STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0449

State of Minnesota,
Respondent,

vs.

Frank Irving Wiggins,
Appellant.

Filed March 20, 2017
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CR-15-12814

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

Michael O. Freeman, Hennepin County Attorney, Cheri A. Townsend, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rochelle R. Winn, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Larkin, Judge; and Reyes, Judge.

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

CONNOLLY, Judge

Appellant contends that the district court erred by denying his suppression motion, arguing that a police officer had neither reasonable suspicion of criminal activity nor reasonable suspicion that appellant was armed and dangerous to justify a stop and a pat-search of appellant. Because the district court did not err by determining that both the stop and the pat-search were supported by reasonable suspicion, we affirm.

FACTS

Respondent State of Minnesota charged appellant Frank Irving Wiggins with possession of a pistol in violation of Minn. Stat. § 624.713, subd. 1(2) (2014). Appellant does not challenge his ineligibility to possess a pistol, nor does he contest that he illegally possessed a pistol. Rather, appellant challenges the stop and subsequent search.

On May 11, 2015 around 3:00 a.m., a police officer observed appellant in a residential neighborhood walking through the grass towards the sidewalk and away from an area of detached garages. The officer was familiar with the neighborhood and noticed that one of the garage doors was open, which was atypical. He also noticed that appellant was wearing a heavy coat. The officer found this odd, as he thought it was warm enough to wear his short-sleeved uniform. Appellant also appeared to have items of clothing hanging around his waist. Based on the time of night, the open garage door, and the general pattern of more frequent burglaries during warm weather, the officer decided to investigate the garage to see if it was vacant. In the garage, the officer observed a large amount of personal property, including bags of clothing.

The officer decided to stop appellant based on the potential burglary, appellant's unseasonably heavy coat, and appellant's proximity near the open garage so late at night. The officer activated his emergency lights and pulled up next to appellant. Appellant immediately raised his hands to shoulder level without being asked, which the officer understood to be an indication that appellant may have a weapon. The officer observed that appellant seemed nervous: he kept repeating that he was walking home from work at McDonald's and stepped off the sidewalk to relieve himself. The officer also indicated that appellant was cooperative and did not resist.

Because of appellant's nervousness, the possibility that appellant's heavy coat could conceal a weapon, and the officer's suspicion of burglary, which often involves a crowbar or weapon, the officer decided to conduct a protective pat-search for weapons. The officer felt a large, handgun-shaped bulge in the left rear pocket of appellant's pants, which he identified as a gun. The state subsequently charged appellant with possession of a pistol in violation of Minn. Stat. § 624.713, subd. 1(2).

Appellant filed a motion to suppress the pistol as fruit of an unlawful search, and the district court denied the motion. Appellant stipulated to the state's case to obtain review of the pretrial ruling. The district court found appellant guilty as charged and sentenced him to 60 months in prison. This appeal follows.

D E C I S I O N

This court generally reviews the district court's findings of fact for clear error. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). When we review a pretrial order on a motion to suppress where the facts are not in dispute, as here, we review the decision de novo and

"determine whether the police articulated an adequate basis for the search or seizure at issue." *State v. Flowers*, 734 N.W.2d 239, 247-48 (Minn. 2007). Both the United States and Minnesota Constitutions protect citizens against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. But if a police officer has a reasonable, articulable suspicion of criminal activity, that officer may initiate a limited, warrantless, investigative stop. *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992). If an officer "reasonably believes the suspect might be armed and dangerous," that officer may also conduct a pat-search of the suspect's outer clothing "in an attempt to discover weapons which might be used to assault him." *Id.* (quotation omitted).

Such reasonable beliefs must be based on "more than an unarticulated 'hunch;' the officer must be able to point to something that objectively supports his suspicion." *State v. Johnson*, 444 N.W.2d 824, 825-26 (Minn. 1989). This court considers the totality of the circumstances to determine "whether a reasonable, articulable suspicion exists from the perspective of a trained police officer, who may make inferences and deductions that might well elude an untrained person." *State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014) (quotation omitted). "[T]he reasonable suspicion standard is not high." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotation omitted). "The police may seize a person so long as the facts support at least one inference of the possibility of criminal activity." *State v. Klamar*, 823 N.W.2d 687, 693 (Minn. App. 2012) (quotation omitted).

The supreme court has held that "there are certain cases in which the right to conduct [a limited, protective weapons] frisk follows directly from the right to stop the person."

State v. Payne, 406 N.W.2d 511, 513 (Minn. 1987). The supreme court cited Professor LaFave, noting that lower courts have often found that the right to frisk follows directly "'whenever the suspect has been stopped for a type of crime for which the offender would likely be armed[,] including such suspected offenses as robbery [and] burglary.'" *Id.* (quoting 3 Wayne R. LaFave, *Search and Seizure* § 9.4(a), at 506 (2d ed. 1987)).

The state argues, and the district court found, that sufficient facts supported the officer's reasonable, articulable suspicion that criminal activity was afoot, therefore justifying the officer's stop of appellant. As described above, the officer noticed an open garage door that was usually closed at 3:00 a.m. and a person walking away from the vicinity of that garage in a heavy coat. The weight of the coat seemed unusual on a night in May. Additionally, the officer knew of a pattern of increased burglaries during warm weather. When the officer decided to look into the garage to see if it was vacant, he found it was filled with clothing items. Appellant appeared to have loose clothing hanging from his waist. Because all of these facts taken in combination could support an inference of the possibility of criminal activity, and because together they formed the officer's particularized and objective suspicion of criminal activity, the officer's stop of appellant was justified. *See Klamar*, 823 N.W.2d at 693.

The state also argues, and the district court found, that sufficient facts supported the officer's reasonable, articulable suspicion that appellant was armed and dangerous, therefore justifying the officer's pat-search of appellant. The officer testified that appellant behaved nervously once stopped. While nervousness alone is insufficient to justify a pat-search, the officer did not rely on appellant's nervousness alone. *See State v. Syhavong*,

661 N.W.2d 278, 282 (Minn. App. 2003) (holding that nervousness "must be coupled with other particularized and objective facts" to justify a pat-search). Here, the officer had a reasonable suspicion that criminal activity was afoot; specifically, the officer suspected a burglary. Burglaries often require burglary tools, and sometimes involve weapons. Such items can be concealed by heavy winter coats. Indeed, the officer testified that, based on his training and experience, he understood that "people wear heavy clothing to conceal items, whether it's weapons or, in this case, as I was investigating [a] possible burglary. It's typically used for that purpose, too, but generally weapons." Officers are entitled to rely on their training and experience to make inferences and deductions, and here the officer did so to infer the potential for weapons, or items that could be used as weapons, concealed under appellant's heavy winter coat. *See Lemert*, 843 N.W.2d at 230.

Appellant argues that the record shows he did not resist and, in fact, cooperated, which the officer confirmed in his testimony. And as soon as the officer stopped appellant, appellant put his hands in the air, though he was not asked to do so. There are numerous possible interpretations of this action, and we do not consider it in the totality of the circumstances here. But the totality of the circumstances, when considering the other factors, supports the officer's reasonable, articulable suspicion that appellant was armed and dangerous. When considering appellant's nervousness in combination with the officer's suspicion of burglary and the plausible potential for concealed weapons under an unseasonably heavy coat, we conclude that the officer had a reasonable, articulable suspicion that appellant was armed and dangerous to justify a pat-search of appellant.

In sum, the officer had reasonable, articulable suspicions that criminal activity was afoot and that appellant was armed and dangerous. Because the officer's stop and pat-search of appellant were justified, we conclude that the district court did not err by denying appellant's motion to suppress.

Affirmed.