

*This opinion is nonprecedential except as provided by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
A22-0003**

State of Minnesota,
Respondent,

vs.

Frank Joseph Tregoning,
Appellant.

**Filed November 28, 2022
Affirmed
Bjorkman, Judge**

Chisago County District Court
File No. 13-CR-20-638

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

Janet Reiter, Chisago County Attorney, David Classen, Assistant County Attorney, Center City, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Reilly, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant challenges his conviction of felony driving while impaired (DWI), arguing that the district court erred by denying his motion to suppress evidence of his intoxication because law enforcement impermissibly expanded the traffic stop. We affirm.

FACTS

Around 7:40 p.m. on September 5, 2020, a sheriff's deputy was patrolling in a marked squad car on U.S. Highway 8 when he saw a motorcycle driving toward him at a high rate of speed. At a curve in the road, the motorcycle veered into oncoming traffic and continued on the left shoulder. The deputy activated his emergency lights to alert nearby traffic, and the motorcycle crashed in front of his vehicle. The deputy reported the crash and called for an ambulance; dispatch contacted the Minnesota State Patrol, which is the law-enforcement agency responsible for investigating crashes that occur on highways.

The deputy then exited his vehicle and identified the motorcycle driver as appellant Frank Tregoning. As they waited for the ambulance and a state trooper, the deputy noticed that Tregoning had a cut on his head and "road rash" on one arm. The deputy did not observe any odor of alcohol coming from Tregoning or bloodshot or watery eyes, but he noted that Tregoning was acting "jittery." The deputy asked Tregoning how much he had to drink, but he denied drinking. The deputy checked Tregoning's driver's license and learned that he lacked a motorcycle endorsement; Tregoning acknowledged as much. Tregoning asked to retrieve his phone, and the deputy instructed him to wait until the state trooper arrived.

Upon their arrival, the emergency medical technicians (EMTs) brought Tregoning into the ambulance to examine him. While Tregoning was with the EMTs, a state trooper arrived to investigate the crash. He began by asking the deputy what he observed and watching the deputy's squad-car recording of Tregoning's driving and the crash. The trooper asked the deputy and one of the EMTs whether they smelled alcohol on Tregoning; both said they had not but noted that Tregoning was acting "weird." The EMT noted that Tregoning gave inconsistent information about his address.

Once the EMTs finished with Tregoning, the trooper spoke with him about the crash. The trooper stood downwind so he would be able to detect any odors coming off of Tregoning. As they spoke, the trooper had to repeat himself and ask Tregoning for his full attention. He also noticed an odor of alcohol from Tregoning and observed that his eyes were bloodshot and watery. Based on these observations, the trooper asked Tregoning how much he had to drink that day. Tregoning denied drinking. The trooper asked him to perform field sobriety tests. Tregoning agreed to do so and confirmed that his head felt fine and he had no physical limitations that would affect his ability to perform the tests. The trooper conducted three tests, all of which revealed signs of impairment. And after a preliminary breath test (PBT) indicated an alcohol concentration above the legal limit, the trooper arrested Tregoning for DWI. Subsequent breath testing indicated an alcohol concentration of 0.12.

Tregoning was charged with felony DWI (enhanced because of a prior conviction) and driving without a motorcycle endorsement. He moved to suppress evidence of his intoxication "obtained as a result of an unlawful expansion of the traffic stop." After an

evidentiary hearing at which the deputy and the trooper testified, the district court denied the motion. A jury found Tregoning guilty of both offenses, and the district court sentenced him to 57 months' imprisonment. Tregoning appeals.

DECISION

When reviewing a district court's pretrial order on a motion to suppress evidence, we review factual findings for clear error and legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). Where, as here, the facts are not in dispute, "the issue 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).

Both the United States and Minnesota Constitutions guarantee the right to be free from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Law enforcement may detain a motorist if (1) the stop is justified at its inception by reasonable, articulable suspicion of criminal activity or probable cause; and (2) the actions of the police during the stop are reasonably related to and justified by the original legitimate purpose or independent probable cause or reasonable suspicion. *State v. Askerooth*, 681 N.W.2d 353, 363, 365 (Minn. 2004). A traffic stop has "no rigid limit" to its duration but may continue as long as reasonable suspicion remains, "provided that police act diligently and reasonably." *State v. Thiel*, 846 N.W.2d 605, 611 (Minn. App. 2014) (quotation omitted), *rev. denied* (Minn. Aug. 5, 2014).

Tregoning does not dispute that law enforcement had reasonable, articulable suspicion to detain him to investigate his erratic driving conduct and the crash. But he contends that the trooper impermissibly expanded the investigation by assessing

Tregoning's possible intoxication because any reasonable suspicion of intoxication lapsed when the deputy and the EMT failed to observe signs of impairment. We disagree. The trooper detained Tregoning to investigate the crash, as he was called to the scene to do. Tregoning does not dispute that the trooper's conduct during their initial interactions was reasonably tied to his duties in addressing the crash—he explained what would happen with the motorcycle, asked Tregoning to describe the crash, obtained Tregoning's contact information, and confirmed that Tregoning lacked a motorcycle endorsement. While doing so, the trooper personally observed well-known indicia of intoxication that generally support an expansion of detention to further assess a driver's impairment. *See Mesenburg v. Comm'r of Pub. Safety*, 969 N.W.2d 642, 648-49 (Minn. App. 2021) (stating that “a traffic violation coupled with indicia of intoxication can provide reasonable suspicion” to justify field sobriety testing and PBT), *rev. denied* (Minn. Mar. 15, 2022).

Tregoning cites no authority for the proposition that the trooper could not follow up on the signs of possible impairment simply because the deputy and EMT did not observe them. We have found no such authority. And we are persuaded that the failure of others to observe the signs the trooper personally observed while lawfully investigating the crash did not eliminate any suspicion of intoxication, particularly in light of Tregoning's driving conduct and “jittery,” confused behavior despite being medically cleared. *Cf. id.* at 649 (concluding that successful completion of field sobriety tests “may have diminished the suspicion that [driver] was impaired” but “did not completely remove that suspicion”).

In sum, the undisputed facts establish that the trooper reasonably detained Tregoning for the purpose of investigating the cause of the crash, including but not limited

to the role intoxication may have played. The trooper's observation of numerous indicia of intoxication justified further detention to investigate possible intoxication through field sobriety testing and a PBT.

Affirmed.