STATE OF MINNESOTA

IN SUPREME COURT

A20-0425

Court of Appeals

Chutich, J.
Dissenting, Thissen, J.
Dissenting in part, Anderson, J.

State of Minnesota,

Respondent,

vs.

Filed: October 13, 2021
Office of Appellate Courts

Larry Dale Taylor,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Jacob P. Fauchald, Assistant Clay County Attorney, Moorhead, Minnesota, for respondent.

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

S Y L L A B U S

A deputy sheriff's expansion of a traffic stop by one question was supported by reasonable, articulable suspicion of other criminal activity when the totality of the circumstances, and the rational inferences to be drawn from them, made him suspect that appellant may have been driving while impaired.

Affirmed.

O P I N I O N

CHUTICH, Justice.

The issue in this case is whether a deputy sheriff had reasonable, articulable suspicion during a traffic stop to believe that appellant Larry Dale Taylor may have been driving while impaired when the deputy learned that Taylor's license had been canceled as inimical to public safety and the deputy saw an open case of beer with missing cans in the backseat of Taylor's truck. Taylor challenges his convictions for first-degree driving while impaired (DWI) and possessing an opened bottle or receptacle containing an alcoholic beverage. He argues that the district court erred by denying his motion to suppress evidence because the deputy impermissibly expanded the scope of the underlying traffic stop by asking Taylor if he had consumed any beer from the open case in his truck. A divided panel of the court of appeals held that the officer lawfully expanded the scope of the stop, and therefore concluded that the district court properly denied the motion to suppress. Because we conclude that the circumstances known to the deputy, and the legitimate inferences to be drawn from them, raised a reasonable, articulable suspicion of other criminal activity sufficient to expand the scope of the traffic stop, we affirm the decision of the court of appeals.

FACTS

Respondent State of Minnesota charged Taylor with (1) first-degree DWI for driving with an alcohol concentration of 0.08 or higher, Minn. Stat. § 169A.20, subd. 1(5) (2020); (2) first-degree DWI for driving while under the influence of alcohol, Minn. Stat. § 169A.20, subd. 1(1); (3) driving after cancellation-inimical to public safety, Minn. Stat.

§ 171.24, subd. 5 (2020); and (4) driving with an open bottle containing an alcoholic beverage, Minn. Stat. § 169A.35, subd. 3 (2020). Taylor was charged with first-degree DWI because he committed the current offense within 10 years of the first of three prior DWI convictions. *See* Minn. Stat. § 169A.24, subd. 1(1) (2020). Taylor filed a motion to suppress, arguing, in part, that the arresting deputy sheriff improperly expanded the scope of the traffic stop by asking him if he had recently consumed alcohol. A contested omnibus hearing was held, at which the deputy sheriff was the sole witness.

The deputy sheriff testified that on February 17, 2019, at about 7:15 p.m., he noticed a truck driving in Clay County without a front license plate and a back license plate covered in snow even though it had not snowed for some time. The deputy pulled the truck over and dusted off the back license plate. He noticed that the registration sticker read "2017"; when he ran the license plate number through the database, he learned that the vehicle had not been registered since then.

The deputy then approached Taylor, who was the driver of the truck and sole occupant. He asked Taylor for identification, which Taylor claimed not to have. The deputy noticed a case of beer in the backseat of the truck, with the flap open, that was missing some cans. It was, as the deputy testified, an "extremely cold" and "unbearable" night; so cold, in fact, that even in his brief interaction with Taylor, he was losing dexterity in his fingers. The deputy escorted Taylor to his squad car and ran the truck's registration through the database. In so doing, he learned that Taylor's license had been canceled as inimical to public safety, which, in his experience, often means that a driver is a "repeat offender" for driving while impaired. The deputy asked Taylor if he knew his driver's

license was canceled as inimical to public safety; Taylor confirmed that he was aware of this status. Based on the license status and the open case of beer, the deputy asked Taylor if he had consumed any of the beer, to which Taylor replied that he had drunk two cans. Later, Taylor admitted to having drunk six cans. After the truck was eventually impounded, the deputy found two empty cans of beer near the passenger seat.

Driving with a license canceled as inimical to public safety, the deputy testified, is a gross misdemeanor, for which he decided to arrest Taylor. Because of the extreme cold, he explained that it would have been irresponsible to have Taylor complete field sobriety tests on the road, both because it would be quite uncomfortable and because the test results might be skewed. He brought Taylor to jail, where Taylor agreed to complete the field sobriety testing. Based on his performance, the deputy concluded that Taylor was impaired. A preliminary breath test revealed that Taylor had an alcohol concentration of 0.09, and a later DataMaster breath test revealed an alcohol concentration of 0.12. Both tests were administered within 2 hours of the stop.

After the omnibus hearing, the district court denied Taylor's motion to suppress the statements and the results of the field sobriety and breath tests. The court concluded that the deputy expanded the scope of the traffic stop to investigate a possible driving while impaired violation when he asked Taylor if he had been drinking. The court further concluded that "[u]nder the totality of the circumstances," the deputy "had reasonable, articulable suspicion of criminal activity to expand the scope of the stop based on the open case of beer and [Taylor's] license status."

Taylor then waived his right to a jury trial and other trial rights and stipulated to the prosecution's evidence in a court trial, under Minn. R. Crim. P. 26.01, subd. 4, to obtain review of the district court's order denying his motion to suppress. The district court found Taylor not guilty of first-degree DWI based on driving while under the influence, but convicted him of the other three counts: (1) first-degree DWI based on driving with an alcohol concentration of 0.08 or more as measured within 2 hours of the time of driving; (2) driving after his license was cancelled as inimical to public safety; and (3) having an open bottle in his vehicle. The district court sentenced Taylor to a stayed, 42-month sentence for first-degree DWI and placed him on probation.

In an unpublished decision, a divided panel of the court of appeals affirmed Taylor's convictions. The court of appeals reasoned that the combination of both the open case of beer within reach of the driver and the canceled license amounted to reasonable, articulable suspicion. *State v. Taylor*, No. A20-0425, 2020 WL 7491283, at *3 (Minn. App. Dec. 21, 2020). The court emphasized that the deputy's training and experience as an officer caused him to believe that drivers whose licenses have been canceled as inimical to public safety are often repeat offenders for driving while impaired. *Id*. It concluded that this knowledge, in combination with the open case of beer within Taylor's reach, gave the officer more than a "mere hunch" that Taylor may have been driving while impaired. *Id.* The court of appeals rejected Taylor's argument that the deputy could not have had a reasonable, articulable suspicion of driving while impaired when he did not observe any physical indicia of intoxication. *Id.* at *4.

The dissent concluded that "[w]ithout 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." *Id.* at *6 (Slieter, J., dissenting). The dissenting judge recognized that an officer may have a reasonable suspicion that a driver is intoxicated even without observing the tell-tale signs of intoxication but concluded that the totality of the circumstances here allowed the deputy to form only a "hunch." *Id*.

We granted Taylor's petition for review.

ANALYSIS

The question before us today is whether the deputy lawfully expanded the scope of the traffic stop to investigate whether Taylor was driving while impaired. Taylor does not contest the facts, but merely whether the expansion of the scope of the stop was lawful. Accordingly, the issue is "purely a legal determination on given facts," which we review de novo. *Berge v. Comm'r of Pub. Safety*, 374 N.W.2d 730, 732 (Minn. 1985).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. *See* U.S. Const. amend. IV; Minn. Const. art. 1, § 10. Warrantless searches and seizures are generally unreasonable. *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). A law enforcement officer may, however, "consistent with the Fourth Amendment, conduct a brief, investigatory stop" of a motor vehicle when "the officer has a reasonable, articulable suspicion that criminal activity is afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (citation omitted) (internal quotations marks omitted).

Reasonable suspicion must be "particularized" and based on "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 (1968). In determining whether the reasonable suspicion standard is met, we consider the totality of the circumstances. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). We have emphasized that an analysis of reasonable suspicion is a " 'common-sense' " and " 'nontechnical' " approach that considers "the factual and practical considerations of everyday life"; this standard is " 'not readily, or even usefully, reduced to a neat set of legal rules.' " *State v. Lee*, 585 N.W.2d 378, 382 (Minn. 1998) (quoting *Ornelas v. United States*, 517 U.S. 690, 695–96 (1996)). 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 (citation omitted) (internal quotation marks omitted). Reasonable suspicion requires more than a mere "hunch" but "is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause." *Navarette v. California*, 572 U.S. 393, 397 (2014) (citations omitted) (internal quotation marks omitted).

Under the Minnesota Constitution, "each incremental intrusion during a traffic stop [must be] 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*." *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004). Generally, if evidence is seized in violation of the constitution, it must be suppressed. *See State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011).

Applying these precedents, we analyze the stop and the ensuing actions of the deputy. First, the deputy pulled Taylor over because his truck was missing a front license plate and the back plate was covered with snow. *See* Minn. Stat. § 169.79, subds. 6–7 (2020) (requiring motor vehicles including pickup trucks to have front and back license plates that are unobscured). Taylor does not challenge this stop or any of the deputy's actions before he asked Taylor about drinking.[1] When the deputy asked Taylor for his license, the deputy noticed the case of beer in the back seat directly behind Taylor, saw that the flap was open, and believed that the open case had a few cans missing. He did not, however, ask Taylor whether he had anything to drink just then. Instead, he asked Taylor to wait in his squad car while he ran the vehicle's registration. The deputy then learned that Taylor's license was canceled as inimical to public safety. Based on the deputy's training and experience, such a license cancellation shows that it is likely that Taylor was

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[1] As the record shows and the dissent recognizes, this case does not involve a pretextual traffic stop. The appellate record shows that Taylor is white. Taylor did not claim that the initial stop was pretextual or challenge the deputy's decision to search for Taylor's license status in the State's computerized records after learning that the truck did not have current registration tabs and Taylor was unable to produce any form of identification. Accordingly, while we share the dissent's concern over racial disparity in traffic stops, this is not a case of a pretextual traffic stop, and Taylor has never raised the issue of race or argued that any of the deputy's actions were pretext for an underlying ulterior motive such as racial bias.

In addition, Taylor does not challenge the legal standard that is used to determine if an incremental expansion of a traffic stop violates the Minnesota Constitution. Taylor agrees that if there was a reasonable, articulable suspicion that he was driving while impaired, the deputy's expansion of the stop to ask him if he had drunk any of the beer in his truck was lawful. *See Askerooth*, 681 N.W.2d at 365. Simply put, Taylor has not asked us to change the law and apply a new standard for evaluating the expansion of a traffic stop that accounts for racial imbalances in our criminal justice system. Contrary to the dissent's claim, we do not lower the bar for the expansion of traffic stops. Instead, we apply well-settled law to the specific factual circumstances of this case based on the arguments made.

a "repeat offender" for driving while impaired. On cross-examination, the deputy acknowledged that there are other reasons that a person's license could be canceled as inimical to public safety, but he explained, "[o]ff the top of my head I'm not aware of which."[2]

Only then, after the deputy observed the open case of beer with the missing cans and learned that Taylor was driving with a license canceled as inimical to public safety, a gross-misdemeanor offense, did he ask Taylor if he had been drinking. This single question is the expansion of the stop challenged here. Because the question is unrelated to the original purpose for the stop and neither party contends that the deputy had or needed to have probable cause, the inquiry must be justified by the reasonableness standard set forth in *Terry*.

The test for reasonableness depends upon "the totality of the circumstances—the whole picture." *United States v. Cortez*, 449 U.S. 411, 417 (1981). We look closely at "the facts available to the officer," and any reasonable inferences to be drawn from them and evaluate whether they establish sufficient reasonable suspicion. *Terry*, 392 U.S. at

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[2] On cross-examination of the deputy, the following exchange occurred:

> Q. Now, there's other reasons why individuals' licenses are canceled as being inimical to public safety other than just DWI convictions, correct?
> A. Off the top of my head I'm not aware of which.
> Q. So you're not saying that there aren't other reasons, you just aren't aware of any other reasons.
> A. Correct.

This testimony shows that the deputy did not contend, as the dissent claims, that drivers whose licenses are canceled an inimical to public safety are always repeat driving while impaired offenders.

21−22. Notably, we need not determine whether either the open case of beer with some missing cans in the truck or the canceled license status would be sufficient by itself. We focus only on whether the *combination* of the objective, particularized facts and any resulting rational inferences warranted a reasonable, articulable suspicion that justified expansion of the stop.

A.

Taylor focuses on each fact separately and claims that, even if considered in combination, they do not add up to reasonable, articulable suspicion. First, he contends that it was lawful for him to possess the open case of beer in his truck. Borrowing language from the United States Supreme Court's decision in *Reid v. Georgia*,[3] 448 U.S. 438, 441 (1980), Taylor cautions that "a very large category of presumably innocent travelers [] would be subject to virtually random expanded seizures if" we determine the expanded seizure was justified based on "as little foundation as there was in this case." He claims, and the dissent emphasizes, that many drivers lawfully transport sealed containers of alcohol in their vehicles, and so to conclude that this fact creates reasonable suspicion to investigate possible impaired driving would subject many Minnesota motorists to

[3] *Reid* involved a stop of two airline passengers in an airport who law enforcement identified as suspicious because they had no luggage besides matching shoulder bags, and walked a few paces apart, with one looking back at the other a few times as they left the terminal. 448 U.S. at 439. The passengers then met outside the airport, where a DEA agent approached and asked to see their airline tickets before requesting that they return to the terminal for a search of their persons and shoulder bags. *Id*. The Supreme Court held that the agent's observations about how appellants were walking through the airport, without more, were insufficient to justify the stop. *Id*. at 441. The Court reasoned that if it accepted the agent's justification here, then large swaths of the population would be subject to nearly random seizures simply for walking through an airport. *Id.*

impermissible discretionary intrusions on their liberty. Our holding today, however, does not cast such a wide net. We need not determine whether an open case of beer inside of a truck establishes reasonable, articulable suspicion, and our holding should not be read to suggest that this fact itself does.

Moreover, as Taylor conceded at oral argument, even lawful activity can serve as the basis for reasonable suspicion. *See State v. Johnson*, 444 N.W.2d 824, 826 (Minn. 1989) (stating that "innocent activity might justify the suspicion of criminal activity"). We emphasize that on the specific facts here, although lawful, it is relevant to the determination of reasonable suspicion that the case of beer was open, it was within arm's reach of the driver, and cans were missing from the case. Because the case was open and cans were missing, someone had likely drunk the missing beer. Drivers can also easily discard cans and bottles of beer from car windows, and, here, the deputy testified that he saw the open case "behind the driver's spot."

B.

We next evaluate the impact of the fact, known to the deputy, that Taylor's license was canceled as inimical to public safety. Minnesota law requires the Commissioner of Public Safety to cancel a license as inimical to public safety when a person is convicted of DWI and has two or more "qualified prior impaired driving incidents."[4] Minn. Stat. § 169A.54, subd. 1(5)–(7) (2020) (requiring cancellation under section 171.04,

[4] A "qualified prior impaired driving incident" is a "prior impaired driving" conviction, which includes DWI convictions and substance-related criminal vehicular operation convictions, and "prior impaired driving-related losses of license." Minn. Stat. § 169A.03, subds. 20, 22 (2020).

subdivision 10, when the qualifying prior DWI incidents exist); *see* Minn. Stat. § 171.04, subd. 1(10) (2020) (referring to the Commissioner having "good cause to believe that the operation of a motor vehicle" by the person "would be inimical to public safety"). Consequently, a person with a significant history of repeatedly driving while impaired will have their license canceled as inimical to public safety. In *State v. Busse*, we explained that "the offense of driving after cancellation as inimical to public safety implicates the necessarily greater concern regarding a person who has repeatedly (by statute, at least three times) violated Minnesota's driving under the influence laws, and yet continues to drive." 644 N.W.2d 79, 85 (Minn. 2002). The cancellation of a license for this reason shows that the person's dangerous driving conduct is so pervasive as to make the driver a threat to public safety.

The deputy testified that based on his training and experience, licenses are often canceled as inimical to public safety because a driver has multiple DWI convictions.[5] *See State v. Morse*, 878 N.W.2d 499, 502–03 (Minn. 2016) (explaining that when determining

[5] The dissent claims any inference that Taylor had a record of repeat DWI convictions is "supposition proffered by the State after the fact" because the deputy did not testify that he inferred Taylor had such a record. This claim ignores the deputy's testimony described above. More importantly, the existence of reasonable, articulable suspicion is an "objective test" and is not based on the subjective beliefs of the officer. *Askerooth*, 681 N.W.2d at 368 (addressing the State's argument that officer safety concerns made the expansion of a traffic stop reasonable, even though the officer "articulated no specific safety concerns during his testimony" because the "reasonableness test is an objective test"); *State v. Lemert*, 843 N.W.2d 227, 230–31 (Minn. 2014) (stating that "the legality of a pat search" under *Terry* "depends on an objective examination of the totality of the circumstances," rather than "the actual, subjective beliefs of the officer" (citation omitted) (internal quotation marks omitted)); *see also State v. Hardy*, 577 N.W.2d 212, 216 (Minn. 1998) ("The reasonableness of the officer's actions is an objective inquiry; it does not depend on the officer's subjective frame of mind.").

if a reasonable, articulable suspicion of criminal activity exists, we give "deference . . . to officers regarding inferences and deductions made based on their training"). Our review of Minnesota law supports the deputy's testimony. Not only does Minnesota law require the Commissioner to cancel a license as inimical to public safety when a person has repeatedly driven while impaired, *see* Minn. Stat. § 169A.54, subd. 1(5)–(7), but also a review of reinstatement cases reveals that the vast majority of cancellations as inimical to public safety involve repeated DWI convictions.[6] It was reasonable for the deputy to infer that a person whose license has been canceled as inimical to public safety has a history of multiple alcohol-related driving incidents. Given the deputy's training and experience interacting with drivers whose licenses have been canceled as inimical to public safety, this fact may be given evidentiary weight in evaluating reasonable inferences.[7]

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[6] *See, e.g.*, *Igo v. Comm'r of Pub. Safety*, 615 N.W.2d 358, 360–61 (Minn. App. 2000) (explaining that conditioning reinstatement on total abstinence from alcohol is reasonable in a case where a driver's license has been canceled as inimical to public safety and stating appellant had several DWI offenses), *rev. denied* (Minn. Oct. 17, 2000); *Lamusga v. Comm'r of Pub. Safety*, 536 N.W.2d 644, 649 (Minn. App. 1995) (same), *rev. denied* (Minn. Oct. 27, 1995); *Thorson v. Comm'r of Pub. Safety*, 519 N.W.2d 490, 493 (Minn. App. 1994) (same); *Wangen v. Comm'r of Pub. Safety*, 437 N.W.2d 120, 123 (Minn. App. 1989) (explaining in a case where the appellant sought reinstatement of his license that the appellant had his license canceled as inimical to public safety after several DWI offenses), *rev. denied* (Minn. May 12, 1989); *Askildon v. Comm'r of Pub. Safety*, 403 N.W.2d 674, 678 (Minn. App. 1987) (explaining that conditioning reinstatement on total abstinence from alcohol is reasonable in a case where a driver's license has been canceled as inimical to public safety and stating appellant had several DWI offenses), *rev. denied* (Minn. May 28, 1987).

[7] The dissent dismisses the deputy's testimony about his training and experience with drivers whose licenses have been canceled as inimical to public safety because there is no evidence that the deputy has "reviewed any information about the percentage of inimical to public safety cancellations that are due to multiple impaired driving violations." The

The dissent contends that it is unreasonable to infer that a person whose license has been canceled as inimical to public safety has a history of repeatedly driving while impaired because the Commissioner may cancel a license as inimical to public safety for reasons other than a history of impaired driving.[8] *See* Minn. Stat. § 171.04, subd. 1(10) (2020);[9] *Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 524–25 (Minn. App. 2013) (upholding cancellation based upon a pattern of driving very slowly on the shoulder of a

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dissent cites no case that requires such statistical evidence before a court may rely on an officer's inferences, based on their training and experience, when determining if a reasonable, articulable suspicion of criminal activity exists. That lack of precedence is not surprising, considering that requiring such evidence is inconsistent with the concept of reasonable, articulable suspicion. *See Lee*, 585 N.W.2d at 382 (explaining that an analysis of reasonable suspicion is a "common-sense, nontechnical" approach that considers "the factual and practical considerations of everyday life," and thus is "not readily, or even usefully, reduced to a neat set of legal rules" (quoting *Ornelas*, 517 U.S. at 695)).

[8] The dissent further claims that we cannot rely on the deputy's training and experience because his understanding of the law regarding the cancellation of a license as inimical to public safety was wrong. The dissent claims that the deputy believed that a person whose license is canceled as inimical to public safety is always a repeat, driving while impaired offender. The record does not support this claim. The deputy testified that based on his training and experience, a person's license is canceled as inimical to public safety because they have a history of repeatedly driving while impaired. He acknowledged, however, that there were other reasons why a person could have their license canceled as inimical to public safety but he was unable to identify any other reasons "off of the top of [his] head."

[9] A person is not entitled to a driver's license if the Commissioner "has good cause to believe that the operation of a motor vehicle on the highways by the person would be inimical to public safety or welfare[.]" Minn. Stat. § 171.04, subd. 1(10). The Commissioner, in turn, is authorized to cancel a person's license if "the person, at the time of the cancellation, would not have been entitled to receive a license under section 171.04." Minn. Stat. § 171.14(a) (2020).

road).[10] That a driver's license is not always canceled as inimical to public safety because of a history of impaired driving incidents "does not negate the reasonableness of [the deputy's] inference. Such is the case with all reasonable inferences." *Kansas v. Glover*, __ U.S. __, 140 S. Ct. 1183, 1188 (2020) (holding investigative stop was reasonable under the Fourth Amendment).

Further, Taylor's reliance on, and the dissent's analogy to, *State v. Henning*, 666 N.W.2d 379 (Minn. 2003), is not persuasive. In *Henning*, we announced that stops on the basis of special series registration plates, issued when other plates are impounded when the vehicle operator was driving while impaired, *alone* are unconstitutional. *Id.* at 385. Specifically, we found that reasonable suspicion must be based on the actual driver of the vehicle, and the driver of a car with the special series plates is not necessarily the one who was required to have the special plates placed on the vehicle. *Id*. This situation is distinguishable from the canceled license at issue here because the canceled driver's license was Taylor's license alone. Consequently, some level of individualized suspicion is present for licenses canceled as inimical to public safety. The dissent's analogy to *Henning* understates the importance of *individualized* suspicion in the analysis.

[10] The court of appeals' decision in *Constans*, 835 N.W.2d 518, is the only appellate case we have found, and that Taylor and the dissent have cited, in which the Commissioner canceled a license as inimical to public safety for a reason other than a history of driving while impaired. When considered in light of Minnesota law that requires the Commissioner to cancel a license as inimical to public safety when a person has a history of driving while impaired and our review of relevant cases involving licenses canceled as inimical to public safety, *Constans* is properly viewed as a factually atypical case that reasonably would not have been at the top of the deputy's mind when testifying.

In this case, Taylor's license canceled as inimical to public safety, in conjunction with the open case of beer in his truck, its placement in the truck, and the missing cans, clear the low hurdle of reasonable suspicion. *Accord 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[]"). The combination of these facts establishes more than a "unarticulated hunch" that Taylor was driving while impaired. *See Davis*, 732 N.W.2d. at 182 (citation omitted) (internal quotation marks omitted). Instead, they provide a " 'particularized and objective basis for suspecting' " that Taylor was driving while impaired. *State v. Poehler*, 935 N.W.2d 729, 733 (Minn. 2019) (quoting *United States v. Cortez*, 449 U.S. 411, 417–18 (1981)).

C.

Taylor next claims that *Holtz v. Commissioner of Public Safety*, 340 N.W.2d 363 (Minn. App. 1983), requires an officer to observe at least one objective indicia of impairment for reasonable suspicion to exist, which was lacking here. While Taylor's reliance on *Holtz* is misplaced for a number of reasons, this assertion misstates the holding of the case.[11] *See Holtz*, 340 N.W.2d at 365 (holding the officer complied with the

[11] *Holtz* involved a civil license revocation under the implied consent law, which requires a higher standard of proof of whether the person was driving while impaired before the police may ask the person to take a test to determine if the person is impaired. *Holtz*, 340 N.W.2d at 365. At the time, the standard of proof required under the implied consent law was "reasonable and probable grounds to believe," the driver was driving while impaired, *id.* (citing Minn. Stat. § 169.123, subd. 2(a) (1982)), which we have held was synonymous with "probable cause," *State v. Harris*, 202 N.W.2d 878, 881 (Minn. 1972).

requirements of the applicable implied consent law when he asked the appellant to take a chemical test for the presence of alcohol after observing several physical signs of intoxication). Further, in *State v. Lee*, we said that "[t]he court of appeals' requirement that the officer observe at least one of the commonly known physical indicia of intoxication is inconsistent with decisions of the United States Supreme Court and of this court both with respect to probable cause and . . . the lesser reasonable suspicion standard." 585 N.W.2d 378, 382 (Minn. 1998).

Taylor insists that the facts of *Lee* are wholly distinguishable from this case and that *Lee* represents a narrow carve out in an exceptional situation, rather than an iteration of the general rule. We do not agree.

In *Lee*, officers arrived at the scene of a motorcycle crash where the driver, Lee, was severely injured, and his passenger admitted that she had been drinking and that they had been coming home from a party. *Lee*, 585 N.W.2d at 379. The passenger claimed she did not know whether Lee was drinking, and the officers were unable to ask him at the scene because of his injuries. *Id*. at 380. Officers noticed that there were no skid marks at the steep curve where the motorcycle crashed, which implied that the driver had not tried to brake. *Id*. While Lee was being transported to the hospital by ambulance, an officer asked him to consent to a blood draw to measure his alcohol concentration. *Id.* Lee refused to consent; the officer nonetheless required the ambulance technician to draw his blood. *Id.*

As stated above, reasonable suspicion is a lesser standard for law enforcement to meet, *Diede*, 795 N.W.2d at 843, and therefore, *Holtz* is distinguishable.

We upheld the involuntary blood draw as constitutional, explicitly stating that no physical indicia of intoxication are required for the higher probable cause standard. *Id*. at 382. We reasoned that " 'ingestion of alcohol in amounts less than those needed to cause gross outward symptoms of intoxication can have a substantial adverse effect on a driver's judgment.' " *Id*. (quoting *State v. Speak*, 339 N.W.2d 741, 745 (Minn. 1983)). Thus, *Lee* unequivocally stands for the proposition that no bright line rule requires an officer to observe one of the physical indicia of intoxication to establish either probable cause or the lower standard of reasonable, articulable suspicion that is at issue here.[12]

No one silver bullet exists to determine reasonable, articulable suspicion of intoxication; we have repeatedly emphasized that we evaluate each case on a totality of the circumstances and the rational inferences that can be drawn from those particular facts. *See, e.g.*, *Davis*, 732 N.W.2d at 182. Although we consider the lack of physical indicia of impairment as one circumstance within the totality of the circumstances analysis, for the reasons stated above, we do not find this absence—although unusual—to outweigh the other factors contributing to the existence of reasonable, articulable suspicion that Taylor was driving while impaired. The totality of the circumstances here, even without outward signs of intoxication, weighs in favor of the conclusion that reasonable, articulable suspicion existed to expand the stop.

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[12] While the dissent agrees with our interpretation of *Lee*, it claims *Lee* "is a much different case" because the facts in *Lee* "strongly suggested the motorcyclist had been drinking and driving." But even if we agreed with the dissent that the evidence in this case is weaker than in *Lee*, that assessment would not change our holding today. *Lee* involved the probable cause standard, *see* 585 N.W.2d at 382, which the dissent concedes is a higher hurdle to clear than reasonable suspicion.

In sum, we reiterate that the bar for reasonable suspicion is low. *See Diede*, 795 N.W.2d at 843 ("[T]he reasonable-suspicion standard is not high."). Applying this standard to the totality of the circumstances here, we conclude that the State presented sufficient articulable facts, and inferences that could be drawn from those facts, to establish a reasonable, articulable suspicion that Taylor was driving while impaired. The deputy's observation of the open case of beer, its location within arm's reach of the driver, and the missing cans, combined with his knowledge that Taylor's license had been canceled as inimical to public safety and his past experience with such drivers, establish that the deputy had sufficient reasonable suspicion to expand the scope of the valid traffic stop by one question. Consequently, the district court properly denied Taylor's motion to suppress evidence that was obtained after the deputy expanded the scope of the underlying traffic stop.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

D I S S E N T

THISSEN, Justice (dissenting).

The court's holding today permits respondent State of Minnesota to intrude on the privacy of any driver who has previous convictions for driving while impaired to ask whether the driver has been drinking simply because the driver has an open case of beer in his back seat (a perfectly legal act), even when there is no indication that the driver has consumed alcohol. In so holding, the court places too little value on the right of Minnesotans to be free from unreasonable State intrusion into their lives; a right enshrined in the Fourth Amendment to the United States Constitution and Article I, Section 10, of the Minnesota Constitution.

Worse yet, in this case, the deputy who asked the question about alcohol consumption had no knowledge that the driver had previous convictions for driving while impaired. Rather, based on his misinterpretation or misunderstanding of the law, the deputy conjectured that the driver had such previous convictions because the driver's license had been revoked as inimical to public safety. While we do not set a high bar for a police officer's reasonable suspicion to expand the scope of a traffic stop, s*ee State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008), that bar is not nonexistent. And because the court today sets that bar too low, I respectfully dissent.

A.

Appellant Larry Dale Taylor sought to suppress evidence obtained after a deputy sheriff expanded a traffic stop. Both the United States Constitution and the Minnesota Constitution prohibit unreasonable searches and seizures by the State. U.S. Const. amend.

IV; Minn. Const. art. I, § 10. "Searches and seizures conducted without warrants are presumptively unreasonable." *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). But when a police officer "has a reasonable, articulable suspicion that criminal activity is afoot," the officer may perform a limited investigatory traffic stop without a warrant or probable cause. *Timberlake*, 744 N.W.2d at 393 (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)). "Reasonable suspicion must be 'based on specific, articulable facts' that allow the officer to 'be able to articulate . . . that he or she had a particularized and objective basis for suspecting the seized person of criminal activity.' " *State v. Diede*, 795 N.W.2d 836, 842–43 (Minn. 2011) (quoting *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995)). In other words, the police officer must have "more than a mere hunch" that the suspect has done something illegal. *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

We use a totality of the circumstances analysis when assessing whether a police officer had a reasonable suspicion, looking at all facts surrounding the traffic stop. *Lugo*, 887 N.W.2d at 487. "Our task is not to decide whether [a] particular officer's suspicion was genuine[;] . . . rather, we examine whether the suspicion was objectively reasonable" based on the facts available to the police officer and any rational inferences the officer may have derived from those facts. *State v. Britton*, 604 N.W.2d 84, 88 (Minn. 2000) (emphasis omitted). The State bears the burden of justifying the expansion of a stop. *State v. Flowers*, 734 N.W.2d 239, 256 (Minn. 2007).

Further, Taylor brings his claim under Article 1, Section 10, of the Minnesota Constitution. "Decisions of the United States Supreme Court interpreting the Fourth Amendment are of 'persuasive, although not compelling, authority' in interpreting article

I, section 10." *State v Askerooth*, 681 N.W.2d 353, 361 (Minn. 2004) (citation omitted) (internal quotation marks omitted). In particular, under Article I, Section 10, of the Minnesota Constitution, "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); *see also State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005). We have stated that

> each incremental intrusion during a traffic stop [must] be 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 [the United States Supreme Court's decision in *Terry v. Ohio*, 392 U.S. 1(1968)]. Furthermore, the basis for the intrusion must be individualized to the person toward whom the intrusion is directed.

Askerooth, 681 N.W.2d at 365. Absent independent probable cause, when a police officer expands the scope of a traffic stop beyond the initial justification for the stop, the officer must have reasonable suspicion of "additional illegal activity." *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

B.

I now turn to the facts of this case. The deputy sheriff originally pulled Taylor over because his truck was missing a front license plate and the rear plate was obscured by snow. In other words, the initial justification for the stop was the deputy's reasonable suspicion that Taylor had violated traffic laws related to the proper displaying of license plates. *See, e.g.*, Minn. Stat. § 169.79 (2020). As the deputy approached the vehicle, he observed a case of beer behind the driver's seat. The flap of the case was open, and it was missing a few cans, but the deputy did not observe any open or empty cans of beer in the vehicle.

Further, the deputy had observed neither erratic driving by Taylor before the stop nor any physical indications that Taylor had been drinking.

Taylor had no driver's license. The deputy instructed Taylor to sit in the back seat of his squad car while he searched for Taylor's name in his squad car computer. The search revealed that Taylor's license had been canceled as inimical to public safety. The deputy did not conduct any follow-up to ascertain why Taylor's license had been canceled. Rather, the deputy immediately asked Taylor whether he had consumed any of the beers from the case in his truck. Taylor responded that he had. Taylor was eventually convicted of driving with an alcohol concentration of 0.08 or more as well as an open container violation.

The State acknowledges that the deputy expanded the scope of the traffic stop by asking Taylor whether he had consumed alcohol. The State also concedes that this expansion was related to neither the original legitimate purpose of the stop nor independent probable cause. So the question here is, at the time the deputy asked Taylor whether he had consumed any of the beer from the open case in his truck, did the deputy have a reasonable suspicion that Taylor had committed some other illegal activity? I conclude that the State did not carry its burden of proving both that such objectively reasonable suspicion existed and that the extension of the stop was sufficiently limited in scope. *See Flowers*, 734 N.W.2d at 252.

The only suspected illegal activity that could have justified the deputy's question about the beer was Taylor possibly driving while impaired. The question was unnecessary to support arresting Taylor for driving without a valid driver's license. After the deputy determined that Taylor's license was canceled as inimical to public safety, he had a

sufficient basis to arrest Taylor for driving without a valid license. *See* Minn. Stat. § 171.24, subd. 5 (2020). Further, standing alone, Taylor's consumption of alcohol (e.g., while not driving) is not illegal.[1] And the record discloses that, at the time the deputy made the inquiry about alcohol consumption, the deputy had no information to suspect that Taylor had an open container of alcohol in the vehicle or that he had been drinking a beer while driving. *See* Minn. Stat. § 169A.35, subds. 2–3 (2020). Accordingly, I examine whether the totality of the circumstances leading up to and surrounding the deputy's question support a reasonable, articulable suspicion that Taylor was driving while impaired. *See Lugo*, 887 N.W.2d at 487.

The State relies on the combination of two facts to support the district court's finding that the deputy had reasonable suspicion that Taylor was driving while impaired: (1) the deputy's observation of the open case of beer behind the driver's seat, and (2) the deputy's inference that Taylor had a prior record of driving while impaired; an inference based solely on his knowledge that Taylor's driver's license had been canceled as inimical to public safety.

[1] A person who has had his license canceled as inimical to public safety typically must abstain from any alcohol consumption to have his license reinstated. *See* Minn. R. 7503.1600, .1700, subp. 4, .1725, subp. 4 (2019). But violating this requirement on its own triggers no criminal penalties. It merely jeopardizes the person's ability to have his license reinstated. *See* Minn. R. 7503.1700, subp. 5, .1725, subp. 5. Of course, the commissioner may impose a no-alcohol restriction on a license and a person who violates such a condition is subject to criminal charges under Minn. Stat. § 171.09, subd. 1(f)(1) (2020).

1.

I first turn to the deputy's knowledge that Taylor's driver's license was canceled as inimical to public safety. The only relevance of Taylor's license status to the deputy's question about Taylor's consumption of beer was to support a conjecture that Taylor had a prior record of driving while impaired. It is Taylor's presumed prior criminal record (not his license status), combined with the open case of beer, that forms the basis for the State's argument that, when the deputy asked about the open case of beer, the deputy had a reasonable suspicion that Taylor was driving while impaired.

It is undisputed that the deputy had no direct knowledge that Taylor had prior driving while impaired violations when he asked Taylor whether he had consumed any beer from the open case. Accordingly, the State's case turns on whether the inference that Taylor had prior driving while impaired violations based on his driver's license status is reasonable and permissible. I now turn to that inquiry.

The record shows that the deputy knew only that Taylor's driver's license had been canceled as inimical to public safety. The record is clear that the deputy did not know *why* Taylor's license was canceled. Indeed, the deputy never even testified that he assumed that Taylor had a record of driving while impaired because of Taylor's license status.[2] That is a supposition proffered by the State after the fact.

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[2] The deputy testified that he asked Taylor the question about the beer—thereby expanding the scope of the traffic stop—based *only* on his observation of the open case of beer. The deputy mentioned no other reason. Specifically, the deputy never stated that his question was also prompted by Taylor's driver's license being canceled as inimical to public safety. The court notes the deputy's testimony that a license is often canceled as

Further, as the court notes, a person may have his driver's license canceled as inimical to public safety for reasons *entirely* unrelated to alcohol-related driving violations. *See Constans v. Comm'r of Pub. Safety*, 835 N.W.2d 518, 524–25 (Minn. Ct. App. 2013) (holding that the Commissioner of Public Safety could cancel a license as inimical to public safety because the driver had a history of driving too slowly on state highways); Minn. Stat. § 171.04, subd. 1(10) (2020) (authorizing the Commissioner of Public Safety to cancel a person's license as inimical to public safety when the Commissioner has "good cause to believe that the operation of a motor vehicle on highways by the person would be inimical to public safety or welfare"). Consequently, the mere fact that a person's license was revoked as inimical to public safety does not support an inference that the person has prior alcohol-related driving violations. *Cf. State v. Henning*, 666 N.W.2d 379, 382, 385–86 (Minn. 2003) (holding that it was not reasonable for police officers to "automatically infer" that a driver was in violation of the law when the vehicle had special series plates because the previous plates were impounded due to a driving while impaired violation).

The State and the court suggest that because a history of alcohol-related driving violations is one reason for canceling a person's driver's license as inimical to public safety, the deputy reasonably inferred that Taylor was driving under the influence on the

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inimical to public safety because a driver has multiple DWI convictions. But that testimony was not given as a reason for expanding the stop to ask whether Taylor had consumed beer. The deputy cited Taylor's canceled license status as only partial support for his decision to ask Taylor to submit to field sobriety tests after his arrest and transport to the Clay County jail. And both the State and this court agree that, on its own, observing the case of beer with a flap open is not enough to support a finding of reasonable suspicion to expand a stop.

night in question. That inference is not something a reasonable and prudent layperson would make. Instead, to make that leap, the State and the court must rely—and exclusively do rely—on the deputy's experience. *See Smith*, 814 N.W.2d at 353 (relying on a police officer's training and experience when assessing whether the officer had a reasonable suspicion to expand the scope of a traffic stop). The deputy testified that he had encountered other drivers who had licenses canceled as inimical to public safety and that it was his "understanding" that such drivers are "repeat offenders for driving while impaired." Indeed, when pressed, the deputy continued to testify that he was not aware of reasons other than multiple driving while impaired violations for which a person could have his license canceled as inimical to public safety, despite this incorrect understanding.[3]

The State's position is flawed. First, "training and experience" is not a talismanic phrase that provides an automatic blessing to a police officer's actions. Rather, the State must prove why and how the police officer's particular training and experience is meaningful to support a reasonable suspicion in a way that would not be apparent to a layperson in the particular case. *See Terry*, 392 U.S. at 27 (stating that when considering

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[3] In response to questioning on cross-examination, the deputy admitted that there *may* be reasons other than multiple driving while impaired violations for which a person could have his driver's license canceled as inimical to public safety, but he was not aware of any. The testimony quoted by the court plainly shows that the deputy knew of no other reason for a cancellation as inimical to public safety. And, as noted above, the deputy never testified in any event that, when he expanded the stop, he relied on Taylor's license being canceled as inimical to public safety. Further, it is not a meaningful response to say (as the court does in footnote 5) that we can ignore the deputy's misunderstanding of the law because it is merely the deputy's subjective belief on the ground that the test is objective. As set forth below, the deputy's understanding of the law was incorrect and *objectively unreasonable*.

whether a police officer acted with reasonable suspicion, "due weight must be given . . . to the specific reasonable inferences which [the officer] *is entitled to draw* from the facts *in light of his experience*" (emphasis added)); *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (stating that training and experience are relevant because "police officers may interpret circumstances differently than untrained persons"); *State v. Martinson*, 581 N.W.2d 846, 853 (Minn. 1998) (Page, J., dissenting) ("[T]he state must articulate *what it is about the officer's training and experience*, coupled with the facts relied on, that creates a reasonable suspicion of illegal conduct." (emphasis added)). Here, the two-question discussion during the suppression hearing concerning the deputy's experience is not enough to show that the deputy's experience was sufficient to reasonably support the speculative leap from an inimical to public safety cancellation to a record of driving while impaired.

There is no evidence that the deputy had been trained on or reviewed any information about the percentage of inimical to public safety cancellations that are due to multiple impaired driving violations. Indeed, there is no evidence in the record whatsoever that the deputy's speculation is true.[4] Further, there was no evidence adduced concerning

[4] I agree that there is no case where we have required the State to introduce statistical or other evidence to support the factual accuracy of a police officer's reason for expanding a stop. But in a case like the one before us, where the reason offered (after the fact) by the State to justify the expansion of a stop is based solely on a bare (and incorrect) assertion by a police officer, the lack of any objective support for the assertion is certainly relevant to our assessment of whether the State carried its burden to prove reasonable suspicion in light of the totality of the circumstances. The court's reliance on the fact that most of the handful of cases involving cancellation as inimical to public safety that have reached Minnesota appellate courts are for repeat driving under the influence violations is not

the extent of the deputy's experience or how many drivers the deputy had encountered whose licenses were canceled as inimical to public safety prior to questioning Taylor. Accordingly, we have no solid basis upon which to do our job and assess whether the deputy's inferences were reasonable. The court just accepts the deputy's assertion at face value. Consequently, the court decides today that an inference based solely on an isolated experience of a particular police officer that may not be consistent with reality is reasonable. The court turns what we have long held to be an objective standard into a subjective one in which a police officer can simply justify a stop based on his belief, even if that belief may be entirely inconsistent with the objective reality.[5]

That brings me to the second flaw in the State's position. The deputy's understanding of the law regarding the cancellation of a driver's license as inimical to public safety was wrong. We have held that a police officer's mistaken interpretation of a statute may not form the particularized and objective basis for suspecting criminal activity

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compelling since the overwhelming majority of cancellations as inimical to public safety cases never reach an appellate court.

[5] The principle articulated by the Supreme Court of the United States, that it is impermissible to tie a police officer's length of service to the validity of a traffic stop, is inapposite. *See, e.g.*, *Kansas v. Glover*, __ U.S. ___, 140 S. Ct. 1183, 1190 (2020). First, as noted, the Supreme Court's pronouncements on the scope of the Fourth Amendment are merely persuasive when we are interpreting Section 1, Article 10, of the Minnesota Constitution. *Askerooth*, 681 N.W.2d at 361. More importantly, my point is not that the deputy's inference was impermissible because he had been employed as a deputy for less than 1 year at the time he stopped Taylor, but rather that there is too little in the record about the basis for the deputy's inference to support a conclusion that the cancellation of Taylor's license as inimical to public safety meant that Taylor had a record of driving under the influence was reasonable. That is an entirely proper inquiry; indeed, the inquiry we must undertake under the federal and state constitutions.

necessary to justify a traffic stop. *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004); *see also George*, 557 N.W.2d at 579 (holding that the stop of a motorcyclist based on a state trooper's mistaken understanding that the headlight configuration on the motorcycle was illegal was not reasonable because "[t]here was no *objective* basis in the law for the trooper to reasonably suspect that George was operating his motorcycle in violation of th[e] law" (emphasis added)). As previously noted, the power of the Commissioner of Public Safety to cancel a person's license as inimical to public safety is not limited to repeat driving while impaired offenders. Accordingly, there was no objective basis for the deputy here to believe that Taylor had a history of alcohol-related driving violations based solely on the fact that his license was canceled as inimical to public safety.

In sum, the deputy had no reasonable basis for believing that Taylor had a prior record of driving while impaired, had no knowledge of whether Taylor had a criminal record, and did not know why Taylor's license had been canceled as inimical to public safety. And the deputy's understanding that drivers with licenses canceled as inimical to public safety are always repeat driving while impaired offenders was based on both unspecified experience and incorrect. To the extent the deputy speculated that Taylor had a history of driving while impaired based on Taylor's license status (and it bears repeating that the deputy never testified that he, in fact, ever made such a speculative leap), any such speculation can be characterized as nothing more than a hunch. Accordingly, one of the two reasons the State relies on to support its position that the deputy had a reasonable suspicion that Taylor was driving while impaired is invalid. The State is left with the deputy's observation that there was an open case of beer behind the driver's seat in Taylor's

vehicle—a fact, the State concedes is insufficient on its own to justify the expansion of the stop.

2.

Even if we concluded that the deputy had a reasonable basis to infer that Taylor had a record of alcohol-related driving violations, his expansion of the stop still was not justified. I have found no precedent to support the conclusion that Taylor's record of driving while impaired on its own is enough to support the expansion of the stop. *Cf. State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (citing *State v. Conaway*, 319 N.W.2d 35, 41 (Minn. 1982) (stating that "a criminal record, even a 'long' one, is best used as 'corroborative information' and not as the sole basis for probable cause")). Indeed, it would be a surprising conclusion that the constitution allows police officers to stop a person on a suspicion that the person is impaired solely because he has a prior driving-under-the-influence conviction without any other particularized and objective basis for such a suspicion. That would dramatically expand the power of police officers to stop Minnesota drivers. Consequently, both the State and the court stress that Taylor's common, lawful activity of transporting an open, partially full case of beer in a truck weighs strongly in favor of a finding that the deputy acted with reasonable suspicion.

The State properly concedes that the transportation of an open case of beer, even one that is partially full, in a vehicle is a lawful activity. Indeed, people across Minnesota transport partially full cases of beer every day, whether traveling to a party or paying back a friend for help with a recent move or some other wholly legal reason. The record here discloses no evidence that most, many, or even a few Minnesotans lawfully transporting

beer on a regular basis actually consume any of the beer that they are transporting while driving. It is simply not a reasonable leap from an observation of an open case of beer in the back seat of a vehicle to the conclusion that the person is driving while impaired.

It is true that even observing a lawful activity can serve as the basis for a reasonable, articulable suspicion to conduct or expand the scope of a traffic stop. *Britton*, 604 N.W.2d at 89 ("It is . . . true that wholly lawful conduct might justify the suspicion that criminal activity is afoot."); *see also Martinson*, 581 N.W.2d at 852 (concluding that multiple lawful acts, when viewed together, supported a finding of a reasonable suspicion sufficient for police officers to conduct an investigatory stop in an airport terminal). But under the reasonable suspicion standard, such lawful activity must consist of "specific, articulable facts" to support a police officer's "particularized and objective basis" that a person is breaking the law. *Diede*, 795 N.W.2d at 842–43 (citation omitted) (internal quotation marks omitted). In other words, something about the lawful activity must raise a reasonable suspicion that a person is engaged in illegal activity.

Unlike some lawful activities we have held could serve as a basis for a reasonable suspicion, the act of transporting an open case of beer is not inherently suspicious—there certainly is no evidence in the record that it is. *See, e.g.*, *Britton*, 604 N.W.2d at 86 (police officer testified that a vehicle with a broken window was a common indicator that the vehicle was stolen); *Martinson*, 581 N.W.2d at 851 (police officers noted that the suspect was acting in a manner "consistent with that of other drug couriers they had arrested"). Accordingly, we should exercise caution when considering the State's argument that such a common, nonsuspicious, and lawful activity could function, even in part, as the basis for

a reasonable suspicion in this case. *See Reid v. Georgia*, 448 U.S. 438, 441 (1980) (holding that police officers "could not, as a matter of law, have reasonably suspected the petitioner of criminal activity on the basis of . . . circumstances [that] describe a very large category of presumably innocent travelers"). The location of the case of beer in Taylor's truck—directly *behind* the driver's seat, a location not conducive to access while driving—further strengthens the need for caution here.

The default rule is that police officers should not intrude into the lives and privacy of Minnesotans who are objectively engaged in lawful behavior. The court, however, opens the door for any police officer to do just that to thousands of Minnesotans. Unfortunately, it is neither rare, nor unlawful, nor suspicious for a person to have multiple prior driving while impaired convictions. Similarly, it is neither rare, nor unlawful, nor suspicious for a person to drive with unopened beer cans in the back seat. And people in both of those categories drive every day without consuming alcohol. Therefore, I conclude that it is not reasonable for a police officer to suspect that a person with a prior record of driving while impaired is currently driving while impaired based solely on the existence of a mostly full case of beer with its flap open behind the driver's seat—a perfectly lawful activity. That is particularly true when, as here, there were no physical or other indicia of impairment whatsoever. It is to that issue that I now turn.

3.

In considering the totality of the circumstances here, it is also important that the deputy observed no erratic driving nor physical indicia of impairment before expanding the stop.

Physical indicia of impairment are not a prerequisite to a reasonable suspicion that a suspect has driven under the influence of alcohol. *See State v. Lee*, 585 N.W.2d 378, 382 (Minn. 1998) (concluding that a police officer need not observe any physical indicia of impairment to have probable cause or reasonable suspicion of driving while impaired). Nevertheless, many cases involving driving while impaired or other alcohol-related driving violations understandably contain evidence of such indicia, such as an odor of alcohol, slurred speech, or bloodshot or glassy eyes. *See, e.g.*, *State v. Poehler*, 935 N.W.2d 729, 732 (Minn. 2019); *Burbach*, 706 N.W.2d at 486; *Kennedy v. Comm'r of Pub. Safety*, No. A15-1279, 2016 WL 3222850, at *1 (Minn. App. June 13, 2016); *Flynn v. Comm'r of Pub. Safety*, No. A06-1136, 2007 WL 1747008, at *1 (Minn. App. June 19, 2007); *State v. Rogus*, Nos. A05-1490, A05-1840, 2006 WL 2347802, at *1 (Minn. App. Aug. 15, 2006); *State v. Lopez*, 631 N.W.2d 810, 812 (Minn. App. 2001), *rev. denied* (Minn. Sept. 25, 2001). Consequently, when the record reflects no physical indicia of impairment at all prior to the expansion of the traffic stop, as here, such an absence should factor in our totality of the circumstances analysis.

The court acknowledges that this absence of physical indicia is "unusual" in a case where a police officer suspects a person is driving while impaired. The court, however, dismisses that absence of physical indicia of alcohol use based on the deputy's conjecture that Taylor had a history of driving while impaired—a conjecture based on the deputy's misunderstanding of Minnesota law on cancellations as inimical to public safety—coupled with the observation of Taylor's legal activity of driving with a case of beer with an open flap behind the driver's seat. The court dismisses the absence of opened cans of beer on

the further speculation unsupported in the record that Taylor tossed them out the window. The court's cherry-picking of certain facts, and its dismissiveness of the lack of any indication of alcohol use or evidence of erratic driving as a factor which should be considered, fails to take seriously our totality of the circumstances analysis. Importantly, it also ignores that the State bears the burden of proving that a reasonable suspicion existed. The court strongly credits the weak reasons of the deputy while ignoring the common-sense inference that a person driving under the influence would generally exhibit some signs of impairment, either through his manner of driving and/or common physical signs of intoxication.

The court relies heavily on *State v. Lee*, where we found probable cause that a nearly unconscious motorcyclist was driving under the influence even though the record did not demonstrate that the police officers investigating a crash observed any physical indicia of impairment. But *Lee* is a much different case and serves as a useful factual counterexample to this case.

In *Lee*, we held that a police officer had probable cause to order a warrantless blood draw from a motorcyclist following a single-vehicle crash despite no evidence of physical indicia of impairment. 585 N.W.2d at 383. Significantly, unlike this case, the motorcyclist could not respond to the police officer's questions because he was severely injured and "incoherent." *Id.* at 380. On the other hand, there was evidence of aberrant driving behavior commonly associated with impaired driving. Skid marks off the road suggested that the motorcyclist had failed to turn to follow the curve of the road and had not applied the brakes before the crash. *Id.* Further, at the scene, the passenger on the motorcycle

admitted that she and the motorcyclist had come from a party where drinking had occurred and admitted that she had been drinking. *Id.* at 379. Given these facts, the police officer suspected that the motorcyclist, like the passenger, had also been drinking, and requested that medical personnel remove a sample of the motorcyclist's blood without his consent. *Id.* at 380. Following the blood draw, which revealed elevated alcohol levels, the motorcyclist was charged with various alcohol-related driving offenses. *Id.* We reviewed the district court's order suppressing the blood test evidence, holding that, given the circumstances surrounding the scene of the crash, the police officer had probable cause to order the blood draw.[6] *Id.* at 381–83. In short, while the record in *Lee* did not recite any observations by the police officer of physical indicia of impairment by the motorcyclist, the objective facts surrounding the incident very strongly suggested that the motorcyclist had been drinking and driving. In this case, in contrast, there was no evidence of erratic driving behavior or admissions of alcohol consumption by others in the vehicle. Rather, as discussed above, the supporting facts and inferences the State argues formed a basis for reasonable suspicion are comparatively weak.[7] Consequently, the lack of any physical

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[6] Although *Lee* involved an issue of probable cause, a higher hurdle for law enforcement to meet than reasonable suspicion, *see id.* at 382, the factual similarities and differences still serve as a useful comparison to this case.

[7] *State v. Rogus* provides another useful contrast to the facts of this case. Nos. A05-1490, A05-1840, 2006 WL 2347802, at *1 (Minn. App. Aug. 15, 2006). There, a police officer pulled over a driver for driving 70 miles per hour in a 55 mile per hour zone. *Id.* When approaching the vehicle, he noticed beer cans in the back seat and smelled alcohol on the driver. *Id.* The police officer then checked the driver's license and discovered that the driver had a restricted license barring him from any alcohol use, even when not driving. *Id.* The police officer then returned to the driver's vehicle and expanded the scope of the

indicia of impairment in the record *prior* to the deputy expanding the scope of the traffic stop tips the scales even further against the State here when considering the totality of the circumstances.

C.

As should be clear by now, I do not believe that the expansion of the stop in this case is allowed under our current standard for stop expansions. I also believe that it is important to be transparent about my full thought process concerning the conclusion that the court reaches in this case. I believe that our decision today is also wrong because it creates too much space for future pretextual and potentially racially motivated stops and will contribute to Minnesota's racial disparities in who is stopped and who is searched following a minor traffic stop.

The court is correct that there is no suggestion in this case that the deputy's decision to stop Taylor for a missing front license plate and a snow-covered back license plate was a pretext for further criminal investigation. The record also discloses that Taylor was white. Those facts, however, do not mean that we can or should ignore how this decision may affect whether future pretextual or potentially racially motivated stops or expansions

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traffic stop by asking whether the driver had consumed any alcohol recently. *Id.* The court of appeals correctly held that the police officer had a reasonable suspicion to expand the scope of the traffic stop by inquiring about the driver's alcohol use. *Id.* at *2.

In *Rogus*, the police officer observed beer cans in the rear of the vehicle, smelled alcohol on the driver, *and* had actual knowledge that the driver had a history of alcohol-related driving violations due to his restricted license status. This stands in contrast to the deputy in this case, who observed no physical indicia of impairment and had no actual knowledge of whether Taylor had a history of alcohol-related driving violations. In other words, the police officer in *Rogus* had more than a mere hunch that the driver had been drinking based on the totality of the circumstances, unlike the deputy here.

of stops are conducted and whether those stops or expansions will be upheld. The rule we adopt in cases like this where there are no racial overtones and no assertions of pretext sets the threshold for the constitutionality of *all* future stops and expansions of stops. The standard for what constitutes reasonable suspicion will not vary in cases where there is no pretext or where pretext exists, at least under current law. It is not enough to say that the parties did not ask us to apply a standard other than reasonable suspicion because, by deciding the case, we are defining that standard.

Each decision we reach in individual cases on what constitutes a reasonable suspicion for a stop or the expansion of a stop impacts the behavior of other state actors in the criminal justice system. It affects how police officers do their jobs, including the extent to which officers use stops for minor traffic violations as a tool to justify a broader police investigation. It affects whether prosecutors will continue to charge felonies when the evidence is the product of an initial stop for a minor traffic violation. Of course, it affects how district courts will review challenges to traffic stops or expansions of stops. Our decision today about what constitutes a reasonable suspicion to expand a search helps set the background rule that drives the behavior of all those other actors. Consequently, the rule we adopt in cases like this directly impacts the liberty interests of all Minnesotans and the structural fairness, and perceived fairness, of our criminal justice system.

The evidence is abundant that the police practice of using stops for minor traffic violations as a tool to justify broader investigations is widespread and common. For several decades, police officers have been trained in how to turn stops for minor traffic violations into investigations for other potential criminal behavior and they are encouraged to adopt

the practice. *See, e.g.*, Brett A. Lacey, *An Examination of the Evolution of Racially Biased Pretextual Investigatory Stops and their Legitimacy in Policing* 37–69 (Mar. 22, 2017) (M.S. thesis, Illinois State University) (Proquest) (providing history of police officer training to expand routine stops as an investigatory tool); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* 70 (2012) (describing how police officers are trained in how to expand stops for minor violations into broader criminal investigations); Charles Remsberg, *Tactics for Criminal Patrol: Vehicle Stops, Drug Discovery & Officer Survival* (1995); Lt. Kirk Simone, Kansas Highway Patrol, *Epic Operation Pipeline, Passenger Vehicle Drug Interdiction Manual*, Kansas Highway Patrol (unpublished). As a leading police officer trainer stated, "the core concept of Criminal Patrol [is] that vehicle stops are golden opportunities for unique field investigations which, with the right volume of contacts, the right knowledge and creativity, and the right approach, can lead to major felony arrests." Remsberg, *Tactics for Criminal Patrol*, *supra*, at 25 (emphasis omitted). And as long as the limits we establish for such police tactics are sufficiently rigorous and protective of Minnesota's individual constitutional rights, such police behavior may legitimately help keep us safe. But therein lies the rub—whether our standard is sufficiently rigorous and protective.

In 1997, we noted "our serious concerns related to the 'pretext problem . . . .' " *George*, 557 N.W.2d at 579. We explained:

> We note first that very few drivers can traverse any appreciable distance without violating some traffic regulation. Second is our concern that police, who have enormous discretion in enforcing traffic laws, may take advantage of their right to stop motorists for routine traffic violations in order to target

> members of groups identified by factors that are totally impermissible as a basis for law enforcement activity.

Id. at 579–80 (citations omitted) (internal quotation marks omitted). The same concerns are reflected in our holdings that the Minnesota Constitution demands more justification for the expansion of traffic stops than that required under the United States Constitution. *See Askerooth*, 681 N.W.2d at 361; *Fort*, 660 N.W.2d at 418–19; *see generally State v. Wiegand*, 645 N.W.2d 125, 136 (Minn. 2002) (noting that Article I, Section 10, of the Minnesota Constitution "imposes a reasonableness limitation on both the duration and scope of a '*Terry* detention' " in the context of a traffic stop).

Those same structural issues continue to plague us today. The racial disparities in Minnesota's criminal justice system are well documented. For instance, in 2018, people in Minnesota age 15 and older who were Black were an estimated six percent of the total state population, yet they comprised 27 percent of the population of individuals convicted of felony offenses, and 36 percent of the prison population. *Demographic Impact Statement for House File 2013-1CE*, Minnesota Sentencing Guidelines Commission (May 12, 2020) (providing current demographic information in Table 3). Similar disparities in felony convictions and imprisonment exist for American Indians in Minnesota. *Id*.

There are of course many reasons for such disparities. But one likely reason is that police expand stops of black individuals and individuals of other racial and ethnic subgroups more and disproportionately often. For instance, a national recent study found:

> After stopping a driver, officers may search both driver and vehicle . . . . Aggregating across all states for which we have search data, white drivers

> are searched in 2.0% of stops, compared to 3.5% of stops for black motorists and 3.8% for Hispanic motorists. Across jurisdiction, . . . black and Hispanic motorists are consistently searched at higher rates than white drivers. After controlling for stop location, date and time, and driver age and gender—via logistic regression, as above—we find that black and Hispanic drivers have approximately twice the odds of being searched relative to white drivers . . . .

Emma Pierson, et al., *A Large-scale Analysis of Racial Disparities in Police Stops Across the United States* 6 (June 18, 2017);[8] *see also* Mary F. Moriarty, Opinion, *Traffic Stops as Criminal Investigations: Pretext Stops Should be Disallowed in Minnesota*, Minnpost, June 6, 2019 (noting that 54.8 percent of the drivers stopped by the Minneapolis police in 2018 were black, although the black population in Minneapolis is 18.8 percent of the total population, and that nearly three-quarters of equipment stops that resulted in searches involved black Minnesotans).[9] Moreover, even if the disproportionate number of traffic stops and searches does not cause more convictions, those disproportionate numbers are problematic as infringements on the dignity of entire classes of Minnesotans and the related distrust between those communities and the police that such disproportionate adverse treatment sows. *See generally* Charles R. Epp, et al., *Pulled Over: How Police Stops Define Race and Citizenship* 2–4 (2014).

In the face of such information, we cannot ignore the broader impact that our reasonable-suspicion jurisprudence has on police practices that use traffic stops as an

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[8] In a follow-up study, the authors analyzed the data using different controls and still found evidence of racial bias in searches following traffic stops. Emma Pierson, et al., *A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States*, Nature, July 2020, at 736.

[9] To its credit, in 2019, the Minneapolis Police Department was the only police department in Minnesota to provide such extensive demographic data.

excuse to conduct broader investigations, and the disproportionate effect those practices have on black Minnesotans, American Indian Minnesotans, and other communities of color. This is true both for cases where there is no observed traffic violation[10] and cases where a traffic stop for a minor traffic violation is expanded into a larger investigation. Certainly, I believe that most police officers in our state are motivated by an interest in keeping their fellow Minnesotans safe and they work hard and risk their lives to do so. But the practical impact of, and practical incentives created by, our decisions that set an extremely low, nearly-anything-goes bar for what constitutes a reasonable suspicion to justify a traffic stop and the expansion of a traffic stop is that pretextual stops are both easier and deemed more acceptable. *See* Remsberg, *Tactics for Criminal Patrol*, *supra*, at 63 (training police officers to push the edge of established legal limits *when appropriate*). Those decisions also create the space for police officers, some of whom may have racially biased beliefs and others who (like most of us[11]) carry implicit or unconscious racial biases into their jobs, to treat members of certain racial groups differently than others. *See George*, 557 N.W.2d at 579–80.

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[10] *See, e.g.*, *State v. Johnson*, 444 N.W.2d 824, 827 (Minn. 1989) (approving stop where police officer observed no traffic violation but where driver turned off highway after looking trooper in eye and then reentered highway a short time later); *see also State v. Holmes*, No. A20-0899, 2021 WL 1846851, at *3 (Minn. Ct. App. May 10, 2021) (approving stop in early morning hours where, although no traffic violation was observed, car passed police vehicle and U-turned), *rev. denied* (Minn. July 20, 2021).

[11] *State v. Lufkins*, 963 N.W.2d 205, 214 n.6 (Minn. 2021) (noting the significant research on the topic of unconscious bias in directing the Supreme Court Advisory Committee on the Rules of Criminal Procedure to study Minnesota's standards for racial challenges to peremptory strikes).

Without question, the easy, nearly unlimited ability accepted by the court in this case to expand traffic stops for minor violations into broader searches and investigations may result in the discovery of more criminal activity, although that may not deter crime or make our communities any safer, *see generally* John MacDonald, et al., *The Effects of Local Police Surges on Crime and Arrests in New York City*, PLOS ONE 11, no. 6 (June 2016). But crime prevention is not our sole concern, especially where Minnesotans' liberty is at stake. What constitutes reasonable police intrusion under our state and federal constitutions is ultimately a balancing of different values we hold as a society, including the interest of the public in crime prevention and detection and interest of individuals in privacy and security relative to the scope of the intrusion. *See* 4 Wayne LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 9.1(d) at 362–63 (4th ed. 2020) (discussing balancing of societal interests in determining reasonableness).[12]

The important societal interest in eliminating racial injustice in our criminal justice system should be part of the mix of societal values in assessing what is a reasonable intrusion. Twenty years ago, our court was issued a challenge:

> Unless and until the justices of the Minnesota Supreme Court elevate their concern for racial equality in the courtroom above concerns for finality, judicial economy, and crime prevention, Minnesotans will continue to read in the papers about racial injustices in our court system, and persons of color

[12] The Supreme Court concluded a quarter-century ago that pretextual stops by police officers are constitutional because the Fourth Amendment to the United States Constitution does not allow inquiry into the officer's subjective motivations for a stop. *United States v. Whren*, 517 U.S. 806 (1996). This case does not present an opportunity to revisit that principle as a matter of state constitutional law. But that principle does not mean that we should ignore the objective racial disparities in traffic stops described above when conducting the balancing of societal values underlying the constitutional standard we set for reasonable suspicion.

> in Minnesota will continue to feel the imposition of racism in the legal system. Judicial economy, crime prevention, and protection of the adversary system are important values. In the context of the history of racial injustice in the court system, however, they operate to perpetuate and encourage unequal treatment of persons of color. The baseline for our justice system must be that all people, including persons of color, resident aliens, new citizens, and those with difficulty speaking English, receive equal justice under the law.

William E. Martin & Peter N. Thompson, *Judicial Toleration of Racial Bias in the Minnesota Justice System*, 25 Hamline L. Rev. 235, 239–40 (2002). The authors identified traffic stops as an area of law ripe for improvement. *Id*. at 249–53. Our standard for establishing a reasonable suspicion to justify a stop or expanded search—including the standard we adopt today—should account for the systemic racial imbalances and inequities that we observe in this corner of our criminal justice system and our societal interest in treating all Minnesotans the same when it comes to fundamental liberty interests like the right to be free of unreasonable searches. While the court's decision in this case does not reject the adoption of such an idea in a future case, it also does not take those considerations into account.

D.

Taking into consideration the totality of the circumstances, I conclude that the State has not met its burden to establish that the deputy acted with reasonable suspicion when asking Taylor whether he had consumed any beers out of the open case in his truck. The deputy's reliance on the presence of the case of beer as well as Taylor's canceled license status, even when considered together, do not amount to a reasonable, objective suspicion that Taylor was breaking the law at the time the deputy expanded the traffic stop. And

even assuming those two facts together came close to supporting reasonable suspicion, the lack of any observed physical indicia of impairment weighs against such a finding. If the facts of this case are enough for reasonable suspicion, it is frankly hard to imagine what is not enough.

While the State need not prove much to clear the low bar for reasonable suspicion, it must still prove that a police officer had a "particularized and objective basis" to expand the scope of a traffic stop beyond its initial justification. *Timberlake*, 744 N.W.2d at 393 (citation omitted) (internal quotation marks omitted). The State failed to do so here, and Taylor suffered an unreasonable seizure in violation of his rights under the United States and Minnesota Constitutions. I would therefore reverse Taylor's convictions based on the district court's failure to suppress the evidence that was gathered after the deputy unlawfully expanded the scope of the traffic stop.

For the reasons stated above, I respectfully dissent.

ANDERSON, Justice (dissenting in part).

I join in parts A through B-3 and D of Justice Thissen's dissent.