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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A25-0007**

State of Minnesota,
Respondent,

vs.

Myon Demarlo Burrell,
Appellant.

**Filed September 8, 2025
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CR-23-18680

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

Kathryn M. Keena, Dakota County Attorney, Todd P. Zettler, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Erica Holzer, Evan A. Nelson, Clayton J. Carlson, Maslon LLP, Minneapolis, Minnesota
(for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Cochran, Judge; and
Ede, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this direct appeal from the judgment of conviction for unlawful firearm possession and fifth-degree drug possession, appellant Myon Demarlo Burrell argues that the district court erred by denying his motion to suppress the evidence against him because

the police lacked (1) reasonable, articulable suspicion to expand the scope of his initial traffic stop to conduct an impaired-driving investigation and (2) probable cause to conduct a warrantless search of his vehicle. In making both arguments, Burrell contends that several of the district court's factual findings are clearly erroneous. We affirm.

FACTS

Based on evidence discovered in a search of Burrell's vehicle following a traffic stop, respondent State of Minnesota charged Burrell with one count of being a prohibited person in possession of a firearm, in violation of Minn. Stat. § 624.713, subd. 1(2) (Supp. 2023), and one count of fifth-degree possession of a controlled substance, in violation of Minn. Stat. § 152.05, subd. 2(1) (Supp. 2023). Burrell moved to suppress the evidence. After a contested omnibus hearing, the district court filed an order denying Burrell's motion. Burrell waived his right to a jury trial and stipulated to the state's case to preserve his right to appeal the dispositive suppression ruling pursuant to Minnesota Rule of Criminal Procedure 26.01, subdivision 4.

Omnibus Hearing and Order Denying Motion to Suppress

The sole witness at the omnibus hearing was Officer Nordby, who conducted the traffic stop and was one of the officers who searched Burrell's vehicle. In addition to Officer Nordby's testimony, the district court received several exhibits, including video footage from Officer Nordby's body-worn camera (BWC) and squad-car dash camera. The following summarizes the evidence presented.

On the morning of August 29, 2023, Officer Nordby was traveling west on North 42nd Avenue in Robbinsdale when he observed a white SUV traveling in the opposite

direction straddling the dotted center line dividing two eastbound lanes. In his rear-view mirror, Officer Nordby observed the SUV continue to straddle the center line between the eastbound lanes. Officer Nordby made a U-turn to travel eastbound toward the SUV and activated his car's dash camera.

Officer Nordby caught up to the SUV, followed it, and monitored its speed by activating his squad car's radar. Officer Nordby recorded the SUV's speed at 37 miles per hour in a 30-mile-per-hour zone and observed the SUV cross over or straddle the line dividing the eastbound traffic lanes several more times. He also observed the SUV briefly cross over the solid line between eastbound traffic and a turn lane for westbound traffic. Based on this driving conduct, Officer Nordby initiated a traffic stop.

As he approached the vehicle, Officer Nordby, who by this time had activated his BWC, saw smoke come out of the vehicle as the driver lowered the window. Officer Nordby spoke with the driver, who identified himself as Burrell. During the interaction with Burrell, Officer Nordby smelled burnt marijuana, saw that Burrell's eyes appeared bloodshot and that his pupils were dilated, and "observed some little marijuana particles on the center console area." Officer Nordby suspected that Burrell might have been driving while impaired by marijuana. Officer Nordby returned to his squad car and requested backup because he was going to conduct an impaired-driving investigation.

When another officer arrived at the scene, Officer Nordby asked Burrell to step out of his vehicle. Officer Nordby informed Burrell that he suspected Burrell had been smoking marijuana in his SUV based on Burrell's "driving conduct," the smoke that came out of the window, and the odor of burnt marijuana. Burrell explained to Officer Nordby that the odor

of burnt marijuana was due to his having smoked marijuana in the vehicle the day before. Officer Nordby again stated that he saw smoke come out of the window, and Burrell explained that he had sprayed an air freshener to mask the odor remaining from the day before. Burrell denied smoking marijuana that morning and submitted to a horizontal-gaze-nystagmus (HGN) test. During the HGN test, Officer Nordby observed that Burrell's eyes exhibited a "lack of smooth pursuit" and "involuntary jerking," which are signs of impairment.

Following the HGN test, Officer Nordby informed Burrell that he intended to search the vehicle. Burrell said that he did not consent to a search, and Officer Nordby replied, "When I have all that smoke coming out, man, that gives me enough." Officer Nordby and other officers then searched Burrell's vehicle, finding a nine-millimeter handgun with an extended magazine in the center console, as well as several capsules containing drugs in a backpack.

In its order denying the motion to suppress, the district court found that Officer Nordby had testified credibly. The district court concluded that the police had reasonable and articulable suspicion to support the initial stop, that the police had reasonable and articulable suspicion of drug use and driving under the influence to support an expansion of the stop, and that the search of Burrell's vehicle was supported by probable cause.¹

¹ The district court also concluded that the search of the vehicle was valid as a search incident to a lawful arrest for DWI—an issue we do not reach because, as explained below, we conclude that the warrantless search was supported by probable case.

Convictions and Sentences

The district court held a stipulated-evidence trial and found Burrell guilty on both counts. It sentenced Burrell to 60 months in prison on the firearm-possession conviction and to a concurrent 19 months in prison on the drug-possession conviction.

Burrell appeals.

DECISION

Burrell challenges the district court's order denying his motion to suppress the evidence seized from his vehicle. He argues that the police lacked reasonable, articulable suspicion to expand the scope of the traffic stop to conduct an impaired-driving investigation. He next argues that the police lacked probable cause to conduct a warrantless search of his vehicle. We address each argument in turn.

I. Reasonable, Articulable Suspicion to Expand the Stop

Both the United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. While warrantless seizures are generally unreasonable, an exception to the warrant requirement exists for a brief investigatory detention if the police have reasonable, articulable suspicion of criminal activity. *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). A traffic stop supported by reasonable, articulable suspicion may be expanded to include investigation of other suspected illegal activity but “only if the officer has reasonable, articulable suspicion of such other illegal activity.” *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). When determining whether an officer had reasonable, articulable suspicion to expand a stop,

courts consider the totality of the circumstances. *State v. Flowers*, 734 N.W.2d 239, 251 (Minn. 2007).

Appellate courts review a district court's factual findings related to a motion to suppress for clear error. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). “[F]indings are clearly erroneous when they are manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole,” leaving the reviewing court “with a definite and firm conviction that a mistake has been committed.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotations omitted); *see also State v. Thompson*, 988 N.W.2d 149, 158 (Minn. App. 2023) (applying *Kenney*), *rev. denied* (Minn. June 20, 2023). Appellate courts defer to the district court's credibility determinations. *State v. Ware*, 856 N.W.2d 719, 728 (Minn. App. 2014).

Burrell makes a two-pronged argument to challenge the district court's determination that Officer Nordby had reasonable, articulable suspicion to expand the stop to conduct an impaired-driving investigation. First, he contends that three of the district court's factual findings—the smoke that Officer Nordby claimed to observe coming out of Burrell's window; the red, bloodshot condition of Burrell's eyes; and the presence of “little marijuana particles on the center console area”—are clearly erroneous. Second, he argues that the remaining, uncontroverted factual findings—Burrell's driving conduct and the odor of marijuana—are insufficient to establish reasonable, articulable suspicion of impaired driving. Burrell does not argue that, if the district court's factual findings are not clearly erroneous, the totality of the circumstances did not provide the police with reasonable, articulable suspicion that Burrell was driving while impaired by marijuana.

Smoke Coming out of Burrell's Vehicle

Burrell challenges the district court's finding that "smoke appeared . . . to emanate from [Burrell's] vehicle" when Burrell rolled down his window as Officer Nordby approached. Officer Nordby testified that he saw smoke come out of the vehicle, and the district court found his testimony credible. Burrell argues that the district court clearly erred in crediting that testimony because the BWC and dash-camera video footage does not show smoke coming out of Burrell's vehicle and Officer Nordby, when viewing the BWC and dash-camera video footage during the omnibus hearing, acknowledged that smoke could not be seen on the dash-camera footage and stated that the BWC footage showed only that the area around the window "kind of appear[ed] to be hazy." Burrell's argument is unconvincing.

As Officer Nordby testified, various factors could account for a difference between what he observed in person and what is visible in his BWC or dash-camera footage. These factors include lighting, the quality of the camera, the density of the smoke, different perspectives, or different proximity to the thing observed. Burrell disputes Officer Nordby's explanation, noting that the dash-camera footage here captured smoke coming out of the window of a different car that was briefly traveling ahead of Officer Nordby as he was following Burrell. But the fact that the dash-camera footage captured different smoke coming from a different car in a different location does not mean that it would necessarily capture the smoke coming out of Burrell's vehicle. We conclude that the video footage is not sufficiently definitive to overcome the deference owed to the district court's determination that Officer Nordby testified credibly. *See Ware*, 856 N.W.2d at 728. As a

result, the district court’s factual finding that Officer Burrell observed smoke emanating from Burrell’s vehicle is not clearly erroneous.²

Condition of Burrell’s Eyes

Burrell also contends that the BWC footage disproves Officer Nordby’s testimony that Burrell’s eyes were bloodshot and red and that his pupils were dilated. This argument is likewise not convincing. Although Burrell’s eyes can be seen on the BWC footage throughout his interaction with Officer Nordby, the BWC was pointed directly at either the door of Burrell’s SUV (while Burrell was still inside the vehicle) or Burrell’s midsection (after Burrell had exited the vehicle). The BWC footage therefore does not show Burrell’s eyes from the same vantage point or with the same clarity that Officer Nordby had during his interaction with Burrell. Thus, the BWC footage does not provide a basis on which to decide that the district court clearly erred in crediting Officer Nordby’s testimony.

Burrell also suggests that Officer Nordby’s testimony about Burrell’s eyes was not credible because Officer Nordby mentioned only Burrell’s driving conduct and the smoke coming out of Burrell’s vehicle—not Burrell’s eyes—when he radioed for backup when

² The district court also found support for its finding that Officer Nordby observed smoke come out of the vehicle because “even [Burrell] admits something came out of the vehicle” since he “declar[ed] . . . that the vapor was ‘air freshener.’” Burrell disputes the district court’s interpretation of his statements, arguing that he was not admitting that anything had come out of the window but rather was simply acknowledging that he had used air freshener to mask the odor of marijuana. The footage from Officer Nordby’s BWC shows that Burrell responded to Officer Nordby informing Burrell that the officer observed smoke coming out of Burrell’s window by stating, “[T]hat was an air freshener, actually,” and that Burrell later responded to Officer Nordby’s assertion that smoke emanated from his window by twice stating, “It wasn’t smoke.” We see no clear error in the district court’s interpretation of this exchange.

expanding the stop to an impaired-driving investigation. But the fact that Officer Nordby did not list all his observations over the radio at that moment does not compel the conclusion that the district court clearly erred by crediting the officer's omnibus-hearing testimony about Burrell's eyes.

Marijuana Particles

Burrell also argues that, because “no marijuana particles are seen” in the BWC footage of Officer Nordby searching the interior of Burrell's vehicle, the district court clearly erred in crediting Officer Nordby's testimony that he observed “marijuana particles” on the vehicle's “center console area.” Again, this argument is unconvincing. While the BWC footage does not show any “marijuana particles” on the center console, the footage of the “console area” is not so clear or comprehensive as to compel the conclusion that the district court clearly erred in crediting Officer Nordby's testimony.

Burrell also suggests that Officer Nordby's testimony was not credible because the BWC footage shows that Officer Nordby opened the center console “without collecting, brushing off, or mentioning ‘little marijuana particles’” and because Officer Nordby did not refer to the particles when he called for backup. Neither argument convinces us that the district court clearly erred by determining that Officer Nordby's testimony was credible.

In sum, we discern no clear error in the three factual findings challenged by Burrell—regarding the smoke, the condition of Burrell's eyes, and the observation of marijuana particles. Burrell does not argue that the totality of the circumstances, if it includes these factual findings, did not furnish reasonable, articulable suspicion to expand

the scope of the traffic stop to conduct an impaired-driving investigation. We thus conclude that the expansion of the stop was constitutional.

II. Probable Cause for Warrantless Search of the Vehicle

Warrantless searches of a vehicle are per se unreasonable under the United States and Minnesota Constitutions “unless one of the well-delineated exceptions to the warrant requirement applies.” *State v. Torgerson*, 995 N.W.2d 164, 168 (Minn. 2023) (quotation omitted). One of these exceptions is the automobile exception, which permits police to search a vehicle without a warrant during a traffic stop “if there is probable cause to believe the search will result in a discovery of evidence or contraband.” *Id.* at 168-69 (quotation omitted). Probable cause exists when, under the totality of the circumstances, “there is a fair probability that contraband or evidence of a crime will be found” in the place searched. *State v. Zanter*, 535 N.W.2d 624, 633 (Minn. 1995) (quotation omitted). In reviewing a pretrial order on a suppression motion, appellate courts review the district court’s factual findings for clear error and its legal conclusions de novo. *Gauster*, 752 N.W.2d at 502.

The district court concluded that the police had probable cause to search Burrell’s vehicle for evidence of driving under the influence based on the smell of marijuana, the presence of marijuana residue on the console, the physical indicia of intoxication exhibited by Burrell, and Burrell’s performance during the HGN test. The state argues that probable cause was additionally supported by the smoke emanating from Burrell’s vehicle and Burrell’s driving conduct.

Burrell first argues that, because the smoke emanating from Burrell’s window is the only reason that Officer Nordby articulated to Burrell before searching the vehicle, our

review of probable cause is limited to only two circumstances: the smoke and the undisputed odor of marijuana. And, Burrell continues, because the district court clearly erred in finding that Officer Nordby observed smoke come out of Burrell's window, only the odor of marijuana is left and the odor of marijuana alone is insufficient under *Torgerson*. 995 N.W.2d 164.³

Burrell's argument fails for two reasons. First, we have already concluded that the district court did not clearly err in finding that Officer Nordby observed smoke coming out of Burrell's vehicle. Second, Burrell offers no authority for the proposition that, in determining the totality of the circumstances, we are restricted to the observations that an officer articulated to a driver. Although the totality of circumstances may include the "reasonable inferences that police officers draw from facts, based on their training and experience," assessing probable cause is "an objective inquiry." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). Officer Nordby's subjective beliefs about whether he had probable cause or what probable cause was based on do not dictate the circumstances that a court may consider in evaluating probable cause. *See State v. Koppi*, 798 N.W.2d 358, 363 (Minn. 2011) ("The actual, subjective beliefs of the officer are not the focus in

³ The state asserts that, even if the odor of marijuana is the only factual finding left to support probable cause, it is sufficient because the search was conducted before the supreme court issued its opinion in *Torgerson* and the *Lindquist* exception to the exclusionary rule therefore applies. *See State v. Lindquist*, 869 N.W.2d 863, 870, 876 (Minn. 2015) (holding that the "exclusionary rule for evidence obtained in violation of a defendant's constitutional rights against unreasonable searches and seizures" does not apply "when law enforcement acts in objectively reasonable reliance on binding appellate precedent"). We need not address the question whether *Torgerson* or *Lindquist* applies because, as we explain, multiple circumstances in addition to the odor of marijuana support the existence of probable cause to search Burrell's vehicle.

evaluating reasonableness.”). Because the totality of circumstances is not limited to the undisputed odor of marijuana, Burrell’s *Torgerson* argument fails.

Burrell next argues that the broader totality of circumstances does not support probable cause. The argument is unconvincing. Burrell again challenges the district court’s factual findings regarding Officer Nordby’s observations of smoke, the condition of Burrell’s eyes, and the presence of “marijuana particles” on the center console. But we have already concluded that those findings are not clearly erroneous. Burrell also argues that his traffic violations were “far too tame to support probable cause of drug use.” We agree that the driving conduct was minor; while it still could contribute to probable cause in conjunction with other circumstances, it is not critical to the probable cause issue here. Burrell does not dispute the odor of burnt marijuana. This leaves one circumstance—the “lack of smooth pursuit” and “involuntary jerking” exhibited by Burrell’s eyes during the HGN test administered by Officer Nordby.

In his brief, Burrell argues that we should conclude that this factual finding is clearly erroneous because “the video evidence disproves” Officer Nordby’s account of Burrell’s performance on the HGN test. At oral argument, Burrell argued that we should conclude that the finding is clearly erroneous because Officer Nordby did not tell Burrell that he had failed the test or immediately place him under arrest after the test concluded. Neither argument is persuasive.

Again, for the reasons discussed above, the BWC footage of the HGN test does not clearly contradict Officer Nordby’s testimony. In fact, the district court viewed the footage itself and found that Burrell’s eyes “very clearly demonstrate a lack of smooth pursuit in

following Officer Nordby's finger, and an involuntary jerking of [Burrell's] eyes is clearly visible as Officer Nordby initially passes his finger across [Burrell's] field of vision." We see no clear error in that finding. As to Burrell's other argument, the fact that Officer Nordby did not tell Burrell that he exhibited signs of impairment or immediately place him under arrest after the HGN test does not compel the conclusion that the district court clearly erred in crediting Officer Nordby's testimony or making its own finding from viewing the BWC footage.

In sum, we conclude that none of the district court's factual findings challenged by Burrell were clearly erroneous and that, based on the totality of the circumstances, the warrantless search of Burrell's vehicle was justified by probable cause.⁴

Affirmed.

⁴ Because we conclude that the police had probable cause to conduct a warrantless search of Burrell's vehicle for evidence in the context of an impaired-driving investigation, we do not address Burrell's argument that police could not have had probable cause to believe they would find evidence or contraband because "[m]arijuana is no longer contraband in Minnesota." See *Torgerson*, 995 N.W.2d at 169. This argument, and the state's response that the police had probable cause to believe the search would result in evidence of a violation of Minnesota's open-package law for cannabis, see Minn. Stat. § 169A.36 (Supp. 2023), are not relevant to whether the police had probable cause to search for evidence of impaired driving.