This opinion is nonprecedential except as provided by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
A21-0257

State of Minnesota,
Appellant,

vs.

Koulton Ugene Robinson,
Respondent.

Filed September 20, 2021
Affirmed
Cochran, Judge

Hennepin County District Court
File No. 27-CR-20-721

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

Michael O. Freeman, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney, Minneapolis, Minnesota (for appellant)

Kassius O. Benson, Fourth District Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for respondent)

Considered and decided by Worke, Presiding Judge; Cochran, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this pretrial prosecution appeal, the state challenges the district court's order granting respondent's motion to suppress evidence seized after officers stopped a vehicle in which respondent was a passenger. The state argues that the district court erred by

(1) determining that respondent had standing to challenge the expansion of the traffic stop, and (2) determining that the officers lacked reasonable, articulable suspicion to expand the scope of the stop. We affirm.

FACTS

In March 2019, appellant State of Minnesota charged respondent Koulton Ugene Robinson with one count of unlawful possession of a firearm or ammunition and one count of fifth-degree possession of methamphetamine. The charges arose after police officers stopped a vehicle, in which Robinson was a passenger, for a speeding violation. The officers ordered the driver out of the vehicle to question him about possible drug activity. The officers later ordered Robinson out of the car. During a subsequent search of the vehicle, the officers discovered methamphetamine, a firearm, and ammunition.

Robinson moved to suppress the evidence obtained during the search, arguing that the traffic stop, the expansion of the stop, and the search of the vehicle violated the Fourth Amendment of the United States Constitution. Following an evidentiary hearing, the district court granted Robinson's motion to suppress the evidence.

Evidentiary Hearing

At the evidentiary hearing, the district court heard testimony from the officer who conducted the traffic stop as well as a sergeant who assisted. The district court also admitted a squad car video of the traffic stop. The following provides a summary of that evidence.

On the morning of March 20, 2019, the officer was monitoring a residence in the city of Bloomington. Law enforcement had gone to that residence a few weeks earlier and

arrested one of the residents for possession of a handgun. The officer knew that person was not present at the house on March 20 because the person was still in custody. Law enforcement had also previously received multiple calls about "narcotics activity and suspicious activity" at the address. Law enforcement was concerned about possible ongoing drug activity at the residence based, in part, on an increase in short-term vehicle traffic at the address.

While monitoring the residence that morning, the officer observed a black Ford Taurus park across the street from it. Two individuals exited the vehicle and went inside. The officer asked the sergeant, who was on the scene in a separate vehicle, to drive by the Taurus and give the officer its license plate number. The officer then ran a search of the number and learned that the registered owner of the vehicle had been involved in drugs and weapons violations in other jurisdictions. The officer also learned that the owner was associated with the resident who had been arrested. Based on the database photograph, the officer believed that the registered owner was one of the individuals who had exited the vehicle. The other individual was later identified as Robinson.

Robinson and the other individual remained in the house for about 50 minutes. After they exited the house, they returned to the car and drove away. The other individual was driving, and Robinson was sitting in the front passenger's seat.

The officer followed the vehicle. She estimated that the vehicle was traveling about 33 to 34 miles an hour, which was in excess of the 30-mile-per-hour speed limit. The officer decided to stop the vehicle based on the traffic violation and based on her belief that the occupants were involved in drug activity. As she was making the traffic stop, the officer

observed that Robinson "moved forward or leaned forward slightly." When asked to describe the motion, she testified that she "saw his head kind of bow down from the visible field" but gave no further details. The sergeant followed behind the officer as the officer made the traffic stop.

The officer went to the driver's side window and spoke with the driver. The driver provided identification and insurance information. The officer asked the two occupants where they were coming from. The driver told the officer that they were coming from the Bloomington residence. The driver said that he was friends with the resident of the house.

While speaking with the driver, the officer observed Robinson in the passenger's seat. According to the officer, Robinson "appeared to be very nervous" and did "not want[] to make direct eye contact." Based on these observations, the officer believed that Robinson had "something to hide." The officer told Robinson that he looked "really familiar" and asked him for his name. Robinson told her that he did not have to identify himself. The officer responded: "People that don't want to identify themselves to the police generally have something to hide." According to the officer, Robinson "again avoided eye contact and seemed very nervous."

The officer returned to the squad car to run a check on the driver's license and insurance. Before doing so, she conferred with the sergeant. She told the sergeant that Robinson looked "super familiar" and that she thought he might have been arrested in connection with a bank robbery more than a year earlier. She also said that he refused to identify himself. The officer stated that she intended to "pull" the driver and Robinson out of the car, meaning that she was going to have the driver and Robinson get out of the car

so she could question them further. At the hearing, she explained that her reason for doing so was to "separate the driver and the passenger to investigate the possible narcotics activity."

Before doing so, the officer ran a check on the driver's identification and insurance information. The officer learned that the driver had unspecified "associations and reports involving narcotics contacts relating to his name." While the officer was checking the driver's information, the sergeant told the officer that it looked like the passenger was "digging around." When asked to explain this observation, the sergeant testified that it appeared Robinson was leaning forward "kind of almost to the point where it looked like he might be reaching underneath the seat for something on the floorboard." The officer testified that she also observed Robinson "moving around a little bit" during this time frame. When asked to explain what she meant, she stated that she "saw movement in his head."

After conducting the identification check, the officer returned to the driver's window and directed the driver to step out of the vehicle. The officer brought the driver in front of the squad car and immediately asked, "Who's your buddy in there?" The driver identified the passenger as Robinson. The officer then questioned the driver about his criminal history and what he was doing at the house. The driver stated that he was at the residence to pick up some clothes and other property belonging to the resident who had been arrested. He also told the officer that there were other people in the house that day, although he did not know them.

While the officer questioned the driver, the sergeant stood to the side of the vehicle and watched Robinson's movements. The sergeant saw that Robinson "continued to be moving around" in his seat and was handling a "cylindrical-shaped container." The sergeant also observed "foil wrapping," which he believed to be consistent with drug paraphernalia. The officer then asked Robinson to step out of the vehicle. The officer patted Robinson down for weapons and discovered a pair of brass knuckles and rubber gloves in his back pocket. The officer placed Robinson under arrest. During a search incident to arrest, the sergeant discovered a methamphetamine pipe on Robinson.

Officers subsequently searched the vehicle. They discovered narcotics, handguns, and ammunition throughout the car. Robinson was subsequently charged with fifth-degree possession of methamphetamine and unlawful possession of a firearm or ammunition.

District Court's Order

Following the evidentiary hearing, the district court granted Robinson's motion to suppress. First, the district court rejected the state's argument that Robinson lacked standing to challenge the constitutionality of the traffic stop and concluded that a passenger seized during a traffic stop may challenge the stop.

The district court then examined the constitutionality of the traffic stop. It determined that the initial traffic stop was legally justified based on the officer's observation that the Taurus was speeding. The district court next concluded that the officer expanded the traffic stop when she ordered the driver to get out of the car and began questioning him about Robinson's identity. The district court therefore addressed whether this expansion of the traffic stop was supported by reasonable, articulable suspicion.

The district court considered Robinson's presence at the residence, which the district court found to be "a known 'drug house.'" The district court determined that this factor was not conclusive and found that there was "no evidence either [the driver] or Mr. Robinson carried anything out of the house when they exited." Moreover, the district court noted that the driver "provided a plausible innocent explanation for being at the house," in that he was "there to pick-up property from the house and left when he found out it was not there." The district court also believed that the length of time that the driver and Robinson stayed in the house—about 50 minutes—was "unlike the traditional short stay present in the vast majority" of cases suggesting drug activity.

The district court rejected other facts that the state emphasized as supporting reasonable suspicion. While the officer testified that Robinson appeared nervous, the district court dismissed this observation as "a subjective assessment derived by the officer's perception" and "not an objective fact." The district court also rejected the state's reliance on Robinson's "furtive movements" observed by the officer and the sergeant while the officer was conducting the driver's license and insurance check, determining that these movements were irrelevant to the question of reasonable suspicion because they all occurred after the officer had made the decision to expand the stop. Finally, the district court declined to rely on Robinson's refusal to identify himself when asked, noting that he had the right not to identify himself at that time.

Based on these facts, the district court concluded that the officer lacked reasonable, articulable suspicion to justify expanding the traffic stop by ordering the driver out of the

car for questioning. Accordingly, the district court ordered the suppression of the drugs and ammunition found during the officers' subsequent search of Robinson and the vehicle.

The state appeals.

DECISION

The state challenges the district court's order granting Robinson's motion to suppress evidence. The state may appeal from "any pretrial order" in which the district court's alleged error of law has a "critical impact" on the outcome of the trial. Minn. R. Crim. P. 28.04, subds. 1(1), 2(2)(b). Here, it is undisputed that the critical-impact requirement is satisfied because the suppression of the ammunition and methamphetamine will certainly affect the state's ability to prosecute Robinson for unlawful possession of those items.

Accordingly, we turn to the state's substantive arguments regarding the district court's decision to grant Robinson's motion to suppress. When reviewing a pretrial order on a motion to suppress, we review the district court's factual findings for clear error and its legal determinations de novo. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). We independently review the facts and determine as a matter of law whether the district court erred in suppressing the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

The state raises two arguments on appeal: (1) the record does not establish that Robinson had standing to challenge the officer's expansion of the traffic stop; and (2) the district court erred by determining that the officer lacked reasonable, articulable suspicion to expand the traffic stop beyond a speeding violation. We address each argument in turn.

I. Robinson had standing to challenge the expansion of the stop.

The state argues that the district court erroneously concluded that Robinson had standing to challenge the expansion of the traffic stop. The concept of "standing" under the Fourth Amendment is based on the idea that a person challenging a search or seizure as unlawful must show that his own constitutional rights were violated and cannot vicariously assert a violation of another person's rights. *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978). To have standing under the Fourth Amendment, a defendant must show that he had "a legitimate expectation of privacy in the invaded place." *Id.* at 143. It is well-established that a passenger in a vehicle stopped by police ordinarily does not have standing to challenge a *search* of the vehicle. *Id.* at 148-49. But a passenger has standing to challenge the *stop* of the vehicle, because the stop is considered a seizure of the passengers as well as the driver. *Brendlin v. California*, 551 U.S. 249, 251 (2007).

Here, the district court determined that Robinson had standing under the Fourth Amendment because he was challenging the constitutionality of the stop, not the later search of the vehicle. The state does not dispute that Robinson had standing to challenge the initial stop, which was for a speeding violation. But the state argues that "it is far less clear whether Robinson, as the passenger in a vehicle, ha[d] standing to challenge the legality of the *expansion of the scope* of a stop of that vehicle." The state maintains that the record does not establish whether Robinson was seized at the time the officer expanded the stop and that, "if Robinson was not seized at that time and was instead free to walk away from the scene, he would lack standing." The state therefore asks us to remand for

the district court to determine whether Robinson had standing at the time the stop was expanded.

The state's argument is premised on the assumption that a passenger may have standing to challenge an initial stop of a vehicle, but that the passenger may not have standing to challenge an *expansion* of the stop. The state's position appears to conflict with United States Supreme Court case law. The Court has defined the ordinary scope of a seizure during a traffic stop: "The temporary seizure of driver and passengers ordinarily continues, and remains reasonable, for the duration of the stop. Normally, *the stop ends* when the police have no further need to control the scene, and *inform the driver and passengers they are free to leave*." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009) (emphasis added). This language indicates that a passenger ordinarily remains seized throughout the expansion of a traffic stop, because the officers continue to control the scene and have not informed the driver or passengers that they are free to leave.

Similarly, the Supreme Court in *Brendlin* explained the likely effect of a traffic stop on a passenger: "[A] sensible person would not expect a police officer to allow people to come and go freely from the physical focal point of an investigation into faulty behavior or wrongdoing." 551 U.S. at 257. The Supreme Court further commented that an "attempt to leave the scene would be so obviously likely to prompt an objection from the officer that no passenger would feel free to leave in the first place." *Id.* We believe these comments about a passenger's inability to leave the scene are just as likely to be true—if not more so—when an officer expands the stop beyond a mere traffic violation and begins to investigate possible criminal activity. Based on Supreme Court precedent, the conclusion

that a passenger continues to be seized during an expansion of the stop is almost inescapable. And we are unaware of any case law suggesting that a passenger, who has standing to challenge the legality of the initial stop, might lose standing when the scope of the stop is expanded. Thus, we conclude that a passenger who reasonably believes that they are not free to leave the scene when a traffic stop is expanded has standing to challenge that expansion.

Finally, we reject the state's contention that the record is unclear as to whether Robinson was free to terminate the encounter, and therefore was no longer seized, at the time the officer ordered the driver out of the car. A passenger is seized if a reasonable person in the passenger's position would not feel free to leave. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993). Nothing in the record suggests that Robinson might have felt free to leave the scene. The officer and the sergeant never gave any indication that Robinson could leave. And when Robinson had earlier refused to identify himself to the officer, she told him that "people that don't want to identify themselves to the police generally have something to hide." In this situation, no reasonable person would have felt free to get out of the car and walk away while the officer was questioning the driver. Because the record establishes that Robinson remained seized at the time the officer expanded the stop, the district court properly concluded that Robinson had standing to challenge the expansion of the stop.

II. The officer lacked reasonable, articulable suspicion of drug-related activity to justify expanding the traffic stop.

We next consider the state's argument that the district court erred by granting the motion to suppress because it incorrectly determined that the officer did not have reasonable, articulable suspicion of drug activity to expand the traffic stop. We conclude that district court did *not* err in this regard either.

The United States and Minnesota Constitutions protect individuals against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. If an individual is illegally seized before officers have reasonable suspicion to seize him, then all evidence obtained after the seizure must be suppressed. *Harris*, 590 N.W.2d at 97.

A traffic stop is considered a seizure akin to a *Terry* investigative stop. *State v. Askerooth*, 681 N.W.2d 353, 359-60 (Minn. 2004) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). Under the *Terry* framework, courts undertake a "dual inquiry," determining first "whether the stop was justified at its inception," and second "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.* at 364. An officer may expand the scope of a traffic stop to investigate other suspected criminal activity "only if the officer has reasonable, articulable suspicion of such other illegal activity." *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). A mere hunch is not sufficient to satisfy the test of reasonableness. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011); *see also Terry*, 392 U.S. at 27. An officer's reasonable suspicion must be based on "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) (quoting *Terry*, 392 U.S. at 21). When articulating reasonable suspicion, officers are permitted to rely on "inferences and deductions that might well elude an untrained person." *State v. Flowers*, 734 N.W.2d 239, 251-52 (Minn. 2007).

In determining whether reasonable, articulable suspicion exists, we look to the totality of the circumstances. *Id.* at 251. In addition, the proffered factual bases and any inferences drawn therefrom are assessed against an objective standard of reasonableness. *State v. Schrupp*, 625 N.W.2d 844, 847 (Minn. App. 2001), *rev. denied* (Minn. July 24, 2001). An officer's subjective good-faith belief will not suffice. *Id.* And, as noted above, we independently review the facts and determine as a matter of law whether the stop and the expansion meet the reasonable, articulable suspicion standard. *Flowers*, 734 N.W.2d at 247, 251-52.

Here, the district court determined that the traffic stop was justified at its inception based on the speeding violation, and neither party challenges that determination on appeal. The officer later directed the driver out of the vehicle and began questioning him about Robinson's identity and possible drug activity. Because the officer's actions in ordering the driver out of the car went beyond the justification for the initial stop, the officer expanded the scope of the traffic stop at that point. *See State v. Fort*, 660 N.W.2d 415, 418-19 (Minn. 2003) (concluding that officer expanded scope of traffic stop by ordering passenger out of vehicle and questioning him about drug-related activity). The question on appeal is therefore whether the officer had reasonable, articulable suspicion of other criminal activity to justify expanding the stop. In addressing this question, we consider

only the facts as they existed at the time the officer ordered the driver out of the car; we do not consider any circumstances that arose after that moment.

The state points to the following circumstances as supporting reasonable, articulable suspicion: (1) Robinson's association with the driver and their presence together at a "known drug house"; (2) Robinson's nervousness; and (3) Robinson's "furtive movement[s]" during the stop. We first discuss these circumstances individually and then consider whether, when viewed together, they provided the officer with reasonable, articulable suspicion that Robinson may have been involved in criminal activity.[1]

The state argues that reasonable suspicion was supported by the fact that Robinson and the driver—who had prior drug-related offenses—had been at a "known drug house" just prior to the stop.[2] Case law makes clear that these facts alone do not establish reasonable suspicion. "Mere proximity to, or association with, a person who may have previously engaged in criminal activity is not enough to support reasonable suspicion of possession of a controlled substance." *Diede*, 795 N.W.2d at 844. Similarly, "[p]resence

[1] The state contends that the district court failed to properly apply the totality-of-the-circumstances test and viewed these circumstances in isolation rather than all together. We disagree. While the district court did comment that certain facts by themselves or "without more" did not support reasonable suspicion, the district court ultimately discussed the most relevant circumstances and explained why, all together, they did not support reasonable suspicion. We are satisfied that the district court properly considered the circumstances in their totality.

[2] Robinson disputes the state's characterization of the residence as a "known drug house." He notes that the officer never testified that she saw any ongoing drug activity at the house and did not testify specifically about drug-related arrests. We reject Robinson's contention. The officer testified that police had received multiple drug-related calls to that house and that she had been involved in some of those contacts. We therefore accept the district court's finding that the residence was a known drug house.

in a known drug house is a relevant, but not conclusive, factor for an officer to consider." *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016) (citing *Illinios v. Wardlow*, 528 U.S. 119, 124 (2000)).

Here, the district court determined that Robinson had a "plausible innocent explanation for being at the house" because the driver told the officer that he was at the house to pick up some of the resident's belongings. We agree with the district court's analysis on this point. In examining the totality of the circumstances, courts are to consider "possible innocent explanations for the alleged suspicious activity." *State v. Baumann*, 759 N.W.2d 237, 240 (Minn. App. 2009), *rev. denied* (Minn. Mar. 31, 2009). We see no error in the district court's finding that Robinson and the driver's explanation for being at the house was plausible. Their 50-minute stay at the house was much longer than the type of stays that are characteristic of drug transactions. *See Utah v. Strieff*, 136 S. Ct. 2056, 2059 (2016) (noting that frequent visitors who leave a house a few minutes after arriving raise suspicions that drug dealing is happening inside). And the district court correctly noted that there was no evidence that Robinson or the driver were carrying items that might conceal drugs or paraphernalia when they left the residence.

The state nonetheless contends that, despite this plausible innocent explanation, it was reasonable for the officer to suspect that Robinson and the driver may have been doing something else inside the residence. The state emphasizes that the driver told the officer that he knew the resident of the house was still in jail and that he did not know anyone else at the house. The state correctly notes that even facts that are consistent with innocent activity may support reasonable suspicion when considered in their totality.

State v. Martinson, 581 N.W.2d 846, 852 (Minn. 1998). But, while we cannot say that the officer's suspicions were necessarily unreasonable given these facts, we believe, like the district court, that Robinson's innocent explanation was stronger in light of the surrounding circumstances. Based on our case law and the district court's finding of a plausible innocent explanation for being at the house, we conclude that Robinson's association with the driver and his presence at the known drug house by themselves are insufficient to support reasonable suspicion of drug activity.

The state also cites Robinson's nervousness as a fact supporting reasonable suspicion. The officer testified that Robinson "appeared to be very nervous" and did not want "to make direct eye contact" with her. The district court correctly noted that "[n]ervousness alone is not an objective fact, but a subjective assessment derived from the officer's perceptions." *State v. Syhavong*, 661 N.W.2d 278, 282 (Minn. App. 2003). And "ordinary drivers may become nervous during a routine traffic stop." *State v. Smith*, 814 N.W.2d 346, 353 (Minn. 2012). For these reasons, courts have repeatedly recognized that a defendant's nervousness in the face of police questioning, without more, does not support reasonable, articulable suspicion. *State v. Burbach*, 706 N.W.2d 484, 490 (Minn. 2005) (determining that defendant's demeanor, "which was nervous, fidgety, and talkative in a way that the officer found more extreme than usual" did not contribute to a finding of reasonable suspicion); *Syhavong*, 661 N.W.2d at 282 (noting that a defendant's nervousness "must be coupled with other particularized and objective facts" to contribute to reasonable suspicion).

The state nonetheless insists that "it was permissible for [the officer] to deduce that Robinson's nervousness was not reasonable under the circumstances." We disagree. While the officer testified that Robinson's behavior was not typical of "people that do not want to hide anything from law enforcement," this fact does not show that his nervousness was unreasonable. The supreme court in *Burbach* rejected a similar argument, and it declined to rely on the arresting officer's testimony that the defendant's nervousness "was significantly more than normal nervousness during a traffic stop" when the nervousness arose from police questioning. 706 N.W.2d at 490. We agree with the district court's characterization of the officer's testimony as merely a "subjective assessment," and there are no objective facts suggesting that Robinson's nervousness went beyond the ordinary type of nervousness that might be typical during a traffic stop. Thus, Robinson's nervousness provides no support for an objective, reasonable suspicion of criminal activity.[3]

[3] The state also points to two additional facts regarding the officer's interaction with Robinson when she first approached the vehicle. We conclude that neither fact supports reasonable suspicion. First, the state cites the officer's statement that Robinson looked familiar and that he reminded her of a bank-robbery suspect who had been arrested a year and a half earlier. The officer did not explain any connection between the past robbery and the drug-related activity the officers were investigating that day. We therefore do not see how this fact is relevant to the officer's decision to expand the scope of the traffic stop. Second, the state notes that Robinson refused to identify himself when the officer asked. The district court determined that this fact did not support reasonable suspicion because Robinson had the right not to identify himself. We agree with the district court's decision not to consider this fact. The United States Supreme Court has recognized that, during a traffic stop, "the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions," but "the detainee is not obliged to respond." *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). Because Robinson had the right to choose not to respond to the officer's

Finally, the state argues that law enforcement testimony about "furtive movements" that Robinson made while in the Taurus supports a conclusion of reasonable suspicion. The state first points to the officer's testimony that the officer observed Robinson make a "furtive movement" before she stopped the vehicle. At the hearing, the officer testified that, as she followed the car, she observed Robinson "move[] forward or lean[] forward slightly." When asked to explain the movement further, she said that she "saw his head kind of bow down." The district court did not discuss this movement, so we deem the district court to have attributed no significance to the officer's testimony for purposes of its reasonable-suspicion analysis. And we agree with the district court's implicit conclusion. The officer's limited description indicated that Robinson, at most, may have leaned forward slightly—an ordinary movement for passengers riding in a moving vehicle. The officer's description of Robinson's movement did not suggest that Robinson may have been attempting to hide something or avoid notice. This movement can hardly be called "furtive." We conclude that Robinson's simple act of leaning forward while the officer was following the Taurus adds no value in terms of reasonable suspicion.

Next, the state argues that, after stopping the Taurus, the officer and the sergeant both "saw Robinson [make] a furtive movement" during the time that the officer was checking the driver's identity and insurance. At the hearing, the officer testified that while she was in her squad car and around the time she was talking with the sergeant, she observed Robinson "moving around a little bit." When asked what she meant, she stated,

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request to identify himself, we do not consider Robinson's exercise of this right when determining the existence of reasonable suspicion.

"I saw movement in his head." She added nothing more. During this same time frame, the sergeant noticed that it looked like Robinson was "digging around like he is hiding something." When asked to explain what he saw, the sergeant testified that Robinson appeared to be "leaning forward." But the sergeant was equivocal when he described Robinson's movement, stating: "He was *kind of almost* to the point where it looked like he *might* be reaching underneath the seat for something on the floorboard." (Emphasis added.) The state argues that these observations of "furtive movement" by Robinson after the stop and before the officer pulled the driver from the car support the conclusion that the officer had reasonable suspicion to believe that the vehicle contained drugs.[4]

Even considering Robinson's "furtive" movement during this time, we conclude that it does not add much to support reasonable suspicion. The officer's testimony that Robinson was "moving around" is so vague that it hardly suggests suspicious behavior. While the sergeant was somewhat more specific in saying that Robinson was leaning forward and "might" have been reaching under the seat, his testimony was uncertain. Moreover, both the officer and the sergeant described minor movement by Robinson. This slight movement stands in sharp contrast to the type of furtive movements that courts have

[4] The district court did not consider this movement by Robinson, reasoning that the officer had already made the decision to order the driver out of the car for further questioning by that point. We agree with the state that the district court erred by looking at the time the officer decided to expand the stop, rather than the time that the officer actually expanded the stop. Under our de novo review of reasonable, articulable suspicion, we consider that movement in our analysis. Additionally, the sergeant observed Robinson "moving around" inside the vehicle and handling a cylindrical-shaped container after the officer had ordered the driver out of the car. The parties agree that we do not consider these movements by Robinson in our reasonable-suspicion analysis because they occurred after the expansion of the stop.

recognized as supporting reasonable suspicion. *See, e.g.*, *Flowers*, 734 N.W.2d at 245, 252 (holding that defendant's "frantic, furtive movements" in vehicle, which lasted for about 45 seconds and during which he leaned all the way into front passenger seat, gave officers reasonable suspicion that defendant may have been armed and dangerous); *State v. Gallagher*, 275 N.W.2d 803, 807-08 (Minn. 1979) (determining that defendant's "immediate exit from his car" and passenger's "awkward movements" in attempting to shield a brown paper bag from officer's view supported probable cause to search the bag). We are not persuaded that Robinson's brief, minor movement observed while the officer was checking the driver's license and insurance leads to the objectively reasonable inference that he may have been engaged in criminal activity.[5] This fact therefore adds little to the reasonable-suspicion analysis.

Having determined that the facts that the state relies on do not support reasonable suspicion by themselves, we consider whether the facts support reasonable suspicion when considered together. We conclude that they do not. These circumstances—Robinson's association with the driver, his coming from a known drug house, his nervousness, and his leaning forward in his seat during the stop—are weak by themselves, and they are not much stronger even when considered as a whole. The totality of the circumstances may, at most, have provided the officer with information to form a "hunch" that Robinson was engaged in drug-related criminal activity at the time she ordered the driver out of the car for

[5] The squad car video that was admitted at the hearing shows the driver and the passenger while they are in the vehicle, but it is difficult to see the passenger and whether he makes any movements.

questioning. But, taken in the aggregate and viewed objectively, they did not establish reasonable suspicion of such behavior. Because the officer who ordered the driver from the car to question him about Robinson lacked reasonable, articulable suspicion of criminal activity to expand the scope of the traffic stop, the district court properly granted Robinson's motion to suppress.

Affirmed.