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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1643**

State of Minnesota,
Respondent,

vs.

Zong Lee,
Appellant.

**Filed June 24, 2019
Affirmed
Florey, Judge**

Wright County District Court
File Nos. 86-CR-17-973; 86-CV-17-2002

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Considered and decided by Florey, Presiding Judge; Connolly, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

FLOREY, Judge

A trooper stopped appellant's van for speeding and came to suspect that he was transporting drugs. The trooper was unable to coordinate a dog sniff and released the van. He relayed information to another trooper, who, approximately two hours later, stopped the van for speeding, searched it, and discovered a substantial amount of marijuana. The state charged appellant with first-degree sale and first-degree possession of marijuana. The district court found appellant guilty of both offenses and formally adjudicated the sale conviction. On appeal, appellant argues that he was subjected to unlawful stops, and therefore the district court erred by refusing to grant his suppression motion. He also challenges his sentence, arguing that the district court abused its discretion by failing to grant a sentencing departure. We affirm.

FACTS

At around 3:20 p.m., on March 4, 2017, Trooper Anthony Schmidt stopped a van in the Fergus Falls area for speeding and having an obstructed windshield. He approached the passenger side and spoke primarily with the driver, appellant Zong Lee, though he briefly conversed with the passenger, M.V., whom appellant identified as a friend.

After the trooper explained the reason for the stop, he asked appellant about the purpose of his trip. Appellant explained that he was driving to Minnesota to attend a family gathering. Appellant provided a driver's license and insurance information. He had an Alaska license, but the van had Washington plates. While talking to appellant, the trooper saw numerous boxes in the back of the van, sealed with tape and labeled "Sunny"; a sheet

of plywood blocking the window behind the driver's side window; and multiple air fresheners hanging in the back of the van. The trooper inquired as to the contents of the boxes, and appellant stated that they contained personal "stuff." The trooper asked appellant what kind of "stuff," and appellant responded that he would rather not say and that he wanted to "plead the Fifth."

Trooper Schmidt returned to his squad car and ran appellant's information. He discovered that the van was not registered to appellant. Also, the insurance information did not match the vehicle or driver, and when the trooper contacted the insurance company to verify coverage, it came back to another party. Schmidt called the local canine officer, Trooper Aaron Myren, explained the circumstances of the stop, and inquired about whether Myren was available for a dog sniff. Myren said he was unavailable. Schmidt told Myren that he would try another trooper, but if there was no available trooper, he would have to let appellant go without further detention.

Trooper Schmidt generated a ticket and then returned to the van. He asked appellant about the discrepancies with the title and insurance. Appellant told the trooper that he may have an insurance card. Appellant looked for the card, but could not locate it. Based on appellant's claim that he had insurance, the trooper told appellant that he would change the citation to not having proof of insurance in the vehicle, and he explained how appellant could provide proof to get the charge dismissed. The trooper asked how long appellant would be in the Twin Cities area, and appellant stated three to four days and explained that he was going to a Hmong ceremony.

The trooper then inquired whether appellant had drugs in the van, and in reference to the boxes, he asked, “Do you want to show me?” Appellant declined, but offered to have a dog check the vehicle. Trooper Schmidt told appellant that he needed to amend the ticket, and he returned to the squad car.

The trooper had a brief telephone conversation with another canine trooper about availability, and printed a new ticket. The trooper brought the ticket to appellant, described what he changed, and, again, explained how appellant could provide proof of insurance. The trooper asked again about appellant’s destination and requested consent to search the van. Appellant declined, and the trooper released the vehicle. The stop was approximately 35 minutes in length.

After the stop, Trooper Schmidt conveyed the circumstances of the stop to Trooper Reed Bye, a canine handler and experienced drug-interdiction officer. Schmidt told Bye to keep an eye out for the van. The van was travelling toward the Twin Cities on Interstate 94; Trooper Bye was assigned to the area between Trooper Schmidt’s location and the Twin Cities. A few hours later, Trooper Bye noticed a van fitting the description.

At around 5:40 p.m., Trooper Bye stopped the van for speeding, at which point his computer provided access to Trooper Schmidt’s notes. Trooper Bye approached the passenger side of the vehicle and noticed: (1) numerous boxes in the back of the van with the label, “N Sunny 25,” on them, with one box packaged with black duct tape; (2) the window behind the driver’s window boarded up with plywood; (3) multiple air fresheners placed in the vehicle; (4) M.V. appeared very nervous, including a noticeable rapid pulse in his stomach and neck; and (5) there was a single key in the ignition.

Trooper Bye later testified that the “N Sunny 25” labeling was significant because marijuana distributors use similar types of names to label their products. The trooper testified that his last arrest involved packaged marijuana labeled “Blueberry 19.” He also testified that multiple air fresheners and a single key are indicators of drug activity, and “black duct tape is very significant” to officers because “it conceals better in false compartments.”

Trooper Bye asked appellant about the purpose of his travels, and appellant stated he was going to visit his uncle, though he later clarified that he was going to a ceremony. The trooper asked appellant why he had an Alaska license and Washington plates. Appellant explained that he flew from Alaska to Washington, where he purchased the van. When asked about the contents of the boxes, appellant stated that the boxes contained gifts.

Trooper Bye advised appellant that he was going to perform a canine sniff search, and asked appellant for consent to search the van. Appellant declined. Trooper Bye had his dog perform a sniff search, and the dog indicated that drugs were present. A subsequent search of the boxes revealed a substantial amount of marijuana.

The state charged appellant with one count of first-degree sale of marijuana, and one count of first-degree possession of marijuana. Appellant moved to suppress evidence obtained from the stops. In June 2017, an omnibus hearing was held on appellant’s motion. Testimony was received from Trooper Bye, but the matter was continued to address discovery issues. At the continued hearing, additional testimony was received from Bye, and squad video and photographs were taken into evidence. Testimony was also received

from Trooper Schmidt and Trooper Myren, and Schmidt's squad video was taken into evidence.

In March 2018, the district court filed an order denying appellant's suppression motion. The court concluded that both stops were lawful, neither trooper unlawfully expanded the scope of his stop, and the stops, even in the aggregate, were not unconstitutionally excessive in duration. The district court also concluded that the coordinated aspect of the stops did not render them unconstitutional, noting that the stops were "based on separate traffic infractions," and "[e]ach [t]rooper also expanded their respective stops based on independent, reasonable suspicion."

The parties agreed to submit the matter to the district court based on stipulated evidence, pursuant to Minn. R. Crim. P. 26.01, subd. 4, in order to obtain appellate review of the district court's pretrial suppression ruling. In May 2018, the district court filed an order finding appellant guilty of both charges. Appellant moved for a dispositional or durational sentencing departure. The district court denied appellant's departure motion and sentenced him to 56 months' imprisonment on the first-degree-sale charge. The court acknowledged appellant's respectful and cooperative demeanor, as well as the demonstrated support from his family and community, but found the offense to be significant, stating, "we don't often get cases that have 160 pounds of marijuana." This appeal followed.

DECISION

I. The district court did not err by denying appellant's suppression motion.

Appellant argues that his pretrial suppression motion should have been granted because he was subjected to unlawful stops. His argument has three parts. First, he asserts that Trooper Schmidt unlawfully expanded the scope of his traffic stop. Second, he argues that Trooper Schmidt unlawfully prolonged that stop. Third, he contends that “the coordinated double stop” of his vehicle by the two troopers was unconstitutional.

The United States and Minnesota Constitutions guarantee the right to be secure against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. An officer may conduct a brief investigatory stop of a person if the officer has a reasonable, articulable suspicion that the person is engaged in criminal activity. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (citing *Terry v. Ohio*, 392 U.S. 1, 19-21, 88 S. Ct. 1868, 1879-81 (1968)).

“Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate at the omnibus hearing that he or she had a particularized and objective basis for suspecting the seized person of criminal activity.” *Diede*, 795 N.W.2d at 842-43 (quotation omitted). In determining whether reasonable suspicion exists, Minnesota courts “consider the totality of the circumstances and acknowledge that trained law enforcement officers are permitted to make inferences and deductions that would be beyond the competence of an untrained person.” *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001). But reasonable suspicion “requires at least a minimal level of objective justification.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted).

When reviewing pretrial orders on motions to suppress evidence, when the facts are not in dispute, we independently review the facts and determine, as a matter of law, whether the district court erred by not suppressing evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). “The [s]tate bears the burden of establishing that the challenged evidence was obtained in accordance with the constitution.” *State v. Edstrom*, 916 N.W.2d 512, 517 (Minn. 2018), *cert. denied*, 139 S. Ct. 1262 (2019).

In determining the validity of a brief investigatory stop for a traffic violation, we conduct a “*Terry* analysis,” which involves a dual inquiry. *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (citing *Terry*, 392 U.S. 1, 88 S. Ct. 1868). First, we ask whether the stop was justified at its inception. *Id.* Second, we ask whether the officers’ actions during the stop were “reasonably related to and justified by the circumstances that gave rise to the stop in the first place.” *Id.* A stop is valid so long as “each incremental intrusion” is “strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible.” *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012) (quotation omitted). “[A]n intrusion not strictly tied to the circumstances that rendered the initiation of the stop permissible must be supported by at least a reasonable suspicion of additional illegal activity.” *Id.* Here, both stops were valid at their inception based on appellant’s offense of speeding, and we therefore focus on the expansions and coordinated nature of the stops. *See State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (stating that an observed traffic violation justifies a stop).

A. Trooper Schmidt did not unlawfully expand his traffic stop.

Appellant asserts that Trooper Schmidt unlawfully expanded the stop by asking him what he was doing in Minnesota, and then, asking him what he had in the boxes. We reject appellant's assertion that these questions constituted an expansion of the stop. An officer investigating a traffic violation by an out-of-state vehicle is justified in inquiring about the driver's intended destination and purpose. See *United States v. Bloomfield*, 40 F.3d 910, 915 (8th Cir. 1994); *State v. Syhavong*, 661 N.W.2d 278, 281 (Minn. App. 2003). "An officer's inquiries into matters unrelated to the justification for the traffic stop . . . do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 333, 129 S. Ct. 781, 788 (2009). After appellant told the trooper that he was in Minnesota for a family gathering, the trooper's brief inquiry into the contents of the plainly observable boxes was effectively a further inquiry into appellant's purpose for travel. Trooper Schmidt did not ask, at this early point in the stop, whether the boxes contained illegal contraband. See *Smith*, 814 N.W.2d at 351 n.1 (rejecting state's argument that a question cannot constitute an expansion, and holding "even a single question, depending on its content, could expand the scope of a traffic stop under other facts").

Even if we concluded that the trooper's question constituted an expansion, under the totality of the circumstances, such an expansion was supported by reasonable, articulable suspicion of criminal activity. Appellant stated that he was driving to a family gathering, yet his van carried numerous large boxes labeled "Sunny." The trooper looked for luggage in the van, but saw only a small bag, which, the trooper later testified "didn't

look like much luggage for the duration of the trip.” The van had Washington plates, but appellant’s driver’s license was from Alaska. A sheet of plywood blocked the window behind the driver’s side window, and multiple air fresheners were hanging in the back of the van. Given the totality of the circumstances, the trooper had a reasonable, articulable suspicion to justify an inquiry into the contents of the boxes. The reasonable-suspicion standard is “not high.” *Diede*, 795 N.W.2d at 843 (quotation omitted).

Appellant argues that the vehicle’s license plate and his origin of travels and state of residence cannot factor into a reasonable-suspicion determination. He points to a federal appellate decision, *Vasquez v. Lewis*, to support that proposition. 834 F.3d 1132, 1138 (10th Cir. 2016) (“It is wholly improper to assume that an individual is more likely to be engaged in criminal conduct because of his state of residence.”). However, *Vasquez* is distinguishable. In justifying the search of a vehicle, the officers in *Vasquez* relied heavily on the fact that the driver was from Colorado, which they considered a drug-source area. *Id.* at 1136-37. The *Vasquez* court deemed this justification unconvincing because “[s]uch a factor is so broad as to be indicative of almost nothing.” *Id.* at 1137 (quotation omitted). Here, the suspicious circumstance was not the state of origin, but rather the apparent inconsistency between appellant’s residence and the origin of the van, as well as the apparent inconsistency between appellant’s stated purpose of travel and the contents of the van. Under the totality of the circumstances, the trooper was justified in inquiring about the contents of the boxes.

B. Trooper Schmidt did not unlawfully prolong his traffic stop.

Appellant argues that Trooper Schmidt unlawfully prolonged the stop. “[A]n extension of the duration of a stop beyond the time necessary to effectuate the purposes of the stop is unreasonable.” *Askerooth*, 681 N.W.2d at 371.

As previously discussed, Trooper Schmidt had reasonable, articulable suspicion to inquire about the contents of the boxes in appellant’s van. When asked about the contents, appellant stated that he wanted to “plead the Fifth.” After returning to his squad car, the trooper discovered that the van was not registered to appellant, and the insurance information did not match the vehicle or driver. These additional circumstances permitted the trooper to further detain the van to investigate the registration and insurance, to make further inquiries into appellant’s destination, to make further inquiries into the contents of the boxes, and to make efforts to obtain a canine.

Appellant cites a Supreme Court opinion, *Rodriguez v. United States*, to support his argument that Trooper Schmidt’s stop was unconstitutionally excessive in duration. 135 S. Ct. 1609 (2015). However, in *Rodriguez*, the Supreme Court did not consider whether the expansion of a traffic stop was supported by reasonable suspicion independent from the basis for the stop. *Id.* at 1616-17 (“The question whether reasonable suspicion of criminal activity justified detaining Rodriguez beyond completion of the traffic infraction investigation, therefore, remains open for Eighth Circuit consideration on remand.”). Here, the trooper developed reasonable, articulable suspicion, independent of the traffic violation, to expand the duration of the stop.

C. The communications between Trooper Bye and Trooper Schmidt did not render Trooper Bye's stop and search of appellant's vehicle unconstitutional.

Appellant claims that the coordinated aspect of the stops by Trooper Schmidt and Trooper Bye was unreasonable. While neither party cites Minnesota caselaw precisely on point, federal caselaw recognizes a heightened scrutiny to certain successive stops. In *United States v. Foreste*, the Second Circuit Court of Appeals warned against a sort of “gamesmanship” by officers making successive stops based upon the same reasonable suspicion:

One officer could stop a vehicle for a traffic infraction on a common drug corridor, become suspicious of the driver's nervousness or explanation for his trip, and then detain the vehicle while a drug-sniffing dog is called to the scene. If the dog took too long to arrive (or, upon arriving, failed to detect any drugs), the officer could telephone a second officer down the road and apprise him of the situation. The second officer could then follow the vehicle until spotting a second traffic infraction, stop the vehicle, and, based on the suspicions relayed by the first officer, detain the vehicle a second time to again wait for a dog.

780 F.3d 518, 525 (2nd Cir. 2015) (footnote omitted). The *Foreste* court held that, “where the same suspicion justifies successive investigations, and the officer conducting the subsequent investigation is aware of the prior investigation and the suspicion that supported it, the investigations’ duration and scope must be both individually and collectively reasonable under the Fourth Amendment.” *Id.* (footnote omitted); *see also United States v. Ilazi*, 730 F.2d 1120, 1125 (8th Cir. 1984) (indicating that some stops should be considered collectively).

We recognize that two independently reasonable stops may collectively become unreasonable. But when, as here, a second officer learns of suspicious behavior, but initiates a stop based upon independent reasonable, articulable suspicion, and each intrusion made by that second officer is likewise supported by independently gathered reasonable, articulable suspicion, then the actions of that second officer are reasonable. *See Whren v. United States*, 517 U.S. 806, 813, 116 S. Ct. 1769, 1774 (1996) (“Subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.”); *Foreste*, 780 F.3d at 525 (stating that the question of whether reasonableness should be evaluated individually or in combination “depends not on the officers’ subjective motivations but on whether the investigatory detentions were based on the same or independent reasonable suspicion”).

The district court found credible Trooper Bye’s testimony that he stopped appellant for speeding and expanded the scope of that traffic stop based upon his own observations. *See State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012) (stating that this court defers to a district court’s credibility determinations when reviewing a pretrial order on a motion to suppress evidence). Though acknowledging that he was aware of Trooper Schmidt’s shared information, Trooper Bye testified that he had “to see [his] own observations, [his] own thing” before expanding the stop into a drug interdiction because “basically it’s [his] traffic stop, and [he has] to defend it.” The communications between Trooper Bye and Trooper Schmidt did not render Trooper Bye’s stop unconstitutional.

Appellant argues that Trooper Bye lacked independent reasonable, articulable suspicion to expand his traffic stop and conduct a dog sniff. We disagree. Under the

totality of the circumstances, Trooper Bye acted upon reasonable, articulable suspicion. These circumstances included: (1) numerous boxes labeled “N Sunny 25”; (2) a window boarded up with plywood; (3) multiple air fresheners; (4) M.V.’s nervous appearance; (5) a single key in the ignition; and (6) appellant’s explanation that he flew from Alaska to Washington and purchased the van to drive to Minnesota. Trooper Bye expanded his stop based upon independently gathered reasonable, articulable suspicion of criminal activity.

II. The district court did not abuse its discretion by refusing to grant a sentencing departure.

Appellant next argues that the district court abused its discretion by refusing to grant a sentencing departure. Appellant received a bottom-of-the-box sentence, that is, a sentence at the low end of the presumptive range. *See* Minn. Sent. Guidelines 4.C (2016). A presumptive sentence is presumed to be appropriate. Minn. Sent. Guidelines 2.D.1 (2016) (“The sentences provided in the Grids are presumed to be appropriate for the crimes to which they apply.”). The district court must impose the presumptive sentence unless there are “substantial and compelling circumstances” that warrant a departure. *State v. Kindem*, 313 N.W.2d 6, 7 (Minn. 1981).

The decision to depart from the sentencing guidelines rests within the district court’s discretion and will not be reversed unless there was a clear abuse of that discretion. *State v. Oberg*, 627 N.W.2d 721, 724 (Minn. App. 2001), *review denied* (Minn. Aug. 22, 2001). “[A]s long as the record shows the [district] court carefully evaluated all the testimony and information presented before making a determination,” we will not interfere with the

district court's decision to impose the presumptive sentence. *State v. Pegel*, 795 N.W.2d 251, 255 (Minn. App. 2011) (quotation omitted).

We first address appellant's request for a dispositional departure. Dispositional departures generally focus on the characteristics of the offender. *See State v. Solberg*, 882 N.W.2d 618, 623 (Minn. 2016). "A defendant's particular amenability to probation justifies a district court's decision to stay the execution of a presumptively executed sentence." *State v. Bertsch*, 707 N.W.2d 660, 668 (Minn. 2006). A "defendant's age, his prior record, his remorse, his cooperation, his attitude while in court, and the support of friends and/or family, are relevant to a determination whether a defendant is particularly suitable to individualized treatment in a probationary setting." *State v. Trog*, 323 N.W.2d 28, 31 (Minn. 1982).

Appellant notes that he was 36 years old at the time of the offense, this was his first criminal offense, he had no prior drug history, he only engaged in the criminal activity to support his wife and children, and he was exceptionally cooperative and showed remorse. The record also indicates that appellant had a strong support system. Numerous letters were submitted on his behalf at sentencing. While there is support for a dispositional departure, the district court did not abuse its discretion by refusing to grant one. "Even if we might have come to a different conclusion had we been weighing the evidence ourselves, that is not the applicable standard upon appellate review." *State v. Stempfley*, 900 N.W.2d 412, 419 (Minn. 2017).

The presentence-investigation report recommended that appellant receive 65 months' imprisonment, a middle-of-the-box sentence. At sentencing, the district court stated:

I know you're a good man. I know you've got incredible community support. I've read every one of these letters, which is why I asked the clerk to call your case last so I could finish the last two letters that I wanted to see. You are so well—loved, so well—respected, this is so out of character for what happened.”

But the district court then concluded, “I just can't ignore 160 pounds.”

In *State v. Chaklos*, the supreme court noted that offense-related factors may be used to support dispositional departures, and ultimately concluded that an upward dispositional departure was justified because the defendant's conduct was “significantly more serious than that typically involved in the commission of the offense in question.” 528 N.W.2d 225, 228 (Minn. 1995). Here, the district court considered the relevant information presented, as well as the severity of the offense, and concluded that a presumptive sentence was appropriate. We will not interfere with that decision. *See Pegel*, 795 N.W.2d at 255. The district court did not abuse its discretion by refusing to grant a dispositional departure.

We next address appellant's request for a durational departure. “The general issue that faces a sentencing court in deciding whether to depart durationally is whether the defendant's conduct was significantly more or less serious than that typically involved in the commission of the crime in question.” *State v. Cox*, 343 N.W.2d 641, 643 (Minn. 1984).

Appellant asserts that a durational departure was justified because he was “motivated by financial duress,” and there was no evidence to indicate that he was involved in larger drug-distribution efforts. The district court concluded that the significant amount of marijuana warranted a presumptive sentence. The district court did not abuse its discretion by refusing to grant a durational departure.

Affirmed.