STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1354

State of Minnesota,
Respondent,

vs.

Jomar Londo Haines,
Appellant.

Filed April 6, 2020
Affirmed
Hooten, Judge

Ramsey County District Court
File No. 62-CR-18-889

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

John Choi, Ramsey County Attorney, Treye Kettwick, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Steven J. Meshbesher, Meshbesher & Associates, P.A., Minneapolis, Minnesota (for appellant)

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

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

HOOTEN, Judge

In this direct appeal from the judgment of conviction for unlawful possession of a firearm, appellant argues that the district court erred in denying his motion to suppress the

evidence against him because his seizure by police was not supported by reasonable, articulable suspicion of wrongdoing, and the conduct of the officers exceeded the scope of what is permissible for an investigatory stop and constituted a de facto arrest. We affirm.

FACTS

In the early morning hours of February 3, 2018, St. Paul police officers Alec Cruz and Daniel Wallace were dispatched to the apartment of N.L. Officers were informed that N.L.'s sister, K.L., had called 911 to report that her boyfriend was at her sister's apartment, "had brought a gun," and "was being threatening." N.L. also called 911 and confirmed what her sister had reported. Dispatch informed officers of the description of the boyfriend—he was "a mixed-race male, Native American/African American, about 5-5, heavyset, with a dark jacket with . . . a feathered hood." As the officers drove to the scene, dispatch sent them an update that no gun had been seen.

When officers arrived at the apartment, they observed an individual who matched the description of the boyfriend leaving the building. The individual was later identified as appellant Jomar Haines. Officer Cruz intended to pat-frisk Haines because "[i]t was a weapon call." Officer Wallace had his gun drawn and pointed at the ground as he and Officer Cruz approached Haines. Because Haines's hands were in his pockets, Officer Cruz asked Haines to show him his hands. Officer Cruz then asked Haines to turn around and put his hands behind his back. Haines complied with the officers' orders. Officer Cruz approached Haines, explaining that he was not under arrest. Officer Cruz took out his handcuffs and grabbed Haines's arms for the purpose of handcuffing him.

Before Officer Cruz was able to handcuff Haines, Officer Wallace saw a gun in his jacket pocket and yelled "gun." Officer Cruz immediately "wrapped [his] arms around [Haines]'s arms to keep him from reaching for anything." Officer Wallace took the gun from Haines's pocket and pointed his own handgun at Haines. Officer Cruz then placed Haines in handcuffs and arrested him.[1]

Because Haines had previously been convicted of assault in the fifth degree and terroristic threats, which are considered crimes of violence under Minn. Stat. § 624.712, subd. 5 (2016), he was ineligible to possess a firearm under Minn. Stat. § 624.713, subd. 1(2) (2016). The state charged Haines with three counts: possession of a firearm as an ineligible person and possession of ammunition as an ineligible person under Minn. Stat. § 624.713, subd. 1(2), and possession of a firearm with an altered serial number under Minn. Stat. § 609.667, subd. 2 (2016).

Haines moved to suppress any and all physical evidence in the case. At the omnibus hearing, Haines argued that he was de facto arrested before officers saw that he was carrying a gun and that because the arrest was not supported by probable cause, the gun should be excluded from evidence. He also argued that officers exceeded the scope of the investigatory stop. After hearing the officers' testimony, the district court concluded that the officers "were reasonably protecting themselves by using prompt and the least intrusive means for securing the scene" and thus the stop "was not transformed into an unlawful

[1] Haines does not challenge his ultimate arrest on appeal.

arrest." The district court also determined that the officers' stop was justified by reasonable suspicion. Accordingly, the district court denied Haines's motion to suppress evidence.

Haines agreed to a stipulated facts trial. *See* Minn. R. Crim. P. 26.01, subd. 4. The district court convicted Haines of possessing a firearm as an ineligible person and dismissed the remaining two counts. He was sentenced to 60 months in prison, which was stayed pending this appeal.

D E C I S I O N

Haines challenges the district court's denial of his motion to suppress the firearm based on the validity of his *Terry* stop. Both the federal and state constitutions protect against unreasonable searches and seizures. U.S. Const. amend IV; Minn. Const. art. I, § 10. The United States Supreme Court in *Terry v. Ohio* set forth the principle that officers may "temporarily detain a suspect without probable cause if (1) the stop was justified at its inception by reasonable articulable suspicion, and (2) the actions of the police during the stop were reasonably related to and justified by the circumstances that gave rise to the stop in the first place." *State v. Diede*, 795 N.W.2d 836, 842 (Minn. 2011) (quotations omitted). When police obtain evidence as a result of a seizure that lacks reasonable suspicion, the evidence must be suppressed. *Id.* "We undertake a de novo review to determine whether a search or seizure is justified by reasonable suspicion or by probable cause." *State v. Burbach*, 706 N.W.2d 484, 487 (Minn. 2005).

I. The district court did not err by finding that the officers had reasonable, articulable suspicion to stop Haines.

Haines argues that the officers did not have reasonable suspicion to stop him. An officer may "stop and temporarily seize a person to investigate that person for criminal wrongdoing if the officer reasonably suspects that person of criminal activity." *State v. Cripps*, 533 N.W.2d 388, 391 (Minn. 1995). "Reasonable suspicion must be based on specific, articulable facts that allow the officer to be able to articulate . . . that he or she had a particularized and objective basis for suspecting the seized person of criminal activity." *Diede*, 795 N.W.2d at 842–43 (quotations omitted). The standard for reasonable suspicion is "not high." *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). It is less demanding than probable cause or a preponderance of the evidence, but still "requires at least a minimal level of objective justification for making the stop." *Id.*

A. The information reported in the 911 calls was sufficient to support reasonable, articulable suspicion.

Haines argues that the 911 calls do not support a finding that the officers had reasonable, articulable suspicion to stop him because the 911 calls did not allege that Haines was engaged in criminal activity.

Haines's argument fails for two reasons: (1) the 911 calls sufficiently alleged that Haines was armed and dangerous and involved in criminal activity; and (2) although the officers were not given all the information reported in the 911 calls, the officers' knowledge at the time of the stop was sufficient to create reasonable, articulable suspicion to stop Haines.

The following exchange occurred when N.L. called 911:

N.L.: There's a man outside my door, there's a man outside my door with a gun. He's trying to get in my apartment door. His name is Jomar. [inaudible] he has a gun.

. . . .

N.L.: And he just beat my sister up.
OPERATOR: What race is he?
N.L.: Native and black.

. . . .

N.L.: Can you please get a cop here right away please?
OPERATOR: Okay. Did you see the gun?
N.L.: No, but he carries one. He's got, there's police already looking at him in uh Plymouth.
OPERATOR: Okay. So he assaulted your sister earlier today?
N.L.: Yes he, he blacked her out, he pulled her hair out.

. . . .

OPERATOR: Does he have a key to get in?
N.L.: No. I don't know him. He just, he's been dating, dating my sister. He just beat her up, and I don't know what's going on. He's threatening all of her family. He's threatening me and my brother and my mom.
OPERATOR: Okay.
N.L.: I'm really scared.

When K.L. called 911, she reported the following: "Hi, um I need, I need a bunch of police. There is a man I, I, with an armed weapon on him at my sister's door, banging on her door. Um she's there alone with my two nephews." She later told the operator that "he's at my sister's door and he's got a gun, he's been calling and making threats saying he's gonna kill everybody." K.L. told the operator that she did not know if her sister saw a firearm but said, "He's at her door, he got in through a secured apartment building, he's at her door where he can kick it in and go in and shoot her and her kids."

Haines argues that the information given to the 911 operator did not create reasonable articulable suspicion that Haines was engaged in criminal activity. The sisters' reports to the 911 operators indicated that Haines had threatened K.L.'s family, had beaten up K.L. that day, and was attempting to get into N.L.'s apartment, and that the sisters believed he had a firearm. Had the officers been privy to the entirety of the sisters' phone calls to 911, there would have certainly been more than reasonable grounds to suspect criminal activity was afoot. *See State v. Lugo*, 887 N.W.2d 476, 486 (Minn. 2016) (defining reasonable suspicion as "a particularized and objective basis for suspecting the particular person stopped of criminal activity"). Furthermore, "[s]tops based upon [an] informant's tips have been found valid upon a showing that there was a basis for the informant's knowledge." *Playle v. Comm'r of Pub. Safety*, 439 N.W.2d 747, 748 (Minn. App. 1989) (noting that there was "reason to believe the informant based his conclusion on personal observation" after the informant described the color and make of the vehicle suspected of drunk driving).

In this case, the record indicates that N.L. personally observed Haines that evening trying to get into her apartment, believed that he had a gun, and expressed concerns for her safety as he had threated her family. N.L. was able to describe his race and knew him from previous interactions because he was dating her sister. And, K.L.'s 911 call confirmed that Haines had beat her up and had been threatening her family that day. As the officers noted, Haines fit the description given by N.L. to the 911 operator. Based upon this record, we agree with the district court that the information given to the 911 operator created reasonable articulable suspicion that Haines was engaged in criminal activity.

Haines also argues that the information given to the officers based on the 911 calls was insufficient to create reasonable, articulable suspicion that Haines was engaged in criminal activity. Although dispatch did not give all the reported information to the officers, the information given to officers was sufficient to support a reasonable, articulable suspicion that Haines was engaged in criminal activity. When Officers Cruz and Wallace were contacted by dispatch, they were notified that there was "a weapons complaint" at N.L.'s apartment, specifically that "[s]omebody called saying that there is a male with a gun trying to get into an apartment building." As the district court noted, "Officer[s] Cruz and Wallace were informed that someone matching [Haines's] physical description and location was car[ry]ing a weapon." The officers reasonably believed that Haines may have been armed and dangerous and, therefore, were permitted to stop and frisk him for weapons. *See State v. Flowers*, 734 N.W.2d 239, 250–51 (Minn. 2007) ("A *Terry* stop permits an officer who suspects that an individual is engaged in illegal activity and also believes that a suspect may be armed and dangerous to frisk the suspect in order to reduce concerns that the suspect poses a danger to officer safety.").

Because the officers had reasonable, articulable suspicion to stop and frisk Haines based on the information they received from dispatch, the district court properly determined that the stop was valid.

B. The officers reasonably suspected that Haines was engaged in criminal activity.

Haines also argues that the officers did not have reasonable, articulable suspicion that Haines was "about to" engage in criminal activity. He relies on *State v. Ries* for the

proposition that the officers only had reasonable suspicion that Haines *might* commit a crime, not that he was *about to* commit a crime. 920 N.W.2d 620, 628 (Minn. 2018).

In *Ries*, a woman called 911 to report that there was a man in her apartment whom she did not know and who had a gun. *Id.* at 623. When officers arrived, they found the man asleep on the coach. *Id.* Officers patted Ries down because they were concerned that if he woke up, he "might" be alarmed. *Id.* at 624. The supreme court held that the officers' search was invalid because "*Terry* does not stand for the proposition that the pat-frisk exception applies to any person who 'might' commit a crime." *Id.* at 628. Instead, a *Terry* stop occurs when police have reasonable, articulable suspicion that a suspect is "*about to* engage in" criminal activity. *Id.*

This case is easily distinguishable from *Ries*. When officers approached Ries, he was "passed out on a couch," and officers were concerned that he might reach for his gun when they tried to wake him. *Id.* at 623–24. In this case, Haines was exiting the apartment building that he previously attempted to enter with a gun after threatening N.L's life and beating up K.L. that day. Based on the information officers received from dispatch, there was reasonable suspicion that Haines had been threatening the 911 caller with a gun and attempting to break into her apartment. Therefore, there was reasonable suspicion that Haines was armed and dangerous and was engaged in criminal activity.

The district court did not err by finding that the officers had reasonable, articulable suspicion to stop Haines.

II. The district court did not err by finding that the officers did not exceed the scope of a *Terry* stop.

Haines argues that the officers exceeded the scope of a *Terry* stop by moving to handcuff Haines while Officer Wallace had his firearm out and pointed at the ground. Haines contends that this constituted an unlawful de facto arrest because the officers did not have probable cause to arrest him before seeing the gun on his person.

"An officer may conduct a limited protective weapons frisk of a lawfully stopped person if the officer reasonably believes that the suspect might be armed and dangerous and capable of immediately causing permanent harm." *State v. Varnado*, 582 N.W.2d 886, 889 (Minn. 1998). "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence . . . ." *Adams v. Williams*, 407 U.S. 143, 146, 92 S. Ct. 1921, 1923 (1972). "[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 . . . ." *State v. Munson*, 594 N.W.2d 128, 137 (Minn. 1999); *see also State v. Moffatt*, 450 N.W.2d 116, 120 (Minn. 1990) (holding that a stop was not deemed a de facto arrest even when officers frisked the suspects for weapons and placed them in separate squad cars).

Haines argues that Officers Cruz and Wallace were reasonable in ordering him to stop, show his hands, and turn around but that they exceeded the scope of the stop by moving to handcuff him. But handcuffing a suspect does not necessarily transform an investigative stop into an arrest. *Munson*, 594 N.W.2d at 137. The question, instead, is

whether the scope of the search and detention was reasonable. *State v. Blacksten*, 507 N.W.2d 842, 846 (Minn. 1993); *Munson*, 594 N.W.2d at 137.

In this case, when Officer Cruz approached Haines, he told him twice that he was not under arrest and was moving to handcuff Haines when Officer Wallace yelled "gun." Similarly in *State v. Walsh*, the supreme court held that the suspect was not under arrest and the scope of the investigative detention was reasonable when the suspect was handcuffed and told he was not necessarily under arrest. 495 N.W.2d 602, 605 (Minn. 1993). Furthermore, Haines was not actually handcuffed when Officer Wallace saw the gun in his pocket, and the timeframe between when officers first approached Haines and when Officer Cruz started to handcuff him was very limited—less than 30 seconds. As the officers explained, due to the nature of the call, they wanted to detain Haines with handcuffs in order to ensure their safety. Because the officers had reason to believe that Haines was armed and he clearly fit the description of the person reported to 911, it was reasonable under the circumstances to handcuff him.

Haines also argues that because the officers attempted to handcuff him, he was not free to leave and was therefore under arrest. The supreme court has previously addressed the "free to leave" language: "[T]he 'not free to leave' language is unfortunate, because a person who is being detained temporarily is not free to leave during the period of detention, yet that does not convert the detention into an arrest." *Moffatt*, 450 N.W.2d at 120. Thus, a person who is temporarily detained may not be free to leave but is not under arrest. *Id.* Instead, whether someone feels free to leave is one part of a two-part test in determining whether a person is under arrest. *State v. Beckman*, 354 N.W.2d 432, 436 (Minn. 1984).

The second part of the test is whether a reasonable person would have concluded that he was under arrest. *Id.*

Officer Cruz told Haines twice that he was not under arrest. Officer Cruz approached Haines, took out his handcuffs, and started to grab Haines's arms when Officer Wallace yelled "gun." A reasonable person who was told twice that he was not under arrest would not believe that he was under arrest but would reasonably believe that he would be pat-frisked for weapons. While Haines was clearly not free to leave at this point in the stop, it would be unreasonable to conclude that he was under arrest.

Haines argues last that the officers used unreasonable force in detaining him by handcuffing him and having a firearm out and pointed at the ground. When determining whether an investigative stop is transformed into an 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), *review denied* (Minn. Oct. 21, 2003). This court "grant[s] officers greater latitude in using force in order to 'neutralize' potentially dangerous suspects during an investigatory stop." *Id.* (alteration in original). Police do not need to have probable cause when the force used during an investigative stop is reasonably necessary for the protection of the officers. *Id.*; *see also State v. Nading*, 320 N.W.2d 82, 84 (Minn. 1982) (holding that under the totality of circumstances, the fact that the police ordered suspected burglars thought to be armed and dangerous to get out of the car and lie on the ground did not convert a temporary

detention into an arrest). "[T]he use of reasonable force is almost invariably justified in cases involving persons suspected of being armed." *Balenger*, 667 N.W.2d at 140.

The district court concluded, "[t]he Officer's safety was at risk based on the dispatch to a weapon's call. By stopping and initiating a search of [Haines] for weapons, the Officers were reasonably protecting themselves by using prompt and the least intrusive means for securing the scene." Because the officers had reason to believe that Haines was armed and dangerous, Officer Cruz's use of force in moving to handcuff Haines and Officer Wallace's firearm being pointed at the ground was reasonable for the limited purpose of conducting a weapons search.

Because the officers had reason to believe that the suspect was armed and dangerous based on the nature of the dispatch call, the officers' actions amounted to an investigative stop and was not transformed into an arrest based on their reasonable use of force.

Affirmed.