STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0015

State of Minnesota,
Respondent,

vs.

Dennis John Demario Byrd,
Appellant.

Filed November 29, 2021
Affirmed
Florey, Judge

Hennepin County District Court
File No. 27-CR-18-29179

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

Michael O. Freeman, Hennepin County Attorney, Jacqueline Bailey, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Kate M. Baxter-Kauf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Florey, Judge; and Bryan, Judge.

NONPRECEDENTIAL OPINION

FLOREY, Judge

In this appeal from a judgment of conviction of possession of a firearm by a person convicted or adjudicated for a crime of violence, appellant challenges the district court's denial of his motion to suppress evidence seized as a result of an investigatory stop and the

subsequent search of his vehicle. Because there was reasonable suspicion to conduct an investigatory stop of appellant's vehicle and because there was probable cause to search appellant's vehicle, we affirm.

FACTS[1]

In September 2017, Sergeant Ligneel with the Federal Bureau of Investigations (FBI) Safe Streets Task Force began investigating an individual, A.B., and his drug trafficking organization (DTO). During this investigation, Sergeant Ligneel gained extensive knowledge of A.B.'s narcotics supply chain, members of the DTO, A.B.'s use of multiple phones and specialized terminology, and the location where A.B. stored and sold heroin, an apartment in Brooklyn Center (Brooklyn Center apartment).

On June 20, 2018, while surveilling one of A.B.'s four phones pursuant to an authorized wiretap, Sergeant Ligneel intercepted four phone calls pertaining to a drug transaction with appellant Dennis John Demario Byrd. During the first phone call at 1:45 p.m., appellant sought to purchase heroin from A.B. A.B. informed appellant that two known DTO associates, "Meeka" and "Punky," were "at the joint." Appellant asked if they were "with the fool" and what "the ticket for four to five of them" was. Sergeant Ligneel believed this was code for asking the price of heroin.

The second phone call at 2:15 p.m. was between A.B. and Punky. A.B. told Punky that appellant was coming over to "pick something up" and that he wanted to "do some business." Based on the timing of the second phone call, Sergeant Ligneel believed Punky

[1] The facts are based on officer testimony taken at a contested omnibus hearing.

was at the Brooklyn Center apartment and set up the initial surveillance detail, which was later cancelled because there were no phone calls indicating appellant was arriving or getting close.

Sergeant Ligneel monitored a third phone call at 4:58 p.m., in which appellant asked A.B. to have Punky "bring [him] [five] of them down." Sergeant Ligneel understood the conversation to be a request for five grams of heroin and an indication that appellant was currently at the Brooklyn Center apartment. Sergeant Ligneel concluded that a drug transaction had not yet taken place and directed surveillance to return to the Brooklyn Center apartment to surveil the impending drug deal.

The surveilling officers arrived and set up surveillance positions near the apartment that allowed them to see who was coming and going from the parking lot. None of the three surveilling officers had a clear view of the apartment complex, but one of the officers had a view of the entrance and exit of the parking lot.

During the fourth and final call at 5:09 p.m., appellant asked A.B. if he was able to get ahold of one of his associates. A.B. indicated that he had not been able to reach Punky or Meeka and that he was going to keep trying. A.B. told appellant that another associate would be back at the Brooklyn Center apartment in thirty minutes. Appellant said, "I'm here," implying that he would wait. The call ended at 5:11 p.m. At around 5:27 p.m., appellant left the area. No drug transactions were documented on the surveillance log.

At approximately 5:30 p.m., Sergeant Ligneel contacted Officer Schroeder, who was nearby, to conduct a traffic stop of appellant. As he approached appellant's vehicle, Officer Schroeder observed a digital scale on the floor behind the center console. He also

observed marijuana flakes on the floor of the vehicle and on appellant's lap. The marijuana flakes were not visible from the still photographs from the body worn camera and Officer Schroeder did not collect the marijuana flakes. He testified that marijuana flakes are not often collected because they are not typically testable due to their small size. Officer Schroeder conducted a pat search of appellant and then detained him in the squad car while he searched appellant's vehicle. Officer Schroeder found a gun under the center console cupholder and arrested appellant. During a search incident to arrest, officers found $1,300, a cell phone, and a bag of crack cocaine. No heroin was located on appellant's person or in the vehicle.

Appellant was charged with one count of possession of a firearm by a person convicted or adjudicated for a crime of violence in violation of Minn. Stat. § 624.713, subd. 1(2) (2016). Appellant moved to suppress the evidence seized from his vehicle, arguing there was a lack of reasonable suspicion to support the investigatory stop and a lack of probable cause to support the search of his vehicle. The district court denied appellant's motion to suppress, and the parties proceeded with a stipulated facts trial. The district court found appellant guilty and sentenced him to sixty months in prison.

This appeal follows.

DECISION

Appellant first argues that the investigatory stop of his vehicle was not supported by a reasonable, articulable suspicion, but rather was based solely on Sergeant Ligneel's hunch that appellant had engaged in a drug transaction. Appellant also argues that, even if there was reasonable suspicion to justify the investigatory stop, the evidence should

nevertheless be suppressed because the police did not have probable cause to believe that drugs would be found in his vehicle at the time of the stop.

The United States and Minnesota Constitutions prohibit "unreasonable searches and seizures" by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. If evidence is seized in violation of the constitution, it must be suppressed. *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011). When we review a pretrial order on a motion to suppress where the facts are not in dispute, as here, we review the decision de novo and determine whether the police articulated an adequate basis for the search or seizure at issue. *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016). To determine whether the constitutional prohibition against unreasonable searches and seizures has been violated, we examine the specific police conduct at issue. *See State v. Davis*, 732 N.W.2d 173, 178 (Minn. 2007) (explaining that "what constitutes an unreasonable search must be assessed based on the facts of each particular case"). The conduct at issue here is the initial investigatory stop of a motor vehicle and the subsequent search of that vehicle.

Reasonable Suspicion

Warrantless seizures are presumptively unreasonable. *Lugo*, 887 N.W.2d at 487. A police officer may, however, initiate a limited, investigatory stop without a warrant if the officer has a reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 22 (1968). A reasonable, articulable suspicion exists if "in justifying the particular intrusion the police officer [is] able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Terry*, 392 U.S. at 21. Courts consider the totality of the circumstances to determine

whether reasonable suspicion exists, including "the officer's experience, general knowledge, and observations; background information, including the nature of the offense suspected and the time and location of the seizure; and anything else that is relevant." *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012). The reasonable-suspicion standard is met "when an officer observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). Trained law-enforcement officers are permitted to make inferences and deductions that would be beyond the competence of an untrained person, but they may not act on "mere whim, caprice, or idle curiosity." *Klamar*, 823 N.W.2d at 691 (citation omitted); *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001).

Appellant first argues that the record does not support a basis for reasonable suspicion because wanting to buy drugs, without obtaining any, is not illegal. Appellant accepts that the record indicates that he may have sought drugs from A.B., but highlights that, from the time of the last surveilled call to the time appellant's vehicle was stopped, officers had not observed any additional behavior indicating a drug transaction occurred. In support of this argument, appellant points to the following facts: (1) he was observed in the parking lot of the Brooklyn Center apartment; (2) he was not observed exiting his vehicle nor being approached by any person while he was in his vehicle; (3) approximately fifteen minutes after the last phone call ended, he was seen leaving the parking lot; (4) no other phone calls were made during this time indicating that appellant abandoned his attempt to purchase heroin.

Appellant's argument hinges on analyzing each factor independently. However, the Minnesota Supreme Court has recognized that "innocent factors in their totality, combined with the investigating officer's experience in apprehending drug traffickers, can be sufficient bases for finding reasonable suspicion." *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998) (citing *Reid v. Georgia*, 448 U.S. 438, 441 (1980)). Here, it is undisputed that Sergeant Ligneel was experienced in investigating drug-related cases. Sergeant Ligneel monitored over 1,000 drug transactions during his ten years on the FBI Safe Streets Task Force. At the time, he had been investigating A.B., a suspected drug trafficker, for nearly one year and had extensive knowledge of his drug operation, including the location and language A.B. used. Sergeant Ligneel identified appellant as a high-frequency caller of A.B. and monitored four separate phone calls that indicated appellant was attempting to purchase heroin at the Brooklyn Center apartment. Based on the totality of the circumstances, the substance of the surveilled phone calls coupled with appellant's presence at the Brooklyn Center apartments for an extended time was reasonably indicative of a possible drug transaction to a trained officer. *See Lugo*, 887 N.W.2d at 487 ("Presence in a known drug house is a relevant, but not conclusive, factor for an officer to consider."); *see also Illinois v. Wardlow*, 528 U.S. 119, 124 (2000) (explaining that "officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation.").

Relying on *State v. Britton*, 604 N.W.2d 84 (Minn. 2000), appellant argues that any reasonable suspicion or indication of criminal activity was dispelled at several points in the investigation and that the only justification for the stop was Sergeant Ligneel's belief that

appellant wanted drugs and would not have left without them. Appellant further argues that an equally plausible explanation for his behavior is that, if appellant sought to purchase drugs, he abandoned his desire to do so and left. In *Britton*, the Minnesota Supreme Court overturned a finding of reasonable suspicion where the officer's suspicion was predicated solely on a car having a broken window. *Id.* at 86. It concluded that the officer's observation of a broken window did not rise to the level of reasonable suspicion without sufficient "assessment based on training and experience that this particular broken window indicated that the vehicle was stolen." *Id.* This case is distinguishable. Here, the investigation, surveillance, and investigatory stop were predicated on Sergeant Ligneel's extensive experience with drug-related cases and his investigation of A.B. Further, Sergeant Ligneel explained why he concluded a drug transaction occurred, stating:

> That [appellant] was wanting to buy heroin, that [Punky] and [Meeka] were asked to sell him that heroin, and that he had remained there for roughly a half hour or a little more. And then when he left, we knew that [A.B.] had four phones, so we obviously didn't intercept calls between [A.B.] and [Punky] on the phone we were listening to and we knew from these calls that [A.B.] was using other phones to get ahold of other people to take care of this. I believed that [A.B.] had finally gotten ahold of [Punky] or [Meeka] and they did the deal with [appellant].

Unlike the officer in *Britton*, Sergeant Ligneel pointed to specific and articulable facts to support his reasonable suspicion of appellant's criminal activity. As such, there is a substantial difference between the inferences made by Sergeant Ligneel in this case and those that flowed from the facts before the officer in *Britton*. If the rationale of the officer

in *Britton* were to constitute reasonable suspicion, it would mean that police officers could stop any car with a broken window. Sergeant Ligneel's inference poses no such danger.

Probable Cause

Appellant further argues that, even if there was reasonable suspicion to justify the investigatory stop, the evidence should nevertheless be suppressed because the police did not have probable cause to believe that drugs would be found in appellant's vehicle at the time of the stop.

A warrantless search is per se unreasonable unless it satisfies "one of the well-delineated exceptions to the warrant requirement." *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). Under the "automobile exception," police may search a car without a warrant if there is "probable cause to believe the search will result in discovery of evidence or contraband." *State v. Search*, 472 N.W.2d 850, 852 (Minn. 1991) (citation omitted). "Probable cause to search an automobile exists where the facts and circumstances within the officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a reasonable man of reasonable caution in the belief that the automobile contains articles the officer is entitled to seize." *State v. Gallagher*, 275 N.W.2d 803, 806 (Minn. 1979) (citations omitted). Additionally, the "plain view" exception permits police to seize an object they believe to be evidence of a crime without a warrant if three criteria are met. "First, the police must be lawfully in the position from which they have a view of the object. Second, the officer must have a lawful right of access to the object. And finally, the object's incriminating nature must be immediately apparent." *State v. Holland*, 865 N.W.2d 666, 671 (Minn. 2015) (quotations omitted).

Appellant argues that, at the time Officer Schroeder searched his vehicle, he lacked sufficient probable cause to believe that the car contained contraband or evidence of a crime. Probable cause is a "common-sense, nontechnical" concept that involves "the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act." *State v. Lee*, 585 N.W.2d 378, 382 (Minn. 1998) (quotation omitted). It is an "objective inquiry that depends on the totality of the circumstances," including "reasonable inferences that police officers draw from facts, based on their training and experience, because police officers may interpret circumstances differently than untrained persons. *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016) (quotation omitted). Based on the totality of the circumstances, including the substance of the four surveilled phone calls, appellant's behavior and presence at the Brooklyn Center apartment for an extended period, Sergeant Ligneel's knowledge of the DTO, and with due weight given to the reasonable inferences the officers drew from their experience and training, there was sufficient probable cause for Officer Schroeder to believe appellant's vehicle contained drugs. Additionally, Officer Schroeder's plain-view observations of the digital scale and marijuana flakes created sufficient probable cause to search appellant's vehicle. We note that, although the digital scale in and of itself might not be enough for a search, under the totality of the circumstances, the digital scale takes special significance.

Under these facts, we determine that Sergeant Ligneel articulated reasonable suspicion of criminal activity that justified an investigatory stop of appellant's vehicle. We further determine that these facts also created sufficient probable cause to search

appellant's vehicle, which was further bolstered by the officer's plain-view observation of the digital scale and marijuana flakes.

Affirmed.