

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0401**

State of Minnesota,
Respondent,

vs.

Jordan Germaine McCray,
Appellant.

**Filed March 15, 2021
Affirmed; motion denied
Worke, Judge**

Ramsey County District Court
File No. 62-CR-18-3745

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for respondent)

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

Joshua T. Peterson, Faegre Drinker Biddle & Reath LLP, Special Assistant Public
Defender, Minneapolis, Minnesota (for appellant)

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

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court wrongly denied his motion to suppress
evidence because police officers conducted an unlawful search and seizure and

unreasonably expanded the stop. Appellant also argues that the district court clearly erred in concluding that he consented to the search. We affirm. Respondent also moved to strike arguments from appellant's reply brief. We deny respondent's motion as moot.

FACTS

Appellant Jordan Germaine McCray was charged with three counts of ineligible possession of firearms and ammunition. McCray moved to suppress the evidence as a result of an unlawful search and seizure and an unreasonable expansion of the stop. The district court held a suppression hearing the morning of trial.

The only witness to testify at the suppression hearing was a patrol officer of the Saint Paul Police Department. The officer testified that he knew McCray from law-enforcement interactions when he was a deputy sheriff in a Wisconsin county. While working there, he pulled McCray over in traffic stops and responded to fights that McCray was involved in at local establishments. At least one of these fights involved firearms. He also arrested McCray multiple times on warrants.

On May 25, 2018, the officer was patrolling east St. Paul with his partner. While patrolling, he saw McCray standing outside a blue Volvo at a gas station. The officer knew that there had previously been a "be-on-the-lookout" alert or a "pick-up-and-hold" alert for McCray for a domestic incident in Goodhue County.¹ The warrant advised that he had access to weapons. He stopped McCray because he thought the warrant was still active. He did not check to see if it was active before approaching.

¹ The parties agreed at oral argument that this alert was functionally the same as an arrest warrant. We refer to this alert as a warrant in this opinion.

The officer drove into the gas station and stopped his squad car nose-to-nose with McCray's Volvo to get in its way. The officer approached McCray and asked if he got his "stuff taken care of." McCray said that he did. The officer then conducted a weapon pat-search for safety. The testifying officer's partner walked past McCray, shined a flashlight inside the car, and stood behind McCray while McCray spoke to the testifying officer. There was one man in the back of McCray's car and another who exited the store after the police officers arrived. The state published the officer's body-camera video of the incident.

During the pat-search, McCray denied having any warrants or firearms. When the officer felt McCray's pockets, McCray said, "Here you go. I'll show you all my money, everything out of here." As he was emptying the contents of his pocket into his hat that the officer was holding, the officer asked, "What about that weed that's in your pocket that I just saw?" McCray placed the bag of marijuana into his hat. The officer asked McCray for his date of birth and radioed the information in for a warrant check.²

Two officers then searched the inside of the car and only found marijuana shake³ on the ground. The officer then asked McCray if his ID was in his wallet, opened the wallet, and found a ".22-caliber, long rifle bullet." He then placed McCray under arrest because he knew he was a felon. The officers searched the trunk and found two guns: a .22 caliber

² The district court found that the officer made the warrant check over the radio simultaneous to the pat-search. The officer did testify that he conducted the warrant check over the radio, but the first time that he communicates over the radio in the body-camera video is about one minute after discovering the marijuana.

³ The officer testified, "Shake is what is created from the grinding of marijuana."

pistol and a .38 caliber pistol. They also found two bags of live ammunition, one for each gun.

The district court denied McCray's motion to suppress the evidence. It determined that the officer's knowledge of the warrant was not stale because "there is no magic formula or no specific time when staleness occurs" and the district court "is directed to . . . examine the totality of the circumstances to make a determination" on whether there was reasonable suspicion. The district court concluded that "there is an objectively, reasonable articulable suspicion that seeing . . . McCray out on the street that, that warrant remains active." The district court also concluded that there is no caselaw imposing a duty on officers to stop "ordinary law enforcement activities and to check to determine whether the warrant is still active."

Following the district court's order, McCray stipulated to a court trial on the evidence admitted during the suppression hearing to protect the evidentiary issue for appeal. The district court found McCray guilty of possessing the .22 caliber gun and ammunition. The district court acquitted McCray on count two for possession of the .38 caliber gun because DNA evidence excluded McCray and included a different passenger of the car. The district court sentenced McCray to two 60-month sentences to be served concurrently. This appeal followed.

DECISION

Motion to strike

The state moved to strike certain arguments from McCray's reply brief because they were not in his principal brief. Generally, issues not raised or argued in an appellant's

principal brief cannot be raised in a reply brief. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010); *see also* Minn. R. Civ. App. P. 128.02, subd. 3. But appellate courts “have considered issues or theories a party failed to raise in its principal brief, especially when those theories were argued at the district court level and both parties addressed the theory in their briefs.” *Anda*, 789 N.W.2d at 887. Because we affirm the district court’s order, we deny the state’s motion as moot and address McCray’s arguments on the merits.

Reasonable suspicion

McCray first argues that the officer did not have reasonable, articulable suspicion to conduct the investigatory stop. Under both the Minnesota and United States Constitutions, officers may “conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.” *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). The standard for reasonable suspicion is not high. *Id.* Police officers must articulate “a particularized and objective basis for suspecting the particular person stopped of criminal activity” that is “more than an inchoate and unparticularized suspicion or hunch of criminal activity.” *Id.* (quotations omitted). Appellate courts review whether an investigatory stop is supported by reasonable suspicion de novo. *See State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

McCray argues that the officer did not have reasonable suspicion because of the collective-knowledge doctrine. The collective-knowledge doctrine pools the knowledge of the police force in establishing the grounds to seize someone. *See State v. Conaway*, 319 N.W.2d 35, 40 (Minn. 1982). It is typically used to impute the knowledge of all

investigating officers to the officer seizing or arresting the individual. *See In re Matter of Welfare of G.M.*, 542 N.W.2d 54, 57 (Minn. App. 1996), *aff'd*, 560 N.W.2d 687 (Minn. 1997). But the doctrine also applies to officers acting on behalf of a different law enforcement agency to make an arrest. *See Conaway*, 319 N.W.2d at 40.

McCray asks us to extend the doctrine to work in favor of the arrestee by imputing the knowledge of any officer that might dispel the reasonable suspicion of the officer conducting the stop. Essentially, he is asking us to impute the knowledge of an unknown law enforcement agent that McCray's warrant was no longer active on the arresting officer. McCray has not provided, and we cannot find, any caselaw applying the collective-knowledge doctrine in this way. We therefore decline to do so.

The district court concluded that the officer had reasonable, articulable suspicion because caselaw does not prescribe a magic formula to calculate staleness, and that "there is an objectively, reasonable articulable suspicion that seeing . . . McCray out on the street that, that warrant remains active." The officer knew about McCray's prior incidents and that at least one incident involved firearms. He also knew that the warrant warned that McCray may have access to firearms. McCray has not shown how the district court erred in concluding that the officer had reasonable suspicion to conduct the investigatory stop.⁴

⁴ While we affirm, we note that when there are no concerns about flight or public safety, the better practice for law enforcement officers is to check a suspect's current warrant status before acting on memory alone. This practice eliminates the perception that an officer is investigating a suspect with an eye toward subsequent arrest, rather than properly effectuating legal process.

Unlawfully expanded scope

McCray next argues that the officer unlawfully expanded the scope of the stop by going “on a fishing expedition for contraband.” McCray argues this because the officer testified that he asked McCray “if there was anything on him” before McCray emptied his pockets. But the body-camera video that was admitted as evidence and played at the suppression hearing shows that the officer did not ask this before McCray offered to show everything in his pockets. McCray’s entire argument depends on the officer’s incorrect recollection of what he said. Thus, the officer did not unlawfully expand the scope of the investigatory stop because he only conducted a weapons pat-search.

Consent to search

McCray next argues that the district court clearly erred by finding that he voluntarily consented to a search by emptying his pockets after the stop. McCray’s argument is that he did not freely consent because the encounter was coercive. Whether consent is voluntary or coerced is a question of fact that appellate courts review under the clearly erroneous standard. *State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011). “Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred.” *Id.* at 846-47.

Consent to search is an exception to the warrant requirement when the consent is freely and voluntarily given. *Id.* at 846. “Whether consent was voluntary is determined by examining the totality of the circumstances, including the nature of the encounter, the kind of person the defendant is, and what was said and how it was said.” *Id.* (quotation omitted). Consent is not involuntary just because the person being questioned is uncomfortable. *Id.*

Instead, consent becomes involuntary when the right to say no is compromised by an official show of authority. *Id.*

McCray argues that his consent was involuntary because the officer asked him if he had anything on him after (1) the officers blocked his car with their squad car and (2) one officer stood on each side of him and pat-searched him. But as mentioned in the previous section, the officer did not ask McCray any questions about evidence on his person before McCray revealed the contents of his pockets. The officer parked his squad car in front of McCray's car to stop him, and one officer stood on each side of him during the pat-search. But right before the pat-search, the second officer said, "Hey listen, if you got everything squared away then we'll get you out of here, alright?" During the pat-search, the first officer told McCray that he is just making sure McCray does not have an outstanding warrant. Neither officer said anything related to what was on McCray's person before McCray emptied his pockets. When the first officer felt at McCray's pockets, McCray said, "I guarantee you I ain't do nothing. Here you go, I'll show you all my money, everything out of here." McCray then handed the officer his hat and emptied the contents of his pockets into the hat. McCray's pockets are not visible in the body-camera video, but the officer testified that he saw a small bag of marijuana that McCray tucked back in his pocket. The officer asked McCray, "What about that weed that's in your pocket that I just saw?" McCray answered, "Man, that's just a bag of weed. I'm sorry." He then put the marijuana in the hat.

Considering these circumstances, we cannot conclude that the district court clearly erred by finding that McCray freely and voluntarily consented to revealing the contents of

his pockets. A squad car parked in front of his car and two officers flanked him. But they told him they were only checking his warrant status and sending him on his way. One officer conducted a pat-search for weapons and felt his pockets. McCray then volunteered to empty his pockets.

McCray argues that he “was subject to a much more intense show of force” than what the supreme court found to be coercive in *Diede*. But the supreme court held that *Diede* was coerced into consenting to open her cigarette package because “she had been seized, was subject to a show of police force, had received repeated requests to open the package, and had already refused consent to search the package.” *Id.* at 847. McCray was never asked to reveal the contents of his pockets, but did so of his own initiative out of an apparent desire to prove to the officers that he was not in possession of anything unlawful. *Diede* is distinguishable. McCray has not shown how the district court clearly erred in finding that McCray voluntarily consented to revealing the contents of his pockets.

Affirmed; motion denied.