STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0629

State of Minnesota,
Respondent,

vs.

Carlos Raul Orellana Duta,
Appellant.

Filed April 14, 2025
Affirmed
Wheelock, Judge

Hennepin County District Court
File No. 27-CR-23-10172

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

Mary F. Moriarty, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant challenges his conviction for unlawful possession of a firearm, arguing that the law-enforcement officers did not have reasonable, articulable suspicion for the

underlying stop of his vehicle, unlawfully expanded the stop, and lacked probable cause to seize the firearm. We affirm.

FACTS

Approximately 11 officers and six squad cars responded, shortly before 10:00 on a morning in May 2023, to a 911 call reporting a suspicious vehicle parked on a residential street in Minneapolis. The squad cars surrounded the parked vehicle, officers approached the occupants, and an officer placed a tire-deflation device on one of the vehicle's tires to ensure that the occupants could not flee. The caller had described the suspicious vehicle as a dark-colored Kia without license plates and occupied by three or four people wearing masks. The sergeant responding to the call knew that Kias are frequently and easily stolen and that it is common for their license plates to be removed and for the stolen vehicles then to be used to commit other crimes. While en route to the scene, the sergeant called the 911 caller to collect more information, and the caller reported that one of the vehicles that was near the Kia had left. When the sergeant arrived on the scene, he observed a dark-colored Kia without license plates that had a temporary license plate affixed to the rear windshield. From outside the vehicle, the sergeant observed two people in the front seat who were not wearing masks; the individual in the driver's seat was later identified as appellant Carlos Raul Orellana Duta.

The sergeant walked around the vehicle and observed, through the passenger-side windows, "marijuana shake . . . on the rear floorboard of the vehicle . . . an open beer can . . . a digital scale in the driver's door panel, and then a clear plastic [baggie]." From his experience and training, the sergeant knew that individuals who sell controlled substances

use digital scales and clear plastic baggies like those he observed in the vehicle. Given these items, the sergeant believed that criminal activity involving controlled substances was taking place. While the sergeant made these observations, other officers on the scene determined that the vehicle was not stolen and that neither occupant had outstanding warrants. Once the sergeant learned of these updates, he informed the other officers present that he intended to continue the traffic stop because of the items he observed inside the vehicle.

Returning to the vehicle, the sergeant informed Duta that he would open the door to the vehicle, but that Duta should not step out until directed. Duta nodded that he understood and began moving a sweatshirt around inside of the vehicle. The sergeant believed that Duta may have been attempting to conceal a weapon and ordered Duta to stop moving around, ultimately taking the sweatshirt from Duta through the partially opened driver's window and throwing it to the ground. The sergeant instructed Duta, who was still sitting in the driver's seat with the door closed, to put his hands behind his head and interlace his fingers. The sergeant reiterated that he would open the door, but that Duta should not get out of the vehicle; however, Duta began to step out of the vehicle with his hands still behind his head. The door opened enough for the sergeant to see a firearm under the driver's seat, wedged between the driver's seat and the driver's door, and he yelled, "Gun!" Immediately after the sergeant identified a firearm, several officers removed Duta from the vehicle, held him on the ground, and handcuffed him. After Duta was standing up, the sergeant asked him whether he had a permit for the firearm, and Duta indicated that he did not.

Officers ascertained that Duta was prohibited from possessing firearms, and respondent State of Minnesota charged him with unlawful possession of a firearm in violation of Minn. Stat. § 624.713, subd. 1(2) (2022). Duta filed a motion to suppress evidence of the firearm, and the district court denied his motion. The parties agreed that our review of the order denying Duta's suppression motion would be dispositive of the matter, and Duta stipulated to the state's evidence, maintained his not-guilty plea, and waived his right to a jury trial under Minn. R. Crim. P. 26.01, subd. 4. The district court entered a judgment of conviction. The district court granted a downward durational departure and sentenced Duta to 57 months in prison.

Duta appeals.

DECISION

Duta asserts that the district court erred by denying his motion to suppress the evidence of the firearm for three reasons: first, the officers lacked reasonable, articulable suspicion to conduct the traffic stop; second, they did not have reasonable, articulable suspicion to expand the stop; and third, they lacked probable cause to search him and seize the firearm under either the automobile exception or the search-incident-to-arrest exception to the constitutional prohibition against warrantless searches and seizures.[1] The United States and Minnesota Constitutions prohibit "unreasonable searches and seizures." U.S.

[1] Duta also asks that we consider whether the officers breached the March 2023 consent decree between the City of Minneapolis (for the Minneapolis Police Department) and the Minnesota Department of Human Rights; the decree outlines procedures for reporting police misconduct to the city. Because Duta has not identified any authority for us to do so, we do not address this argument.

Const. amend. IV; Minn. Const. art. I, § 10. "Generally, if evidence is seized in violation of the constitution, it must be suppressed." *State v. Taylor*, 965 N.W.2d 747, 752 (Minn. 2021). We review each of Duta's arguments de novo because the facts are not in dispute. *See State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008).

A. Initial Stop

Duta first argues that the facts do not support the district court's determination that the officers possessed reasonable, articulable suspicion to conduct the initial investigatory stop. He points out that third-party observations of suspicious activity do not always support reasonable suspicion and that there were sufficient differences between the 911 caller's report and the scene officers observed when they arrived such that the officers could not have had reasonable, articulable suspicion to initiate the stop. Specifically, he asserts the following differences: the 911 caller reported that there were three vehicles in a row, but officers found Duta's vehicle parked alone; the 911 caller reported that there were three or four individuals in the vehicle, but the officers found only two individuals in the vehicle; the 911 caller reported that the individuals were all wearing masks, but the officers found no one wearing a mask; and the first officers on the scene believed Duta's vehicle was not the vehicle the 911 caller identified. The state argues that the officers' observations, even without the 911 call, would have justified a stop because Duta's vehicle was missing a front license plate and details at the scene corroborated the 911 call, including the location of Duta's vehicle and the presence of another vehicle parked near Duta's.

An officer may conduct a brief stop and investigation only if they have reasonable, articulable suspicion of criminal activity, meaning that the stop cannot be "the product of mere whim, caprice or idle curiosity." *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996). To have reasonable, articulable suspicion for an investigatory stop, the officer must be able to point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* (quoting *Terry v. Ohio*, 392 U.S. 1, 21 (1968)). An initial stop is lawful if officers "had a particularized and objective basis for suspecting the particular persons stopped of criminal activity." *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (quotation omitted). To determine whether officers had such a basis, "the court should consider the totality of the circumstances and should remember that trained law-enforcement officers are permitted to make inferences and deductions that might well elude an untrained person." *Id.* (quotation omitted).

An anonymous tip may have "sufficient indicia of reliability to provide reasonable suspicion to make an investigatory stop." *Navarette v. California*, 572 U.S. 393, 397 (2014) (quotation omitted). Appellate courts "presume that tips from private citizen informants are reliable . . . when informants give information about their identity so that the police can locate them if necessary." *Timberlake*, 744 N.W.2d at 394 (quotations omitted). A tip may be reliable if it is based on "[r]ecent personal observation of incriminating conduct," which is typically "the preferred basis for an informant's knowledge." *State v. Ward*, 580 N.W.2d 67, 71 (Minn. App. 1998). When an officer's personal observations can corroborate some details of the anonymous tip, the tip may be sufficiently reliable to provide a basis for an initial stop. *Navarette*, 572 U.S. at 398.

Here, officers responded to a 911 call reporting a suspicious vehicle. The caller reported that they had seen a dark-colored Kia without license plates in which there were three or four people wearing masks. When the sergeant called them to collect more information, the caller reported that one of the vehicles that was near the Kia had left. Because the caller's phone number was available to the sergeant and the caller provided real-time reporting of their personal observations, the tip was reliable. *See Timberlake*, 744 N.W.2d at 394; *Ward*, 580 N.W.2d at 71. When officers arrived, they identified a dark-colored Kia with missing license plates on the street where the tip reported it would be.

Duta relies on the inconsistencies between the details reported by the 911 caller and the officers' observations to challenge that reasonable, articulable suspicion supported the stop, but the inconsistencies do not negate the tip's reliability and the officers' on-scene observations were of a vehicle that matched the vehicle described by the 911 caller—a dark-colored Kia without license plates. While we acknowledge that there were some differences between the 911 caller's description and Duta's vehicle, we must look at the totality of the circumstances. Because the tip was presumptively reliable, the vehicle was a dark-colored Kia, two people were inside the vehicle, and the vehicle did not have a front license plate and was parked where the caller said it was, we conclude that the totality of the circumstances was sufficient to support reasonable, articulable suspicion for the initial stop.

B. Expansion of the Stop

Duta next argues that, when the officers surrounded the vehicle, requested identification from the occupants, looked inside the vehicle, and asked Duta to step out of the vehicle, the officers unlawfully expanded the stop because the expansion was not related to the original purpose of the stop, supported by independent probable cause, or reasonable. The state responds that reasonable, articulable suspicion was present, given that officers observed marijuana shake, a digital scale, an open beer can, and a clear plastic baggie in the vehicle, and that this supported the expansion of the stop.

Under the Minnesota Constitution, "each incremental intrusion during a stop must be strictly tied to and justified by" one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) "reasonableness to justify that particular intrusion." *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quotations omitted). The expansion is reasonable if, objectively, "the facts available to the officer at the moment of the seizure warrant a man of reasonable caution in the belief that the action taken was appropriate." *Id.* (quotations omitted).

As stated above, when determining whether an investigation is reasonable, a reviewing court may consider officers' inferences and deductions made in light of their training and experience. *Kvam*, 336 N.W.2d at 528. The expansion of a stop may be reasonable if there is an open alcohol container in addition to other facts. *Taylor*, 965 N.W.2d at 753-54 (concluding that the presence of an open case of alcohol and concerns that the driver had a license cancelled as inimical to public safety allowed the officer to expand the stop to determine whether the driver was under the influence of

alcohol). And, when expanding a stop, an officer may ask an individual to step out of the vehicle for officer safety. *Askerooth*, 681 N.W.2d at 367 (citing *Pennsylvania v. Mimms*, 434 U.S. 106, 111 (1977)).

Here, the sergeant's observation of marijuana shake, an open beer can, a digital scale, and a clear plastic baggie inside Duta's vehicle provided new facts that supported the stop's expansion because, as the district court found, these items were visible to officers from where they were lawfully positioned outside the vehicle. Based on his training and experience, the sergeant suspected that there may have been criminal activity related to controlled substances because digital scales and tear-off plastic baggies like those he saw in the vehicle are often connected to narcotics use and sale. These facts, when combined with the presence of an open alcohol container and marijuana shake, provided a reasonable basis to justify the expansion of the stop, including a request that Duta exit the vehicle.

C. Probable Cause

Duta finally argues that the officers' subsequent search of his vehicle was unlawful because they did not obtain a warrant and neither the automobile exception nor the search-incident-to-arrest exception applied. Duta claims that the officers gave confusing instructions about exiting the vehicle and then based their belief that criminal activity was afoot on this confusion. He also asserts that he was de facto under arrest at the moment he was stepping out of the vehicle and before officers saw the firearm. The state points out that the officers did not use any force until they discovered the firearm and that, once Duta admitted he did not have a permit to carry the firearm, probable cause existed for his arrest.

"Generally, searches conducted outside of the judicial warrant process are per se unreasonable." *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). One exception to this rule allows officers to "search an automobile without a warrant if they have probable cause for believing that the vehicles are carrying contraband or illegal merchandise." *Id.* (quotation omitted). Probable cause for a search "exists when there is a fair probability that contraband or evidence of a crime will be found in a particular place." *State v. Torgerson*, 995 N.W.2d 164, 169 (Minn. 2023) (quotations omitted). Whether an officer has probable cause is "an objective inquiry" that "must be based on objective facts that could justify the issuance of a warrant." *Id.* (quotations omitted). The determination of probable cause includes reasonable inferences that officers may make based on their training and experience. *State v. Koppi*, 798 N.W.2d 358, 362 (Minn. 2011).

Another exception to the warrant requirement is for searches incident to a lawful arrest. *State v. Bernard*, 859 N.W.2d 762, 766 (Minn. 2015). An arrest is lawful if it is supported by probable cause, which requires the objective facts to be "such that under the circumstances a person of ordinary care and prudence would entertain an honest and strong suspicion that a crime has been committed." *State v. Johnson*, 314 N.W.2d 229, 230 (Minn. 1982) (quotation omitted). If a person is lawfully arrested, then officers may conduct a search of the person and the area within the person's control incident to that arrest. *State v. Bradley*, 908 N.W.2d 366, 369 (Minn. App. 2018). The search-incident-to-arrest exception permits a limited search of a vehicle if "it is reasonable to believe the vehicle contains evidence of the offense of arrest." *Arizona v. Gant*, 556 U.S. 332, 351 (2009).

Here, once the driver's door was opened, the sergeant immediately saw the firearm and called out, "Gun!" to the other officers, and officers removed Duta from the vehicle for officer safety. Officers then confirmed that Duta did not have a permit to possess the firearm. The firearm was beneath the driver's seat, between the driver's seat and the driver's door. We have already determined that the officers lawfully expanded the stop, which allowed them to ask Duta to step out of the vehicle, and we are not persuaded by Duta's argument that he was "de facto under arrest" at that moment. We determine that, after Duta stated that he did not have a permit to possess the firearm, officers had probable cause to arrest Duta and to search the vehicle under either the automobile exception or the search-incident-to-arrest exception.

In sum, at every step in the stop and arrest of Duta and the discovery and seizure of the firearm, the officers had reasonable, articulable suspicion or probable cause that justified each incremental intrusion.

Affirmed.