STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1797

State of Minnesota,
Respondent,

vs.

Maurice Lamont Eaton,
Appellant.

Filed February 13, 2012
Affirmed
Wright, Judge

Ramsey County District Court
File No. 62-CR-09-196

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

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

Ira W. Whitlock, Whitlock Law Office, LLC, St. Paul, Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Collins, Judge.*

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

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

WRIGHT, Judge

Appellant challenges his conviction of second-degree sale of a controlled substance, a violation of Minn. Stat. § 152.022, subd. 1(1) (2008). Appellant argues that the district court erred by denying his motion to suppress evidence and dismiss the charge because the arresting officer lacked a reasonable, articulable suspicion of criminal activity to conduct an investigative stop and probable cause to arrest him for a controlled-substance offense. He also asserts that he was deprived of his right to a fair trial because the district court erroneously limited the scope of the initial suppression hearing. We affirm.

FACTS

On December 3, 2008, St. Paul Police Officer Michael Herschman was seated in a parked, unmarked vehicle near the corner of University Avenue and Galtier Street in St. Paul when he observed a man enter the passenger side of a Suburban parked nearby that was occupied by a man sitting in the driver's seat. The two men interacted in a manner that is consistent with a controlled-substance transaction. Shortly thereafter, the passenger left the Suburban and drove away in a separate vehicle. Officer Herschman advised other officers of what he had observed, gave them his location and a description of the suspects' vehicles, and requested assistance investigating both vehicles.

Responding to Officer Herschman's request, St. Paul Police Officer Paul Cottingham drove to the parked Suburban and activated his emergency lights. As Officer Cottingham walked toward the Suburban, both Officer Herschman and Officer

Cottingham observed the driver make furtive movements. Concerned that the driver was reaching for a weapon, Officer Cottingham drew his gun and directed the driver to show his hands and exit the vehicle. The driver complied, and Officer Cottingham handcuffed him. In response to Officer Cottingham's questions before conducting a pat-down search, the driver admitted that he was hiding heroin in his underwear. Officer Cottingham recovered 4.98 grams of heroin and money prior to arresting the driver.

The driver, appellant Maurice Lamont Eaton, was charged with second-degree sale of a controlled substance. Eaton moved to suppress the evidence seized from him and to dismiss the charge, alleging that the police stopped, searched, and arrested him in violation of his constitutional right to be free from an unreasonable search and seizure. Officer Herschman was the sole witness at the suppression hearing held on May 27, 2009. Near the end of the hearing, the parties disputed whether the scope of the suppression hearing was limited to Eaton's challenge of the investigative stop or whether the suppression motion included a challenge to Eaton's arrest. Concluding that Eaton's challenge was limited to the investigative stop, the district court ruled only on the validity of the stop. In doing so, the district court held that Officer Herschman's observations established a reasonable, articulable suspicion that Eaton had engaged in a controlled-substance transaction, which was sufficient to authorize a limited investigative stop. The district court denied Eaton's suppression motion on this ground.

Eaton moved for reconsideration of the district court's ruling as to the limited nature of Eaton's challenge, which the district court granted in order to permit Eaton to challenge his arrest. Following a second suppression hearing on October 13, 2009, at

which Officer Cottingham testified, the district court concluded that Officer Cottingham had probable cause to arrest Eaton and denied Eaton's suppression motion on this additional basis. This appeal followed.

D E C I S I O N

I.

Eaton argues that the district court erroneously denied his suppression motion because he was seized by Officer Cottingham without the existence of a reasonable, articulable suspicion of criminal activity and arrested without probable cause, in violation of the United States and Minnesota constitutions. When reviewing a pretrial order denying a motion to suppress evidence, we review the facts for clear error and determine as a matter of law whether the evidence must be suppressed. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992). When the facts are not in dispute, we determine whether the police officer's actions constitute a seizure and, if so, whether the officer articulated an adequate basis for the seizure. *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999).

The Fourth Amendment to the United States Constitution and Article I, Section 10, of the Minnesota Constitution protect against unreasonable searches and seizures. Here, the state does not contest that Officer Cottingham's encounter with Eaton constituted a seizure. To justify a seizure, the police must have a reasonable, articulable suspicion of criminal activity at the moment a person is seized. *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968); *see also State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). "'[I]nnocent' factors in their totality, combined with the investigating officer's experience," can be sufficient to establish reasonable suspicion. *State v.*

Martinson, 581 N.W.2d 846, 852 (Minn. 1998) (quotation omitted). Eaton contends that Officer Herschman did not have a reasonable suspicion of criminal activity to justify a seizure because Officer Herschman "could not see contraband exchanging hands."

The undisputed evidence establishes that Officer Herschman was conducting surveillance in an area where the police had received complaints of drug trafficking activity. He testified that he observed an individual enter the passenger side of Eaton's parked Suburban; the two vehicle occupants talked, leaned toward the vehicle's center console, and handled an imperceptible object. Approximately 30 seconds later, the passenger left the Suburban, entered another vehicle, and drove away. At the time of his observations, Officer Herschman had more than seven years of experience as a police officer, during which he served for approximately 18 months as a member of the Narcotics Vice Response Team, where he received specialized narcotics and undercover-operations training and investigated "hundreds" of narcotics transactions. Based on his training and experience, Officer Herschman testified, Eaton's behavior was consistent with a narcotics transaction. Specifically, Eaton's behavior was consistent with the inspection, bargaining, and exchange of money involved during a narcotics transaction in a vehicle, which is the location where many narcotics transactions occur. The district court credited this evidence. Officer Herschman's observations, together with his extensive experience with narcotics investigations and his knowledge of the area for its drug-trafficking activity, amply establish that Officer Herschman possessed a reasonable, articulable suspicion that Eaton was engaged in criminal activity so as to justify an investigative seizure.

Eaton argues that suppression of the heroin is warranted because Officer Cottingham, who conducted the investigative stop, did not personally possess the requisite reasonable, articulable suspicion of criminal activity. This argument is unavailing. We consider the totality of the circumstances, including the *collective* knowledge of all investigating officers, to determine whether reasonable, articulable suspicion existed. *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448-49 (Minn. App. 2005), *review denied* (Minn. June 28, 2005). Under the collective-knowledge doctrine, "the *entire* knowledge of the police force is pooled and imputed to the arresting officer for the purpose of determining if sufficient probable cause exists for an arrest." *State v. Conaway*, 319 N.W.2d 35, 40 (Minn. 1982); *accord Olson v. Comm'r of Pub. Safety*, 371 N.W.2d 552, 555-56 (Minn. 1985) (recognizing that collective knowledge of officer and dispatcher may provide reasonable, articulable suspicion of criminal activity). When Officer Herschman requested assistance in investigating a possible narcotics transaction, he advised other officers, including Officer Cottingham, of his location and "[e]xactly what [he] had seen." Officer Cottingham testified that, before encountering Eaton, he received information from Officer Herschman as to the location of a hand-to-hand, controlled-substance transaction, including a description of the vehicles involved. Under the collective-knowledge doctrine, Officer Herschman's reasonable, articulable suspicion of Eaton's criminal activity is imputed to Officer Cottingham.

To the extent that Eaton also challenges the constitutionality of his arrest, the collective knowledge of Officers Herschman and Cottingham at the time of the stop also

established probable cause to arrest Eaton.[1] Moreover, the record reflects that, before he conducted a pat-down search, Officer Cottingham asked Eaton whether he had "anything illegal, any contraband, guns, drugs, knives, anything sharp that could hurt [the officer]?" Eaton replied, "[Y]eah. You're going to find it anyway." This admission occurred before Eaton or his vehicle was searched and before his arrest. *See In re Welfare of G.M.*, 560 N.W.2d 687, 692 (Minn. 1997) ("Once police have reasonable suspicion to stop a person, *Terry* allows the police to conduct a pat-down search of the person without either probable cause or a warrant." (citing *Terry*, 392 U.S. at 24, 88 S. Ct. at 1881)). Although Eaton admitted possessing heroin after he was handcuffed, police may restrain a suspect in certain situations for safety reasons. *See State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999) (stating that "briefly handcuffing a suspect while the police sort out the scene of an investigation does not per se transform an investigatory detention into an arrest"); *State v. Moffatt*, 450 N.W.2d 116, 120 (Minn. 1990) (holding that suspect may be detained temporarily and lack the freedom to leave without being under arrest and observing that it "would have been foolish" for officers not to detain suspects who may have had weapons); *see also State v. Askerooth*, 681 N.W.2d 353, 366-67 n.10 (Minn.

[1] In *State v. Hawkins*, we concluded that the police had probable cause to arrest the defendant based on the arresting officer's observation of the defendant riding a bicycle around an intersection for 15 minutes, whistling and waving at approaching vehicles, and conducting what appeared to be hand-to-hand transactions with other individuals. 622 N.W.2d 576, 581 (Minn. App. 2001). As here, the officer in *Hawkins* testified that he could not see whether the defendant had anything in his hand or whether anything was exchanged. *Id.* at 578. But the officer testified that the defendant's conduct was consistent with that of a person engaging in illegal drug sales. *Id.* at 581. For example, whistling is a common way for narcotics dealers to alert others that they are selling narcotics, and the defendant's behavior was consistent with a controlled-substance transaction. *Id.*

2004) (acknowledging that detention may be reasonable in dangerous situations); *State v. Herem*, 384 N.W.2d 880, 883 (Minn. 1986) (holding that confining defendant in squad car did not constitute an arrest; rather, it "seem[ed] only prudent under the circumstances"). Here, both Officer Herschman and Officer Cottingham observed Eaton arch his back and move his hand toward the lower part of his back as Officer Cottingham approached. Officer Cottingham testified that he was concerned that Eaton was reaching for a weapon. Under the circumstances presented here, handcuffing Eaton for safety purposes was reasonable and it did not constitute a de facto arrest.

In sum, the record contains ample evidence establishing that, based on their collective knowledge, the police officers possessed a reasonable, articulable suspicion of criminal activity that justified the decision to stop and investigate Eaton; and Eaton's arrest after he admitted possessing heroin was supported by probable cause to believe that he had committed a controlled-substance offense. Because the district court's decision to deny Eaton's suppression motion is legally sound, Eaton is not entitled to relief on this ground.

II.

Eaton argues that he is entitled to a new trial because the district court erroneously limited the first suppression hearing to address only the issue of the investigative stop. But he does not dispute that, after the second suppression hearing, which he requested, all of the bases for his suppression motion had been adjudicated before trial. "Due process guarantees in our state and federal constitutions include the right to a fair trial." *Spann v. State*, 704 N.W.2d 486, 493 (Minn. 2005).

The district court limited the first suppression hearing to the issue of the investigative stop based, in part, on defense counsel's representations to the district court at an April 2, 2009 pretrial hearing. An appellant is responsible for supplying a sufficient record on appeal to permit our review of the issues raised. *State v. Taylor*, 650 N.W.2d 190, 204 n.12 (Minn. 2002). Because the record before us does not contain a transcript of the April 2 hearing, we are unable to review this aspect of the district court's decision. But even *if* the district court erred by deciding to limit the first suppression hearing to the constitutional challenge of the investigative stop, Eaton is entitled to relief only if such error were prejudicial. *See State v. Ortlepp*, 363 N.W.2d 39, 42 (Minn. 1985) (holding that defendant is not entitled to relief because he was not prejudiced by lack of omnibus hearing); *State v. White*, 295 Minn. 217, 225, 203 N.W.2d 852, 858 (1973) (observing that "[j]ustice does not demand an error-free trial, for the crucial inquiry is whether, considering the record as a whole, the error was prejudicial to the result"); *State v. Mitchell*, 268 Minn. 513, 521, 130 N.W.2d 128, 133 (1964) (observing that "not every error that occurs in a trial is prejudicial"). It is within a district court's discretion to reopen an omnibus hearing and reconsider omnibus rulings, which "may be the most efficient and preferable course of action [and] can spare parties the time, trouble, and expense of an appeal." *State v. Papadakis*, 643 N.W.2d 349, 356-57 (Minn. App. 2002).

Here, Eaton sought the district court's procedural ruling that he now challenges on appeal. Eaton moved the district court to reopen the record and reconsider his motion to suppress the evidence on an additional ground. The district court granted Eaton's motion. In order "[t]o avoid an unfair or unjust result to [Eaton]," the district court held a

second suppression hearing to address Eaton's challenge to his arrest. The district court subsequently ruled that the arrest did not violate Eaton's constitutional rights. *See* Part I, *supra*. Any error committed by limiting the scope of the first suppression hearing was remedied by the district court's decision to grant Eaton's motion and hold a second suppression hearing. Indeed, Eaton fails to identify any error or prejudice arising from the district court's decision to grant the very relief he sought.

Affirmed.