STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1889

In the Matter of the Welfare of: D. A. C.

Filed August 18, 2009
Affirmed
Kalitowski, Judge

Hennepin County District Court
File No. 27-JV-07-15909

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Considered and decided by Hudson, Presiding Judge; Kalitowski, Judge; and Klaphake, Judge.

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

KALITOWSKI, Judge

Appellant D.A.C. challenges his adjudication and sentence, arguing that the district court erred in denying his motion to suppress evidence obtained from a search because his Fourth Amendment rights were violated when the police: (1) improperly stopped him without a reasonable articulable suspicion that appellant was involved in criminal activity or carrying a weapon and (2) impermissibly expanded the scope of the

Terry stop. Because we conclude that the stop and frisk of appellant was lawful, we affirm.

D E C I S I O N

Appellant was charged in Hennepin County District Court with possession of a pistol in violation of Minn. Stat. § 624.713, subd. 1(a), 2 (2006). At a *Rasmussen* hearing, appellant argued that the stop and frisk of his person by police was illegal and consequently, the evidence obtained from the search—a .22 caliber pistol—should be suppressed. The district court denied appellant's motion to suppress, concluding that law enforcement had reasonable articulable suspicion to conduct an investigative *Terry* stop and frisk of appellant and that law enforcement did not impermissibly expand the scope of the search. Appellant waived his right to a trial and submitted the case to the district court on stipulated facts. After the district court adjudicated appellant delinquent, appellant brought this appeal, arguing that the district court erred in denying his motion to suppress.

I.

Appellant argues that the district court erred as a matter of law in determining that appellant's Fourth Amendment rights were not violated when he was stopped and seized by police. Specifically, appellant contends that (1) the police lacked a reasonable articulable suspicion that appellant was involved in criminal activity and therefore, a *Terry* stop was not justified, and (2) a suspicion on the part of police that appellant was carrying a weapon did not justify a *Terry* stop. We disagree.

"When reviewing pretrial orders on motions to suppress evidence, we 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). We review de novo whether a search or seizure is justified by reasonable suspicion or probable cause. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005). And we review the district court's findings of fact for clear error. *Id.*

The Stop

Before examining the search and seizure of the contraband, we must analyze the stop that led to its discovery. *In re Welfare of G.M.*, 560 N.W.2d 687, 690 (Minn. 1997); *State v. Schinzing*, 342 N.W.2d 105, 109 (Minn. 1983).

Appellant argues that his detention was improper because the officers did not have a reasonable basis to suspect that he was engaged in criminal activity. Specifically, appellant contends that his presence near a group of people who were suspected of drug activity and police suspicion that he was carrying a weapon did not justify the stop.

Warrantless searches "are *per se* unreasonable under the fourth amendment—subject only to a few specifically established and well-delineated exceptions." *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992) (quoting *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967)). One such exception is the brief investigatory stop, which requires only reasonable suspicion of criminal activity, rather than probable cause. *State v. Martinson*, 581 N.W.2d 846, 850 (Minn. 1998) (citations omitted). Under *Terry v. Ohio*, the police may stop and frisk a person when (1) they have a reasonable, articulable suspicion that a suspect might be engaged in criminal activity, and (2) the

officer reasonably believes the suspect might be armed and dangerous. 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968).

A determination of whether the police have reasonable suspicion to conduct an investigative stop is based on the totality of the circumstances. *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695 (1981); *Engwer v. Comm'r of Pub. Safety*, 383 N.W.2d 418, 419 (Minn. App. 1986). The Minnesota Supreme Court has recognized that the "reasonable suspicion standard is not high." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). "Reasonable, articulable suspicion requires a showing that the stop was not the product of mere whim, caprice, or idle curiosity." *State v. Waddell*, 655 N.W.2d 803, 809 (Minn. 2003) (quotation omitted). "That standard 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.'" *Timberlake*, 744 N.W.2d at 393 (quoting *G.M.*, 560 N.W.2d at 691). And the grounds for making a stop can be based on the collective knowledge of all investigating officers. *In re Welfare of G.M.*, 542 N.W.2d 54, 57 (Minn. App. 1996), *aff'd*, 560 N.W.2d 687 (Minn. 1997).

Both flight and evasive conduct can create reasonable suspicion, particularly when coupled with proximity to wrongdoing. Flight "is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000), *quoted in State v. Houston*, 654 N.W.2d 727, 733 (Minn. App. 2003), *review denied* (Minn. Mar. 26, 2003). And the Minnesota Supreme Court

has held that "evasive conduct," combined with circumstances beyond "merely being in a high crime area," may give rise to reasonable suspicion. *Dickerson*, 481 N.W.2d at 843.

Here, a Minneapolis police officer was informed by his lieutenant that he had observed an individual dealing narcotics in front of the doorway of Snow Foods, "a place of [a] lot of drug activity, [and] shots fired," and was instructed to investigate. When the officer entered the parking lot of Snow Foods, he saw approximately 15 to 18 people in the parking lot, all of whom were walking westbound. The officer noticed an individual who matched the description of the narcotics dealer, but his attention was diverted to appellant when appellant "reached to his side and made a couple quick steps as if he was going to run." The officer saw appellant reach down at his right side a second time, and noticed a small bulge at appellant's right side. The officer chose to "focus solely" on appellant and ordered appellant "to show me his hands" and to "get down on the ground."

Appellant argues that there was no basis for the police to believe he was part of the group involved in drug activity. But appellant testified that it would appear to an onlooker that he was walking with two to four other people. Given the totality of the circumstances, we conclude that it was reasonable for the officer to infer that appellant may be associated with the drug activity and that the district court did not clearly err in finding that appellant was "walking in a group" with a person suspected of drug activity after observing appellant in close proximity to that group.

Appellant also argues that any police suspicion that he was carrying a weapon near his waist is insufficient to justify a *Terry* stop. "A *Terry* stop permits an officer who suspects that an individual is engaged in illegal activity and also believes that a suspect

may be armed and dangerous to frisk the suspect in order to reduce concerns that the suspect poses a danger to officer safety." *State v. Flowers*, 734 N.W.2d 239, 250-51 (Minn. 2007) (citing *Adams v. Williams*, 407 U.S. 143, 146, 92 S. Ct. 1921 (1972)). Here, the police suspicion that appellant was carrying a weapon was not the sole factor that justified the stop, and contrary to appellant's assertions, the officer's testimony establishes that appellant's presence in a high-crime area was not the sole basis of the stop. The stop was based on the lieutenant's reported observations of narcotics dealing, the officer's knowledge that Snow Foods was a high-crime area, appellant's furtive hand movements toward his waistband, and his evasive behavior indicating that he might flee. *See Engwer*, 383 N.W.2d at 419 (holding that a determination of whether police have reasonable suspicion to conduct a *Terry* stop is based on totality of the circumstances); *see also Dickerson*, 481 N.W.2d at 843 (holding that the combination of the defendant (1) exiting a known crack house, and (2) changing directions upon eye contact with police supplied reasonable suspicion to support a stop and patdown search for weapons).

We conclude that under the totality of the circumstances, the officer had a reasonable articulable suspicion of criminal activity sufficient to justify his stop of appellant.

The Search

Appellant argues that the officer improperly assumed that weapons might always be present when a law enforcement officer confronts a citizen and thus, the patdown search for weapons violated his constitutional rights. We disagree.

A police officer may conduct a pat-search narrowly confined to a frisk for weapons if the officer has an "objective articulable basis" for believing that a lawfully stopped person may be armed and dangerous and that such a search is necessary to protect the officer's safety or the safety of others. *In re Welfare of M.D.R.*, 693 N.W.2d 444, 450 (Minn. App. 2005), *review denied* (Minn. June 28, 2005); *see also State v. Gilchrist*, 299 N.W.2d 913, 916 (Minn. 1980). Reasonableness depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by police. *M.D.R.*, 693 N.W.2d at 450.

Here, the officer testified about: (1) the lieutenant's observations of narcotics-dealing activity; (2) the large group of people in a high-crime area; (3) his observations of appellant's evasive movements; and (4) his observation of a small bulge near appellant's waistband. Based on the totality of these circumstances, we conclude that the officer had a reasonable and objective articulable basis for thinking that appellant may be armed. Therefore, the patdown search of appellant after he was lawfully stopped did not violate appellant's constitutional rights.

II.

Appellant argues that the police impermissibly expanded the scope of the *Terry* stop because (1) the officer had his weapon drawn when he confronted appellant, and (2) the officer handcuffed appellant before conducting the patdown search. We disagree.

The scope of an investigatory *Terry* stop is limited: law enforcement officers are only permitted to make reasonable inquiries limited to verifying or dispelling the reasonable articulable suspicion of criminal activity. *Terry*, 392 U.S. at 30, 88 S. Ct. at

1884. "An initially valid stop may become invalid if it becomes 'intolerable' in its 'intensity and scope.'" *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quoting *Terry*, 392 U.S. at 17, 18, 88 S. Ct. at 1878). The reasonableness of an investigative stop is determined "by an objective and fair balancing of the government's need to search or seize and the individual's right to personal security free from arbitrary interference by law officers." *Flowers*, 734 N.W.2d at 252 (quotation omitted).

The supreme court has mandated consideration of the following factors in determining whether police have exceeded the scope of a permissible *Terry* stop: (1) the number of officers and police cars involved; (2) the nature of the crime and whether there is reason to believe the suspect may be armed; (3) the strength of the officers' reasonable, articulable suspicions; (4) the erratic behavior of or suspicious movements by the person under observation; and (5) the need for immediate action by the officers and lack of opportunity for them to make a stop in a less threatening manner. *Id*. at 253. The actions of law enforcement officers must be evaluated in light of relevant surrounding circumstances. *State v. Ailport*, 413 N.W.2d 140, 143 (Minn. App. 1987), *review denied* (Minn. Nov. 18, 1987).

The *Flowers* factors support the conclusion that the police here did not exceed the permissible scope of the investigative stop. As discussed above, factors two, three, and four are satisfied. With regard to the first factor, six officers responded to a situation involving observed narcotics activity, where 15 to 18 people were observed walking in a group at a high-crime location known for drug activity and shots fired. Based on the lieutenant's observation of narcotics activity earlier that day in the area, a high-crime

area, and the presence of a large group of people in the vicinity, we conclude that the number of officers was reasonable due to the reasonable possibility that other officers or individuals present at the scene could be in danger if law enforcement did not gain full control of the situation quickly.

As to the fifth factor, we conclude that the police officers reasonably perceived a need to take immediate action. Based on the totality of the facts, it was reasonably likely that a dangerous, and possibly deadly, situation could unfold if the officers did not react quickly. The officer testified that he ordered appellant to show his hands and get down on the ground "because there was [sic] so many kids out there that if something were to happen right away, at least he was secured enough so that he couldn't do anything." Appellant had been observed making furtive gestures towards his waistband, had indicated by his actions that he would try to run, and had been walking with a large group of people, at least one of whom was suspected of dealing narcotics. We conclude that in such a situation, a reasonable police officer would perceive a need to take immediate action.

Appellant argues that the officer's action of drawing his weapon turned the encounter into an unlawful arrest, rather than a mere *Terry* stop. At trial, it was disputed as to whether the officer drew his weapon. The district court determined that, even assuming that the officer did draw his weapon, the encounter did not exceed the limitations of *Terry*. We agree. The supreme court has recognized that if "an officer making a reasonable investigatory stop has cause to believe that the individual is armed, he is justified in proceeding cautiously with weapons ready." *State v. Munson*, 594

N.W.2d 128, 137 (Minn. 1999) (quotation omitted). We conclude that because the officer had reason to believe appellant was armed, he was justified in proceeding cautiously with his weapon ready.

Appellant argues that the officer's action of handcuffing appellant was unreasonable and exceeded the scope of *Terry*. But "briefly handcuffing a suspect while the police sort out the scene of an investigation does not per se transform an investigatory detention into an arrest." *Id.* And an officer is permitted to handcuff, frisk, and briefly detain an armed person who is reasonably believed to be committing a crime without transforming the stop into an arrest. *See State v. Walsh*, 495 N.W.2d 602, 605 (Minn. 1993) (an officer conducting a *Terry* stop may handcuff a suspect briefly while sorting out a scene); *Dickerson*, 481 N.W.2d at 843 (an officer may frisk a suspect for weapons if the officer is justified in believing the suspect to be armed and dangerous, without transforming the stop into an arrest). Here, the officer handcuffed appellant because appellant was suspected of being armed and because of safety concerns for others nearby. We conclude that this handcuffing did not constitute a violation of appellant's Fourth Amendment rights.

In conclusion, based on the totality of the circumstances, the application of the *Flowers* factors to these facts support our determination that the police did not exceed the permissible scope of a *Terry* stop.

Affirmed.