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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0158**

State of Minnesota,
Respondent,

vs.

Ramiro Cruz-Pineda,
Appellant.

**Filed December 12, 2022
Affirmed
Cochran, Judge**

Hennepin County District Court
File No. 27-CR-21-8855

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

Michael O. Freeman, Hennepin County Attorney, Sarah J. Vokes, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant challenges his conviction of first-degree possession of a controlled substance, arguing that the district court erred by denying his motion to suppress evidence obtained after police searched his vehicle and his person. We affirm.

FACTS

In April 2021, a Plymouth Police Department Special Investigations Unit officer (the lead officer) received a report from a concerned citizen who suspected that someone was dealing drugs in the citizen's residential neighborhood. The citizen lived on a cul-de-sac street. The citizen reported seeing a blue Chevy and various second vehicles stop near the citizen's house several times between March and May 2021. The blue Chevy was always the lead vehicle. Once stopped, someone from the second vehicle would get out, approach the blue Chevy, reach inside, and return to their vehicle. Then, both vehicles would leave, having been stopped for only a few seconds. The citizen provided the lead officer with the dates and times of each stop, as well as photographs and a description of the driver. By reviewing the photographs, police were able to identify the license plate of the blue Chevy.

Following this report, the lead officer surveilled the citizen's neighborhood on four occasions. On the first two occasions, the lead officer did not see anything notable. On the third occasion, the lead officer saw the blue Chevy and another vehicle enter the neighborhood, but both vehicles continued without stopping.¹ On the fourth occasion, the lead officer and other members of her unit, including a sergeant and a supporting officer, saw the blue Chevy enter the citizen's neighborhood, followed by a gray Dodge Avenger. Once the vehicles were stopped, the lead officer saw someone leave the gray Dodge, walk

¹ The lead officer testified that the driver of the blue Chevy seemed to be the same person who appeared in the concerned citizen's photos. The lead officer also speculated that the driver did not stop because he had seen her.

towards the blue Chevy, and re-enter the gray Dodge five to ten seconds later, but her view of the blue Chevy was blocked by a tree. Then, both vehicles left. The lead officer later testified that, based on her training and experience, she suspected that a drug deal had occurred.

After observing the suspected drug deal, the lead officer followed the gray Dodge while the sergeant and the supporting officer followed the blue Chevy out of the neighborhood. The supporting officer stopped the blue Chevy and identified appellant Ramiro Cruz-Pineda as the driver. Shortly thereafter, the sergeant arrived and requested a K-9 unit. The sergeant also requested a Spanish-speaking officer because Cruz-Pineda had limited English-language skills. Officers informed Cruz-Pineda that they had stopped him because they suspected him of selling drugs. While they waited for a Spanish-speaking officer to arrive, officers contacted a Hennepin County dispatcher whom they believed spoke Spanish to help translate their statements to Cruz-Pineda and to obtain his consent to search his vehicle and person.

Approximately 36 minutes after the stop, a K-9 unit arrived. Officers conducted a dog sniff around the exterior of the blue Chevy, and the K-9 unit alerted the officers to the presence of drugs. Officers searched the blue Chevy and found more than two thousand U.S. dollars, two cell phones, receipts for money transfers to Mexico, a St. Jude playing card, and a cutout in the passenger-side floor that served as a hidden compartment. The

sergeant and the supporting officer later testified that these items and the compartment were indicative of drug trafficking.²

While the blue Chevy was being searched, a Spanish-speaking officer arrived. The Spanish-speaking officer translated the supporting officer's request to search Cruz-Pineda's person, and Cruz-Pineda eventually consented to the search.³ During the search, officers recovered 26 "balloon balls," which tested positive for heroin.

Respondent State of Minnesota charged Cruz-Pineda with first-degree sale of a controlled substance and first-degree possession of a controlled substance. During pretrial proceedings, Cruz-Pineda moved to suppress the evidence obtained during the stop, arguing that police: (1) stopped him and conducted a dog sniff without reasonable suspicion of criminal activity; (2) unlawfully expanded the scope and duration of the stop; and (3) searched his person without consent, a warrant, or an exception to the warrant requirement. At a hearing on the motion, the parties stipulated to the admission of portions of the officers' body-worn camera footage, and the state called four witnesses—the lead officer, the sergeant, the supporting officer, and the Spanish-speaking officer. The witnesses testified about their involvement before and during the vehicle stop. The district court found their testimony credible.

² With regard to the St. Jude playing card, the supporting officer explained that drug traffickers will often have playing cards of different patron saints—in this case, St. Jude.

³ According to officers' testimony, the Spanish-speaking officer stopped the supporting officer from searching Cruz-Pineda's person before confirming Cruz-Pineda's consent. These officers further testified that they believed that Cruz-Pineda had consented to be personally searched. The district court presumably credited this testimony and found that Cruz-Pineda had consented to the search.

Based on this evidence, the district court denied Cruz-Pineda's motion to suppress, concluding that police (1) had reasonable and articulable suspicion of criminal activity to stop Cruz-Pineda's vehicle and conduct the dog sniff; (2) reasonably expanded the duration of the stop to wait for a K-9 unit and a Spanish-speaking officer; and (3) had probable cause to search Cruz-Pineda's vehicle and person. After the district court denied the motion, Cruz-Pineda proceeded pursuant to Minn. R. Crim. P. 26.01, subd. 4, whereby Cruz-Pineda stipulated to the state's evidence and waived a jury trial to obtain review of the dispositive pretrial order denying his motion to suppress. The state submitted only the first-degree possession charge to the district court, and the district court found Cruz-Pineda guilty. The district court later sentenced Cruz-Pineda to 48 months in prison. This appeal follows.

DECISION

When reviewing a district court's pretrial decision on a motion to suppress evidence, this court reviews the district court's legal determinations de novo and its findings of fact for clear error. *State v. Brown*, 932 N.W.2d 283, 289 (Minn. 2019). Because the facts here are undisputed, we review the district court's decision de novo. *See id.*

Cruz-Pineda raises three arguments on appeal. He contends that the district court erred by denying his motion to suppress evidence because police (1) lacked reasonable, articulable suspicion of criminal activity to stop Cruz-Pineda's vehicle and conduct a dog sniff around the vehicle; (2) unlawfully expanded the duration of the stop; and (3) unlawfully searched his person. We address each argument in turn.

I. The district court did not err by concluding that police lawfully conducted the vehicle stop and dog sniff.

Cruz-Pineda first argues that the district court erred by not suppressing the evidence obtained after the warrantless vehicle stop because police lacked reasonable, articulable suspicion of criminal activity to support the stop and subsequent dog sniff. We are not persuaded.

Both the United States and Minnesota Constitutions protect individuals from “unreasonable searches and seizures” by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A warrantless search or seizure is generally unreasonable. *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021). But police may conduct a brief, warrantless investigatory stop of a motor vehicle when they have “a reasonable, articulable suspicion that criminal activity is afoot.” *Id.* (quotation omitted).

“We review de novo a district court’s determination of reasonable suspicion.” *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012). “Reasonable suspicion must be particularized and based on specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Taylor*, 965 N.W.2d at 752 (quotation omitted). “Reasonable suspicion requires more than a mere hunch but is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.” *Id.* (quotation omitted). “[T]he bar for reasonable suspicion is low.” *Id.* at 758. In determining whether the reasonable-suspicion standard is met, we consider the totality of the circumstances. *Id.* at 759. Importantly, we consider reasonable suspicion from the perspective of a trained police

officer, whose inferences may “elude an untrained person.” *State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014) (quoting *United States v. Cortez*, 449 U.S. 411, 418 (1981)).

With these legal principles in mind, we first consider whether the district court erred when it concluded that police had reasonable suspicion to stop Cruz-Pineda’s vehicle. We then consider whether the district court erred when it concluded that police had reasonable suspicion to conduct a dog sniff of the outside of the vehicle.

A. The district court did not err by concluding that police had reasonable suspicion of criminal activity to support the vehicle stop.

The district court concluded that police had reasonable suspicion of criminal activity to conduct the vehicle stop based on two pieces of evidence: (1) the concerned citizen’s tip, and (2) police observations during their surveillance of the citizen’s neighborhood. Cruz-Pineda argues that this evidence provided police with “no more than a mere hunch” that Cruz-Pineda was engaged in criminal activity and therefore was insufficient to satisfy the reasonable-suspicion standard. We disagree.

Both third-party tips and officer observations can provide the basis for reasonable suspicion. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). A third-party tip supports reasonable suspicion if it is sufficiently reliable. *Id.* at 397. A tip from a concerned citizen is presumptively reliable because concerned citizens act out of fear for their safety and the safety of others—not out of a desire for leniency during criminal prosecution. *State v. McGrath*, 706 N.W.2d 532, 540 (Minn. App. 2005), *rev. denied* (Minn. Feb. 22, 2006). A concerned citizen’s reliability is enhanced when they provide

police with information about their identity, allowing police to follow up with them. *Timberlake*, 744 N.W.2d at 394. Regarding officer observations, reasonable suspicion exists when an officer observes unusual behavior that would lead a reasonable officer to conclude, based on their experience, that criminal activity may be occurring. *Id.* at 393.

The record supports the district court's conclusion that the concerned citizen's tip and subsequent police surveillance of the neighborhood would lead a reasonable officer to conclude that Cruz-Pineda was engaging in criminal activity. First, the concerned citizen contacted the police to report suspected drug dealing near the citizen's home. The lead officer then spoke with the citizen. The citizen provided specific dates and times of numerous suspected drug transactions that they observed in front of their house involving vehicles stopped on the street. The concerned citizen specifically identified a blue Chevy as the "lead" vehicle and provided a description of the person who was driving the vehicle. The concerned citizen also provided several photographs to the police, including ones that allowed police to identify the license plate of the blue Chevy.

Second, after receiving the concerned citizen's tip, police observed similar activity in the same location as reported by the citizen. The lead officer saw the blue Chevy, driven by a person matching Cruz-Pineda's description, and a second vehicle drive through the citizen's neighborhood on two occasions. On the second occasion, the blue Chevy was followed by a gray Dodge, and both vehicles stopped near the citizen's home. The driver of the gray Dodge exited the vehicle, approached the blue Chevy, and returned to the gray Dodge five to ten seconds later. According to the lead officer, based on her training and experience, she suspected that a drug transaction had taken place.

Taken together, the concerned citizen’s tip and the officers’ observations support a rational inference that Cruz-Pineda was dealing drugs from his blue Chevy. *See State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016) (“It is enough that a law enforcement officer can articulate specific facts which, taken together with rational inferences from those facts, objectively support the officer’s suspicion.”). These facts provided police with more than a mere hunch. Because officers were able to articulate specific facts which objectively supported the officers’ suspicion of criminal activity, we agree with the district court that police had a reasonable suspicion of criminal activity sufficient to stop Cruz-Pineda’s vehicle.

B. The district court did not err by concluding that police had reasonable suspicion of drug activity to support the dog sniff.

Cruz-Pineda next argues that the evidence was insufficient to support the dog sniff around the exterior of his vehicle during the stop. Here again, he argues that officers were acting on a mere hunch. We are not persuaded.

To conduct a dog sniff during a vehicle stop, police must have reasonable suspicion of drug-related criminal activity. *See id.* To determine whether reasonable suspicion exists, we consider the totality of the circumstances from the perspective of a trained police officer, who may draw inferences that elude an untrained person. *Id.* at 486-87.

The district court concluded that police had reasonable suspicion of drug-related criminal activity to support the dog sniff based on the same facts that supported the stop—the concerned citizen’s tip and the officers’ observations. We agree with the district court’s conclusion that these facts provided police with a sufficient basis to conduct the dog sniff.

Here, police had reasonable suspicion of drug-related criminal activity to support the dog sniff, just as they had reasonable suspicion of drug-related criminal activity to support the stop of Cruz-Pineda’s vehicle. As discussed above, the concerned citizen contacted the police to report suspected drug activity. The concerned citizen specifically identified the blue Chevy as the “lead” vehicle and reported that it was being driven by someone who matched Cruz-Pineda’s description. Additionally, while surveilling the citizen’s neighborhood, the lead officer observed behavior consistent with drug trafficking. A reasonable officer would infer, based on the totality of the circumstances, that Cruz-Pineda was engaging in drug activity. Accordingly, the district court did not err by concluding that police had reasonable suspicion of drug-related criminal activity to conduct the dog sniff, and the dog sniff was lawful.

II. The district court did not err by concluding that the duration of the stop was not unlawfully expanded.

Cruz-Pineda next argues that, even if the vehicle stop and dog sniff were lawful, police unlawfully expanded the duration of the stop.⁴ Based on this argument, Cruz-Pineda contends that the district court erred by not suppressing evidence obtained after the stop was “illegally expanded.” We are not persuaded.

⁴ Cruz-Pineda also purports to argue that police unlawfully expanded the *scope* of the vehicle stop, but his brief does not address the merits of this argument. Therefore, this issue is not properly before this court, and we do not address it. *See State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (stating that a claim of error “based on mere assertion and not supported by any argument or authorities . . . is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection”) (quotation omitted).

Neither the United States Supreme Court nor the Minnesota Supreme Court recognize a rigid time limit for the length of an investigatory stop. *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999). In general, a person may be stopped for only as long as is reasonably necessary to fulfill the purpose of the stop. *State v. Blacksten*, 507 N.W.2d 842, 846 (citing *United States v. Sharpe*, 470 U.S. 675, 686 (1985)). But law enforcement may expand the length of a stop if they continue to have reasonable suspicion of criminal activity, provided that they act diligently and reasonably. *Munson*, 594 N.W.2d at 137.

We consider the facts and circumstances of the case when determining whether the length of a stop is reasonable. *Id.* Additionally, we do not “indulge in unrealistic second-guessing” when considering whether police acted diligently and reasonably. *State v. Moffatt*, 450 N.W.2d 116, 119 (Minn. 1990). “The question is not simply whether some other alternative was available, but whether the police acted *unreasonably* in failing to recognize or pursue it.” *Id.* (emphasis added) (quoting *Sharpe*, 470 U.S. at 687).

Cruz-Pineda argues that the duration of the stop was unreasonable because law enforcement did not act diligently in procuring a K-9 unit or an interpreter. He contends that law enforcement could have requested a K-9 unit and a Spanish-language interpreter earlier. And he argues that, rather than waiting for an interpreter, officers could have utilized other options “such as the Language Line service or even a phone application such as Google Translate.” Because the record reflects that law enforcement acted diligently in obtaining a K-9 unit and a Spanish-speaking officer, we agree with the district court that the duration of the stop was not unlawful.

First, with regard to the dog sniff, the officers testified that the sergeant on the scene requested a K-9 unit shortly after the supporting officer stopped Cruz-Pineda's vehicle. Body-worn camera footage from both officers supports this testimony. Furthermore, although it took the K-9 unit approximately 36 minutes to arrive after being requested, this delay was not unreasonable in light of the circumstances. In *State v. Thiel*, this court held that a 20-25-minute delay in the arrival of a K-9 unit was not unreasonable because the stop was in a rural area. 846 N.W.2d 605, 612 (Minn. App. 2014), *rev. denied* (Minn. Aug. 5, 2014). Here, the circumstances were similarly challenging. The record reflects that Cruz-Pineda was stopped in an area and at a time of day when K-9 units were difficult to acquire. Taken together, these facts show that officers acted diligently in procuring a K-9 unit and therefore did not unlawfully expand the length of the vehicle stop on that basis.

Similarly, the record reflects that officers acted diligently in procuring an interpreter for Cruz-Pineda. According to officers' testimony, the sergeant requested a Spanish-speaking officer shortly after arriving on scene. The sergeant's body-worn camera footage supports this testimony. In addition, officers testified that, while they waited for a Spanish-speaking officer to arrive, they attempted to translate their communications to Cruz-Pineda through a Spanish-speaking dispatcher, and they repeatedly confirmed his understanding. Officers may have been able to request a Spanish-speaking officer a few minutes sooner, but there is no evidence that this marginal time difference would have shortened the stop, given the apparent demand for Spanish-speaking officers at the time. Furthermore, the ability to act more efficiently does not mean that police acted

unreasonably. *Moffatt*, 450 N.W.2d at 119. Likewise, the decision to not use the “Language Line” or Google Translate was not unreasonable given that officers attempted to translate their communications through a Spanish-speaking dispatcher while they waited for a Spanish-speaking officer to arrive. For these reasons, we agree with the district court that the duration of the stop was not unlawfully expanded.

III. The district court did not err by concluding that police had probable cause to search Cruz-Pineda’s person.

Lastly, Cruz-Pineda argues that the district court erred by concluding that police had probable cause to arrest Cruz-Pineda and thereby search his person without a warrant.⁵ This argument also is not persuasive.

As discussed above, warrantless searches generally are unreasonable under the United States and Minnesota Constitutions. U.S. Const. amend. IV; Minn. Const. art. 1, § 10; *Munson*, 594 N.W.2d at 135. One “well-recognized exception to the warrant requirement” is a search incident to arrest, which allows police to search a person who has been lawfully arrested. *State v. Bernard*, 859 N.W.2d 762, 766-67 (Minn. 2015) (citing *Arizona v. Gant*, 556 U.S. 332, 338 (2009)). Under this exception, a search can occur even before the arrest, but police must have probable cause to arrest at the time of the search. *In re Welfare of G.M.*, 560 N.W.2d 687, 695 (Minn. 1997). The state bears the burden of

⁵ In addition, Cruz-Pineda argues that he did not consent to the search. The district court did not address whether Cruz-Pineda consented to the search of his person, but rather concluded that the search was lawful because officers had probable cause to arrest Cruz-Pineda at the time of the search. Because we agree that officers had probable cause to search Cruz-Pineda’s person, *see infra*, we do not consider whether Cruz-Pineda consented to the search.

showing that probable cause to arrest exists at the time of the search. *See State v. Ture*, 632 N.W.2d 621, 627 (Minn. 2001) (noting that “[t]he state bears the burden of establishing an exception to the warrant requirement”).

Probable cause to arrest exists when an ordinary person “would entertain an honest and strong suspicion that a *specific* individual has committed a crime” based on the totality of the circumstances. *State v. Ortega*, 770 N.W.2d 145, 150 (Minn. 2009). The totality of the circumstances includes reasonable inferences made by police officers based on their training and experience. *State v. Lester*, 874 N.W.2d 768, 771 (Minn. 2016). “We review de novo a [district] court’s determination of probable cause as it relates to a warrantless search,” giving “due weight” to the inferences made by police officers and to a district court’s finding that they were reasonable. *Id.* (quotation omitted).

Here, the evidence shows that police had probable cause to arrest Cruz-Pineda and therefore search his person. First, the concerned citizen identified Cruz-Pineda’s vehicle, described someone matching Cruz-Pineda’s appearance, and reported that both were involved in activities that are indicative of drug dealing. Then, the lead officer, who had training and experience in investigating drug crimes, observed activity involving Cruz-Pineda that she suspected was a drug deal. Based on this evidence, police stopped Cruz-Pineda and conducted a dog sniff around his vehicle. During the dog sniff, the K-9 unit alerted officers to the presence of drugs, which gave the police probable cause to search Cruz-Pineda’s vehicle.⁶ Officers testified that the search revealed several items that, based

⁶ Cruz-Pineda does not dispute on appeal that officers had probable cause to search his vehicle based on the dog-sniff alert.

on the officers' experience, are indicative of drug trafficking. Taken together, the concerned citizen's tip, officers' observations during police surveillance of the citizen's neighborhood, and the sniff and search of Cruz-Pineda's vehicle would lead an ordinary person to "entertain an honest and strong suspicion" that Cruz-Pineda had committed a drug crime. *Ortega*, 770 N.W.2d at 150. Thus, the district court did not err by concluding that police had probable cause to arrest Cruz-Pineda and thereby search his person.

Conclusion

Based on our de novo review, we conclude that police (1) had reasonable suspicion to stop Cruz-Pineda's vehicle and conduct a dog sniff around his vehicle; (2) did not unlawfully expand the duration of the stop; and (3) had probable cause to arrest and therefore search Cruz-Pineda's person. Accordingly, the district court did not err by denying Cruz-Pineda's motion to suppress evidence obtained following the stop of Cruz-Pineda's vehicle and the search of his person.

Affirmed.