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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0672**

State of Minnesota,
Respondent,

vs.

Michael Lee Abram,
Appellant.

**Filed March 11, 2013
Affirmed
Schellhas, Judge**

Douglas County District Court
File No. 21-CR-10-1586

Lori Swanson, Attorney General, Robert A. Plesha, Assistant Attorney General, St. Paul, Minnesota; and

Chad Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Worke, Judge; and Schellhas,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges the district court's denial of his suppression motion, arguing that the police obtained evidence by unlawfully expanding the scope of a traffic stop. We affirm.

FACTS

The facts are undisputed. On the night of July 31, 2010, Officer Richard Homan clocked a motor vehicle traveling ten miles-per-hour over the speed limit westbound on Interstate Highway 94. Officer Homan stopped the vehicle, observed the sole passenger reach down toward the center console area in a "furtive movement," approached the driver and asked for identification, and identified the driver as appellant Michael Abram. Officer Homan then observed that Abram's and the passenger's hands were "shaking very badly" and he could "see their stomach[s] pulse" under their "real thin T-shirts." Officer Homan described the behavior of Abrams and the passenger as a sign of "extreme nervousness," not the sort of nervousness normally observed during a traffic stop. Officer Homan did not observe any contraband or smell any marijuana or alcohol coming from the vehicle.

Because of the level of nervousness exhibited by Abram and the passenger and the passenger's furtive movement, Officer Homan asked Abram to sit in the front seat of his squad car while he checked Abram for outstanding warrants. Officer Homan noticed that Abram had "bloodshot eyes" and was "slow and lethargic" while talking. Abrams told Officer Homan that he talked that way because he was taking anti-seizure medication for

a head injury. Abram also said that he was traveling to meet his dad in Alexandria. When Officer Homan told Abram that he had passed Alexandria by several miles, Abram was unable to explain what he and the passenger were doing. Abram also told Officer Homan that the passenger owned the vehicle and that they were coming from Minneapolis, where they had been for a “couple days, just hanging out, going to the Mall of America, visiting some friends and stuff like that.” At that point, based on all the circumstances, Officer Homan believed that Abram and the passenger were using drugs, either marijuana or methamphetamine.

Officer Homan approached the passenger to inquire about his ownership of the vehicle. The passenger told Officer Homan that he and Abram were in “the cities looking for a car for [Abram].” Officer Homan noticed that the passenger had “meth scabs or meth bugs . . . commonly seen with meth users,” which Officer Homan had personally seen many times. Officer Homan also noticed that the passenger was “twitching.” Following these observations, Officer Homan asked Abram and the passenger whether they had “any contraband of any kind in the vehicle,” and both said no. Officer Homan called for assistance and walked around the vehicle with his canine partner. The dog alerted in two different areas on the vehicle. When the dog entered the vehicle, she “physically pulled the seat away and tried to get into the trunk.” In the trunk, Officer Homan found a plastic bag that he believed contained “crystal meth,” and the officer then arrested Abram and the passenger. After transporting Abram and the passenger to jail, Officer Homan used a Narcotic Identification Kit (NIK) to test the contents of the plastic

bag, which weighed 6.1 grams and tested positive for methamphetamine, and Abram admitted that the methamphetamine belonged to him.

Respondent State of Minnesota charged Abram with third-degree controlled-substance crime in violation of Minn. Stat. § 152.023, subd. 2(a)(1) (2008). Abram moved to suppress the methamphetamine evidence, arguing that Officer Homan improperly expanded the scope of the traffic stop by questioning him about whether he had any contraband in the vehicle and by conducting a drug-detection dog sniff around the vehicle. The district court denied Abram's motion, and Abram waived his jury-trial rights to a jury trial and proceeded with a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 4. After concluding that the terms of Abram's first stipulation were ambiguous about the evidence to be considered by it, the district court vacated the stipulation. Abram subsequently waived his jury-trial rights and proceeded with a stipulated-facts trial under Minn. R. Crim. P. 26.01, subd. 4. The court convicted him as charged.

This appeal followed.

DECISION

“When reviewing a pretrial order on a motion to suppress, we review the district court's factual findings under our clearly erroneous standard. We review the district court's legal determinations, including a determination of probable cause, de novo.” *State v. Milton*, 821 N.W.2d 789, 798 (Minn. 2012) (citation omitted).

The Minnesota Constitution prohibits unreasonable searches and seizures. Minn. Const. art. I, § 10. Evidence resulting from an unreasonable seizure must be excluded.

See State v. Wiggins, 788 N.W.2d 509, 512 (Minn. App. 2010) (stating that evidence seized in violation of the prohibition against unreasonable searches and seizures “generally must be suppressed”), *review denied* (Minn. Nov. 23, 2010).

[A] traffic stop does not violate Minn. Const. art 1, § 10, as long as each incremental intrusion during the stop is 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 v. Ohio*.

State v. Smith, 814 N.W.2d 346, 350 (Minn. 2012) (quoting *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004)). “Article I, Section 10, imposes this reasonableness limitation on both the duration and scope of a traffic stop.” *Id.* (quotation omitted). “To be reasonable, the basis of the officer’s suspicion must satisfy an objective, totality-of-the-circumstances test.” *Id.* at 351. In applying this test, we ask “whether the facts available to the officer at the moment of the seizure would warrant a [person] of reasonable caution in the belief that the action taken was appropriate.” *Id.* at 351–52 (quotations omitted). “[A]ny intrusion in a routine traffic stop must be supported by an objective and fair balancing of the government’s need to search or seize and the individual’s right to personal security free from an arbitrary interference by law officers.” *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005) (quotations omitted). “[A] police officer may expand the scope of a traffic stop to include investigation of other suspected illegal activity only if the officer has reasonable, articulable suspicion of such other illegal activity.” *Smith*, 814 N.W.2d at 351 (quotation omitted). The police officer’s suspicion “must be particularized and based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.” *Id.*

at 352 (quotations omitted); *see State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (stating the same in the context of a narcotics-detection dog sniff).

The district court concluded that Officer Homan “developed a reasonable, articulable suspicion that [Abram] and the passenger possessed contraband narcotics in the motor vehicle,” and that Officer Homan therefore was justified in expanding the scope of the traffic stop. Abram argues that the court’s conclusion is erroneous. We disagree.

Upon his initial stop of the vehicle, Officer Homan observed the passenger make furtive movements, which by itself can be sufficient for a police officer to develop reasonable suspicion sufficient to expand the scope of a traffic stop. *See State v. Flowers*, 734 N.W.2d 239, 252 (Minn. 2007) (concluding that police officers had a “reasonable suspicion of some form of illegal activity” when the defendant made furtive movements for “approximately 45 seconds” after being pulled over). Further, Abram and the passenger exhibited signs of “extreme nervousness” because their hands were “shaking very badly” and their stomachs were “puls[ing]” under their shirts. The district court considered these signs of “extreme nervousness” as one of the factors justifying Officer Homan’s reasonable suspicion of some form of illegal activity. We defer to the district court’s finding. *See Smith*, 814 N.W.2d at 353–55 (deferring to the district court’s finding that the driver’s violent shaking was not reasonable in the context of the traffic stop, and holding that the violent shaking, when coupled with the driver’s evasiveness, was sufficient for the police officer to form a reasonable suspicion and therefore expand the scope of a traffic stop).

Moreover, Officer Homan observed that Abram had “bloodshot eyes,” slow and lethargic speech, and that the passenger had “meth scabs” and was “twitching.” Based on the officer’s training and experience, he suspected that Abram and the passenger were under the influence of drugs. Because of their special training, “police officers articulating a reasonable suspicion may make inferences and deductions that might well elude an untrained person.” *Flowers*, 734 N.W.2d at 251–52. And bloodshot eyes are a factor that can contribute to a police officer developing reasonable suspicion that a drug-related criminal activity may be taking place. *See State v. Volkman*, 675 N.W.2d 337, 341–42 (Minn. App. 2004) (stating that police officer’s observations that included driver’s “red and bloodshot” eyes and his belief that they were “consistent with intoxication by drugs other than alcohol” “presented a particularized reason for expansion of the original stop and a basis” for officer to request consent to search vehicle).

In addition to Officer Homan’s observed, suspected indicia of drug impairment in Abram and the passenger, the officer’s suspicion was heightened when Abram told him that he was traveling to a destination that he had already passed and described the purpose for traveling to the Cities differently from the passenger. Based on a totality of the circumstances, Officer Homan articulated specific facts that reasonably justified his suspicion that Abram and the passenger were engaged in drug-related criminal activity.

Citing *State v. Wiegand*, 645 N.W.2d 125 (Minn. 2002) and an unpublished case, Abram also argues that Officer Homan improperly expanded the scope of the traffic stop by using his canine partner to conduct a narcotics-detection drug sniff around the vehicle. We do not address the unpublished case because “[u]npublished opinions of the [c]ourt of

[a]ppeals are not precedential,” Minn. Stat. § 480A.08 (2012), but we do address *Wiegand*.

The use of a narcotics-detection dog is a search for purposes of the Minnesota Constitution, and to sustain the use of a dog sniff in the context of a motor-vehicle stop, the reasonable-articulable-suspicion standard is necessary. *Davis*, 732 N.W.2d at 176 (citing *Wiegand*, 645 N.W.2d at 133–34, 137). In *Wiegand*, the supreme court concluded that the police officer improperly exceeded the scope of a traffic stop by conducting a narcotics-detection dog sniff when the defendant had “very slow and quiet speech, was somewhat nervous, was shaking, and had glossy eyes.” 645 N.W.2d at 128. But, in *Wiegand*, the police officer testified that he “did not suspect” that the defendant “was under the influence of any drugs.” *Id.* In this case, Officer Homan articulated facts that reasonably supported his suspicion that Abram and the passenger were involved in drug-related criminal activity, and, based on his training and experience, believed that Abram and the passenger were impaired by drugs.

Based on a totality of the circumstances, Officer Homan did not unlawfully expand the scope of the traffic stop by questioning Abram and the passenger about drug contraband in the vehicle and conducting a drug-detection dog sniff of the vehicle. We therefore conclude that the district court did not err by denying Abram’s suppression motion.

Affirmed.