STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1362

State of Minnesota,
Respondent,

vs.

Antonio Depreese Arnold,
Appellant.

Filed May 28, 2013
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CR-11-27425

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

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

David W. Merchant, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Worke, Judge; and Larkin, Judge.

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

LARKIN, Judge

Appellant challenges his conviction of prohibited person in possession of a firearm, arguing that the district court erred by denying his motion to suppress evidence on constitutional grounds and by allowing the jury to hear evidence regarding a witness's fear of testifying. We discern no error in the district court's rulings and therefore affirm.

FACTS

On July 27, 2011, Minneapolis police officers responded to a shooting near the intersection of 21st and Penn Avenues North. An individual had been shot in the back. A witness at the scene informed the police that a Mitsubishi Diamante automobile was involved with the shooting. The witness provided the police with the Mitsubishi's license plate number and informed them that the vehicle was driven by a white female and that there were three black male passengers in the car. A police sergeant entered the vehicle information into a "KOPS" alert to inform other officers that the vehicle had been involved in a shooting.[1]

The following day, officers spotted the vehicle about ten blocks from the area of the shooting. One of the officers who observed the vehicle was aware of the KOPS alert and had also independently learned about the vehicle and its involvement in the shooting from other officers. The officers observed that a white female was driving and that there were three black male passengers. Four squad cars were called to the scene. Officers

[1] The record indicates that "KOPS" is an alert system that notifies police of vehicles or individuals that might present "potentially unsafe situations."

activated the emergency lights on their vehicles to stop the Mitsubishi and then ordered its occupants out at gunpoint. As the occupants got out of the Mitsubishi, one of them told the officers that there was a gun in the car. The officers handcuffed all of the occupants and put them into the back of squad cars. Next, the officers searched the Mitsubishi and found a pistol under the driver's seat, which would have been within reach of the rear driver-side passenger. Officers arrested that passenger, appellant Antonio Depreese Arnold, for possession of the pistol. They searched Arnold and found shell casings on his person. Respondent State of Minnesota subsequently charged Arnold with prohibited person in possession of a firearm.

Prior to trial, Arnold moved the district court to suppress the firearm and ammunition, contending that the police lacked reasonable, articulable suspicion to stop the vehicle and that Arnold's placement in a squad car after the initial stop constituted an illegal arrest. After a hearing, during which two police officers testified, the court ruled that the stop was justified and that Arnold was not arrested when he was handcuffed and placed in the squad car.

At trial, the state called N.K., the driver of the Mitsubishi, to testify. N.K. testified that when she picked Arnold up on July 28, he was carrying a gun inside a gym bag. After testifying that she and her passengers stopped at a Wal-Mart without making a purchase, N.K. acknowledged that she had previously told the prosecutor that Arnold purchased bullets at Wal-Mart. N.K. then testified that she was nervous and scared. Over Arnold's objection, the following exchange occurred:

PROSECUTOR: Could you tell us why you are feeling a little scared?
. . . .
N.K.: I just don't know the outcome of this. That's why.
PROSECUTOR: Concerned for yourself?
N.K.: Uh-huh.
PROSECUTOR: What are you concerned could happen?
N.K.: Anything.
PROSECUTOR: Has anybody been bothering you about this?
N.K.: Not to me, personally, no.
PROSECUTOR: They have been bothering friends of yours?
N.K.: No, I have just been hearing things.
PROSECUTOR: What have you been hearing?
. . . .
N.K.: Just about coming after me or something along those lines.
PROSECUTOR: [N.K.], are those concerns influencing what you are saying up there today?
N.K.: No.

The jury found Arnold guilty of prohibited person in possession of a firearm, and the district court sentenced him to serve 48 months in prison. Arnold appeals his conviction.

D E C I S I O N

I.

Arnold argues that the state failed to prove that the police had reasonable, articulable suspicion to stop the Mitsubishi because the state did not show that "the KOPS alert or information provided to the police about the [Mitsubishi] being involved in a shooting was based on reliable information from a credible source."

"When reviewing pretrial orders on motions to suppress evidence, [appellate courts] may independently review the facts and determine, as a matter of law, whether the

district court erred in suppressing—or not suppressing—the evidence." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999). We review the district court's findings of fact under a clearly erroneous standard, but we review its legal determinations de novo. *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006). Deference must be given to the district court's credibility determinations. *See State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989) (stating that "[t]he weight and credibility of the testimony of individual witnesses" is for the fact-finder to determine).

The United States and Minnesota Constitutions prohibit unreasonable search and seizure by the government. U.S. Const. amend. IV; Minn. Const. art. I, § 10. A police officer may, however, initiate a limited investigative stop without a warrant if the officer has reasonable, articulable suspicion of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968). Whether the police have reasonable suspicion to conduct an investigative stop depends on the totality of the circumstances and a showing that the stop was not "the product of mere whim, caprice, or idle curiosity." *In re Welfare of M.D.R.*, 693 N.W.2d 444, 448 (Minn. App. 2005) (quotation omitted), *review denied* (Minn. June 28, 2005).

The factual basis required to justify an investigative stop is minimal. *Magnuson v. Comm'r of Pub. Safety*, 703 N.W.2d 557, 560 (Minn. App. 2005). "It need not arise from the personal observations of the police officer but may be derived from information acquired from another person." *Id.* "An informant's tip may be adequate to support an investigative stop if the tip has sufficient indicia of reliability." *Id.* Minnesota caselaw involving traffic stops based on informant tips focuses on two factors: (1) sufficient

identification of the tipster, *Rose v. Comm'r of Pub. Safety*, 637 N.W.2d 326, 328 (Minn. App. 2001), *review denied* (Minn. Mar. 19, 2002), and (2) adequate specificity regarding why the tipster believes the suspect driver is engaged in illegal behavior. *Olson v. Comm'r of Pub. Safety*, 371 N.W.2d 552, 556 (Minn. 1985). Neither factor is independently dispositive, and the determination of whether the officer had a reasonable suspicion of criminal activity at the time of the stop is based on the totality of the circumstances. *Jobe v. Comm'r of Pub. Safety*, 609 N.W.2d 919, 921 (Minn. App. 2000). An anonymous tip may be combined with corroborating evidence under a totality-of-the-circumstances analysis to establish the factual basis for reasonable, articulable suspicion. *Illinois v. Gates*, 462 U.S. 213, 233, 103 S. Ct. 2317, 2329 (1983).

In this case, the KOPS alert was based on information provided to the police by a witness to a shooting who reported that the Mitsubishi was involved. The district court found that a "witness provided this information at the scene of the shooting in a face-to-face encounter with a police officer who then shared that information with others." Arnold contests this factual finding, arguing that there is nothing in the record to support the conclusion that the witness provided the information "in a face-to-face encounter with a police officer." But the record includes evidence that there were witnesses at the scene of the shooting, police officers responded to the scene, and a witness provided this information to the police. It therefore was reasonable for the district court to conclude that the information was passed from a witness to the police in a "face-to-face encounter." *See State v. Gomez*, 721 N.W.2d 871, 883 (Minn. 2006) ("If there is

reasonable evidence to support the [district] court's findings of fact, a reviewing court should not disturb those findings." (quotation omitted)).

The witness who provided the information regarding the Mitsubishi reportedly saw the shooting and had first-hand knowledge that the Mitsubishi was involved in the shooting. *See Olson*, 371 N.W.2d at 556 ("If the police chose to stop on the basis of the tip alone, the anonymous caller must provide at least some specific and articulable facts to support the bare allegation of criminal activity."). Because the information was provided to the police face to face, it was sufficiently reliable to justify an investigative stop. *See State v. Balenger*, 667 N.W.2d 133, 138 (Minn. App. 2003) ("[U]ncorroborated anonymous tips provided to police face to face are sufficiently reliable to justify an investigative stop, because the tipster puts himself in a position where his identity might be traced, and he might be held accountable for providing any false information."), *review denied* (Minn. Oct. 21, 2003). Finally, the facts that the Mitsubishi had license plates that matched the license plate number provided by the witness, contained the same number of occupants of the same race and gender, and was observed ten blocks from the location of the shooting only one day later corroborated the information provided to the police. *See Gates*, 462 U.S. at 233, 103 S. Ct. at 2329 (explaining that corroborating evidence may establish reasonable, articulable suspicion).

In conclusion, under the totality-of-the-circumstances, the police had reasonable, articulable suspicion to stop the Mitsubishi.

II.

Arnold also argues that "[b]y stopping the car, ordering everyone out at gunpoint, handcuffing the occupants, and placing them directly into marked squad cars, the police turned a routine traffic stop into an arrest which required probable cause."

A stop that is initially valid "may become invalid if it becomes 'intolerable' in its 'intensity or scope.'" *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (quoting *Terry*, 392 U.S. at 17-18, 88 S. Ct. at 1878). When reviewing the intensity or scope of a stop, we ask "whether the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *Id*.

In this case, when the police stopped the Mitsubishi, they believed that it had been involved in a shooting the day before. Therefore, the police were justified in ordering the occupants out of the Mitsubishi at gunpoint. *See State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999) (stating that an officer making an investigatory stop "is justified in proceeding cautiously with weapons ready" when the officer "has cause to believe that the individual is armed" (quotation omitted)). Moreover, because an occupant of the Mitsubishi informed the police that there was a gun in the vehicle, the police were justified in handcuffing and placing Arnold in the back of a squad car while they located the gun and secured the scene. *See id*. ("We have also held 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, nor does placing the suspect in the back of a squad car while the investigation proceeds.").

Arnold argues that the holding of *State v. Blacksten*, is dispositive. 507 N.W.2d 842, 847 (Minn. 1993) (holding that "the detention of respondent two miles from his residence for well over an hour while [a] search warrant was being sought was not a reasonable pre-arrest investigatory stop"). Although the supreme court in *Blacksten* held that a purported investigatory stop was actually an arrest, the suspect in that case did not possess a gun and the officer detained the suspect for over an hour without conducting any investigation. *Id*. at 846-47. The supreme court observed that the officer "had no intention of conducting any investigation" during the detention and concluded that "the stop was not a reasonable pre-arrest detention intended to freeze the scene so that an investigation could be made." *Id*. at 846. Unlike the circumstance in *Blacksten*, the police in this case were actively investigating a shooting that occurred 24 hours earlier and were informed that there was a gun in the Mitsubishi. It was not unreasonable for the police to handcuff and temporarily detain the occupants of the Mitsubishi in squad cars while the police secured the scene and conducted their investigation. The officers' actions in doing so did not transform the investigatory stop into an arrest.

III.

Lastly, Arnold argues that evidence regarding N.K.'s fear of testifying was irrelevant and highly prejudicial. "Evidentiary rulings rest within the sound discretion of the [district] court and will not be reversed unless there was a clear abuse of discretion." *State v. Ashby*, 567 N.W.2d 21, 25 (Minn. 1997). "The district court has a wide range of discretion in determining the relevancy of evidence." *State v. Schulz*, 691 N.W.2d 474, 477 (Minn. 2005).

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. Relevant evidence is generally admissible. Minn. R. Evid. 402. "Bias, which may be induced by self-interest or by fear of testifying for any reason, is almost always relevant because it is probative of witness credibility." *State v. McArthur*, 730 N.W.2d 44, 51 (Minn. 2007). However, even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." Minn. R. Evid. 403. "The district court should be concerned that the evidence of fear is not used to create an inference that a defendant is a bad person who is likely to commit a violent crime." *McArthur*, 730 N.W.2d at 51. Determinations regarding "how evidence of witnesses' fears or threats against witnesses should be handled" are left "to the discretion of the district courts, trusting them to make sound decisions about the admissibility of evidence of witnesses' fear and to fashion appropriate safeguards in the event such evidence is admitted." *Id.* at 52.

The evidence regarding N.K.'s fear of testifying explained why her trial testimony was inconsistent with her prior statements regarding the offense. Thus, the evidence was relevant to an assessment of N.K.'s credibility and to explain her reluctance to testify. *See id.* ("Evidence of witnesses' fears of testifying and of purported threats against witnesses both tend to be relevant to general witness credibility or to explain a witness's reluctance to testify or inconsistencies in a witness's story."). As to any potential prejudice, N.K.'s testimony on the topic was brief. She stated that she had not personally

been threatened. And, to the extent she had heard about threats, she was vague about the content and did not link the threats to Arnold. *See id*. (stating that "the district courts should ensure that *evidence* of fears of or threats by the defendant or others is not used to improperly attack the defendant's character"). Thus, there was minimal danger that N.K.'s testimony would cause the jury to infer that Arnold was a bad person.

Arnold relies on *State v. Harris* to argue that the district court erred in permitting an "inference, when there was no evidence, that [he] was the source of the danger or perceived danger which caused the witness[]" to be fearful. 521 N.W.2d 348, 353 (Minn. 1994). Arnold's reliance on *Harris* is misplaced. In *Harris*, the supreme court concluded that the prosecutor's "repeated questioning" of witnesses about their participation in a witness-protection program and the "cumulative effect" of "continuous references to witnesses' fear" created an inference unsupported by any evidence that the defendant was responsible for threats and thus "was of bad character and had a propensity to commit crimes of violence." *Id*. at 352.

In *Harris*, the prosecutor began to emphasize the witnesses' participation in the county's witness-protection program in the government's opening statement. *Id*. at 351. Moreover, there is no indication that the *Harris* witnesses provided inconsistent testimony. *See id*. at 350 (stating that each of the witness-protection program witnesses testified that he met the defendant in jail and that the defendant admitted to killing the victim). Unlike the prosecutor in *Harris*, the prosecutor in this case did not solicit evidence regarding N.K.'s fear of testifying until after she provided testimony that was inconsistent with her previous statements. And the prosecutor in this case did not dwell

on the topic. *See id.* at 352 (observing that the prosecutor's questioning regarding the witness-protection status "did not just occur once or with only one witness, but rather was an important focus of [the prosecutor's] direct-examination of these witnesses"). Thus, the danger of unfair prejudice that was at issue in *Harris* is not present here, and the district court did not abuse its discretion by allowing N.K.'s brief explanation regarding her fear of testifying.

Affirmed.