

*This opinion is nonprecedential except as provided by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
A22-1296**

State of Minnesota,
Respondent,

vs.

Jacob Richard Lindekugel,
Appellant.

**Filed July 3, 2023
Affirmed
Halbrooks, Judge***

Hennepin County District Court
File No. 27-CR-21-16371

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

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rebecca Ireland, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Wheelock, Judge; and
Halbrooks, Judge.

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

In this appeal from final judgments of conviction of fifth-degree possession of a controlled substance, appellant challenges the district court's pretrial order denying his motion to suppress the evidence seized during a warrantless search of his vehicle. Appellant argues that the district court erred by determining that (1) his seizure was supported by reasonable, articulable suspicion of criminal activity and (2) the warrantless search of his vehicle was valid under the automobile exception to the warrant requirement. Because we conclude that the officer had reasonable, articulable suspicion of criminal activity and probable cause to search the vehicle, we affirm.

FACTS

On July 8, 2021, an officer with the Bloomington Police Department was on patrol near American Boulevard in Bloomington, which he considered to be a "higher crime area." At about 4:50 a.m., after bar close, the officer was patrolling the parking lot of a nearby hotel when he saw a truck that was parked with its right rear tire over the line of the adjacent parking spot.¹ The truck was occupied and the interior was illuminated. The officer suspected that the truck was occupied by an impaired driver, so he parked his vehicle at an angle 15 to 20 feet behind and off to the right side of the truck without

¹ The Bloomington Police Department does not have a contract with the hotel to patrol its property. But the hotel and other hotels in the area ask the police to patrol their parking lots as a courtesy.

activating his emergency lights. The officer ran the truck's license-plate number and determined that the truck was registered to appellant Jacob Richard Lindekugel.

When the officer approached Lindekugel's truck, he saw Lindekugel attempt to hide a short glass or plastic object. The officer tapped on Lindekugel's passenger-side window and asked him what he was doing. Lindekugel rolled down the window slightly and explained that he was trying to use his tablet to activate his phone so that he could call a friend to get back into his hotel room. As soon as Lindekugel rolled down the window, the officer smelled the odor of unburnt marijuana emanating from the vehicle. When the officer asked Lindekugel where he was staying, Lindekugel indicated that he was staying at the Motel 8, which the officer knew to be approximately one mile away. The officer noticed that Lindekugel's speech was slow and slurred throughout their conversation. Lindekugel claimed to be "exhausted," but the officer suspected that Lindekugel was impaired and was saying that he was tired to conceal his impairment.

At this point, the officer requested a "routine assist" from another officer and asked Lindekugel to roll down the passenger-side window even more so that the two of them could talk more easily. The officer asked to see Lindekugel's driver's license, and Lindekugel handed it to him. The officer asked Lindekugel if he still lived in Bloomington, and Lindekugel struggled to provide his address. The officer then asked Lindekugel how much he had to drink, and Lindekugel said, "I'll breathalyze right now, dude. I'm not f-cked up. I'm just exhausted." The officer clarified that he did not care if Lindekugel had been drinking as long as he was not driving, and Lindekugel responded, "That's all it is,

brother.” Lindekugel went on to explain that he had taken a drink after he was done driving.

The officer then asked to see several items in Lindekugel’s truck. The officer told Lindekugel that he saw him holding an item and asked if it was a vape. Lindekugel confirmed that it was and handed the e-cigarette he was holding to the officer, along with containers of liquid nicotine. The officer then asked Lindekugel what was in the plastic bag on the floor beneath the passenger’s seat. Lindekugel said that it was trash and tried to move it to the back seat. When the officer asked if he could see what was in the bag, Lindekugel said, “If I say no, what are you gonna do?” Lindekugel then asked the officer what he was worried about, and the officer said that the items on the floor looked like plastic baggies. The officer saw that one plastic baggie had a “green leafy substance in it that was consistent with marijuana.” Lindekugel said that the items were not plastic baggies—they were THC cartridges for his vape. Lindekugel handed the cartridges to the officer and explained that they were from Minnesota and that he had a prescription for them. The officer did not ask to see Lindekugel’s prescription. Lastly, the officer said that he saw Lindekugel holding an item that looked like a pipe when he approached the truck. Lindekugel stated that he did not know what he was holding when the officer arrived, but speculated that it may have been the tablet he was using to activate his phone.

The officer asked Lindekugel if he could search the truck, and Lindekugel declined. The officer said that he had probable cause to search the vehicle based on Lindekugel’s possession of the THC cartridges because possession of “any resinous form of marijuana is illegal.” The officer then directed Lindekugel to step out of the truck, and he complied.

The officer searched the truck and found a glass pipe containing residue of a potential narcotic and multiple containers of potential narcotics.

Respondent State of Minnesota charged Lindekugel with third-degree possession of a narcotic other than heroin, in violation of Minn. Stat. § 152.023, subd. 2(a)(1) (2020); fourth-degree possession of a hallucinogen, in violation of Minn. Stat. § 152.024, subd. 2(1) (2020); and two counts of fifth-degree possession of marijuana, in violation of Minn. Stat. § 152.025, subd. 2(1) (2020). Testing later revealed that some of the substances recovered from Lindekugel's truck contained MDMA and LSD. On June 8, 2022, the state amended its complaint and charged Lindekugel with two additional counts of fifth-degree possession of a controlled substance based on his possession of MDMA and LSD.

Lindekugel moved to suppress the evidence recovered during the search of his truck, arguing that (1) the officer seized Lindekugel the moment he parked his squad car behind Lindekugel's truck and approached the passenger-side window; (2) any seizure of Lindekugel was unlawful because the officer did not have reasonable, articulable suspicion of criminal activity; and (3) the officer did not have probable cause to search Lindekugel's truck based on the smell of marijuana alone.

The district court held an evidentiary hearing and heard testimony from the officer and a supervisor of the drug-chemistry section at the Minnesota Bureau of Criminal Apprehension (BCA). The officer testified that he had received training in identifying controlled substances, had worked on approximately one hundred cases involving controlled substances, and could identify marijuana by smell. He further testified that he receives training on updates in the law and knows that some legal substances, such as hemp

and CBD, resemble marijuana but are not marijuana. But he stated that he did not know that some substances smell just like marijuana but are nevertheless legal. The BCA supervisor testified that the only difference between legal hemp and illegal cannabis is the concentration of THC. Accordingly, the BCA supervisor testified that a person cannot differentiate between legal hemp and illegal cannabis by sight or smell but only through sophisticated testing.

The district court denied Lindekugel's motion to suppress. In its order, the district court determined that (1) the officer did not seize Lindekugel when he parked his squad car and approached Lindekugel's vehicle; (2) the officer had reasonable, articulable suspicion that Lindekugel was impaired; (3) the officer had probable cause to search the vehicle based on the smell of marijuana emanating from Lindekugel's truck; (4) alternatively, the officer had probable cause to search the vehicle based on Lindekugel's behavior, the odor of alcohol emanating from the vehicle, and his admission to drinking; and (5) alternatively, the officer had probable cause to search the vehicle based on his observation of drug paraphernalia.

Lindekugel stipulated to the state's evidence under Minn. R. Crim. P. 26.01, subd. 4, to preserve his right to appeal the district court's denial of his motion to suppress. The district court found Lindekugel guilty and convicted him of two counts of fifth-degree possession of a controlled substance, in violation of Minn. Stat. § 152.025, subd. 2(1). The district court sentenced Lindekugel to 13 months in prison and stayed his prison sentence.

This appeal follows.

DECISION

The United States and Minnesota Constitutions prohibit “unreasonable searches and seizures” by the government. U.S. Const. amend. IV; Minn. Const. art. 1, § 10. A warrantless search or seizure is presumptively unreasonable unless it falls within a well-recognized exception to the warrant requirement. *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003); *State v. Milton*, 821 N.W.2d 789, 798-99 (Minn. 2012). The state bears the burden of proving that an exception to the warrant requirement applies. *Licari*, 659 N.W.2d at 250. Evidence obtained during an unlawful search or seizure must be suppressed. *See State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

When the facts are undisputed, as they are here, we review de novo a district court’s decision on a pretrial motion to suppress and determine whether the police provided an adequate basis for the search or seizure in question. *See State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016); *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011). To determine whether a search or seizure was unreasonable, we examine the specific police conduct at issue. *See State v. Davis*, 732 N.W.2d 173, 178 (Minn. 2007) (explaining that “what constitutes an unreasonable search must be assessed based on the facts of each particular case”). The conduct at issue here is the seizure of Lindekugel and the search of his vehicle. We consider these issues in turn.

I. The seizure of Lindekugel was lawful.

Lindekugel argues that the district court erred by denying his motion to suppress because the officer’s seizure of Lindekugel was unlawful.

Under *Terry v. Ohio*, 392 U.S. 1 (1968), 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 (quotation omitted). “The reasonable-suspicion standard is ‘not high.’” *Id.* at 843 (quoting *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008)). But it requires “more than an inchoate and unparticularized suspicion or hunch of criminal activity.” *Timberlake*, 744 N.W.2d at 393 (quotation omitted). 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.” *Id.* (quotation omitted). When determining whether reasonable suspicion exists, we consider the totality of the circumstances, including seemingly innocent factors. *Davis*, 732 N.W.2d at 182.

“Not all encounters between the police and citizens constitute seizures.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). A seizure occurs when an officer restrains a citizen’s liberty “by means of physical force or show of authority.” *Id.* (quotation omitted). “[A] person has been seized if in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter.” *Id.* (quotation omitted). Minnesota courts consider the following circumstances to determine whether a seizure has occurred: “the threatening presence of several officers, the display of a weapon by an officer, some

physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request must be compelled." *In re Welfare of E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993). In the absence of these circumstances, otherwise inoffensive contact between a police officer and a citizen does not amount to a seizure. *Id.*

Lindekugel contends that he was seized when the officer parked his squad car at an angle behind his truck and approached the passenger-side window because a reasonable person in his position would not have felt free to leave.² We are not persuaded.

"[T]he use of a squad car to block a parked vehicle generally constitutes a seizure." *State v. Lopez*, 698 N.W.2d 18, 22 (Minn. App. 2005). But "a seizure occurs only when the officer actually positions his squad car so as to prevent the other vehicle from leaving." *Illi v. Comm'r of Pub. Safety*, 873 N.W.2d 149, 152 (Minn. App. 2015). Moreover, a police officer generally does not seize someone in a parked car simply by approaching the car and asking the person questions. *Lopez*, 698 N.W.2d at 22. This is true even when a person complies with an officer's requests out of a "moral or instinctive pressure to cooperate." *Harris*, 590 N.W.2d at 99 (quotation omitted). An officer's encounter with a person in a parked car can become a seizure, but only when the officer exceeds the bounds of a typical

² In the alternative, Lindekugel argues that he was seized either when the officer first started questioning him or when the officer requested back-up. Lindekugel did not raise these arguments before the district court, and the district court did not consider them. We generally only consider arguments that were presented to and considered by the district court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (explaining that appellate courts "generally will not decide issues which were not raised before the district court"). Accordingly, we decline to consider these alternative arguments.

citizen-to-citizen interaction, such as when the officer ceases to be “conversational” and instead becomes “overbearing and harassing.” *State v. Sanger*, 420 N.W.2d 241, 243 (Minn. App. 1988) (quotation omitted).

Here, a reasonable person in Lindekugel’s position would not have felt as if they could not leave based on the way the officer parked his squad car and approached Lindekugel’s truck. The record shows that the officer parked his squad car at an angle 15 to 20 feet away from Lindekugel’s truck without activating his emergency lights. The position of the parked squad car would not have prevented Lindekugel from leaving. The record also shows that the officer approached the truck in a nonthreatening manner and was polite and friendly throughout his encounter with Lindekugel. At no point did the officer exhibit the “overbearing” or “harassing” behavior that is characteristic of a seizure. *Id.* (quotation omitted). For these reasons, the district court did not err by concluding that Lindekugel was not seized when the officer parked his squad car some distance behind Lindekugel’s truck and approached the passenger-side window. *See Illi*, 873 N.W.2d at 152; *Lopez*, 698 N.W.2d at 22; *Sanger*, 420 N.W.2d at 243.

Lindekugel also contends that the seizure was unlawful regardless of when it occurred “because it was not supported by a reasonable, articulable suspicion that Lindekugel committed a crime.” When the facts are undisputed, we review de novo a district court’s determination that a seizure was supported by reasonable, articulable suspicion. *Diede*, 795 N.W.2d at 843. Lindekugel asserts that the record does not support “more than a hunch or curiosity about what [activity was] afoot.” We disagree.

The record shows that the officer “had a particularized and objective basis for suspecting . . . criminal activity.” *Id.* The officer saw an occupied truck with its interior lights on “straddling [two] parking lanes” after bar close in a high-crime area. Based on these particularized facts and in light of his experience, the officer had an objective basis for suspecting that Lindekugel was impaired, and that criminal activity may have been afoot. *See Timberlake*, 744 N.W.2d at 393. Considering the totality of the circumstances, including seemingly innocent factors, we conclude that the officer had reasonable, articulable suspicion of criminal activity to support his seizure of Lindekugel. *See Davis*, 732 N.W.2d at 182. Accordingly, the district court did not err by determining that the seizure was lawful. *See Diede*, 795 N.W.2d at 842.

II. The search of Lindekugel’s vehicle was lawful.

Lindekugel argues that the district court erred by denying his motion to suppress because the officer lacked probable cause to search Lindekugel’s vehicle. We review *de novo* a district court’s determination that a warrantless search was supported by probable cause. *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016)

The state defended the search of Lindekugel’s vehicle under the “automobile exception” to the warrant requirement. Under this exception, a police officer may search a vehicle without a warrant “if there is probable cause to believe the search will result in a discovery of evidence or contraband.” *Id.* (quotation omitted). “Probable cause exists when there are facts and circumstances sufficient to warrant a reasonably prudent [person] to believe that the vehicle contains contraband.” *Id.* (quotation omitted).

We consider the totality of the circumstances when determining whether police had probable cause to conduct a search. *Id.* “[T]he totality of the circumstances 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.” *Id.* Accordingly, we “give due weight to reasonable inferences drawn by police officers and to a district court’s finding that the officer was credible and the inference was reasonable.” *Id.* (quotation omitted).

Lindekugel contends that the district court erred by determining that the officer had probable cause to search Lindekugel’s vehicle based solely on the smell of unburnt marijuana. Lindekugel acknowledges that, under well-settled precedent, police have probable cause to search a vehicle for contraband based on the smell of marijuana alone. *See, e.g., United States v. Johns*, 469 U.S. 478, 482 (1985) (holding that when “officers . . . detected the distinct odor of marijuana, they had probable cause to believe that the vehicles contained contraband”); *State v. Schultz*, 271 N.W.2d 836, 837 (Minn. 1978) (holding that if an officer “smelled the odor of marijuana emanating from the passenger compartment [of a vehicle] . . . then the officer properly conducted a warrantless search of the passenger compartment for marijuana pursuant to the so-called motor vehicle exception to the warrant requirement”); *State v. Thiel*, 846 N.W.2d 605, 611 (Minn. App. 2014) (holding that the odor of marijuana emanating from the appellant’s vehicle provided the officer with probable cause to search the vehicle for marijuana), *rev. denied* (Minn. Aug. 5, 2014). But Lindekugel nevertheless urges this court to overturn its “unsound” precedent because the

Minnesota legislature has legalized industrial hemp and the smell of hemp is indistinguishable from that of marijuana.

This argument is unavailing. As the state correctly asserts, we are bound by precedent. *State v. M.L.A.*, 785 N.W.2d 763, 767 (Minn. App. 2010) (explaining that “this court is bound by supreme court precedent and the [precedential] opinions of the court of appeals”), *rev. denied* (Minn. Sept. 21, 2010). Until that precedent is changed, the smell of marijuana emanating from a vehicle gives police probable cause to search that vehicle for contraband. *See Schultz*, 271 N.W.2d at 837; *Thiel*, 846 N.W.2d at 611. Accordingly, the district court did not err by concluding that the officer had probable cause to search Lindekugel’s vehicle based on the smell of marijuana.

We also note that the officer had probable cause to search Lindekugel’s vehicle under the totality of the circumstances.³ The officer saw an occupied truck, with its interior lights on, “straddling [two] parking lanes” after bar close in a high-crime area. When the officer approached the truck, he saw Lindekugel hide a short “glass or plastic clear thing” which appeared to be a smoking device. The officer also observed that Lindekugel was exhibiting signs of impairment—namely, slow and slurred speech. Finally, the officer saw what appeared to be plastic baggies on the floor beneath the passenger’s seat and observed

³ Lindekugel argues that the district court erred by determining that the officer had probable cause to search Lindekugel’s vehicle based in part on the “odor of alcohol emanating from [the] vehicle” because the suppression record does not contain evidence to support this conclusion. Because we conclude that the officer had probable cause to search Lindekugel’s vehicle based on the smell of marijuana and under the totality of the circumstances, we decline to address this argument. *See* Minn. R. Civ. P. 61 (requiring harmless error to be ignored); *Kallio v. Ford Motor Co.*, 407 N.W.2d 92, 98 (Minn. 1987) (“Although error may exist, unless the error is prejudicial, no grounds exist for reversal”).

that one of the baggies appeared to contain marijuana. Based on these facts and circumstances, the district court did not err by concluding that the officer had probable cause to search Lindekugel's vehicle. *See Lester*, 874 N.W.2d at 771.

Affirmed.