This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).

STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0845

State of Minnesota,
Respondent,

vs.

Irwin James Sam,
Appellant.

Filed April 27, 2020
Affirmed
Reilly, Judge

Mille Lacs County District Court
File No. 48-CR-18-1059

Keith Ellison, Attorney General, Edwin W. Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Joseph J. Walsh, Mille Lacs County Attorney, Milaca, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Randall Tietjen, Charlie Gokey (pro hac vice), Robins Kaplan LLP, Special Assistant Public Defenders, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

REILLY, Judge

In this direct appeal from final judgment, appellant argues that his conviction for possession of a firearm by an ineligible person must be reversed because the district court erred by holding that a state trooper's observations during an investigatory stop established reasonable, articulable suspicion of illegal activity to support questioning appellant about drug use or possession, and then frisking him. Appellant also argues that the district court erred by holding that a state trooper's suspicion that he had used or possessed drugs entitled the trooper to assume that appellant was armed and dangerous. Because the district court did not err, we affirm.

FACTS

A state trooper followed a car into a casino parking lot after seeing it roll through a stop sign. The trooper had also noticed that a backseat passenger was not wearing a seatbelt. As the trooper caught up to the car, the driver quickly signaled a left turn and went down the next parking row. This heightened the trooper's "suspicion that the vehicle was trying to turn off immediately upon [him] getting behind it." The car parked, its doors opened, and two passengers began to "exit quickly." The trooper pulled up and parked, told the passengers that he wanted to talk to them, and got out as the car's driver did the same.

Based on previous criminal investigations at or near the casino, the trooper considered it to be a "high-crime area involved in lots of drugs and weapons." The trooper knew that day was "payday for [band] members of the area," which in his experience,

correlated to "an uptick in drug-related and weapon-related crimes," because "[d]rug dealers [would] often flood the area . . . because people have money to then purchase drugs and illegal items."

The trooper noticed that the driver and passengers had bloodshot eyes and appeared pale, which he recognized as signs of recent drug use. One passenger kept putting her hands in her pockets, and both passengers were "repeatedly looking around and shifting on their feet." The trooper identified the driver as appellant Irwin James Sam and the male passenger as M.N. The trooper was acquainted with M.N., having previously found him in possession of methamphetamine during a traffic stop. The trooper knew from other officers that M.N. was known to carry weapons, and knew that M.N. had previously been arrested for drugs, which resulted in a search warrant for guns.

As the trooper spoke with appellant, who was "standing in the doorframe" of the car, appellant was "repeatedly putting his hands in his pockets and was shifting around on his feet, [and] not looking at [the trooper]." Appellant "kept glancing around" and "kept looking back into the vehicle." This concerned the trooper, because in his training and experience, "people will often either touch areas or use their eyes to look at areas where there may be something illegal . . . it's something – a cue [police officers] look for in law enforcement when someone is either armed on their person or there's maybe illegal items in a vehicle."

Looking through the driver's open door, the trooper saw a canister of butane fuel to the left of the driver's seat, which "caught [his] attention" because he commonly sees butane fuel "in vehicles and on people that are drug users." In response to the trooper's

question, the driver and passengers denied that there was any "dope" in the car. When the trooper confronted the individuals about the butane fuel and its known association to drug use, they laughed.

Suddenly, appellant's "demeanor completely changed." Appellant "attempt[ed] to aggressively move towards [the trooper] and then start[ed] to pull the door shut on [him]." At that point, the trooper became concerned that appellant was armed and dangerous. The trooper informed appellant that he was going to pat search him. At some point, appellant shut and locked the door. Appellant again reached down to his right pocket, and the trooper commanded him to stop reaching for his right side.

The trooper frisked appellant and felt a bullet in his right front pocket. The trooper removed the bullet and asked if there were any weapons in the car. Appellant disclaimed any knowledge about the contents of the car. The trooper again observed appellant reaching around his pocket area. The trooper commanded appellant to stop reaching for his pocket and again asked him if there were any guns in the car, which appellant denied. The trooper placed appellant in handcuffs and told him that he was detained but not under arrest. The trooper again asked appellant if there were guns in the car, and appellant said there were guns under the driver's side floor mat. The trooper advised appellant of his *Miranda* rights, searched the car, and recovered two pistols from under the driver's side floor mat.

Respondent State of Minnesota charged appellant with three counts of possession of a firearm by an ineligible person under Minn. Stat. § 609.165, subd. 1b (2016). Appellant moved to suppress all evidence obtained during the search of his car. The district

court denied appellant's motion to suppress. Following a stipulated-facts trial, the district court found appellant guilty of all three counts. Appellant was convicted and sentenced to 60 months' imprisonment. This appeal follows.

D E C I S I O N

The district court did not err when it found that there was reasonable suspicion of illegal activity to justify expanding the scope of the stop by questioning appellant about drug use and possession.

"Generally, warrantless searches are per se unreasonable." *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). "If an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). An officer may then expand a traffic stop if each incremental intrusion is tied to and justified by "(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). Reasonable, articulable suspicion requires that the officer identify "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968). The reasonable, articulable suspicion standard is satisfied when an officer observes conduct that leads him to reasonably conclude, based on his experience, that criminal activity may be afoot. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation and citation omitted). When reviewing a pretrial order on a motion to suppress evidence, an appellate court reviews the district court's factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

Appellant does not challenge the initial stop. Rather, appellant contends that the trooper illegally expanded the scope of the traffic stop by investigating whether appellant used or possessed drugs. At the outset, we note that the district court stated it was "not completely clear at what point [appellant] allege[d] the expansion of the stop occurred" and focused its initial analysis on appellant's contention that the seizure of the vehicle's occupants was beyond the scope of the initial stop. And although unclear to us as well, it appears that appellant, in his pretrial motion to suppress, may have challenged both the seizure and the subsequent expansion of the stop based on the trooper's observations of potential drug use or possession. While the district court may not have explicitly concluded that the expansion of the stop was justified at the exact moment appellant now contends it occurred, the district court made very thorough findings with regards to each "incremental intrusion" and concluded that the trooper's observations when "taken together constitute sufficient reasonable, articulable suspicion to support the expansion of the stop."

Appellant argues that the trooper's observations in this case "fail to amount to reasonable suspicion, whether examined separately or together" to justify the expansion of the stop because sometimes, "zero plus zero plus zero adds up to zero."[1] *United States v. Billups*, 442 F.Supp.2d 697, 699 (D. Minn. 2006). Specifically, appellant focuses on the

---

[1] In *Billups*, the indicators of criminal behavior relied on by the government included: (1) the fact that Billups was driving slightly under the speed limit (65-67 mph in a 70 mph zone); (2) the car driven by Billups had tinted back windows (legally tinted, given that the car was licensed in Colorado); (3) Billups drove with two hands on the steering wheel; (4) Billups's seat was pushed back so that his head was obscured by the "B" pillar separating the driver's side windows; and (5) Billups did not make eye contact with the trooper when he passed him. 442 F.Supp.2d at 698.

following circumstances, arguing that none of them, whether examined separately or together, amount to reasonable suspicion to justify expanding the scope of the stop: (1) appellant's presence in a "high-crime" area; (2) appellant's nervous behavior; (3) appellant's bloodshot eyes, pale skin, and possession of butane fuel; and (4) appellant's proximity to an individual with a criminal record.[2] Appellant asks this court to review and reject each of the trooper's individual observations. But this position is contrary to well-established caselaw which directs Minnesota courts to determine whether reasonable suspicion exists by considering the "totality of the circumstances." *State v. Smith*, 814 N.W.2d 346, 351-52 (Minn. 2012) ("To be reasonable, the basis of the officer's suspicion must satisfy an objective, totality-of-the-circumstances test."). We now turn to the factors considered by the district court and argued by appellant to be insufficient to support an expansion of the traffic stop.

(1) Appellant's presence in a high-crime area

The trooper testified that in his experience the casino is a "high-crime" area around "payday" because law enforcement tend to see "an uptick in drug-related and weapon-related crimes" around that time. Appellant argues that his presence in the casino parking

[2] Appellant also appears to argue that the trooper's testimony regarding some of these factors is not credible. However, the district court credited the trooper's testimony and we defer to the district court's credibility determinations. *See State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010) ("[T]he trier of fact is in the best position to determine credibility and weigh the evidence."); *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) ("[Appellate courts] accord great deference to the [district] court's determinations [because] . . . [t]he credibility of witnesses and the weight to be given their testimony are determinations to be made by the factfinder.").

lot on payday does not support a reasonable suspicion of illegal activity, although he concedes that his presence in a high-crime area may be considered in the reasonable-suspicion analysis. *See Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000) (noting that law enforcement is "not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation" and the fact that a stop occurred in a "high crime area" is "among the relevant contextual considerations in a *Terry* analysis"). However, appellant argues that his presence in a "high-crime area" is entitled to "limited weight in the reasonable suspicion analysis."

Here, it is unclear from its order how much weight the district court gave this particular factor in the analysis as a whole, especially in light of the fact that the district court cited several other reasons why the expansion of the stop was justified. Moreover, none of the caselaw appellant cites indicates that presence in a high-crime area is entitled to "limited weight in the reasonable suspicion analysis." Accordingly, we discern no error in the district court's reliance on this factor as part of its reasonable-suspicion analysis.

(2) Appellant's nervous behavior

Appellant argues that his nervous behaviors do not amount to reasonable suspicion of illegal activity.[3] First, appellant argues that the trooper's observations of appellant

[3]Appellant argues that the district court's finding that the passengers were "looking at" the trooper's marked squad car cannot provide the requisite reasonable, articulable suspicion because these observations were not "particularized" or "individualized" to appellant. We need not reach this argument because even if appellant is correct on this point, there are other findings of nervousness that were "individualized" and "particularized" to appellant.

"quickly pull[ing] down a parking row at the casino" and trying to quickly leave the parked car are insufficient to establish reasonable suspicion. Appellant relies on *State v. Schrupp* to support his position, arguing that this court in that case held there was no reasonable suspicion justifying a search when a "driver pulled quickly into a driveway." 625 N.W.2d 844, 848 (Minn. App. 2001), *review denied* (Minn. July 24, 2001). As an initial matter, *Schrupp* dealt with the reasonableness of the stop, which appellant does not challenge here. Additionally, this court did not conclude that the stop was unlawful because pulling quickly into a driveway did not provide an officer with reasonable suspicion. Rather, we concluded that the stop was unlawful because despite the officer believing that the driver "might be trying to avoid [him]," the officer "did not identify any inference of the possibility of criminal activity." *Id*. Appellant's reliance on *Schrupp* is misplaced, and appellant does not cite to any other relevant legal authority to support his position. As such, we reject appellant's argument.

Appellant next contends that his behaviors, including "excessive movement," repeatedly "looking around," putting his hands in his pockets, "shifting around on his feet" and repeatedly "looking back into the vehicle" are the types of nervous behaviors this court and the supreme court have rejected as adequate bases for expanding a traffic stop because nervous behavior cannot contribute to an officer's reasonable suspicion of criminal activity. We are not persuaded. In *State v. Syhavong*, 661 N.W.2d 278, 282 (Minn. App. 2003), this court determined that "an officer's perception of an individual's nervousness *may contribute to an officer's reasonable suspicion*, [but] nervousness is not sufficient by itself and must be coupled with other particularized and objective facts." (Emphasis

added). As such, *Syhavong* stands for the proposition that nervousness may contribute to an officer's reasonable suspicion, as long as it is not the only factor relied on. We discern no error in the district court relying, in part, on appellant's nervous behaviors to conclude that reasonable suspicion justified the trooper's expansion of the stop.

(3) Appellant's bloodshot eyes, pale skin, and possession of butane fuel

Appellant argues that his pale skin, bloodshot eyes and possession of butane fuel do not amount to reasonable suspicion of illegal activity. Appellant first challenges the district court's factual findings regarding his pale skin and possession of butane fuel, implying that those factual findings are erroneous because there were other plausible explanations for the trooper's observations presented at the hearing. However, just because appellant offered a plausible alternative explanation, the district court, as fact-finder, was not required to accept that explanation. *State v. Larson*, 393 N.W.2d 238, 241-42 (Minn. App. 1986).

Appellant also argues that Minnesota caselaw makes "clear that such weak indicia of recent drug use are insufficient to justify the expansion of the traffic stop." Appellant relies on *State v. Wiegand*, 645 N.W.2d 125 (Minn. 2002). In that case, Wiegand "was evasive, nervous and had glossy eyes." *Id*. at 137. Despite those observations, the supreme court concluded there was no articulable basis to suspect criminal activity because, while the officer indicated that Wiegand was acting suspiciously, the officer also had "no reason to suspect drug-related activity" at the time he expanded the scope of the stop. *Id*.

Here, in contrast, the trooper observed appellant's pale skin and bloodshot eyes and saw butane fuel in the car. Based on these observations, the trooper's suspicion that appellant was involved in drug-related activity was objectively reasonable. As such, the

instant case is distinguishable from *Wiegand*. Moreover, this court has relied on indicia of drug or alcohol use such as bloodshot and watery eyes, and constricted pupils, when considering reasonable suspicion in the context of impaired driving. *See State v. Hegstrom*, 543 N.W.2d 698, 702 (Minn. App. 1996) (holding that "the observed symptoms of some type of intoxication, particularly the severely constricted pupils, plus the strong evidence of inattentive driving" were sufficient to establish probable cause to believe the driver was under the influence of a controlled substance); *State v. Driscoll,* 427 N.W.2d 263, 265 (Minn. App. 1988) (relying in part on driver's bloodshot and watery eyes when determining that probable cause existed). The district court did not err in relying, in part, on appellant's bloodshot eyes, pale skin, and possession of butane fuel in its reasonable-suspicion analysis.

(4) Appellant's proximity to individual with a criminal record

Appellant argues that his proximity to an individual with a criminal record does not support a reasonable suspicion of illegal activity to justify expanding the stop. Specifically, appellant takes issue with the district court's finding that the trooper "recognized [M.N.] as someone who has a criminal history involving guns and drugs" and relied on this, in part, when concluding that reasonable suspicion justified expansion of the stop.

Citing *State v. Diede*, appellant argues that "[m]ere 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." 795 N.W.2d 836, 844 (Minn. 2011). In *Diede,* the supreme court concluded that Diede being in the same

vehicle with a suspected drug dealer was insufficient to support a reasonable suspicion that Diede possessed controlled substances. *Id.* at 845. However, contrary to appellant's assertion, the supreme court did not hold that courts may not consider a person's proximity to or association with a person with a known criminal history when it analyzes whether reasonable suspicion exists. Rather, the supreme court, relying on United States Supreme Court precedent, concluded that mere proximity, without more, is not enough to support a reasonable suspicion of criminal activity. *Id.* at 852 (citing *Ybarra v. Illinois*, 444 U.S. 85, 91, 100 S. Ct. 338, 347 (1979)). Accordingly, the district court did not err in considering, as one factor in its reasonable-suspicion analysis, appellant's proximity to and association with M.N.[4]

(5) Totality of the circumstances

Here, the district court considered all of the factors discussed above and determined that under the totality of the circumstances, the trooper's observations "constitute[d] sufficient reasonable, articulable suspicion to support the expansion of the stop." The district court's findings are supported by the record. And, based on the totality of the circumstances in this case, we conclude that the district court did not err in finding that

---

[4] Appellant contends that the district court erred when it considered the identity of M.N. in the analysis because his identity was obtained through an unlawful expansion of the traffic stop and therefore the evidence of M.N.'s identity must be suppressed. However, "Fourth Amendment rights are personal rights, which . . . may not be vicariously asserted." *Rakas v. Illinois*, 439 U.S. 128, 134, 99 S. Ct. 421, 425 (1978) (quotation omitted). And, a "person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed." *Id.* Accordingly, we reject appellant's argument.

reasonable suspicion supported the trooper's expansion of the stop when he questioned appellant about drug use and possession.

The district court did not err when it determined that the trooper's frisk of appellant's person was justified under the circumstances.

Appellant argues that the trooper illegally expanded the scope of the stop when he frisked him for weapons.[5] "[D]uring a routine traffic stop for a minor traffic violation, a pat-down search is improper unless some additional suspicious or threatening circumstances are present." *State v. Varnado*, 582 N.W.2d 886, 890 (Minn. 1998). "[I]n the absence of probable cause, the police may stop and frisk a person when (1) they have a reasonable articulable suspicion that a suspect might be engaged in criminal activity and (2) the officer reasonably believes that suspect might be armed and dangerous." *State v. Flowers*, 734 N.W.2d 239, 250-51 (Minn. 2007) (summarizing holding of *Terry*, 392 U.S. 1, 88 S. Ct. 1868). "The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Terry*, 392 U.S. at 27, 88 S. Ct. at 1883 (citations omitted). When considering whether the officer acted reasonably under the circumstances, "due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Id.* Appellant challenges both prongs of the frisk

---

[5] Respondent argues that even if this court determines that the frisk of appellant's person was unlawful, this court may reach an issue the district court declined to reach: "whether the inevitable discovery doctrine precludes application of the exclusionary rule." Because we conclude that the weapons were discovered as a result of a lawfully expanded stop, we need not consider whether the inevitable discovery doctrine applies.

analysis, arguing that there was no reasonable suspicion of criminal activity, and the record does not establish that the trooper had a reasonable belief appellant was armed and dangerous.

Regarding the first prong, we have already concluded that there was reasonable suspicion to justify the trooper's expansion of the stop when he questioned appellant about his use or possession of drugs. And, because drug possession is criminal activity under Minnesota law, *see* Minn. Stat. §§ 152.021-.027 (2018), we need not reconsider whether there was reasonable suspicion of criminal activity under the first prong of the analysis.

Turning to the second prong, appellant contends that the district court erred when it determined that appellant was armed and dangerous because "drugs and weapons are commonly associated" and that suspicion of drug use or possession is insufficient to establish a reasonable belief that a suspect is armed and dangerous. Appellant mischaracterizes the district court's order. The district court did not, as appellant contends, base its conclusion entirely on the rationale that "drugs and weapons are commonly associated." Rather, the district court considered various factors.

In addition to the various factors discussed previously, the record shows that while appellant and the trooper were standing in the doorframe of the vehicle, in response to the trooper's question regarding the butane fuel, appellant "attempt[ed] to aggressively move towards [the trooper] and then start[ed] to pull the door shut on [him]." It was then that the trooper believed appellant could be armed and dangerous. In addition, appellant repeatedly put his hands in his pockets and the trooper told him to get his hands out of his

pockets. When the trooper then informed appellant he was going to conduct a frisk, appellant again reached to his right side pocket, and the trooper again gave him a loud verbal command to not reach into his pocket. The trooper then frisked appellant for weapons. Based on this record, we conclude there was adequate reasonable suspicion to justify the frisk.

We also note that the supreme court has recognized that a "substantial nexus exists between drug dealing and violence." *State v. Lemert*, 843 N.W.2d 227, 232 (Minn. 2014) (citations omitted); *see also State v. Ludtke*, 306 N.W.2d 111, 113 (Minn. 1981) (concluding frisk was justifiable where officer was alone on the highway with two people who possessed marijuana, one of whom was seen making a furtive movement in the back of the car). Therefore, we conclude that it was not unreasonable for the district court to consider the association between drugs and weapons as a factor in its analysis.

Finally, appellant argues that "[m]erely touching one's pockets is anxious behavior that provides little justification for a frisk." Appellant relies on an unpublished decision, *State v. Peake*, A16-0232, 2017 WL 393788, at *1 (Minn. App. Jan. 30, 2017), which is not precedential, to support his position. *See Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993) ("Unpublished opinions of the Court of Appeals are not precedential."). And the supreme court has recognized that reaching for one's pockets is a factor justifying a frisk. *See State v. Gannaway*, 191 N.W.2d 555, 557 (Minn. 1971) ("Gannaway's reaching for his outer coat pocket, even after being warned not to do so, gave [the officer] reasonable cause to initiate a protective frisk for weapons."). Accordingly, we reject appellant's argument and conclude that under the circumstances of

this case, the trooper was justified in expanding the scope of the stop by frisking appellant for weapons.

Affirmed.