Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-336

OCTOBER TERM, 2019

State of Vermont v. Tyler D. Bullis*	}	APPEALED FROM:
	}	
	}	Superior Court, Chittenden Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 149-1-18 Cncr
		Trial Judge: David R. Fenster

In the above-entitled cause, the Clerk will enter:

Defendant appeals from his conditional nolo contendere plea to possessing heroin. He argues that the trial court erred in denying his motion to suppress and dismiss. We affirm.

Defendant was charged with misdemeanor possession of heroin in January 2018. He filed a motion to suppress and dismiss, arguing that he was unlawfully seized and that his unlawful seizure tainted his consent to a search of his person and truck. Following a hearing, the court denied the motion. It found as follows. In mid-November 2017, a police officer was patrolling an area in Winooski known for drug activity. The officer was experienced and familiar with Winooski and its drug activity. He had personal and collective knowledge regarding drug cases in the area, especially at a nearby location known as the "Allen House." The officer had been involved in five to ten drug cases involving the Allen House and he knew that other officers had been involved in drug cases involving the Allen House as well. The officer also had specific recent information from cooperating informants that drugs were being sold out of an apartment in the Allen House. Additionally, the officer had made a car stop involving an individual who told him that he had obtained marijuana from J.P. at the Allen House.

On the evening in question, the officer saw J.P. exiting the Allen House. The officer drove around the block and returned to see J.P. leaving the side of a pickup truck that was stopped on the side of the road. The officer stopped his car; he watched the truck pull out and then pull into a parking lot approximately 100 feet from where the truck was originally stopped. Defendant, the driver of the truck, exited the vehicle and began walking across the parking lot. Meanwhile, the officer parked his car. He met defendant on foot in the parking lot.

The officer asked defendant about meeting with J.P. Defendant replied that he had given J.P. a ride from a bar in Winooski. When the officer asked defendant where he was headed, defendant said that he "was just walking down the road." The officer learned from defendant's identification that defendant lived in Grand Isle. He asked defendant the name of the person who he had dropped off. Defendant said the individual's name was Brian and that he had met him for the first time at the bar. Having just seen J.P. leave the Allen House, the officer questioned defendant's honesty. He told defendant that he knew who J.P. was and what he did, and he asked

defendant if he bought anything from J.P., "even if it was just weed." The officer continued to confront defendant about his contact with J.P. Eventually, defendant admitted to having a "pot pipe" in his truck and, sometime later, admitted to having marijuana in his truck. Defendant eventually consented to a search of his person and truck. The officer found a fold of heroin in defendant's wallet.

Based on its findings, the court agreed with defendant that what began as a consensual encounter was converted into a Terry stop when the officer began asking defendant pointed questions about drug possession or other illegal activity. At that point, the court found, defendant was seized for purposes of Fourth Amendment analysis. See State v. Pitts, 2009 VT 51, ¶ 9, 186 Vt. 71 (recognizing that "while mere questioning may not constitute a seizure per se, pointed questions about drug possession or other illegal activity in circumstances indicating that the individual is the subject of a particularized investigation may convert a consensual encounter into a Terry stop requiring objective and articulable suspicion under the Fourth Amendment" (quotation omitted)).

The court determined that the officer had a reasonable, articulable suspicion for the initial stop and seizure given that defendant was walking in an area of known drug activity with "accompanying suspicious conduct [and] other factors." State v. Alexander, 2016 VT 19, ¶ 23, 201 Vt. 329. The court explained that, in addition to the officer's knowledge of criminal activity around that location, the officer saw defendant conclude a brief roadside meeting with J.P., an individual the officer knew to distribute marijuana. Defendant appeared to be trying to conceal the nature of his contact with J.P. He provided information that the officer knew to be false. The court concluded that defendant's inconsistent, and apparently untruthful, answers provided an additional basis to support a finding of reasonable suspicion.

The court further found that defendant's vague travel plans contributed to reasonable suspicion. See State v. Tetreault, 2017 VT 119, ¶ 32, 206 Vt. 366 (noting that "unusual or conflicting travel plans can give rise to reasonable suspicion"). Defendant told the officer that he was "just walking down the road," which the officer found odd. Taken in context, the court found the answer implausible. Defendant, who lived in Grand Isle, suggested that he drove to Winooski to go to a bar, met someone he did not know at the bar and gave that person a ride home, and upon dropping that person off at a location that even defendant described as "weird," drove 100 feet to a parking lot, parked his car, and started "just walking down the road" at night, in November, without destination or explanation.

Looking at the totality of the circumstances, the court concluded that the officer had reasonable suspicion to seize defendant and expand the interaction. Because defendant's detention was lawful, the court concluded that his consent to search was not tainted. It further found that his consent was not coerced. Defendant entered a conditional plea and this appeal followed.

Defendant argues that the court erred in concluding that the officer had reasonable suspicion to seize him. He asserts that the officer relied upon several innocent, unrelated, factors to justify prolonging the encounter. Defendant maintains that the court should not have deferred to the officer's training and experience in evaluating the totality of the circumstances. He also asserts that his consent to search was tainted by his illegal detention.

In reviewing the denial of a motion to suppress, we review the trial court's findings for clear error and its legal conclusions de novo. State v. Williams, 2007 VT 85, ¶ 2, 182 Vt. 578 (mem.) (citations omitted). "Although we review the trial court's conclusions with respect to reasonable suspicion de novo, we nonetheless consider the training and expertise of the officer in

drawing inferences from the individual facts and circumstances." State v. Manning, 2015 VT 124, ¶ 15, 200 Vt. 423. We conclude that the officer here had reasonable suspicion to seize defendant and expand the interaction here.

"Generally, a police officer may stop an individual where the officer has reasonable and articulable grounds to suspect that an individual is engaged in criminal activity." Alexander, 2016 VT 19, ¶ 15 (citation omitted). "In determining whether an officer had reasonable suspicion to effectuate a seizure . . . , we look at the totality of the circumstances." Manning, 2015 VT 124, ¶ 14. Defendant maintains that walking in a high-crime neighborhood and nervous equivocations do not amount to reasonable suspicion.[*] We do not view these factors in isolation, however, as defendant appears to suggest. As we have explained:

> The totality-of-the-circumstances approach allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that might well elude an untrained person. Although each factor in the analysis in isolation may be consistent with innocent behavior, the factors taken together can form the basis for reasonable suspicion. As such, courts must avoid a "divide-and-conquer" analysis that scrutinizes each factor independently and accords no weight to conduct that alone is fairly innocuous. Similarly, conduct that would appear ordinary in one context may appear suspicious in an entirely different context.

Id. (citations omitted).

As reflected above, the factors referenced by defendant were part of a host of other circumstances, including the officer's knowledge about drug activity in the area, the officer's recent tip about J.P., and the officer's observation of J.P., concluding a brief roadside meeting with defendant. It also included defendant's lies to the officer and his implausible description of the evening's events, including that he was taking a walk on a November evening with no particular destination. This behavior was relevant in considering the totality of the circumstances. See Tetreault, 2017 VT 119, ¶ 32 (recognizing that "unusual or conflicting travel plans can give rise to reasonable suspicion").

We similarly reject defendant's assertion that the court relied on unsupported presumptions based on vague references to the officer's experience. The officer here had personal and collective information about drug activity in the area, including specific information about the Allen House

[*] The trial court did not find that defendant was nervous or that he equivocated. By "nervous equivocations," defendant apparently refers to the court's finding that he provided inconsistent and apparently untruthful answers. We note that while an individual's nervousness alone would not suffice to support a reasonable suspicion of wrongdoing, it can be considered as part of the totality of the circumstances. See Manning, 2015 VT 124, ¶¶ 15-16 (considering, among other factors, that "defendant was nervous and shaking when asked for his identification" in holding that officer had reasonable suspicion to believe defendant possessed illegal drugs, and citing other cases similarly considering a defendant's nervousness in evaluating totality of circumstances); see also State v. Cunningham, 2008 VT 43, ¶ 24, 183 Vt. 401 ("Although generalized 'nervousness' is a weak basis for an officer's reasonable suspicion of particular criminal activity, such nervousness may be considered together with other, more substantial factors.").

and J.P., the individual seen leaving the side of defendant's truck. The officer had been involved in numerous drug cases involving the Allen House, he knew drugs were being sold out of an apartment in the Allen House, and he had information that J.P. sold marijuana out of the Allen House. It was appropriate here to rely on the officer's "training and expertise . . . in drawing inferences from the individual facts and circumstances." Manning, 2015 VT 124, ¶ 15. To the extent defendant argues that we should find an absence of reasonable suspicion here based on the facts of a different case involving the same officer, we reject that argument.

Given all of the circumstances discussed above, we find this case analogous to Tetreault, Manning, and other cases where we have found reasonable suspicion, and not like those, such as Alexander, and Cunningham, where we have concluded that an officer was acting merely on a hunch. Compare Tetreault, 2017 VT 119, ¶¶ 30-37 (concluding that totality of circumstances established reasonable suspicion, including defendant's "unusual reason for travel, actions inconsistent with his stated itinerary, travel to and from a drug source city, excessive nervousness and furtive movements, and the presence of marijuana and drug courier paraphernalia in the car, viewed by a trooper familiar with drug trafficking practices"); Manning, 2015 VT 124, ¶¶ 15-19 (concluding that totality of circumstances established reasonable suspicion, including facts that defendant was sitting in his car in area known for drug activity; he made furtive movements when officer approached; he appeared to hide pill bottle; he was nervous and shaking; and his wallet contained large amount of crumpled bills) with Alexander, 2016 VT 19, ¶¶ 22-29 (finding no reasonable suspicion for extending stop where defendant was traveling by cab from out of state and apparently looking for a location that was a known drug spot, and defendant met a very general physical description of someone suspected of selling drugs); Cunningham, 2008 VT 43, ¶¶ 22-26 (finding no reasonable suspicion for stop based solely on defendant's nervousness, existence of a prior criminal record, and inability to explain why he was in a certain town fifteen miles from his home). Because the officer had reasonable suspicion, defendant's motion to suppress was properly denied. Having found the seizure valid, we reject defendant's final argument that his "illegal detention" irremediably taints any claim of a consensual search.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice