STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1819

State of Minnesota,
Respondent,

vs.

Christopher Jerome Hill,
Appellant.

Filed November 27, 2017
Affirmed; motion granted
Reilly, Judge

Ramsey County District Court
File No. 62-CR-15-8482

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

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Reilly, Judge; and Reyes, Judge.

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

REILLY, Judge

On appeal from his conviction of one count of controlled-substance crime in the fifth degree, appellant Christopher Jerome Hill argues that the discovery of cocaine was

the fruit of an unlawful search and seizure and that the district court erred in admitting the evidence. We affirm.

FACTS

During roll call at the start of his shift, Officer Soucheray (officer) received information that a blue Chrysler PT Cruiser was involved in a shots-fired incident. While on patrol the officer noticed a blue PT Cruiser brake suddenly as it drove past his squad car. Suspicious, the officer learned the car had expired tabs and was registered to a person who lived in the area. Assuming the driver of the car was driving home, the officer drove toward the owner's registered address to wait for the car to arrive. When the car did not appear within a reasonable time, the officer grew suspicious that the driver may have been impaired or was trying to elude him. Resuming patrol, the officer glimpsed the car on a main road and accelerated to catch up. The car then executed an illegal U-turn at a red light and drove in the other direction. The officer turned on his squad car's lights, called for backup, and pulled the vehicle over.

The officer approached the vehicle with his gun drawn. The officer was unable to see through the vehicle's tinted windows, so he opened the rear door on the driver's side to speak with its occupants. Appellant Christopher Hill was driving and two other individuals were seated in the vehicle. The officer removed appellant from the vehicle to secure him in his squad car for identification. Before placing appellant in the squad car, the officer performed a pat-frisk on appellant for officer safety. The officer did not find any weapons, but he did find a small bag of marijuana. The officer placed appellant in the back of the squad car without handcuffs.

Other officers arrived on the scene and searched the car after removing the two other individuals. Police discovered a gun underneath the driver's seat. The officer then handcuffed appellant and told him they found a gun in the car. At the station, appellant dropped a baggie containing what would later be confirmed to be cocaine. Appellant was charged with a fifth-degree controlled substance crime.

During the omnibus hearing, appellant moved to suppress the cocaine as the fruit of an unlawful search and seizure. The district court denied appellant's motion, finding the confinement of appellant in the squad car and the accompanying pat-frisk were permissible. The jury found appellant guilty of a violation of a controlled substance law. This appeal follows.

D E C I S I O N

The issue before this court is whether the district court erred in admitting evidence of the cocaine discovered as a result of an officer's allegedly unconstitutional pat-frisk and confinement of appellant. "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) (citing *State v. Othoudt*, 482 N.W.2d 218, 221 (Minn. 1992)). In this context, the reviewing court evaluates a district court's factual findings on the clearly erroneous standard, but views its legal determinations de novo. *State v. Onyelobi*, 879 N.W.2d 334, 342-43 n.4 (Minn. 2016).

A. The officer's confinement of Hill was reasonable.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. Traffic stops under the Minnesota Constitution are interpreted as investigative *Terry* stops. *State v. Askerooth*, 681 N.W.2d 353, 363 (Minn. 2004). Under *Terry*, a traffic stop must be justified at its inception. *Id.* at 364. This stop was justified, because the officer had probable cause to stop Hill for either his illegal U-turn through a red light or driving a car with expired tabs. *See Whren v. U.S.*, 517 U.S. 806, 819, 116 S. Ct. 1769, 1777 (1996) (holding that a traffic stop is reasonable where officer observes violation of traffic code).

Beyond the initial stop, police actions during the stop must be reasonably related to and justified by the circumstances that gave rise to the stop in the first place. *Askerooth*, 681 N.W.2d at 364. Police actions may also be justified by independent probable cause or reasonableness. *Id.* at 365. That is, each incremental intrusion must be "strictly tied to and justified by" either: (1) the circumstances making the stop valid in the first place; (2) independent probable cause; or (3) *Terry* reasonableness. *Id.* at 364-65 (citing *Terry v. Ohio*, 392 U.S. 1, 19, 88 S. Ct. 1868 (1968)). Hill's confinement was not justified by the initial circumstance of him driving with expired tabs. *See id.* at 365 (concluding that confining a defendant in a police squad following a traffic stop was unreasonable when supported only by department policy); *State v. Varnado*, 582 N.W.2d 886, 890 (Minn. 1998) (holding that a minor traffic violation did not justify an investigatory search). Nor was Hill's confinement justified by independent probable cause, because the officer did not yet know of appellant's driving record.

We are left with whether the *Terry* reasonableness standard was satisfied. To be reasonable, an officer's actions during a traffic stop must satisfy the objective test: "would the facts available to the officer at the moment of the seizure warrant a [person] of reasonable caution in the belief that the action taken was appropriate." *Askerooth*, 681 N.W.2d at 364 (quotation omitted). An officer's action is "appropriate" if, on balance, the government's need to search or seize does not outweigh "the individual's right to personal security free from arbitrary interference by law officers." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S. Ct. 2574, 2579 (1975). Confinement in a squad car solely for identification purposes or as a matter of routine practice is not reasonable police action. *Askerooth*, 681 N.W.2d at 367. In determining whether confinement is reasonable, officer safety is a compelling factor. *Id*. at 368 (citing *Varnado*, 582 N.W.2d at 891). But, officer safety alone does not mandate a finding of reasonableness. *Id.* at 368.

The officer in this case confined appellant for the purpose of identifying him, because appellant did not provide an ID. But the officer was also concerned that appellant had eluded him while driving, increasing his unease. Importantly, appellant's car also matched the description of a vehicle recently involved in a shots-fired incident, presenting a likelihood that the occupants of the car were dangerous. Looking at the totality of the circumstances, the officer had a reasonable concern for his safety.

The presence of other officers can make a confinement motivated by officer safety less reasonable. *See Varnado*, 582 N.W.2d at 891 (arguing that an additional officer could simply "watch" the individual instead of resorting to confinement). Other officers were present on the scene during Hill's confinement in the squad car. During that time, the other

officers searched Hill's vehicle and detained the two other individuals still in the car. While the other officers' presence can weigh against an officer safety determination, we decline to rule that their presence outweighed officer safety concerns in this case.

The possibility that appellant's car was involved in a recent shots-fired incident, considered alongside appellant's evasive driving, make the officer's confinement reasonable.

B. The officer's pat-frisk was appropriate.

Appellant next claims the pat-frisk was an unlawful search. During a routine traffic stop, a pat-frisk is improper unless additional suspicious or threatening circumstances are present. *Varnado*, 582 N.W.2d at 891. "[P]olice may stop and frisk a person when (1) they have a 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) (citation omitted).

Here, the officer had reason to believe Hill's vehicle was recently involved in a shots-fired incident, which provides the basis for a pat-frisk. Hill's vehicle matched the description the officer received at roll call, and Hill drove evasively when the officer started following. The officer had a reasonable belief that Hill might be armed and dangerous. While the stop was initiated by a traffic violation, there were "additional suspicious or threatening circumstances" that justified a pat-frisk. *In re Welfare of M.D.B.*, 601 N.W.2d 214, 216 (Minn. App. 1999) (citation omitted). The pat-frisk was justified by individual articulable suspicion.

We therefore conclude that the officer's confinement and pat-frisk of Hill were justified by reasonable suspicion of other threatening circumstances, and the district court did not err in admitting the cocaine evidence discovered as a result of Hill's arrest.[1]

Affirmed; motion granted.

[1] For the first time on appeal in his reply brief appellant argues that the car wasn't blue and that appellant wasn't arrested for his driving record. Respondent's motion to strike appellant's newly raised arguments in his reply brief is granted. *State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009) (holding that this court does not consider arguments made for the first time in a reply brief).