STATE OF MINNESOTA
IN COURT OF APPEALS
A09-2161

In the Matter of the Welfare of: T. R. J., Child

Filed August 31, 2010
Affirmed
Minge, Judge

Hennepin County District Court
File No. 27-JV-09-10165

John J. Brogan, Emily L. Grande, Special Assistant Public Defenders, Stoel Rives LLP, Minneapolis, Minnesota (for appellant T.R.J.)

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Lee W. Barry, Assistant County Attorney, Minneapolis, Minnesota (for respondent county)

Considered and decided by Minge, Presiding Judge; Johnson, Judge; and Harten, Judge.[*]

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

MINGE, Judge

Appellant challenges his delinquency adjudication based on illegal gun possession, arguing that because he was unlawfully seized and frisked, the district court should have granted his motion to suppress the evidence of the gun. Because we conclude that the officers had reasonable, articulable suspicion that appellant might be engaged in criminal

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

activity prior to the seizure and reasonably believed appellant might be armed and dangerous prior to the frisk, we affirm.

FACTS

On September 3, 2009, appellant was a juvenile living in the Huntington Place Apartment Complex in Brooklyn Park, an area designated for heightened police presence. About 10:00 p.m., two Brooklyn Park police officers patrolling the area on bicycles saw appellant leave one of the apartment buildings. The officers questioned appellant and eventually seized and frisked him. Discovering a pistol, the officers arrested appellant.

The state filed a delinquency petition charging appellant with possession of a pistol in violation of Minnesota Statutes section 624.713, subdivisions 1(1), 2 (Supp. 2009). Appellant moved to suppress the pistol, arguing that he was unlawfully seized and frisked. The district court denied appellant's motion. Appellant was found guilty of the offense and adjudicated delinquent. He was placed in a residential program to be followed by supervised probation. This appeal follows.

D E C I S I O N

"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 the officers had reasonable, articulable suspicion that appellant was engaged in criminal activity when they seized him. We review de novo the

legality of a limited investigative stop and whether the necessary suspicion exists. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999). Both the Fourth Amendment of the United States Constitution and Article I, Section 10 of the Minnesota Constitution prohibit unreasonable searches and seizures. Warrantless searches and seizures are generally considered unreasonable. *Munson*, 594 N.W.2d at 135. To avoid suppression of the evidence acquired from a warrantless search, the state must show that an exception to the warrant requirement applies. *State v. Metz*, 422 N.W.2d 754, 756 (Minn. App. 1988).

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). This standard requires "'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the 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 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 reasonable, articulable 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.

Because this suspicion must exist when appellant was seized, we first determine when the seizure occurred. A seizure occurs when a reasonable person would believe based on the totality of the circumstances, that he or she was not free to disregard the police questions or leave. *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). A reasonable person would not believe that he or she has been seized when an officer approaches that person in a public place and engages in conversation. *Id.*

In the case before us, the officers did not order appellant to stop, did not have any flashing lights on their bikes to signal appellant to stop, and did not show their weapons. They approached appellant in a public place and engaged him in conversation by asking questions. Eventually, one of the officers asked appellant if they could frisk him. When he said "no," one officer grabbed appellant's arm. Because a reasonable person would not have felt free to leave at the point at which the officer asked to frisk appellant, we conclude appellant was seized at the time that request was made. Prior to the frisk request, the officers' interaction with appellant was more casual; it was not yet a seizure.

The issue becomes whether—at the time of the frisk request—the officers had reasonable, articulable suspicion that appellant was engaged in criminal activity. The record establishes that when the officer asked appellant to permit a search, the officers knew the following: (1) appellant was in a high-crime area and exited one of the buildings where criminal activity had recently occurred; (2) the time was around 10:00

p.m.; (3) appellant was wearing a quilted winter jacket when it was 60 degrees outside and other people nearby were wearing light-weight clothing, including shorts; (4) appellant was rigid and guarded and looked back and forth nervously while the officers talked to him; (5) appellant concealed his right hand and appeared to be using it to guard his waistband; (6) when appellant revealed his right hand after the officers asked him to, it was gloved but his left hand was not; and (7) appellant held his right arm six to eight inches away from his body in front of his waistband rather than just let it hang normally after displaying his hand to the officers. Based on these facts, we conclude that the officers had reasonable, articulable suspicion that appellant might be engaged in criminal activity and that the investigative stop was proper.

II.

The next issue is whether the officers were justified in frisking appellant. An officer may frisk a lawfully stopped person if the officer reasonably believes that the person might be armed and dangerous. *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884. Whether an officer reasonably believes this depends entirely on the facts. *Id*. at 30, 88 S. Ct. at 1884.

Here, appellant was nervous and positioned his right arm in front of his waistband as if he were trying to conceal or guard something after the officers asked to see his right hand. These facts alone would likely justify a frisk of appellant. Moreover, appellant was in a high-crime area, exited a building where criminal activity had recently occurred, wore a glove on only his right hand, and despite mild weather wore a bulky jacket that could easily conceal a weapon. These additional facts make the conclusion that appellant

might be armed and dangerous even more reasonable. We conclude the frisk of appellant was lawful.

Affirmed.

Dated: