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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1571**

State of Minnesota,
Respondent,

vs.

Michael Eugene Tabaka,
Appellant.

**Filed July 24, 2017
Affirmed
Halbrooks, Judge**

Isanti County District Court
File No. 30-CR-15-144

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Jeffrey Edblad, Isanti County Attorney, Cambridge, Minnesota, Scott A. Hersey, Special Assistant County Attorney, St. Paul, Minnesota (for respondent)

Richard S. Virnig, Virnig Law PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Schellhas, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

On appeal from his convictions of fifth-degree controlled-substance possession and possession of a hypodermic needle, appellant challenges the district court's dismissal of

his pretrial motion to suppress evidence. Appellant contends that the district court erred by concluding that the deputy had reasonable, articulable suspicion to conduct a canine sniff of the vehicle's exterior. We affirm.

FACTS

After midnight on February 27, 2015, an Isanti County deputy noticed a vehicle driving on a county road in Spencer Brook Township that did not have its rear license plate illuminated. The deputy ran a check of the vehicle's license plate and realized that he had stopped the same vehicle the night before and had given the driver an oral warning for a minor equipment violation. He then observed the driver stop the vehicle on the road's shoulder. The driver activated the hazard lights and stepped out of the vehicle. The deputy pulled up behind the vehicle and walked over to ask the driver, subsequently identified as appellant Michael Eugene Tabaka, what was wrong with the vehicle.

During the conversation with Tabaka, the deputy observed that Tabaka's eyes appeared glassier than the previous night and that he spoke in a more excited, agitated manner. The deputy asked Tabaka where he was coming from and Tabaka explained that he was making a loop through the area. Tabaka then spontaneously said, "Well, I wasn't coming from Johnny's." With his flashlight, the deputy looked inside the vehicle and viewed a hypodermic needle cap lying on the driver's seat. Based on Tabaka's mannerisms, the unprompted comment, and the hypodermic needle cap, the deputy believed that Tabaka might have engaged in drug-related activity.

The deputy requested Tabaka's consent to search the vehicle. After Tabaka declined, the deputy conducted a pat-down search of Tabaka and then removed his

narcotics canine from his squad car. The narcotics canine conducted a sniff around the vehicle's exterior and alerted the deputy to the presence of a controlled substance inside the vehicle. The deputy searched the vehicle and discovered two hypodermic needles and a small baggie of crystalline methamphetamine between the vehicle's sunroof and its liner. The deputy then arrested Tabaka.

The state charged Tabaka with one count of fifth-degree possession of a controlled substance, in violation of Minn. Stat. § 152.025, subd. 2(a)(1) (2014), and one count of possession of a hypodermic needle, in violation of Minn. Stat. § 151.40, subd. 1 (2014). Tabaka moved the district court to suppress the evidence resulting from the search. After the district court held a contested omnibus hearing, the district court denied his motion. The district court later held a one-day court trial and found Tabaka guilty of both counts. The district court sentenced Tabaka to 60 days in jail. This appeal follows.

D E C I S I O N

Tabaka argues that the district court erred by determining that the deputy possessed reasonable, articulable suspicion to deploy his narcotics canine for a canine sniff around the vehicle's exterior. In reviewing a district court's order on a motion to suppress evidence, we independently review the facts and determine, as a matter of law, whether the district court erred in suppressing or not suppressing the evidence. *State v. Askerooth*, 681 N.W.2d 353, 359 (Minn. 2004). We review de novo the district court's conclusion that reasonable, articulable suspicion existed to justify the search. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). But "[appellate courts] accept the district court's factual

findings unless they are clearly erroneous.” *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

The Fourth Amendment to the United States Constitution and article I of the Minnesota Constitution protect citizens from unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A search conducted without a warrant is presumptively unreasonable unless the search falls within one of the few well-established exceptions to the warrant requirement. *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016). One exception to the warrant requirement is that a police officer may “conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). Police must have reasonable, articulable suspicion of drug-related activity prior to initiating a canine sniff around the exterior of a vehicle. *State v. Wiegand*, 645 N.W.2d 125, 137 (Minn. 2002).

Reasonable suspicion occurs when a police officer has a particularized and objective basis for suspecting that a particular person is engaging in criminal activity. *Lugo*, 887 N.W.2d at 486. The suspicion must be based on ““specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”” *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). Because of their special training, a police officer articulating a reasonable suspicion may make inferences and deductions that may elude an untrained person. *State v. Flowers*, 734 N.W.2d 239, 251-52 (Minn. 2007). The requisite showing for reasonable suspicion is not high and is less than probable cause.

Timberlake, 744 N.W.2d at 393. But police cannot use a canine to conduct a canine sniff “at random and without reason,” *State v. Carter*, 697 N.W.2d 199, 211 (Minn. 2005) (quotation omitted), or out of “mere whim, caprice, or idle curiosity,” *Wiegand*, 645 N.W.2d at 134 (quotation omitted).

Tabaka contends that the district court relied on inappropriate facts and made impermissible legal conclusions in determining that the deputy possessed reasonable, articulable suspicion. Tabaka’s argument first suggests that the district court improperly relied on (1) his refusal to consent to the search of the vehicle, (2) his nervousness, (3) his affiliation with “Johnny” (a known individual with a substantial history involving drug crimes), and (4) the deputy’s knowledge of his prior use of methamphetamine as facts that would demonstrate that the deputy possessed a reasonable suspicion. Although the district court did provide this information as context in its factual findings, it did not rely on these particular facts in concluding that the deputy possessed reasonable, articulable suspicion that would justify the canine sniff around the vehicle’s exterior.¹

Instead, the district court based its conclusion on several other facts that would indicate that Tabaka may have been engaging in drug-related criminal activity, including: (1) the deputy’s observation of a hypodermic needle cap in the driver’s seat, (2) the

¹ Tabaka contends that the district court relied on facts “not even in the record” and asserts that there is nothing in the record that supports the deputy’s knowledge of him as a methamphetamine user. But the deputy testified that he had known Tabaka for quite some time. And the probable-cause statement in the complaint, which was admitted into evidence at the hearing, specifically provides that Tabaka is a known user of methamphetamine. Because the evidence in the record supports the district court’s finding, the finding is not clearly erroneous.

deputy's knowledge that a hypodermic syringe would constitute illegal contraband, (3) the spontaneous nature of Tabaka's comment about "Johnny," and (4) Tabaka's appearance and mannerisms suggesting impairment. We evaluate these findings to decide whether they properly support the district court's determination of reasonable suspicion.

Tabaka emphasizes that the possession of a hypodermic needle cap is "in and of itself" not illegal or even suspicious activity. He then provides several "innocent reasons" for why the cap may have appeared in the vehicle. But Tabaka attempts to view this information in isolation rather than in combination with the other relevant circumstances. *See Davis*, 732 N.W.2d at 182 ("[Minnesota courts] consider the totality of the circumstances when determining whether reasonable suspicion exists, and seemingly innocent factors may weigh into the analysis."). Although the possession of a hypodermic needle cap is an inherently innocent activity, in the context of this stop combined with the other circumstances indicating impairment, we believe that the presence of the cap reasonably raised the deputy's suspicion of drug possession. *See State v. Munoz*, 385 N.W.2d 373, 376-77 (Minn. App. 1986) (stating that an officer who "observed glassine envelopes in plain view" and "was familiar with such containers as being commonly used to market controlled substances" could reasonably conclude that "controlled substances might be present").

Tabaka also contends that the district court improperly accepted his "nervousness" as a factor supporting reasonable suspicion. While he is correct that Minnesota courts are reluctant to rely on nervous behavior to support a finding of reasonable suspicion, the district court never mentions Tabaka's allegedly nervous demeanor as one of the reasons

justifying reasonable suspicion. *See Burbach*, 706 N.W.2d at 490. And even if Tabaka was indeed nervous, his attempt to justify his mannerisms on innocent conduct, such as the result of cold weather and car trouble, is unavailing. This argument again fails to account for the combination of circumstances that altogether raised the deputy's suspicion. *See Smith*, 814 N.W.2d at 353 (considering nervous-like behavior with other conduct that suggested defendant was engaging in drug-related activity).

Similarly, Tabaka asserts that because the deputy did not note any actual signs of intoxication through field sobriety tests or chemical testing, the district court could not have used Tabaka's impairment as a factor for finding reasonable suspicion. But we defer to the district court's findings regarding the reasonableness of a person's behavior during a stop. *Id.* at 354. This same deputy had stopped Tabaka the night before giving him a reasonable frame of reference in observing Tabaka's behavior and mannerisms. And exhibiting glassy eyes, making spontaneous, unprompted comments, and speaking in an agitated manner are all reasonable indicators of drug use that would support an objective suspicion of drug-related activity and drug possession. *Cf. Burbach*, 706 N.W.2d at 491 (holding that lack of signs of drug use or impairment, along with other minor factors, does not support reasonable suspicion of drug possession).

We conclude that the totality of the circumstances established reasonable, articulable suspicion justifying the deputy's decision to deploy his canine partner and conduct a canine sniff around the exterior of the vehicle. The district court did not err by denying Tabaka's motion to suppress evidence of the search.

Affirmed.