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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-1033**

State of Minnesota,
Respondent,

vs.

Marcus Darnell Lockett,
Appellant.

**Filed May 12, 2014
Affirmed
Smith, Judge**

Hennepin County District Court
File No. 27-CR-12-28838

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

Michael O. Freeman, Hennepin County Attorney, Jane N.B. Holzer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Bridget Kearns Sabo, Assistant Public Defender, St. Paul, Minnesota; and

William L. Davidson, Special Assistant Public Defender, Lind, Jensen, Sullivan & Peterson, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Smith, Presiding Judge; Connolly, Judge; and Chutich,
Judge.

UNPUBLISHED OPINION

SMITH, Judge

We affirm the district court's denial of appellant's suppression motion because appellant's brief detention by police was reasonably related to and justified by the original legitimate purpose of the stop.

FACTS

Minneapolis police received information from a confidential reliable informant (CRI) regarding a person bicycling near a local park with a 9mm gun in his waistband at approximately 11:00 p.m. on August 30, 2012. The suspect was described as a black male with a cast. Shortly thereafter, Officers Anna Hedberg and Gilles Antaya observed a man matching the description on the park's swing set, with a bicycle nearby. The two officers—with at least one gun drawn—instructed the man, later identified as appellant Marcus Darnell Luckett, to put his hands in the air. Luckett complied. As additional officers arrived on the scene, Officer Antaya searched Luckett's person. No weapons were found, and the officers placed Luckett—who could not be handcuffed due to the cast on his arm—in a squad car while they searched the sandbox.¹ After approximately five minutes, Officer Brandy Steberg located a 9mm semi-automatic handgun in “a fresh

¹ On appeal, Luckett implies that Officer Hedberg testified there was “[n]o particular reason” not to let Luckett depart after Officer Antaya searched his person and found no weapons. This assertion misconstrues the record. Officer Hedberg testified that there was no particular reason for the specific *location* of Luckett's detention. And objectively, Luckett's cast provides at least one reason for detaining Luckett inside, rather than outside, the squad car.

mound of sand” approximately 10 to 15 feet from the swing set. The officers arrested Lockett.

During a post-*Miranda* interview the following morning, Lockett stated that he had possessed the gun for approximately 20 minutes, and that he took the gun to the park to deliver it to someone else. The state charged Lockett with one count of possession of a firearm by a prohibited person, in violation of Minn. Stat. § 624.713, subd. 1(2) (2012).

Lockett moved to suppress the gun and his August 31 statement, arguing that information from the CRI did not provide “probable cause to initially stop, frisk, and detain” him, and therefore the evidence was “the fruit of an illegal search.” Lockett reiterated this argument three days later, in a second suppression motion, and added an alternative basis for suppressing his August 31 statement: failure to voluntarily waive his *Miranda* rights. The district court denied Lockett’s suppression motions.

The matter proceeded to trial, and the jury found Lockett guilty of the charged offense. The district court sentenced Lockett to 60 months’ imprisonment.

D E C I S I O N

Lockett argues that the district court erroneously denied his motion to suppress the gun and his August 31 statement because, by placing him in a squad car, the officers impermissibly expanded the scope of the initial seizure. The United States and Minnesota Constitutions prohibit unreasonable seizures. U.S. Const. Amend. IV; Minn. Const. art. I, § 10. Whether a seizure violates these constitutional prohibitions presents a mixed question of fact and law. *State v. Lee*, 585 N.W.2d 378, 382-83 (Minn. 1998). We review the district court’s findings of fact for clear error and give due weight to

inferences drawn from those facts by the district court. *Id.* at 383. In doing so, we defer to the district court’s assessment of witness credibility. *State v. Miller*, 659 N.W.2d 275, 279 (Minn. App. 2003), *review denied* (Minn. July 15, 2003). But we review de novo whether, based on the facts, a seizure meets constitutional standards. *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

To determine whether a seizure was reasonable, we conduct “a dual inquiry. First, we ask whether the stop was justified at its inception. Second, 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.” *State v. Askerooth*, 681 N.W.2d 353, 364 (Minn. 2004) (citations omitted). Each “incremental intrusion” must be “tied to and justified by one of the following: (1) the original legitimate purpose of the stop, (2) independent probable cause, or (3) reasonableness.” *Id.* at 365.

Luckett does not challenge the validity of the initial stop. Therefore, our focus is on the second prong of the inquiry. *See id.* at 364. Under this prong, only “[a]n intrusion not closely related to the initial justification for the search or seizure” requires “independent probable cause or reasonableness to justify that particular intrusion.” *Id.*; *see also State v. Wiegand*, 645 N.W.2d 125, 135 (Minn. 2002) (if police officers “act diligently and reasonably,” an investigative detention may continue “as long as the reasonable suspicion for the detention remains,” but “[e]xpansion of the scope of the stop to include investigation of other suspected illegal activity is permissible under the Fourth Amendment only if the officer has a reasonable, articulable suspicion of such other illegal activity” (quotations omitted)).

Here, the original purpose of the stop—to investigate the CRI’s report of a person with a gun—justifies Lockett’s detention. The record establishes that Lockett matched the CRI’s “description almost to a T.” Officer Hedberg testified that when no gun was found on Lockett’s person, the officers believed the alleged gun may “be buried in the sand or a nearby garbage can.” It was reasonable for the officers to detain Lockett while they investigated the CRI’s report by searching the immediate area for a gun. Lockett’s argument is without merit, and he is not entitled to relief.

Affirmed.