

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1217**

State of Minnesota,
Respondent,

vs.

Kristoffer Marshall Anderson,
Appellant.

**Filed June 29, 2020
Affirmed
Smith, John, Judge***

Dakota County District Court
File No. 19HA-CR-18-2932

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

James C. Backstrom, Dakota County Attorney, Anna Light, Assistant County Attorney,
Hastings, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica M. Surges, Laura
Heinrich, Assistant Public Defenders, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, 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.

UNPUBLISHED OPINION

SMITH, JOHN, Judge

We affirm the district court's denial of the appellant Kristoffer Marshall Anderson's motion to suppress evidence because the record supports the district court's conclusion that the officer had reasonable, articulable suspicion to seize the appellant.

FACTS

Anderson moved to suppress any evidence flowing from the search following his seizure and arrest, including a loaded firearm found in his pocket. At the December 2018 motion hearing, Anderson argued that the moment Officer Baumeister asked Anderson for his name, Anderson was not free to leave. Anderson also argued that at that moment, Officer Baumeister did not have a reasonable, articulable suspicion that a crime was being committed. Officer Baumeister testified that on November 9, 2018, at about 10:25 p.m., he received a call from an employee at Discount Tire on Robert Street in West St. Paul. Officer Baumeister was unable to provide any additional information about the caller. The caller told Officer Baumeister there was an unknown individual, who appeared to be wearing camouflage clothing, walking around the building after business hours. The person was looking into vehicles, including a vehicle belonging to a Discount Tire employee. The caller also stated that an employee approached the person in the parking lot, and the person turned and walked toward the woods, located east of the business. The employee lost sight of the person.

Officer Baumeister testified that based on his experience working the night shift on Robert Street, there were only a few businesses open after 10:00 p.m. in that area, and

Discount Tire was not one of them. Officer Baumeister testified that “it is a tire business, so sometimes customers drop off their cars, and that they’re there waiting to be serviced.” When Officer Baumeister arrived at the scene, Anderson was the only person near Discount Tire. Anderson was straddling a bicycle that had a sled attached to it, approximately 30 yards (or about 100 feet) from Discount Tire. Anderson was heading northeast. It was dark, so Officer Baumeister put on his spotlight to illuminate the area. Officer Baumeister stopped his car, and approached Anderson.

Officer Baumeister testified that Anderson’s behavior was suspicious. Officer Baumeister testified Anderson was “turning and looking at [Officer Baumeister] rapidly, moving his hands throughout his body.” This gave Officer Baumeister the impression that Anderson was trying to conceal something. Anderson seemed calm when Officer Baumeister approached him. Officer Baumeister told Anderson that he was making contact with him because the Discount Tire staff had reported that there was an individual looking in the vehicles at their business. Anderson responded with a “rant” about how there were “other kids” or individuals “up in the parking lot who were acting suspicious.” Anderson was talking rapidly, and it was difficult for Officer Baumeister to understand him. Anderson admitted to Officer Baumeister that he had been in the Discount Tire parking lot.

Officer Baumeister asked Anderson if he had any form of identification on him and Anderson said no. Then Officer Baumeister asked Anderson for his name and birthdate. Anderson provided Officer Baumeister with a birthdate and a name other than his own. Officer Baumeister testified that he did not believe that Anderson was free to leave once he asked Anderson for his name. When the assisting officer, Officer Forester, arrived

Officer Baumeister asked him to stay with Anderson while he went back to his squad car to check the name Anderson gave him in the state identification database. Officer Forester testified that Anderson appeared to be homeless. Officer Forester stated that their conversation was casual, though Anderson seemed uncomfortable talking with police officers.

Officer Baumeister checked the spelling of the name Anderson gave him and ran several variations of the name in the state identification database, but he could not find any person with the name Anderson provided. Officer Baumeister then concluded that Anderson had given him a false name. Officer Baumeister exited his squad car and told Anderson to get off his bicycle because he was being detained. The district court found that the officers had probable cause to arrest Anderson once they determined that he had given them a false name. Anderson was searched incident to his arrest after arriving at the jail. Anderson had a black .38 caliber revolver in his left breast pocket. The serial number confirmed that it had been stolen from St. Louis County, Minnesota. Anderson's backpack contained a number of tools including bolt cutters, heavy-duty scissors, wire cutters, screwdrivers, and a crow bar. Anderson's criminal history includes multiple convictions for crimes of violence. Anderson was charged with two counts of possession of a firearm or ammunition by an ineligible person pursuant to Minnesota Statutes section 624.713.1(2) (2018).

At the December 2018 motion hearing Officer Baumeister testified that Anderson appeared to be wearing a camouflage hunting jacket. Officer Forester testified that Anderson was wearing camouflage pants, but he could not recall the jacket Anderson was

wearing. After being shown a picture, Officer Forester testified that he recalled that Anderson was wearing a black jacket and several layers of clothing. Officer Forester stated that Anderson zipped up one of his layers of clothing while he was talking to him. Officer Forester testified that there were no camouflage pants in the pictures he was shown in court, but he could not say whether or not a picture of the camouflage pants existed, because he was not the person who took the inventory of the defendant's clothes. Officer Forester testified that he believed that Anderson's pants were similar to some hunting cover-all pants that he himself owns, which have a kind of camouflage pattern.

The district court found that Anderson was not free to leave while he was being questioned by Officer Baumeister. However, the district court found that the seizure was reasonable based on what Officer Baumeister knew at the time: (1) that the police officer arrived at the scene shortly after receiving a call; (2) that the caller stated that the person they saw was wearing camouflage; (3) that the police officers arrived at the scene approximately 30 yards from Discount Tire; and (4) that it was after business hours. The district court stated, "I don't think it's critical that somebody has a black coat, green coat or otherwise," because eye-witness information is often inaccurate. The district court stated that, for example, officers may hear that a person is six feet tall or five feet tall, and they still have to determine what the person is doing there and what is happening. Based on these facts, the district court concluded that the police had the right to investigate who Anderson was, and what he was doing approximately 30 yards from Discount Tire after hours.

In April 2019, Anderson agreed to a stipulated-facts trial under Minnesota Rules of Criminal Procedure, rule 26.01, subdivision 3. The district court concluded that Anderson was guilty of possession of both the firearm and ammunition. On appeal, Anderson argues that Officer Baumeister's seizure of him was not supported by reasonable, articulable suspicion that a crime had occurred or was about to occur, or that Anderson was the person described in the 911 call. Therefore, it is Anderson's position that the court erred by denying his suppression motion, because the firearm and ammunition discovered on his person were uncovered as the result of an illegal seizure.

D E C I S I O N

Officer Baumeister had reasonable suspicion to seize Anderson.

Anderson argues that Officer Baumeister had no reasonable, articulable suspicion that a crime occurred or was about to occur. Anderson argues that when Officer Baumeister seized him, he only knew five things: "an employee said a person was looking in a car, Anderson was leaving the area on a bike, his eyes were wide, he was moving his hands, and he was speaking rapidly."

A seizure occurs "when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (quotation omitted). Both the United States and Minnesota constitutions protect against unreasonable searches and seizures. U.S. Const. amend IV; Minn. Const. art. I, § 10. "To lawfully seize a person temporarily to investigate a crime, a police officer must have a reasonable, articulable suspicion that the person was or will be engaged in criminal activity." *State v. Wiggins*, 788 N.W.2d 509, 513 (Minn. App. 2010) (citing *Terry*

v. Ohio, 392 U.S. 1, 21-22, 88 S. Ct. 1868, 1880 (1968)) (additional citation omitted). “We evaluate whether a reasonable, articulable suspicion exists from the perspective of a trained police officer, who may make ‘inferences and deductions that might well elude an untrained person.’” *State v. Lemert*, 843 N.W.2d 227, 230 (Minn. 2014) (quoting *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 695 (1981)). In reviewing whether a warrantless seizure is justified, we review the district court’s factual findings for clear error and its legal conclusions de novo. *State v. Stavish*, 868 N.W.2d 670, 677 (Minn. 2015).

A. The 911 call

Anderson argues that the information provided in the 911 call does not support Officer Baumeister’s decision to conduct an investigative stop. He also argues that even if it did, there was no reasonable, articulable suspicion that Anderson was the person described in the 911 call. “The information necessary to support an investigative stop need not be based on the officer’s personal observations, rather, the police can base an investigative stop on an informant’s tip if it has sufficient indicia of reliability.” *In re Welfare of G.M.*, 560 N.W.2d 687, 691 (Minn. 1997). To determine an informant’s reliability, “we look both at the informant and the informant’s source of the information and judge them against all of the circumstances.” *Id.* (quotation omitted). An informant who appears to be a private citizen is presumed to be reliable. *Marben v. State, Dep’t of Pub. Safety*, 294 N.W.2d 697, 699 (Minn. 1980).

The employee that called from Discount Tire was apparently a private citizen, and therefore presumed reliable. The caller told Officer Baumeister there was an unknown individual wearing camouflage, walking around the building after hours and looking into

one of the employee's vehicles. The caller stated that an employee approached the person in the parking lot, and the person then turned and walked toward the woods, located east of the business. It was about 10:25 p.m. and Discount Tire, as well as most of the other businesses in the vicinity, were closed. There were often multiple cars parked at Discount Tire after business hours because customers drop off their cars to be serviced. The vehicle that the unknown person was looking into at 10:25 p.m. did not belong to a customer, it belonged to one of the employees. It was reasonable for officers to suspect that a car theft may be underway based on a call from a business reporting that a stranger was looking into an employee's vehicle, in the business's parking lot that was regularly full of unattended vehicles, after normal business hours, at 10:25 p.m. at night.

When Officer Baumeister arrived on the scene, Anderson was approximately 30 yards from Discount Tire, headed northeast. Anderson admitted that he was in the Discount Tire parking lot. It was dark. Officer Baumeister put on his spotlight to illuminate the area and did not see anyone other than Anderson. Anderson presented no testimony or evidence that there was anyone else in the area, apart from his own statements to Officer Baumeister that there were other people in the parking lot acting suspicious.

The only issue of fact Anderson disputes is the color of his clothing, however the district court chose not to make a finding of fact on this issue. Anderson argues that he did not match the description provided by the 911 caller. Anderson points out that the 911 caller did not mention that Anderson had a bicycle or a sled, and the officers contradicted each other when they described his clothing. A number of factors can affect the accuracy of an eyewitness's description of a suspect. *See State v. Ferguson*, 804 N.W.2d 586, 606

(Minn. 2011) (acknowledging that studies indicate certain factors affect the reliability of eyewitness identifications). Both Officer Baumeister and Officer Forester testified that Anderson was wearing some sort of hunting attire, however their accounts differ on the exact color of his clothes. The district court reasoned that the exact color of the coat was irrelevant because eye-witness testimony is often inaccurate. The court stated that, for example, officers may hear a person is six feet tall or five feet tall, nonetheless they still have to put together what the person is doing there and what is happening.

Officer Forester testified hunting attire often features camouflage. It is reasonable that someone looking at a person wearing hunting attire in the dark would assume that the color of their clothes was some sort of camouflage. Furthermore, there is no reason to assume that the presence of the bicycle and sled meant Anderson did not fit the description just because the caller did not see, or perhaps just did not mention them. Anderson could have returned to his bicycle and sled after looking into the window of the employee's car. Based on these circumstances, it was reasonable for Officer Baumeister to suspect that Anderson was the person described in the call because he was the only person at the scene, and he was heading in the general direction reported by the caller. Therefore the district court's ruling was not based on clear error due to inconsistent reports of the color of Anderson's clothes. Furthermore, in this case it was appropriate for the district court to make its legal conclusions without regard to the color of Anderson's clothes.

B. Officer Baumeister's observations of Anderson

Even if we were to conclude that Anderson did not fit the description in the 911 call, Anderson's circumstances would merit a temporary seizure of his person to run his name in the state database. On a motion to suppress, the district court must find that "under all the circumstances, a reasonable person would have believed that because of the conduct of the police he was not free to leave, then there was a 'seizure,' and the police must be able to articulate reasonable suspicion justifying the seizure, or else any evidence that is the fruit of the seizure is suppressible." *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993). The precise meaning of "reasonable suspicion" cannot be reduced to a neat set of legal rules. *Ornelas v. United States*, 517 U.S. 690, 695-96, 116 S. Ct. 1657, 1661 (1996). However, the police officer should be able to articulate that the nature, quality, repetition, or pattern of the circumstances leading up to the stop become "so unusual and suspicious that they support at least one inference of the possibility of criminal activity." *State v. Schrupp*, 625 N.W.2d 844, 847-48 (Minn. App. 2001), *review denied* (Minn. July 24, 2001).

The district court found that Anderson was not free to leave while being questioned by Officer Baumeister, however, the district court concluded that the surrounding circumstances justified the seizure. Being in a parking lot late at night, after most businesses in the area are closed, and for no apparent reason, could be considered suspicious. *See Thomeczek v. Comm'r of Pub. Safety*, 364 N.W.2d 471, 472 (Minn. App. 1985) (concluding that because Thomeczek was parked near an empty lot late in the evening, in an area undergoing construction, there was a basis for suspicion); *see also State*

v. Lee, 225 N.W.2d 14, 16 (Minn. 1975) (reasoning the time (4:15 a.m.) was a relevant factor because police know that tires are more commonly stolen from automobiles at night). It is not necessary that the police must possess articulable suspicion before they approach a person in public, unless that person is not free to leave. *E.D.J.*, 502 N.W.2d at 783. It was reasonable for Officer Baumeister to approach Anderson outside Discount Tire, when Anderson was there after hours and for no apparent reason.

Once Officer Baumeister approached Anderson, Anderson's behavior immediately became increasingly suspicious. Furtive gestures and strange, evasive movements in the presence of police can be considered factors raising justifiable suspicion. *Florida v. Rodriguez*, 469 U.S. 1, 6, 105 S. Ct. 308, 311 (1984); *State v. Dickerson*, 481 N.W.2d 840 (Minn. 1992), *aff'd by Minnesota v. Dickerson*, 508 U.S. 366, 113 S. Ct. 2130 (1993). Officer Baumeister testified that Anderson's behavior was suspicious. Anderson's actions gave Officer Baumeister the impression that Anderson was trying to conceal something. Anderson moved away from Officer Baumeister as the officer approached him, and Anderson was rapidly turning to look at Officer Baumeister while moving his hands throughout his body. After Officer Baumeister told Anderson that he was making contact because of a report that someone was looking in the vehicles at Discount Tire, Anderson responded with a "rant" about how there were "other kids" or individuals in the parking lot who were "acting suspicious." Anderson was talking rapidly, and it was difficult for Officer Baumeister to understand him. At this point it was appropriate for Officer Baumeister to command Anderson to wait with Officer Forester while Officer Baumeister

ran a search of the name Anderson had given him. By this time, Officer Baumeister had reasonable, articulable suspicion to justify a temporary seizure.

Therefore, we affirm the district court's denial of Anderson's motion to suppress based on an allegedly illegal seizure. Based on our de novo review of the application of the law regarding warrantless seizures, we conclude the district court properly determined that Officer Baumeister had reasonable, articulable suspicion to temporarily detain Anderson while checking the name Anderson gave him in the state identification database.

Affirmed.