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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1865**

State of Minnesota,
Respondent,

vs.

Frank Joseph Boyd,
Appellant.

**Filed October 14, 2024
Affirmed
Bjorkman, Judge**

Otter Tail County District Court
File No. 56-CR-22-1477

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

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Julie Loftus Nelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larson, Presiding Judge; Worke, Judge; and Bjorkman, Judge.

NONPRECEDENTIAL OPINION

BJORKMAN, Judge

Appellant was convicted, following a jury trial, of third-degree possession of methamphetamine, first-degree refusal to submit to chemical testing for suspected driving

while impaired (DWI), and driving after revocation of his driver's license. On appeal, he challenges the district court's denial of his pretrial motion to suppress evidence obtained during a traffic stop, arguing that (1) police unlawfully expanded the scope of the stop by continuing to question the other occupants of the vehicle after arresting appellant and (2) evidence obtained through that impermissible expansion must be suppressed and cannot justify the subsequent warrantless search of the vehicle. We affirm.

FACTS

Around 10:30 p.m. on June 28, 2022, an Otter Tail County sheriff's deputy (deputy) saw a vehicle on Highway 78 that appeared to have an inoperable headlight. The deputy activated his squad car's emergency lights to conduct a traffic stop. The vehicle did not immediately pull over, and the deputy reported the situation to dispatch. After approximately 37 seconds, the vehicle exited the highway, pulled into a gas station, and stopped at a gas pump. The driver, later identified as appellant Frank Joseph Boyd, began to get out, and the deputy ordered him back into the vehicle.

When the deputy approached, with a flashlight illuminated, he saw three other people in the vehicle—one passenger in the front and two in the back. The deputy asked Boyd for his driver's license. As they spoke through the driver's window, the deputy noticed an odor of alcohol coming from inside the vehicle. Boyd said he did not have his driver's license, and the deputy asked Boyd for anything with his name on it. After some searching in the hatchback part of the vehicle and assistance from his front-seat passenger, Boyd found his wallet and gave the deputy his identification card and license reinstatement paperwork.

The deputy checked Boyd's identification against state records and learned that Boyd's driver's license was revoked; he had an extensive history of impaired driving and a limitation on his license prohibiting him from consuming alcohol or drugs; and he had multiple active arrest warrants from neighboring counties. The deputy arrested Boyd based on the warrants and had Boyd stand next to the vehicle while he conducted a pat-down search. As he searched Boyd, the deputy looked through the windows into the vehicle and saw an open 12-pack container of Twisted Iced Tea, which he knew to be an alcoholic beverage, located behind the driver's seat. He placed Boyd in the back of his squad car and asked him if any of the passengers could drive the vehicle; Boyd said the front passenger could. As they spoke, the deputy noticed an odor of alcohol coming from Boyd.

The deputy then obtained the front passenger's driver's license and checked her driving status. As he went past the vehicle again, he noticed additional containers of alcohol in the vehicle, a bottle of Windsor in the hatchback and a Twisted Iced Tea can behind a rear passenger. The front passenger's driver's license was valid, and she said she had not had anything to drink, but she acknowledged that there were open and empty alcohol containers in the vehicle. The deputy performed field sobriety tests and questioned her about drug use.

Meanwhile, additional officers arrived and began walking around the vehicle and speaking with the other passengers. Like the deputy, they noticed the containers of alcohol in the vehicle, with signs that they were open—the can behind the back passenger was “crinkled,” and the whiskey appeared to have some contents missing and condensation around the bottle. They relayed their observations to the deputy.

The officers then removed the backseat passengers from the vehicle and questioned them about their activities, the contents of the vehicle, and whether they had been drinking alcohol or using drugs; one of the passengers acknowledged that there was probably “a little bit of weed” in the vehicle. Once the passengers were outside, the officers saw on the floor between the back passengers another open can of Twisted Iced Tea and, on top of it, some plastic tubing, which they knew to be commonly used for smoking methamphetamine. The passengers denied any knowledge of the tubing.

After obtaining this information from the passengers, the officers searched the vehicle. The Twisted Iced Tea can underneath the tubing was open and cold, leading the officers to be suspicious of the passengers’ denial of any knowledge about the tubing. Under the driver’s seat, the officers found a small amount of marijuana. In a fanny pack they found by the front passenger seat, the officers discovered in one compartment 2.2 grams of a substance that tested positive for methamphetamine and, in a separate compartment, 18.9 grams of a substance that appeared to be the same. And in the hatchback, they found bags containing 2.1 grams of a substance that also tested positive for methamphetamine.

The deputy transported Boyd to a detention facility. He administered field sobriety tests, which yielded results suggesting Boyd was under the influence of a controlled substance. The deputy obtained a warrant for a blood or urine sample for chemical testing; Boyd refused to give a blood sample and did not cooperate with urine collection.

Boyd was charged with third-degree possession of methamphetamine, first-degree DWI-test refusal, first-degree DWI, violation of a driver’s license restriction, and driving

after revocation of his driver's license. Boyd moved to suppress evidence obtained as a result of the stop, arguing that (1) police lacked reasonable suspicion for the stop because the deputy was mistaken about the inoperable headlight, (2) police unlawfully expanded the scope of the stop by looking into the vehicle with their flashlights and by questioning the other occupants after the traffic violation was resolved and he was arrested, and (3) police lacked probable cause to search the vehicle for evidence of a crime because their testimony about open containers of alcohol is not credible and it is not illegal to possess plastic tubing.

At a contested omnibus hearing, the deputy and other officers testified consistent with the facts described above, and the district court received and considered several exhibits, including video from the deputy's squad car. The district court denied the motion, crediting the officers' testimony about the stop and concluding that the stop was justified at its inception and that each incremental intrusion was justified by additional evidence of criminal activity. Following a jury trial, Boyd was convicted of third-degree possession of methamphetamine, first-degree DWI-test refusal, and driving after revocation of his driver's license,¹ and sentenced to prison.

Boyd appeals.

DECISION

The United States and Minnesota Constitutions guarantee the right of the people to be secure against unreasonable searches and seizures. U.S. Const. amend. IV; Minn.

¹ Boyd was also found guilty of first-degree DWI and violation of a driver's license restriction, but the district court did not enter convictions for those offenses.

Const. art. I, § 10. An officer may briefly stop a vehicle to conduct a limited investigation if the officer has a reasonable suspicion that the person in the vehicle is engaged in criminal activity. *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021). The reasonable-suspicion standard requires “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). The stop must be reasonable in both duration and scope. *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004). Each “incremental intrusion” must be justified by: (1) the original purpose of the stop, (2) independent probable cause, or (3) “reasonableness, as defined in *Terry*.” *Taylor*, 965 N.W.2d at 752 (quoting *Askerooth*, 681 N.W.2d at 365). We review de novo the legal determination whether an expansion of a traffic stop is justified. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

Boyd argues that the police unlawfully expanded the scope of the stop by continuing to question the passengers even after the traffic violation was addressed, he was arrested, and “it was clear” that the front passenger was sober and licensed to drive.² And he contends that because that expansion was improper, the evidence obtained as a result of it cannot justify the subsequent vehicle search. This argument is unavailing for two reasons.

First, even if detaining the passengers, questioning them, and removing them from the vehicle expanded the scope of the traffic stop for the passengers, Boyd has not demonstrated that it did so for him. In other words, he does not claim that the officers’

² Notably, Boyd does not repeat most of the arguments he made to the district court and, despite quoting extensively from the squad video, does not challenge the court’s factual findings.

conduct infringed on *his* Fourth Amendment rights. And he may not assert the passengers' Fourth Amendment rights. *State v. deLottinville*, 890 N.W.2d 116, 119 (Minn. 2017) (stating that Fourth Amendment rights are “personal and may not be vicariously asserted” (quotation omitted)).

Second, the officers had a valid basis to continue investigating and to search the vehicle. As noted above, police may expand the scope of a traffic stop if their observations during the stop supply reasonable suspicion or probable cause as to additional criminal activity. *Taylor*, 965 N.W.2d at 752. Such additional suspicion may arise from the contents of the vehicle in plain view to the officers. *See State v. Milton*, 821 N.W.2d 789, 799 (Minn. 2012) (explaining plain-view doctrine). And if the officers' observations give rise to probable cause to believe that the vehicle contains contraband, they may search the vehicle without a warrant. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007) (citing *Maryland v. Dyson*, 527 U.S. 465, 467 (1999)). Such a search encompasses the vehicle itself and “any closed containers” within the vehicle “that could contain the object of the search.” *State v. Barrow*, 989 N.W.2d 682, 688 (Minn. 2023).

By the time police arrested Boyd and confirmed the front passenger's driving status, they had observed Boyd's unusually slow response when the deputy initiated the traffic stop; learned of his history of impaired driving; noted an odor of alcohol from the vehicle and from Boyd; seen, in plain view from their vantage outside the vehicle, multiple containers of alcohol that appeared to be open; and heard from the front passenger that there were open containers of alcohol in the vehicle. These observations provided probable cause to suspect there were open containers of alcohol in the vehicle, in violation of Minn.

Stat. § 169A.35, subd. 3 (2020), justifying a search anywhere such containers might be found. Police also had probable cause to suspect the vehicle contained controlled substances based on their observation of plastic tubing consistent with methamphetamine use, a passenger's acknowledgment that the vehicle contained "a little bit of weed," and their discovery of a small amount of marijuana early in their search.³ See *State v. Bigelow*, 451 N.W.2d 311, 312-13 (Minn. 1990) (stating that the "lawful discovery of drugs" in a vehicle gives "probable cause to believe that a further search of the vehicle might result in the discovery of more drugs"). This probable cause justified searching anywhere in the vehicle that controlled substances might be found.

In sum, the officers' ongoing interactions with the passengers did not expand the duration or scope of the stop with respect to Boyd, and the search of the vehicle he was driving was justified by probable cause to suspect the vehicle contained open containers of alcohol and controlled substances.

Affirmed.

³ At the time of the stop, it was unlawful to possess more than 1.4 grams of marijuana in a vehicle. Minn. Stat. § 152.027, subd. 3 (2020).