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

STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0011

State of Minnesota,
Respondent,

vs.

Donald Ray Shellito,
Appellant.

Filed December 16, 2024
Affirmed
Cochran, Judge

Douglas County District Court
File No. 21-CR-23-622

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Chad Larson, Douglas County Attorney, Alexandria, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Gina D. Schulz, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Connolly, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

In this direct appeal from the judgment of conviction for first-degree drug possession, appellant Donald Ray Shellito challenges the district court's order denying his motion to suppress evidence seized during a search of his person for weapons. Because

law enforcement had a reasonable, articulable suspicion, based on the totality of the circumstances, that Shellito was engaged in criminal activity and might have been armed and dangerous, we conclude the search was lawful. We therefore affirm.

FACTS

On April 8, 2023, while on duty, a deputy with the Douglas County Sheriff's Department observed a car parked at a truck stop. There were two people in the car, whom the deputy recognized from an earlier traffic stop. Shellito was in the driver's seat and James Manoy, the registered owner of the vehicle, was in the passenger seat. The deputy checked the criminal-history and driver's-license statuses of Shellito and Manoy. He learned that neither had a valid driver's license and that Shellito had two prior convictions for third-degree drug possession.

While surveilling the vehicle, the deputy observed Shellito "doing [a] full 360-degree look around" from the driver's seat. Based on his training and experience, the deputy believed Shellito was looking to see if Shellito and Manoy could drive away without being noticed by law enforcement. The deputy was parked across the street at the time. He surveilled Manoy's car from that spot for a while and then left. When the deputy returned about 45 minutes later, Manoy and Shellito were still at the truck stop. The deputy estimated that Manoy and Shellito were parked there for "a good two hours."

Upon his return, the deputy observed Shellito grab a backpack, exit the vehicle, and walk into the truck stop. A short time after, Manoy got into the driver's seat and drove away from the truck stop. The deputy followed Manoy and pulled him over a short distance from the truck stop after Manoy made an illegal U-turn. When he made contact with

Manoy, Manoy was smoking a fresh cigarette and complained that he could not breathe. Manoy told the deputy that he was driving to the hospital due to his trouble breathing. But the deputy observed Manoy was driving in the opposite direction of the hospital when stopped. And Manoy could not explain to the deputy why he was smoking a cigarette while he was having trouble breathing. According to the deputy, Manoy "appeared [to be] very heavily under the influence of a controlled substance" at the time.

While talking with Manoy, the deputy also observed an open bottle of alcohol in Manoy's car that was in plain view. Based on the open-bottle-law violation, the deputy conducted a search of the car. During the search, the deputy found a leather pouch containing "a first-degree possession amount of methamphetamine . . . along with psilocybin mushrooms." When the deputy confronted Manoy about the drugs, he stated that Shellito "left that in my car."

After arranging for an ambulance to transport Manoy to the hospital, the deputy returned to the truck stop. There, he and another deputy found Shellito seated in the lounge, talking on his cell phone. The two deputies approached Shellito and asked him to hang up the phone. Shellito removed the phone from his ear but did not hang up the phone. Shellito asked, "What did I do?" The deputy stated that he needed to talk to Shellito. Shellito responded, "I didn't do nothing wrong," and the deputy again told Shellito to hang up the phone. Shellito again asked "what did I do wrong," at which point the deputy told Shellito to stand up so he could check Shellito for weapons. Shellito stood up and began to take off his coat but then sat back down. As he was sitting down, Shellito removed his jacket. The deputy noticed that Shellito "was trying really hard to slide his right arm out of the

sleeve, as if something was obstructing that sleeve." The deputy then grabbed Shellito's wrist and told Shellito to stand up so that the deputy could check him for weapons. With the deputy's hand still holding Shellito's arm, Shellito stood up and initially indicated that he did not have a weapon. But Shellito quickly corrected himself by informing the deputy that he had a knife in his right pocket. While the deputy searched the pocket for the knife, he felt a small bag that he "immediately believed to be methamphetamine due to the shards."

The deputy placed Shellito under arrest for possession of methamphetamine and searched the rest of Shellito's personal property incident to arrest. In Shellito's backpack, the deputy found drug paraphernalia, including digital scales, hypodermic syringes, and "dime baggies." In Shellito's coat, the deputy found a bag which contained "a large amount of methamphetamine."

Respondent State of Minnesota charged Shellito with one count each of (1) first-degree sale of a controlled substance, (2) first-degree possession of a controlled substance, (3) misdemeanor possession of hypodermic syringes, and (4) petty misdemeanor possession of drug paraphernalia. Minn. Stat. §§ 151.40, subd. 1, 152.021, subds. 1(1), 2(a)(1), .092(a) (2022). Shellito pleaded not guilty.

Prior to trial, Shellito moved to suppress evidence of the drugs and paraphernalia, arguing the evidence was the fruit of an unconstitutional warrantless search. The district court held a contested hearing. The district court heard testimony from the deputy and accepted into evidence the body-worn-camera footage from the deputy's partner. The deputy testified that he observed Shellito and Manoy in the parking lot of the truck stop,

conducted the search of Manoy's car which revealed the drugs that Manoy said belonged to Shellito, and had the above-described interaction with Manoy. The deputy further testified he suspected that Shellito had drugs with him when he went into the truck stop based on Shellito's conduct and his belief that Manoy drove off without Shellito to "go see where squad cars were." The deputy also testified that, in his experience, "[u]sually, where there's drugs, there's at least knives and a lot of times guns."

In a written order, the district court denied Shellito's motion to suppress the evidence found as a result of the search. The district court concluded that "the warrantless search of [Shellito's] person and property was lawful in this case." The district court determined that the deputy "was justified in making contact with [Shellito]" in the truck stop based on the drugs found in Manoy's car and Manoy's statement that the drugs belonged to Shellito. The district court also found that when the deputy first approached Shellito in the truck stop, Shellito "immediately began acting in a highly agitated manner, and in an unusual manner that was suspicious to [the deputy]." The district court noted that when Shellito tried to take off his coat, the deputy "suspected [Shellito] could possibly have been concealing drugs or a weapon." And the district court determined that the deputy "was justified in believing [Shellito] was armed" because Shellito himself told the deputy that he had a knife. The district court concluded that the deputy had a lawful basis to frisk Shellito for weapons and reach into his pocket to remove the knife. And, because the deputy "immediately recognized the baggie containing methamphetamine in [Shellito's] pocket, he was justified in seizing it and placing [Shellito] under arrest."

Prior to trial, the state dismissed all of the initial charges except one count of first-degree possession of a controlled substance in violation of Minnesota Statute section 152.021, subdivision 2(a)(1). The jury found Shellito guilty of the drug-possession charge, and the district court sentenced him to 105 months' imprisonment.

Shellito appeals.

DECISION

Shellito argues that the district court erred in denying his pretrial motion to suppress the evidence seized during the deputy's warrantless search of Shellito for weapons because law enforcement (1) seized Shellito at the truck stop without a reasonable, articulable suspicion that he was engaged in criminal activity and (2) searched Shellito for weapons without a reasonable, articulable suspicion that Shellito might be armed and dangerous. We are not persuaded.

"When reviewing a district court's pretrial order on a motion to suppress evidence, 'we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo.'" *State v. Gauster*, 752 N.W.2d 496, 502 (Minn. 2008) (quoting *State v. Jordan*, 742 N.W.2d 149, 152 (Minn. 2007)).

Both the United States Constitution and the Minnesota Constitution 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, without violating the prohibition against unreasonable searches and seizures, "[a law-enforcement] officer may stop and temporarily seize a person to investigate that person for criminal wrongdoing

if the officer reasonably suspects that person of criminal activity." *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). And, if the law-enforcement officer has a particularized and objective basis for suspecting criminal activity, the officer may conduct a limited search for weapons if the officer also has reason to believe that the suspect might be armed and dangerous. *State v. Flowers*, 734 N.W.2d 239, 250 (Minn. 2007); *Terry v. Ohio*, 392 U.S. 1, 30-31 (1968). This type of temporary, warrantless seizure and search of a person for weapons is often referred to as a *Terry* search. *See, e.g.*, *Flowers*, 734 N.W.2d at 250. If, during the course of such a search, "an officer locates what he immediately and without further manipulation has probable cause to believe is evidence of a crime, then the officer may legally seize that evidence." *State v. Harris*, 590 N.W.2d 90, 104 (Minn. 1999).

"We review de novo a district court's determination of reasonable suspicion of illegal activity." *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 (quotations omitted). The "reasonable suspicion" standard is "not high." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quoting *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006)). "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." *Taylor*, 965 N.W.2d at 752 (quotations omitted).

In determining whether the reasonable-suspicion standard is met, we consider the totality of the circumstances. *Flowers*, 734 N.W.2d at 251. And we consider reasonable suspicion from the perspective of a trained law-enforcement 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 Shellito's argument that law enforcement did not have a reasonable, articulable suspicion that he was engaged in criminal activity. We then turn to Shellito's argument that law enforcement lacked reasonable suspicion that he might be armed and dangerous when they searched his person for weapons and found drugs in his pants pocket.

I. The district court did not err by determining that law enforcement had a reasonable, articulable suspicion that Shellito was engaged in criminal activity.

Shellito argues that the district court erred when it concluded that the deputy had a reasonable, articulable suspicion that Shellito was engaged in criminal activity that justified an investigatory seizure of Shellito at the truck stop. As an initial matter, Shellito argues that he was seized "almost immediately when [the deputies] entered the truck stop lounge where [Shellito] was talking on the phone." The state does not dispute this characterization. Accordingly, for purposes of our analysis, we assume without deciding that Shellito was seized when law enforcement first approached him at the truck stop.

To argue that law enforcement lacked the requisite reasonable, articulable suspicion of criminal activity to support the investigatory seizure, Shellito focuses on evidence in the record in a piecemeal manner. As noted above, however, our standard of review requires

us to consider the totality of the circumstances in analyzing this question. *Flowers*, 734 N.W.2d at 251. Regardless, Shellito's specific arguments about the individual pieces of evidence are unavailing.

Shellito's Connection to the Drugs in Manoy's Car

Shellito argues there is no credible evidence that the drugs found in Manoy's car belonged to him. He contends that Manoy's statement that the drugs belonged to Shellito lacks credibility. He further contends that no other evidence linked Shellito to the drugs in Manoy's car. Accordingly, he contends that evidence of drugs in Manoy's car should not be considered in determining whether the record supports the district court's determination that law enforcement had a reasonable, articulable suspicion that Shellito was engaged in criminal activity.

Information provided by a reliable informant can contribute to the totality of the circumstances that provide reasonable suspicion that a suspect is engaged in criminal activity. *Timberlake*, 744 N.W.2d at 393. To be relied upon by law enforcement, the information must have "sufficient indicia of reliability." *State v. Cook*, 610 N.W.2d 664, 667 (Minn. App. 2000). The reliability of information can be supported by an informant's personal observations and through independent corroboration by law enforcement. *State v. Mosley*, 994 N.W.2d 883, 890-92 (Minn. 2023). "[R]easonable suspicion can arise from information that is less reliable than that required to show probable cause." *Alabama v. White*, 496 U.S. 325, 330 (1990).

Here, Manoy's statement that the drugs in the car belonged to Shellito had sufficient indicia of reliability for the deputy to rely upon Manoy's statement. Before Manoy made

the statement to the deputy, the deputy observed Shellito and Manoy parked in Manoy's car for an extended period of time. Accordingly, the deputy had reason to believe that Manoy's statement was based on Manoy's personal observation and knowledge.

Shellito argues that, even though the two were parked in the car together, there are "reasons to doubt Manoy's credibility as an informant." He emphasizes the self-serving nature of Manoy's statement and the fact that Manoy appeared to be under the influence of a controlled substance when he made the statement. While these facts provide reason to question Manoy's credibility, there are other facts that support the credibility of Manoy's statement. As the state notes in its brief, Manoy's statement was corroborated by the deputy observing Shellito's suspicious behavior in Manoy's car, including "doing a full 360-degree look around," and by Shellito carrying a backpack into the truck stop. In addition, Shellito's criminal record of past drug offenses corroborates Manoy's statement. And the deputy did not need to have been convinced of Manoy's accusation beyond a reasonable doubt, or even to a level that would support probable cause. He only needed reasonable, articulable suspicion that Shellito was engaged in criminal activity, which "can arise from information that is less reliable than required to show probable cause." *Id.* Therefore, Manoy's statement that the drugs in the car belonged to Shellito is properly considered in determining whether law enforcement had a reasonable, articulable suspicion that Shellito was engaged in criminal activity.

Prior Traffic Stop

Shellito also argues that, during an earlier traffic stop that same day, the deputy pulled Shellito and Manoy over and told them to not drive because both men had suspended

driver's licenses. Shellito maintains that the instruction from the earlier traffic stop explains why he remained in Manoy's parked car for almost two hours before going into the truck stop. Shellito did not present this argument to the district court at the suppression hearing, and the district court did not rely on the amount of time Shellito spent in the car when deciding whether there was reasonable, articulable suspicion of criminal activity. Therefore, this argument may not be properly before us. *See State v. Morse*, 878 N.W.2d 499, 502 (Minn. 2016) (stating appellate courts "must generally consider only those issues that the record shows were presented and considered by the [district] court in deciding the matter before it." (quoting *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988)) (other quotation omitted)).

Even assuming the argument is properly raised on appeal, it is unavailing. While the prior traffic stop provides an innocuous explanation for the amount of time Shellito spent in Manoy's car, it does not explain Shellito's behavior while in Manoy's car or Manoy's statement that the drugs found in the car belonged to Shellito. Furthermore, it does not eliminate the reasonable inference that a passenger in a car may be engaged in a common enterprise with the driver. *See Lemert*, 843 N.W.2d at 232 (noting that "a car passenger . . . will often be engaged in a common enterprise with the driver") (quoting *Wyoming v. Houghton*, 526 U.S. 295, 304-05 (1999)). Nor does it eliminate the suspicion gleaned from observing Shellito in a car that contained drugs. Thus, even if we were to consider the deputy's prior instruction that the men not drive the car, the deputy still had reasonable suspicion that Shellito was engaged in criminal activity involving drugs based on these other circumstances.

Shellito's Criminal History

Finally, Shellito contends that the deputy's knowledge of Shellito's prior criminal record "cannot stand on its own to give rise to reasonable suspicion." We agree but conclude this argument does not require reversal. "[A] criminal record, even a long one, is best used as corroborative information . . . ." *State v. Carter*, 697 N.W.2d 199, 205 (Minn. 2005) (quotation omitted). This is precisely how the deputy used Shellito's criminal history. The deputy learned of Shellito's prior drug-offense convictions while surveilling Shellito in Manoy's car. Instead of seizing Shellito based solely on his criminal history, he waited until he had a more particularized suspicion that Shellito was engaged in criminal activity. The deputy focused primarily on Shellito's conduct and the drugs found in Manoy's car, not Shellito's criminal history.

Shellito further argues that the significance of his past convictions is diminished for purposes of determining whether law enforcement had a reasonable, articulable suspicion of criminal activity because the prior drug-offense convictions were two to three years old at the time the deputy seized Shellito. In support of his position, Shellito relies on *Carter*, which notes that "convictions that are several years old are less reliable" than more recent convictions for purposes of determining probable cause. *Id.* at 205. While we agree that the significance of a conviction diminishes over time, we note that *Carter* considered the prior convictions in the context of a probable cause determination, which is a higher standard to meet than reasonable, articulable suspicion. *Id.* at 204-05. More importantly, the convictions at issue in *Carter* were five and seven years old, compared to Shellito's convictions which were two or three years old. *Id.* at 204. Lastly, nothing in the record

suggests that the deputy or the district court put improper weight on Shellito's criminal history.

For these reasons, we reject Shellito's arguments that the district court erred in its determination that the deputy "was justified in making contact" with Shellito in the truck stop. Instead, we conclude that the record contains specific, articulable facts that support the district court's determination that law enforcement had a reasonable suspicion that Shellito was engaged in criminal activity when they first encountered Shellito in the truck stop. First, the deputy observed Shellito in Manoy's car, which was later found to contain "a first-degree possession amount of methamphetamine . . . along with psilocybin mushrooms." Second, the deputy observed Shellito "doing [a] full 360-degree look around" while in Manoy's car, which the deputy found to be suspicious. Third, when the deputy confronted Manoy about the drugs found in his car, Manoy told the deputy that they belonged to Shellito. Fourth, the deputy knew that Shellito had a criminal history of drug convictions. Taken together, these facts provided the deputy with a reasonable, articulable suspicion that Shellito was engaged in criminal activity involving drugs. The deputy had far more than a mere hunch. Because there are specific, articulable facts that objectively support the deputy's suspicion that Shellito was engaged in criminal activity involving drugs, the limited investigatory seizure of Shellito was lawful.

II. The district court did not err in finding that law enforcement had a reasonable, articulable suspicion that Shellito might be armed and dangerous when law enforcement searched him for weapons.

Shellito next argues that even if the investigatory stop of Shellito was justified, the district court erred in determining that law enforcement had a reasonable, articulable

suspicion that Shellito might be armed and dangerous. Shellito contends that the district court made three clearly erroneous factual findings regarding Shellito's interaction with the deputy while in the truck stop, which prejudicially impacted its analysis. The state responds that we do not need to address the challenged factual findings because law enforcement had a reasonable, articulable suspicion that Shellito might be armed and dangerous *prior* to approaching Shellito in the truck stop. We agree with the state.

In support of its position, the state relies on *Lemert*. 843 N.W.2d 227. In that case, the supreme court considered whether law enforcement's search of a passenger in a car for weapons was lawful. *Id.* at 229. Law enforcement conducted the search of the passenger after arresting the driver of the car for drug-trafficking. *Id.* The supreme court emphasized that the legality of a search depends on an objective examination of the totality of the circumstances. *Id.* at 230. And the supreme court concluded that officers had reasonable, articulable suspicion that the passenger, Lemert, might have been armed and dangerous because Lemert was in a car with a suspected drug dealer and other facts known to law enforcement "increased the likelihood that Lemert was either [a] customer or a fellow participant in those activities." *Id.* at 232. The court concluded that these facts, along with the reasonable inference that passengers "will often be engaged in a common enterprise with the driver" and the "substantial nexus . . . between drug dealing and violence," provided sufficient particularized suspicion to search Lemert for weapons. *Id.* (quoting *Houghton*, 526 U.S. at 304-05).

Shellito asserts that this case is distinguishable from *Lemert* because, in *Lemert*, law enforcement knew for certain that the driver was "actively engaged in selling a large

amount of methamphetamine." While it is true that there is no direct evidence of drug dealing in this case like there was in *Lemert*, the totality of the circumstances here support the conclusion that law enforcement had a reasonable, articulable suspicion that Shellito was armed and dangerous based on the reasonable, articulable suspicion that Shellito was engaged in criminal-drug activity. As discussed above, the deputy testified that he found a "first-degree possession amount of methamphetamine . . . along with psilocybin mushrooms" in Manoy's car. And, according to Manoy, the drugs belonged to Shellito. In addition, the deputy testified that, when Shellito exited the car to go to the truck stop, Shellito's conduct gave him reason to suspect that Shellito had drugs with him. The deputy further testified that, in his experience, drugs and weapons "usually" go together. *See also id.* (noting that a "substantial nexus exists between drug dealing and violence"). Therefore, law enforcement had a reasonable, articulable basis to suspect that Shellito might be armed and dangerous when they first made contact with Shellito in the truck stop. *See id.* Consequently, the search of Shellito for weapons was lawful.

In sum, we conclude that, based on the totality of the circumstances, law enforcement had a reasonable, articulable suspicion that Shellito was engaged in criminal-drug activity. We further conclude that law enforcement had a reasonable, articulable suspicion that Shellito might be armed and dangerous when they first encountered Shellito in the truck stop, supporting the search for weapons.[1] The district

[1] Because we conclude that law enforcement had reasonable, articulable suspicion to believe that Shellito might be armed and dangerous when they first approached Shellito in the truck stop, we need not address Shellito's claims that the district court made three

court therefore did not err in denying Shellito's motion to suppress evidence found during the *Terry* search.

Affirmed.

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clearly erroneous fact-findings regarding law enforcement's interactions with Shellito in the truck stop.