

*This opinion is nonprecedential except as provided by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
A22-0459**

State of Minnesota,
Respondent,

vs.

Anthony Wayne LaPointe,
Appellant.

**Filed February 27, 2023
Reversed
Segal, Chief Judge**

Crow Wing County District Court
File No. 18-CR-21-1849

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

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

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Atif Ahmed Khan, Jeffrey M. Markowitz, Stephen M. Warner, Special Assistant Public Defenders, Arthur, Chapman, Kettering, Smetak & Pikala, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Segal, Chief Judge; Gaïtas, Judge; and Halbrooks, Judge.*

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

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In this direct appeal from the district court's judgment of conviction for first-degree controlled-substance crime, appellant argues that the district court erred in denying his pretrial motion to suppress evidence of illegal drugs found in his car following a dog sniff because the police officer lacked a reasonable, articulable suspicion to justify the expansion of the scope and duration of the traffic stop to conduct the dog sniff. We agree and reverse.

FACTS

In May 2021, a police officer was conducting traffic surveillance on a highway in Nisswa when a car being driven by appellant Anthony Wayne LaPointe caught his attention. The officer was stationed in the median and observed that LaPointe was driving in the left lane but slowed down as he approached the officer's location. After LaPointe passed the officer, the officer pulled onto the highway and LaPointe tapped his brakes in response and moved into the right lane. The officer noted that the car had darkly tinted windows, a loud exhaust, and had slowed down while the other cars on the highway maintained their speeds. The officer got closer to LaPointe's car to verify that he could not see into the car due to the level of tint and then initiated a traffic stop. The officer also ran the car's license plate and discovered that LaPointe "had prior contacts involving drug possession and drug sales," and was on probation for third-degree controlled-substance crime.

The officer approached the passenger-side door and saw that, in addition to LaPointe, there was a dog in the car and a woman in the passenger seat. LaPointe

immediately asked why he had been pulled over, and the officer informed LaPointe that he was pulled over because of the darkly tinted windows, loud exhaust, and failure to signal 100 feet before changing lanes. The officer told LaPointe that he would not be writing LaPointe a ticket, but asked LaPointe to get out of the car, at which point LaPointe became argumentative. While LaPointe was standing outside the car, he recorded the encounter, stated that law enforcement had been harassing him and killing people, and became noticeably irritated when the officer said that he was going to speak with the passenger.

In response to the officer's questions, LaPointe said there was nothing illegal in the car and that he would not consent to a search of the car. The officer also volunteered a couple of times to check the tint level of the windows on LaPointe's car. LaPointe acknowledged that the tint might be too dark and turned down the offers. The officer then returned to his squad car and asked over the radio whether there were any canine units in the area; he was told there were not. At that point, the officer told LaPointe that he was free to leave, and LaPointe returned to his car and drove away. The stop lasted about 15 minutes.

Shortly after LaPointe drove away, the officer learned that a canine unit was available to conduct a dog sniff. The officer attempted to catch up with LaPointe. The officer ultimately found LaPointe, not on the highway, but on a local road. LaPointe's car was pulled over on the side of the road with the hood up. LaPointe was at the front of the car looking at the engine and the female passenger was walking behind the car with the dog. When the officer asked LaPointe if he needed assistance, LaPointe said his car had overheated, but that he needed no help. LaPointe again became argumentative and claimed

that he was being harassed. The officer advised him that a canine unit was on the way and that this was a continuation of the prior traffic stop. The canine unit arrived at the scene about 20 minutes after the officer located LaPointe by the side of the road. A dog sniff was conducted and, after the dog alerted, the officers discovered 76 grams of methamphetamine hidden in the car. LaPointe eventually admitted that the methamphetamine belonged to him.

Respondent State of Minnesota charged LaPointe with one count of first-degree controlled-substance crime. LaPointe moved to suppress the evidence discovered as a result of the dog sniff, arguing that the officer lacked reasonable suspicion that LaPointe “was engaged in illegal drug activity” and that deploying the canine to conduct a dog sniff was therefore unconstitutional. At the motion hearing, the state presented testimony by the officer who conducted the traffic stop. The district court denied the motion to suppress and decided that “the expansion of the traffic stop to include the use of a drug-detection canine” was justified based on LaPointe’s “unusual behavior” that “was not typical or reasonable” and the fact that LaPointe was on probation for controlled-substance crime at the time of the traffic stops.

After the district court denied the motion to suppress, LaPointe sought to preserve his right to obtain review of the pretrial ruling pursuant to Minn. R. Crim. P. 26.01, subd. 4, and stipulated to the prosecution’s case against him. The parties agreed that the ruling on the suppression motion was dispositive, LaPointe waived his right to a jury trial, and the case was submitted to the district court. The district court found LaPointe guilty of first-degree controlled-substance crime and sentenced him to 132 months in prison.

DECISION

“When reviewing a district court’s pretrial order on a motion to suppress evidence,” this court reviews the district court’s factual findings for clear error and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). “[T]he scope and duration of a traffic stop must be limited to the justification for the stop.” *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003). “[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.” *Florida v. Royer*, 460 U.S. 491, 500 (1983).

Expansion of a traffic stop beyond its original purpose is permissible if an officer has reasonable, articulable suspicion of other criminal activity. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). “[E]ach incremental intrusion during a stop must be strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible.” *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quotations omitted). And the use of a dog sniff to determine if there are controlled substances present must be supported by “reasonable, articulable suspicion of drug-related criminal activity.” *Wiegand*, 645 N.W.2d at 135.

This court reviews “questions of reasonable suspicion de novo.” *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). “Reasonable suspicion 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.” *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021) (quotations omitted). “In determining whether the reasonable suspicion standard is met, we consider the totality of the circumstances.” *Id.* We evaluate whether

reasonable suspicion exists from the perspective of a trained police officer, whose inferences may “elude an untrained person.” *State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014) (quotation omitted). Any evidence obtained from an unconstitutional search must generally be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007).

Here, the police officer initiated the traffic stop because he observed that the windows of LaPointe’s car appeared to be too darkly tinted, the exhaust was too loud, and LaPointe failed to signal 100 feet before changing lanes. LaPointe does not argue—nor do we suggest—that these were not permissible reasons to initiate a traffic stop. But we note that these reasons involved equipment and moving violations that were unrelated to any suspicion of controlled-substance crime. In addition, the violations were relatively minor and the officer informed LaPointe almost immediately after approaching the car that he would not be writing LaPointe a ticket. We therefore must consider whether the police officer’s additional observations and inferences justified the police officer’s expansion of the duration of the stop, as well as the use of a dog sniff, beyond what was necessary to address the equipment and moving violations.

The state argues that the police officer had reasonable, articulable suspicion to expand the scope and duration of the traffic stop based on LaPointe’s driving conduct after seeing the police officer—that he slowed down and tapped his brakes; LaPointe’s “aggressive and confrontational” behavior after being asked to step out of the car; the observation that, after LaPointe complied and stepped out of the car, it appeared that LaPointe did not want the police officer to speak with the female passenger; LaPointe’s nervousness; and the fact that LaPointe was on probation for third-degree controlled-

substance crime. We consider each individual factor and then assess whether the totality of the circumstances justified the expansion of the search to include a dog sniff.

A. Driving Conduct

The state argues that the expansion of the traffic stop was justified, in part, because LaPointe’s “vehicle acted in a manner consistent with those involved in criminal behavior, and inconsistent with the other motoring public.” At the suppression hearing, the police officer testified that, as LaPointe’s car neared the police officer’s squad car on the highway, “the vehicle slow[ed] down” and that after the officer “activated [his] brake lights and pulled out after the vehicle . . . the vehicle tapped their brakes in response.” The police officer testified that this behavior was consistent with “deceptive behavior” he had learned about in drug interdiction training, and that it might indicate the driver may be “trying to avoid law enforcement.”

The supreme court has held that evasive conduct may give rise to reasonable suspicion of criminal activity “if the driver’s conduct is such that the officer reasonably infers that the driver is deliberately trying to evade the officer.” *State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989). Thus, the conduct is properly considered when evaluating the totality of the circumstances. But we observe that it requires too many inferences to characterize the conduct here—slowing down upon noticing the police officer and tapping the brakes after the officer activated his lights—as a deliberate attempt to evade law enforcement.

B. Behavior During Stop

We next consider LaPointe's behavior during the traffic stop. We note that Minnesota courts have expressed reluctance to consider a motorist's nervous behavior as evidence that they may be engaged in criminal activity.¹ Rather, an individual's nervousness may contribute to an officer's reasonable suspicion of criminal activity, but it is not independently sufficient to expand a traffic stop. *Syhavong*, 661 N.W.2d at 282.

Here, the officer testified at the suppression hearing that he observed indicia of nervousness—specifically that LaPointe's "carotid artery [was] visibly pulsing" and his hand was shaking. In *Smith*, evidence of extreme nervousness—violent shaking—and an evasive explanation for that nervousness were deemed sufficient to establish reasonable suspicion. 814 N.W.2d at 353-54. Here, however, unlike *Smith*, LaPointe was not "violently shaking" and did not give an "evasive" answer about the reason for his nervousness. *Id.* at 354.

¹ See *State v. Burbach*, 706 N.W.2d 484, 490-91 (Minn. 2005) (holding that Burbach's nervous behavior, an unsubstantiated tip that the vehicle Burbach was driving was involved in transporting cocaine, and speeding did not establish reasonable, articulable suspicion of drug-related activity to justify the expansion of the traffic stop to request a vehicle search); *Wiegand*, 645 N.W.2d at 137 (determining that, in the absence of any reason to believe that Wiegand was under the influence of chemicals or engaged in drug-related activity, Wiegand's nervous behavior did not support expanding the traffic stop to conduct a dog sniff); *State v. Syhavong*, 661 N.W.2d 278, 282 (Minn. App. 2003) (stating that nervousness must be combined with other particularized and objective facts to support expansion of a stop). But see *State v. Smith*, 814 N.W.2d 346, 353-54 (Minn. 2012) (acknowledging the court's reluctance to consider nervous behavior as evidence of criminal activity but concluding that Smith's "violent shaking" and "evasive" explanation as to why he was shaking provided the police officer with reasonable, articulable suspicion that Smith was engaged in other illegal activity).

Additionally, the police officer's primary observation relating to LaPointe's behavior was not his nervousness, but rather his "aggressive and confrontational" behavior during the stop. When asked why he was "being difficult," LaPointe explained that he did not like police and felt he was being harassed because he had been pulled over for "bullsh-t reasons multiples times in the past weeks." LaPointe's answer may have been aggressive or confrontational, but it was not evasive as in *Smith*. We find this distinction important and hesitate to suggest that an expression of dislike for or frustration with law enforcement provides meaningful evidence that an individual may be engaged in criminal activity. While LaPointe's behavior was properly considered in the totality of the circumstances, we conclude that it is distinguishable from that in *Smith*.

The state also points to the police officer's observation that LaPointe questioned why the police officer needed to speak with the female passenger and the officer's interpretation that LaPointe was worried about what the female passenger would say to the officer. The police officer testified that he routinely questions passengers during traffic stops but, as noted above, "an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." *Royer*, 460 U.S. at 500. To that end, "[d]uring a traffic stop, an officer's questions must be limited to the purpose of the stop." *Syhavong*, 661 N.W.2d at 281 (citing *Royer*, 460 U.S. at 498-500). And "each incremental intrusion" must be tied to and justified under the circumstances. *Askerooth*, 681 N.W.2d at 364.

Here, the police officer pulled LaPointe over for minor equipment and moving violations. The police officer informed LaPointe almost immediately that he would not be writing LaPointe a ticket. At that juncture, the officer had eliminated the justification for detaining LaPointe based on the traffic violations. The officer nonetheless asked LaPointe to step out of the car—which LaPointe did—and, approximately five minutes after notifying LaPointe that he would not be receiving a ticket, informed LaPointe that he was going to speak with the passenger, who was still in the car. Under these circumstances, it was not unreasonable for LaPointe to question why the police officer needed to speak with the passenger. *See Wiegand*, 645 N.W.2d at 135 (stating that “the scope of a stop must be strictly tied to and justified by the circumstances” of the initial stop and reason for investigation).

C. Prior Conviction

Finally, the state notes that the police officer was aware that LaPointe was on probation for third-degree controlled-substance crime and had prior contacts with law enforcement related to drug activity. Reasonable suspicion of criminal activity may be supported by an officer’s knowledge of an individual’s criminal history that is similar to the offense that is under investigation. *See State v. Gilchrist*, 299 N.W.2d 913, 916 (Minn. 1980) (holding that police bulletin that suspect may have been involved in recent homicide, possessed firearms, and was wanted for questioning in Nebraska combined with officer knowledge of suspect’s criminal history of firearms-related offenses supported an investigatory stop); *State v. Bellikka*, 490 N.W.2d 660, 663 (Minn. App. 1992) (holding that police knowledge of a driver’s history of burglary offenses strengthened officer’s

reasonable suspicion that he was involved in a recent burglary), *rev. denied* (Minn. Nov. 25, 1992).

Accordingly, LaPointe's prior conviction and contacts with law enforcement may be considered when assessing the totality of the circumstances. But we again note that LaPointe was initially stopped for minor equipment and moving violations. The initial reason for the investigation was therefore unrelated to controlled substances, which distinguishes the case from *Bellikka*. There, the initial stop of Bellikka's car was based on the officer's suspicion that Bellikka was involved in a burglary and this court found that Bellikka's prior burglary conviction strengthened that suspicion. 490 N.W.2d at 662-63.

D. Totality of the Circumstances

Based on the totality of the circumstances relied on by the officer as justification for the dog sniff, we conclude that the police officer did not have a reasonable, articulable suspicion to justify the expansion of the search in this case. As noted above, an officer must have "reasonable, articulable suspicion of drug-related criminal activity" to justify the use of a dog sniff to determine if there are controlled substances present. *Wiegand*, 645 N.W.2d at 135. Here, the totality of the circumstances include that LaPointe slowed down and changed lanes after seeing the police car pull out behind his car with lights on, had a fast pulse, was confrontational during the traffic stop, and had a prior conviction and contacts with law enforcement involving controlled substances. As noted above, LaPointe's driving conduct did not amount to a deliberate attempt to evade law enforcement as in *Johnson*, and his behavior during the traffic stop was distinguishable from the "violent shaking" and "evasive" answers to questions seen in *Smith*. *Johnson*,

444 N.W.2d at 826; *Smith*, 814 N.W.2d at 354. And neither LaPointe's driving conduct nor behavior during the stop offer meaningful evidence to suggest that LaPointe was involved in drug-related criminal activity. Additionally, the police officer did not express any suspicion that LaPointe was under the influence of substances at the time of the stop.

The strongest factor supporting a suspicion that LaPointe may have been involved in drug-related criminal activity comes from LaPointe's prior conviction for controlled-substance crime. But to conclude that this alone establishes reasonable suspicion to conduct a dog sniff simply sets too low a bar. As discussed above, prior caselaw suggests that a conviction may be used to buttress reasonable suspicion when an individual is suspected of a crime similar to the prior conviction. It does not follow that evidence of a prior conviction for controlled-substance crime provides reasonable suspicion that an individual may be involved in drug-related criminal activity when the individual was stopped for equipment and moving violations and has engaged in some mildly suspicious behavior not specific to drug-related activity.

We also conclude that the totality of the circumstances does not justify the expanded duration of the stop in this case. As noted above, the police officer informed LaPointe that he would not be writing a ticket for the equipment and moving violations shortly after approaching the car. Nonetheless, an additional 15 minutes passed before the police officer told LaPointe he was free to go. After LaPointe left the scene, the officer learned that there was a canine unit available to conduct a dog sniff. The officer then relocated LaPointe and told him it was "a continuation of the traffic stop from before." After the officer relocated LaPointe, an additional 20 minutes passed before the canine unit conducted the dog sniff.

As previously stated, “each incremental intrusion during a stop must be strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible.” *Askerooth*, 681 N.W.2d at 364 (quotations omitted). Here, there were multiple incremental intrusions, including the prolonged duration of the stop, investigatory questions about whether there was contraband in the car, and the dog sniff.

Notably, the state offers no support for the police officer’s decision to re seize LaPointe as a “continuation” of the prior stop. The initial stop lasted 15 minutes, during which time the officer explained the reasons for the stop, informed LaPointe that the officer was not going to issue any traffic tickets, questioned LaPointe after asking him to step out of the car, and only then told LaPointe that he was free to go. Based only on the fact that the officer found out that a canine unit was available, the officer searched for LaPointe and re seized him, telling LaPointe that this was a continuation of the original stop. The officer’s conduct in relocating and re seizing LaPointe after unequivocally telling LaPointe that he was free to go and ending the traffic stop was a significant intrusion that was unreasonable under the circumstances here.

Accordingly, we conclude that the district court erred in denying LaPointe’s motion to suppress the evidence discovered as a result of the dog sniff of his car and reverse the order denying the motion to suppress. And because the parties agreed that the ruling on the suppression motion was dispositive, *see* Minn. R. Crim. P. 26.01, subd. 4, we reverse LaPointe’s conviction for first-degree controlled-substance crime.

Reversed.