STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1274

State of Minnesota,
Respondent,

vs.

Joseph Gregory Vanguilder,
Appellant.

Filed July 27, 2020
Affirmed in part, reversed in part, and remanded
Ross, Judge

Hennepin County District Court
File No. 27-CR-18-26291

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

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

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

Timothy J. Droske, Special Assistant Public Defender, Lindsey Schmidt, Christopher A. Delong, Dorsey & Whitney LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Ross, Judge; and Rodenberg, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

A police officer approached and spoke with a couple whom he saw exit a parked van at 3:00 a.m., walk toward and then away from a closed business, and unsuccessfully attempt to enter two locked apartment buildings. After the officer arrested the man for providing a fictitious name during the encounter, the officer had the van towed to the police department to be subjected to a dog sniff for drugs. The man, Joseph Vanguilder, now appeals his convictions for providing a fictitious name and for drug-sale and possession crimes resulting from the evidence seized during the van search. The officer did not unconstitutionally stop Vanguilder, so we affirm his fictitious-name conviction. But the officer lacked probable cause to seize the van, so we reverse the drug-related convictions and remand for further proceedings.

FACTS

At about 3:00 a.m. one August morning, Robbinsdale Police Officer Alexander Weber noticed a red van parked and idling. Minutes later, the van's motor was shut off and a man and woman exited. The woman matched the general description of a suspect the officer had been looking for to execute an arrest warrant. He watched the couple walk on the sidewalk past his stopped squad car. They stood in front of a closed barbershop for three to four minutes. Then they turned and walked back past the squad car and up a grass embankment toward an apartment complex. The officer watched them pull on a locked door and fail to open it. Then he watched them approach a different apartment building and again try but fail to open a locked door. He watched them several minutes more and saw

that they neither entered any building nor left the area. Suspicious, he left his car and approached them.

Officer Weber called out to the couple, saying, "Hello. My name's Officer Weber." He added, "I'm with the Robbinsdale Police Department. Would you mind if I spoke with you?" He explained that he had been looking for a woman with outstanding arrest warrants and asked if they had drivers' licenses or identification cards they would be willing to show him. The couple replied, saying they had no identification with them.

Officer Weber asked if they would be willing to provide their names. The man said that his name was "Jacob Allen Moriah." The woman said she was "Makaya Rae Wishcop-Sundberg." The officer would later find that both names were fictitious. In the meantime, he asked if either of them had ever been issued a Minnesota driver's license. The man said no, and he claimed to be licensed instead in Oregon. The woman said that she had never applied for a Minnesota driver's license. He asked the woman if she had ever been arrested, and she said yes, for possession of a stolen vehicle, but, responding to a different question, she claimed that she had been released before police fingerprinted or photographed her. Officer Weber suspected that the couple was not who they claimed to be.

Officer Weber asked questions about what they were doing. They did not explain their business near the barbershop. They eventually said that they were there to meet their friend, "Kellie." Kellie was the name of the woman Officer Weber had been looking for.

Backup officers arrived, and Officer Weber went to a squad car to check the information the couple had provided. The man's stated name matched no Oregon licensee.

And the woman's stated name matched no booking information the officer could find through the law-enforcement database. Officer Weber believed that the couple had given him false identifying information. He therefore fingerprinted both of them with a portable print-reading machine, which revealed their true identities. He identified the man as Joseph Vanguilder and the woman as a person being sought on an outstanding arrest warrant for a narcotics-related offense. He arrested Vanguilder for providing false information.

Officer Weber sat each of them in squad cars and turned his attention to the red van they had exited, which was lawfully parked on the street. He shone his flashlight inside, saw items in a "disorganized, chaotic look," and thought the couple might have been living in the van. He asked for Vanguilder's consent to search the van, but Vanguilder refused.

Officer Weber had the van towed to a secured garage at the Robbinsdale Police Department. There he again looked through the window, this time noticing a plastic baggie on the floor containing a crystal-like substance. He directed a canine unit to conduct a dog sniff outside the van, which resulted in the dog alerting so as to indicate drugs inside. Using this information, the officer sought and obtained a warrant to search the van. The search uncovered marijuana, methamphetamine, heroin, and various narcotics paraphernalia.

The state charged Vanguilder with giving a peace officer a fictitious name and four drug-related charges: first-degree sale of methamphetamine, first-degree possession of methamphetamine, fifth-degree possession of heroin, and fifth-degree possession of alprazolam. *See* Minn. Stat. §§ 152.021, subds. 1(1), 2(a)(1), .025, subd. 2(1), 609.506, subd. 1 (2018). Vanguilder moved to suppress all evidence resulting from both the stop and the search. He argued that Officer Weber unconstitutionally detained him and

unconstitutionally seized his van. The district court denied Vanguilder's motion. It reasoned that the officer had reasonable suspicion to conduct an investigative *Terry* stop when he first approached the couple and that, because officers could have lawfully conducted the dog sniff on the street, they could impound the van to conduct a dog sniff at the police station.

After Vanguilder stipulated to the state's case under Minnesota Rule of Criminal Procedure 26.01, subdivision 4, the state dismissed one of the drug-possession charges, and the district court found Vanguilder guilty on the remaining charges. It sentenced him to 68 months in prison. Vanguilder appeals.

D E C I S I O N

Vanguilder appeals from his convictions by challenging the district court's denial of his motion to suppress. Where, as here, the salient facts are not disputed, we review a district court's denial of a motion to suppress de novo. *State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001). Vanguilder offers two arguments as to why the Fourth Amendment requires us to order the district court to suppress the evidence obtained after his detention and the van's seizure. He argues first that Officer Weber lacked reasonable suspicion to conduct a *Terry* stop and that therefore all evidence obtained as a result of the stop must be suppressed (including both the evidence of his providing a false name and the evidence of drugs discovered in his van). He argues alternatively that police unlawfully seized his van from its lawful parking space and that all drug-related evidence later obtained must be suppressed. Only Vanguilder's second argument prevails.

I

Vanguilder argues that Officer Weber unconstitutionally detained him when he approached and spoke with him and that, as a result, no evidence obtained after the detention can be used to convict him. It is true of course that the United States and Minnesota Constitutions protect individuals against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. And if a seizure is unreasonable, then all evidence obtained as a result of the seizure must be suppressed. *State v. Harris*, 590 N.W.2d 90, 99 (Minn. 1999). Given the noninvasive nature of the officer's approach and the inquisitive, nondemanding form of his conversation with the couple, we doubt that his initial interaction with Vanguilder constituted a seizure in the constitutional sense. But for the sake of the argument, we may assume that the officer seized Vanguilder because, even if he did, reasonable suspicion supported the seizure.

We also make another assumption. Vanguilder argues that all the evidence—including evidence of his giving police a fictitious name—must be suppressed because the stop was invalid. But he did not disclose evidence after being detained, as that term is usually applied in the Fourth Amendment context; he committed a crime after being detained. He cites no caselaw suggesting that his criminal *conduct* during the stop is the kind of *evidence* subject to suppression. But the state offers no argument on this point and we can and will readily decide this case assuming Vanguilder's premise has merit.

The record informs us that, at most, we are discussing a very brief, investigatory detention. An officer may conduct a brief, investigatory stop and detention, known as a *Terry* stop, "when the officer has a reasonable, articulable suspicion that criminal activity

is afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675 (2000)). The standard for reasonable suspicion is not high. *Id.* It is met with "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the officer's] intrusion." *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). The officer has reasonable suspicion when he "observes unusual conduct that leads [him] to reasonably conclude in light of his . . . experience that criminal activity" might be taking place. *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997).

This case resembles *Terry* in material ways. In that case, an officer suspected that two men may have been preparing to rob a store in the middle of the afternoon when he saw the two men (later joined by a third man) walking back and forth to peer inside the same store window and then conferring with each other. *Terry*, 392 U.S. at 5–6, 28, 88 S. Ct. at 1871–72, 1883. In this case, the officer saw two people leave a van at 3:00 in the morning, walk back and forth on a sidewalk in front of a closed business, and then attempt to access two different locked apartment buildings. Like the unusual movement that Officer McFadden found suspicious in *Terry*, this unusual movement reasonably aroused Officer Weber's suspicions. A reasonable officer would have suspected that the couple was trying to enter the common area of two different residences impermissibly, or that they may have been casing the barbershop to prepare for a break-in. Given the low bar set by the reasonable-suspicion standard, the conduct here clears it, justifying an investigatory detention.

Vanguilder argues that, even if Officer Weber had reasonable suspicion to initiate the stop, he improperly expanded its scope. Even when a stop is justified at its inception, an officer's actions must be "reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). If an additional intrusion in terms of scope or duration is not closely related to the initial justification for the seizure, only independent probable cause or reasonable suspicion can justify that intrusion. *Id.*

Officer Weber did not improperly expand Vanguilder's detention. As to scope, he was originally suspicious about who Vanguilder and his companion were and what they were doing. So he asked their names and whether they had identification. An officer does not violate the Fourth Amendment by asking to see identification during the course of an investigative stop. *State v. White*, 489 N.W.2d 792, 793–94 (Minn. 1992). As to duration, the length of the investigative detention extended only after the duo added to the officer's suspicion with their dubious answers to his questions about their identities and their identification. Because Vanguilder's response raised concerns about whether he had given the officer a fictitious name, and because giving an officer a fictitious name is a crime, Officer Weber had reasonable suspicion to continue inquiring about his identity and searching the police database to determine it.

Officer Weber also had reasonable suspicion to continue the detention based on the couple's responses to his inquiry about what they were doing there. Officer Weber testified that they did not explain why they walked toward the barbershop. And when he learned they were supposedly meeting "their friend Kellie," under the peculiar circumstances a

reasonable officer would suspect that Vanguilder's companion was the Kellie he was seeking to apprehend on an arrest warrant. Vanguilder accurately says that there is "nothing unreasonable or suspicious about being in the area to meet a friend," but his characterization glosses over the unique details that do indeed arouse objectively reasonable suspicion.

We therefore hold that reasonable suspicion supported Officer Weber's initial stop and the continued detention, which, according to our review of the record, lasted only a few minutes before the officer discovered certainly that Vanguilder had lied about who he was. We affirm the district court's denial of Vanguilder's motion to suppress with respect to evidence obtained during the initial stop, including evidence regarding Vanguilder's providing a false name.

II

Vanguilder argues that officers violated the Fourth Amendment by seizing his van without probable cause. He is plainly correct.

The Fourth Amendment prohibits police from unreasonably seizing property, and property seized without a warrant is presumed unconstitutionally seized. *United States v. Place*, 462 U.S. 696, 701, 103 S. Ct. 2637, 2641 (1983). It is true, as the state suggests, that if police had stopped Vanguilder for some violation unrelated to drugs and then extended the length of the stop to conduct a narcotics-detection dog sniff outside the van, police could justify the additional intrusion only on "a reasonable, articulable suspicion of drug-related criminal activity." *State v. Wiegand*, 645 N.W.2d 125, 135, 137 (Minn. 2002). It is also true that seizing the van had no practical impact on Vanguilder's liberty, since he

had already been taken into custody. But it nevertheless impacted his possessory interest, and it does not follow that police could seize the van based on mere reasonable suspicion. A seizure, like a search, still requires a warrant or a valid exception to the warrant requirement, and either of these requires probable cause. *See State v. Holland*, 865 N.W.2d 666, 671 (Minn. 2015). Because the two constitutionally significant events—the dog sniff and the van seizure—are governed by different constitutional standards, we reject the state's attempt to fold both of them under an officer's reasonable suspicion to administer a sniff.

We are not persuaded otherwise by the state's reliance on *State v. Roy*, 265 N.W.2d 663 (Minn. 1978), for the proposition that no constitutional difference exists between searching a vehicle on the scene and seizing a vehicle to search it later, as long as each action was justified by the same circumstances. The state misreads *Roy*. The *Roy* court validated the pre-search seizure of a car before obtaining a warrant because police in fact had probable cause to obtain a warrant and to search the car. 265 N.W.2d at 665. The *Roy* court explained that this arrangement was constitutionally permissible (but not advisable) because the police, who already had probable cause to obtain a warrant to search the car, "resorted to the *lesser intrusion* of simply seizing the car and towing it to Minneapolis, where they obtained a warrant to search it." *Id.* (emphasis added). This holding differs obviously from the state's theory here, which is that an officer with mere reasonable suspicion for a dog-sniff intrusion can rely on that *lower* level of suspicion to justify the *greater* intrusion of seizing the car and towing it to the police department. *Roy* by no means supports the process the police employed here.

In sum, we hold that police violated Vanguilder's Fourth Amendment right against unreasonable seizures by seizing the van without a warrant or a valid exception to the warrant requirement. When a vehicle seizure is unconstitutional, the resulting search is also unreasonable and evidence obtained from the search must be suppressed. *State v. Rohde*, 852 N.W.2d 260, 266 (Minn. 2014). We reverse the district court's denial of Vanguilder's motion to suppress and consequently reverse the drug-related convictions. We remand for further proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.