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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1193

State of Minnesota,
Respondent,

vs.

William NMN Jones,
Appellant.

Filed October 20, 2009
Affirmed
Worke, Judge

Ramsey County District Court
File No. 62-K4-07-003068

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

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Considered and decided by Schellhas, Presiding Judge; Worke, Judge; and Ross, Judge.

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

WORKE, Judge

Appellant challenges his convictions of possession of a firearm by an ineligible person and possession of a stolen firearm, arguing that the district court (1) erred by not suppressing evidence because appellant was unlawfully seized and the officers unlawfully searched him and the vehicle in which he was a passenger and (2) abused its discretion by permitting the state to impeach appellant with prior felony convictions that were not relevant to his credibility. We affirm.

D E C I S I O N

Seizure and Suppression of Evidence

Appellant William NMN Jones argues that the district court erred by refusing to suppress evidence discovered as the result of an unlawful search and seizure. Appellant contends that officers did not have a reasonable articulable suspicion of criminal activity to approach the parked vehicle in which he was a passenger, remove him from the vehicle, and then search him and the vehicle. In an appeal of a pretrial order on a motion to suppress, this court independently reviews the facts and determines as a matter of law whether the district court erred in its decision. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). This court accepts the district court's factual findings unless they are clearly erroneous. *State v. Williams*, 535 N.W.2d 277, 286 (Minn. 1995). "Findings of fact are clearly erroneous only if the reviewing court is left with the definite and firm conviction that a mistake has been made. If there is reasonable evidence to support the [district]

court's findings of fact, [we] should not disturb those findings." *State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006) (quotation omitted).

Seizure

Appellant argues that he was unlawfully seized when the officers approached the parked vehicle without reasonable articulable suspicion of criminal activity. The district court concluded that appellant was not seized when the officers merely approached the vehicle to check on the welfare of the female occupant. The district court concluded that appellant was seized when the officers opened the door and removed him from the vehicle.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. "A seizure occurs 'when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen.'" *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995) (quoting *Terry v. Ohio*, 392 U.S. 1, 9 n.16, 88 S. Ct. 1868, 1879 n.16 (1968)). In Minnesota, "a person has been seized if in view of all of 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.* Not every encounter between a police officer and a citizen is a seizure. *In re E.D.J.*, 502 N.W.2d 779, 781 (Minn. 1993). "A person generally is not seized merely because a police officer approaches him in a public place or in a parked car and begins to ask questions." *Harris*, 590 N.W.2d at 98.

Here, officers working a narcotics-and-vice detail in a high-crime area drove by a parked vehicle with two occupants; a female, L.C., who was seated facing forward in the driver's seat, and appellant, who was seated facing L.C., in the front passenger seat. As he drove by, Officer Thomas Tanghe noticed that L.C. looked concerned, surprised or startled. Officer Tanghe turned around and parked his vehicle behind L.C.'s vehicle. The officers were in an unmarked vehicle equipped with emergency lights and a siren, but did not activate the lights or siren. As the officers approached the vehicle on foot, they observed appellant look back at them and then immediately turn and lean forward. Based on their experience and training, the officers believed that appellant was retrieving or hiding a weapon or other contraband. Officer Trygve Sand opened the front passenger door and immediately noticed two bullets on the seat between appellant's legs. Sand removed appellant from the vehicle, conducted a pat-search, and discovered baggies packed with marijuana in appellant's pants pocket. Commander Robert Thomasser searched the area inside the vehicle where he had seen appellant leaning and recovered a semi-automatic pistol and an ammunition clip from under the front passenger seat. The recovered firearm had been stolen from a residence in 1999. The officers also found baggies of marijuana in the center console.

The record supports the district court's finding that the officers' initial approach of the vehicle was to check on the welfare of L.C. She stated that when the officers drove by, she was in fact upset because she was going through something. Additionally, when the officers made contact with L.C., the first questions they asked her regarded her well-being and whether she was being held against her will. Thus, the record supports the

conclusion that appellant was not seized when the officers merely approached the vehicle to check on L.C.'s welfare. The district court did not clearly err in finding that appellant was seized only when he was removed from the vehicle. Having determined when appellant was seized, the issue now is whether the seizure was legal. The district court concluded that appellant's immediate forward-leaning movement provided the officers with a basis to conduct a search and seizure.

"[A]n officer may, consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion [of] criminal activity." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675 (2000) (citing *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884). "Reasonable suspicion must be based on 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007) (quoting *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880). 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). "The officer may justify his decision to seize a person based on the totality of the circumstances and may draw inferences and deductions that might elude an untrained person." *Harris*, 590 N.W.2d at 99 (quotation omitted). However, the officer must "be able to articulate something more than an inchoate and unparticularized suspicion or hunch." *State v. Martinson*, 581 N.W.2d 846, 850 (Minn. 1998) (quotations omitted). In *State v. Richmond*, this court stated that a seizure was justified, in part, by the officer observing the driver lean toward the passenger compartment after the traffic stop was initiated, which made the officer

suspect that the driver was attempting to hide something. 602 N.W.2d 647, 650-51 (Minn. App. 1999), *review denied* (Minn. Jan. 18, 2000).

Here, the officers observed appellant look at them and then immediately bend forward. Based on his training and experience, Officer Tanghe recognized appellant's movement as a danger to officer safety. Officer Sand became concerned for officer safety because he believed that appellant was reaching for a weapon. Commander Thomasser was similarly concerned because he believed that appellant was reacting to the officers' presence and was possibly retrieving a weapon or hiding evidence. The officers articulated more than a mere hunch or suspicion; the officers indicated that appellant's furtive movements led them to believe that he was either hiding evidence or retrieving a weapon. *See id.* (stating that an officer had reasonable suspicion to search in part because the driver made a "furtive movement" by reaching toward the passenger compartment). The district court did not err in concluding that the officers had a reasonable suspicion that appellant was engaged in criminal activity, which justified the seizure.

Search of Appellant

Appellant argues that even if the seizure was valid, the officers illegally searched him. The district court concluded that appellant's furtive movements provided the officers with reasonable suspicion that appellant was engaged in criminal activity and armed and dangerous. The district court also found that the detection of the bullets provided cause for further concern, and, that under the circumstances, the pat-search of appellant was legal.

Warrantless searches "are per se unreasonable under the Fourth Amendment-subject only to a few specifically established and well-delineated exceptions." *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 514 (1967). One exception is the protective pat-search for weapons. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992). Officers 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) they reasonably believe that the suspect might be armed and dangerous. *Id.* (citing *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884). If both factors exist, officers "may conduct a carefully limited search of the outer clothing of such person[ ] in an attempt to discover weapons which might be used to assault him." *Id.* (quotation omitted).

The officers observed appellant's immediate forward motion after appellant became aware of the officers' presence. Appellant's movement led the officers to believe that he was retrieving or hiding a weapon or evidence. Upon opening the passenger-side door, Sand and Thomasser immediately noticed two bullets on the seat between appellant's legs. Sand removed appellant from the vehicle and conducted a pat-search and found small baggies holding marijuana. The pat-search was justified based on (1) appellant's furtive movements, which led the officers to believe that he was retrieving or hiding a weapon or evidence, which provided reasonable, articulable suspicion that appellant might be engaged in criminal activity and (2) the observation of bullets on the seat, which led the officers to believe that appellant might be armed and dangerous. *See id.* The district court did not err in concluding that the search was reasonable and in refusing to suppress the evidence found as a result of the search of appellant's person.

Search of Vehicle

Appellant also argues that the search of the vehicle was illegal. The district court found that the officers had a particularized and objective basis for suspecting appellant of engaging in criminal activity and a reasonable belief that he was armed and dangerous; thus, the court concluded that the officers were authorized to conduct a protective sweep of the passenger compartment of the vehicle.

Subject to certain narrow exceptions, warrantless searches are prohibited under the Fourth Amendment. *See New York v. Belton*, 453 U.S. 454, 457, 101 S. Ct. 2860, 2862 (1981). An exception to the warrant requirement "permits a search of a vehicle's passenger compartment, even when not incident to arrest, if an officer possesses a reasonable belief based on specific and articulable facts that a suspect is dangerous and may gain immediate control of weapons." *State v. Robb*, 605 N.W.2d 96, 100 (Minn. 2000).

The officers reasonably believed that appellant could be retrieving or hiding a weapon or evidence. Sand and Thomasser observed bullets on the seat between appellant's legs. The officers did not need a warrant to search the vehicle because they reasonably believed that appellant was armed and dangerous given the bullets seen on the seat between appellant's legs and appellant's conduct earlier of leaning over as if to hide or retrieve something. Therefore, the district court did not err in concluding that the search of the vehicle was valid and in refusing to suppress the evidence found as a result of the search.

Prior Convictions

Appellant also argues that the district court abused its discretion in permitting the state to impeach him with prior-conviction evidence that was not relevant to credibility. After balancing the relevant factors, the district court permitted the state to impeach appellant with a 2001 conviction of fifth-degree controlled-substance crime and a 2003 conviction of second-degree controlled-substance crime. This court reviews a district court's ruling on the admissibility of prior convictions for impeachment of a defendant under a clear-abuse-of-discretion standard. *State v. Swanson*, 707 N.W.2d 645, 654 (Minn. 2006).

Evidence that a witness has a felony conviction is admissible for impeachment purposes if the probative value of the evidence outweighs its prejudicial effect. Minn. R. Evid. 609(a)(1). When considering the admission of such evidence, a district court should demonstrate on the record that it weighed the factors set forth in *State v. Jones*, 271 N.W.2d 534, 538 (Minn. 1978). *See Swanson*, 707 N.W.2d at 654. The *Jones* factors include the: (1) impeachment value of the prior crime; (2) date of conviction and subsequent history; (3) similarity of the past crime to the crime charged—the greater the similarity, the greater the reason for not permitting its use; (4) importance of the defendant's testimony; and (5) centrality of the issue of credibility. 271 N.W.2d at 538.

Impeachment Value

The district court stated that the impeachment value of the evidence was limited because the convictions do not involve crimes of inherent dishonesty. But the fact that a prior conviction did not directly involve truth or falsity does not mean it has no

impeachment value. *State v. Brouillette*, 286 N.W.2d 702, 707 (Minn. 1979). The supreme court has stated that "impeachment by prior crime aids the jury by allowing it to see the whole person and thus to judge better the truth of his testimony." *Id.* (quotation omitted). Thus, even though the impeachment value was limited, it would have served to allow the jury to see appellant as a whole person, and this weighs in favor of admission.

Dates of Prior Crimes

The district court acknowledged that the crimes were recent felonies—a 2001 fifth-degree controlled-substance-crime conviction and a 2003 second-degree controlled-substance-crime conviction. Evaluating the dates allows a district court to determine whether the convictions have lost their relevance over time. *State v. Bettin*, 295 N.W.2d 542, 546 (Minn. 1980). Appellant's relatively recent pattern of criminal activity weighs in favor of admission.

Similarity

The district court also stated that the past crimes were similar to one of the charged offenses—fifth-degree controlled-substance crime. "The danger when the past crime is similar to the charged crime is that the likelihood is increased that the jury will use the evidence substantively rather than merely for impeachment purposes." *Id.* Appellant was charged with possession of a firearm by an ineligible person, possession of a stolen firearm, and fifth-degree controlled-substance crime. The prior convictions were similar only to the controlled-substance-crime charge. Although the jury did not hear the evidence because appellant chose not to testify, the jury found appellant not guilty of

fifth-degree controlled-substance crime. Because the prior convictions were similar to only one of three charged crimes, this factor weighs in favor of admission.

Importance of Testimony and Credibility Issue

The district court ruled that while it was important for appellant to testify, it was equally important for the jury to see appellant as the "whole person." If the defendant's version of the facts is centrally important to the result reached by the jury, the prior-conviction evidence should not be admitted because it might prevent the defendant from testifying. *State v. Gassler*, 505 N.W.2d 62, 67 (Minn. 1993). But appellant did not make an offer of proof as to the content of his testimony. Appellant argues that the jury never heard his side of the story, but fails to explain his side of the story. Appellant states that he was not able to explain the gun, the magazine, or the bullets. But the evidence shows that the bullets were found on the seat between appellant's legs and the gun was found under the seat in which he was seated. Additionally, L.C. told the officers that appellant borrowed her car the night prior to his arrest. The next day when the officers drove by the same vehicle, appellant told L.C. "[t]here go the police." Appellant was holding a magazine and a gun. L.C. testified that she did not know that there was a gun in the vehicle. She stated that the gun "[g]ot to be his because it is not mine," and that nobody else used her car. L.C. also testified that the marijuana found in the car had to belong to appellant because it did not belong to her. Thus, if appellant had testified, he most likely would have contradicted L.C.'s testimony. The credibility issue would have been central to the case because the jury would have had to determine whom to believe, L.C. or appellant. This factor weighs in favor of admission of the evidence because

credibility would have been central to the case and the jury should be able to see appellant as a whole person. Thus, the district court did not abuse its discretion in allowing the evidence to be admitted.

Affirmed.