

*This opinion is nonprecedential except as provided by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
A23-1501**

State of Minnesota,
Respondent,

vs.

Lue Vang,
Appellant.

**Filed September 16, 2024
Affirmed
Smith, John, Judge***

Ramsey County District Court
File No. 62-CR-21-2121

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

John J. Choi, Ramsey County Attorney, Anna R. Light, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Kate M. Baxter-Kauf, Emma Ritter Gordon, Derek C. Waller, Lockridge Grindal Nauen P.L.L.P., Special Assistant Public Defenders, Minneapolis, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Cochran, Judge; and Smith, John, Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's denial of appellant's pretrial motion to suppress evidence obtained during a traffic stop because the officers had a reasonable, articulable suspicion for the stop and because they had probable cause to search appellant's vehicle.

FACTS

Respondent State of Minnesota charged appellant Lue Vang with first-, third-, fourth-, and fifth-degree drug possession and with unlawful possession of ammunition based on evidence obtained during a traffic stop and vehicle search. Vang moved the district court to suppress the evidence, arguing that the traffic stop was not based on a reasonable, articulable suspicion of criminal activity and that officers unlawfully searched his vehicle. In a hearing on the motion, the two Saint Paul Police Officers who initiated the stop testified and the district court received the squad car dash-camera video and both officers' body-worn camera videos into evidence.

The district court found that on July 26, 2020, the two officers were on patrol near Mackubin Street and Van Buren Avenue around 6:45 p.m. when they observed a vehicle that failed to signal 100 feet prior to turning, had a dark window tint, and did not have a functioning third brake light. The officers initiated a traffic stop of the car.

Once the vehicle pulled over, both officers approached the car, one on the driver's side and one on the passenger's side. While speaking with Vang, one of the officers observed that Vang was nervous and had a scale, which the officer recognized as drug

paraphernalia. Both officers also smelled marijuana coming from the vehicle. One of the officer's searched Vang subject to arrest and put him in the squad car.

The officers searched the car. They found pieces of paper that contained suspected controlled substances and a bag with several jars of suspected marijuana, four live rounds of ammunition, and a safe. Before leaving the scene, the officers tested the vehicle's window tint. The tint measured at 37%.

An officer read Vang his *Miranda* rights. Vang agreed to speak to the officer and took responsibility for everything in the vehicle. He admitted that he had a large amount of methamphetamine in the safe the police found in the car. The officer obtained a warrant to search the safe. The safe contained a large amount of field-tested positive methamphetamine, field-tested positive cocaine, field-tested positive methylenedioxymethamphetamine (MDMA), and approximately \$4,000 in cash.

The district court denied Vang's motion to suppress, finding that the dark window tint and failure to signal created reasonable, articulable suspicion for the traffic stop and that the officers had probable cause to search the vehicle based on the odor of marijuana, presence of a digital scale, and Vang's nervousness. Vang and the state agreed to proceed with a stipulated-evidence trial under Minn. R. Crim. P. 26.01, subd. 4. The district court found Vang guilty on all counts.

DECISION

"When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Gauster*, 752 N.W.2d 496, 502

(Minn. 2008) (quotation omitted). “[T]he reviewing court may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed.” *State v. Othoudt*, 482 N.W.2d at 218, 221 (Minn. 1992). In reviewing the district court’s factual findings, this court defers to the district court’s credibility determinations. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *rev. denied* (Minn. July 15, 2003).

I.

Vang argues that the district court erred because the dark window tint and alleged failure to signal did not provide reasonable, articulable suspicion to justify the traffic stop. The United States and Minnesota Constitutions prohibit unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. “Generally, warrantless searches are per se unreasonable.” *Gauster*, 752 N.W.2d at 502. A police officer may initiate a limited stop for investigatory purposes without a warrant if the officer has a reasonable, articulable suspicion of criminal activity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). “In determining whether a stop is justified, we consider the totality of the circumstances and acknowledge that trained law enforcement officers are permitted to make inferences and deductions that would be beyond the competence of an untrained person.” *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001).

A traffic stop ““must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.”” *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)). A

suspicion cannot be based on a “mere hunch” or be “the product of mere whim, caprice or idle curiosity.” *Id.*; *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996). “[I]f an officer observes a violation of a traffic law, no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop.” *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004). “[T]he factual basis required to support a stop for a ‘routine traffic check’ is minimal.” *State v. Engholm*, 290 N.W.2d 780, 783 (Minn. 1980) (quotation omitted).

The district court found that the officers stopped Vang for three reasons: (1) “the vehicle’s dark window tint,” (2) the “lack of [a] functioning third brake light,” and (3) “failure to signal 100 feet prior to turning.” The district court found that the officers were mistaken that the nonfunctioning brake light was unlawful, and that finding is not challenged on appeal. Vang argues that the other two reasons—the dark window tint and alleged failure to signal—did not provide reasonable, articulable suspicion of wrongdoing.

Vang argues that contrary to the testimony of the officers, he properly used his turn signal, and the officers were unable to see his vehicle 100 feet before the turn. Vang argues that because the dash-camera “video evidence directly contradicts [the officers’] mistaken subjective assessment,” the officers’ testimony is not credible.

An officer’s reasonable mistake of fact does not invalidate an otherwise valid traffic stop. *See State v. Licari*, 659 N.W.2d 243, 254 (Minn. 2003) (stating that “searches based on honest, reasonable mistakes of fact are unobjectionable under the Fourth Amendment”); *State v. Sanders*, 339 N.W.2d 557, 560 (Minn. 1983); *State v. Duesterhoeft*, 311 N.W.2d 866, 868 (Minn. 1981); *City of St. Paul v. Vaughn*, 237 N.W.2d 365, 369-70 (Minn. 1975).

Officers must show that a traffic stop “was not the product of mere whim, caprice or idle curiosity, but was based upon specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Pike*, 551 N.W.2d at 921-22 (quotation omitted). “An actual violation of the vehicle and traffic laws need not be detectable.” *Id.* at 921.

Whether the officers made a mistake, and whether that mistake was reasonable, are questions of fact. Therefore, we review the district court’s factual findings on this issue for clear error and defer to the district court’s credibility determinations. *See Gauster*, 752 N.W.2d at 502; *Miller*, 659 N.W.2d at 279. The district court found that because Vang’s vehicle and the officers’ vehicle were moving in opposite directions with the “setting sun shining brightly in [the officers’] field of vision,” the officers’ mistaken belief that Vang did not “signal 100 feet prior to turning was reasonable given the circumstances.”

Based on the record, including the hearing transcripts and dash camera footage, the district court’s findings were not in clear error. The district court’s findings that the vehicles were moving in opposite directions and that the sun was in the officers’ field of vision are supported by the dash camera footage and transcript. Therefore, the district court did not clearly err in finding the officers made a reasonable mistake of fact.

Vang also argues that the district court erred in its finding that the dark window tint provided a reasonable, articulable suspicion for a traffic stop. He makes three sub-arguments. First, Vang argues that his vehicle’s dark window tint did not support a reasonable, articulable suspicion at the time; rather, the officers’ testimony that they stopped Vang because of the vehicle’s dark window tint was a post-hoc justification.

Second, Vang argues that the state did not have an objective basis to suspect whether Vang had violated the window-tint law because the state has the burden to disprove any applicable exceptions under the window-tint law. Third, Vang argues that because the violation is a petty misdemeanor, it does not give rise to a reasonable, articulable suspicion of criminal activity.

The officers testified about their suspicions that the vehicle violated the window-tint law. The district court held that “[t]his alone was enough to conduct the traffic stop.” Notably, when the officers tested the windows, they found that they measured at 37% light transmittance instead of the 50% light transmittance required by law. *See* Minn. Stat. § 169.71, subd. 4(3) (Supp. 2019) (“A person must not drive or operate any motor vehicle required to be registered in the state of Minnesota upon any street or highway” when “any side window or rear window . . . has a light transmittance of less than 50 percent plus or minus three percent in the visible light range . . .”).

Vang’s argument that this was a post-hoc justification is based on the officers’ credibility. Vang claims that because the officers only tested the window about half an hour into the stop, this suggests it was a post-hoc justification.¹ Although the video evidence does not clearly show whether the officers identified the dark window tint as a

¹ Vang cites nonprecedential opinion *State v. Johnson* to support his argument. No. A17-0319, 2017 WL 5242584, at *3 (Minn. App. Nov. 13, 2017). In *Johnson*, the court determined that there was not a post-hoc justification because there was no reason to conclude that the officer’s email to a prosecutor, given 24 hours after the stop in question and providing justification for the stop, was fabricated. *Id.* Similarly, nothing in this case suggests that the officers’ reasons for stopping Vang were fabricated; this again goes to the district court’s credibility determination, which this court defers to. *See id.*; *Miller*, 659 N.W.2d at 279.

reason for the stop when Vang asked for the reason, the officers testified to that basis, and the district court credited their testimony. The officers were not required to provide a reason; an officer's observation of "a violation of a traffic law, no matter how insignificant the traffic law . . . forms the requisite particularized and objective basis for conducting a traffic stop," and as the district court found, the 37% measurement showed that "the officers' observations were correct." *Anderson*, 683 N.W.2d at 823. Regardless of any alleged failure to advise Vang on the dark window tint as a reason for the stop, the officers both testified that they were suspicious of the dark window tint and demonstrated a particularized objective basis for the stop, and we defer to the district court's findings. *See Miller*, 659 N.W.2d at 279 (stating that we defer to the district court's credibility determinations).

Vang also argues that the officers lacked reasonable suspicion for the stop because they "did not have an objective basis" to determine that Vang violated the window-tint statute and that no exception to the statute applied. Vang argues that the window-tint law has several exceptions, and "exceptions are generally elements of a crime the [s]tate must prove." Vang does not argue that a specific exception applies to this case, and he does not cite authority indicating that the officers could not have had a reasonable suspicion for the stop without excluding each of them.

In nonprecedential opinion *State v. Baker*, "[t]he basis for the traffic stop was the officer's suspicion that Baker's vehicle violated the window-tint statute." No. A23-1038, 2024 WL 1039253, at *2 (Minn. App. Mar. 11, 2024), *rev. denied* (Minn. May 29, 2024). Baker argued that the vehicle was exempt from the statute under the limousine exception;

this court held that “even if we assume the officer made a mistake of law when he stopped Baker’s vehicle, we conclude that any mistake was reasonable.” *Id.* at *1-2. Similarly, in nonprecedential opinion *Connell v. Commissioner of Public Safety*, because no exception applied to an analogous law in the stop of a snowmobile, “the officer’s stop was not based on a mistake of law, and the officer’s observation of a violation of section 84.87 provided reasonable, articulable suspicion for the traffic stop.” No. A23-1034, 2024 WL 413518, at *3 (Minn. App. Feb. 5, 2024). Here, as the district court held, a mistake “would be reasonable given that there would be no way for the officers to determine whether one of the exceptions applied without stopping and pulling over [Vang]’s car.” Based on analogous persuasive nonprecedential authority, Vang’s argument is not persuasive.

Lastly, Vang argues that because a window-tint violation is a petty misdemeanor, it cannot support a reasonable, articulable suspicion of criminal activity. However, “a violation of a traffic law, no matter how insignificant the traffic law” is enough for a reasonable, articulable suspicion. *Anderson*, 683 N.W.2d at 823. Although petty misdemeanors are “not technically ‘crimes,’” this court has held that “it is accepted that ‘reasonable and articulable suspicion’ of traffic violations, whether petty misdemeanors or misdemeanors, can justify a stop.” *State v. Beardemphl*, 674 N.W.2d 430, 432 (Minn. App. 2004). Therefore, as the district court ruled, the officers’ reasonable, articulable suspicion of the window tint violation “alone was enough to conduct the traffic stop.”

II.

Vang also argues that the district court erred because the officers did not have probable cause to search the vehicle. Warrantless searches are per se unreasonable, subject

to limited exceptions. *Othoudt*, 482 N.W.2d at 222. “The state bears the burden of establishing an exception to the warrant requirement.” *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001).

An officer may conduct a warrantless vehicle search “under the automobile exception to the Fourth Amendment if the officer has probable cause to believe the search will produce evidence of a crime.” *State v. Lopez*, 631 N.W.2d 810, 814 (Minn. App. 2001) (quotation omitted), *rev. denied* (Minn. Sept. 25, 2001). “Probable cause is an objective inquiry that depends on the totality of the circumstances in each case.” *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). The totality of the circumstances includes police officers’ reasonable inferences drawn from facts based on their training and experience. *Id.* “Therefore, an appellate court must 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.* (quotations omitted). “When reviewing a pretrial order on a motion to suppress, we review the district court’s determination of probable cause *de novo*.” *State v. Holland*, 865 N.W.2d 666, 673 (Minn. 2015).

The district court reasoned that there was probable cause to search based on three things: a digital scale seen in the car, the smell of marijuana, and Vang’s nervousness. Vang argues that these circumstances did not support the district court’s finding of probable cause and addresses each of these three circumstances individually. He then argues that the smell of marijuana, scale, and nervousness together cannot establish probable cause as they “all are consistent with either a small amount of marijuana or marijuana being used

for medical purposes” and “[m]ere nervousness and a common item do not increase the probability of contraband enough to support probable cause.”

Vang’s arguments are unpersuasive for three reasons. First, as Vang acknowledges, a determination of probable cause is made by examining “the totality of circumstances objectively”; however, much of his argument is focused on each factor independently. *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009). Specifically, Vang argues, and the state agrees, that the district court erred in stating that “the odor of marijuana nonetheless provides probable cause to search” considering the Minnesota Supreme Court’s holding that “the probable cause analysis calls for the odor of marijuana to be *one of the circumstances considered* as part of the totality of the circumstances” and does not create probable cause on its own. *State v. Torgerson*, 995 N.W.2d 164, 173 (Minn. 2023) (emphasis added).

However, as the state argues, the probable cause determination in this case was consistent with *Torgerson*. In *Torgerson*, “[n]either officer articulated any other circumstance contributing to their probable cause analysis.” *Id.* at 175. They “did not witness Torgerson drive unsafely or erratically, did not recall Torgerson displaying any indicia of impairment, *nervous or evasive behavior*, or furtive movements, and *did not see any drug paraphernalia in plain view in the vehicle.*” *Id.* at 168 (emphasis added). The officers in Vang’s case, though, did notice Vang’s “nervous or evasive behavior” and saw “drug paraphernalia in plain view in the vehicle” when observing the scale. *See id.*

Considering the totality of the circumstances, which included the odor of marijuana, the officers had probable cause to search the vehicle.²

Second, when Vang addresses the totality of the circumstances, he argues that they were “consistent with either a small amount of marijuana or marijuana being used for medical purposes,” and therefore there was not probable cause. However, officers may make “reasonable inferences” from the facts “based on their training and experience[] because police officers may interpret circumstances differently than untrained persons.” *Lester*, 874 N.W.2d at 771. Even if the circumstances may be consistent with a small amount of marijuana or marijuana use for medical purposes, an officer’s reasonable inference may nevertheless contribute to a probable cause determination. See *State v. Lembke*, 509 N.W.2d 182, 184 (Minn. App. 1993) (stating that “[a] bag has many legitimate uses, but[a]n officer may . . . rely on trained intuition and observations drawn from his experience”); *State v. Munoz*, 385 N.W.2d 373, 376-77 (Minn. App. 1986) (stating that an officer had probable cause based on his observation of “glassine envelopes in plain view on the passenger side front floor mat” and experience “with such containers as being commonly used to market controlled substances”).

Vang again relies on *Torgerson* to support his argument; in *Torgerson*, the court held that the smell of marijuana alone is not enough to constitute probable cause and noted that there was “*no drug paraphernalia* or other evidence to indicate that the marijuana was

² Vang also argues that the scale alone and nervousness alone are not grounds for probable cause; however, as discussed, probable cause is determined based on the totality of the circumstances—the circumstances do not need to establish probable cause individually.

being used in a manner, or was of such a quantity, so as to be criminally illegal, and no evidence showing that any use was not for legal medicinal purposes.” 995 N.W.2d at 175. Unlike in *Torgerson*, in this case an officer did see drug paraphernalia and made a probable cause determination based on a reasonable inference regarding the totality of multiple circumstances.

Third, Vang argues that the search occurred when the officer reached into the vehicle to get his wallet. However, this argument is immaterial. Vang states that “[m]oving the wallet revealed a glass pipe,” but the district court did not rely on the glass pipe in determining probable cause—the officers obtained probable cause to expand their search based on Vang’s nervousness, the digital scale in Vang’s lap, and the smell of marijuana.

Affirmed.