STATE OF MINNESOTA
IN COURT OF APPEALS
A16-0744

State of Minnesota,
Respondent,

vs.

Corie Demetrius Bass,
Appellant.

Filed April 3, 2017
Affirmed
Reilly, Judge

Hennepin County District Court
File No. 27-CR-14-21669

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

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Francine Kuplic (certified student attorney), Minneapolis, Minnesota (for respondent)

Eric L. Newmark, Newmark Storms Law Office LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

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

REILLY, Judge

Appellant Corie Demetrius Bass was charged as a prohibited person in possession of a firearm, in violation of Minn. Stat. § 624.713, subd. 1(2) (2016). Bass moved to

suppress the gun evidence, arguing that the search was unlawful because the police lacked a sufficient basis for the stop. The district court denied the motion, and Bass appealed. Because we conclude that the police had reasonable, articulable suspicion to suspect one of the vehicle occupants of criminal activity, and because the officers' show of force and intrusion upon the entire group was a reasonable means of ensuring officer safety, we affirm.

FACTS

Around midnight on July 24, 2014, an unidentified individual called the Minneapolis 911 Call Center and the following conversation ensued:

> OPERATOR: 911, what's the address of [the] emergency?
> CALLER: Yes, I stay at [near First Avenue and Eighth Street].
> OPERATOR: Mm-hmm.
> CALLER: And I'm looking out my window and in the parking lot there's a lot of guys, and I'm, it's a blue car and a, I wanna say gold Mustang.
> OPERATOR: Ok.
> CALLER: And I just seen em pass a gun to each other.
> OPERATOR: And a gold mu, ok, the one that did, that passed the weapon, can you tell what race they were?
> CALLER: They're black. They're all black.
> OPERATOR: Ok but . . .
> CALLER: It's a lot, it's, it's a lot of females in this parking lot.
> OPERATOR: Ok, but was it males that, that passed the gun or females?
> CALLER: I, I believe he, it looked like a female, but it's a, a guy. I don't know.
> OPERATOR: Ok, could you tell what color shirt or jacket or anything they were wearing? Just so, I mean it's a huge officer's safety thing. That's like the one . . .
> CALLER: They sitting in the car, they sitting in the car right now. They sitting in a car right now. The one has on, I think this is a gold Mustang, has [on] a white tank top.
> OPERATOR: And that's the one with the gun?

CALLER: Yes.
OPERATOR: That's the gun, ok.
CALLER: The blue, the blue car just passed it to the one in the gold car.
OPERATOR: Ok and the one in the gold car, the white tank top, is a, you're not sure if it's a male or a female?
CALLER: Yes.
OPERATOR: But [they're] African American?
CALLER: Yes.
OPERATOR: Ok. They, in the driver's or the passenger's seat?
CALLER: The driver's seat.
OPERATOR: Driver's? Ok and what is your name?
CALLER: I rather not say.
OPERATOR: You wanna be anonymous? Ok. I'll get em right out there . . .
CALLER: Yes.
OPERATOR: . . . in the parking lot. [Near First Avenue and Eighth Street], ok.
CALLER: Oh, alright.
OPERATOR: Thank you, bye-bye.

The 911 operator then dispatched officers to the scene. When the dispatcher tried to return the 911 call, it went to the caller's voicemail.

Officers Tobias Anderson, Sherry Appledorn, and Aaron Morrison responded to the radio transmission "[t]hat there was a possible person with a gun inside of a vehicle" in the parking ramp near First Avenue and Eighth Street. Upon arrival, the officers saw a gold Mustang parked along the wall of the ramp. A blue sedan was parked directly to the right of the gold Mustang, and a white Cadillac was parked adjacent to the blue sedan. An unidentified woman was sitting in the front driver's seat of the gold Mustang, a second unidentified woman was standing between the gold Mustang and blue sedan, and two men, one of whom was later identified as Bass, were sitting in the front seat of the white Cadillac. The three cars were backed into the parking spots, with the trunk of their cars against the

wall. The responding officers did not see any other individuals in close proximity to the gold Mustang and blue sedan. To approach the blue sedan and gold Mustang, the officers had to walk in front of the white Cadillac.

After arriving at the scene, the officers determined that officer safety required they "treat it all as one threat." Engaging in what Officer Anderson described as a "systematic left-to-right elimination of any possible threat," the officers secured the white Cadillac first because it was "the most accessible vehicle." At gunpoint, the officers ordered the two men out of the white Cadillac, handcuffed the men, and placed them in the back of one of the squad cars. The officers then handcuffed the woman standing between the blue sedan and the gold Mustang, and placed her in a squad car. While Officer Anderson walked the woman to a squad car, she stated, without prompting, that if the officers were looking for a gun they should check the white vehicle. When Officer Appledorn later asked the woman if she knew why the officers were on the scene, she replied "yes," and stated that there was a gun wrapped in a towel in the white Cadillac. After detaining the first woman, the officers ordered the second woman out of the gold Mustang and placed her in handcuffs. Officer Morrison then conducted a warrantless search of the white Cadillac and recovered a handgun; the gun was wrapped in a black sock and tucked between the seat and center console.

The state charged Bass with possession of a firearm by a prohibited person, in violation of Minn. Stat. § 624.713, subd. 1(2). Bass moved to suppress the gun discovered during the search, and the district court denied his motion. Bass then waived his rights under Minn. R. Crim. P. 26.01, subd. 1(2)(a) and 3(a), and stipulated to the state's evidence

under Minn. R. Crim. P. 26.01, subd. 4.[1] The district court subsequently found Bass guilty and sentenced him to 60 months in prison.

This appeal follows.

D E C I S I O N

A. Standard of Review

Because Bass stipulated to the evidence against him pursuant to Minn. R. Crim. P. 26.01, subd. 4, our review is limited to whether the district court properly denied his pretrial suppression motion. *See* Minn. R. Crim. P. 26.01, subd. 4(f). When reviewing the district court's order, we review findings of fact for clear error and legal conclusions de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). We may also independently review facts that are undisputed and determine if the evidence seized must be suppressed as a matter of law. *Id.*

[1] Despite the district court's order titled "Findings Pursuant to *Lothenbach* Procedure" and amended order titled "New Findings Pursuant to *Lothenbach* Procedure," it appears that the parties intended to proceed under Minn. R. Crim. P. 26.01, subd. 4. This rule of criminal procedure permits a defendant to enter a plea of not guilty; waive all rights related to trial, including the right to a jury trial; stipulate to the state's evidence in a court-trial; and immediately appeal a dispositive, pretrial ruling. Although Minn. R. Crim. P. 26.01, subd. 4, replaced the so-called *Lothenbach* procedure in 2007, the record is replete with references to *Lothenbach*. In this case, Bass entered a plea of not guilty, waived all jury-related rights, and stipulated to the state's evidence. Both parties acknowledged that Bass may appeal the dispositive pretrial issue, but he may not appeal the court's finding of guilt or other issues that could be raised at a contested trial. As *Lothenbach* has not been the law in Minnesota since 2007, we caution the parties and the district court against continued use of the term and suggest instead that the parties and district court refer to the rule of criminal procedure.

B. The officers had reasonable, articulable suspicion to stop and temporarily detain Bass.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. When determining whether this constitutional prohibition was violated, we examine the reliability of the anonymous tip and the specific police conduct at issue. *See Florida v. J.L.*, 529 U.S. 266, 269-70, 120 S. Ct. 1375, 1378 (2000); *see also State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). The conduct at issue here is the investigatory stop of the white Cadillac.

An officer may conduct "a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." *Illinois v. Wardlow*, 528 U.S. 119, 123, 120 S. Ct. 673, 675 (2000) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968)). While the reasonable, articulable suspicion standard is "not high," *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quotation omitted), it "requires at least a minimal level of objective justification" for the stop, *Wardlow*, 528 U.S. at 123, 120 S. Ct. at 676. To satisfy the standard, officers "must be able to articulate more than an inchoate and unparticularized suspicion or hunch of criminal activity." *Id.* at 123-24, 120 S. Ct. at 676 (quotation omitted). The reasonable-articulable-suspicion standard may be met when an officer "observes unusual conduct that leads the officer to reasonably conclude in light of his or her experience that criminal activity may be afoot." *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). Information provided by a reliable informant may also satisfy the standard. *Id.* "But information given by an informant must bear indicia

of reliability that make the alleged criminal conduct sufficiently likely to justify an investigatory stop by police." *Timberlake*, 744 N.W.2d at 393-94.

Generally, anonymous tips are less reliable than tips provided by identified informants and therefore may provide the basis for the stop "only if accompanied by specific indicia of reliability." *J.L.*, 529 U.S. at 269, 120 S. Ct. at 1378. In essence, "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity" because an unknown informant may not be held responsible for fabricated allegations and the informant's reputation may not be assessed. *Id.* at 270, 120 S. Ct. at 1378 (quotation omitted). However, an anonymous tip may exhibit sufficient indicia of reliability if the tip is suitably corroborated. *Id.*

In *Florida v. J.L.*, the United States Supreme Court reexamined its holding in *Alabama v. White*, 496 U.S. 325, 110 S. Ct. 2412 (1990), and classified *White* as a "close case." 529 U. S. at 271, 120 S. Ct. at 1379. In *White*, the police received an anonymous tip noting that a woman carrying cocaine would leave her apartment at a specific time, get into a particular car, and drive to a named motel. 496 U.S. at 327, 110 S. Ct. at 2412. The Court in *J.L.* stated that "[s]tanding alone, the tip would not have justified a *Terry* stop." 529 U.S. at 270, 120 S. Ct. at 1378. Only after police observation verified "that the informant had accurately predicted the woman's movements . . . did it become reasonable to think the tipster had inside knowledge about the suspect and therefore to credit his assertion about the cocaine." *Id.*

Unlike *White*, the Supreme Court determined that the anonymous tip in *J.L.* lacked the moderate indicia of reliability. *Id.* at 271, 120 S. Ct. at 1379. In *J.L.*, the police received

an anonymous tip asserting that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun. *Id.* at 268, 120 S. Ct. at 1377. But the anonymous tip provided no predictive information, leaving the police without a means to test the informant's knowledge or credibility. *Id.* The Court therefore determined that the *Terry* stop was unconstitutional. *Id.* at 271, 120 S. Ct. at 1379.

Here, the state contends that the tip was reliable because the tipster was identifiable and the tipster's description proved accurate. Tips from private citizens are presumed reliable and these tips are particularly reliable "when informants give information about their identity so that the police can locate them if necessary." *State v. Davis*, 732 N.W.2d 173, 178, 183 (Minn. 2007) (citing *City of Minnetonka v. Shepherd*, 420 N.W.2d 887, 888, 890 (Minn. 1988)). In this case, the tipster was an eyewitness who called from an unblocked number and provided his address, but he stated that he wished to remain anonymous. The Supreme Court recently held that use of a 911 call system is an "indicator of veracity," as these systems have "features that allow for identifying and tracing callers, . . . provid[ing] some safeguards against making false reports with immunity." *Navarette v. California*, 134 S. Ct. 1683, 1689 (2014). Informants are also considered particularly reliable if they provide identifying information. *Davis*, 732 N.W.2d at 183. And eyewitness observation "lends significant support to the tip's reliability," even if the tip is anonymous. *Navarette*, 134 S. Ct. at 1689. The tipster here called 911 from an unblocked number, provided his address, and witnessed the events reported in the 911 call. This lends credence to the reliability of the tip.

"An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse." *J.L.*, 529 U.S. at 272, 120 S. Ct. at 1379. But such a limited description does not demonstrate that the tipster has sufficient knowledge of criminal activity—the reasonable suspicion standard here "requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *Id.* In this case, the tip's description proved accurate; responding officers observed two black women near a blue sedan and gold Mustang in the identified parking lot. And the Minnesota Supreme Court clarified in *State v. Timberlake* that a reliable informant's tip that a defendant is carrying a gun in a motor vehicle provides reasonable, articulable suspicion that a defendant is engaged in criminal activity, even if the tip does not indicate the presence of illegal activity. 744 N.W.2d at 394-95, 397. Like *Timberlake*, the 911 call and corroborating circumstances provided reasonable, articulable suspicion that the individuals in the blue sedan and gold Mustang were engaged in criminal activity.

The 911 call alone, however, did not provide reasonable, articulable suspicion that the men in the white Cadillac were similarly involved in criminal activity. But once officers have some articulable suspicion of criminal activity, the *Terry* balancing test applies to allow officers to reasonably conduct a stop and temporarily detain or seize an individual. *Terry*, 392 U.S. at 20-22, 88 S. Ct. at 1879-80. Under the test, courts determine the reasonableness of officer action by balancing the importance of the governmental interests at stake against the individual's Fourth Amendment interests. *Id.* Governmental interests generally include the interest in investigating potential criminal activity and the

need for law enforcement safety. *Id.* at 22-24, 88 S. Ct. at 1880-81. In *Pennsylvania v. Mimms*, 434 U.S. 106, 111, 98 S. Ct. 330, 333 (1977), the Supreme Court held that an officer's command that a driver exit the vehicle during a legitimate *Terry* stop was reasonable given the balancing of officer safety against the intrusion on the driver's liberty. In *Maryland v. Wilson*, 519 U.S. 408, 413-15, 117 S. Ct. 882, 886 (1997), the Court affirmed that *Mimms* applies to vehicle occupants.

To prove a *Terry* stop was supported by reasonable suspicion, an officer must "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21, 88 S. Ct. at 1880. When evaluating the validity of a *Terry* stop, we consider the totality of the circumstances. *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695 (1981). An officer may have reasonable suspicion to conduct a *Terry* stop based on a combination of factors even where no single factor, considered alone, would justify a stop. *Terry*, 392 U.S. at 22, 88 S. Ct. at 1880-81. "Factors that may reasonably lead an experienced officer to investigate include time of day or night, location of the suspect parties, and the parties' behavior when they become aware of the officer's presence." *United States v. Quinn*, 812 F.3d 694, 697-98 (8th Cir. 2016) (quotation omitted). Moreover, "a person's temporal and geographic proximity to a crime scene, combined with a matching description of the subject, can support a finding of reasonable suspicion." *Id.* at 698.

In this case, the district court found that: Bass was at the scene when officers arrived; he was parked next to the blue sedan, which was parked to the right of the gold Mustang; no other individuals were observed in close proximity to the gold Mustang and blue sedan;

the stop occurred late at night; and the officers were concerned about law enforcement safety. Applying the factors discussed in *Quinn*, we conclude that the district court did not err by determining that the tip provided the officers with reasonable suspicion to conduct a *Terry* stop of all three cars found at the scene

Moreover, we note that the stop was not unlawful merely because Bass was detained at gunpoint. When the circumstances warrant a show of force to ensure officer safety, a lawful stop or limited investigatory detention is not converted into an unlawful arrest simply because the individual stopped is not free to terminate the encounter or was stopped by a show of force. *See, e.g.*, *State v. Nading*, 320 N.W.2d 82, 84 (Minn. 1982) (holding that where officers have reasonable suspicion that a defendant is armed and dangerous, officers may take reasonable precautions during temporary detention); *State v. Ailport*, 413 N.W.2d 140, 144 (Minn. App. 1987) ("An officer is justified in proceeding cautiously with weapons ready if he is making a reasonable investigatory stop and has cause to believe an individual may be armed."), *review denied* (Minn. Nov. 18, 1987). "[B]riefly 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." *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999). Given the circumstances surrounding the stop at issue here, including the details of the 911 call, the location, the late hour, and the fact that the officers had to proceed past the white Cadillac to conduct a *Terry* stop of the women in the identified cars, the officers acted reasonably by approaching the group with guns drawn and first securing Bass.

C. The officers conducted a lawful search of the vehicle.

Under *Terry*, police may stop and search a suspect, even in the absence of probable cause, when "(1) they have reasonable, articulable suspicion that a suspect might be engaged in criminal activity and (2) the officer reasonably believes the suspect might be armed and dangerous." *State v. Dickerson*, 481 N.W.2d 840, 843 (Minn. 1992). The Minnesota Supreme Court has further clarified that an officer may conduct:

> a protective search of the passenger compartment of the vehicle, limited to those areas in which a weapon may be placed or hidden, if the officer has a particularized and objective basis for suspecting the particular person stopped of criminal activity and the officer possesses a reasonable belief, based on specific and articulable facts, that the suspect is dangerous and may gain immediate control of a weapon.

State v. Flowers, 734 N.W.2d 239, 251 (Minn. 2007) (quotation omitted). When evaluating the reasonableness of a *Terry* stop, this court must determine whether the stop was justified at its inception, and if the actions of the police were reasonably related to and justified by the circumstances initially giving rise to the stop. *Id.* Here, the district court concluded that the officers reasonably suspected illegal activity, and reasonably feared for their safety, based on the vehicle's proximity and gun report.

To be reasonable, the officers' actions must not exceed the permissible scope of a *Terry* search. *Id.* at 252. When officers have articulated a reasonable suspicion of criminal activity and that the suspect is armed and dangerous, the officers may conduct "a carefully limited frisk for weapons." *Dickerson*, 481 N.W.2d at 846. An officer's protective search may extend to the passenger compartment of the vehicle, but it "must be appropriately

limited to those areas in which a weapon may be placed or hidden." *Flowers*, 734 N.W.2d at 253 (quotation omitted).

After arriving at the scene, officers observed the occupant of the blue sedan engaging with the occupants of the white Cadillac and articulated a reasonable suspicion that one of the occupants was armed and dangerous based on the woman's unsolicited statement that "if you are looking for a gun, it's in the white Cadillac." The officers therefore handcuffed Bass, detained him in the back of a squad car, and conducted a brief search of the front compartment of the white Cadillac. The scope of the officer's search was limited to the front seats of the passenger compartment, and the search uncovered a gun wrapped in a sock in between the front driver's seat and the center console. This was a lawful *Terry* search under the Fourth Amendment.[2]

Affirmed.

[2] The state also argues, for the first time on appeal, that even if the seizure was unlawful, the district court did not err by denying appellant's suppression motion because discovery of the firearm was inevitable. Because the search and seizure was lawful under *Terry*, we decline to address this argument.