

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 18 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

CHARLES ANTONIO GRAY,

Defendant - Appellant.

No. 23-1076

D.C. No.

1:22-cr-00016-DLC-1

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Dana L. Christensen, District Judge, Presiding

Submitted April 3, 2024**
Portland, Oregon

Before: OWENS and FRIEDLAND, Circuit Judges, and SILVER, District
Judge.***

Charles Gray appeals from his conviction by guilty plea for possession with
intent to distribute methamphetamine. He contends that the evidence of

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Roslyn O. Silver, United States District Judge for the
District of Arizona, sitting by designation.

methamphetamine underlying his conviction was the fruit of an unconstitutionally prolonged traffic stop, and that the district court improperly denied his suppression motion. As the parties are familiar with the facts, we do not recount them here.

We affirm.

We review a district court's denial of a suppression motion de novo and its underlying factual findings for clear error. *United States v. Evans*, 786 F.3d 779, 784 (9th Cir. 2015). "We review reasonable suspicion determinations de novo, reviewing findings of historical fact for clear error and giving due weight to inferences drawn from those facts by resident judges and local law enforcement officers." *Id.* at 788 (quoting *United States v. Valdes-Vega*, 738 F.3d 1074, 1077 (9th Cir. 2013) (en banc)).

The district court properly denied Gray's suppression motion. Officer Kilpela did not unconstitutionally prolong the traffic stop. A traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete [the] mission" of the stop. *Illinois v. Caballes*, 543 U.S. 405, 407 (2005). The "mission" of a traffic stop is "to address the traffic violation that warranted the stop and attend to related safety concerns." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015) (citation omitted). However, "an officer may prolong a traffic stop if the prolongation itself is supported by independent reasonable suspicion." *Evans*, 786 F.3d at 788.

1. Kilpela's pre-consent conversations did not unconstitutionally prolong the stop. Gray contends that Kilpela's conversations with Dewitty, Dixon, and Gray before obtaining Dewitty's consent to search the car were unconstitutional because Kilpela was "investigating a criminal offense" when "he had no reasonable basis for doing so." However, "no reasonable suspicion is required to justify questioning that does not prolong the stop." *United States v. Mendez*, 476 F.3d 1077, 1080 (9th Cir. 2007). Kilpela questioned Dewitty, Dixon, and Gray for around twelve minutes while filling out paperwork for the stop and checking the VIN number of the car. *See id.* (holding that the detective's questions about defendant's gang tattoos while running an identification check on defendant "could not have expanded the duration of the stop since the stop would, in any event, have lasted until after the check had been completed"). There is no indication that the stop would have been shorter if Kilpela had not talked to them.

2. Gray next contends that Kilpela prolonged the stop because he did not have the reasonable suspicion required to ask Dewitty if there was anything illegal in the car. Reasonable suspicion depends on "whether the facts and circumstances within the officer's knowledge are sufficient to warrant a prudent person to believe a suspect has committed, is committing, or is about to commit a crime." *United States v. Willy*, 40 F.4th 1074, 1080 (9th Cir. 2022).

Based on Kilpela's knowledge at the time, it was reasonable for him to

suspect criminal activity. *See Ornelas v. United States*, 517 U.S. 690, 695 (1996) (stating that reasonable suspicion is a “commonsense, nontechnical conception[] that deal[s] with ‘the factual and practical considerations of everyday life on which reasonable prudent men, not legal technicians, act’” (quoting *Illinois v. Gates*, 462 U.S. 213, 231 (1983))). As the district court found:

(1) the vehicle had been rented in the name of a third party who was not present in the vehicle; (2) Mr. Gray and Ms. Dixon did not know who had rented the car; (3) the vehicle was approximately 1,400 miles from where it had to be returned in two days . . . ; (4) the occupants were traveling from a known narcotics hub down a major drug corridor; . . . (5) Mr. Gray, Ms. Dewitty, and Ms. Dixon contradicted one another in their statements regarding their travel plans . . . [; and (6)] rental cars are often used in drug trafficking.

These findings are not clearly erroneous and support the relatively low bar of reasonable suspicion. *See Valdes-Vega*, 738 F.3d at 1078-80 (finding reasonable suspicion where a truck with foreign plates drove “in a suspicious manner” near a checkpoint in “an area frequented by smugglers”). Thus, because Kilpela had reasonable suspicion to ask Dewitty if there was anything illegal in the car, he did not unconstitutionally prolong the stop.

AFFIRMED.