STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0714

State of Minnesota,
Respondent,

vs.

Sage Stone Carlson,
Appellant.

Filed March 31, 2025
Affirmed
Schmidt, Judge

Chippewa County District Court
File No. 12-CR-23-55

Keith Ellison, Attorney General, Thomas R. Ragatz, Assistant Attorney General, St. Paul, Minnesota; and

Matthew Haugen, Chippewa County Attorney, Montevideo, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Sean R. Smallwood, Special Assistant Public Defender, Minneapolis, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Johnson, Judge; and Schmidt, Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Sage Stone Carlson argues the district court erred in denying his motion to suppress evidence of drugs found in his car because the officer did not have reasonable suspicion to expand the traffic stop and because the officer did not have probable cause to search his car. Because we determine that the officer had reasonable suspicion to expand the stop and probable cause to search the car, we affirm.

FACTS

In January 2023, a police officer observed a car that "appeared to be going over the posted speed limit." The officer's radar indicated that the car was going 52 miles per hour in a 40-miles-per-hour zone. The officer turned on his emergency lights and pulled over the car. As the officer approached, he smelled marijuana coming from the car. The officer requested the driver's identification and learned that the driver was Carlson, who was born in 2003. The officer noted that Carlson stated, "that there was no way he could have [been] speeding[.]" The officer had Carlson exit the car.

The officer told Carlson that he could smell marijuana. Carlson then told the officer about a CBD pen[1] in his pocket, which Carlson said he purchased from someone in Hutchinson, Minnesota. Carlson gave the pen to the officer. The officer told Carlson he would be searching his car and asked if there was anything inside. Carlson mentioned "a joint" in the ashtray. The officer searched the car and found: (1) a joint; (2) a second vape

[1] The vape pen contained both THC (tetrahydrocannabinol) and CBD (cannabidiol).

pen; (3) a prescription bottle with small pieces of cannabis flower inside; (4) the container for the first CBD pen; (5) a vacuum sealed bag of psychedelic mushrooms; (6) a glass pipe; and (7) marijuana. The officer arrested Carlson. The mushrooms later tested positive for psilocybin—a schedule 1 hallucinogen. Minn. Stat. § 152.02, subd. 2(d)(21) (2024).

Respondent State of Minnesota charged Carlson with one count of second-degree controlled substance possession and one count of fifth-degree controlled substance possession. Carlson moved to suppress the evidence obtained from the search of his car.

The district court denied the motion to suppress. The district court first determined that the officer had reasonable suspicion to expand the stop because of the odor of marijuana coming from the car, and from Carlson's inability "to perceive his rate of speed." The district court also determined that the officer had probable cause to search the car because of the smell of marijuana, the presence of a vape pen on Carlson, Carlson's age, the time of day,[2] the traffic violation, and Carlson's misperception of his speed.

The parties agreed to a stipulated facts bench trial because the suppression issue was dispositive. Minn. R. Crim. P. 26.01, subd. 4. The district court found Carlson guilty of both counts, but only convicted him on count one because count two constituted a lesser-included offense. The court sentenced Carlson to seven days in jail—with credit for seven days served—and placed him on supervised probation for five years.

Carlson appeals.

[2] The incident report states it was 1036 hours. There is no indication whether the arrest happened in the morning or the evening.

DECISION

Carlson argues the district court erred in denying his motion to suppress because the officer lacked reasonable articulable suspicion to expand the traffic stop and did not have probable cause to search Carlson's car. The Minnesota and United States Constitutions protect an individual's right "to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures[.]" Minn. Const. art. I, § 10; U.S. Const. amend. IV. "Warrantless searches are generally unreasonable unless they fall within a recognized warrant exception." *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). "The state has the burden to prove that, in the absence of a search warrant," police had "probable cause to conduct a search." *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007).

We review de novo whether reasonable suspicion or probable cause justified a search or seizure. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). To review whether an exception to the warrant requirement justified a warrantless search or seizure, we review the district court's factual findings for clear error and its legal conclusions de novo. *State v. Stavish*, 868 N.W.2d 670, 677 (Minn. 2015).

I. The officer had reasonable, articulable suspicion to expand the stop.

Carlson argues the district court erred in determining that the police officer had reasonable, articulable suspicion to expand the stop because the odor of marijuana, alone, cannot justify the expansion of an investigatory stop. The state argues that the officer did not expand the stop when he asked Carlson to exit his car, and the officer had reasonable suspicion to expand the stop by asking questions about marijuana. We agree with the state.

Officers are allowed "to conduct limited stops to investigate suspected criminal activity when the police can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) (quotation omitted). "[A]n investigatory stop is necessary when the totality of the circumstances points to some observable unusual conduct . . . that leads the officer reasonably to conclude in light of [their] experience that criminal activity may be afoot." *State v. Schrupp*, 625 N.W.2d 844, 846 (Minn. App. 2001) (quotation omitted), *rev. denied* (Minn. July 24, 2001). "[E]ach incremental intrusion during a traffic stop [must] be individualized to the person toward whom the intrusion is directed and tied to and justified by one of the following: (1) the original purpose of the stop, (2) independent probable cause, or (3) reasonableness[.]" *State v. Askerooth*, 681 N.W.2d 353, 356 (Minn. 2004). "The reasonable-suspicion standard is not high." *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011) (quotation omitted).

First, Carlson and the state debate whether the officer expanded the stop when he asked Carlson to step out of the car. The Minnesota Supreme Court has stated "that a police officer may order a driver out of a lawfully stopped vehicle without an articulated reason." *Askerooth*, 681 N.W.2d at 367 (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977)). Here, the officer lawfully stopped Carlson for speeding and needed no other reason to order Carlson out of the car. Carlson cites a nonprecedential case in which we determined that an officer seized the defendant after he asked the defendant to leave a parked vehicle. *State v. Dawson*, No. A24-0573, 2024 WL 4481412, at *4-5 (Minn. App. Oct. 14, 2024), *rev. denied* (Minn. Feb. 18, 2025). But removing an individual from a parked vehicle

presents different circumstances from asking someone to leave a vehicle that police lawfully stopped. Although a more serious intrusion requires an additional basis, having a driver exit a vehicle after a lawful stop does not. *See Askerooth*, 681 N.W.2d at 367. The stop was not expanded when Carlson was asked to exit his vehicle.

Second, Carlson and the state debate whether the officer impermissibly expanded the stop when he asked Carlson questions about marijuana.[3] Carlson argues that the record does not support the district court's statement that Carlson exhibited impaired driving.[4] The district court did not state that Carlson was impaired, but instead noted: "In this case it was reasonable for a police officer to *suspect* Mr. Carlson of marijuana possession or impaired driving." The district court based this statement on the officer's belief that Carlson "appeared unable to perceive his rate of speed." The district court properly noted Carlson's inability to perceive his speed allowed the officer to reasonably suspect that Carlson was impaired while driving.

Carlson argues that the district court's decision fails because the odor of marijuana alone cannot justify an officer's expansion of a stop. *See State v. Torgerson*, 995 N.W.2d 164, 174-75 (Minn. 2023). In *Torgerson*, the Minnesota Supreme Court

[3] The state argues that the officer asking about the odor of marijuana was unlikely to expand the stop in any meaningful way. But "the scope and duration of a traffic stop investigation must be limited to the justification for the stop." *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003). And "even a single question, depending on its content, could expand the scope of a traffic stop[.]" *State v. Smith*, 814 N.W.2d 346, 351 n.1 (Minn. 2012).

[4] Carlson also argues that the district court erred by noting Carlson was stopped at night. The state agrees that the record is unclear as to the time of day that the stop occurred. We agree and we will not consider the time of the stop in our de novo review.

determined that the odor of marijuana, on its own, does not support probable cause to search a vehicle. *Id.* at 165. *Torgerson* does not, however, address whether the scent of marijuana can be used as reasonable, articulable suspicion to expand a traffic stop. *Id.* at 169 n.4.[5] We need not answer that question given other circumstances in this case.

The officer first smelled marijuana as he approached the car. He then learned that Carlson was under the age of twenty-one—the legal age in Minnesota to possess marijuana—when he checked his license. Minn. Stat. § 342.09, subd. 1 (2024). The officer also noticed Carlson's misperception of speed when Carlson stressed that he could not have been going over the speed limit. These are three "specific and articulable facts which, taken together with rational inferences from those facts" provided reasonable suspicion for the officer to expand the stop. *Britton*, 604 N.W.2d at 87 (quotation omitted).

II. The officer had probable cause to search Carlson's car.

Carlson argues the district court erred in determining that the officer had probable cause to search the car, contending that the officer's sole basis for the search was the odor of marijuana. Carlson also argues that even if other factors are considered, they do not amount to probable cause.

[5] Carlson urges us to apply the reasoning in cases from Oregon and Massachusetts. These states have also decriminalized small amounts of marijuana, and their courts have held that the odor of marijuana did not, alone, support reasonable suspicion to expand a stop. *State v. Moore*, 488 P.3d 816, 821-22 (Or. Ct. App. 2021); *Commonwealth v. Cruz*, 945 N.E.2d 899, 909-10 (Mass. 2011). But neither case involved a suspicion of impaired driving. Rather, one case involved the odor of unburnt marijuana, *Moore*, 488 P.3d at 818, and the other involved a car parked in a neighborhood, *Cruz*, 945 N.E.2d at 902.

Under the automobile exception to the warrant requirement: "When probable cause exists to believe that a vehicle contains contraband, the Fourth Amendment permits the police to search the vehicle without a warrant." *Flowers*, 734 N.W.2d at 248. 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). Probable cause is a totality-of-the-circumstances analysis that requires "more than mere suspicion but less than the evidence necessary for conviction." *Id.* (quotation omitted). The Minnesota Supreme Court has held:

> [T]hat the odor of marijuana may be considered as part of the probable cause calculus. Specifically, the odor of marijuana is one of the circumstances in the totality of circumstances analysis that should be considered in determining if there is a 'fair probability' that contraband or evidence of a crime will be found in the location searched.

Id. at 174 (quotation omitted). But, on its own, the odor of marijuana "is insufficient to establish a fair probability that the search would yield evidence of criminally illegal drug-related contraband or conduct." *Id.* at 175.

The district court determined that "Mr. Carlson's admission that he had a 'CBD pen' and Mr. Carlson's surrender of it to the officer can be considered in the probable cause 'calculus' because those events occurred before the officer decided to search the vehicle." The district court then determined that the CBD pen, along with Carlson's age, "the excessive speed, the odor of marijuana, . . . and misperception of speed provide[d] probable cause that the vehicle would contain marijuana."

Carlson argues that the officer only stated that he was searching the car because of the odor of marijuana. Therefore, Carlson contends that the officer did not articulate "a particularized and objective basis for suspecting the seized person of criminal activity." *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). The record here consists of the officer's incident report; the district court did not receive testimony at an omnibus hearing. Besides the odor of marijuana—which can be considered within the totality of the circumstances for the probable cause calculus—the officer wrote in his report that Carlson was speeding, Carlson asserted there was no way he could be speeding, Carlson was born in 2003, and Carlson gave the officer a CBD pen. These additional facts, combined with the odor of marijuana, provided sufficient probable cause to search the car.

Carlson also argues that the facts of his age and the smell of marijuana are not enough to suggest "there is a criminally illegal amount of drugs in the vehicle[,]" and "there are other, likely innocent, explanations as to why" his vehicle smelled like marijuana. But "[t]he 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." *State v. Hawkins*, 622 N.W.2d 576, 580 (Minn. App. 2001).

The officer here had the knowledge that he smelled marijuana, Carlson was under the age of twenty-one, Carlson had a misperception of his speed, and Carlson handed the officer a CBD pen. Thus, the officer had probable cause to believe Carlson's car contained contraband to justify the warrantless search of Carlson's automobile. *See Torgerson*, 995 N.W.2d at 169.

Affirmed.