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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0720**

State of Minnesota,
Respondent,

vs.

Martez Lavell Gibson,
Appellant.

**Filed April 15, 2008
Affirmed
Harten, Judge***

Ramsey County District Court
File No. K2-05-1122

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101; and

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Considered and decided by Worke, Presiding Judge; Minge, Judge; and Harten, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

HARTEN, Judge

Appellant Martez Gibson challenges his conviction of possession of a firearm by an ineligible person, arguing that the evidence of the firearm should have been suppressed because the stop of the car in which appellant had the firearm was unconstitutional and the officers arrested him without probable cause. Because we conclude that the stop of the car was constitutional and that the officers' show of force was reasonable, we affirm.

FACTS

About 1:45 a.m. on 26 March 2005, two St. Paul police officers received a dispatch call advising them of multiple shots being fired near a St. Paul intersection and a second call informing them of a fight near the intersection. They drove to the intersection, arriving about a minute after the first call.

The officers saw a group of people in the front yard of a house, then saw four men leave the group, get into a car, and drive toward the officers' squad car. One of the car's occupants was appellant, who was ineligible to possess a firearm; he was sitting in the back seat behind the driver.

The officers turned their squad car to block the moving car; they also activated their emergency lights. When the car was stopped, the officers left the squad car, drew their guns but pointed them at the ground, and ordered the occupants of the car to put their hands somewhere visible. Except for appellant, the occupants complied; appellant

kept his hands down in his lap and refused repeated commands to make his hands visible to the officers.

An officer then opened appellant's door and told appellant to put his hands on his head and come out of the car. The officer patted appellant down and found the handle of a loaded handgun protruding from his belt.¹ Appellant was charged with possession of a firearm by an ineligible person. In district court, he moved unsuccessfully to suppress the evidence of the handgun on the grounds that the car had been unlawfully stopped and he had been arrested without probable cause. At a subsequent bench trial on stipulated facts, appellant was found guilty. He challenges his conviction, asserting that the evidence of the handgun should have been suppressed.

DECISION

1. The Stop

“When reviewing pretrial orders on motions to suppress evidence, this court independently reviews the facts to determine, as a matter of law, whether the district court erred by suppressing, or not suppressing, the evidence.” *State v. Balenger*, 667 N.W.2d 133, 137 (Minn. App. 2003), *review denied* (Minn. 21 Oct. 2003).

It is undisputed that the officers stopped appellant's car when they blocked its path and activated the squad car emergency lights. Whether a stop is reasonable “depends on (1) whether the stop was justified at its inception and (2) whether the actions of the police were reasonably related in scope to the circumstances that justified the stop in the first

¹ Appellant does not challenge either his ineligibility to possess a firearm or the legality of the search.

place.” *Id.* (quotation omitted). “An investigative stop is justified when the police can point to specific and articulable facts that, together with rational inferences drawn from those facts, create reasonable suspicion of criminal activity.” *Id.* “[C]onsiderable discretion will be given to an officer’s decision to conduct an investigatory stop” *State v. Waddell*, 655 N.W.2d 803, 810 (Minn. 2003).

The dispatcher had told the police that several shots had been fired and that a fight was in progress; the officers saw four men attempting to leave the scene in a car. One officer testified that the car was stopped because “people that usually leave upon our [the police] arrival are usually the people involved in whatever crime had occurred.” The other officer testified that “[w]hen we saw the vehicle leave the area, the scene of the fight and that area of the shots-fired call, we immediately thought that there was a good possibility that there would be someone with a weapon in the vehicle, that they would try to flee the scene.” When asked why he thought this, the officer answered, “Naturally when people see your squad car—and if there’s some criminal activity going on—they don’t usually stay in that same vicinity and they try to flee.” We conclude that the officers reasonably suspected that the occupants of the vehicle were attempting to flee after having been involved in criminal activity and that there was a weapon in the vehicle. The stop of the car in which appellant was riding was justified based on the officers’ reasonable suspicion.

2. The Arrest

Appellant also argues that, by approaching him with guns drawn, telling him to show his hands, and ordering him out of the car with his hands on his head, the officers

arrested him without probable cause. “There is no bright-line test separating a legitimate investigative stop from an unlawful arrest.” *Balenger*, 667 N.W.2d at 139.

In determining whether a police officer’s conduct turned an investigative stop into an unlawful arrest, courts must specifically consider the aggressiveness of the police methods and the intrusiveness of the stop against the justification for the use of such tactics, i.e., whether the officer had a sufficient basis to fear for his or her safety.

. . . [T]he trend has been to grant officers greater latitude in using force in order to neutralize potentially dangerous suspects during an investigatory stop. Thus, the use of force reasonable under the circumstances will be permitted without a showing of probable cause when force is necessary for the protection of the investigating officers and the degree of force used is reasonable. And the use of reasonable force is almost invariably justified in cases involving persons suspected of being armed.

Id. at 139-40 (quotations and citations omitted). The officers knew that shots had been fired and that the men in the car were trying to leave the scene. The officers then made a rapid decision to prevent the men from leaving and to discover if any of them had a weapon. Officers are not required “unnecessarily [to] risk their lives when encountering a suspect they reasonably believe is armed and dangerous.” *Id.* at 141. Even if they lack probable cause, officers are not required to “allow a crime to occur or a criminal to escape.” *Id.* (quotation omitted). Moreover, in assessing officers’ conduct, “[t]his court will not engage in second-guessing.” *Id.* The officers here were not required to risk their lives by approaching, without their guns drawn, four men at a location where shots had been fired, or to allow the four to escape, or to allow appellant to ignore the command to

show his hands. The fact that the officers lacked probable cause at the time of the stop to arrest appellant does not provide a basis for suppressing the evidence of the gun.²

Affirmed.

² The parties did not develop any arguments on whether appellant's refusal to comply with the officers' command amounted to probable cause for interference with a police officer. *See* Minn. Stat. § 609.50, subd. 1(2) (2006); *State v. Krawsky*, 426 N.W.2d 875, 877 (Minn. 1988) (construing this statute to forbid interference with police officer performing official duties).