

*This opinion is nonprecedential except as provided by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
A24-2019**

State of Minnesota,
Respondent,

vs.

Donte Marquez Henry,
Appellant.

**Filed December 8, 2025
Affirmed
Bentley, Judge**

Sherburne County District Court
File No. 71-CR-23-1398

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

Dawn R. Nyhus, Sherburne County Attorney, George R. Kennedy, Assistant County Attorney, Elk River, Minnesota (for respondent)

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

Considered and decided by Bentley, Presiding Judge; Wheelock, Judge; and Larson, Judge.

NONPRECEDENTIAL OPINION

BENTLEY, Judge

Appellant Donte Marquez Henry challenges the district court's denial of his motion to suppress evidence seized after police decided to conduct a warrantless search of his car.

Specifically, he asserts that the police lacked probable cause to search and that the district court erred in denying the motion. We affirm.

FACTS

The following facts derive from the evidence admitted at a contested omnibus hearing on Henry's motion to suppress. The evidence included officer testimony and footage from the officer's body-worn and squad-car cameras.

An officer with the Becker Police Department noticed a car without its lights on leaving a gas station at night. The officer followed the car and observed that its lights came on but that its right brake light did not function properly. The officer initiated a stop, and the driver pulled over.

When the officer approached the car and began speaking with the driver through an open window, he smelled what he described as a "very strong odor" of "fresh marijuana." The driver, identified as Henry, told the officer that his driver's license was revoked. At that time, the officer asked Henry, "How much weed do you have in here?" In response, Henry picked up a small, ceramic container with a screw top from the center console and said that he had a medical marijuana card. The officer then asked, "That's not your medical container, is it?" Henry explained that it was an odor-blocking container. The officer told Henry that it was not working well because he could smell the marijuana as soon as the window was rolled down.

While Henry looked for his medical marijuana card, the officer asked Henry to give him the marijuana container. After opening and inspecting the marijuana, the officer noted it was "already all ground up." The officer observed that the container did not meet

Minnesota packaging requirements, a misdemeanor offense. *See* Minn. Stat. § 169A.36, subd. 3 (Supp. 2023).

The officer then asked Henry to pull into a nearby parking lot and followed behind him in the squad car. After running Henry's information through dispatch, the officer confirmed that Henry's license had been revoked, "learned that [he] had several felony convictions for different violent crimes so that he was prohibited from possessing . . . any kind of firearms and ammunition," and saw that he was subject to supervised release. The officer also observed that, as a condition of Henry's supervised release, "he was prohibited from using or possessing mood-altering substances."

When the officer reapproached the car, Henry showed him his medical marijuana card on his phone. The officer asked Henry to step out of his vehicle. He informed Henry that his marijuana was not packaged in compliance with the law, asked about his probation status, and mentioned that he is not allowed "to have mood-altering substances." Henry stated that he had permission from his parole officer to have marijuana and offered to call her to confirm. The officer then asked if he would find anything else in the car, and Henry explained there were "cones" for packing marijuana. At that moment, the officer told Henry that he was going to search the car and asked if he would "find any surprises?" Henry said yes and informed the officer that he had a gun on his chest. The officer then placed Henry in handcuffs and retrieved the firearm from inside Henry's jacket.

After the officer secured Henry in the back of the squad car, Henry's car was searched. The search revealed "a soft-sided holster with an additional 9mm magazine" between the driver's seat and center console and half of a box of ammunition in the back

seat. An inspection of the firearm retrieved from Henry's jacket showed that it was loaded and its serial number appeared to have been removed.

Respondent State of Minnesota charged Henry with possession of a firearm or ammunition by an ineligible person, in violation of Minnesota Statutes section 624.713, subdivision 1(2) (2022), with reference to section 624.713, subdivision 2(b), and with driving after revocation, in violation of Minnesota Statutes section 171.24, subdivision 2 (2022). Henry moved to suppress the evidence that was seized after the officer announced he would search the car. The district court held a contested omnibus hearing on the motion during which the officer testified. After the hearing, the district court denied the motion.

The district court found the officer's testimony credible. It also concluded that the officer had reasonable, articulable suspicion that there would be additional contraband beyond the marijuana in noncompliant packaging to support expansion of the initial traffic stop. And the district court determined that the officer had probable cause to search Henry's car. In its analysis, the district court misstated that a Minnesota Supreme Court decision, *State v. Torgerson*, 995 N.W.2d 164 (Minn. 2023), discussed below, had not yet been decided at the time of Henry's stop. Later in its analysis, however, the district court determined that, even if *Torgerson* applied, the officer had probable cause.

Henry waived his right to a jury trial and stipulated to the state's case to preserve his right to appeal the dispositive suppression ruling under Minnesota Rule of Criminal Procedure 26.01, subdivision 4. The district court found Henry guilty on both counts. It sentenced Henry to 60 months' imprisonment on the firearm-possession conviction and 90 days' imprisonment on the driving-after-revocation conviction.

Henry appeals the firearm-possession conviction.

DECISION

We first address the scope of the issues on appeal. Henry’s primary argument is that the smell of marijuana alone was the basis for the officer’s announcement that he would search the car, which led to Henry’s confession about the gun. Applying the supreme court’s decision in *Torgerson*, he maintains that the smell of marijuana was insufficient to establish probable cause. He also contends that the district court’s probable-cause determination must be reversed because the district court’s order demonstrates that the district court had a mistaken belief that the stop took place before *Torgerson* was decided, when the stop occurred after that decision was filed.

Alternatively, for the first time in his reply brief, Henry argues that a separate constitutional violation occurred when the officer first asked Henry about marijuana in his car. Because Henry did not make this argument in his motion to suppress or in his initial brief on appeal, the issue is forfeited, and we decline to review it on the merits. *See Fontaine v. Steen*, 759 N.W.2d 672, 676 (Minn. App. 2009) (stating that “issues not raised or argued in appellant’s brief cannot be raised in a reply brief”); *see also State v. Marsh*, 931 N.W.2d 825, 829 (Minn. App. 2019) (declining to reach an issue raised for the first time on appeal of a motion to suppress and recognizing that “this court’s review is expressly limited to the pretrial ruling by the district court”).¹

¹ We take no position on whether, under the law applicable at the time of this traffic stop, the smell of marijuana alone would have established reasonable, articulable suspicion to expand the stop to ask about controlled substances in the vehicle. *See State v. Babineau*, 23 N.W.3d 396, 408 n.3 (Minn. App. 2025) (noting that, with respect to the holding that

We therefore consider only the issues raised in Henry’s initial brief. We first address the argument that the officer lacked probable cause to search the car. We then consider whether the district court’s order must be reversed because of the district court’s mistaken belief that the stop occurred before the *Torgerson* decision was filed.

I

Both the United States and Minnesota Constitutions guarantee the “right of the people to be secure in their persons, houses, papers, and effects” from “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. “A search conducted without a warrant issued upon probable cause is generally unreasonable” under both the Fourth Amendment and article I, section 10. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). But under the automobile exception to the warrant requirement, police may conduct a warrantless search of a vehicle, including closed containers in that vehicle, “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). “Probable cause is an objective inquiry that depends on the totality of the circumstances in each case,” which “includes reasonable inferences that police officers draw from facts, based on their training and experience.” *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). Appellate courts review a district court’s factual findings underlying its probable-

the odor of marijuana alone does not support reasonable suspicion, “[o]ur holding is expressly tied to Minnesota’s legal framework for cannabis possession in existence at the time of the charged offense” and “[w]e express no opinion as to whether subsequent changes to Minnesota’s cannabis laws might warrant a different outcome”).

cause determination for clear error and the district court’s application of the probable-cause standard to those facts de novo. *State v. Lopez*, 778 N.W.2d 700, 703 (Minn. 2010).

Henry maintains that the officer lacked probable cause to search because the search was based on only the smell of marijuana, contrary to *Torgerson*. The state responds that a probable-cause determination was supported by more than the marijuana smell, including that the officer observed that Henry was in possession of marijuana contained in noncompliant packaging, in violation of Minnesota Statutes section 169A.36, subdivision 3. As background for our analysis, we provide a brief overview of the *Torgerson* decision and the statutory packaging requirements that were in effect at the time of the search.

In *Torgerson*, 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 probable cause justifying a warrantless vehicle search. 995 N.W.2d at 175. At the time of *Torgerson*’s arrest, marijuana was listed as a Schedule I controlled substance under Minn. Stat. § 152.02, subd. 2(h) (2022). *Id.* at 169. But Minnesota law provided three exceptions that made marijuana possession noncriminal. *See id.* at 169-70 (explaining the three exceptions). Therefore, the court concluded that possession of marijuana was “not always a crime.” *Id.* at 170.

After the stop in *Torgerson* occurred, but before the stop in this case, a law came into effect that sets forth packaging requirements for marijuana possessed in a vehicle, with violations amounting to a misdemeanor. *See* Minn. Stat. § 169A.36, subds. 3, 5 (Supp. 2023). Subdivision 3, provides:

Possession; crime described. It is a crime for a person to have in possession, while in a private motor vehicle on a street or highway, any cannabis flower, [or] a cannabis product . . . that:

(1) is in packaging or another container that does not comply with the relevant packaging requirements in chapter 152 or 342;^[2]

(2) has been removed from the packaging in which it was sold;

(3) is in packaging that has been opened or the seal has been broken; or

(4) is in packaging of which the contents have been partially removed.^[3]

² Medical cannabis must be packaged

in compliance with the United States Poison Prevention Packing Act regarding child-resistant packaging and exemptions for packaging for elderly patients, and label distributed medical cannabis with a list of all active ingredients and individually identifying information, including:

(i) the patient's name and date of birth;

(ii) the name and date of birth of the patient's registered designated caregiver or, if listed on the registry verification, the name of the patient's parent or legal guardian, if applicable;

(iii) the patient's registry identification number;

(iv) the chemical composition of the medical cannabis;

and

(v) the dosage.

Minn. Stat. § 152.29, subd. 3(c)(5) (2022). Personal-use cannabis must be

(1) prepackaged in packaging or a container that is child-resistant, tamper-evident, and opaque; or

(2) placed in packaging or a container that is plain, child-resistant, tamper-evident, and opaque at the final point of sale to a customer.

Minn. Stat. § 342.62, subd. 2(a) (Supp. 2023).

³ The packaging requirements do not apply to packages in the trunk of a vehicle or, if there is no trunk, to packages in any area not normally occupied by the driver or passengers. *See* Minn. Stat. § 169A.36, subd. 6(b) (Supp. 2023).

Turning to the probable-cause question, Henry relies heavily on *Torgerson*, arguing that the officer's search was based "solely" or "primarily" on the smell of marijuana and is therefore unlawful. *See Torgerson*, 995 N.W.2d at 174-75. In support of this position, Henry directs the court to the officer's testimony and argues that the marijuana smell was the "entire basis" for the officer's search. He further argues that, under *Torgerson*, there must be evidence that the marijuana was "being used in a manner, or was of such a quantity, so as to be criminally illegal" and not for medical purposes, and that no such evidence exists here. Lastly, he refutes that the other bases cited by the district court—Henry's probation status, criminal history, revoked license, and noncompliant marijuana packaging—establish probable cause. None of these arguments persuades us that the district court erred.

Assessing probable cause is an "objective inquiry," in which courts need not, and should not, rely on the subjective beliefs or motivations of an individual officer. *Lester*, 874 N.W.2d at 771; *see also State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011) ("The actual, subjective beliefs of the officer are not the focus in evaluating reasonableness."). We note that our reading of the record differs from Henry's characterization of the officer's testimony. Based on our review, the testimony does not support Henry's claim that the smell of marijuana alone was the entire basis for his search. Rather, the officer affirmed on cross-examination that "the entire basis" to search was "that small container of marijuana," which on its face references the physical package containing the marijuana rather than its odor. But even assuming the officer did testify that the search was based on the smell alone,

it was proper for the district court in conducting the objective inquiry to look beyond that testimony to the totality of the circumstances including, but not limited to, the smell of marijuana.

The totality of the circumstances provides a sufficient basis to establish probable cause at the time the officer announced the search. First, in addition to smelling an odor of marijuana, the officer observed the packaging violation under Minnesota Statutes section 169A.36, subdivision 3. That fact distinguishes this case from *Torgerson*. During the stop in *Torgerson*, there was no visible marijuana and, at that time, there was no law specifically governing the packaging of marijuana in a vehicle. *See State v. Babineau*, 23 N.W.3d 396, 413-14 (Minn. App. 2025) (Connolly, J., concurring) (noting that “the marijuana laws have now changed since *Torgerson*” and “[t]he statutory scheme in place” at the writing of that decision, including the packaging requirements, “is quite different”).

The known packaging violation is relevant to the probable-cause determination because it gave the officer reason to believe there may be other packaging violations in the car. In that sense, we find this case indistinguishable from caselaw holding that an officer who sees an open container of alcohol in a vehicle has probable cause to search the vehicle for further evidence of open container violations. *See State v. Alesso*, 328 N.W.2d 685, 686, 688 (Minn. 1982) (stating that a police officer “could have searched the car for other evidence relating to the open-bottle violation” after observing the driver and passenger of a car drinking from cups that the police officer believed contained alcohol); *State v. Ellanson*, 198 N.W.2d 136, 137 (Minn. 1972) (concluding search of glove compartment was reasonable based on violation of open-bottle law); *State v. Collard*, 414 N.W.2d 733,

735-36 (Minn. App. 1987) (concluding that a police officer had probable cause to search a vehicle when he observed an open container of alcohol in plain view, even when there was no sign that the driver had been drinking), *rev. denied* (Minn. Jan. 15, 1988).

The packaging violation also distinguishes this case from the case *State v. Burbach*, 706 N.W.2d 484 (Minn. 2005), that Henry cites. In *Burbach*, the supreme court held that the smell of alcohol coming from a passenger in the vehicle was not enough on its own to justify a search of the vehicle. 706 N.W.2d at 489. That case was instructive in *Torgerson* because it was undisputed that the only basis for the search was the smell of burnt marijuana, 995 N.W.2d at 174-75, but that is not so here. The officer did not initiate a search until after he was shown the noncompliant marijuana packaging and learned of Henry's criminal history and supervised release status. We therefore conclude that *Burbach* is inapposite to the circumstances of this case.

Second, the totality of the circumstances also includes the officer's testimony that the marijuana odor was "very strong" and that it is "quite a frequent occurrence" that he would smell marijuana and be provided a "smaller amount of marijuana" but "then . . . do a search of the vehicle and discover either additional marijuana that would make it potentially a felony or other drugs that would be a more serious offense." Officers are permitted to make such reasonable inferences when determining probable cause and are not required to believe an innocent explanation. *See State v. Hawkins*, 622 N.W.2d 576, 580 (Minn. App. 2001) ("The fact that there might have been an innocent explanation for [the defendant's] conduct does not demonstrate that the officers could not reasonably believe that [the defendant] had committed a crime."). The officer here was not required to

believe Henry’s claim that the marijuana was for medical use. The officer also observed that the container “did not appear to be a medicinal container” and testified that in the past he has been told “many times” that something is medical marijuana when it was not.

Third, an individual’s criminal history may be considered as one factor relevant to probable cause under a totality-of-the-circumstances analysis. *See State v. Hochstein*, 623 N.W.2d 617, 623 (Minn. App. 2001) (considering “appellant’s prior criminal record” in its probable-cause analysis); *State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996) (concluding that “the trial court properly considered [Lieberg’s criminal history] as one factor in the totality of relevant circumstances”). *But see State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (cautioning that “a criminal record . . . is best used as corroborative information and not as the sole basis for probable cause” (quotations omitted)). Here, Henry’s two previous convictions for controlled-substance offenses have some probative value and contribute to the totality of the circumstances. *See Hochstein*, 623 N.W.2d at 623.

Considering the totality of the circumstances here—the presence of marijuana in noncompliant packaging, the strong odor of marijuana, the officer’s training and experience, and Henry’s criminal history—the officer had probable cause to search the car at the time he announced his intent to do so, leading to Henry admitting to possession of the gun. Thus, the district court did not err in denying the motion to suppress evidence of the firearm and other items found in the car after a search.⁴

⁴ Henry also argues that the order on the motion to suppress should be reversed because the officer did not have reasonable, articulable suspicion of criminal activity to expand the scope of the stop when the officer asked Henry to step out of the car and conducted a search. We disagree. First, a police officer may order a driver to exit their vehicle during a

II

Henry separately argues that the district court clearly erred by finding that the search here occurred before the supreme court's decision in *Torgerson*. He maintains that, because the "district court's analysis rests on basic factual and legal errors," it should be reversed. Although the state concedes that the district court erred in that finding, it argues that the error was not prejudicial because the district court analyzed the facts under both pre- and post-*Torgerson* standards. We agree with the state that the district court's mistake does not warrant reversal.

It is undisputed that the district court erred in finding "that the vehicle search in this case was conducted pre-*Torgerson*." The *Torgerson* decision was released in September 2023, 995 N.W.2d at 164, whereas the stop in this case took place nearly two months later in November 2023. The district court also mischaracterized the controlling law when it concluded that details omitted in the police report about the strength of the marijuana smell "would have been virtually irrelevant under existing case law at the time of the search" and that, at the time of Henry's stop, "the odor of marijuana alone was enough to justify a warrantless search." But the district court did not stop with the pre-*Torgerson* analysis. It provided an additional, alternative analysis under *Torgerson*, taking into consideration the totality of the circumstances beyond the smell alone. After

lawful traffic stop "without an articulated reason." *State v. Askerooth*, 681 N.W.2d 353, 367 (Minn. 2004). Second, any argument that the officer lacked reasonable, articulable suspicion to search the car is subsumed by our analysis that the search was supported by probable cause. *See State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (stating that the reasonable suspicion standard is "less demanding than probable cause").

considering the totality of the circumstances, the district court said it would reach the same conclusion whether or not it was applying *Torgerson*, stating “[e]ven after the ruling in *Torgerson*, [the officer] still had probable cause to search, as there were other factors outside the smell of marijuana that indicated he may find evidence of other crimes in [Henry’s] vehicle or on his person.”

For the reasons explained, we are persuaded that the totality of the circumstances supports the district court’s probable-cause determination. For that reason, the district court’s mistake as to the timing of the stop was harmless and we see no basis to reverse the district court’s decision. *See* Minn. R. Crim. P. 31.01 (“Any error that does not affect substantial rights must be disregarded.”).

Affirmed.