DA 22-0451

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 113

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOHN DAVID PANASUK,

Defendant and Appellant.

APPEAL FROM: District Court of the Fifteenth Judicial District,
In and For the County of Roosevelt, Cause No. DC-2021-24
Honorable David Cybulski, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Nancy G. Schwartz, N.G. Schwartz Law, PLLC, Huntley, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Bjorn Boyer, Assistant Attorney General, Helena, Montana

Janet Christoffersen, Roosevelt County Attorney, Wolf Point, Montana

Submitted on Briefs: February 14, 2024

Decided: May 28, 2024

Filed:

Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 A jury convicted John David Panasuk (Panasuk), in the Fifteenth Judicial District Court, Roosevelt County, of felony criminal possession of dangerous drugs, in violation of § 45-9-102, MCA, and misdemeanor criminal possession of drug paraphernalia, in violation of § 45-10-103, MCA. Panasuk appeals.

¶2 We reverse and restate the issue on appeal as follows:

¶3 *Did the District Court err when it found law enforcement had sufficient particularized suspicion to expand the scope of a traffic stop to a drug investigation?*

FACTUAL AND PROCEDURAL BACKGROUND

¶4 On May 19, 2021, Panasuk was pulled over by Officer Riediger (Riediger) and Lieutenant Frank Martell (Martell), Fort Peck Tribal Police Officers, for towing a trailer without trailer plates. Riediger approached Panasuk and requested his license, registration, and proof of insurance. Panasuk was initially unable to provide this information and Riediger asked him to exit his vehicle and come to his patrol car. The other occupants of the vehicle, Camilla TalksDifferent (TalksDifferent) and Dustin Hickman (Hickman), were also told to exit the vehicle. While Panasuk was with Riediger, TalksDifferent indicated she had located Panasuk's license. Both Riediger and Martell knew TalksDifferent and her history as a drug user. However, they did not know Panasuk or Hickman. When Hickman produced a North Dakota driver's license, Riediger contacted the Williams County Task Force in North Dakota, with whom he testified he has a good relationship, and was told Hickman had a history of being a drug dealer and user.

¶5 Riediger recalled that two weeks earlier on May 6, 2019, he was told by Special Agent Raul Figueroa (Figueroa), who was a Bureau of Indian Affairs (BIA) Officer, that Panasuk was driving a stolen vehicle. Figueroa claimed that Panasuk had admitted to selling methamphetamine and that he had methamphetamine in the vehicle. However, the substance eventually recovered from the vehicle tested negative for methamphetamine, so Figueroa told Riediger that he believed Panasuk was attempting to sell the substance on the Fort Peck Indian Reservation as methamphetamine. Panasuk was never arrested or charged in connection with this incident.

¶6 Eventually, Riediger read TalksDifferent her Miranda rights and TalksDifferent gave him consent to search her purse, where Riediger found two syringes. TalksDifferent also told Riediger there was methamphetamine in Panasuk's vehicle. Riediger seized the vehicle and applied for a search warrant. Law enforcement recovered 6.4 grams of methamphetamine from the vehicle's center console after searching the vehicle. Panasuk was charged with criminal possession of dangerous drugs and drug paraphernalia.

¶7 At the suppression hearing, Riediger testified that for every traffic stop involving people he does not know, he always tells the driver and other occupants to get out of the vehicle and come back to his patrol car. Riediger also always continues the investigation beyond what is required to issue a citation when he is suspicious that one or more of the occupants has a drug history, even though he has no particularized suspicion that drug activity is currently taking place. In similar fashion, Riediger always asks the occupants of the vehicle if they have any firearms, drugs, alcohol, or "anything," and he calls drug

task forces and out-of-state police forces for information about the vehicle's occupants when he suspects they have a drug history. When asked if this level of investigation was common in routine traffic stops, Officer Riediger testified that he does this "for every single traffic stop." When pressed further on whether this level of investigation was routine even for passengers, the following exchange occurred:

> Q: You also call out [of] state police forces to ahh, to check a passenger?
> A: Yes, I do. I have a great working relationship with the surrounding agencies and in working illegal narcotic as well.
> Q: You do that for every traffic stop?
> A: Yes if I suspect an individual, I do not know them, I do call around and ask.

When asked why he turned a routine traffic stop into a drug investigation, Officer Riediger stated that he had information from Figueroa that Panasuk was dealing illegal narcotics on the Fort Peck Indian Reservation. However, when asked if he observed any evidence of illegal drug activity during the stop, he responded "[n]ot at the time I conducted my investigation." When asked whether his particularized suspicion was based entirely on Panasuk's prior history and a conversation he had two weeks prior with the BIA special agent, Officer Riediger stated "[y]es."

¶8 The stop took one and one-half hours.

¶9 The District Court summarily denied Panasuk's motion to suppress noting Panasuk's May 6, 2021, incident with Figueroa and that, subsequently, TalksDifferent said there was methamphetamine in the vehicle.

STANDARD OF REVIEW

¶10 "We review a district court's denial of a motion to suppress evidence for whether the court's findings of fact are clearly erroneous and whether those findings were correctly applied as a matter of law." *State v. Vegas*, 2020 MT 121, ¶ 8, 400 Mont. 75, 463 P.3d 455 (citing *State v. Ruggirello*, 2008 MT 8, ¶ 15, 341 Mont. 88, 176 P.3d 252). "Lower court findings of fact are clearly erroneous if not supported by substantial evidence, the court misapprehended the effect of the evidence, or upon our independent review of the record we are firmly convinced that the court was otherwise mistaken." *State v. Noli*, 2023 MT 84, ¶ 24, 412 Mont. 170, 529 P.3d 813 (citing *State v. Hoover*, 2017 MT 236, ¶ 12, 388 Mont. 533, 402 P.3d 1224). This Court reviews de novo "[w]hether a lower court correctly interpreted and applied the pertinent law to the facts at issue . . . ." *Noli*, ¶ 24.

DISCUSSION

¶11 *Did the District Court err when it found that law enforcement had sufficient particularized suspicion to expand the scope of a traffic stop to a drug investigation?*

¶12 Generally, government searches and seizures are unlawful under the Fourth Amendment to the United States Constitution and Article II, Section 11, of the Montana Constitution unless conducted in accordance with a judicial warrant issued on probable cause. *Noli*, ¶ 26. A *Terry* stop is a recognized exception, which allows a law enforcement officer to stop and temporarily detain a person for investigative purposes if they have specific and articulable objective facts, based on the totality of the circumstances and including reasonable inferences, that lead to an objectively reasonable suspicion that the

person is or is about to be engaged in criminal activity. *Noli*, ¶¶ 30–31; *see also* §§ 46-5-401, -403, MCA. Relevant considerations include the quantity, substance, quality, and degree of reliability of information known to the officer at the time. *Noli*, ¶ 30.

¶13 *Terry* and its progeny counsel that law enforcement officers may seize and search individuals based on a reasonable suspicion of criminal activity derived from "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion"—something less than probable cause. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968). However, the permissible scope of any such investigative detention depends on the particular facts and circumstances of each case, but that in every case it must "last no longer than is necessary to effectuate the purpose of the stop." *Florida v. Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 1325 (1983). Hence, a *Terry* stop exception to the warrant requirement permits only a "limited intrusion upon the personal security of the [subject]. . .[and] the investigative methods employed should be the least intrusive means reasonably available to verify or dispel" the suspicion which justified the intrusion in the first place. *Royer*, 460 U.S. at 500. *See also*, *Noli*, ¶ 33.

¶14 Police must act with reasonable diligence to quickly confirm or dispel the particularized suspicion of criminal activity that justified the initial stop, and any subsequent expansion in duration or scope must be based on new or additional particularized suspicion developed *within the lawful scope or duration of the initial stop* and before it should have reasonably been completed. *Noli*, ¶¶ 33, 35. Thus, on a valid traffic stop, the tolerable duration of police inquiry is limited to the time necessary to

address the traffic violation and any related safety concerns and authority for the seizure ends when tasks related to the traffic infraction reasonably should have been completed. *Noli*, ¶ 33. Police may attempt to verify information provided and ask for other information reasonably related to the stop which does not unreasonably prolong its duration under the totality of the circumstances—including routine police database checks. *Noli*, ¶ 34. Incidental police questioning of the driver or occupants to investigate other criminal activity of which there is no particularized suspicion cannot prolong the stop to any measurable degree beyond what is reasonably necessary to quickly accomplish the justified purpose of the stop. *Noli*, ¶ 36. Police also have reasonable latitude to reach, follow up on, and confirm or dispel initial suspicions of criminal activity. *State v. Laster*, 2021 MT 269, ¶ 13, 406 Mont. 60, 497 P.3d 224.

¶15 An officer conducting a traffic stop may request a driver's license and vehicle registration, run a computer check, and issue a citation. However, when the driver has produced a valid driver's license and proof that he may operate the car, he must be allowed to proceed on his way, without being subject to further delay by additional police questioning.[1] *Noli*, ¶¶ 33-35. Everything that comes *after* what is necessary to resolve the initial traffic violation comes too late to support continued detention of the offender. Thus, further questioning and the concomitant detention of a driver are permissible in only one

[1] It is unclear on what basis the Special Concurrence construes this as a new, special two-part test not rooted in our precedent. Special Concurrence, ¶ 32. Our precedent has long established, as we most recently held in *Noli*, that the tolerable duration of police inquiry is limited to the time necessary to address the traffic violation and any related safety concerns. Authority for the seizure ends when tasks related to the traffic infraction reasonably should have been completed. *Noli*, ¶ 33.

of two circumstances: (1) during the course of the permissible scope of the traffic stop, the officer acquires an objectively reasonable and articulable suspicion that the driver is engaged in illegal activity, or (2) the driver voluntarily consents to the officer's additional questioning. *Noli*, ¶¶ 33-35; *Laster*, ¶ 40. In the first instance a Fourth Amendment seizure has occurred, but it is reasonable and consequently constitutional. In the second there is no seizure, and hence the Fourth Amendment's strictures are not implicated.

¶16 On appeal, Panasuk does not challenge the original basis for the traffic stop of his vehicle. The Fort Peck Tribal Officers validly stopped his vehicle to issue a traffic citation for towing a trailer without a license plate. Because addressing the traffic infraction was the purpose of the stop, it should not have lasted any longer than was necessary to effectuate that purpose. Authority for the seizure thus ends when tasks tied to the traffic infraction are—or should reasonably have been—completed. *Rodriguez v. United States*, 575 U.S. 348, 355-56, 135 S. Ct. 1609, 1615 (2015). Permissible inquiries from police would thus include checking the driver's license, ascertaining whether there were any outstanding warrants for the driver, and inspecting the automobile's registration and proof of insurance. *Rodriquez*, 575 U.S. at 355, 135 S. Ct. at 1615. These inquiries are allowed because they serve the same purpose as the original stop: enforcement of the traffic code and making sure vehicles on the road are operated safely. *Rodriquez*, 575 U.S. at 355, 135 S. Ct. at 1615.

¶17 On appeal, the State contends that after pulling Panasuk over, Officer Riediger developed sufficient particularized suspicion during his initial stop to expand the scope of

the traffic stop to a drug investigation. The State argues that because Riediger testified, Panasuk appeared "extremely nervous," had recently been pulled over by another officer and Panasuk said there was methamphetamine in his vehicle (even though there was not), and was in the company of TalksDifferent and Hickman, that Riediger had sufficient particularized suspicion to suspect current, on-going drug activity. This is incorrect. First, this Court has consistently held that:

> without reasonable officer-articulated inferences of some *particular* criminal activity, merely inconsistent accounts of a person's conduct or presence, nervous or defensive behavior when monitored or confronted by police, or the desire to avoid or evade oncoming police are insufficient to support a reasonable *particularized* suspicion of *any particular* criminal activity.

State v. Zeimer, 2022 MT 96, ¶ 50, 408 Mont. 433, 510 P.3d 100 (emphasis in original); *see also State v. Harning*, 2022 MT 61, ¶ 24, 408 Mont. 140, 507 P.3d 145 (holding that "[n]ervous behavior during a traffic stop is not uncommon and does not establish particularized suspicion to extend a traffic stop into a drug investigation of Harning's vehicle"). Whether or not Panasuk appeared "extremely nervous" does not, on its own, create particularized suspicion justifying the expansion of a routine traffic stop into a drug investigation. It is not uncommon for individuals to appear nervous when confronted by law enforcement, especially when considering Panasuk's prior interactions with law enforcement, the fact that he did not have a license plate on his trailer, and the fact that he was unable to produce his driver's license upon request.

¶18 Additionally, although Panasuk was initially unable to provide his license, TalksDifferent soon found Panasuk's driver's license which was then provided to Riediger.

However, Riediger testified he continued the stop based solely on Panasuk's history and on information he had received from Figueroa. Figueroa told Riediger that Panasuk was suspected of dealing illegal drugs on the Reservation. Riediger had no particularized suspicion to begin a drug investigation other than Panasuk's previous stop by Figueroa. Rather, the facts indicate that Riediger initiated a lawful stop of Panasuk's vehicle upon seeing that he was pulling a trailer without a license plate. After approaching the vehicle, he recognized TalksDifferent as a known user, and then took the additional step of calling the Williams County Drug Task Force in North Dakota where he then learned that Hickman was also a known user and possible distributer of narcotics, and recalled his talk with Figueroa about the incident with Panasuk two weeks prior.

¶19 This went beyond what was reasonably necessary to resolve the initial traffic stop and impermissibly expanded the scope of the detention without any particularized suspicion. Riediger expanded the scope of the detention into a drug investigation without any particularized suspicion that Panasuk was currently involved in illegal drug activity. Although the fact that there were known drug users in the car and the fact that Panasuk appeared "extremely nervous" are all factors to be considered, taken together they do not rise to the articulable inferences necessary to constitute particularized suspicion. These facts more closely resemble "mere generalized suspicion or an undeveloped hunch of criminal activity" which we have consistently held does not create particularized suspicion. *Hoover*, ¶ 18.

¶20 Furthermore, Riediger candidly admits that the only fact he relied upon to expand the duration and scope of the detention to a drug investigation was the prior incident Panasuk had with Figueroa. The Special Concurrence would affirm the District Court because the record is "unclear" and the State did not develop an adequate record of the timeline of events. Special Concurrence, ¶ 27. However, the Special Concurrence ignores Riediger's plain, unambiguous, persistent insistence during direct and cross examination at the suppression hearing that the *only* reason he expanded the stop was Panasuk's history and that he *always* expands the duration and nature of a search based *solely* on a person's prior history. Thus, the record here is clear and does establish that Riediger, through his testimony alone, expanded the scope of the stop without particularized suspicion of any wrongdoing. Rather than point to specific and articulable facts that the subject "is engaged, or about to engage, in criminal activity . . . ," Riediger candidly testified he expanded the search because of Panasuk's history. *Hoover*, ¶ 17. Based on Riediger's testimony, every person who has been under suspicion of committing, arrested for, or convicted of a crime would be subject to a reduced right of privacy and unreasonable searches. To the contrary, Riediger made very clear what his suspicion was based on, and there is nothing unclear in the record about that.

¶21 To make matters worse, the information Riediger relied upon, imparted by Figueroa, did not provide evidence of Panasuk dealing illegal drugs. Figueroa a couple weeks prior had stopped Panasuk on suspicion of driving a stolen vehicle—which turned out not to be the case. During the stop, Panasuk told Figueroa there was methamphetamine in the

vehicle, which also turned out not to be the case. What Figueroa suspected to be methamphetamine, was instead boric acid.

¶22 Most importantly, knowledge of a person's prior criminal involvement is alone insufficient to give rise to the requisite reasonable suspicion because:

> If the law were otherwise, any person with any sort of criminal record—or even worse, a person with arrests but no convictions—could be subjected to a Terry-type investigative stop by a law enforcement officer at any time without the need for any other justification at all. Any such rule would clearly run counter to the requirement of a *reasonable* suspicion, and of the need that such stops be justified in light of a balancing of the competing interests at stake.

United States v. Sandoval, 29 F.3d 537, 543 (10th Cir. 1994) (emphasis in original). While knowledge of prior criminal history alone is insufficient to constitute particularized suspicion, knowledge of prior criminal activity in conjunction with other factors that *do* foster a reasonable suspicion of *current* criminal activity can be sufficient. Here, Riediger testified he was relying on information imparted by Figueroa about Panasuk's prior criminal involvement and not anything he was currently witnessing. Moreover, the record clearly establishes that both passengers, who were obviously not involved in the traffic infraction, were removed from the vehicle, and had inquiries made of their criminal backgrounds—all prior to any particularized suspicion that a drug investigation was necessary.

¶23 It would be improper to uphold the expansion of this search when it was based on information Riediger had about Panasuk's prior suspected drug involvement. Prior criminal involvement cannot be a basis to authorize a detention. *See State v. Wilson*, 2018

MT 268, ¶¶ 31-33, 393 Mont. 238, 430 P.3d 77 (officer lacked particularized suspicion to extend a traffic stop into a drug investigation based on the driver's prior drug history, nervousness of the vehicle's occupants, evidence of "hard travel," and an unusual travel story). See also *State v. Carrywater*, 2022 MT 131, ¶ 26, 409 Mont. 194, 512 P.3d 1180 (officer's awareness of prior drug-related activity of the vehicle's occupants and his observation they appeared nervous did not establish particularized suspicion to expand an initially valid traffic stop).

CONCLUSION

¶24 We conclude the initial detention was unconstitutionally extended beyond what was necessary to effectuate the initial purpose of the stop. There were no articulable facts, other than prior suspected criminal histories, which were offered as justification to expand the search into a drug investigation. The District Court's order dismissing Panasuk's motion to suppress is reversed and this matter is remanded for further proceedings consistent with this opinion.

¶25 Reversed.

/S/ LAURIE McKINNON

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR

Chief Justice Mike McGrath, specially concurring.

¶26 I concur with the result reached by the majority but would reverse because the State failed to meet its burden. On challenge of the expansion of a temporary stop, "the State has the burden of affirmatively proving and demonstrating that the subject officer(s) had the requisite particularized suspicion of criminal activity based on specific and articulable objective facts known to, and reasonable inferences made by, the officer(s) under the totality of the circumstances of record." *Noli*, ¶ 31.

¶27 Here, it is unclear from the record when TalksDifferent got out of the car, provided Riediger with Panasuk's license, and consented to the search of her handbag—after which it is clear that Riediger had particularized suspicion to expand the scope of his initial investigation. The State could have met its burden by eliciting clearer testimony from Riediger on the timeline of the stop, or by introducing the dashcam footage of the stop. However, neither party introduced Riediger's dash-cam footage into evidence at the motions hearing or at trial, and the testimony at the motions hearing did not clearly indicate the sequence of events during the traffic stop. As such, we do not have a clear timeline of events in contrast to the facts available in *Noli*. We are thus left to speculate when and how quickly these crucial events occurred.

¶28 It is undisputed that the traffic stop lasted for one and a half hours from beginning to end. Clearly, if Riediger did not develop particularized suspicion of drug activity until the end of this time, the expansion would have been illegal, and the District Court should have granted Panasuk's motion to suppress. *See Noli*, ¶ 64. If, however, TalksDifferent got out of the car while Panasuk was receiving his initial citation and gave consent to

Riediger to search her bag—as one reading of the record would suggest, Opinion, ¶ 4—then Riediger would have been within the lawful scope of his initial traffic stop when he developed particularized suspicion of drug activity.

¶29 After stopping Panasuk on May 19, Riediger approached his vehicle and asked for Panasuk's license, registration, and insurance. Panasuk responded that he did not have his driver's license with him but gave his name to Riediger. Riediger recognized Panasuk's name from a conversation he had had with Figueroa two weeks before. About two weeks before the stop at issue in this case, Panasuk had been involved in a traffic stop that Figueroa had responded to. Panasuk had been pulling a trailer with four cars on it. While interviewing Panasuk, Panasuk admitted to purchasing one of the cars on the trailer with meth, to selling meth on the reservation, and admitted to having more meth in his truck. Figueroa told Riediger, who he has daily contact with, about this stop and Panasuk's admissions to selling meth and trading meth for cars. "[A]n officer may rely on information conveyed by a third person to formulate particularized suspicion to stop a person." *State v. Gill*, 2012 MT 36, ¶ 16, 364 Mont. 182, 272 P.3d 60.[1]

¶30 After Panasuk said he did not have his license, Riediger asked him to come back to his patrol vehicle so he could speak to him and write him citations for driving without

[1] I agree with the majority that Panasuk's nervousness and prior criminal record alone is not enough to warrant particularized suspicion. I note that based on Riediger's prior knowledge, however, the circumstances presented here—which are quite similar to the circumstances under which Panasuk admitted to selling meth and trading meth for cars on the reservation only two weeks prior—are a much closer call. The fact that the substance Figueroa tested was not in fact meth is not as important as the majority asserts. Opinion, ¶ 21. The substance that Figueroa tested could have been different to what Panasuk sold and traded on the reservation. The important fact is that Panasuk admitted to selling and trading meth on the reservation, whether or not it was the substance that Figueroa tested, and Riediger knew this fact prior to his stop of Panasuk.

registration or a license plate. Panasuk acted "extremely nervous" at this time. TalksDifferent "soon found" Panasuk's driver's license and gave it to Riediger. Opinion, ¶¶ 4, 18. Riediger asked TalksDifferent for consent to search her handbag, which she gave. "'[T]he search of property, without a warrant and without probable cause, but with proper consent voluntarily given, is valid under the Fourth Amendment.'" *State v. Urziceanu*, 2015 MT 58, ¶ 14, 378 Mont. 313, 344 P.3d 399 (quoting *United States v. Matlock*, 415 U.S. 164, 165–66, 94 S. Ct. 988, 990 (1974)).

¶31 Riediger found two hypodermic needles during his search of TalksDifferent's bag. He asked TalksDifferent to come back to his vehicle so he could write her a citation. Riediger read TalksDifferent her rights and TalksDifferent informed Riediger that Panasuk had handed Hickman a bag of meth to hide in the truck when they got pulled over. At this point, Riediger had particularized suspicion of drug activity. Nevertheless, the State failed to show how "soon" TalksDifferent found the license and then gave consent to search her bag. If it was during the period where Panasuk was back at the cruiser getting cited for the initial stop, I would affirm the District Court. If, however, this did not happen until some later time when Riediger pulled everyone out of the vehicle, as the Majority interprets the record, I would reverse. Because it is the State's burden, and because the State has failed to present a record sufficient to distinguish between the two scenarios, we must reverse.

¶32 I also write separately because of the Court's articulated two-part test. *See* Opinion, ¶ 15. This test explicitly covers a situation not present here, and is thus dicta. Opinion, ¶ 15 ("when the driver has produced a valid driver's license and proof that he may operate the car, he must be allowed to proceed on his way . . . ."). Here, Panasuk was unable to

provide his license, registration, or insurance. Riediger was thus allowed to request that Panasuk come back to the cruiser with him to verify his identity, inquire into the circumstances of these particular crimes, verify other provided information, and ask for other related information. *Noli*, ¶ 34; *State v. Roberts*, 284 Mont. 54, 58, 943 P.2d 1249, 1251 (1997) (discussing circumstances where proper to require a driver or passenger to get out of a vehicle); *State v. Bailey*, 2021 MT 157, ¶ 37, 404 Mont. 384, 489 P.3d 889 (same and citing cases). The Court should be wary of narrowing decades worth of proper police procedure when the circumstances dictate a different approach than the two explicitly provided by the majority—and which are not even present here.

/S/ MIKE McGRATH

Justices Jim Rice and Beth Baker joins in the Special Concurrence of Chief Justice McGrath.

/S/ BETH BAKER
/S/ JIM RICE