STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1855

State of Minnesota,
Respondent,

vs.

Shawna Ann Lang,
Appellant.

Filed October 21, 2024
Affirmed
Bjorkman, Judge

Nobles County District Court
File No. 53-CR-23-18

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

Braden Hoefert, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant County Attorney, Slayton, Minnesota (for respondent)

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

Considered and decided by Larson, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges her conviction of driving while impaired (DWI) following a stipulated-evidence trial, arguing that the district court erred by denying her motion to

suppress all evidence because police (1) lacked reasonable suspicion to initiate a traffic stop and (2) impermissibly expanded the stop. We affirm.

FACTS

On July 27, 2022, a Worthington police officer was in the parking lot of a gas station in a marked squad car. After observing a gray Chevy Impala make a right turn out of the parking lot into the right lane of Oxford Street, the officer followed in the same direction. The officer observed the Impala move from the right lane to the left lane of Oxford Street without using its turn signal. Because the driver failed to signal the lane change, the officer stopped the Impala.

When he approached the vehicle, the officer recognized the driver as appellant Shawna Ann Lang, whom he knew to have a history of drug-related criminal activity. The officer directed Lang out of her vehicle and then questioned her about where she was traveling and her plans for the day. While speaking with Lang, the officer observed her to have "excited" behavior, facial twitching, dilated pupils, and dry lips. Based on his training and experience, the officer recognized these as indicia of recent methamphetamine use. After questioning Lang, the officer asked the passenger in Lang's vehicle a similar series of questions and obtained consistent information.

The officer returned Lang's identification and proof of insurance to her and then questioned Lang about her drug use. Lang responded that she had not used methamphetamine since March 2022. She agreed to perform field sobriety tests, after which the officer informed Lang that he believed that she had used methamphetamine more

recently. After she admitted to smoking methamphetamine four days earlier, the officer arrested Lang.

Respondent State of Minnesota charged Lang with one count of fourth-degree DWI (body contains any amount of schedule I/II drugs) and one count of fourth-degree DWI (under the influence of a controlled substance), in violation of Minn. Stat. § 169A.20, subd. 1(2), (7) (Supp. 2021). Lang moved to suppress all evidence obtained from the traffic stop. Following an evidentiary hearing during which the officer testified as described above and his squad-car camera video recording was admitted as an exhibit, the district court denied Lang's motion. The court reasoned that (1) the officer had reasonable, articulable suspicion to stop Lang's vehicle because she violated a traffic law; and (2) the expansion of the stop was lawful because the officer had reasonable suspicion that Lang was driving while under the influence of a controlled substance. After acknowledging her intent to appeal the dispositive suppression ruling, Lang waived her right to a jury and agreed to a stipulated-evidence trial. The district court found Lang guilty, convicted her of the schedule I/II DWI offense, and imposed a stayed 90-day jail sentence.

Lang appeals.

DECISION

The United States and Minnesota Constitutions prohibit "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Our supreme court has adopted the principles and framework of *Terry v. Ohio*, 392 U.S. 1 (1968), when analyzing the reasonableness of a seizure during a traffic stop. *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004). Under the *Terry* framework, the district court first determines whether

the traffic stop was justified at its inception by reasonable, articulable suspicion of criminal activity. *Id.* at 364; *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). Second, the court considers whether the police actions during the stop were "reasonably related to and justified by the circumstances that gave rise to the stop in the first place" or, alternatively, were supported by "independent probable cause or reasonableness to justify [the] particular intrusion." *Askerooth*, 681 N.W.2d at 364.

When reviewing a pretrial order on a motion to suppress evidence, we independently review the facts to determine whether, as a matter of law, the district court erred in suppressing or not suppressing the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). In doing so, we review the district court's factual findings for clear error and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008).

I. Lang's traffic violation justified the stop.

A traffic stop is justified at its inception if it is based upon reasonable, articulable suspicion of criminal activity. *Diede*, 795 N.W.2d at 842. An officer has an "objective basis for stopping [a] vehicle" if they observe a violation of traffic law, no matter how insignificant. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

A. Lang waived the argument that the conduct the officer observed did not violate a Minnesota traffic law.

Lang argues that the officer's testimony that he "observed [the Impala] make a lane change into the left lane and while doing so not using its turn signal" does not support reasonable suspicion that Lang violated Minn. Stat. § 169.19, subd. 4 (2020), which permits drivers to turn or change lanes only "after giving an appropriate signal." Lang

contends that this provision only requires drivers to signal *before* the act of turning or changing lanes, not *during* the maneuver. The state contends that Lang waived this statutory-interpretation argument by disclaiming it in the district court. We agree with the state.

We generally only consider issues that "were presented and considered by the trial court in deciding the matter before it." *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (quoting *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)). Likewise, we do not address arguments that a party voluntarily relinquished. *See State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009) (stating "[w]aiver is the voluntary relinquishment of a known right"); *see also State v. King*, 990 N.W.2d 406, 420 n.7 (Minn. 2023) (distinguishing waiver from forfeiture).

Lang asserts that her statutory argument simply refines the argument she advanced in the district court. The record defeats this assertion. While cross-examining the officer during the evidentiary hearing, defense counsel twice acknowledged that failing to signal when changing lanes violates the law:

> Q: Okay. Was there any driving behavior of Ms. Lang that caused you to be concerned for her being under the influence?
> A: Just the not activating your turn signal on a busy—busy road.
>
> Q: Now, *conceding that that's a violation of the law*, you would agree that that's a fairly common thing that people not under the influence do as well, correct?
> A: Yes.
>
> . . . .

> Q: So as far as driving behavior, suspicious driving behavior, swerving, something that would lead you to believe impairment, *the only thing you have is that violation of the law for the turn signal*?
> A: Yes . . . .

(Emphases added.)

Moreover, Lang's supporting legal memorandum—filed after the evidentiary hearing—states that "[the officer] testified that he stopped [Lang] for failing to use her turn signal when changing lanes. There is no dispute that this is a violation of law." On this record, we easily conclude that Lang waived her statutory-interpretation argument and we decline to address it.

B. The district court did not clearly err in finding that Lang failed to signal her lane change.

The officer testified that "the gray Impala change[d] from the right lane to the left lane without using its turn signal." When asked why his squad-car video did not capture the lane change, he explained that the video "only show[s] . . . what is directly in front of [him], and at the time of the lane change, the [Impala] was off to [his] right." And the officer testified that there was nothing between his squad car and the Impala at the time the Impala made the lane change. We defer to a district court's determination regarding the credibility of witness testimony. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012). Based on our review of the record, we discern no clear error in the district court's finding that Lang failed to signal her lane change, creating the requisite reasonable suspicion for the traffic stop.

II. The expansion of the stop was supported by reasonable, articulable suspicion of criminal activity.

A valid traffic stop may become invalid if it "becomes 'intolerable' in its 'intensity or scope.'" *Askerooth*, 681 N.W.2d at 364 (quoting *Terry*, 392 U.S. at 17-18). An officer must have "a particularized and objective basis for suspecting the seized person of criminal activity" to expand the scope or duration of a stop. *State v. Sargent*, 968 N.W.2d 32, 38 (Minn. 2021) (quotation omitted).

Lang contends that the officer impermissibly expanded the traffic stop at three points: (1) by directing Lang out of her vehicle, (2) by questioning Lang and her passenger about their activities on the day in question, and (3) by further questioning Lang about drug use and administering field sobriety tests after returning her license and registration. We address each argument in turn.

First, Lang argues that the officer expanded the scope of the stop by ordering her out of her vehicle without articulating safety concerns. We are not persuaded. An "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)). This is so because such an additional intrusion is de minimis. *Mimms*, 434 U.S. at 111. Accordingly, the officer did not expand the traffic stop by asking Lang to step out of her vehicle.

Second, Lang contends that the officer expanded the scope of the stop by asking her and her passenger "general investigative" questions and extended the duration of the stop by questioning her passenger. An officer expands the scope of a stop if they engage in

investigative questioning unrelated to the purpose of the stop and without reasonable, articulable suspicion of other criminal activity. *See State v. Fort*, 660 N.W.2d 415, 418-19 (Minn. 2003) (concluding no reasonable suspicion to expand a traffic stop for speeding and a cracked windshield to include questions about drugs and weapons); *Sargent*, 968 N.W.2d at 40-42 (holding that questions about pretrial release conditions were questions about noncriminal activity unrelated to a traffic stop). But an officer may "ask the driver about [their] destination and the reason for the trip" during a routine traffic stop. *State v. Syhavong*, 661 N.W.2d 278, 281 (Minn. App. 2003). That is the situation here. Once the officer had ordered Lang out of the car, he proceeded to ask her questions about how she knew her passenger and where they were heading for the day. The officer then asked the passenger the same questions. We conclude that the officer's initial questioning of Lang and her passenger falls within the scope of the "reason for the trip," and did not expand the scope of the stop. *Id.*

To the extent that Lang argues that the officer's questioning of her passenger extended the duration of the stop, as we discuss below, the record demonstrates that the officer had reasonable suspicion that Lang was under the influence of methamphetamine *before* speaking to the passenger. In other words, the officer had a valid basis to continue to detain Lang during the passenger's brief questioning. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) ("Law enforcement may continue the detention as long as the reasonable suspicion for the detention remains provided they act diligently and reasonably." (quotation omitted)).

Third, Lang argues that the officer impermissibly expanded the scope of the stop by continuing to question her about drug use after returning her license and registration and by administering field sobriety tests. This argument is unavailing. The officer testified that he observed "possible signs of impairment" early on, while speaking with Lang about what she was doing for the day. He described Lang as exhibiting "excited" behavior, very dry lips, dilated pupils, and facial tremors. Based on his experience and training, the officer recognized these as signs of possible drug use. The district court expressly found this testimony reliable. One "objective indicator of intoxication" can constitute reasonable suspicion that a person is under the influence. *Otto v. Comm'r of Pub. Safety*, 924 N.W.2d 658, 661 (Minn. App. 2019) (quotation omitted). This record persuades us that the officer had reasonable, articulable suspicion to expand the traffic stop by asking Lang about drug use and requesting field sobriety testing.

In sum, the record supports the district court's findings that Lang (1) violated a traffic statute by failing to signal when changing lanes, and (2) exhibited multiple indicia of controlled-substance use. Because the traffic stop was valid and the officer permissibly expanded it based on reasonable suspicion that Lang was impaired, we conclude that the district court did not err by denying Lang's suppression motion.

Affirmed.