

*This opinion is nonprecedential except as provided by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
A24-1484**

State of Minnesota,
Respondent,

vs.

Kyle Jacob Kocurek,
Appellant.

**Filed August 18, 2025
Affirmed
Bond, Judge**

Washington County District Court
File No. 82-CR-22-4450

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

Kevin Magnuson, Washington County Attorney, Andrew T. Jackola, Assistant County Attorney, Stillwater, Minnesota (for respondent)

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

Considered and decided by Slieter, Presiding Judge; Bond, Judge; and Kirk, Judge.*

NONPRECEDENTIAL OPINION

BOND, Judge

In this direct appeal from the judgment of conviction for fifth-degree drug possession and fleeing police in a motor vehicle, appellant argues that the district court

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

erred by denying his motion to suppress evidence because law enforcement did not have a reasonable, articulable suspicion of a traffic violation to justify the stop of appellant's vehicle. We affirm.

FACTS

Around 3:00 a.m. on December 22, 2022, two St. Paul Park police officers on routine patrol observed a Chevy Silverado truck parked in the driveway of a house one of the officers described as a “nuisance property.”¹ Both officers noted that the truck was running and that the numbers and letters on the license plate were not visible because the plate was entirely covered by snow. It had snowed earlier in the day and the streets had not yet been plowed, but it had stopped snowing by the time the officers drove by the house.

About 30 minutes later, the officers were parked at an auto repair shop two or three miles down the road from the house when they observed the same Chevy Silverado truck drive past them with its license plate still entirely obscured by snow. It had not snowed since the officers saw the truck in the driveway of the house. The officers activated the squad-car emergency light to initiate a traffic stop. When the truck did not pull over, the officers activated the car's siren. The truck still did not pull over. The officers pursued the truck for approximately 20 miles before the driver, appellant Kyle Jacob Kocurek, pulled over. When officers searched the truck, they found a substance later determined to be methamphetamine on the driver's seat and driver's side floor along with two open bottles of alcohol. Officers arrested Kocurek, and respondent State of Minnesota charged

¹ These facts derive from the evidence presented at the suppression hearing.

him with one count of fifth-degree drug possession in violation of Minn. Stat. § 152.025, subd. 2(1) (2022), and one count of fleeing police in a motor vehicle in violation of Minn. Stat. § 609.87, subd. 3 (2022).

Kocurek moved to suppress the evidence found in the truck on the basis that the officers did not have reasonable suspicion to stop his vehicle. At a contested omnibus hearing, the two officers testified consistent with the facts described above, and the district court received a photograph of the license plate at the time of the traffic stop. Kocurek also testified at the hearing. Kocurek testified that, before he drove away from the residence, he cleared the snow from the license plate.

In a post-hearing memorandum, Kocurek conceded that if his license plate had been obscured by snow, the officers would have had a reasonable, articulable suspicion that he was in violation of Minn. Stat. § 169.79, subd. 7 (2022), which requires license plates to be “legible and unobstructed and free from grease, dust, or other blurring material so that the lettering is plainly visible at all times.” But Kocurek argued that his license plate was not obstructed by snow when officers attempted to stop him because he had cleared his license plate of snow before driving off from the house.

The district court denied Kocurek’s motion, crediting the officers’ testimony that they could not read Kocurek’s license plate because it was obscured by snow and determining that they had reasonable, articulable suspicion to believe that Kocurek was in violation of Minn. Stat. § 169.79, subd. 7. Kocurek waived his right to a jury trial and the

parties proceeded to a stipulated-evidence trial under Minn. R. Crim. P. 26.01, subd. 3.² The district court found Kocurek guilty of both counts and sentenced him to two concurrent prison terms of 21 months.

Kocurek appeals.

DECISION

Kocurek argues that the district court erred by denying his motion to suppress the evidence discovered during the traffic stop. When reviewing a pretrial order denying a motion to suppress, appellate courts “review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.” *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009) (quotation omitted). “Determinations of credibility of witnesses at the omnibus hearing are left to the [district] court, and those determinations will not be overturned unless clearly erroneous.” *State v. Smith*, 448 N.W.2d 550, 555 (Minn. App. 1989), *rev. denied* (Minn. Dec. 29, 1989). A factual finding “is not clearly erroneous if it is reasonably supported by the evidence as a whole.” *State v. Barshaw*, 879 N.W.2d 356, 366 (Minn. 2016).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches and seizures are generally presumptively unreasonable. *State v. Anderson*, 733 N.W.2d 128, 136 (Minn. 2007). However, a police officer may conduct a limited, investigatory stop

² Under this rule, by agreement of the parties, “a determination of the defendant’s guilt . . . may be submitted to and tried by the court based entirely on stipulated facts, stipulated evidence, or both.” Minn. R. Crim. P. 26.01, subd. 3(a).

without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). Reasonable suspicion must be based on specific facts that give the police officer a particularized and objective basis for suspecting the detained person of criminal activity. *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011). An officer's observation of a violation of any traffic law, "however insignificant," provides the officer with an objective basis for conducting a stop. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

The district court determined that the officers lawfully stopped Kocurek's vehicle because they had reasonable suspicion to believe that he had violated Minn. Stat. § 169.79, subd. 7, because Kocurek's license plate was covered by snow. That subdivision provides:

All plates must be (1) securely fastened so as to prevent them from swinging, (2) displayed horizontally with the identifying numbers and letters facing outward from the vehicle, and (3) mounted in the upright position. The person driving the motor vehicle shall keep the plate legible and unobstructed and free from grease, dust, or other blurring material so that the lettering is plainly visible at all times. It is unlawful to cover any assigned letters and numbers or the name of the state of origin of a license plate with any material whatever, including any clear or colorless material that affects the plate's visibility or reflectivity.

Minn. Stat. § 169.79, subd. 7. As Kocurek recognizes, we have previously addressed whether a police officer's observation of a snow-covered license plate provides reasonable suspicion justifying a traffic stop. In *State v. Clark*, we concluded that the district court erred by determining that there was no valid basis to conduct a traffic stop of a vehicle when the officer "noted a loud exhaust noise coming from the vehicle" and "observed that the rear license plate was 'obliterated by snow,' preventing him from reading the letters

and numbers on the license plate.” 394 N.W.2d 570, 572 (Minn. App. 1986). Though we did not explicitly cite Minn. Stat. § 169.79, subd. 7, we reasoned that these observations constituted “two violations of law.” *Id.* And in multiple nonprecedential opinions following *Clark*, we have determined that law enforcement had reasonable suspicion to stop a vehicle when the vehicle’s license plate was illegible because it was obscured by snow in violation of Minn. Stat. § 169.79, subd. 7. *State v. Larson*, No. A07-0146, 2008 WL 4907945, at *3 (Minn. App. Nov. 18, 2008), *rev. denied* (Minn. Mar. 17, 2009); *Frazier v. Comm’r of Pub. Safety*, No. A07-0997, 2008 WL 2574108, at *2 (Minn. App. July 1, 2008); *State v. Holly*, No. CX-00-933, 2001 WL 15757, at *2 (Minn. App. Jan. 9, 2001).³

On appeal, Kocurek does not argue that the district court clearly erred by crediting the officers’ testimony and finding that his license plate was obscured by snow. Instead, Kocurek contends that we should decline to follow *Clark* because, in concluding that reasonable suspicion justified the stop, *Clark* did not interpret the meaning of Minn. Stat. § 169.79, subd. 7. Kocurek urges us to “take a fresh look” at the meaning of the statute and conclude “that recently fallen snow is not covered within the scope of Minn. Stat. § 169.79, subd. 7.” We decline Kocurek’s invitation.

“A reviewing court must generally consider only those issues that the record shows were presented [to] and considered by the trial court in deciding the matter before it.” *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (quoting *Thiele v. Stich*, 425 N.W.2d 580,

³ Nonprecedential opinions in this opinion are cited for their persuasive value. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c).

582 (Minn. 1988)). Kocurek's sole argument in the district court was that, as a factual matter, his license plate was not obscured by snow at the time of the traffic stop because he cleared the snow off before he left the house. In making this argument, Kocurek conceded that "[s]hould the court find that [Kocurek's] license plate was covered by snow . . . that would constitute a specific and articulable suspicion of a violation to justify the attempted traffic stop." Kocurek did not argue that, even if the license plate were obscured, there was no objective basis for a traffic stop because a license plate obscured by recently fallen snow does not violate Minn. Stat. § 169.79, subd. 7. Because Kocurek did not raise the issues surrounding interpretation of the statute in the district court, we conclude this argument is forfeited. *Thiele*, 425 N.W.2d at 582.

Even if we were to address Kocurek's argument that the statute does not prohibit driving with snow-covered license plates if the snow had recently fallen, Kocurek would not be entitled to relief. Kocurek argues that Minn. Stat. § 169.79, subd. 7, does not apply to snow that has fallen so recently that it would be unreasonable to expect a driver to have cleared it off their license plate before or during driving. But Kocurek does not dispute that, in this case, it had snowed earlier in the day, officers drove by the house after it had stopped snowing and snow had accumulated on Kocurek's license plate, it did not snow again between the time when officers observed Kocurek's truck at the house and when they stopped him, and it was not snowing during the traffic stop. Given these facts, the record does not support that the snow on Kocurek's license plate had fallen so recently that he was unable to clear it off. *See State v. Welsch*, No. A11-1946, 2012 WL 3792242, at *1-2 (Minn. App. Sept. 4, 2012) (rejecting appellant's argument that traffic stop for an obscured

license plate while it was actively snowing was unlawful because, in part, “the record [did] not support . . . that [appellant] was unable to clear the snow off her license plate before driving away from the parking lot”). To the extent that Kocurek’s statutory-interpretation argument rests on hypothetical facts not present in this case, it calls for an advisory opinion. Appellate courts do not issue advisory opinions. *Minn. Democratic-Farmer-Labor Party by Martin v. Simon*, 970 N.W.2d 689, 692 (Minn. App. 2022) (stating that appellate “courts do not issue advisory opinions” (citing *State v. Arens*, 586 N.W.2d 131, 132 (Minn. 1998))).

Because Kocurek’s snow-covered license plate provided officers reasonable suspicion to stop his truck to investigate a violation of Minn. Stat. § 169.79, subd. 7, we conclude that the district court did not err by denying Kocurek’s pretrial suppression motion. *See Clark*, 394 N.W.2d at 572.

Affirmed.