STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0264

Stanley Paul Wenell-Jack, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

Filed September 3, 2019
Affirmed
Larkin, Judge

Itasca County District Court
File No. 31-CR-16-1142

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

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

Matti R. Adam, Itasca County Attorney, Nichole J. Carter, Assistant County Attorney, Grand Rapids, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Rodenberg, 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 fifth-degree possession of a controlled substance, arguing that the evidence supporting the conviction should have been suppressed as the result of an illegal seizure. We affirm.

FACTS

Respondent State of Minnesota charged appellant Stanley Paul Wenell-Jack with felony fifth-degree possession of a controlled substance, misdemeanor providing a false name or date of birth to a peace officer, and misdemeanor possession of a legend drug.[1] Wenell-Jack moved to suppress the state's evidence, arguing that it was obtained as the result of an illegal search and seizure. The district court held an evidentiary hearing on the motion and established the following factual record.

In the early morning hours of April 22, 2016, Grand Rapids Police Officers Ashley Moran and Shaun Pomplun were separately patrolling downtown Grand Rapids. Several local businesses had been burglarized recently, and no suspects had been identified. At approximately 1:55 a.m., Officer Moran saw a man, later identified as Wenell-Jack, who appeared to be sleeping inside a 24-hour laundromat.

Officer Moran asked Officer Pomplun to meet her at the laundromat. Officer Pomplun arrived, and the officers entered the laundromat. They saw Wenell-Jack "slumped over" in a chair, and he appeared to be sleeping. The officers saw a "small duffel

[1] A "legend drug" is a "drug that is required by federal law to be dispensed only pursuant to the prescription of a licensed practitioner." Minn. Stat. § 151.01, subd. 17 (2014).

bag, measuring approximately one foot in length by eight inches in width" on the ground by Wenell-Jack's foot. The officers woke Wenell-Jack and began to question him. The officers stood side by side, directly in front of Wenell-Jack, approximately eight feet away from him. The officers were positioned between Wenell-Jack and the laundromat's exit.

As soon as Wenell-Jack woke, he grabbed the duffel bag that was at his feet, placed it on his lap, and held it close to his body. Officer Moran thought that behavior was suspicious and that the bag might contain burglary tools in light of the recent burglaries in the area. Officer Pomplun thought that Wenell-Jack was trying to hide something in the bag.

Officer Pomplun asked Wenell-Jack what he was doing, and Wenell-Jack responded that he had been at a nearby apartment complex and was waiting for a friend to pick him up. Officer Pomplun asked Wenell-Jack for his name, and he identified himself as "Jordan James Carson," with a date of birth of June 4, 1983. When Officer Pomplun asked Wenell-Jack what was in the duffel bag, he responded that it contained his "stuff and some tools." Officer Pomplun asked Wenell-Jack to open the bag and he complied, revealing a sweater and a propane tank with a torch. Wenell-Jack told the officers that he was using the torch to help a friend weld something. Officer Pomplun knew that propane torches are generally not used for welding and he also knew, based on his training and experience, that propane torches are frequently used to heat drugs such as methamphetamine and heroin.

At that point, Officer Moran contacted police dispatch and requested a database search of the name and date of birth that Wenell-Jack had provided, and they came back as "not on file." Officer Pomplun told Wenell-Jack that it was a crime to give a peace officer

a false name and again asked for his identification. Wenell-Jack stated that he did not have picture identification with him and once again asserted that his name was "Jordan James Carson."

Officer Pomplun asked Wenell-Jack to remove the sweater and propane torch from the duffel bag, and he complied. Officer Pomplun stepped closer to Wenell-Jack to see what was in the bag and observed a methamphetamine pipe and several loose yellow pills. Wenell-Jack admitted that the pills belonged to a friend and that he did not have a prescription for them. Based on his observations of the pipe and the pills, Officer Pomplun placed Wenell-Jack under arrest and performed a pat search. During the search, the officer discovered a wallet containing Wenell-Jack's Minnesota state identification card. Officer Moran provided dispatch with Wenell-Jack's name, and dispatch reported that he had two outstanding gross misdemeanor arrest warrants and that he was on felony probation in Itasca County.

The district court denied Wenell-Jack's motion to suppress, concluding that "reasonable suspicion supported an investigative stop of [Wenell-Jack] to investigate burglary related crimes." The parties agreed to proceed under Minn. R. Crim. P. 26.01, subd. 4, which allows a defendant to stipulate to the prosecution's case to obtain review of a district court's pretrial ruling. The district court found Wenell-Jack guilty of fifth-degree possession of a controlled substance and giving a false name to a peace officer and not guilty of possession of a legend drug. The district court entered judgment of conviction for the controlled-substance crime and sentenced Wenell-Jack to a prison term of one year and one day. Wenell-Jack did not file a direct appeal.

Nearly two years later, Wenell-Jack petitioned for postconviction relief, arguing that "[t]he officers did not have individualized reasonable articulable suspicion to justify an investigatory stop." The postconviction court denied Wenell-Jack relief.

Wenell-Jack appeals from the postconviction court's denial of relief.

D E C I S I O N

A person convicted of a crime who claims that the conviction violates his rights under the constitution or laws of the United States or Minnesota may petition for postconviction relief unless direct appellate relief is available. Minn. Stat. § 590.01, subd. 1 (2018). The petition must include "a statement of the facts and the grounds upon which the petition is based and the relief desired." Minn. Stat. § 590.02, subd. 1(1) (2018). This court reviews a denial of postconviction relief for an abuse of discretion. *Reed v. State*, 925 N.W.2d 11, 18 (Minn. 2019). In doing so, we review the postconviction court's legal determinations de novo and its factual findings for clear error. *Brown v. State*, 895 N.W.2d 612, 617 (Minn. 2017).

I.

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). But a police officer may stop and detain a person without

a warrant, for investigative purposes, based on specific and articulable facts that create reasonable suspicion of illegal activity. *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000) (citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). "[T]he reasonable suspicion standard is not high," but it requires more than an unarticulated "hunch." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008) (quotations omitted). An officer may not stop a person based on "mere whim, caprice, or idle curiosity." *Marben v. State, Dep't of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980) (quotation omitted).

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). Evasive behavior is a pertinent factor in a reasonable-suspicion determination. *Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S. Ct. 673, 676 (2000). An appellate court reviews a determination of reasonable suspicion de novo, but accepts the supporting factual findings unless they are clearly erroneous. *State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2012).

Wenell-Jack contends that he was illegally seized and that "[t]he evidence obtained as a result of the illegal seizure must be suppressed."[2] *See State v. Jackson*, 742 N.W.2d

[2] In district court, Wenell-Jack also challenged the search of his bag, arguing that it was an unconstitutional warrantless search, to which he did not voluntarily consent. *See State v. Diede*, 795 N.W.2d 836, 846 (Minn. 2011) ("Consent is an exception to the warrant requirement. For a search to fall under the consent exception, the State must show by a preponderance of the evidence that consent was given freely and voluntarily." (citation omitted)). The district and postconviction courts rejected that challenge, and Wenell-Jack does not seek review of that aspect of the postconviction court's ruling in his primary brief.

163, 178 (Minn. 2007) (stating that evidence obtained in violation of the Fourth Amendment generally must be suppressed).

Under the Minnesota Constitution, a seizure occurs when, given the totality of the circumstances, "a reasonable person in the defendant's shoes would have concluded that he or she was not free to leave." *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993); *see also State v. Askerooth*, 681 N.W.2d 353, 362 (Minn. 2004) (explaining that article I, section 10 of the Minnesota Constitution provides greater protection than the Fourth Amendment, under which a seizure only occurs when the police use physical force or a person submits to a show of authority by the police).

Wenell-Jack contends that the seizure occurred when Officer Pomplun asked him for identification. The state does not dispute that contention. Because the issue is undisputed, we assume without deciding that Officer Pomplun's request for identification constituted a seizure. As to the basis for that seizure, the relevant circumstances are as follows. Officers Moran and Pomplun encountered Wenell-Jack, slumped over and sleeping, in a 24-hour laundromat at approximately 1:55 a.m. A series of recent, unsolved burglaries had taken place in the area. When the officers approached Wenell-Jack, they saw a small duffel bag, approximately one foot long and eight inches wide, on the ground by his foot. When the officers woke Wenell-Jack, he immediately grabbed the duffel bag and placed it on his lap. Officer Moran thought that reaction was suspicious and that the bag might contain burglary tools. Officer Pomplun believed that Wenell-Jack was trying to hide something in the bag. Officer Pomplun asked Wenell-Jack what he was doing, and

Wenell-Jack replied that he was waiting for a friend to pick him up. There was no indication that Wenell-Jack was doing laundry.

Again, the standard for reasonable, articulable suspicion is low, and police officers can make reasonable inferences. *See Timberlake*, 744 N.W.2d at 393; *Richardson*, 622 N.W.2d at 825. Given the circumstances, including the small size of Wenell-Jack's bag, the fact that he was not doing laundry, and his evasive act of grabbing the bag when he woke and observed the officers, we conclude that there was reasonable, articulable suspicion of criminal activity to support an investigatory seizure.

Wenell-Jack argues that his "sleeping in a laundromat did not provide an objective basis to believe he was involved in previous burglaries at other businesses." But Wenell-Jack's argument ignores the other circumstances that combined to create reasonable, articulable suspicion including the time of day, the lack of any indication that he was doing laundry, and his immediate, evasive movement of the bag at his feet when he woke and observed two police officers in front of him. Wenell-Jack also argues that there was an innocent explanation for his behavior and that the officers did not provide any details regarding the previous burglaries that would indicate any link between those incidents and his conduct. But "seemingly innocent factors" may contribute to a finding of reasonable, articulable suspicion. *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). And, given all of the circumstances, the officer's generalized knowledge regarding previous burglaries was adequate to contribute to reasonable suspicion of criminal activity.

Again, "[t]he touchstone of the Fourth Amendment is reasonableness." *Johnson*, 813 N.W.2d at 5 (quotation omitted). Given the totality of the circumstances, the

minimally intrusive act of requesting Wenell-Jack's identification was reasonable. And because the police lawfully seized Wenell-Jack for investigative purposes, his argument that the contraband should be suppressed as the result of an illegal seizure fails. Accordingly, we affirm without addressing the state's arguments that Wenell-Jack lacked standing to challenge Officer Pomplun's actions and that under *Utah v. Strieff*, 136 S. Ct. 2056 (2016), the evidence need not be suppressed.

II.

Wenell-Jack submitted a pro se brief raising additional issues. The majority of his pro se arguments address whether his seizure was supported by reasonable, articulable suspicion, and they are consistent with the arguments in his primary brief. We therefore do not discuss them separately. Wenell-Jack also argues that the police officers' actions constituted a seizure, an issue that is not disputed on appeal. Lastly, Wenell-Jack summarily refers to his "alleged" consent to the officers' request to see his bag. But he does not offer any legal argument or authority challenging the search of his bag. Wenell-Jack's unsupported assertion of error regarding the search of his bag is waived, and we therefore do not address it. *See Brooks v. State*, 897 N.W.2d 811, 819 (Minn. App. 2017) ("[I]ssues not adequately briefed are waived."), *review denied* (Minn. Aug. 8, 2017); *State v. Andersen*, 871 N.W.2d 910, 915 (Minn. 2015) (stating that mere assertions of error without supporting legal authority or argument are waived unless prejudicial error is obvious on mere inspection).

Affirmed.