

*This opinion is nonprecedential except as provided by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
A24-0573**

State of Minnesota,
Appellant,

vs.

Jontrail Wesley Dawson,
Respondent.

**Filed October 14, 2024
Affirmed
Ede, Judge**

Crow Wing County District Court
File No. 18-CR-23-3040

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

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Considered and decided by Worke, Presiding Judge; Ede, Judge; and Reilly, Judge.*

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

NONPRECEDENTIAL OPINION

EDE, Judge

In this pretrial appeal from the district court's order suppressing evidence and dismissing the criminal complaint against respondent Jontrail Wesley Dawson, appellant State of Minnesota argues that the court erred by determining that a police officer seized Dawson at the time the officer asked Dawson to step out of a vehicle and, in the alternative, that the officer had reasonable, articulable suspicion to seize Dawson. Because we conclude that law enforcement lacked reasonable suspicion to seize Dawson when the officer requested that Dawson exit the vehicle, the district court did not err in ordering suppression and dismissing the complaint. We therefore affirm.

FACTS

The following summary is based on the factual findings set forth in the district court's omnibus order and our independent review of the testimony and evidence admitted at the contested omnibus hearing. The relevant facts are undisputed.¹

Shortly after 8:00 a.m. on August 25, 2023, a police officer on routine patrol received a call from a narcotics investigator. The investigator informed the officer that Dawson was connected to a narcotics investigation and that Dawson's sport utility vehicle (SUV), which was under active surveillance in the investigation, was parked on a public

¹ The state specifically articulates only one challenge to a factual finding by the district court as clearly erroneous—that Dawson did not voluntarily consent to a search of his vehicle. Because we conclude that law enforcement unlawfully seized Dawson without reasonable suspicion before Dawson purportedly consented to the search of his vehicle, we need not address the state's clear-error argument.

road along with a sedan. In addition, the investigator told the officer “that there could be a high probability of a large amount of drugs in one of [the] vehicles at the location.” More specifically, the investigator reported to the officer that “there could be possibly a large amount of cocaine in one of [the] vehicles.” But the officer had “information at that time that it”—i.e., the possibility that there could be a large amount of cocaine in one of the vehicles—“was not actually specifically related to” Dawson. And the evidence presented to the district court did not elaborate on the origin, age, and substantiation of the information that the investigator provided to the officer. The investigator asked the officer to approach and contact the occupants of the vehicles while the investigator maintained surveillance.

At the time, the officer knew that the vehicles were parked near a “crypto mining business” that was also under investigation by law enforcement. And the officer considered the location where the vehicles were parked to be “a high-crime area” based on his previous investigation of incidents nearby, which included “multiple alarm calls” about “break-ins” of buildings and storage lockers. Nevertheless, the officer admitted that he considered two “calls for service” about such burglaries to be “multiple” and that he did not know whether two calls would make the location a “high-crime area.” The officer was likewise “unsure” of how many calls for service he had received involving burglaries in the area during the week, month, and year before the incident, and he was “unsure” of how many burglaries had occurred in the area in “broad daylight.”²

² The district court found that “this incident occurred at 8:30 a.m., not in the evening, when break-ins are likely to occur.”

When he arrived at the location, the officer observed a sedan parked behind an SUV on a public street. The officer—who was in full uniform—parked his marked squad car some distance behind the two vehicles but did not turn on his siren or emergency lights. There were no occupants in the sedan. The rear passenger-side window of the SUV was down as the officer approached. In the backseat of the SUV, the officer observed that a man—who was not wearing a shirt—was sitting on the passenger side and that a woman—who was not wearing a bra, but was wearing a tank top—was sitting on the driver side.

The officer informed the two individuals that he was “doing his routine daily patrols” when he saw the two vehicles and had to “check and see what’s going on.” The man responded that the woman was “his lady” and that he could not “go over to her family’s house,” so they were parked in the location to work on their relationship. The officer informed the couple that, because there had been “a ton of break-ins” of storage sheds in the area, the officer “like[d] to come down . . . and check it out, and make sure everything’s good.” The officer asked the man and the woman for their names “to make sure everything’s good and good to go,” requesting that each of them spell their names for him as he wrote them down in a spiral notebook. The man identified himself as Dawson, and the woman identified herself as D.H. The couple—who were compliant and respectful throughout the encounter—also provided the officer with their dates of birth.

The officer told the couple that he was “getting a little odor of pot” and asked if they were “smoking a little bit.” During his testimony at the contested omnibus hearing, the officer stated that he was not being truthful when he told Dawson and D.H. that he detected only “a little odor of pot” because the officer was trying “[t]o put [Dawson] at ease in an

attempt to try to get him to speak with [the officer] further.” Although the officer also testified that it was actually a “strong odor” of “freshly burned marijuana,” he described the smell as “not [a] large odor, but [an] odor of marijuana coming from the vehicle,” and he admitted on cross-examination that he failed to mention that he smelled burnt marijuana either during the incident or in his police report.

In response to the officer’s question, Dawson denied smoking at the time and stated that he was “the only one that smokes” and that he had his “medical card.” The officer did not see any illegal substances or paraphernalia in plain view inside the SUV. Nor did the officer observe Dawson or D.H. display any signs of impairment. The officer asked if it was “cool if [he] could talk to [Dawson] outside, just so [the officer could] see what’s going on.” Immediately after Dawson complied by stepping out of the vehicle and standing next to the rear passenger side of the SUV, the officer asked Dawson if the sedan belonged to him. Dawson stated that the sedan belonged to D.H. and that, although the SUV was “in her name,” it belonged to him and he “paid for it.” Pointing at the sedan, the officer then directed Dawson as follows: “Let’s just go step back here by . . . her car.” Dawson followed the officer’s instructions and walked over to the driver’s side of the sedan, where he stood as the interaction with the officer continued.

The officer again informed Dawson that he was “simply down [t]here checking on things” and asked whether D.H. had a house that Dawson and D.H. could have gone to rather than meeting at the location where they had parked. After Dawson explained the situation involving his relationship with D.H. further, the officer used his radio to call Dawson’s name and date of birth into a law enforcement dispatcher. The officer then

reiterated to Dawson that he had detected “a little odor of pot” and asked Dawson if there was any marijuana in the vehicle. At that point, Dawson stated that he had no marijuana but did have “roaches³” all through that car,” explaining that, “even if [he] did have something,” he kept his “stuff in [his] jar” and “get[s his] stuff from [a] dispensary” because he has his “medical card.”

The officer eventually asked Dawson for consent to search the SUV, which Dawson provided by saying, “Yeah, that’s cool.” The ensuing search of the vehicle revealed multiple burnt marijuana roaches and a digital scale in the center front seat cupholder. The officer also found a plastic bag containing white powder in the rear cupholder of the vehicle, which weighed 6.5 grams with packaging and field-tested positive for cocaine.

The state charged Dawson with fifth-degree possession of cocaine. Dawson moved the district court for an order “suppressing evidence and derivative evidence seized in violation of [his] Fourth Amendment rights” and an order dismissing the complaint, arguing (1) that he was unlawfully seized, (2) that officers unlawfully expanded the scope and duration of the seizure, and (3) that officers illegally searched the vehicle he was driving. The district court held a contested omnibus hearing at which the officer testified and the parties stipulated to the admission of footage from the officer’s body-worn camera.

Following the hearing, the district court filed an omnibus order granting Dawson’s motion to suppress and his motion to dismiss the complaint for lack of probable cause, along with a memorandum explaining the court’s reasoning.

³ The officer explained that “roaches” are “burnt ending [sic] cigarettes of marijuana.”

The state appeals.

DECISION

The state challenges the district court's pretrial order suppressing the cocaine evidence seized by police from Dawson's vehicle and dismissing the complaint. We first address the state's ability to appeal the district court's pretrial order before turning to the merits of the state's arguments.

A. The district court's order suppressing evidence and dismissing the complaint had a critical impact on the outcome of the case.

To begin, we consider whether the state is entitled to appellate review.

"The State's ability to appeal in a criminal case is limited." *State v. Lugo*, 887 N.W.2d 476, 481 (Minn. 2016). "There must be a statute or court rule that permits the appeal, or the issue must arise by necessary implication from an issue where the State's right to appeal is expressly provided." *State v. Rourke*, 773 N.W.2d 913, 923 (Minn. 2009) (quotation omitted). "The rules governing appeals by the State in criminal cases are strictly construed because such appeals are not favored." *Lugo*, 887 N.W.2d at 481.

Under Minnesota Rule of Criminal Procedure 28.04, subdivision 1(1), the state may appeal as of right to the court of appeals "in any case, from any pretrial order, including probable cause dismissal orders based on questions of law." When appealing a pretrial order, the state must also explain "how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial." Minn. R. Crim. P. 28.04, subd. 2(2)(b).

“Dismissal of a complaint satisfies the critical impact requirement.” *State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001), *rev. dismissed* (Minn. June 22, 2001). Because the district court’s dismissal of the complaint extinguished the state’s ability to prosecute Dawson and precluded any trial, we conclude that the critical-impact standard is met. We therefore review the merits of the state’s appeal. *See Lugo*, 887 N.W.2d at 481–86 (permitting appellate review of the merits upon establishment of critical impact).

B. The district court did not err in ordering suppression and dismissing the complaint.

The state challenges the district court’s determination that the officer seized Dawson at the time the officer asked Dawson to step out of the SUV. In the alternative, the state asserts that, even if the officer seized Dawson when the officer asked Dawson to exit the SUV, the officer had reasonable, articulable suspicion to do so.⁴ Dawson contends that the district court did not err in ordering suppression of the cocaine evidence because the officer seized Dawson without reasonable suspicion of criminal activity when the officer had Dawson get out of the SUV. We agree with Dawson.

“When reviewing a pretrial order on a motion to suppress evidence, [appellate courts] review the district court’s factual findings under a clearly erroneous standard and its legal determinations de novo.” *State v. Gibson*, 945 N.W.2d 855, 857 (Minn. 2020)

⁴ The state also argues that the officer had a reasonable, articulable suspicion to justify his request for consent to search Dawson’s SUV, that Dawson validly consented to the search, and that the search was lawful under the automobile exception to the warrant requirement. Because we conclude that law enforcement lacked reasonable suspicion to seize Dawson when the officer requested that Dawson exit the vehicle, we decline to address the state’s additional arguments.

(quotation and citation omitted). Appellate courts “may independently review facts that are not in dispute, and determine, as a matter of law, whether the evidence need be suppressed.” *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quotation omitted). “We will not reverse a correct decision by the district court simply because we disagree with its reasoning.” *State v. Eichers*, 840 N.W.2d 210, 216 (Minn. App. 2013) (citing *Kahn v. State*, 289 N.W.2d 737, 745 (Minn. 1980)), *aff’d on other grounds*, 853 N.W.2d 114 (Minn. 2014). “We may affirm the district court on any ground, including one not relied on by the district court.” *State v. Fellegy*, 819 N.W.2d 700, 707 (Minn. App. 2012) (citing *Kafka v. O’Malley*, 22 N.W.2d 845, 849 (Minn. 1946)), *rev. denied* (Minn. Oct. 16, 2012); *see also Eichers*, 840 N.W.2d at 216 (quoting this aspect of *Fellegy* in an appeal challenging a district court’s order on a defendant’s motion to suppress).

Below, we address whether the officer seized Dawson when he asked Dawson to step out of the SUV before analyzing whether reasonable, articulable suspicion supported such a seizure.

1. The officer seized Dawson at the time he asked Dawson to exit the SUV.

The state argues that Dawson was not seized when the officer requested that Dawson exit the SUV because the officer did not order Dawson to get out of the vehicle. We are not persuaded.

The United States and Minnesota Constitutions protect individuals from unreasonable searches and seizures by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But “[n]ot all encounters between the police and citizens constitute seizures.” *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). Generally, a person is not

seized when “a police officer approaches him . . . in a parked car and begins to ask questions.” *Id.* And an individual’s compliance with a request based on “some moral or instinctive pressure to cooperate” does not compel the conclusion there is a seizure merely “because the other person to the encounter is a police officer.” *See id.* at 99 (stating that “[a] seizure does not result when a person, due to some moral or instinctive pressure to cooperate, complies with a request to search because the other person to the encounter is a police officer” (quotation omitted)).

A seizure does occur, however, “when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.” *Id.* at 98 (quotation omitted). “In [considering] whether a seizure has occurred, the court determines whether a police officer’s actions would lead a reasonable person under the same circumstances to believe that [they were] not free to leave.” *State v. Lopez*, 698 N.W.2d 18, 21 (Minn. App. 2005). This determination is based on the totality of the circumstances “as applied to a reasonable person.” *Id.* at 21–22. The Minnesota Supreme Court has “held that a passenger of a car is considered seized ‘if a reasonable person, under the circumstances, would not feel free to disregard the police questions or to terminate the encounter.’” *State v. Sargent*, 968 N.W.2d 32, 37 n.3 (Minn. 2021) (quoting *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003)). And “this court has found a show of authority sufficient to constitute a seizure where officers asked a person to exit a parked vehicle and approach the officer.” *State v. Klamar*, 823 N.W.2d 687, 692 (Minn. App. 2012); *see also State v. Day*, 461 N.W.2d 404, 407 (Minn. App. 1990) (stating that “it is likely to be a seizure if a person is ordered out of

a vehicle, or the police engage in some other action or show of authority which one would not expect between two private citizens”), *rev. denied* (Minn. Dec. 20, 1990).

We conclude that the officer’s actions here would lead a reasonable person under the same circumstances to believe that they were not free to leave. In so concluding, we are mindful that Dawson was in a parked car when the officer approached and began to ask questions, that Dawson later chose to comply with the officer’s request that he exit the SUV, and that those two facts might suggest that the officer did not seize Dawson. *See Harris*, 590 N.W.2d at 98–99. But the totality of the following specific circumstances would nevertheless lead a reasonable person to believe that they were not free to leave: (1) the fully uniformed officer’s arrival in a marked squad car, which he parked behind the SUV and sedan; (2) the officer’s request that Dawson—who was sitting in the backseat on the passenger side of the SUV—state and spell his name while the officer wrote it down with the express purpose of “mak[ing] sure everything’s good and good to go” as part of his routine daily patrol of the location because of recent burglaries; (3) the officer’s statement to Dawson and D.H. that he could smell marijuana; (4) the officer’s question whether they were smoking; and (5) following all of the foregoing, the officer asking Dawson if it was “cool if [he] could talk to [Dawson] outside, just so [the officer could] see what’s going on.” *See Sargent*, 968 N.W.2d at 37 n.3; *Lopez*, 698 N.W.2d at 21–22. No reasonable person would expect such an interaction between two private citizens, nor would they believe that they were free to unilaterally terminate the encounter. *See Day*, 461 N.W.2d at 407; *see also Klamar*, 823 N.W.2d at 692.

But even assuming the officer's conduct *before* asking Dawson to step out of the vehicle did not constitute a seizure, we conclude that the officer's actions *just after* Dawson's exit of the SUV—and *before* Dawson's admission about the marijuana roaches—were more than an adequate show of authority to establish that Dawson was seized. *See Harris*, 590 N.W.2d at 98. This includes: (1) the officer's continued questioning of Dawson as to the ownership of the vehicles; (2) the officer's instruction that Dawson "go step back" by the sedan; (3) the officer's follow-up query about Dawson's relationship with D.H.; and (4) the officer's use of his radio to call Dawson's name and date of birth into a law-enforcement dispatcher.

Based on the totality of the circumstances, we conclude that the officer's actions here would lead a reasonable person to believe that they were not free to leave. *See Lopez*, 698 N.W.2d at 21; *see also Klamar*, 823 N.W.2d at 692. The district court therefore did not err in determining that the officer seized Dawson at the time the officer asked Dawson to step out of the SUV.

2. The officer lacked reasonable suspicion to seize Dawson.

In the alternative to its argument that the officer did not seize Dawson when the officer asked Dawson to exit the SUV, the state maintains that reasonable, articulable suspicion supported such a seizure. We are unconvinced.⁵

⁵ The district court determined that "a seizure to further the investigation based on the marijuana odor at this point"—i.e., when the officer "requested Mr. Dawson exit the vehicle for questioning"—"would not be unlawful." Instead, the district court granted Dawson's motion to suppress on different grounds: (1) that the officer "did not have reasonable, articulable suspicion to expand the scope and duration of the seizure and, therefore, no probable cause to search the vehicle"; and (2) that "Dawson did not

“Searches and seizures conducted without warrants are presumptively unreasonable. An exception to the warrant requirement permits a police officer to conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *Lugo*, 887 N.W.2d at 486 (quotation and citation omitted). “Reasonable, articulable suspicion must be present at the moment a person is seized.” *State v. Hunter*, 857 N.W.2d 537, 543 (Minn. App. 2014) (quotation omitted). “The reasonable-suspicion standard is not high.” *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011) (quotation omitted). “Reasonable suspicion requires more than a mere hunch but is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.” *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021) (quotation omitted). “It is enough that a law enforcement officer can articulate specific facts which, taken together with rational inferences from those facts, objectively support the officer’s suspicion.” *Lugo*, 887 N.W.2d at 486.

That said, “[r]easonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate at the omnibus hearing that he or she had a particularized and objective basis for suspecting the seized person of criminal activity.” *Diede*, 795 N.W.2d at 842–43 (quotation omitted). And the Minnesota Supreme Court has “recognized that article I, section 10 [of the Minnesota Constitution] requires that the basis

voluntarily consent to the search of his vehicle.” As noted above, however, we review the district court’s legal determinations de novo, we will not reverse a correct decision just because we disagree with its reasoning, and we may affirm the court on any ground, including one that it did not rely on. *See Gauster*, 752 N.W.2d at 502; *Eichers*, 840 N.W.2d at 216; *Fellegy*, 819 N.W.2d at 707.

for justifying an intrusion during a minor traffic stop be individualized to the driver toward whom the intrusion is directed.” *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004); *see also Sargent*, 968 N.W.2d at 43 (“Under *Askerooth*, to . . . seize, there must be an individualized, articulable, and reasonable suspicion of wrongdoing.” (quotation omitted)). “Reasonable suspicion is analyzed from the point of view of an objective police officer and in light of the totality of the circumstances.” *State v. Garding*, ___ N.W.3d ___, ___, 2024 WL 3975342, at *4 (Minn. Aug. 28, 2024). “Where appropriate, the totality of the circumstances may be analyzed by looking first to each identified fact supporting reasonable suspicion independently and then considering whether those facts, even if independently weak, are sufficient in the aggregate.” *Id.* “Evidence obtained as a result of a seizure without reasonable suspicion must be suppressed.” *Diede*, 795 N.W.2d at 842.

Analyzing each of the identified facts underlying the totality of the circumstances from the point of view of an objective police officer, both independently and in the aggregate, we conclude that the officer lacked specific, articulable facts to support a particularized and objective basis for suspecting Dawson of criminal activity.

a. Information Provided by Investigator

The officer received the following information from the investigator: (1) that Dawson was connected to a narcotics investigation; (2) that his SUV was under surveillance; and (3) that there could possibly have been a high probability of a large amount of cocaine in either the SUV or the sedan, but that possibility was not actually

specifically related to Dawson.⁶ But there is no evidence of the origin, age, and substantiation of this information.

“When evaluating tips, courts are to make a practical, common-sense decision whether, given all the circumstances including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *State v. Burbach*, 706 N.W.2d 484, 490 (Minn. 2005) (quotation omitted). In *Burbach*, after a police officer stopped a vehicle “traveling 55 miles per hour in a 30-miles-per-hour speed zone” and the driver (Burbach) identified herself, the officer “remembered her name and her vehicle’s license plate from a tip he had received from his sergeant at a shift-change meeting one or two weeks earlier[,]” during which the “sergeant had shown [the officer] a short list of the license-plate numbers of vehicles suspected by narcotics officers of carrying crack cocaine” and had “told [the officer] the corresponding owners’ names, including Burbach’s.” *Id.* at 486. The Minnesota Supreme Court observed that “[t]he tip . . . consist[ed] only of Burbach’s name and license plate number,” which “was passed on at a shift-change meeting to the officer from his sergeant, who, in turn, had gotten the tip from narcotics officers[,]” and that “the state [did] not attempt[] to establish the tip’s origins, how old the tip was, or

⁶ The district court did not consider the information that the officer received from the investigator because of a discovery sanction that the court imposed against the state for failing to timely disclose the information to the defense. The state argues that the district court erred in doing so. Even accounting for the disputed information provided by the investigator, however, we conclude that the officer lacked reasonable suspicion to seize Dawson. Thus, any assumed error by the district court in declining to consider the investigator’s information is harmless. *See* Minn. R. Crim. P. 31.01 (requiring that harmless error be ignored).

whether the tip was substantiated, and the state . . . provided no other method of evaluating its reliability.” *Id.* Based on those facts, the Minnesota Supreme Court agreed with the district court’s determination that the tip “lack[ed] . . . veracity and corroboration” and with the district court’s decision “declin[ing] to give such a tip much weight.” *Id.*

Consistent with *Burbach*, we conclude that the analogous facts before us regarding the information provided by the investigator also lack veracity and corroboration, thereby failing to support reasonable, articulable suspicion. *See id.* Indeed, the investigator’s information is not specific, particularized, or individualized to Dawson, nor does it amount to more than a mere hunch. *See Taylor*, 965 N.W.2d at 752; *Sargent*, 968 N.W.2d at 43; *Diede*, 795 N.W.2d at 842–43.

b. “High-Crime Area”

The officer considered the location where the vehicles were parked to be “a high-crime area” based on burglaries of nearby storage units and the presence of a “crypto mining business” that was under investigation.

We conclude that this information is likewise insufficient to support reasonable, articulable suspicion because “merely being in a high-crime area will not justify a stop.” *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff’d*, 508 U.S. 366 (1993). Moreover, it is objectively unreasonable to suspect Dawson of criminal activity based on the vehicles’ location given: (1) the vague information about the investigation of the “crypto mining business”; (2) the officer’s definition of two calls for service as “multiple”; and (3) the officer’s lack of knowledge whether two calls for service would make the location a “high-crime area,” how many calls for service he had received involving

burglaries in the area during the week, month, and year before the incident, and how many burglaries had occurred in the area in “broad daylight.” The district court implicitly weighed the credibility of this evidence and found that burglaries were likely to occur in the evening, not at the time of morning when this incident occurred. *See State v. Jones*, 755 N.W.2d 341, 348–49 (Minn. App. 2008) (recognizing that “the district court made an implicit credibility finding”), *aff’d*, 772 N.W.2d 496 (Minn. 2009). “Deference must be given to the district court’s credibility determinations.” *Klamar*, 823 N.W.2d at 691 (citing *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989)).

c. Odor of Marijuana

The odor of marijuana emanating from the SUV fails to support reasonable, articulable suspicion for the officer’s seizure of Dawson, even considering the open-package law that became effective on August 1, 2023, just a few weeks before the subject incident. *See* 2023 Minn. Laws ch. 63, art. 4, § 30, at 2836–37 (codified at Minn. Stat. § 169A.36, subds. 3, 6(b) (Supp. 2023)) (prohibiting the possession of any form of cannabis in any amount while “in a private motor vehicle on a street or highway,” unless the cannabis is in its sealed commercial packaging or in the vehicle’s trunk or “another area of the vehicle not normally occupied by the driver and passengers”). We reach this conclusion based on the Minnesota Supreme Court’s decisions in *Burbach* and *State v. Torgerson*, 995 N.W.2d 164 (Minn. 2023).

When the officer made the initial vehicle stop in *Burbach*, he detected “a strong odor of alcohol” but could not determine whether the aroma came from Burbach or the passenger seated next to her. 706 N.W.2d at 486. Burbach’s passenger informed the police

officer that the smell was coming from him and—after ordering Burbach out of the vehicle—the officer detected no odor of alcohol on Burbach. *Id.* Burbach also showed no signs of impairment. *Id.* Fifteen minutes into the traffic stop, the officer obtained Burbach’s consent to search the vehicle. *Id.* at 487. In reviewing the state’s appeal from a pretrial order suppressing crack cocaine seized during the purported consent search, the supreme court reasoned that, “[a]t best, these facts provide only an attenuated inference of an open container” and that, “[t]o allow a vehicle search solely because an adult passenger smelled of alcohol would be to permit highly speculative searches against a large group of entirely law-abiding motorists, including designated drivers.” *Id.* at 489. Citing article I, section 10 of the Minnesota Constitution, the supreme court held that “an officer’s detection of the odor of alcohol coming from an adult passenger during a traffic stop does not, by itself, provide a reasonable, articulable suspicion of an open-container violation sufficient to permit an officer to expand the traffic stop by requesting to search the vehicle.” *Id.*

Torgerson concerned a vehicle search by law enforcement where it was “undisputed that the only indication that evidence of a crime or contraband may be found in Torgerson’s vehicle was the odor of marijuana emanating from the vehicle.” 995 N.W.2d at 174. The supreme court held that, “[i]n the absence of any other evidence as part of the totality of the circumstances analysis, the evidence of the medium-strength odor of marijuana, on its own, is insufficient to establish a fair probability that the search would yield evidence of criminally illegal drug-related contraband or conduct.” *Id.* at 175. In so holding, the supreme court concluded that *Burbach* was “more instructive than the cases relied on by the State[,]” reasoning that “*Burbach* is helpful to our analysis . . . because it shows that

reasonable suspicion—which requires a lesser showing than probable cause—did not exist when the only evidence of wrongdoing was the odor of alcohol.”⁷ *Id.* at 172–73.

We have held that, where a police officer “detected the odor of alcohol coming from the interior” of a vehicle, that odor provided the officer “with reasonable suspicion of criminal activity, i.e., an open bottle in the car,” such that “she had a lawful basis to continue [a] detention and conduct an investigation.” *State v. Lopez*, 631 N.W.2d 810, 814 (Minn. App. 2001), *rev. denied* (Minn. Sep. 25, 2001). *Lopez*, however, was decided in 2001, pre-dating the Minnesota Supreme Court’s 2005 decision in *Burbach*. We nonetheless acknowledge that, in a post-*Burbach* decision, we continued to rely on *Lopez* and distinguished *Burbach* “because the Minnesota Supreme Court did not consider or determine whether the officer impermissibly seized Burbach by ordering her from the car and conducting field sobriety tests.” *Klamar*, 823 N.W.2d at 694–95 (citing *Burbach*, 706

⁷ Torgerson “argue[d] that the State failed to meet its burden to prove that reasonable suspicion [based solely on the odor of marijuana] supported expansion of the traffic stop[.]” but the supreme court held that “the argument [was] forfeited and . . . decline[d] to address the issue” because the “argument was not presented to either the district court or the court of appeals.” 995 N.W.2d at 169 n.4. Although the supreme court’s statements and conclusions about *Burbach* in *Torgerson* are not a holding because Torgerson forfeited the reasonable-suspicion argument, the supreme court’s analysis is not dicta because it squarely addresses the facts and legal issue before the court. *See Ries v. State*, 920 N.W.2d 620, 635 n.8 (Minn. 2018) (“Statements and conclusions based on the facts and legal issues before the court . . . are not dicta.”). And because the supreme court expressly concluded that its construction of *Burbach* was instructive and helpful to its analysis in *Torgerson*, the supreme court’s statement that, under *Burbach*, reasonable suspicion does not exist when the only evidence of wrongdoing is the odor of alcohol is binding. *See State v. Atwood*, 925 N.W.2d 626, 629 (Minn. 2019) (explaining that the supreme court is “bound to [its] prior statements or rulings on an issue . . . when the statement or ruling was necessary to the decision in the case”); *see also State v. Curtis*, 921 N.W.2d 342, 346 (Minn. 2018) (“The court of appeals is bound by supreme court precedent, as it has repeatedly acknowledged.”)

N.W.2d at 488–89); *see also Mesenburg v. Comm’r of Pub. Safety*, 969 N.W.2d 642, 648 (Minn. App. 2021) (post-*Burbach* decision citing *Burbach* and characterizing *Lopez* as “conclud[ing] that the odor of alcohol alone provided an officer with reasonable suspicion of criminal activity to expand a traffic investigation” (quotation omitted)), *rev. denied* (Minn. Mar. 15, 2022). But our decisions in both *Klamar* and *Mesenburg* predate the supreme court’s 2023 decision in *Torgerson*, which we are now bound to follow. *See Curtis*, 921 N.W.2d at 346.

And both cases’ treatment of *Lopez* and *Burbach* are distinguishable because—unlike *Dawson*—the drivers in *Klamar* and *Mesenburg* did not dispute that the odor of an illicit substance could support reasonable, articulable suspicion for their seizures. *See Mesenburg*, 969 N.W.2d at 648 (explaining that “*Mesenburg* does not dispute the basis for the traffic stop, nor does he dispute the validity of the initial expansion of the stop to request field sobriety testing[,]” and reasoning that a trooper’s observations of “*Mesenburg* speeding, detect[ion of] the odor of alcohol on his breath, and . . . [suspicion that *Mesenburg*] was lying when he denied drinking alcohol that night . . . support[ed] an expansion of the traffic stop to request *Mesenburg* perform field sobriety tests”); *Klamar*, 823 N.W.2d at 695–96 (explaining that “*Klamar* essentially agreed, at oral argument, that the circumstances justified *Klamar*’s continued detention so the trooper could investigate whether she was the source of the alcoholic odor” and citing *Pennsylvania v. Mimms*, 434 U.S. 106, 109–11 (1977), and *Askerooth*, 681 N.W.2d at 367, in concluding that “*Klamar*’s removal from the vehicle pursuant to her lawful seizure did not render the seizure

unconstitutional”). For all these reasons, we conclude that *Burbach* and *Torgerson*—rather than *Lopez*, *Klamar*, and *Mesenburg*—control here.

Applying the supreme court’s reasoning in *Torgerson* and its holding in *Burbach*, we conclude that the officer’s detection of the odor of marijuana coming from the SUV did not provide a reasonable, articulable suspicion of an open-package violation sufficient to permit an objective police officer to seize Dawson.⁸ Contrary to the state’s suggestion at oral argument, *Burbach* is not distinguishable from the facts before us on the ground that the police in *Burbach* determined that the odor of alcohol was emanating not from Burbach but from the adult passenger. This is because the language of the operative open-container law at issue in *Burbach* is nearly the same as that of the current open-package law, particularly as to both laws’ uniform extension of criminal liability to vehicle owners, drivers, and passengers alike for possessing or keeping open alcohol containers and

⁸ In the legal analysis section of the memorandum accompanying the district court’s omnibus order, the court described the smell as “the odor of marijuana coming from the vehicle” and did not state that the odor was a strong odor of freshly burnt marijuana. In light of the competing evidence in the record as to the officer’s various descriptions of the smell as “a little odor of pot,” a “strong odor” of “freshly burned marijuana,” and “not [a] large odor, but [an] odor of marijuana coming from the vehicle,” as well as the officer’s admission that he failed to mention that he smelled burnt marijuana either during the incident or in his police report, we defer to the district court’s general description of the smell as “the odor of marijuana” in its legal analysis as an implicit credibility determination. See *Klamar*, 823 N.W.2d at 691; *Jones*, 755 N.W.2d at 348–49. We also conclude that the evidentiary morass about the odor here is analogous to *Torgerson*, in which the supreme court synthesized similarly conflicting descriptions as a “medium-strength odor of marijuana[.]” 995 N.W.2d at 174–75.

marijuana packages in private motor vehicles on a street or highway.⁹ Compare Minn. Stat. § 169A.35, subds. 3, 4 (2002) with Minn. Stat. § 169A.36, subds. 3, 4 (Supp. 2023).

If an officer’s detection of the odor of alcohol coming from an adult passenger is not enough to support reasonable, articulable suspicion of an open-container violation, then—as the supreme court reasoned in *Torgerson*—the odor of marijuana likewise cannot support such reasonable suspicion here. See *Torgerson*, 995 N.W.2d at 172–73; *Burbach*, 706 N.W.2d at 489. Our conclusion is reinforced by the facts that Dawson displayed no signs of impairment and that no illegal substances or paraphernalia were in plain view at the time of Dawson’s seizure.¹⁰

d. Totality of Circumstances

Taken together, the independently weak identified facts here also fail to support reasonable, articulable suspicion in the aggregate. See *Garding*, 2024 WL 3975342, at *4.

⁹ In its brief, the state recognizes that “[t]he language in section 169A.36 is almost identical to that of Minnesota’s open-bottle law.”

¹⁰ Even if the odor of marijuana emanating from the SUV was sufficient to support reasonable, articulable suspicion to seize Dawson at the time the officer requested that Dawson exit the vehicle and instructed Dawson to step over to the sedan, the officer’s subsequent question—i.e., whether D.H. had a house that Dawson and D.H. could have gone to rather than meeting at the location where they had parked—unconstitutionally expanded the seizure. This is because the officer’s question about the nature of Dawson’s relationship with D.H. in no way related to the marijuana odor. See *Sargent*, 968 N.W.2d at 38 (“Each incremental intrusion during a stop must be strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible[.]” and “each step of an officer’s investigation must be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*[v. *Ohio*, 392 U.S. 1 (1968)].” (quotations omitted)); see also *State v. Smith*, 814 N.W.2d 346, 351 n.1 (Minn. 2012) (“recogniz[ing] that even a single question, depending on its content, could expand the scope of a traffic stop”).

Indeed, just as the tip in *Burbach*—considered together with other factors in that case—could not support reasonable, articulable suspicion, so too is the vague, nonspecific information provided by the investigator to the officer insufficient as part of the totality of the circumstances here. *See Burbach*, 706 N.W.2d at 490–91. Moreover, the information from the investigator that there could possibly have been a high probability of a large amount of cocaine in either the SUV or the sedan bears no reasonable relation to the odor of marijuana in the SUV. And even setting aside that Dawson and D.H.’s presence near the “crypto mining business” and storage units just after 8:00 a.m. while in a state of undress in the backseat of the SUV does not reasonably relate to the officer’s report of “multiple” calls for service about burglaries, there is no reasonable relationship between the couple’s decision to park their vehicles in the supposed “high-crime area,” the odor of marijuana in the SUV, and the information provided by the investigator.

In that connection, more fundamental to our reasonable-suspicion analysis are the facts the officer observed when he first approached the SUV: (1) Dawson and D.H. were in the backseat; (2) Dawson was shirtless; (3) D.H. was braless; (4) Dawson stated that they were parked in the location because he could not go over to D.H.’s family’s house; and (5) Dawson said that they were there to work on their relationship. Analyzing the totality of these circumstances from the point of view of an objective police officer, we agree with the district court’s determination that, rather than establishing reasonable suspicion of criminal activity, these facts “would lead a person to believe that there may have been intimate relations occurring in the backseat of the vehicle.”

In sum, the officer seized Dawson at the time he asked Dawson to exit the SUV. *See Klamar*, 823 N.W.2d at 692. And the officer lacked the requisite reasonable, articulable suspicion to justify that seizure. *See Hunter*, 857 N.W.2d at 543. Because “[e]vidence obtained as a result of a seizure without reasonable suspicion must be suppressed[,]” we conclude that the district court did not err in ordering suppression and dismissing the complaint. *See Diede*, 795 N.W.2d at 842.

Affirmed.