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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-2457**

State of Minnesota,
Respondent,

vs.

Sean Andrew Dugan,
Appellant.

**Filed March 3, 2009
Affirmed
Ross, Judge**

Dakota County District Court
File No. K9-07-177

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul,
MN 55101-2134, and

James C. Backstrom, Dakota County Attorney, Nicholas A. Hydukovich, Special Staff
Assistant County Attorney, Dakota County Judicial Center, 1560 Highway 55, Hastings,
MN 55033 (for respondent)

Stanley H. Nathanson, 14700 North FLW Boulevard, Suite 157, Scottsdale, AZ 85260
(for appellant)

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

UNPUBLISHED OPINION

ROSS, Judge

This appeal concerns a police officer's extended detention of Sean Dugan, whose failure to signal a lane change prompted a traffic stop that led to the discovery of drugs in his car. Dugan challenges the district court's denial of his motion to suppress the evidence, arguing that police unlawfully expanded the scope of the stop and that the evidence from the stop was inadmissible. Because reasonable, articulable suspicion justified each incremental and minor intrusion into Dugan's liberty, we affirm.

FACTS

While patrolling Burnsville in the early morning hours of January 10, 2007, Officer Steven Stoler stopped a car driven by Sean Dugan for failing to signal a lane change. Officer Stoler approached Dugan and observed that he and his two passengers appeared to be extremely nervous. Within about one minute of the traffic stop, Officer Stoler heard a report over his portable radio of a suspicious vehicle. The dispatcher described the suspicious vehicle as being occupied by several people and parked on the wrong side of the road, near a trucking business close to the site of the traffic stop. Officer Stoler considered that he had first seen Dugan's car coming from the direction of the reported suspicious vehicle.

Officer Stoler therefore began to investigate whether Dugan's car might have been the subject of the report. He asked Dugan to step out of the vehicle. As Dugan complied, Officer Stoler noticed that his movements were jerky and rapid. He asked where Dugan had just come from. Dugan first gave an answer that Officer Stoler knew to be false; he

said that he was coming from a particular gas station, but the officer had observed Dugan drive past the gas station without stopping. When Officer Stoler challenged Dugan's answer, Dugan quickly revised it, claiming instead that he was in the area to pick up a friend. This answer added to the suspicion. Officer Stoler considered the very early morning hour, the type of commercial and pedestrian traffic that ordinarily occurs in the area, and the dishonesty of Dugan's first answer. He doubted that Dugan was there to pick up anyone. Officer Stoler returned to his squad car and radioed for more detail about the reported suspicious vehicle. Dugan sat on a nearby curb.

As Officer Stoler finished his brief radio discussion, he noticed Dugan reach inside his jacket. Concerned for his safety, he instructed Dugan to remove his hand and to stand. When Dugan stood, the officer heard something fall to the ground. It was a scale coated with a white residue that Officer Stoler believed to be an illegal drug. Officer Stoler arrested Dugan on suspicion of possession of a controlled substance and possession of drug paraphernalia. When he searched Dugan's vehicle, he found 23 grams of methamphetamine. The traffic stop, questioning, communication regarding the reported suspicious vehicle, and discovery of Dugan's scale together took less than five minutes.

The state charged Dugan with first- and second-degree controlled substance crimes. Dugan moved the district court to suppress the drug evidence as the product of an unconstitutionally expanded traffic stop. The district court denied the motion, tried Dugan in a *Lothenbach* proceeding, and convicted him on both counts. Dugan appeals.

DECISION

Dugan challenges the district court's denial of his motion to suppress evidence. We review pretrial suppression rulings de novo, which permits us to independently review the evidence and decide whether suppression is warranted as a matter of law. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Dugan argues that Officer Stoler unconstitutionally expanded the scope of the traffic stop. The federal and state constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A traffic stop must have an initial lawful justification to meet the constitutional reasonableness requirement, and the resulting investigation must be limited to circumstances that justified the stop or that regard officer safety. *State v. Wiegand*, 645 N.W.2d 125, 135–36 (Minn. 2002). But an officer may expand either the duration or the substantive scope of a detention when a “reasonable, articulable suspicion” of additional criminal activity arises within the time necessary to conduct the originally-justified investigation. *Id.* at 136.

Dugan does not challenge the stop as initially unjustified; he contends instead that Officer Stoler lacked any basis to detain and question him beyond his failure to signal a lane change. The contention is unavailing. Dugan accurately points out that Officer Stoler relied expressly on Dugan's nervousness to justify the additional investigation. And he accurately argues that nervousness and fidgety behavior, even when coupled with an anonymous tip, may in some cases be insufficient to create a reasonable suspicion. *State v. Burbach*, 706 N.W.2d 484, 491 (Minn. 2005). But nervousness was only one

factor relied on here. Additional circumstances supported Officer Stoler's suspicion that criminal activity was afoot, justifying the expanded investigation.

Only seconds into the time it would reasonably take Officer Stoler to resolve Dugan's traffic violation, he learned of a suspicious vehicle in the area, and the circumstances of the report suggested it may have been Dugan's vehicle. Multiple occupants were in Dugan's car and he had been traveling from the same area as the reported vehicle. Officer Stoler believed that the time of day and the area's commercial nature meant that passenger vehicles with multiple occupants would unlikely be in the vicinity for legitimate purposes. When he asked a brief question to explore whether Dugan's car was the subject of the report, Dugan lied. The driver's nervousness, passengers' nervousness, report of a suspicious vehicle, dishonesty in answering a simple question, change of answer, and out-of-place nature of Dugan's car, all logically provoked Officer Stoler's suspicion of illegal activity.

We hold that Officer Stoler had reasonable, articulable suspicion, and that the stop's expansion was adequately supported. Each incremental intrusion on Dugan's liberty was justified, as the Minnesota Constitution requires. *State v. Askerooth*, 681 N.W.2d 353, 365 (Minn. 2004). Officer Stoler's efficient, five-minute investigation lacks any constitutional infirmity. The expansion of the substantive scope and duration of the traffic stop was justified, and the district court therefore did not err when it refused to suppress the evidence seized during the stop.

Affirmed.