

*This opinion is nonprecedential except as provided by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
A24-0062**

State of Minnesota,
Respondent,

vs.

Emilio Andres Trevino,
Appellant.

**Filed December 16, 2024
Reversed
Johnson, Judge**

Mille Lacs County District Court
File No. 48-CR-21-1450

Keith Ellison, Attorney General, Lydia Villalva Lijó, Assistant Attorney General, St. Paul, Minnesota; and

Corey J. Haller, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bentley, Presiding Judge; Segal, Chief Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Emilio Andres Trevino was convicted after a stipulated-evidence court trial of unlawful possession of a firearm by an ineligible person. His conviction is based on evidence that police officers found a handgun during a warrantless search of his vehicle.

Trevino moved to suppress the evidence of the handgun, but the district court denied the motion. We conclude that the officers did not have probable cause for a warrantless search of Trevino's vehicle because the facts and circumstances known to the officers were not sufficient to justify a reasonable belief that Trevino's vehicle contained contraband. Therefore, we reverse the district court's denial of Trevino's motion to suppress, and we reverse Trevino's conviction.

FACTS

On July 20, 2021, Mille Lacs Band police officers Cook and Gadbois drove past a house that was known by law-enforcement officers to be a place where drug trafficking often occurred. The officers saw an unfamiliar vehicle parked in an unusual position on or near the driveway with an occupant in the driver's seat, which led them to believe that a passenger was making a short visit to the house. The officers saw the vehicle drive away minutes later. They noticed that the vehicle had a piece of paper taped onto it in lieu of license plates. In addition, a large object was hanging from the rearview mirror, and the driver failed to signal a turn.

The officers initiated a traffic stop. Officer Cook approached the driver's side of the vehicle and asked the driver, Trevino, for a driver's license, proof of insurance, and vehicle registration. Trevino provided a Wisconsin driver's license and an Arizona vehicle-registration document. He explained that his license plates had been stolen in Arizona.

Two passengers were in Trevino's vehicle when it was stopped. The back-seat passenger, H.B., informed Officer Gadbois that she was Trevino's girlfriend and had just

flown from Arizona to the Minneapolis-St. Paul airport to visit him. Officer Cook asked Trevino why he was in Mille Lacs County, 120 miles from the airport. Trevino stated that he and H.B. were visiting A.W., a friend of H.B.'s brother who lived nearby in the city of Garrison. The officers were familiar with A.W., whose house also was known by law-enforcement officers as a place where drug trafficking often occurred. The front-seat passenger, J.J., also was known to the officers as someone associated with drugs and with the house where Trevino's vehicle was first seen. Trevino and H.B. stated that they first met J.J. earlier that day at A.W.'s house and were asked to give her a ride to the house where Trevino's vehicle was first seen. Trevino also stated that he was driving back to A.W.'s house when officers stopped his vehicle.

The officers asked Trevino to exit the vehicle while they searched a database for his driver's license. He complied. Approximately 14 minutes after the initiation of the traffic stop, the officers asked Trevino for consent to search his vehicle. He declined. The officers asked for consent a second time approximately two minutes later, and Trevino again declined.

Officer Gadbois then saw the outline of a methamphetamine pipe in a pocket of Trevino's cargo shorts. Officer Gadbois asked Trevino what was in his pocket. Trevino emptied two other pockets but did not remove the pipe. Officer Gadbois patted Trevino's pocket and confirmed that it contained a methamphetamine pipe. Trevino removed the pipe from his pocket and handed it to Officer Gadbois, who inspected it and saw that it was clean. Officer Cook continued questioning Trevino by asking whether there was any marijuana or other drugs in the vehicle. Trevino responded in the negative. Officer Cook

asked Trevino whether there were any weapons in the car. Trevino again answered in the negative.

Approximately 21 minutes after the traffic stop began, Trevino began breathing heavily and sweating profusely. Trevino asked the officers for a cup of soda that was in his vehicle. Officer Gadbois retrieved the cup and gave it to Trevino. The officers questioned Trevino about what was causing him to sweat so much.

Approximately 24 minutes after the traffic stop began, Trevino became unsteady on his feet. According to Officer Cook, Trevino “looked like he was going [to] vomit, and then almost tipped over.” Officer Cook assisted Trevino by lowering him to a seated position on the ground. Officer Cook told Officer Gadbois to search Trevino’s vehicle. Trevino asked Officer Cook why they were going to search his vehicle. Officer Cook responded by saying, “Because we have probable cause; that’s why.” As Officer Gadbois walked toward the driver’s door to start searching, Trevino said to Officer Cook, “There’s a weapon in the car.” Officer Gadbois searched the vehicle and found a handgun, several marijuana cartridges, and drug paraphernalia with a small amount of methamphetamine residue that was not weighed.

The state charged Trevino with unlawful possession of a firearm by an ineligible person, in violation of Minn. Stat. § 609.165, subd. 1b (2020). In November 2021, Trevino moved to suppress the evidence of the handgun and to dismiss the complaint. In February 2022, the district court conducted an omnibus hearing at which three persons testified: Trevino, Officer Cook, and Officer Gadbois. Trevino filed a memorandum in which he argued that the officers expanded the scope of the stop without reasonable suspicion and

conducted a warrantless search of his vehicle without probable cause. In November 2022, the district court denied Trevino's motion. The district court reasoned that the officers lawfully expanded the scope of the traffic stop and lawfully conducted a warrantless search of Trevino's vehicle pursuant to the automobile exception to the warrant requirement.

In July 2023, Trevino waived his right to a trial by jury. *See* Minn. R. Crim. P. 26.01, subd. 1(2)(a). The parties agreed to try the case on the basis of documentary exhibits and Trevino's stipulation to prior convictions. The parties also agreed that the ruling on Trevino's pre-trial motion would be dispositive of the case and that a trial would be unnecessary. *See* Minn. R. Crim. P. 26.01, subd. 4. After trial, the district court filed an order in which it found Trevino guilty. The district court imposed a sentence of 60 months of imprisonment but stayed execution of the sentence, placed Trevino on probation, and ordered him to serve six months in the county jail. Trevino appeals.

DECISION

Trevino argues that the district court erred by denying his pre-trial motion to suppress evidence and to dismiss. Trevino's argument has two parts. First, he argues that the officers did not have a reasonable, articulable suspicion of criminal activity when they questioned him during the traffic stop and that the officers unreasonably expanded the duration of the traffic stop. Second, he argues that the officers did not have probable cause to believe that contraband was in his vehicle when they conducted a warrantless search of the vehicle. We confine our analysis to the second part of Trevino's argument, which is dispositive of the appeal.

The Fourth Amendment to the United States Constitution provides,

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. amend. IV. The Minnesota Constitution contains substantially the same language. Minn. Const. art. I, § 10.

A warrantless search generally is presumed to be unreasonable and a violation of the Fourth Amendment. *Kentucky v. King*, 563 U.S. 452, 459 (2011); *State v. Edstrom*, 916 N.W.2d 512, 517 (Minn. 2018). A warrantless search may be deemed reasonable, however, if a recognized exception to the Fourth Amendment’s warrant requirement applies. *Missouri v. McNeely*, 569 U.S. 141, 148 (2013); *State v. Rohde*, 852 N.W.2d 260, 263-64 (Minn. 2014).

One such exception to the warrant requirement is the automobile exception. Under that exception, “police may search a car without a warrant, including closed containers in that car, if there is probable cause to believe the search will result in a discovery of evidence or contraband.” *State v. Barrow*, 989 N.W.2d 682, 685 (Minn. 2023) (quotation omitted). A warrantless search may be justified under the automobile exception because it often is “not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.” *Carroll v. United States*, 267 U.S. 132, 153 (1925).

The determination of whether a warrantless search of a vehicle is supported by 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); *see also State v. Torgerson*, 995 N.W.2d 164, 173 (Minn. 2023). Probable cause exists if “there are facts and circumstances sufficient to warrant a reasonably prudent person to believe that the vehicle contains contraband.” *Lester*, 874 N.W.2d at 771 (quotation and alteration omitted). This determination is “a common-sense, nontechnical concept that involves the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act.” *Id.* (quotation and alteration omitted). “The probable cause necessary to support a warrantless search of a motor vehicle ‘must be based on objective facts that could justify the issuance of a warrant by a magistrate and not merely on the subjective good faith of the police officers.’” *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999) (quoting *United States v. Ross*, 456 U.S. 798, 808 (1982)). This court applies a *de novo* standard of review to a district court’s determination that a warrantless search was supported by probable cause. *Lester*, 874 N.W.2d at 771.

In this case, the district court reasoned that the search of Trevino’s vehicle was justified because the following circumstances provided the officers with probable cause to believe that the vehicle contained contraband:

(1) the vehicle’s presence in the driveway of a known drug house that is home to an individual with active felony warrants for drug trafficking offenses, (2) the front passenger was known to the officers to have an extensive history with controlled substance use and has been associated with numerous drug overdoses in recent months, (3) the individual that Defendant and the other occupants stated they were going

to meet also resided at a residence known to the officers to be a drug house, (4) Defendant and the other occupants were breathing heavily and appeared anxious, (5) Defendant once informed of the impending search of his vehicle began profusely sweating, (6) Defendant nearly collapsed prior to his detention, and (7) Defendant was in possession of a pipe primarily used to smoke methamphetamine.

Trevino contends that these circumstances do not establish probable cause to believe that contraband would be found in his vehicle. He asserts that the circumstances of this case are different from other cases in which probable cause was present because of a confidential informant's tip, furtive movements indicating a consciousness of guilt, contraband in plain view, or the odor of controlled substances. *See, e.g., State v. Mosley*, 994 N.W.2d 883, 893 (Minn. 2023) (corroborated informant's tip); *State v. Willis*, 320 N.W.2d 726, 728 (Minn. 1982) (handgun in plain view); *State v. Gallagher*, 275 N.W.2d 803, 805-08 (Minn. 1979) (furtive gestures of occupants); *State v. Wicklund*, 205 N.W.2d 509, 510-11 (Minn. 1973) (odor of burnt marijuana).

In response, the state cites only one precedential opinion in support of its argument that the warrantless search was supported by probable cause: *State v. Smith*, 814 N.W.2d 346 (Minn. 2012). But *Smith* is a case concerning reasonable suspicion, not probable cause. *Id.* at 348. The reasonable-suspicion standard is a "less demanding" standard than the probable-cause standard. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011) (quotation omitted). Accordingly, *Smith* does not support the state's argument that the officers had probable cause to believe that contraband was inside Trevino's vehicle.

The state also cites one nonprecedential opinion: *State v. Allinder*, No. A08-0068, 2009 WL 304879 (Minn. App. Feb. 10, 2009). In that case, this court concluded that

officers had probable cause for a warrantless search of a vehicle because an officer noticed “an extremely strong pungent odor of burnt marijuana coming from the vehicle’s interior,” the driver admitted to smoking marijuana while driving and to having a marijuana pipe in his pocket, and the pipe contained a small amount of burnt marijuana. *Id.* at *2. Such circumstances are absent from the record in this case. Officers Cook and Gadbois specifically testified that there was no odor of drugs or alcohol coming from Trevino’s vehicle. Trevino did not admit to using drugs while driving and exhibited no signs of being under the influence of drugs or alcohol. The pipe in Trevino’s pocket was clean. Accordingly, *Allinder* is easily distinguishable. Our independent research has not revealed any caselaw supporting the state’s argument that the facts and circumstances of this case establish probable cause for a warrantless search of Trevino’s vehicle.¹

The district court relied on multiple circumstances for its conclusion that the officers had probable cause for a warrantless search of Trevino’s vehicle. Each of those circumstances, by itself, is “weak evidence of drug possession.” *See State v. Burbach*, 706 N.W.2d 484, 490 (Minn. 2005). Trevino’s front-seat passenger was known by the officers to be associated with drugs. But mere association with a person who is a known drug user typically does not satisfy even the lower reasonable-suspicion standard, let alone the

¹The state does not argue that Trevino’s statement to Officer Cook about the weapon in his car supports the district court’s probable-cause determination. Likewise, the state did not make such an argument to the district court, and the district court did not mention Trevino’s statement in its probable-cause analysis. The absence of such argument and analysis may be due to the fact that Trevino made the statement after the officers decided to search his vehicle and after Officer Cook stated to Trevino that probable cause was present. Thus, we do not consider Trevino’s statement in our probable-cause analysis.

probable-cause standard. *See Diede*, 795 N.W.2d at 844. Trevino’s vehicle was traveling between two known drug houses. But mere presence in a high-crime area also falls short of the lower reasonable-suspicion standard. *See State v. Varnado*, 582 N.W.2d 886, 890 (Minn. 1998); *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992); *see also Brown v. Texas*, 443 U.S. 47, 48-52 (1979). Trevino possessed a methamphetamine pipe, but it was clean, which indicates that it had not been used recently, thus distinguishing this case from those in which an occupant of a vehicle possessed a pipe encrusted with drug residue. *See, e.g., State v. Veigel*, 304 N.W.2d 900, 901-02 (Minn. 1981); *Thiel*, 846 N.W.2d at 609, 611; *Allinder*, 2009 WL 304879, at *2-3. Trevino became light-headed and nearly fainted. But a suspect’s nervousness or shaking usually is insufficient to satisfy the lower reasonable-suspicion standard. *See Burbach*, 706 N.W.2d at 490-91; *State v. Wiegand*, 645 N.W.2d 125, 128, 137 (Minn. 2002); *State v. Syhavong*, 661 N.W.2d 278, 282 (Minn. App. 2003); *cf. Smith*, 814 N.W.2d at 352-54.

The circumstances identified by the district court are not just weak in isolation but also “weak in the aggregate.” *See Burbach*, 706 N.W.2d at 490. In other cases with multiple weak indicators of criminal activity, the supreme court has concluded that the circumstances did not satisfy the reasonable-suspicion standard, which, again, is a lower standard than the probable-cause standard. *See Diede*, 795 N.W.2d at 843 (passenger’s prior drug sales and possibly furtive actions in vehicle and defendant’s remaining in vehicle); *Burbach*, 706 N.W.2d at 490-91 (defendant’s nervousness, fidgetiness, talkativeness, stale unsubstantiated tip, and speeding); *Wiegand*, 645 N.W.2d at 137 (defendant’s evasiveness, nervousness, glossy eyes, and vaguely suspicious actions). In

some situations, multiple similar circumstances may satisfy the reasonable-suspicion standard. *See State v. Garding*, 12 N.W.3d 697, 699-701, 706 (Minn. 2024) (defendant’s suspicious behavior, passenger’s suspicious explanations, physical indicia of passenger’s “prolonged drug use,” and officer’s observation of plastic bag possibly containing drugs); *State v. Lugo*, 887 N.W.2d 476, 487-88 (Minn. 2016) (defendant’s vehicle leaving known drug house, defendant’s recent arrest for drug possession, defendant’s untruthful statement, and defendant’s incriminating statement). But, again, the reasonable-suspicion standard is a “less demanding” standard than the probable-cause standard. *Diede*, 795 N.W.2d at 843.

Regardless of whether the circumstances of this case could satisfy the lower reasonable-suspicion standard, there is a conspicuous absence of caselaw indicating that, under a totality-of-the-circumstances analysis, the circumstances of this case satisfy the probable-cause standard. In the absence of such caselaw, we conclude that the facts and circumstances are insufficient to justify a belief by a reasonably prudent person that Trevino’s vehicle contained contraband. *See Lester*, 874 N.W.2d at 771.

Thus, the district court erred by denying Trevino’s pre-trial motion to suppress evidence and to dismiss the complaint.

Before concluding, we must determine the appropriate appellate remedy. The parties agree that Trevino’s guilt was determined in a stipulated-evidence court trial pursuant to rule 26.01, subdivision 4, of the rules of criminal procedure. In such a trial, “the parties agree that the court’s ruling on a specified pretrial issue is dispositive of the case” and that “a trial will be unnecessary if the defendant prevails on appeal.” Minn. R. Crim. P. 26.01, subd. 4(a), (c). In light of the parties’ agreement, our conclusion that the

district court erred in its pre-trial ruling is dispositive of the case, without the need for a remand for further proceedings. *See State v. Galvan-Contreras*, 980 N.W.2d 578, 582, 586-87 (Minn. 2022) (reversing conviction without remand after concluding that district court erred by denying pre-trial motion to dismiss for lack of probable cause in case tried pursuant to rule 26.01, subdivision 4); *State v. Yang*, 814 N.W.2d 716, 718, 722-23 (Minn. App. 2012) (reversing conviction without remand after concluding that district court erred by denying pre-trial motion to suppress evidence in case tried pursuant to rule 26.01, subdivision 4). Therefore, we reverse Trevino's conviction without a remand.

Reversed.