STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1298

State of Minnesota,
Respondent,

vs.

Kevin Maurice Williams,
Appellant.

Filed April 12, 2011
Affirmed
Harten, Judge*

Hennepin County District Court
File No. 27-CR-09-53102

Lori A. Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Thomas A. Weist, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

David W. Merchant, Chief Appellate Public Defender, G. Tony Atwal, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Peterson, Judge; and Harten, 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

HARTEN, Judge

Appellant challenges the district court's denial of his motion to suppress on grounds that the police did not have a reasonable basis to suspect that he was engaged in criminal activity at the time of the investigatory stop. Because (1) appellant's race, height, gender, and apparel matched the description of a suspect involved in a shooting; (2) appellant was found approximately one block away from the scene of the shooting; and (3) appellant's excessive sweating was inconsistent with a casual bike ride, we conclude that the totality of the circumstances sufficiently supported reasonable police suspicion of criminal activity and therefore we affirm.

FACTS

Shortly after midnight on 23 October 2009, appellant Kevin Maurice Williams was biking to his sister's house. Appellant came across the scene of a shooting, stopped to watch the investigation for a few minutes, and then continued on his way.

Two Minneapolis police officers were patrolling approximately ten blocks away when they heard about the shooting. They drove towards the scene to see if they could find anyone matching the shooter's description: "a black male, approximately six feet tall with a medium build, wearing all dark clothing." Within a block of the shooting, the officers observed appellant, a black male with a heavy[1] build, wearing a dark, puffy hooded jacket, riding down an alley. The officers had initially driven past the alley, but backed up and drove down the alley after one of them spotted appellant. Appellant was

[1] The record reflects that appellant weighs approximately 300 pounds.

riding his bike towards the squad car "kind of at a lackadaisical pace," without "any sort of major intent or purpose of having to move quickly." Although appellant veered into a driveway at one point, the officer who spotted him did not observe any evasive behavior. As appellant passed the squad car's passenger side, the officer observed that appellant "was sweating profusely[,] . . . dripping down his face as if . . . he had just gotten done working out." The officers decided to stop appellant because he "matched the description of the shooting suspect."

One officer exited the squad car, asked appellant to get off his bike, and directed him over to the squad. Appellant was pat-frisked and all of his property was returned. Appellant was not carrying a wallet or any identification. The officer asked appellant to sit in the back of the squad car while she attempted to identify him.[2] Appellant provided his name and date of birth to the officer, who tried without success to verify his identity in three different databases.

Meanwhile, a vehicle pulled up next to the squad car and a passenger, later identified as A.A.H., said "that she believed the person that [the officers] had in the back of [their squad] car had just robbed her at gunpoint." This was the first the officers had heard about a robbery. Based on the description of the alleged robber "matching [appellant] exactly," the officers placed appellant under arrest for robbery.

The officer asked appellant to step out of the squad car in order to handcuff him. Due to appellant's size, she decided to use two sets of handcuffs linked together. While the officer was trying to secure the second handcuff, appellant pushed her and ran away.

[2] The state concedes that appellant was not free to leave at this point.

Her partner observed appellant's white shirt hanging out underneath his coat and broadcast that information along with appellant's description to assisting officers. Appellant was apprehended approximately a block and a half away. The officer then drove A.A.H. over to where appellant was being held and A.A.H. identified appellant as the perpetrator of the robbery in a show-up procedure. Officers searched the area, including the alley where they first saw appellant, but no firearm was recovered. Because there were no witnesses to the original shooting, appellant did not participate in any show-up procedure in connection with that crime, and the record reflects that appellant was not subsequently connected to that shooting.

Appellant was charged with one count of second-degree aggravated robbery in violation of Minn. Stat. § 609.245, subd. 2 (2008). Appellant challenged the stop, asserting that he did not match the description of the shooting suspect, the officers had no reasonable, articulable suspicion to believe that appellant was involved in criminal activity, and, therefore, the identification made by A.A.H. should be suppressed. The district court denied appellant's suppression motion, stating:

> As to the stop, I do find that the stop was valid. I believe based on the facts of this case that the police had reasonable, articulable suspicion to believe that [appellant] might be engaged in criminal activity. They had a description from dispatch. They had other information that was there. There was a difference in whether he was heavy build or medium build. I thought the officers from their testimony were very cautious in the way that they proceeded before they approached [appellant], to the point that they allowed him to go by them and then after seeing him sweating and stuff decided that they needed to stop him, so I believe that the officers had a right to stop [appellant].

Following the denial of his motion to suppress, appellant waived his right to a jury trial and submitted the case to the district court on stipulated facts in return for reduction of the charge to simple robbery, a violation of Minn. Stat. § 609.24 (2008). Appellant was convicted and sentenced to 41 months imprisonment. This appeal follows.

D E C I S I O N

The United States and Minnesota constitutions protect individuals against unreasonable searches and seizures. U.S. Const. amend IV; Minn. Const., art. 1, § 10. "In reviewing a district court's determinations of the legality of a limited investigatory stop, [appellate courts] review questions of reasonable suspicion de novo." *State v. Britton*, 604 N.W.2d 84, 87 (Minn. 2000).

A limited investigatory stop is permissible "if the state can show the officer to have had a 'particularized and objective basis for suspecting the particular person stopped of criminal activity.'"[3] *State v. Pike*, 551 N.W.2d 919, 921 (Minn. 1996) (quoting *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S. Ct. 690, 695 (1981)). Such a stop requires

[3] We additionally note that the officers had an objective basis to stop appellant because he violated a traffic law. "Ordinarily, if an officer observes a violation of a traffic law, however insignificant, the officer has an objective basis for stopping the vehicle." *State v. George*, 557 N.W.2d 575, 578 (Minn. 1997). Appellant was riding a bicycle at night without a headlamp in violation of Minn. Stat. § 169.222, subd. 6(a) (2008). There was testimony at the hearing that this violation played a role in the decision to stop appellant. Because appellant was required to follow the traffic laws, this violation provided an objective basis for the stop. *See* Minn. Stat. § 169.222, subd. 1 (2008) ("Every person operating a bicycle shall have all of the rights and duties applicable to the driver of any other vehicle by this chapter, except in respect to those provisions in this chapter relating expressly to bicycles and in respect to those provisions of this chapter which by their nature cannot reasonably be applied to bicycles."); *In re Welfare of M.D.B.*, 601 N.W.2d 214, 216-17 (Minn. App. 1999) (analyzing officer's stop of a juvenile on a bike for failing to obey a stop sign and turning the wrong way on a one-way street as a stop for minor traffic offenses), *review denied* (Minn. 18 Jan. 2000).

only reasonable suspicion of criminal activity. *Id.* Reasonable suspicion is not a high standard, but police must be able to articulate a particularized and objective basis for suspecting the person stopped of criminal activity and cannot simply rely on a hunch. *State v. Timberlake*, 744 N.W.2d 390, 393 (Minn. 2008). "The police must only show that the stop was not the product of mere whim, caprice or idle curiosity, but was based upon 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *Pike*, 551 N.W.2d at 921-22 (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880 (1968)). Appellate courts "consider the totality of the circumstances when determining whether reasonable suspicion exists, and seemingly innocent factors may weigh into the analysis." *State v. Davis*, 732 N.W.2d 173, 182 (Minn. 2007). If the officers lacked reasonable suspicion of criminal activity prior to the stop, then appellant was illegally seized, and any evidence gathered thereafter must be suppressed. *State v. Harris*, 590 N.W.2d 90, 97 (Minn. 1999).

Appellant argues that "it was objectively unreasonable to believe that [he] was the shooting suspect, when his physical description and description of his clothing did not match that of the shooting suspect" and he did not engage in any furtive or suspicious behavior prior to the stop. The state replies that, while appellant's build was heavier than the alleged shooter, appellant "fit most elements of the description given," including race, gender, height, and apparel. Additionally, the state points out that appellant's excessive sweating was inconsistent with the level of physical activity he appeared to be engaged in, causing officers to reasonably suspect that appellant had been running just before the

officers discovered him. Based on the totality of the circumstances, we agree with the state.

The following factors may be taken into account when determining the propriety of an investigatory stop near the scene of a recent crime:

> (1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

Appelgate v. Comm'r of Pub. Safety, 402 N.W.2d 106, 108 (Minn. 1987) (discussing investigatory stop of a motor vehicle). Here, the officers had a particularized and objective basis for suspecting appellant of criminal activity because he shared several characteristics with the alleged shooter and was found within a block of the reported shooting. Appellant's white shirt appears to have become visible after he took off running and his clothing was otherwise consistent with the alleged shooter. But "the particularity of the description is only one factor, which cannot be considered in isolation. The size of the area to be searched affects significantly the adequacy of the description." *State v. Saffeels*, 484 N.W.2d 429, 430 (Minn. App. 1992), *review denied* (Minn. 1 June 1992).

Additionally, while appellant asserts that "[t]he officers knew that [the alleged shooter] was not on a bicycle," the record reflects that a bicycle simply was not mentioned as part of the suspect's description and there is no contrasting description of

the alleged shooter's means of transportation. The officer also explained that "[t]here are miscellaneous bikes that kind of lay around in alleys, and it became somewhat clear to me it was possible that that was how [appellant] ended up on a bike because other than this, [appellant] fit the description [of the alleged shooter]." "[T]rained law-enforcement officers are permitted to make inferences and deductions that might well elude an untrained person." *State v. Kvam*, 336 N.W.2d 525, 528 (Minn. 1983) (quotation omitted); *see Britton*, 604 N.W.2d at 89 ("It is also true that wholly lawful conduct might justify the suspicion that criminal activity is afoot.").

Furthermore, appellant's sweating was not consistent with a casual bike ride. *See State v. Moffatt*, 450 N.W.2d 116, 118-19 (Minn. 1990) (objective suspicion legitimately increased by the fact that passengers in vehicle were "soaked with sweat," which was inconsistent with just driving around in a car on a warm night, and "gave a lame reason for being in the area"). Thus, while appellant did not precisely match the description of the allege shooter, the combination of his shared characteristics, his presence in the vicinity, and his seemingly out-of-place signs of physical exertion were sufficient to warrant the investigatory stop under the totality of the circumstances. *See Davis*, 732 N.W.2d at 182.

Affirmed.