

*This opinion is nonprecedential except as provided by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
A23-1430**

State of Minnesota,
Respondent,

vs.

Dakota Lynn Cary,
Appellant.

**Filed July 29, 2024
Affirmed
Reyes, Judge**

Crow Wing County District Court
File No. 18-CR-22-1018

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

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

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

Daniel J. Supalla, Kirsten H. Pagel, Special Assistant Public Defenders, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Reyes, Judge; and Jesson,
Judge.*

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

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that his conviction of fifth-degree possession of a controlled substance must be reversed because the district court erred by denying his pretrial motion to suppress evidence seized after officers expanded the scope of a traffic stop. We affirm.

FACTS

The following stipulated facts are based on video evidence and officer J.H.'s testimony presented during a contested omnibus hearing. On the night of March 18, 2022, officer J.H. saw a vehicle pull into the back entrance of a "well-known drug house."¹ He observed the vehicle's lights flash three to five times before "a couple" of people left the house and entered the vehicle. The vehicle then left the house and drove past officer J.H., at which time he noticed that it had a broken taillight and a loud exhaust. Officer J.H. initiated a traffic stop.

Officer J.H. recognized all four of the vehicle's occupants, including appellant Dakota Lynn Cary, who was in the rear-passenger seat behind the driver. Officer J.H. continued to monitor the vehicle's occupants while he obtained the vehicle's registration and insurance information from the driver. During this period, appellant was "fidgety," making "exaggerated" hand movements, and his skin had "a very notable shininess to it." Based on his training and experience, officer J.H. believed appellant's physical condition

¹ Officer J.H. testified that there had been "a lot" of drug activity reported at the house, several habitual drug users lived there, and officer J.H. had conducted multiple drug-related traffic stops in which people were traveling to or from the house.

and behaviors were consistent with the use of controlled substances. Officer J.H. had previously interacted with appellant six to ten times, and appellant had been under the influence of a controlled substance on all but one of those occasions. Appellant's behavior on the night in question was "very consistent" with his prior behavior while under the influence and inconsistent with his prior behavior while not under the influence.

Shortly after officer J.H. began speaking with the driver, appellant made a "frantic" effort to grab his backpack and leave the vehicle. Officer J.H. told appellant to stay in the vehicle because he was not wearing his seatbelt, a violation that officer J.H. wanted to discuss with him. After verifying the vehicle's information, officer J.H. briefly returned to his squad car to run a warrant check on each of the vehicle's occupants, which revealed no outstanding warrants.

After backup officers arrived at the scene, officer J.H. reapproached the vehicle and asked the driver to step out. After a series of preliminary questions, officer J.H. asked the driver if he realized that appellant was "very high," to which the driver responded that he had no knowledge of appellant's condition because he had "just picked him up." Following his conversation with the driver, officer J.H. asked appellant to exit the vehicle.

Officer J.H. observed that appellant had a freshly lit cigarette; enlarged pupils; and shiny, sweaty-looking skin. Appellant denied any recent drug use. After questioning appellant about why he had tried to leave the vehicle and where he was currently staying, officer J.H. briefly returned to his squad car, at which point another officer stated that he had received information earlier that day indicating that appellant was selling methamphetamine. The driver refused officer J.H.'s request to search the vehicle.

Officer J.H. reapproached appellant and asked if he could check appellant's pockets for weapons. Appellant responded "yes" before emptying his pockets, revealing, among other items, a pocket knife, three cell phones, a stack of \$20 bills, a cigarette box, and a scale. Appellant then agreed to allow officer J.H. to search his backpack, which was in the vehicle. Appellant's backpack contained a hypodermic needle, plastic bags with trace amounts of white residue, burnt tinfoil that tested positive for methamphetamine, and six pills containing fentanyl. Officer J.H. also found 6.7 grams of methamphetamine inside of appellant's cigarette box.

Respondent State of Minnesota charged appellant with two counts of fifth-degree possession of a controlled substance under Minn. Stat. § 152.025, subd. 2(1) (2020). Appellant moved to suppress the evidence uncovered during the traffic stop, arguing that officer J.H. impermissibly expanded the scope of the stop in violation of his Fourth Amendment rights. After the contested omnibus hearing, the district court denied appellant's motion, determining that officer J.H. had reasonable, articulable suspicion of appellant's criminal activity that justified expanding the scope of the traffic stop. Following a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 4, the district court found appellant guilty of both counts and sentenced him to 19 months in prison, stayed for five years.

This appeal follows.

DECISION

Appellant argues that, although officer J.H. lawfully stopped the vehicle, he impermissibly expanded the scope of the traffic stop before discovering evidence of

controlled substances by (1) questioning the driver about potential drug activity and (2) questioning appellant about potential drug activity and performing consent searches of his person and backpack. We are not persuaded.

When the material facts are undisputed, as here, we review the district court’s denial of a pretrial suppression motion de novo. *State v. Hunn*, 899 N.W.2d 541, 544 (Minn. App. 2017), *aff’d*, 911 N.W.2d 816 (Minn. 2018).

Both the United States and Minnesota constitutions guarantee the “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. Minnesota courts have adopted the analysis set forth in *Terry v. Ohio*, 392 U.S. 1 (1968), to determine the reasonableness of a warrantless seizure that occurs during a traffic stop. *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004).

The *Terry* analysis involves a two-step inquiry. *State v. Sargent*, 968 N.W.2d 32, 38 (Minn. 2021). The reviewing court first asks whether officers had “reasonable articulable suspicion” to justify the stop at its inception. *Id.* If the first prong is met, as appellant concedes here, the reviewing court next asks whether “the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place.” *Id.* (quotation omitted.)

The second step of the *Terry* analysis provides that “[a]n initially valid [traffic] stop may become invalid if it becomes ‘intolerable’ in its ‘intensity or scope.’” *Askerooth*, 681 N.W.2d at 364 (quoting *Terry*, 392 U.S. at 17-18). Police inquiries during a traffic stop are generally limited to addressing “the traffic violation that warranted the stop and

attend[ing] to related safety concerns.” *Sargent*, 968 N.W.2d at 38 (quotation omitted). Each incremental intrusion of a suspect’s rights that occurs during a traffic stop must therefore “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*.” *Askerooth*, 681 N.W.2d at 365.

Under *Terry*, an officer may expand the scope of a traffic stop to investigate other suspected illegal activity only if they have reasonable, articulable suspicion of that illegal activity. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) (citing *Terry*, 392 U.S. at 20-21). Whether reasonable, articulable suspicion exists is an objective test that “considers the ‘totality of the circumstances,’ including the special training, experience, and ability of law enforcement officers to make inferences and deductions beyond that of the average person.” *Sargent*, 968 N.W.2d at 38-39 (citation omitted). “Reasonable suspicion must be ‘particularized’ and based on ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’” *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021) (quoting *Terry*, 392 U.S. at 21).

Establishing reasonable suspicion is a “low hurdle.” *State v. Taylor*, 965 N.W.2d 747, 757 (Minn. 2021). “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.’” *Id.* at 752 (quotation omitted). The state has the burden to show that a *Terry* search was reasonable in scope. *Sargent*, 968 N.W.2d at 39.

I. Officer J.H. had reasonable, articulable suspicion to question the driver about potential drug activity.

Appellant first argues that officer J.H. unlawfully expanded the traffic stop by questioning the driver about matters unrelated to the stop's original purpose. We disagree.

The record shows that, at the time he questioned the driver, officer J.H. had the following “specific and articulable facts” supporting his suspicion of appellant’s drug activity: (1) the vehicle appellant rode in had picked up multiple individuals from a “well-known drug house”; (2) appellant was fidgety, making exaggerated hand movements, and had sweaty, shiny-looking skin despite the cold temperatures; (3) appellant made a “frantic” effort to exit the vehicle at the beginning of the stop; (4) appellant’s condition and behaviors were consistent with prior occasions on which officer J.H. observed appellant while he was under the influence of a controlled substance; and (5) appellant had an extensive criminal drug history, including six to ten interactions with officer J.H.

Appellant challenges each of these facts *individually* to argue that they could not have provided officer J.H. with reasonable, articulable suspicion to expand the traffic stop. However, each of those facts may be considered collectively when evaluating whether officer J.H. had reasonable suspicion of appellant’s drug activity *under the totality of the circumstances*. See *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016) (“Presence in a known drug house is a relevant, but not conclusive, factor” in reasonable-suspicion analysis);² *Askerooth*, 681 N.W.2d at 369 (supporting officers’ training and experience

² Because officer J.H. had several additional circumstances beyond appellant’s presence in the well-known drug house that contributed to his reasonable, articulable suspicion, appellant’s reliance on *State v. Fort* is unavailing. 660 N.W.2d 415, 419 (Minn. 2003)

allows them to make inferences about physical symptoms that may elude lay observers); *State v. Flowers*, 734 N.W.2d 239, 253 (Minn. 2007) (noting officers may consider “the erratic behavior of or suspicious movements by the persons under observation” to establish reasonable suspicion); *Lugo*, 887 N.W.2d at 487 (stating even arrests that do not lead to convictions can be considered to establish reasonable suspicion if they were for offenses of same general nature).

Appellant unpersuasively attempts to analogize the circumstances in his case to those in *State v. Burbach*, 706 N.W.2d 484 (Minn. 2005). In *Burbach*, the supreme court concluded that the odor of alcohol from a vehicle passenger was insufficient to establish reasonable suspicion of criminal activity “particularized” to the defendant. *Id.* at 488-89. The defendant in *Burbach* had successfully completed field-sobriety tests, and a passenger in defendant’s vehicle had taken responsibility for the alcohol odor. *Id.* Notably, the *Burbach* court emphasized that the defendant showed no physical signs of impairment that would contribute towards a finding of reasonable suspicion. *Id.* at 490-91. Conversely, here officer J.H. had reasonable suspicion of appellant’s criminal activity based on both the aforementioned facts and *appellant’s* physical symptoms that caused officer J.H. to believe that he was under the influence of a controlled substance. *Askerooth*, 681 N.W.2d at 369; *Flowers*, 734 N.W.2d at 251-52.

Appellant next argues that officer J.H.’s belief that he was under the influence is insufficient to establish reasonable, articulable suspicion because “[c]onsumption of illegal

(concluding defendant’s presence in “high drug” area was, by itself, insufficient to create reasonable, articulable suspicion to justify expanding scope of traffic stop).

drugs is not a crime.” This argument incorrectly assumes that evidence of appellant being under the influence of a controlled substance cannot contribute to officer J.H.’s reasonable suspicion that appellant possessed a controlled substance. In *Wiegand*, the supreme court concluded that there was no reasonable suspicion for an officer to conduct a search for drug evidence after it emphasized that the searching officer never suspected that the defendant was under the influence of any controlled substances. 645 N.W.2d at 136. As a result, being under the influence of a controlled substance is a relevant circumstance when assessing whether there is reasonable suspicion of possession to justify further investigation. See *Sargent*, 968 N.W.2d at 38 (requiring consideration of “the totality of the circumstances” (citation omitted)).

We conclude that the facts available to officer J.H., as well as the reasonable inferences that he could draw from those facts, show that he had reasonable, articulable suspicion to expand the stop to question the driver. Appellant’s argument therefore fails.

II. Officer J.H. had reasonable, articulable suspicion to support the subsequent expansions of the traffic stop.

Appellant contends that, even if reasonable, articulable suspicion supported officer J.H.’s decision to question the driver, officer J.H. lacked the reasonable suspicion necessary to further extend the traffic stop to question appellant and perform consent searches of his person and backpack. We are not convinced.

Before questioning appellant, officer J.H. learned from the driver that he had “just picked [appellant] up,” indicating that appellant was present at the well-known drug house immediately before entering the vehicle. See *Lugo*, 887 N.W.2d at 487. Officer J.H. also

testified that, from up close, appellant appeared to be under the influence based on officer J.H.'s prior interactions with appellant. *See Askerooth*, 681 N.W.2d at 369; *Flowers*, 734 N.W.2d at 251-52. This information, along with the facts described above, provided officer J.H. with sufficient facts to meet the “low hurdle” to establish reasonable, articulable suspicion to question appellant. *Taylor*, 965 N.W.2d at 757.

Similarly, we conclude that officer J.H. had reasonable, articulable suspicion to conduct the consent searches of appellant and his backpack. Along with the “specific and articulable” facts that permitted the first two expansions of the traffic stop, officer J.H. additionally received confirmation from appellant that he lived at the drug house and learned that another officer had received information earlier that day stating that appellant had been selling drugs. *See Lugo*, 887 N.W.2d at 487. Officer J.H. testified that he wanted to search appellant's pockets for weapons based on the information he received and because appellant was holding something in his pocket with a “slightly wide” grip. *See State v. Lemert*, 843 N.W.2d 227, 232 (concluding officer's knowledge of defendant's ties to drug-trafficking activities provided reasonable suspicion that defendant was armed). Because officers may expand a stop to perform a limited search for weapons, and because reasonable, articulable suspicion supported officer J.H.'s request to search appellant's pockets, officer J.H.'s consent inquiry was permissible. *Wiegand*, 645 N.W.2d at 135-36.

Finally, reasonable, articulable suspicion supported the consent search of appellant's backpack because, in addition to the facts discussed above, the search of appellant's person revealed a pocket knife, cash, three cell phones, and a scale. Officer J.H. testified that the possession of several cell phones is often associated with the sale or

possession of controlled substances. *See Askerooth*, 681 N.W.2d at 369; *Flowers*, 734 N.W.2d at 251-52; *United States v. Bowman*, 660 F.3d 338, 345 (8th Cir. 2011) (noting that three visible cell phones in defendant's car contributed to officer's reasonable suspicion that defendant possessed controlled substances). Accordingly, it was reasonable for officer J.H. to request to search appellant's backpack.

Because reasonable, articulable suspicion supported each phase of officer J.H.'s investigation, we conclude that the district court did not err by denying appellant's suppression motion.

Affirmed.