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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2136**

State of Minnesota,  
Respondent,

vs.

Teon Gregory Anderson,  
Appellant.

**Filed October 28, 2013  
Reversed  
Stauber, Judge**

Ramsey County District Court  
File No. 62-CR-12-1099

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Thomas Rolf Ragatz, Assistant Attorney General, St. Paul, Minnesota (for respondent)

Leslie Joan Rosenberg, Assistant State Appellate Public Defender, St. Paul, Minnesota  
(for appellant)

Considered and decided by Hooten, Presiding Judge; Schellhas, Judge; and  
Stauber, Judge.

**UNPUBLISHED OPINION**

**STAUBER**, Judge

Appellant challenges the district court's failure to suppress evidence that he unlawfully possessed a BB gun, leading to his conviction for possession of a firearm by an ineligible felon. Because the arresting officer's persistent investigative questioning

expanded the scope of a traffic stop without reasonable, articulable suspicion of further criminal activity, we reverse.

## **FACTS**

In the early morning of February 9, 2012, appellant Teon Gregory Anderson was driving an automobile with a broken brake light in a high-crime area of St. Paul. A patrol officer spotted the broken light, looked up appellant's license plate on a squad-car computer, and discovered that appellant, the registered owner of the vehicle, was registered as a predatory sex offender and had a suspended driver's license. The officer stopped appellant. During the traffic stop, appellant admitted that he was driving with a suspended license and without proof of insurance.

At trial, the officer testified that he asked whether appellant had "anything in the car that he shouldn't have." Video of the stop shows the officer, less than 30 seconds into the traffic stop, abruptly making this inquiry after asking about appellant's license and insurance. The officer testified that appellant, upon hearing the question, was "evasive," "very hesitant," and "needed [the officer] to kind of lead him on further in the questioning." In the video of the stop, appellant, upon hearing the officer's first question, responded, "Uh, anything like . . . ? No." After the officer asks appellant to clarify, appellant again said "no." The officer responded "[y]ou're kinda hesitant there," and appellant again said "no," followed by, "I mean like, no, do you mean like what? No drugs? No." The officer asked "[n]o guns?" and appellant again responded "no." The officer asked "no?" and appellant again replied "no," before hesitating and asking "does a

pellet gun count as a gun?” All told, the transcript shows that appellant responded “no” to the officer’s questioning eight times before mentioning the BB gun.

Appellant was arrested and charged with violating Minn. Stat. § 609.165, subd. 1b(a) (2012), which prohibits certain felons from possessing firearms. At a contested omnibus hearing, appellant requested that the district court suppress the evidence of his gun possession because the officer’s questioning went beyond the scope of the traffic stop and was unsupported by reasonable, articulable suspicion of criminal activity. The district court denied appellant’s motion. Appellant was subsequently convicted at trial. This appeal followed.

## D E C I S I O N

When no facts are in dispute, a district court’s decision on suppressing evidence is a question of law. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). We review the facts independently to determine whether the evidence must be suppressed. *Id.*

The United States and the 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. A warrantless seizure is unreasonable unless it falls into a recognized exception. *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007).

One such exception allows an officer with a reasonable, articulable suspicion of criminal activity and a reasonable fear for officer safety to conduct a limited search for weapons. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968)), *aff’d*, 508 U.S. 366, 113 S. Ct. 2130 (1993).

The Minnesota Constitution requires application of the *Terry* framework to traffic stops. *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004).

When the essential question is whether the mechanics of a *Terry* stop were lawful, we proceed in three steps. First, we determine “whether the stop was justified at its inception.” *Id.* at 364. Second, we ask “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.* Finally, if the police action went beyond the scope of the initial justification for the stop, we ask whether “independent probable cause or reasonableness [justified] that particular intrusion.” *Id.*

#### **I. Initial stop**

The state provides two separate justifications for the initial traffic stop: the broken brake light and the reasonable suspicion that appellant was driving on a suspended license. A police officer who observes a traffic violation, such as a broken brake light in violation of Minn. Stat. § 169.48 (2012), has probable cause to stop a vehicle. *Whren v. United States*, 517 U.S. 806, 810, 116 S. Ct. 1769, 1772 (1996). And the requisite “reasonable suspicion of criminal activity” for a lawful traffic stop is satisfied when an officer knows that the vehicle’s owner has a suspended driver’s license. *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996). The officer consequently had two valid reasons to stop appellant’s vehicle.

## **II. Expansion of the scope of the stop**

When the initial stop was lawful, we must assess “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.” *Askerooth*, 681 N.W.2d at 364. Any police actions not related to the circumstances giving rise to the stop must be justified by independent probable cause or reasonableness. *Id.* at 356.

The state asserts that police stopped appellant for two reasons: they saw his broken brake light, and they reasonably suspected that he was driving with a suspended license. For about 30 seconds after the stop, the officer asked appropriate questions about appellant’s license and insurance, both questions that were reasonably related to the initial justification for the stop. But video of the stop shows the officer abruptly following up these routine questions by asking appellant if he had anything he was “not supposed to have.” This was not a casual aside, but the beginning of a persistent line of investigative questions that continued despite appellant’s repeated “no” answers. The officer admitted as much when he testified that appellant “was very hesitant and needed me to kind of lead him on further in the questioning.” The officer’s questions, which were clearly designed to investigate the possibility that appellant had contraband, went beyond the scope of initial stop for a broken brake light and suspended license.

## **III. Independent reasonableness of the expanded stop**

In the context of a routine traffic stop, escalated police questioning “aimed at soliciting evidence of drugs and weapons” is an independent intrusion of privacy expectations protected under the Minnesota Constitution. *State v. Fort*, 660 N.W.2d 415,

419 (Minn. 2003). When such an intrusion is “not closely related to the initial justification for the search or seizure,” it is only valid if “there is independent probable cause or reasonableness to justify [it].” *Askerooth*, 681 N.W.2d at 364. During a traffic stop, police must have independent “reasonable, articulable suspicion” of further crimes in order to undertake “investigative questioning” about whether a person has drugs or weapons. *Fort*, 660 N.W.2d at 419.

Under this standard, officers “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.” *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880. We consider the events “leading up to the stop or search” to decide whether the sum total of the underlying facts, “viewed from the standpoint of an objectively reasonable police officer, amount[ed] to reasonable suspicion.” *State v. Martinson*, 581 N.W.2d 846, 850 (Minn. 1998) (quotation omitted). On the objective facts, it must be clear that the officers were not basing their suspicion on a mere hunch. *State v. Cripps*, 533 N.W.2d 388, 391-92 (Minn. 1995).

The events leading up to the search unfolded after appellant was stopped for driving with a broken brake light and a suspended license. The officer who pulled him over also knew that appellant was a convicted felon and predatory sex offender. The stop occurred in the early morning in a high-crime neighborhood. Appellant appeared nervous when answering questions about his insurance and driver’s license. No other factor supports the reasonableness of the search.

None of these factors can support a reasonable, articulable suspicion on its own. *See Fort*, 660 N.W.2d at 419 (requiring independent reasonable, articulable suspicion to

expand the scope of a stop for traffic violations); *State v. Syhavong*, 661 N.W.2d 278, 282 (Minn. App. 2003) (stating that nervousness is not an objective fact, but a “subjective assessment derived from the officer’s perceptions” that cannot establish a reasonable suspicion of criminal activity by itself); *Dickerson*, 481 N.W.2d at 843 (holding that simply “being in a high-crime area” cannot create a reasonable suspicion of criminal activity alone); *see also, e.g., United States v. Jerez*, 108 F.3d 684, 693 (7th Cir. 1997) (holding that knowledge of a criminal record alone cannot warrant a reasonable, articulable suspicion).

The state nevertheless argues that it is a “reasonable inference” for a police officer, during a routine traffic stop, to suspect that a nervous convicted sex offender in a high-crime area possesses contraband, and may be subjected to extensive, persistent police questioning until he admits it. Because the totality of the circumstances provided no reasonable, articulable suspicion that appellant actually possessed contraband, we disagree. The district court erred when it failed to suppress the evidence leading to appellant’s conviction.<sup>1</sup> Because reversing the suppression order is wholly dispositive of the case, we decline to address appellant’s other arguments challenging the conviction.

**Reversed.**

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<sup>1</sup> At the district-court level, the state argued that the discovery of the gun was inevitable regardless of whether the *Terry* stop was lawful because the gun would have been found during an inventory search of the vehicle after it was properly impounded. The state has not briefed that issue on appeal, and has thus waived this argument. *State v. Butcher*, 563 N.W.2d 776, 780 (Minn. App. 1997), *review denied* (Minn. Aug. 5, 1997); *see also State v. Boehl*, 726 N.W.2d 831, 835-36 (Minn. App. 2007) (stating that this rule would ordinarily apply when the state is the respondent in a criminal appeal), *review denied* (Minn. Apr. 17, 2007).