STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1073

State of Minnesota,
Respondent,

vs.

Cornelius Palmer,
Appellant.

Filed May 13, 2019
Affirmed
Larkin, Judge

Hennepin County District Court
File No. 27-CR-17-9744

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Linda M. Freyer, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Jodi L. Proulx, Stillwater, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Larkin, Judge; and Smith, John, Judge.*

* Retired judge of the Minnesota Court of Appeals, serving 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

LARKIN, Judge

Appellant challenges his conviction of possession of a firearm by a prohibited person, arguing that the district court erred by denying his motion to suppress the firearm as the fruit of an unlawful search and seizure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Cornelius Palmer with possession of a firearm by a prohibited person. Palmer moved to suppress the evidence supporting the charge, arguing that it was obtained during an unlawful search and seizure. The district court held a hearing on Palmer's motion over the course of two days. Minneapolis Police Officers Hilary Glasrud, Jason Schmitt, and Jeffrey Werner testified at the hearing, as did Palmer. Squad and body-cam videos of the search and seizure were also received as evidence. The district court found the relevant facts to be as follows.

On April 18, 2017, a confidential reliable informant (CRI) contacted Officer Werner by cell phone and told him that earlier that day, the CRI had been inside a vehicle from which drugs were being sold in the area of Chicago and Franklin Avenues in Minneapolis. That is a high-crime area with a significant gang presence and a high level of drug dealing. The CRI described the vehicle as a black four-door Chevy with license plate number 366MDC. The CRI reported that "the driver was a black man, about 30 years old with long-dreadlocks wearing a baseball cap; the front seat passenger was a black woman; and the back seat passenger was a black man, about 40 years old with a medium afro." The

CRI saw semi-automatic firearms in the waistbands of the two men in the vehicle, as well as prescription pills and either crack cocaine or cocaine in the vehicle.

Information from the CRI had led to arrests and charges in the past. Before working with Officer Werner, the CRI successfully conducted controlled buys for other police units. Officer Werner had been working with the CRI for less than a year when the CRI gave him the tip on April 18, 2017. Officer Werner had met with the CRI multiple times face-to-face in the time they had been working together. Prior to providing the tip in this case, the CRI had provided Officer Werner with information that had led to the recovery of a firearm and illegal drugs. The CRI was not under any obligation to contact Officer Werner on a regular basis. Officer Werner testified that the CRI was not cooperating with the police to "work[] off any sort of potential charges or arrests or sentences." The CRI was paid $600 for the information provided in this case.

After receiving the information from the CRI, Officer Werner and other officers went to the area of Chicago and Franklin Avenues in unmarked police vehicles looking for the vehicle described by the CRI. Officers observed a black Chevy with license plate 366MDC at Franklin and Elliot Avenues, a block away from Chicago and Franklin Avenues. The driver matched the CRI's description, as did the other two occupants of the vehicle.

Officer Schmitt first observed the vehicle in a parking lot near a grocery store located on Franklin Avenue. He saw an individual, later identified as Palmer, exit the vehicle, speak with another person for a few minutes, return to the vehicle, and drive out of the parking lot. Officer Schmitt and other officers in unmarked cars followed the

vehicle. Officers observed the vehicle make a quick lane change without signaling and then head down Fourth Avenue at a high rate of speed. After learning that officers had observed those traffic violations, Officer Werner requested that a marked squad car stop the vehicle. Officer Glasrud responded to Officer Werner's request and located the vehicle as it was traveling west on 32nd Street East near Fourth Avenue. Officer Glasrud pulled in behind the vehicle and activated her squad car's emergency lights, but the vehicle did not stop. Instead, the vehicle continued west on 32nd Street and then turned south onto Clinton Avenue. An unmarked police car traveling in the opposite direction pulled in front of the suspect vehicle and blocked its path, causing it to stop.

Officer Glasrud exited her squad car with her gun drawn and went to the driver's side of the vehicle. Three additional officers approached the vehicle with guns drawn and directed its occupants to keep their hands up. Another officer approached the vehicle with his gun drawn shortly afterward. Officer Glasrud pulled Palmer out of the driver's seat with the help of Officer Scott Watry and a plain-clothed officer. The three officers brought Palmer to the ground, and Officer Glasrud handcuffed him. Officer Watry began to pat frisk Palmer and turned him on his side. After Officer Watry did so, Palmer stated, "There's a gun right here," and Officer Watry pulled a gun from Palmer's waistband. Officers pulled Palmer up off the ground, completed his pat frisk, and placed him in the backseat of Officer Glasrud's squad car. Officers searched the suspect vehicle and found a handgun in a glove compartment and a second firearm inside a bag on the backseat.

The district court denied Palmer's motion to suppress. The parties agreed to a stipulated-facts trial, and the district court found Palmer guilty of possession of a firearm

by a prohibited person. The district court entered judgment of conviction and sentenced Palmer to an executed 60-month prison term. Palmer appeals, challenging the constitutionality of his search and seizure.

D E C I S I O N

The United States and Minnesota Constitutions guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects" against "unreasonable searches and seizures." U.S. Const. amend. IV; Minn. Const. art. I, § 10. "The touchstone of the Fourth Amendment is reasonableness." *State v. Johnson*, 813 N.W.2d 1, 5 (Minn. 2012) (quotation omitted). Generally, warrantless searches and seizures are per se unreasonable. *State v. Horst*, 880 N.W.2d 24, 33 (Minn. 2016). However, police "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) (citing *Terry v. Ohio*, 392 U.S. 1, 30, 88 S. Ct. 1868, 1884 (1968)).

In determining whether reasonable suspicion exists, Minnesota courts "consider the totality of the circumstances and acknowledge that trained law enforcement officers are permitted to make inferences and deductions that would be beyond the competence of an untrained person." *State v. Richardson*, 622 N.W.2d 823, 825 (Minn. 2001). The reasonable-suspicion standard is "less demanding than probable cause," but requires more than an unarticulated "hunch." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008).

"[E]ach incremental intrusion during [an investigative] stop must be 'strictly tied to and justified by the circumstances which rendered the initiation of the stop permissible.'"

State v. Askerooth, 681 N.W.2d 353, 364 (Minn. 2004) (quoting *Terry*, 392 U.S. at 19, 88 S. Ct. at 1878) (other quotation omitted). Under the Minnesota Constitution, "an intrusion not strictly tied to the circumstances that rendered the initiation of the stop permissible must be supported by at least a reasonable suspicion of additional illegal activity." *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

When reviewing a district court's pretrial order on a motion to suppress evidence, we review the district court's factual findings for clear error and its legal determinations de novo. *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). This court reviews a district court's determination of reasonable suspicion de novo. *Smith*, 814 N.W.2d at 350.

Palmer challenges the constitutionality of his search and seizure on two grounds. First, Palmer argues that the officers "lacked a reasonable articulable suspicion to stop [his] vehicle or expand the scope of the stop based upon the informant's tip." Second, Palmer argues that "[his] seizure was not an investigatory seizure, but rather an arrest lacking probable cause." We address each argument in turn.

Reasonable Articulable Suspicion to Stop and Frisk Palmer

Palmer concedes that there was reasonable suspicion to stop his vehicle based on the officers' observations of traffic violations. *See State v. George*, 557 N.W.2d 575, 578 (Minn. 1997) ("Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle."). But Palmer contends that "[b]ecause the state failed to prove that the informant's tip was reliable, it did not contribute to a reasonable articulable suspicion of criminal activity justifying the stop of the vehicle or provide an independent basis to expand the scope of the stop."

"The reasonable suspicion standard can . . . be met based on information provided by a reliable informant." *Timberlake*, 744 N.W.2d at 393. "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." *Id.* at 393-94. This court has articulated six factors that are relevant when assessing the reliability of a confidential, but not anonymous, informant:

> (1) a first-time citizen informant is presumably reliable; (2) an informant who has given reliable information in the past is likely also currently reliable; (3) an informant's reliability can be established if the police can corroborate the information; (4) the informant is presumably more reliable if the informant voluntarily comes forward; (5) in narcotics cases, "controlled purchase" is a term of art that indicates reliability; and (6) an informant is minimally more reliable if the informant makes a statement against the informant's interests.

State v. Ross, 676 N.W.2d 301, 304 (Minn. App. 2004), *review denied* (Minn. June 15, 2004).

"The second factor is fulfilled by a simple statement that the informant has been reliable in the past . . . ." *Id.* It is not necessary for officers to provide details regarding the informant's past veracity. *State v. Munson*, 594 N.W.2d 128, 136 (Minn. 1999); *Ross*, 676 N.W.2d at 304. As to that factor, Palmer argues that the following testimony of Officer Werner "greatly diminished the current reliability of the informant": (1) he had met with the informant less than a dozen times and could not recall the first time he met the informant, (2) the informant had not provided information resulting in a criminal conviction, and (3) only once did Officer Werner recover a firearm and illegal drugs through use of the informant. Palmer cites *State v. Ross*, 676 N.W.2d at 303, *State v. Wiley*,

366 N.W.2d 265, 269 (Minn. 1985), and *State v. Munson*, 594 N.W.2d at 136, as support. However, none of those cases supports his position.

In *Ross*, this court reasoned that because supreme court precedent does not "require that specific details [regarding] the past veracity of the CRI be alleged," the district court's conclusion "that more information was necessary was incorrect." 676 N.W.2d at 304. The CRI in *Ross* had "previously provided accurate information resulting in successful arrests." *Id.* at 303. Similarly, Officer Werner testified that the CRI's information had led to the recovery of narcotics and a firearm in the past, as well as arrests and charges.

In *Wiley*, the supreme court reasoned that an officer's sworn statement that an informant had "been used over several years successfully" provided reason to believe that the informant had provided reliable information in the past. 366 N.W.2d at 269. Similarly, Officer Werner's testimony that the CRI had provided information that led to the recovery of narcotics and a firearm, arrests, and charges established the CRI's past reliability.

And in *Munson*, an officer testified that "by definition, a CRI was someone who had previously provided the police with information that led to an arrest and that the particular CRI who provided the information about [the defendant] had given the police reliable information in the past." 594 N.W.2d at 136. The supreme court noted that "the record does not contain specific details of the CRI's record," but reasoned that "further elaboration concerning the specifics of the CRI's veracity is not typically required." *Id.* Like the officer in *Munson*, Officer Werner generally testified that the CRI had provided police with information that had led to arrests and charges.

In sum, Officer Werner's testimony regarding the informant's provision of reliable information in the past shows that the informant was currently reliable.

As to the third reliability factor, police corroboration of a CRI's information, Palmer relies on *State v. Cook*, in which this court held that a CRI's information did not establish probable cause to conduct a warrantless felony arrest "because the informant never claimed he observed the suspect committing a crime and the informant provided non-incriminating details easily obtainable by the general public." 610 N.W.2d 664, 665 (Minn. App. 2000), *review denied* (Minn. July 25, 2000). Palmer argues that, like in *Cook*, "the details corroborated here were easily obtained and insufficient to establish reliability."

The CRI in *Cook* told police that the defendant in that case had been selling crack cocaine at a YMCA in Minneapolis and that the defendant had the crack cocaine in the waistband of his pants. *Id.* at 666. The CRI described the defendant's physical appearance, stated that the defendant was driving a blue Lincoln, and provided a license-plate number. *Id*. Officers located a blue Lincoln with that license-plate number at the YMCA and observed the defendant, who matched the CRI's description, entering the driver's side of the vehicle. *Id.* Officers approached the vehicle and placed the defendant under arrest. *Id.* During a subsequent search, officers found crack cocaine in the waistband of the defendant's pants. *Id.* The district court granted the defendant's motion to suppress the drugs, concluding that police lacked probable cause to arrest the defendant based on the CRI's tip. *Id.*

On appeal, this court found that the CRI was "undeniably credible" based on his track record. *Id.* at 667. But this court stated that "[r]ecitation of facts establishing a CRI's

reliability by his proven 'track record' . . . does not by itself establish probable cause." *Id.* at 668. "The information obtained from the CRI must still show a basis of knowledge." *Id.* This court reasoned that although "the CRI's tip included a description of [the defendant's] clothing, physical appearance, vehicle, and present location," those details "fail[ed] to offer any explanation for the basis of the CRI's claim that [the defendant] was selling drugs." *Id.* For example, the "CRI never claimed that he had purchased drugs from [the defendant] or that he had seen [the defendant] selling drugs." *Id.* This court further reasoned that the details of the CRI's tip "were entirely innocuous and lacked any incriminating aspects that might corroborate the CRI's claim that [the defendant] was selling drugs at the YMCA" and that "any link between [the defendant] and illegal activity was nonexistent." *Id.* This court concluded that although police may have had reasonable suspicion to legally stop and question the defendant to ascertain his identity, they did not have probable cause to arrest him at that time. *Id.* at 669.

This case is distinguishable from *Cook* for two reasons. First, the issue in *Cook* was whether the CRI's tip provided probable cause to arrest. *Id.* The issue in this case is whether the CRI's tip provided reasonable, articulable suspicion justifying an investigative seizure. The reasonable-suspicion standard is "obviously less demanding than . . . probable cause." *Alabama v. White*, 496 U.S. 325, 330, 110 S. Ct. 2412, 2416 (1990) (quotation omitted). And although factors regarding whether an informant's tip establishes probable cause "are also relevant in the reasonable-suspicion context, allowance must be made in applying them for the lesser showing required to meet that standard." *Id.* at 328-29, 110 S. Ct. at 2415. As we recognized in *Cook*, "police may have had 'reasonable suspicion' to

legally stop and question [the defendant] to ascertain his identity," but the facts did not "support finding that police had 'probable cause' to arrest [the defendant] at that time." 610 N.W.2d at 669; *see Adams v. Williams*, 407 U.S. 143, 147, 92 S. Ct. 1921, 1924 (1972) (stating that although the informant's tip "may have been insufficient for a narcotics arrest or search warrant," it had "enough indicia of reliability to justify [a] forcible stop").

Second, unlike *Cook*, the record in this case establishes the CRI's basis of knowledge: the CRI had been in the suspect vehicle on the day he provided the tip and had seen firearms and drugs in the vehicle. "Recent personal observation of incriminating conduct has traditionally been the preferred basis for an informant's knowledge." *Wiley*, 366 N.W.2d at 269. In sum, unlike the circumstances in *Cook*, the CRI's tip in this case was based on recent personal observations of incriminating conduct.

Moreover, in addition to corroborating the innocuous details of the CRI's tip, the officers observed conduct that corroborated the CRI's report of illegal activity. "[E]vidence of flight suggests consciousness of guilt." *State v. Bias*, 419 N.W.2d 480, 485 (Minn. 1988). Officer Glasrud testified, and the relevant squad video shows, that the suspect vehicle did not immediately stop when Officer Glasrud pulled in behind it and turned on her squad car's emergency lights and that it did not stop until an unmarked police vehicle pulled in front of it and blocked its path. The vehicle's failure to stop when Officer Glasrud activated her squad car's emergency lights corroborated the CRI's tip in that it suggested that the occupants of the vehicle were involved in illegal conduct.

As to the fourth reliability factor, that an informant is presumably more reliable if the informant voluntarily comes forward, Palmer argues that because the CRI was paid

$600 for the tip, the CRI's "reliability was significantly diminished." Palmer relies on *State v. Ward*, 580 N.W.2d 67, 72 (Minn. App. 1998), asserting that the payment "effectively branded the informant a 'stool pigeon.'" *Ward* states that "courts remain reluctant to believe the typical 'stool pigeon' who is arrested and who, at the suggestion of the police, agrees to cooperate and name names in order to curry favor with the police." 580 N.W.2d at 71-72. But Officer Werner testified that the CRI was not "working off any sort of potential charges or arrests or sentences" when the CRI provided the tip in this case. The CRI therefore was not a "stool pigeon" as described in *Ward*.

In sum, the record establishes that (1) the CRI had given reliable information in the past and was likely also currently reliable, (2) the CRI's report of criminal activity was based on recent, personal observation of that activity and was corroborated by police observations and Palmer's own actions in response to Officer Glasrud's attempt to stop his vehicle, and (3) the CRI voluntarily came forward. Under the circumstances, the CRI's reliability was adequately established, and the CRI's report provided reasonable suspicion to stop Palmer for investigative purposes.

"So long as [an] officer is entitled to make a forcible stop, and has reason to believe that the suspect is armed and dangerous, [the officer] may conduct a weapons search limited in scope to this protective purpose." *Williams*, 407 U.S. at 146, 92 S. Ct. at 1923. If both of those requirements are satisfied, "police may 'conduct a carefully limited search of the outer clothing of such [a] person[] in an attempt to discover weapons which might be used to assault [the officer].'" *Dickerson*, 481 N.W.2d at 843 (alteration in original) (quoting *Terry*, 392 U.S. at 30, 88 S. Ct. at 1884).

Again, the CRI's report provided reasonable suspicion of criminal activity justifying Palmer's investigative seizure. The CRI's report that the two men in the suspect vehicle had semi-automatic firearms in their waistbands also provided reason to believe that Palmer may be armed and dangerous. Palmer's failure to immediately stop the vehicle when Officer Glasrud pulled in behind the vehicle and activated her marked squad car's emergency lights exacerbated that concern. *See Williams*, 407 U.S. at 148, 92 S. Ct. at 1924 ("When [the defendant] rolled down his window, rather than complying with the policeman's request to step out of the car so that his movements could more easily be seen, the revolver allegedly at [the defendant's] waist became an even greater threat."). Because both stop-and-frisk requirements were satisfied in this case, the officers were authorized to conduct a limited search of Palmer's outer clothing for officer safety. We therefore reject Palmer's argument that "officers impermissibly expanded the scope of the [traffic] stop when they approached [his] vehicle with guns drawn, directed him to show his hands, physically seized and handcuffed him, then proceeded to conduct a pat-search."

Probable Cause to Arrest

Palmer contends that "[e]ven if officers had a reasonable articulable suspicion of criminal activity to conduct an investigatory seizure . . . , the overly intrusive actions of officers constituted an arrest, as opposed to an investigatory seizure, which required probable cause."

"The ultimate test to be used in determining whether a suspect was under arrest is whether a reasonable person would have concluded, under the circumstances, that he was under arrest and not free to go." *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984)

(citing *Florida v. Royer*, 460 U.S. 491, 103 S. Ct. 1319 (1983)). But as explained below, courts also consider officer safety when determining whether police conduct turned an investigative seizure into an arrest requiring probable cause.

> To be reasonable under the Fourth Amendment, an investigative stop must be limited in scope and duration to its initial justification. In determining the propriety of a stop's scope and duration, courts must balance the nature and degree of the intrusion on an individual's Fourth Amendment rights against the governmental interest in crime prevention and legitimate concerns about the safety of law-enforcement officers. The courts must also consider the totality of the circumstances and judge the facts against an objective standard, namely, whether the facts available to the officer at the moment of the stop would cause a person of reasonable caution to believe that the action taken was appropriate.
>
> There is no bright-line test separating a legitimate investigative stop from an unlawful arrest. Instead, "common sense and ordinary human experience must govern over rigid criteria." *In determining whether a police officer's conduct turned an investigative stop into an unlawful arrest, courts must specifically consider the aggressiveness of the police methods and the intrusiveness of the stop against the justification for the use of such tactics, i.e., whether the officer had a sufficient basis to fear for his or her safety.*

State v. Balenger, 667 N.W.2d 133, 139 (Minn. App. 2003) (emphasis added) (quotation and citations omitted), *review denied* (Minn. Oct. 21, 2003).

"Unduly intrusive police conduct may, but does not automatically, transform an otherwise legitimate investigative stop into an unlawful arrest." *Id.* "[T]he trend has been to grant officers greater latitude in using force in order to 'neutralize' potentially dangerous suspects during an investigatory stop." *Id.* (quotation omitted). "Thus, the use of force reasonable under the circumstances will be permitted without a showing of probable cause

when force is necessary for the protection of the investigating officers and the degree of force used is reasonable." *Id.*; *see State v. Nading*, 320 N.W.2d 82, 84 (Minn. 1982) (holding that under totality of circumstances, fact that police ordered suspected burglars thought to be armed and dangerous to get out of car and lie on the ground did not convert a temporary detention into an arrest); *State v. O'Neill*, 216 N.W.2d 822, 828 (Minn. 1974) (holding that where "officers [knew] from [a] radio report that the occupants of [a] car were armed, the officers were justified for their own protection in holding the occupants at gunpoint until they were frisked for weapons"). The use of reasonable force is normally justified in cases involving armed suspects. *Balenger*, 667 N.W.2d at 140. In sum,

> there is a fine line between an arrest and an investigatory detention. It is not always apparent at what precise moment an arrest occurs. The action of the police officers must be judged according to the circumstances existing at the time. *But the determination whether an arrest occurs at the initial stop should not be decided solely by the conduct of the arresting officers or the amount of force they exhibit at the time.* If an officer making a reasonable investigatory stop has cause to believe that the individual is armed, he is justified in proceeding cautiously with weapons ready.

O'Neill, 216 N.W.2d at 827-28 (emphasis added) (citations omitted).

Palmer argues that "the actions of law enforcement in this case, did not amount to a reasonable pre-arrest detention to further investigate the 'tip' of the informant, but rather constituted an arrest." Specifically, Palmer argues that the following actions transformed his seizure into a de facto arrest: (1) officers blocked in his vehicle; (2) several officers approached the vehicle with guns drawn and pointed; (3) officers directed him to show his hands and then physically removed him from his vehicle, put him on the ground,

handcuffed him, and searched him; and (4) at no time during the initial seizure did officers advise him that he was not under arrest. Palmer relies on *State v. Blacksten*, 507 N.W.2d 842 (Minn. 1993), and *State v. Carver*, 577 N.W.2d 245 (Minn. App. 1998).

In *Blacksten*, police stopped the defendant's vehicle because of safety concerns related to an anticipated search of the defendant's residence. 507 N.W.2d at 845. After stopping the defendant's vehicle, an officer pointed a shotgun at him, ordered him to get out of the car and lie on the ground, and searched him. *Id.* Next, the officer handcuffed the defendant and placed him in the back of a squad car. *Id.* Approximately an hour and 15 minutes later, police obtained a warrant to search the defendant's residence. *Id.* Shortly after searching the residence, officers informed the defendant that he was under arrest. *Id.* The supreme court stated that the defendant was "de facto under arrest from the time he was ordered to the ground at gunpoint, handcuffed, and placed in the squad car," noting that the officer who stopped the defendant "had no intention of conducting any investigation while detaining him" and that the defendant was seized "two miles from his residence at least an hour and fifteen minutes prior to the issuance of the search warrant for that residence." *Id.* at 846-47. The supreme court held that "the detention of [the defendant] two miles from his residence for well over an hour while the search warrant was being sought was not a reasonable pre-arrest investigatory stop." *Id.* at 847.

In *Carver*, an officer stopped the defendant's vehicle after observing it speeding. 577 N.W.2d at 247. The officer ordered the defendant to get out of his vehicle and assume the prone position on the road. *Id.* The officer then approached the defendant, handcuffed him, and escorted him back to the officer's patrol car. *Id.* The officer testified that he took

those precautions because of the way the vehicle sped past his patrol car without slowing down, because it was not clear to the officer why the defendant was speeding, and because the officer did not know whether additional officers were available to assist. *Id.* The district court granted the defendant's motion to suppress evidence obtained after the defendant had been handcuffed and placed in the squad car. *Id.* On appeal, the state argued that the defendant was not under arrest when he was ordered to assume the prone position on the roadway and handcuffed. *Id.* This court reasoned that although ordering the defendant to lie on the ground did not constitute an arrest, the officer's additional action of handcuffing the defendant "sufficiently restrained freedom of movement so as to give a reasonable person the belief that he was not free to go." *Id.* at 248.

Palmer's reliance on *Blacksten* and *Carver* is unavailing because the officer safety concerns in those cases do not compare to the safety concern in this case. Instead, the circumstances of this case are more like those in *Munson*. 594 N.W.2d at 128. In that case, a CRI described a rented vehicle and told police it would arrive at an address in St. Paul carrying a large amount of crack cocaine. *Id.* at 132. The CRI further reported that the occupants of the vehicle would be three African American males, two of whom the CRI identified. *Id.* The CRI "said that the three occupants may be armed, but had no direct knowledge on that point." *Id.* Officers located the vehicle at the St. Paul address, activated the lights on their squad car, and pulled up behind it. *Id.* at 132-33. The officers approached the vehicle with their guns drawn and ordered the occupants to raise their hands. *Id.* at 133. Other officers arrived on the scene, and the police ordered the occupants out of the vehicle. *Id.* Police handcuffed the vehicle's occupants, frisked them for

weapons, removed the handcuffs after determining that they were not armed, and placed them in separate squad cars. *Id.* Police searched the vehicle and discovered drug evidence. *Id.*

On appeal, the *Munson* defendant argued, in part, that his detention was unreasonable. *Id.* at 135. The supreme court concluded that the detention was reasonable, explaining:

> We have recognized in the past that if an officer making a reasonable investigatory stop has cause to believe that the individual is armed, he is justified in proceeding cautiously with weapons ready. Moreover, once a person is permissibly stopped, an officer may frisk that person for weapons if the officer is justified in believing that the suspect is armed and dangerous. We have also held that briefly 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. Here, the record indicates that the stop of the [vehicle's] occupants occurred late at night and that it involved multiple suspects. The record also shows that the officers were acting on information that the occupants may be armed and that the [vehicle] was carrying a large amount of illegal drugs. *Under these circumstances, approaching the [vehicle] with weapons drawn, removing the occupants from the [vehicle], frisking them, placing them in the back seat of squad cars and even handcuffing them briefly until it was determined they were not armed, were reasonable steps taken by the officers to safely conduct their investigation.*

Id. at 137 (emphasis added) (quotation and citations omitted); *see Williams*, 407 U.S. at 146, 92 S. Ct. at 1923 ("[T]he policeman making a reasonable investigatory stop should not be denied the opportunity to protect himself from attack by a hostile suspect.").

Similar to *Munson*, the stop in this case involved multiple suspects and two of them reportedly were armed. Also like *Munson*, the officers were acting on information that the

suspects were transporting narcotics in their vehicle. In fact, the circumstances here provide greater support for the officers' safety-based use of force because the CRI had been in the vehicle earlier that day and had observed that two men in the vehicle were armed. In addition, Palmer did not stop the vehicle when the police indicated that he should do so. *See Williams*, 407 U.S. at 148, 92 S. Ct. at 1924 ("When [the defendant] rolled down his window, rather than complying with the policeman's request to step out of the car so that his movements could more easily be seen, the revolver allegedly at [the defendant's] waist became an even greater threat.").

Again, when determining whether the use of force by the police turned an investigative stop into an arrest, we must balance "the aggressiveness of the police methods and the intrusiveness of the stop against the justification for the use of such tactics, i.e., whether the officer had a sufficient basis to fear for his or her safety." *Balenger*, 667 N.W.2d at 139. Although the officers' use of force in this case was aggressive, it was justified given the officers' reasonable belief that two men in the suspect vehicle recently had been selling drugs and were armed. Thus, the officers' actions did not transform an otherwise legitimate investigative stop into an arrest requiring probable cause.

Conclusion

Because the officers had a lawful basis to stop and frisk Palmer, and because the totality of the circumstances justified the level of force used in doing so, we affirm.

Affirmed.