

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2008).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0409**

State of Minnesota,
Respondent,

vs.

James William Steinbach,
Appellant.

**Filed April 28, 2009
Affirmed
Shumaker, Judge**

St. Louis County District Court
File No. 69VI-CR-07-761

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Melanie Sue Ford, St. Louis County Attorney, 100 North 5th Avenue West, Suite 501, Duluth, MN 55802-1298 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Stoneburner, Presiding Judge; Shumaker, Judge; and Collins, Judge. *

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

UNPUBLISHED OPINION

SHUMAKER, Judge

On this appeal from the district court's denial of his motion to suppress evidence, appellant argues that the stop of the car in which he was a passenger was pretextual and that no independent basis existed to expand the scope of the stop. Because the stop was justified by the officer's observation of a traffic violation, and because reasonable suspicion supported the expansion of the stop, we affirm.

FACTS

On April 13, 2007, Conservation Officer John Velsvaag was getting the oil changed on his Department of Natural Resources' truck when he noticed a car pull into the stall on his left. Officer Velsvaag testified that the driver and two passengers "were very jittery, high strung, erratic movements, looking around a lot." Appellant James Steinbach was the front-seat passenger of this car. Officer Velsvaag testified that he thought the three men were "casing" the oil-change establishment, although he observed them for "less than a minute."

When the men walked away, leaving the car behind, Officer Velsvaag ran a computer check of the car's license plates. He discovered that the registered owner only had a learner's permit, and therefore needed another licensed driver over the age of 18 in the car with him before he could drive legally. Officer Velsvaag, feeling "that something was going on," called for backup from the city police. About 15 minutes later, the driver and Steinbach returned to the car and drove away, stopping to pick up the other passenger at a nearby store. Officer Velsvaag followed them.

After following the car onto the highway, Officer Velsvaag saw it move from the left lane into the right lane without a proper lane-change signal. Once the car was in the right-hand lane, Officer Velsvaag “observed [the driver] and Mr. Steinbach reaching down towards the center console area of the vehicle; and [the driver] in particular, I could see that his body was bent over to the right.” The car swerved a little in its lane. Officer Velsvaag then turned on his “red lights,” and stopped the car.

After the car stopped, Officer Velsvaag again saw the driver and Steinbach “reaching down towards the center console, below the center console, in the front seat.” Officer Velsvaag got the driver’s identification, and at some point made a cursory search for weapons. He testified that the other officers arrived to assist him within one minute, and that he told them about his observations at the oil-change station and the improper lane-change.

Officer Backman was one of the officers who came to assist Officer Velsvaag. Officer Backman approached Steinbach on the passenger’s side of the car, and noticed he “was quite nervous His hands were shaking. I could see his neck was throbbing.” Officer Backman believed that he recognized Steinbach, who “was being evasive, looking away.” He asked the driver whether there was another licensed driver in the car, and the driver replied that the back-seat passenger was licensed. Officer Backman checked the back-seat passenger’s driving status with dispatch, and found that it was valid.

Then, Officer Backman “had the driver step out of the vehicle . . . [and] asked him who the passenger of the vehicle was.” The driver said “James.” The officer approached

Steinbach, and called him by his first name. Steinbach “turned himself away and became increasingly nervous.” He asked Steinbach for his last name, but Steinbach “turned further away as he said it. I had difficulty hearing him, and I had him spell his name.” Steinbach complied. Next, the officer “checked with Midway dispatch if there was active warrants, and my recollection, I had dealt with him earlier in the year, and my partner at that time told me that the last time he had run him he had warrants on him.” Dispatch informed Officer Backman that Steinbach had an active warrant out for his arrest. The officer arrested Steinbach, searched him, and discovered methamphetamine in one of Steinbach’s pockets.

On April 17, 2007, Steinbach was charged with a fifth-degree controlled substance crime. He moved to suppress the contraband, and a contested omnibus hearing was held. The district court denied Steinbach’s motion. Agreeing that the search issue was dispositive of the case, Steinbach waived his rights to a jury trial and agreed to a *Lothenbach* proceeding under Minn. R. Crim. P. 26.01, subd. 4. The court found Steinbach guilty of fifth-degree possession and he appealed.

D E C I S I O N

Appellant Steinbach contends that the district court erred in denying his motion to suppress the methamphetamine because the stop was pretextual and illegal, and no independent reasonable, articulable suspicion existed to expand the scope of the stop. We review de novo a district court’s pretrial suppression order to determine whether the district court erred as a matter of law in making its decision. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). It is uncontested that Steinbach was seized when Officer

Velsvaag stopped the car in which he was a passenger. Therefore, the only inquiries on appeal are whether the stop was based on reasonable, articulable suspicion, and if so, whether the expansion of the stop was justified. A district court's determination that reasonable, articulable suspicion of unlawful activity existed to justify a limited investigative stop is also reviewed de novo. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

We perform a two-pronged analysis to determine the legality of an investigatory stop. *Askerooth*, 681 N.W.2d at 364. We first consider whether the stop was justified at its inception. *Id.* We then determine “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.* (citing *Terry v. Ohio*, 392 U.S. 1, 19-20, 88 S. Ct. 1868, 1879 (1968)).

The Stop

The federal and state constitutions prohibit unreasonable searches. U.S. Const. amend. IV; Minn. Const. art. I, § 10. The protections of the Fourth Amendment and Article I apply to seizures of the person, including brief investigatory stops such as the stop of the car in which Steinbach was a passenger. *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 694 (1981); *Askerooth*, 681 N.W.2d at 363.

Steinbach argues that Officer Velsvaag's inability to “recall specifically what the law required for a lane change” invalidates the stop. However, the record reflects only that Officer Velsvaag was confused as to how long before changing lanes a signal is required, not whether a signal is required *before* a lane change is made. The submitted

facts show that the driver failed to signal his lane change before entering the right-hand lane. This is a violation of Minn. Stat. § 169.19, subds. 4, 5 (2008). An officer has an objective basis for stopping a vehicle if the officer observes a traffic law violation, even a minor one. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

Steinbach also argues that the car in which he was a passenger was stopped on a pretextual basis, and therefore the stop was unlawful. Officer Velsvaag testified that he “stopped him because of the lane change. I was following them because of what took place at the . . . instant oil change shop.” A police officer's observation of a traffic violation, however, is sufficient to establish probable cause to stop the vehicle. *Whren v. United States*, 517 U.S. 806, 810, 116 S. Ct. 1769, 1772 (1996). When a stop is based on probable cause, a police officer's subjective intent has no bearing on the reasonableness of the stop. *Id.* at 812-13, 116 S. Ct. at 1774. Thus, the stop was valid regardless of Officer Velsvaag's subjective intentions.

Expansion of Stop

The inquiry does not end with the determination that the stop was justified, for “[a]n initially valid 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, 88 S. Ct. at 1878). An investigation after a traffic stop must be limited to the circumstances that originally justified the stop, and may include a limited search for weapons. *Id.*; *State v. Wiegand*, 645 N.W.2d 125, 136 (Minn. 2002). Each incremental intrusion during a stop must 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. It is the state’s burden to show that the seizure was sufficiently limited. *Id.*

The district court found that Officer Backman was justified in running a warrants check when Steinbach “became nervous as shown by shaking hands and throbbing neck, avoided eye-contact, and attempted to conceal his identity by pulling his visor down to cover his face.” Steinbach argues that, after verifying that the driver was accompanied by a licensed driver over the age of 18, Officer Backman had no objective basis for expanding the scope of the stop to request his identification and run a warrants check.

The police may investigate whether a vehicle’s passengers have valid driver’s licenses when they discover that a driver cannot legally operate the vehicle. *State v. Johnson*, 645 N.W.2d 505, 510 (Minn. App. 2002). But, running a warrants check on a passenger expands the scope of that inquiry, and some reasonable articulable suspicion of criminal activity must exist to justify the expansion. *See id.* at 510-11 (holding that absent reasonable suspicion of criminal activity, officer could not request a passenger’s identification to run a warrants check). Reasonable suspicion requires “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quotations omitted). The objective facts must “warrant a man of reasonable caution in the belief” that a warrants check was appropriate. *Askerooth*, 681 N.W.2d at 364 (quotation omitted). Determinations of reasonable suspicion are based on the totality of the circumstances. *Davis*, 732 N.W.2d at 182.

At the omnibus hearing, Officer Backman testified that (1) Officer Velsvaag requested backup because there were furtive movements inside the vehicle; (2) Steinbach was nervous; his hands were shaking and his neck was throbbing; (3) he recognized Steinbach from somewhere, but was not immediately sure because he was “being evasive, looking away”; (4) upon being questioned as to his identity, Steinbach “instantly turned himself away and became increasingly nervous”; (5) Steinbach “turned further away” when he told Officer Backman his name; and (6) Officer Backman’s partner informed him that when Steinbach was previously dealt with he “had warrants on him.” Officer Backman’s supplemental report states that he recognized Steinbach as “someone he had dealt with” from an ongoing narcotics investigation involving a different individual, and that Steinbach “pulled his hat visor lower over his face,” when he inquired whether there was a licensed driver in the car.

Steinbach objects to the court using Officer Backman’s knowledge of a previous warrant in support of its finding that reasonable suspicion justified the expansion of the stop because, at the omnibus hearing, he successfully objected to Officer Backman’s testimony on this issue as hearsay. However, we find that the court erroneously sustained this objection because the statement was not offered for its truth, but for its effect on Officer Backman, namely to show the basis for his suspicion that Steinbach may have had a warrant out for his arrest. This is not hearsay. *See* Minn. R. Evid. 801(c). Therefore, this statement could properly be considered as a basis for Officer Backman’s suspicion to expand the scope of the stop.

Furthermore, other objective facts supported the officer's expansion of the search. An individual's responses and the circumstances of the stop may "give rise to suspicions unrelated to the traffic offense, [and] an officer may broaden his inquiry and satisfy those suspicions." *State v. Syhavong*, 661 N.W.2d 278, 282 (Minn. App. 2003) (quotation omitted). When Officer Backman approached the car, Steinbach was so nervous that his pulse was visible in his neck. Nervousness alone cannot constitute the basis for an officer's reasonable suspicion, but may contribute to reasonable suspicion when it is supported by other objective, particularized facts. *Id.* Steinbach also acted evasively, pulling his visor down over his face, mumbling and turning away from Officer Backman when he was asked for his name. Nervous behavior coupled with deliberate evasive conduct may provide a reasonable basis for suspecting the motorist of criminal activity. *State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989). Additionally, the officers witnessed Steinbach making "furtive movements," which may also contribute to an officer's suspicion of criminal activity. *See State v. Munoz*, 385 N.W.2d 373, 376 (Minn. App. 1986) (stating that furtive movements may provide a basis for probable cause).

These objective facts gave the officers reasonable, articulable suspicion that criminal activity was afoot. The court did not err in ruling that the evidence against Steinbach was constitutionally obtained and should not be suppressed.

Affirmed.