STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1416

State of Minnesota,
Respondent,

vs.

Tamarr Brayon Long,
Appellant.

Filed September 6, 2022
Affirmed
Halbrooks, Judge[*]

Hennepin County District Court
File No. 27-CR-20-22848

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

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jessica Merz Godes, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Gaïtas, Presiding Judge; Cochran, Judge; and Halbrooks, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

HALBROOKS, Judge

Appellant challenges his conviction of possession of ammunition by an ineligible person, arguing that the district court erred by not suppressing evidence that resulted from an unlawful seizure and that the seizure was not attenuated by the discovery of a warrant for his arrest. We affirm.

FACTS

On October 24, 2020 at 2:00 a.m., Hennepin County Sheriff's Office deputies responded to "a suspicious persons report" made in a residential neighborhood of Golden Valley. The deputies approached two cars with lights off, but still running, parked on the side of the road. Appellant Tamarr Brayon Long was a passenger sitting in the rear right seat of a Honda. The encounter ended with Long's seizure and arrest. After being arrested, deputies found ammunition on his person and a firearm under the seat directly in front of where he had been sitting.

Long was initially charged with one count of ineligible possession of ammunition or firearm in violation of Minn. Stat. § 624.713 subd. 1(2) (2020). A *Rasmussen* hearing was held to address Long's motion to suppress the evidence as a result of an unlawful seizure. Long argued that the officers did not have reasonable, articulable suspicion to contact Long nor probable cause to seize him. At the *Rasmussen* hearing, the deputy who initiated Long's seizure testified, describing the information that he received from dispatch about the reporting party's call as follows:

> As I was heading to the call, the notes indicated that the RP, which is the reporting party, said there was a vehicle outside of her house bearing—I think they gave three digits of the license plate. . . .
>
> But she called in worried because her mother's driver's license was recently stolen and was kind of nervous and worried that it might be related that there is a car parked outside in front of her house.

The reporting party noted that the car had been running for about five minutes before she called the police. The deputy described the neighborhood as "purely residential" without many streetlights, near a freeway but not directly off of it. The deputy testified that when he and his partner arrived at the scene he found two running cars, one—a Honda—with a license plate matching the description given by the reporting party. He approached the Honda and found that it contained three people, not one as the reporting party had stated. His partner approached the second car.

The deputy stated that he walked up to the Honda and asked if everyone was okay. The deputy asked the car's occupants why they were in the area, and the driver responded that they were looking for a hotel. The driver said that she was from Anoka but that they were coming from Brooklyn Park, looking for a hotel because her grandparents would not allow her to return to the home due to the risk of spreading COVID-19. The deputy testified that this response drew his suspicion because the cars were "pulled into not a well-lit area. It was a neighborhood fully residential. And if you were an individual looking for a hotel, off of Highway 169 if you went a little more south, for instance, 394, you probably could have just pulled into a hotel parking lot." The driver had her phone in her lap when the deputy approached.

The deputy identified the driver of the Honda and ran warrant checks on her as well as the driver of the second car. The driver of the second car had an outstanding sign-and-release warrant. While the deputy handled that warrant, his partner conducted field sobriety testing of the driver of the Honda. When the driver of the second car had signed the warrant and got back in her car, the deputy decided to get identification of the two passengers in the Honda. The deputy explained his justification:

> [A]fter the collaboration of the stories, we went to identify the rest of the occupants because the time of day, the area where the vehicles were parked, and the prior knowledge that the RP reported that her mother's driver's license was stolen led me to identify the rest of the occupants in that vehicle.

Approximately 15 minutes after he arrived on the scene, the deputy got verbal identification from Long and the other passenger. He checked their names for warrants, telling them to "hang tight" while he did so. Two more police cars with at least one officer in each arrived on the scene while the deputy checked for warrants. About "a minute or two" after receiving Long's information, the deputy discovered that Long had an outstanding felony warrant.

The deputy arrested Long and searched him incident to his arrest. Long had a "Bersa magazine" in his front pocket, and a Bersa[1] firearm was found under the seat directly in front of him.

On cross-examination, defense counsel questioned the deputy for specifics about the reporting party's call, including if the officer knew when and where the alleged stolen

[1] "Bersa" is a brand of firearm.

driver's license had been taken. The deputy responded that the crime he had been "dispatched to investigate" "was just suspicious activity." He clarified this answer by stating: "the referring party said that the mother's driver's license was stolen and that she was just kind of nervous that there was a vehicle parked outside for the last five minutes with the lights off." On re-direct examination, the state asked the deputy whether he was concerned about burglary or robbery, or some "suspicion that something was afoot regarding this vehicle." The deputy responded:

> given the information from . . . the reporting party, you know, it could have been a potential burglary or casing of a place. It is very suspicious of a car at that time being parked in front of someone's house who just had their license stolen. So I guess we're investigating . . . a potential crime that may or may not have been committed.

He also testified that, based on his training and experience, it was common for a burglar to have a getaway car "just waiting and running for them to return [to] and drive off quickly." He testified that at the time of the incident he did not think this was a high drug or high crime area.

No other witnesses were called, and both parties submitted written closing arguments. The district court denied Long's suppression motion, concluding that Long was seized when the driver was seized, and that the deputy had "reasonable particular suspicion" of criminal activity because the deputy became suspicious of the answers provided during his initial questioning. In sum:

> Based on the late hour, the idling of the cars without their lights on, the lack of light in the area, the suspicious answers, and his knowledge that an occupant of a nearby house had their ID

> with their home address on it stolen earlier that day, [the deputy] became suspicious of a possible burglary.

The district court denied Long's suppression motion on an additional basis, concluding that "the attenuation doctrine applies and would purge the taint of any unconstitutionally obtained evidence against [Long]."

The state amended its complaint, charging Long with one count of ineligible possession of ammunition and one count of ineligible possession of a firearm in violation of Minn. Stat. § 624.713 subd. 1(2). A jury convicted Long of possession of ammunition by an ineligible person. He was sentenced to prison for 60 months. This appeal follows.

DECISION

When reviewing a challenge to a ruling on a motion to suppress evidence, this court's review is limited to the district court's pretrial order denying the motion to suppress. *State v. Busse*, 644 N.W.2d 79, 88-89 (Minn. 2002). In considering a challenge to such an order, appellate courts review factual findings for clear error and legal conclusions de novo. *State v. Diede*, 795 N.W.2d 836, 843 (Minn. 2011). "Findings of fact are clearly erroneous if, on the entire evidence, we are left with the definite and firm conviction that a mistake occurred." *State v. Andersen*, 784 N.W.2d 320, 334 (Minn. 2010). A determination as to the existence of reasonable, articulable suspicion or probable cause is reviewed de novo. *State v. Munson*, 594 N.W.2d 128, 135 (Minn. 1999).

The Fourth Amendment of the United States Constitution and article 1, section 10 of the Minnesota Constitution prohibit unreasonable searches and seizures. Warrantless searches and seizures are unreasonable under both the state and federal constitutions unless

a recognized warrant exception applies. *Coolidge v. New Hampshire*, 403 U.S. 443, 474 (1971); *State v. Ortega*, 770 N.W.2d 145, 149 (Minn. 2009). The state must show that an exception to the warrant requirement applies. *State v. Licari*, 659 N.W.2d 243, 250 (Minn. 2003).

Under Minnesota law, a seizure occurs when "in view of all the circumstances surrounding the incident, a reasonable person would have believed that he or she was neither free to disregard the police questions nor free to terminate the encounter." *State v. Harris*, 590 N.W.2d 90, 98 (Minn. 1999) (citing *Florida v. Royer*, 460 U.S. 491, 497-98 (1983) and *United States v. Mendenhall*, 446 U.S. 544, 554 (1980)) (other citation omitted). A police officer may temporarily seize an individual to investigate possible criminal activity, provided that the officer has a reasonable and articulable suspicion that the individual is engaged in criminal activity. *State v. Askerooth*, 681 N.W.2d 353, 364, 368 (Minn. 2004) (citing *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968)). "[T]he reasonable suspicion showing 'is not high.'" *State v. Bourke*, 718 N.W.2d 922, 927 (Minn. 2006) (quoting *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997)). But it does "require[] at least a minimal level of objective justification for making the stop." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000). The justification must be more than an "inchoate and unparticularized suspicion or hunch" that criminal activity may occur. *Terry*, 392 U.S. at 27. An officer cannot rely on "whim, caprice, or idle curiosity" as grounds for a stop. *State v. Pike*, 551 N.W.2d 919, 921-22 (Minn. 1996) (citing *Terry*, 392 U.S. at 21). Moreover, an officer must have "objective evidentiary justification" for the belief that an individual is involved in criminal activity. *Terry*, 392 U.S. at 21. A police officer must be able to point to

"specific, articulable facts" that allow the officer to articulate a "particularized and objective basis for suspecting the seized person of criminal activity." *Diede*, 795 N.W.2d at 842-43.

The district court concluded that Long was seized when the driver of the Honda was seized, and on appeal, neither party challenges that conclusion. The district court further determined that the deputy had reasonable, articulable suspicion that there may be a possible burglary because of "the late hour, the idling of the cars without their lights on, the lack of light in the area, the suspicious answers, and his knowledge that an occupant of a nearby house had their ID with their home address on it stolen earlier that day."[2] Long concedes that the information given by the reporting party during the 911 call was sufficient to justify the police approaching the Honda to determine why the occupants were there. But Long argues that once the officer received the information that the occupants were looking for a hotel, the encounter should have ended. The deputy testified that the answers to his questions were suspicious because he thought that it was a "weird" place to look for a hotel. He testified that the area was not well lit, it was residential, and hotels

[2] The district court made a factual finding that "the [reporting party] was concerned that the middle-of-the-night arrival of the car was related to the theft of her mother's purse that day. The purse contained an ID which had the 911 caller's address on it." Long argues that the district court's findings that the reporting person's mother's purse and driver's license had been stolen earlier that day was error. In its principal brief, the state concedes that the district court clearly erred because the record only points to a stolen driver's license that had been taken "recently," not a purse stolen the same day. We conclude that these factual findings, while erroneous, were not material to the conclusion that the deputy had reasonable, articulable suspicion to seize and investigate Long.

were located further south along the freeway where the driver could have "just pulled into a hotel parking lot."

Long does not agree with the characterization of the driver's answers as "suspicious." He argues that the driver may not have had the same knowledge about the location of hotels as the deputy. And he contends that the evidence that the driver had her phone on her lap corroborated that she was looking for hotels online. But the deputy was entitled to have suspicion about the driver's answers. The late hour and the cars idling where there was little light in a residential neighborhood, along with the proximity of hotels close by are facts sufficient for the deputy to find the answers suspicious.

Long attempts to make a distinction between the deputy supporting his suspicion on the driver's answers rather than on what Long was doing during the encounter. He states that by doing so, the deputy's suspicion was not particularized to Long. *See United States v. Cortez*, 449 U.S. 411, 417-18 (1981) (concluding that "detaining officers must have a particularized and objective basis for suspecting the particular person stopped of criminal activity").

But, as the state argues, the deputy's suspicions were justified under the totality of the circumstances. The deputy believed that the cars idling in front of the reporting party's house in a purely residential neighborhood was unusual. Combined with the fact that the reporting party's mother's identification had recently been stolen, the deputy reasonably believed that the house might be being cased or about to be burglarized. The deputy testified that, in his experience, burglars often keep a running vehicle nearby to escape. And his suspicions grew throughout the course of the brief seizure. After receiving the

"suspicious" answers to his questions, the officer helped his partner determine that the driver of the second vehicle had an outstanding warrant. This added to the officer's suspicions under the totality of the circumstances. The deputy's return to the passengers in the Honda in order to continue his investigation was reasonable and justified under the circumstances.

Long also argues that the reporting party did not give the deputy sufficient information to "objectively and reasonably" link Long in the Honda to the stolen driver's license. Long cites to *Brown v. Texas* where officers stopped a man who had been walking in an alley in an area known for high drug traffic. 443 U.S. 47, 48-49 (1979). The officers stopped the man after they observed him and another man walking in opposite directions away from one another in an alley. *Id.* at 48. The officers thought that the situation "looked suspicious" and noted that they had never seen that man in the area before. *Id.* at 49. In concluding that the officers' reasonable suspicion that the man was involved in criminal activity was not supported by the preceding circumstances, the Supreme Court stated:

> Officer Venegas testified at appellant's trial that the situation in the alley "looked suspicious," but he was unable to point to any facts supporting that conclusion. There is no indication in the record that it was unusual for people to be in the alley. The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct. In short, the appellant's activity was no different from the activity of other pedestrians in that neighborhood. When pressed, Officer Venegas acknowledged that the only reason he stopped appellant was to ascertain his identity.

Id. at 52.

Long argues that his case is similar to *Brown* because the reporting party "did not articulate a single fact that objectively and reasonably linked the Honda, lawfully parked on a residential city street, to the stolen driver's license." Long argues that the facts articulated to police by the reporting party are important because they were what the deputy would have known when approaching the Honda. He contends that the reporting party merely imagined a link between the stolen driver's license and the car parked outside her house, but gave no indication that it was unusual for there to be "traffic on the street at that time of day." However, the time of day is different here than in *Brown*. The Honda was parked idling outside of the reporting party's house at 2:00 a.m. in a purely residential neighborhood. Brown was walking in an alley at midday. And the recently stolen driver's license coupled with the suspicious answers to the deputy's questions in this case add justification under the totality of the circumstances.

Citing *State v. Johnson*, 645 N.W.2d 505 (Minn. 2002), Long asserts that the deputy should have simply verified his identity rather than run a warrant check. In *Johnson*, we addressed whether an officer had reasonable, articulable suspicion that a passenger was involved in criminal activity to justify seizing him and running a warrant check. *Id.* at 507. The officers had pulled over the car for an equipment violation. *Id.* When it was determined that the driver had only a permit to drive, the officer asked another passenger and Johnson whether they had a valid driver's license. *Id.* The officer took Johnson's identification and instead of merely establishing that the license was valid, ran a warrant check. *Id.* This court determined that the officer could have legally established that the license was valid, as this would have pertained to the driver having only a permit that

required a licensed passenger in the car. *Id.* at 508. But since the warrant check was not justified by reasonable, articulable suspicion that Johnson was involved in criminal activity, the seizure was not valid. *Id.* at 510.

Here, the deputy testified that he believed that Long and the other people present in the Honda were engaged in casing or burglarizing the house. As articulated, the totality of the circumstances supplied the deputy with the necessary reasonable, articulable suspicion to justify the warrant check.

Finally, because we conclude that the search and seizure of Long was justified by reasonable, articulable suspicion, we decline to address Long's argument that the district court erred when it denied his suppression motion on the alternative basis of the attenuation doctrine.[3] We conclude that Long was lawfully seized and that the district court did not err by denying his motion to suppression.

Affirmed.

[3] Moreover, the Minnesota Supreme Court has "consistently declined to adopt, much less even address, the [federal] 'good faith' exception" to the exclusionary rule. *State v. Jackson*, 742 N.W.2d 163, 180 n.10 (Minn. 2007).