

*This opinion is nonprecedential except as provided by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
A22-1029**

State of Minnesota,
Respondent,

vs.

Luis A.M. Rodriguez,
Appellant.

**Filed May 1, 2023
Reversed and remanded
Halbrooks, Judge***

Benton County District Court
File No. 05-CR-21-1246

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Philip K. Miller, Benton County Attorney, Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Wheelock, Judge; and Halbrooks, Judge.

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

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellant Luis A.M. Rodriguez challenges the district court's denial of his pretrial motion to suppress evidence recovered during a stop of his vehicle. In the alternative, he challenges the district court's entry of convictions of both first- and fifth-degree controlled-substance possession because the offenses arose out of the same set of circumstances. Because we conclude that law enforcement lacked reasonable, articulable suspicion to justify their expansion of the traffic stop into a drug investigation, we reverse the district court's denial of the motion to suppress and remand for a new trial. Because we reverse and remand, we need not address Rodriguez's erroneous-entry-of-conviction argument.

FACTS

At 1:36 a.m. on July 18, 2021, emergency dispatchers notified officers of a wrong-way driver. A 911 caller reported to law enforcement that the driver was seen traveling westbound in the eastbound lane, making U-turns, and driving erratically. Deputy Berthiaume followed the car, which was traveling at a slow speed, and saw it cross both the fog and the lane-dividing lines. Deputy Berthiaume pulled the car over; Deputy Goerger arrived shortly after at around 1:50 a.m. Deputy Berthiaume approached the car on the driver's side and spoke to the driver while Deputy Goerger approached on the passenger side.

Deputy Berthiaume testified that he identified the driver as appellant Luis A.M. Rodriguez. Rodriguez gave Deputy Berthiaume his passport and visa, which showed that Rodriguez resided in Mexico. Rodriguez reported to Deputy Berthiaume that he was

looking for a motel. When the deputy told Rodriguez that he had pulled him over for being “all over the road,” Rodriguez explained that he was looking for a notebook that was in the glove box. He told the deputy that an address was in that notebook. As the deputy spoke to Rodriguez, he observed Rodriguez looking at area motels on his phone. He also noticed that Rodriguez smelled strongly of cologne.

A third law enforcement officer, Trooper Carlson, arrived at the scene around five minutes into the stop. Trooper Carlson asked Deputy Berthiaume whether he believed that Rodriguez was sober, and Deputy Berthiaume responded, “Seems like it.” By this point, Deputy Goerger had reached the same conclusion about Rodriguez’s lack of impairment.

Deputy Berthiaume asked Trooper Carlson whether he “had a puppy around,” meaning a drug-sniffing dog. When Trooper Carlson responded that he did not, Deputy Berthiaume called Officer Bosma, to “see if [he was] around.” Officer Bosma responded that he was on his way. While waiting for Officer Bosma and the canine officer to arrive, Trooper Carlson asked Rodriguez to step out of the vehicle. The officers gave Rodriguez a preliminary breath test (PBT) and determined that he had an alcohol concentration of 0.0.

Officers then asked Rodriguez to open his trunk and Rodriguez did so. In the trunk officers saw two bags, which officers believed was an insufficient amount for a person traveling on business for three weeks, which Rodriguez had stated he was. Deputy Berthiaume also saw damage to the back of the car and observed that the car was using a spare tire. This led him to suspect that Rodriguez was hiding drugs. The officers kept Rodriguez on the side of the road until the canine officer and Officer Bosma came, about thirty minutes into the traffic stop. After sniffing the perimeter and the inside of the car,

the dog alerted to two containers in the passenger seat. The officers opened the containers and found about 123 grams of cocaine, under one gram of methamphetamine, and approximately \$8,900 in cash and then arrested Rodriguez.

The state charged Rodriguez with first-degree controlled-substance sale and first-degree controlled-substance possession, later amending the complaint to add a charge of fifth-degree controlled-substance possession. Before the state amended its complaint, Rodriguez moved to suppress the evidence obtained from the stop, arguing that the officers unlawfully expanded the scope of the stop without having reasonable suspicion to do so. The district court denied the motion.

A jury found Rodriguez guilty of both first- and fifth-degree controlled-substance possession but acquitted him on the controlled-substance-sale charge. The district court convicted Rodriguez of both possession offenses and sentenced him concurrently to 65 months' imprisonment on the first-degree conviction and 13 months' imprisonment on the fifth-degree conviction.

This appeal follows.

DECISION

Rodriguez challenges the district court's denial of his motion to suppress the evidence seized during the stop of his car. He concedes that the initial stop based on his erratic driving behavior was warranted, arguing instead that the officers lacked the reasonable, articulable suspicion of drug-related activity necessary to expand the scope of the stop to a drug investigation. 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) (quotation omitted). Because the district court made limited factual findings concerning the expansion of the stop, we base our review on the suppression hearing transcripts and the body-camera footage from the stop.

Both the United States and Minnesota Constitutions protect against unreasonable searches and seizures, and courts presume that warrantless searches and seizures are unreasonable. U.S. Const. amend. IV; Minn. Const. art. I, § 10; *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). A limited exception to the warrant requirement permits law enforcement to “conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *Lugo*, 887 N.W.2d at 486 (quoting *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008)). The stop may “last no longer than is necessary to effectuate the purpose of the stop,” *Florida v. Royer*, 460 U.S. 491, 500 (1983), and its scope must be “strictly tied to and justified by the circumstances that rendered the initiation of the investigation permissible.” *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002).

The United States Supreme Court's decision in *Rodriguez v. United States* guides our analysis here. In *Rodriguez* the Supreme Court addressed the constitutionality of dog sniffs that prolong an otherwise completed traffic stop. 575 U.S. 348, 350 (2015). In *Rodriguez* police officers pulled over a car after watching it veer slowly onto the shoulder before pulling back onto the road. *Id.* at 351. When stopped, Rodriguez, the driver, informed officers that he had swerved onto the shoulder to avoid a pothole. *Id.* Officers issued Rodriguez a written warning, but they did not consider him free to leave. *Id.* at 352.

Instead, officers held Rodriguez for another seven to eight minutes so that a drug-sniffing dog could arrive. *Id.* The dog alerted to the presence of drugs, and Rodriguez was later indicted. *Id.*

Rodriguez moved to suppress the evidence, and the district court denied the motion. *Id.* at 352-53. The Eighth Circuit affirmed based on its conclusion that the seven to eight-minute delay was de minimis. *Id.* at 353. The Supreme Court vacated the judgment, holding that police may not routinely extend an otherwise-completed traffic stop, absent reasonable suspicion, to conduct a dog sniff. *Id.* 358. See *Wiegand*, 645 N.W.2d at 136 (stating the scope of a traffic stop is limited “to that which occasioned the stop, to the limited search for weapons, and to the investigation of only those additional offenses for which the officer develops a reasonable, articulable suspicion within the time necessary to resolve the originally-suspected offense”).

We see this case as indistinguishable from *Rodriguez v. United States*. As in that case, before calling for the drug-sniffing dog, Deputies Goerger and Berthiaume had resolved the initial suspected DWI concern after concluding that Rodriguez was not intoxicated. But Deputy Berthiaume called the drug-sniffing dog anyway:

DEFENSE COUNSEL: So the dog was ordered?

DEPUTY BERTHIAUME: Yes.

Q: So basically you are saying this isn't a DWI stop at all?

A: No. It was based on the driving conduct, but after my questions and investigating it didn't stay a DWI stop. It became more of a -

Q: So after four minutes when you said you decided he wasn't impaired, right, that's what you testified to?

A: Yes.

Q: It became something else then?

A: Yes.

In other words, the deputies extended the DWI stop by calling in a drug-sniffing dog.

The state concedes that Deputy Berthiaume may not have subjectively believed that Rodriguez was intoxicated.¹ But it argues that Deputy Berthiaume's belief that Rodriguez was sober is immaterial for two reasons.

First the state contends that Deputy Berthiaume's subjective belief that Rodriguez was not intoxicated is irrelevant because the reasonableness of an officer's suspicion is an objective inquiry. But this argument ignores the Minnesota Supreme Court's analysis in *State v. Wiegand*. In *Wiegand*, the supreme court held that the expansion of the scope of a routine traffic stop to include a dog sniff was not reasonable. 645 N.W.2d 136. In reaching that conclusion, the supreme court stressed that "the officer testified he did not suspect appellants were under the influence of anything." *Id.* In other words, the officer's subjective belief regarding the appellants' lack of intoxication remained relevant in *Wiegand*. Here, Deputy Berthiaume's knowledge remains relevant to this inquiry as well.

Second, the state argues that even if Deputy Berthiaume's subjective beliefs are relevant, Trooper Carlson testified that he still believed that Rodriguez was driving impaired based on the driving conduct and, therefore, performed a DWI investigation. This argument is undermined by the record. "During a traffic stop, an officer's questions must be limited to the purpose of the stop." *State v. Syhavong*, 661 N.W.2d 278, 281 (Minn. 2003). Trooper Carlson's initial questioning of Rodriguez had nothing to do with a DWI stop. When Trooper Carlson arrived and went to speak to Rodriguez—five minutes into

¹ The state does not address the related testimony by Deputy Goerger that he too believed Rodriguez to be sober.

the stop—he first asked Rodriguez, “So you are coming up here from Mexico?” At the evidentiary hearing, Trooper Carlson conceded that this question had nothing to do with Rodriguez’s being a potentially impaired driver.

During the stop, Trooper Carlson followed that question up by asking Rodriguez “What brings you up here then?” and “Why are you all the way up here?” Again, questions irrelevant to whether Rodriguez was intoxicated. Trooper Carlson appeared to continue this line of questioning unrelated to a DWI stop by asking Rodriguez about his working out of Minneapolis and his reasons for being in St. Cloud. Trooper Carlson did not address Rodriguez’s driving conduct until about three minutes into the exchange and did not ask Rodriguez about his alcohol consumption until seven minutes after his initial questioning began. And while the state is correct that Trooper Carlson did not know with certainty that Rodriguez was sober until after the PBT, this argument ignores the delay caused by Trooper Carlson’s drug-trafficking investigation that occurred before the PBT.

Having concluded that the officers expanded the scope and duration of the stop by continuing to detain Rodriguez after determining that he was not intoxicated and by questioning him about his international travel, we turn to the issue of whether this expansion was supported by reasonable suspicion of additional criminal activity.

Deputy Berthiaume testified about the basis for his suspicions when he ordered the dog and after concluding that Rodriguez was not intoxicated, citing “the driving conduct, the smell of cologne, that he wasn’t using alcohol, [and that he] didn’t appear to be using controlled substance.” But the smell of cologne was only suspicious insofar as it could be used to mask controlled substances, and the officers had already eliminated the possibility

of controlled-substance use. So, officers were left only with the facts that Rodriguez was from Mexico, that he had traveled from Texas through Memphis, and that he had driven erratically before the stop. This is not enough.

We are unpersuaded by the state's reliance on the fact that Mexico is a "source country," and that Texas is a "source state" for narcotics. In *Brown v. Texas*, the United Supreme Court considered whether a person's standing in an alleyway in a neighborhood frequented by drug users provided the officer with reasonable suspicion of criminal activity to support the officer stopping the person and asking for his identification. 443 U.S. 47, 51-52 (1979). The Court concluded that it did not, stating:

There is no indication in the record that it was unusual for people to be in the alley. The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct. In short, the appellant's activity was no different from the activity of other pedestrians in that neighborhood.

Id. at 52. We believe that the same rationale applies here. Merely coming from a "source country" or "source state" is not sufficient, standing alone, to support an officer's reasonable suspicion. There must be something additional that distinguishes the activity of the person from other travelers coming from one of these source locations.

We are similarly unpersuaded by the state's reliance on Rodriguez's driving conduct as a basis for reasonable suspicion of drug-related criminal activity. In *State v. Burbach* the supreme court rejected a similar argument by the state. 706 N.W.2d 484, 490 (Minn. 2005). There the officer observed Burbach driving 25 miles over the speed limit, turned on his emergency lights, and followed as Burbach traveled about a block. *Id.* at 486. After driving

for about a block with the officer behind her, Burbach drove an additional three-quarters of a block in the parking lane before stopping. *Id.* The court observed that Burbach showed no signs of impairment. *Id.* When evaluating the effect of Burbach’s driving conduct on the reasonable-suspicion analysis, the court held that it provided “little reason to suspect drug possession.” *Id.* at 490. Given the similar driving-conduct allegation in this case, we cannot conclude that the driving conduct supports a reasonable suspicion of drug-related criminal activity.

While we recognize that the reasonable-suspicion standard is not high, *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016), it does require more than an officer’s “inchoate and unparticularized suspicion or ‘hunch[.]’” *State v. Poehler*, 935 N.W.2d 729, 733 (Minn. 2019) (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). Here officers had no more than that—a hunch. Their hunch was the basis to extend the stop beyond its permissible purpose as a DWI investigation in order to investigate a potential drug-trafficking offense. But the officers’ hunch cannot justify their decision to continue the detention of Rodriguez.

We therefore reverse the district court’s order denying Rodriguez’s pretrial motion to suppress the unconstitutionally obtained evidence and remand for a new trial. Because we are reversing Rodriguez’s convictions and remanding for a new trial, we need not address Rodriguez’s assertion that the district court erred in entering convictions for the first- and fifth-degree controlled substance offenses.

Reversed and remanded.