

*This opinion is nonprecedential except as provided by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
A25-1718**

State of Minnesota,
Respondent,

vs.

Terrance Stephen Russell,
Appellant.

**Filed August 10, 2026
Reversed
Halbrooks, Judge***

Pipestone County District Court
File No. 59-CR-22-142

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

Damain D. Sandy, Pipestone County Attorney, Pipestone, Minnesota (for respondent)

Mark D. Kelly, St. Paul, Minnesota (for appellant)

Considered and decided by Harris, Presiding Judge; Wheelock, Judge; and
Halbrooks, Judge.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

After a stipulated-evidence trial, appellant Terrance Stephen Russell was convicted of second- and fifth-degree controlled-substance crimes. His convictions are based on

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

evidence that police officers found during a warrantless search of his vehicle. Russell moved pretrial to suppress the evidence and dismiss all counts, but the district court denied the motion. In this appeal, Russell challenges that ruling, arguing that the district court erred in refusing to suppress the evidence because police officers unlawfully seized Russell and lacked probable cause to search his vehicle without a warrant. Because we conclude that the police officers did not have probable cause to conduct the warrantless vehicle search, we reverse the district court's denial of Russell's motion to suppress, and we, therefore, reverse Russell's convictions.

FACTS

In April 2022, a deputy sheriff of the Pipestone County Sheriff's Office (the deputy) received instructions to report to the local fairgrounds to release an impounded vehicle from secure storage. After the deputy arrived at the fairgrounds, a vehicle containing two people approached the deputy's squad car. The deputy exited his squad car and approached the vehicle on the passenger side, at which time the driver, Russell, got out of the vehicle. The passenger of the vehicle opened the passenger window, and the deputy informed both of them that the impounded vehicle was ready. While standing near the passenger window, the deputy smelled an odor of marijuana. Without informing Russell or his passenger that he smelled marijuana, the deputy told them to "sit tight" while he went "to make a quick phone call." Russell returned to the driver's seat of his vehicle. The deputy returned to his squad car, called his supervising lieutenant, and repositioned his squad car so that the squad-car camera was aimed at Russell's vehicle.

The deputy again got out of his squad car and approached the vehicle at the passenger-side window. The deputy asked Russell and his passenger, “How much weed is in the car?” and stated that he had “just smelled it.” Russell admitted that there was a “roach”¹ and pointed toward the ashtray. The deputy asked them when they smoked the roach and who smoked it. Russell denied smoking the roach recently. The deputy then told them that he was going to perform a search of Russell’s vehicle and ordered them to exit the vehicle. The deputy began to search the vehicle, and after the deputy’s supervising lieutenant arrived, they both continued the search.

Evidence retrieved as a result of the vehicle search included: a black backpack containing 31 grams of pills of methamphetamine and MDMA,² 194.87 grams of marijuana plant material without packaging and various labeled containers; a postal service shipping box with a total of seven grams of marijuana plant material; and various other drug paraphernalia including labeled containers and other smaller amounts of marijuana and products containing THC.³ The officers arrested Russell and the passenger.

Based on this evidence, respondent State of Minnesota charged Russell with four counts: second-degree possession of a controlled substance under Minn. Stat. § 152.022,

¹ A “roach” is the end of a burnt marijuana cigarette.

² Methylenedioxymethamphetamine, otherwise known as MDMA, is a hallucinogen and a Schedule I controlled substance. Minn. Stat. § 152.02, subd. 2(d)(2) (2020); Minn. R. 6800.4210, subp. C(7) (2021).

³ Tetrahydrocannabinol, otherwise known as THC, is a naturally occurring substance in a cannabis plant, and their synthetic equivalents. Minn. Stat. § 152.02, subd. 2(h)(2) (2020); Minn. R. 6800.4210, subp. C(25) (2021); *see also State v. Loveless*, 987 N.W.2d 224, 250 (Minn. 2023) (defining THC).

subd. 2(a)(5) (2020) (count I); fourth-degree possession of a controlled substance under Minn. Stat. § 152.024, subd. 2(1) (2020) (count II); fifth-degree sale of a controlled substance under Minn. Stat. § 152.025, subd. 1(1) (2020) (count III); and fifth-degree felony possession of a scheduled controlled substance under Minn. Stat. § 152.025, subd. 2(1) (2020) (count IV).

Russell moved to suppress the evidence, arguing that the deputy unlawfully searched his vehicle without a warrant. The deputy testified at the contested omnibus hearing. The district court denied Russell's motion. Russell requested that the district court reconsider its ruling in light of the supreme court's decision in *State v. Torgerson*, 995 N.W.2d 164 (Minn. 2023).⁴ The district court agreed to reconsider the matter but again denied Russell's motion to suppress the evidence, determining that the warrantless search of Russell's vehicle was justified under the automobile exception to the warrant requirement. The district court reasoned that "the smell of marijuana combined with the actual presence of marijuana in the vehicle" was enough for the deputy to establish probable cause.

The parties agreed that the district court's ruling on the suppression motion was dispositive and proceeded under Minn. R. Crim. P. 26.01, subd. 4. Accordingly, Russell waived his right to a jury trial and submitted the case for trial on stipulated evidence to preserve the suppression issue for appeal. At the conclusion of the trial, the district court

⁴ The district court denied Russell's motion to dismiss on May 26, 2023, and the supreme court filed *Torgerson* on September 13, 2023. Thereafter, Russell submitted his request for reconsideration, and on April 16, 2024, the district court again denied his motion.

found Russell guilty of count I and count III, and imposed a stayed 48-month prison sentence on count I.

This appeal follows.

DECISION

Russell argues that the district court erred by denying his pretrial motion to suppress the evidence and to dismiss all counts. Russell presents two arguments. First, Russell contends that the deputy did not have reasonable, articulable suspicion of criminal activity to justify seizing him when the deputy said, “Sit tight.” Second, Russell asserts that police officers did not have probable cause to conduct a warrantless search of his vehicle.

In considering a challenge to a district court’s ruling on a motion to suppress evidence, we review factual findings for clear error and legal determinations de novo. *State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011). When the facts are undisputed, as they are here, “we review a pretrial order on a motion to suppress de novo and ‘determine whether the police articulated an adequate basis for the search or seizure at issue.’” *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011) (quoting *State v. Flowers*, 734 N.W.2d 239, 247-48 (Minn. 2007)).

I.

We first address Russell’s argument that he was unlawfully seized when the deputy said, “Sit tight.” On appeal, Russell contends that he was unreasonably seized because the deputy did not have reasonable, articulable suspicion of criminal activity. The state argues that Russell forfeited any claim that the deputy unlawfully seized him because he never

raised it in district court. As a result, the district court neither considered nor addressed it. We agree.

A defendant may appeal a “dispositive, pretrial ruling” by agreeing to proceed with a stipulated-evidence trial. *State v. Myhre*, 875 N.W.2d 799, 802 (Minn. 2016); *see also* Minn. R. Crim. P. 26.01, subd. 4. Appellate review “is expressly limited to the pretrial ruling by the district court.” *State v. Marsh*, 931 N.W.2d 825, 829 (Minn. App. 2019), *rev. denied* (Minn. Sept. 17, 2019). A motion to suppress evidence “should specify, with as much particularity as is reasonable under the circumstances, the grounds advanced for suppression in order to give the state as much advance notice as possible as to the contentions it must be prepared to meet at the hearing.” *State v. Needham*, 488 N.W.2d 294, 296 (Minn. 1992). In *Needham*, we recognized that, in practice, the precise grounds for suppression are not always clear at the outset of the contested omnibus hearing but become clear during the questioning of the witnesses. *See id.* But if a defendant does not raise their precise challenges in a motion to suppress or at the omnibus hearing and instead raises them for the first time on appeal, those arguments are forfeited. *See State v. Lieberg*, 553 N.W.2d 51, 56 (Minn. App. 1996).

Russell’s motion at the omnibus hearing challenged the admissibility of the evidence. Russell argued that the deputy “did not have reasonable articulable suspicion of criminal activity to search [Russell’s] *motor vehicle*,” and that “[Russell’s] *vehicle* was

searched without a warrant or exception to the warrant requirement.”⁵ (Emphasis added.) In his accompanying memorandum, Russell did not address the deputy’s alleged unlawful seizure of Russell before the search of his vehicle. He focused solely on the warrantless search of his vehicle. Finally, at the omnibus hearing, Russell raised the issue of his seizure only in a “post-arrest” context, arguing that his arrest was improper as a result of the warrantless search of the *vehicle*—not that he was seized *before* the vehicle search. In both its order denying Russell’s motion to suppress and its order on reconsideration, the district court made explicit rulings based on the search of Russell’s vehicle without any mention of the deputy’s alleged unlawful seizure of Russell before the search.

Although Russell’s seizure argument asks for the same relief as the search argument, it is based on a wholly separate body of law and requires factual determinations that were never presented to or analyzed by the district court in either of its omnibus orders. *See State v. Sorenson*, 441 N.W.2d 455, 459 (Minn. 1989) (declining to rule on the validity of a warrantless seizure because it was not raised at the district court, and there was “insufficient information in the trial court record” on the issue); *State v. Brunes*, 373 N.W.2d 381, 386 (Minn. App. 1985) (“Because appellant did not raise these issues at the omnibus hearing, it has waived them and their appeal is not properly before this court.”), *rev. denied* (Minn. Oct. 11, 1985).

⁵ We note that Russell’s arguments do not accurately state the law, which instead requires probable cause to search a motor vehicle under the automobile exception. *See State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016).

Because this court’s review is expressly limited to the district court’s pretrial ruling, and because Russell did not preserve the seizure issue for appeal, he has forfeited it. *See Roby v. State*, 547 N.W.2d 354, 357 (Minn. 1996) (stating that a reviewing court “will not decide issues which were not raised before the district court, including constitutional questions of criminal procedure”).

II.

We next address the deputy’s search of Russell’s vehicle. Russell argues that the evidence should be suppressed because the deputy did not have probable cause to conduct a warrantless search of his vehicle.

The United States and Minnesota Constitutions guarantee the right of the people to be secure against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. This guarantee extends to the right of people to be secure in their vehicles. *See, e.g., Berkemer v. McCarty*, 468 U.S. 420, 439-40 (1984); *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). The Minnesota Constitution has been interpreted to provide greater protection from unreasonable searches and seizures during traffic stops than the U.S. Constitution. *State v. Ortega*, 770 N.W.2d 145, 152 (Minn. 2009). Warrantless searches and seizures are unreasonable unless a recognized exception to the warrant requirement applies. *Id.* at 149.

One such exception permits a police officer to search a vehicle without a warrant 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 is a fair probability that contraband or evidence of a crime will be found in a particular

place.” *Torgerson*, 995 N.W.2d at 169 (quotation omitted). “This is a common-sense, non[-]technical concept that involves the factual and practical considerations of everyday life on which reasonable and prudent people, not legal technicians, act.” *Id.* (quotations omitted).

Determining whether probable cause exists is an “objective inquiry that depends on the totality of the circumstances in each case.” *Id.* (quotations omitted). In a totality-of-the-circumstances analysis, “courts do not examine the bits and pieces of a probable cause showing in isolation,” but must consider them in their entirety. *Lieberg*, 553 N.W.2d at 55 (quotation omitted). “[A] collection of pieces of information that would not be substantial alone can combine to create sufficient probable cause.” *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (quotation omitted). This evaluation may be based on “reasonable inferences that police officers draw from facts, based on their training and experience, because police officers may interpret circumstances differently than untrained persons.” *Lester*, 874 N.W.2d at 771. Accordingly, in reviewing a probable-cause determination, “an appellate court must give due weight to reasonable inferences drawn by police officers and to a district court’s finding that the officer was credible and the inference was reasonable.” *Id.* (quotations omitted).

Here, based on the odor of marijuana and the presence of a burnt roach in the vehicle, the deputy conducted a warrantless search of Russell’s vehicle. Russell contends, relying on *Torgerson*, that this was not enough to establish probable cause. 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 the deputy’s search of Russell’s vehicle, marijuana was a schedule I controlled substance. Minn. Stat. § 152.02, subd. 2(h) (2020). Marijuana was defined as “all parts of the plant of any species of the genus *Cannabis*.” Minn. Stat. § 152.01, subd. 9 (2020). There were three statutory exceptions that made cannabis possession noncriminal. The first exception was for “hemp,” defined as having a delta-9 THC concentration of not more than 0.3 percent. *See* Minn. Stat. §§ 152.01, subd. 9 (2020), .22, subd. 5a (Supp. 2021). The second exception was for medical cannabis possessed under Minnesota’s medical cannabis registry program. Minn. Stat. § 152.32, subd. 2 (Supp. 2021). And the third exception made possession of a “small amount”—“42.5 grams or less”—of marijuana a noncriminal petty misdemeanor. Minn. Stat. §§ 152.027, subd. 4(a) (2020), .01, subd. 16 (Supp. 2021). Under certain circumstances, possession of more than 1.4 grams of marijuana in a motor vehicle was a misdemeanor, but possession of 1.4 grams or less was a noncriminal offense. Minn. Stat. § 152.027, subd. 3 (2020); *see also Torgerson*, 995 N.W.2d at 170. Consequently, under the then-existing statutory scheme, possession of marijuana was “not always a crime.” *Torgerson*, 995 N.W.2d at 170.

The question in this case is whether the odor of marijuana (not sufficient under *Torgerson*) in combination with the presence of a roach gave the deputy sufficient reason to believe there was a fair probability that more than 1.4 grams of marijuana would be found in the vehicle. The deputy did not testify to, or mention, any other circumstances that justified his search, such as slurred speech or other indicia of impairment,

paraphernalia in plain view, or any suspicious gestures to support a reasonable inference that a fair probability of criminal activity existed. *See State v. Douglas*, 29 N.W.3d 187, 191-92 (Minn. 2025).

Although the deputy’s narrative report described a “very strong odor of marijuana emitting from the vehicle,” that odor, combined with only a noncriminal amount of marijuana in the roach, did not under these circumstances—a voluntary encounter for a lawful purpose—establish “a fair probability that contraband or evidence of a crime” would be found in Russell’s vehicle. *Torgerson*, 995 N.W.2d at 169 (quotation omitted).

Given the totality of the circumstances and the prevailing law at the time, because the deputy did not have probable cause to search Russell’s vehicle, the district court erred by denying Russell’s motion to suppress the evidence obtained pursuant to that search and to dismiss the complaint. Accordingly, we reverse Russell’s convictions.

Reversed.