STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0475

State of Minnesota,
Respondent,

vs.

Dekota Flowers,
Appellant.

Filed June 16, 2009
Affirmed
Toussaint, Chief Judge

Ramsey County District Court
File No. 62-K5-002799

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

Susan Gaertner, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, 50 Kellogg Boulevard West, Suite 315, St. Paul, MN 55102 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Samantha R. Bohrman, Special Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, MN 55104 (for appellant)

Considered and decided by Toussaint, Chief Judge; Klaphake, 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

TOUSSAINT, Chief Judge

Appellant Dekota Flowers challenges his convictions of possession of a firearm by an ineligible person, arguing that the district court erred in denying his suppression motion because his Fourth Amendment rights were violated when police conducted an investigatory stop without a reasonable, articulable suspicion for doing so and that his right to a fair trial was prejudiced when three officers who testified during trial violated the sequestration order by discussing their testimony. Because there was a reasonable basis to justify the investigatory stop and appellant's right to a fair trial was not prejudiced, we affirm.

D E C I S I O N

I

Appellant argues the district court erred by not suppressing the two guns police officers found near or on him after he fled the scene following the 911 call of a concerned citizen. In denying the motion, the district court found that the responding officer "had a reasonable basis for at least inquiring of [appellant] and his companion as to what they were doing leaving a building at 3:00 in the morning from which a 911 call had been received," particularly because "he saw them in the lobby with the elevator door closing, . . . [and] the 911 call reported an argument on the third floor and the sound of breaking glass." The district court further stated that discovery of the weapons flowed from the officer's investigation of the third floor of the building, where the 911 call was made, which revealed a broken fire-extinguisher box and glass on the floor, and

appellant's fleeing when the officer questioned him about those circumstances.

"We undertake de novo review to determine whether a search or seizure is justified by reasonable suspicion or by probable cause." *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). This 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." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

The United States and Minnesota Constitutions prohibit "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. On appeal, the state does not appear to dispute that the officer's actions constituted a seizure or detention of appellant from the point of the initial contact, and therefore the primary issue is whether the seizure was reasonable. *See Delaware v. Prouse*, 440 U.S. 648, 653-654, 99 S. Ct. 1391, 1396 (1979) ("The essential purpose of the proscriptions in the Fourth Amendment is to impose a standard of 'reasonableness' upon the exercise of discretion by government officials, including law enforcement agents . . .").

A brief seizure for the purposes of a limited investigatory stop is lawful only if the officer had a "particularized and objective basis for suspecting the particular persons stopped of criminal activity." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) (quotation omitted). An investigatory stop "requires only reasonable suspicion of criminal activity, rather than probable cause." *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (citing *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968)). This standard is satisfied if the seizure "was not the product of mere whim, caprice or idle curiosity, but was based on specific and articulable facts which, taken together with

rational inferences from those facts, reasonably warrant [the] intrusion." *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004) (quotation omitted). An officer may make his assessment of reasonable suspicion on the basis of "inferences and deductions that might elude an untrained person." *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995).

Appellant argues the responding officer's conduct in stopping him to ask questions was an illegal seizure from the outset because the officer did not have a reasonable, articulable suspicion for detaining him. Appellant contends that he and his companion were merely walking out of the apartment building and the officer stopped them based only on his "hunch" that they were involved in the disturbance reported by the 911 caller.

The officer articulated the reasons he was suspicious of appellant at the Rasmussen hearing, and the district court summarized those reasons in its ruling that "the content of the 911 call, the physical presence of [appellant] and his companion at the location, in proximity to the elevator and the fact that they were both crying." Appellant's attorney suggested to the officer during his testimony that these factors could only lead to a "hunch" that appellant was somehow involved with the incident reported in the 911 call. But these were the attorney's words, not the officer's. Taking into account the specific facts identified by the officer—the time, that he arrived very soon after the 911 call was received, that appellant and his companion were the only people around, were leaving the building, and were crying—the officer did not stop appellant based on "mere whim, caprice or idle curiosity."

II

Appellant argues that because the three officers who testified for the state at trial discussed the case when they were together in a conference room for several hours before being called to testify, they violated the sequestration order and prejudiced his right to a fair trial.

The district court is in the best position to determine whether an incident at trial creates sufficient prejudice to deny the defendant a fair trial such that a mistrial is warranted. *State v. Manthey*, 711 N.W.2d. 498, 506 (Minn. 2006). We review the district court's denial of a mistrial for an abuse of discretion. *Id.*

"Witnesses may be sequestered or excluded from the courtroom, prior to their appearance, in the discretion of the court." Minn. R. Crim. P. 26.03, subd. 7. A sequestration order is meant "to remove any possibility that a witness waiting to testify may be influenced consciously or subconsciously by the testimony of other witnesses and to afford opposing counsel the opportunity of bringing out in cross-examination any discrepancies in the testimony of the various witnesses." *State v. Miller*, 396 N.W.2d 903, 906 (Minn. App. 1986) (quotation omitted). A party claiming a violation of a sequestration order must show prejudice resulting from the violation when seeking a new trial. *State v. Erdman*, 383 N.W.2d 331, 334 (Minn. App. 1986), *review denied* (Minn. Apr. 24, 1986). Prejudice consists of a showing that there was an attempt to influence the testimony of another witness or that a person made statements to a sequestered witness that did influence that witness. *Id.*

The district court denied appellant's motion for a mistrial based on violation of the sequestration order, finding that even on the remote possibility that the officers coordinated some aspect of their testimony during the discussions they had prior to testifying, it was not prejudicial to appellant. The court further concluded that the officers had different roles in the case and testified as to different aspects of the stop and discovery of the weapons, indicating it was not likely they coordinated their testimony.

Appellant argues the "violation of the sequestration order robbed defense counsel of the opportunity to tease out discrepancies in [the officers'] testimony." He contends that several factors establish that he was prejudiced by the violation of the sequestration order: the extent of the officers' conversations; the breadth of the topics covered in their conversations; and the fact that the officers were the only witnesses the jury heard from, with the exception of the 911 dispatcher.

Although the officers' conduct constitutes a violation of the sequestration order, appellant has not established prejudice from the violation because there is no evidence the officers' discussions while they were together in the conference room were intended to influence, or did influence, their testimony. None of the officers observed the actual testimony of the other officers, and each was called to testify regarding different aspects of the case. On this record, appellant has not established prejudice from the violation of the sequestration order sufficient to warrant a new trial.

Affirmed.