DIVISION ONE
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RUTH WILLINGHAM, ACTING CLERK
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 09-0585
	)	
Appellee,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	
ANTWOINE LAMONTE MONTAGUE,	)	(Not for Publication –
	)	Rule 111, Rules of the
Appellant.	)	Arizona Supreme Court)
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-113650-009 DT

The Honorable Paul J. McMurdie, Judge

AFFIRMED

Terry Goddard, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
and Sarah E. Heckathorne, Assistant Attorney General
Attorneys for Appellee

O. Joseph Chornenky, P.C. — Phoenix
By O. Joseph Chornenky
Attorney for Appellant

W A R N E R, Judge

¶1 Antwoine Lamonte Montague ("Defendant") appeals his conviction and sentence for possession of narcotic drugs for

sale. He challenges the denial of a motion to suppress evidence obtained during a warrantless search of his vehicle. He also challenges the sufficiency of the evidence supporting his conviction. We affirm.

BACKGROUND[1]

¶2 In February 2008, police were investigating potential narcotics trafficking from a residence on West Glendale Avenue (the "Glendale Residence"). Following surveillance of the Glendale Residence, police stopped a gray Pontiac that had been there. Defendant was driving the Pontiac and police detained him while a drug-sniffing dog was brought to the scene. After the dog alerted, officers searched the car and found a box containing cocaine in the trunk.

¶3 The State charged Defendant with possession of narcotic drugs for sale, a class 2 felony. Defendant moved to suppress all evidence seized from the car, but the trial court denied the motion after a suppression hearing.

¶4 The parties stipulated to a bench trial based on the police reports. The court found Defendant guilty and sentenced him to a four-year mitigated term of imprisonment and ordered him to pay a fine. This appeal followed, and we have jurisdiction pursuant to the Arizona Constitution, Article 6,

[1]Additional facts are discussed in the context of the issues addressed below.

Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 and -4033 (2010).

DISCUSSION

I. Motion to Suppress

A. Reasonable Suspicion for Stop

¶5 Defendant does not challenge that, once the drug-sniffing dog alerted on the car, probable cause supported searching it and seizing the cocaine. *See State v. Box*, 205 Ariz. 492, 496, ¶ 14, 73 P.3d 623, 627 (App. 2003) (dog's alerting on trunk provided probable cause to search the car). Rather, he argues the police did not have reasonable suspicion to stop him, so the evidence seized should have been suppressed.

¶6 Police may, consistent with the Fourth Amendment, conduct an investigatory stop if there is reasonable suspicion that "criminal activity is afoot." *State v. Rogers*, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996) (citing *Ornelas v. United States*, 517 U.S. 690, 693 (1996)). Reasonable suspicion considers the totality of circumstances to see whether police have "a particularized and objective basis for suspecting legal wrongdoing," but need not rise to the level of probable cause. *United States v. Arvizu*, 534 U.S. 266, 273-74 (2002) (internal quotation omitted). Police may detain a suspect during an investigatory stop for as long as reasonably necessary to "diligently pursue[] a means of investigation . . . likely to

confirm or dispel their suspicions quickly." *State v. Teagle*, 217 Ariz. 17, 26, ¶ 32, 170 P.3d 266, 275 (App. 2007) (quoting *United States v. Sharpe*, 470 U.S. 675, 686 (1985)).

¶7 Construing the evidence at the suppression hearing in a light most favorable to sustaining the trial court's ruling, and applying de novo review, *Ornelas*, 517 U.S. at 699; *State v. Hyde*, 186 Ariz. 252, 265, 921 P.2d 655, 668 (1996), we conclude there was reasonable suspicion to stop Defendant.

¶8 The evidence shows that in February 2008, Glendale detective K.L. received information from a confidential informant that a person named "Chewy" was trafficking narcotics from the Glendale Residence. The informant provided K.L. with vehicle descriptions and the location of a possible client.

¶9 On February 27 and 28, 2008, the Glendale Police Department conducted surveillance of Chewy, other individuals, and various vehicles. Officers observed a number of vehicles, including a gray Pontiac and a truck driven by Chewy, "coming and going" to and from the Glendale Residence and other locations. One of the vehicles under surveillance, a green Jeep, was described as "probably a load vehicle . . . [that was] possibly involved in a drug transaction at 106th Avenue and Lower Buckeye." Further, officers observed Chewy at the Glendale Residence and the other locations where suspicious activity occurred. For example, after officers observed a

possible drug transaction involving the green Jeep, Chewy and others were observed "swapping" the green Jeep and Chewy's truck, an activity one officer termed an "indicator[]" of narcotics activity.

¶10 On February 28, police officers observed the gray Pontiac backing into the garage of the Glendale Residence around 12:05 p.m., after which the garage door closed. Although an officer admitted that closing a garage door after backing in is not itself indicative of drug trafficking, he testified that such behavior is an "indicator[]" and typical of drug couriers who want to conceal narcotics activity in the car.

¶11 Around 4:40 p.m., J.P., a DEA agent assisting in the surveillance, saw the gray Pontiac leave the Glendale Residence and followed it westbound on Glendale Avenue. As he followed, the Pontiac entered a park, slowly made a U-turn, and exited eastbound on Glendale. J.P. explained that drug couriers typically use this driving behavior to detect and evade police.

¶12 J.P. initiated a traffic stop and told Defendant to exit the Pontiac. Defendant was handcuffed, told he was being detained for a narcotics investigation, and read his *Miranda* rights. Before invoking his right to counsel, Defendant stated that the Pontiac was his.

¶13 Around 30 minutes later, a K-9 unit arrived to conduct a "free air sniff" of the Pontiac. The drug-sniffing dog

alerted to the vehicle's trunk and back seat area. Its handler searched the trunk and discovered a sealed cardboard box containing three pounds of cocaine.

¶14 Based on facts officers had before the stop -- including information from the informant, the conduct of vehicles observed at the Glendale Residence, the fact that Defendant's rented Pontiac was backed into the garage where it remained behind a closed door for several hours, and Defendant's evasive driving -- they had reasonable suspicion that Defendant was involved in illicit drug trafficking. While some of these facts taken alone could be considered innocuous, together they justified an investigatory stop. *See State v. O'Meara*, 198 Ariz. 294, 296, ¶ 11, 9 P.3d 325, 327 (2000) ("[L]ooking at the whole picture in this case, the car switching, the U-turns, and the fabric softener, there is no doubt that [the police officer] had reasonable suspicion to detain [defendant] . . . .").

B. Arrest

¶15 Defendant next argues that even if the stop were valid, it escalated into a de facto arrest requiring probable cause because of the restraints placed on him and the duration of the detention. We review de novo whether the stop constituted a de facto arrest, viewing the facts in a light most favorable to sustaining the trial court's ruling. *In re Roy L.*, 197 Ariz. 441, 444, ¶ 7, 4 P.3d 984, 987 (App. 2000).

¶16 Neither the manner nor the length of Defendant's detention made it an arrest. When police make an investigatory stop supported by reasonable suspicion, they may detain the individual for a reasonable period of time to investigate. *Teagle*, 217 Ariz. at 26, ¶ 32, 170 P.3d at 275. Here, detaining Defendant for approximately 30 minutes while awaiting the arrival of the K-9 unit was reasonable. *See id.* at 26, ¶ 35, 170 P.3d at 275 (detention of one hour and 40 minutes is not necessarily unreasonable while waiting for K-9 unit).

¶17 Officers may also use reasonable force to secure the suspect and protect themselves and the public during an investigatory stop. *State v. Blackmore*, 186 Ariz. 630, 634, 925 P.2d 1347, 1351 (1996). Here, Defendant was recently observed participating in suspected drug trafficking and was believed to be transporting drugs. J.P. was therefore justified for safety and investigatory reasons in searching Defendant and placing him in handcuffs while waiting for the K-9 unit to arrive. *See, e.g., id.* at 631, 634, 925 P.2d at 1348, 1351 (detention of burglary suspect did not amount to a de facto arrest where officer "drew his gun and ordered defendant to lie on the ground, then handcuffed him, helped him to his feet, walked him to the patrol car, and searched him"); *State v. Aguirre,* 130 Ariz. 54, 56, 633 P.2d 1047, 1049 (App. 1981) (suspect who was detained, frisked, handcuffed, and placed in a patrol car was

not under arrest). The circumstances of Defendant's detention did not turn it into an arrest.

II. Sufficiency of Evidence

¶18 Defendant was convicted under A.R.S. § 13-3408(A)(2) (2010),[2] which makes it a crime to knowingly possess a narcotic drug for sale. Defendant claims there was insufficient evidence to permit a finding that he knowingly possessed the cocaine found in the Pontiac. We review claims of insufficient evidence de novo and affirm if, viewing the evidence in a light most favorable to the State, a rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *State v. Cox*, 217 Ariz. 353, 357, ¶ 22, 174 P.3d 265, 269 (2007); *State v. Bible*, 175 Ariz. 549, 595, 858 P.2d 1152, 1198 (1993).

¶19 The police reports submitted into evidence show that Defendant flew from Baltimore to Phoenix in the morning of February 28 and rented the gray Pontiac. Before Defendant was stopped later that day, police observed his gray Pontiac back into the garage of the Glendale Residence, whereupon the garage door closed and the vehicle did not emerge for four and a half hours.

[2]We cite a statute's current version when no material revisions have occurred since the date of the offense.

¶20 When a search warrant was executed at the Glendale Residence, police discovered it was a stash house. Police found approximately three pounds of methamphetamine, 200 pounds of marijuana, $168,000 in cash, two assault rifles, a ledger, and scales.

¶21 When Defendant left the Glendale Residence in the Pontiac, he drove in a manner to detect surveillance. Once stopped, a package containing three pounds of cocaine was found in Defendant's trunk. The package was addressed to a Maryland residence, and Defendant intended to fly back to Baltimore that evening.

¶22 These facts are sufficient to support Defendant's conviction. The amount and packaging of the cocaine in Defendant's rental vehicle, Defendant's manner of driving, the fact that he spent time at a stash house, and the fact that he flew to Phoenix from Baltimore for the day all support an inference that Defendant knowingly possessed the cocaine for sale. *See, e.g., State v. Olson*, 134 Ariz. 114, 118-19, 654 P.2d 48, 52-53 (App. 1982) (amount of drugs, together with other factors, is sufficient evidence to support convictions of possession of marijuana for sale).

CONCLUSION

¶23 For the foregoing reasons, we affirm Defendant's conviction and sentence.

_____/S/_____
RANDALL H. WARNER, Judge*

CONCURRING:

_____/S/_____
LAWRENCE F. WINTHROP, Presiding Judge

_____/S/_____
PATRICK IRVINE, Judge

*Pursuant to Article 6, Section 3 of the Arizona Constitution, the Arizona Supreme Court designated the Honorable Randall H. Warner, Judge of the Arizona Superior Court, to sit in this matter.