IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOHN ANTHONY MAJALCA,
Appellant.

No. 2 CA-CR 2020-0094
Filed April 22, 2021

Appeal from the Superior Court in Pima County
No. CR20183503001
The Honorable Jeffrey T. Bergin, Judge

AFFIRMED

COUNSEL

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OPINION

Chief Judge Vásquez authored the opinion of the Court, in which Vice Chief Judge Staring and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 After a jury trial, John Majalca was convicted of possession of a narcotic drug for sale, possession of drug paraphernalia, two counts of possession of a narcotic drug, and four counts of possession of a deadly weapon during the commission of a felony drug offense. The trial court sentenced him to mitigated, concurrent prison terms, the longest of which is twelve years. On appeal, he argues that the court erred by denying his motion to suppress evidence obtained during a traffic stop because it was unconstitutionally prolonged. For the following reasons, we affirm.

Factual and Procedural Background

¶2 In reviewing the denial of a motion to suppress, we view the facts in the light most favorable to upholding the trial court's ruling, and we consider only the evidence presented at the suppression hearing. *State v. Wyman*, 197 Ariz. 10, ¶ 2 (App. 2000). From February to August 2018, the Tucson Police Department's Community Response Team (CRT) conducted weekly surveillance of Majalca in response to a tip the team had received from another law enforcement agency. The CRT is a specialized group of uniformed and plainclothes officers who conduct undercover operations dealing "mostly [with] narcotics and high level offenders."

¶3 The CRT initially received information in February 2018 that Majalca was suspected of selling "a large amount of narcotics." This tip included specific details, such as Majalca's name, address, and vehicle, and that he used a "small black handheld safe" to transport narcotics. The CRT verified his address, vehicle, and use of the safe through surveillance. In August 2018, the CRT conducted surveillance based on another tip regarding suspected narcotics dealing at a residence, in a "high crime area," with "a lot of people with lengthy criminal history coming and going." During surveillance, a plainclothes officer observed Majalca's vehicle at the residence and later saw him "walking out of a gate" carrying a "small black box" that he placed in the trunk of his vehicle. Suspecting that Majalca was

in possession of narcotics, the CRT requested the assistance of a canine officer.

¶4 Majalca drove away from the residence and "committed a slew of traffic violations," which the CRT "call[ed] out" to each other over the radio. For example, the officers observed Majalca speeding, changing lanes in an unsafe manner, driving through a private parking lot to avoid stopping at a red light, and failing to come to a complete stop at an intersection with a red flashing light. Based on the officers' specialized training in narcotics investigations, they considered Majalca's driving behavior to be consistent with a "heat run," or "driving in a manner that would make it difficult to be surveilled or followed."

¶5 A uniformed police officer working with the CRT initiated a traffic stop after independently observing a moving violation. The officer approached the vehicle and asked Majalca for his driver license and registration and then returned to his patrol vehicle to conduct a records check. Returning to Majalca's vehicle a second time, the officer asked for his phone number, which is required to print an e-citation, and questioned him about his driving behavior, specifically driving through the private parking lot and failing to stop at the red flashing light. Majalca denied committing either driving violation.

¶6 The officer returned to his patrol vehicle to generate the e-citation and confirmed that there were no pending 9-1-1 calls about Majalca's driving behavior. Then, based on "the observations made by the other members of the [CRT], [Majalca's] driving behavior, . . . [and his] denials about his [driving] behavior," the officer decided to return to Majalca's vehicle a third time to conduct a horizontal gaze nystagmus (HGN) test to confirm he was not under the influence of intoxicants. After the HGN test, the officer asked Majalca where he was coming from, to which he answered that he was grocery shopping but did not mention he had just left the residence the CRT had under surveillance.

¶7 Once again, the officer returned to his patrol vehicle to print the e-citation, but the printer malfunctioned and needed to be readjusted and plugged back in. Before the officer was able to issue and explain the citation to Majalca, the canine unit arrived. At this time, the officer asked Majalca to step out of his vehicle "[s]o that he [wa]sn't in danger from a K-9 walking around [it]," and Majalca complied. The dog alerted to Majalca's vehicle, and a subsequent search revealed narcotics.

¶8 A grand jury indicted Majalca for possession of a narcotic drug for sale (heroin), possession of a dangerous drug for sale (methamphetamine), possession of drug paraphernalia, money laundering, two counts of possession of a narcotic drug (suboxone and methadone), five counts of possession of a deadly weapon during the commission of a felony drug offense, and four counts of possession of a deadly weapon by a prohibited possessor.

¶9 Majalca filed a motion to suppress, arguing that the initial stop lacked reasonable suspicion and, even if the officer had reasonable suspicion to initiate the stop, it was unconstitutionally prolonged. The state responded that the officer had reasonable suspicion to initiate the traffic stop, based on Majalca's moving violations, and that it was "not unreasonably prolonged" because the "mission" of the stop was not completed before the canine unit arrived. The state also argued that the officer had reasonable suspicion that Majalca was involved in criminal drug activity. The trial court held a two-day evidentiary hearing and subsequently denied the motion to suppress, concluding that "the traffic stop was supported by reasonable suspicion and was not delayed for an unreasonable time period."

¶10 Majalca was tried, convicted, and sentenced as described above. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

Motion to Suppress

¶11 Majalca argues that the trial court erred by denying his motion to suppress. He contends the uniformed officer unlawfully prolonged the traffic stop to give time for the canine unit to arrive, thereby violating his Fourth Amendment rights. We review the denial of a motion to suppress for an abuse of discretion, *State v. Sallard*, 247 Ariz. 464, ¶ 7 (App. 2019), but whether reasonable suspicion exists is a mixed question of law and fact that we review de novo, *State v. Kjolsrud*, 239 Ariz. 319, ¶ 8 (App. 2016).

¶12 The Fourth Amendment protects against unreasonable searches and seizures. *See* U.S. Const. amend. IV; *Terry v. Ohio*, 392 U.S. 1, 8 (1968); *State v. Gay*, 214 Ariz. 214, ¶ 8 (App. 2007). An investigatory traffic stop is a seizure under the Fourth Amendment, and because it is brief and limited in nature, an officer need only possess "'an articulable, reasonable suspicion, based on the totality of the circumstances,' that a traffic violation has occurred." *State v. Sweeney*, 224 Ariz. 107, ¶ 16 (App. 2010) (quoting

State v. Teagle, 217 Ariz. 17, ¶ 20 (App. 2007)). An officer who has observed a traffic violation has reasonable suspicion to initiate a traffic stop. *Kjolsrud*, 239 Ariz. 319, ¶ 9.

¶13 The duration of a traffic stop, however, is generally limited by the time required for an officer to address the reason that necessitated the stop. *See Rodriguez v. United States*, 575 U.S. 348, 354 (2015); *Sweeney*, 224 Ariz. 107, ¶ 17. A traffic stop "justified solely by the interest in issuing a warning ticket" becomes unreasonable, and thus unconstitutional, when "it is prolonged beyond the time reasonably required to complete [the stop's] mission" of issuing the warning ticket. *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). Although the Fourth Amendment "tolerate[s] certain unrelated investigations that d[o] not lengthen the roadside detention," a dog sniff is beyond the "ordinary inquiries incident to [a traffic] stop" and is a detour from the stop's mission. *Rodriguez*, 575 U.S. at 355–56.

¶14 When an officer conducts a dog sniff during a traffic stop, "[t]he critical question . . . is not whether the dog sniff occurs before or after the officer issues a ticket . . . but whether conducting the sniff 'prolongs'—i.e., adds time to—'the stop.'" *Id.* at 357. Upon completion of the traffic stop's mission, an officer "must allow a driver to continue on his way unless (1) the encounter between the driver and the officer becomes consensual, or (2) during the encounter, the officer develops a reasonable and articulable suspicion that criminal activity is afoot." *Sweeney*, 224 Ariz. 107, ¶ 17.

¶15 Majalca relies on *Rodriguez* and *Sweeney* to support his argument that the traffic stop was prolonged improperly. In *Rodriguez*, a canine officer initiated a traffic stop after observing the defendant "veer slowly onto the shoulder" of the highway, violating state law. 575 U.S. at 351. When he first approached the defendant's vehicle, the officer questioned the defendant about why he had driven on the shoulder of the road and asked for his driver license, registration, and proof of insurance. *Id.* After conducting a records check, the officer returned to the vehicle, asked for the passenger's driver license, and questioned the passenger about where the pair were coming from and where they were going. *Id.* The officer then ran a records check on the passenger, called for a second officer, and began writing a warning ticket for the traffic violation. *Id.* Returning to the defendant's vehicle for a third time, the officer issued and explained the written warning and returned the documents. *Id.* at 352. At this time, the officer considered the "justification for the traffic stop" complete but did not consider the defendant "free to leave." *Id.* The officer subsequently asked for consent to conduct a dog sniff, which the defendant refused. *Id.* The officer then ordered the defendant out of his vehicle and

waited for the second officer to arrive before conducting a dog sniff. *Id.* The dog alerted to the presence of drugs, and a search of the vehicle uncovered methamphetamine. *Id.* The Supreme Court concluded that the officer unconstitutionally prolonged the traffic stop beyond its mission and held that absent reasonable suspicion of illegal drug activity, extending a traffic stop in order to conduct a dog sniff violates the Fourth Amendment. *See id.* at 350.

¶16 Similarly, in *Sweeney*, a canine officer "initiated a stop after he observed [the defendant] following another vehicle at what he believed to be an unsafe distance." 224 Ariz. 107, ¶ 2. As the officer approached the defendant's vehicle, he noticed it was a rental, and the defendant handed him a Canadian driver license. *Id.* ¶ 3. After obtaining the documents to complete a records check, the officer asked the defendant to come to his patrol vehicle and questioned him about "his travels and the reason for his visit to Arizona" while the officer completed the warning citation. *Id.* The officer then issued the warning citation and "wished [the defendant] a safe trip." *Id.* ¶ 5.

¶17 As the defendant was returning to his vehicle, the officer asked if he could speak with him again. *Id.* When the defendant returned to the patrol vehicle, the officer asked "whether he had anything illegal in his vehicle," to which the defendant answered in the negative. The officer then requested consent first to search the vehicle and then to conduct a dog sniff. *Id.* The defendant refused both. *Id.* As the defendant started to walk back toward his vehicle, the officer "grabbed [him] by the arm," told him he was being detained, and conducted a dog sniff. *Id.* ¶ 6. The dog alerted to drugs, and a search of the vehicle revealed cocaine. *Id.* The defendant moved to suppress the evidence, arguing in part that "the detention went beyond the scope of the traffic stop." *Id.* ¶ 7. After an evidentiary hearing, the trial court determined: "(1) the length of the detention was reasonable; (2) the encounter between [the officer] and [the defendant] was consensual after the warning citation was given; and (3) there was reasonable suspicion for the continued detention." *Id.* ¶ 9. On appeal, this court concluded that "[b]ecause the circumstances here did not form a particularized and objective basis for the second seizure, the absence of consent rendered that seizure and subsequent search unlawful" and reversed the trial court's denial of the suppression motion. *Id.* ¶ 33.

¶18 In this case, Majalca contends the HGN test and multiple records checks were unnecessary for the mission of the traffic stop and, thus, the officer unconstitutionally prolonged the time required to complete it. The trial court ruled that "to the extent the stop was delayed for

unrelated reasons, it appears that such delays were de minimis," finding that the records checks and HGN test prolonged the traffic stop "by no more than two . . . minutes." But as Majalca points out, *Rodriguez* rejected the "de minimis" standard and the "[a]uthority for the [traffic stop] ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." 575 U.S. at 354, 356.

¶19 However, even if we were to conclude Majalca was detained longer than allowed by the traffic stop's mission, there was a valid, independent basis for detaining Majalca: the officers' reasonable suspicion based on facts gathered before the stop that Majalca was involved in illegal drug activity. Although the trial court used the wrong legal standard, it came to the correct legal conclusion, and we therefore must affirm. *See State v. Boteo-Flores*, 230 Ariz. 551, ¶ 7 (App. 2012) ("We are required to affirm a trial court's ruling if legally correct for any reason . . . ."); *see also State v. Perez*, 141 Ariz. 459, 464 (1984) ("The fact that the trial judge came to the proper conclusion for the wrong reason is irrelevant.").

¶20 Unlike in *Rodriquez* and *Sweeney*, the traffic stop in this case was not "justified only by a police-observed traffic violation," and, as the state argues, officers had independent reasonable suspicion to detain Majalca to wait for the canine unit to arrive based on the totality of the circumstances.[1] *Rodriguez*, 575 U.S. at 350. "By definition, reasonable suspicion is something short of probable cause." *State v. O'Meara,* 198 Ariz. 294, ¶ 10 (2000); *see United States v. Cortez*, 449 U.S. 411, 417–18 (1981) (reasonable-suspicion standard is investigatory in nature and involves "probabilities," not "hard certainties" of criminal activity). "Although 'reasonable suspicion' must be more than an inchoate 'hunch,' the Fourth Amendment only requires that police articulate some minimal, objective justification for an investigatory detention." *Teagle*, 217 Ariz. 17, ¶ 25; *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000) (Fourth Amendment permits officer to conduct "investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot"). In determining whether reasonable suspicion authorized an officer to initiate an investigatory traffic stop, we look at the "whole picture to evaluate the totality of the circumstances" and to determine whether, "collectively, these

[1]The circumstances suggest that the traffic violations were not the officer's primary motivation for the stop. But regardless of whether the officer-observed traffic violations were the sole reasons for the traffic stop, an officer's subjective intent for a stop is irrelevant to whether reasonable suspicion existed. *See Whren v. United States*, 517 U.S. 806, 812–13 (1996).

factors . . . show reasonable suspicion of criminal activity." *O'Meara*, 198 Ariz. 294, ¶ 9. Likewise, considering the totality of the circumstances permits officers to rely on their training and experience "to make inferences from and deductions about the cumulative information available to them [at the time of the traffic stop] that 'might well elude an untrained person.'" *United States v. Arvizu*, 534 U.S. 266, 273 (2002) (quoting *Cortez*, 449 U.S. at 418); *see Teagle*, 217 Ariz. 17, ¶ 26. Reasonable suspicion can be based on the collective knowledge of the officers involved in an investigation. *See State v. Chavez-Inzunza*, 145 Ariz. 362, 364 (App. 1985) (valid stop under collective-knowledge doctrine where officer who observed events constituting reasonable suspicion radioed other officers to conduct stop); *see also State v. Lawson*, 144 Ariz. 547, 553 (1985) (collective-knowledge doctrine does not require that arresting officer "personally be in possession of all the facts"). We review de novo whether reasonable suspicion justified an officer's investigatory stop and "accord deference to a trained law enforcement officer's ability to distinguish between innocent and suspicious actions." *Teagle*, 217 Ariz. 17, ¶ 26; *see State v. Woods*, 236 Ariz. 527, ¶ 13 (App. 2015).

¶21 The officers' testimony as to the circumstances—separate from the observed traffic violations—supporting reasonable suspicion that Majalca may have been involved in transporting narcotics included (1) information received about Majalca's involvement in the sale of narcotics; (2) the surveillance conducted February through August 2018 that confirmed the tips received, including the officers' observation of a "black safe" associated with Majalca, the location of his residence, and the description of his car; (3) Majalca had taken the safe into a suspected narcotics residence located in a "high crime area," which was relayed by radio to the CRT; (4) his driving patterns consistent with that of a "heat run"; and (5) his evasive responses to questions about his whereabouts and the alleged traffic violations, which were inconsistent with the officer's own observations.

¶22 It was reasonable for the officers, based on their training and experience, to infer from these facts that Majalca was involved in criminal activity. *See, e.g., Woods*, 236 Ariz. 527, ¶ 16 (officer had reasonable suspicion to detain defendant during traffic stop until canine unit arrived where defendant "was using a rental car with no personal belongings inside, provided confusing explanations about the purpose of his trip, had an extensive criminal history of drug transportation, and had two unlabeled taped boxes in the trunk of his car that had a weight and density consistent with drug packages"). We therefore conclude that the officers had reasonable suspicion to believe Majalca was engaged in drug-related

activity, justifying the call for the canine unit and the dog sniff. And, the uniformed officer had sufficient information to detain Majalca for the time it took for the canine unit to arrive.

¶23 In sum, although the call for the canine unit and subsequent dog sniff extended the time Majalca was detained for reasons connected to the traffic violations, it was permissible based on the officers' reasonable suspicion he was involved in criminal activity before, and unrelated to, those violations. The officers therefore had two independent reasons to detain Majalca: (1) officer-observed traffic violations and (2) reasonable suspicion of criminal activity from the earlier surveillance.

Disposition

¶24 For the reasons stated above, the trial court did not err in denying Majalca's motion to suppress. His convictions and sentences are affirmed.