

*This opinion is nonprecedential except as provided by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
A20-0647**

State of Minnesota,
Respondent,

vs.

Shane Kenneth Halverson,
Appellant.

**Filed April 26, 2021
Affirmed
Reyes, Judge**

Stearns County District Court
File No. 73-CR-19-7246

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

Janelle P. Kendall, Stearns County Attorney, Nathan J. Knoernschild, Assistant County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Melissa A. Haley, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Worke, Judge; and Jesson, Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

On appeal from his convictions of driving while impaired and driving after cancellation, appellant argues that the district court erred by determining that (1) reasonable, articulable suspicion supported the initial stop; (2) the subsequent

expansions of the stop were justified; and (3) probable cause supported the warrant for his blood sample. We affirm.

FACTS

An officer responded to a report of a suspicious person on Allendale Drive in St. Cloud. The suspicious person had entered a home to see “Crystal,” who did not live there. The suspicious person did not apologize for entering the home uninvited or further inquire about “Crystal” before fleeing the scene. The report described the suspicious person as a white male with short hair, a black shirt, and blue jeans who fled in a black car.

As the officer responded to the report, he passed a person driving a black car. He thought the person and car matched the descriptions in the report. A bicyclist flagged the officer down and stated that the black car that the officer had just passed nearly hit him. The officer saw appellant Shane Kenneth Halverson driving his car, which matched the descriptions of the car and person from the report, and then stopped him. The officer noticed that appellant’s pupils were constricted, his eyes were glossy, and that he was fidgeting, shaking, and sweating profusely, despite the cool weather that evening.¹

The officer returned to his squad car, looked up appellant’s driver’s license, and learned that his license had been cancelled as inimical to public safety. Because the officer also saw that appellant had a history of fleeing, the officer requested a second officer. The officer then placed appellant under arrest for the cancelled-license violation. As they

¹ The unobjected-to weather report introduced at trial establishes the temperature for August 26, 2019, the date of the stop, was a high of 72 degrees Fahrenheit with a low of 60 degrees Fahrenheit.

returned to the squad car and before searching appellant, the officer asked appellant if he had anything he should not have. Appellant replied that he had marijuana on him. The officer found a bag of marijuana and a pipe on appellant.

Believing appellant to be impaired, the officer administered the horizontal- and vertical-gaze nystagmus tests, finding vertical nystagmus in both eyes and horizontal nystagmus in one eye. The officer then placed appellant in the back of his squad car and requested that a “certified drug recognition evaluator/expert” (DRE) meet him at the hospital, believing appellant to be impaired by narcotics.

Once the second officer arrived, they searched appellant’s car and found a glass pipe in the center console. The first officer accompanied appellant to the St. Cloud Hospital where he completed a search-warrant application. The hospital drew appellant’s blood and when the DRE arrived, the results revealed cannabis, a stimulant, and a dissociative anesthetic.

Respondent State of Minnesota charged appellant with driving under the influence of a controlled substance (count 1), driving with any amount of a controlled substance other than marijuana in the body (count 2), trespass (count 3), and driving after cancellation as inimical to public safety (count 4). The parties agreed to submit counts 2 and 4 to the court on stipulated facts. The district court found appellant guilty of both counts and sentenced appellant to 54 months in prison on count 2 and to a concurrent 365-day term on count 4. This appeal follows.

DECISION

In reviewing a district court's determination of the legality of a traffic stop and any subsequent expansion of it, we review its factual findings for clear error and its determination of reasonable suspicion of illegal activity de novo. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). Because the facts are undisputed, we focus our review on the reasonable-suspicion determination.

The United States and Minnesota Constitutions protect individuals against “unreasonable searches and seizures” by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches and seizures are presumptively unreasonable. *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). If officers seize a person or evidence in violation of the constitution, that evidence must be suppressed. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). Yet, an officer may initiate a warrantless limited investigatory stop if the officer can articulate specific facts supporting a reasonable, articulable suspicion of criminal activity. *Id.* at 842-43. “[T]he reasonable suspicion showing is ‘not high.’” *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quoting *Richards v. Wisconsin*, 520 U.S. 385, 394, 117 S. Ct. 1416, 1422 (1997)).

I. The district court did not err by determining that the officer had reasonable, articulable suspicion to stop appellant.

Appellant contends that the officer lacked reasonable, articulable suspicion to initially stop his car because the suspicious-person description was too general. Alternatively, appellant argues that the bicyclist's tip could not have supported reasonable,

articulable suspicion because the officer did not observe or articulate any driving conduct consistent with the tip. We disagree.

In considering whether reasonable, articulable suspicion exists, 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); *see also State v. Britton*, 604 N.W.2d 84, 88-89 (Minn. 2000) (noting we are deferential to police officer training and experience). But an officer may not act on “mere whim, caprice, or idle curiosity.” *Marben v. State, Dep’t of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotation omitted).

The undisputed facts here are that the officer responded to a reported trespass involving a white male with short hair, a black shirt, and blue jeans who fled in a black car. Within ten minutes of the report,² the officer stopped appellant, a white male with short hair driving in a black car near the reported trespass. The officer relied on appellant’s proximity to “the exact area of the suspected trespass” in deciding to conduct a traffic stop.

The description from the report and the surrounding circumstances provide reasonable, articulable suspicion based on our careful review of prior cases. *See State v. Waddell*, 655 N.W.2d 803, 807, 810 (Minn. 2003) (concluding reasonable, articulable suspicion supported stop despite difference in number of vehicle occupants and color of vehicle and that suspects were stopped six to eight miles from robbery); *State v.*

² At oral argument, appellant conceded that the suspicious-person report and initial stop occurred within ten minutes of each other.

Smallwood, 594 N.W.2d 144, 149, 155 (Minn. 1999) (concluding officers had reasonable suspicion when car was stopped with headlights off leaving the area of the crime within two minutes of report and suspect matched general description).

Considering the description of the car and suspicious person, the officer's testimony about the proximity of the stop to the reported trespass, and the relatively short time that elapsed between the report and the stop, we conclude that the officer had reasonable, articulable suspicion to stop appellant's car. Consequently, we decline to address appellant's alternative argument.

II. The district court did not err by determining that the expansions of the stop were justified.

Appellant argues that the officer lacked any basis to (1) verify appellant's driver's license; (2) ask appellant whether he had anything he should not have; and (3) administer the nystagmus tests to appellant. We are not persuaded.

During an investigatory stop, each incremental intrusion must be strictly "tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause," or (3) a reasonable basis for the expansion. *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004). Probable cause requires a sufficient nexus between "the evidence sought and the place to be searched," based on the totality of the circumstances. *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014). Circumstances that the issuing judge may consider in determining whether there is probable cause to issue a search warrant include "the type of crime, the nature of the items sought, the extent of

the defendant's opportunity for concealment, and the normal inferences as to where the defendant would usually keep the items." *Id.* at 623.

A. Verifying appellant's identity and driver's license was strictly tied to the original purpose of the stop.

Appellant first argues that the officer had no basis to continue the conversation after appellant stated he was leaving the cemetery and on his way to a friend's house. Because the officer stopped appellant based on the suspicious-person report, verifying appellant's identity was strictly tied to the original purpose of the stop. *See State v. White*, 489 N.W.2d 792, 793-94 (Minn.1992) (stating that officer may request identification from lawfully stopped person). Thus, appellant's argument that any communication should have ended after appellant provided his destination is not persuasive.

B. The officer reasonably asked appellant if he had anything on him that he should not have as part of a search incident to arrest.

Next, appellant contends that the officer had no justification to ask him whether he had anything on him that he should not have when appellant was handcuffed.

Under the well-recognized exception to warrantless searches, officers can conduct a full search of the person who has been lawfully arrested. *State v. Bernard*, 859 N.W.2d 762, 767 (Minn. 2015) (concluding that warrantless breath test, as search incident to arrest, does not violate Fourth Amendment). There are two distinct types of searches within a search incident to arrest: police may search (1) the person by virtue of a lawful arrest and (2) the area within the immediate control of the arrestee. *Id.* at 768-69. While the latter requires either a concern for officer safety or for preserving evidence, the former has no such requirements. *Id.* at 769.

Because the officer lawfully arrested appellant for the cancelled driver's license offense, the officer's search was incident to that arrest. As such, the officer needed no further justification to search appellant and the officer's question was therefore reasonable.

C. Independent probable cause supported administering the nystagmus tests.

Appellant argues that the officer lacked a reasonable basis or probable cause to administer the nystagmus tests.

Here, the officer's lawful pat-down search had already revealed a bag of marijuana, and the officer had observed appellant sweating, fidgety, shaking, with constricted pupils and glossy eyes. Only after finding appellant's bag of marijuana and the pipe did the officer administer the nystagmus tests. The physical indicia of impairment and appellant's possession of marijuana not only provided a reasonable basis to expand the search, but they provided independent probable cause to administer the nystagmus tests.

Accordingly, the district court appropriately determined that each incremental step of the stop was justified.

III. The district court did not err by determining that probable cause supported the warrant for appellant's blood sample.

Appellant argues that the search warrant lacked probable cause of impairment by (1) controlled substances not tested by breath and (2) controlled substances I/II, but not marijuana, under Minn. Stat. § 169A.51, subds. 3 and 4 (2020). We disagree.

We afford "great deference to the issuing judge's finding of probable cause" if there is a substantial basis for it. *State v. Harris*, 589 N.W.2d 782, 787-88 (Minn. 1999) (quotations omitted); see also *State v. Rochefort*, 631 N.W.2d 802, 804-05 (Minn. 2001)

(noting our deferential standard is consistent with “the Fourth Amendment’s strong preference for searches conducted pursuant to a warrant”) (quoting *Massachusetts v. Upton*, 466 U.S. 727, 733, 104 S. Ct. 2085, 2088 (1984)). The issuing judge must make a “practical, common-sense decision” on whether probable cause exists. *Harris*, 589 N.W.2d at 788 (quoting *Illinois v. Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 2332 (1983)). Probable cause exists if “there is a fair probability that contraband or evidence of a crime will be found.” *Yarbrough*, 841 N.W.2d at 622 (quoting *Gates*, 462 U.S. at 238, 103 S. Ct. at 2332). Probable cause requires a sufficient nexus between the evidence sought and the place to be searched, based on the totality of the circumstances. *Id.*

Here, the issuing judge had a substantial basis for concluding that probable cause existed because the search warrant states that appellant entered a stranger’s residence asking for someone who did not live there, fled the scene without any explanation, drove a car while “fidgety, sweating, and visibly shaking,” and that the officer noted horizontal nystagmus in his left eye and vertical nystagmus in both eyes. The officer testified that, while he did not detect an odor of alcohol or otherwise suspect appellant of being under the influence of alcohol, vertical nystagmus shows impairment by narcotics but not alcohol unless the person is extremely intoxicated. Thus, a fair probability existed that evidence of narcotic impairment would be found in appellant’s blood based on the totality of the circumstances articulated in the search warrant.

Appellant argues that, because criminal conduct is not the only inference from the alleged behavior and physical indicia, the warrant lacks probable cause. Similarly, appellant argues that there are other medically valid reasons for the nystagmus results. But

the standard for probable cause is not that the alleged facts give rise to only one inference. *State v. Hawkins*, 622 N.W.2d 576, 580 (Minn. App. 2001) (stating that possibility of innocent explanation does not defeat probable cause). Instead, this court defers to the issuing judge's common-sense decision, based on the totality of the circumstances, so long as there is a substantial basis. *Harris*, 589 N.W.2d at 788. Accordingly, we conclude that the issuing judge had a substantial basis for finding probable cause to obtain appellant's blood sample.

Affirmed.