STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1482

State of Minnesota,
Respondent,

vs.

Christopher Eugene Griep,
Appellant.

Filed August 31, 2010
Affirmed
Minge, Judge

Hennepin County District Court
File No. 27-CR-09-1319

Lori Swanson, Attorney General, John B. Galus, Assistant Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, G. Tony Atwal, Assistant Public Defender, Ellen M. Ahrens, Certified Student Attorney, St. Paul, Minnesota (for appellant)

Considered and decided by Minge, Presiding Judge; Halbrooks, Judge; and Ross, Judge.

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

MINGE, Judge

Appellant Christopher Griep challenges his conviction of possession of a firearm by an ineligible person, arguing that the district court committed reversible error by failing to suppress the firearm evidence because the record does not establish that police had an objectively reasonable basis to seize or frisk appellant. In his pro se brief, Griep also argues that the district court erred when it sentenced him under Minn. Stat. § 609.11 (2008) without a sentencing hearing by jury. We affirm.

D E C I S I O N

Standard of Review

"When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings under a clearly erroneous standard and the district court's legal determinations de novo." *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009) (quotation omitted).

I.

The first issue is whether Minneapolis police officer George Judkins was justified in seizing Griep. Both the U.S. Constitution (Fourth Amendment) and Minnesota Constitution (article I, section 10) prohibit unreasonable searches and seizures. Warrantless searches and seizures are generally considered unreasonable. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). To avoid suppression of the evidence acquired from a warrantless search, the state must establish an exception to the warrant requirement. *State v. Metz*, 422 N.W.2d 754, 756 (Minn. App. 1988).

Legal Standard

A police officer may make a limited investigative stop if the officer has reasonable, articulable suspicion that the person stopped is engaged in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968)). Reasonable, articulable suspicion requires "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). "The requisite showing is not high." *Id.* (quotation omitted). The officer must be able to point to facts that objectively support the suspicion and cannot base it on a mere unarticulated hunch. *Id.* In forming this suspicion, an officer may make inferences and deductions that might elude an untrained person. *State v. Syhavong*, 661 N.W.2d 278, 282 (Minn. App. 2003). We examine the totality of the circumstances when determining whether this suspicion exists. *Davis*, 732 N.W.2d at 182. "These circumstances include the officer's general knowledge and experience, the officer's personal observations, information the officer has received from other sources, the nature of the offense suspected, the time, the location, and anything else that is relevant." *Appelgate v. Comm'r of Pub. Safety*, 402 N.W.2d 106, 108 (Minn. 1987). "[S]eemingly innocent factors may weigh into the analysis." *Davis*, 732 N.W.2d at 182.

The issue is whether officer Judkins had reasonable, articulable suspicion that Griep was engaged in criminal activity. We review de novo the legality of a limited investigatory stop and whether this suspicion exists. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999).

Speeding Vehicle

The relevant circumstances start with Judkins receiving a radio call at 2:26 a.m. that a light-colored SUV evaded another squad car by taking off at a high speed. Although the radio call did not specifically state that the SUV was fleeing the police, Judkins inferred that this SUV had fled from the other officers. This inference is reasonable. It is implied by the fact that the SUV took off at a high speed *from* the other squad car. The fact that the other squad car lost the SUV despite trying to catch up further supports this inference. It is unlikely that the police would lose a vehicle unless the vehicle was trying to avoid the police. Fleeing police while in a motor vehicle is a crime. Minn. Stat. § 609.487, subd. 3 (2008). So, at the very least, Judkins had reasonable, articulable suspicion that the driver of a matching SUV was engaged in criminal activity and would be justified in stopping such a vehicle to investigate.[1]

The next step in the analysis is whether it was reasonable for Judkins to believe that the SUV he saw was the suspect SUV. The officer making the radio call described the suspect vehicle as a light-colored SUV. The vehicle that Judkins saw—a beige or light-brown SUV—matched both the vehicle type and color of this description. This alone is enough because it is not unreasonable for an officer to stop a vehicle that is similar but not identical to a vehicle description given by other officers who had grounds to stop that vehicle. *See State v. Yang*, 774 N.W.2d 539, 552 (Minn. 2009) (holding that

[1] Even if Griep was correct that Judkins only had reasonable, articulable suspicion that the suspect SUV had been speeding, Judkins would still be justified in stopping the driver to investigate because "a violation of traffic a law, however insignificant, [provides] an objective basis for stopping the vehicle." *See State v. George*, 557 N.W.2d 575, 578 (Minn. 1997).

it was not unreasonable for an officer to stop a dark-blue Honda Civic hatchback, even though that vehicle was different in size, style, and color from the black Honda Accord that was described on the police radio, where the officer who stopped the vehicle testified that he thought it matched the radioed description and the vehicles have similar shapes).

But there is more. Judkins saw the vehicle in which Griep was a passenger at 2:30 in the morning, just two minutes after the radio call, and just six or seven blocks away from the location where the light-colored SUV evaded the other officers. Because it was 2:30 in the morning, it was unlikely that there would be many cars being driven or occupied. *See Appelgate*, 402 N.W.2d at 108 (identifying the number of persons in the area of the recent crime as one relevant factor). Moreover, upon exiting his squad car, Judkins smelled burnt rubber, which is caused by fast driving and hard braking. This is consistent with this vehicle taking off from police at high speed, further linking this vehicle to the one described in the radio call. Based on all these facts, it was reasonable for Judkins to conclude that this vehicle was the suspect vehicle from the radio call. Therefore, Judkins had reasonable, articulable suspicion to stop the driver of this vehicle to investigate.

Suspicious Passenger

Griep argues that even if it was reasonable to conclude that the vehicle Judkins saw was the suspect vehicle that had sped away from police officers, Judkins only had reasonable, articulable suspicion to stop the driver, not Griep. But the conduct of the vehicle's occupants here was also unusual, expanding suspicion to the passengers. Once Judkins approached the vehicle, all three occupants hurried across the street. Judkins

believed that the three saw him as he approached in a marked squad car and thought they were fleeing towards the house. Fleeing from an officer on foot is also a crime. Minn. Stat. § 609.487, subd. 6 (2008). Although Griep argues that he only hurried in this manner because he wanted to avoid being hit by Judkins's oncoming squad car, this subjective intent is irrelevant, even if true. The inquiry is whether Judkins had a reasonable, articulable suspicion that Griep was attempting to flee. It is unusual for an adult to run across the street towards his house after parking. It is even more unusual for all three adults exiting a vehicle to do so. Moreover, Judkins reasonably believed that Griep saw him approach.

A reasonable explanation for the adults running or hurrying across the street towards the house upon seeing Judkins approach is that they were trying to flee Judkins and enter the house before he could stop them.

Evasive Conduct/Suspicious Location

Surrounding circumstances provide additional bases for finding reasonable, articulable suspicion for an investigative stop. Evasive conduct is relevant. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992), *aff'd*, 508 U.S. 366, 377, 113 S. Ct. 2130, 2138 (1993). In *Dickerson*, police saw the defendant leave an apartment building connected with drugs and weapons. *Id*. at 842. When the *Dickerson* defendant saw the police, he turned around and went down an alley. *Id*. The Minnesota Supreme Court held that the defendant's evasive conduct after noticing police, combined with the defendant's departure from a building with a history of drug activity, provided the suspicion necessary for police to stop the defendant. *Id*. at 843.

Here, the following information was known to Judkins in addition to Griep's evasive conduct: (1) the reported driver of the SUV had a history of illegal behavior; and (2) the house to which Griep and others were hurrying to had been frequented by people who had records for illegal activity and being fugitives. Like the defendant in *Dickerson*, Griep engaged in evasive conduct upon noticing police and went to a house associated with crime.

Based on the circumstances known to Judkins at the scene, we conclude that he had reasonable, articulable suspicion to detain Griep.

II.

The next issue is whether the police were justified in frisking Griep. An officer may frisk a lawfully stopped person if the officer reasonably believes the suspect might be armed and dangerous. *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884.

Reasonable Basis

In *Dickerson*, the state supreme court upheld the frisk of the defendant because of his evasive behavior and the history of drugs and guns in the building that the defendant had left. 481 N.W.2d at 843. Similarly, Griep was evasive and sought to enter a house with a history of drugs and guns. The case for believing that appellant might be armed and dangerous here is even stronger than in *Dickerson* for several reasons: Judkins knew from personal experience that one of Griep's vehicle companions had possessed a gun during a crime; Griep ignored Judkins' initial commands to stop; and the evasive conduct was greater here than in *Dickerson*. Judkins reasonably suspected that (1) the vehicle Griep had been in sped away from—rather than simply avoided—other police; and

(2) Griep was fleeing from Judkins on foot. Because the belief that Griep might be armed and dangerous was reasonable, the district court did not err in concluding that the officers were justified in frisking Griep for officer safety.

Frisking Officer

Griep's counterarguments are unavailing. He first argues that because the new arriving officer who frisked him did not testify, and because Judkins did not indicate that he told this officer anything, there is no evidence in the record that the officer who actually searched him reasonably believed that he might be armed and dangerous. To support this proposition, Griep relies on a New York case: *People v. Barreto*, 161 A.D.2d 305 (N.Y. App. Div. 1st Dept. 1990). *Barreto* is not controlling and is distinguishable. In *Barreto*, only the officer who did not do the frisk testified, and he did not indicate that he shared his observations with the other officer who did the frisk. *Id*. at 306. But the New York court reasoned that even if the searching officer had testified similarly, the testimony would not have provided reasonable, articulable suspicion to search because there was no evasive conduct or other suspicious circumstances. *Id*. at 307-08. Nothing in the record indicated that the New York officers feared for their safety. *Id*. at 308.

Moreover, courts have employed the collective-knowledge doctrine to uphold searches. *Magnuson v. Comm'r of Pub. Safety*, 703 N.W.2d 557, 559-600 (Minn. App. 2005). Under this doctrine, courts determine whether a particular officer's action was justified by imputing the collective knowledge of all the police involved to that officer. *Id.* (applying this doctrine to determine whether an investigative stop was justified, and noting that the acting officer need not know the factual basis justifying the stop). Under

this doctrine, because Judkins had a valid basis for frisking appellant, the backup officer who arrived at the scene and performed the frisk would have a valid basis as well.

Genuineness of Need to Search

Griep next asserts that because Judkins stopped him at the door and prevented him from disengaging from the situation, Judkins created a dangerous situation, which the police then sought to impermissibly use to justify the search. This argument is belied by the record. Judkins had a reasonable basis to believe that Griep was fleeing an officer rather than merely disengaging from the situation. Fleeing an officer is a crime, not something citizens are privileged to do. Griep's reliance on *State v. Wynne* is misplaced. *See* 552 N.W.2d 218, 222-23 (Minn. 1996). In *Wynne*, the defendant arrived at her and her mother's home to find officers searching the home according to a warrant. *Id*. at 219. The warrant did not authorize the search of her person. *Id*. Officers met her at the car she arrived in, took her purse, brought her purse into the home, and then searched it. *Id*. at 222. The court held that the officers were not justified in searching the purse because they created any threat that the purse represented by bringing it inside the home themselves. *Id*. Here, Judkins did not bring Griep or any items associated with him anywhere. All Judkins did was follow Griep and prevent him from fleeing into the house. Indeed, it was reasonable for Judkins to conclude that if Griep entered a home linked to drugs, guns, and fugitives—which could very well contain guns or dangerous persons—then the danger to him and other officers would increase. Unlike in *Wynne*, this potential for increased danger stemmed from Griep's actions, not the officer's.

Totality of Circumstances

Griep's final argument is that the totality of the circumstances does not support the frisk. He relies on the supreme court decision *State v. Varnado*, 582 N.W.2d 886 (Minn. 1998). In that case, the defendant was stopped by the officers because she had a cracked windshield. *Id.* at 887. The *Varnado* court simply held that a frisk is improper during a routine stop for a minor traffic violation unless some additional suspicious or threatening circumstances are present. *Id.* at 890. The defendant's presence in a high-crime area, without more, was not enough. *Id.* Similarly, the defendant's association with a suspected drug dealer who was not even present was not enough. *Id.*

Here, Judkins reasonably suspected Griep of fleeing from himself and other police officers, a suspicious circumstance far more serious than a cracked windshield. During the stop, Griep was with an individual known to possess weapons and was trying to enter a home associated with drugs, guns, and fugitives. Griep also ignored the first couple of Judkins's commands to stop. Moreover, the fact that *Varnado* approvingly cites *Dickerson*, a more analogous case, buttresses our conclusion. *Id.*

Because the stop and frisk of Griep were proper, we affirm the district court's decision denying Griep's motion to suppress.

III.

The final issue raised in this appeal is whether the district court erred when it sentenced Griep under Minn. Stat. § 609.11, subd. 5(b) (2008) without a sentencing hearing by jury. Griep asserts that under *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct.

2531 (2004), he is entitled to have a sentencing jury make the factual determinations that constitute the basis for his sentence.

Blakely held that a court may not impose a greater sentence than what is allowed by the facts reflected in the jury verdict or admitted by the defendant unless those additional facts justifying a greater sentence are found by a sentencing jury and proved beyond a reasonable doubt. 542 U.S. at 301-05, 124 S. Ct. at 2536-38. This rule does not apply to sentencing enhancements due to prior convictions reflected in official records. *Id.* at 301-02, 124 S. Ct. at 2536; *State v. Wiskow*, 774 N.W.2d 612, 615 (Minn. App. 2009).

Minn. Stat. § 624.713, subd. 1(2) (2008), prohibits people who have been convicted of a crime of violence from possessing firearms. The prior record is an element of the crime. Under Minn. Stat. § 624.712, subd. 5 (2008), a conviction of a drug crime under chapter 152 is a crime of violence. In 1995, Griep was convicted of a drug crime under Minn. Stat. § 152.025 (1992). So when police searched Griep and discovered he had a firearm, he was in violation of Minn. Stat. § 624.713, subd. 1(b). Minn. Stat. § 609.11, subd. 5(b), provides that a person convicted of being a prohibited person in possession of a firearm under Minn. Stat. § 624.713, subd. 1(2), must be sentenced for a minimum of five years. This is exactly what Griep was sentenced to.

The *Blakely* rule does not apply here because this sentence was based on an undisputed court record of Griep's prior conviction. Accordingly, we affirm the district court's sentence.

Affirmed.