

*This opinion is nonprecedential except as provided by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
A23-1222**

State of Minnesota,
Respondent,

vs.

Jason Michael Randall,
Appellant.

**Filed July 15, 2024
Reversed
Harris, Judge**

Clay County District Court
File No. 14-CR-22-744

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

Brian J. Melton, Clay County Attorney, Caitlin Rose Hurlock, Assistant County Attorney,
Moorhead, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, John Patrick Monnens, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Worke, Judge; and Harris,
Judge.

NONPRECEDENTIAL OPINION

HARRIS, Judge

In this appeal from the judgment of conviction for second-degree possession of
methamphetamine, appellant challenges the denial of his motion to suppress evidence

obtained during the expansion of a traffic stop. Because we conclude that the record does not support reasonable, articulable suspicion of driving while impaired, we reverse.

FACTS

Respondent State of Minnesota charged appellant Jason Michael Randall by amended complaint arising from the search of his vehicle during a traffic stop. Randall moved to suppress all evidence seized during the search of his vehicle, contending that the state trooper lacked a reasonable, articulable suspicion to expand the traffic stop into a DWI investigation. The facts below are derived from testimony and exhibits presented during the suppression hearing.

At approximately 1:00 a.m. on March 1, 2022, a state trooper responded to a 911 call reporting that a newer white pickup truck with a temporary plate was “weaving over lane lines.” The trooper spoke with the caller and intercepted a pickup truck matching the description and began following the vehicle. The trooper initiated a traffic stop based on the vehicle going 74 miles per hour in a 70-mile-per-hour zone.

The trooper informed the driver, identified as Randall, that he was not “going terribly fast” and that he was “checking on [him]” based on the call. Randall explained that he was driving to visit a friend in Moorhead and volunteered that he had been pulled over for speeding earlier that day. The trooper told Randall that someone had called him in for going “fog line to fog line” and Randall said that he had not been swerving. The trooper then asked Randall whether he had been on his phone, drinking, or taken any prescription medication, and Randall denied doing so. The trooper also noticed the ignition interlock in Randall’s vehicle, and Randall confirmed it was working. The trooper testified

that he noticed Randall eating during the stop and that Randall mispronounced “Moorhead” twice.

When the trooper returned to his squad car to run Randall’s license and the vehicle information, he learned that Randall was on supervised release for DWI, had several prior DWIs, and had an “any use restriction” on his driver’s license.

The trooper testified that, after he returned to Randall’s vehicle, he noticed that “[Randall’s] speech was a little slurred” and that Randall was “very restless,” “unable to sit still,” and exhibited “just erratic behavior that [the trooper] wouldn’t expect for someone that was just on a long drive.” The trooper again asked Randall whether he had been weaving, on his phone, or using any substances. After Randall said he had not, the trooper ordered Randall to step out of his vehicle to administer field sobriety tests. The squad-car video shows that the second interaction between the trooper and Randall lasted approximately 40 seconds before Randall exits his vehicle, and then shows Randall standing still while waiting for the trooper to administer the tests. Following the field sobriety tests, the trooper deployed his K9 partner and ultimately found methamphetamine in Randall’s vehicle.

At the hearing, the trooper testified that he administered the tests based on Randall’s “erratic behavior,” Randall’s criminal history, and the 911 call about Randall’s driving. The trooper explained that he thought Randall was showing “signs of substance use.” On cross-examination, the trooper testified that he did not see Randall weaving or changing lanes from when he intercepted the vehicle at milepost 22, to when he pulled the vehicle over at milepost 20. And when cross-examined about the observations of Randall’s

restlessness, the trooper explained that he “maybe observed it on the first approach, but not enough for [the trooper] to want to get [Randall] out to do field sobriety until the second time.”

The district court denied Randall’s motion to suppress. The district court determined that the trooper’s decision to expand the traffic stop by asking about substance use and to administer field sobriety tests was supported by reasonable, articulable suspicion of DWI.

Randall waived his right to a jury trial and other trial rights and stipulated to the prosecution’s case to obtain review of the order denying his motion to suppress. *See* Minn. R. Crim. P. 26.01, subd. 4 (outlining procedure for preserving a dispositive pretrial ruling for appeal). The district court found Randall guilty of count five, second-degree sale of methamphetamine, in violation of Minnesota Statutes section 152.022, subdivision 1(1) (2020), and sentenced Randall to 111 months in prison. The district court dismissed the remaining counts. Randall appeals.

DECISION

The sole question before us is whether the district court erred in denying Randall’s motion to suppress evidence. On appeal from a pretrial order denying a motion to suppress, “we review the district court’s factual findings for clear error and its legal determinations *de novo*.” *State v. Chute*, 908 N.W.2d 578, 583 (Minn. 2018).

The Fourth Amendment to the U.S. Constitution and article I, section 10 of the Minnesota Constitution protect “against unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. Although warrantless searches are generally

unreasonable, an officer may conduct a limited, investigatory stop without a warrant if the officer has “reasonable, articulable suspicion” of criminal activity. *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021). But “[a]n initially valid stop may become invalid if it becomes intolerable in its intensity or scope.” *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quotation omitted). “Under the Minnesota Constitution, each incremental intrusion during a traffic stop must be tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*.” *Taylor*, 965 N.W.2d at 752 (quotation omitted). “[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.” *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

The standard for demonstrating reasonable, articulable suspicion is “not high,” but officers “must articulate a particularized and objective basis for suspecting the particular person stopped of criminal activity.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). Thus, “[a] hunch, without additional objectively articulable facts,” is not enough. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). When determining whether an officer had reasonable, articulable suspicion of criminal activity supporting the search or seizure, we consider the totality of the circumstances. *Taylor*, 965 N.W.2d at 752. “We look closely at the facts available to the officer, and any reasonable inferences to be drawn from them and evaluate whether they establish sufficient reasonable suspicion.” *Id.* at 753 (quotation omitted). “Evidence obtained as a result of a seizure without reasonable suspicion must be suppressed.” *Diede*, 795 N.W.2d at 842. Further,

the justification for the suspicion generally cannot solely be based on conduct consistent with the “activities of any multitude of innocent persons.” *State v. Harris*, 590 N.W.2d 90, 100-01 (Minn. 1999). We evaluate reasonable suspicion based on the totality of the circumstances. *State v. Lugo*, 887 N.W.2d 476, 486-87 (Minn. 2016) (quotation omitted). But we may consider the strength of the individual circumstances independently before considering them in their totality. *See id.* at 487-88 (considering the relevance and significance of the objective facts independently before considering them in totality); *State v. Burbach*, 706 N.W.2d 484, 489-91 (Minn. 2005) (concluding that police did not have reasonable suspicion of drug possession justifying a search of appellant’s vehicle and stating that “[e]ach of these factors is weak evidence of drug possession, and they are also weak in the aggregate”).

Randall and the state agree that the trooper lawfully initiated the traffic stop. They disagree, however, whether the district court erred in determining that the trooper had a reasonable, articulable suspicion to expand the stop by asking Randall about substance use and ordering him out of his vehicle to conduct field sobriety tests. The district court ruled that the trooper had reasonable and articulable suspicion that Randall was impaired based on the trooper’s testimony regarding his observations about Randall’s behavior; the driving complaint about Randall; and Randall’s criminal history of DWI. We consider Randall’s challenges to the articulated grounds in turn and then evaluate whether the totality of the circumstances support the expansion of the stop.

Randall's Behavior

First, Randall contends that the trooper characterized his behavior as “erratic” and “unusual” but failed to articulate why the trooper’s observations of Randall’s behavior were consistent with substance use.

The trooper identified certain conduct by Randall that he viewed as unusual. The trooper did not, however, testify which specific aspects of Randall’s behavior suggested impairment or controlled substance use, or explain why Randall’s behavior was consistent with other impaired drivers based on his training or experience. When evaluating reasonable suspicion, we do so 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). But that does not relieve officers of the burden of identifying “particularized and objective basis for suspecting the particular person stopped of criminal activity.” *Timberlake*, 744 N.W.2d at 393 (quotation omitted). Thus, we are unpersuaded that characterizing a driver’s behavior as “unusual” or “erratic,” is more than a “hunch.” *See Diede*, 795 N.W.2d at 843 (concluding that there was not reasonable suspicion that driver was engaged in criminal activity of possessing a controlled substance when driver was nervous, refused to let officers search a cigarette package, denied seeing something the officer observed, and the vehicle had mismatched license plates). Likewise, the trooper’s testimony that he observed “signs of controlled substance use,” absent testimony about such signs, is not a particularized basis for reasonable suspicion. *See id.* (stating there must be objectively articulable facts of criminal activity); *see also State v. Wiegand*, 645 N.W.2d 125, 138 (Minn. 2002) (determining that a drug dog sniff was not justified

where the driver was evasive, nervous, and shaking, and noting that “acting suspiciously is not an articulable basis to suspect criminal activity,” and where “the officer indicated no reason to suspect drug-related activity”). Instead, we must consider the trooper’s specific observations of Randall’s behavior.

Randall also argues that the district court made clearly erroneous factual findings about Randall’s behavior during his interactions with the trooper. The district court’s findings show that it credited the trooper’s testimony about Randall’s behavior during the traffic stop, and we generally defer to such credibility determinations. *See, e.g., State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012). The trooper’s squad-car video of the interaction, however, does not match the trooper’s testimony about his observations. The trooper testified—and the district court found—that Randall mispronounced Moorhead twice. The squad-car video shows that Randall did not mispronounce Moorhead twice. At best, Randall mispronounced Moorhead once and immediately corrected himself. Likewise, the district court found, consistent with the trooper’s testimony, that Randall was “restless” and “unable to be still.” The trooper testified that he had not noticed the restlessness enough to do field sobriety tests until the second interaction, and the squad-car video of Randall from immediately after that second interaction does not show that Randall was “restless” and “unable to be still,” rather it depicts him standing still. Moreover, we note that the supreme court has underscored its “reluctan[ce] to rely on nervous behaviors as evidence to support a reasonable, articulable suspicion of criminal activity.” *Burbach*, 706 N.W.2d at 490. Thus, we consider only the remaining observations about Randall’s

behavior—speech that was “a little slurred,” eating during the stop, and greeting the trooper a second time, as part of the totality of the circumstances.

Citizen Complaint

Second, we turn to the citizen complaint. Randall does not dispute that the trooper could rely on the complaint when first initiating the traffic stop.¹ But he contends that any suspicion of impairment arising from that complaint was dispelled based on the trooper’s observations of Randall’s driving and the first interaction between the trooper and Randall.

The trooper testified that he was responding to a 911 call that a white pickup truck with a temporary license plate was “weaving over the lane lines.” The trooper testified that he confirmed this information with the caller and followed the subject vehicle. The trooper testified that he did not witness any weaving while following Randall’s vehicle, and the squad-car video shows no control issues, lane departures, swerving, or changing lanes without signaling. The trooper also testified that the sole traffic violation he witnessed was Randall’s speed—going 74 miles per hour in a 70-mile-per-hour zone, which the trooper informed Randall was “not terribly fast.” We are not convinced that such a violation suggests impaired driving. *See id.* at 490 (concluding that “speeding 55 miles per hour in a 30-miles-per-hour zone and perhaps pulling over and stopping somewhat slowly” provided officers “little reason to suspect drug possession”). And as Randall contends, the trooper testified that he lacked sufficient suspicion to conduct field sobriety testing during his first interaction with Randall, before the trooper returned to his squad car to run the

¹ When a citizen informant provides identifying information, as was the case here, we presume such tips are reliable. *State v. Davis*, 732 N.W.2d 173, 182-83 (Minn. 2007).

driver's license and vehicle information. As a result, we must consider both the driving complaint—which was not corroborated by the trooper while following the vehicle for at least two miles—and the fact that the sole traffic violation witnessed by the trooper was Randall's speeding as part of the totality of the circumstances.

Criminal History

Third, we consider the trooper's knowledge of Randall's history of DWI. The trooper learned that Randall was on supervised release for DWI when he returned to his squad car after his initial interaction with Randall. Randall does not dispute, and we agree, that his history may be considered when assessing the totality of the circumstances. *See Taylor*, 965 N.W.2d at 758 (concluding that officer's observation of open case of beer, with missing cans and within arm's reach of the driver, "combined with his knowledge that [the driver's] had been canceled as inimical to public safety" provided reasonable, articulable suspicion). We agree with Randall, however, that the caselaw does not suggest that criminal history may independently provide reasonable, articulable suspicion of DWI. *Id.*; *State v. Henning*, 666 N.W.2d 379, 385-86 (Minn. 2003) (holding that mere presence of special license plates issued under Minnesota Statutes section 169A.60 (2002) does not support reasonable, articulable suspicion); *cf. State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (stating that a criminal record cannot form the sole basis for probable cause). We therefore consider the trooper's knowledge about Randall's criminal history alongside the other circumstances.

Totality of the Circumstances

Finally, we consider the totality of the circumstances. That totality includes: a vehicle matching Randall's vehicle was reported changing lanes without signaling; the trooper followed Randall's vehicle for about two miles and did not witness swerving or lane changes without signaling; the trooper initiated the traffic stop based on the vehicle going 74 miles per hour in a 70-mile-per-hour zone; Randall ate during the stop; Randall mispronounced Moorhead when explaining where he was going; Randall greeted the trooper a second time when the trooper returned to the vehicle; and the trooper noticed Randall's behavior as unusual only after learning his history of DWI.

In supporting its decision, the district court cited *Taylor*, 965 N.W.2d at 747. In *Taylor*, the defendant was stopped due to not having a front license plate and the rear license plate was covered in snow. *Id.* at 752. When the deputy approached the vehicle, he noticed a case of beer in the backseat which was missing cans and had the flap open. *Id.* at 752-53. The deputy then learned that Taylor's driver's license was cancelled inimical to public safety, which the deputy knew too often to be due to repeated drunk driving incidents. *Id.* at 753. The Minnesota Supreme Court concluded that there was reasonable articulable suspicion to expand the traffic stop based on the totality of the circumstances of the presence of an open case of beer and Taylor's driver's license status of cancelled inimical to public safety. *Id.* at 758. The supreme court held, reasonable-suspicion standard is a "low hurdle," but it requires more than a "mere hunch." *Id.* at 752, 757 (quotation omitted). It may even arise without any physical indicia of impairment if enough "other factors" suggest a driver is impaired. *Id.* at 758. But the absence of such

indicia is part of the totality of the circumstances for a court to consider in determining whether it is objectively reasonable to suspect impaired driving. *Id.*

This case is distinguishable from *Taylor*. Unlike *Taylor* where the deputy observed an open case or beer with one can missing, here the trooper did not observe any alcohol or controlled substances in Randall's vehicle indicating recent consumption. Unlike *Taylor*, where the deputy learned that Taylor's driver's license was cancelled inimical to public safety, here the trooper learned that Randall was on supervised release for DWI, had several prior DWIs, and had an "any use restriction" on his driver's license. Furthermore, during the trooper's first approach, the trooper was aware that Randall had a history of DWI.² The trooper had a report of a concerned citizen that was not supported by his own observation of Randall's driving conduct. There was no indication that Randall was under the influence, and by the trooper's own testimony, on his first approach he had not noticed the behavior enough to do field sobriety tests. The trooper did not provide any testimony about how his training or experience would lead him to believe his observations about Randall's behaviors—eating, greeting the trooper again, and restlessness—suggested that Randall was impaired.

We conclude that these circumstances do not provide an objective basis to suggest Randall was impaired when the trooper expanded the stop. *Cf. Burbach*, 706 N.W.2d at 490 (concluding that suspicion of drug possession "supported only by a driver's nervous

² The record demonstrates that upon his initial approach the trooper asked appellant whether he had been drinking, or taken any prescription medication, and noticed the ignition interlock in Randall's vehicle (indicating a use restriction) and as the trooper testified upon his initial approach, he did not have enough to do field sobriety tests.

behavior, an unsubstantiated tip of unknown origin, and speeding” and “the driver does not exhibit other signs of impairment” is insufficient for reasonable, articulable suspicion).

Because we conclude that the record does not support reasonable, articulable suspicion to expand the traffic stop, the district court erred in denying Randall’s motion to suppress. And because the parties agreed that the ruling on the suppression motion was dispositive under rule 26.01, subdivision 4, we reverse Randall’s conviction for second-degree controlled substance crime.

Reversed.