STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1658

State of Minnesota,
Respondent,

vs.

Delbert K. Sybrandt,
Appellant.

Filed December 30, 2008
Affirmed
Hudson, Judge

Chisago County District Court
File No. CR-05-1574

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2134; and

Janet Reiter, Chisago County Attorney, Beth A. Beaman, Assistant County Attorney, 313 North Main Street, Room 373, Center City, Minnesota 55012 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Sharon E. Jacks, Assistant Public Defender, 540 Fairview Avenue North, Suite 300, St. Paul, Minnesota 55104 (for appellant)

Considered and decided by Hudson, Presiding Judge; Larkin, 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

HUDSON, Judge

On appeal from a conviction of fifth-degree controlled substance crime, appellant argues that the district court erred in denying his motion to suppress because his seizure was not supported by a reasonable suspicion of criminal activity. Because appellant's acts of resisting arrest and fleeing constitute intervening circumstances sufficient to purge the taint from the alleged illegality of his seizure, we affirm.

FACTS

At approximately 6:30 p.m. on July 1, 2005, State Trooper Brett Westbrook was driving in Rush City when he observed a vehicle with its license plate obstructed and an object hanging from its rearview mirror, both violations of Minnesota law. Trooper Westbrook followed the vehicle, but the vehicle turned and a semitrailer truck pulled behind it, making a traffic stop difficult to initiate. The vehicle then pulled into the parking lot of a strip mall. After waiting for the semitrailer to pass, Trooper Westbrook drove into the parking lot and initiated a traffic stop.

When Trooper Westbrook pulled behind the vehicle, appellant Delbert Keith Sybrandt, a passenger in the vehicle, opened the passenger door and stepped out of the vehicle. Trooper Westbrook activated his emergency lights to signal detention of the vehicle, but appellant continued to walk away. Trooper Westbrook told appellant to stop while he conducted his investigation, but appellant said "No" and continued walking. Trooper Westbrook approached appellant and again told appellant to stay by the vehicle.

Appellant began yelling at Trooper Westbrook, stating that Westbrook had no reason to talk to him. Appellant then threw a magazine clip from a handgun onto the ground.

Trooper Westbrook commanded appellant to put his hands behind his head so he could search appellant for weapons. Appellant refused and told Trooper Westbrook to relax. Trooper Westbrook told appellant to get on the ground or he would be required to use force against appellant, but appellant kept yelling at Westbrook. Trooper Westbrook tried to secure appellant in a wristlock, but appellant pulled away and moved towards Westbrook's squad car. Trooper Westbrook pushed appellant onto the hood of the squad car, but appellant pushed himself off of the vehicle, and ran away, yelling and screaming.

Trooper Westbrook caught up with appellant, pushed him against a parked car in the parking lot, and sprayed appellant with a chemical irritant. The spray had no effect on appellant, who again took off running. Trooper Westbrook chased appellant and pushed him into some scaffolding, causing appellant to fall. He attempted to handcuff appellant, but appellant slipped away and ran off again. When Trooper Westbrook caught up with appellant, appellant swung his arms at Westbrook and Westbrook pushed appellant onto the ground.

Trooper Westbrook placed appellant in a neck restraint and told him to stop resisting. Appellant claimed that he could not stop resisting because of the neck restraint, and Trooper Westbrook loosened his restraint on appellant. Appellant immediately began kicking and trying to push away from Trooper Westbrook. Trooper Westbrook was eventually able to gain control of appellant and placed appellant in handcuffs. Appellant was arrested and searched incident to his arrest. On appellant's person,

Trooper Westbrook found two knives, two rifle rounds, a small bag of marijuana, and small bag containing methamphetamine.

Appellant was charged with fourth-degree assault, fifth-degree controlled substance crime, and obstructing legal process. Before trial, appellant moved the district court to dismiss the charges for lack of probable cause and to suppress the methamphetamine as the fruit of an illegal seizure. The district court dismissed the charge of fourth-degree assault but found probable cause for the remaining charges. The district court also denied appellant's motion to suppress, finding that the methamphetamine was not the product of an illegal seizure.

Appellant waived his right to a jury trial and proceeded with a stipulated-facts *Lothenbach* hearing. Appellant reached an agreement with the state whereby the charge of obstructing legal process would be dismissed if appellant was found guilty. On August 9, 2006, the district court found appellant guilty of fifth-degree controlled substance crime. The charge of obstructing legal process was dropped. This appeal follows.

D E C I S I O N

Appellant argues that the district court erred in denying his motion to suppress the methamphetamine because his seizure was not supported by a reasonable suspicion that he was engaged in criminal activity. "Both the Minnesota and United States constitutions protect against 'unreasonable' searches and seizures by the state." *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999) (citing U.S. Const. amend. IV; Minn. Const. art. I, § 10). "When reviewing pretrial orders on motions to suppress evidence, we 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).

Appellant does not challenge the traffic stop of the vehicle. Instead, appellant contends that when the vehicle was stopped, he was already out of the vehicle and walking away, such that he was no longer a passenger in the vehicle and was not seized during the initial traffic stop. He argues that because he was not part of the initial stop, Trooper Westbrook needed a reasonable suspicion that appellant was engaged in criminal activity in order to seize appellant and make him stay at the scene. Appellant suggests that Trooper Westbrook had no such reasonable suspicion.

Without determining exactly when appellant was seized, the district court concluded that Trooper Westbrook had the authority, pursuant to the legal stop of the vehicle, to order appellant to stay in or around the vehicle. In reaching its conclusion, the district court relied on several cases from foreign jurisdictions, applying *Maryland v. Wilson*, 519 U.S. 408, 117 S. Ct. 882 (1997), to similar facts. In *Wilson*, the Supreme Court held that "an officer making a traffic stop may order passengers to get out of the car pending completion of the stop." *Id*. at 415, 117 S. Ct. at 886. The cases relied upon by the district court interpret *Wilson* as also allowing an officer making a traffic stop to order passengers to stay in or close to the vehicle pending completion of the stop.

Appellant asserts that, because he was already out of the vehicle when Trooper Westbrook initiated the traffic stop, he was not a passenger in the vehicle and *Wilson* does not apply. We note that the record does not clearly reflect when appellant exited the

vehicle in relation to Trooper Westbrook's traffic stop. Because the case proceeded on a stipulated-facts hearing, the only findings of facts are the findings made by the district court. The district court order denying appellant's motion to suppress indicates that appellant was exiting the vehicle before Trooper Westbrook initiated the stop. The district court order finding appellant guilty, on the other hand, states that appellant exited the vehicle after Trooper Westbrook began the traffic stop.

But we need not determine exactly when appellant exited the vehicle or whether *Wilson* applies to the facts presented here because even if appellant was illegally seized when Trooper Westbrook asked appellant to remain near the vehicle, Minnesota courts have generally held that resisting arrest and flight from a police officer, even if prompted by illegal police conduct, are intervening circumstances sufficient to purge the illegality of its primary taint. *See State v. Ingram*, 570 N.W.2d 173, 178 (Minn. App. 1997) (holding that physically resisting arrest and flight from a police officer generally constitute intervening circumstances sufficient to purge the initial illegality of the primary taint, even if prompted by an illegal search and seizure), *review denied* (Minn. Dec. 22, 1997); *City of St. Louis Park v. Berg*, 433 N.W.2d 87, 90 (Minn. 1988) (holding that evidence of defendant's resistance to arrest may not be excluded as fruit of the poisonous tree); *State v. Combs*, 394 N.W.2d 567, 568–69 (Minn. App. 1986) (holding an illegal arrest does not require suppression of evidence of a crime committed in response to the arrest), *rev'd in part on other grounds*, *State v. Combs*, 398 N.W.2d 563 (Minn. 1987).

Accordingly, when appellant resisted arrest and fled from Trooper Westbrook, any taint from the alleged illegality of appellant's seizure was purged. Appellant argues that his resistance and fleeing cannot be intervening circumstances because the charge of assault against Trooper Westbrook was dismissed by the district court and the charge of obstructing legal process was dropped by the state. But we have previously held that resisting arrest can constitute an intervening circumstance even if a defendant is not charged with assault of a police officer, resisting arrest, or obstructing legal process. *Ingram*, 570 N.W.2d. at 179.

Appellant also contends that he only physically resisted Trooper Westbrook after Westbrook "attacked" appellant three times. The record does not support appellant's contention. Appellant physically resisted Trooper Westbrook and fled when Westbrook attempted to secure appellant with a wristlock and search appellant for weapons, prior to any significant use of force by Westbrook. Further, even if appellant's physical resistance was in response to the force used by Trooper Westbrook, "[a] defendant may not resort to self-help to resolve disputes concerning unreasonable searches and seizures, because the legal safeguards under the Fourth, Fifth, Sixth, and Fourteenth Amendments provide the victim of an unlawful search with realistic and orderly legal alternatives to physical resistance." *Id*. at 178 (quotations and citations omitted).

As a result, appellant's acts of resisting and fleeing constitute intervening circumstances sufficient to purge the taint from the alleged illegality of appellant's seizure. Appellant's resistance and fleeing also gave Trooper Westbook adequate grounds to arrest appellant and search appellant subsequent to his arrest. Minn. Stat.

§ 609.50, subd. 1(2) (2004); *see State v. Robb*, 605 N.W.2d 96, 100 (Minn. 2000) (stating that an officer may search a person's body and the area within his or her immediate control if the search is incident to a lawful arrest) (citing *Chimel v. California*, 395 U.S. 752, 763, 89 S. Ct. 2034, 2040 (1969)). Therefore, the search of appellant's person, which produced the methamphetamine, was a constitutional search incident to arrest and the district court did not err in refusing to suppress the methamphetamine.

Affirmed.