STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1651

State of Minnesota,
Appellant,

vs.

Jared Michael Desroches, et al.,
Respondents.

Filed May 4, 2020
Affirmed
Johnson, Judge

Douglas County District Court
File No. 21-CR-19-364, 21-CR-19-365

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

Chad M. Larson, Douglas County Attorney, Alexandria, Minnesota (for appellant)

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

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

JOHNSON, Judge

A state trooper found a large quantity of marijuana in a camper mounted on a pickup truck that was traveling through Douglas County on Interstate Highway 94. The two

occupants of the pickup, Jared Michael Desroches and Alexander Clifford Gordon, were charged with drug-related offenses. The defendants jointly moved to suppress the evidence found by the trooper. The district court granted the motion on the ground that the trooper unreasonably expanded the scope of an investigative stop arising from a crack in the pickup's windshield. The state appeals. We conclude that the trooper unreasonably expanded the scope of the investigative stop by asking Desroches to exit the cabin of the pickup and sit in the front seat of the trooper's patrol car while the trooper conducted an investigation into the suspected cracked-windshield violation. Therefore, we affirm.

FACTS

At approximately 2:00 p.m. on March 2, 2019, a state trooper was on the shoulder of Interstate Highway 94 in Douglas County, having just assisted a towing company in the removal of a semi-truck from the ditch. A white pickup truck with a slide-in camper on its bed drove past the trooper in a southeasterly direction. The trooper saw a large crack across the pickup's windshield, which he believed would obstruct the driver's view. The trooper also believed that it was unusual to see a camper in Minnesota in wintertime.

The trooper followed the pickup, which was traveling in the right lane. After the trooper caught up, he traveled in the left lane and slightly behind the pickup for approximately 45 seconds. The trooper observed that the driver was "intently focused" on his left rear-view mirror and frequently looked at the patrol car. The trooper also saw the pickup drift over the fog line. The trooper then pulled up alongside the pickup for approximately 30 seconds so that he could see the cracked windshield and look inside the pickup's cabin. The trooper saw that the driver looked straight ahead and used "extremely

exaggerated" hand motions "as if he was in a deep conversation with somebody or himself inside of the car."

The trooper activated his flashing lights to stop the pickup. He exited his patrol car, approached the passenger door of the pickup, and asked the driver, Desroches, for his driver's license and proof of insurance. As Desroches searched for those items, the trooper asked Desroches and the passenger, Gordon, about their origin and their destination; they said that they were driving from Montana to Minneapolis. Because Desroches could not immediately find a paper copy of his proof of insurance, he began looking for it on his cellphone. The trooper asked Desroches and Gordon when they left Montana; the trooper later testified that he "didn't get much of an answer" but, instead, got "a change in subject."

Approximately one minute after the trooper began the conversation, he said to Desroches, "Why don't you just bring it on back here with me so you can pull it up?" Desroches exited the cabin of the pickup and walked toward the trooper's patrol car. As he walked toward the left side of the patrol car, the trooper said, "Why don't you just come have a seat up in the front there?" Desroches entered the patrol car and sat in the front passenger seat.

It appears from the record that, after the trooper and Desroches were inside the patrol car, Desroches continued searching for his proof of insurance on his cellphone while the trooper used his computer to search for information about Desroches's driver's license and the pickup. Meanwhile, the trooper asked Desroches additional questions about his travels. Desroches said, among other things, that he and his significant other use the camper as a "homestead" and that he was going to visit friends in Minneapolis and St. Paul. Desroches

also said that he and Gordon had left Montana on February 25 (which was five days earlier) and "pretty much have been driving straight through." Desroches's statements made the trooper suspicious because Desroches's timeline did not make sense.

The trooper left the patrol car and returned to the pickup to talk further with Gordon. Gordon told the trooper that he and Desroches left Montana on February 28 (which was only two days earlier) and that they were going to the Minneapolis area to drop off the pickup with a person there. This made the trooper even more suspicious because it was inconsistent with Desroches's statement that he and his significant other use the camper as a home.

The trooper returned to the patrol car, told Desroches that he suspected that the two men were involved in criminal activity, and asked Desroches if there were any drugs in the pickup. Desroches initially said there were none, but he clarified his answer by saying that there might be a small amount of marijuana in the cabin because he had a Montana-issued medical-marijuana card. The trooper asked for consent to search the pickup; Desroches declined.

The trooper returned to the pickup again and asked Gordon to step outside. The trooper asked Gordon whether he had ever looked inside the camper. Gordon initially said that he had never been in the camper, but he also said that the camper contained trash bags and possibly contained marijuana.

The trooper then directed a drug-sniffing dog to sniff the exterior of the pickup and camper. The dog alerted to the presence of marijuana. The trooper searched the pickup and camper. He found 900 pounds of marijuana in plastic garbage bags that were stacked

from floor to ceiling. He also found 406 grams of THC concentrate in one-gram packages, 112 glass jars of THC wax, and $15,500 in cash.

The state charged both Desroches and Gordon in separate cases with two counts of first-degree controlled-substance crime, in violation of Minn. Stat. § 152.021, subds. 1(6), 2(a)(6) (2018). In April 2019, Desroches and Gordon jointly moved to consolidate their cases so that they could raise identical issues at an omnibus hearing. They filed a joint motion to suppress the evidence that was found in the search of the pickup and the camper.

In August 2019, the district court conducted an omnibus hearing. The trooper was the only witness. In a joint memorandum of law filed after the hearing, Gordon and Desroches presented two arguments: first, that the trooper did not have a reasonable suspicion of criminal activity when he stopped the pickup and, second, that even if he did, he unreasonably expanded the scope of the stop by asking Desroches to exit the cabin of the pickup and sit in the front seat of the patrol car. In a responsive memorandum, the state argued that the trooper had a reasonable suspicion of criminal activity based on the cracked windshield and on Desroches's swerving over the fog line. The state also argued that the trooper reasonably expanded the scope of the stop by asking Desroches for his driver's license and proof of insurance and by asking Desroches to sit in the front seat of the patrol car while Desroches searched for his proof of insurance on his cellphone.

In October 2018, the district court filed an order in which it ruled on the joint motion to suppress. The district court concluded that the investigative stop was valid because the trooper had a reasonable suspicion of a cracked-windshield violation. But the district court concluded that the trooper unreasonably expanded the scope of the stop by asking

Desroches to exit the cabin of the pickup and sit in the front seat of the patrol car. Accordingly, the district court granted the joint motion and suppressed the evidence arising from the stop. The district court also dismissed all charges against Desroches and Gordon for lack of probable cause. The state appeals.

D E C I S I O N

The state argues that the district court erred by granting Desroches and Gordon's joint motion to suppress evidence.

A.

Before considering the state's arguments for reversal, we must consider a threshold issue: whether the state may challenge the district court's suppression ruling in a pre-trial appeal. As a general rule, the state is not entitled to appellate review of a district court's pre-trial order as a matter of right. *See* Minn. R. Crim. P. 28.04, subd. 2; *see also* Minn. R. Crim. P. 28.04, subd. 1. To obtain appellate review of a pre-trial order, the state must show that, unless the district court's ruling is reversed, it "will have a critical impact on the outcome of the trial." *State v. Webber*, 262 N.W.2d 157, 159 (Minn. 1977); *see also* Minn. R. Crim. P. 28.04, subd. 2(2)(b). The state can satisfy the critical-impact standard if the challenged ruling either "'completely destroys' the state's case" or "'significantly reduces the likelihood of a successful prosecution.'" *State v. McLeod*, 705 N.W.2d 776, 784 (Minn. 2005) (quoting *State v. Joon Kyu Kim*, 398 N.W.2d 544, 551 (Minn. 1987)). In this case, the state contends that the critical-impact requirement is satisfied because the district court dismissed the charges. Desroches and Gordon do not respond to the contention. We agree with the state that the district court's order, which suppressed evidence and dismissed the

charges, satisfies the critical-impact standard. *See State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). Thus, the state may proceed with its pre-trial appeal.

B.

The United States and Minnesota constitutions guarantee the right of the people to be secure against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. This guarantee extends to the right of the people to be secure in their motor vehicles. *Berkemer v. McCarty*, 468 U.S. 420, 439-40, 104 S. Ct. 3138, 3150 (1984); *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). A law-enforcement officer generally may not seize a person in a motor vehicle without probable cause. *United States v. Ross*, 456 U.S. 798, 806 n.8, 102 S. Ct. 2157, 2163 n.8 (1982); *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). But an officer may briefly seize a person in a motor vehicle to conduct a brief limited investigation if the officer has a reasonable, articulable suspicion that the person is engaged in criminal activity. *Berkemer*, 468 U.S. at 439-40, 104 S. Ct. at 3150; *State v. Diede*, 795 N.W.2d 836, 842-43 (Minn. 2011); *see also Terry v. Ohio*, 392 U.S. 1, 30-31, 88 S. Ct. 1868, 1884-85 (1968).

The Minnesota Supreme Court has held that article I, section 10, of the Minnesota Constitution requires an investigative stop to be reasonable in both duration and scope. *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004); *see also State v. Wiegand*, 645 N.W.2d 125, 136 (Minn. 2002). To determine whether an investigative stop is reasonable in both duration and scope, a Minnesota court must conduct a two-step analysis. *Askerooth*, 681 N.W.2d at 364. First, the court must determine "whether the stop was justified at its inception." *Id.* Second, the court must 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.*

The second part of the analysis ensures that "each incremental intrusion during a traffic stop [is] tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness, as defined in *Terry*." *Id.* at 365; *see also State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). Under the first of these three principles, a valid stop may be expanded incrementally so long as "each incremental intrusion during a stop [is] strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible," but "[a]n initially valid stop may become invalid if it becomes intolerable in its intensity or scope." *Askerooth*, 681 N.W.2d at 364 (quotations and alteration omitted). Under the second principle, an incremental intrusion that is "not closely related to the initial justification for the search or seizure" is permissible if "there is independent probable cause . . . to justify that particular intrusion." *Id.* And under the third principle, an intrusion that is not otherwise justified is permissible if it is "reasonable," which means that it "must satisfy an objective test: 'would the facts available to the officer at the moment of the seizure . . . warrant a [person] of reasonable caution in the belief that the action taken was appropriate.'" *Id.* (quoting *Terry*, 392 U.S. at 21-22, 88 S. Ct. at 1880). The reasonableness of an officer's action "is based on a balancing of the government's need to search or seize and the individual's right to personal security free from arbitrary interference." *Id.* at 365 (quotation omitted).

In applying this test, we apply a clear-error standard of review to a district court's factual findings and a *de novo* standard of review to a district court's determination as to

whether an expansion of a traffic stop is justified. *Smith*, 814 N.W.2d at 350; *State v. Cox*, 807 N.W.2d 447, 452 (Minn. App. 2011).

C.

On appeal, the difference between the parties' positions is relatively narrow. Desroches and Gordon—who have filed a single joint responsive brief—do not challenge the district court's determination that the trooper lawfully stopped the pickup based on a suspected cracked-windshield violation. The parties agree that the trooper expanded the scope of the stop when he asked Desroches to exit the cabin of the pickup and sit in the front seat of the patrol car. At oral argument, the state agreed that the trooper did not yet have a reasonable suspicion of drug-related criminal activity when he asked Desroches to exit the cabin of the pickup and sit in the front seat of the patrol car. And there is no dispute that the trooper eventually developed a reasonable suspicion of drug-related criminal activity after talking one-on-one with Desroches in the front seat of the patrol car and talking one-on-one with Gordon near the pickup. Thus, the question on appeal is whether the trooper lawfully or unlawfully expanded the scope of the stop when he asked Desroches to exit the cabin of the pickup and sit in the front seat of the patrol car.

We interpret the state's brief to make two arguments for reversal, which are based on the first and third principles identified by *Askerooth*.

1.

The state's primary argument is that the trooper's expansion of the stop is justified by its reasonableness. We construe this argument to be based on the third principle identified in *Askerooth*. *See* 681 N.W.2d at 365.

Two supreme court opinions are especially pertinent to our analysis. First, in *State v. Varnado*, 582 N.W.2d 886 (Minn. 1998), two officers stopped a driver for a cracked-windshield violation as she pulled into the parking lot of an apartment complex. *Id.* at 888. When the driver could not produce her driver's license, one officer asked her to sit in the back seat of his patrol car while he searched computerized records for the status of her driver's license. *Id.* The driver was cooperative and did not present any risk to officer safety. *Id.* at 891. The officer frisked the driver before she sat in the patrol car and found drugs on her person. *Id.* at 888-89. On appeal, the supreme court concluded that "the inability of a minor traffic violator to produce a driver's license in and of itself is not a reasonable basis to require the driver to sit in the back of a squad car" and that "the officers did not have a reasonable basis for forcing Varnado to sit in the back of the squad car." *Id.* at 891.

Second, in *Askerooth*, a police officer stopped a vehicle that had run a stop sign. *See* 681 N.W.2d at 357. The driver did not have a driver's license. *Id.* The officer ordered the driver to step out of the vehicle, asked him to place his hands behind his head, pat-searched him, and ordered him to sit in the back seat of the officer's squad car. *Id.* The officer later found drugs in the back seat, where the driver had sat. *Id.* at 357-58. The supreme court determined that the officer expanded the scope of the stop and considered whether the expansion was reasonable. *Id.* at 364-65. The state relied on the officer's testimony that he had followed his "standard procedure" and that moving the investigation to the squad car was more convenient. *Id.* The supreme court acknowledged that the officer's approach was more convenient but diminished the importance of convenience,

reasoning that "there was only a minimal need for [the officer] to confine Askerooth in the squad car" and that the driver's "interest in being free from unreasonable seizure in these circumstances outweighed [the officer's] need for convenience because obtaining Askerooth's name, date of birth, and address did not require confinement in [the officer's] squad car." *Id*. at 365-66. The supreme court concluded that "the lack of a driver's license, by itself, is not a reasonable basis for confining a driver in a squad car's locked back seat when the driver is stopped for a minor traffic offense." *Id*. at 365.

The facts of this case are not meaningfully different from the facts of *Varnado* or *Askerooth*. In each of those cases, a driver was stopped for a minor infraction, and an officer required the driver to sit in the officer's squad car during the brief investigation. *Varnado*, 582 N.W.2d at 888-89; *Askerooth*, 681 N.W.2d at 357-58. The state does not attempt to distinguish *Varnado*. The state emphasizes two differences between the facts of this case and the facts of *Askerooth*: that Askerooth was pat-searched while Desroches was not, and that Askerooth was required to sit in the back seat of the squad car while Desroches was asked to sit in the front seat of the trooper's patrol car. These differences are too slight to make a difference. What is significant is that the trooper's approach "only tangentially served a governmental interest" but placed a more serious burden on the "driver's interest in being free from unnecessary intrusions." *See Askerooth*, 681 N.W.2d at 366.

The state also attempts to distinguish *Askerooth* in other ways. The state contends that "the trooper was standing in cold weather alongside traffic traveling at interstate speeds, and the driver was unable to provide proof of insurance." These contentions either

are not supported by the record or are based on facts that simply do not justify a different result.

As an initial matter, it is not fair to say that Desroches was unable to provide proof of insurance. He did not find it immediately after being asked, but he was still searching for it when the trooper asked him to exit the cabin of the pickup and sit in the front seat of the patrol car. State statutes expressly allow a driver to keep and present proof of insurance in electronic format. Minn. Stat. § 60A.139, subd. 2 (2018); Minn. Stat. § 169.791, subds. 1(d), 2 (2018). Desroches said that he would look on his cellphone after looking for a paper copy for approximately one minute. The trooper asked him to move to the patrol car without giving him an opportunity to look on his cellphone while seated in the cabin of the pickup. It appears that Desroches found proof of insurance on his cellphone shortly after entering the patrol car.

With respect to the state's contention about the outdoor temperature, it was indeed rather cold at the time of the stop—approximately five degrees Fahrenheit. We do not disagree that it would have been more comfortable for the trooper to conduct the investigation by conversing with Desroches inside a heated patrol car. But it appears that the cold weather did not prevent or substantially interfere with the trooper's investigation. The video-recording created by the trooper's dashboard camera shows that he was not wearing a hat or gloves, which indicates that he was not uncomfortable or in great need of shelter. The trooper did not testify at the suppression hearing that he asked Desroches to sit in the patrol car because of the cold temperature. We do not wish to foreclose the possibility that, in extreme weather conditions, it may be impractical to the point of

impossible for an officer to effectively conduct an investigation by speaking with a stopped driver while exposed to the elements. But this is not such a case. Conducting the investigation by talking to Desroches in the patrol car was a matter of convenience, not a matter of necessity. *See Askerooth*, 681 N.W.2d at 365. In addition, the video-recording shows that the trooper initially spoke to Desroches and Gordon from the passenger side of Desroches's pickup before asking Desroches to sit in the patrol car. Thus, the trooper was somewhat shielded from the noise of passing traffic and was not at greater risk of injury than when he was sitting in his patrol car.

The state also contends that the trooper's expansion of the stop is authorized by this court's opinion in *State v. Klamar*, 823 N.W.2d 687 (Minn. App. 2012). The *Klamar* opinion arose from different factual circumstances. The officer in that case, a state trooper, came across a vehicle that already was stopped on the shoulder of an interstate highway. *Id.* at 689-90. The trooper observed the front-seat passenger vomiting on the ground, smelled a strong odor of alcohol in the vehicle, and saw that the driver had bloodshot and watery eyes. *Id.* at 690. The trooper asked the driver to step out of her vehicle so that he could perform field sobriety tests. *Id*. On appeal from her conviction of driving while impaired, the driver argued that the trooper violated her constitutional rights by ordering her to exit her vehicle for investigative purposes instead of speaking with her through the driver's-side window. *Id.* at 695. This court recognized an additional intrusion but reasoned that it was "not so significant as to render the seizure constitutionally offensive" and, furthermore, that "it was reasonable for the officer to physically remove Klamar from" the vehicle so that he could determine the source of the alcohol odor and administer field

sobriety tests. *Id*. at 695-96. The *Klamar* opinion is distinguishable because the suspected criminal offense was different and because the opinion is limited to the question whether the officer was justified in ordering the driver to exit her vehicle; we did not consider whether the officer could have immediately ordered the driver to sit in the officer's patrol car because the officer did not do so. *Id.* at 690.

The state contends further that the trooper's expansion of the stop is expressly authorized by *Pennsylvania v. Mimms*, 434 U.S. 106, 98 S. Ct. 330 (1977). In *Mimms*, an officer stopped a vehicle for an expired license plate and asked the driver to step out of the vehicle, apparently because that was the officer's standard practice. *Id.* at 107, 98 S. Ct. at 331. The officer saw a bulge under the driver's clothing, frisked him, and found a revolver. *Id.*, 98 S. Ct. at 331. The issue on appeal was "whether the order to get out of the car, issued after the driver was lawfully detained, was reasonable and thus permissible under the Fourth Amendment," given "the incremental intrusion resulting from the request to get out of the car once the vehicle was lawfully stopped." *Id.* at 109, 98 S. Ct. at 332. The Court considered the state's interest in officer safety, which it deemed significant in light of "the inordinate risk confronting an officer as he approaches a person seated in an automobile," as well as "[t]he hazard of accidental injury from passing traffic to an officer standing on the driver's side of the vehicle." *Id.* at 110-11, 98 S. Ct. at 333. The Court also considered the driver's interest in "personal liberty" and reasoned that the "additional intrusion can only be described as *de minimis*." *Id.* at 111, 98 S. Ct. at 333. The Court elaborated by stating that, while the driver is briefly detained, "the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside it,"

which the Court deemed to be "not a 'serious intrusion upon the sanctity of the person'" nor "a 'petty indignity.'" *Id.* at 111, 98 S. Ct. at 333 (quoting *Terry*, 392 U.S. at 17, 88 S. Ct. at 1877). The *Mimms* opinion is distinguishable because, again, it is limited to the question whether the officer was permitted to order the driver to exit his vehicle; the Supreme Court did not consider whether the officer could have immediately ordered the driver to sit in the officer's squad car because the officer did not do so. In addition, there are no officer-safety concerns in the present case, as the state conceded at oral argument. Indeed, the trooper freely invited Desroches to join him in the front seat of his patrol car, where the trooper likely was at greater risk than if Desroches had remained in his own vehicle. Furthermore, the *Mimms* opinion is based on the Fourth Amendment to the United States Constitution, while the *Askerooth* opinion is based on article 1, section 10, of the Minnesota Constitution, which the supreme court has interpreted to provide greater protection than the Fourth Amendment. *See Askerooth*, 681 N.W.2d at 361-63, 369-70.

In light of *Askerooth* and *Varnado*, we conclude that the trooper's investigation into Desroches's proof of insurance does not, by itself, justify the trooper's requirement that Desroches exit the cabin of the pickup and sit in the front seat of the trooper's patrol car. Desroches's interest in avoiding incremental intrusions on his liberty outweighed the trooper's interest in a more convenient means of conducting an investigation into Desroches's cracked windshield and confirming his proof of insurance. Thus, the trooper's expansion of the stop was not reasonable and, thus, is not justified by the third principle identified in *Askerooth*.

2.

The state also argues that the trooper's expansion of the stop is justified by the original legitimate purpose of the stop, which inherently includes an inquiry into whether Desroches had a valid driver's license, vehicle registration, and proof of insurance. We construe this argument to invoke the first principle identified in *Askerooth*. *See* 681 N.W.2d at 365. The supreme court in *Askerooth* did not actually analyze the first principle in that case; the supreme court simply stated that "the confinement of Askerooth cannot be justified by the original purpose of the stop." *Id.* at 365.

The state is generally correct insofar as it states that, in any valid traffic stop, the officer may ask the driver for a valid driver's license, vehicle registration, and proof of insurance. "Beyond determining whether to issue a traffic ticket, an officer's mission includes ordinary inquiries incident to the traffic stop," such as "inquiries involv[ing] checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance," which "serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly." *Rodriguez v. United States*, 575 U.S. 348, 355, 135 S. Ct. 1609, 1615 (2015) (quotations and alterations omitted). Stated somewhat differently, an officer "may reasonably ask for the driver's license and registration and ask the driver about his destination and reason for the trip." *State v. Syhavong*, 661 N.W.2d 278, 281 (Minn. App. 2003).

The fact that an officer may make inquiries into certain issues that are peripheral to a brief investigative stop is not determinative of the issue on appeal. The question is *how*

and *where* the officer may make such inquiries. Specifically, the question is whether the officer may confirm a driver's proof of insurance by requiring the driver to exit his or her vehicle and sit in a squad car.

As described above, the supreme court has concluded that, during a traffic stop for a minor traffic violation, it is unreasonable for an officer to require the driver to exit his or her vehicle and sit in the officer's patrol car while the officer conducts an investigation into the driver's license. The state has not cited any caselaw in which a Minnesota appellate court has held that such an investigation is justified by the first principle of *Askerooth*. To remain consistent with the *Askerooth* court's analysis of the third principle, we conclude that the trooper's requirement that Desroches exit the cabin of his pickup and sit in the front seat of the patrol car is not justified by the original purpose of the traffic stop. Thus, the trooper's expansion of the stop is not justified by the first principle identified in *Askerooth*.

In sum, the trooper unlawfully expanded the scope of the investigative stop. Therefore, the district court did not err by granting Desroches and Gordon's joint motion to suppress evidence.

Affirmed.