**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-668**

State of Minnesota,
Respondent,

vs.

Jonas Jacox,
Appellant.

**Filed May 25, 2010**
**Affirmed**
**Ross, Judge**

Clay County District Court
File No. 14-CR-08-2622

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Brian J. Melton, Clay County Attorney, Heidi M.F. Davies, Assistant County Attorney, Moorhead, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, Lydia Villalva Lijó, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Stauber, Presiding Judge; Stoneburner, Judge; and Ross, Judge.

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

**ROSS**, Judge

Appellant Jonas Jacox was convicted of being a felon in possession of a firearm after the district court denied his motion to suppress evidence that he argues was discovered in two unlawful vehicle searches. What began as a trooper's welfare check on a stranded driver developed into a vehicle search that revealed a handgun that the driver illegally possessed. Because we conclude that Jacox's seizure and the trooper's vehicle search that uncovered the handgun did not violate Jacox's constitutional rights, we affirm.

## FACTS

On a June 2008 afternoon, Trooper Jesse Grabow saw a Pontiac with its hazard lights flashing stopped on the side of westbound Interstate 94 near Moorhead. Grabow stopped behind the Pontiac and initiated his squad car's "arrow stick" lights to direct traffic around him. The Pontiac's driver, Jonas Jacox, stepped out but immediately returned to the car after Trooper Grabow motioned for him to do so. The trooper walked to Jacox's passenger window. Jacox stated that he had missed the last exit and run out of gas. He claimed that he was returning home to Chicago from St. Paul but that he had driven for three hours in the wrong direction.

The trooper noticed the strong odor of air freshener and scented lotion from within the vehicle. Jacox had a newly lit cigarette, which Trooper Grabow twice asked him to extinguish. The trooper saw a green, leafy stem- and seed-like substance on the floor that he suspected to be marijuana, several food wrappers scattered throughout the vehicle, and

an energy beverage. Trooper Grabow saw no luggage in the car, which was a hatchback with its cargo hold visible through the rear window. He learned that the Pontiac did not belong to Jacox, who claimed that it was his fiancée's.

Trooper Grabow became suspicious of criminal activity. He later opined at the omnibus hearing that energy drinks are commonly used by people involved in criminal activity travelling long distances. He asserted that drug users rely on air fresheners and cigarettes to mask the odor of illegal drugs. He explained that criminals sometimes use other peoples' cars so the driver has a basis to deny ownership of contraband found inside. And Trooper Grabow believed that the lack of luggage was suspicious for Jacox's interstate trip.

Trooper Grabow asked Jacox for identification and to step out of the car. Jacox complied. He explained that he had been in St. Paul for the past five days visiting his cousin. The trooper offered to telephone for gasoline to be delivered roadside, and he asked Jacox if he had money to cover the cost. Jacox responded that he had $50. Trooper Grabow returned to his squad car to check Jacox's license and the car's registration.

About eight minutes later, Trooper Grabow reapproached Jacox and announced that he needed to confirm the registration on his car. He checked the dashboard vehicle identification number by looking through the windshield, and then he opened the driver's

door to check what he described as the "federal ID sticker"[1] on the door frame. Trooper Grabow testified that he thought it was important to check both the vehicle identification number and the federal ID sticker to make sure they matched. While purportedly checking the federal ID sticker, Trooper Grabow also leaned into the passenger compartment and again observed the green substance on the vehicle's floor. He also believed that he smelled burnt marijuana. The trooper asked if there were any guns, knives, or drugs in the vehicle and if Jacox had smoked marijuana. Jacox responded, "No," to each question. The trooper asked if anyone had been smoking marijuana in the vehicle recently and Jacox responded, "Not that I know of." He described Jacox's demeanor during the questioning as evasive. He believed that Jacox avoided eye contact, looked at the ground and the vehicle, and stalled. Trooper Grabow asked for permission to search the vehicle, and Jacox denied the request.

The trooper then said he would call for fuel to get Jacox underway. He called and requested a gasoline delivery and informed Jacox that it would cost $85. Jacox said that he had $85, and they discussed his previous statement that he had only $50. Jacox claimed that he had meant only that he wanted to *spend* $50, not that he *had* only $50.

Trooper Grabow then decided to search inside the vehicle without Jacox's consent. He searched the cargo hold area and found a black plastic garbage bag with clothing that smelled like marijuana. He searched the spare tire compartment and found a toiletry bag

[1] *See United States v. Johnson*, 767 F.2d 1259, 1264 n.3 (8th Cir. 1985) (discussing "federal safety labels," also called "Nader stickers," that are affixed to the driver's side door and contain information about the vehicle, including the vehicle identification number).

that contained a handgun and a digital scale coated with white powdery residue. The trooper then handcuffed and searched Jacox, finding more than $2,000 in cash and rolling papers in his pocket.

The state charged Jacox, who had a felony record, with being a felon in possession of a firearm, theft of a firearm, and possession of drug paraphernalia. Jacox moved to suppress the evidence, arguing that he was unlawfully seized and that Trooper Grabow lacked a reasonable basis to search his car. After a contested omnibus hearing, the district court concluded that there was no unlawful seizure because the trooper justifiably asked Jacox to remain in his vehicle, to provide identification, and to step out of the vehicle. The district court also held that the trooper had probable cause to search the vehicle. The district court therefore denied Jacox's motion to suppress the evidence.

Jacox agreed to a bench trial using stipulated evidence pursuant to Minnesota Rule of Criminal Procedure 26.01, subdivision 4 for the felon-in-possession charge, and the state agreed to dismiss the remaining charges. The district court found Jacox guilty of being a felon in possession of a firearm. Jacox appeals, challenging the district court's suppression ruling.

## D E C I S I O N

Jacox argues that the gun evidence must be suppressed because the trooper unlawfully detained him, improperly expanded the detention, and conducted two warrantless searches of his car. The federal and state constitutions guarantee the right of persons not to be subjected to "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. Evidence seized in violation of this guarantee generally

must be suppressed. *State v. Jackson*, 742 N.W.2d 163, 177−78 (Minn. 2007). We review each pretrial suppression ruling de novo, considering whether the facts found by the district court support the decision as a matter of law. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We accept the district court's factual findings unless they are clearly erroneous. *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007). We first address Jacox's unlawful-detention arguments and then his unlawful-search arguments.

**I**

Jacox argues that he was illegally seized when the trooper ordered him back into his car, that he was illegally seized when the trooper directed him out of his car to stand near the squad car, and that the trooper improperly expanded the scope of seizure after the license and registration check revealed no reason for continued detention.

We first determine from the stipulated facts when Jacox was seized and then whether the seizure was justified. *See Harris*, 590 N.W.2d at 98. Generally, a person is seized when a reasonable person would believe that the trooper was attempting "to capture or seize or otherwise to significantly intrude on [his] freedom of movement." *State v. Hanson*, 504 N.W.2d 219, 220 (Minn. 1993).

We disagree with Jacox's contention that he was seized when the trooper pulled behind his parked car and motioned for him to remain inside. A person in a parked car is not seized merely because a police officer approaches him and begins to ask questions. *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980). And an officer may lawfully investigate parked cars along the road to offer assistance. *Kozak v. Comm'r of Pub. Safety*, 359 N.W.2d 625, 628 (Minn. App. 1984). Trooper Grabow engaged Jacox after

seeing his car stopped beside the interstate with its hazard lights flashing. Jacox does not specifically object to the trooper's welfare check but to his motioning him to remain in his car. Trooper Grabow testified that he did this for safety reasons and out of a concern for Jacox potentially being struck by traffic. The squad car's video recording shows that Jacox was parked on the shoulder within feet of rapidly passing interstate traffic. That Trooper Grabow approached the vehicle on the passenger side supports his stated concern about traffic. A reasonable person would not consider himself seized by the trooper's direction not to step from the car under these circumstances.

But Jacox was seized when the trooper directed him from the Pontiac after he had complied with the trooper's request for identification. An officer's encounter with a driver seated in an already stopped car becomes a seizure when the officer requests identification and asks the driver to leave the vehicle. *LaBeau v. Comm'r of Pub. Safety*, 412 N.W.2d 777, 779 (Minn. App. 1987). After giving the trooper his driver's license and exiting the vehicle on the trooper's command, Jacox became detained.

We next consider whether Jacox's detention was constitutional. To conduct an investigative seizure, known commonly as a *Terry* stop, a police officer must have a reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21–22, 88 S. Ct. 1868, 1880 (1968); *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003). This is not a high standard. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). Reviewing courts consider the totality of the circumstances to determine whether police were justified in conducting a *Terry* stop. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000). Trained law enforcement officers may interpret circumstances using inferences

and deductions beyond the competence of untrained persons. *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001).

The cumulative circumstances support the trooper's reasonable suspicion of criminal activity. We discount the significance of the energy drink and the lack of luggage. There is no evidence in the record to suggest that the trooper observed more than a single can of an energy beverage. Energy beverages are presumably common for highway drivers, so the trooper's focus on a single beverage is no basis to distinguish an innocent driver from a driver with an unlawful purpose. The trooper could reasonably doubt Jacox's story about visiting St. Paul for five days if Jacox had no luggage on the supposed return drive. But Jacox did have "luggage." He had a bag of clothing in the cargo hold that the trooper had failed to notice. Even so, the remaining circumstances easily support a reasonable, articulable suspicion of criminal activity.

Jacox argues that even if the circumstances justified a seizure, the expanded investigation by the trooper was improper because he lacked a reasonable and articulable suspicion that Jacox committed any offense other than petty misdemeanor possession of a small amount of marijuana, for which he could not be arrested. *See* Minn. Stat. § 152.027, subd. 4 (2006) (petty-misdemeanor possession of a small amount of marijuana); *State v. Martin*, 253 N.W.2d 404, 406 (Minn. 1977) ("[A]n officer ordinarily may not arrest a person without a warrant for a petty misdemeanor.").

Trooper Grabow did not issue Jacox a citation for possession of marijuana. Instead, he continued his investigation. An officer may expand the scope and duration of a seizure to investigate other suspected illegal activity if the officer develops reasonable,

articulable suspicion of additional criminal activity. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002). This court has rejected the argument that an officer who observes a small amount of marijuana cannot reasonably suspect, and further investigate, the presence of additional illegal drugs. In S*tate v. McGrath*, we reviewed the district court's decision that police lacked probable cause to justify a search of the defendant's home because marijuana discovered in the defendant's garbage merely demonstrated personal use of marijuana in a noncriminal amount. 706 N.W.2d 532, 543 (Minn. App. 2005), *review denied* (Minn. Feb. 22, 2006). We disagreed, concluding that "Minnesota caselaw does not support the district court's determination that small, noncriminal amounts of marijuana cannot establish a fair probability that evidence of a crime or contraband will be found in a particular place." *Id.* at 544. The marijuana, even a noncriminal amount, supported a reasonable expectation that more marijuana would be found on the premises. *Id.*

In *State v. Ortega*, we addressed a defendant's challenge to a police officer's search that revealed cocaine in the defendant's back pocket. 749 N.W.2d 851, 853 (Minn. App. 2008), *aff'd* 770 N.W.2d 145 (Minn. 2009). Ortega argued that because he had previously turned over to the officer only a noncriminal amount of marijuana, the officer did not have probable cause to search his person. *Id.* at 854. We disagreed and held that the officer had probable cause to search for more marijuana based on Ortega's possession of a small amount of marijuana. *Id.*, *see also State v. Bigelow*, 451 N.W.2d 311, 312–13 (Minn. 1990) ("[T]he lawful discovery of drugs or other contraband in a

motor vehicle gives the police probable cause to believe that a further search of the vehicle might result in the discovery of more drugs or other contraband . . . .")

The trooper's continued investigation was justified because the presence of even a small amount of marijuana in the vehicle supported a reasonable, articulable suspicion of drug activity beyond a noncriminal amount. The additional cumulative circumstances underlying the suspicion also independently justified the investigation.

**II**

Jacox argues that the gun evidence should have been suppressed because the trooper discovered the gun after two unlawful vehicle searches. A warrantless search is per se unreasonable unless it fits within one of the recognized exceptions to the warrant requirement. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). The "motor vehicle exception" provides that warrantless searches of automobiles are not unreasonable if supported by probable cause. *Id.* Probable cause to search exists when the facts and circumstances would lead a reasonably prudent person to believe that the vehicle contains contraband. *State v. Johnson*, 277 N.W.2d 346, 349 (Minn. 1979). In the context of a warrantless search, we review the district court's probable-cause determination de novo. *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997).

Jacox argues that the first unlawful search occurred when the trooper opened the driver's door to check the federal ID sticker located on the door frame, and the second when the trooper conducted the full vehicle search and discovered the firearm. The district court did not address whether the federal ID sticker check was a search. It held that because the trooper smelled burnt marijuana when he checked the sticker, this

observation, combined with his earlier observations, provided probable cause for the warrantless vehicle search. We also conclude that the trooper had probable cause to justify a warrantless search under the motor vehicle exception, but on a different ground.

We agree that Trooper Grabow's leaning into the car during the federal ID sticker check was a search, but we disagree with Jacox's argument that opening the car door to compare the federal ID sticker to the VIN, alone, was a search. A "search" occurs when a police officer intrudes upon an area where a person has a reasonable expectation of privacy. *State v. Hardy*, 577 N.W.2d 212, 215 (Minn. 1998). Individuals have a constitutionally protected expectation of privacy in their automobiles. *State v. Goodrich*, 256 N.W.2d 506, 510 (Minn. 1977). But we are bound by the Supreme Court, which has held that individuals do not have a reasonable expectation of privacy in the area of their vehicle's door frame under the federal Constitution. *New York v. Class*, 475 U.S. 106, 118, 106 S. Ct. 960, 968 (1986). In *Class*, the Court observed that the VIN is located on the door frame and on the dashboard, and stated that "[n]either of those locations is subject to a reasonable expectation of privacy." *Id.* We recognize that the Minnesota Constitution may be construed to afford a person more protection against police intrusion than the federal Constitution. *See In re Welfare of B.R.K.*, 658 N.W.2d 565, 577 (Minn. 2003) ("[W]e are free to interpret the Minnesota Constitution as affording greater protection against unreasonable searches and seizures than the United States Constitution, but do not do so cavalierly.") But although no Minnesota precedent has addressed a driver's expectation of privacy in his car's door frame under the Minnesota Constitution, Minnesota caselaw *does* establish that police may order a person out of his lawfully

detained car. *State v. Askerooth*, 681 N.W.2d 353, 367 (Minn. 2004). If a person can be constitutionally ordered from his stopped car, he can reasonably expect that police may open his door.

Jacox relies on *State v. Metz*, 422 N.W.2d 754 (Minn. App. 1988), to support his argument that the trooper could not open the door to read the sticker because he did not have probable cause to believe that the car was stolen. His reliance on *Metz* is misplaced. *Metz* relied on the Supreme Court's holding in *Arizona v. Hicks*, 480 U.S. 321, 107 S. Ct. 1149 (1987), that the moving of some stereo equipment in a home to read and record serial numbers was a "search." *Id.* at 324, 107 S. Ct. at 1152. Moving the equipment was a search because it produced a "new invasion of respondent's privacy." *Id.* at 324–25, 107 S. Ct. at 1152. Trooper Grabow's opening the door to expose the door frame was not a new invasion of Jacox's privacy because Jacox did not have a reasonable expectation of privacy in that area.

Jacox's second assertion, that the trooper "searched" when he entered the car while ostensibly checking the door sticker, is compelling support for the argument that the trooper intruded into an area where Jacox expected privacy. The state's response that the trooper did not enter the car is directly contradicted by the squad-car video. After telling Jacox that he was going to confirm some "registration stuff," Trooper Grabow walked over to the driver's side of Jacox's car and looked through the windshield toward the dash where a VIN is commonly affixed. It appears that he read the VIN through the windshield for approximately 14 seconds. Then he opened the driver's door and looked at the door frame for about six seconds. But Trooper Grabow spent the next 31 seconds

looking into the car's interior, not at the door frame, with his entire upper torso at times inside. The brief sticker check quickly became a search when the trooper entered the vehicle, an area where Jacox does have a protected expectation of privacy. *See Class*, 475 U.S. at 114–15, 106 S. Ct. at 966 (stating that a car's interior as a whole is subject to Fourth Amendment protection and police intrusion into that space is a search).

But a person may lose his expectation of privacy in a vehicle and its contents if circumstances establish probable cause to believe that the vehicle contains contraband. *State v. Nace*, 404 N.W.2d 357, 361 (Minn. App. 1987) (*quoting United States v. Ross*, 456 U.S. 798, 823, 102 S. Ct. 2157, 2172 (1982)), *review denied* (Minn. June 25, 1987). The same caselaw that justifies Jacox's expanded detention justifies the search. Trooper Grabow had probable cause to believe that the vehicle held additional contraband based on his initial observation of marijuana on the floor. *See McGrath*, 706 N.W.2d at 544 (holding that marijuana residue found in defendant's garbage established probable cause to search defendant's residence for drugs); *Ortega*, 749 N.W.2d at 854 (holding that officer had probable cause to search defendant's person after defendant handed officer a noncriminal amount of marijuana because "the presence of any amount logically suggests that there may be more"). Trooper Grabow's observation of marijuana on the floor, combined with the previously detailed suspicious circumstances, provided probable cause to search the entire vehicle. *See State v. Olson*, 482 N.W.2d 212, 214 (Minn. 1992) (holding that a search is lawful if an objective legal basis supports it, even if the officer conducting the search relied on an unsupportive ground).

Jacox also argues that it was unlawful for the trooper to search the spare-tire compartment because he had no basis to believe that marijuana would be found there. He cites open-bottle cases for the premise that detecting the odor of alcohol gives a police officer probable cause to search only the vehicle's passenger compartment. Searches for open bottles of alcohol are limited to the passenger compartment because it is illegal to keep open bottles in the passenger compartment, not in the trunk. *See State v. Schinzing*, 342 N.W.2d 105, 109 (Minn. 1983); Minn. Stat. § 169A.35, subd. 6(b) (2006) (providing an exception to the crime of possessing an open bottle of alcohol in a motor vehicle if the bottle is in the trunk). If probable cause exists to justify a search of the vehicle for drugs, police may search "every part of the vehicle and its contents that may conceal the object of the search." *Bigelow*, 451 N.W.2d at 313. The trooper was justified in searching the spare-tire compartment and the toiletry bag within it. And the district court did not err by denying the motion to suppress evidence of the gun.

**Affirmed.**