This opinion is nonprecedential except as provided by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
A22-1098

State of Minnesota,
Respondent,

vs.

Ismael Villegas, Jr.,
Appellant.

Filed May 30, 2023
Affirmed
Worke, Judge

Crow Wing County District Court
File No. 18-CR-20-4031

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

Donald F. Ryan, Crow Wing County Attorney, Jaqueline R. Fogal, Assistant County Attorney, Brainerd, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Peter H. Dahlquist, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Bratvold, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his controlled-substance-crime conviction, arguing that the district court erred by denying his motion to suppress evidence because police improperly expanded the scope of a traffic stop. We affirm.

FACTS

On December 3, 2020, an officer parked off a state highway observed a vehicle approach in the right-hand lane. As the vehicle neared the officer, the driver looked away from the officer and switched into the left-hand lane, which was the furthest from the officer. After passing the officer, the vehicle moved back to its original lane of traffic. Through his training, the officer knew that this behavior was abnormal because there was no reason for the driver to change lanes and create distance from the officer's squad car. The officer followed the vehicle and watched it cross the fog line several times and travel too closely behind another vehicle.

The officer conducted a traffic stop. He identified the driver as appellant Ismael Villegas, Jr. Villegas produced identification but was unable to provide proof of insurance. The officer noted that Villegas appeared "nervous," specifically, he "had trembling hands and avoid[ed] eye contact."

The officer told Villegas that he stopped Villegas because his driving conduct could mean that Villegas was impaired, tired, or texting and driving. The officer asked Villegas "to step out of the vehicle and . . . to have a seat in the front seat [of the squad car]" while the officer conducted routine license and insurance checks. While sitting in the squad car, the officer noticed that Villegas's "carotid artery [was] visibly pulsing, his breathing [was] shallow, and [he had] short responses" to questions.

Although Villegas told the officer that the vehicle belonged to his uncle, the vehicle did not come back registered to his uncle. Villegas offered to call his uncle. The officer and Villegas exited the squad car and walked to Villegas's vehicle to retrieve his phone.

From outside the vehicle, the officer observed a cut straw and tinfoil inside the vehicle. An assisting officer observed a twisted partial plastic baggie. The officer knew that individuals put drugs in a plastic bag and then twist it off. He also knew that individuals use a cut straw to retrieve narcotics from a plastic bag and ingest them, and that tinfoil is consistent with heroin paraphernalia. When the officer retrieved the cut straw, he observed "a bag of what appeared to be heroin in plain view partially tucked underneath the driver's seat."

The officer arrested Villegas for drug possession. A search of the vehicle pursuant to the automobile exception produced three one-pound bags of marijuana, a scale, empty vacuum-sealed bags, and empty postal packages. Villegas admitted that the heroin and marijuana belonged to him. The state charged Villegas with fifth-degree controlled-substance crimes.

Villegas moved to suppress the evidence, arguing that the officer impermissibly expanded the scope of the stop. Following a hearing, the district court denied Villegas's motion. The district court concluded that Villegas's traffic violations provided the officer with an objective basis for the stop, and the expansion of the stop was justified by Villegas's driving conduct and the officer's observations leading him to investigate whether Villegas was driving impaired.

The district court held a stipulated-facts proceeding, under Minn. R. Crim. P. 26.01, subd. 4, to allow Villegas to receive review of the district court's pretrial ruling. The district court adjudicated Villegas guilty of fifth-degree drug possession and sentenced him to 12 months in prison, stayed for five years. This appeal followed.

DECISION

Villegas argues that the district court erred by denying his suppression motion because the officer impermissibly expanded the scope of the stop by having him sit in the squad car for 12 minutes. In reviewing a pretrial suppression order when the facts are not in dispute, as is the case here, we "may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed." *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

Individuals have a constitutional protection against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. This protection extends to the right of the people to be secure in their motor vehicles. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). Generally, an officer may stop a vehicle to conduct a limited investigation if the officer has a reasonable, articulable suspicion that the person in the vehicle is engaged in criminal activity. *State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004); *see also Terry v. Ohio*, 392 U.S. 1, 30-31 (1968). Even a minor traffic-law violation provides reasonable suspicion for an investigative stop. *Anderson*, 683 N.W.2d at 823.

Here, the officer stopped Villegas for traffic-law violations—Villegas followed too closely behind a vehicle and crossed the fog line several times. Villegas concedes that the officer was justified in making the initial stop but argues that the officer impermissibly expanded the stop by asking him to sit in the squad car.

A valid investigatory stop must be limited in scope and duration. *State v. Diede*, 795 N.W.2d 836, 845 (Minn. 2011). It must last only as long as necessary to "effectuate the purpose of the stop." *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) (quotation

omitted). A valid stop may be expanded so long as "each incremental intrusion . . . [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*." *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004). The reasonableness of an officer's action requires a "balancing of the government's need to search or seize and the individual's right to personal security free from arbitrary interference." *Id.* (quotation omitted).

We conclude that the expansion of the stop was justified by the original legitimate purpose of the stop. The officer testified that Villegas's "weaving" driving conduct could have indicated that he was impaired. The officer told Villegas that he stopped him to ensure that Villegas was not impaired, tired, or texting and driving. The officer testified that when he observes this driving conduct, he normally asks a driver to exit the vehicle to make sure that the driver is not impaired.

Villegas claims that if the officer was concerned that he was driving impaired, rather than confine him to the squad car, he should have conducted field sobriety tests. But the officer testified that one of the reasons he will ask a driver to sit in his squad car is to observe the driver's behavior during a conversation. The officer articulated a basis for having Villegas sit in the squad car. *Cf. id.* (stating only reason officer provided for confining driver in squad car was "officer convenience").

Field sobriety testing is not the only tool available to an officer to identify impairment; he may also do so through observation. As the district court concluded, the expansion of the stop was justified by several facts—Villegas's "driving conduct," "avoidance of eye contact, trembling hands, [and] nervous behavior." Because the

expansion of the stop is justified by the reason for the initial stop, to investigate possible impairment, the district court did not err by denying Villegas's suppression motion.

Affirmed.