STATE OF MINNESOTA

IN SUPREME COURT

A19-1554

Court of Appeals

Hudson, J.
Concurring, Moore, III, McKeig, JJ.

State of Minnesota,

Respondent,

vs.

Filed: December 29, 2021
Office of Appellate Courts

Carlos Ramone Sargent,

Appellant.

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

Benjamin T. Lindstrom, Cass County Attorney, Walker, Minnesota, for respondent.

Cathryn Middlebrook, Chief Appellate Public Defender, Saint Paul, Minnesota; and

David M. Robbins, Special Assistant Public Defender, Meyer Njus Tanick, PA, Minneapolis, Minnesota, for appellant.

S Y L L A B U S

1. Article I, Section 10 of the Minnesota Constitution requires a law enforcement officer to have reasonable articulable suspicion of criminal activity to expand the scope and duration of a traffic stop beyond its initial purpose.

2. Because a violation of a pretrial release condition does not constitute criminal activity, the law enforcement officer's investigation into appellant's non-criminal violation of his pretrial release conditions exceeded the permissible scope and duration of the traffic stop and therefore was an unreasonable seizure under Article I, Section 10 of the Minnesota Constitution.

Reversed and remanded.

O P I N I O N

HUDSON, Justice.

This case arises from appellant Carlos Ramone Sargent's appeal of the district court's order denying his motion to suppress evidence. During a routine traffic stop, law enforcement officers questioned Sargent, a passenger in the stopped vehicle, about the conditions of his pretrial release. Sargent was then arrested for violating a condition of his pretrial release and a pat-down search revealed ammunition in his pocket.

The State charged Sargent with illegal possession of ammunition. Sargent moved to suppress the State's evidence, arguing that the officers violated his constitutional right to be free from unreasonable searches and seizures when they questioned him about the conditions of his pretrial release during the traffic stop. The district court denied Sargent's suppression motion and he was convicted of illegal possession of ammunition. The court of the appeals affirmed.

We reverse. The Minnesota Constitution requires that a law enforcement officer have reasonable articulable suspicion of criminal activity to expand the scope and duration of a traffic stop. We conclude that a pretrial release violation does not constitute criminal

activity, which means the inquiry by the officers into the conditions of Sargent's pretrial release exceeded the permissible scope of the traffic stop and was an unlawful seizure under Article I, Section 10 of the Minnesota Constitution. Therefore, we reverse the decision of the court of appeals and remand to the district court with directions to vacate Sargent's conviction and grant his suppression motion.

FACTS

In May 2017, Sargent was charged with fifth-degree possession of a controlled substance and driving while impaired. The district court granted him pretrial release with conditions that included refraining from the use of alcohol and submitting to random drug tests. Sargent posted bail and was released from custody pending his trial on the two charges.

Six months later, law enforcement officers with the Leech Lake Tribal Police initiated a traffic stop of a vehicle driven by an adult female for failing to properly signal a turn. Sargent was one of three passengers inside of the vehicle. One of the officers recognized Sargent because the officer had recently reviewed Sargent's criminal history in connection with an assault investigation and knew that he was on pretrial release. The officer did not know whether Sargent's pretrial release was subject to any specific conditions.

During the traffic stop, an officer smelled an odor of alcohol coming from inside of the vehicle. The officer asked the adult female driver if she had been drinking; she responded "no." The officer then asked the three passengers in the car the same question,

and all the passengers, including Sargent, admitted that they had consumed alcohol earlier that evening. A preliminary breath test confirmed the adult female driver's sobriety.

The officer began questioning Sargent and asked if he had "a no drink" condition as part of his pretrial release. Sargent responded in the affirmative. The officer asked Sargent to submit to a preliminary breath test; he agreed and provided a breath sample that showed an alcohol concentration of 0.03.

The officer contacted dispatch and received confirmation that Sargent's pretrial release included a condition prohibiting him from consuming alcohol. The officer attempted to contact the probation agent supervising Sargent's pretrial release but was unable to reach him. Another probation agent told the officer that Sargent should be arrested for violating his pretrial release condition. Sargent was placed under arrest, leading to a pat-down search that revealed ammunition in Sargent's pocket.

The State charged Sargent with illegal possession of ammunition under Minn. Stat. § 624.713, subd. 1(2) (2020). Before trial, Sargent moved to suppress the ammunition evidence found in his pocket during the pat-down search, arguing that the officer's questions about the conditions of his pretrial release improperly expanded the scope of the traffic stop. The district court determined that the officer had sufficient reasonable articulable suspicion that Sargent was violating a condition of his pretrial release to expand the scope of the traffic stop and denied the suppression motion. Sargent waived his right to a jury trial and agreed to a stipulated evidence trial to obtain review of the pretrial ruling. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court found Sargent guilty and sentenced him to the mandatory minimum of five years in prison.

Sargent appealed the district court's denial of his suppression motion and the court of appeals affirmed. *State v. Sargent*, 951 N.W.2d 121, 134 (Minn. App. 2020). In a precedential opinion, the court of appeals determined that the officer's expansion of the traffic stop to investigate the conditions of Sargent's pretrial release was constitutional and reasonable under *Terry v. Ohio*, 392 U.S. 1 (1968). *Sargent*, 951 N.W.2d at 131. The court of appeals acknowledged that the violation of a pretrial release condition is not a crime under Minnesota law and "does not provide a basis for a traditional *Terry* stop," but the court was "not persuaded that the noncriminal nature of a pretrial-release violation requires a conclusion that expansion of a warrantless seizure to investigate such a violation is never constitutionally reasonable." *Id.* at 128. Accordingly, the court of appeals affirmed.

Sargent asked our court to review the issue of whether law enforcement may expand the scope of a traffic stop to investigate an individual for a potential violation of the conditions of their pretrial release.[1] We granted Sargent's request for review.

ANALYSIS

Sargent argues that the district court committed a reversible error by denying his pretrial suppression motion. When reviewing a pretrial motion to suppress, "we review the district court's factual findings for clear error and its legal determinations de novo." *State v. Leonard*, 943 N.W.2d 149, 155 (Minn. 2020). Under a de novo standard, "we do

[1] Sargent also sought review of whether the random-testing condition of his pretrial release was unconstitutional. We denied review of that issue. *State v. Sargent*, No. A19-1554, Order at 1 (Minn. filed Dec. 29, 2020).

not defer to the analysis of the courts below, but instead we exercise independent review." *Wheeler v. State*, 909 N.W.2d 558, 563 (Minn. 2018).

Sargent contends that the law enforcement officer's investigation into the conditions of his pretrial release exceeded the permissible scope of the traffic stop and amounted to an unconstitutional seizure. Thus, we begin our analysis with an overview of the law governing the scope and duration of traffic stops. We then turn to the facts of this case to determine whether the officer's investigation exceeded the permissible scope of the traffic stop.

I.

Both the Fourth Amendment to the United States Constitution and Article I, Section 10 of the Minnesota Constitution protect the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; *see* Minn. Const. art. I, § 10.[2] The first step when analyzing an alleged

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[2] Although identical in their language and structure, we have interpreted Article I, Section 10 of the Minnesota Constitution to provide greater protection against unreasonable searches and seizures than the Fourth Amendment of the United States Constitution. *See, e.g.*, *State v. Askerooth*, 681 N.W.2d 353, 361–63 (Minn. 2004). But when analyzing the reasonableness of an officer's seizure under the Minnesota Constitution, our analysis is governed by "the principles and framework of *Terry*" that are derived from the Fourth Amendment. *Id.* at 363; *see also State v. Flowers*, 734 N.W.2d 239, 266 n.36 (Minn. 2007) (Gildea, J., concurring in part, dissenting in part) (noting that the permissible scope of a *Terry* stop is "a concept that is drawn from the federal constitution").

Because we conclude that Sargent's rights were violated under the Minnesota Constitution, we need not decide whether his federal constitutional rights were violated. *See Flowers*, 734 N.W.2d at 258 ("[W]e have concluded that Flowers' rights under our state constitution were violated, and therefore we need not address the issue of whether Flowers' rights under the federal constitution were violated.").

violation of Article I, Section 10 is to determine whether the officer's conduct constituted a search or seizure. *State v. Davis*, 732 N.W.2d 173, 176 (Minn. 2007). The conduct at issue in this case is the officer's questioning of a passenger during a routine stop for a minor traffic violation. The parties do not dispute that Sargent was seized when the officer began questioning him about the conditions of his pretrial release.[3] Thus, the first step of the analysis is complete.

Having concluded that a search or seizure occurred, the next step is to decide whether it was unreasonable. A search or seizure conducted without a warrant is considered unreasonable per se. *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005). Absent a warrant, the State has the burden to show that a search or seizure falls within one of the "specifically established and well delineated exceptions" to the warrant requirement. *Id.* (citation omitted) (internal quotation marks omitted).

Here, the State relies on the *Terry* search exception, which comes from the United States Supreme Court's decision in *Terry v. Ohio*, 392 U.S. 1 (1968). We have summarized the holding from *Terry* as follows: even without probable cause, "police may stop and frisk a person when (1) they have a reasonable, articulable suspicion that a suspect might be engaged in criminal activity and (2) the officer reasonably believes the suspect might

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[3] In *State v. Fort*, we held that a passenger of a car is considered seized "if a reasonable person, under the circumstances, would not feel free to disregard the police questions or to terminate the encounter." 660 N.W.2d 415, 418 (Minn. 2003). The facts of this case as relevant to the seizure issue are analogous to the facts of *Fort*. There is little doubt that, under the circumstances, an objectively reasonable person in Sargent's position would not feel free to disregard the officer's questions or to end the encounter. Therefore, we agree with the parties that Sargent was seized when the officer started questioning him about the conditions of his pretrial release.

be armed and dangerous." *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366 (1993). "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence . . . ." *State v. Flowers*, 734 N.W.2d 239, 251 (Minn. 2007) (quoting *Adams v. Williams*, 407 U.S. 143, 146 (1972)). In Minnesota, we have expressly adopted "the principles and framework of *Terry* for evaluating the reasonableness of seizures during traffic stops even when a minor law has been violated." *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004).

Applying the *Terry* framework to a traffic stop involves a two-pronged analysis. *See id.* at 364. Under the first *Terry* prong, "we ask whether the traffic stop was justified at its inception," *id.*, by a showing of "reasonable articulable suspicion," *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). If the officer had reasonable suspicion to justify the initial stop, we turn to the second *Terry* prong and ask whether "the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *Diede*, 795 N.W.2d at 842 (quoting *Askerooth*, 681 N.W.2d at 364). Because Sargent concedes that the initial traffic stop of the vehicle for failing to signal a turn was lawful, our analysis focuses solely on the second *Terry* prong.

"The second *Terry* prong constrains the scope and methods of a search or seizure." *Askerooth*, 681 N.W.2d at 364. An initially valid stop of a vehicle may "become invalid if it becomes 'intolerable' in its 'intensity or scope.' " *Id.* (quoting *Terry*, 392 U.S. at 17−18). "[T]he tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop and attend to related safety concerns." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (internal

citations omitted). An officer seeking to expand the duration or scope of the traffic stop beyond its original justification may only do so if "he or she had a particularized and objective basis for suspecting the seized person of criminal activity." *Diede*, 795 N.W.2d at 843 (quoting *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995)).

"[E]ach incremental intrusion during a stop must be 'strictly tied to and justified by the circumstances which rendered [the initiation of the stop] permissible.' " *Askerooth*, 681 N.W.2d at 364 (quoting *Terry*, 392 U.S. at 19). Put another way, each step of an officer's investigation 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*." *Id.* at 365.

Reasonableness, as defined by *Terry*, is an objective standard: "would the facts available to the officer at the moment of the seizure . . . warrant a man of reasonable caution in the belief that the action taken was appropriate?" *Id.* at 364 (quoting *Terry*, 392 U.S. at 21–22) (internal quotation marks omitted). We have explained that "to be reasonable, any intrusion in a routine traffic stop must be supported by an objective and fair balancing of the government's need to search or seize and the individual's right to personal security free from arbitrary interference by law officers." *Burbach*, 706 N.W.2d at 488 (citations omitted) (internal quotation marks omitted). Our reasonableness inquiry considers the "totality of the circumstances," including the special training, experience, and ability of law enforcement officers to make inferences and deductions beyond that of the average person. *Flowers*, 734 N.W.2d at 251–52. In the end, the burden is on the State to

"demonstrate that the *Terry* search was sufficiently limited in scope and duration." *Id.* at 252.

II.

With these principles in mind, we turn to the issue of first impression before us: whether a law enforcement officer may expand the scope of a traffic stop to investigate a passenger's potential violation of a condition of their pretrial release.[4] "Any expansion of the scope or duration of a traffic stop must be justified by a reasonable articulable suspicion of other *criminal activity*." *State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003) (emphasis added).

Sargent argues that, even if the officer had reasonable suspicion that he was actively violating a condition of his pretrial release, such conduct is not a crime. Because the officer did not have reasonable suspicion of *criminal activity*, Sargent contends that the officer's expansion of the scope of the traffic stop was unconstitutional. The State acknowledged during oral argument that a pretrial release violation is not a crime under Minnesota law, but maintains that an officer may expand the scope of a traffic stop to investigate a potential violation of a pretrial release condition if the officer's actions are reasonable under *Terry.*

As a preliminary matter, we agree with Sargent and the court of appeals that under *State v. Jones*, 869 N.W.2d 24, 25 (Minn. 2015), a pretrial release violation is not a crime.

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[4] In this case, the officer's knowledge that Sargent was on pretrial release combined with Sargent's admission that he had been consuming alcohol earlier in the evening provide the "minimal level of objective justification" to reasonably suspect that Sargent was violating a condition of his pretrial release. *See State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (citation omitted) (internal quotation marks omitted).

In *Jones*, the issue was whether a probationer could be charged with criminal contempt for violating a condition of his probation.[5] *Id.* Reading the criminal contempt and probation statutes together, we found it "telling that the comprehensive probation statutes do not provide, or even hint, that a willful violation of a 'term' of probation constitutes criminal contempt." *Id.* at 29. Thus, we concluded that "[a] willful violation of a term of probation does not itself constitute a violation of a 'mandate of a court' under [the criminal contempt statute]." *Id.* at 31.

Although *Jones* was decided in the context of probation violations, we find its reasoning applies with equal force to the violation of a condition of pretrial release for two reasons. First, nothing in the Minnesota Rules of Criminal Procedure suggests that a willful violation of a pretrial release condition constitutes criminal contempt. In fact, the opposite is true; the comments accompanying Rule 6.03, which governs violations of pretrial release conditions, plainly state that with one exception not relevant here, "there are no provisions similar to Rule 6.03 in existing Minnesota statutory law." *See* Minn. R. Crim. P. 6 cmt. Second, it is noteworthy that individuals on pretrial release pending a trial have not been convicted of a crime and still carry the presumption of innocence. *See Taylor v. Kentucky*, 436 U.S. 478, 483–86 (1978). If a probationer's willful violation of a term of probation does not constitute criminal contempt, then an individual who is *merely accused* of a crime

[5] In *Jones,* the criminal contempt charge was brought under Minn. Stat. § 588.20, subd. 2(4) (2014), which provided that every person who willfully disobeys "the lawful process or other mandate of a court" is guilty of a misdemeanor. *See Jones*, 869 N.W.2d at 25–26. The State does not argue that *Jones* is distinguishable or offer any alternative theory to explain why pretrial release violations should be considered criminal activity.

(and still presumed innocent) should likewise not be subject to criminal contempt charges for violating a condition of pretrial release.

Even though the court of appeals recognized that Sargent was not engaged in criminal activity, it was "also not persuaded that the noncriminal nature of a pretrial-release violation requires a conclusion that expansion of a warrantless seizure to investigate such a violation is never constitutionally reasonable." *Sargent*, 951 N.W.2d at 128. We disagree. Indeed, it is precisely the noncriminal nature of Sargent's conduct that leads us to conclude that the officer's questioning was unreasonable in its scope. Permitting law enforcement officers to subject motorists and their passengers to questioning about noncriminal conduct with no nexus to the initial purpose for the stop, even if done in a reasonable manner, is incompatible with "the individual's right to personal security free from arbitrary interference by law officers" guaranteed by Article I, Section 10 of the Minnesota Constitution. *Askerooth*, 681 N.W.2d at 365 (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)).[6] Thus, we reaffirm the fundamental principle that under Article I, Section 10 of the Minnesota Constitution, an officer must have

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[6] This individual right to avoid arbitrary interferences by police has its origins in, and is necessarily informed by, the history of the Fourth Amendment and the Framer's experience with arbitrary search and seizure practices under British colonial rule. *See generally* Tracey Maclin, *Anthony Amsterdam's Perspectives on the Fourth Amendment, and What it Teaches About the Good and Bad in* Rodriquez v. United States, 100 Minn. L. Rev. 1939, 1984 (2016) (arguing that arbitrary police questioning of motorists during routine traffic stops is "inconsistent with the central meaning of the Fourth Amendment, which . . . was designed to restrain police discretion when conducting searches and seizures"); Thomas Y. Davies, *Recovering the Original Fourth Amendment*, 98 Mich. L. Rev. 547, 724 (1999) ("The Framers aimed the Fourth Amendment precisely at banning Congress from authorizing use of general warrants; they did not mean to create any broad reasonableness standard for assessing warrantless searches and arrests.").

reasonable articulable suspicion of criminal activity—that is, conduct that is a crime under Minnesota law—to expand the scope of a traffic stop.[7]

The State, however, highlights several passages from prior decisions where we upheld the expansion of a traffic stop based on reasonable articulable suspicion of "illegal activity." *See, e.g.*, *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) ("Expansion of the scope of the stop to include investigation of other suspected *illegal activity* is permissible under the Fourth Amendment only if the officer has reasonable, articulable suspicion of such other *illegal activity*." (emphasis added)). By implication, the State suggests that a willful violation of a pretrial release condition, although not a crime, falls into a broader category of "illegal activity" and can provide a sufficient basis for expanding the scope of a traffic stop. We disagree. A closer review of our case law reveals that the State's proposed distinction between "criminal" and "illegal" activity for the purposes of a *Terry* stop is a distinction without a difference.[8] Whether we have referred to the suspected

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[7] To be clear, our holding does not mean that officers are categorically prohibited from investigating any suspected violations of pretrial release conditions during a traffic stop. Indeed, in many instances, an individual who is violating a condition of pretrial release will also be committing a separate crime. But that was not the case here. Sargent's conduct (i.e., sitting in the passenger seat of a vehicle with an alcohol concentration of less than half of the legal limit for operating a motor vehicle) was entirely legal in any other context. Put another way, an officer is permitted to expand the scope of a traffic stop to investigate a suspected pretrial release condition violation if the underlying conduct is criminal.

[8] In cases where we have reviewed the expansion of a traffic stop using the *Terry* framework, the underlying conduct justifying the expansion of each traffic stop was criminal. *Compare State v. Smith*, 814 N.W.2d 346, 351–52 (Minn. 2012) (relying on evasive answers, lack of proof of insurance, and other facts to justify expansion of search for controlled substances or weapons), and *Flowers*, 734 N.W.2d at 251–52 (concluding that failure to comply with directions to pull over and suspicious movements in vehicle

conduct as "criminal" or "illegal," the takeaway in each case is the same: an officer must have reasonable suspicion that an individual is committing a crime to expand the scope of a traffic stop beyond its initial purpose.

We are also not persuaded by the two alternative grounds offered by the court of appeals to justify the officer's expansion of the scope of the traffic stop to investigate Sargent's noncriminal pretrial release condition violation. First, the court of appeals found it significant that a traffic stop can be lawfully initiated based on reasonable articulable suspicion of a traffic violation, which is a petty misdemeanor and, by definition, not a crime. *Sargent*, 951 N.W.2d at 129; *see, e.g.*, Minn. Stat. § 609.02, subd. 4a (2020) (" 'Petty misdemeanor' means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than $300 may be imposed."). The court of appeals' reasoning suggests that if law enforcement officers can *initiate* a traffic stop based on suspicion of noncriminal activity (e.g., a traffic violation), then officers should be able to *expand* the scope of a traffic stop based on suspicion of noncriminal activity (e.g., a pretrial release condition violation). But that logic is contrary to *Terry*, which held that "a search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope." *Terry*, 392 U.S. at 18.

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supported search for controlled substances or weapons), *with Diede*, 795 N.W.2d at 843−44 (concluding that defendant's proximity to person who is suspected of criminal activity does not justify expansion to search for defendant's possession of controlled substances), *Burbach*, 706 N.W.2d at 488–89 (stating that odor of alcohol from adult passenger does not justify expansion to search for open containers and possession of controlled substances), and *Fort*, 660 N.W.2d at 419 (concluding that a stop for speeding and a cracked windshield did not justify expansion to search for controlled substances).

Similarly, we have explained that "the justification for an initial search or seizure will not necessarily provide a basis for subsequent expansions of the scope of that search or seizure." *Askerooth*, 681 N.W.2d at 364.

Second, the court of appeals determined that the officer's warrantless seizure of Sargent was justified because Minnesota Rule of Criminal Procedure 6.03, subdivision 2, permits an officer to make a warrantless arrest for a pretrial release condition violation under certain circumstances. *Sargent*, 951 N.W.2d at 129 (citing Minn. R. Crim. P. 6.03, subd. 2).[9] But the Minnesota Rules of Criminal Procedure do not control the analysis when considering a violation of the Minnesota Constitution. *See State v. LeDoux*, 770 N.W.2d 504, 512 (Minn. 2009) ("[T]he rules cannot diminish Constitutional protection."). Moreover, we rejected a similar argument in *Askerooth*, explaining that "only article I, section 10's reasonableness requirement explicitly applies to an officer's actions from the time the officer initiates an investigative detention and continues to apply throughout the detention by requiring reasonableness for any increase in the intrusiveness of the stop." *Askerooth*, 681 N.W.2d at 363 n.6.

The same rationale applies here. Whether or not law enforcement may expand the scope of a traffic stop to investigate a noncriminal infraction is, at its core, a constitutional

[9] Rule 6.03 allows licensed peace officers to conduct a warrantless arrest for a pretrial release condition violation if (1) they have probable cause to believe a pretrial release violation has occurred, (2) it "reasonably appears" that the individual's continued release "will endanger the safety of any person," and (3) it is not "possible" to obtain a warrant. Minn. R. Crim. P. 6.03, subd. 2. Absent these conditions, the rule instructs officers to obtain a warrant before making the arrest. *See id.* ("When possible, a warrant should be obtained before making an arrest under this rule.").

question—one that cannot be resolved solely based on the rules of criminal procedure. Instead, we look to the principles and framework of *Terry* as our guide when determining if an officer's actions in a particular case exceeded the permissible scope of a traffic stop.

In sum, we reaffirm the principle that law enforcement officers must have reasonable articulable suspicion of criminal activity to expand the scope of a traffic stop. We hold that a violation of a condition of pretrial release does not constitute criminal activity. Accordingly, we conclude that the officer's questioning of Sargent about the conditions of his pretrial release exceeded the permissible scope of a traffic stop in violation of Article I, Section 10 of the Minnesota Constitution.[10]

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court with directions to vacate Sargent's conviction and grant his suppression motion.

Reversed and remanded.

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[10] The court of appeals held "that an officer may expand the scope of a traffic stop to investigate a suspected pretrial-release violation if the expansion is reasonable as defined in *Terry*, that is, if the government interest in public safety outweighs the resulting intrusion on the suspect's individual rights." *Sargent*, 951 N.W.2d at 133. But as the concurrence notes, there is no evidence in the record that Sargent's conduct created a safety risk for the officers or the public.

C O N C U R R E N C E

MOORE, III, Justice (concurring).

The conclusions reached by the court in this case are supported by the law. I agree with the court that a violation of a pretrial release condition is not criminal contempt under Minn. Stat. § 588.20, subd. 2(4) (2020), consistent with the rationale in *State v. Jones*, 869 N.W.2d 24, 26–31 (Minn. 2015). And because Sargent's actions did not constitute a separate criminal offense, and the officer's contact with Sargent was not based on officer safety concerns, I also agree with the majority's conclusion that the officer's expansion of the traffic stop and seizure of Sargent was not supported by Article I, Section 10 of the Minnesota Constitution as interpreted in *State v. Askerooth*, 681 N.W.2d 353, 364–70 (Minn. 2004).[1]

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[1] Eight states have enacted statutes that make violation of a pretrial release condition a separate criminal offense. *See* Alaska Stat. § 11.56.757(a) (2020) ("A person commits the crime of violation of condition of release if the person . . . violates a condition of release imposed by a judicial officer . . . ."); Colo. Rev. Stat. § 18-8-212(1) (2021) ("A person who is released on bail bond of whatever kind . . . commits a class 6 felony if he knowingly fails to appear for trial or other proceedings . . . or if he knowingly violates the conditions of the bail bond."); Conn. Gen. Stat. § 53a-222(a) (2021) ("A person is guilty of violation of conditions of release in the first degree when, while charged with the commission of a felony, such person is released . . . and intentionally violates one or more of the imposed conditions of release."); Del. Code Ann. tit. 11, § 2113(c) (2020) ("If the defendant . . . knowingly breaches any condition of release, each such . . . breach shall be a separate crime . . . ."); 720 Ill. Comp. Stat. 5/32-10(a) (2021) (criminalizing a failure to surrender following a violation of a condition of pretrial release); Me. Stat. tit. 15, § 1092 (2021) (making it a crime to violate a condition of preconviction release); Okla. Stat. tit. 22, § 1110 (2021) ("Whoever . . . incurs a forfeiture of the bail or violates such undertaking or recognizance and willfully fails to surrender himself within five (5) days following the date of such forfeiture shall . . . be guilty of a felony . . . ."); Wisc. Stat. § 946.49 (2020) (making it a separate offense to "intentionally fail[] to comply with the terms of his or her" release). Other jurisdictions make violations of pretrial release conditions punishable as criminal contempt. *See, e.g.*, 18 U.S.C. § 3148(a), (c) (stating violations of conditions of

However, I write separately because the majority's holding places law enforcement officers who are attempting to enforce pretrial release conditions set by the district courts in a difficult position. Under Minn. R. Crim. P. 6.02, subd. 1, a defendant must be released from custody during the pretrial stage of a criminal proceeding on either personal recognizance or an unsecured appearance bond "unless a court determines that release will endanger the public safety or will not reasonably assure the defendant's appearance." We have said that Rule 6.02 "by its express terms, permits public safety concerns to be considered" by the district court when determining whether the imposition of pretrial release conditions will assure the defendant's appearance at future court proceedings. *State v. Martin*, 743 N.W.2d 261, 266 (Minn. 2008). In doing so, district courts must consider various factors, including the relative safety of the victim(s), any other person, and the greater community as well as "the nature and circumstances of the offense charged" on a case-by-case basis, rather than imposing release conditions as standard or blanket policies. Minn. R. Crim. P. 6.02, subd. 2; *see Martin*, 743 N.W.2d at 267.

My concerns are specifically related to the safety of law enforcement officers and the public. The Minnesota Rules of Criminal Procedure allow an officer to "arrest a released defendant if the officer has probable cause to believe a release condition has been violated and it reasonably appears continued release will endanger the safety of any

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pretrial release are subject to prosecution for contempt of court); N.H. Rev. Stat. Ann. § 597:7-a(II) (2021) ("A person who has been released pursuant to the provisions of this chapter and who has violated a condition of his release is subject to . . . a prosecution for contempt of court"). As we have long recognized, "[t]he enactment of criminal laws, the scope of those laws, and the sanctions for their violation, are solely within the legislative function and province." *State v. Soto*, 378 N.W.2d 625, 630 (Minn. 1985).

person." Minn. R. Crim. P. 6.03, subd. 2. Although the criminal rules "cannot diminish Constitutional protection[s]," *State v. LeDoux*, 770 N.W.2d 504, 512 (Minn. 2009), I am concerned that if officers are not allowed to investigate potential violations of pretrial release conditions that implicate public safety concerns, then a district court's order establishing pretrial release conditions becomes largely meaningless because the conditions serve no purpose and do not allow officers to act in a preventative capacity to protect public safety in their communities.

In the context of traffic stops, we have interpreted Article I, Section 10 of the Minnesota Constitution to provide individuals with more protection from unreasonable searches and seizures than the Fourth Amendment. *Askerooth*, 681 N.W.2d at 362–63. Under *Askerooth*, to "search or seize, there must be an individualized, articulable, and reasonable suspicion of wrongdoing." *State v. Ortega*, 770 N.W.2d 145, 152 (Minn. 2009). We balance the government's need to search or seize a vehicle's occupants against "the individual's right to personal security free from arbitrary interference by law officers." *Askerooth*, 681 N.W.2d at 365 (quoting *United States v. Brignoni-Ponce*, 422 U.S. 873, 878 (1975)).

We have emphasized, however, that the analysis "should not be read as limiting in any way a search conducted pursuant to *Terry v. Ohio* for purposes of officer safety." *State v. Fort*, 660 N.W.2d 415, 419 n.2 (Minn. 2003). The principles of *Terry* apply when evaluating the reasonableness of searches and seizures during traffic stops even when a minor law has been violated. *Askerooth*, 681 N.W.2d at 363. Under *Terry*, a law enforcement officer may stop and frisk a person when the officer has (1) a reasonable,

articulable suspicion of criminal activity *and* (2) reasonably believes the suspect might be armed and dangerous. *State v. Flowers*, 734 N.W.2d 239, 250 (Minn. 2007).

Like the United States Supreme Court, we have repeatedly emphasized the existence of officer safety concerns during traffic stops, particularly in the early morning hours when some officers are working without a partner present. *See, e.g.*, *Askerooth*, 681 N.W.2d at 368. Recognizing the "paramount interest" in officer safety, *State v. Varnado*, 582 N.W.2d 886, 891 (Minn. 1998), we have noted that the safety concerns increase when there are multiple people inside of a stopped vehicle because all the individuals may have similar motivations to conceal evidence of criminal activity, *Ortega*, 770 N.W.2d at 152. Because of these heightened concerns, law enforcement officers can order passengers out of a stopped vehicle without violating the constitutional requirement for an individualized suspicion of criminal activity. *Maryland v. Wilson*, 519 U.S. 408, 413–15 (1997); *Ortega*, 770 N.W.2d at 152.

In this case, the State did not present any evidence during the omnibus hearing to indicate that Sargent's conduct, including his suspected violation of the pretrial release condition requiring him to abstain from alcohol use, created an immediate risk to the officer or the public. But I want to make clear that law enforcement officers are not foreclosed by this decision from expanding a *Terry* stop under the appropriate circumstances. *See Terry v. Ohio*, 392 U.S. 1, at 30–31 (holding that an officer may conduct a limited protective weapons frisk of a lawfully stopped person if the officer has an objective articulable basis for thinking that the person may be armed and dangerous); *State v. Payne*, 406 N.W.2d 511, 513–14 (Minn. 1987) (concluding that officer's act of removing passengers from a

vehicle and searching them for weapons was permissible under *Terry*). For example, if a law enforcement officer conducts a traffic stop of a vehicle and knows that a passenger in the vehicle is on pretrial release for domestic assault and has a pretrial release condition prohibiting the possession of dangerous weapons, the officer will have, under *Terry*, a lawful basis to expand the scope of the traffic stop if the officer has reasonable articulable suspicion to believe that the passenger is possessing a dangerous weapon. The traffic stop expansion in this example is necessary and appropriate to address officer and public safety concerns, and the information gathered by the officer during the expanded stop may be used to subsequently allege a violation of the defendant's pretrial release conditions.

McKEIG, Justice (concurring).

I join in the concurrence of Justice Moore.