

*This opinion is nonprecedential except as provided by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
A21-0208**

State of Minnesota,
Respondent,

vs.

Warren Earl Barry,
Appellant.

**Filed January 3, 2022
Affirmed
Bratvold, Judge**

Crow Wing County District Court
File No. 18-CR-19-3022

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

Donald F. Ryan, Crow Wing County Attorney, Lindsey S. Lindstrom, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Appellate Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

BRATVOLD, Judge

Appellant challenges a final judgment of conviction for first-degree driving while impaired (DWI), arguing the district court erred by denying his motion to suppress

blood-test evidence. Because the stop of appellant's vehicle was supported by reasonable articulable suspicion and the expansion of the stop was lawful, we affirm.

FACTS

The following summarizes the district court's factual findings following an evidentiary hearing. On August 1, 2019, just after 12:47 a.m., a Baxter police officer began following a pickup truck because it had a "damaged side tail lamp." The officer saw the truck's taillight "emit a white light to the rear" when the vehicle braked. The truck stopped for a red light, and the officer pulled up behind the truck at the stoplight. The light turned green, but the truck "remain stopped for approximately 8-10 seconds before moving." The officer conducted a traffic stop and identified the driver as appellant Warren Earl Barry.

The officer observed Barry "to be restless and have a hard time sitting still in his seat." The officer invited Barry to the squad car to verify information about Barry's driver's license and the vehicle's proof of insurance. While they were in the squad car, the officer "observed [Barry] to be restless, frequently moving, [and] twitching his fingers." The officer also noticed Barry's pupils reacted "little to none to light, and [Barry] had bumps on the back of his tongue," a common sign of drug use. The officer performed field sobriety tests, which Barry "performed poorly on."

The officer arrested Barry and, after obtaining a search warrant, secured a blood sample which the Minnesota Bureau of Criminal Apprehension analyzed. Barry's blood sample tested positive for amphetamine and methamphetamine. The state charged Barry with felony DWI under Minn. Stat. § 169A.20, subd. 1(2) (2018); gross misdemeanor

driving after cancellation under Minn. Stat. § 171.24, subd. 5 (2018); and misdemeanor driving without proof of insurance under Minn. Stat. § 169.791, subd. 2(a) (2018).

Barry moved to suppress evidence obtained from the traffic stop, and the district court held a contested evidentiary hearing. Barry argued the traffic stop was unlawful and, alternatively, the expansion of the stop was unconstitutional. The district court heard testimony from the officer who stopped Barry's truck and received into evidence two recordings of the traffic stop and subsequent investigation. One recording was from the officer's squad car and the other recording was from the officer's body camera. After receiving briefs from both parties, the district court denied Barry's motion.

The district court first determined the officer had reasonable articulable suspicion to stop Barry's truck. The district court found the video recording was unclear as to whether "white light [was] emitting from the taillight," but "clearly" showed "the coloration between the two taillights is different." The district court determined this difference in color violated Minn. Stat. § 169.57, subd. 1 (2018), and determined the equipment violation established reasonable articulable suspicion for the stop. The district court also reasoned Barry's "extended pause at a green light with no opposing traffic" combined with the equipment violation to create "reasonable suspicion [of impaired driving] as outlined in the DWI training manual provided to officers."

Second, the district court considered the first expansion of the traffic stop: when the officer invited Barry to the squad car. The district court reasoned the officer's request was justified by "probable cause" because Barry "was driving with a license cancelled [inimical

to public safety]” and lacked proof of insurance. Barry asked to make a phone call to get proof of insurance, which he did while in the officer’s squad car.

Finally, the district court considered the second expansion of the traffic stop: when the officer shone a light in Barry’s mouth and eyes and conducted other field sobriety tests. The district court found the video showed Barry’s “speech was mumbled and slurred and his speech pattern and behaviors indicated that he was under the influence.” The district court concluded Barry’s actions, combined with the officer’s testimony about his training and experience as a drug-recognition evaluator, established reasonable articulable suspicion for the second expansion of the traffic stop. Based on its analysis, the district court denied Barry’s motion to suppress evidence.

Under Minn. R. Crim. P. 26.01, subdivision 4, Barry maintained his not-guilty plea, waived his right to a jury trial, and stipulated to the state’s facts to obtain review of the district court’s pretrial ruling denying his motion to suppress. The district court issued its findings of fact, conclusions of law, and order finding Barry guilty of all three charged offenses and sentenced him to 72 months in prison.

This appeal follows.

DECISION

I. The district court did not err by denying Barry’s motion to suppress evidence from the traffic stop.

“When reviewing a district court’s pretrial order on a motion to suppress evidence, ‘we review the district court’s factual findings under a clearly erroneous standard and the district court’s legal determinations de novo.’” *State v. Gauster*, 752 N.W.2d 496, 502

(Minn. 2008) (quoting *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007)). “When facts are not in dispute, as here, we review a pretrial order on a motion to suppress de novo and ‘determine whether the police articulated an adequate basis for the search or seizure at issue.’” *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011) (citation omitted).

A. The district court did not err by determining reasonable articulable suspicion justified stopping Barry’s truck.

The United States and Minnesota Constitutions protect against “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. “Temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure,” which requires reasonable articulable suspicion. *Whren v. United States*, 517 U.S. 806, 809 (1996) (quotation omitted); see also *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999); *Terry v. Ohio*, 392 U.S. 1, 21 (1968) (“[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”).

In determining whether reasonable articulable suspicion justifies a stop, Minnesota courts consider the totality of the circumstances. *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001). “[I]f an officer observes a violation of a traffic law, no matter how insignificant, that observation forms the requisite particularized and objective basis for conducting a traffic stop.” *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004). Also, when assessing the totality of the circumstances, we recognize that trained law-enforcement officers may make inferences and deductions beyond the competence of

an untrained person. *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (citing *United States v. Cortez*, 449 U.S. 411, 417–18 (1981)).

Barry argues the district court’s decision “to not suppress the evidence was erroneous” because the officer lacked reasonable articulable suspicion to stop Barry’s pickup truck. Barry contends the district court clearly erred by finding an equipment violation because the squad-car video does not show a white light projecting from the taillight. Barry also argues no statute “prohibits operating a vehicle with a cracked taillight if a small amount of white light is being emitted.” Barry finally contends his pause at the intersection for eight to ten seconds “after the light turned green was also not a basis for stopping [his] vehicle.” Thus, Barry concludes neither of the officer’s reasons for the traffic stop “amounted to an ‘objectively reasonable suspicion’ that a person inside [his] vehicle was engaged in criminal activity,” making the stop unwarranted.

The state counters, arguing Barry committed two equipment violations, either of which provided reasonable articulable suspicion for a traffic stop. First, the state argues the district court’s finding that Barry’s taillights were different colors establishes a violation of Minn. Stat. § 169.57, subd. 3(a) (2018) (“When a vehicle is equipped with stop lamps or signal lamps, the lamps must at all times be maintained in good working condition.”). The state argues that “observation of a brake light in not good condition gives rise to an objective, reasonable, articulable suspicion justifying a traffic stop.” Second, the state argues the district court’s finding of different colored taillights also shows Barry violated Minn. Stat. § 169.57, subd. 1(a) (requiring a vehicle equipped with two stop lamps on the rear that “shall emit a red or yellow light”). The state argues this alternate violation “would

also give rise to reasonable suspicion to stop the vehicle.” The district court’s decision relied on the second violation.

Before addressing the parties’ arguments, however, we first consider whether the district court’s factual finding of two different-colored taillights is clearly erroneous. Barry argues “the squad video does not support the officer’s testimony.” At the evidentiary hearing, the officer testified he “observed a vehicle in front of [him] that projected a white light to its rear.” On cross-examination, the officer testified “part of [the taillight] was red and part of it was white.” The officer also testified he stopped Barry’s truck because the “[v]ehicle [was] projecting a white light to the rear.”¹ The district court did not discredit the officer’s testimony but found the video recording showed “some ambiguity as to whether or not there was a white light emitting from the taillight.” Still, the district court found “there is clearly a difference in color between the two [tail]lights.” The officer’s testimony supports the district court’s factual finding of two different colored taillights, as does the squad-car video recording.² Thus, the district court’s finding of two different-colored taillights is not clearly erroneous.

¹ The officer also testified that, while his squad car and Barry’s truck were stopped at the traffic signal, he saw Barry’s truck “pause for about 8 to 10 seconds” before proceeding through a green light, and that “[a]bnormal pauses at green lights such as [Barry’s] is an indicator of impaired driving in the NHTSA [(National Highway Traffic Safety Administration)] DWI enforcement manual.”

² The district court’s finding about the video recording being “unclear” is supported by the squad-car video recording, which is not as clear as the officer’s body-camera video recording. The body-camera video shows a white light emitting from Barry’s right rear taillight as the officer walks toward the truck to speak with Barry.

We next consider the district court’s determination of a taillight equipment violation. Minnesota has many statutes about vehicle stop lamps and taillights. Minn. Stat. § 169.57, subd. 1, requires vehicles manufactured or assembled after January 1, 1960, to be “equipped with at least two stop lamps on the rear which shall emit a red or yellow light.” Minn. Stat. § 169.57, subd. 3(a), states when a vehicle is equipped with “stop lamps,” the lamps must “at all times be maintained in good working condition.” Minn. Stat. § 169.50, subd. 1(a) (2018) states, “[e]very motor vehicle . . . must be equipped with at least one taillamp, exhibiting a red light plainly visible from” the rear. Minn. Stat. § 169.50, subd. 1(b) (2018), states any vehicle manufactured after January 1, 1960, “must be equipped with at least two taillamps mounted on the rear” and “[w]hen lighted, the taillamps must comply with the provisions of this subsection,” which includes subdivision 1(a) that requires taillamps to be red.

The district court determined “taillight[s] of a different color is a violation of Minn. Stat. § 169.57(1).” But Minn. Stat. § 169.57, subd. 1(a), requires a vehicle to have two stop lamps on the rear “which shall emit a red *or* yellow light.” (Emphasis added.) Neither the plain language of this section nor caselaw suggests differently colored stop lamps violate this provision. Rather, the legislature’s use of the disjunctive word “or” suggests stop lamps may be either red or yellow, or both, and comply with the statute. *See generally Aberle v. Faribault Fire Dept. Relief Ass’n*, 41 N.W.2d 813, 817 (Minn. 1950) (“The word ‘or’ is a disjunctive and ordinarily refers to different things as alternatives.”). On the other hand, operating a vehicle with a white taillight violates section 169.57, subd. 1(a). *State v. DeRose*, 365 N.W.2d 284, 286 (Minn. App. 1985) (citing Minn. Stat. §§ 169.50, subd. 1,

.57, subds. 1, 3 (1984)) (“The driver was also violating the law by operating the car with a white taillight.”). But the district court did not find Barry’s taillight emitted a white light. Rather, the district court found “it is unclear in the video footage that there is white light emitting from the taillight.” Thus, the district court erred by determining Barry violated section 169.57, subd. 1.

Still, the evidence supported the determination that Barry violated another of the taillight statutes.³ Minn. Stat. § 169.50, subd. 1, requires vehicles to have “two taillamps mounted on the rear” that “[w]hen lighted” must exhibit “a red light plainly visible from” the rear of the vehicle. The district court’s finding that Barry’s taillights were “clearly” different colors implies it found only one taillight was red, a violation of section 169.50, subd. 1. Thus, the officer’s observation of an equipment violation established reasonable articulable suspicion to stop Barry’s vehicle. *See Anderson*, 683 N.W.2d at 823 (holding

³ Neither party discussed section 169.50, subd. 1, in the briefs submitted to the court. This court must “decide cases in accordance with law, and that responsibility is not to be diluted by counsel’s oversights, lack of research, failure to specify issues or to cite relevant authorities.” *State v. Hannuksela*, 452 N.W.2d 668, 673 n.7 (Minn. 1990) (quotation omitted) (determining the supreme court could consider applying the severance doctrine to a search warrant even though neither party discussed its applicability in their briefs or oral arguments). We note “it is proper for an appellate court to decide an issue not raised on appeal only when the reasoning relied upon by the appellate court is neither novel nor questionable.” *State v. Glidden*, 455 N.W.2d 744, 746 (Minn. 1990) (citing *Hannuksela*, 452 N.W.2d at 673–74 n.7) (determining the court of appeals should not have raised and decided an issue because it was a novel issue the supreme court had not decided before). Here, our consideration of Minn. Stat. § 169.50, subd. 1, is neither novel nor questionable. *See, e.g., DeRose*, 365 N.W.2d at 286 (determining a driver violated section 169.50, subd. 1, by operating a car with a white taillight). In fact, we wonder whether the district court’s memorandum simply miscited the statute it was applying.

officers have cause to stop a vehicle if they observe any traffic violation, no matter how insignificant).

We also consider the state's reasoning about two suspected equipment violations. The state argues a violation of Minn. Stat. § 169.57, subd. 3, requiring stop lamps to be in "good working condition," for the first time on appeal. We seldom review arguments and issues raised for the first time on appeal. *State v. Goebel*, 654 N.W.2d 700, 702 (Minn. App. 2002).⁴ The state also failed to present evidence of a violation of section 169.57, subd. 3. During the evidentiary hearing, the prosecuting attorney elicited testimony about the officer's observation of a white taillight and did not address the "working condition" of the stop lamps. Thus, we decline to consider the "working condition" violation. *See Garza v. State*, 632 N.W.2d 633, 637 (Minn. 2001) ("Because the state failed to take advantage of its opportunity to build a factual record with respect to standing, we do not believe that resolution of the standing issue is necessary to the interests of justice."); *see also Grunig*, 660 N.W.2d at 137. The state also argues Barry violated Minn. Stat. § 169.57, subd. 1. But, as discussed above, this section does not require stop lamps to be red; instead, it requires stop lamps to be either yellow or red.

In conclusion, the district court did not err by determining reasonable articulable suspicion supported a traffic stop of Barry's truck because the officer observed a suspected

⁴ While the state may "raise alternative arguments on appeal" to defend the district court's "underlying decision," they may do so only when sufficient record facts allow this court to consider the alternative argument, the argument has legal support, and the relief previously granted will not be expanded. *See State v. Grunig*, 660 N.W.2d 134, 137 (Minn. 2003). Here, the state did not offer proof of the "working condition" of Barry's taillight.

equipment violation of Minn. Stat. § 169.50, subd. 1, which requires vehicles to have “two taillamps mounted on the rear” that “[w]hen lighted” must exhibit “a red light plainly visible from” the rear of the vehicle.⁵

B. The district court did not err by determining additional reasonable articulable suspicion supported the officer’s expansion of the traffic stop.

The scope of an investigatory stop of a vehicle or the investigatory detention of a person is limited to what is reasonably related to the circumstances which gave rise to the seizure. *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). When a stop is lawful, police may expand the scope of that stop only if there is “reasonable articulable suspicion” of criminal activity beyond the original purpose of the stop. *State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003). “[E]ach incremental intrusion” must be “tied to and justified by . . . (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*.” *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012) (quoting *Askerooth*, 681 N.W.2d at 365). The reasonable-articulable-suspicion standard is “not high.” *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quotation omitted). The officer need only articulate specific facts which, taken together with rational inferences from those facts, objectively support the officer’s suspicion. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007).

⁵ Barry also challenges the district court’s determination that Barry’s “extended pause at a green light with no opposing traffic” combined with the equipment violation to create reasonable articulable suspicion. Because we uphold the traffic stop based on a suspected equipment violation alone, we need not address this alternative argument. Rather, we discuss the officer’s observation of Barry’s driving conduct below, in our analysis of the second issue.

Barry argues, even if the traffic stop were lawful, the evidence from the stop should be suppressed because the expansion of the stop was unlawful. Barry concedes the officer's first expansion of the scope of the stop—asking Barry to accompany him to his squad car to verify the status of his driver's license and determine whether he had proof of insurance—was supported by reasonable articulable suspicion.

Barry contends the officer unconstitutionally expanded his investigation by conducting field sobriety tests, including using “a flashlight to look in [his] eyes and mouth.” The state argues the expansion was reasonable because the officer saw indications of Barry's impairment: (1) Barry's “long pause at the light which Officer Halverson knows from the NHTSA DWI enforcement manual is an indicator of impaired driving”; and (2) Barry was restless in his truck, and when he moved to the squad car, continued “to be restless, frequently moving, and twitching his fingers.”

The district court determined the officer's expansion of his investigation was supported by reasonable articulable suspicion because the officer's suspicion of impairment was based on Barry's conduct while seated in the squad car. The district court found “[i]n the squad video, it is clear that [Barry] is exhibiting symptoms of being under the influence.” And the district court credited the officer's testimony, based on his experience as a drug-recognition evaluator, that Barry showed indicia of impairment throughout their interaction.⁶

⁶ The officer testified he is a certified drug-recognition evaluator, he saw Barry's truck pause for “8 to 10 seconds before the vehicle proceeded through” the green light, and that “[a]bnormal pauses at green lights such as that is an indicator of impaired driving in the NHTSA DWI enforcement manual.” The officer also testified Barry was restless and

The district court specifically found the officer observed, while seated in the squad car, that Barry was “restless, frequently moving, [and] twitching his fingers.” The district court also found, during the exchange in the squad car, Barry’s “speech was mumbled and slurred and his speech patterns and behavior indicated that he was under the influence.” We reject Barry’s claim that the video evidence does not support these findings. Thus, based on the officer’s observation of Barry’s behavior, the officer’s expertise in drug recognition, and the inferences he made, the district court did not err by determining there was reasonable articulable suspicion to expand the officer’s investigation because Barry displayed indicia of impairment.

In conclusion, the officer saw Barry commit an equipment violation, which established reasonable articulable suspicion to stop Barry’s truck. The officer, based on his training, also observed signs of impairment in Barry’s driving conduct and as Barry spoke while seated in the truck. After Barry moved to the squad car, the officer observed Barry exhibit additional signs of impairment, which established reasonable articulable suspicion to expand the scope of the traffic stop. Thus, the district court did not err by denying Barry’s motion to suppress the evidence obtained as a result of the traffic stop.

Affirmed.

struggled to sit still in his truck; this restlessness continued when Barry moved to the squad car. Barry had “a hard time sitting still,” and was “tapping and twitching his finger.” Additionally, the officer’s body-camera recording shows Barry acted restlessly in his truck and in the squad car. The recording also shows Barry’s speech is sometimes delayed and slightly slurred.