This opinion is nonprecedential except as provided by Minn.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
A20-1641

State of Minnesota,
Respondent,

vs.

Thomas Eric Walbridge,
Appellant.

Filed November 22, 2021
Affirmed
Larkin, Judge

Mille Lacs County District Court
File No. 48-CR-18-1802

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

Joseph J. Walsh, Mille Lacs County Attorney, Brian D. Wold, Erica L. Madore, Assistant County Attorneys, Milaca, Minnesota (for respondent)

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

Grant S. Gibeau, Special Assistant Public Defender, Taft, Stettinius & Hollister LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Larkin, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges his conviction for first-degree possession of a controlled substance, arguing that the district court erred by denying his motion to suppress

methamphetamine that was seized during the search of a vehicle he was driving. We affirm.

FACTS

Respondent State of Minnesota charged appellant Thomas Eric Walbridge with first-degree possession and sale of a controlled substance. Walbridge moved to suppress the controlled-substance evidence, arguing that it was obtained during an unconstitutional search and seizure.

Evidence presented at a contested hearing on Walbridge's motion indicates that on August 2, 2018, at approximately 2:10 a.m., a Mille Lacs County deputy sheriff stopped a vehicle Walbridge was driving for traveling 61 miles per hour in a 55-mile-per-hour zone. When the deputy approached Walbridge, he noticed that Walbridge was "profusely sweating" despite the 50- to 55-degree temperature, his pupils were constricted, his eyes were bloodshot, and his body and hands were shaking. He also observed that Walbridge was more nervous than a typical driver during a traffic stop. Based on the deputy's training and experience, he suspected that Walbridge was under the influence of drugs or alcohol.

Walbridge told the deputy that he was coming from his cousin's house. The deputy testified that Walbridge's cousin and his residence were "known to law enforcement for various criminal activities," including drug activity.

The deputy asked Walbridge about his physical appearance. Walbridge said that he was sweating because he had been cleaning at his cousin's house and that he was shaking because he was nervous. At the deputy's request, Walbridge held out his hands, and the deputy observed that his hands were "visibly rapidly shaking." Walbridge stuttered when

answering a few questions. Additionally, the deputy noticed numerous air fresheners inside the vehicle. In the deputy's experience, people use large amounts of air fresheners to mask odors from controlled substances.

The deputy conducted field tests to determine if Walbridge was impaired. The tests indicated impairment. For example, Walbridge's pupils were slow to react to light; he estimated that 30 seconds had passed in only 20 seconds; he had "eyelid flutter"; and he had raised bumps on the back side of his tongue, which are common when a person uses a pipe to ingest a controlled substance. The deputy asked Walbridge if there were particular substances in the vehicle. Walbridge answered "no" when asked whether the vehicle contained alcohol, marijuana, or heroin, but he responded "negative" when asked whether he had methamphetamine. Also, Walbridge initially denied that he had ever used methamphetamine, but then he admitted that he had used it in the past.

The deputy requested consent to search the vehicle. Walbridge refused. The deputy told him that he could either consent and "be on his way" if no controlled substances were found or the deputy would arrange for a canine trained in narcotics detection to come to the scene. Walbridge again denied consent to search the vehicle. The deputy contacted a canine officer, who arrived at the scene approximately 20 minutes later.

The canine officer walked the canine around the outside of Walbridge's vehicle on a retractable leash. The driver's door was closed, but the window was down. The canine's behavior changed when it reached the driver's door. At that point, the canine's breathing became "more intense" and the canine began to sniff heavily, which indicated that it had detected an odor. The canine then jumped into the vehicle through the open window. It

searched for the source of the odor inside the vehicle and gave a "final response" on a backpack located on the floor of the back passenger side. The backpack contained methamphetamine and other drug paraphernalia.

The district court denied Walbridge's motion to suppress, concluding that the deputy had probable cause to search Walbridge's vehicle. Walbridge waived his right to a jury trial and stipulated to the prosecution's case to obtain review of that pretrial ruling, pursuant to Minn. R. Crim. P. 26.01, subd. 4. The district court found Walbridge guilty of first-degree possession of a controlled substance. It entered judgment of conviction and sentenced Walbridge to serve 75 months in prison. Walbridge appeals.

DECISION

The United States and Minnesota Constitutions protect "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Evidence obtained by the police as the result of an unconstitutional seizure must be suppressed. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). Similarly, evidence obtained during an unconstitutional search must be suppressed. *State v. Rohde*, 852 N.W.2d 260, 263 (Minn. 2014).

"When reviewing pretrial orders on motions to suppress evidence, we may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court's factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

I.

Under principles established by the United States Supreme Court in *Terry v. Ohio*, 392 U.S. 1 (1968), a police officer may "stop and temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity." *Diede*, 795 N.W.2d at 842 (quotation omitted). "Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate . . . that he or she had a particularized and objective basis for suspecting the seized person of criminal activity." *Id.* at 842-43 (quotations omitted). The reasonable-suspicion standard is met "when an officer observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). The standard is not high, but it requires more than an unparticularized hunch. *Id.*

The Minnesota Supreme Court recently described the reasonable-suspicion standard in *State v. Taylor*, ___ N.W.2d ___, ___, 2021 WL 4765700, at *3 (Minn. Oct. 13, 2021). The supreme court noted that reasonable suspicion is a "low hurdle." *Id.* at *7. The court also reiterated that a judicial determination of reasonable suspicion is based on an objective standard, and not on the investigating officer's subjective beliefs. *Id.* at *5 n.5. "[W]e evaluate each case on a totality of the circumstances and the rational inferences that can be drawn from those particular facts." *Id.* at *8; *see also State v. Lee*, 585 N.W.2d 378, 382 (Minn. 1998) (explaining that probable cause and reasonable suspicion are "not finely-tuned standards," but are rather "fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed" (quotation omitted)).

"[E]ach incremental intrusion during a stop must be strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quotations omitted). Under the Minnesota Constitution, an intrusion not strictly tied to the circumstances that made the initial stop permissible must be supported by "at least a reasonable suspicion of additional illegal activity." *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

Here, the deputy stopped Walbridge for driving over the speed limit. Walbridge does not challenge that initial stop. Instead, he contends that the police lacked reasonable suspicion to expand the scope of the traffic stop to conduct a dog sniff of his vehicle. The police may conduct a dog sniff around the exterior of a motor vehicle if they have "reasonable, articulable suspicion of drug-related criminal activity." *State v. Wiegand*, 645 N.W.2d 125, 137 (Minn. 2002).

To support reasonable suspicion that Walbridge was engaged in drug-related criminal activity, the state points to Walbridge's behavior that suggested he was impaired, such as his profuse sweating despite the mild temperature, constricted pupils, bloodshot eyes, rapid shaking, and abnormal nervousness. The state also notes that Walbridge was coming from a known drug house, had numerous air fresheners in his vehicle, exhibited signs of impairment during the field tests, admitted he had used methamphetamine in the past, and responded differently when asked whether he had methamphetamine in the vehicle.

Walbridge asserts that some of the circumstances on which the state relies cannot establish reasonable suspicion of drug-related activity. According to Walbridge,

reasonable suspicion cannot be based on the fact that he was coming from his cousin's house, which the police knew to be associated with drug activity. "Mere proximity to, or association with, a person who may have previously engaged in criminal activity is not enough to support reasonable suspicion of possession of a controlled substance." *Diede*, 795 N.W.2d at 844. Nevertheless, "[p]resence in a known drug house is a relevant, but not conclusive, factor for an officer to consider." *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016). For example, the Minnesota Supreme Court concluded that the police had reasonable suspicion to stop a person who had just left a building with a history of drug activity because the person made eye contact with the police as he was leaving and abruptly changed the direction he was walking. *State v. Dickerson*, 481 N.W.2d 840, 842-43 (Minn. 1992), *aff'd sub nom. Minnesota v. Dickerson*, 508 U.S. 366 (1993). In sum, Walbridge's presence at his cousin's house immediately before the traffic stop alone does not establish reasonable suspicion of criminal activity, but it can be considered with the other circumstances.

Walbridge also asserts that reasonable suspicion cannot be based on his nervousness during the traffic stop. The supreme court has been reluctant to rely on a defendant's nervous behavior to support reasonable suspicion of criminal activity. *State v. Burbach*, 706 N.W.2d 484, 490 (Minn. 2005). Indeed, "ordinary drivers may become nervous during a routine traffic stop." *Smith*, 814 N.W.2d at 353. Nonetheless, the supreme court has held that nervousness supported reasonable suspicion where it was manifested in a "severe physical manner." *Id.* at 353-54. Thus, consideration of Walbridge's physical signs of abnormal nervousness, along with the other present circumstances, is appropriate.

Walbridge further argues that his signs of impairment did not establish reasonable suspicion to believe there were controlled substances in the vehicle. Specifically, Walbridge argues that those facts may have caused reasonable suspicion to believe he was driving while impaired, but not that he was transporting drugs in his vehicle. That argument assumes that evidence that a driver is impaired cannot contribute to reasonable suspicion that his vehicle contains drugs and therefore cannot support a dog sniff of the vehicle's exterior.

In *Wiegand*, the supreme court held that, to conduct a dog sniff of a vehicle's exterior, the police must have reasonable, articulable suspicion of "drug-related criminal activity." 645 N.W.2d at 137. In determining that the police lacked reasonable suspicion to conduct a dog sniff of the vehicle in *Wiegand*, the supreme court stressed that the police officer "did not suspect [the defendants] were under the influence of anything, nor did he have any indication that they were transporting drugs." *Id.* at 136-37. The supreme court also noted that, even though the driver was "evasive, nervous and had glossy eyes," the police never suspected that he was under the influence of any controlled substances. *Id.* at 137. That language indicates that driving under the influence of a controlled substance is a relevant circumstance when assessing whether there is reasonable suspicion justifying a dog sniff of a vehicle's exterior.

Based on *Wiegand*, we conclude that Walbridge's signs of impairment are properly considered—along with all the other circumstances—when determining whether reasonable suspicion justified the dog sniff in this case. *See State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998) (requiring consideration of the totality of the

circumstances). Here, the deputy observed several signs of impairment, and Walbridge's field tests suggested that he was impaired. Walbridge had been at a residence known for drug activity shortly before the traffic stop. The deputy observed numerous air fresheners inside the vehicle, which, in his training and experience, were likely used to mask odors from controlled-substance use. We conclude that, under the totality of those circumstances, the police had reasonable suspicion of drug-related criminal activity and that the dog sniff of Walbridge's vehicle was lawful.

II.

Walbridge contends that, even if reasonable suspicion supported the expansion of the traffic stop, the canine's search of the inside of his vehicle was unconstitutional. Generally, a search is unreasonable when it is conducted without a warrant issued upon probable cause. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). However, under the automobile exception to the warrant requirement, the police may search a vehicle without a warrant when they have probable cause to believe that the vehicle contains contraband. *Id.* "Probable cause exists when there are facts and circumstances sufficient to warrant a reasonably prudent person to believe that the vehicle contains contraband." *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (quotation omitted). Probable cause is an objective inquiry that depends on the totality of the circumstances. *Id.*

The state argues that the deputy had probable cause to search Walbridge's vehicle for controlled substances because there was probable cause to believe that he had been driving while impaired. The state does not cite, and we are not aware of, authority supporting the state's proposition that probable cause to believe an individual has been

driving while impaired automatically gives rise to probable cause to search the person's vehicle. In fact, that proposition is inconsistent with caselaw. For example, in *State v. Charley*, the supreme court held that an officer had probable cause to search a vehicle for drugs based on "the totality of the circumstances." 278 N.W.2d 517, 519 (Minn. 1979). Those circumstances included not only the defendant's impairment, but also the officer's observation of the defendant exchanging something with a teenager in a parking lot immediately before the traffic stop, his observation of the defendant placing something under the seat when he stopped the vehicle, and his observation of a bag protruding from under the seat. *Id.* at 518-19. We reject the state's contention that there was probable cause to search Walbridge's vehicle based solely on probable cause to believe he had been driving while impaired.

However, the United States Supreme Court has held that a dog's alert to the presence of controlled substances provides probable cause to search if the dog has successfully completed a certification or training program. *Florida v. Harris*, 568 U.S. 237, 246-47 (2013). Here, the canine officer testified that the canine was trained and certified to locate narcotics, and Walbridge did not contest that evidence. Furthermore, this court has held that a dog's alert to the presence of controlled substances after sniffing the exterior of a vehicle established probable cause to search the vehicle. *State v. Pederson-Maxwell*, 619 N.W.2d 777, 781 (Minn. App. 2000). We therefore conclude that the canine's alert to the presence of drugs outside the vehicle provided probable cause to believe that the vehicle contained controlled substances. Thus, it was lawful for the police to search inside the vehicle for drugs under the automobile exception to the warrant requirement.

Walbridge argues that the search was unlawful because the canine entered his vehicle during the dog sniff. He claims that the canine officer "facilitated" the canine's entry into the vehicle by opening the driver's-side door before the canine displayed a final response indicating the presence of narcotics. Walbridge notes that Minnesota courts have not addressed the constitutionality of a dog sniff of a vehicle's interior when the officer facilitates the canine's entry into the vehicle.

The state responds that this court need not determine whether the canine officer facilitated the canine's entry into the vehicle because there was probable cause to search the vehicle once the canine signaled the presence of an odor of drugs from outside the driver's door. We agree. The canine's detection of that odor was evident through its heavy sniffing and more intense breathing. At the contested hearing, the canine officer explained the significance of that behavior: "[T]he dog breathing in that way and his body language that I testified to is an indication to me that he is in odor, which is an alert to the presence of odor. It's not a final response, but it is an alert to the presence of odor."

Walbridge argues that a dog sniff cannot provide probable cause of drug-related activity unless and until the canine provides a "final" response. The canine officer's testimony in this case establishes that the canine's behavior outside the vehicle was an "alert" to the presence of drugs, but not a final response. Caselaw generally does not distinguish between a dog's initial alert outside of a vehicle and its "final response." Instead, cases typically refer to a dog's "alert" without mentioning the precise timing and location of a "final" alert. *See id.* Because caselaw supports a conclusion that the canine's initial alert outside of Walbridge's vehicle provided probable cause to search the vehicle,

Walbridge's argument regarding the constitutionality of the canine's subsequent entry into the vehicle is immaterial, and we decline to address it.

Affirmed.