

*This opinion is nonprecedential except as provided by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
A24-1565**

State of Minnesota,
Respondent,

vs.

Derrick Laton Ponder,
Appellant.

**Filed August 11, 2025
Affirmed
Larson, Judge**

St. Louis County District Court
File No. 69HI-CR-24-36

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

Kimberly J. Maki, St. Louis County Attorney, Chris Florey, Assistant County Attorney,
Virginia, 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; Larkin, Judge; and Larson,
Judge.

NONPRECEDENTIAL OPINION

LARSON, Judge

Appellant Derrick Laton Ponder challenges the district court's decision to deny his motion to suppress evidence seized during a warrantless search of his vehicle. Ponder argues that the district court erred when it applied the automobile exception to the warrant

requirement because the police officer lacked probable cause to believe that searching the vehicle would result in the discovery of evidence or contraband. We affirm.

FACTS

Respondent State of Minnesota charged Ponder with first-degree aggravated robbery under Minn. Stat. § 609.245, subd. 1 (2022), and unlawful possession of a firearm under Minn. Stat. § 624.713, subd. 1(2) (2022), in connection with a robbery at a convenience store (first convenience store) in January 2024. Ponder moved to suppress the evidence underlying these charges, asserting the evidence was discovered during an unlawful vehicle search. The district court held a contested omnibus hearing where it heard testimony from the officer who conducted the search and received three stipulated exhibits: an image from the security-camera footage at the first convenience store displaying the suspect; an image from security-camera footage taken at a separate convenience store (second convenience store) displaying Ponder three hours before the robbery; and the police department's tow/vehicle-custody policy. The following facts were established at the contested omnibus hearing.

An officer began his shift at 5:30 a.m. on January 10, 2024, and was informed that an armed robbery had occurred at the first convenience store early that morning. The officer was told that the suspect stole "Newport or Marlboro Red[]" cigarettes, and dispatch provided the officer with an image of the suspect taken from security-camera footage. The image depicted the suspect holding a black handgun and wearing black pants, a black mask,

tan winter boots, and a black zipper jacket with a red emblem near the front left pocket. Based on the image, law enforcement suspected Ponder was involved in the robbery.¹

The officer then traveled to the second convenience store, about 38 blocks from the first convenience store, to get coffee and snacks. While there, the officer informed the store clerk about the recent robbery at the first convenience store. The store clerk then informed the officer that the second convenience store had been robbed on January 9, 2024. The officer left the second convenience store and returned around 7:00 a.m. when the store manager arrived to review security-camera footage. After reviewing the second convenience store's security-camera footage, the officer determined the two robberies were not related. But the officer observed Ponder on the security-camera footage "walking into the store, paying for fuel and then leaving" on January 9, 2024 at 11:34 p.m. The officer noted that Ponder had the same apparent race, height, and build as the suspect at the first convenience store and was wearing similar clothing—including tan boots and a black zipper jacket with a "little kind of tag" on the lower left side. The officer also observed Ponder leave in a red Toyota Camry and collected a partial license-plate number. The officer saved an image of Ponder from the security-camera footage, shared the image with his co-workers, and asked a neighboring police department to "keep an eye out at the address" where Ponder may have been staying.

Later that day, the neighboring police department located Ponder, and he fled from law enforcement on foot. The officer responded to the scene, where the neighboring police

¹ The officer testified that he was familiar with Ponder from previous encounters.

department had “narrowed down” Ponder’s location and discovered a red Toyota Camry. Upon his arrival, the officer was directed to “sit on” the red Toyota Camry, which resembled Ponder’s vehicle from the security-camera footage at the second convenience store and matched the partial license-plate number. When the officer approached the vehicle, he observed—through the window—a backpack with an open zipper that contained what appeared to be a “factory sealed pack of Marlboro Reds.” The cigarettes appeared to be consistent with the brand stolen from the first convenience store.

After law enforcement apprehended Ponder, the red Toyota Camry was towed to the police garage. Following the policy for seized and impounded vehicles, the officer conducted an inventory search of the vehicle.² In doing so, he located the backpack with multiple unopened cigarette packs and cigarette cartons that he believed “were consistent with the items taken from” the first convenience store.

Following the contested omnibus hearing, the district court denied Ponder’s motion to suppress. The district court determined that the officer “had sufficient probable cause to initiate a warrantless search of the subject vehicle under the automobile exception,” based on the totality of the circumstances. The matter proceeded to a jury trial. After a three-day trial, the jury found Ponder guilty of both counts. The district court sentenced Ponder concurrently to 95 months in prison for the aggravated-robbery conviction and

² The state did not raise arguments under the inventory-search exception to the warrant requirement. *See State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (discussing when inventory searches are constitutional).

60 months in prison for the unlawful-possession conviction, with 175 days' credit for time served.

Ponder appeals.

DECISION

Ponder argues the district court erred when it denied his motion to suppress. When reviewing a district court's decision to deny a pretrial suppression motion, we review the district court's factual findings for clear error and its legal determinations de novo. *Gauster*, 752 N.W.2d at 502.

The United States and Minnesota Constitutions guarantee individuals the right to be free from "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "[A]ny evidence obtained as a result of an unreasonable search or seizure must be suppressed." *State v. Bradley*, 908 N.W.2d 366, 369 (Minn. App. 2018). "A search conducted without a warrant is unreasonable unless it satisfies one of the well-delineated exceptions to the warrant requirement." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). "The state bears the burden of establishing an exception to the warrant requirement." *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001).

Here, Ponder challenges the district court's application of the automobile exception. Under the automobile exception, "the 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." *Lester*, 874 N.W.2d at 771 (quotation omitted). "Probable cause exists when there are facts and circumstances sufficient to warrant a reasonably prudent person to believe that the vehicle contains contraband," *id.* (quotation

omitted), and “does not expire when [the vehicle] is impounded,” *State v. Schell*, 994 N.W.2d 326, 330 (Minn. App. 2023), *rev. denied* (Minn. Oct. 25, 2023). “Probable cause is an objective inquiry that depends on the totality of the circumstances in each case.” *Lester*, 874 N.W.2d at 771. And “the totality of the circumstances includes reasonable inferences that police officers draw from facts, based on their training and experience.” *Id.* The analysis requires “more than mere suspicion but less than the evidence necessary for conviction.” *State v. Torgerson*, 995 N.W.2d 164, 169 (Minn. 2023) (quotation omitted).

Ponder first argues the district court erred in its application of the automobile exception because the state did not present any evidence linking the red Toyota Camry to the robbery. We disagree. The officer testified that, before the red Toyota Camry was towed to the police garage, he knew: (1) there had been a robbery at the first convenience store earlier that morning; (2) the suspect stole multiple cigarette packs from the first convenience store, including “Newport or Marlboro Reds”; (3) Ponder was seen at the second convenience store, 38 blocks away, hours before the robbery at the first convenience store; (4) reviewing the security-camera footage from both convenience stores, Ponder and the suspect had similar physical attributes and wore similar clothing; (5) Ponder was seen driving a red Toyota Camry at the second convenience store; (6) a red Toyota Camry bearing the same partial license-plate number as the vehicle at the second convenience store was located near Ponder; (7) Ponder fled on foot after encountering law enforcement; and (8) through the red Toyota Camry’s window, the officer observed an unzipped backpack containing a pack of unopened Marlboro Reds. Taken together, these facts support the conclusion that a reasonably prudent person would find “more than [a]

mere suspicion” existed that the red Toyota Camry contained contraband from the robbery of the first convenience store. *Id.* (quotation omitted); *see also Lester*, 874 N.W.2d at 771.

Ponder also argues that a time and distance gap precluded the district court from finding probable cause in this case. Specifically, Ponder argues that he was seen driving the red Toyota Camry “over three hours prior to the robbery [of the first convenience store] and on the other side of the town.” But in *State v. Search*, the supreme court concluded that an officer had probable cause to search a vehicle when the search occurred *one week after* the robbery took place. 472 N.W.2d 850, 850-51, 853 (Minn. 1991). There, the police questioned Search at his apartment and, following the conversation, Search left the apartment “with a duffel bag large enough to contain the stolen” property and fled in an unrelated vehicle. *Id.* at 853. Despite the significant gap in time between the robbery and watching Search place the duffel bag in the vehicle, the supreme court determined law enforcement had probable cause to search the vehicle and the duffel bag. *See id.*

This case is similar to *Search*. While a time and distance gap existed between Ponder patronizing the second convenience store and the robbery at the first convenience store, that gap does not negate that the facts highlighted above, in their totality, warranted a reasonably prudent person to believe the red Toyota Camry contained evidence of a crime. *See id.*; *Lester*, 874 N.W.2d at 771. Thus, we are not persuaded that the short time and distance gap deprived the officer of probable cause.

Ponder finally argues that the district court made clearly erroneous findings. First, Ponder argues the district court’s finding that the officer viewed “packages” of Marlboro Red cigarettes was clear error because the officer only testified that he observed one

package. But even if the district court's finding was erroneous, we conclude the error was harmless because a single package of cigarettes would also have supported a finding of probable cause. *See* Minn. R. Crim. P. 31.01 ("Any error that does not affect substantial rights must be disregarded."); *Search*, 472 N.W.2d at 853. Second, Ponder asserts the district court clearly erred in its finding that the officer observed the same brand of cigarettes as those stolen from the first convenience store. But Ponder bases this argument solely on the evidence established at trial, and those facts are outside our scope of review when evaluating the district court's decision on a pretrial motion. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally consider "only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it" (quotation omitted)).

For these reasons, reviewing the totality of the circumstances, we conclude the district court correctly determined that probable cause existed because a reasonably prudent person would believe the red Toyota Camry contained contraband from the robbery of the first convenience store. *See Lester*, 874 N.W.2d at 771. The district court correctly applied the automobile exception.

Affirmed.