STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1574

State of Minnesota,
Respondent,

vs.

Alexis Poinsett,
Appellant.

Filed October 7, 2008
Affirmed
Harten, Judge*

Ramsey County District Court
File No. K7-07-178

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

Susan E. Gaertner, Ramsey County Attorney, Mitchell L. Rothman, Assistant County Attorney, 50 West Kellogg Boulevard, Suite 315, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Roy G. Spurbeck, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Schellhas, Presiding Judge; Halbrooks, Judge; and Harten, Judge.

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

U N P U B L I S H E D O P I N I O N

HARTEN, Judge

Appellant Alexis Poinsett challenges the denial of his motion to suppress the evidence derived from the seizure of his person on the ground that the officer who seized him lacked an adequate basis to do so. Because we conclude that the officer had an adequate basis for the acts that constituted the seizure, we affirm.

FACTS

On 12 January 2007, an individual considered to be a confidential, reliable informer (CRI) by an off-duty St. Paul police officer telephoned the officer at home and reported that one or both of two men then walking on a St. Paul street might possess narcotics. The CRI described the men: both were black; the younger one was dressed in black and was carrying a .357 handgun; the older one was wearing a green jacket and a blue cap. The CRI also gave the men's precise location: they had just left the apartment complex at 755 Selby Avenue and were walking east on the north side of Selby Avenue. The off-duty officer relayed this information to two on-duty officers and kept them posted with new information on the men's location as he received it from the CRI.

One of the officers, who was not in uniform, knew that gang members lived at the Selby Avenue address and that gun and drug activity had been reported there. In an unmarked car, the officer drove west on Selby Avenue toward the men. When he saw two men matching the descriptions he had received, he stopped his car in an intersection about 30 feet from them, got out of his car, and shouted, "St. Paul police." At this point, the other officer and a third officer drove up behind the two men.

All three officers then saw one of the men, later identified as appellant, turn and reach towards his waistband. The officer in front of the men, thinking appellant might be reaching for a weapon, drew his own weapon and ordered appellant to show his hands. Appellant then took off running north through residential yards. The officer ran parallel to him and then turned to cut him off; the other two officers also pursued appellant, who continued running after they ordered him to stop. When the officers caught appellant, they found a .357 magnum handgun in his waistband. He was charged with possession of a firearm by an ineligible person.

Appellant moved to suppress the evidence on the ground that he was unlawfully seized because the officer did not have a reasonable suspicion to justify the seizure. His motion was denied. After a Lothenbach trial on stipulated facts, he was found guilty and sentenced to 60 months in prison.

D E C I S I O N

In reviewing a pretrial order denying a motion to suppress evidence, "when the facts are not in dispute, a reviewing court must determine whether a police officer's actions constitute a seizure and if the officer articulated an adequate basis for the seizure." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). "[An appellate court] may independently review the facts and determine, as a matter of law, whether the district court erred in suppressing—or not suppressing—the evidence." *Id.*

1. Initial Contact

Appellant argues that he was seized when the officer stopped his car in the intersection, got out, and identified himself as "St. Paul Police." "[A] person has been

seized if in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter." *Id.* The officer testified that, when he saw appellant and the other man on the sidewalk, he "pulled [his] car up at an angle in front of the sidewalk and exited and started to identify [himself as] St. Paul Police." When asked how he identified himself, he answered, "[S]ince I was dressed in civilian clothes, I had my badge hanging around my neck, and I yelled, 'St. Paul Police.'" We agree with the district court that, at this point, "[a]t the inception of [the officer's] stop of [appellant] . . . [a] reasonable person would have believed that he was not free to leave" and the seizure of appellant occurred.[1]

2. Basis for the Seizure

The standard for a seizure is not high and is met when an officer "observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). A CRI's information can provide "reasonable, articulable suspicion . . . [of] criminal activity." *Id.* at 397. Here, the CRI's information on two points, in conjunction with the officer's knowledge and experience, provided the reasonable, articulable suspicion.

[1] Respondent State of Minnesota argues that the seizure did not occur until the officer "ordered him to keep his hands in the open." But respondent did not file a notice of review and is therefore precluded from raising this argument. *See* Minn. R. Civ. App. P. 106.

First, the officer had been informed that two men had left the apartment complex at 755 Selby Avenue. The officer testified that he knew "there have been a lot of calls for service there" in relation to "individuals in the building with guns, a lot of narcotics activities, both sales and usage in different apartments in there." He also testified, "I'm familiar with quite a few gang members that either reside there or have family or friends that are there. It's a frequent hangout for them."

Second, the officer had been informed that two men were walking eastbound on Selby Avenue, that one was wearing a green jacket and a blue baseball cap, and that the other was wearing black clothes, carrying a gun, and might be carrying narcotics. The officer saw only two pedestrians in that area of Selby Avenue: a man wearing a green jacket and a blue baseball cap and another man wearing black clothes. The officer's stop of these men was based on a reasonable, articulable suspicion. It was not the product of mere whim, caprice, or idle curiosity. *See State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (holding that suspicion is reasonable if stop is not result of whim, caprice, or idle curiosity).

Appellant argues that the CRI's tip was insufficiently reliable because the CRI did not provide a source. He cites no authority for this argument. Moreover, this CRI was well known to the police; over four years, his information was repeatedly proved accurate and resulted in arrests. Here, his information was corroborated: the men were dressed as he described them, they walked as he said they were walking, and they continued to be where his updated reports said they were. The CRI's ability to update information on the men's location implied that he either had them under observation or was in instant

communication with someone who did. *See State v. Ross*, 676 N.W.2d 301, 304 (Minn. App. 2004) (concluding that CRI's updating of information showed that he had current information that enhanced his reliability). The fact that the CRI did not identify the source of his information was irrelevant.

Appellant relies on *Rose v. Comm'r of Pub. Safety*, 637 N.W.2d 326, 327 (Minn. App. 2001) (holding that citizen's tip that a possible intoxicated driver was on the road did not provide articulable cause for police to stop vehicle), *review denied* (Minn. 19 March 2002) to argue that information that he *might* have narcotics was insufficient to imply criminal activity. But *Rose* is distinguishable: the information in that case was received from a citizen who had no history of providing reliable information and it was uncorroborated (the officer noticed no improper driving by the allegedly intoxicated driver). *Id*. at 329. Here, the CRI was well known to the police as a source of accurate information, and the officer who seized appellant received repeated enhanced corroborations of the CRI's augmented tip.

The CRI's tip, coupled with the officer's experience, training, and knowledge about the apartment appellant had just left, provided a reasonable, articulable suspicion of criminal activity and furnished an adequate basis to seize appellant. The district court properly denied appellant's motion to suppress the evidence.

Affirmed.