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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0557
A13-0558

State of Minnesota,
Respondent,

vs.

Veronica Jakab,
Appellant (A13-0557),

Geba Bogdanov,
Appellant (A13-0558).

Filed January 21, 2014
Affirmed
Bjorkman, Judge

Ramsey County District Court
File No. 62-CR-11-7159

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Charles L. Hawkins, Minneapolis, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and Stauber, Judge.

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

BJORKMAN, Judge

Appellants challenge their convictions of aiding and abetting receiving stolen property and possession of burglary tools. Appellants argue that the district court erred by denying their motions to suppress evidence obtained during the search of their vehicle. We affirm.

FACTS

On September 2, 2011, T.F., an employee of Now Bikes and Fitness in Arden Hills, received an e-mail from the company's corporate office about a string of thefts from another bike store chain in Minnesota and Wisconsin. The e-mail described the two suspects (a man and a woman), their method of hiding merchandise under the woman's skirt, the vehicle they drove, and the items stolen. The e-mail also included a photo of the two suspects.

Later that day, T.F. observed a man and a woman enter the store and believed they were the same individuals in the e-mailed photo. He attempted to monitor them as they moved around the store but was unable to maintain constant sight of both. The individuals left the store without purchasing anything and drove away. T.F. then called 911 and reported a theft. He also described the suspects' vehicle, including a complete license-plate number.

Roseville Police Officer Maia Gardner heard the report through dispatch and observed the suspects' vehicle in a nearby parking lot. She activated her emergency lights and pulled behind the vehicle. The vehicle moved into a parking spot, and a man

and a woman exited the vehicle and began walking away in separate directions. Officer Gardner ordered them back to the car multiple times before they complied. Officer Gardner saw them making furtive movements in the vehicle and became concerned for her safety. She decided to separate them while waiting for Ramsey County Sheriff's Deputies to arrive, so she removed the woman from the vehicle and conducted a pat-down search. During the search, Officer Gardner observed that the woman was wearing multiple thick, long skirts with slits and large pockets and capri pants underneath. Officer Gardner concluded that the skirts were theft tools, seized the skirts, and placed the woman in the back of her squad car.

Deputy Michael Servatka arrived shortly thereafter with T.F., who identified the suspects as the individuals he saw in his store. Officer Gardner and Deputy Servatka identified the suspects as appellants Geba Bogdanov and Veronica Jakab,[1] residents of Illinois. The officers also determined that the vehicle appellants were driving was rented. When the officers looked through the windows of the vehicle, they saw multiple full black garbage bags partially covered by a large black cloth in the rear of the vehicle, with at least one price tag sticking out of one of the bags. Deputy Servatka arrested appellants and called for a tow truck.

While waiting for the truck, the officers opened the rear of appellants' vehicle, moved the black cloth, and moved some of the bags around, then decided to stop and

[1] Appellants have since married, and Veronica Jakab now is known as Veronica Bogdanov.

obtain a search warrant. After doing so, they searched the vehicle and discovered more than $25,000 in stolen merchandise.

Both appellants were charged with aiding and abetting receiving stolen property, and Jakab was charged with possession of theft tools. Appellants moved to suppress the evidence obtained from their vehicle. After a joint *Rasmussen* hearing, the district court denied the motions. Appellants waived their right to a jury trial and submitted the charges to the district court on stipulated facts pursuant to Minn. R. Crim. P. 26.01, subd. 3. The district court found appellants guilty of all charges. These consolidated appeals follow.

D E C I S I O N

When reviewing a pretrial suppression order, we independently review the facts to determine whether, as a matter of law, the district court erred in not suppressing the evidence. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court's factual findings for clear error and defer to its credibility determinations. *State v. Klamar*, 823 N.W.2d 687, 691 (Minn. App. 2012). But we review legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009).

Appellants argue that the pat-down search of Jakab and their warrantless arrests were unlawful and that the subsequent search of their vehicle was therefore also unlawful, requiring suppression of the evidence seized during the search. We address each argument in turn.

I. The pat search of Jakab was valid.

A police officer may conduct a limited pat search for weapons of a lawfully stopped person when the officer has reasonable grounds to believe the person may be armed and dangerous. *State v. Payne*, 406 N.W.2d 511, 513 (Minn. 1987) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868 (1968)). The principle justification for conducting a pat search is officer safety. *State v. Varnado*, 582 N.W.2d 886, 891 (Minn. 1998). The officer does not need to be certain the suspect is armed; rather, a pat search is permitted when a reasonably prudent person in the officer's circumstances would believe he or she was in danger. *Terry*, 392 U.S. at 27, 88 S. Ct. at 1883. A suspect's furtive movements may justify a *Terry* pat search. *See State v. Flowers*, 734 N.W.2d 239, 252 (Minn. 2007).

Officer Gardner testified that when appellants eventually returned to their vehicle, she observed them making "furtive movements" and noted that they seemed "very nervous." She decided "to remove the female passenger to conduct a *Terry* search to make sure there were no weapons in the vehicle for my safety." Jakab argues that this testimony cannot justify the *Terry* search because Officer Gardner did not include any references to officer-safety concerns in her incident report and mentioned them for the first time at the *Rasmussen* hearing. We are not persuaded. Jakab thoroughly cross-examined Officer Gardner on apparent discrepancies between her report and her testimony. The district court considered all of Officer Gardner's testimony and expressly found her credible. We will not second-guess that determination on appeal. *See Klamar*, 823 N.W.2d at 691.

Jakab also argues that Officer Gardner's act of removing Jakab's skirts exceeded the proper scope of a *Terry* search. We disagree. A *Terry* search "must be strictly limited to that which is necessary for the discovery of weapons which might be used to harm the officer or others nearby." *Minnesota v. Dickerson*, 508 U.S. 366, 373, 113 S. Ct. 2130, 2136 (1993) (quotation omitted). But if an officer lawfully conducting a *Terry* search sees or feels an item, the incriminating character of which is immediately apparent, the officer may confiscate the item. *Id.* at 375-77, 113 S. Ct. at 2137-38; *see also State v. Krenik*, 774 N.W.2d 178, 185 (Minn. App. 2009) (clarifying that the officer need not be immediately certain of the object's identity but need only have probable cause to believe it is contraband), *review denied* (Minn. Jan. 27, 2010). Officer Gardner began her search with a standard "open hand" pat-down of Jakab's person, feeling for weapons or sharp objects. Based on her visual observations and the feel of the outside of Jakab's clothing, Officer Gardner knew that Jakab was wearing multiple heavy skirts; that the top skirt was long and slitted, with a tie waist; and that the underskirt had large, wide pockets and tied underneath the top skirt like an apron. Based on her experience, the warm weather that made such heavy clothing unsuitable and the report that Jakab was suspected of theft, Officer Gardner determined that the skirts she saw and felt were theft tools. Because the plain look and feel of Jakab's skirts indicated their criminal purpose, we conclude Officer Gardner lawfully confiscated them.

II. Appellants' warrantless arrests were valid.

A warrantless arrest is lawful if it is supported by probable cause. *State v. Williams*, 794 N.W.2d 867, 871 (Minn. 2011). Probable cause exists if a person of

ordinary care and prudence would, based on the objective facts, entertain "an honest and strong suspicion" that a specific individual committed a crime. *Id.* (quotation omitted). "In applying this test, a court should not be unduly technical and should view the circumstances in light of the whole of the arresting officer's police experience as of the time of the arrest." *State v. Carlson*, 267 N.W.2d 170, 174 (Minn. 1978). Information acquired through regular police channels can be used to support probable cause regardless of whether the arresting officer knows the underlying basis of the official suspicion. *State v. Cavegn*, 294 N.W.2d 717, 721 (Minn. 1980).

Police possessed the following information when they arrested appellants. Appellants' physical appearance, attire, and vehicle matched the description of the individuals whom Now Bikes and Fitness representatives suspected of theft. When Officer Gardner stopped appellants, they sought to flee, neither had a driver's license or other identification, and Jakab originally identified herself with a name that was not her legal name (Veronica Bogdanov). Jakab's layered clothing was inappropriate for the warm weather and highly consistent with use as a theft tool. And there were many large, full black trash bags plainly visible in the back of appellants' vehicle, and Deputy Servatka saw at least one price tag sticking out of one of the bags. Viewed as a whole, this information amply establishes probable cause to believe Jakab possessed theft tools and both appellants had committed a theft-related crime.

Appellants contend that these facts do not justify a warrantless arrest because police did not know the value of the merchandise in their vehicle and therefore lacked probable cause to believe appellants had committed a felony. *See* Minn. Stat. § 629.34,

subd. 1(c) (2010) (authorizing warrantless arrest for felony offense committed outside officer's presence). We are not persuaded. First, as noted above, police had probable cause to believe that Jakab possessed a theft tool, which is a felony offense. *See* Minn. Stat. § 609.59 (2010). Second, various facts indicated that appellants were involved in a felony-level theft offense. The information from Now Bikes and Fitness indicated recent thefts of numerous items, including a wetsuit and "entire racks of premium cycling shorts." Appellants' vehicle contained numerous full black trash bags, which appeared to hold merchandise and which appellants had attempted to conceal with a cloth. And Deputy Servatka testified that appellants' evasiveness, use of a rental vehicle, and the fact that they were from out of town were consistent with his experience with theft rings. Considered together, these facts amply support an "honest and strong suspicion" that appellants stole property or knowingly possessed stolen property worth more than $1,000. *See* Minn. Stat. §§ 609.52, subd. 3(3), (5) (providing that theft of more than $1,000 in property is a felony and permitting aggregation of multiple lesser thefts in a six-month period), .53, subd. 1 (criminalizing receiving stolen property) (2010). Accordingly, appellants' challenges to their warrantless arrests fail.

III. The warrant authorizing the search of appellants' vehicle was lawful.

Evidence that police obtain "by exploitation of" unlawful conduct must be suppressed as "fruit of the poisonous tree." *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 417 (1963). But evidence that is obtained by separate lawful means, or by means "sufficiently distinguishable to be purged of the primary taint," need not be suppressed. *Id.*; *see also State v. Hodges*, 287 N.W.2d 413, 416 (Minn. 1979) (holding

that warrant issued based on sufficient lawfully obtained information is not invalidated by intervening illegal conduct).

Appellants argue that the evidence seized from their vehicle was "obtained after the warrantless arrests" and therefore must be suppressed. We disagree. Police conducted a valid *Terry* search of Jakab; they lawfully arrested appellants based on ample evidence establishing probable cause to believe Jakab knowingly possessed a theft tool and that both appellants were involved in a felony-level theft offense; and they lawfully searched appellants' vehicle pursuant to a warrant issued based on the same probable cause that justified their arrests. Accordingly, we conclude the district court did not err by denying appellants' motions to suppress the evidence obtained from their vehicle.

Affirmed.