he is “basically doing a search based off reasonable suspicion seeing a weapon in there, or any kind of weapon.”

Trooper Anderson “performed a weapons check around [Spencer’s] driver’s side of the vehicle, anything that he could reach or grab in that area.” In the center console, the trooper discovered a glass pipe that is typically used for smoking methamphetamine. And

“in the area of the speedometer cluster in open view,” he found a small baggy that contained a “crystalline substance that appeared to be methamphetamine.”

After searching Spencer’s vehicle, Trooper Anderson returned to the squad car and discovered Spencer asleep in the back seat. Spencer was then arrested and transported to the county jail, where field sobriety tests were performed. During the testing, Trooper Anderson “noticed additional indicators of controlled-substance impairment, such as fast pulse rate, dilated pupils, body tremors, and constant rambling.” Trooper Anderson subsequently applied for, and was granted, a search warrant to obtain a sample of Spencer’s blood or urine. Spencer, however, refused to provide a sample for testing.

Respondent State of Minnesota charged Spencer with first-degree test refusal and first-degree operating a motor vehicle under the influence of a controlled substance. Spencer moved to suppress the evidence obtained during the search of his vehicle, arguing, among other things, that his vehicle was illegally searched because, at the time Spencer was placed in the back seat of the squad car, the trooper did not have probable cause to arrest Spencer for driving under the influence. Spencer also argued that the search warrant was invalid because it cannot support a finding of probable cause without the illegally obtained evidence.

The district court determined that the trooper’s “expertise in detecting impairment by controlled substances,” along with the “observed driving conduct and physical indicia of impairment supplied Trooper Anderson with sufficient probable cause to believe that [Spencer] was driving while impaired by a controlled substance.” In reaching its conclusion, the district court noted that “[a]lthough Trooper Anderson waited until after he

completed a search of the vehicle to actually place [Spencer] under arrest, probable cause to arrest existed before the search occurred.” The district court further concluded that because all of the evidence contained in the search-warrant affidavit was lawfully obtained, Spencer’s argument that the search warrant is invalid “fails.” Thus, the district court denied Spencer’s motion to suppress.

The state amended the complaint to add additional charges. A jury found Spencer guilty of first-degree test refusal, but not guilty of all other charges. The district court then sentenced Spencer to serve 42 months in prison, but stayed execution of the sentence and placed him on probation for seven years. This appeal follows.

DECISION

Spencer challenges the district court’s denial of his suppression motion, arguing that the search of his vehicle was illegal because, at the time of the search, the trooper did not have probable cause to arrest him for DWI. He also claims that, even if there was probable cause to arrest him, the search of his vehicle was an unlawful search incident to arrest.

“When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court’s factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

I. The trooper had probable cause to arrest Spencer for DWI.

The United States and Minnesota Constitutions guarantee an individual’s right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I,

§ 10. A search or seizure conducted without a warrant is presumptively unreasonable unless the state proves that an exception to the warrant requirement applies. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). “A search incident to a lawful arrest is a well-recognized exception to the warrant requirement under the Fourth Amendment.” *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015). Under this exception, “[p]olice may search a vehicle incident to a recent occupant’s arrest.” *Arizona v. Gant*, 556 U.S. 332, 351, 129 S. Ct. 1710, 1723 (2009). “Even if a search is conducted before the actual arrest, it is valid if (1) the arrest and search are substantially contemporaneous, and (2) probable cause to arrest existed before the search.” *State v. Cornell*, 491 N.W.2d 668, 670 (Minn. App. 1992) (quotation omitted). “The crucial factor is that there must be probable cause to arrest at the time the officer makes the search.” *Id.* at 670-71.

Probable cause is an objective inquiry. *State v. Riley*, 568 N.W.2d 518, 523 (Minn. 1997). It exists “when a person of ordinary care and prudence, viewing the totality of circumstances objectively, would entertain an honest and strong suspicion that a specific individual has committed a crime.” *State v. Onyelobi*, 879 N.W.2d 334, 343 (Minn. 2016) (emphasis and quotation omitted). The level of proof required to establish probable cause is “more than mere suspicion but less than the evidence necessary for conviction.” *Id.* (quotation omitted). A probable-cause inquiry includes “reasonable inferences that police officers draw from facts, based on their training and experience, because police officers may interpret circumstances differently than untrained persons.” *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016).

Spencer argues that the search of his vehicle was unlawful because, at the time of the search, Trooper Anderson did not have probable cause to arrest him for driving under the influence of a controlled substance. We disagree. “An officer needs only one objective indication of intoxication to constitute probable cause to believe a person is under the influence.” *State v. Kier*, 678 N.W.2d 672, 678 (Minn. App. 2004); *Holtz v. Comm’r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983) (stating that a police officer “need only have one objective indication of intoxication to constitute reasonable and probable grounds to believe a person is under the influence”).

Here, Trooper Anderson had multiple grounds to suspect that Spencer was driving under the influence of a controlled substance. First, Trooper Anderson observed Spencer cross the centerline and exceed the speed limit, which can be indicia of intoxication. See *State v. Driscoll*, 427 N.W.2d 263, 265 (Minn. App. 1988) (stating that erratic driving and failing to observe traffic laws can be indicia of intoxication). Second, Spencer was driving despite the fact that his driver’s license was suspended. Third, Trooper Anderson believed that Spencer exhibited suspicious behavior, such as (1) he did not know the full name of the owner of the vehicle he was driving; and (2) despite driving into a storage-locker facility parking area to allegedly “unload the property that was in his vehicle,” Spencer was unable to articulate which storage locker he intended to use and did not have a key to a storage locker.

Third, and most importantly, Trooper Anderson observed that Spencer exhibited “symptoms” consistent with controlled-substance impairment. Specifically, Trooper Anderson observed that Spencer was “constantly” moving his arms and touching his head,

was very talkative, and was “moving around the vehicle constantly.” Trooper Anderson also observed that Spencer kept “moving his body so to prevent me from seeing inside the front passenger compartment,” and that there were times when Spencer was talking that he would mumble to the point where he could not understand Spencer. *See Franko v. Comm’r of Pub. Safety*, 432 N.W.2d 469, 472 (Minn. App. 1988) (stating that facts indicating intoxication included incoherent and rambling speech and “spaced out” appearance). And the trooper observed Spencer to have an “unsteady gate,” and “was touching his vehicle a lot,” which Trooper Anderson suspected “could be for keeping his balance.” The parties stipulated to Trooper Anderson’s credentials as a law enforcement officer, including the training he received in detecting impairment by a controlled substance, and this court gives great deference to an “officer’s experience and judgment” when reviewing whether the officer had legitimate cause to act.² *See Johnson v. Comm’r of Pub. Safety*, 366 N.W.2d 347, 350 (Minn. App. 1985) (discussing the deference due when evaluating whether an officer had probable cause to require a breath test).

Spencer argues that the squad-car video “does not objectively support” Trooper Anderson’s testimony that Spencer showed signs of impairment because the “video showed Spencer get out of his car with no issues.” But we have reviewed that video and conclude that it supports the district court’s finding that Spencer seemed to “walk with an unsteady

² Although the state also asserts that Spencer’s bloodshot eyes, and the fact that he fell asleep in the back of the squad car, support the district court’s probable-cause determination, those observations made by the trooper occurred *after* the trooper started searching the vehicle and, therefore, cannot be considered in determining whether the trooper had probable cause to arrest *at the time* he searched the vehicle.

gate.” Moreover, the video supports Trooper Anderson’s testimony that Spencer was “constantly” moving his arms and touching his head, was very talkative, and would mumble at times to the point he was not understandable. Thus, even if the squad-car video did not show that Spencer walked with an “unsteady gate,” the video supports the trooper’s testimony that Spencer exhibited other signs of impairment.

Spencer argues that even if the trooper’s “observations provided reasonable suspicion of intoxication, [Trooper] Anderson was required to conduct field sobriety tests at the scene to affirm his suspicions.” But this court has stated that “roadside sobriety tests are not required to support an officer’s reasonable belief that a driver is intoxicated.” *Holtz*, 340 N.W.2d at 365.

Finally, Spencer emphasizes the fact that Trooper Anderson did not arrest him before searching his vehicle, and consistently told Spencer that he would soon be free to leave. But the trooper’s statements to Spencer are not determinative of whether there was probable cause to arrest Spencer because the test is an objective one. *See Riley*, 568 N.W.2d at 523 (stating that probable cause is an objective inquiry). Rather, the totality of the circumstances presented, including Spencer’s driving conduct, the symptoms he displayed after being stopped, and the trooper’s experience in detecting impairment by controlled substance, provided Trooper Anderson with probable cause to arrest Spencer for DWI at the time he searched the vehicle.

II. The trooper’s search of Spencer’s vehicle was a lawful search incident to arrest.

Spencer argues that “even if probable cause existed to arrest,” the district court erred by denying his motion to suppress evidence obtained from the warrantless search of his

vehicle because the search was not justified under the search-incident-to-arrest exception as articulated in *Gant*.³ In that case, the Supreme Court clarified the search-incident-to-arrest exception, stating that “[p]olice may search a vehicle incident to a recent occupant’s arrest *only if* the arrestee is within reaching distance of the passenger compartment at the time of the search *or [if]* it is reasonable to believe the vehicle contains evidence of the offense of arrest.” 556 U.S. at 351, 129 S. Ct. at 1723 (emphasis added).

Spencer contends that the district court misapplied the Supreme Court’s decision in *Gant* when it determined that Trooper Anderson was permitted to search the vehicle after Spencer was placed in the back seat of the squad car because neither of the scenarios discussed in *Gant* apply here. We agree that the first scenario is not applicable. Although there was a compound bow sitting on the front seat of the vehicle, Spencer was already secured in the squad car at the time the trooper searched the vehicle. As such, the district court improperly determined that the trooper had a valid basis to search the passenger compartment for weapons.

Spencer further argues that the second scenario discussed in *Gant* is not applicable because “[e]ven if [Trooper] Anderson had probable cause to arrest Spencer for driving under the influence of a controlled substance, it would not be reasonable to believe that drugs would be found in Spencer’s vehicle.” This argument is unavailing. In *Gant*, the defendant was arrested “for driving with a suspended license,” handcuffed, and “locked in the back of a patrol car.” *Id.* at 335, 129 S. Ct. at 1714. Officers then searched the

³ The parties make no additional arguments, nor do we discuss, whether any other exception to the warrant requirement is applicable.

defendant's car and found cocaine in the pocket of a jacket on the backseat. *Id.* at 336, 129 S. Ct. at 1715. The Supreme Court held that the search was unlawful because the defendant was secured at the time of the search, and officers could not have reasonably believed that evidence of the crime of arrest (driving with a suspended license) would be in the defendant's car. *Id.* at 344, 129 S. Ct. at 1719. In so holding, the Court noted other cases, including *Thornton v. United States*, 541 U.S. 615, 632, 124 S. Ct. 2127, 2137 (2004), and *New York v. Belton*, 453 U.S. 454, 462, 101 S. Ct. 2860, 2865 (1981), where police arrested defendants for drug offenses before their vehicle was searched. *Gant* observed that drug offenses, unlike driving with a suspended license, “suppl[ied] a basis for searching the passenger compartment of an arrestee’s vehicle and any containers therein.” *Id.* at 343-44, 129 S. Ct. at 1719.

Spencer argues that *Belton* and *Thornton* are distinguishable because, unlike those cases, “the circumstances prior to Spencer’s arrest did not give rise to a reasonable belief that there would be evidence related to drug *possession* in the vehicle”; the trooper “did not smell drugs, did not see paraphernalia or illegal substances, was not acting on a tip that contraband may [be] in the vehicle, and Spencer did not make an admission that drugs were in the vehicle.” But although Spencer’s offense is different from the arresting offenses in *Belton* and *Thornton*, the record in this case supports the district court’s determination that the trooper reasonably believed that he would find drugs—evidence related to the crime of arrest—in Spencer’s vehicle.

As addressed above, Spencer exhibited driving conduct that can be consistent with impairment. In addition, Trooper Anderson testified that Spencer displayed suspicious

behavior after he was stopped; Spencer was driving with a suspended license, he did not know the last name of the owner of the vehicle he was driving, and he pulled into a storage-locker facility parking area but did not have the key to the storage locker or know which storage locker he intended to use. Moreover, the trooper testified that Spencer was “constantly” moving his arms and touching his head, walked with an “unsteady gate,” was very talkative, would mumble at times to the point he was not understandable, and “was obviously moving his body so to prevent [the trooper] from seeing inside the front passenger compartment.” And the trooper testified that Spencer’s conduct was consistent with symptoms of being under the influence of controlled substances.

Evidence of drugs or drug paraphernalia in Spencer’s car is circumstantial evidence that Spencer was driving while impaired, and based on his observations, it was reasonable for Trooper Anderson to believe evidence of that crime would be in the vehicle. Thus, under *Gant*, the trooper could constitutionally search the *passenger compartment* of the vehicle, but not the trunk of the vehicle. See 556 U.S. at 343-44, 129 S. Ct. at 1719 (observing that drug offenses, unlike driving with a suspended license, “suppl[ied] a basis for searching the *passenger compartment* of an arrestee’s vehicle and any containers therein” (emphasis added)). The district court, therefore, did not misapply *Gant*, and properly concluded that the trooper conducted a lawful search incident to arrest.

Because the search warrant was based on evidence lawfully obtained, the search warrant is not invalid. Accordingly, the district court did not err by denying Spencer's motion to suppress.⁴

Affirmed.

⁴ We note that, even without the evidence discovered during the search of Spencer's vehicle, there was probable cause to obtain a search warrant for Spencer's blood or urine.