

*This opinion is nonprecedential except as provided by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
A21-0277**

State of Minnesota,
Respondent,

vs.

Michael Troy Moyer,
Appellant.

**Filed December 13, 2021
Affirmed
Larkin, Judge**

Anoka County District Court
File No. 02-CR-18-1037

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

Anthony C. Palumbo, Anoka County Attorney, Robert I. Yount, Assistant County Attorney, Anoka, Minnesota (for respondent)

Hillary B. Parsons, Caplan & Tamburino Law Firm, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Klaphake, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

LARKIN, Judge

On appeal from his conviction of first-degree possession of a controlled substance, appellant argues that the district court erred by refusing to suppress evidence obtained after two separate traffic stops were expanded to include narcotics-detection dog sniffs. We affirm.

FACTS

Respondent State of Minnesota charged appellant Michael Troy Moyer with one count of first-degree possession of methamphetamine in February 2018, based on evidence discovered after two traffic stops, specifically, methamphetamine in the front pocket of his sweatshirt. Moyer moved to suppress that evidence. After a contested omnibus hearing in early 2019, the district court denied Moyer's motion, reasoning that both stops were lawful and that the expansion of those stops to include narcotics-detection dog sniffs was reasonable. Moyer agreed to stipulate to the prosecution's case under Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the pretrial ruling. The district court found Moyer guilty of first-degree possession of methamphetamine and sentenced him to a stayed 87-month prison term. Moyer challenges the pretrial denial of his motion to suppress.

DECISION

The United States and Minnesota Constitutions guarantee "[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 pursuant to an unconstitutional search or seizure must be suppressed. *See State v. Rohde*, 852

N.W.2d 260, 263 (Minn. 2014) (search); *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (seizure). Warrantless searches and seizures are generally unreasonable. See *State v. Othoudt*, 482 N.W.2d 218, 221-22 (Minn. 1992). But police may conduct limited investigative stops based on a “particularized and objective basis for suspecting the person stopped of criminal activity.” *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). Police officers may then expand “the scope of the stop” to investigate “other suspected illegal activity” if the officer has reasonable, articulable suspicion of such activity. *Id.*

In this case, the relevant facts are undisputed. Deputy Matthew O’Connor was on general patrol in a marked vehicle in Anoka County on the evening of September 5, 2017. He observed a vehicle leaving a house that had been the site of seven or eight narcotics arrests since 2015. Deputy O’Connor followed the vehicle until it pulled into a gas station a half-mile away. In his experience, pulling a vehicle into a gas station while being followed by a marked police vehicle may be an evasive maneuver. After five or ten minutes, the vehicle returned to the house and parked. Deputy O’Connor decided to surveil the house.

Ten to fifteen minutes later, a pickup truck left the driveway. Deputy O’Connor followed the truck and observed it cross the white fog line on the road. He initiated a traffic stop and identified Moyer as the driver. Moyer told Deputy O’Connor that he was going to Running Aces, a nearby casino. Deputy O’Connor learned that Moyer was not the registered owner of the truck he was driving.

Deputy O’Connor was familiar with Moyer and knew that he lived at the house where the narcotic arrests had occurred. Deputy O’Connor had been trained that a person

driving a vehicle of which he is not the registered owner can be a “main indicator[]” of narcotics trafficking. His training also informed him that casinos were often used as cover for narcotics trafficking. Based on that knowledge, he requested a K9 unit, which performed a narcotics-detection dog sniff.

After the K9 unit alerted to the odor of narcotics in the vehicle, Deputy O’Connor searched the vehicle. He found a cell phone, pulled the case off to scan for narcotics, and as he was setting it down, he saw a text message from “Chuck” stating that “Chuck” would be meeting Moyer soon. Deputy O’Connor also found what he described as a large amount of cash.

After the traffic stop, Deputy O’Connor contacted security personnel at the casino to monitor Moyer’s activities if he arrived there. The casino security personnel reported that Moyer arrived at the casino, met up with a male individual, the pair went into a bathroom together for a short time, and then they gambled together at a high stakes table. They left in separate vehicles after being in the casino for less than an hour.

Deputy O’Connor stationed himself near the casino and observed Moyer drive away in the pickup truck. He followed Moyer northbound on Interstate 35. He observed Moyer travelling at 74 to 77 miles per hour and crossing the median line. He also observed that Moyer’s vehicle had a broken brake light. Deputy O’Connor contacted a K9 unit for backup. He then initiated another traffic stop. At or around that time, Deputy O’Connor learned that another deputy had stopped the vehicle driven by the man who had been with Moyer at the casino.

After the K9 unit arrived, Deputy O'Connor removed Moyer from the vehicle. Moyer was wearing a hooded sweatshirt with a large front pocket. He kept his hands in the pocket and refused to remove them. Deputy O'Connor pat frisked Moyer to ensure that he did not have a weapon in his pocket. He felt a soft brick-shaped object, but it did not feel like a weapon.

Deputy O'Connor learned that the driver of the second vehicle told a deputy that he had met with Moyer at the casino and that "he was helping him get out of a bad situation and [to] escape from the cartels." Deputy O'Connor also learned that a deputy found marijuana in the second vehicle. Contrary to the other driver's statement, Moyer told Deputy O'Connor that he did not know anyone whom he saw at the casino.

The K9 unit conducted a dog sniff of Moyer's vehicle, and the K9 alerted to an odor of narcotics. After which, Deputy O'Connor searched Moyer's sweatshirt pocket. He discovered a large object wrapped in brown paper and cellophane. Suspecting that the object contained narcotics, Deputy O'Connor opened it and field-tested its contents. The contents tested positive for methamphetamine.

Moyer challenges the expansions of both traffic stops, arguing that the evidence obtained as a result of the dog sniffs and the search of his person must be suppressed. Moyer argues that "the second dog sniff resulted in the immediate search of [his] person" and that "[b]ecause [that] sniff was impermissible, the search of [his person] should not have occurred." Thus, Moyer contends that "the evidence found in his hoodie pocket should have been suppressed and the charge against him dismissed."

Because Moyer does not contest the relevant facts, the issue of whether the expansion of the two traffic stops was lawful is “purely a legal determination on given facts, which we review de novo.” *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021) (quotation omitted). We apply principles derived from *Terry v. Ohio*, 392 U.S. 1 (1968), to the expansion of minor traffic stops to “conduct a narcotics-detection dog sniff around the exterior of a motor vehicle.” *Wiegand*, 645 N.W.2d at 137; *see State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004) (applying *Terry* principles to “traffic stops even when a minor law has been violated”). We must consider whether “each incremental intrusion” beyond the initial traffic stop was justified, either by “the original legitimate purpose of the stop,” “independent probable cause,” or “reasonableness, as defined in *Terry*.” *Askerooth*, 681 N.W.2d at 364-65. A lawful traffic stop may be expanded to include a “narcotics-detection dog sniff” if there is “a reasonable, articulable suspicion of drug-related criminal activity.” *Wiegand*, 645 N.W.2d at 137.

“[T]he bar for reasonable suspicion is low.” *Taylor*, 965 N.W.2d at 758. It requires “more than a mere ‘hunch’ but ‘is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.’” *Id.* at 752. (quoting *Navarette v. California*, 572 U.S. 393, 397 (2014)). The test for reasonableness “depends upon the totality of the circumstances,” which requires looking closely at “the facts available to the officer” as well as “any reasonable inferences to be drawn from them.” *Id.* at 753 (quotations omitted). Ultimately, we must determine whether the combination of “objective, particularized facts and any resulting rational

inferences warranted a reasonable, articulable suspicion that justified expansion of the stop.” *Id.*

Applying those principles, we conclude that the first dog sniff was unconstitutional because reasonable suspicion of drug-related criminal activity was lacking. Prior to the first traffic stop, Deputy O’Connor had followed a vehicle as it went to a gas station and back to a house. He then saw another vehicle—the pickup truck Moyer was driving—leave that same house. He identified Moyer as the driver of the truck, which was not registered in Moyer’s name. Moyer then informed Deputy O’Connor that he was going to the casino. Despite Deputy O’Connor’s training and personal experience, his reasons for conducting the first dog sniff amounted to no more than a “hunch” that Moyer was engaged in drug-related criminal activity.

As a rule, evidence that “‘would not have come to light’ but for police exploitation of their illegal actions is generally deemed ‘fruit of the poisonous tree’ and excluded from” use at trial. *State v. Davis*, 910 N.W.2d 50, 54 (Minn. App. 2018) (quoting *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963)). But evidence is not subject to exclusion if it is obtained “‘by means sufficiently distinguishable to be purged of the primary taint’ of the unconstitutional activity.” *Id.* at 59 (quoting *Wong Sun*, 371 U.S. at 488). We therefore consider whether the narcotics in Moyer’s sweatshirt pocket were obtained by means sufficiently distinguishable to be purged of the unconstitutional taint of the first dog sniff.

Before Deputy O’Connor initiated the first traffic stop, he knew that Moyer lived at a house where numerous narcotic arrests had occurred. And before Deputy O’Connor initiated the first dog sniff, Moyer told the deputy that he was going to the casino. That

revelation prompted Deputy O'Connor to contact casino personnel. He subsequently learned that Moyer met another individual at the casino, that they went into a bathroom for a short time, that they gambled together for less than an hour, and that they left in separate vehicles. Moyer does not dispute that Deputy O'Connor had a lawful basis to initiate the second traffic stop after he left the casino. During that stop, Moyer told Deputy O'Connor that he did not know anyone whom he saw at the casino. But the individual who Moyer had been with at the casino told another deputy that he met with Moyer at the casino and that Moyer was "helping him get out of a bad situation and escape from the cartels." Moreover, that individual had marijuana in his vehicle.

Those facts were available to the officers before they executed the second dog sniff. None of those facts was discovered as a result of the first dog sniff. We therefore consider whether those facts justified the expansion of the second traffic stop to include another dog sniff.

Mere 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. But this case involves more than mere association. Moyer's evasive answers regarding his activities at the casino supported a reasonable inference that he was involved in drug-related activity with the person he met at the casino. *See State v. Bergerson*, 671 N.W.2d 197, 204 (Minn. App. 2003) (concluding that an individual's evasive answers to police questions was one circumstance that contributed to a determination of reasonable, articulable suspicion), *rev. denied* (Minn. Jan. 20, 2004).

Again, “the bar for reasonable suspicion is low.” *Taylor*, 965 N.W.2d at 758. Based on the totality of the circumstances, the facts available to the officers, and the reasonable inferences to be drawn from those facts, we conclude that a reasonable, articulable suspicion of drug-related criminal activity justified the second dog sniff. We further conclude that the narcotics in Moyer’s sweatshirt pocket were obtained by means sufficiently distinguishable from the first dog sniff to be purged of its unconstitutional taint. Thus, the district court correctly determined that the methamphetamine found in Moyer’s sweatshirt pocket was admissible to establish his guilt.

Affirmed.