STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0886

State of Minnesota,
Respondent,

vs.

Ronald Jay Bolkema,
Appellant.

Filed September 3, 2019
Affirmed
Bratvold, Judge

Hennepin County District Court
File No. 27-CR-17-21147

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Patrick R. Lofton, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota; and

Rory F. Collins, Bruce Jones, Special Assistant Public Defenders, Faegre Baker Daniels, LLP, Minneapolis, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Larkin, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

In this direct appeal from his judgment of conviction for controlled-substance possession, appellant challenges the district court's denial of his pretrial motion to suppress evidence found in his car. Appellant argues that law enforcement conducted an illegal search for narcotics because they failed to obtain a warrant and there was no nexus connecting his unoccupied car to drug-related activity. Because officers had reasonable, articulable suspicion to conduct a dog sniff of the exterior of appellant's car, we affirm.

FACTS

Officer Jones, a police officer with the City of Bloomington, worked on a contractual security assignment at a hotel in Bloomington. He had been a police officer for about 30 years, had worked at the same hotel "[m]any times," and had previously observed narcotics activity at the hotel.

On May 7, 2016, at about 11:45 p.m., Jones walked through the hotel parking lot, approached a parked car with its headlights on, and saw three people in the car. Jones also saw "a white powdery substance with tin foil" on the lap of the person in the driver's seat. At Jones's request, the driver handed him the foil and powder. Jones arrested the driver and one passenger on drug-related charges. Jones asked the remaining passenger, J.S., to wait in the car until backup arrived. J.S. told Jones that she was staying in room 345 of the hotel.

After backup arrived, Jones and Officer Danner accompanied J.S. to room 345, and on their way, they encountered C.S., who was also staying in room 345. After they reached

room 345, the officers asked J.S. if they could search it, and she let them in the room. The officers found narcotics and drug paraphernalia ("a pen or a tube"). J.S. and C.S. told officers that a man they called "Ron" had rented the room for them. After checking with the hotel, Jones determined that appellant Ronald Jay Bolkema was the registered guest for room 345. Officers then arrested J.S. and C.S. on drug-related charges and asked hotel staff to "pin" the room, which means that keycards for the room would be deactivated.

On May 9, hotel staff told police they had given Bolkema a keycard to enter the room and Detective Heinzmann responded. Heinzmann had been an officer with the City of Bloomington for about 13 years and had special training in narcotics. Before going to the hotel, Heinzmann learned about the May 7 incident.

Heinzmann arrived at room 345 with his partner at about 12:30 p.m. Bolkema let the officers inside. Bolkema told Heinzmann that he was at the hotel to see about a damage deposit, had only been in his room for five to ten minutes, and had not slept there overnight. Bolkema also stated that he had rented the room for J.S. and C.S. Bolkema consented to a personal search, which revealed "a crack pipe with [a] brillo pad inside of it." Bolkema also consented to a search of the room, which revealed "snorting straws," but no drugs. Bolkema told the officers that he drove to the hotel in a blue car.

Heinzmann told Bolkema that he was free to leave, and then accompanied Bolkema as he left the room and went to a blue car in the hotel parking lot. Heinzmann asked for permission to search Bolkema's car, but he refused. At this point, officers told Bolkema he was no longer free to leave. Heinzmann conducted a dog sniff of the exterior of Bolkema's car. The dog alerted Heinzmann to the driver's side door seam. Heinzmann opened the

door, and the dog sniff continued. The dog indicated that drugs were near the center console in an energy drink can. Heinzmann and his partner found a false bottom in the can, which the officers unscrewed to discover approximately 10 grams of methamphetamine.

The officers arrested Bolkema and later obtained and executed a search warrant of a second hotel room rented by Bolkema, where they found 0.46 grams of methamphetamine and 1.35 grams of cocaine. In a post-Miranda statement, Bolkema acknowledged "ownership of the seized" drugs.

The state charged Bolkema with two counts: second-degree possession of a controlled substance under Minn. Stat. § 152.022, subd. 2(a)(1) (2014), for the drugs found in his car (count one), and fifth-degree possession of a controlled substance under Minn. Stat. § 152.025, subd. 2(a)(1) (2014), for the drugs in the second hotel room (count two).

Bolkema moved to suppress the evidence seized by the police, arguing the dog sniff of the vehicle exterior was illegal, and the court conducted an evidentiary hearing in February 2018. Jones and Heinzmann testified to the above facts for the state. Bolkema did not testify and the defense recalled Heinzmann, who testified that Bolkema's car was different from the car in the hotel parking lot on May 7.

At the hearing, the district court orally denied Bolkema's motion to suppress, concluding that Heinzmann "had reasonable articulable suspicion to conduct the search." Bolkema and the state then agreed to stipulate to the state's evidence for a court trial, while preserving the pretrial issue for appellate review under Minn. R. Crim. P. 26.01, subd. 4. The district court found Bolkema guilty of both counts—second- and fifth-degree possession of controlled substances. On count one, the district court committed Bolkema

to the commissioner of corrections for 72 months. The district court did not impose a sentence for count two. Bolkema appeals.

D E C I S I O N

Bolkema argues that the district court "erred in concluding that reasonable, articulable suspicion justified the warrantless dog sniff of [his] car." Bolkema asks this court to "overturn the denial of [his] motion to suppress and reverse his conviction."[1]

In reviewing a district court's decision to deny a motion to suppress evidence, this court "independently review[s] the facts and determine[s], as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court's factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search or seizure is unreasonable, subject to a few exceptions. *See State v. Othoudt*, 482 N.W.2d 218, 222 (Minn. 1992). Caselaw establishes that a dog sniff around the exterior of a "legitimately stopped" vehicle "is not a search requiring probable cause." *State v. Wiegand*, 645 N.W.2d 125, 133 (Minn. 2002). Instead, it is akin to a *Terry* stop for the purpose of police investigation of criminal activity. *Id.* In part, this is because "a dog sniff is much less

[1] We assume, without deciding, that the parties stipulated that if the dog sniff of the vehicle exterior was an illegal search, then the evidence seized in the search of the blue car, in the search of Bolkema's person, in Bolkema's second hotel room, as well as Bolkema's Mirandized statements to officers would be "suppressed as the fruit of the poisonous tree based on the illegal search." *See State v. Miller*, 659 N.W.2d 275, 281 (Minn. App. 2003), *review denied* (Minn. July 15, 2003).

intrusive than a typical search," and can only reveal "the presence of narcotics and nothing else." *Id.* at 134. Accordingly, an officer must have "reasonable, articulable suspicion of drug-related criminal activity" before conducting a dog sniff of a vehicle's exterior. *Id.* at 135. In reviewing a warrantless dog sniff, two requirements must be tested: (1) police must be "able to articulate reasonable grounds for believing that drugs may be present in the place they seek" to search; and (2) the police must be "lawfully present in the place where the canine sniff is conducted." *State v. Carter*, 697 N.W.2d 199, 212 (Minn. 2005).[2]

An officer's suspicion meets the reasonable, articulable standard based on an "objective, totality-of-the-circumstances test." *State v. Smith*, 814 N.W.2d 346, 351 (Minn. 2012). This test focuses on whether "the facts available to the officer at the moment" of the search would warrant a reasonable person to believe that the search was appropriate. *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). The available facts include "inferences and deductions" officers make from their experience and training. *State v. Morse*, 878 N.W.2d 499, 502-03 (Minn. 2016). Reasonable suspicion requires "something more than an unarticulated hunch," and an officer must be able to "point to something that objectively supports the suspicion at issue." *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). Because it is a legal determination, this court reviews de novo whether a district

[2] *Wiegand* considered and decided what standard applied to a warrantless dog sniff of the exterior of a vehicle stopped for a "routine equipment violation." 645 N.W.2d at 135. Here, Bolkema's vehicle was parked in a hotel lot and not stopped for any violation of law. The parties assume that *Wiegand* articulated the standard for a legal warrantless search of the exterior of Bolkema's vehicle. We proceed with that assumption, and do not consider whether a different standard may apply.

court's factual findings support a reasonable suspicion of criminal activity justifying a search. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011).

Here, the district court determined that Heinzmann had reasonable suspicion to conduct a dog sniff of Bolkema's car exterior based on five circumstances: (1) Bolkema rented the hotel room for other persons who possessed drugs on May 7; (2) on May 9, officers found Bolkema "in the hotel room where narcotics had been found 36 hours earlier"; (3) Bolkema had drug paraphernalia on his person, specifically, a "crack pipe" with a "brillo pad," which "apparently is used to consume cocaine or crack"; (4) Bolkema told police he had driven to the hotel in a blue car, had only been in the room for about five to ten minutes, had not stayed overnight in the room, and planned to leave; and (5) Heinzmann, who had experience in narcotics, testified that he knew that "on occasion people rent hotel rooms for the purpose of using drugs."[3] The district court concluded that, based on Bolkema's behavior and statements to police on May 9, Bolkema "had created the connection between himself and the blue car." The court also concluded that, considering the totality of the circumstances, "there is a sufficient nexus between the

[3] The state argues that two additional circumstances support reasonable suspicion of Bolkema's involvement in drug-related activity: (1) that Bolkema's blue car was a rental vehicle, and Heinzmann testified that rental cars are often used to transport drugs; and (2) the young age of the women staying in the hotel room, which Heinzmann testified suggests possible prostitution. But the district court rejected possible prostitution as a circumstance supporting reasonable suspicion to conduct the dog sniff. And the district court did not rely on Heinzmann's testimony that Bolkema rented the blue car. Heinzmann's testimony suggested that he did not discover the blue car was rented until after he started the dog sniff. Because the district court did not rely on either of these additional circumstances, we do not consider them here.

alleged criminal activity and the car" because Bolkema "had just driven there in a blue sedan and he had been there about five minutes." Accordingly, the district court determined that police had "reasonable articulable suspicion to . . . do the dog sniff."

Bolkema argues that the May 7 and May 9 drug-related activity had "nothing to do with the car [he] was driving" and does not "conjure the nexus required to have reasonable articulable suspicion of drug-related activity in [his] car." While the state concedes that there must be "*some* nexus between the criminal activity and the place to be sniffed," the state also argues that Minnesota caselaw has used the nexus test only to determine the existence of probable cause for a warrant, and as such, there is a lesser nexus requirement for reasonable suspicion.

We assume, without deciding, that the nexus requirement for probable cause applies to determine whether reasonable suspicion supports a warrantless dog sniff of a vehicle exterior.[4] A nexus "must be established between the evidence sought and the place to be searched." *State v. Yarbrough*, 841 N.W.2d 619, 622 (Minn. 2014). "A nexus may be inferred from the totality of the circumstances," including "the type of crime, the nature of the items sought, the extent of the defendant's opportunity for concealment, and the normal inferences as to where the defendant would usually keep the items." *Id.* 622-23

Bolkema relies on *State v. Carter* to contend that there was not an adequate nexus connecting the drug-related activity in the hotel room to his car. *See* 697 N.W.2d at 212.

[4] Although no Minnesota caselaw has used the nexus test to establish reasonable suspicion, federal cases have considered nexus in a reasonable-suspicion context. *See, e.g.*, *United States v. Clay*, 640 F.2d 157, 161 (8th Cir. 1981) (discussing the nexus test in a reasonable suspicion context).

In *Carter*, an agent from the Minnesota Bureau of Criminal Apprehension (BCA) informed police that he observed two suspicious vehicles in the parking lot of a self-storage facility. *Id.* at 203. Police determined that one of the two suspicious vehicles was registered to an individual with a previous drug-related conviction and that individual had rented two units at the facility. *Id.* Police also determined that this individual's brother (appellant), who was not associated with the suspicious vehicles in the parking lot, also rented two storage units. *Id.* Four weeks later, police conducted a dog sniff outside the four units. *Id.* The dog sniff indicated the presence of drugs outside appellant's unit. *Id.* Officers obtained a search warrant, performed a full search of appellant's unit, and seized evidence, including firearms, but no drugs. *Id.* Under these circumstances, the supreme court held: "Because police did not articulate reasonable suspicion that drugs were present in [appellant]'s storage unit, we hold that the deployment of a drug-detection dog was an unreasonable search under the Minnesota Constitution; that the evidence resulting from the dog sniff was unlawfully obtained and must be suppressed." *Id.* at 212. The supreme court reversed the lower court rulings upholding the search and reversed appellant's convictions. *See id.*

The nexus between the drug-related activity and the location of the dog sniff is stronger here than it was in *Carter* for two reasons. First, police acted on the information faster than the police in *Carter*. Officers conducted the dog sniff immediately after speaking with Bolkema on May 9. The dog sniff in *Carter* was four weeks after the BCA agent observed the suspicious vehicles. *Id.* at 203. Second, the officers had more information connecting Bolkema's car to drug-related activity than the officers in *Carter* had to connect the storage units to drug-related activity.

As the district court found, Bolkema "created the connection between himself and the blue car" because he told officers he had just driven to the hotel. Police reasonably suspected Bolkema's connection to drug-related activity because a search of the hotel room, which Bolkema rented for others, revealed drugs and drug paraphernalia on May 7, and 36 hours later, police found Bolkema in the same room with a "crack pipe with [a] brillo pad" on his person and "snorting straws" in the room. In *Carter*, the only information officers had about the appellant was that he made "frequent visits" to his storage units. *Id.* at 205. The supreme court determined that the appellant's "mere association" with his brother, who had a criminal-drug record and whose car was observed in the parking lot, did not establish a "nexus linking the suspicious vehicles or their drivers to any criminal activity involving [appellant]." *Id.* at 206 n.3.

We conclude that there was a sufficient nexus to support a reasonable suspicion of drug-related activity in Bolkema's car. Police made the "normal inference[]" as to where Bolkema would secure drugs—in the car that he told police he had just driven to the hotel. *See Yarbrough*, 841 N.W.2d at 623. Based on the totality of the circumstances, we agree with the district court's conclusion that there was a sufficient nexus between the drug-related activity in the hotel room and Bolkema's car.[5] *See id.*

[5] The state argues in the alternative that this court should consider Bolkema's refusal to consent to a search of his car as a circumstance supporting a nexus between drug-related activity and the car, citing two cases from the United States Supreme Court. *See Florida v. Bostick*, 501 U.S. 429, 437, 111 S. Ct. 2382, 2387 (1991) ("[A] refusal to cooperate, without more, does not furnish the minimal level of objective justification needed for a detention or seizure."); *Florida v. Royer*, 460 U.S. 491, 498, 103 S. Ct. 1319, 1324 (1983) (similar). Because the district court did not rely on Bolkema's refusal to consent, and we

Still, Bolkema argues that the district court erroneously relied upon several circumstances that, in isolation, do not "support a reasonable, articulable suspicion of drug activity involving him." Bolkema argues that his "association with people who use drugs," visiting a "known drug house," and the crack pipe found on his person do not provide reasonable suspicion. But the test is whether the *totality* of the circumstances support reasonable suspicion. *See Smith*, 814 N.W.2d at 351. Bolkema was *not* merely associating with drug users *or* visiting a known drug house, *or* possessing a crack pipe. Here, the record evidence establishes that Bolkema had rented a hotel room in which police had discovered narcotics and drug paraphernalia two days earlier; officers later found Bolkema in the same room, which Bolkema admitted he had rented for others to use; officers found a crack pipe and brillo pad on Bolkema's person, and snorting straws in Bolkema's room; and Bolkema sought to immediately leave the hotel in his car.

We conclude that, under the totality of the circumstances, officers had reasonable suspicion that Bolkema was engaged in illegal drug-related activity that extended to his car. Accordingly, we affirm the district court's denial of Bolkema's suppression motion.

Affirmed.

---

conclude that officers had reasonable suspicion to conduct a dog sniff without this circumstance, we do not consider it here.