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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-65**

State of Minnesota,
Respondent,

vs.

Smokie Hamilton Johnson,
Appellant.

**Filed February 6, 2012
Affirmed
Ross, Judge**

Ramsey County District Court
File No. 62-CR-10-3805

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney,
Sonja Beddow (certified student attorney), St. Paul, Minnesota (for respondent)

Seamus R. Mahoney, St. Paul, Minnesota (for appellant)

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

UNPUBLISHED OPINION

ROSS, Judge

While police investigated the report of a street fight, they searched Smokie
Hamilton Johnson and found him to be in possession of a firearm as an ineligible person.

A witness had reported that two females were fighting in the middle of the street and that one of them entered a red pickup truck. The responding officer stopped Johnson's red Suburban as it travelled away from people standing in the middle of the street. Johnson appeals from his gun-possession conviction, arguing that the police unconstitutionally stopped his Suburban. Because the officer had a reasonable suspicion to conduct the investigatory stop, we affirm.

FACTS

Shortly after 10 p.m. on May 14, 2010, St. Paul police received a report that two women were fighting near the intersection of Payne Avenue and Tedesco Street. Officer Thomas Diaz arrived almost immediately, and the dispatcher informed him that the women had been separated and one of them had gotten into a red pickup truck. Officer Diaz saw a red Suburban driving south on Bedford Street toward the intersection of Bedford and Payne, the intersection immediately northeast of the intersection of Payne and Tedesco. Officer Diaz also saw a group of people standing in the middle of Bedford Street 50 to 100 feet to the north of the southbound Suburban. He suspected that the people in the street were the ones involved in the fight and that the red Suburban was the truck described by the dispatcher.

Officer Diaz stopped the Suburban to determine whether anyone inside was involved in the fight. Officer Diaz approached and saw that the driver, Smokie Johnson, was male and that the front passenger seat was empty. But he could not see if anyone else was inside. Officer Diaz also could not see Johnson's hands, so he asked him to place them on the steering wheel.

Johnson immediately asked Officer Diaz why he had been stopped. Officer Diaz told him that he was investigating a fight and that he needed to talk to Johnson to verify whether he was involved. He asked Johnson to produce his driver's license, but Johnson refused. Johnson became more agitated and angry, and he began moving around in the driver's seat. Officer Michael Tschida arrived and Johnson continued to refuse to provide his license or his name and date of birth. He removed his hands from the steering wheel and reached down toward the center console. Officer Diaz became more concerned about his safety, so he asked Johnson to step out of his car.

Johnson complied but argued more about being stopped. He interrupted the officer's attempted explanation. Because Officer Diaz was concerned about interacting with an agitated and argumentative man who refused to allow himself to be identified, he decided to conduct a pat search before continuing. He asked Johnson to put his hands on his head. Johnson initially complied but then turned from Officer Diaz towards Officer Tschida and began to lower his hands. Officer Diaz grabbed Johnson's hands and told him again to put them on his head, but Johnson tensed and resisted. Increasingly concerned for his safety, Officer Diaz put Johnson in handcuffs to conduct a *Terry* pat-down check for weapons. Officer Tschida also grabbed Johnson's left arm to assist, and he felt what he believed to be a gun on Johnson's left side. He asked Johnson if it was a gun, and Johnson said yes.

The officers removed a Smith and Wesson handgun from a shoulder holster Johnson wore under his clothing. Officer Diaz identified Johnson and learned that he was a convicted felon. He therefore arrested Johnson, and the state charged him with illegal

possession of a firearm in violation of Minnesota Statutes section 624.713, subdivision 1 (2010). The time between the dispatcher's initial call and Johnson's arrest was eight minutes.

Johnson moved the district court to suppress the firearm evidence on the ground that Officer Diaz illegally stopped his Suburban. The district court denied the motion. Johnson waived his right to a jury trial and submitted the case to the district court on stipulated facts, preserving for appeal his challenge to the stop. *See State v. Lothenbach*, 296 N.W.2d 854, 857–58 (Minn. 1980); Minn. R. Crim. P. 26.01, subd. 4. The district court found Johnson guilty and sentenced him. Johnson appeals.

D E C I S I O N

Johnson contests his conviction by challenging the district court's ruling on the traffic stop that preceded it. When we review a district court's pretrial suppression ruling on undisputed facts, we consider the facts independently and determine as a matter of law whether the challenged evidence should have been suppressed. *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992).

Both the United States and the Minnesota constitutions prohibit the state from conducting unreasonable seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may, however, without violating a person's constitutional right to be free of unreasonable seizures, conduct a brief, investigatory stop when he has a reasonable, articulable suspicion of criminal activity. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct 1868, 1884 (1968)). This is not a high standard. *Id.* And “we recognize that trained law enforcement officers may

interpret circumstances using inferences and deductions beyond the competence of untrained persons.” *State v. Wiggins*, 788 N.W.2d 509, 513 (Minn. App. 2010).

Johnson argues that the basis for Officer Diaz’s investigatory stop was inadequate. He contends that Officer Diaz had a particular description of both the offenders (females fighting) and the vehicle (a red pickup truck) and ignored those particulars to stop and detain him, a male in a red Suburban. But an exact match between the description and the stopped vehicle is not necessary to render an investigatory stop lawful. *See State v. Yang*, 774 N.W.2d 539, 549, 552 (Minn. 2009) (holding that officer reasonably stopped a dark blue Honda Civic hatchback based on a description of a black Honda Accord); *State v. Waddell*, 655 N.W.2d 803, 809–10 (Minn. 2003) (holding that officer reasonably stopped a gray vehicle when the suspect vehicle was described as blue or black). The district court found that it is not uncommon for individuals to refer to a sport utility vehicle as a “truck.” And a reasonable officer could surmise that an ordinary caller might easily mistake a red Suburban for a red pickup truck with a topper. A reasonable officer also would not narrowly construe the words of an emergency report by an onlooker relayed through a dispatcher so as to restrict his initial investigation. As Officer Diaz testified from his experience, “[P]eople don’t see what they think they see sometimes.” We hold that Johnson’s red Suburban was sufficiently similar to the description of the identified vehicle so that it was not unreasonable for Officer Diaz to stop it.

It is also true that a witness reported that two females were involved in a fight and that Johnson is male. But a reasonable officer beginning an investigation after a reported fight would not necessarily limit his inquiry to talking with women; he would recognize

that, despite the dispatcher's limited information, others may have been involved in the reported fight or be material witnesses to it, and the circumstances of the fight might go beyond what the caller observed or reported. Even if this were not so, when Officer Diaz decided to stop Johnson's Suburban, he did not know how many people were inside or whether they were male or female. And he testified that although he could eventually see that the stopped Suburban was driven by a male, he was still unsure whether someone else—possibly a woman—was also inside.

Johnson further contends that Officer Diaz lacked an adequate basis for the stop because it did not occur at the specific intersection of the reported fight. But an objective, reasonable officer would understand that people and vehicles are mobile and that descriptions of locations, like descriptions of cars and people, may not have been reported in a timely fashion or with precision and accuracy. The Constitution does not prevent an officer headed to the reported center of a fluid and unknown incident from engaging with suspicious elements on the way and in relatively close proximity. The district court found that the location of the reported fight was close to the location of the stop and in the same area. Officer Tschida testified that since the intersections were literally only a stone's throw from each other and Bedford is a less prominent street, someone reporting the fight might refer to the broader area, including the intersection of the stop, simply as Payne and Tedesco.

We recognize that Johnson's Suburban was headed toward the intersection of Payne and Tedesco rather than away when the officer stopped it. But Officer Diaz observed several people standing in the street behind the Suburban, and he had no reason

to rule out their possible involvement in the conflict or the Suburban's involvement with them.

An officer conducting a *Terry* stop may lawfully direct a person to provide identification, and if it were not for Johnson's combative response, the challenged investigatory stop here would have been only a minor intrusion before Officer Diaz identified Johnson and resolved whether he or any passengers were involved. *See State v. White*, 489 N.W.2d 792, 793 (Minn. 1992). ("The United States Supreme Court and this court have consistently ruled that in the course of a *Terry* stop police may direct a person to provide identification.") Considering the totality of the circumstances, we hold that Officer Diaz had a reasonable basis to stop the red Suburban and to identify Johnson, and that the evidence obtained after Johnson acted suspiciously and combatively was admissible to prove that he illegally possessed a firearm.

Affirmed.