IN THE COURT OF APPEALS OF IOWA

No. 7-689 / 06-1676
Filed December 12, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

TYRIS DESHAWN EASLEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager (pretrial) and Stephen C. Clarke (trial), Judges.

Tyris Easley appeals from his convictions of second-offense possession of marijuana and failure to affix a drug tax stamp. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Shellie Knipfer, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Cristen Douglass, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Brad Walz, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Zimmer and Eisenhauer, JJ.

ZIMMER, J.

Tyris Easley appeals from his convictions of second-offense possession of marijuana in violation of Iowa Code sections 124.401(1)(d) and 124.411 (2005), and failure to affix a drug tax stamp in violation of section 453B.12. He raises several constitutional issues in asserting the district court erred in denying his motion to suppress. Additionally, he raises a number of factual issues in his pro se brief. We affirm.

I. Background Facts and Proceedings.

On February 28, 2006, around 9:00 p.m., Waterloo Police Officer Matthew Wertz responded to a dispatch that there was a fight in progress at Babe's Tap. Wertz was in uniform and driving a marked patrol car. His patrol car's emergency lights were activated when he arrived at the scene. Upon his arrival, the officer observed a number of people standing outside the bar. One of the people Wertz observed was a male wearing a yellow and dark colored jacket. Wertz watched this individual, who was later identified as Tyris Easley, turn around, look at him, and then "walk[ ] quickly around the corner." As Wertz parked his car on the south side of the building, he observed Easley go around another corner of the building. Wertz then got out of his car and walked to the rear of the building where he had last seen Easley. Thinking Easley may have been involved in the fight, or had information regarding the fight, Wertz began to follow Easley around the building.

Officer Matthew McGeough was the second officer to respond to the fight at Babe's Tap. He parked his car in front of the bar, on the north side of the building. McGeough then saw Easley "come running around the corner." When

Easley reached the front of the building, he stopped running and started walking toward McGeough's location. McGeough approached Easley in order to identify him. Wertz came around the same corner that Easley had come running from, and told McGeough to "detain him." Wertz then went back to the other side of the building and detained two other individuals.

McGeough began talking with Easley, instructing him to "[s]tay here" as he tried to "get his information." According to McGeough, Easley acted "real nervous." Easley "kept reaching into his pockets," despite McGeough continually telling him to take his hands out of his pockets. Easley also kept trying to walk away while the officer talked to him. Because of Easley's behavior, and because of McGeough's fear that Easley would flee, McGeough placed handcuffs on Easley in order to detain him for questioning. Like Wertz, McGeough suspected that Easley had been involved in the bar fight because of his behavior.

McGeough then asked Easley if he could search him and Easley consented. McGeough found $110 cash in Easley's front pocket and $2365 cash in his back pocket. Easley claimed he earned the money while working at Weststaff, where he made eight dollars per hour.

Upon McGeough's suggestion, Wertz retraced Easley's path around the building and discovered a plastic bag filled with marijuana. McGeough read Easley his *Miranda* rights and drove him to the police station. While they were en route from the scene of the arrest to the police station, McGeough advised Easley of his *Miranda* rights for a second time. At the station, Easley completed a *Miranda* right waiver form before Wertz and McGeough conducted a videotaped interview of him. Easley admitted the marijuana was his and that the

sale of marijuana accounted for the large amount of cash in his pant pockets. Easley also admitted being on probation for possession of marijuana with intent to deliver. The officers ultimately concluded Easley had not been involved in the bar fight.

After he was formally charged, Easley filed a motion to suppress evidence, arguing he was "stopped by the police without probable cause," "searched illegally by police without probable cause or consent," and "questioned illegally by the police and no statements were voluntarily made and would be fruits of the illegal activity of the police." Following a hearing, the district court denied his motion to suppress. Easley waived his right to a trial by jury, and a bench trial was held.

The district court found Easley guilty of possession of marijuana with intent to deliver, second controlled substance offense, and failure to affix a tax stamp. Easley was sentenced to an indeterminate term of ten years for his second-offense possession of marijuana with intent to deliver and an indeterminate term of five years for his failure to affix a tax stamp. The fines he received for the convictions were both suspended.

Easley appeals. He asserts the district court erred in denying his motion to suppress because police officers did not have reasonable suspicion to make an investigatory *Terry* stop. Additionally, in his pro se brief, he asserts the district court erred in allowing his confession because he was not properly given *Miranda* warnings before custodial interrogation and his confession was coerced. He also raises a number of factual issues in his pro se brief.

II. Constitutional Claims.

A. Scope and Standards of Review.

We review Easley's constitutional claims de novo, examining the totality of the circumstances as shown by the entire record. *State v. Seager*, 571 N.W.2d 204, 207 (Iowa 1997). We are not bound by the district court's determinations, but we may give deference to its credibility findings. *State v. Turner,* 630 N.W.2d 601, 606 (Iowa 2001). In reviewing the trial court's ruling, we consider both the evidence presented at the suppression hearing and that introduced at trial. *Id*.

B. Terry Stop.

The Fourth Amendment to the United States Constitution protects people from unreasonable searches and seizures by government officials. *State v. Kinkead*, 570 N.W.2d 97, 100 (Iowa 1997). Warrantless searches and seizures are presumptively unreasonable, and the State bears the burden of proving an exception to the warrant requirement of the Fourth Amendment exists. *State v. Kreps*, 650 N.W.2d 636, 641 (Iowa 2002). One of the well-established exceptions to the warrant requirement is the *Terry* stop, which allows an officer to stop an individual for investigatory purposes based on a reasonable suspicion that a criminal act has occurred or is occurring. *Id.*; *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889, 906 (1968). An officer must have specific and articulable cause to support a reasonable belief that criminal activity may have occurred. *Kinkead*, 570 N.W.2d at 100. The existence of a reasonable suspicion is based on an objective standard: "[W]ould the facts available to the officer at the moment of the seizure or the search 'warrant a man

of reasonable caution in the belief' that the action taken was appropriate?" *Terry,* 392 U.S. at 21-22, 88 S. Ct. at 1880, 20 L. Ed. 2d at 906.

In *Illinois v. Wardlow*, 528 U.S. 119, 124-125, 120 S. Ct. 673, 676, 145 L. Ed. 2d 570, 576-77 (2000), the Supreme Court held that reasonable suspicion existed where the defendant engaged in headlong flight upon noticing the police in a high crime area. While the Supreme Court explained that an individual has a right to simply ignore an officer or go about his business when approaching or coming in contact with law enforcement, it also noted that "nervous, evasive behavior is a pertinent factor in determining reasonable suspicion." *Wardlow*, 528 U.S. 119, 124-125, 120 S. Ct. 673, 676, 145 L. Ed. 2d 570, 576 (2000). The Court went on to explain that "[h]eadlong flight—wherever it occurs—is the consummate act of evasion: [i]t is not necessarily indicative of wrongdoing, but it is certainly suggestive of such." *Id*.

As previously explained by the Iowa Supreme Court, however, flight alone does not justify a *Terry* stop. *See Kreps*, 650 N.W.2d at 647. "For flight to constitute grounds for suspicion, the circumstances surrounding the suspect's efforts to avoid the police must be such as to allow a rational conclusion that flight indicated a consciousness of guilt." *Id.* at 644. In order to reach such a conclusion, evidence must be presented that permits "a reasonable inference that (1) the suspect knew the police were present and (2) the police believed that the suspect was aware of police presence." *Id.* According to our supreme court, "the key is that the relationship between the police presence and the suspect's flight was *causal* rather than *coincidental*." *Id.*

With these principles in mind, we examine the record in this case. The State does not dispute that McGeough detained Easley upon Wertz's instruction and hence, a seizure of Easley's person took place. The State argues that Wertz had a reasonable cause or suspicion to authorize McGeough to detain Easley for investigatory purposes. Easley disagrees.

In this case, the officers went to the scene because the police department had received a report that a bar fight was occurring.[1] Citing only the suppression hearing transcript, Easley argues, "there was no testimony establishing that the defendant's leaving was in response to seeing the officer and then attempting to leave the scene." We disagree. It can be reasonably inferred from the evidence presented at the suppression hearing and at trial that Easley knew the police were present and that Wertz believed Easley was aware of his presence.[2] *Id.* at 644. When Wertz arrived at the scene he was in his patrol car and had the lights flashing. He saw a group of people standing outside the bar. At trial, Wertz testified that he observed one individual, later identified as Easley, turn around, look at him, and then walk quickly around the corner. No one else in the crowd engaged in similar behavior. Wertz testified that based on Easley's quick

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[1] In his pro se brief, Easley claims the *Terry* investigative stop was invalid because Babe's Tap in Waterloo "is not considered a high crime (drug trafficking) area." However, while there is no evidence concerning whether Babe's Tap is in a high crime area, the officers were called to this location because a fight was in progress. Moreover, whether a location is considered a high-crime area or is the location of recent criminal activity is only one element that may be considered in determining if reasonable suspicion exists for purposes of detaining a subject. *See, e.g., Kreps*, 650 N.W.2d at 647 (finding other "combined factors" afforded the officer reasonable suspicion to believe that criminal conduct was afoot at the time of the stop despite that "there was no evidence of recent criminal activity in the area, and no evidence that [the suspect] was in a high-crime area").

[2] In reviewing the district court's ruling we consider both the evidence presented at the suppression, and the evidence presented at trial.

departure from the scene after seeing him arrive in his patrol car, he thought Easley may have been involved in the fight and was now trying to avoid him. After parking his patrol car, Wertz followed Easley on foot around another corner of the building. The defendant's path brought him back to the front of the building where he was detained.

A suspect's flight, in addition to his presence at the scene of a recently committed crime, provides the type of specific, articulable facts allowed under *Terry* to justify a brief detention by officers to resolve any ambiguity. *See Terry*, 392 U.S. at 21, 88 S. Ct. at 1880, 20 L. Ed. 2d at 906; *see also Wardlow*, 528 U.S. at 125, 120 S. Ct. at 677, 145 L. Ed. 2d at 577 (noting how *Terry* recognized that officers could detain individuals to resolve the ambiguity between acts that may either be innocent or criminal). Based on Easley's behavior after seeing the officer arrive, we conclude Wertz had the reasonable suspicion necessary to justify the detention of Easley. Accordingly, we find the district court did not err in denying Easley's motion to suppress because his constitutional rights under the Fourth Amendment were not violated.

C. Miranda Rights and Confession.

Easley raises two challenges to the district court's ruling concerning his confession. First, he asserts he was not properly given *Miranda* warnings. Before an individual who is in custody may be subjected to interrogation, the individual must be advised of his or her constitutional rights to remain silent and to have appointed counsel present prior to any questioning. *Turner,* 630 N.W.2d at 607 (Iowa 2001) (citing *Miranda v. Arizona*, 384 U.S. 436, 478-79, 86 S. Ct. 1602, 1630, 16 L. Ed. 2d 694, 726 (1966)). If these warnings are not given, any

evidence obtained as a result of a custodial interrogation is inadmissible unless the State can show the defendant knowingly waived those rights. *Miranda*, 384 U.S. at 479, 86 S. Ct. at 1630, 16 L. Ed. 2d at 726. The requirement of *Miranda* warnings does not arise unless there is both custody and interrogation. *State v. Countryman*, 572 N.W.2d 553, 557 (Iowa 1997).

Prior to their arrival at the Waterloo Police Department, McGeough informed Easley twice of his rights under *Miranda*. McGeough first advised Easley of his rights when the officers located the marijuana. McGeough advised Easley of his rights a second time when he drove Easley to the police station. Easley disputes that he was given the *Miranda* warnings in the patrol car, stating "the police car's audio/video won't support that." The record reveals that McGeough's patrol car was temporarily unequipped with a taping system. However, the record also reveals that no custodial interrogation took place during the trip to the police station. McGeough testified he "stayed clear" of conversations regarding Easley's involvement in what the officers had located. McGeough testified that he "wanted to wait until [they] got to the station where the interview rooms are both with tape and audio recording." Once at the station, McGeough placed Easley in an interview room, removed his handcuffs, and spoke with him about his *Miranda* rights again. At no time did Easley assert his right to counsel. Instead, he proceeded to make incriminating statements about his ownership of the marijuana.

Easley also asserts in his pro se brief that his confession at the police station was involuntary because it was given "under intimidation and a leading threatening demeanor." Easley does not provide any details in support of his

assertion. Based on our review of the record, we reject his claim. On the night of his arrest, Easley was twenty-seven years old. He was on probation for a prior conviction of possession of marijuana with intent to deliver. He was informed of his rights under *Miranda* three times. His interview at the police station was two and one-half hours, which included the officers' questioning and performing of administrative duties. Easley was not threatened during the interview. He did not demand an attorney at any time during the interview. Easley signed a written consent to search his house and a separate written consent to search his car. Upon our review of the record, we conclude Easley's confession was not coerced, but was rather the product of his free choice. *See State v. Snethen*, 245 N.W.2d 308, 315 (Iowa 1976) (stating incriminating statements are deemed voluntary when they were the "product of an essentially free and unconstrained choice, made by the defendant at a time when his will was not overborne nor his capacity for self-determination critically impaired").

Accordingly, we conclude the district court properly denied Easley's motion to suppress his statement because Easley was informed of his *Miranda* rights three times before any custodial interrogation took place and because his confession was not coerced.

III. Additional Pro Se Claims.

In his pro se brief, Easley takes issue with a number of factual conclusions made by the district court. We consider Easley's factual challenges to be claims contesting the sufficiency of the evidence, and therefore review his claims for errors at law. *State v. Beeson*, 569 N.W.2d 107, 110 (Iowa 1997). After considering all the evidence in the record, we will uphold a verdict when there is

substantial evidence in the record to support it. *State v. Aldape*, 307 N.W.2d 32, 39 (Iowa 1981). We are prohibited, however, from weighing the evidence or the credibility of witnesses; rather, we give great weight to the district court's credibility findings. *State v. O'Shea*, 634 N.W.2d 150, 156 (Iowa Ct. App. 2001).

Among his factual challenges, Easley claims he "didn't walk/run from officers responding to a fight," his signature on the consent form was "obviously forged," "no officer testified that he was out of breath and sweating," he was not "acting suspicious," and he "did not keep putting his hands in his pockets as he had nothing illegal on his person." Easley and the officers who detained him testified at trial. The court found the police officers' testimony to be credible, and found Easley's testimony to be "inconsistent and lacking in credibility." As the fact finder, the trial court was not required to accept Easley's version of the facts. *State v. Trammell*, 458 N.W.2d 862, 863 (Iowa Ct. App. 1990). Finding sufficient evidence in the record to support the district court's ruling, we determine Easley's factual challenges to be without merit.

Easley also claims he was "never shown the marijuana" found by Wertz until trial, and that Police Officer Becky DeKruit testified the marijuana "was inside two different bags" at trial. However, Easley did not object on any ground to the admission of the marijuana at trial; therefore, he is barred from challenging the State's exhibit on appeal. *Tindell v. State*, 629 N.W.2d 357, 359 (Iowa 2001).

Finally, Easley claims that his out-of-court confession was not corroborated as required by Iowa Rule of Criminal Procedure 2.21(4). Easley raises this issue for the first time on appeal. Because Easley failed to raise the issue of corroboration at the trial court, this issue is not preserved for our review

and is deemed waived on appeal. *See Peters v. Burlington N. R.R.*, 492 N.W.2d 399, 401-02 (Iowa 1992) ("Ordinarily, issues must be raised and decided by the trial court before they may be raised and decided on appeal.").

IV. Conclusion.

We have considered all of Easley's claims, whether or not specifically discussed. Finding them all to be without merit, the decision of the district court is affirmed.

AFFIRMED.