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**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-229**

State of Minnesota,
Respondent,

vs.

Kenneth Stuart Norman,
Appellant.

**Filed June 9, 2009
Affirmed
Ross, Judge**

Pine County District Court
File No. 58-CR-06-984

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Considered and decided by Johnson, Presiding Judge; Halbrooks, Judge; and Ross,
Judge.

UNPUBLISHED OPINION

ROSS, Judge

We are asked to determine the constitutionality of a traffic stop and investigation that resulted in the driver's conviction of possession of a controlled substance. Kenneth Norman claims that the trooper who stopped and investigated him violated his constitutional rights. Because the trooper had reasonable suspicion to stop Norman and reasonable suspicion to pursue field sobriety testing and inquire about drugs, we affirm.

FACTS

State Troopers Brett Westbrook and Scott Schneider sat in their patrol cars in the parking lot of Tobies Restaurant in Hinckley when an unidentified man handed Trooper Westbrook a slip of paper. The paper bore the license plate number of a white Jeep, which was just leaving the parking lot. The man told the troopers that he believed the driver was intoxicated. Trooper Westbrook followed the Jeep onto Interstate 35 southbound. He observed the Jeep reach 83 miles per hour in a 70-mile-per-hour zone, weave within its lane, and cross the fog line. After following several miles, Trooper Westbrook activated his emergency lights, stopped the Jeep driven by Norman, and began to investigate.

Trooper Westbrook continued to be suspicious because he smelled an unusual odor coming from the Jeep's passenger compartment and noticed that Norman's speech was "quick and inarticulate." Norman's brief on appeal tells us the account he gave for his irregular driving: "Norman explained that there was a dog in the vehicle with him and that they were fighting over a donut." Plausible to some, perhaps, but Trooper

Westbrook was not convinced. Suspecting impairment, he asked Norman to step out of the vehicle for sobriety testing.

Before Trooper Westbrook could begin the testing, however, Norman put his hands in his pockets, where the trooper then noticed a bulge. He asked Norman to remove his hands from his pockets. Norman at first complied, but he immediately returned his hands to his pockets. Trooper Westbrook therefore conducted a pat search for weapons. He felt something that he knew was probably not a weapon, and he thought it might be a pill container. Because he still suspected Norman of being under the influence of drugs or alcohol, he briefly asked about the object. He found Norman's responses to be evasive. Without Trooper Westbrook asking him to do so, Norman took the object from his pocket and handed it to the trooper. It was a translucent brown medicine bottle that contained a residue that added to Trooper Westbrook's suspicion. Trooper Westbrook asked Norman if the bottle contained cocaine, and Norman answered, "Yes."

The troopers then searched Norman's Jeep and found vials and baggies that also contained small amounts of cocaine. The troopers arrested Norman and the state charged him with fifth-degree possession of a controlled substance. Norman moved to suppress the evidence discovered during the traffic stop. The district court denied the motion and, after a stipulated facts trial, convicted Norman. Norman appeals.

D E C I S I O N

Norman argues that the evidence seized during the traffic stop is the product of an unconstitutional search and is therefore inadmissible. He claims that his detention and

the searches of his person and vehicle exceeded the scope of the initial justification for his traffic stop. The arguments are not persuasive.

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 (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. We review pretrial suppression rulings de novo, review the evidence independently, and decide whether suppression is warranted as a matter of law. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

Norman does not take issue with the traffic stop but with the poststop investigation. We disagree with Norman's contention that the investigation exceeded the scope of the stop.

When evaluating the validity of an investigation after a traffic stop, this court considers the totality of the circumstances to determine whether an officer had a reasonable suspicion of criminal activity. *Rose v. Comm'r of Pub. Safety*, 637 N.W.2d 326, 328 (Minn. App. 2001), *review denied* (Minn. Mar. 19, 2002). So we first determine the basis of the stop to decide whether the investigation expanded into a new area. Norman's representation on appeal that the trooper stopped him for "a minor traffic

infraction” misses the real reason for the stop. The anonymous tip and Norman’s driving aroused Trooper Westbrook’s suspicion that Norman was driving while impaired by drugs or alcohol.

Norman asserts that Trooper Westbrook had dispelled his suspicion that Norman was impaired before he discovered the bottle containing cocaine in Norman’s pocket. The record belies that assertion. It is true that Trooper Westbrook witnessed none of the tell-tale signs of alcohol intoxication, such as the odor of alcoholic beverages, watery eyes, and so forth. But the tipster’s note, Norman’s unsafe driving, the inarticulate speech, and the odd odor emanating from Norman’s car worked together to create and sustain Trooper Westbrook’s suspicion and led him reasonably to request that Norman leave his car for sobriety testing. Trooper Westbrook therefore justifiably investigated the cause of Norman’s unsafe driving even after it became unlikely that alcohol was involved, because he reasonably never overcame his suspicion that drugs may have been involved.

Norman contends that his explanation about the dog-driver-donut tug of war should have satisfied Trooper Westbrook’s suspicion and ended the inquiry. No doubt, the explanation might have persuaded a less discerning officer, but it is not so facially compelling to have rendered Trooper Westbrook’s ongoing suspicion objectively unreasonable. The high-speed weaving continued for miles. We need not decide whether drivers generally would tend to fight their dogs to retain donut possession—a proposition not established on our limited record. It is enough on these facts to hold that

an officer may reasonably doubt the veracity of an interstate driver's claim to have persisted in the contest for several miles at speeds exceeding 80 miles per hour.

Norman has not shown that any step in the short investigation was constitutionally infirm. Trooper Westbrook discovered the cocaine before he had a chance to complete the reasonably requested field sobriety tests, and his request for the testing was within minutes of the stop and consistent with the reason for the stop. Norman suggests that this case is similar to *State v. Fort*, 660 N.W.2d 415 (Minn. 2003), which resulted in evidence suppression. It is not. The driver in *Fort* was stopped for a routine traffic violation and police conducted a drug search without reasonable suspicion. *Id.* at 418–19. In contrast, Norman was stopped under suspicion of driving while impaired, and the investigation never expanded beyond that purpose. Trooper Westbrook asked Norman to leave his Jeep for field sobriety tests. He then conducted a brief search for weapons in response to a reasonable concern for officer safety. When he felt what appeared to be a pill container, he explored for drug possession further, still suspecting that Norman may have been under the influence of drugs. The brief, constitutionally permissible questioning about the container led Norman, voluntarily and without solicitation by the trooper, to remove and produce the container. Observing through the container's transparent shell what appeared to be cocaine, the trooper asked, "Is this cocaine?" Norman confessed that it was, and nothing in this concise sequence raises any constitutional concerns.

Because suspected impaired driving initially justified the traffic stop and suspicious placement of Norman's hands in his pockets justified the pat-search, Trooper Westbrook expanded neither the substantive nor the durational scope of the traffic stop

when he pursued sobriety testing and conducted the pat-search. He stopped Norman to investigate his reasonable suspicion that Norman was impaired because of drugs or alcohol, and his reasonable investigation netted evidence that supported that suspicion. In view of the totality of the circumstances, we hold that Trooper Westbrook conducted his investigation entirely based on and within the scope of his reasonable, articulable suspicion of impaired driving, which continued through the time Norman voluntarily surrendered the contraband.

Affirmed.