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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

JEREMY ALLEN VOLK, *Appellant*.

No. 1 CA-CR 16-0753  
FILED 1-30-2018

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Appeal from the Superior Court in Coconino County  
No. S0300CR201500164  
The Honorable Mark R. Moran, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Jason Lewis  
*Counsel for Appellee*

Law Office of Lee Phillips, P.C., Flagstaff  
By Lee Phillips  
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Randall M. Howe joined.

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**C A T T A N I**, Judge:

¶1 Jeremy A. Volk appeals his convictions and sentences for transportation of narcotic drugs for sale and transportation of marijuana for sale. Volk challenges in particular the superior court’s denial of his motion to suppress evidence found in his car during a traffic stop. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 On February 18, 2015, Arizona Department of Public Safety (“DPS”) Officer Harris was monitoring eastbound traffic on the I-40 highway near Flagstaff. Around 11:00 a.m., he noticed a white car with a single occupant, Volk, driving with his arms locked out, firmly gripping the steering wheel, and looking straight ahead. The officer noticed that Volk had a GPS unit in the center of his windshield, which the officer believed to be illegally placed. The officer also noticed a red minivan directly behind Volk’s car, with two male occupants who made prolonged and aggressive eye contact with the officer. After seeing the officer, the van driver sped up and reached an unsafe distance behind Volk.

¶3 The officer decided to get a second look at the vehicles, and caught up with them five miles down the highway. When he got closer to the vehicles, the occupants of the red van again made aggressive eye contact and again drove within an unsafe distance behind Volk. When the officer moved closer to Volk to confirm the positioning of the GPS unit, the red van moved in close behind the patrol car, so the officer activated his rear emergency lights to signal to the van to back off, but the van continued to approach the patrol car. At this point, the officer recognized this as a potential “load car/heat car” driving scheme for drug trafficking.<sup>1</sup> Despite

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<sup>1</sup> Drug traffickers at times use a “load car” (a car carrying contraband), while a “heat car” (a second car, not carrying any contraband), maintains a close distance to the load car with the goal of distracting police attention away from the load car.

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the red van's erratic and unsafe driving, the officer decided to pull over Volk's vehicle for the GPS violation, and the red van continued down the highway.

¶4 The officer approached Volk's car on the passenger side, confirmed that the car was a rental, and notified Volk that he had been pulled over because of the placement of the GPS unit. During the interaction, the officer noticed fast food wrappers, empty energy drink cans, sleeping equipment, and a can of air freshener in the passenger compartment. Volk told the officer he worked as a pizza delivery driver and that he was travelling from Oregon to Texas to visit his girlfriend's grandparents. He indicated that he was driving even though his girlfriend was flying because he was afraid of heights. The car rental agreement required the car to be back by February 23, but Volk told the officer he wasn't planning to leave Texas until February 25 or 26. When the officer asked why the rental dates did not align with Volk's travel dates, Volk responded that his girlfriend's work schedule had changed unexpectedly. Throughout the interaction, the officer noticed that Volk was very nervous, even after he was told that he would only be receiving a warning for the GPS violation.

¶5 While printing out the warning, still suspecting that Volk was driving a load car, the officer asked for permission to search the car, but Volk refused. The officer then called a canine unit and told Volk not to leave. When the dog arrived 35 minutes later, it alerted on the car, which contained 81 pounds of marijuana and a two-way radio in the trunk.

¶6 After the State charged Volk with two felony counts, he filed a motion to suppress the evidence gathered at the traffic stop. The superior court denied the motion in a 12-page ruling, and after both parties agreed to waive a jury trial, the judge found Volk guilty on both counts and sentenced him to concurrent 5-year prison terms. Volk timely appeals, and we have jurisdiction under Arizona Revised Statutes ("A.R.S.") § 12-120.21(A)(1).

**DISCUSSION**

¶7 In reviewing a ruling on a motion to suppress, we consider the court's factual findings under an abuse of discretion standard, but we review de novo mixed questions of fact and law, including whether the totality of the circumstances support a reasonable suspicion of illegal activity. *State v. Moreno*, 236 Ariz. 347, 350, ¶ 5 (App. 2014).

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**I. Reasonable Suspicion for the Initial Stop.**

¶8 The Fourth Amendment protection against “unreasonable searches and seizures” applies to investigatory traffic stops, but because traffic stops are less intrusive than arrests, they need only be supported by an articulable, reasonable suspicion that the suspect committed a traffic violation. *State v. Sweeney*, 224 Ariz. 107, 111-12, ¶ 16 (App. 2010); *see also Terry v. Ohio*, 392 U.S. 1, 30 (1968). Here, Volk argues that the officer lacked reasonable suspicion to conduct the initial traffic stop based on the officer’s belief that the placement of Volk’s windshield-mounted GPS unit violated the law. Volk asserts that the officer’s assessment regarding the location and legality of the GPS unit was both incorrect and unreasonable.

¶9 Under A.R.S. § 28-959.01(B) a window-mounted GPS unit may not be placed on a windshield “in a manner that obstructs or reduces a driver’s clear view through the windshield.” There is an exception, however, for a device placed “[i]mmediately behind, slightly above or slightly below the rearview mirror.” § 28-959.01(A)(12)(a). Thus, if the driver places a GPS unit in one of the statutorily designated areas listed in (A)(12), he is *per se* not in violation of the visibility restriction of (B), but if the driver places the unit somewhere other than the designated areas, the driver violates (B) if the device obstructs or reduces his view. A violation of this statute may provide the basis for a traffic stop. *See Moreno*, 236 Ariz. at 354, ¶ 18.

¶10 Officer Harris testified that he “noticed there was a GPS unit improperly mounted in the middle of the windshield, which is a violation of state law.” The officer stated that the unit was mounted 6 to 8 inches below the rearview mirror, which he opined did not constitute “slightly below” the rearview mirror. The officer did not testify whether he believed the placement of the GPS unit obstructed or reduced Volk’s view through the windshield.

¶11 Volk argues that because the officer did not indicate whether the GPS unit obstructed the driver’s view, the officer may not have understood that § 28-959.01 only prohibits devices that obstruct or reduce a driver’s view. Volk contends that this possible mistake of law undermines a finding of reasonable suspicion. But Officer Harris’s testimony did not specifically evidence a misunderstanding of the law, and counsel did not follow-up with questions on cross-examination to clarify what Volk now speculates was the officer’s understanding of the law. Speculation aside, the facts presented at the suppression hearing were sufficient to show reasonable suspicion that the GPS unit was in a position (in the middle of

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the windshield well below the rearview mirror) that would block the driver's view and thus violate § 28-959.01(B). Accordingly, the facts presented to the court support the ruling that the officer had reasonable suspicion justifying the initial stop. See *Moreno*, 236 Ariz. at 352, ¶ 11 (holding that if the facts, as believed by law enforcement, give rise to reasonable suspicion that an equipment violation has occurred, the traffic stop may be upheld on that basis alone).

**II. Reasonable Suspicion for the Continued Detention.**

¶12 Volk next contends that Officer Harris did not have a reasonable suspicion that he was involved in illegal activity, and thus was not justified in detaining him beyond the initial traffic stop. Once an officer has completely addressed the traffic violation warranting the initial stop, the driver must be permitted to leave without further delay or questioning unless (1) the encounter between the driver and officer becomes consensual, or (2) the officer gains an independent reasonable suspicion that the driver is engaged in illegal activity. *Rodriguez v. United States*, 135 S. Ct. 1609, 1612 (2015) ("We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures."); *State v. Teagle*, 217 Ariz. 17, 23, ¶ 22 (App. 2007). "Reasonable suspicion is something short of probable cause, but it must be more than an 'inchoate and unparticularized suspicion or hunch.'" *Sweeney*, 224 Ariz. at 112, ¶ 21 (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). To establish reasonable suspicion, law enforcement officers are required to articulate some minimal level of objective justification, which is a considerably lower standard of proof than preponderance of the evidence. *Teagle*, 217 Ariz. at 272-73, ¶ 25.

¶13 Officer Harris extended Volk's detention after completing the purpose of the initial stop – he issued a warning approximately 15 minutes after the stop and began asking Volk questions related to drug trafficking. The extended detention constituted a seizure beyond what was necessary to complete the initial traffic stop. See *Rodriguez*, 135 S. Ct. at 1615-16. Because Volk did not consent to prolonging the interaction and detention, evidence discovered during the continued detention must be suppressed absent evidence of reasonable suspicion developed during the initial interaction. See *id.*; *United States v. Gorman*, 859 F.3d 706, 717 (9th Cir. 2017) (applying the "fruit of the poisonous tree" doctrine).

¶14 In determining whether reasonable suspicion exists for the continued detention, we consider the totality of the circumstances, including the defendant's conduct and the officer's training and experience.

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*Sweeney*, 224 Ariz. at 112, ¶ 22; see also *United States v. Cortez*, 449 U.S. 411, 418 (1981) (totality of the circumstances test permits law enforcement officers to draw “common sense conclusions about human behavior”). We will not reject a factor just because it could apply to an innocent traveler; nevertheless, factors that “describe a very large category of presumably innocent travelers” are by themselves insufficient to establish reasonable suspicion. *Teagle*, 217 Ariz. at 273, ¶ 25. Thus, “the articulated factors together must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied.” *Id.* (quoting *United States v. Foreman*, 369 F.3d 776, 781 (4th Cir. 2004)).

¶15 Considered together, the factors presented at the suppression hearing support the court’s finding that the officer had reasonable suspicion that Volk was involved in criminal activity. Officer Harris recognized that Volk and the two occupants in the red van may have been driving in tandem as part of a load car/heat car drug trafficking scheme. And contrary to Volk’s argument that the officer may not have actually believed there was a load car/heat car scheme, the officer called in to DPS dispatch and noted his explicit suspicion of the scheme before pulling Volk over.

¶16 Although Volk was not the one driving erratically, Officer Harris was permitted to consider the unusual conduct of the red van, appearing to be driving in tandem with Volk, in his aggregation of factors building a reasonable suspicion. See *Moreno*, 236 Ariz. at 350, ¶¶ 2–4 (considering the load car/heat car scheme in building a reasonable suspicion of illegal activity); see also *Cortez*, 449 U.S. at 418.

¶17 Additionally, Officer Harris testified that other factors present during the stop were, considered in the aggregate, suspicious and indicative of drug trafficking. For example, as discussed above, the dates on Volk’s rental agreement did not align with the dates of his actual travel and the officer found Volk’s explanation for the inconsistency unconvincing. The officer also found unconvincing Volk’s explanation that he was driving, as opposed to flying with his girlfriend, because he was afraid of heights.

¶18 Officer Harris also fairly considered Volk’s nervous demeanor. Nervousness during a traffic stop is generally not a reliable indicator of criminal activity, but Volk’s nervous demeanor persisted even after the officer told him he would only issue a warning for the GPS violation. See *Cortez*, 449 U.S. at 418 (permitting officers to come to common sense conclusions based on human behaviors); see also *Sweeney*, 224 Ariz. at 114, ¶ 26. The officer testified that in his experience, a person’s demeanor

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generally relaxes noticeably after finding out they will only receive a warning. Although this factor does not carry great weight, it may be considered as part of the analysis. *See Teagle*, 217 Ariz. at 273, ¶ 25.

¶19 Volk argues that the factors in this case are analogous to those in *Sweeney*, in which this court reversed the superior court’s denial of the defendant’s motion to suppress, finding that the factors relied on by the officer for extending the initial stop—including an implausible story, nervousness even after learning the officer would only issue a warning, and vague answers to the officer’s questions—“only gave rise to [an] inchoate and unparticularized suspicion or hunch.” *Sweeney*, 224 Ariz. at 113, ¶¶ 23–24. Here, in contrast, there was evidence of a load car/heat car drug trafficking scheme, and the aggregated factors considered by Officer Harris support the court’s finding that the officer had a reasonable suspicion of criminal activity justifying the continued detention and search. *See Teagle*, 217 Ariz. at 273, ¶ 25.

CONCLUSION

¶20 Volk’s convictions and sentences are affirmed.



AMY M. WOOD • Clerk of the Court  
FILED: AA