



# MINNESOTA JUDICIAL TRAINING UPDATE



## JUDGES HANDBOOK ON MOTOR VEHICLE STOPS



**FOREWORD: Challenging The Legality Of A Motor Vehicle Stop Is One The Most Common Legal Arguments Raised In Support Of A Motion To Suppress. This Handbook Is Designed To Provide Judges And Attorneys With A Comprehensive Reference Guide To The Laws Governing Motor Vehicle Stops. This Handbook Answers The Following Commonly Asked Questions.**

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**1. WHAT IS THE GENERAL RULE?**

**1. General Rule - Reasonable Suspicion:** A peace officer can stop and temporarily detain a motor vehicle whenever he/she has specific and articulable facts which, when taken together with reasonable inferences from those facts, reasonably warrant the intrusion.<sup>1</sup> In other words, to make an investigatory stop, an officer must have a reasonable suspicion that a crime has been or is being committed.<sup>2</sup> The test for determining the legality of a stop of a motor vehicle is whether the peace officer had a particularized and objective basis for suspecting the driver or passenger(s) of criminal behavior, or that they were otherwise engaged in wrongdoing.<sup>3</sup> While the standard is less demanding than probable cause or a preponderance of the evidence,<sup>4</sup> it requires “at least a minimal level of objective justification,”<sup>5</sup> and the stop must not be based upon “mere whim, caprice, or idle curiosity.”<sup>6</sup> The threshold question in every motor vehicle stop is whether, under the circumstances, the officer acted reasonably.

**2. Application of Fourth Amendment:** Because stopping a motor vehicle or preventing a vehicle from moving constitutes a "seizure", the Fourth Amendment clearly applies to all motor vehicle investigative stops. In other words, the Fourth Amendment prohibition against unreasonable searches and seizures requires that an investigative stop be supported by reasonable suspicion of misconduct.<sup>7</sup> Under the Fourth Amendment exclusionary rule, evidence obtained as a result of an unconstitutional (unreasonable) seizure is not admissible in a court of law.<sup>8</sup> However, the Fourth Amendment and the exclusionary rule only apply when and if a person or motor vehicle is actually stopped (seized) by police.

**3. Definition of "Stop" (Seizure):** In defining what constitutes a "stop," courts have adopted an objective test. A person or motor vehicle is considered to be stopped (seized) within the meaning of the Fourth Amendment if, by means of "physical force" or a "show of authority," a reasonable person would believe that he was not free to leave.<sup>9</sup> Under the Minnesota Constitution, a "seizure" occurs at the point a peace officer orders a person to stop (verbally or by actions),<sup>10</sup> or does or says anything that would cause a reasonable person to believe he was not free to leave.<sup>11</sup> Under the Minnesota Rule, a seizure can occur even though the person does not immediately stop or otherwise submit to the officer's show of authority.<sup>12</sup>

**4. Stop v. Contact:** Officers should remember that the mere act of approaching a person who is standing on a public street or sitting in a car that is parked and asking questions does not require a "reasonable suspicion." Such inoffensive contact between a citizen and the police is not considered to be a "seizure." In other words, a peace officer can approach, seek the cooperation of and direct questions to anyone they want without having a reasonable suspicion, as long as they do not turn the contact into a "seizure" by ordering the person to stop or by doing or saying anything that would cause the person to believe that he was not free to leave.<sup>13</sup>

## 2. WHAT CONSTITUTES A MOTOR VEHICLE?

Although the majority of motor vehicle stop cases involve the stop, detention and search of automobiles, the definition of motor vehicle is far more expansive. For example, Minnesota Statute, §169.011, subd. 42 (2010), defines "motor vehicle" as:

*"Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires. Motor vehicle does not include an electric personal assistive mobility device or a vehicle moved solely by human power."*

The term "motor vehicle" is a generic one which, in its broadest sense, includes all self-propelled vehicles, including: automobiles,<sup>14</sup> trucks,<sup>15</sup> farm tractors,<sup>16</sup> tractor-trailer rigs,<sup>17</sup> trailers attached to cars,<sup>18</sup> camper-type vans,<sup>19</sup> self-contained mobile homes,<sup>20</sup> snowmobiles,<sup>21</sup> all-terrain vehicles,<sup>22</sup> aircraft,<sup>23</sup> and watercraft,<sup>24</sup> etc.

## 3. WHAT CONSTITUTES REASONABLE SUSPICION?

**1. What is Reasonable Suspicion?** "Reasonable suspicion" entails some minimal level of objective justification for making a stop.<sup>25</sup> It is something more than instinct or unparticularized suspicion or "hunch," but less than the level of suspicion required for probable cause.<sup>26</sup>

**2. Minimal Factual Basis Needed to Justify Stop:** The threshold for an investigative stop is "very low."<sup>27</sup> Although any traffic violation will justify a motor vehicle stop, an actual traffic violation need not occur.<sup>28</sup> The officer must be able to point to "specific and articulable facts that, along with rational inferences from those facts, reasonably warrant the intrusion of a stop."<sup>29</sup> The stop must not be the product of mere whim, caprice or idle curiosity. In other words, a peace officer cannot stop a motor vehicle without cause or reason, nor can an officer stop a vehicle based upon mere curiosity, suspicion, or assumption unsupported by facts.<sup>30</sup>

**3. The Totality of the Circumstances:** In determining whether the stop was justified, the totality of the circumstances surrounding the stop must be taken into account.<sup>31</sup> The process does not deal with "hard certainties" but rather with probabilities.<sup>32</sup> Furthermore, the evidence must be viewed from the vantage point of those versed in the field of law enforcement. In other words, trained peace officers can make inferences and deductions that might elude untrained persons.<sup>33</sup>

- a) **Objective Determination (Pretextual Stops)** - Ascertaining "specific and articulable facts" is an objective determination. In other words, it doesn't matter when or why a peace officer decides to stop a driver as long as sufficient objective facts justifying the stop exist at the time the stop occurs.<sup>34</sup> A traffic stop will withstand a pretext challenge asserted in violation of the Fourth Amendment if it was

objectively based on a reasonable and articulable suspicion of criminal activity.<sup>35</sup> An officer's subjective intentions are generally irrelevant to the analysis of whether there was an objectively reasonable basis for the seizure.<sup>36</sup>

- b) Consideration of Past Criminal Conduct - A motor vehicle occupant's past criminal behavior is a factor an officer may take into consideration in forming a reasonable suspicion justifying an investigative stop.<sup>37</sup>
- c) Reasonable Mistakes Made by Peace Officers – An officer's articulable suspicion may turn out to be mistaken without invalidating the stop.<sup>38</sup> The mistaken belief that the driver of a motor vehicle was a person whose driver's license was suspended was sufficient to justify an investigative stop, even though the driver turned out to be somebody else.<sup>39</sup> An investigative stop was valid where a peace officer acted reasonably in stopping a car that the officer believed to be the one they had been following which had engaged in "questionable" driving activity. The fact that police actually stopped the wrong car did not invalidate the stop.<sup>40</sup> However, an investigative stop is invalid where the stop is based on an officer's mistaken interpretation of the law, whether or not the stop was made in good faith.<sup>41</sup>
- d) Innocent Conduct - The fact that the suspicion-arousing behavior eventually proves to be completely innocent will not invalidate the stop. The relevant inquiry is not whether particular conduct is innocent or guilty, but the degree of suspicion that attaches to particular types of non-criminal acts."<sup>42</sup>
- e) Insufficient Reasons to Stop Motor Vehicle - The mere fact that a person is in a high-crime area, is a stranger in an area, or appears to be lost does not alone constitute a sufficient basis to justify an investigative stop.<sup>43</sup> The fact that a driver slows down at a yield sign at the end of a parking ramp does not constitute an "articulable ground" for an investigative stop.<sup>44</sup> Although continuous or unusual weaving within the lane will often support a lawful stop, an investigative stop of an automobile after the vehicle swerved once in the road, but stayed in its lane, was held improper.<sup>45</sup> On the other hand, valid stops can occur when the vehicle is seen at an unusual time in an area with a history of crimes or a potential for crimes, even when no crime is currently reported. In such cases it is important that the officer be able to articulate what about the vehicle and circumstances was suspicious.<sup>46</sup>

#### 4. WHAT ABOUT INFORMATION OBTAINED FROM INFORMANTS?

**1. Anonymous Informants:** If the tip comes from a purely anonymous source, the information will not justify an investigative stop of a suspect's vehicle unless the officer is able to verify the reliability of the information. That is most often done through the officer locating the vehicle and then making personal observations consistent with the anonymous tip. The more facts the officer can independently verify, the more likely the anonymous tip will be found reliable, thereby providing the requisite reasonable suspicion to justify an investigative stop.<sup>47</sup> However, if an anonymous informant provides information face-to-face with an officer courts have upheld stops and seizures even when the officer does not observe corroborating driving conduct.<sup>48</sup> Such direct contact enhances the informant's credibility because he or she can be held accountable for any false information.<sup>49</sup> In addition, when the circumstances make it appear that the anonymous informant is a private citizen not involved in criminal activity, the informant is presumed to be reliable.<sup>50</sup> An informant's tip may carry sufficient "indicia of reliability" to justify an investigative stop (reasonable suspicion) even though it may be insufficient to support an arrest or a search warrant (probable cause).

**2. Private Citizen Informants:** Police may rely on an informant's tip if the tip has sufficient "indicia of reliability."<sup>51</sup> When assessing reliability, courts examine the credibility of the informant and the basis of the informant's knowledge under the totality of the circumstances.<sup>52</sup> As a general rule, whenever a private

citizen informant calls the police with specific information concerning an intoxicated person driving a motor vehicle or other criminal activity, as long as the informant is willing to identify himself/herself for police and the circumstances of the tip suggest that the informant had a basis for the allegation of criminal activity, such as observations of impaired driving conduct or personal interaction, the information provided will constitute "reasonable suspicion" justifying an investigative stop even though the officer has made no personal observations of intoxicated driving or other criminal activity. Information obtained from a known informant carries a presumption of reliability because the police could hold the identified informant accountable if he or she knowingly provided false information.<sup>53</sup> Any minor traffic violation observed and reported by an identified private citizen is sufficient to support a stop, and citizen need not conclude that driver was likely intoxicated.<sup>54</sup>

Note: If the information received from the known informant is sketchy or otherwise of questionable reliability, it is recommended that officers verify the information through personal observations. However, if the information received from the known informant is clear, specific and of sufficient detail, there is no requirement that a peace officer delay the investigative stop in order to confirm, through personal observations, the reliability of the information.<sup>55</sup>

**3. Other Police Agencies:** Under the "collective knowledge" approach, the factual basis for stopping a motor vehicle may arise from information supplied by other officers or law enforcement agencies.<sup>56</sup> The "collective knowledge" principle imputes the entire knowledge of the police force to all officers and applies to the stops of motor vehicles. Thus, an officer may rely on information from another officer or known to the dispatcher.<sup>57</sup> However, a motor vehicle stop will be deemed illegal if facts adding up to a reasonable suspicion were not in the hands of the officer or agency that made the request to stop the vehicle.<sup>58</sup> In other words, an investigative stop can be based on a "police bulletin," a "wanted flyer" or other police information if the bulletin, wanted flyer or other information was issued on the basis of articulable facts that add up to a reasonable suspicion.<sup>59</sup>

## 5. CAN OFFICERS STOP A VEHICLE OUTSIDE THEIR JURISDICTION?

**1. Investigative Stops:** As a general rule, a police officer outside his jurisdiction does not have the right to make an investigative stop unless he is acting in the *course and scope of his employment* while outside his jurisdiction.<sup>60</sup>

For example: While inside his jurisdiction, a peace officer observed a driver brake "suddenly or abruptly" before leaving a parking lot. The officer followed the car outside his jurisdiction and soon noticed that the car was weaving within its lane. Even though the trial court ruled that the "weaving" of the car and the resulting investigative stop occurred outside the officer's jurisdiction, the Minnesota Supreme Court<sup>61</sup> upheld the investigative stop (and the resulting DWI arrest) as lawful because the officer was acting "*in the course and scope of (his) employment*" when he stopped the vehicle while outside his jurisdiction.

Note: Other than the above example, it is unclear how far Minnesota Appellate Courts will go in defining when and under what circumstances a peace officer is acting "in the course and scope of his employment while outside his jurisdiction." It is clear, however, that simply being "on duty" is not enough. If there is any question about the officer's status, arrangements should be made for an officer from the local law enforcement agency to make the investigative stop.

**2. Arrests:** Statutory authority for out-of-jurisdiction arrests and, in some instances for investigative stops, is set forth in M.S. § 629.40 (2010) "Allowing Arrests Anywhere in State."<sup>62</sup>

Subdivision 2: Out of Jurisdiction Arrests - In any case where a peace officer could arrest a person for a criminal offense committed within the officer's jurisdiction, and the person to be arrested escapes from or leaves the officer's jurisdiction, the officer may pursue and apprehend the person to be arrested anywhere in the state. (The above is a summary of the actual statutory provision.)

Subdivision 3: Authority for Out of Jurisdiction Arrests - When a peace officer, in obedience to a court order or *in the course and scope of employment*, or in fresh pursuit of a suspect, is outside his jurisdiction, the officer is considered to be serving in the regular line of duty as fully as though the service was within the officer's jurisdiction. (The above is a summary of the actual statutory provision and is the section most often relied upon to justify an out-of-jurisdiction investigative stop.)

**3. Citizens Arrest:** If a peace officer is outside his jurisdiction and is not acting in the course and scope of (his) employment, in obedience to a court order, in fresh pursuit of a suspect or is off-duty, he does not have the right to arrest a suspect in his capacity as a peace officer (except when confronted with circumstances that would permit the use of deadly force under M.S. § 609.066).<sup>63</sup> However, nothing in this section limits the officer's authority to arrest as a private person.<sup>64</sup>

Note: Citizens arrest and investigative stops - Although the citizen arrest statute, Minn. Stat. §629.37, gives a private party the authority to arrest whenever a public offense is committed in their presence or for a felony offense based upon a standard of probable cause, the law does not confer on a private party the authority to make an investigative stop based on reasonable suspicion.<sup>65</sup>

## 6. VEHICLE STOPS FOR COMPLETED CRIMES

### Misdemeanor vs. Felony

**1. Completed Crimes (felonies vs. misdemeanors):** Investigative motor vehicle stops based on reasonable suspicion that the driver or passenger was involved in or is wanted in connection with, an ongoing or completed *felony* offense, are valid.<sup>66</sup> However, a peace officer may not stop a motor vehicle for the sole purpose of investigating a *completed misdemeanor offense*.<sup>67</sup> As a general rule, a "*completed misdemeanor offense*" is any misdemeanor crime that was committed prior to the day of the stop.<sup>68</sup>

For example: An investigative stop resulting from an officer's suspicion that the driver, or at least the driver's car, had been involved in a misdemeanor "no pay" gas theft approximately two months earlier was illegal.<sup>69</sup>

**2. Ongoing Misdemeanor Crimes:** If a peace officer has reasonable suspicion that a driver or occupant was involved in a misdemeanor crime which occurred in the very recent past (such as the same day of the stop or within the preceding 24 hours), then the crime will be considered an ongoing offense rather than a "*completed misdemeanor offense*" and the officer may stop the vehicle to investigate.<sup>70</sup>

For example: A late night investigative stop of a motor vehicle based upon a private citizen's report that the occupants had just committed a misdemeanor theft (theft of some tires at a gas station that same night) was upheld by the Minnesota Court of Appeals.<sup>71</sup>

**3. Exceptions:** The above limitation on investigative stops for completed misdemeanor crimes does not apply if the purpose for the stop is to place the driver or occupant of a motor vehicle under arrest for a misdemeanor offense that the officer has authority to arrest for, even though not committed in his presence (i.e. domestic assault;<sup>72</sup> violation of order for protection or restraining order;<sup>73</sup> violation of no contact order;<sup>74</sup> trespass on school property;<sup>75</sup> DWI and aggravated DWI;<sup>76</sup> theft by swindle,<sup>77</sup> or any of the following gross misdemeanor offenses: theft,<sup>78</sup> criminal damage to property 3rd degree,<sup>79</sup> check forgery,<sup>80</sup> harassment or stalking,<sup>81</sup> financial transaction card fraud<sup>82</sup>).

## 7. APPROACHING AN ALREADY STOPPED VEHICLE

**1. General Rule:** If a peace officer approaches an already stopped vehicle and speaks with the driver or looks through the car window to observe what is inside, the officer's actions do not constitute a "seizure" within the meaning of the Fourth Amendment (as long as the occupants are free to leave).<sup>83</sup> In other words, a peace officer has as much right as anyone else to be in public places, and they may use as a basis for developing a "reasonable suspicion" plain view observations that are made upon an approach to a stopped motor vehicle.<sup>84</sup>

**2. Asking Driver for Identification:** Approaching a motor vehicle in a public place and asking the driver for his name does not effect a stop or "seizure" under the Fourth Amendment.<sup>85</sup> However, an officer must have "specific and articulable facts which warrant the intrusion" (i.e. reasonable suspicion) before it is proper to ask the driver for identification (versus simply asking the driver for his name) or to step out of the vehicle.<sup>86</sup> As a general rule, requesting identification from a person may constitute a seizure if, under the totality of circumstances, a reasonable person would have believed that he/she was not free to leave or otherwise decline the encounter.<sup>87</sup>

**3. "Good Samaritan" Investigations:** Investigations to determine if the occupants of a stopped vehicle need assistance are generally held not to be seizures and, hence, are not prohibited by the Fourth Amendment. Thus, an automobile was not unconstitutionally seized when the officer walked up to a stopped vehicle to see if there was a problem and then observed that the driver was intoxicated.<sup>88</sup> However, if a peace officer parks a squad car so as to prevent the driver from leaving, there may be a "seizure" under the Fourth Amendment. Preventing a motor vehicle or occupant from leaving would require a reasonable suspicion.<sup>89</sup>

Note: The use of flashing squad lights (for safety reasons) when pulling in behind an already stopped vehicle is not, in the absence of other factors, such a strong show of authority that its use will turn an otherwise "Good Samaritan" approach into a Fourth Amendment seizure requiring reasonable suspicion of criminal activity.<sup>90</sup>

## 8. WHAT CAN AN OFFICER DO ONCE A VEHICLE IS STOPPED?

**1. Plain View Observations:** After a car is lawfully stopped, officers may approach and shine a flashlight through the windows to observe whatever is in plain sight.<sup>91</sup> If the officers then see evidence in plain view through the door or window of the car, they may seize it. See Chapter 3 "Plain View Seizure of Evidence".

**2. Ordering Driver and Occupants of Motor Vehicle Out of Car:** Following a routine traffic stop or otherwise valid investigative stop of a motor vehicle it is proper for the peace officer, for his/her safety, to

order the driver and passengers to get out of the vehicle while the investigation is being completed.<sup>92</sup> The officer may also open the door of a stopped vehicle.<sup>93</sup>

**3. Demand for Identification and Proof of Insurance:** A demand to see license, registration papers, proof of insurance, and the vehicle identification number (VIN) is within the scope of police authority pursuant to a lawful motor vehicle stop.<sup>94</sup> However, although M.S. § 171.08 requires a driver to display his/her drivers license upon demand of a peace officer, that provision only applies if the investigative stop is lawful (i.e. based on reasonable suspicion).<sup>95</sup> And under that same provision the licensee shall also, upon request of any officer, write the licensee's name in the presence of the officer to determine the identity of the licensee.

**4. Limited Search to Inspect Vehicle Identification Number (VIN):** Federal law requires that the VIN number be placed inside the passenger compartment in plain view of someone outside the automobile.<sup>96</sup> Following a valid motor vehicle stop, in order to observe a vehicle identification number (VIN), a peace officer may reach into the passenger compartment of a vehicle to move papers obscuring the VIN number after the driver have exited the vehicle. If officers allow the driver to remain inside the car they would have the right to order the driver to move papers or anything else that may be obscuring the VIN number.<sup>97</sup>

**5. Investigative Questions and the Application of *Miranda*:** Following a lawful investigative stop, an individual in a car may be detained for a reasonable period of time and may be asked questions for the purpose of investigating the suspicious or unlawful behavior giving rise to the stop.<sup>98</sup> As a general rule, the *Miranda* warnings are not required in temporary investigative detentions. Even though a routine traffic stop is a “seizure” within the Fourth Amendment, because they are usually temporary, brief and public, they are not considered “custodial” and, therefore, *Miranda* warnings are not required.<sup>99</sup> Brief questioning of a driver, even while in the patrol car, does not automatically convert an ordinary traffic stop into a de facto arrest so as to require the *Miranda* warnings.<sup>100</sup> However, if a motorist detained pursuant to a traffic stop “is subjected to treatment that renders him ‘in custody’ for practical purposes, then he would be entitled to all the protections prescribed by *Miranda*.”<sup>101</sup> In DWI cases, *Miranda* warnings are not required prior to field sobriety tests or the Implied Consent Advisory.<sup>102</sup>

**6. Expanding the Scope of the Initial Stop:** The scope of a stop must be “strictly tied to and justified by the circumstances” that rendered the initial stop permissible.<sup>103</sup> 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.” While the reasonable suspicion standard is less demanding than probable cause or a preponderance of the evidence, it still requires at least a minimal level of objective justification.<sup>104</sup>

## 9. HOW LONG CAN THE VEHICLE & OCCUPANTS BE DETAINED?

Although an investigative stop and detention of a motor vehicle must be temporary and last no longer than is necessary to effectuate the purpose of the stop, there is no hard-and-fast time limit for a permissible investigative stop.<sup>105</sup> The United States Supreme Court has established the following standard for evaluating the length of detention:

*"In assessing whether a detention is too long in duration to be justified as an investigative stop, we consider it appropriate to examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant."*<sup>106</sup>

Any expansion of the scope or duration of a traffic stop must be justified by a reasonable articulable suspicion of other criminal activity.<sup>107</sup> See Section 1.8 #6 above.

For example - Sixty-one minute detention upheld: The detention of a suspect for 61 minutes after a peace officer stopped the suspect's car was upheld by the Minnesota Supreme Court<sup>108</sup> because it was the only car in the area in which a burglary had been reported; the area was serviced by a small police department; the officer who participated in the investigation had to be awakened at home and summoned to help; three suspects were involved; and it took time for one officer to test the shoes of the suspects against the shoe prints found around the store that had been robbed.<sup>109</sup>

Note: The length of a lawful detention will depend upon the circumstances of the individual case. Generally, the reasonableness of the length of detention depends on the complexity of the investigation. As the introductory questioning proceeds, the suspect's answers may either allay or augment the officer's suspicions. Continuing suspicious behavior during detention may require additional investigation and soon may ripen into probable cause warranting a full custodial arrest.

## 10. CAN VEHICLES BE SEARCHED WITHOUT A WARRANT?

Under the Fourth Amendment, all warrantless searches are presumptively unreasonable unless the search falls within an established exception to the warrant requirement.<sup>110</sup> There are seven (7) general exceptions under which a warrantless motor vehicle search may be justified:

## 11. SEVEN EXCEPTIONS TO THE WARRANT REQUIREMENT:

The Following Seven Exceptions To The Warrant Requirement Will Be Individually Addressed In Future Judicial Training Updates:

1. **SEARCH INCIDENT TO ARREST**
2. **PLAIN VIEW SEIZURE OF EVIDENCE**
3. **PROBABLE CAUSE SEARCH FOR EVIDENCE**
4. **INVENTORY SEARCH**
5. **PROTECTIVE WEAPONS SEARCH**
6. **CONSENT SEARCH**
7. **MEDICAL EMERGENCY SEARCH**

**RESOURCES:** "MINNESOTA HANDBOOK ON MOTOR VEHICLES: STOPS, WARRANTLESS SEARCHES, SEIZURES"; Michelle Margoles, University of Minnesota Extern; Ian Mitchell, University of Minnesota Extern; Chelsey Abrahamson, University of Minnesota Extern; William Ross, Law Clerk; Heather Schuetz, Court Reporter.

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**ENDNOTES:**

- <sup>1</sup> *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000); *State v. McKinley*, 232 N.W.2d 906 (Minn. 1975). See also *United States v. Arvizu*, 534 U.S. 266, 273, 122 S. Ct. 744, 750 (2002) (“reasonable suspicion”).
- <sup>2</sup> *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001); *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (“a limited investigative stop is lawful if the state can show the officer to have had a ‘particularized and objective basis for suspecting the particular person stopped of criminal activity’”); *United States v. Thompson*, 906 F.2d 1292, 1295 (8th Cir. 1990); *United States v. Cortez*, 449 U.S. 411, 417–18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).
- <sup>3</sup> *State v. Anderson*, 683 N.W.2d 818, 822-23 (Minn. 2004) (limited investigatory stop allowed “if the state can show that the officer had a ‘particularized and objective basis for suspecting the particular person stopped of criminal activity’”); *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (“An actual violation of the vehicle and traffic laws need not be detectable”); *State v. L’Italien*, 355 N.W.2d 709 (Minn. 1984); *Wilkes v. Commissioner of Public Safety*, 777 N.W.2d 239, 243 (Minn. Ct. App. 2010); *State v. Schmitz*, 369 N.W.2d 579 (Minn. Ct. App. 1985); *State v. Capers*, 451 N.W.2d 367 (Minn. Ct. App. 1990); *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979); *United States v. Cortez*, 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981).
- <sup>4</sup> *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008); *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003) (a brief investigatory stop requires only reasonable suspicion of criminal activity, a lesser quantum of proof than probable cause).
- <sup>5</sup> *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000); *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008).
- <sup>6</sup> *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003); *State v. Pike*, 551 N.W.2d 919, 921 (Minn.1996).
- <sup>7</sup> *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008); *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (ruling that the Minn. Const. art I, § 10 “now explicitly adopt[s] the principles and framework of *Terry* for evaluating the reasonableness of seizures during traffic stops even when a minor law has been violated”).
- <sup>8</sup> *Weeks v. United States*, 232 U.S. 383, 34 S.Ct. 341 (1914); *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691 (1961); *State v. Jackson*, 742 N.W.2d 163, 177-78 (Minn. 2007).
- <sup>9</sup> *Brendlin v. California*, 551 U.S. 249, 254, 127 S. Ct. 2400, 2405 (2007); *Terry v. Ohio*, 392 U.S. 1, 19 n. 16, 88 S.Ct. 1868, 1879 n. 16 (1968) (A seizure occurs “when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen”); *State v. Cripps*, 533 N.W.2d 388, 391 (Minn.1995)
- <sup>10</sup> *Matter of Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993) (holding once a police officer ordered defendant to stop, “there clearly was a ‘seizure’”).
- <sup>11</sup> *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995) (“For purposes of Article I, Section 10 of the Minnesota Constitution . . . a person has been seized if in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter”); *Matter of Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn.1993) (“Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled. In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person”). See, e.g., *Overvig v. Comm’r of Pub. Safety*, 730 N.W.2d 789 (Minn. Ct. App. 2007) (officer did not seize motorist merely opening door of motorist’s car, which was running in empty parking lot late at night, where officer did not park his vehicle in a position blocking motorist’s car from moving in either direction and did not activate his emergency lights, and officer did not make any other showing of authority, such as displaying a weapon or using a tone of voice that would indicate that motorist could not terminate the encounter once the officer opened the door); *State v. Johnson*, 645 N.W.2d 505 (Minn. Ct. App. 2002) (defendant was “seized” when officers seized defendant’s State identification card and ran a warrants check); *State v. Bergerson*, 659 N.W.2d 791, 795 (Minn. Ct. App. 2003) (holding a trailing squad car with flashing lights constitutes a seizure because “no reasonable driver would believe that he or she is free to disregard or terminate the encounter with police”).
- <sup>12</sup> *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995); *In re E.D.J.*, 502 N.W.2d 779 (Minn. 1993) (The Minnesota Supreme Court adopts the “Minnesota Rule” on when a “seizure” occurs and rejects the more liberal U.S. Supreme Court rule enacted in *California v. Hodari*); *California v. Hodari* D. 499 U.S. 621, 626, 111 S.Ct. 1547, 1551, 113 L. Ed. 2d 690 (1991) (a suspect must actually stop or otherwise submit to an officer’s show of authority before a Fourth Amendment seizure occurs; “an arrest requires either physical force (as described above) or, where that is absent, submission to the assertion of authority”).
- <sup>13</sup> *Matter of Welfare of E.D.J.*, 502 N.W.2d 779, 782 (Minn.1993) (generally an officer approaching and asking questions of a person standing on a public street or sitting in a parked car is not a seizure); see, e.g., *State v. Colosimo*, 669 N.W.2d 1, 4 (Minn. 2003) (holding that an officer walking up to and conversing with defendant while defendant’s boat rested on the trailer of a parked portage truck is not a seizure); *Crawford v. Commissioner of Public Safety*, 441 N.W.2d 837, 839 (Minn. Ct. App. 1989) (officer’s approach of an already-stopped vehicle does not constitute a Fourth Amendment seizure); However, if the officer summons the person to come over and then requests identification and requires questions to be answered, a “seizure” has occurred. See *State v. Day*, 461 N.W.2d 404, 407 (Minn. Ct. App. 1990).
- <sup>14</sup> *State v. Lепley*, 343 N.W.2d 41 (Minn. 1984); *Taulelle v. Allstate Insurance Company*, 207 N.W.2d 736 (Minn. 1973).
- <sup>15</sup> *United States v. Bradshaw*, 490 F.2d 1097 (4th Cir. 1974).
- <sup>16</sup> *Johnson v. Bergquist*, 239 N.W. 772 (Minn. 1931).

- <sup>17</sup> *United States v. Maspero*, 496 F.2d 1354, 1356 (5th Cir. 1974) (although not actually upon the open road when searched, the truck was in a semi-public place, had easy and immediate access to the road, and the information imparted to the agents that departure of the tractor-trailer rig could be imminent); *Merritt v. Comm'r of Pub. Safety*, C3-02-1393, 2003 WL 21006940 (Minn. Ct. App. May 6, 2003) (no formal finding of tractor-trailer as "motor vehicle," but court affirmed violation of Minnesota implied consent statute when intoxicated and seated in tractor-trailer).
- <sup>18</sup> *State v. Russell*, 164 N.W.2d 65 (Minn. 1969); *Atkins v. State*, 307 N.E.2d 73 (Ind. Ct. App. 1974).
- <sup>19</sup> *State v. Lepley*, 343 N.W.2d 41 (Minn. 1984).
- <sup>20</sup> *United States v. Miller*, 460 F.2d 582 (10th Cir. 1972); *California v. Carney*, 471 U.S. 386, 105 S.Ct. 2066, 85 L.Ed.2d 406 (1985). (The U.S. Supreme Court has held that the automobile exception was applicable to a motor home parked on a public parking lot, explaining that the vehicle exception "has historically turned on the ready mobility of the vehicle, and on the presence of the vehicle in a setting that objectively indicates that the vehicle is being used for transportation"); *State v. Lepley*, 343 N.W.2d 41 (Minn. 1984); *Michigan v. Thomas*, 458 U.S. 259 (1982) (Relevant factors in determining if motor home is readily mobile includes: if elevated on blocks, whether vehicle is licensed, whether it is connected to utilities, and whether it has convenient access to a public road).
- <sup>21</sup> Minn. Stat. § 84.91 (1990); *Melby v. Commissioner of Public Safety*, 367 N.W.2d 527 (Minn. 1985).
- <sup>22</sup> *Id.*
- <sup>23</sup> Minn. Stat. § 360.0752 (1992); *United States v. Nigro*, 727 F.2d 100 (6th Cir. 1984) (Includes airplanes with "inherent mobility" without regard to whether police could have prevented take off).
- <sup>24</sup> Minn. Stat. § 86B.331 (1990); *United States v. Hensel*, 699 F.2d 18 (1st Cir. 1983) (But not every boat, commercial or pleasure craft is fair game for warrantless searches); *United States v. Zurosky*, 614 F.2d 779 (1st Cir. 1979); *United States v. Cadena*, 588 F.2d 100 (5th Cir. 1979).
- <sup>25</sup> *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S.Ct. 673 (2000) ("While the standard is less demanding than probable cause or a preponderance of the evidence, it 'requires at least a minimal level of objective justification for making the stop'").
- <sup>26</sup> *United States v. Sokolow*, 490 U.S. 1, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989); *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000); *State v. Johnson*, 444 N.W.2d 824, 825-26 (Minn. 1989).
- <sup>27</sup> *State v. DeRose*, 365 N.W.2d 284 (Minn. Ct. App. 1985). See also *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (the reasonable suspicion standard is "not high"); *Frank v. Commissioner of Public Safety*, 384 N.W.2d 574 (Minn. Ct. App. 1986) (Factual basis to stop a car is "minimal").
- <sup>28</sup> *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004) ("Generally, if an officer observes a violation of a traffic law, no matter how insignificant the traffic law, that observation forms the requisite particularized and objective basis for conducting a traffic stop"); *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) ("An actual violation of the vehicle and traffic laws need not be detectable"); *Wilkes v. Comm'r of Pub. Safety*, 777 N.W.2d 239, 243 (Minn. Ct. App. 2010); *Frank v. Commissioner of Public Safety*, 384 N.W.2d 574 (Minn. Ct. App. 1986); *State v. Reese*, 388 N.W.2d 421 (Minn. Ct. App. 1986).
- <sup>29</sup> *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001). See also *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 66 L.Ed.2d 621 (1981) (officers must have a "particularized and objective basis for suspecting the particular person stopped of criminal activity"); *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000); *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (investigative stop is lawful "if the state can show the officer to have had a 'particularized and objective basis for suspecting the particular person stopped of criminal activity'"); *State v. Wagner*, 637 N.W.2d 330, 336 (Minn. Ct. App. 2001) (trooper had an objective and reasonable suspicion to stop vehicle when trooper observed defendant drive on the shoulder, cross the center line, then speed up and turn sharply).
- <sup>30</sup> *Delaware v. Prouse*, 440 U.S. 648, 99 S.Ct. 1391, 49 L.Ed.2d, 660 (1979); *State v. Britton*, 604 N.W.2d 84, 89 (Minn. 2000) (fact that the vehicle defendant was driving had a broken window did not afford police a reasonable suspicion that the vehicle was stolen, so as to justify an investigatory stop); *State v. Pike*, 551 N.W.2d 919, 922 (Minn. 1996) (stop upheld based upon trooper's knowledge that owner of vehicle he observed being driven had a revoked license, and upon the fact that the trooper had no reason to believe that the vehicle's owner was not driving the vehicle); *State v. Moffat*, 450 N.W.2d 116 (Minn. 1990) (Stop upheld - suspects car found in area of a burglary and was the only car in the area moments after burglary occurred); *State v. Johnson*, 444 N.W.2d 824 (Minn. 1989) (Stop upheld based upon driver's deliberate attempt to evade a peace officer); *State v. Gallagher*, 275 N.W.2d 803 (Minn. 1979) (This decision contains an analysis of "furtive gestures" as a basis for automobile searches"); *State v. Hodgman*, 257 N.W.2d 313 (Minn. 1977) (Stop upheld - youthful occupant staring out window, appeared to be in an alcohol or drug induced stupor); *State v. Barber*, 241 N.W.2d 476 (Minn. 1976) (License plates wired rather than bolted to car - stop upheld); *State v. McKinley*, 232 N.W.2d 906 (Minn. 1975) (Equipment violation-stop upheld); *State v. Johnson*, 713 N.W.2d 64, 67 (Minn. Ct. App. 2006) (a reasonable, articulable suspicion existed for a traffic stop where light configuration on driver's motorcycle violated statute); *State v. Bergerson*, 659 N.W.2d 791, 796 (Minn. Ct. App. 2003) (absent any other activity or information about Bergerson, merely purchasing two generic items from a hardware store (rubber tubing and acetone), which separately and together have numerous legitimate uses, does not create reasonable suspicion of criminal activity); *State v. Kittridge*, 613 N.W.2d 771, 773 (Minn. Ct. App. 2000) (stop upheld where officers observed defendant's vehicle violated the law by displaying an expired license plate on the front of the truck he was driving); *State v. Haataja*, 611 N.W.2d 353 (Minn. Ct. App. 2000) (police officer had reasonable, articulable suspicion that defendant was driving while intoxicated, based upon his observation of defendant driving unusually slowly and impeding traffic in residential neighborhood at 1:30 a.m.); *Johnson v. Morris*, 445 N.W.2d 563 (Minn. Ct. App. 1989) (Investigative stop upheld, reflectors on the vehicle were not clearly visible and officers were aware of grain thefts in the area); *Purnell v. Commissioner of Public Safety*, 410 N.W.2d 439 (Minn. Ct. App. 1987) (Preventing movement away from the scene of a crime, "freezing the situation" may be necessary when police are unsure of perpetrator's identity); *Applegate v. Commissioner of Public Safety*, 402 N.W.2d 106, 108 (Minn. Ct. App. 1987) (Court lists six factors to consider in determining the validity of stopping a motor vehicle in the vicinity of a recently committed offense); *State v. Clark*, 394 N.W.2d 570, 572 (Minn. Ct. App. 1986) (Pointing out muffler noise as sufficient basis to uphold stop); *State v. Henderson*, 382 N.W.2d 275

(Minn. Ct. App. 1986) (Stop upheld - vehicle driving slowly through residential alley late at night in area victimized by recent burglaries); *State v. Randle*, 381 N.W.2d 88 (Minn. Ct. App. 1986) (Stop upheld based on officers' experiences, knowledge of criminal patterns, movement of car, and actions of occupants); *Berg v. Commissioner of Public Safety*, 370 N.W.2d 75 (Minn. Ct. App. 1985); *State v. Pierce*, 347 N.W.2d 829, 833 (Minn. Ct. App. 1984) (Upholding stop based on muffler noise).

<sup>31</sup> *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) ("In deciding the propriety of investigative stops, we review the events surrounding the stop and consider the totality of the circumstances in determining whether the police had a reasonable basis justifying the stop"); *State v. Hollins*, 789 N.W.2d 244, 248 (Minn. Ct. App. 2010), *review denied* (Dec. 22, 2010).

<sup>32</sup> *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621 (1981); *State v. Balenger*, 667 N.W.2d 133, 139 (Minn. Ct. App. 2003); *State v. Delaney*, 406 N.W.2d 584, 586 (Minn. Ct. App. 1987).

<sup>33</sup> *State v. Askerooth*, 681 N.W.2d 353, 369 (Minn. 2004) (we allow that the special training of police officers may lead them to arrive at "inferences and deductions that might well elude an untrained person"); *O'Neill v. Commissioner of Public Safety*, 361 N.W.2d 471 (Minn. Ct. App. 1985).

<sup>34</sup> *State v. Britton*, 604 N.W.2d 84, 88 (Minn. 2000) (Our task is not to decide whether the particular officer's suspicion was genuine (and in fact we can easily accept that it was); rather, we examine whether the suspicion was objectively reasonable); *State v. DeSart*, 357 N.W.2d 416 (Minn. Ct. App. 1984).

<sup>35</sup> *Whren v. United States*, 517 U.S. 806, 116 S. Ct. 1769 (1996); *State v. Everett*, 472 N.W.2d 864, 868-69 (Minn. 1991); *State v. Battleson*, 567 N.W.2d 69, 71 (Minn. Ct. App. 1997); *State v. Anim*, No. A06-1556 (Minn. Ct. App. May 27, 2008) (unpublished opinion).

<sup>36</sup> *Whren*, 517 U.S. at 813, 116 S. Ct. at 1774; see also *State v. Steinbach*, No. A08-0409 (Minn. Ct. App. Apr. 28, 2009) (unpublished opinion) (there was a reasonable articulable suspicion for the stop where officer learned driver had a permit only, observed vehicle change lanes without signaling and swerve, and officer's subjective intent that the vehicle was casing a business had no bearing on the reasonableness of the stop); *State v. Micius*, No. A09-865, 2010 WL 2572116 (Minn. Ct. App. June 29, 2010) (unpublished opinion) (stop lawful despite alleged pretext where appellant committed a traffic violation).

<sup>37</sup> *State v. LaMar*, 382 N.W.2d 226 (Minn. Ct. App. 1986).

<sup>38</sup> *State v. Barber*, 241 N.W.2d 476 (Minn. 1976) (a state trooper observed a car with license plates held on with baling wire. Believing the occupants might be switching plates from car to car, he stopped the car. It turned out the plates were not being switched from car to car, but the Supreme Court held that the inference drawn was rational and justified the stop which led to an arrest for driving after suspension; *State v. King* NO. A09-1214 (Minn. Ct. App. Apr. 13, 2010) (unpublished opinion) (stop based on failure to turn on headlights where officer mistaken by 3 minutes about time of sunset is good faith mistake of fact); *State v. Mendel*, No. C4-02-91 (Minn. Ct. App. Sept. 17, 2002) (unpublished opinion) (officer's belief that appellant had crossed center line was a reasonable mistake of fact even though later investigation revealed his perception had been faulty); *Gertken v. Commissioner of Public Safety*, No. C0-96-319 (Minn. Ct. App. Sept. 3, 1996) (unpublished opinion) (stop valid when officer mistakenly but reasonable believed that driver had high beams on); *State v. Jackman*, No. A06-1192 (Minn. Ct. App. Aug. 21, 2007) (unpublished opinion) (stop valid even though officer had wrong license plate number of vehicle identified from surveillance of drug activity).

<sup>39</sup> *City of St. Paul v. Vaughn*, 237 N.W.2d 365 (Minn. 1975); *United States v. Sokolow*, 490 U.S. 1, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989).

<sup>40</sup> *State v. Johnson*, 392 N.W.2d 685 (Minn. Ct. App. 1986). See also *State v. Sanders*, 339 N.W.2d 557, 558 (Minn. 1983) ("Police had reasonable basis for suspecting that defendant was person for whom probable cause to arrest existed; therefore, stop of defendant to identify him was valid even though it turned out that police were mistaken in their suspicion").

<sup>41</sup> *State v. Anderson*, 683 N.W.2d 818, 824 (Minn. 2004) (stop invalid where officer stopped vehicle based upon mistaken interpretation of statute, "whether [the stop was] made in good faith or not"); *State v. Kelly*, No. C9-02-295 (Minn. Ct. App. July 23, 2002) (unpublished opinion) (officer's belief that road was closed was a mistake of law and so officer did not have objective basis for stop); *Timmerman v. Commissioner of Public Safety*, No. C0-00-973 (Minn. Ct. App. Nov. 21, 2002) (unpublished opinion) (stop invalid when officer mistakenly believed statute required driver to signal turn from private driveway); *State v. Kilmer*, 741 N.W.2d 607 (Minn. Ct. App. 2007) (stop invalid because officer's belief that running yellow semaphore was illegal was a mistake of law); *State v. Smith*, No. A07-2426 (Minn. Ct. App. Aug. 5, 2008) (unpublished opinion) (officer's belief that tires passing the stop sign before coming to a stop was illegal was a mistake of law).

<sup>42</sup> *State v. Combs*, 398 N.W.2d 563 (Minn. 1987); *State v. Timberlake*, 744 N.W.2d 390 (Minn. 2008) (police had a reasonable, articulable suspicion that defendant was engaged in criminal activity based on the reliable informant's report that he was carrying a gun in a motor vehicle; court rejects defendant's argument that stop was unjustified because it is legal in Minnesota for a private citizen to carry a permitted gun in public). But see *State v. Bergerson*, 659 N.W.2d 791, 796 (Minn. Ct. App. 2003) (absent any other activity or information about Bergerson, merely purchasing two generic items from a hardware store (rubber tubing and acetone), which separately and together have numerous legitimate uses, does not create reasonable suspicion of criminal activity).

<sup>43</sup> *St. Paul v. Uber*, 450 N.W.2d 623 (Minn. Ct. App. 1990); *Doheny v. Commissioner of Public Safety*, 368 N.W.2d 1 (Minn. Ct. App. 1985); *Brown v. Texas*, 443 U.S. 47, 52 (1979) (Merely being in a high-crime area will not justify a stop). See also *State v. Diede*, 795 N.W.2d 836, 844 (Minn. 2011) ("Mere proximity to, or association with, a person who may have previously engaged in criminal activity is not enough to support reasonable suspicion of possession of a controlled substance").

<sup>44</sup> *Larson v. Commissioner of Public Safety*, 358 N.W.2d 154 (Minn. Ct. App. 1984).

<sup>45</sup> *State v. Brechler*, 412 N.W.2d 367 (Minn. Ct. App. 1987) (single, isolated “swerve” not enough to justify the stop); See also *Warrick v. Commissioner of Public Safety*, 374 N.W.2d 585 (Minn. Ct. App. 1985) (slight weaving during windy conditions and poor visibility was not enough to stop vehicle); On the other hand, stops can occur though officers do not observe any overtly “illegal” driving conduct. As long as the officer can point to some objective fact from which there is a rational inference of unlawful activity, the stop is arguably valid. Stops may be based on observations of driving conduct that reasonable lead an officer to believe the driver may be impaired. For example, many DWI arrests are based on traffic stops of vehicles for continuous or unusual weaving within its lane of travel. *State v. Dalos*, 635 N.W.2d 94, 96 (Minn. Ct. App. 2001) (continuous weaving within lane); *State v. Kvam*, 336 N.W.2d 525 (Minn. 1983) (fast turn and weave within lane); *State v. Just*, No. A06-388 (Minn. Ct. App. Sept. 12, 2006) (unpublished opinion) (weaving within lane several times and below speed limit; *State v. Morris*, No. A08-0849 (Minn. Ct. App. Apr. 21, 2009) (unpublished opinion) (weaving within own lane valid basis for stop).

<sup>46</sup> *Cobb v. Commissioner of Public Safety* 410 N.W.2d 902 (Minn. Ct. App. 1987) (valid seizure when vehicle parked on street for ten minutes in area where burglaries had been reported at that time of day); *Olmscheid Commissioner of Public Safety*, 412 N.W.2d 41 (Minn. Ct. App. 1987) (upheld stop of vehicle seen on dead-end road near closed businesses in early morning hours where thefts have been a problem).

<sup>47</sup> *Alabama v. White*, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990) (Anonymous telephone tip that defendant would be leaving a particular apartment, at a particular time, in a particular vehicle, that she would be going to a particular motel and that she would be in possession of cocaine, was corroborated by independent police work and thus provided reasonable suspicion to make an investigative stop); *State v. Richardson*, 622 N.W.2d 823 (Minn. 2001) (anonymous tip, followed by independent observation of erratic driving is sufficient to justify a stop); *Olson v. Commissioner of Public Safety*, 371 N.W.2d 552 (Minn. 1985); *State v. Pealer*, 488 N.W.2d 3 (Minn. Ct. App. 1992); *State v. Teigen*, 381 N.W.2d 529 (Minn. Ct. App. 1986) (Uncorroborated anonymous tip insufficient to justify an investigative stop for a possible drunk driving violation).

<sup>48</sup> See *State v. Davis*, 393 N.W.2d 179 (Minn. 1986) (stop valid when anonymous citizen pointed to suspect vehicle and yelled to officer that driver just ran red light).

<sup>49</sup> *In Re Welfare of G.M.* 560 N.W.2d 687, 691 (Minn. 1997) (citing *Davis*, 393 N.W.2d at 181. See also *State v. Ballenger*, 667 N.W.2d 133 (Minn. Ct. App. 2003) (uncorroborated anonymous tip that person is armed and has committed a criminal offense was sufficiently reliable to justify investigating stop when tip was provided by private citizen to police face-to-face).

<sup>50</sup> See *State v. Stich*, 399 N.W.2d 198, 201 (Minn. Ct. App. 1987); *Schlemme v. Commissioner of Public Safety*, 363 N.W.2d 781, 784 (Minn. Ct. App. 1985).

<sup>51</sup> *State v. Timberlake*, 744 N.W.2d 390, 393-94 (Minn. 2008) (the reasonable suspicion standard can also be met based on information provided by a reliable informant, but it “must bear indicia of reliability that make the alleged criminal conduct sufficiently likely to justify an investigatory stop by police”); *In re Welfare of G.M.*, 560 N.W.2d 687 (Minn. 1997).

<sup>52</sup> *State v. Munson*, 594 N.W.2d 128, 136 (Minn.1999); *Matter of Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997) (“we look both at the informant and the informant's source of the information and judge them against ‘all of the circumstances’”); *State v. McCloskey*, 453 N.W.2d 700 (Minn. 1990); *State v. Cook*, 610 N.W.2d 664, 667 (Minn. Ct. App. 2000) (Although informant was credible, information was not reliable where informant never claimed that he had purchased drugs from defendant or that he had seen defendant selling drugs, details provided by informant did not predict any future behavior on defendant's part, and informant's details were simply report of defendant's appearance and present location, which anyone could have provided); See *Illinois v. Gates*, 462 U.S. 213 (1983); *Jobe v. Commissioner of Public Safety*, 609 N.W.2d 919, 920 (Minn. Ct. App. 2000). Generally Minnesota appellate courts have focused on two factors: (1) identifying information given by the citizen complainant; and (2) the facts that support the citizen complainant's assertion that a specific person is engaged in criminal activity. See *Jobe*, a609 N.W.2d at 921. These two factors generally reflect the “veracity” of the informant and the “basis of knowledge” for the information which once comprised the two-pronged *Spinelli-Aguilar* test for probable cause. See *Gates*, 462 U.S. at 228. The strict two pronged *Spinelli-Aguilar* test was rejected in favor of the totality of the circumstances test now employed, id; *State v. Wiley*, 366 N.W.2d 265, 268 (Minn. 1985) while not dispositive, these two factors, the veracity of the information and the factual basis for believing the person is engaged in criminal activity, are still “highly relevant” to the determination. See *Alabama v. White*, 496 U.S. 325, 328 (1990).

<sup>53</sup> *State v. Davis*, 732 N.W.2d 173, 182-83 (Minn. 2007) (“We presume that tips from private citizen informants are reliable. This is particularly the case when informants give information about their identity so that the police can locate them if necessary”). See also *State v. Timberlake*, 744 N.W.2d 390, 394 (Minn. 2008) (Report from a reliable informant that defendant was carrying a gun in a motor vehicle furnished police officers with a reasonable suspicion that defendant was engaged in criminal activity, so as to justify an investigatory stop, even though officers did not know whether defendant had a permit to carry the gun); *Jobe v. Commissioner of Public Safety*, 609 N.W.2d 919, 920 (Minn. Ct. App. 2000); *City of Minnetonka v. Sheppard*, 420 N.W.2d 887 (Minn. 1988) (A drunk driving tip received from an identified gas station attendant, describing the vehicle and license number, was found to be reliable because “the police could hold the identified informant accountable if he knowingly provided false information”); *Marben v. State Department of Public Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (An unidentified truck driver's CB radio communication that a vehicle had been tailgating him for sixty to seventy miles was sufficient to justify an investigative stop); *State v. Davis*, 393 N.W.2d 179 (Minn. 1986) (An anonymous shout from a passing vehicle that another car had just run a red light justified stopping the car); *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (Totality of circumstances should be considered).

<sup>54</sup> See *Yoraway v. Commissioner of Public Safety*, 669 N.W.2d 622 (Minn. Ct. App. 2003). See also *State v. Kuznia*, No. A07-129 (Minn. Ct. App. Sept. 4, 2007) (unpublished opinion) (caller identified himself to 911 dispatcher when giving information but then requested to remain anonymous: Court of Appeals still considered caller identified for purposes of analysis); *Freeman v. Commissioner of Public safety*, No A08-1433 (Minn. Ct. App. July 7, 2009) (unpublished opinion) (ex-wife presumed reliable).

<sup>55</sup> See *Yoraway v. Comm'r of Pub. Safety*, 669 N.W.2d 622, 626 (Minn. Ct. App. 2003) (informant's report of erratic driving provided police officer with reasonable, articulable suspicion to make a traffic stop, though informant did not link the erratic driving to possible alcohol-impaired driving, where informant identified himself, informant saw vehicle passing in no-passing zones and almost forcing informant's car off the road, and informant described make, model,

and color of vehicle, approximate age and gender of driver and gender of passenger, location of the vehicle, and direction in which and specific streets on which the vehicle was traveling); *State v. Pealer*, 488 N.W.2d 3 (Minn. Ct. App. 1992)

<sup>56</sup> *State v. Loving*, 775 N.W.2d 872, 881 (Minn. 2009); *State v. Conaway*, 319 N.W.2d 35, 41 (Minn. 1982) (search upheld where defendant was in possession of a "loaner" car from dealership, which car had never been stolen but which had been mistakenly listed on police department and state records as stolen by dealership employee, there was no information held by police department that the car was not stolen, and officers' observations of defendant together with officers' knowledge of defendant's long criminal record provided corroborative information to establish probable cause); *Magnuson v. Comm'r of Pub. Safety*, 703 N.W.2d 557, 559-60 (Minn. Ct. App. 2005).

<sup>57</sup> *Rancour v. Commissioner of Public Safety*, 355 N.W.2d 462, 464 (Minn. Ct. App. 1984); *State v. Greene*, No. C7-01-1211 (Minn. Ct. App. Jan. 29, 2002) (unpublished opinion) (under collective knowledge doctrine, state could rely on specific facts known to dispatcher but not passed on to officer prior to stop); *State v. Weyaus*, No. A10-612, 2011 WL 691650 (Minn. Ct. App. Mar. 1, 2011 (unpublished opinion) (information known to officer requesting stop imputed to officer who conducts the requested stop).

<sup>58</sup> *United States v. Hensley*, 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985) (Motor vehicle stop based on "wanted flyer" upheld); *State v. Conaway*, 319 N.W.2d 35 (Minn. 1982); *State v. Conaway*, 319 N.W.2d 35, 41 (Minn. 1982); *Knapp v. Comm'r of Pub. Safety*, 594 N.W.2d 239, 242 (Minn. Ct. App. 1999) (PBT invalid where, even though officer relied in good faith on information from deputy that there was "reason to believe" defendant was driving under the influence, there were no other facts that provided a basis for inferring that the deputy had a specific and articulable suspicion); *State v. Tottenham*, 368 N.W.2d 367 (Minn. Ct. App. 1985) (Even though deputy saw no erratic driving, a different officer reported that driver was intoxicated and one-half hour later, the deputy saw driver leave a parking lot by two bars, stop upheld).

<sup>59</sup> *State v. Okegbeuro*, 409 N.W.2d 1 (Minn. Ct. App. 1987).

<sup>60</sup> See *State v. Tilleskjaer*, 491 N.W.2d 893 (Minn. 1992); *State v. Meyer*, 641 N.W.2d 324, 326-27 (Minn. Ct. App. 2002) (stop valid where officer was outside his jurisdiction when he observed defendant speeding, stopped and arrested defendant, because the purpose of trip outside of jurisdiction was to obtain driver and owner registration records which were not available within jurisdiction, and it was officer's customary practice to attach such records to citations issued within jurisdiction); *Lorenzen v. Comm'r of Pub. Safety*, 594 N.W.2d 552 (Minn. Ct. App. 1999) (officer was acting within the course and scope of her employment for purposes of conferring jurisdiction when officer's suspicion was first aroused within city limits, but she did not observe conduct justifying a stop until outside city limits).

<sup>61</sup> *Tilleskjaer*, 491 N.W.2d at 894.

<sup>62</sup> *Id.*; *State v. Schinzing*, 342 N.W.2d 105 (Minn. 1983); *State Dept. of Public Safety v. Juncewski*, 308 N.W.2d 316 (Minn. 1981); *State v. Filipi*, 297 N.W.2d 275 (Minn. 1980); *State v. Meyer*, 641 N.W.2d 324, 326-27 (Minn. Ct. App. 2002); *State v. Halvorson*, 356 N.W.2d 376 (Minn. Ct. App. 1984); but see *State v. Smith*, 367 N.W.2d 497 (Minn. 1985) (Suppression is not required for technical statutory violations).

<sup>63</sup> Minn. Stat. § 629.40, subd. 4; *Tilleskjaer*, 491 N.W.2d at 893.

<sup>64</sup> Minn. Stat. § 629.40, subd. 4; see also Minn. Stat. § 629.37 ("When a private person may make arrest").

<sup>65</sup> *State v. Tilleskjaer*, 488 N.W.2d 327 (Minn. Ct. App. 1992) (Although the Court of Appeals ultimate ruling was reversed on appeal, see 491 N.W.2d 893 (Minn. 1992), the courts discussion on the scope of a private citizen's authority to arrest vs. authority to make an investigative stop, is still valid law); see also *Piotrowski v. Comm'r of Pub. Safety*, 453 N.W.2d 689, 690 (Minn. 1990); *State v. Schinzing*, 342 N.W.2d 105, 108-09 (Minn. 1983).

<sup>66</sup> *United States v. Hensley*, 469 U.S. 221, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985); *State v. Okegbeuro*, 409 N.W.2d 1 (Minn. Ct. App. 1987).

<sup>67</sup> *Blaisdell v. Commissioner of Public Safety*, 375 N.W.2d 880 (Minn. Ct. App. 1985), *aff'd. on other grounds*, 381 N.W.2d 849 (Minn. 1986) (Minnesota Supreme Court expressed "no opinion as to the correctness of the Court of Appeals' holding" as to whether all stops to investigate completed misdemeanors are impermissible under the Fourth Amendment); *State v. Dobsinski*, A06-588, 2007 WL 738688, at \*3 (Minn. Ct. App. Mar. 13, 2007); *State v. Pitt*, A03-1908, 2004 WL 2382156, at \*5 (Minn. Ct. App. Oct. 20, 2004).

<sup>68</sup> *Id.* at 882 n.2 ("courts should be hesitant to declare criminal conduct which occurred in the very recent past (such as the same day of the stop) to be 'completed'"); see also *Dobsinski*, 2007 WL 738688, at \*3 (stop valid; misdemeanor offense occurring minutes before investigatory stop was not "completed"); *Pitt*, 2004 WL 2382156, at \*5 (investigatory stop was invalid when based upon misdemeanor offense completed more than two months earlier).

<sup>69</sup> *Blaisdell*, 375 N.W.2d at 882 n.2.

<sup>70</sup> *Id.*; *State v. Holmes*, 569 N.W.2d 181, 185 (Minn. 1997) (suppressing pistol found in investigatory stop where officer merely suspected defendant of seven outstanding parking tickets, because "the [United States] Supreme Court has indicated that '[t]he Terry rule should be expressly limited to investigation of serious offenses'" (quoting 4 Wayne R. LaFave, *Search and Seizure* § 9.2(c), at 32 (3d ed.1996)); *State v. Stich*, 399 N.W.2d 198, 199 (Minn. Ct. App. 1987) ("No precedent holds that it is unlawful to make an immediate pursuit and stop of a person who has committed a misdemeanor in the very recent past"); *Dobsinski*, 2007 WL 738688, at \*3; *Pitt*, 2004 WL 2382156, at \*5.

<sup>71</sup> *State v. Hiler*, 376 N.W.2d 760 (Minn. Ct. App. 1985); see also *State v. Angeschi*, A05-105, 2005 WL 3289447, at \*4 (Minn. Ct. App. Dec. 6, 2005) (stop upheld because 911 call claiming defendant harassed her and investigatory stop with field sobriety tests concluding defendant was driving under the influence all occurred within an hour).

- <sup>72</sup> Minn. Stat. § 629.341, subd. 1 (2010).
- <sup>73</sup> Minn. Stat. §§ 629.34, subd. 1(c)(6); 518B.01, subd. 14 (Domestic Abuse Order for Protection); 609.748, subd. 6 (Harassment Restraining Order) (2010).
- <sup>74</sup> Minn. Stat. § 629.34, subd. 1(c)(6) (2010); MINN. R. CRIM. P. 6.03, subd. 2 (1994).
- <sup>75</sup> Minn. Stat. § 609.605, subd. 4(f) (2010).
- <sup>76</sup> Minn. Stat. §§ 169A.40, subd. 1 (DWI); 169A.40, subd. 3(3) (Aggravated DWI); 360.0752, subd. 4 (Aircraft DWI); 84.91 (Snowmobile and all terrain vehicle DWI) (2010).
- <sup>77</sup> Minn. Stat. §§ 609.52, subd. 2(4); 629.364(b) (2010).
- <sup>78</sup> Minn. Stat. §§ 609.52, subd. 2(1) to (17); 629.34, subd. 1(c)(5) (2010).
- <sup>79</sup> Minn. Stat. §§ 609.595, subd. 2 (1992); 629.34, subd. 1(c)(5) (2010).
- <sup>80</sup> Minn. Stat. §§ 609.631, subd. 4(4); 629.34, subd. 1(c)(5) (2010).
- <sup>81</sup> Minn. Stat. §§ 609.749; 629.34, subd. 1(c)(5) (2010).
- <sup>82</sup> Minn. Stat. §§ 609.821, subd. 3; 629.34, subd. 1(c)(5) (2010).
- <sup>83</sup> *State v. Hanson*, 504 N.W.2d 219, 219-20 (Minn. 1993) (No seizure where officer saw vehicle stopped on shoulder of highway at night, activated emergency lights to warn oncoming drivers, and parked behind the vehicle to see if driver needed any assistance. Under the circumstances, the officer's actions "would not have communicated to a reasonable person ... that the officer was attempting to seize the person. A reasonable person would have assumed that the officer was not doing anything other than checking to see what was going on and to offer help if needed." But, Court also noted that under many circumstances, an officer's use of emergency lights "would signal to a reasonable person that the officer is attempting to seize the person"); *State v. Lopez*, 698 N.W.2d 18, 22 (Minn. Ct. App. 2005) (Defendant was seized where officer received call about unconscious person in parked car, activated squad car lights, pulled into parking lot, partially blocked forward movement of defendant's vehicle, pounded on driver's window, and opened driver's door); *Paulson v. Commissioner of Public Safety*, 384 N.W.2d 244 (Minn. Ct. App. 1986); *State v. McCalip*, A09-169, 2009 WL 3818371, at \*2-3 (Minn. Ct. App. Nov. 17, 2009) (No seizure where officer pulled up behind a driver's already-stopped car and then activated his emergency lights, because the driver was far from any town and there was no evidence to that the driver pulled over in response to anything the officer did).
- <sup>84</sup> *State v. Riley*, 667 N.W.2d 153, 156 (Minn. Ct. App. 2003) ("It is well settled that a police officer, while standing in a place in which he has a right to be, next to an automobile which he has not stopped, may properly shine his flashlight through the car window into the passenger compartment and observe anything in plain view"); *State v. Reese*, 388 N.W.2d 421, 422 (Minn. Ct. App. 1986) ("In the cases involving already-stopped vehicles, it is not necessary that an officer suspect criminal activity but he may arrest a driver and seize contraband if he views it in plain sight in the vehicle"); *State v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980) (officer did not seize defendant and "had a right to be where he was when he looked through the window" and saw marijuana when defendant had already stopped his car, officers approached for a legitimate reason and defendant did not try to leave).
- <sup>85</sup> *Florida v. Royer*, 460 U.S. 491, 497, 103 S.Ct. 1319, 1324, 75 L.Ed.2d 229 (1983); *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (A person generally is not seized merely because a police officer approaches him in a public place or in a parked car and begins to ask questions); *In re Welfare of E.D.J.*, 502 N.W.2d 779, 782 (Minn.1993); *United States v. Vohnoutka*, 292 N.W.2d 756, 757 (Minn. 1980); *Overvig v. Comm'r of Pub. Safety*, 730 N.W.2d 789, 792 (Minn. Ct. App. 2007); *State v. Lopez*, 698 N.W.2d 18, 22 (Minn. Ct. App. 2005); *State v. Krech*, 381 N.W.2d 898, 899 (Minn. Ct. App. 1986) ("A seizure under the Fourth Amendment does not occur when an officer simply walks up and talks to a driver sitting in an already-stopped car").
- <sup>86</sup> *State v. Davis*, 732 N.W.2d 173, 182 (Minn.2007) (to make a legal investigatory stop or seizure, the police must be able to show a reasonable suspicion based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion"); *LaBeau v. Commissioner of Public Safety*, 412 N.W.2d 777 (Minn. Ct. App. 1987); *Cobb v. Commissioner of Public Safety*, 410 N.W.2d 902 (Minn. Ct. App. 1987); *State v. Day*, 461 N.W.2d 404, 407 (Minn. Ct. App. 1990) ("Unless an officer has a reasonable suspicion that a driver is unlicensed or that he is otherwise subject to seizure for violations of the law, a seizure for the purpose of checking identification is unreasonable under the Fourth Amendment." Thus, defendant seized when uniformed and armed police officer summoned defendant to approach squad car and required defendant to provide identification and answer questions); *State v. Lipinski*, 419 N.W.2d 651 (Minn. Ct. App. 1988); *State v. Hickman*, 491 N.W.2d 673 (Minn. Ct. App. 1992) (Although Minn. Stat. § 171.08 requires a driver to display his/her drivers license upon demand of a peace officer, that provision only applies if the investigative stop is based upon "reasonable suspicion"). *But see State v. Pfannenstern*, 525 N.W.2d 587, 588 (Minn. Ct. App. 1994) ("Not every request for identification rises to the level of intrusiveness" required to constitute a seizure).
- <sup>87</sup> *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995) seizure when Cripps had to stand in line and watch officer request I.D. from all bar patrons to determine if they were of legal drinking age); *State v. Baril*, No. A05-2433 (Minn. Ct. App. Dec. 26, 2006) (unpublished opinion) (seizure when officer asked motorist sitting in truck for identification and to exit); *State v. Perry*, No. A07-429 (Minn. Ct. App. Apr. 22, (2008) (unpublished opinion) (unlawful seizure where officer responded to call about suspicious vehicle and made contact with vehicle occupants who gave explanation for behavior before police requested identification).
- <sup>88</sup> *United States v. Angell*, 11 F.3d 806, 809 (8th Cir. 1993), *cert. denied* 114 S.Ct. 2747, 512 U.S. 1239 (1994) (No seizure where officer initially questioned defendants concerning who they were and where they were going and then told defendants "stay there" or "hold it right there;" officer did not turn on his patrol

car lights, did not block pathway of defendant's car, did not draw weapon, and did not physically touch defendants); *State v. Lopez*, 698 N.W.2d 18, 23 (Minn. Ct. App. 2005) (Generally an officer responding to a call to investigate someone unconscious or sleeping in a vehicle is justified in investigating the welfare of that individual); *Blank v. Commissioner of Public Safety*, 358 N.W.2d 441 (Minn. Ct. App. 1984); *Paulson*, 384 N.W.2d at 244; *Kozak v. Commissioner of Public Safety*, 359 N.W.2d 625 (Minn. Ct. App. 1984).

<sup>89</sup> *Overvig v. Comm'r of Pub. Safety*, 730 N.W.2d 789, 793 (Minn. Ct. App. 2007) (Officer did not seize motorist by merely opening door of motorist's car, which was running in empty parking lot late at night, where officer did not park his vehicle in a position blocking motorist's car from moving in either direction and did not activate his emergency lights and officer did not make any other showing of authority, such as displaying a weapon or using a tone of voice that would indicate that motorist could not terminate the encounter once the officer opened the door); *State v. Lopez*, 698 N.W.2d 18, 22 (Minn. Ct. App. 2005) (Defendant was seized when officer received call about unconscious person in parked car, activated squad car lights, pulled into parking lot, partially blocked forward movement of defendant's vehicle, pounded on driver's window, and opened driver's door); *Klotz v. Commissioner of Public Safety*, 437 N.W.2d 663 (Minn. Ct. App. 1989); *State v. Sanger*, 420 N.W.2d 241 (Minn. Ct. App. 1988) (A peace officer who observed a parked vehicle at night with people in the front and back seats, effected an investigative stop (seizure) when he positioned his squad car in such a position that the parked car could not leave; *but see Erickson v. Commissioner of Public Safety*, 415 N.W.2d 698 (Minn. Ct. App. 1987) (Unintentional blocking of car did not constitute a seizure).

<sup>90</sup> *State v. Hanson*, 504 N.W.2d 219 (Minn. 1993).

<sup>91</sup> *State v. Vohnoutka*, 292 N.W.2d 756, 756 (Minn. 1980) (Police officer, while standing in a place in which he had a right to be next to automobile which had not been stopped by officer or temporarily seized, properly shined flashlight through window into passenger compartment, and marijuana which he saw in open view justified subsequent search of vehicle pursuant to motor-vehicle exception to the warrant requirement); *State v. Landon*, 256 N.W.2d 89 (Minn. 1977) (Court upheld the practice of police officers routinely shining flashlights through the windows of cars lawfully stopped for speeding against a Fourth Amendment challenge); *State v. Riley*, 667 N.W.2d 153, 156-57 (Minn. Ct. App. 2003) (Officers' use of flashlight to look in car and observe an uncased rifle was lawful where the stop was valid); *State v. Krech*, 381 N.W.2d 898, 899 (Minn. Ct. App. 1986) (police officers' use of flashlights to illuminate defendant's already-parked car "was permissible because the officers' visual check was made from a lawful vantage point").

<sup>92</sup> *Pennsylvania v. Mimms*, 434 U.S. 106, 111, 98 S.Ct. 330, 333, 54 L.Ed.2d 331 (1977) (Once a motor vehicle has been lawfully detained for a traffic violation, the police officer may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures; "[w]hat is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety"); *Maryland v. Wilson*, 519 U.S. 408, 412 (1997) (officer may also order the passengers out of the vehicle); *State v. Willis*, 320 N.W.2d 726 (Minn. 1982); *State v. Gilchrist*, 299 N.W.2d 913 (Minn. 1980); *State v. Ferrise*, 269 N.W.2d 888 (Minn. 1978) (Held that officer opening of passenger's door was permissible under a *Mimms* analysis, due to concern for officers' safety); *State v. Krenik*, 774 N.W.2d 178, 183 (Minn. Ct. App. 2009) (Officer did not need individualized justification for directing the front seat passenger of legally stopped vehicle to get out of the vehicle; ordering a passenger out of a vehicle during a valid traffic stop was reasonable); *Overvig v. Comm'r of Pub. Safety*, 730 N.W.2d 789, 792-93 (Minn. Ct. App. 2007) (Officer's act of opening driver's unlocked door after driver was unresponsive to officer's knocking was proper; "it is not reasonable in situations such as this to require officers to communicate with unresponsive or unconscious drivers through closed car windows when the driver refuses or is unable to lower the window."); *State v. Keith*, C9-00-1359, 2001 WL 139008 (Minn. Ct. App. Feb. 20, 2001) (Held that police officer's act of opening passenger door without knocking, after approaching based upon informant's tip, was proper); *LaBeau v. Commissioner of Public Safety*, 412 N.W.2d 777 (Minn. Ct. App. 1987).

<sup>93</sup> *State v. Ferrise*, 269 N.W.2d 888 (Minn. 1978); *Harrer v. Commissioner of Public Safety*, No. C9-99-1919 (Minn. Ct. App. July 11, 2000) (unpublished opinion) (officer authorized to arrest appellant for obstruction of legal process where appellant refused to get out of car after lawful order to do so by officer).

<sup>94</sup> *New York v. Class*, 475 U.S. 106, 106 S.Ct. 960, 89 L.Ed.2d 81 (1986) (A police officer's demand to inspect the VIN, driver's license, and registration papers, is within the scope of police authority pursuant to a traffic violation stop); Minn. Stat. §§ 171.08 (Displaying driver's license upon demand of peace officer); 169.792, subd. 5(a) (Demand for proof of insurance by peace officer) (1992); *State v. Schinzing*, 342 N.W.2d 105 (Minn. 1983) (Requesting stopped driver to show his license is standard procedure in stop cases); *State v. Bauman*, 586 N.W.2d 416, 423 (Minn. Ct. App. 1998) (Police officer's search for driver's license of defendant, who identified himself as his brother when stopped for speeding while under suspension, was valid under automobile exception to warrant requirement).

<sup>95</sup> *State v. Hickman*, 491 N.W.2d 673 (Minn. Ct. App. 1992) (An officer who stops a driver with expired plates but then sees a valid temporary permit may not ask to see a license); *Frazier v. Comm'r of Pub. Safety*, No. A07-0997, 2008 WL 2574108, at \*4 (Minn. Ct. App. July 1, 2008) (Request to see license was valid where officer stopped driver for snow obscuring view of license plate and tabs, approached vehicle and asked for driver's license, observed signs of intoxication, conducted field sobriety tests and arrested the driver; Court distinguished case from *Hickman* because officer presumably could have cited driver for violating statute and would be justified in asking for license in that occasion); *State v. Mattson*, No. A06-483, 2006 WL 2474237, at \*3 (Minn. Ct. App. Aug. 29, 2006) (Officer's request to see driver's license was invalid because the State failed to establish officer had reasonable suspicion for her belief that driver license was not valid); Minn. Stat. § 171.08 (The licensee shall also, upon request of any officer, write the licensee's name in the presence of the officer to determine the identity of the licensee) (1992).

<sup>96</sup> *New York v. Class*, 475 U.S. 106, 106 S.Ct. 960, 89 L.Ed.2d 81 (1986).

<sup>97</sup> *New York v. Class*, 475 U.S. 106, 106 S.Ct. 960, 89 L.Ed.2d 81 (1986) (Following lawful investigative stop, while driver was outside car, officers lawfully reached into vehicle to remove papers that were covering the VIN and observed a gun protruding from underneath the drivers seat. Seizure of gun upheld under Plain View Doctrine. The court also held that the visual observation of an identification number appearing on the vehicle's interior "does not constitute a Fourth Amendment search"); *State v. Jacox*, No. A09-668, 2010 WL 2035618, at \*5 (Minn. Ct. App. May 25, 2010), *review denied* (Aug. 10, 2010) (Court held officer opening car door to compare federal ID sticker to VIN in a lawfully stopped vehicle was not a search because defendant did not have expectation of privacy on the door frame or dashboard of car where VIN is located); *State v. Hanson*, No. C5-01-686, 2002 WL 109373, at \*4-5 (Minn. Ct. App. Jan. 29, 2002) (Officer's inspection of VIN number on Bobcat parked in backyard of home was not a search in and of itself because no evidence that officer moved or handled Bobcat to locate VIN, and mere inspection of exposed VIN is not a search because there is no reasonable expectation of privacy with respect to the car's VIN).

<sup>98</sup> *State v. Askerooth*, 681 N.W.2d 353, 374 (Minn. 2004) (The placement of a lawfully stopped motorist in a police car for a short period of time does not automatically take the situation beyond the realm of the ordinary traffic stop); *State v. Pleas*, 329 N.W.2d 329 (Minn. 1983); *State v. Gallagher*, 275 N.W.2d 803 (Minn. 1979); *Kirsch v. Commissioner of Public Safety*, 440 N.W.2d 147 (Minn. Ct. App. 1989); *State v. Schinzing*, 342 N.W.2d 105 (Minn. 1983) (Requesting stopped driver to show his license is standard procedure in stop cases).

<sup>99</sup> *Berkemer v. McCarty*, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984); *Pennsylvania v. Bruder*, 109 S.Ct. 205 (1988); *State v. Herem*, 384 N.W.2d 880 (Minn. 1986); *State v. Vonderharr*, 733 N.W.2d 847, 854-55 (Minn. Ct. App. 2007) (An officer's general on-site questioning during an investigative stop, even if the questioning occurs in a patrol car, is not custodial interrogation requiring a *Miranda* warning); *Bowman v. Com'r. of Pub. Safety*, No. CX-95-91, 1995 WL 351688 (Minn. Ct. App. June 13, 1995) (Temporary investigative detentions are generally not subject to *Miranda* because the defendant is not in "custody").

<sup>100</sup> *Vivier v. Commissioner of Public Safety*, 406 N.W.2d 587 (Minn. Ct. App. 1987); *State v. Van Wagner*, 504 N.W.2d 746, 749 (Minn. 1993) (Placing an intoxicated driver into the rear of the squad car did not create a custodial setting thus requiring *Miranda* warnings because "the defendant who was placed in the back seat of a squad car "had to be put somewhere" and could not, in his drunken state, be left in his own car); See also *State v. Herem*, 384 N.W.2d 880, 883 (Minn. 1986) (The back seat of a squad car, though locked to prevent the suspects exit, is not by itself a custodial setting); *State v. Urban*, No. A08-1316, 2009 WL 2151130, at 4 (Minn. Ct. App. July 21, 2009) (Because the officer had a particularized and objective reason to stop appellant and question him on the scene to investigate the situation, there was no custodial interrogation implicating appellant's *Miranda* rights, even though questioning was conducted in patrol car); *State v. Williams*, No. A03-929, 2004 WL 1661219, at 2 (Minn. Ct. App. July 27, 2004) (Court held that statements made without a *Miranda* warning were admissible because a reasonable person in defendant's position would not have believed that he was in police custody to the degree associated with formal arrest, where defendant was approached by an officer who told him he matched the description of a man who had recently committed a theft in the area, officer then asked defendant to wait in the squad car with him and his partner until victim arrived; neither officer drew his gun, defendant was not handcuffed, and detention was only for 10 to 15 minutes); *State v. Voigt*, 486 N.W.2d 793, 795 (Minn. Ct. App. 1992) (The mere placement of a defendant in the back seat of a squad car might not, by itself, make it a full custodial detention thus requiring *Miranda* warnings before questioning can begin).

<sup>101</sup> *Berkemer*, 468 U.S. at 420, 104 S.Ct. at 3138, 82 L.Ed.2d at 317; *Bruder*, 109 S.Ct. at 205; *State v. Vonderharr*, 733 N.W.2d 847, 855 (Minn. Ct. App. 2007) (Court held that a *Miranda* warning was not required because defendant was not subjected to "treatment which can fairly be characterized as the functional equivalent of formal arrest," where trooper only asked defendant general questions about his alcohol consumption on the scene and requested a PBT, which did not rise to the level of a custodial interrogation, even though trooper repeated the question); *State v. Voigt*, 486 N.W.2d 793 (Minn. Ct. App. 1992) (Officer's questioning of defendant subsequent to ordinary traffic stop became custodial interrogation when officer conditioned defendant's release on his providing written statement, thus *Miranda* warning was required); *State v. Seekon*, 392 N.W.2d 624, 626 (Minn. Ct. App. 1986) (Statements made during probable cause felony stop executed in response to radio report of threats were inadmissible without *Miranda* warning); *State v. Proechel*, No. C1-93-1142, 1993 WL 536118, at 2-3 (Minn. Ct. App. Dec. 28, 1993) (Following valid vehicle stop, officer asked driver for his license and driver admitted to driving without a license. Officer stopped talking to driver from the roadside and immediately directed the driver into the back seat of his squad car. It was not until defendant was safely detained there that the officer began the questioning which led to defendant's further admission that the vehicle was uninsured. Because there was no reason to place defendant in the squad car other than to detain him, the sudden change from roadside questioning to a custodial setting required a *Miranda* warning before further questioning. Defendant's squad car admission was suppressed. If the officer had left defendant in his car and continued the roadside questioning there would have been no need for a *Miranda* warning).

<sup>102</sup> *Nyflot v. Commissioner of Public Safety*, 369 N.W.2d 512 (Minn. 1985), overruled by *Friedman v. Comm'r of Pub. Safety*, 473 N.W.2d 828, 836-37 (Minn. 1991); *State v. Mellett*, 642 N.W.2d 779, 788 (Minn. Ct. App. 2002) (Court held that since there is no evidence that appellant was in custody, her refusal to perform field sobriety tests was not the product of custodial interrogation, thus *Miranda* warnings were not necessary for refusal statement to be admitted into evidence); *Butler v. Commissioner of Public Safety*, 348 N.W.2d 827 (Minn. Ct. App. 1984).

<sup>103</sup> *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004); *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002); *State v. Ortega*, 749 N.W.2d 851, 853 (Minn. Ct. App. 2008), *aff'd on other grounds*, 770 N.W.2d 145 (Minn. 2009); *State v. Syhavong*, 661 N.W.2d 278, 281 (Minn. Ct. App. 2003) (officer lacked reasonable, articulable suspicion to expand the scope of initial stop by asking defendant whether he had anything illegal in the car).

<sup>104</sup> *State v. Smith*, A10-0916 June 6, 2012 (Minn. 2012) (an officer's expansion of the scope of a lawful traffic stop was supported by a reasonable, articulable suspicion of illegal activity, when the totality of the circumstances include a defendant shaking "very violently" and he offered an evasive explanation for the shaking. This decision departs from a line of cases generally holding that a defendant's nervousness doesn't give rise to reasonable suspicion); See also, *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002); *State v. Ortega*, 749 N.W.2d 851, 853 (Minn. Ct. App. 2008), *aff'd on other grounds*, 770 N.W.2d 145 (Minn. 2009). See also *State v. Diede*, 795 N.W.2d 836, 845 (Minn. 2011) (Detective's request to search cigarette package was an improper expansion of the scope of the stop, where the initial investigation and stop were based upon mismatched license plates, because "even if mismatched plates supported a reasonable suspicion that the truck was stolen or that the owner was attempting to evade automobile registration fees, a search for drugs was not reasonably related to those justifications"); *State v. Askerooth*, 681 N.W.2d 353, 365, 367 (Minn. 2004) ("In essence, Article I, Section 10 of the Minnesota Constitution requires that each incremental intrusion during a traffic stop 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*. Furthermore, the basis for the intrusion must be individualized to the person toward whom the intrusion is directed." With regard to traffic stops, a police officer may order a driver out of a lawfully stopped vehicle without an articulated reason; but there must be an additional basis, independent of an officer's command for a driver to exit a vehicle, before a more serious intrusion is permitted, such as confining defendant in the back of a squad car. Court held that "the lack of a driver's license, by itself, is not a reasonable basis for confining a driver in a squad car's locked back seat when the driver is stopped for a minor traffic offense"); *State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003) (Investigative questioning, request for consent to search, and subsequent search of passenger for narcotics in vehicle stopped for routine traffic violations went beyond scope of traffic stop and was unsupported by any reasonable articulable suspicion, where officer testified that location of stop was in high drug area, and that he intended to offer defendant a ride home and conducted pat down search for purposes of officer safety, but officer never said he suspected any crime other than traffic violations); *State v. Cox*, 807 N.W.2d 447, 452 (Minn. Ct. App. 2011) ("If a stop is initially justified on one basis, an officer cannot expand the scope of the investigation without additional reasonable suspicion to support the expansion"; where officer lawfully stopped defendant for suspicion of stolen tabs and upon approaching defendant to inquire as to the tabs officer immediately observed signs of defendant's intoxication, officer lawfully developed additional reasonable suspicion that supported the expanded scope of the initial stop); *State v. Miller*, 659 N.W.2d 275, 280 (Minn. Ct. App. 2003) (Held dog sniff impermissible expansion of

initial traffic stop for broken windshield, where officer did not have a reasonable, articulable suspicion that either defendant or other occupant was involved in drug-related or any criminal activity).

<sup>105</sup> *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) (Even if the officer does have a “reasonable, articulable suspicion” to properly stop a vehicle, “an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop”); *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999) (“[A]s long as the reasonable suspicion for the detention remains, the police may continue the detention provided they act diligently and reasonably”); *State v. Blacksten*, 507 N.W.2d 842, 846 (Minn. 1993); *State v. Moffatt*, 450 N.W.2d 116, 119 (Minn. 1990) (the police may continue to detain a person only “[a]s long as the reasonable suspicion for the detention remains”).

<sup>106</sup> *United States v. Sharpe*, 470 U.S. 675, 105 S.Ct. 1568, 84 L.Ed.2d 605 (1985) (Court upheld a 20-minute detention of a “suspected drug trafficking” pickup truck and camper). See also *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004); *State v. Blacksten*, 507 N.W.2d 842, 846 (Minn. 1993) (reiterating and applying the general rule in *Sharpe*).

<sup>107</sup> *State v. Smith*, A10-0916 June 6, 2012 (Minn. 2012) (an officer’s expansion of the scope of a lawful traffic stop was supported by a reasonable, articulable suspicion of illegal activity, when the totality of the circumstances include a defendant shaking “very violently” and he offered an evasive explanation for the shaking. This decision departs from a line of cases generally holding that a defendant’s nervousness doesn’t give rise to reasonable suspicion); See also, *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002); *State v. Ortega*, 749 N.W.2d 851, 853 (Minn. Ct. App. 2008), *aff’d on other grounds*, 770 N.W.2d 145 (Minn. 2009). See also *State v. Diede*, 795 N.W.2d 836, 845 (Minn. 2011) (Detective’s request to search cigarette package was an improper expansion of the scope of the stop, where the initial investigation and stop were based upon mismatched license plates, because “even if mismatched plates supported a reasonable suspicion that the truck was stolen or that the owner was attempting to evade automobile registration fees, a search for drugs was not reasonably related to those justifications”); *State v. Askerooth*, 681 N.W.2d 353, 365, 367 (Minn. 2004) (“In essence, Article I, Section 10 of the Minnesota Constitution requires that each incremental intrusion during a traffic stop 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*. Furthermore, the basis for the intrusion must be individualized to the person toward whom the intrusion is directed.” With regard to traffic stops, a police officer may order a driver out of a lawfully stopped vehicle without an articulated reason; but there must be an additional basis, independent of an officer’s command for a driver to exit a vehicle, before a more serious intrusion is permitted, such as confining defendant in the back of a squad car. Court held that “the lack of a driver’s license, by itself, is not a reasonable basis for confining a driver in a squad car’s locked back seat when the driver is stopped for a minor traffic offense”); *State v. Fort*, 660 N.W.2d 415, 419 (Minn. 2003) (Investigative questioning, request for consent to search, and subsequent search of passenger for narcotics in vehicle stopped for routine traffic violations went beyond scope of traffic stop and was unsupported by any reasonable articulable suspicion, where officer testified that location of stop was in high drug area, and that he intended to offer defendant a ride home and conducted pat down search for purposes of officer safety, but officer never said he suspected any crime other than traffic violations); *State v. Cox*, 807 N.W.2d 447, 452 (Minn. Ct. App. 2011) (“If a stop is initially justified on one basis, an officer cannot expand the scope of the investigation without additional reasonable suspicion to support the expansion”; where officer lawfully stopped defendant for suspicion of stolen tabs and upon approaching defendant to inquire as to the tabs officer immediately observed signs of defendant’s intoxication, officer lawfully developed additional reasonable suspicion that supported the expanded scope of the initial stop); *State v. Miller*, 659 N.W.2d 275, 280 (Minn. Ct. App. 2003) (Held dog sniff impermissible expansion of initial traffic stop for broken windshield, where officer did not have a reasonable, articulable suspicion that either defendant or other occupant was involved in drug-related or any criminal activity).

<sup>108</sup> *State v. Moffatt*, 450 N.W.2d 116 (Minn. 1990) (Sixty-one minute detention upheld); See also, *State v. Gallagher*, 275 N.W.2d 803 (Minn. 1979) (Two-hour detention upheld); *United States v. Place*, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983) (Ninety-minute detention held improper).

<sup>109</sup> *Moffatt*, 450 N.W.2d at 116.

<sup>110</sup> *Katz v. United States*, 389 U.S. 347, 357 (1967); *State v. Othoudt*, 482 N.W.2d 218, 222 (1992).