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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0928**

State of Minnesota,
Respondent,

vs.

Morgann Craighead Buie,
Appellant.

**Filed May 7, 2018
Affirmed
Schellhas, Judge**

Hennepin County District Court
File No. 27-CR-16-9586

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

Michael O. Freeman, Hennepin County Attorney, Christiana M. Martenson, Assistant
County Attorney, Minneapolis, Minnesota (for respondent)

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

Thomas Aaron Wilson, Special Assistant Public Defender, Wilson Law Firm P.L.L.C., St.
Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Schellhas, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges his conviction and sentence for second-degree controlled-substance possession, arguing that the district court erred by denying his motion to suppress drug evidence. We affirm.

FACTS

On April 8, 2016, the state charged appellant Morgan Buie¹ with a second-degree controlled-substance crime in violation of Minn. Stat. § 152.022, subd. 2(a)(1) (2014), for methamphetamine possession. Buie challenged the constitutionality of the police officer's expansion of the scope of the investigative stop and welfare check.

At a contested omnibus hearing, former South Lake Minnetonka Police Officer Ryan Burke testified that, around 3:30 a.m., on April 7, 2016, he was patrolling in a squad car when he responded to a report of an anonymous 911 call about two people “possibly having sex” in a vehicle in front of a residence on Glencoe Road. Officer Burke had previously been to that residence to help a woman in distress after a fight with her boyfriend. A training officer once told Officer Burke that he had responded to calls at that residence and that he believed that the residence involved some type of “meth drug use.”

On this occasion, Burke noticed that Glencoe Road was not well lit and was void of traffic as he approached the residence. On arrival, he saw a light-tan SUV, with its headlights off, parked in front of the residence, which was dark inside. The vehicle matched

¹ The case heading incorrectly spells Buie's first name as “Morgann” with two “N's.” Buie informed the district court that his first name only contains one “N.”

dispatch's description. Officer Burke then observed a man exit the vehicle on the driver's side and appear to want to leave the scene. Officer Burke told the man that he was there because of a call reporting suspicious activity, and he asked the man his name. The man identified himself as Buie. Officer Burke asked who was with him, and Buie pointed to a woman in the vehicle and said she was his girlfriend. The woman was lying down in the passenger seat motionless, and appeared "passed out or sleeping."

Buie gave short answers to Officer Burke and appeared "fidgety." He informed Officer Burke that he had recently purchased the vehicle and that it was not yet registered in his name. Buie also said that he was visiting a friend at the residence. Officer Burke suspected Buie of engaging in lewd acts, prostitution, or human trafficking, and he wanted to check on the well-being of the woman. Because the woman was still motionless, Officer Burke checked on her welfare by asking, "Are you okay[?]," to which she replied, "Yeah, I'm fine." Officer Burke wrote in a report that the woman appeared slow and tired, but that she "appeared to be okay." Buie told Officer Burke that the woman's name was K.K. After the woman awoke, she said that her name was K.A.D. The difference in reported names caused Officer Burke to become more suspicious about prostitution or human trafficking. Buie explained to Burke that the woman went by K.K. on Facebook and in general, and that she did not use her legal name.

Officer Burke testified about his training and experience, which included how to identify human-trafficking situations and prostitution. While working for Minneapolis Park Police, he handled calls involving sexual conduct in vehicles. He was trained to separate men and women in domestic disputes when asking for information because, he explained,

often victims may be too fearful to be truthful in front of their abusers. Based on his suspicion of human trafficking or prostitution, Officer Burke employed the same investigative technique that he uses in domestic disputes, and told Buie to stay where he was.

Officer Burke checked Buie's name and license plates and called for backup so that he could question Buie and K.A.D. alone. While he looked up the information in his squad car, a man exited the residence and stated, "They're staying at my house. Everything is fine." Officer Burke asked the man to return to the house because he had not yet spoken with K.A.D. and Buie alone. When the second officer arrived, Officer Burke approached the passenger side of the vehicle to speak with K.A.D. and knocked on the window. K.A.D. was again lying down and appeared to be tired. Burke shined his flashlight in the vehicle and noticed a hypodermic needle on the floorboard underneath a center console and the front passenger seat.

The officers detained Buie and K.A.D. in different squad cars, and Officer Burke called Hopkins Police for a K9 to sniff the perimeter of the vehicle due to his suspicion of narcotics possession. When sniffing the perimeter of the vehicle, the narcotics K9 alerted twice. Officers obtained a search warrant, searched the vehicle, and found a baggie that contained 13 to 14 grams of methamphetamine.

The district court concluded that Officer Burke did not unlawfully expand the investigative stop and denied Buie's motion to suppress. Buie stipulated to the prosecutor's

case, and the district court found him guilty and sentenced him to a stayed 90-month prison term.²

Buie now appeals the pretrial order denying his suppression motion.

DECISION

Buie does not challenge the legality of (1) Officer Burke's initial investigative stop and welfare check, (2) his observation of the hypodermic needle, or (3) the narcotics K9 sniff of the vehicle. He challenges the district court's conclusion that Officer Burke had a reasonable suspicion to expand the scope of the initial investigative stop and welfare check.

Whether reasonable suspicion exists is a mixed question of fact and constitutional law. *State v. Lugo*, 887 N.W.2d 476, 487 (Minn. 2016). When reviewing a district court's determination of the legality of an investigatory stop, this court reviews its findings of fact for clear error and its conclusion on reasonable suspicion de novo. *Id.*

Both the United States and Minnesota Constitutions protect against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "A search conducted without a warrant issued upon probable cause is generally unreasonable." *State v. Flowers*, 734 N.W.2d 239, 248 (Minn. 2007). One exception to the warrant requirement

² Defense counsel in district court and on appeal cite Minn. R. Crim. P. 26.01, subd. 3, which allows a stipulated-facts trial when both the defense and the prosecution agree to stipulate to a set of facts and a judge determines whether the defendant is guilty. *See Dereje v. State*, 837 N.W.2d 714, 720 (Minn. 2013) (analyzing Minn. R. Crim. P. 26.01, subd. 3). But the parties made it clear to the district court that they were proceeding under *State v. Lothenbach*, 296 N.W.2d 854 (Minn. 1980), and Buie's pretrial counsel informed him that the pretrial issue was dispositive. Buie preserved his right to appeal only the pretrial ruling. Notwithstanding reference to the wrong rule, Buie stipulated to the prosecution's case under Minn. R. Crim. P. 26.01, subd. 4, to preserve his right to appeal the pretrial order.

allows the police to conduct a “brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *Lugo*, 887 N.W.2d at 486; *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968).

“Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate that he or she had a particularized and objective basis for suspecting the seized person of criminal activity.” *State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (quotations omitted). “The reasonable-suspicion standard is not high.” *Id.* (quotation omitted). “A trained police officer is entitled to draw inferences on the basis of all of the circumstances . . . inferences and deductions that might well elude an untrained person.” *Id.* (quotations omitted). A district court must assess the totality of the circumstances of the stop. *Id.*

An investigative stop remains valid when “each incremental intrusion during a stop is strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible.” *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012) (quotation omitted). An investigative stop may become unlawful if it moves beyond a duration which is necessary “to effectuate the purpose of the stop,” or beyond the scope of the stop and the circumstances that rendered the initiation of the investigation permissible. *State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) (quotation omitted); *see also Terry*, 392 U.S. at 18, 88 S. Ct. at 1878 (“[A] search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope.”). “An intrusion not closely related to the initial justification for the search or seizure is invalid . . . unless there

is independent probable cause or reasonableness to justify that particular intrusion.” *Askerooth*, 681 N.W.2d at 364 (citation omitted).

Appellate courts first determine whether an expansion of a stop beyond its original justification occurred. *Smith*, 814 N.W.2d at 351. We agree with the district court that the scope of the stop expanded when Officer Burke detained Buie in order to further investigate whether Buie was engaged in human trafficking or prostitution. We conclude that the expansion of the initial scope of the stop was justified by a reasonable suspicion. As described by the district court, the totality of the circumstances included:

(1) [Officer Burke] was dispatched to the scene on a report of two people engaging in sexual activity in an SUV matching the description of the SUV that [Buie] was exiting, (2) it was between the hours of 3:00 and 4:00 in the morning, in a dark, low-traffic residential neighborhood, (3) a woman was either sleeping or passed out in the passenger seat of the SUV, (4) when asked, [Buie] provided a last name for the woman that did not match her legal last name, and (5) the vehicle was parking in front of a house known to Officer Burke as a location where drug activity was suspected.

Additionally, the tan SUV was not registered to Buie, who appeared nervous and fidgety, and Burke had previously been to the residence on a call involving a domestic dispute.

Buie argues that because Officer Burke’s initial suspicion of illegal activity was “low,” his suspicion should have been dispelled when he did not observe sexual activity. We are not persuaded. Deferring to Officer Burke’s training and experience and his ability to suspect circumstances that would elude an untrained eye, we conclude that he possessed a reasonable suspicion of the occurrence of human trafficking or prostitution and reasonably expanded the initial scope of the investigative stop to enable him to speak with

K.A.D. outside of the presence of Buie. Based on the totality of circumstances and his training and experience, Officer Burke reasonably suspected the occurrence of human trafficking or prostitution. 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).

Buie asserts that each of the district court’s factual findings was insufficient to find a reasonable suspicion to justify an expansion of the stop’s scope. Even if each fact alone does not provide reasonable suspicion, Buie’s argument is unpersuasive. “[I]nnocent’ factors in their totality, combined with the investigating officer’s experience . . . can be sufficient bases for finding reasonable suspicion.” *State v. Martinson*, 581 N.W.2d 846, 852 (Minn. 1998); accord *United States v. Sokolow*, 490 U.S. 1, 9–10, 109 S. Ct. 1581, 1587 (1989) (“*Terry* itself involved ‘a series of acts, each of them perhaps innocent’ if viewed separately, ‘but which taken together warranted further investigation.’” (quoting *Terry*, 392 U.S. at 22, 88 S. Ct. at 1880–81)); see also *Reid v. Georgia*, 448 U.S. 438, 441, 100 S. Ct. 2752, 2754 (1980) (“[T]here could, of course, be circumstances in which wholly lawful conduct might justify the suspicion that criminal activity was afoot.”).

In sum, Officer Burke had a reasonable suspicion that human trafficking or prostitution was occurring and was justified in expanding the initial scope of the stop. The district court therefore did not err by denying Buie’s suppression motion.

Affirmed.