**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A20-0425**

State of Minnesota,
Respondent,

vs.

Larry Dale Taylor,
Appellant.

**Filed December 21, 2020**
**Affirmed**
**Cochran, Judge**
**Dissenting, Slieter, Judge**

Clay County District Court
File No. 14-CR-19-644

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

Brian Melton, Clay County Attorney, Jacob Fauchald, Assistant County Attorney, Moorhead, Minnesota (for respondent)

Luke T. Heck, Drew J. Hushka, Vogel Law Firm, Fargo, North Dakota (for appellant)

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

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

**COCHRAN**, Judge

In this direct appeal, appellant challenges his convictions of (1) driving with an alcohol concentration of 0.08 or more and (2) possessing an opened bottle or receptacle

containing an alcoholic beverage. Appellant argues that the district court erred by denying his motion to suppress evidence that was obtained after a law enforcement officer expanded the scope of the underlying traffic stop. Because the officer had a reasonable, articulable suspicion to expand the scope of the stop, we conclude that the district court properly denied the motion to suppress. Therefore, we affirm.

**FACTS**

In February 2019, at approximately 7:00 p.m., a Clay County sheriff's deputy conducted a traffic stop of appellant Larry Dale Taylor after noticing that Taylor's truck had no front license plate and that the rear license plate was obstructed by snow. After stopping the truck, the deputy approached it, brushed off the rear license plate, and noticed that the registration sticker was expired. He then spoke with Taylor, who failed to produce a driver's license and admitted to last registering the vehicle in 2017. During this interaction, the deputy observed a case of beer with an open flap in the back seat of the truck, directly behind the driver.

The deputy placed Taylor in the back of his squad car and checked Taylor's license plate and name. He confirmed that Taylor was the registered owner of the vehicle, but he learned that Taylor's driver's license had been canceled as inimical to public safety. Based on that information, the deputy decided to arrest Taylor for driving with a canceled license.

While Taylor was in the back of the squad car, the deputy asked Taylor if he had consumed any of the beers from the open case in the truck. Taylor initially responded that he had consumed two of the beers but later admitted to having had six. Because it was extremely cold that evening, the deputy decided to conduct field sobriety tests at the county

jail rather than on the road. After arriving at the jail and performing several field sobriety tests, Taylor agreed to take a breath test, which measured his alcohol concentration as 0.12. Taylor was then booked at the jail for driving-while-intoxicated (DWI) as well as driving with a canceled license, and his vehicle was impounded. The deputy conducted an inventory search of the truck and found two open cans of beer by the front passenger seat.

Taylor was subsequently charged with (1) driving while under the influence of alcohol, (2) driving with an alcohol concentration of 0.08 or more as measured within two hours of the time of driving, (3) driving after cancelation–inimical to public safety, and (4) possessing an opened bottle or receptacle containing an alcoholic beverage while in a private motor vehicle upon a street or highway. Taylor filed a motion to suppress and/or dismiss, arguing that all evidence obtained as a result of each incremental seizure of Taylor after the initial traffic stop must be suppressed because the deputy impermissibly expanded the scope of the stop by asking Taylor if he had been drinking. He further argued that the deputy effectuated an unlawful de facto arrest of Taylor and that the field sobriety tests were conducted in violation of Taylor's right against self-incrimination and right to due process.

The district court held a contested omnibus hearing to address the motion. Only the deputy testified at the hearing. He explained the circumstances of the initial traffic stop and that he learned that Taylor's driver's license was canceled as inimical to public safety after running Taylor's license plate and name. He further testified that it was his understanding that people obtain a license status of canceled–inimical to public safety because they are "repeat offenders for driving under the influence." He stated that he asked

Taylor if he had consumed any alcohol that night because he saw the open beer case and it "appeared as if there were missing beers off of that case," although he acknowledged that he did not see any cans elsewhere in the truck at that time.

The district court denied Taylor's motion. It found that the deputy had a reasonable, articulable suspicion to expand the scope of the traffic stop to investigate a possible DWI violation. Specifically, the district court held that the deputy's observation of the open case of beer, in combination with Taylor's license status—which the deputy believed to be associated with a history of impaired driving offenses—provided a reasonable, articulable suspicion that supported the deputy's inquiry into whether Taylor had been drinking.

The parties agreed to proceed under Minn. R. Crim. P. 26.01, subd. 4, whereby Taylor stipulated to the prosecution's evidence and waived a jury trial in order to obtain review of the district court's order denying his motion to suppress. The district court then found Taylor guilty of three of the four counts. The court found Taylor guilty of (1) the DWI offense of driving with an alcohol concentration of 0.08 or more, (2) driving after cancelation–inimical to public safety, and (3) possessing an opened bottle or receptacle containing an alcoholic beverage while in a private motor vehicle upon a street or highway. The DWI conviction is a felony-level offense because Taylor had three other DWI convictions within the past ten years. This appeal follows.

## D E C I S I O N

The only issue on appeal is whether the district court erred when it concluded that the deputy had a reasonable, articulable suspicion that supported expanding the scope of the traffic stop to investigate Taylor for a possible DWI violation.

The United States and Minnesota Constitutions protect individuals from "unreasonable searches and seizures" by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Warrantless searches and seizures are presumptively unreasonable. *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). But an officer may initiate a warrantless limited investigatory stop if he has a reasonable, articulable suspicion of criminal activity. *Id.* During such an investigatory stop, each incremental intrusion must be strictly tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) a reasonable basis for the expansion. *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004). If evidence is seized in violation of the constitution, it must be suppressed. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

Taylor argues that the district court erred in denying his motion to suppress evidence against him. He acknowledges that the deputy acted lawfully in making the initial traffic stop to investigate his obstructed license plate. Taylor also does not dispute that his arrest for driving after cancelation–inimical to public safety was proper. Instead, Taylor argues that the district court erred when it concluded that the deputy had a reasonable basis to expand the scope of the stop to investigate whether Taylor was driving while intoxicated.

In expanding the scope of a traffic stop, a police officer's investigation must be limited to "only those additional offenses for which the officer develops a reasonable, articulable suspicion within the time necessary to resolve the originally-suspected offense." *Diede*, 795 N.W.2d at 845 (quotation omitted). "The reasonable-suspicion standard is not high." *Id.* at 843 (quotation omitted). It requires more than a mere "hunch" but is less

demanding than probable cause. *Id.* (quotation omitted). "Reasonable suspicion is a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Lugo*, 887 N.W.2d at 486 (quotation omitted). In determining whether the reasonable suspicion standard was met, courts consider the totality of the circumstances. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). A reasonable, articulable suspicion exists if "in justifying the particular intrusion the police officer [is] able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968); *see also Davis*, 732 N.W.2d at 182. Under this standard, trained police officers may "draw inferences and deductions that might well elude an untrained person." *Lugo*, 887 N.W.2d at 487 (quotation omitted). If law enforcement had a reasonable, articulable suspicion to support the expansion of a traffic stop, the expansion of the stop does not violate the constitution and evidence found as a result of the expansion may be admitted at trial. *State v. Smith*, 814 N.W.2d 346, 351 (Minn. 2012).

Here, the district court found, and the parties do not dispute, that the deputy expanded the scope of the traffic stop when he asked Taylor whether he had consumed any of the beers from the case in his truck. The district court then examined the totality of the circumstances of the stop to determine whether the deputy had a reasonable, articulable suspicion that supported expanding the scope of the stop to investigate a possible DWI offense. Specifically, the court considered the deputy's observation of the open case of beer in Taylor's truck and Taylor's canceled–inimical to public safety license status, which the deputy understood to often result from repeated DWI offenses. Considering those two

facts together, the district court concluded that the deputy had a reasonable, articulable suspicion that Taylor had been driving while intoxicated and thus had a lawful basis for expanding the scope of the stop.

On appeal, Taylor argues that the district court erred by concluding that specific facts identified by the deputy were sufficient to support the expansion of the stop. Taylor argues that these facts—the open case of beer and Taylor's canceled license—do not support a reasonable suspicion that he was driving while intoxicated. First, he contends that a canceled license does not provide any meaningful suspicion of impaired driving because a license can be canceled for reasons other than driving while impaired, and he further argues that a canceled license is only indicative of past conduct, not his conduct on the day of the stop. Second, he argues that the open case of beer does not present evidence of intoxication because it is "merely a box," not an open container. Based on his contention that neither fact is sufficient individually to suspect intoxication, Taylor maintains that the officer did not have a lawful basis to expand the scope of the stop to investigate a possible DWI violation. We are not persuaded.

We review de novo a district court's determination of reasonable suspicion to expand the scope of a stop, but accept the district court's factual findings unless they are clearly erroneous. *Id.* at 350. Because Taylor disputes only the district court's legal determination and not its factual findings regarding the existence of the canceled license or the open case of beer, our review is de novo. *Id.*

In determining whether the deputy had a reasonable, articulable suspicion of a possible DWI violation, we consider the totality of the circumstances and any rational

inferences that can be drawn from the facts, taking into account the deputy's experience. *Davis*, 732 N.W.2d at 182. Here, the deputy observed a person who had been driving not just with a canceled license, but also with an open case of beer in the back seat. According to the deputy, the case of beer was directly behind the driver and appeared to have a few cans missing. The deputy also knew from experience that a history of recurrent DWIs was a common basis for license cancelation. When the observation of the open case of beer is considered along with the canceled license and the deputy's knowledge that license cancelation is often due to repeated DWI violations, it was rational for the deputy to infer that Taylor may have been driving while intoxicated. In other words, the deputy had a reasonable, articulable suspicion of a DWI violation. The facts here provided the deputy with more than a mere hunch that Taylor may have been driving while intoxicated. They provided him with an objective, particularized basis to suspect that Taylor may have been driving while intoxicated. Accordingly, we agree with the district court that the reasonable-suspicion standard was met in this case.

We recognize that a canceled license by *itself* is not enough to provide law enforcement with a reasonable basis to suspect criminal activity. *See State v. Henning*, 666 N.W.2d 379, 385-86 (Minn. 2016) (holding that "special series plates" issued on account of a prior driving-under-the-influence conviction "may not provide the *sole* justification for a stop" (emphasis added)). And we acknowledge that a driver's license can be canceled for reasons other than DWI offenses. *See Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 524 (Minn. App. 2013) (holding that "the plain language of section 171.04, subdivision 1(10), provides the commissioner the discretion to determine

driving conduct that is inimical to public safety, even when the driving does not involve impaired driving"). But the question here is not whether Taylor's canceled license itself provided a sufficient basis to expand the scope of the stop to include a DWI investigation. The question is whether the canceled license along with the open case of beer located directly behind the driver's seat that appeared to have a few cans missing, and any rational inferences taken from those facts, reasonably warranted the deputy to suspect a DWI violation. *See Davis*, 732 N.W.2d at 182 (stating that we consider the totality of the circumstances when determining whether the reasonable-suspicion standard has been met); *see also Henning*, 666 N.W.2d at 385-86 (stating that while special series plates may not provide the sole justification for a stop, "special series plates may be a factor for law enforcement to consider and would provide a basis for closer scrutiny of [a] vehicle[]"). For the reasons explained above, we conclude that the facts pointed to by the deputy, along with rational inferences taken from those facts, were sufficient to support expanding the scope of the traffic stop to investigate a possible DWI violation.

In his reply brief and at oral argument, Taylor also argued that the facts of this case are insufficient to support a reasonable, articulable suspicion of a DWI violation because the deputy did not observe any physical indicia of intoxication. Taylor relies on this court's decision in *Holtz v. Comm'r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983), to support his argument and contends that *Holtz* established a bright-line rule requiring law enforcement to observe at least one physical indication of intoxication in order to reasonably suspect a driver of a DWI violation. Taylor argues that because the deputy did not observe any physical indicia of intoxication when he stopped Taylor, the facts in this

case are insufficient to support a reasonable, articulable suspicion of a DWI violation. We disagree.

*Holtz* does not support Taylor's position. *Holtz* did not address whether a police officer had a reasonable, articulable suspicion of a DWI violation to expand the scope of a traffic stop. Rather, the case addressed, in relevant part, the standard under the 1982 implied consent law for when an officer could require a driver to take a "blood, breath, or urine" test. *Holtz*, 340 N.W.2d at 365. Under that statute, if the driver refused to take a preliminary breath test, the officer could require the driver to provide a chemical sample of blood, breath, or urine if the officer had "reasonable and probable grounds to believe" the driver had been driving under the influence. Minn. Stat. § 169.123, subd. 2(a) (1982). An individual who refused to do so could have their license revoked. *Id.*, subd. 4. In *Holtz*, the appellant challenged the revocation of his license for refusing a test, arguing that reasonable and probable grounds did not exist to invoke the implied consent law. 340 N.W.2d at 364. In holding that the officer in *Holtz* had reasonable and probable grounds to believe the driver was intoxicated, we stated that "an officer need only have one objective indication of intoxication to constitute reasonable and probable grounds to believe a person is under the influence." *Id.* at 365.

Taylor argues that the language quoted above is equally applicable to the determination of whether an officer has a reasonable, articulable suspicion of a DWI violation and therefore requires an officer to observe at least one objective indication of intoxication to lawfully expand the scope of a traffic stop. But the "reasonable and probable grounds to *believe*" standard discussed in *Holtz* is, by its terms, a higher standard

than the reasonable, articulable *suspicion* standard at issue in this case. The "reasonable and probable grounds" standard is synonymous with "probable cause." *State v. Harris*, 202 N.W.2d 878, 881 (Minn. 1972). And it is well established that probable cause is a more exacting standard than reasonable suspicion. *Diede*, 795 N.W.2d at 843. Accordingly, *Holtz*'s pronouncement that "an officer need only one objective indication of intoxication" pertains to the higher probable-cause standard applicable under this state's 1982 implied consent law and does not apply to the far less stringent reasonable-suspicion standard at issue here.[1] Moreover, the *Holtz* decision did not preclude the possibility that an officer could have "reasonable and probable grounds" to believe an individual was driving under the influence based on evidence *other than* physical indicia of intoxication. Rather, *Holtz* simply recognized that "signs of intoxication [can] exist independently or in combination with others" and just one indication of intoxication can provide a "reasonable and probable grounds to believe a person is under the influence." 340 N.W.2d at 365.

Taylor provides no further caselaw to support his argument. And we are unaware of any case that requires at least one physical indication of intoxication in order for an officer to have a reasonable, articulable suspicion of a DWI violation. As the supreme court recognized in *State v. Lee*, whether there is a reasonable, articulable suspicion of a crime is a fact-specific determination that does not lend itself to a precise science.

[1] Minnesota's implied consent law was amended after the United States Supreme Court's decision in *Birchfield v. North Dakota*, 136 S. Ct. 2160, 2170-72 (2016). The current version requires a warrant to conduct a blood or urine test unless a judicially recognized exception to the search warrant requirement exists but allows a breath test when an officer has probable cause to believe the person was driving while impaired. Minn. Stat. § 169A.51, subds. 1, 3 (2018).

585 N.W.2d 378, 382 (Minn. 1998) (explaining that probable cause and reasonable suspicion are "not finely-tuned standards," but are rather "fluid concepts that take their substantive content from the particular contexts in which the standards are being assessed" (quotations omitted)).

We recognize that, in many DWI cases, there is evidence of physical indicia of intoxication, and that the present case is unusual in that the deputy did not testify to observing any physical indicia of intoxication. But that by itself is not determinative. The determination of whether the deputy had a reasonable, articulable suspicion of intoxication depends on the objective, particularized facts identified by the deputy and the rational inferences that can be drawn from those facts. *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880; *Davis*, 732 N.W.2d at 182. Bearing in mind that the reasonable, articulable suspicion standard is not a high one, for the reasons explained above, we conclude that the facts in this case are sufficient to support the expansion of the traffic stop even without any physical indicia of intoxication.

In sum, under the totality of the circumstances of this case, the deputy's observation of the open case of beer along with Taylor's canceled-inimical to public safety license status were sufficient to create a reasonable, articulable suspicion that Taylor was driving while intoxicated. We therefore hold that the deputy lawfully expanded the scope of the traffic stop and that, accordingly, the district court did not err in denying Taylor's motion to suppress.

**Affirmed.**

**SLIETER**, Judge (dissenting)

I respectfully dissent. As the majority correctly states, this case turns on whether a driver's license that has been canceled as inimical to public safety together with a deputy's observation of an open case of beer behind the driver's seat of the vehicle, is sufficient to establish a reasonable suspicion of criminal behavior sufficient to justify expanding a stop to ask the driver whether he had consumed alcohol. I contend it does not.

Generally, "the scope and duration of a traffic stop investigation must be limited to the justification for the stop." *State v. Fort*, 660 N.W.2d 415, 418 (Minn. 2003). Our court must therefore assess "whether the actions of the [deputy] during the [seizure] were reasonably related to and justified by the circumstances that gave rise to the [seizure] in the first place." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). "[E]ach incremental intrusion during a stop must be strictly tied to and justified by the circumstances" that led to the stop, or supported by independent probable cause or a reasonable basis for the expansion. *Id.* (quotations omitted). "Both probable cause and reasonableness are evaluated by looking at the 'totality of the circumstances.'" *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005) (citation omitted). This analysis must be "particularized" and "individualized to the driver." *Id*. (quotation omitted).

The deputy initiated a stop of Taylor's truck after observing that the front license plate of the truck was missing and the rear license plate was obstructed by snow. After making the stop, the deputy observed an open case of beer behind the driver's seat of the truck. Because of inclement weather, the deputy next asked that Taylor accompany him to the squad car, where he confirmed Taylor's license status and asked Taylor if he had

"consumed any of the beers that were located in the truck." The parties agree that the deputy's question was an expansion of the stop.

The deputy's question to Taylor was not related to the original purpose of the stop, which was an obstructed license plate. Taylor's canceled license status does not provide a reasonable basis for the deputy's question especially because the deputy was not aware of the reason for the canceled status. These facts are similar to those in *State v. Henning*, in which the supreme court stated "the mere presence of the special series plates does not amount to 'reasonable articulable suspicion'" of impaired driving. 666 N.W.2d 379, 385 (Minn. 2003) (quotation omitted). Like special series plates, a driver's license status is not itself sufficient to establish a particularized reasonable suspicion of driving while impaired. Further, as the majority recognizes, a driver's license may be canceled for reasons other than impaired driving. *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 524 (Minn. App. 2013).

The majority agrees that the driver's license status alone is insufficient to warrant the expansion but asserts that the expansion is justified when the license status is considered with the presence of an open case of beer in the back seat of the vehicle. I respectfully disagree. Without the presence of any indicia of intoxication, the license status together with the observation of a legally-located open case of beer did not provide a reasonable basis to believe the driver was intoxicated.

A police officer "need only have one objective indication of intoxication to constitute reasonable and probable grounds to believe a person is under the influence." *Holtz v. Comm'r of Pub. Safety*, 340 N.W.2d 363, 365 (Minn. App. 1983). Common

indicia of intoxication include erratic driving, failing to observe traffic laws, bloodshot and watery eyes, an odor of alcohol, and impaired coordination. *Otto v. Comm'r of Pub. Safety*, 924 N.W.2d 658, 661-62 (Minn. App. 2019). No indicia of intoxication were observed by the deputy.

In some situations, law enforcement may have reasonable suspicion for a DWI investigation "even if none of the commonly-known physical indicia of intoxication [are] present" if the facts support such a determination. *State v. Lee*, 585 N.W.2d 378, 382 (Minn. 1998). However, in *Lee*, the facts established that the defendant—who officers approached on a road after he was involved in a motorcycle accident—was seriously injured, lying on the ground, and "incoherent," and the officers knew that the defendant had been at a party before the accident. *Id*. at 379. These unique circumstances provided the officers with reasonable suspicion to believe the defendant was intoxicated despite none of the common physical indicia of intoxication being present. *Id.* at 382.

The deputy expanded the stop based on two factors: Taylor's canceled license status and the open case of beer in his truck. The totality of the circumstances may, at most, have provided the deputy information to form a "hunch" that Taylor had been driving while intoxicated, but reasonable suspicion requires "more than an unarticulated hunch." *State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000). For the foregoing reasons, I respectfully dissent from the majority opinion.