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**STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1677**

State of Minnesota,
Appellant,

vs.

Jorge Armando Benavides,
Respondent.

**Filed April 17, 2017
Affirmed
Smith, Tracy M., Judge
Dissenting, Hooten, Judge**

Kandiyohi County District Court
File No. 34-CR-16-666

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

Shane D. Baker, Kandiyohi County Attorney, Kristen Pierce, Assistant County Attorney,
Willmar, Minnesota (for appellant)

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Considered and decided by Reilly, Presiding Judge; Hooten, Judge; and Smith,
Tracy M., Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Appellant State of Minnesota challenges the district court's suppression of evidence
and dismissal of the drug-possession charge resulting from a traffic stop that led to a

narcotics-detection dog sniff around a vehicle in which respondent Jorge Armando Benavides was a passenger. The state contends that the expansion of the scope of the stop was supported by reasonable, articulable suspicion and that, even if it was not, the evidence should not be suppressed because it inevitably would have been discovered during a routine inventory search after the vehicle was towed from a no-parking zone. Because the state has not shown that the officer had a reasonable, articulable suspicion of drug-related criminal activity and the record does not establish that the evidence inevitably would have been discovered, we affirm.

FACTS

On July 30, 2016, at about 5:00 p.m., Willmar Police Officer Samuel Schaeffbauer was driving eastbound on Minnesota Avenue when he observed a minivan approximately two blocks ahead of him facing south at a stop sign at the intersection of Minnesota Avenue and 4th Street SE. The driver of the minivan appeared to wait for the officer to drive past him before crossing the intersection and continuing on 4th Street. As the officer passed in front of the stopped minivan, the driver and the passenger in the minivan “both looked straight forward and did not make eye contact” with the officer. Officer Schaeffbauer continued on Minnesota Avenue, turned right onto Ann Street SE, and then turned right again onto Johanna Avenue, where he saw the minivan, now on Johanna Avenue, turn around to return to 4th Street. The minivan came to a stop at the intersection of Johanna and 4th Street, then activated its right turn signal and turned right onto 4th Street. Officer Schaeffbauer initiated a traffic stop and the minivan pulled over in a no-parking zone.

Officer Schaeffbauer testified that the reason for the traffic stop was the driver's failure to timely signal the turn.

Officer Schaeffbauer asked the driver where they were going. The driver said he had picked up the passenger, Benavides, and was taking him to the house of a friend whose nickname is "Homeboy," but whose real name he claimed not to know. The driver said they had taken a strange route because they were having trouble finding Homeboy's house. Officer Schaeffbauer discovered that the driver's license was revoked. The driver did not provide proof of motor-vehicle insurance, but he said he could call the owner of the vehicle to get insurance information.

Officer Schaeffbauer asked Benavides to exit the vehicle and questioned him away from the driver. According to Officer Schaeffbauer's testimony, he asked Benavides where he was going and Benavides told him Homeboy's house. Officer Schaeffbauer asked when Benavides had last been in the presence of methamphetamine, and he said about three or four days earlier. Officer Schaeffbauer testified that he had had several previous interactions with Benavides during traffic stops and that Benavides seemed more nervous than normal during this particular stop.

Officer Schaeffbauer asked the driver if he would consent to a search of the vehicle. The driver did not consent to a search. According to Officer Schaeffbauer's testimony, he decided to search the vehicle because he believed its occupants had been attempting to avoid him, because Benavides was acting unusually nervous, and because he recognized both Benavides and the driver and knew both had previously been involved in drug-related activity.

Officer Schaeftbauer called another officer for a dog sniff of the minivan. The second officer arrived within about 15 minutes with a canine partner and conducted a dog sniff around the outside of the vehicle. The dog alerted, indicating that it smelled a controlled substance. The officers searched inside the vehicle and found a pipe and a plastic bag both containing a substance that later tested positive for methamphetamine. The officers arrested Benavides and the driver and called for the vehicle to be towed.

Benavides was charged with first-degree controlled-substance possession. Benavides moved to suppress the evidence obtained as a result of the search, arguing that Officer Schaeftbauer unconstitutionally expanded the scope of the traffic stop, and moved to dismiss the charge because there was no probable cause without the unconstitutionally seized evidence. The district court concluded that Officer Schaeftbauer did not have reasonable, articulable suspicion to expand the scope of the traffic stop to include a drug investigation with a dog sniff. The district court further concluded that discovery of the methamphetamine was not inevitable because Benavides and the driver should have been allowed an opportunity to legally move the vehicle, in which case the vehicle would not have been towed and subject to an inventory search. The district court therefore granted Benavides's motions to suppress the evidence from the stop and to dismiss the charge.

The state appeals.

DECISION

In an appeal from a pretrial order in a criminal case, we review the district court's legal conclusions de novo. *State v. Lugo*, 887 N.W.2d 476, 485 (Minn. 2016). The district court's factual findings are reviewed for clear error. *Id.* at 481.¹

I. The officer did not have reasonable, articulable suspicion of drug-related criminal activity to justify expanding the scope of the traffic stop.

The state challenges the district court's conclusion that Officer Schaeffbauer lacked a sufficient basis to expand the scope of the traffic stop to investigate possible drug possession by inquiring about drugs and performing a narcotics-detection dog sniff around the outside of the vehicle.² Whether an officer's expansion of an investigation was justified by reasonable, articulable suspicion of criminal activity is a legal question that we review de novo. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011).

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Generally, a search conducted without a warrant is per se unreasonable. *State v. Burbach*, 706 N.W.2d 484, 488 (Minn. 2005). One exception is that a police officer may conduct a limited investigatory traffic stop without a warrant if (1) the stop is justified at its inception by a reasonable, articulable suspicion of criminal activity and (2) the officer's actions are reasonably related to and

¹ The state's ability to appeal a pretrial order is limited. *Lugo*, 887 N.W.2d at 481. Any alleged error by the district court must have a critical impact on the outcome of the trial. *Id.* It is undisputed that the suppression order here has a critical impact.

² The state does not contend that the drug investigation was within the scope of the initial traffic stop, but rather argues that the officer had reasonable suspicion of drug-related criminal activity to expand the scope of the stop.

justified by the circumstances that gave rise to the stop. *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004). During an ordinary traffic stop, an officer's mission is to determine whether to issue a traffic ticket and to investigate "ordinary inquiries incident to" the traffic stop, which typically consist of checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the vehicle's registration and proof of insurance. *Rodriguez v. United States*, 135 S. Ct. 1609, 1615 (2015) (quotation omitted). The investigative purpose of an ordinary traffic stop is to "ensur[e] that vehicles on the road are operated safely and responsibly." *Id.* "Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission." *Id.*

Any expansion of the scope of the investigation beyond the initial justification for the traffic stop must be justified by independent reasonable, articulable suspicion based on specific facts leading to a "particularized and objective basis" to suspect criminal activity. *Diede*, 795 N.W.2d at 843, 845 (quotation omitted). In order to conduct a narcotics-detection dog sniff around the exterior of a motor vehicle, an officer must have a reasonable, articulable suspicion of drug-related criminal activity. *State v. Wiegand*, 645 N.W.2d 125, 137 (Minn. 2002). An officer's suspicion may not be based on a hunch; it must be objectively reasonable under the totality of the circumstances. *State v. Smith*, 814 N.W.2d 346, 351 (Minn. 2012). To demonstrate reasonable, articulable suspicion, it is enough that an officer can articulate specific facts that, taken together with rational inferences from those facts, objectively support the officer's suspicion. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880

(1968)). A trained police officer is entitled to draw “inferences and deductions that might well elude an untrained person” on the basis of all of the circumstances. *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (quotation omitted).

Officer Schaeftbauer testified that his reasons for expanding the scope of the stop into a drug investigation were that: (1) the unusual driving route indicated that the driver was trying to evade him; (2) Benavides was acting unusually nervous; (3) Benavides claimed not to know Homeboy’s real name despite having been friends for three years, which implies that their relationship may be drug related; and (4) the officer recognized both suspects as having been involved in prior drug-related activity.

In addressing whether the officer had reasonable suspicion, we must consider “the totality of the circumstances.” *Smith*, 814 N.W.2d at 351. Even if the factors individually are not “independently suspicious,” all the factors considered together may provide an officer with reasonable suspicion to expand the scope of a stop. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998).

The state cites *State v. Johnson*, in which the supreme court held that a driver’s “evasive conduct” of turning off the highway immediately after making eye contact with a state trooper and then resuming in the same direction on the highway within a minute gave the trooper reasonable suspicion of criminal activity to justify a limited investigative traffic stop. 444 N.W.2d 824, 827 (Minn. 1989). *Johnson* does not support a conclusion that there was reasonable, articulable suspicion of drug-related activity here for two reasons. First, although Officer Schaeftbauer testified that he believed the driver was attempting to avoid him and the driver acknowledged he had taken a “strange route,” the district court

did not make a finding that the driver was deliberately trying to evade the police. Second, in *Johnson*, the court merely held that the evasive driving there was enough to support a traffic stop. *Id.* The investigation in *Johnson* did not expand beyond the officer pulling over the vehicle and the driver admitting that his license was revoked. *Id.* at 825. Although *Johnson* did not define exactly how far an officer may go in investigating for criminal activity based on evasive driving alone, *Johnson* does not hold that evasive driving justifies a drug investigation. *See id.* at 827. Thus, the unusual driving route did not create reasonable suspicion of drug-related criminal activity.

The state argues that Benavides acted unusually nervous, justifying the expansion of the stop. Acting nervous generally is not enough to create reasonable suspicion of drug-related criminal activity. *See, e.g., Diede*, 795 N.W.2d at 843, 846 (concluding that the defendant’s nervousness in response to questioning by officers after her passenger had been arrested did not give rise to reasonable suspicion that she was engaged in drug-related criminal activity); *Burbach*, 706 N.W.2d at 846, 490 (concluding that a driver behaving “significantly more nervous, fidgety, and talkative than a normally nervous person in a traffic stop” while the officer “intense[ly]” questioned her about drugs, along with her speeding and an unsubstantiated tip about cocaine possession, did not support reasonable suspicion of illegal activity); *State v. Fort*, 660 N.W.2d 415, 417-19 (Minn. 2003) (concluding that there was no reasonable suspicion of drug-related activity where the driver was stopped in a “high-drug” area, appeared nervous, and avoided eye contact); *Wiegand*, 645 N.W.2d at 137 (holding that because the officer “simply noted that Wiegand was acting

suspiciously, but indicated no reason to suspect drug-related activity,” the officer was not justified in expanding the scope of a stop for an equipment violation with a dog sniff).

The state, however, relies on *Smith*. 814 N.W.2d at 346. In *Smith*, the supreme court concluded that the defendant’s “shaking very violently,” together with his “evasive” explanation for doing so when asked about it, provided reasonable, articulable suspicion of other illegal activity sufficient to warrant expansion of the scope of a traffic stop by asking the defendant if he had weapons or anything illegal in the car. *Id.* at 347. The supreme court in *Smith* concluded that “it was not irrational for the officers, based on their training and experience, to infer or deduce that the extent of Smith’s nervousness was not reasonable in the context of this traffic stop.” *Id.* at 353 (quotation omitted). Recognizing that “ordinary drivers may become nervous during a routine traffic stop” without giving rise to reasonable suspicion of criminal activity, the supreme court in *Smith* reasoned that it “must give deference to the [district] court’s factual findings regarding the reasonableness of the defendant’s behavior in the context of a particular traffic stop.” *Id.* at 354.

The supreme court’s conclusion in *Smith* was based on the district court’s finding that the defendant’s nervousness was unreasonable under the circumstances. In this case, however, the district court made no such finding. The district court found that Benavides “looked straight forward and did not make eye contact” with Officer Schaeffbauer before the stop. The district court also acknowledged, without making a factual finding or a credibility determination, that Officer Schaeffbauer testified that Benavides was acting “unusually nervous” compared to their previous interactions. Without a finding suggesting

unreasonable nervousness like in *Smith*, we are not persuaded that Benavides’s nervousness contributes much to suspicion of drug-related criminal activity.³

The district court found that the driver told Officer Schaeftbauer they were going to the house of a friend whom he knows by the nickname “Homeboy.” The state asserts that this reliance on only the nickname contributed to the officer’s suspicion that the driver and Benavides were engaged in drug-related criminal activity.⁴ Officer Schaeftbauer testified that drug dealers sometimes use nicknames to cover up their real names, and so the use of the nickname during the stop indicated that the relationship between Benavides and Homeboy is “probably something just drug related.” The district court did not accept this inference in its findings or make a finding regarding the credibility of Officer Schaeftbauer’s opinion. Moreover, we are not persuaded that mere association with a person known only by a nickname is sufficient to provide reasonable suspicion of drug-related criminal activity. *Cf. State v. Varnado*, 582 N.W.2d 886, 890 (Minn. 1998) (holding

³ While recognizing that it is outside of our role to make factual findings, *Kucera v. Kucera*, 275 Minn. 252, 254-55, 146 N.W.2d 181, 183 (1966), we note that the officer’s description of Benavides’s behavior does not approach the extreme nervousness found in *Smith*: “[Benavides] seemed a little, little bit nervous and jittery, more so when he was in the car though. Once we—I, I got him out of the car and was talking with him a little bit more it wasn’t quite as bad. In the car he just—in the vehicle was just a little bit more like I said straight faced. It wasn’t a typical I guess [Benavides] that I knew at the time. He wasn’t quite as conversational with me.”

⁴ The state also cites the fact that Officer Schaeftbauer testified that he eventually realized the likely identity of Homeboy, a person whose name has come up in the past with “being around the presence of drugs and involved in drugs.” But that fact is irrelevant to the question of whether the officer had reasonable suspicion to begin the drug investigation because he did not identify Homeboy until after the dog sniff.

that mere association with suspected drug dealer does not provide reasonable basis to suspect person is armed and dangerous, justifying a frisk for weapons).

The state also asserts that the officer's suspicion was supported by his knowledge of Benavides's and the driver's prior involvement with drugs. Reasonable suspicion of criminal activity may be supported by an officer's knowledge of an individual's criminal history that is similar to the offense under investigation. *State v. Gilchrist*, 299 N.W.2d 913, 916 (Minn. 1980).

The district court's order states that Officer Schaeftbauer "testified that he decided to search the vehicle . . . because he has known the two to be involved in drug-related activity." But the district court did not make findings on what specifically Officer Schaeftbauer knew about the drug-related history of Benavides or the driver, and did not make a finding regarding the credibility of the officer's testimony. On appeal, the state asks us to consider as fact several statements from Officer Schaeftbauer's testimony that the district court did not adopt in its findings of fact. It is not the role of this court to make factual findings. *Kucera*, 275 Minn. at 254-55, 146 N.W.2d at 183; see *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (holding that the court of appeals exceeds its scope of review by "reweighing the evidence and finding its own facts"); *Whitaker v. 3M Co.*, 764 N.W.2d 631, 640 n.1 (Minn. App. 2009) ("[O]ur role as an error-correcting court does not extend to making factual findings in the first instance."), *review denied* (Minn. July 22, 2009). Thus, when deciding whether the officer had reasonable, articulable suspicion of drug-related criminal activity based on the suspects' history, we apply the legal standard to the relevant fact found by the district court—that Officer Schaeftbauer testified that he

“has known the two to be involved in drug-related activity”—without assigning credence to specific statements by Officer Schaeftbauer that the district court did not find to be true.

Minnesota appellate courts have previously concluded that an officer had reasonable suspicion of criminal activity where the officer was investigating a particular crime and used his knowledge of a suspect’s related criminal history to connect that particular suspect to the alleged crime. In *Gilchrist*, the supreme court concluded that there was reasonable suspicion to support a *Terry* stop based on an informant’s tip that the suspect may have been involved in a recent homicide and possessed firearms and the officer’s personal knowledge that the suspect had prior firearms convictions. 299 N.W.2d at 916. In *State v. Bellikka*, the court of appeals concluded that an officer had reasonable suspicion to stop a driver where the officer was responding to a burglar alarm at a business, the driver was near the business and was the only other person on the road, and the officer knew the driver had a history of burglaries. 490 N.W.2d 660, 663 (Minn. App. 1992), *review denied* (Minn. Nov. 25, 1992).

Unlike in *Gilchrist* and *Bellikka*, the officer in this case was investigating a minor traffic violation that was unrelated to any prior involvement in drug-related activity. Officer Schaeftbauer was not investigating a controlled-substance crime initially. There was no outside tip or present observation leading him to believe that a drug-related crime was underway. Officer Schaeftbauer was generally suspicious because the driving route seemed unusual and Benavides seemed nervous, but the only things that may have specifically pointed to drugs were the officer’s knowledge of the suspects’ prior involvement with drugs and the officer’s belief, unevaluated by the district court, that

knowing a friend by a nickname indicates that the relationship is “probably something just drug related.”

The state argues that this case is factually similar to *State v. Lugo*. 887 N.W.2d at 476. In *Lugo*, the supreme court concluded that reasonable, articulable suspicion of drug-related criminal activity supported the expansion of a traffic stop to perform a dog sniff outside of the vehicle where (1) an officer who was conducting surveillance of a “known drug house” observed the defendant entering the house and leaving it 12 minutes later; (2) the defendant “took an unusually long time to stop” and “leaned over in his seat as though he was trying to hide something”; (3) the defendant had recently been arrested for drug possession; (4) the defendant lied about the identity of the vehicle’s owner, who had previously been arrested for a drug crime, and drug paraphernalia had been found in that vehicle; and (5) the defendant said “man just take me to jail, please,” suggesting “consciousness that he had committed a crime.” 887 N.W.2d at 479, 487.

The facts in *Lugo* provide stronger support for suspicion of drug-related criminal activity than the facts in this case. Here, there is no finding that Benavides was in a house the officer knew to be connected with drugs, no finding that there was anything unusual about the way the driver pulled over, no finding that the driver or Benavides made any furtive movements, and no finding that the driver or Benavides lied about anything or acknowledged guilt in any way.

The totality of the circumstances in this case does not support a conclusion that the officer had a “particularized and objective basis” to suspect that Benavides and the driver were engaged in drug-related criminal activity at the time of the traffic stop. *See Diede*,

795 N.W.2d at 843, 845. Thus, the expansion of the scope of the traffic stop to include a drug investigation was not supported by reasonable, articulable suspicion of drug-related criminal activity. *Id.*

II. The evidence is not admissible under the inevitable-discovery doctrine.

The state argues that even if the expansion of the stop was improper, the evidence should have been received under the inevitable-discovery doctrine. If the state establishes by a preponderance of the evidence that the fruits of a challenged search “ultimately or inevitably would have been discovered by lawful means,” the evidence should be received. *Nix v. Williams*, 467 U.S. 431, 444, 104 S. Ct. 2501, 2509 (1984). The inevitable-discovery doctrine “involves no speculative elements but focuses on demonstrated historical facts capable of ready verification or impeachment.” *Id.* at 444-45 n.5, 104 N.W.2d at 2509 n.5.

The state contends that the evidence would have been discovered in an inventory search of the minivan. An inventory search is a valid exception to the warrant requirement. *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008). A warrantless inventory search may be constitutional if the impoundment that preceded it was reasonable under the Fourth Amendment and was “conducted pursuant to standardized criteria.” *Id.* at 503.

The state contends that the vehicle would have been towed even if the drug investigation had not occurred because the vehicle was parked in a no-parking zone, no one had produced proof of insurance on the vehicle, and neither Benavides nor the driver had a valid driver’s license. The state asserts that department policies compel these towing and searching procedures. However, the district court did not make a finding as to whether the Willmar Police Department has a policy that would have required the officer to have

the vehicle towed immediately without giving the driver an opportunity to call someone to bring proof of insurance and a driver's license. The district court also made no finding as to whether the department has a policy of conducting an inventory search of the contents of all vehicles that are towed. There is no evidence of either of these policies in the record.

Officer Schaeftbauer testified that if someone had arrived with a valid driver's license and proof of insurance on the vehicle, he would have allowed the licensed person to move the vehicle. The officer also testified that the driver said his girlfriend could bring proof of insurance if he called her.

Because the state did not introduce sufficient evidence of the police department's impoundment policies and standardized criteria for impoundment, we conclude that the district court did not err in determining that the state failed to establish by a preponderance of the evidence that a constitutional search of the vehicle was inevitable. *See Nix*, 467 U.S. at 444, 104 S. Ct. 2509. The evidence therefore is not admissible under the inevitable-discovery doctrine. *Id.*

Affirmed.

HOOTEN, Judge (dissenting)

I respectfully dissent. There is no dispute regarding the legality of the stop of the vehicle in which Benavides was a passenger; the only issue is whether the officer unlawfully expanded the scope of the stop by conducting a dog sniff of the vehicle. Because the totality of the circumstances, including the officer's training and experience and his familiarity with the driver and Benavides, created a reasonable, articulable suspicion of drug-related criminal activity, I would conclude that the expansion of the stop was valid and that suppression of the methamphetamine discovered was not required.

The Minnesota Supreme Court has stated that “in order to lawfully conduct a narcotics-detection dog sniff around the exterior of a motor vehicle stopped for a routine equipment violation, a law enforcement officer must have a reasonable, articulable suspicion of drug-related criminal activity.” *State v. Wiegand*, 645 N.W.2d 125, 137 (Minn. 2002).⁵ The reasonable suspicion standard is “not high” and is less demanding than

⁵ In an opinion issued several years after *Wiegand*, the United States Supreme Court held that law enforcement may conduct a dog sniff of a vehicle during a lawful traffic stop without reasonable suspicion of criminal activity and that such dog sniff does not violate the Fourth Amendment because it is not a search which implicates a legitimate privacy interest. *Illinois v. Caballes*, 543 U.S. 405, 409–10, 125 S. Ct. 834, 838 (2005). In *Rodriguez v. United States*, the Supreme Court clarified that an officer cannot extend or prolong an otherwise completed traffic stop in order to conduct a dog sniff of a vehicle, absent a reasonable suspicion of criminal activity. 135 S. Ct. 1609, 1616 (2015). Notwithstanding these cases, the Minnesota Supreme Court has continued to cite *Wiegand* as requiring that law enforcement must have a reasonable, articulable suspicion of drug-related criminal activity before a dog sniff of a vehicle may be conducted, suggesting that the Minnesota Constitution may provide greater protection in this context than the U.S. Constitution. See *State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016) (applying the standard set forth in *Wiegand* when evaluating dog sniff of vehicle, but not addressing interaction between *Wiegand* and *Caballes*). Therefore, I will analyze the dog sniff under the standard set forth in *Wiegand*

the probable cause standard. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011) (quotation omitted). To meet the reasonable, articulable suspicion standard, the officer must be able to “articulate specific facts which, taken together with rational inferences from those facts, objectively support the officer’s suspicion.” *Lugo*, 887 N.W.2d at 486. Appellate courts “are deferential to police officer training and experience and recognize that a trained officer can properly act on suspicion that would elude an untrained eye.” *State v. Britton*, 604 N.W.2d 84, 88–89 (Minn. 2000). In evaluating whether the officer had reasonable, articulable suspicion, a reviewing court considers the totality of the circumstances. *State v. Flowers*, 734 N.W.2d 239, 251 (Minn. 2007). While appellate courts defer to the district court’s finding of facts unless they are clearly erroneous, whether an officer had reasonable suspicion is reviewed de novo. *Lugo*, 887 N.W.2d at 487.

The majority suggests that some of Officer Schaeffbauer’s testimony may not be considered in evaluating the totality of the circumstances leading up to the dog sniff of the vehicle because the district court did not make findings regarding the evidence presented in that testimony. Although these facts were not mentioned in the district court’s order, Benavides does not dispute the facts, and undisputed facts may be considered by a reviewing court because reasonable suspicion is an objective test. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992) (stating that “when reviewing a pre-trial order suppressing evidence where the facts are not in dispute and the trial court’s decision is a question of law, the reviewing court may independently review the facts and determine, as a matter of law, whether the evidence need be suppressed”). Moreover, the district court gave no indication in its order that it found any part of Officer Schaeffbauer’s testimony to be

incredible. Therefore, in evaluating the totality of the circumstances, I will consider the entirety of Officer Schaefbauer's testimony.

Based upon this record, which only contains the testimony of Officer Schaefbauer, I conclude that the officer had a reasonable suspicion of drug-related criminal activity based on the totality of the circumstances and that therefore the dog sniff of the vehicle was a reasonable search. Officer Schaefbauer pointed to many objective facts to support his suspicion that drug-related criminal activity was afoot.

First, Officer Schaefbauer, as a police officer employed in a small town, was familiar with both the driver and Benavides and knew that both had been recently involved in drug-related activity. Specifically, Officer Schaefbauer knew who Benavides was and was aware that he had been found in possession of a meth pipe approximately three weeks previously. Officer Schaefbauer also knew that the driver had been assaulted in connection with a drug-related incident only a few months earlier.

Second, Officer Schaefbauer testified that his attention was initially drawn to the vehicle in which Benavides was riding because it appeared that the vehicle was attempting to avoid him. When Officer Schaefbauer first noticed the vehicle, he was approximately two blocks away and driving 15 miles an hour. He testified that at the time he thought it was unusual that the driver of the vehicle appeared to wait for him to drive past before pulling out into the intersection, even though the driver had plenty of time to drive through the intersection before he reached it. He also noted that the driver and Benavides, whom he recognized as he entered the intersection and drove past them, looked straight forward rather than looking to the right and left for incoming traffic into the intersection. After

Officer Schaeffbauer passed the vehicle, he turned, went around the block, turning twice in an attempt to meet up with the vehicle again and observed it just as it was making a U-turn in the middle of the road to go the opposite direction.

Third, Officer Schaeffbauer knew that neither the driver nor Benavides had a valid driver's license. Once the vehicle was stopped, neither occupant of the vehicle was able to provide Officer Schaeffbauer with proof of insurance.

Fourth, Officer Schaeffbauer noted that, in addition to the "unusual route" that the vehicle took and the evasiveness of the driver and Benavides, Benavides was "nervous," "jittery," and was "pacing" when he got out of the vehicle. Officer Schaeffbauer explained that this nervousness was contrary to Benavides's usual demeanor when he had previously stopped him on four or five occasions during the past year, when he had been "very conversational and talkative."

Fifth, when Officer Schaeffbauer questioned Benavides, he stated that he and the driver were going to the house of a friend named "Homeboy." Based on his training and experience, Officer Schaeffbauer knew that persons associated with drug activity often use a nickname to conceal their real name.

Sixth, Benavides provided inconsistent answers to Officer Schaeffbauer's questions. Benavides initially told Officer Schaeffbauer he did not know Homeboy's real name, even though Benavides had known Homeboy for three years. However, "later in the stop" Benavides used his phone to look up "Homeboy," who was listed as "Troy" in his phone and was able to point out Troy's house.

Finally, when Officer Schaeffbauer asked Benavides when was the last time he had been around methamphetamine, Benavides admitted that he had been in the presence of methamphetamine three or four days previously. Officer Schaeffbauer testified that, based upon his training and experience, drug users are often untruthful about their most recent use of drugs. He believed that Benavides had used methamphetamine more recently than that to which he admitted.

Taking into account the totality of these circumstances, along with Officer Schaeffbauer's training and experience, I conclude that there were sufficient facts and reasonable inferences from those facts to support Officer Schaeffbauer's reasonable suspicion that the driver and Benavides were engaged in drug-related activity. Even though a specific fact may appear insignificant in isolation, seemingly innocent facts taken in the aggregate may amount to reasonable suspicion. *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998). Based upon this record, the district court's order granting Benavides' motion to suppress and dismissing the charge against Benavides should be reversed.